

IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
CIVIL TRIAL DIVISION

MANAYUNK NEIGHBORHOOD COUNCIL, INC. : SEPTEMBER TERM, 2006
Appellant

v.

BOARD OF BUILDING STANDARDS : DOCKET NO.: 1384

and

CITY OF PHILADELPHIA

and

RECTOR STREET ASSOCIATES, L.P.
Appellees/Intervenors

ORDER

AND NOW, this ~~26~~^{28^A} day of July, 2007, it is hereby

ORDERED

That the decision of the Philadelphia Board of Building Standards is **AFFIRMED**.

DOCKETED

JUL 26 2007

J. KELLEHER

COPIES SENT
PURSUANT TO Pa.R.C.P. 236(b)

JUL 26 2007

FIRST JUDICIAL DISTRICT OF PA
USER I.D.:

BY THE COURT:



GLAZER, J.

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OPINION

GLAZER, J.

July 26, 2007

FACTUAL AND PROCEDURAL HISTORY

This court has reviewed the findings of fact and conclusions of law by the Board of Building Standards (the "Board"). In summary, the Manayunk Neighborhood Council (the "Council") appeals from the decision of the Board of Building Standards, which denied Council's appeal of the decision of the Philadelphia Historical Commission, ("Commission") which granted permission to Rector Associates to construct a five story roof-top addition to the warehouse, located at 3 Rector Street, in order to convert it to a residential condominium building.

In 2005, Rector Associates made a proposal to the Commission for the complete demolition of the existing building at 3 Rector Street, and a development of residential units in its place. However, due to opposition from the Commission's Architectural Committee, as well as several other factors, Rector Associates altered the proposed plan for complete demolition, and began work on a revised proposal that saved the existing historic building, incorporating an overbuild concept instead. The revision involved an addition to the structure in order to convert the property into a residential building. (Findings of Fact, ¶ 1, 5, 7).

On February 10, 2006, the Commission approved the newly proposed Project "in concept", and Rector Associates returned to the Commission for final approval of the addition on June 9, 2006. The Commission unanimously voted for final approval of the Project. However, despite the vote of the Commission, on July 5, 2006 the appellant filed an appeal of the commission's decision to the Board. (Findings of Fact, ¶ 6, 8).

Following the appeal, a public hearing before the Board was held on July 20, 2006. After the hearing, the Board unanimously affirmed the decision of the Commission and denied the Council's appeal. (Findings of Fact, ¶ 9). The Commissioner of the Department of Licenses and Inspections ("L&I") ratified the Board's decision by letter dated August 15, 2006, and on September 14, 2006, the Council appealed the decision of the Board to this court.

The present appeal asserts that the Commission committed several errors in approving the proposed project. Specifically, appellant argues that the Commission ignored several provisions of the Property Maintenance Code, ("PM Code") which is designed to preserve and protect the Main Street Manayunk National Historic District.

(Findings of Fact, ¶ 11, 17, 19). The appellants also assert that the Commission failed to apply the Secretary of the Interior's standards for preservation when considering the proposal for demolition and new construction. It is appellant's claim that due to the historic nature of the building, and its placement on the National Register, the standards of the Secretary of the Interior must be applied.

The appellants further argue that the Commission has approved the proposal in spite of the Commission's staff recommendation that the proposal be denied. In summary, the Council asserts that the proposal will strip the historic building of its architectural features, that the new building is far out of scale for the district, and that the approval improperly bypassed the PM Code. (Findings of Fact, ¶ 17, 19).

Rector Associates has replied to appellant's claims by stating that the Secretary of the Interior's standards are not applicable because no proof exists that the property is actually listed on the National Register. Furthermore, appellees argue that the proposal saves a historic building from further deterioration and aging by incorporating it into an economically sound development, and that the proposal has been changed numerous times in an attempt to accommodate the various claims made by the appellants.

The appellees assert that the Commission retains the ultimate voice when approval or denial of a project is considered. It is argued by appellees that the recommendation of the staff, although relevant and important, does not and cannot supersede the ultimate power of the Commission to render a decision. Therefore, the appellees maintain that the approval of the Commission has been consistent with the PM Code and that the new proposal preserves "the historic fabric of the building." (Brief of Appellee, ¶ 2)

For the reasons that follow, the decision of the Board is affirmed.

DISCUSSION

In cases involving decisions of local agencies, boards, or commissions, this court's scope of appellate review is limited. Unless this court determines that an error of law was committed, or that the agency's findings of fact were not supported by substantial evidence, this court may not reverse the board's decision. *Boston Concessions Group, Inc. v. Logan Township Bd. of Supervisors*, 815 A.2d 8, 11 (Pa. Cmwlth. 2002). "Substantial evidence" meaning "such relevant evidence as a reasonable person might accept as adequate to support a conclusion." *Valley View Civic Association v. Zoning Board of Adjustment*, 501 Pa. 550, 555, 462 A.2d 637, 640 (1983).

As a general rule, the courts of this Commonwealth will show deference to decisions rendered by the local agencies. Moreover, the local agency functions as the finder of fact and determines the weight and credibility to be afforded the evidence. *In re Realen Valley Forge Greenes Assoc.*, 799 A.2d 938 (Pa. Cmwlth. 2002). In addition, when reviewing a zoning board decision, this court should not "engage in fact finding or disturb the board's credibility determinations on appeal." *In re Brickstone Realty Corp.*, 789 A.2d 333, (Pa. Cmwlth. 2001). As such, this Court must determine whether an error of law was committed by the Commission, if the findings of fact were not supported by substantial evidence, or if the procedure was contrary to statutory regulations.

After hearing testimony and reviewing evidence, the Board granted permission to Rector Associates to develop the new residential condominiums at 3 Rector Street. (Findings of Fact, ¶ 9). The Commission had considered the ramifications stemming from such a project and unanimously voted for approval following numerous extensive

deliberations and several public hearings. The Board determined that the applicable sections of the PM Code, specifically §§ 704.2.2, 704.2.3, and 704.2.7, had been satisfied, as required, and that the project would not compromise or eliminate the historical importance of the area. (Conclusions of Law, ¶ 8).

The Board concluded that appellants failed to meet their burden of showing that the Commission abused its discretion by not following the direct recommendation of its staff. The Commission's decision to grant approval of the necessary permits, as per § 704.2.2 of the PM Code, was well within its decision making limits and the claim by appellants that the Commission may not disagree with its staff recommendation is unfounded. The board has also concluded that the proposal has satisfied the required provisions of the PM Code, the governing set of regulations in this matter. (Conclusions of Law, ¶ 7, 8).

It has been shown that the appellees, Rector Associates, have gone through a rigorous process of examination before the Commission pursuant to the PM Code. The current project is a result of compromises and multiple revisions and new proposals. The appellees have attempted to satisfy all the concerns of the Philadelphia Preservation Alliance and have altered their design accordingly. This project has arrived at this stage of proceedings following numerous proposals and multiple meetings between the parties involved to reach an amicable satisfaction of all concerns.

In the current proposal, each provision of the PM Code was punctiliously followed. The PM Code states that the features of the original structure should be "retained and repaired wherever possible." (PM Code § 704.2.5). The PM Code also states that "[o]riginal existing storefronts contributing to the character of the district

shall be retained and repaired.” (PM Code § 704.2.6). The project has complied with these provisions by incorporating the existing building into the new condominium development.

The Board considered these provisions when rendering its approval of the proposed project, and as such, it is this court’s conclusion that the Board’s decision was supported by substantial evidence, and it committed neither an abuse of discretion nor an error of law. Appellant has failed to meet the requirements for reversing the decision rendered by the Board, and failed to present credible evidence that the development of the property at 3 Rector Street would result in the obliteration of the Manayunk Historic District. Therefore, the decision of the Board is affirmed.

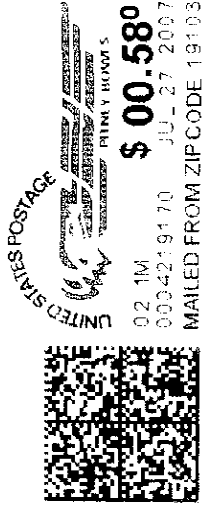
BY THE COURT:



GLAZER, J.



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