

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)
)
241-243 E. Bay Holdings, LLC,)
)
Petitioner,)
)
vs.)
)
The City of Charleston, The City of)
Charleston Board of Zoning Appeals-)
Zoning, Apex Real Property, LLC, and)
East Bay 7, LLC,)
)
Respondents.)

IN THE COURT OF COMMON PLEAS
CASE NO.: 2017-CP-10-4212

ORDER

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SC Court of Appeals

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CLERK OF COURT

This matter is an appeal by 241-243 E. Bay Holdings, LLC (“East Bay”) from a final decision of the City of Charleston Board of Zoning Appeals – Zoning (“BZA”) which unanimously approved with conditions the application of Pearce Development, LLC (formerly known as Apex Real Property, LLC) (“Pearce”) for a special exception in the Accommodations Overlay Zone for a 50-room hotel on property owned by Pearce located on three contiguous parcels at 36 North Market Street, 5 Guignard Street and 235 East Bay Street.

The Court held a hearing on April 16, 2018, to hear arguments from the parties concerning the issues on appeal. Present at the hearing were Alice F. Paylor, attorney for East Bay; Daniel S. McQueeney, Jr., attorney for the BZA and the City; and Charles J. Baker III, attorney for Pearce. For the following reasons, the Court affirms the decision of the BZA and dismisses the appeal.

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)).

“[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. Issues Presented and Applicable Zoning Provisions

In its Brief and at the hearing on this appeal, East Bay presented two issues and abandoned any others raised in its Petition appealing the BZA decision. The issues presented are (1) whether there was evidence in the record that Pearce provided information from which the BZA could



consider the impact of the planned conference/meeting room on parking and traffic;¹ and (2) whether there was evidence in the record that Pearce provided information from which the BZA could consider parking for hotel employees and restaurant customers.

Section 54-220 of the City's Zoning Ordinance governs the BZA's authority to grant special exceptions for accommodation uses. To grant a special exception for a hotel, the ordinance requires the BZA to make various findings. Section 54-220 b.1.(f) provides that, in making these findings, the BZA consider certain information provided by the applicant relating to the impact of the hotel's accessory uses (such as conference facilities and restaurants) on parking and traffic and relating to parking for employees:

[I]n making these findings, the Board of Zoning Appeals shall consider the following information to be provided by the applicant in site plans, floor plans, building elevations, and a detailed written assessment report to be submitted with the application:

...

(7) the accessory uses proposed for the facility in terms of size, impact on parking, and impact on traffic generation;

...

(13) the long term provision of on- or off-site parking for employees who drive vehicles to work.

B. Evidence Concerning the Conference/Meeting Room

Pearce submitted its initial application for the special exception in November 2016. The BZA conducted hearings on the application on December 20, 2016 and January 17, 2017. Both times, the BZA deferred action over concerns about the cumulative impact on traffic in the Ansonborough neighborhood from Pearce's proposed hotel and two other recently approved hotels

¹ Pearce contends that East Bay did not appeal the issue of the conference/meeting room's impact on traffic since its Petition refers only to its impact on parking. See Petition, para. 15C. *Austin v. Board of Zoning Appeals*, 362 S.C. 29, 606 S.E.2d 209 (Ct. App. 2004) (written petition must "set[] forth plainly, fully and distinctly why the decision is contrary to law" and statute makes no provision for amendment of the grounds set forth in the petition). However, since the Court concludes there was evidence for the BZA to consider about the conference/meeting room's impact on traffic, it need not reach this issue.

in the same two-block area. In deferring action the second time, the BZA specifically suggested that Pearce's traffic engineer and the City engineer consider ways to mitigate traffic in the Ansonborough neighborhood.

The third BZA hearing occurred on July 18, 2017. In advance of the hearing, Pearce submitted a revised site plan, floor plans and detailed written assessment as well as a Traffic Impact Analysis from Bihl Engineering, LLC based on these revised plans. The revisions moved the hotel entrance, lobby and valet service off North Market Street to Guignard Street with vehicular access to and from East Bay Street only. The revised plans also clearly showed a conference/meeting room measuring 4,438 square feet on the second floor of the existing, historic building at 36 North Market Street that was proposed to be renovated as part of the overall project.

The BZA unanimously approved the special exception at this third hearing with two conditions: "1) no access to conference room from Market Street; 2) mandatory right turn on Guignard for leaving hotel." The fact that the BZA placed a condition on its approval of the hotel disallowing access to the conference room from North Market Street is clear evidence that the BZA considered its impact on traffic. The reason for this condition was to prevent vehicles from delivering people attending events in the conference space on North Market Street and proceeding to turn right onto Anson Street and venturing into the Ansonborough neighborhood. Both conditions furthered the purpose of the ordinance to avoid negative impacts in residential neighborhoods by preventing traffic associated with the conference facility from entering Ansonborough.

Further, the record contains additional evidence that there was information presented for the BZA to consider concerning the conference/meeting room. There is evidence in the record that, at the July 18, 2017 hearing, the existence of the conference space was brought to the BZA's

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attention in several ways: City staff member Lee Batchelder noted the second floor of the 36 North Market Street building was shown as conference space; Pearce's architect, Eddie Bello, reviewed the plans with the BZA and noted the conference/meeting room, which was clearly shown in the plans; and in opposing the special exception, East Bay's lawyer told the BZA that traffic and parking related to the conference facility was one of their "main concerns." The record demonstrates that the BZA was aware of the conference facility and considered it in conjunction with the required factors under the Zoning Ordinance.²

There was also evidence presented to the BZA that traffic and associated parking for the hotel project, which necessarily included the conference room, would not have a material impact on the surrounding area: the proposed project would displace two large existing restaurants/bars on the property having little or no parking and substitute three smaller restaurant spaces plus the conference/meeting room, which combined had approximately the same square footage as the two restaurants being displaced; the plans provided for parking well in excess of the required number of spaces for a 50-room hotel; and the new restaurants would be expected to cater primarily to pedestrian traffic and hotel guests with no material impact on parking or traffic. Further, Pearce submitted a traffic study, which projected traffic impacts on the surrounding area and concluded that no traffic from the hotel would be expected to travel through Ansonborough. There was no conflicting expert testimony on traffic presented to the BZA. As such, there was evidence before the BZA relating to traffic associated with the conference/meeting room.

C. Evidence Concerning Parking for Employees and Restaurant Customers

² The BZA does not operate in a vacuum. It is common knowledge that numerous hotels in downtown Charleston have conference and event facilities as large as or larger than the room in Pearce's plans, and the BZA regularly considers applications for hotel projects that include conference and event facilities.



The Zoning Ordinance requires the BZA to consider information concerning “long term provision of on- or off-site parking *for employees who drive vehicles to work.*” (emphasis added). By its terms, the Ordinance presumes that not all employees will drive to work. Pearce’s application addressed employee parking, and there was evidence before the BZA from which it could have appropriately concluded that there would be adequate on- or off-site parking for employees who drive to work.

First, the hotel plans provided an additional 16 parking spaces above the required minimum, some of which could be used by management employees. Second, there was evidence that employees could use, and Pearce would encourage them to use, easily accessible CARTA bus service and on-site bicycle storage. Third, the final hotel plans reduced the number of employees needed on site by significantly decreasing the total restaurant space present on these three parcels, restaurants being the most employee-intensive use. Fourth, the architect, Eddie Bello, described to the BZA the number of parking spaces being provided, the valet parking system, and the flow of traffic into and out of the parking garage. The BZA acknowledged the parking specifically when it imposed the second condition requiring a right turn only out of the parking area onto Guignard Street.

The evidence cited above also demonstrates that the BZA considered information concerning parking for restaurant customers. Moreover, evidence was presented to the BZA regarding the absence of parking for the existing restaurants occupying the property, the reduction in restaurant space with the new hotel project, and the additional parking spaces being provided above the minimum required under the zoning ordinance. In addition, there was evidence that the restaurants were clustered along pedestrian friendly North Market Street and could be expected to be frequented by customers on foot.

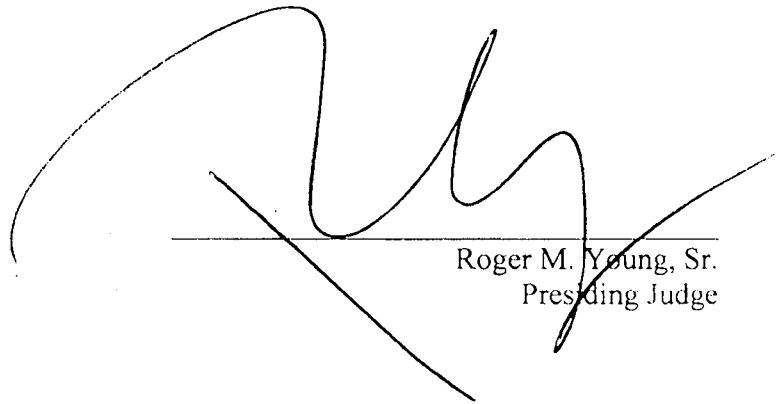
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CONCLUSION

Under the law, the Court must affirm the BZA's decision unless there is no evidence to support it. In this case, there is evidence in the record which supports the decision to approve the special exception for the hotel project. It appears from the record that the BZA carefully considered the issues and did not act in an arbitrary or capricious manner or abuse its discretion in rendering the decision. Now, therefore, it is

ORDERED that the decision of the BZA is hereby affirmed and the appeal is dismissed.

AND IT IS SO ORDERED.



Roger M. Young, Sr.
Presiding Judge

Charleston, SC
May 7, 2018