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No “Cherry Picking” for Local Historic District Commissions

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The North Carolina Court of Appeals has recently re-affirmed that local historic district commissions must look at the entire historic district in determining whether a proposed development project is congruous with the historic district in question. Likewise, the personal preferences of individual commission members should not be considered in determining congruity.

In Sanchez v. Town of Beaufort (filed on May 3, 2011), a property owner proposed to demolish an existing structure located within the Town of Beaufort’s Historic District that was in complete disrepair. In its place, the property owner proposed to construct a new one and a half story structure that was roughly 11 feet taller than the existing structure. Despite the property owner presenting substantial evidence that surrounding structures in the historic district were between 26 and 35 feet tall, the Beaufort Historic Preservation Commission (“BHPC”) refused to grant the project a certificate of appropriateness unless the developer agreed to reduce the height from 27 feet, 3 inches to 24 feet. The developer appealed the BHPC’s decision to the Beaufort Board of Adjustment (“BOA”). The BOA reversed the BHPC’s decision on the grounds that the 24-foot height requirement was arbitrary and not supported by the evidence in the record. The BOA ordered the HPC to issue a certificate of appropriateness for the 27 foot, 3 inch structure.

The BOA’s decision was appealed to the Superior Court and then to the Court of Appeals by a neighboring property owner who was concerned that the proposed project would obstruct her view of the water and reduce the value of her home. The neighboring property owner contended

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that the BHPC's decision should have been upheld because (1) there was evidence in the record that other one and a half story structures in the historic district were between 20 and 22 feet in height and (2) the proposed structure violated the historic guidelines governing the protection of Beaufort's "vistas." Both the Superior Court and the Court of Appeals rejected these arguments and upheld the decision of the BOA. Specifically, the Court of Appeals noted that "N.C. Gen. Stat. § 160A-400.9 does not permit the BHPC to 'cherry pick' certain properties located within the historic district in order to determine the congruity of proposed construction; instead, the BHPC must determine congruity contextually, based upon 'the total physical environment of the Historic District.'" Likewise, in referencing the transcript from the hearings before the BHPC, the Court noted that the 24-foot requirement was established by each member of the BHPC without the use of any determining principle from the BHPC's guidelines and was clearly arbitrary. Finally, the Court rejected the neighboring property owner's arguments that the project violated the BHPC's vista regulations. The Court reasoned that because the BHPC was prepared to approve the structure at 24 feet (eight feet taller than the existing structure) and the members had already conceded that the "vista" would be impaired by any replacement structure, the BHPC's decision could not have been based on alleged violations of the "vista" guidelines.

The Sanchez case should serve as a strong warning to local historic district commissions seeking to impose unfettered discretion or personal preferences against development projects proposed by property owners in historic districts. Protecting local historic districts is clearly a worthwhile and laudable goal; however, the review of proposed developments in historic districts should be done within the confines of the congruity standard set forth in the statutes governing historical preservation.

Chad W. Essick is an attorney in the Raleigh Office of Poyner Spruill LLP and practices primarily in the area of land use and zoning. Mr. Essick represented the prevailing developer in Sanchez v. Town of Beaufort.

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