

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

L. Casey Manning, Circuit Court Judge

Case No. 2020-CP-40-03475



University Hill Neighborhood Association..... Plaintiff/Respondent,

v.

City of Columbia, City of Columbia Design and Development Review Committee and
Trinitas Ventures LLC Defendants/Appellants.

MOTION FOR EXPEDITED APPELLATE REVIEW

Pursuant to Rule 263(b) of the *South Carolina Appellate Court Rules*, Appellant Trinitas Ventures LLC (“Trinitas”) respectfully requests an order from this Honorable Court expediting the above-captioned appeal for the following reasons.

BACKGROUND

This action began an appeal from two decisions of the City of Columbia (“City”) Design/Development Review Commission (“DDRC”), a board of architectural review authorized by S.C. Code Ann. § 6-29-870. Trinitas proposes to demolish certain existing buildings and construct an apartment building at the southeast corner of Gervais Street and Pickens Street in Columbia, South Carolina, known as 1600-1620 Gervais Street (the “Proposed Construction”). On March 12, 2020, the DDRC granted Trinitas’ application for a Certificate of Site Plan Approval (the “Site Plan

Approval Decision”) and on July 9, 2020, the DDRC granted Trinitas’ application for a Certificate of Design Approval for New Construction (the “Design Approval Decision”). On July 23, 2020, the University Hill Neighborhood Association (“Association”) appealed both DDRC decisions.

Association’s notice of appeal (improperly captioned as a “Complaint”) acknowledges that this case is an appeal pursuant to S.C. Code Ann. § 6-29-900(A). Compl. at ¶ 3. Association asserts that the DDRC’s Site Plan Approval Decision should be vacated because City’s delegation of site plan review to the DDRC rather than City’s Planning Commission was *ultra vires*. Association also argues the DDRC’s Design Approval Decision was based on mistaken legal interpretations and insufficient evidence to “justify reducing the requirements of a number of specific provisions” in City’s *City Center Design/Development Guidelines*, Final Report, September 1, 1998, LDR International, Inc. (“*Guidelines*”). See City Ordinance Section 17-253.

On August 24, 2020, City, DDRC, and Trinitas filed Motions to Dismiss Association’s appeal. Trinitas asserted: (i) the circuit court lacked jurisdiction over the DDRC’s March 12, 2020 Site Plan Approval Decision because Association failed to timely appeal pursuant to S.C. Code Ann. § 5-29-900(A) (requiring an appeal to be filed within 30 days of actual notice of the decision); (ii) Association lacked standing to appeal under S.C. Code Ann. § 6-29-900(A) because Association did not have a “substantial interest” and could not establish standing or application of the public interest exception to the standing requirement; and (iii) Association failed to state an appeal as to the Site Plan Approval Decision entitling it to relief under S.C. Code Ann. § 6-29-930 (“[T]he court must determine only whether the decision of the board is correct as a matter of law.”).

On October 7, 2020, the circuit court denied the Motions to Dismiss and ruled on the merits of the appeal on all issues raised by Association, finding: “[T]he position of the DDRC concerning height was a mistake of law and . . . the grant by . . . City of the power of site plan review . . . to the

DDRC was *ultra vires*.” Order at p. 32. On October 15, 2020, Trinitas and the DDRC filed a Joint Motion to Alter or Amend. City also filed a Motion to Alter or Amend. By order entered November 19, 2020, the circuit court denied these motions. On December 3, 2020, City, DDRC, and Trinitas filed a Notice of Appeal pursuant to Rule 203, SCACR.

ARGUMENTS

I. EXPEDITED REVIEW WOULD FURTHER LEGISLATIVE INTENT.

Granting expedited appellate review of this case would promote clear legislative intent that appeals from boards of architectural review, like the DDRC, be conducted expeditiously. The South Carolina Legislature enacted Article 5 of Chapter 29 of the South Carolina Code of Laws to administer local planning and zoning. Specifically, sections 6-29-870, *et seq.* apply to any

local government which enacts a zoning ordinance which makes specific provision for the preservation and protection of historic and architecturally valuable districts and neighborhoods or significant or natural scenic areas, or protects or provides, or both, for the unique, special, or desired character of a defined district, corridor, or development area or any combination of it, by means of restriction and conditions governing the right to erect, demolish, remove in whole or in part, or alter the exterior appearance of all buildings or structures within the areas[.]

S.C. Code Ann. § 6-29-870(A). To carry out these functions, a local government “may provide for appointment of a board of architectural review or similar body.” *Id.* City established the DDRC pursuant to S.C. Code Ann. § 6-29-870, *et seq.* See City Ordinances at § 17-653.

“[A] board of architectural review has those powers involving the structures and neighborhoods as may be determined by the zoning ordinance. S.C. Code Ann. § 6-29-880. Section 17-653 of City’s ordinances empowers the DDRC to “[a]dminister the design guidelines for the . . . [design district (“DD”)] . . . area[.]” City Ordinances at § 17-653(b)(9). Further, City Ordinance § 17-253 provides that “[d]evelopment within the –DD area must comply with design guidelines set forth in . . . [City’s] Code and [the *Guidelines*].” City Ordinances at § 17-253.

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.

S.C. Code Ann. § 6-29-900(A); *see also* City Code §§ 17-677, 17-655(f)(1).

After an appeal is filed,

At the next term of the circuit court or in chambers upon ten days' notice to the parties, the resident presiding judge of the circuit court of the county must proceed to hear and pass upon the appeal on the certified record of the board proceedings. The findings of fact by the board of architectural review are final and conclusive on the hearing of the appeal, and the court may not take additional evidence. In the event the judge determines that the certified record is insufficient for review, the matter must be remanded to the board of architectural review for rehearing. 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 Ann. § 6-29-930(A) (emphasis added).

In *Ward v. S.C. Dep't of Soc. Servs.*, 427 S.C. 197, 829 S.E.2d 718 (2019), this Court considered legislative intent with respect to the undefined term “expedited” in the context of the family court’s remedy of removing names from the Central Registry of Child Abuse and Neglect pending an administrative hearing. *Id.* at 206, 827 S.E.2d at 723. This Court recognized: “the Legislature mandated an expedited review,” including an expedited hearing, and concluded that the family court correctly ruled that “eighty-two days did not satisfy that mandate.” *Id.* at 207, 827 S.E.2d at 723. Similarly, in *Chesapeake B & M, Inc. v. Hartford County, Md.*, 58 F. 3d 1005 (4th Cir. 1995), the U.S. Court of Appeals for the Fourth Circuit concluded that an applicable licensing law, which provided “for prompt judicial review,” requires not only “prompt access to the judiciary” but also “a sufficiently prompt decision on the merits.” *Id.* at 1011-12.

Although the statute at issue does not use explicit terms like “expedited” and “prompt judicial review,” the South Carolina Legislature clearly intended appeals from a board of architectural review to be resolved speedily. First, the Legislature mandated an appeal to be filed within thirty (30) days of an aggrieved party’s actual notice of the decision. S.C. Code Ann. § 6-29-900(A). Second, the Legislature required that a hearing on the merits be made at the “next [available] term of the circuit court or in chambers upon ten days’ notice to the parties.” S.C. Code Ann. § 6-29-930(A). Here, the circuit court has already determined the merits by deciding all issues raised in Association’s appeal in the order entered October 7, 2020. Granting expedited review of this subsequent appeal would promote the legislative intent of a speedy review of an appeal. Otherwise, an appeal could take a year or longer to work its way through the appellate process, thereby frustrating the legislature’s intent.

There is authority for the requested expedited treatment of this matter. The Supreme Court has a standing order to expedite review of appeals involving termination of parental rights proceedings, adoption proceedings, and/or Department of Social Services actions involving custody of a minor child. *In re Expediting App. from Termination of Parental Rights Proceedings, Adoption Proceedings, and/or Dep’t of Soc. Servs. Actions Involving Custody of a Minor Child*, S.C. Sup. Ct. Order dated October 20, 2011. Further, the Supreme Court has routinely expedited appeals in cases involving elections or qualifications of candidates. *See, e.g., Tempel v. S.C. State Elec. Com’n*, App. Case No. 2012-212729 (Aug. 17, 2012) (granting expedited appeal from order disqualifying candidate); *George v. Mun. Election Comm’n*, 335 S.C. 182, 516 S.E.2d 206 (1999) (granting expedited appeal where the validity of a referendum had bearing on upcoming elections).

In addition to the aforementioned classes of cases, the Supreme Court has also granted expedited appellate review in a recent case involving issues of standing and injunctive relief where

public bodies and expenditure (or withholding) of public funds were at issue. *See, e.g., Richland County v. S.C. Dep't of Revenue*, No. 2016-001839 (Mar. 22, 2017) (granting petitioner's request for certification under Rule 204(b), SCACR, and expedited appellate review). Similarly, the case at bar presents issues of Association's standing to appeal the DDRC's decision and the DDRC's interpretation and application of City ordinances and guidelines. Moreover, this case involves issues of the circuit court's jurisdiction (appellate and subject matter) while sitting in an appellate capacity, the types of issues which constitute legal issues of major importance.

Further, our courts value efficiency and finality. *See State v. Hewins*, 409 S.C. 93, 109, 760 S.E.2d 814, 822 (2014) (“[T]he prompt resolution of claims and finality are desirable goals in civil litigation.”); *Davis v. Richland Cty. Council*, 372 S.C. 497, 503-04, 642 S.E.2d 740, 743 (2007) (addressing issues “[i]n the interest of judicial economy”); *Edge v. State Farm Mut. Auto. Ins. Co.*, 366 S.C. 511, 517, 623 S.E.2d 397, 390 (2050) (considering cross-appeal in the interest of judicial economy); *State v. Vick*, 384 S.C. 189, 202, 682 S.E.2d 275, 282 (Ct. App. 2009) (“[O]ur courts have at times considered an issue in the interest of judicial economy”); Rule 501, SCACR, Canon 3(B)(8) (“A judge shall dispose of all judicial matters promptly, efficiently and fairly.”).

In *Richland County v. S.C. Dep't of Revenue*, No. 2016-001839, the Supreme Court granted Richland County's Motion to Expedite the Appeal, thereby accepting Richland County's argument that the order on appeal, which allegedly conflicted with extant legal opinions as to the South Carolina Department of Revenue's (“SCDOR”) scope of authority, would lead to “the possible waste of judicial and legislative resources.” *See* Motion for Certification and to Expedite Appeal, No. 2016-001839 (Jan. 20, 2017). Richland County also argued it had its own “individualized and important need for an expeditious determination by th[e] Court.” *Id.*

Similarly, here, Trinitas contends the circuit court's order conflicts with case precedent regarding jurisdiction of the lower court while sitting in an appellate capacity, improperly and unnecessarily extends principles of standing in contradiction to the Supreme Court's ruling in *Carnival Corp. v. Historic Ansonborough Homeowners Association*, 407 S.C. 67, 75, 753 S.E.2d 846, 850 (2014), places into doubt City's delegation of site plan review which jeopardizes other applications currently pending before the DDRC, and negates or substantially undermines the DDRC's ability to make discretionary decisions when applying City's *Guidelines* to proposed construction within its jurisdiction. There is a substantial possibility that a prolonged appeal in this case will detrimentally impact City and its board of architectural review, the DDRC, as to similar projects which come before the DDRC for review between now and a final resolution of this appeal. In addition, similar boards of architectural review throughout the state could be chilled by the circuit court's order in this case. The result of such an impact on public boards of architectural review is to stymie private development and commerce in this State.

II. EXPEDITED REVIEW IS NECESSARY TO PREVENT SUBSTANTIAL FINANCIAL PREJUDICE TO TRINITAS.

In *Richland County v. S.C. Dep't of Revenue*, Richland County argued it had an "individualized and important need for an expeditious determination by th[e] Court." *See* Motion for Certification and to Expedite Appeal, No. 2016-001839 (Jan. 20, 2017). The Supreme Court presumptively agreed by taking the case within its jurisdiction pursuant to Rule 204(b), SCACR, and granting an expedited review of the case. Here, there is also a significant likelihood of substantial prejudice to Trinitas if this appeal is not given expedited review.

The Proposed Construction has already been pending for review for more than eighteen months. Indeed, Trinitas entered into a contract for the purchase of the real property on which it

wishes to locate the Proposed Construction (the “Site”) on August 30, 2018. Affidavit of Damian VanMatre at ¶ 3. From September 19, 2018 through July 2020, Trinitas met numerous times with community stakeholders, including City and Association, to consider zoning, height, and design suggestions. *Id.* at ¶¶ 4-5. On June 4, 2019, the owner of the Site, Capital Investments, LLC (“Owner”), voluntarily rezoned the property to make it part of the City Center Design/Development District. *Id.* at ¶ 5. That rezoning subjected the Proposed Construction to the scrutiny of the DDRC. As a consequence, pursuant to City’s ordinances and guidelines, on December 3, 2019, Trinitas filed two applications to the DDRC, including: (1) a Certificate of Site Plan Approval, and (2) a Certificate of Design Approval for New Construction, under a Letter of Agency from Owner.

The DDRC first considered Trinitas’ applications at a meeting on January 9, 2020, a month after the applications were initially filed. At that time, City reported to the DDRC that its staff had completed review of the applications and recommended that DDRC approve both applications. Association appeared at the DDRC meeting and objected to both applications based on Association’s concerns that the Proposed Construction would be used as “student housing,” an improper consideration for the DDRC given that the Proposed Construction had already been approved by City’s zoning board. Nevertheless, at the January 2020 meeting, the DDRC denied both applications orally and, on January 13 and 14, 2020, confirmed its denials of both applications in writing.

Trinitas filed a petition for rehearing, contesting the DDRC’s stated bases for its denials of the applications, including the “mass[,] scale[,] and use” of the Proposed Construction. On February 7, 2019, the DDRC met in a closed executive session and, independent of Trinitas’ petition, revoked its prior denials of the applications. The DDRC placed both applications for rehearing at its next meeting. On March 12, 2020, the DDRC conducted a second public hearing on the applications. Association again appeared and made arguments in opposition. After a lengthy hearing, the DDRC

entered the “Site Plan Approval Decision and held Trinitas’ application for design approval for consideration at a later date.

The DDRC conducted a public working session to discuss Trinitas’ application for design approval, which was held on June 10, 2020. Association appeared and requested a reduction of the height of the Proposed Construction and suggested certain other design changes. Following the working session, for a third time, Trinitas’ application for design approval was considered by the DDRC at a public hearing on July 9, 2020. Association appeared and made arguments in opposition. At the July 9, 2020 hearing, the DDRC entered the Design Approval Decision.

On July 23, 2020, Association filed this appeal, which has now been pending for over four months. Trinitas requested an expeditious hearing on the merits pursuant to S.C. Code Ann. § 6-29-930(A). Trinitas, and other Appellants, also filed Motions to Dismiss. On October 7, 2020, the circuit court, sitting in an appellate capacity, entered an order (which is now on appeal) denying the Motions to Dismiss and, instead of simply denying the motions pursuant to a form order or without explanation, the circuit court ruled on the merits of all issues in Association’s appeal, concluding:

Defendants’ Motions to Dismiss are denied. In particular, it is important to note that the position of the DDRC concerning height was a mistake of law and that the grant by the City of the power of site plan review within the DD overlay area to the DDRC was *ultra vires*.

Order (Oct. 7, 2020) at p. 32. City, DDRC, and Trinitas requested the circuit court alter, amend, or reconsider its order; however, the circuit court denied these motions by order dated November 19, 2020, leaving the parties no choice but to appeal Rule 203, SCACR. *See also* S.C. Code Ann. § 14-3-330 (stating the appellate courts have jurisdiction to consider “[a]ny intermediate judgment, order or decree in a law case involving the merits” and “[a]n[y] order affecting a substantial right”).

Given the significant amount of time that has already passed in the DDRC's (and now court's) review of the Proposed Construction, a denial of Trinitas' request for expedited review would likely cause substantial prejudice and financial hardship to Trinitas. Trinitas has already incurred \$275,000 in nonrefundable deposits to the Owner of the Site. VanMatre Aff. at ¶¶ 8-9. Trinitas has also incurred significant development costs associated with the Proposed Construction, caused by making changes to the design based on feedback from City and Association during the nearly two year review of Trinitas' applications related to the Proposed Construction. *Id.* at ¶ 8. Trinitas has also incurred significant internal costs and legal fees in preparing for four public hearings and one working session in connection with City's review of Trinitas' applications. *Id.*

With respect to the future financial hardship which would result from a delayed decision in this case, Trinitas currently has through January 18, 2021, before it is required to make an additional \$50,000 deposit to Owner. VanMatre Aff. at ¶ 9. Trinitas will be contractually required to pay an additional \$50,000 every sixty (60) days through October 2021, totaling more than \$300,000, if this appeal takes even a minimum of a year to resolve. *Id.* This amount does not include the significant financial loss Trinitas will suffer if the contract is not renewed. Trinitas' contract with Owner will expire on November 18, 2021, at which time Owner may decide not to allow Trinitas to renew the contract or Trinitas may decide the Proposed Construction is not worth the additional significant expense to renew. *Id.* at ¶ 10.

Should this appeal be given ordinary review pursuant to the timelines set forth in the *South Carolina Appellate Court Rules*, a resolution of the appeal authorized by S.C. Code Ann. § 6-29-900(A) will be significantly delayed, defeating the goal of expedited review set out in the statute. It is vital that the development of real estate in South Carolina proceed in an orderly, efficient, and economically sound fashion. Any other process discourages investment and chills development. The

statute authorizing boards of architectural review recognizes that reality and provides for special and expedited handling of appeals like this one. Unreasonably burdening those who wish to invest in South Carolina with costly and indefinite appellate delays discourages investment and works against the purposes advanced by the statute.

Where, as here, the DDRC made decisions in Trinitas' favor based on its extensive review of filings submitted by all interested parties and consideration of public comments during four public hearings and one public working session, those decisions should be given the deferential treatment mandated by S.C. Code Ann. § 6-29-930(A) and be provided expedited review on appeal as set forth in § 6-29-900(A).

CONCLUSION

In this case, the Legislature's intent is best served by this Honorable Court granting expedited review. The first stage of appellate review was conducted by the circuit court pursuant to S.C. Code Ann. §§ 6-29-900 and 6-29-930. Additional review should occur just as expeditiously as the statute requires during the first stage. Further, expedited review would promote the judicial process.

Trinitas respectfully requests this Court grant an expedited review of this appeal and seeks an order setting forth an abbreviated and expedited briefing schedule and dates for judicial determination. Otherwise, the judicial process will unnecessarily and unreasonably delay a resolution of the issues in this case in spite of the Legislature's intent that these appeals be conducted expeditiously and cause significant prejudice to the parties.

[SIGNATURE ON FOLLOWING PAGE]

Respectfully submitted,

s/ Lyndey R. Z. Bryant

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7. From January to July 2020, Trinitas participated in four public meetings before the DDRC and one public working session in connection with the Proposed Construction.

8. Trinitas has already incurred \$275,000 in nonrefundable deposits to the Owner. Trinitas has also incurred significant development costs associated with the Proposed Construction, including engineering and architect costs, as a result of changes made to the Proposed Construction's site plan and design based on feedback from City and Association. Trinitas has also incurred significant internal costs and legal fees in preparing for four public hearings and one working session before the DDRC.

9. Trinitas' contract with Owner requires Trinitas to make an additional \$50,000 nonrefundable deposit to Owner on January 18, 2021. After January 2021, Trinitas will be contractually required to pay an additional \$50,000 every sixty days until October 2021.

10. Trinitas' contract with Owner will expire on November 18, 2021, at which time Owner may decide not to allow Trinitas to renew the contract or Trinitas may decide that the economic benefit anticipated from the Proposed Construction is outweighed by the burden imposed by the uncertainty and delays of the planning process.

11. Delay of the appellate courts' review of the appeal filed by Association would significantly prejudice Trinitas and the proposed project.

I solemnly swear and/or affirm that the above information is true and correct to the best of my knowledge and belief.

FURTHER AFFIANT SAYETH NOT.

[SIGNATURE ON FOLLOWING PAGE]

Damian VanMatre

Damian VanMatre
Vice President of Development Operations
Trinitas Ventures LLC

Sworn to and subscribed before me

This 3RD day of December 2020.

Elizabeth Jaye Gonzalez

Notary Public for Indiana

My Commission Expires: 01-29-28



THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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Dec 04 2020

APPEAL FROM RICHLAND COUNTY
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SC Court of Appeals

L. Casey Manning, Circuit Court Judge

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University Hill Neighborhood Association..... Plaintiff/Respondent,

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PROOF OF SERVICE

I certify that I served the **Motion for Expedited Appellate Review** by depositing a copy of it in the U.S. Mail, postage prepaid, on December 4, 2020, addressed to all parties of record, as follows:

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Dec 04 2020

SC Court of Appeals

December 4, 2020

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The Honorable Jenny Abbott Kitchings
Clerk of Court, Court of Appeals

RE: **Motion for Expedited Review**

University Hill Neighborhood Association, *Plaintiff/Respondent* v.

City of Columbia, City of Columbia Design and Development Review Committee
and Trinitas Ventures, LLC, *Defendants/Respondents*.

Case No. 2020-CP-40-03475

A&R File No. 029415-000001

Dear Mrs. Kitchings:

I have enclosed for filing Appellant's Motion for Expedited Review. I am simultaneously serving a copy of the Motion on all counsel to this matter as set forth in the Proof of Service.

Under separate cover, I will mail the filing fee check.

Thank you for your help with these matters.

Sincerely,

s/ Lyndey R. Z. Bryant

Lyndey R. Z. Bryant

LRZB/jas

Enclosure

cc: via U.S. Mail w/encl.

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