

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO. 2018-CP-10-3307

The Charleston County School District,)
)
Appellant,)

vs.)

FINAL ORDER AND DECISION

Charleston County, South Carolina;)
The Charleston County Board of Zoning)
Appeals; and Joel Evans in his capacity)
as Director of the Charleston County)
Zoning and Planning Department,)
)
Respondents.)

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This matter is before this court upon the Charleston County School District's (the "School District" or "District") appeal challenging the Charleston County Board of Zoning Appeals' (the "Board" or "BZA") decision finding that 1) the School District missed the deadline to file the appeal, 2) the planning director did not err in his interpretation of "accessory use," and 3) the BZA is without authority to grant a vested right to the School District. After careful consideration of the Petition, certified record filed in this action, and the arguments of counsel, I affirm the BZA's decision.

FINDINGS OF FACT

The School District owns real property located at 12 S. Grimball Road in an incorporated portion of James Island, South Carolina. The James Island Elementary School is located at the site along with a school bus parking lot to support the elementary school. In May 2016, ADC Engineering, Inc. ("ADC Engineering") submitted a site plan review application to the Charleston County Zoning and Planning Department ("Planning Department") on behalf of the District for the James Island Elementary School Bus Parking Facility to be located on the James Island Elementary

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School property on James Island.¹ Pursuant to the Charleston County Zoning and Land Development Regulations Ordinance (“ZLDR”), Chap 3. Development Review Procedures, Art. 3.7 Site Plan Review, Applicability, the District is required to submit an application prior to establishing its proposed use. The ZLDR provides in pertinent part that:

Site Plan Review procedures shall apply to any of the following: (A) new development, redevelopment and property improvements that increase by more than 25 percent the area devoted to vehicular use, or the gross floor area of buildings; (b) any change in use to a more intensive use, as determined by the Planning Director; and (c) any earth disturbing activity greater than or equal to 5,000 square feet.

ZLDR Art. 3.7, § 3.7.1 Applicability.

In the application, the District proposes to construct a new bus parking facility, with bus and employee parking and a support facility. The support facility consists of an office building for administrators and break rooms and bathrooms for bus drivers. Testimony at the Board hearing reveals that bus maintenance will be performed at both on and off-site locations.

In January 2017, the District sent a letter to the Planning Department describing the purpose of the facility, which is to alleviate the District’s inability to store the James Island portion of the District’s school buses in one location. The centralized location for parking the District’s fleet of 35 buses on James Island was located at the old Fort Johnson Middle School lot where the District is building the new Camp Road Middle School. Construction of the Camp Road Middle School is the reason the District seeks to relocate its bus storage needs to the James Island Elementary School property. Testimony at the Board hearing reveals that the Camp Road Middle School construction will not go forward unless the District moves its fleet of buses to the James Island Elementary School property location.

¹ The District authorized ADC Engineering to act on its behalf regarding the processing of the site plan review application.

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On February 9, 2017, the Planning Department issued a site plan review project status report granting approval of the District's site plan submitted by ADC Engineering. The project status report indicates that the site plan will held in the "to be permitted" file for a period of one year. Furthermore, the Planning Department conditioned its final approval upon two things. First, the District needed to obtain a zoning permit before conducting any land disturbance or constructing any site improvements and having an inspection of the trees barricades. Second, if the permit has not been obtained within the one-year time period, and there has been no communication with the planning department regarding the project, then the project will no longer be eligible to receive a permit. The project status report clearly notified the District that if it wanted a permit after that time, it will have to repeat the review process and that any changes in the site plan must be reviewed by the site plan review committee. The site plan is silent regarding an extension of time.

The site plan approval's one-year suspense expired on February 9, 2018. On February 6, 2018, ADC Engineering requested a one-year extension to complete the conditions of the project status report. On February 28, 2018, the planning director denied the request for the extension. According to ZLDR Art. 3.7, § 3.7.8 Appeals, which by reference to ZLDR Art. 3.13, § 3.13.3 Application Filing, Timing, (which provides the time refrain to perfect an appeal) states in pertinent part that "[a]ppeals of Administrative Decisions to grant or deny a Zoning Permit shall be filed within 30 calendar days from the date of the Administrative Decision." Therefore, the District had until March 28, 2018, to file the appeal of the planning director's decision denying the extension. The record before me indicates that the District failed to comply with and timely file its appeal of the planning director's decision to the BZA, because the appeal was filed on April 18, 2018.

On June 4, 2018, the Board held a public hearing to review the matter. The Board found that the District missed the deadline to file the appeal, that the planning director did not err in his

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interpretation of “accessory use” and that it is without authority to grant a vested right to the School District. On June 28, 2018, the School District filed a request for pre-litigation mediation, which resulted in a mediation of the parties. On August 21, 2018, the mediator filed his proof of ADR/Exemption form declaring the case at an impasse.

CONCLUSIONS OF LAW

A. UNTIMELY APPEAL

Based upon the Findings of Fact, I conclude as a matter of law that the School District failed to timely file and perfect its appeal of the planning director’s decision to the Board; and therefore, the District’s appeal is time-barred. “Compliance with statutory time periods for filing appeals is a prerequisite for an appellate entity to have jurisdiction to hear an appeal.” *See Botany Bay Marina, Inc. v. Townsend*, 296 S.C. 330, 334, 372 S.E.2d 584, 586-587 (1988), overruled on other grounds by *Woodard v. Westvaco Corp.*, 319 S.C. 240, 460 S.E.2d 392 (1995); *see also Sadisco of Greenville, Inc. v. Greenville County Bd. of Zoning Appeals*, 340 S.C. 57, 59, 530 S.E.2d 383, 384 (2000); *South Carolina Coastal Conservation v. S.C. Dep’t of Health and Env’tl. Control*, 380 S.C. 376, 669 S.E.2d 913 (Ct. App. 2008). The ZLDR provides that appeals of administrative decisions on zoning related matters “shall be filed within 30 calendar days from the date of the Administrative Decision.” ZLDR Art. 3.13, § 3.13.3 Application Filing, Timing. The BZA correctly found that the District was appealing a zoning related decision and that the District failed to file its appeal on this issue within 30 days. Therefore, I agree with the BZA that the appeal is time-barred.

Notwithstanding the District’s failure to timely perfect its appeal on its request for the extension, the District contends that its delay is excusable, because the County did not provide actual notice to the District of the denial of its request for the extension. The record does not support the District’s contention. As a threshold matter, “[i]n reviewing the questions presented by the appeal,

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the court shall determine only whether the decision of the Board is correct as a matter of law.” (citations omitted). “Furthermore, ‘[a] court will refrain from substituting its judgment for that of the reviewing body, even if it disagrees with the decision.’” *Wyndham Enterprises LLC v. City of North Augusta*, 401 S.C. 144, 148, 735 S.E.2d 659, 661 (citing *Rest. Row Assocs. v. Horry Cnty.*, 335 S.C. 209, 216, 516 S.E.2d 442, 446 (1999)). “However, a decision of a municipal [Z]oning board will be overturned if it is arbitrary, capricious, has no reasonable relation to a lawful purpose, or if the board has abused its discretion.” *Id.*; see also *Helicopter Solutions, Inc. v. Hinde*, 414 S.C. 1, 9, 776 S.E.2d 753, 757; *Austin v. Bd. of Zoning Appeals*, 362 S.C. 29, 33, 606 S.E.2d 209, 211 (Ct. App. 2004). “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.’” *Austin*, at 35, 606 S.E.2d at 212.

The record supports the BZA’s finding that ADC Engineering was acting as agent for the School District. ADC Engineering submitted the site plan review application, including all of the supporting documents to complete the application, communicated with the Planning Department on all aspects of the application, received the approval of the application, and made the request for the one-year extension of the site plan approval. The record equally supports the fact that the Planning Department sent correspondence to ADC Engineering denying the request for the extension.² Since ADC Engineering was acting as an agent for the District regarding the site plan application, the District cannot claim as a matter of law that ADC Engineering was not authorized to communicate on behalf of the District. “The doctrine of apparent authority focuses on the principal’s manifestation to a third party that the agent has certain authority. Accordingly, the principal is bound by the acts

² The District’s counsel acknowledged when asked at the Board hearing when the District became aware, and by what method did it become aware of the County denying the extension, he responded that it was “via email sometime in early March” from “York”, ADC’s engineer.

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of the agent when it places the agent in such a position that persons or ordinary prudence, reasonably knowledgeable with business usages and customs, are led to believe that the agent has certain authority and they in turn deal with the agent based upon that assumption.” (citations omitted). *Rickborn v. Liberty Life Ins. Co.*, 321 S.C. 291, 297, 468 S.E.2d 292, 298 (1996). “It is well established that a principal is affected with constructive knowledge of all material facts of which his agent receives notice while acting within the scope of his authority.” *Bennett v. Carter*, 421 S.C. 374, 382, 807 S.E.2d 197, 201-02 (2017) (citing *Crystal Ice Co. of Columbia, Inc. v. First Colonial Corp.*, 273 S.C. 306, 309, 257 S.E.2d 496, 497 (1979)).

Therefore, I conclude that the School District had knowledge of the Planning Department’s February 28, 2018, notification that the request for the extension was denied, and the District’s appeal was not filed within the required time-period with the Board; therefore, it is time barred.

B. PRINCIPAL USE VS. ACCESSORY USE

As alternative grounds for its appeal to the BZA, the District contends that the Board’s finding of fact that the planning director’s interpretation of the bus parking facility is not an accessory use is an error of law because it violates the ZLDR.³ I disagree. The ZLDR defines “accessory use” as a use customarily incidental and subordinate to the principal use of a zoning lot or of a structure. *See* ZLDR Chap. 12, Art. 12.1, Terms and Uses Defined. The planning director opined that where a parcel has a legally operating school, school bus parking lots shall be allowed as an accessory use to the school provided that the majority of the bus parking is to serve the school facility on the subject property, and, that fuel and maintenance facilities for buses shall not be allowed as an accessory use to a school. I find this reasoning to be consistent with the definition of

³ The record before me does not indicate whether this issue has the same jurisdictional infirmities as the question of whether the District timely challenged the denial of the extension. Since neither party has raised jurisdiction on this issue, I will address whether the BZA erred as a matter of law.

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Accessory Use in the ZLDR. “[I]ssues involving the construction of an ordinance are reviewed as a matter of law under a broader standard of review than is applied in reviewing issues of fact. (citations omitted). Although great deference is accorded the decisions of those charged with interpreting and applying local zoning ordinances, a broader and more independent review is permitted when the issue concerns the construction of an ordinance. (citations omitted).” *Helicopter Solutions*, at 9-10, 776 S.E.2d at 757.

Furthermore, the South Carolina Court of Appeals in *Boehm v. Town of Sullivan’s Island Bd. of Zoning Appeals* held that an accessory use “must be so necessary or commonly to be expected that it cannot be supposed that the ordinance was intended to prevent it.” 423 S.C. 169, 187, 813 S.E.2d 874, 883 (Ct. App. 2018) (citing *Borough of Northvale v. Blundo*, 85 N.J. Super. 56, 203 A.2d 721, 723 (N.J. Super. Ct. App. Div. 1964)). “A ‘use’ in the zoning context is ‘the purpose or activity for which land or buildings are designed, arranged, or intended, or for which land or buildings are occupied or maintained.’” *Id.* at 187, 813 S.E.2d at 883 (citing *Heilker v. Zoning Bd. of Appeals for the City of Beaufort*, 346 S.C. 401, 412, 552 S.E.2d 42, 48 (Ct. App. 2001).

The BZA’s decision is correct as a matter of law because the bus parking facility was not an accessory use but a second principal use of the school property. My review of the record reveals that there is evidence, which reasonably supports the Board’s findings that the bus parking facility is not customarily incidental and subordinate to the principal use of the James Island Elementary School. The Elementary School is educational and located in a residential area. The District designed and intended the property and its building as an elementary school, and currently occupies and maintains it as one. The District conducts the activities, practices, and operations in connection with the property’s purpose, and the elementary school has its own designated parking lot with the required number of spaces to accommodate their school buses and employees. Therefore, I affirm

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the Board's decision that the bus parking facility is not incidental to the use of the property for the elementary school.

C. VESTED RIGHTS

The BZA ruled that it was without authority to grant a vested right to the School District. Although the District appealed the BZA's decision *in toto*, the District in its Petition to this court on appeal conceded that it agrees "the BZA cannot grant vested rights and that the CCSD never requested this." The County similarly argued in this appeal that the BZA cannot grant vested rights. Therefore, since neither the District nor the County challenged this finding by the Board over whether it can grant vested rights, this matter is not preserved for appellate review and the BZA's ruling stands on this point.⁴

Based upon the Findings of Fact and Conclusions of Law, the BZA's Final Decision and Order on Appeal is affirmed,

IT IS SO ORDERED.



Jennifer B. McCoy, Judge
Court of Common Pleas, Ninth Judicial Circuit

Charleston, South Carolina
December 19, 2018

⁴ The District also raises other issues for this court's consideration on appeal (i.e., failure of the Board to include the District's memorandum in support of its appeal to the Board and its challenge to the supermajority vote requirement of the Board); however, this court declines to do so on appeal. "It is well settled that, but for a very few exceptional situations not present here, an appellate court cannot address an issue unless it was raised to, and ruled upon by, the trial court." Mercer v. Phillips, 318 S.C. 453, 455, 458 S.E.2d 427, 429 (1995).

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