

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)
)
SE CALHOUN, LLC,)
)
)
Appellant,)
)
vs.)
)
CITY OF CHARLESTON and CITY OF)
CHARLESTON BOARD OF)
ARCHITECTURAL REVIEW,)
)
)
Respondents.)
)
_____)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO. 2021-CP-10-04366

RECEIVED
Dec 22 2021
SC Court of Appeals

ORDER DENYING PETITIONS TO INTERVENE BY PRESERVATION SOCIETY OF CHARLESTON AND HISTORIC CHARLESTON FOUNDATION

This matter came before the Court for a hearing on November 5, 2021, on Petitions to Intervene filed by the Preservation Society of Charleston (“PSC”) and the Historic Charleston Foundation (“HCF”), collectively referred to as “Petitioners” hereinafter, in this appeal from a decision of the City of Charleston Board of Architectural Review (“BAR”) denying Appellant’s application for conceptual approval. After considering the legal memoranda submitted and the oral arguments of counsel, I find that neither petitioner has shown that it has a “substantial interest” in the appeal of the BAR decision, as required by S.C. Code Ann. § 6-29-915(A), and, therefore, the Petitions are denied.

In early 2021, Appellant submitted an application for conceptual approval to the BAR for a structure to be built at 295 Calhoun Street in the City of Charleston. The BAR denied the first submission and made specific recommendations for changes. Appellant submitted a second changed application, and the BAR again denied it. Appellant timely filed a Notice of Appeal and a Request for Pre-Litigation Mediation in accordance with S.C. Code Ann. § 6-29-900(B)(2).

Under § 6-29-915(A), “[a] person who is not the owner of the property may petition to intervene as a party, and this motion must be granted if the person has a substantial interest in the decision of the board of architectural review.” PSC and HCF filed such petitions and had the burden of showing that each of them “has a substantial interest in the decision of the [BAR].” Petitioner’s position that they should be allowed to intervene under Sec. 6-29-615(A) has the effect of giving them veto rights over any settlement proposal. Under the statute, any mediated settlement must be approved in a public meeting of the Charleston City Council.

In their petitions, PSC and HCF each claimed that they had substantial interests for three reasons: (1) they own property adjacent to 295 Calhoun Street; (2) they participated extensively in the BAR’s public process as well as meeting with the Appellant’s team when they were attempting to develop a design that would appeal to them; and (3) their missions are to maintain the historic character of Charleston’s architecture.

I find that neither PSC nor HCF owns any property adjacent to, or within the “immediate surroundings” of 295 Calhoun, as defined by the City of Charleston Zoning Ordinance (ZO). 295 Calhoun lies adjacent to the Medical District across from Roper Hospital and the MUSC medical complex on Calhoun Street, and is adjacent to vacant lots used by these medical entities for parking. While technically within in the Harleston Village Neighborhood, 295 Calhoun is situated in an area on which hospitals, medical offices, and supporting commercial enterprises are located. Petitioners claim that their ownership of preservation easements on various properties in the Harleston Village gives them a substantial interest in this appeal. The Court finds that there is no merit to this argument, which the South Carolina Supreme Court considered in Carnival Corp. v. Historic Ansonborough Neighborhood Ass’n, 407 S.C. 67, 79, 753 S.E.2d 846, 852 (2014) (holding that PSC’s conservation easement on a nearby property did not make it a “property

owner” as required by § 6-29-950, which permits an “adjacent or neighboring property owner who would be specially damaged” by a violation of a zoning ordinance to bring suit).

The Court acknowledges that Petitioners have an interest in the architectural design of 295 Calhoun, just as they do in every proposed development presented to the BAR. However, having a general interest does not equate to a “substantial interest.” In this case, the general interests of PSC and HCF are protected by the City of Charleston and the BAR, both of which are parties to the appeal and pre-litigation mediation. In addition, S.C. Code Ann. § 6-29-915(D), requires that any agreement reached in mediation must be approved by City Council in public session and then by the Circuit Court. This gives PSC and HCF, as well as all other members of the public, the ability to offer their input to City Council, just as they have already done before the Planning Commission and the BAR.

For all of these reasons, the Court finds that neither PSC nor HCF has a “substantial interest” in the pending appeal.

IT IS, THEREFORE, ORDERED that the Petitions to Intervene filed by the Preservation Society of Charleston and the Historic Charleston Foundation are denied.

AND IT IS SO ORDERED.

ROGER M. YOUNG, SR.
CIRCUIT COURT JUDGE

November __, 2021



Charleston Common Pleas

Case Caption: Se Calhoun Llc VS Charleston City Of , defendant, et al

Case Number: 2021CP1004366

Type: Order/Intervene

It is so ordered.

/s Roger M. Young, Sr. S.C. Circuit Judge 2134