

**IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO**

WALTER REINHAUS,	:	APPEAL NO. C-180616 TRIAL NO. A-1801386
Plaintiff-Appellant,	:	<i>JUDGMENT ENTRY.</i>
vs.	:	
ZONING BOARD OF APPEALS OF THE CITY OF CINCINNATI,	:	
Defendant-Appellee.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court. *See Rep.Op.R. 3.1; App.R. 11.1(E); 1st Dist. Loc.R. 11.1.1.*

Appellant Walter Reinhause appeals from the judgment of the trial court adopting the magistrate's decision upholding the decision of appellee, the Zoning Board of Appeals of the city of Cincinnati ("ZBA"). The ZBA's decision denied in part Reinhause's request for a certificate of appropriateness. Reinhause sought the certificate to make exterior modifications to his circa 1880 industrial brick building.

Due to its location, Reinhause's property is subject to the historic conservation guidelines for the Over-the-Rhine ("OTR") historic zoning district of the city. Reinhause was required to obtain a certificate of appropriateness to modify the building's facade, including his plan to add new door openings and Juliet balconies in-between existing window openings on the front and to add a metal spiral staircase, instead of a regular staircase, to connect second and third level metal decks on the side. The city's Urban Conservator, the Historic Conservation Board ("HCB"), the ZBA, and the court of

OHIO FIRST DISTRICT COURT OF APPEALS

common pleas rejected Reinhaus's request for these two modifications because Reinhaus failed to demonstrate, as required by Cincinnati Municipal Code 1435-09-2, that the modifications substantially conformed to the guidelines for the historical district or that the denial of the request would cause him to suffer economic hardship.

In his sole assignment of error, Reinhaus argues that the trial court erred by affirming the ZBA's decision that denied the certificate of appropriateness for these modifications. Within that assignment of error, he presents multiple issues for this court's review. Our standard of review focuses on the existence of legal error in the trial court and "permits reversal only when the common pleas court errs in its application or interpretation of the law or its decision is unsupported by a preponderance of the evidence as a matter of law." *Cleveland Clinic Found. v. Cleveland Bd. of Zoning Appeals*, 141 Ohio St.3d 318, 2014-Ohio-4809, 23 N.E.3d 1161, ¶30. We cannot weigh the evidence. *Id.* at ¶25.

First we note, contrary to Reinhaus's position, that he had the burden below of showing that the ZBA's presumably valid decision was erroneous. *Hebeler v. Colerain Twp. Bd. of Zoning Appeals*, 116 Ohio App.3d 182, 185, 687 N.E.2d 324 (1st Dist.1997), citing *C. Miller Chevrolet Inc. v. Willoughby Hills*, 38 Ohio St.2d 298, 313 N.E.2d 400 (1974), paragraph two of the syllabus. Further, during its R.C. 2506.04 review, the common pleas court was required to give due deference to the administrative agency's resolution of evidentiary conflicts and was prohibited from blatantly substituting its judgment for that of the agency, "especially in areas of administrative expertise." *Athenry Shoppers Ltd. v. Dublin Planning & Zoning Comm.*, 10th Dist. Franklin No. 08AP-742, 2009-Ohio-2230, ¶17.

The record shows that when challenging the denial of the certificate of appropriateness, Reinhaus failed to present authority to support his position that prior

OHIO FIRST DISTRICT COURT OF APPEALS

action by the HCB related to an expired building permit was determinative with respect to this current application for the proposed modifications. Moreover, the trial court found that the proposed additional door openings on the front facade would alter the symmetry of the building and contravene the guideline directed to door and window openings. This unambiguous guideline is not limited to merely restricting the altering of original window openings, as Reinhaus argues. The trial court also found that the context of the proposed spiral staircase on the side facade was relevant to the substantial-compliance review.

With respect to economic hardship, the trial court noted that Reinhaus's evidence on the three mandatory factors for the analysis was not persuasive. For instance, Reinhaus did not present objective, relevant evidence, and did not demonstrate current efforts to pursue economic incentives to facilitate redevelopment. His argument was further undermined because the proposed front facade changes would not be located in a residential part of the project. Relatedly, Reinhaus failed to support his conclusory claim of a "pro-tanto" taking.

Ultimately, the record demonstrates that the trial court, in affirming the ZBA's decision, applied the correct law, and its conclusions are supported by a preponderance of the evidence. While the decision includes minor factual inaccuracies, those inaccuracies were not significant to the trial court's analysis and were harmless. Consequently, we overrule the assignment of error and affirm the trial court's judgment.

Further, a certified copy of this judgment entry shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

MOCK, P.J., ZAYAS and WINKLER, JJ.

OHIO FIRST DISTRICT COURT OF APPEALS

To the clerk:

Enter upon the journal of the court on December 20, 2019,
per order of the court _____.
Presiding Judge