

denial without prejudice of all four hearings. (Tr. at 2-4). Ms. Nyfeler spoke and answered questions of the Commissioners. (Tr. 4-18). Commissioner Sherman moved the Landmark Commission to deny items 1-4 and the motion carried unanimously. The Appellant appealed the Landmark Commission's decision to the City Plan Commission ("CPC") within the required 30-day deadline.

B. The Historic Preservation Program and Staff Recommendations

The purpose of the historic district preservation program is to protect, enhance, and perpetuate places that represent distinctive and important elements of the city of Dallas' historical and architectural history, and to preserve diverse architectural styles, patterns of development, and design preferences reflecting phases of the city of Dallas' history. Dallas Development Code § 51A-4.501(a).

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 and staff recommendations helpful in determining what proposed work is compatible with the historic overlay district and what proposed work is not compatible.

C. The Legal Standard

The Landmark Commission must grant a CA for contributing structures if it determines that the proposed work:

- a. is consistent with the regulations contained in this section and the preservation criteria contained in the historic overlay district ordinance;
- b. will not have an adverse effect on the architectural features of the structure;
- c. will not have an adverse effect on the historic overlay district; and
- d. will not have an adverse effect on the future preservation, maintenance, and use of the structure or the historic overlay district.

§ 51A-4.501(g)(6)(C)(i). At the December 3, 2018 Landmark Commission hearing, the Appellant had the burden of proof to establish the necessary facts to warrant a favorable action. § 51A-4.501(g)(6)(B).

Regarding appeals to the CPC, the City Council provided guidance and mandated that the CPC give deference to the Landmark Commission's decision. § 51A-3.103(a)(1). Their reasoning is based on their requirement that all Landmark Commissioners have expertise in historic preservation. § 51A-4.501(o)(requiring that the CPC give deference to the landmark commission decision and may not substitute its judgment for the landmark commission's judgment).

When the CPC hears an appeal from the Landmark Commission, it may not substitute its judgment for the judgment of the Landmark Commission, but, rather, shall determine if the Landmark Commission erred in its decision. § 51A-4.501(o)(1). The 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.” § 51A-4.501(o)(2).

There is no violation of a statutory or ordinance provision. Neither did the Landmark Commission exceed its authority as the Dallas Development Code specifically grants the Landmark Commission jurisdiction to approve, deny with prejudice, or deny without prejudice the certificate of appropriateness and may impose conditions on the certificate of appropriateness. § 51A-4.501(g)(6)(B). Therefore, this appeal considers whether there is substantial evidence in the record to support the decision of the Landmark Commission.

D. Argument

The record in this case is clear and there is substantial evidence to support the Landmark Commission’s decision. The Landmark Commission’s decisions were consistent with Staff’s recommendations. (D2-2 through D2-3; Landmark Commission Minutes at 10). Both Staff and Landmark Commission’s reasoning for their recommendations and vote to deny with prejudice is clear on the record.

For Appellant to have prevailed at the Landmark Commission, he had to have proved all four of the criteria in 51A-4.501(g)(6)(C)(i). However, Appellant failed to meet his burden with regard to the first criteria, whether the work already done is consistent with the regulations contained in this section and the preservation criteria contained in the historic overlay district ordinance. 51A-4.501(g)(6)(C)(i)(aa).

As to Item 1, Appellant’s request to replace all the siding with Hardie Board, it did not meet the preservation criteria for Section 3.2 of the preservation criteria which requires that the “reconstruction, renovation or repair of opaque elements of the protected facades must employ materials similar to the original materials in texture, color, pattern, grain and module size . . .” (D2-2 through D2-3; D2-9 through D2-10). Appellant’s representative admits there was wood siding originally on the house. (Tr. at 5). Hardie Board does not look the same as wood siding and is not typically approved by the Landmark Commission. (Tr. 13). The preservation criteria is the replacement materials matching the original materials, not what was on the house when it was purchased as Appellant’s representative asserted at the hearing. (Tr. 5).

As to Items 2 and 4, Appellant’s requests to replace thirteen wood windows with vinyl windows and the front door, they did not meet the preservation criteria for Section 3.10 of the preservation criteria which requires that the “where replacement of an original door or window is necessary, replacement doors and windows must express mullion size, light configuration, and material to match the original doors and windows.” (D2-3; D2-11 and D2-14). Appellant’s representative only offered to replace the front windows, not with compliant windows, but with

“glass windows.” (Tr. 9). Appellant’s representative fails to explain how this gets the Appellant into compliance or resolves the preservation issue.

As to Item 3, Appellant’s request to replace wood columns on the front porch, it did not meet the preservation criteria for Section 3.20 of the preservation criteria which requires that “all original columns . . . that are part of the porch of balcony configuration must be preserved.” (D2-3; D2-12 through D2-13). Appellant’s representative claimed that “in the early 1900’s the columns were contrasting . . .” and then offers to paint the columns so they are not contrasting. (Tr. 9). The column placement is “strange.” (Tr. 13-15). However, Appellant’s representative fails to explain how this gets the Appellant in compliance with the preservation criteria at issue or resolves the issue preservation issue.

Appellant’s representative claimed that the Appellant’s house looks historical, but does not provide a basis for the assertion. (Tr. at 9). The Staff’s evidence provided in the record is the only substantial evidence and it supports the decision of the Landmark Commission. Appellant provided no evidence that the work already done to which he is seeking approval, is consistent with the regulations contained in this section and the preservation criteria contained in the historic overlay district ordinance. § 51A-4.501(g)(6)(C)(i)(aa). Nor does Appellant provide any evidence on the record of his burden to meet 51A-4.501(g)(6)(C)(i)(bb) through (dd). It is clear from the record that the Appellant did not meet his burden and there is substantial evidence on the record to support the decision of the Landmark Commission.

E. 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 judgment for that of the Landmark Commission, the CA with imposed conditions must be affirmed.

Respectfully submitted,

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