Memorandum of Decision

Bennett and Solic v. City of Raleigh, et al.

23CV025381-910

AND

City of Raleigh, et al. v. BOA, et al.

23CV025572-910

July 8, 2024

To: All Counsel of record

From: Superior Court Judge Bryan Collins

Mr. Justus is to send the Court draft orders in Word format consistent with the following rulings. I will review the drafts, make appropriate edits after considering comments from opposing counsel and will enter my final orders. I would like the drafts within 15 days and the comments no more than 15 days after the draft is circulated.

Standing

The Motion to Dismiss for lack of standing is denied. The BZA ruled that there is standing. This court reviews that decision *de novo* while viewing the allegations as true and the supporting record in the light most favorable to the non-moving party. The Mangum decision controls here. It is not necessary that a party demonstrate that injury has already occurred but a showing of "immediate OR (emphasis added) threatened injury" will suffice for purposes of standing. Petitioners have sufficiently forecast special damages because their properties are the closest to the planned development and would be affected to a much greater degree than the neighborhood as a whole, including one of them having a road within two feet of their back yard.

This court rejects the argument that simply approving a subdivision doesn't cause any damage. It certainly causes a threatened injury. There is no material difference for standing purposes between the facts of this case and those in Mangum.

Merits

I find that all the requirements for a compact development pursuant to Section 2.3.1 of the UDO have been met with the exception of the requirement for a transitional protective yard in Section C of 2.3.1. In finding this, I have conducted a whole record review to determine whether the ruling was arbitrary and capricious, whether it was supported by competent, material and substantial evidence and whether Petitioners were afforded the due process of law and I find nothing erroneous about any of that.

My ruling is based on my *de novo* review of whether the BZA made an error of law in applying Section C of Section 2.3.1. I find that it did.

Section C of 2.3.1 is titled "Transitional Protective Yard." The Ayers case tells us that unless a term in an ordinance is defined specifically it should be assigned its plain and ordinary meaning. We should avoid interpretations that create absurd or illogical results and that we can use the title of the ordinance as sone evidence of what it means.

The UDO defines "protective yard" as a landscaped yard area which contains no buildings, vehicular surface area, loading, storage or display service areas. It includes transitional protective yards in the definition.

Section C allows for three types of transitional protective yards: Type B1 or Type B2 Transitional protective yards; or "perimeter lots must meet the dimensional standards of Article 2.2 Conventional Development Option of the district where the property is located." This third option is ambiguous on its face and even more ambiguous when considered in the context of a transitional protective yard. The B1 and B2 options require 20 feet of buffer or 35 feet of buffer, each with trees and shrubs required. The City argues that all that is required for the third option under Transitional Protective Yard is an open lot that meets the width requirement for a conventional development option in R-4. This allows a result that is totally not consistent with the other two options, in that it would allow a miniscule distance between the development and the neighboring properties with no buffer and no fence.

The court notes that "perimeter lot" is not defined in the UDO. This court finds that for an "open lot" to be a Transitional Protective Yard under Section C of 2.3.1 that it must meet the dimensional standards of Article 2.2 Conventional Development Option for the district where the property is located around the perimeter of the proposed subdivision, i.e. it must provide at least 65 feet of separation between the subdivision and the neighboring properties. This the only interpretation of the third part of Section C that is in harmony with the overall purpose and intent of the UDO and that does not bring about an absurd result.

Since the BZA approved a plan that does not meet the requirements of Section C of UDO Section 2.3.1, it has made an error of law and its decision is reversed and the approval is revoked.