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Berlin v. City of Atlanta Urban Design Commission

Court of Appeals of Georgia - July 2, 2025 - S.E.2d - 2025 WL 1822481

Neighbors filed petition for certiorari challenging decision of city's urban design commission to approve certificate of appropriateness for the redevelopment of two residential parcels in historic district, naming commission and property owners as defendants and seeking declaratory judgment.

The Superior Court denied neighbors' motion for summary judgment and granted summary judgment sua sponte to defendants. Neighbors filed application for discretionary appeal, which was granted, and the Court of Appeals reversed and remanded. On remand, neighbors filed an amended certiorari petition challenging the commission's decisions on substantive grounds and on the ground that the commission did not comply with notice requirements. The Superior Court denied neighbors' motion for partial summary judgment and granted summary judgment to the defendants, and, following a hearing, issued a detailed final order affirming the commission's decision. neighbors appealed.

The Court of Appeals held that:

- Standard to evaluate the city's compliance with notice requirements was substantial compliance;
- City substantially complied with redevelopment ordinance's notice requirements; and
- Evidence was sufficient to support commission's approval of certificate of appropriateness.

City urban design commission's approval of certificate of appropriateness for the redevelopment of two residential parcels in historic district did not constitute rezoning, and thus correct standard to evaluate the city's compliance with notice requirements was substantial compliance, rather than strict compliance; while city exercising its zoning power when it established the district, the commission was not concerned with use or density but with regulation of external architectural features, which was closer to the scope of the city's police power rather than its zoning power, and ordinance did not set forth a consequence for non-compliance with the notice provisions or prohibit other modes of proceeding.

City urban design commission, in proceeding for certificate of appropriateness for the redevelopment of two residential parcels in historic district, substantially complied with redevelopment ordinance's notice requirements, which provided that, before "any" meeting, notice of the application "shall" be published on the city website, signage "shall" be posted on the property, and notice of the hearing "shall" be mailed to nearby property owners, even if sign was posted on the properties before the first hearing, but not the second and third hearings, and notice of the first hearing was mailed to only two of the four neighbors and no notices of the second and third hearings were mailed to any affected property owners; neighbors all either attended or otherwise participated in at least one of the meetings, and were afforded a meaningful opportunity to be heard on the applications.

Evidence was sufficient to support city urban design commission's approval of certificate of appropriateness for the redevelopment of two residential parcels in historic district; commission

adopted a ten-page city staff report, which addressed and examined the property configuration and characteristics of the properties and the general design of each house and analyzed, inter alia, the use, density, required parking, height limitations, lot coverage, open space, tree removal, and architectural elements.

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