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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1474-15T4

CHESTNUT SQUARE APARTMENTS,
LLC, and DR. JAMIL AKHTAR,

Plaintiffs-Appellants/
Cross-Respondents,

v.

CITY OF VINELAND and CITY
OF VINELAND FIRE PREVENTION
BUREAU,

Defendant-Respondent/
Cross-Appellant,

and

CUMBERLAND COUNTY CONSTRUCTION
BOARD OF APPEALS,

Defendant-Respondent.

Submitted June 1, 2017 – Decided September 19, 2017

Before Judges Carroll and Gooden Brown.

On appeal from the Superior Court of New
Jersey, Law Division, Cumberland County,
Docket No. L-121-14.

Stephen Altamuro, attorney for appellants
Chestnut Square Apartments, LLC, and Dr. Jamil
Akhtar.

Buonadonna & Benson, PC, attorneys for respondents/cross appellants City of Vineland and City of Vineland Fire Prevention Bureau (Michael E. Benson and Alan G. Giebner, on the brief).

Edward F. Duffy, attorney for respondent Cumberland County Construction Board of Appeals.

PER CURIAM

Chestnut Square Apartments, LLC (Chestnut Square), and Dr. Jamil Akhtar (collectively plaintiffs) appeal from the July 10, 2015 order of the Law Division affirming in part the decision of the Cumberland County Construction Board of Appeals (Board). The Board determined that Chestnut Square and Dr. Akhtar violated Ordinance No. 2003-70 and Uniform Fire Code Section 503 by removing the fire lane signage, and imposed a \$5000 fine on each of them. The trial court upheld the violation against Chestnut Square but reduced the fine to \$2500. As to Dr. Akhtar, the court vacated and dismissed the violation and the fine. The Board also determined that Chestnut Square and Dr. Akhtar violated N.J.S.A. 52:27D-210 by interfering with the duties of the Fire Bureau, and imposed a \$2500 fine on each of them. The court affirmed the violation and the fine against Chestnut Square but vacated and dismissed both as to Dr. Akhtar. The City of Vineland cross-appeals the provisions of the July 10, 2015 order that relieved Dr. Akhtar of all personal liability and reduced the fine imposed

on Chestnut Square. We conclude that the arguments raised in both the appeal and cross-appeal are without merit and, accordingly, we affirm.

The express purpose of the Uniform Fire Safety Act (UFSA), N.J.S.A. 52:27D-192 to -213, enacted in 1983, is to create a "uniform, minimum, fire safety code" to "protect the lives and property of the State's citizens[,]" ensure "uniform" and "thorough . . . fire safety inspections[,]" and provide "swift and commensurate" penalties for violations. N.J.S.A. 52:27D-195. UFSA "is remedial legislation . . . and shall be liberally construed to effectuate these purposes." N.J.S.A. 52:27D-193. Pursuant to N.J.S.A. 52:27D-210a(1), "[n]o person shall . . . [o]bstruct, hinder, delay or interfere by force or otherwise with the . . . local enforcing agency in the exercise of any power or the discharge of any function or duty under the provisions of [UFSA.]" Under N.J.S.A. 52:27D-210b(1), "[a] person who violates or causes to be violated a provision of [N.J.S.A. 52:27D-210a] shall be liable to a penalty of not more than \$5,000 for each violation."

To implement UFSA, the Legislature specifically instructed the Department of Community Affairs (DCA) to "promulgate . . . regulations to [e]nsure the maintenance and operation of buildings and equipment in such a manner as will provide a reasonable degree

of safety from fire and explosion." N.J.S.A. 52:27D-198(a). Pursuant to those legislative instructions, the DCA adopted the model code of the International Code Council as the State Fire Prevention Code for New Jersey (Uniform Fire Code), subject to the modifications set forth in N.J.A.C. 5:70-3.2. See N.J.A.C. 5:70-1.1 to -4.20. N.J.A.C. 5:70-1.3(a) provides that the Uniform Fire Code is designed "for the safeguarding to a reasonable degree of life and property from . . . conditions hazardous to life or property in the use or occupancy of buildings or premises."

Section 503 of the Uniform Fire Code, governing fire apparatus access roads, provides:

503.1. Where required. Fire apparatus access roads shall be provided and maintained in accordance with Section 503.1.1.

503.1.1. The fire official may require and designate public or private fire lanes as deemed necessary for the efficient and effective operation of fire apparatus, access to building openings by fire fighters or egress of occupants.

503.1.1.1. Proposed fire lanes shall not conflict with prior approvals issued by the planning and/or zoning boards unless the administrative authority for the planning and/or zoning board grants approval of the creation of the fire lane in writing.

503.2. Specifications. Fire apparatus access roads shall be installed and arranged in accordance with Section 503.2.1 through 503.2.7.

503.2.2. Authority. The fire code official shall have the authority to require an increase in the minimum access widths where they are inadequate for fire or rescue operations.

503.3. Marking. Where required by the fire code official, approved signs or other approved notices shall be provided for the fire apparatus access roads to identify such roads or prohibit the obstruction thereof. Signs or notices shall be maintained in a clean and legible condition at all times and be replaced or repaired when necessary to provide adequate visibility.

503.4. Obstruction of fire apparatus access roads. Fire apparatus access roads shall not be obstructed in any manner, including the parking of vehicles. The minimum widths and clearances established in Section 503.2.1 shall be maintained at all times.

Similarly, N.J.S.A. 40A:14-53 provides that a "municipality, by ordinance, may authorize the officials in charge of the paid or part-paid fire department and force to establish fire areas to regulate traffic and parking therein and provide penalties for violations."

Pursuant to UFSA, Vineland Ordinance No. 2003-70 was adopted on December 24, 2003, to update all existing fire lanes and ensure compliance with the Uniform Fire Code. The ordinance amended prior Ordinance No. 973, and includes comprehensive requirements concerning fire lanes, such as curb markings and signage. The Ordinance further delineates various locations in the City of

Vineland where fire lanes were to be established or maintained as follows:

§253-1. Prohibited parking.

No person shall park or stop a motor vehicle in or in any other manner obstruct a properly designated fire lane, fire hydrant or fire department connection. This shall apply to any public street, private street or access lane.

§253-2. Enforcement.

Violations of this chapter or any provision of the Uniform Fire Safety Act . . . or the New Jersey Uniform Fire Code . . . which pertains to this chapter shall be enforced by the Fire Prevention Bureau.

. . . .

§253-3. Fire lane locations.

All fire lane locations shall be recorded in a file maintained by the Fire Prevention Bureau and shall be made available for public inspection. Copies of said file shall also be located in the City Clerk's Office, the Police Department, and the Fire Department.

§253-4. Curb markings.

All curbs in a fire lane shall be painted exclusively with yellow traffic paint that meets the specifications for Type 1 Pure Drying Yellow Traffic Paint for road and bridge construction of the New Jersey Department of Transportation. . . .

§253-5. Posting and signs.

Whenever a fire lane is established on any property, the property owner shall erect, replace, repair and maintain all fire lane signs and markings on said property as specified in this section and by the Fire Prevention Bureau. The property owner shall have fifteen (15) days to comply with this

section upon proper notice by the Fire Prevention Bureau. . . .

. . . .

§253-6. Violations and penalties.

The Fire Prevention Bureau shall have the authority to issue any fine, penalty or enforcement action as provided for in the Uniform Fire Safety Act or the New Jersey Uniform Fire Code.

. . . .

§253.7. Appeals.

Any person may appeal a fine, penalty or enforcement action issued under this chapter by submitting a written hearing request to the City of Vineland Construction Board of Appeals. . . .

[Vineland, N.J., Ordinance No. 2003-70 (2003).]

Chestnut Square is a large apartment complex in the City of Vineland constructed in 1968. It consists of 232 units encompassing thirteen different buildings with wood-frame construction and a common attic space across the top of each building. Chestnut Square is one of the designated locations in Vineland where fire lanes were to be established and maintained under Ordinance No. 2003-70. In 2005, Chestnut Square and Dr. Akhtar, the managing member of the LLC, were cited for violations relating to the curbing and signage of its fire lanes. Among other things, they were ordered to repaint the "[e]xisting [y]ellow [c]urbing" and repaint the "No Parking Fire Lane" sign. The

violations were abated and a certificate of compliance was issued in 2006. In 2012, Chestnut Square and Dr. Akhtar were again cited for violations relating to the color of the curbing of its fire lanes. The violations were abated with the proper colored curbs and certificates of compliance were issued in September 2013.

Subsequently, an inspection revealed that the "Fire Lane-No Parking" signs had been removed and replaced with "No Parking-Tow Away Zone" signs. As a result, Chestnut Square and Dr. Akhtar were cited by the Fire Marshal and issued two violations, resulting in the issuance of a September 25, 2013 Order to Pay Penalty and Abate Violations as follows:

#1. Entire Complex: Fire lanes shall be installed in accordance with Vineland City Ordinance #2003-70, Uniform Fire Code, Section 503, Fire Apparatus Access Roads. Fine imposed: \$5,000.00.

2. Removal of Fire Lanes Post Inspection: No person shall hinder or interfere with the duties of the local enforcement agency, N.J.S.A. 52:27d-210. Fine imposed: \$5,000.00.

Plaintiffs appealed the issuance of the violations to the Board. A testimonial hearing was conducted on January 7, 2014, during which Dr. Akhtar and Fire Marshal, Michael Cifaloglio, testified. Cifaloglio testified that after the 2012 violations were abated, his officers began enforcing the parking restrictions. However, Chestnut Square residents informed his

office that Chestnut Square's head of maintenance, Cafael Torres, had instructed them that "they did not have to pay their tickets because it was not a fire lane, it was a tow away zone and the signs say tow away zone." When Cifaloglio investigated on September 25, 2013, he discovered "that the signs had, in fact, been changed." Cifaloglio confronted Torres who informed him that Dr. Akhtar had told him "they're not fire lanes. They're tow away zones." Cifaloglio acknowledged that "[t]hings got a little heated" until Dr. Akhtar intervened. However, Cifaloglio admitted that he never heard Dr. Akhtar tell anyone not to pay their ticket.

Dr. Akhtar testified that he directed staff to replace the fire lane signs with the tow-away zone signs, explaining that "it's . . . absolutely counterproductive to make that a fire lane" because it was "not a through lane." However, according to Dr. Akhtar, he did not instruct staff to tell residents they did not have to pay the tickets, and he denied being aware of the 2005 or 2012 violations and resulting abatements.

Regarding Ordinance No. 2003-70, Cifaloglio testified that the ordinance was purposely vague to give him enforcement flexibility and to avoid having to amend the ordinance every time the Uniform Fire Code was revised. According to Cifaloglio, the ordinance "doesn't need to be specific because Section 503 of the Uniform Fire Code is quite specific."

The Board sustained the violations but reduced the fine on the hindering violation from \$5000 to \$2500. In rejecting plaintiffs' challenges to the violations, the Board determined that

(1) the language of the Uniform Fire Code, Section 503 is clear and unambiguous; (2) fire lanes were previously established at the subject apartment complex prior to November 11, 2005 and the owner, in fact, abated violations regarding same at said time[;] (3) the owner subsequently abated violations regarding the fire lanes in or about July 2013; (4) [t]he owner thereafter unilaterally modified the signage to "Tow Away" Zone; (6) the owner LLC, by and through its building manager, instructed tenants that the areas were not fire lanes but were "tow away" zones and they did not have to pay any violations.

To challenge the Board's decision, plaintiffs filed a complaint in lieu of prerogative writs seeking to overturn the violations and fines, alleging that the Board and the Fire Bureau's actions were "arbitrary, capricious and unreasonable and in violation of State and Federal Law." Specifically, plaintiffs alleged that Ordinance No. 2003-70 was "vague and overbroad and therefore unenforceable against [p]laintiffs[.]" Plaintiffs alleged the Board sustained the violations without any "valid proof" establishing "either violation[.]" Plaintiffs also alleged that their "property, improvements, and building predate any ordinance regarding fire lanes and therefore they are not subject

to same." Further, plaintiffs contend that because "[n]o specific proof was provided" indicating that "he individually hindered or obstructed the Fire Marshal[,,]" Dr. Akhtar was "not individually responsible for decisions made by the entity."¹

In a July 10, 2015 written decision, Judge Richard J. Geiger upheld the violations against Chestnut Square, determining the Board's findings and conclusions were supported by "substantial credible evidence in the record[,]" and were neither arbitrary, capricious, nor unreasonable. However, the judge vacated and dismissed the violations against Dr. Akhtar, finding insufficient evidence of personal involvement or any wrongdoing on his part. Further, Judge Geiger determined that as a member, rather than an owner of the LLC, Dr. Akhtar was "not liable for the acts of the LLC or its employees that he did not personally undertake or direct."

Judge Geiger also reduced the fine against Chestnut Square imposed for the ordinance violation to \$2500. The judge found the \$5000 fine "to be unreasonable and excessive under the circumstances[,]" given the fact that "plaintiffs did not remove the fire lane signs for purposes of creating additional illegal

¹ Plaintiffs' complaint consisted of three counts. However, with the agreement of the parties, counts two and three were subsequently dismissed.

parking[,]" and "removing the fire lane signs did not result in any actual harm." The judge acknowledged, however, that "this was not the first time that Chestnut Square had been cited for fire lane violations and that this was an intentional violation, not a careless mistake." Nonetheless, Judge Geiger noted that the \$5000 fine "was the maximum allowable under the law" and "five times higher than the fine permitted for committing a disorderly persons offense."

In rendering his decision, Judge Geiger rejected plaintiffs' arguments after thoroughly canvassing the record, giving due deference to the Board's credibility findings, and accurately applying the legal principles governing the action in lieu of prerogative writs. In analyzing plaintiffs' contention that Ordinance No. 2003-70 was "void for vagueness" and failed "to put property owners on notice of its requirements[,]" Judge Geiger acknowledged that the prior ordinances included a schedule or listing of the specific location and dimensions of the fire lanes at each affected commercial property, while Ordinance No. 2003-70 does not. "Instead, it merely lists the mailing addresses of the affected properties and provides: 'All fire lane locations shall be recorded in the file maintained by the Fire Prevention Bureau[.]'" Judge Geiger further noted that the ordinance, "does not contain any specific reference to Section 503" of the Uniform

Fire Code, nor "any details with regard to the width, length or location of the fire lanes."

Nonetheless, Judge Geiger found that:

The record in this matter clearly demonstrates that since at least 2005, Chestnut Square and Dr. Akhtar had actual notice of the location, length and width of the fire lanes required at Chestnut Square. Indeed the curbs for the fire lanes were painted and signs posted at each required fire lane. Enforcement action occurred when the color of the curbs was changed by Chestnut Square from yellow to red. After being cited, Chestnut Square changed the color back to yellow. In addition, the fire lanes were at one point properly posted with Fire Lane-No Parking signs, which were subsequently changed by Chestnut Square to No Parking-Tow [Away] Zone signs, and have now been changed back. It is thus clear that both Chestnut Square and Dr. Akhtar have known the precise location and dimensions of the fire lanes since 2005. Accordingly,[] [t]hey had actual knowledge of the requirements. This is not a case in which they have been penalized for not complying with fire lane requirements that they did not know about. Nor is this a case in which the reasonableness of the size and dimensions of the fire lanes is under any legitimate substantive attack.

In rejecting plaintiffs' contention that the City Council "impermissibly gave unbridled, complete and unlimited power to the Fire Marshal[] to decide where and what fire lanes would be established[,]" Judge Geiger explained:

While the City delegated the authority to determine and enforce the location and dimensions of the fire lanes at the designated

commercial locations to the Fire Marshal[], the list of locations would naturally change over time as new commercial entities were created. More importantly, Section 503.1.1 of the Uniform Fire Code expressly authorizes fire officials to require and designate public or private fire lanes as deemed necessary for the efficient and effective operation of fire apparatus, access to building openings by fire fighters or egress of occupants. Determining the location and dimensions of fire lanes is a function that requires the particularized knowledge and expertise of fire officials, who have necessary ability to determine the specific areas that fire apparatus need unfettered access to for ingress, egress and positioning fire engines and ladder trucks during fires. This includes the size of the trucks and outriggers, locations of fire hydrants, building size and configuration in relation to curb lines and other pertinent information within their knowledge base.

In rejecting plaintiffs' contention that Chestnut Square was not subject to the Uniform Fire Code because it was built before the Uniform Fire Code was adopted, Judge Geiger considered plaintiffs' reliance on "Bulletin 2010-4 issued by the Department of Community Affairs," reiterating the language of N.J.A.C. 5:70-3.1(d), which states:

This subchapter establishes fire prevention requirements governing the safe maintenance of all buildings and premises subject to the code. It is not the intent of the new Uniform Fire Code Subchapter 3 to require the installation or upgrading of any system, equipment or building component not already required by [N.J.A.C.] 5:70-4 or by the Uniform Construction Code in effect at the time of construction of the building or at the

time of installation of any existing system, equipment or building components. This subchapter shall not be cited as the basis for any retrofit requirement.

Judge Geiger found plaintiffs' reliance on the Bulletin misplaced because "imposing fire lanes does not involve 'the installation or upgrading of any system, equipment or building component.' It only involves creating, demarcating and signing no parking zones."

Likewise, Judge Geiger rejected plaintiffs' contention that Chestnut Square "should be grandfathered in as to the later adopted Uniform Fire Code requirements" because of its compliance with "all applicable Uniform Construction Code [N.J.S.A. 52:27D-119 to -141] and Planning Board requirements when it was built[.]" The judge explained that "the Uniform Construction Code does not regulate exterior fire lanes. In addition, the Uniform Construction Code did not become effective in New Jersey until 1976, some eight years after Chestnut Square was constructed." Similarly, Judge Geiger rejected plaintiffs' contention "that the creation of the fire lanes is in conflict with the Site Plan approved by the Planning Board." The judge noted:

There is no evidence in the record that the fire lanes eliminate any designated parking spaces approved or required by the Site Plan. The fire lanes did not change any curb lines, the width of any driveways, or location of any entrance or exit within the apartment complex. Therefore, imposing the fire lanes did not violate Section 503.1.1.1 of the Uniform Fire

Code by conflicting with prior approvals issued by the planning or zoning boards.


This appeal and cross-appeal followed. On appeal, Chestnut Square renews the arguments that were rejected by Judge Geiger. The City of Vineland cross-appeals the reduction of the fine imposed on Chestnut Square and the judge's finding that Dr. Akhtar was not personally liable. We affirm substantially for the reasons stated by Judge Geiger in his comprehensive and well-reasoned written decision. We add only the following brief comments.

We review the Board's action using the same standard of review as the trial court. Fallone Props., L.L.C. v. Bethlehem Twp. Planning Bd., 369 N.J. Super. 552, 562 (App. Div. 2004). We must determine whether the "board'[s] decision 'is supported by the record and is not so arbitrary, capricious, or unreasonable as to amount to an abuse of discretion.'" New Brunswick Cellular Tel. Co. v. S. Plainfield Bd. of Adjustment, 160 N.J. 1, 14 (1999) (quoting Smart SMR of N.Y., Inc. v. Fair Lawn Bd. of Adjustment, 152 N.J. 309, 327 (1998)). The Board's decision must be supported by substantial evidence in the record, Ten Stary Dom P'ship v. Mauro, 216 N.J. 16, 33 (2013), not by unsupported allegations or conjecture, Cell S. of N.J., Inc. v. Zoning Bd. of Adjustment of W. Windsor Twp., 172 N.J. 75, 88 (2002). Having reviewed the record and the parties' arguments in light of the controlling

legal principles, we find no basis to disturb Jude Geiger's insightful analysis of the issues presented. R. 2:11-3(e)(1)(A).

Affirmed.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.


CLERK OF THE APPELLATE DIVISION