

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

LYNN SHERIDAN,)
Petitioner,)
v.) C.A. No. 06A-01-005-PLA
BOARD OF ADJUSTMENT)
OF THE CITY OF NEW CASTLE)
Respondent.)

Submitted: July 31, 2006
Decided: August 18, 2006

UPON PETITIONER LYNN SHERIDAN'S
MOTION TO DISMISS

DENIED.

UPON PETITIONER LYNN SHERIDAN'S
MOTION FOR DECLARATORY JUDGMENT

DENIED.

UPON RESPONDENT BOARD OF ADJUSTMENT OF NEW CASTLE'S
MOTION TO DISMISS

GRANTED.

Bayard Marin, Esquire, Wilmington, Delaware, Attorney for Petitioner
Lynn Sheridan.

James F. Harker, Esquire, Wilmington, Delaware, Attorney for
Respondent Board of Adjustment of the City of New Castle.

ABLEMAN, JUDGE

This is an appeal from a decision by the Zoning Board of Adjustment (“Board”) permitting proposed additions to be built onto property at 137 East 2nd Street in New Castle, Delaware. Linda Brown (“Brown”), apparently an equitable property owner due to a bill of sale, as well as Frederick Dressler and Julie Larick, apparently the legal owners of the property, applied for a building permit to improve the existing residence by constructing an addition. The application was opposed by Lynn Sheridan (“Sheridan”), the owner of an adjacent property. The Historic Area Commission (“HAC”) considered and approved the application on October 20, 2005.

Sheridan appealed that decision to the Board, arguing that the HAC was improperly convened and failed to follow established guidelines permitting input from owners neighboring the property in question. The Board announced its judgment upholding the Historic Area Commission’s decision after a hearing held December 6, 2005. On January 6, 2006, Sheridan appealed the decision by filing for certiorari in this Court. A handwritten note, apparently signed and dated February 24, 2006 by Brown, evidences a request by Brown to withdraw the application. There is, however, no indication that the note was filed with, or received by, the Board.¹ A written decision on the matter was dated the same day, and filed by the Board on February 27, 2006. Sheridan

¹ The HAC meeting minutes from April 21, 2005 indicate that Dressler and Larick withdrew their requests for a variance nearly a year previous. Although Brown’s handwritten withdrawal bears her date of February 24, 2006, there is no indication of when it was actually filed with the Board.

amended her writ of certiorari on March 23, 2006, to reflect the Board's written decision.

Both parties agree that the case should be dismissed, but vigorously dispute the reasons for doing so. Petitioner argues that the handwritten non-date stamped document she found in the file, and subsequently submitted to the Court, in what was termed a "Motion for Declaratory Judgment," requires this Court to conclude that Ms. Brown voluntarily dismissed her case before the Board issued its written decision. The reason Petitioner asserts this position is, if the Court were to find the handwritten note was filed by Brown as a matter of record, then the case was properly dismissed and the decision of the Board is therefore null and void. Ms. Sheridan relies upon that dismissal for obvious reasons. It means that the Board's decision, which constitutes approval of the improvements to the property, owned not by Brown but by Dr. Dressler and Ms. Larick, would no longer exist, as if the matter were never before the Board.

The Board – who is the sole Respondent named in this appeal – views the case differently. It suggests primarily, as a matter of fairness, that the only individuals who have any stake in this proceeding, and in the decisions of the Board, are the owners of this property, who have not been named in this appeal. The Board asserts that it has no stake whatsoever in the result of this controversy and that Ms. Sheridan's failure to timely join the legal or equitable owners of the property as

indispensable parties to this proceeding requires dismissal.² Ms. Brown was the original applicant to the HAC and Dr. Dressler and Ms. Larick are the legal owners of the property.

The second basis for dismissal asserted by the Board is that Ms. Sheridan did not perfect her Petition for Certiorari in the statutorily prescribed manner. Since Sheridan failed to file the petition within thirty days after the Board's written decision of February 24, 2006 (filed February 27, 2006), the writ should be dismissed as untimely pursuant to 22 *Del. C.* § 328.

The Board is opposed to dismissal based on Ms. Brown's handwritten, undocketed and uncertified letter for the same reason that Sheridan wants dismissal. That is, if the effect of this dismissal would render the Board's decision null and void, Sheridan would, without any action or effort to convince this Court that the Board's decision was wrong, achieve the result she ultimately seeks.

Sheridan then filed a motion for a declaratory judgment on July 31, 2006, requesting that the Court either dismiss the appeal as moot, or remand the matter to the Board. Four days later, on August 4, 2006, Sheridan requested a restraining order against the property owners, who had obtained a building permit from the City of New Castle, and started demolition on the property, presumably for the purposes of constructing the aforementioned additions.

² *Hackett v. Bd. of Adjustment of Rehoboth Beach*, 794 A.2d 596, 598 (Del. 2002).

This appeal was pending when the “Motion for a Declaratory Judgment” was filed in this case by Sheridan. Since this Court does not have the authority to issue a declaratory judgment within the context of an appeal, the Motion for Declaratory judgment must be denied.³ The Motion to Dismiss must be granted due to the fact that the real parties in interest in this litigation have not been named.

If, as Sheridan now claims, the decision is null and void as a result of Brown’s withdrawal, it would have made no sense for her to have appealed the Board’s ruling. That specious claim cannot be used to excuse the failure to join indispensable parties; Sheridan cannot have it both ways. More importantly, she cannot take advantage of an undocketed, non-date stamped document that could have easily made its way into the Board’s record after the final decision. Indeed, as far as Sheridan was concerned when she filed her appeal, the decision was valid and enforceable.

³ See 10 Del. C. Chpt. 65; *Mason v. Bd. of Pension Trustees*, 473 A.2d 1258 (Del. 1983) (declaratory judgment action is not proper vehicle for review of rulings of administrative agencies). See also 10 Del. C. § 6511, which requires the joinder of all parties who have any interest that would be affected by the declaration.

For the foregoing reasons, the Motion for Declaratory Judgment is hereby **REVERSED** and the Board's Motion to Dismiss is **GRANTED**.

IT IS SO ORDERED.

PEGGY L. ABLEMAN, JUDGE

Original to Prothonotary – Civil
cc: Bayard Marin, Esquire
James F. Harker, Esquire