

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2017CP4003084

Lance E Woodley

City Of Columbia South Carolina

Victoria Alicia Woodley

Design Development Review Commission

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: _____

Attorney for : Plaintiff Defendant or 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(a), 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 _____
- STAYED DUE TO BANKRUPTCY
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):
 Affirmed; Reversed; Remanded; Other _____

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 JUDGMENT 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
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order.

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DEC 27 2017
SC Court of Appeals

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 _____ Judge Code 2164 Date _____

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this 18 day Aug, 2017 to attorneys of record or to parties (when appearing pro se) as follows:

Gerald D. Jowers

Jessica Mangum

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter _____

Clerk of Court Jeanette W. McBride

STATE OF SOUTH CAROLINA)
)
 COUNTY OF RICHLAND)
)
 Lance E. Woodley and)
 Alicia Woodley,)
)
 Appellants)
)
 VS.)
)
 The City of Columbia, South Carolina)
 acting through its)
 Design/Development Review Commission)
)
)
 Respondent.)

IN THE COURT OF COMMON
 PLEAS

2017 CP 40 03084

ORDER

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DEC 27 2017

SC Court of Appeals

RICHLAND COUNTY
 FILED
 2017 AUG 24 PM 4: 17
 JEANETTE W. HENNING
 C. C. P. & G. S.

This is an appeal from a decision of the City of Columbia's Design/Development Review Commission (DDR) dated April 20, 2017,

A hearing was held before the undersigned on July 28, 2017. Present were counsel for Appellants and the City of Columbia. Based on the record before me and arguments of counsel, I make the following findings:

In 2016, the Appellants purchased the property known as 101 Waccamaw Avenue/2012 Heyward Street Columbia, South Carolina. The property is a corner lot and consists of a dwelling unit that has been used a duplex and for that reason has two separate street addresses. This property is on the outer edge of a neighborhood known as Wales Garden.

At the time of the purchase, the house was in very poor condition; it had for a number of year been used as a duplex rental dwelling leased by college students.

The dwelling was initially constructed in 1966 and at least two additions have been made added to the dwelling since that time. The original construction of the dwelling was as a two story rectangular structure somewhat in the Federalist-style of architecture and fronted on Waccamaw Avenue; thereafter a wing was added in the 1970's facing Hayward Street that loosely resembled a ranch- style. A third addition was added later. This addition is on the rear of a portion of the dwelling but is clearly visible from Waccamaw Avenue. This addition is without any particular architectural style.

→ check 1

The Appellants purchased the property for the purpose of making it their permanent residence. Their plan was to convert the dwelling into a single-family residence and gradually upgrade the home in stages, and make some changes to the exterior so that the house will not appear to be a duplex. The Appellants goal was to enhance the value of the dwelling and make it an asset to the neighborhood and a suitable home for them and their family.

In the initial phase of the renovation, in addition to interior remodeling, the Appellants planned to remove the dilapidated windows and doors and replace them with energy efficient windows and doors that would improve the appearance of the home and make it more comfortable and safe for them.

Appellant Lance Woodley testified before the DDR that his contractor called the city building office and was advised that a permit for that work was not necessary. That information was erroneous.

The contractor began replacing the windows and the front door. Before all of the windows were replaced, agents of the Respondent issued a stop work order based on the requirements of the Wales Garden Architectural Conservation District.

Appellants were unaware of the existence of this District and rules and regulations pertaining thereto. Appellant Lance Woodley is an experienced real estate broker in the Columbia area with 25 years of experience and he testified before the DDR that he had never heard of these additional restrictions on the homes in Wales Garden.

After the stop work order, the Appellants met informally with the staff of the DDR and explained their plans for improving the property. The Respondent's staff did not reconsider its disapproval of Appellants' work and as a consequence the Appellants were ordered to remove the new windows and doors that they had installed and replace them with the old windows that were removed, all at considerable expense to them. The decision of the Respondent's staff was that the style of the home was ranch-style and the new windows and doors do not match that style. Appellants dispute the finding that the house was ranch-style because the majority of the dwelling was constructed in other styles.

The Appellants appealed the decision of the staff to the DDR. Respondent's rules for such appeals limit all appellants to only 10 minutes. At this hearing, the staff presented its findings and recommendation and Appellant Lance Woodley testified. Due to the limited time allowed, Appellants were not represented by legal counsel and were not allowed to cross-examine the staff of the DDR.

The DDR denied Appellants requests without explanation or findings.

Appellant raises on this appeal the following grounds:

a. The rules of the Wales Garden Architectural Conservation District are unconstitutional because the public, including these Appellants, are not properly notified of the existence of these rules by appropriate signage in the neighborhood or other reasonable means that would put the public on notice of these restrictive rules for this one small section of the City of Columbia.

b. The procedures of the Respondent denied Appellants of Due Process of Law in the following particulars:

1. By limiting the time for presentation of Appellants' appeal to only ten (10) minutes, the Appellants have been denied the right to (i) present an adequate defense, (ii) to present expert witnesses, (iii) cross-examine the staff of Respondent who are the adverse witnesses, (iv) denied Appellants the right to make discovery, and (v) denied them effective assistance of legal counsel.

2. By issuing a decision without any findings of fact or conclusions or stating any reasons for their decision.

3. By failing to provide an impartial hearing tribunal as the Respondent and its staff acted in this matter as prosecutor, judge and jury.

I find that The Wales Garden Architectural Conservation District (the "Ordinance") was created by the City of Columbia in April of 2008. This was an attempt by the City to enact historic zoning and according to the provisions of the Ordinance to:

"Protect the beauty of the City and improve the quality of its environment through identification, recognition, conservation, maintenance and enhancement of areas, sites and structures that constitute or reflect distinctive features of the economic, social, cultural or architectural history of the city and its distinctive physical feature;"

I assume the Ordinance was properly enacted as required by State law as well as the procedures of the City.

According to the Ordinance, any of the following actions involving real property within the Wales Garden neighborhood are subject to review and approval by the DDR:

"New construction,

Actions that alter the exterior appearance of a building,

Additions/Enclosures visible from the public right of way;

Fences/walls;

Driveways/parking areas,

Demolition/relocation,

Signage.

I find the provisions of this Ordinance are vague as they contain a few rules but primarily provide guidelines for the Design/ Development Review Commission to make decisions on a case by case basis.

I find the DDR has delegated the initial decision making to its staff.

I find this Ordinance applies only to a small area of the city in an older neighborhood known as Wales Garden. This Ordinance and its enforcement severely limit the rights of property owners to remodel or renovate their homes and property within this neighborhood. The degree of control over the rights of property owners that this Ordinance gives to the DDR is significantly greater than the customary and ordinary zoning that is in effect in other residential neighborhoods in the City of Columbia.

I find this Ordinance is in addition to the existing standard residential zoning for the Wales Garden neighborhood.

I find that Appellants' property is not a historic structure within the meaning of the ordinance. This is a fact not in dispute. According to Respondent's staff, Appellants property is a "non-contributing" structure because it was not built during the period of architectural significance for this neighborhood. Even though Appellants' property is not historic, it is still subject to the provisions of the ordinance that give the DDR and especially its staff broad discretion in dictating how Appellants may remodel the exterior of their home.

I find the vagueness of this ordinance problematic. I am concerned that it does not provide Fair Notice to the public required by Due Process but I will not decide that as it is not before this Court.

I do find that this Ordinance and its enforcement are subject to the requirements of Due Process and Equal Protection as set forth in the Constitutions of the United States and the State of South Carolina due to the fact that it infringes on the right of homeowners in this neighborhood to use and improve their private residential property as they see fit.

In The State, v. Zeb Eron Binnarr 400 SC 156, 733 SE 2d 890 (2012) our Supreme Court held.

"[D]ue process is flexible and calls for such procedural protections as the particular situation demands." S.C. Dep't of Soc. Servs. v. Wilson, 352 S.C. 445, 452, 574 S.E.2d 730, 733 (2002) (quoting Morrissey v. Brewer, 408 U.S. 471, 481 (1972)). The requirements in a particular case depend on the importance of the interest involved and the circumstances under which the deprivation may occur. S.C. Dep't of Soc. Servs. v. Beeks, 325 S.C. 243, 246, 481 S.E.2d 703, 705 (1997). Accordingly, a claim of denial of due process must be analyzed with a two-part inquiry: (1) whether the interest involved can be defined as "liberty" or "property" within the meaning of the Due Process Clause; and, if so (2) what process is due in the circumstances. Bd. of Regents of State Colls. v. Roth, 408 U.S. 564, 571-73 (1972).

A residence is an important property interest and in many cases is largest expenditure many people will ever make and is certainly the most valuable asset that many people have. Any law or ordinance that applies to only a small area and infringes on the rights of homeowners to improve their homes in a much more intrusive way than normal residential zoning or private subdivision restrictions should be well publicized in such a manner as will give actual notice to prospective purchasers of property within the district.

I find that Due Process and Equal Protection require that the City should extensively and effectively publicize the existence and of this District and the consequences of it so that purchasers of property within this district will have actual notice that the property they may purchase is subject to unusual and highly restrictive rules and procedures.

At the hearing on this matter, the Court asked counsel for the City of Columbia, how an individual could learn about this Ordinance. She initially said that a property owner would be advised about the Ordinance when they applied for a permit for planned work. The problem with this is that does not protect a prospective purchaser of property. No one applies for a permit before they purchase property. Counsel also stated that the City's website had some information that identified that the property was in the District. While that is true, I do not believe that most citizens would fully understand the significance and consequences of property being within this District without actual notice of the ramifications of this Ordinance.

I find that the City of Columbia has failed to provide proper notice to the public including these Appellants of the existence of and ramifications of The Wales Garden Architectural Conservation District and this failure violates the Due Process and Equal Protection provisions of the Constitutions of the United States and the state of South Carolina.

I find that Notice of the existence of this unusual Ordinance and its significance on property rights should have been be filed in the Office of the Register of Deeds for Richland County and by other means reasonably calculated to provide advance actual

notice to future owners of property within this district, including but not limited to signage at the entrances to this district.

I find that the Appellants did not have proper notice of the existence of the Wales Garden Architectural Conservation District and its ramifications prior to their purchase of their property within this neighborhood and they have been deprived of the use of their property without due process of law.

In Kurschner v City of Camden Planning Commisison 656 SE 2d 346, 376 SC

165 (SC 2998) our Supreme Court held:

Procedural due process imposes constraints on governmental decisions which deprive individuals of liberty or property interests within the meaning of the Due Process Clause of the Fifth or Fourteenth Amendment of the United States Constitution. *Mathews v. Eldridge*, 424 U.S. 319, 332, 96 S.Ct. 893, 47 L.Ed.2d 18 (1976). The fundamental requirements of due process include notice, an opportunity to be heard in a meaningful way, and judicial review. S.C. Const. art. 1, § 22; *Stono River Envtl. Protection Ass'n v. S.C. Dep't of Health and Envtl. Control*, 305 S.C. 90, 94, 406 S.E.2d 340, 342 (1991). Due process does not require a trial-type hearing in every conceivable case of government impairment of a private interest. *First Fed. Sav. Loan Ass'n of Walterboro v. Bd. of Bank Control*, 263 S.C. 59, 65, 207 S.E.2d 801, 804 (1974) (quoting *Cafeteria and Restaurant Workers Union v. McElroy*, 367 U.S. 886, 894, 81 S.Ct. 1743, 6 L.Ed.2d 1230 (1961)). Rather, due process is flexible and calls for such procedural protections as the particular situation demands. *S.C. Dep't of Soc. Sens. v. Wilson*, 352 S.C. 445, 452, 574 S.E.2d 730, 733 (2002).

I find the procedures for an appeal from a staff decision to the DDR are flawed and do not meet the requirements of procedural due process. The published rules of the DDR allot only 10 minutes for an appellant to make a presentation to the DDR. With such a limited time, there is no opportunity for legal representation, expert witnesses or cross-examination of the staff. The procedure is patently unfair and does not provide a property owner "an opportunity to be heard in meaningful way."

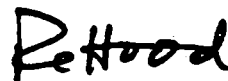
I further find that procedural due process requires an impartial hearing panel. The procedure followed by the DDR makes it and its staff the prosecutor, judge and jury. This procedure is on its face unfair and not calculated to provide a meaningful and fair hearing.

Based on the foregoing findings of fact and conclusions of law, it is hereby ordered, adjudged and decreed:

1. The provisions of the Wales Gardens Architectural District ordinance of the City of Columbia and any regulations made pursuant thereto shall not apply to the Appellants and their property at 101 Waccamaw Avenue/2021 Heyward Street throughout their time of ownership of this property.

2. The "stop work" order and any other orders issued by the City of Columbia against the Appellants and this property including the order of the Respondent that that ordered the removal of newly installed windows and door from Appellants' property are rescinded.

AND IT IS SO ORDERED.



Robert E. Hood,
Judge, 5th Judicial Circuit

August 22 2017