STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON)
) Case No. 2016-CP-10-1106
241-243 E. Bay Holdings, LLC,)
)
Plaintiff-Petitioner,)
)
v.)
)
The City of Charleston, The Board of Zoning Appeals-Zoning for The City of Charleston, and Rainbow Market Group, LLC,) **ORDER**
)
Defendants-Respondents.)
)
Re: 2 Anson Street)

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON)
) Case No. 2016-CP-10-1107
241-243 E. Bay Holdings, LLC,)
)
Plaintiff-Petitioner,)
)
v.)
)
The City of Charleston, The Board of Zoning Appeals-Zoning for The City of Charleston, and Rainbow Market Group, LLC,)
)
Defendants-Respondents.)
)
Re: 40-46 Market Street)

These two related matters are appeals by 241-243 E. Bay Holdings, LLC ("East Bay") from final decisions of the City of Charleston Board of Zoning Appeals – Zoning ("BZA") which approved the following requests of Rainbow Market Group, LLC ("RMG"): (1) a special exception in the A1 Accommodations Overlay Zone for a 50-room hotel on property owned by

RMG located at 2 Anson Street (unanimous vote); (2) a special exception in the A1 Accommodations Overlay Zone for a 50-room hotel on property owned by RMG located at 40-46 Market Street (unanimous vote); and (3) a variance for hotel frontage at 44-46 Market Street to have three full stories instead of two and one-half stories as provided in the Old City Height District 35 (5-1 vote in favor).

The Court held a hearing on June 20, 2016, to hear arguments from the parties concerning the issues on appeal. Present at the hearing were Alice F. Paylor, attorney for East Bay; Timothy A. Domin, attorney for the BZA and the City; and Charles J. Baker III, attorney for RMG. For the following reasons, the Court affirms the decisions of the BZA and dismisses these appeals.

STANDARD OF REVIEW

The Circuit Court's review of decisions of administrative zoning boards is a limited one. "The findings of fact by the board of appeals must be treated in the same manner as a finding of fact by a jury, 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." S.C. Code § 6-29-840(A). Therefore, "the trial court must uphold a decision by the [board] unless there is no evidence to support it." *Town of Hollywood v. Floyd,* 403 S.C. 466, 476, 744 S.E.2d 161, 166 (2013). Further, the Court can overturn the board's decision only "if it is arbitrary, capricious, has no reasonable relation to a lawful purpose, or if the board has abused its discretion." *Austin v. Board of Zoning Appeals,* 362 S.C. 29, 33, 606

S.E.2d 209, 211 (Ct. App. 2004) (quoting *Restaurant Row Assocs. v. Horry County,* 335 S.C. 209, 216, 516 S.E.2d 442, 446 (1999).[1]

"[A local zoning board's] construction of its own ordinance, the enforcement of which it is charged with, should be given some consideration and not overruled without cogent reason therefor." *Clear Channel Outdoor v. City of Myrtle Beach*, 372 S.C. 230, 236, 642 S.E.2d 565, 568 (2007) (quoting *Purdy v. Moise,* 223 S.C. 298, 302, 75 S.E.2d 605, 607 (1953)). Therefore,

> [i]t is a well settled proposition of zoning law that a court will not substitute its judgment for the judgment of the board. The court may not feel that the decision of the board was the best that could have been rendered under the circumstances. It may thoroughly disagree with the reasoning by which the board reached its decision. It may feel that the decision of the board was a substandard piece of logic and thinking. Nonetheless, the court will not set aside the board's view of the matter just to inject its own ideas into the picture of things.

Restaurant Row Assocs. v. Horry County, 335 S.C. 209, 216, 516 S.E.2d 442, 446 (1999) (quoting *Talbot v. Myrtle Beach Board of Adjustment*, 222 S.C. 165, 173, 72 S.E.2d 66, 70 (1952)).

ANALYSIS

A. Special Exceptions for Two 50-Room Hotels

The Anson Street and Market Street properties in question are located in the City's A-1 Accommodations Overlay Zone. Section 54-220 of the zoning ordinance allows hotels of up to fifty rooms in the A-1 zone subject to approval of the BZA, which must make several specific findings concerning the potential impact of the proposed hotels on the neighborhood.

The first issue is East Bay's contention that the BZA erred by acting on RMG's requests for special exceptions sooner than allowed by the City of Charleston zoning ordinance because

[1] The record on appeal consists of the materials presented to the BZA, which were filed by the City before the hearing, and certified transcripts of the BZA proceedings from November 17, 2015 and February 2, 2016, which were received into evidence without objection at the hearing. Because additional evidence may not be submitted on appeal, the Court disregards the affidavit and attached photographs filed by East Bay on June 15, 2016.

the requests actually sought reconsideration of similar applications for 50-room hotels on these properties which had been previously denied. Section 54-931 of the ordinance requires "parties" whose requests for special exceptions or variances have been denied to wait for six months before seeking reconsideration of "the same request." RMG submitted its requests for the special exceptions approximately one month after the previous applications were denied. The evidence shows that the real party in interest for the previous applications was Highgate Hotels and that, contrary to East Bay's argument, Highgate Hotels was not a hotel management company for RMG, but a prospective purchaser of the property, which desired to build and operate the hotels in its own right. In addition, the evidence demonstrates that RMG's proposals were substantially different from those of Highgate Hotels as they eliminated the structural connection between the two hotels and also eliminated any shared parking between the hotels, both of which were part of the previous plans and the key reasons the BZA rejected those previous plans. Since there is evidence in the record that RMG's requests and the previous requests were not only made by different parties but also did not constitute the same requests, the Court affirms the BZA's determination.[2]

The second issue raised by East Bay is that the BZA erred in concluding that these are two, separate 50-room hotels and not a single 100-room hotel, which would not be allowed in this zoning district. The evidence shows that the two hotel buildings are separate and distinct structures and, unlike the previous proposals, have no elevated courtyard connecting the buildings and do not share parking. Further, East Bay's argument that the Anson Street hotel does not have amenities such as a restaurant, fitness center or outside space is unavailing since the evidence shows these amenities are not required and many hotels in Charleston lack such

[2] The same reasoning applies to the variance request.

amenities. The only shared element between the two hotel projects is the driveway for traffic circulation, part of which crosses the Anson Street property and part of which crosses the Market Street property. The record demonstrates, however, that there will be cross-easements for each property's use of the other property, which is common among other facilities in downtown Charleston. As such, there is evidence to support the BZA's conclusion that these are two, separate 50-room hotels as allowed in the A-1 Accommodations Overlay Zone, and the Court cannot substitute its judgment for that of the BZA.[3]

The third issue relates to the parking requirements of the zoning ordinance. East Bay contends that the mechanized stacking of vehicles approved by the BZA is not allowed under the City ordinance and, even if it were, the parking is too congested. The evidence shows that the stacking configuration was approved by the manufacturer and that the BZA's approval is subject to a condition for a minimum clearance for vehicle stacking spaces.

The Court concludes that stackers are an allowable means of satisfying the parking requirements of the zoning ordinance. The thrust of these requirements, as stated in section 54-316, is to assure new facilities have "the required number of off-street parking spaces with adequate provisions for ingress and egress by an automobile of standard size . . . ." The ordinance does not define the term "parking spaces" and, therefore, does not exclude the use of stackers. The fact that section 54-318 contains design requirements only for surface lots and parking garages does not mean that stackers cannot provide the required number of off-street parking spaces. Further, there is evidence in the record that the BZA has allowed the use of stackers to meet the parking requirements for several other hotel projects in downtown

[3] East Bay raises the point that RMG's plans do not provide for an off-street loading place for either hotel; however, the zoning ordinance, section 54-321, requires a loading zone only for hotels of 100 or more rooms.

Charleston, and its construction of the City's ordinance is entitled to deference and should not be overruled without cogent reason. *Clear Channel Outdoor v. City of Myrtle Beach*, 372 S.C. 230, 236, 642 S.E.2d 565, 568 (2007).

The fourth issue, which relates to the Market Street hotel only, involves the requirement of section 54-220b(1)(c) that the total floor area of the restaurant and bar area for a hotel not exceed 12% of the total interior, conditioned floor area of the hotel. There is evidence in the record from which the BZA could find that the square footage maximum is not exceeded since the plans submitted by RMG's architect show the restaurant space of 5,472 square feet to be less than the calculated 12% maximum of 6,285 square feet. East Bay contends that RMG's architects miscalculated these areas but does not explain how its calculations were made to arrive at a different conclusion. RMG's plans are conceptual plans, and the project must come before the City's Technical Review Committee ("TRC") at a later stage at which the TRC will review actual construction documents and can mandate necessary changes for compliance with building codes, fire codes, zoning and other requirements. Therefore, there is evidence to support the BZA's finding that the proposal did not exceed the 12% maximum restaurant area.

B. Variance for Three Stories on Market Street Hotel

The zoning ordinance for Old City Height District 35 limits the height of buildings fronting on Market Street at this location and further restricts those buildings to two and one-half stories. RMG's application requested a variance to allow the proposed building at 44-46 Market Street to be a full three stories instead of two and one-half stories. RMG did not seek a variance from the height limit, and there is no question the proposed building is within the allowable height at this location.

East Bay first contends that the BZA erred in finding the request met the four factors necessary to obtain a variance. The record, however, contains evidence to support the BZA's findings. First, there is evidence that the existence of three grand trees along the rear property line on Guignard Street creates an exceptional condition pertaining to this particular property. Second, the evidence shows that this condition does not generally apply to other property along Guignard. Third, there is evidence that applying the ordinance to limit the building to two and one-half stories would unreasonably restrict the use of the property and possibly lead to the loss of one or more of the grand trees. Last, the evidence supports a finding that authorization of the variance will not be substantially detrimental to adjacent property or the public good and will actually improve the character of the district by allowing the building to more accurately reflect the historical character of Market Street.

East Bay next argues that the BZA failed to adequately explain its findings in writing pursuant to section 54-924 of the zoning ordinance. The transcript of the February 2016 BZA hearing reflects considerable discussion of the four factors to be considered in granting the variance. Specifically, the City's Zoning Administrator, Lee Batchelder, explained the reasons he believed the variance test had been met. The BZA's adoption of his reasoning is apparent from the statement by the BZA Chairman that "Mr. Batchelder made his case." The Court concludes that the transcript serves as a sufficient written explanation of the BZA's findings to satisfy section 54-924.

CONCLUSION

Under the law, the Court must affirm the BZA's decisions unless there is no evidence to support them. In this case, there is evidence in the record which supports the decisions to approve the two special exceptions and one variance. It appears that the BZA carefully

considered the issues and did not act in an arbitrary or capricious manner or abuse its discretion in rendering the decisions. Now, therefore, it is

ORDERED that the decisions of the BZA are hereby affirmed and both appeals are dismissed.

AND IT IS SO ORDERED.

J.C. Nicholson, Jr.
Presiding Judge

CHARLESTON, SC
~~July~~ 26, 2016