

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Thomas S. Tisdale, Park R. Dougherty and
Martha T. Dougherty,

Appellant,

vs.

The City of Charleston, City of Charleston
Board of Architectural Review, Eugene M.
Woodard and Janice S. Woodard,

Respondents

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

CASE NO.: 2015-CP-10-6186

ORDER AFFIRMING DECISION OF THE
CITY OF CHARLESTON BOARD OF
ARCHITECTURAL REVIEW

RECEIVED

JUL 22 2015

SC Court of Appeals


FILED

This matter is before the Circuit Court on appeal from a decision of the City of Charleston Board of Architectural Review giving conceptual approval for an addition to the residential structure at 107 King Street. Appellants are nearby property owners. Their standing to bring this appeal is not disputed.

On appeal to the Circuit Court, the findings of fact by a board of architectural review shall be treated in the same manner as findings of fact by a jury, and the court may not take additional evidence. See S.C. Code Ann. § 6-29-930; Austin v. Board of Zoning Appeals, Town of Hilton Head Island, 606 S.E.2d 209 (S.C. Ct. App. 2004); see also Heilker v. Zoning Bd. of Appeals for City of Beaufort, 552 S.E.2d 42, 44 (S.C. Ct. App. 2001). In this regard, it is well-settled that "the factual findings of the jury will not be disturbed unless a review of the record discloses that there is *no evidence* which reasonably supports the jury's findings." Vulcan Materials Co. v. County of Greenville, 536 S.E.2d 892 (S.C. Ct. App. 2000) (emphasis in original). Further, the Court's review is "strictly limited to the facts and arguments raised to the board. Indeed, the Circuit Court is expressly forbidden from

considering any new facts." Austin, 606 S.E.2d at 214. Additionally, "[a] court will refrain from substituting its judgment for that of the reviewing body, even if it disagrees with the decision." Restaurant Row Assocs. v. Horry County, 516 S.E.2d 442, 446 (S.C. 1999). The statute governing BAR appeals, S.C. Code Ann. § 6-29-930, specifically provides that "the findings of fact by the board of architectural review are final and conclusive on the hearing of the appeal, and the court may not take additional evidence. . . . In determining the questions presented by the appeal, the court must determine only whether the decision of the board is correct as a matter of law."

The City of Charleston's ordinances provide some guidance for the Board's decision-making: See Charleston Zoning Ordinances, 54-240(a) ("the Board of Architectural Review shall consider, among other things, the historic, architectural and aesthetic features of such structure, the nature and character of the surrounding area, the use of such structure and the importance to the city.").




In the present case, the decision was a close one. The application was initially deferred. The applicant made some modest changes and came back to the Board. By a 4-2 vote, the BAR gave conceptual approval to the application. The City's architect was at the meeting and set forth the position of staff recommending approval. Although the number of opponents was more than the number of advocates, there were those who spoke for the application and against. It is clear the Board's decision should not be measured by counting the number of voices for a project versus those against.

The addition to 107 King has limited visibility to from the street. There is some visibility of a corner of the addition looking through the piazza and driveway of Mr. Tisdale's home from the right of way on Broad Street. There is also some ability to see a portion of the addition from King Street and an ability to see some portion of the structure over a wall and past the property of a resident if standing on Orange Street. Appellants argue the

Board applied a relaxed standard of review due to limited visibility of the structure from public rights of way. The City agrees there should not be a lower standard of review for structures with limited visibility from the street, but the City does note it only has jurisdiction over the visible portions. Furthermore, the Board denies it applied a relaxed standard due to limited visibility.


Based on a review of the record, it appears the Board decided by a majority vote that the structure was compatible and harmonious with the surrounding structures. This was a proper decision-making standard. Each board member voting to approve the application set forth their reasoning:



Member White: *"You know, harmony is a big consideration . . . But an orchestra is made up of a lot of instruments that are so different from one another, and yet they still can react in harmony. It's not all violins. . . . within this one image . . . from 109 Broad to 1907 Broad and then 105 and 105 1/2 King . . . you have about 150 years of architectural history right there. The Board of Architectural Review was never intended and the ordinance does not read to suggest architectural expression stops at . . . some date on a calendar. What is shown here, in my view, is very sensitive to the height, scale, and mass of the surrounding elements. . . . It's stucco-on-masonry. So is the building its being attached to. The overall percentage of glazing is not astronomically greater than what you might see glazing the south or west façade of a proper single house . . . The height of the building is not so tall as to be out of context or keeping with the surrounding sites . . . I think that Mr. Stockton, who is one of the most well-regarded preservationists and also a long-time member of this board, has correctly identified this building is not out of keeping with the historic district. It has been put on a little diet, which is exactly what it needed . . . It is without arresting effects. It does not substantially alter the streetscape. It does not fall out of harmony with the surrounding buildings . . ."*

Thereafter, board member Harrison directed comments to the use of glass in other projects in the City. She expressed that when you expand a use of a structure, you want to *"add on in a sensitive way that doesn't negatively impact the historic nature of your home or the neighborhood, and for the amount of area that we are talking about, it is extremely nominal. . . . I think this is how it's successfully done."*

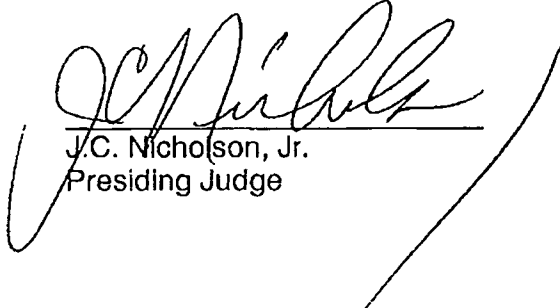
Board member Wallace then stated: *"I think its evident that over the last 40 years or more, we have had modern architecture integrated into the Old and Historic District, and I don't think this is so blatantly modern that it is out of character or scale . . . not just our [standards] in the City of Charleston, but, for example, the President's Advisory Council on Historic Preservation says that if you do an addition to a historic building, it should look like an addition. . . . That's a national standard . . . accepted by the National Trust for Historic Preservation and other preservation groups . . . for many, many years."*

 Board member Alexander said, *"I would certainly agree with Mr. White . . . there are interpretations to harmony that don't have to reflect the same architectural style as what building you're next to."*

Appellants direct the Court's attention to various passages of the transcript where the limited visibility of the structure from the public ways is discussed. Appellants also point to a discussion between several individuals including a board member and the project architect regarding the structure not being appropriate on Broad Street. As noted above, this Court must review the decision of the Board the same as a jury verdict. The Court is not persuaded these references prove the Board was applying a relaxed visibility standard. Because the Board's jurisdiction is limited to portions of a structure that are visible, it seems reasonable to discuss how much or little of the structure is visible. Likewise, the Board is within its rights to discuss how a structure might be appropriate for one location, but not for another. Further, the comment of one Board member during the debate and discussion of

a project does not fatally undermine the decision of the Board. These passages do not constitute adequate proof the Board applied the incorrect standard or considered improper evidence.

Based on this Court's review of the Record, the decision of the Board of Architectural Review is AFFIRMED.



J.C. Nicholson, Jr.
Presiding Judge

5/4, 2016
Charleston, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2015-CP-10-6186

Thomas S. Tisdale, et al

The City of Charleston, et al

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:	Attorney for : <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant
	or <input type="checkbox"/> Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON): Rule 12(b), SCRPC; Rule 41 SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled); Other
- ACTION STRICKEN (CHECK REASON): Rule 40(j), SCRPC; Bankruptcy; Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):
 Affirmed; Reversed; Remanded; Other

FILED
 2016 MAY -14 PM 3:06
 JULIE J. ARRESTROM
 CLERK OF COURT

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court:

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk : _____

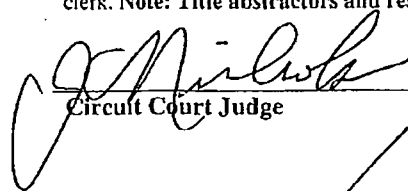
INFORMATION FOR THE PUBLIC INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
N/A		\$

If applicable, describe the property, including tax map information and address, referenced in the order:
N/A

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.



 Circuit Court Judge

2117
Judge Code

5/14/16
Date