

Dale Coonrod	§	
	§	
Appellant,	§	In re 5835 Reiger Avenue
	§	
	§	
vs.	§	
	§	Appeal to the City Plan Commission
	§	
Landmark Commission,	§	
Appellee.	§	

Brief in Support of the Landmark Commission

The Issue

Did the City Plan Commission (CPC) err in imposing a condition that the proposed fence be set back two feet from the sidewalk when approving the certificate of appropriateness (CA) for the proposed fence?

Summary

The Landmark Commission requests that the CPC affirm its decision to approve a CA for a nine-foot cedar fence, with sliding gate, with the condition that the fence be set back two feet from the sidewalk. The Landmark Commission agreed with preservation staff that setting back the proposed fence two feet would make the fence compatible with the historic overlay district. Mr. Coonrod failed to meet his burden of proof to convince the Landmark Commission that a fence constructed immediately adjacent to the sidewalk would be compatible with the historic overlay district.

The Legal Standard

The owner has the burden of proof to establish the necessary facts to warrant favorable action.¹ The City Council requires that all Landmark Commissioners have expertise in historic preservation.² Because of the expertise of the Landmark Commission, the City Council mandates that the CPC give deference to the Landmark Commission’s decision, therefore; the CPC, as the appellate body, may not substitute its judgment for the judgment of the Landmark Commission, but, rather, determine if the Landmark Commission erred in its decision.³ The

¹ DALLAS DEVELOPMENT CODE § 51A-4.501(g)(6)(B).

² DALLAS DEVELOPMENT CODE § 51A-3.103(a)(1).

³ DALLAS DEVELOPMENT CODE § 51A-4.501(o): “The city plan commission shall give deference to the landmark commission decision and may not substitute its judgment for the landmark commission’s judgment.”

CPC is required to affirm the decision of the Landmark Commission unless it finds that the decision: “(A) violates a statutory or ordinance provision; (B) exceeds the [L]andmark [C]ommission’s authority; or (C) was not reasonably supported by substantial evidence considering the evidence in the record.”⁴

Discussion

The Landmark Commission did not violate a statutory or ordinance provision.

The Landmark Commission did not exceed its authority by granting the CA subject to a condition. The Dallas Development Code specifically states that the Landmark Commission may impose conditions on certificates of appropriateness.⁵

The decision of the Landmark Commission was reasonably supported by substantial evidence in the record. Staff’s recommendation clearly states that the conditions are what make the proposed fence compatible with the neighborhood.⁶ The Landmark Commission points to a provision in the historic overlay ordinance that requires fences set back two feet from the sidewalk.⁷ While a noncontributing structure does not have to strictly comply with preservation criteria, the Landmark Commission frequently looks to preservation criteria when attempting to gauge what is on the ground in a historic district. Due to the quasi-judicial nature of Landmark Commission proceedings, Landmark Commissioners are restricted from visiting properties that have pending CA applications, so the Landmark Commission finds the preservation criteria helpful in determining what proposed work is compatible with the historic overlay district and what proposed work is not compatible.

Conclusion

Because the Landmark Commission did not violate a statutory or ordinance provision, did not exceed its authority, and its decision is reasonably supported by substantial evidence in the record, the City Plan Commission must affirm the decision of the Landmark Commission. The City Plan Commission must give deference to the Landmark Commission, even if the City Plan Commission may have come to a different conclusion than the Landmark Commission. Because the City Plan Commission may not substitute its judgement for that of the Landmark Commission, the CA with imposed conditions must be affirmed.

⁴ DALLAS DEVELOPMENT CODE § 51A-4.501(o)(2).

⁵ DALLAS DEVELOPMENT CODE § 51A-4.501(g)(6)(B).

⁶ March 7, 2016 Landmark Commission docket materials, Page 10 of the record: Staff report.

⁷ See Ordinance No. 26331, Exhibit E, Page 73 of Section 6 of the Record.

Respectfully submitted,

OFFICE OF THE CITY ATTORNEY
1500 Marilla Street 7DN
Dallas, Texas 75201
214-670-1332

BY



LAURA MORRISON
Assistant City Attorney
State Bar No. 24056010

Certificate of Service

On May 31, 2016, a copy of this Brief in Support of the Landmark Commission was mailed by certified mail to:

Dale Coonrod
5835 Reiger Avenue
Dallas, Texas 75214



LAURA MORRISON