

Case No. CA223-240 (CM)

BERNARD SHAW	§	In re 2431 Park Row Avenue
Appellant,	§	
	§	
vs.	§	
	§	Appeal to the City Plan Commission
LANDMARK COMMISSION,	§	
Appellee.	§	

BRIEF IN SUPPORT OF THE LANDMARK COMMISSION

TO THE HONORABLE COMMISSIONERS OF THE CITY PLAN COMMISSION:

Now comes the City of Dallas Landmark Commission (“Landmark”) and submits this brief in support of Landmark’s decision to deny without prejudice at its March 6, 2023 meeting the application for a certificate of appropriateness to increase second floor plate from eight feet to ten feet for 2431 Park Row Avenue, Case No. CA223-240 (CM).

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, Tex., Code § 51A-4.501(a). To advance this purpose, all members of Landmark 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).

2431 Park Row Avenue is a contributing structure in the South Boulevard/Park Row Historic District. (*See* Record § 3, p. 11.)¹ In 2016, Landmark approved a certificate of appropriateness to, among other things, construct a second story addition to the house, but as of 2023, Appellant “just financially hadn’t gotten to do [that] yet.” (*See id.* §§ 1, 5, pp. 6, 47.) In February 2023, Appellant filed an application for a certificate of appropriateness to, among other things, increase the second-floor plate from eight to ten feet. (*Id.* §§ 1, 2, pp. 6, 8.) Staff recommended approval. (*Id.* § 2, p. 8.) The task force did not have a quorum and, therefore, did not make a recommendation. (*Id.* § 2, p. 8.) The record of the task force meeting indicates that one of the two task force members present was “for the change,” and the other had “no comment.” (*Id.* § 3, p. 15.)

Landmark heard this matter at its March 6, 2023 meeting. (*Id.* § 4, pp. 34-35.) Despite receiving notice from staff that “strongly encouraged” applicants proposing new construction to attend the meeting (*id.* § 7, p. 90-91), no representative for Appellant attended the meeting (*id.* §§ 4, 5, pp. 34, 46). At the meeting, Commissioner Anderson moved to deny the application without prejudice. (*Id.* §§ 4, 5, pp. 34, 51.) During the discussion before and after the motion, commissioners expressed concern that the two-foot increase in height was not consistent or compatible with the height of other homes in the district and, therefore, would have an adverse effect on the historic district. (*See, e.g., id.* § 5, pp. 48-51, 53.) Commissioners also expressed concern that the drawings submitted in 2023 had other differences from the drawings approved in 2016 that had not been approved by Landmark. (*See, e.g., id.* § 5, pp. 50-51 55-56.) Several commissioners wanted to get more information from Appellant to confirm what was being proposed to ensure that it was clear what had been approved by Landmark. (*See, e.g., id.* § 5, pp.

¹ All Record references are to the section number and the page number in the pdf copy of the Record.

53, 55-56, 58-59.) The motion to deny without prejudice was approved by a vote of 11 to 4. (*Id.* §§ 4, 5 pp. 45, 56-58.) Appellants filed a timely appeal to this Commission. (*Id.* § 7, p. 106.)

B. The Standard of Review for the City Plan Commission

In an appeal from Landmark, the City Plan Commission (“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, Tex., 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 actually be contrary to the decision, the remaining evidence may nonetheless amount to substantial evidence. *City of Dallas v. Stewart*, 361 S.W.3d 562, 566 (Tex. 2012).

Because 2431 Park Row Avenue is a contributing structure in the South Boulevard/Park Row Historic District, Landmark was required to grant the application if it determined that:

- (aa) the proposed work is consistent with the regulations contained in this section and the preservation criteria contained in the historic overlay district ordinance;
- (bb) the proposed work will not have an adverse effect on the architectural features of the structure;
- (cc) the proposed work will not have an adverse effect on the historic overlay district; and
- (dd) the proposed work will not have an adverse effect on the future preservation, maintenance and use of the structure or the historic overlay district.

Dallas, Tex., Code § 51A-4.501(g)(6)(C)(i). Appellants had the burden of proof to establish the necessary facts to warrant a favorable action. *Id.* § 51A-4.501(g)(6)(B).

C. Argument

In this case, Appellant cannot meet his burden to show that Landmark violated a statutory or ordinance provision or exceeded its authority, and there is more than a scintilla of evidence to support Landmark’s decision. The record indicates that staff recommended approval in this case because the proposed height would be under the maximum height for the district of 36 feet (*see* Record §§ 3, 5, pp. 10-11, 47), but as one commissioner noted and staff acknowledged, “just because it says you can have 36 feet in height doesn’t mean this building automatically goes 36 feet in height. It’s got to fit . . . the district” (*id.* § 5, p. 49; *see also id.* § 5, p. 51 (“[T]he issue that I brought up earlier is that this is a street of predominantly what’s called a California bungalow. They’re brick bungalows, and the roof forms are all very consistent. And popping one up without exploring further how it has an adverse effect on the rest of the block would be a-- a big-- big mistake.”). There is nothing in the ordinance that requires Landmark to approve an application for a certificate of appropriateness solely because it is under the maximum height requirement. (*See id.* § 6, p. 84.) To the contrary, the standard under section 51A-4.501(g)(6)(C)(i) that Landmark was applying requires it to determine whether proposed work will have an adverse effect on the historic district, so as the commissioner pointed out, a building with a height that doesn’t fit the district – and would, therefore, have an adverse effect on the district – should not be approved.

Commissioners also expressed concerns about the fact that there were other changes between the originally approved design from 2016 and what had been submitted for consideration in 2023, even though the only request before Landmark was to increase the second-floor plate. (*See* Record § This was particularly troubling because, despite having the burden of proof before

Landmark as well as before this Commission, Appellant did not appear at the Landmark hearing and, therefore, was not available to respond to or address questions from the commissioners. (*See* Record §§ 4, 5, pp. 34, 46.) Commissioners were concerned that there was insufficient information in the drawings submitted by the Appellant to determine how the proposed height “affects the street” and a lack of clarity in the drawings that made them uneasy to approve the application at that meeting. (*See, e.g., id.* § 5, p. 53, 55-56.) As the chair explained after the motion to deny without prejudice was approved:

So the motion has still carried, but of course what we’re hoping will happen is that the applicant will discuss it with staff and staff will let them know what our real concerns were. Please come back with the exact drawing you want and let staff help them craft their request to cover whatever is different in this new one since 2016. They could have had a few new ideas since then, so -- and bring it back. It’s not that we don’t want you to do the house, and it’s not that we’re saying it’s awful or anything like that. Just -- we want to see the actual drawing of what we’re approving and discuss that height thing. And that -- it would help to see the height in context of other heights nearby to see how that works, but hopefully they will ask staff and staff will help them with that.

(*Id.* § 5, pp. 58-59.)

This is simply a case where Landmark needed additional information to ensure that the application met all of the criteria for approval and in particular the requirement that the proposed work would not have an adverse effect on the historic district. Appellant was not available at the meeting to provide additional information and respond to questions. Therefore, Landmark acted within its discretion to deny the application without prejudice in the hope that Appellant would come back to it with the additional information it required, and this Commission should affirm that decision.

D. Conclusion

The evidence on the record supports the decision of Landmark as to the denial without prejudice of the certificate of appropriateness under the substantial evidence standard of review

applicable here, and there is no evidence that Landmark violated a statutory or ordinance provision or exceeded its authority. Therefore, this Commission should affirm Landmark's decision to deny without prejudice the certificate of appropriateness.

Respectfully submitted,

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