

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

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| Patrick Morgan and Judith Morgan, |) | |
| Petitioners, |) | |
| |) | |
| v. |) | Case No. BS137685 |
| |) | |
| City of La Habra Heights, et al., |) | [Tentative] Decision and Order |
| <u>Respondent/Real Parties in Interest.</u> |) | Granting Writ of Mandate |

By a verified petition filed on June 4, 2012 against Respondent City of La Habra Heights (“City”) and Real Parties in Interest Ajit Shah and Nirali Shah (“RPIs”), Petitioners Patrick Morgan and Judith Morgan (“Petitioners”) seek a peremptory writ of mandate commanding the City to vacate, annul, and set aside its approval of the RPIs’ project to renovate and add a second story addition to their residence and to vacate the City’s adoption of Resolution No. 2012-03.

Having reviewed the pleadings, the administrative record, and the parties’ briefs, the Court rules as follows:

Requests for Judicial Notice

The Court grants the parties’ requests for judicial notice of the referenced City of La Habra Heights Municipal Code and Ordinances.

Factual and Procedural Background

On December 9, 2010, the RPIs submitted to the City their Community Development Department Application in connection with a project located at 1281 Mayapan Road, La Habra Heights, California (“project” or “property”). (AR 1-2). In a letter dated January 5, 2011, the City deemed the RPIs’ application to be incomplete; on January 24, 2011, the City received additional plans and submissions by the RPIs. (AR 3-5; Ex Tab 3). The RPIs requested Standards Modifications for building designs and setback requirements that would, *inter alia*, allow them to modify their property to: (1) add 2,420 square-feet of covered patio area to the rear and south of the residence; (2) add a 1,850 square-foot second story addition for a new master suite and living space; and (3) construct a 587 square-foot balcony for the second story addition. (AR 6-8).

Petitioners opposed the RPIs’ construction project. They own the property located at 1265 Mayapan Road, which faces the south side of the RPIs’ property. (AR 28). Specifically, Petitioners asserted that the RPIs’ modifications would create and exacerbate legal-nonconforming conditions and negatively impact their privacy. (AR 9-11). On August 23, 2011, the RPIs submitted additional plans and blueprints modifying the project. (AR 12; Ex Tab 9). Petitioners continued to oppose the RPIs’ plans. (AR 17-20, 24).

On November 9, 2011, Katherine Laufenburger, the Planning Manager for the City, approved three administrative standards modifications for the project:

1. Permitting a height of a structure in excess of 16' to the proposed height of 26';
2. Permitting a reduced large structure front setback for the proposed second story from 38.7' to 35'; and
3. Permitting a reduced large structure front setback ranging from 20'5" to 25'5"

(AR 27, 32-33).

On November 28, 2011, Petitioners appealed the November 9, 2011 decision approving the administrative standards modifications for the RPIs' project. (AR 53). Hearings were conducted before the City's Planning Commission on December 27, 2011 and January 24, 2012. (AR 256, 470). On January 24, 2012, the City's Planning Commission approved Resolution No. 2012-01, which upheld the approval of the administrative standards modifications for the RPIs' project. (AR 526-534).

On February 8, 2012, Petitioners appealed the Planning Commission's approval of Resolution No. 2012-01 to the City Council. (AR 537-38). On March 8, 2012, the City Council held a hearing on Petitioners' appeal. (AR 688). Through Resolution No. 2012-03, the City Council denied Petitioners' appeal and approved the RPIs' standards modifications for their proposed second story addition. (AR 739-760).

The verified Petition was filed with the Court on June 4, 2012. On January 10, 2013, the RPIs filed an Answer to the Petition. On January 11, 2013, the City filed an Answer to the Petition.

The matter was argued and submitted on May 14, 2013.

Standard of Review

Petitioners seek a writ of mandate pursuant to California Code of Civil Procedure section 1094.5. Section 1094.5 of the California Code of Civil Procedure is the administrative mandamus provision providing the procedure for judicial review of adjudicatory decisions rendered by administrative agencies. Topanga Ass'n for a Scenic Community v. County of Los Angeles, (1974) 11 Cal. 3d 506, 514-15.

Section 1094.5(a) states, in pertinent part, that "[w]here the writ is issued for the purpose of inquiring into the validity of any final administrative order or decision made as the result of a proceeding in which by law a hearing is required to be given, evidence is required to be taken, and discretion in the determination of facts is vested in the inferior tribunal, corporation, board, or officer, the case shall be heard by the court sitting without a jury." Under CCP § 1094.5(b), the pertinent issues are: whether the respondent has proceeded without jurisdiction, whether there was a fair trial, and whether there was a prejudicial abuse of discretion. An abuse of discretion is established if the respondent has not proceeded in the manner required by law, the

decision is not supported by the findings, or the findings are not supported by the evidence. CCP § 1094.5(b).

An agency is presumed to have regularly performed its official duties. Evid. Code § 664. Therefore, the petitioner seeking administrative mandamus has the burden of proof. Steele v. Los Angeles County Civil Service Commission, (1958) 166 Cal. App. 2d 129, 137; Afford v. Pierno, (1972) 27 Cal. App. 3d 682, 691 (“[T]he burden of proof falls upon the party attacking the administrative decision to demonstrate wherein the proceedings were unfair, in excess of jurisdiction or showed prejudicial abuse of discretion.”).

In reviewing the City’s decision and findings, the Court applies the substantial evidence standard. SP Star Enterprises, Inc. v. City of Los Angeles, (2009) 173 Cal. App. 4th 459, 469; Mountain Defense League v. Board of Supervisors, (1977) 65 Cal.App.3d 723, 728. Substantial evidence is relevant evidence that a reasonable mind might accept as adequate to support a conclusion (California Youth Authority v. State Personnel Board, (2002) 104 Cal. App. 4th 575, 584-85), or evidence of ponderable legal significance which is reasonable in nature, credible and of solid value. Mohilef v. Janovici, (1996) 51 Cal. App. 4th 267, 305 n. 28.

Analysis

Petitioners contend that the City proceeded in excess of its jurisdiction because the RPIs’ application did not include landscaping and lighting plans as required by the La Habra Heights City Code. Petitioners also contend that they did not receive a fair trial because the City’s representatives misled the Planning Commission and the City Council by claiming that there was discretionary authority to waive the submission of landscape and outdoor lighting plans. Finally, Petitioners contend that findings 1 and 5 through 7 are not supported by substantial evidence.

The City argues that its municipal laws do not mandate the submission of detailed landscaping and lighting plans. Instead, under City Code section 8.2.30, the Planning Division has the discretion to determine whether an application is complete. The City maintains that Petitioners received a fair trial because they received notice and had an opportunity to be heard. Finally, the City contends that substantial evidence supports the challenged findings.

The RPIs assert that the City did not exceed its jurisdiction because whether lighting and landscaping plans were submitted has no bearing on whether the City has statutory jurisdiction to review and approve the application since section 8.2.10 provides the City with the statutory authority to act. In addition, the RPIs argue that the City did not exceed its jurisdiction because it has the discretion to determine the level of detail required in an application for standards modification pursuant to City Code section 8.2.30.D. Furthermore, the RPIs contend that Petitioners were never entitled to a trial and that substantial evidence supports the City’s findings.

As set forth below, the Court finds that the City abused its discretion in granting the RPIs’ application for standards modification without requiring them to submit landscaping and lighting plans in connection with their project.

1. Landscaping and Lighting Plans

City Code section 4.12.20 provides that “[a]ll development plans must include an outdoor lighting plan submitted as part of the development application as specified in Article 7.” Similarly, City Code section 7.6.50.A states that “[a]ll development plans must include an outdoor lighting plan submitted as part of the development application.”

City Code section 7.12.40.A provides that “[a] Landscaping and Irrigation Plan is required for any project that will result in the following: . . . an increase in building height; or an increase of 1,000 square feet of floor area. The plans as (sic) shall be provided as part of the application package submitted to the City as required by Article 8.”

City Code section 8.2.30.D governs general application requirements for land use and development applications:

All project applications must include property information including title report, legal description and details of all existing development and uses of the site. Depending upon the proposed project, other required information may include, but not be limited to, neighborhood location detail and neighbor notification list, property line survey, view impact analysis, setback and privacy analysis, site selection analysis, landscape analysis, geo-hazards analysis, storm water runoff analysis, engineering analyses and traffic impact analysis. These requirements are conceptual and are not intended to constitute or be a substitute for final, detailed engineering or technical documents.

City Code section 8.2.30.D.3 notes that “[a]ll planned development information must be presented to the Planning Division in the degree of detail prescribed in the specific application materials. The detail provided must be adequate to identify the impact of the project upon the neighbors’ views and privacy and upon community character. . . . Typical mitigation detail includes conceptual landscape plans evidencing capability to screen the development without causing view impairment.”

Finally, City Code section 8.2.30.F provides that “[l]and use and development applications submitted to the Planning Division will be reviewed to determine completeness. . . . If the application is deemed complete, City staff shall continue to process the request.”

a. Lighting Plans

On December 9, 2010, the RPIs submitted their Community Development Department Application to the City. (AR 1-2). Pursuant to City Code sections 4.12.20 and 7.6.50.A, the RPIs’ development application was required to include an outdoor lighting plan. Here, it is undisputed that the RPIs failed to submit an outdoor lighting plan with their application materials. Indeed, the administrative record fails to demonstrate that any outdoor lighting plan was submitted by the RPIs at any time. (AR Ex Tabs 1, 3, 9). Accordingly, the City failed to proceed in the manner required by law under City Code sections 4.12.20 and 7.6.50.A because it

approved the RPIs' development application when the development application lacked statutorily required outdoor lighting plans.

The City fails to cite to any portion of the City Code that supports its contention that the Planning Manager had the authority to waive the requirements of City Code sections 4.12.20 and 7.6.50.A. Similarly, the Court is not persuaded by the RPIs' argument that the City Code gives the City discretion to conditionally approve the application on the condition that the RPIs obtain final lighting and glare plans. Contrary to the RPIs' assertions, City Code sections 4.12.20, 7.6.50.A, and 8.2.30 do not provide the City with discretion to conditionally approve an application that has failed to include an outdoor lighting plan.

b. *Landscaping Plans*

The RPIs requested standards modifications for building designs and setback requirements that would, *inter alia*, allow them to modify their property located at 1281 Mayapan Road to (1) add 2,420 square-feet of covered patio area to the rear and south of the residence; (2) add a 1,850 square-foot second story addition for a new master suite and living space; and (3) construct a 587 square-foot balcony for the second story addition. (AR 6). In addition, the standards modifications for the project would increase the height of the structure from 16' to 26'. (AR 27, 32). Because the project would increase the building height of the property and result in an increase of 1,000 square feet of floor area, City Code section 7.12.40 requires that a landscaping and irrigation Plan be submitted as part of the application package to the City.

After reviewing the administrative record, the Court finds that the RPIs did not submit a landscaping and irrigation plan. The Court acknowledges that the RPIs submitted topographic surveys and a proposed site plan for the first floor which identified two trees to be removed. However, these submissions are not, on their face and by their own designations, landscaping and irrigation plans. Indeed, it is telling that at the first Planning Commission hearing, the City Planning Manager acknowledged that no landscaping plans were submitted or required. (AR 271). The Court notes that the proposed site plan for the first floor depicting the two trees that were to be removed was submitted by the RPIs at the time the Planning Manager made this determination. (AR Ex Tab 1). That the City later attempted to call these documents "conceptual" landscape plans is not persuasive.

Moreover, with regard to landscaping and irrigation plans, City Code section 7.12.40.D requires that on-site landscape materials must provide at least 50% screening of all elevations of all structures and fences and retaining walls visible from the street and from other parcels. The removal of two trees depicted in the proposed site plan for the first floor and the topographic surveys fail to provide sufficient information regarding whether the landscape materials provide the requisite 50% screening. Accordingly, the City's after-the-fact reference to the building plans as including "conceptual" landscaping plans is without merit.

Based on the foregoing, the Court finds that the City abused its discretion because it did not proceed in the manner required by law under City Code sections 4.12.20, 7.6.50.A, and/or 7.12.40.A. Specifically, the City approved the RPIs' application even though it lacked the

required lighting and landscaping plans. In light of this finding, the Court does not reach Petitioners' other arguments.

Disposition

For the reasons stated above, the petition for writ of mandate is GRANTED. Judgment shall be entered ordering a writ of mandate to issue from this Court, remanding the proceedings to the City commanding it to set aside its decision and to reconsider its actions in light of this decision and order. Petitioners shall file and serve a proposed judgment and a proposed writ of mandate within 10 days with a proof of service showing that they were served on all parties. The administrative record shall be returned to the party who lodged it, to be preserved without alteration until the judgment is final, and to be forwarded to the Court of Appeal in the event of an appeal.

IT IS SO ORDERED.

May 13, 2013

Luis A. Lavin
Judge, Superior Court of California
County of Los Angeles