STATE OF SOUTH CAROLINA )
) IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON ) C/A No.: 2019-CP-10-03131

J. Doe,

Plaintiff,

v.

Design Review Board (DRB) of the Town of Sullivans Island (S.I.), Svjetlana Bilic Damjanovic, Individually and d/b/a Alka Construction Co., Branko Damjanovic, Individually and d/b/a Alka Construction Co., Kenneth Craft, III, Individually and d/b/a Craft Design Co., and Alka Construction Co.,

Defendants.

**Order Denying Plaintiff's Motion for Preliminary Injunction**

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This matter came before the Court for hearing on June 27, 2019, on Plaintiff's Motion for Preliminary Injunction (the "Motion"). The hearing was attended by the Plaintiff, pro se, and the attorneys for all Defendants except Kenneth Craft Design Co. The Court allowed Plaintiff to serve and file a memorandum in support of her motion after the hearing, to respond to the memorandum in opposition presented at the hearing by Defendant Design Review Board of the Town of Sullivans Island (the "DRB").

This is an appeal from a final decision of the DRB approving the plans for construction of a house at 1616 Poe Ave. on Sullivans Island that is owned by Defendant Branco Damjanovic. Plaintiff seeks to halt the construction of the approved house. Plaintiff makes numerous allegations of alleged harm. These assertions are principally that the design is incompatible with the

surrounding neighborhood and will forever destroy the character of the historic district as well as the character of the area around Fort Moultrie, an historic site of national significance.[1]

Plaintiff put forward her own affidavit that contains sweeping opinions of the harm she perceives will ensue if the approved design is constructed. She has not presented the Court with any affidavits of qualified professionals supporting her personal opinions.

Having fully considered the filings, the arguments of Plaintiff and counsel, and the applicable law, the Court denies the motion.

"An injunction is a drastic remedy issued by the court in its discretion to prevent irreparable harm suffered by the plaintiff." Scratch Golf Co. v. Dunes W. Residential Golf Properties, Inc., 361 S.C. 117, 121, 603 S.E.2d 905, 907 (2004). "A preliminary injunction should issue only if necessary to preserve the status quo ante, and only upon a showing by the moving party that without such relief it will suffer irreparable harm, that it has a likelihood of success on the merits, and that there is no adequate remedy at law." Poynter Invs., Inc. v. Century Bldrs. of Piedmont, Inc., 387 S.C. 583, 586-87, 694 S.E.2d 15, 17 (2010).

Plaintiff has an adequate remedy at law through the statutory appeal process established in S.C. Code §6-29-900 that provides for appeals from decisions of the design review boards of local governments. Courts should reserve their equitable powers for situations when there is no adequate remedy at law. Strategic Res. Co. v. BCS Life Ins. Co., 367 S.C. 540, 544, 627 S.E.2d 687, 689 (2006). "The right to appeal provides respondents with an adequate remedy at law . . . ." Strategic Res. Co., 367 S.C. at 545, 627 S.E.2d at 689.

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[1] The Court has considered all of Plaintiff's allegations of harm but has used this general description of her allegations in the interest of brevity. The Court's failure to describe each one does not mean the ones not mentioned were not considered. The Court took them all into account in deciding the pending motion.

Section 6-29-900(A) of the South Carolina Code provides: "(A) A person who may have a substantial interest in any decision of the board of architectural review or any officer, or agent of the appropriate governing authority may appeal from any decision of the board to the circuit court in and for the county by filing with the clerk of court a petition in writing setting forth plainly, fully, and distinctly why the decision is contrary to law. The appeal must be filed within thirty days after the affected party receives actual notice of the decision of the board of architectural review."

This statutory appeal process affords Plaintiff with an adequate remedy at law.

The Court further finds and concludes that Plaintiff has failed to make a competent showing of irreparable harm. Plaintiff's affidavit is replete with her personal opinion that this one house, if constructed, will destroy the character and integrity of the historic district, but Plaintiff has failed to submit any competent proof from a qualified historian or preservationist to support her broad assertions of harm. Additionally, her affidavit is mostly full of conclusory contentions without making any competent evidentiary showing of the specific facts that supposedly support Plaintiff's conclusory contentions of irreparable harm. Without the support of a qualified professional and an evidentiary basis for such conclusions, Plaintiff's opinions are entirely speculative.

For instance, our Court of Appeals has found similar testimony of a neighbor that property values will be negatively impacted by a proposed development is not sufficient to support a finding of irreparable harm. See Strong v. Winn-Dixie Stores, Inc., 240 S.C. 244, 256, 125 S.E.2d 628, 634 (1962) ("There was some testimony as to depreciation in value of the property in the area in the event the supermarket is permitted to operate. This evidence consisted of expressions of opinion by individuals, and it is a matter of speculation as to whether any such depreciation would result."); Wyndham Enterprises, LLC v. City of N. Augusta, 735 S.E.2d 659, 663 (Ct. App. 2012)

("At the hearing, residents testified as to their concerns regarding the proposed fireworks business. These concerns included an increase in traffic, a decline in property values, and a detrimental impact on the character of the surrounding area. The testimony proffered was based on speculation and opinion.").

The Court further finds and concludes Plaintiff has failed to establish a likelihood of success on the merits. "A preliminary injunction should issue only if necessary to preserve the status quo ante, and only upon a showing by the moving party that without such relief it will suffer irreparable harm, *that it has a likelihood of success on the merits*, and that there is no adequate remedy at law." Hook Point, LLC v. Branch Banking & Trust Co., 397 S.C. 507, 511, 725 S.E.2d 681, 683 (2012) (emphasis added). "*When the legal right is doubtful*, or the performance of duty rests in discretion, or when there is another adequate remedy, a writ of mandamus cannot rightfully be issued." In Interest of Lyde, 284 S.C. 419, 421, 327 S2d 70, 71 (1985) (emphasis added).

This Court's authority to overturn the discretionary decision is extremely limited. The Court may overturn the DRB's decision only if the DRB committed a legal error:

> In reviewing a decision by a board of architectural review, the circuit court should act when the board abuses its discretion by committing errors of law or bases its decision on findings of fact that are not supported by the evidence. Gurganious v. City of Beaufort, 317 S.C. 481, 486, 454 S.E.2d 912, 915 (Ct.App.1995). Furthermore, our standard of review of a board of architectural review's decision is the same as that of the trial court. Fairfield Ocean Ridge, Inc. v. Town of Edisto Beach, 294 S.C. 475, 479–80, 366 S.E.2d 15, 18 (Ct.App.1988) (holding the appellate court will not reverse the circuit court's affirmance of the board unless the board's findings of fact have no evidentiary support or the board commits an error of law).

Blind Tiger, LLC v. City of Charleston, 621 S.E.2d 361, 362 (Ct. App. 2005).

While Plaintiff does make conclusory allegations of legal errors, Plaintiff has not identified a specific legal error by the DRB that would require this Court to reverse the approval of the

application. The law affords boards such as the DRB considerable discretion. In the absence of clear legal error, the courts must defer to local zoning boards:

> The appellate court gives "great deference to the decisions of those charged with interpreting and applying local zoning ordinances." Gurganious v. City of Beaufort, 317 S.C. 481, 487, 454 S.E.2d 912, 916 (Ct. App. 1995). This court will not reverse a zoning board's decision unless the board's findings of fact have no evidentiary support or the board commits an error of law. Charleston Cty. Parks & Recreation Comm'n v. Somers, 319 S.C. 65, 67, 459 S.E.2d 841, 843 (1995).

Arkay, LLC v. City of Charleston, 791 S.E.2d 305, 308 (Ct. App. 2016).

Here, Plaintiff has not made a prima facie showing by affidavit that the DRB committed a cleat legal error that would support a determination it is likely to succeed on the merits. A local architectural review board has considerable discretion when it is passing on the aesthetics of a proposed structure, an inherently subjective determination. Plaintiff may disagree with how the DRB used its discretion and may perceive that the design is incompatible with the surrounding community and historic area when the DRB did not perceive that it did, but these differences do not establish reversible legal error.

The Court's findings and conclusions in this Order are merely for purposes of the pending Motion. Plaintiff has failed to make a prima facie showing of all the elements to support a preliminary injunction. These findings and conclusions are not binding on the merits of the appeal which will be determined on the full record and be based on the showing and arguments Plaintiff makes at that time.

**Conclusion**

For the foregoing reasons, the Court denies Plaintiff's Motion for Preliminary Injunction.

R. Markley Dennis, Jr.
Circuit Judge