

Case No. CA212-354 (LVO)

**JOHN OBERPRILLER and
SUZANNE MILLER,**
Appellants,

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In re 6219 La Vista Dr.

vs.

Appeal to the City Plan Commission

LANDMARK COMMISSION,
Appellee.

BRIEF IN SUPPORT OF THE LANDMARK COMMISSION

TO THE HONORABLE COMMISSIONERS OF THE CITY PLANNING COMMISSION:

Now comes the City of Dallas Landmark Commission (“Landmark Commission”) and submits this brief in support of the Commission’s decision to deny with prejudice Appellants’ application for a certificate of appropriateness “to retain replacement of original leaded glass windows with single-light glass” which does not meet the Swiss Avenue preservation criteria and the standards of Dallas City Code Section 51A-4.501(g)(6)(c)(i).

A. Facts and Background

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’s historical and architectural history, and to preserve diverse architectural styles, patterns of development, and design preferences reflecting phases of the City of Dallas’s history. Dallas City Code § 51A-4.501(a). To advance this purpose, all members of the Landmark Commission are required to have “demonstrated experience in historic preservation and outstanding interest in the historic traditions of the city and have knowledge and demonstrated experience in the fields of history, art, architecture, architectural history, urban history, city planning, urban design, historic real estate development, or historic preservation.” *Id.* § 51A-3.103(a)(1).

The structure at issue is a contributing structure in the Swiss Avenue Historic District. (Record at D5-1). The structure is a single-family structure built in the 1920s. On May 5, 2022, Appellants filed an application for a certificate of appropriateness (“CA”) seeking to retain replacement of original leaded glass with single light glass.

Staff recommended that the Landmark Commission deny the request with prejudice because the proposed work does not meet Section 51P-63.116(1)(P) of the Swiss Avenue preservation criteria and the standards in City Code Section 51A-4.501(g)(6)(C)(i) and the U.S. Secretary of the Interior standards. (Record at D5-4). The Task Force also recommended that the request be denied. (*Id.*).

The Landmark Commission heard this matter at its June 6, 2022 meeting. Appellants were not present and were not represented at the hearing by legal counsel or any other agent. Commissioner Rothenberger moved to deny Applicants’ request with prejudice, and the motion was unanimously approved 8-0. Appellants filed a timely appeal to the City Plan Commission (“CPC”).

B. The Standard of Review for the CPC

On appeal to the CPC, the CPC “shall give deference to the landmark commission and may not substitute its judgment for the landmark commission’s judgment” and must affirm unless the CPC finds that the decision:

- (A) violates a statutory or ordinance provision;
- (B) exceeds the landmark commission’s authority; or
- (C) was not reasonably supported by substantial evidence considering the evidence in the record.

Dallas City Code § 51A-4.501(o). The substantial evidence review is very limited in that it requires only more than a mere scintilla of the evidence to support the decision. Thus, even if a

preponderance of the evidence in the record may be contrary to the decision, the remaining evidence may nonetheless amount to substantial evidence. *Upper Trinity Reg'l Water Dist. v. Nat'l Wildlife Fed'n*, 514 S.W. 3d 855, 861 (Tex. App—Houston [1st Dist.] 2017, no pet.).

Because the structure is a contributing structure in the Swiss Avenue Historic District, the Landmark Commission was required to grant the application if it determined that “the proposed work is compatible with the historic overlay district.” Dallas City Code § 51A-4.501(g)(6)(C)(i). Appellant had the burden of proof to establish the necessary facts to warrant a favorable action. *Id.* § 51A-4.501(g)(6)(B). Appellants did not appear at the hearing and presented no evidence or argument at the hearing.

C. Argument

The record in this case is clear, and there is more than a scintilla of evidence to support the decision. The Landmark Commission’s decision to deny Appellants’ request was consistent with Staff’s recommendation. The reasoning for the Landmark Commission’s decision to deny Applicants’ request is clear from the record. Moreover, the evidence in the record from Appellants is insufficient to meet Appellants’ burden of proof.

As to the request, Staff recommended denial with prejudice because “the proposed work does not meet ... the Swiss Avenue preservation criteria” and “the standards in City Code.” Appellants provided no evidence at the hearing on behalf of Appellants’ request.

The record shows that the residence at 6219 La Vista Dr. is a contributing structure. (Record at D5-1). The residence sustained damage to the original leaded glass windows on June 13, 2012 and the windows were covered with boards for approximately nine years. (*Id.*) The applicants proposed to retain replacement of original wood-framed windows with diamond-patterned leaded glass along the first story of the front and side facades with wood-framed

windows with single-light glass within existing openings. (*Id.* at D5-4.) The record shows that the proposed replacement of leaded glass windows with single-light glass does not comply with preservation criteria because the criteria do not allow single, fixed-plate glass except as part of an original period design. (*Id.*). The record further shows that the criteria require that all windows “on the front and side facades of a main building must be typical of the style and period of the building” and “must contain at least two lights (window panes).” (*Id.*). The proposed replacement windows do not meet the criteria. The record also shows that the proposed replacement would adversely affect the character of the site and district. (*Id.*).

The only evidence in the record supports the decision of the Landmark Commission as to Appellants’ request and certainly meets the substantial evidence standard of review for CPC. Additionally, it is clear from the record that Appellants did not meet their burden to establish that the proposed work is compatible with the Swiss Avenue Historic District preservation criteria. There is no evidence that the Commission’s decision violates any statutory or ordinance provision or that the Commission exceeded its authority in denying the request with prejudice.

D. 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’s decision and the City Plan Commission may not substitute its judgment for that of the Landmark Commission. The denial with prejudice of the Certificate must be affirmed.

Respectfully submitted,

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**ATTORNEY FOR THE LANDMARK
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CERTIFICATE OF SERVICE

I certify that on the 10th day of August 2022 a copy of this Brief was sent via electronic means to Yolanda Hernandez at Yolanda.hernande@dallas.gov; and to Elaine Hill at Phyllis.hill@dallas.gov.

/s/ Gary R. Powell

Gary R. Powell