

IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
CIVIL TRIAL DIVISION

MANAYUNK NEIGHBORHOOD : SEPTEMBER TERM, 2006
COUNCIL, INC. and KEVIN SMITH :
: NO. 1384
v. :
: :
PHILADELPHIA BOARD OF :
BUILDING STANDARDS and CITY :
OF PHILADELPHIA : Control No. 022016

ORDER

AND NOW, this 18th day of April, 2007, upon consideration of the Motion to Quash filed by the Intervenor, Rector Street Associates, LP, and all responses thereto, it is ORDERED and DECREED that said Motion is granted in part and the appeal of Kevin Smith is hereby quashed.*

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PURSUANT TO Pa.R.C.P. 236(b)

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CIVIL ADMINISTRATION

BY THE COURT:

[Signature]
GLAZER, J.

* This case originated with the Philadelphia Historic Commission ("PHC"). The PHC granted Rector Street Associates, LP permission to construct a five story rooftop addition onto a warehouse located at 3 Rector Street in Philadelphia. Appellants then appealed to the Board of Building Standards (the "BBS"). The BBS affirmed the decision of the PHC and this appeal ensued.

The instant motion argues that appellants lack standing to prosecute the appeal. Appellant, Kevin Smith, is an individual who lives at 293 Hermitage Street. Appellant,

Manayunk Neighborhood Council (the "Neighborhood Council"), is a nonprofit corporation with a registered address of 293 Hermitage Street. Appellants' address of 293 Hermitage Street is located about one mile from the subject property.

The Movant is Rector Street Associates, LP ("RSA"). RSA is an intervenor in this appeal. RSA argues that Kevin Smith lacks standing because he is not directly aggrieved by the decision of the Board and because he failed to appear before the Board. RSA further argues that the Neighborhood Council lacks standing because none of its members are directly aggrieved by the decision of the Board.

As an initial matter, RSA attempts to argue that this case is subjected to a heightened standing requirement because it involves an appeal from the BBS. RSA derives this argument from the word "directly" in Section A-801.1 of the Philadelphia Administrative Code ("Any person who is *directly* aggrieved . . ."). Section A-801.1 governs standing for appeals to the BBS. RSA argues that the same "heightened" standard should therefore be applied to appeals from the BBS. RSA cites no case law for this proposition and the language of Section A-801.1 does not support the argument. The word "directly" adds nothing to the requirements of standing; this is simply an appeal from a local agency.

The Local Agency Law allows appeals to be brought by any person who has standing. 2 PA.CON.S.TAT. § 752 (2006). To establish standing it must be shown that the party has a substantial, immediate and direct interest in the claim sought to be litigated. E.g., In re Milton Hershey Sch., 911 A.2d 1258, 1261-62 (Pa. 2006); Soc'y Hill Civic Ass'n v. Phila. Bd. of License & Inspection Review, 905 A.2d 579, 586 (Pa. Commw. Ct. 2006); Pittsburgh Trust for Cultural Resources v. Zoning Bd. of Adjustments, 604 A.2d 298, 301-02 (Pa. Commw. Ct. 1992). A litigant has "a substantial interest if there is a discernible adverse effect to an interest other than that of the general citizenry." In re Milton Hershey Sch., 911 A.2d at 1262. The interest "is direct if there is harm to that interest. It is immediate if it is not a remote consequence of a judgment." Id.; Soc'y Hill Civic Ass'n, 905 A.2d at 586 n3.

Kevin Smith has failed to demonstrate that he has a substantial, immediate and direct interest in this building project. Mr. Smith lives slightly over one mile away from the subject property. (10/4/06 Zoning Board Minutes, P.40). Finally, in responding to this Motion, Mr. Smith has failed to allege a sufficient nexus to this building project. For these reasons, the appeal of Kevin Smith is quashed.

As for the standing of the Neighborhood Council,

where, as here, an association claims standing to sue, it must be alleged that at least one of the association's members has or will suffer a direct, immediate and substantial injury to an interest as a result of the challenged action. At the same time, this does not mean that standing requires a showing of economic injury. It is clear that some interests will suffice to confer standing even though they

are neither pecuniary nor readily translatable into pecuniary terms.

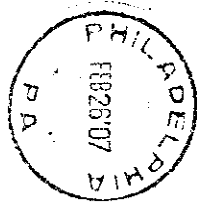
Pittsburgh Trust for Cultural Resources v. Zoning Bd. of Adjustments, 604 A.2d 298, 304 (Pa. Commw. Ct. 1992).

In Soc'y Hill Civic Ass'n, a developer sought approval of proposed alterations to historic townhouses in the Society Hill section of Philadelphia. 905 A.2d at 582. The Historic Commission approved a plan to demolish certain of the townhouses and to restore others. During the demolition, the developer failed to properly preserve the façade of the townhouses and this resulted in destruction of carved marble cornices, ornate marble stoops and wrought iron railings. The developer sought permission to reproduce the carved marble cornices out of fiberglass. Id. The Society Hill Civic Association opposed the fiberglass reproductions and the Architectural Committee recommended that the request be denied but the Historic Commission approved the use of fiberglass. Id. at 583. The Civic Association appealed to the court of common pleas and both the City and the developer sought to have the appeal quashed because the Civic Association lacked standing. The motion to quash was denied.

On appeal, the Soc'y Hill Civic Ass'n court focused on the purpose and membership of the Civic Association. The court determined that the Civic Association was formed to promote "the improvement of the Society Hill area of Philadelphia ... and the preservation and restoration of its historic buildings." Id. at 586 (*quoting* By Laws). Further, the Civic Association included "residents, businesses and other organizations who actively seek to protect historic buildings in the neighborhood." Id. Finally, "[b]ecause of its purpose to promote preservation and restoration of historic buildings in the Society Hill area, the [Civic] Association ha[d] a substantial, direct and immediate interest in the outcome of this litigation." Id. Similarly, the Neighborhood Council has demonstrated a commitment to preserving and preserving historic buildings in the Manayunk section of Philadelphia. (E.g., Pl. Exh. 2, 3). Because of this demonstrated commitment, the Neighborhood Council has a substantial, direct and immediate interest in the outcome of the litigation. Therefore, the Neighborhood Council has standing to prosecute this appeal.

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