

DAVID AND TRELIA GHAZEE

Appellant,

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In re 3614 Meadow street

vs.

Appeal to the City Plan Commission

Landmark Commission,

Appellee.

BRIEF IN SUPPORT OF THE LANDMARK COMMISSION

Facts and Background

On May 7, 2018, the Landmark Commission held a hearing on a certificate of appropriateness (“CA”) for an addition and changes to a contributing and existing building located at 3614 Meadow Street. David and Trelia Ghazee, owners of the property (“Owner” and “Appellant”) were proposing ten items to be added or changed to the existing structure. Of the 10 items, staff recommended approval with conditions of two of the items and denial without prejudice on six of the items based on the regulations in the Wheatley Place Historic District Ordinance 24432 (the “Ordinance”) ¹:

Item 1. Staff recommends denial without prejudice of the Owner’s request to construct a two-story addition that connects the main structure to the existing accessory structure because the proposed work does not meet the standard in City Code Section 51A-4.501(g)(6)(C)(i). This request is inconsistent with the Ordinance Section 9.8 which states additions cannot exceed the height of the contributing structure.

Item 3. Staff recommends denial without prejudice of the Owner’s request to add front-facing gable to the front elevation because the proposed work does not meet the standards in City Code Section 51A-4.501(g)(6)(C)(i). The request is inconsistent with the Ordinance Section 6.1 which states that historic slope, massing, configuration, and material of the roof must be preserved.

Item 4. Staff recommends denial without prejudice of the Owner’s request to replace all windows because the proposed work does not meet the standards in City Code Section 51A-4.501(g)(6)(C)(i). The request is inconsistent with the Ordinance Section 5.3 which states that replacement windows must express profile, muntin, and muillon size, light configuration, and material to match the historic [window].

Item 5. Staff recommends denial without prejudice of the Owner’s request to add a door to the left side elevation because the proposed work does not meet the standard in City Code

¹ Pages 125-128 of the Record.

Section 51A-4.501(g)(6)(C)(i). The Owner has not provided insufficient information on the style and material of the proposed door.

Item 7. Staff recommends denial without prejudice of the Owner's request to replace aluminum siding with Hardie board because the proposed work does not meet the standard in City Code Section 51A-4.501(g)(6)(C)(i). The request is inconsistent with the Ordinance Section 4.3 which states that the wood siding must be restored wherever practical.

Item 8. Staff recommends denial without prejudice of the Owner's request to paint existing brick, to brand: Behr-PPU24-22 'shadow mountain' because the proposed work does not meet the standards in City Code Section 51A-4.501(g)(6)(C)(i). The request is inconsistent with the Ordinance Section 4.1(e) which states that brick on protected facades may not be painted.

Item 9. Staff recommends approval with conditions of the Owner's request to expand the approach on the right side of existing driveway and expand driveway to proposed new structure, the condition being that the approach and driveway are brush finish concrete so that it is consistent with the standards in City Code Section 51A-4.501(g)(6)(C)(i) and the Ordinance Section 3.3.

Item 10. Staff recommends approval with conditions of the Owner's request for a new fence, the condition being that the tops of the gate are horizontal so that it is consistent with the standards in City Code Section 51A-4.501(g)(6)(C)(i) and the Ordinance Section 3.11(b), 3.12 and 3.14.

The Landmark Commission's decisions were consistent with staff's recommendation.² The Appellant appealed the Landmark Commission's decision within the required 30 day deadline.

The Legal Standard

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.³

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

² Pages 129-131 of the Record.

³ DALLAS DEVELOPMENT CODE § 51A-4.501(a).

d. will not have an adverse effect on the future preservation, maintenance, and use of the structure or the historic overlay district.⁴

The owner has the burden of proof to establish the necessary facts to warrant favorable action.⁵

The City Council requires that all Landmark Commissioners have expertise in historic preservation.⁶ 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, shall determine if the Landmark Commission erred in its decision.⁷ 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."⁸

Objections to Appellant's brief

The City objects to any new evidence presented by Appellant about the expense and/or cost of materials and/or labor needed to complete each request because this information was available to Appellant at the time of the hearing before the Landmark Commission on May 7, 2018.⁹

Argument

First, the Landmark Commission did not violate a statutory or ordinance provision. As shown above, each denial or approval with condition was consistent with and cited to provisions within Ordinance 24432.

Second, the Landmark Commission did not exceed its authority by denying without prejudice. The Dallas Development Code specifically states that the Landmark Commission reviews applications for building permits for proposed work and design on a property subject to the predesignation moratorium or a historic structure and determine whether a certificate of appropriateness should be issued.¹⁰ The Dallas Development Code specifically states that the Landmark Commission shall approve, deny with prejudice, or deny without prejudice the certificate of appropriateness and may impose conditions on the certificate of appropriateness.¹¹

Finally, the Landmark Commission's decision is supported by evidence in the record.

⁴ DALLAS DEVELOPMENT CODE § 51A-4.501(g)(6)(C)(i).

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

⁶ DALLAS DEVELOPMENT CODE § 51A-3.103(a)(1).

⁷ 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)

⁸ DALLAS DEVELOPMENT CODE § 51A-4.501(o)(2).

⁹ Page 136 of the Record, Rule 6 of the Procedure for Appeals of Certificates of Appropriateness to the City Plan Commission

¹⁰ DALLAS DEVELOPMENT CODE § 51A-3.103(c)(6).

¹¹ DALLAS DEVELOPMENT CODE § 51A-4.501(g)(6)(B).

The information provided by staff to the Landmark Commission contained further explanation of each item.¹²

As to Item 1, the height of the proposed attached contributing structure was more than that of the main building violating the provisions of Ordinance 24432. The property owner argued that his grandfather previously owned the property and that the original detached accessory structure was two stories.¹³ However, as staff and the commissioner pointed out, the original two-story structure was detached and not a new building that needs to adhere to the provisions of Ordinance 24432.¹⁴

As to Item 3, the front facing gable did not adhere to the provisions that the roof needs to be consistent with the historic roof configuration and there was no evidence submitted that showed the house originally had a front facing gable as the owner argued.¹⁵

As to Item 4, the windows being replaced need to match the historic or be wood to be consistent with the historic preservation criteria in Ordinance 24432. The evidence provided by the Owner only included the fact that replacement windows were going to be material inconsistent with Ordinance 24432.¹⁶

As to Item 5, creating a door on the side elevation. The denial was not based on the location of the door but the lack of information provided as to the material and style of the door to determine consistency with the preservation requirements. The Owner provided no evidence as to the material and style of door.

As to Item 7, no evidence was provided by Owner that besides Hardie board which is inconsistent with the preservation requirements, whether they had any other material that would be consistent.

As to Item 8, painted brick is not consistent with the historic preservation requirements, thus it was denied. Although Owner argues that the original brick was painted, they provide no evidence to support such information.¹⁷

As to Item 9, the expansion of driveway was approved with the condition that the material used would be consistent with the preservation requirements.

Finally, Item 10, the location and type were approved with the condition that the tops of the iron gates remain horizontal to be consistent with the preservation requirements.

¹² Pages 10-12 of the Record.

¹³ Page 7 (lines 4-11) from Transcript of May 7, 2018 Landmark Commission Hearing

¹⁴ Pages 10-12 of the Record and Page 10 (lines 13-25), Page 11 (lines 1-8), Page 19 (lines 4-13) from Transcript of May 7, 2018 Landmark Commission Hearing.

¹⁵ Page 14 (lines 17-21) from Transcript of May 7, 2018 Landmark Commission Hearing.

¹⁶ Page 45 of the Record.

¹⁷ Page 9 (lines 13-20) from the Transcript of May 7, 2018 Landmark Commission Hearing.

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.

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,

LARRY E. CASTO
Dallas City Attorney

/s/Sonia T. Ahmed
Sonia T. Ahmed
Texas Bar No. 24082605
sonia.ahmed@dallascityhall.com

City Attorney's Office
1500 Marilla Street, Room 7D North
Dallas, Texas 75201
Telephone: 214-670-3519
Telecopier: 214-670-0622