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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas
The Honorable Marvin H. Dukes, III

Opinion Number 27995
Appellate Case No.: 2019-001201
Heard May 20, 2020 – Filed September 16, 2020

Grays Hill Baptist Church, Petitioner

v.

Beaufort County and The Beaufort County Zoning Board of Appeals, Defendants,

And

The United States of America, Defendant-Intervenor,

Of Which Beaufort County and The United States of America are Respondents.

RETURN TO PETITION FOR REHEARING

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The Petitioner, Grays Hill Baptist Church, respectfully submits this Return in opposition to the Petition for Rehearing filed on behalf of one of the Respondents, Beaufort County, regarding the Opinion of the South Carolina Supreme Court filed in this action on September 16, 2020. Beaufort County asserts that this Court erred in reversing the decision of the South Carolina Court of Appeals, and in affirming the decision of the Beaufort County Master in Equity, on the following ground:

> The majority opinion errs in applying the standard of review in this case as there was evidence before the Planning Commission that the original Development Permit was limited to a development that included only the sanctuary and did not include the fellowship hall and once that sanctuary was built a new Development Permit was required for any further development of the property.

Petition for Rehearing, pg. 2.

It is respectfully requested that the Petition for Rehearing be denied for two (2) reasons, to-wit:

1. The Planning Commission did **not** find that the original Development Permit was limited to a development that included only the Sanctuary and did not include the Fellowship Hall, but rather, the Planning Commission expressly found that the original Master Plan had **both** a Sanctuary and a Fellowship Hall planned.

2. Even if the Planning Commission had found that the Fellowship Hall was not part of the original Development Permit, there is no evidence which **reasonably** supports such a finding.

Each of these reasons is addressed in turn below.

I. THE PLANNING COMMISSION EXPRESSLY FOUND THAT THE ORIGINAL MASTER PLAN HAD BOTH A SANCTUARY AND A FELLOWSHIP HALL PLANNED.

Beaufort County's request for a rehearing is based on the assertion that the Planning Commission found as a matter of fact "that the original Development Permit was limited to a development that included only the Sanctuary and did not include the Fellowship Hall." Petition for Rehearing, pg. 2. This is incorrect. The Planning Commission expressly found as a matter of fact that the original Development Permit included both the Sanctuary and the Fellowship Hall. In its Decision dated March 6, 2012 denying the Church's request to build the Fellowship Hall the Planning Commission expressly found as follows:

"The original Master Plan had both a church and fellowship hall planned."

Decision of Planning Commission dated March 6, 2012, Record on Appeal, pg. 239 (emphasis added).

It is clear from reading the decision of the Planning Commission that had the Church proceeded to build the Fellowship Hall at the same time as it built the Sanctuary, there would have been no problem. The Planning Commission felt that since the Church proceeded to build only the Sanctuary, then once "the County issued a final inspection certificate of compliance" this "effectively closed out this Development Permit." Once this Certificate of Compliance was issued, the Planning Commission felt that the "continued validity" of the original Development Permit was lost. Record on Appeal, pg. 241. The Planning Commission denied the Church's subsequent request to construct the Fellowship Hall, not because the Fellowship Hall was not part of the original Development Permit, but rather, the Planning Commission felt that the original Development Permit had been "closed out" once construction of the Sanctuary took place without the concurrent construction of the Fellowship Hall. The Planning Commission then went on to deny the permit to construct the fellowship hall because they felt it would increase the "occupant

load" in violation of the new Zoning Development Standards Ordinance which had been enacted in the interim. *Id.*

In short, there is absolutely nothing in the decision of the Planning Commission to suggest that the Commission found as a matter of fact that the original Development Permit did not encompass the Fellowship Hall as shown on the original Development Plat or the original Master Plan. The Planning Commission, to the contrary, expressly found that the Fellowship Hall was part of the original plan. The Planning Commission concluded, however, that the Development Permit was "closed out" in December of 1997 when the Certificate of Occupancy was issued for the Sanctuary. This, of course, is directly contrary to the terms of the Permit itself, which provides that it would expire only if substantial completion of the entire project was not accomplished within two (2) years of its issuance. Record on Appeal, pg. 243.

II. THERE IS NO EVIDENCE THAT WOULD REASONABLY SUPPORT A FINDING THAT THE ORIGINAL DEVELOPMENT PERMIT DID NOT INCLUDE THE FELLOWSHIP HALL.

As the Respondent Beaufort County correctly notes, the trial court must uphold the decision by the Planning Commission unless there is no evidence to support it. Petition for Rehearing, pg. 2, citing *Town of Hollywood v. Floyd,* 403 S.C. 466, 476, 744 S.E.2d 161, 166 (2013). This is a paraphrasing of S.C. Code Ann. §6-29-840(A), which dictates that "the findings of fact by the board of appeals must be treated in the same manner as a finding of fact by a jury." *Id.* A more precise stating of the standard of review, accordingly, is that a finding of fact will not be disturbed upon appeal unless found to be without evidence which "reasonably supports" the findings. E.g., *Townes Associates, Ltd. v. City of Greenville,* 266 S.C. 81, 86, 221 S.E.2d 773, 775 (1976); *Erickson v. Jones Street Publishers, LLC,* 368 S.C. 444, 464, 629 S.E.2d 653, 664 (2006).

Assuming for the sake of argument that the Planning Commission found as a matter of fact that the Fellowship Hall was not part of the original Development Permit, then this would be a finding that is not "reasonably supported" by the evidence.

In its Petition for Rehearing, the only evidence in the record pointed to by the Respondent Beaufort County in support of its argument that such a finding by the Planning Commission has reasonable evidentiary support is the building area in square feet listed on the Application and a reference in the Narrative accompanying the Application to Phase I and Phase II. Petition for Rehearing, pg. 3.

With respect to the first item, it is true that in a block labeled "BLDG AREA (SQFT)" the number 15,872 appears and that this is the square footage of the Sanctuary as shown on the Development Plat. See Final Plan Application, Record on Appeal, pg. 244 and Development Plat, Record on Appeal, pg. 246. The Respondent Beaufort County's argument that this constitutes reasonable evidentiary support that for a factual finding that the Fellowship Hall was not included in the original Development Permit overlooks two (2) facts.

First, immediately underneath the above-referenced square footage, the "Final Plan Application" states as follows:

> FINAL PLAN APPLICATION – INFORMATION REQUIRED – ALL DEVELOPMENT
>
> . . .
>
> SIX BLACK OR BLUE LARGE PRINTS OF THE DEVELOPMENT SITE PLAN(S) CONTAINING:
>
> . . .
>
> PROPOSED BUILDINGS, STRUCTURES, AND FACILITIES.

Record on Appeal, pg. 244.

The plat of the Development Site Plan accompanying the Application, and which was ultimately approved as part of the Permit, shows as one of the "proposed buildings, structures and facilities," the Fellowship Hall. It is nonsensical to claim that the Fellowship Hall, which is plainly and clearly drawn as one of the "proposed buildings" was not intended to be included in the development. Why else would it be shown on the Development Plat as one of the "proposed buildings?"

Secondly, this document upon which Respondent Beaufort County relies is the Development **Application**. What is relevant in this case is not the Application for the permit, but rather, is the permit in itself. There is absolutely no evidence whatsoever that would reasonably support the conclusion that the Fellowship Hall was not part of the Development Permit, since the Development Permit, by definition, permits the development of what is shown on the Development Plat, and the Fellowship Hall is clearly shown on the Development Plat. To argue that the terms of an application trump the content of the permit that is actually granted, is like arguing that negotiations leading up to a contract trump the terms of the contract that is eventually executed. If the permit were vague, then perhaps it would be of interest to explore the circumstances leading up to the issuance of the permit, but in this case the permit is clear and unambiguous.

The second item pointed to by the Respondent Beaufort County as providing some evidentiary basis for a finding that the Fellowship Hall was not part of the original Development Plan is a reference in the Narrative accompanying the Application to Phase I and Phase II. More precisely, this narrative recites:

> "Phase I of the development will consist of a 15,872 ft.^{2} church with 25,150 ft.^{2} of asphalt and concrete paving. Phase II of the development will consist of a 11,250 ft.^{2} building shown on the enclosed plat as the building to the south of the church."

Record on Appeal, pg. 245.

Contrary to what the Respondent Beaufort County now argues, it is clear from the foregoing that the Church was seeking a single Development Permit granting permission to develop **both** Phase I and Phase II "as shown on the enclosed plan." Nothing in this Narrative gives rise to the implication that a permit solely for "Phase I" was being sought. There is nothing in this Narrative to indicate that the Church is not seeking permission for what is referenced as "Phase II" or that "Phase II" is something that would be permitted at a later date. It is clear that the Church is seeking permission to develop both "Phase I" **and** "Phase II" in its Narrative. No where in this Narrative does the Church indicate, either expressly or impliedly, that it is not seeking a permit for the development of "Phase II" as part of its application. In fact, by referencing Phase II, it is clear that the Church is expressly seeking permission to develop what in the narrative it references as "Phase II," otherwise, there would be no reason to mention Phase II at all in this Application.

Additionally, this Narrative, as is the case with the Application, is not the governing instrument. The governing instrument is the Development Plat itself, and the documentation leading up to permitting the Development Plat would be of interest only if the Development Plat were vague on its face, which it is not.

CONCLUSION

The Planning Commission did not find that the original Development Permit issued to the Church was limited to a development that included only the Sanctuary and did not include the Fellowship Hall. To the contrary, the Planning Commission expressly found that the original Master Plan included both the Sanctuary and the Fellowship Hall. The Planning Commission subsequently denied the Church's request to construct the Fellowship Hall because the Planning

Commission felt that the original Development Permit had been "closed out" and was no longer valid at the time the Church requested the Construction Permit for the Fellowship Hall.

Assuming, *arguendo*, that the Planning Commission denied the Church's request to construct the Fellowship Hall, not because the Development Permit had previously expired, but because the Fellowship Hall was never part of the Development Permit, then this is finding of fact which is not reasonably supported by the evidence. The only "evidence" pointed to by Beaufort County in support of this contention are items in the Application and Narrative accompanying the Application which are each consistent with the Fellowship Hall being part of the original Development Permit and, in any case, in order to ascertain what was permitted, the terms of the Permit itself control, not documents predating the Permit.

It is, accordingly, respectfully requested that the Petition of the Respondent Beaufort County for a Rehearing be denied.

Respectfully submitted,

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By: _____

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