

Case No. CD223-003 (RD)

ANNEMARIE BRISTOW,
Appellant,

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In re 338 S. Fleming Avenue

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”) and submits this brief in support of the Commission’s decision to deny without prejudice Appellant’s application for a Certificate of Demolition to demolish a structure in the Tenth Street Neighborhood Historic District using the standard “demolish or remove a structure that poses an imminent threat to public health or safety.”

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).

The structure at issue is located in the Tenth Street Neighborhood Historic District (“Tenth Street”). (See Record § 2, p. 6.)¹ The Dallas City Code recognizes Tenth Street as an endangered historic district, meaning a “district that is in danger of being irreplaceably lost from severe deterioration or damage or impending demolition of structures” Dallas, Tex., Code § 51A-11.102(4.1).

Before the application under appeal in this matter, Appellant filed two previous applications for a certificate of demolition and removal (“CD”) using the standard “replace with more appropriate/compatible structure,” but both were denied without prejudice by Landmark on December 6, 2021 and August 1, 2022, respectively. (Record § 3, p. 9-10.) An appeal of the August 1, 2022 denial was heard by this Commission on October 6, 2022, and this Commission affirmed the Landmark decision. Appellant also filed two applications for a certificate of appropriateness (“CA”) to construct a new structure on the property because the Dallas City Code requires that a CA be approved for a proposed new structure before an application for a CD using the standard “replace with more appropriate/compatible structure” can be considered. Dallas, Tex., Code § 51A-4.501(h)(4)(A)(ii). The first CA application was denied without prejudice on December 6, 2021, and the second was approved with conditions on June 6, 2022. (Record § 3, p. 9-10.) Nothing in the Dallas City Code requires a CD to be approved simply because a CA has been approved. Rather, it is simply a condition precedent to consideration of an application for a CD under the standard “replace with more appropriate/compatible structure.” See Dallas, Tex., Code § 51A-4.501(h)(4)(A)(ii); (see also Record § 5, p. 66-67).

¹ All record references are to the section number and the page number in the pdf copy of the corrected version of the record for this matter.

On December 1, 2022, Randy Shear filed the application for a CD at issue in this appeal on behalf of the owner, Appellant Annemarie Bristow, using the standard “demolish or remove a structure that poses an imminent threat to public health or safety.” (Record §§ 1, 2, pp. 4, 6-7.) Both staff and the Tenth Street Task Force recommended denial without prejudice. (Record §§ 2, 3, pp. 6-7, 11, 16.) Landmark considered the application for a CD at its January 9, 2023 meeting. (Record §§ 2, 4, pp. 6, 51.) Two speakers spoke in favor of the application. (Record §§ 4, 5, pp. 51, 56-66.) Commissioner Swann moved to deny the request without prejudice, and the motion was approved by a vote of 14 to 1. (Record § 4, p. 51.) Appellant filed a timely appeal to this Commission. (Record § 7, p. 140.)

B. Standard of Review for Landmark Appeals

In an appeal from Landmark, this Commission “shall give deference to the landmark commission and may not substitute its judgment for the landmark commission’s judgment” and must affirm unless this Commission 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 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 “[d]emolition or removal of a historic structure constitutes an irreplaceable loss to the quality and character of the city,” a property owner seeking demolition or removal of any

structure on a property in a historic overlay district must choose one of four reasons for the demolition or removal. *Id.* § 51A-4.501(h)(1), (2)(B). Each reason has its own separate application requirements and criteria for Landmark to consider. *See generally id.* § 51A-4.501(h)(2), (4). For a CD application using the standard “demolish or remove a structure that poses an imminent threat to public health or safety,” the Dallas City Code requires Landmark to “deny an application to demolish or remove a structure that poses an imminent threat to public health or safety unless it finds that:

- (i) the structure constitutes a documented major and imminent threat to public health and safety;
- (ii) the demolition or removal is required to alleviate the threat to public health and safety; and
- (iii) there is no reasonable way, other than demolition or removal, to eliminate the threat in a timely manner.”

Id. § 51A-4.501(h)(4)(C). The applicable standard to “demolish or remove a structure that poses an imminent threat to public health or safety” is the same for all structures in a historic overlay district regardless of whether they are contributing or non-contributing. *Id.* Appellant had the burden of proof to establish the necessary facts by clear and convincing evidence to warrant a favorable action on a CD. *Id.* § 51A-4.501(h)(3)(B). This is a higher burden than for a CA. *Compare id., with id.* § 51A-4.501(g)(6)(B) (providing that applicant has burden of proof but not imposing clear and convincing evidence standard).

C. Argument

In this matter, there is no evidence 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. Appellant had the burden of proof to establish the necessary facts by clear and convincing evidence, but Appellant did not meet this burden. As to the first two requirements

of the standard that “the structure constitutes a documented major and imminent threat to public health and safety and that “the demolition or removal is required to alleviate the threat to public health and safety, Appellant’s representative, Mr. Shear, acknowledged that the most significant threat from the structure – fire from the electrical service and old gas lines – had been remediated. (See Record § 5, pp. 71-73.) He also acknowledged that the building had been boarded up and secured from entry. (Record § 5, p. 72.) Landmark Commissioners also questioned whether the Appellant had met her burden as to the third requirement for issuance of a CD – that there is no reasonable way, other than demolition or removal, to eliminate the threat in a timely manner and raised concerns that Appellant had not fully explored alternatives to demolition. (See, e.g., Record § 5, pp. 94-95, 97.) Ultimately, all but one of the Landmark Commissioners voted to deny the CD without prejudice having determined that Appellant did not establish by clear and convincing evidence that the three requirements had been met as necessary for Landmark to approve a CD under the standard “demolish or remove a structure that poses an imminent threat to public health or safety.”

In her brief, Appellant focuses a great deal on the issue of whether the structure is contributing or noncontributing, but that issue is irrelevant here. Although the Dallas City Code sets out a different standard for approving a CA based on whether a structure is contributing or noncontributing, that is not true for a CD. Compare Dallas, Tex., Code § 51A-4.501(g)(6)(C), with *id.* § 51A-4.501(h)(4). In fact, while there is one standard for a CD application that is specifically for noncontributing structures, it only applies to noncontributing structures that are “newer than the period of historic significance” and requires an additional finding that “demolition of the structure will not adversely affect the historic character of the property or the integrity of the historic overlay district.” See Dallas, Tex., Code § 51A-4.501(h)(4)(D). That is, the Dallas City

Code does not provide for Landmark to approve a CD simply because a structure is noncontributing. For the property at issue here, that standard was not even available because it was constructed during the period of historic significance for Tenth Street. (*See, e.g.*, Record § 5, pp. 81-83, 92.) Additionally, in her brief, Appellant conflates the matter on appeal with her prior appeal of a CD under a different standard, which has already been heard by this Commission and resolved in favor of Landmark, and the initiation of demolition by neglect proceedings under section 51A-4.501(k) of the Dallas City Code, which is not part of this appeal.

Landmark's decision is consistent with the applicable ordinances and in particular with the Dallas City Code's classification of Tenth Street as an endangered historic district and the high standard that must be met to demolish an "irreplaceable" structure in any historic district. Furthermore, Landmark's determination was within its authority and reasonably supported by substantial evidence. Therefore, this Commission must affirm the decision.

Respectfully submitted,

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