

Case No. CA245-008 (CP)

TED HOWARD and	§	
MEGAN HOWARD,	§	
Appellants,	§	
	§	In re 718 Glendale Street
	§	
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 Commission” or “Commission”) and submits this brief in support of the Commission’s decision to deny without prejudice Appellants’ application for a certificate of appropriateness (“CA”).

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 in this appeal is a contributing structure in the Junius Heights Historic District. *See* Record § 2. On August 16, 2024, Appellants’ architect, Leslie Nepveux, filed an application for a certificate of appropriateness (“CA”), file number CA245-008(CP), seeking to “install a new wood fence” in the front yard of Appellants’ property, located at 718 Glendale Street in Dallas (the “Property”). *Id.* §§ 1, 2, 3.

Both Staff and the Task Force recommended that the Landmark Commission deny the request without prejudice. *Id.* § 2. Staff based its recommendation on its position that “the proposed work is inconsistent with the preservation criteria sections 3.6(a)(1) and (2); the standards in City Code Section 51A-4.501(g)(6)(C)(i) for contributing structures; and the Secretary of the Interior’s Standards for Rehabilitation.” *Id.* Likewise, the Task Force members voted 6-0 to recommend denial without prejudice. *Id.* §3.

The Landmark Commission heard this matter at its October 7, 2024 meeting. *Id.* Appellants’ architect, Leslie Nepveux, spoke in support of the CA request and presented evidence showing the exact location of the proposed fencing on both sides of the house, and explained the owners’ reasons for the requested fencing. City Planner, Christina Paresse, was also present at the hearing to answer the Commissioners’ questions on behalf of city staff. Nepveux presented photographs, which clearly showed the portions of the proposed fencing that extended into the front half of the side yard, and the portion that would be located within 5 feet of the porch. *Id.* §3. Nepveux also related the owners’ privacy concerns as the primary reason for the requested fencing. After a discussion of these points, Commissioner Cummings moved to deny Appellants’ request for a CA without prejudice, and the motion was approved by a vote of 12 to 2. *Id.* § 5, p. 21. Appellants filed a timely appeal to the City Plan Commission (“CPC”) on November 1, 2024. *Id.* § 7.

B. Legal Standards

1. Standard for the Landmark Commission to grant a CA request for a contributing structure.

The Property at issue in this appeal is a contributing structure in the Junius Heights Historic District; therefore, the Landmark Commission is only required to grant the CA if it determines that all of the following criteria are satisfied:

- (1) “the proposed work is consistent with the regulations contained in this section and the preservation criteria contained in the historic overlay district ordinance;”
- (2) “the proposed work will not have an adverse effect on the architectural features of the structure;”
- (3) “the proposed work will not have an adverse effect on the historic overlay district;” and
- (4) “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 City Code § 51A-4.501(g)(6)(C)(i). The preservation criteria found in the historic overlay ordinance for the Junius Heights Historic District provide in pertinent part that “fences in interior side yards must be located in the rear 50 percent of the side yard and behind the open front porch of an adjacent house . . . If more screening is required for additional security or privacy, the Landmark Commission may allow a fence that is located five feet behind the porch of the house requesting the fence.” Ord. 26331, Ex. B, § 3.6(a)(2). At the Landmark Commission hearing on a CA request, the applicant has the burden of proof to establish the necessary facts to warrant a favorable action. *Id.* § 51A-4.501(g)(6)(B).

2. The standard of review for this appeal is deferential substantial evidence review.

On appeal from a decision of the Landmark Commission, 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). Substantial evidence review is very limited in that it requires only more than a mere scintilla of 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).

Accordingly, Appellant has the burden in this appeal to show that the Commission's decision was either: (1) a clear abuse of discretion (i.e., violates a statutory provision or exceeds its authority) or (2) was not supported by any evidence beyond a mere scintilla, such that there is no reasonable basis in the record for the decision.

C. Argument

The record in this case is clear – it is undisputed that Appellants' proposed work would have installed a fence in the front 50 percent of the side yard and less than 5 feet behind the porch of the house requesting the fence. This fence placement is inconsistent with the preservation criteria contained in the Junius Heights historic overlay district ordinance, and therefore, clearly violates § 51A-4.501(g)(6)(C)(i)(aa) of the Dallas City Code. The inconsistency with the preservation criteria is also the stated basis for both the Staff and Task Force recommendations to deny Appellants' CA. Record § 2. As the record demonstrates, the Commission ultimately adopted Staff's reasoning and followed its recommendation, denying the requested CA without prejudice based on the placement of the proposed fence. Accordingly, there is more than a scintilla of evidence to support the Landmark Commission's decision denying the CA request, and Appellants cannot meet their burden of proof for this appeal.

The recommendations from Staff and the Junius Heights Task Force, together with the evidence presented to the Commission by the Applicant, provided a reasonable basis for the Landmark Commission's denial. During the hearing, Appellants' architect, Leslie Nepveux, admitted that the location of the proposed fence violated the Junius Heights preservation criteria. Record §3. The only reasons propounded by Nepveux for the requested placement of the fence were to avoid ending the fence in the middle of a window and to allow the residents more visual privacy. When asked whether she had considered landscaping to create a visual barrier without a fence, Nepveux said she had not discussed that option with the owners. *See id.* § 5, p. 12: 3-19 ("COMMISSIONER ANDERSON: . . . there's no return so it's not a security issue, is it? What is the reason for the fence? NEPVEUX: Yes, it's a visual thing . . . ANDERSON: Have you thought of maybe softening with landscaping? . . . I think landscaping would be a better answer. Has that been considered or not?" NEPVEUX: We have not talked about it with the homeowner. No.")).

And later, when questioned by Commissioner Montgomery regarding the specific security or privacy concerns that created the need to enclose the dining room windows behind a fence on the south side of the property, Nepveux responded, "I don't know the specifics." *Id.* § 5, p. 14: 17-18. Commissioner Montgomery noted that "normally when we've got a fence like that forward of where it is supposed to be, we do ask them to have it open." *Id.* § 5, p. 14: 10-12. Furthermore, in addition to observing that the placement of the proposed fence was not consistent with the preservation criteria, Commissioner Montgomery raised a particular concern regarding the awkward interaction of the proposed fence with the decorative trim on the south side of the home, suggesting that the fence would detract from the historic character of a contributing structure in Junius Heights. *See id.* § 5, p. 13: 11-15 (Commissioner Montgomery noting that because the fence on that side of the house was already constructed, "we didn't have to imagine how awkwardly [the

fence] interacts with the bracket. This is an issue . . .”). Finally, given that the homeowners’ primary concern was visual privacy, Commissioner Cummings asked, “[H]ave they explored wood blinds, curtains, or café curtains?” *Id.* § 5, p. 15: 7-8. To which, Ms. Nepveux replied, “I have not asked them that.” *Id.* § 5, p. 15: 9-10.

In light of the undisputed facts and the evidence presented at the hearing, Appellants did not provide sufficient evidence to “establish the necessary facts to warrant a favorable action” by the Commission. Dallas City Code § 51A-4.501(g)(6)(B). Notably, the Commissioners were not convinced that the proposed work was necessary to address privacy or security concerns or that the appearance of the proposed fence, particularly on the south side of the home, would be consistent with the historic character of the home and the broader neighborhood. Ultimately, in voting to deny without prejudice, the Commissioners agreed with Staff that the proposed fence would be inconsistent with the specific preservation standards in the historic overlay and would have an adverse effect on the historic district as a whole. Record § 3.

The 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 Junius Heights Historic District. Moreover, there is no evidence of any violation of a statutory or ordinance provision or that the Commission exceeded its authority in denying the request without 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 CPC must affirm the decision of the Landmark Commission. Even if the CPC could

have conceivably come to a different conclusion, it must nevertheless give deference to the Landmark Commission's decision and the CPC may not substitute its judgment for that of the Landmark Commission. The denial without prejudice of the CA must be affirmed.

Respectfully submitted,

CITY ATTORNEY OF THE CITY OF DALLAS
Tammy L. Palomino
City Attorney

/s/ Ryan T. Crocker

Ryan T. Crocker
Assistant City Attorney
Texas State Bar No. 24137452
ryan.crocker@dallas.gov

7DN Dallas City Hall
1500 Marilla Street
Dallas, Texas 75201
Telephone: 214-671-0418
Facsimile: 214-670-0622

**ATTORNEY FOR THE LANDMARK
COMMISSION AND THE CITY OF DALLAS**