

BEFORE BEXLEY CITY COUNCIL

IN RE: APPEAL OF NOVEMBER 25, 2013 DECISION OF BEXLEY PLANNING COMMISSION ON APPLICATION NO. 13-0008 FOR EXTERIOR DESIGN REVIEW

FINDINGS, CONCLUSIONS AND DECISION OF COUNCIL ON APPEAL

This matter came before Bexley City Council on February 25, 2014 upon the timely notice of appeal of Maureen Ingram of the decision of the Bexley Planning Commission on November 25, 2013 "Approving and/or Approving with Conditions Application No. 13-0008 for Exterior Design Review of the property located at 2525 E. Main Street in Bexley." The appellant, Maureen Ingram, attended the hearing and was represented by legal counsel. The applicants and appellees Anna Krupovlyanskaya ("Ms. Anna") and architect, John M. McKay, AIA were also present.

City Council held a hearing on this matter. All witnesses who appeared were sworn and subject to cross-examination. Council also had before it the record of the Planning Commission proceedings relating to the property located at 2521/2525 E. Main Street (the "subject property"), including Application No. 13-0008 for "Exterior Design Review", which is the subject of the present appeal, and Application No. 12-0010 for a "Variance", previously determined by the Planning Commission on a different application. At the commencement of the hearing, the President of Council stated that this hearing was only upon Application No. 13-0008 for Exterior Design Approval of the subject property and reviewed the procedures and standards that would be followed by Council. Council President cautioned that the evidence should relate to the application on appeal and whether there was a preponderance of evidence that the general exterior design elements presented by the applicant complied with the requirements of the Main Street District in Bexley City Code Chapter 1224 and the Main Street Guidelines provided for in that chapter. Following the hearing, Council unanimously denied the appeal, to be followed with findings of fact, conclusions of law and a written decision by Council.

Upon due consideration of the record, testimony and arguments presented at the hearing, City Council makes the following findings of fact and conclusions of law.

Ms. Anna is the owner of the property located at 2521/2525 E. Main Street in Bexley, Ohio. The property is one in a 'strip' of six contiguous individual long-standing buildings in Bexley south of East Main Street in the block between S. Cassingham Road and Montrose Avenue. Mrs. Ingram operates a business known as "the M&M sales company" in the building adjacent to and east of the subject property and is an owner of the company that owns the property.

The subject property (and all of the buildings in the block) is zoned Mixed Use Commercial (MUC) and is a sub-district of and located within the Main Street District. Ms. Anna intends to use the subject property for an upscale restaurant on the first floor with a specialty dinner theater/small banquet hall on the second floor and a mezzanine level for private dinner parties and meetings, which are permitted uses in the MUC district.

Ms. Anna has filed two applications relating to the subject property. In July 2012, by Application No. 12-0010, Ms. Anna applied to the Bexley Planning Commission for a parking variance for the subject property. Planning Commission held a hearing on that application on July 23, 2012 that was continued on October 22, 2012 when Planning Commission approved the application for a parking variance with the condition that valet parking be provided subject to a permit from the Mayor's office. The October 22, 2012 decision of the Planning Commission on Application No. 12-0010 was not appealed and the merits of its decision on the application for a parking variance and valet parking are not before City Council.

In July 2013, Ms. Anna and architect, John M. McKay, filed Application No. 13-0008 with the Bexley Planning Commission seeking exterior design review and approval of the building elevations and materials changes to the building at 2521/2525 E. Main Street. The application included proposed building elevations and finishes for the subject property. A roof-top patio was also proposed.

Planning Commission conducted a hearing upon Application No. 13-0008 on July 22, 2013 that was continued on November 25, 2013. All witnesses who appeared were sworn. The applicants presented their proposed building elevations showing modifications to the current exterior design of the building along with a proposed rooftop patio. The city's Design Consultant, Karen Bokor, testified about her design review of the proposal with the Planning Commission. Several other witnesses including the Appellant, Maureen Ingram appeared and testified, raising issues relating to the roof-top patio and parking but not the exterior design or materials. Since the commission had already considered and approved parking for the Ms. Anna's permitted use of the property, it limited its consideration to review of the exterior design and roof-top patio. The Planning Commission approved the general design and elements of the building. Material samples, colors, signage and lighting and the roof-top patio details and use were not included in the approval, and are to be submitted by the Appellee-Applicants to the Commission for final review and approval. Mrs. Ingram appealed to Council.

At the hearing before this Council, Appellant, Ms. Ingram argued that whenever any exterior changes are made to a building in the Main Street District, the Bexley City Code required Planning Commission, and now requires this Council, to review the entire site including the plans for the previously approved parking and evaluate the entire site for its impact on the Main Street District, not just the exterior design. Appellant also argued that the Planning Commission had never actually granted a parking variance and had no authority to authorize valet parking. Appellant argued that the Applicant's use of the property was a high intensive use that requires significant on-site parking and

approval of Exterior Design Application No. 13-0008 would have a negative impact. Appellant requested that Council return the case to the Planning Commission for further action.

Appellee-Applicants argued that Planning Commission approved prior Application No. 12-0010 in October 2012 granting a parking variance for the subject property on the condition that valet parking be provided and a permit for valet parking be obtained from the Mayor as provided by ordinance and that parking was not properly before Council for consideration. Appellee-Applicants stated they filed all of the applications required by the city, met all the city's requirements and received all necessary approvals including parking. The property was currently zoned for a restaurant use, had previously been used for a Free Mason Banquet Hall and offices and its use and parking are and had been permitted. Appellee-Applicants testified that they were now at the building permit stage which required them to obtain approvals for the design and materials of the exterior elevations. They argued the exterior elevations were the only issue approved by the Planning Commission on November 25, 2013 and were the only issues before Council on appeal since parking issues had been previously resolved. Appellees stated they were not equipped or able to address issues relating to parking at this hearing. It is undisputed that the restaurant is not yet open for business and Ms. Anna had not yet applied for or received a valet parking permit from the city. No other witnesses appeared or testified.

Appellant Ingram presented no credible testimony upon the proposed building elevations or exterior design of the building or how it failed to meet the provisions of the Bexley Code or Main Street Guidelines. Ms. Ingram's testimony and exhibits, most of which were before the Planning Commission and previously considered as part of Application No. 12-0010, related to the on-site and valet parking for the subject property. Ms. Ingram urged Council to reconsider parking, require new viable plans to accommodate parking and consider its impact on Main Street. Council cautioned Ms. Ingram and her counsel to limit the testimony to the application and decision before it on exterior design elements that was before Planning Commission and Council on appeal. Nonetheless, Council did allow appellant to offer testimony and exhibits and proffer additional evidence regarding parking issues, which were addressed by Planning Commission in its decision on Application No. 12-0010 that was not appealed.

Council finds that both the application and the decision by the Planning Commission in Application No. 13-0008 before it on appeal were for the exterior building elevations of the subject property, not parking. (The proposed use and details of a roof-top patio were tabled and not determined). It appears from the testimony, Appellant's Exhibits and the record before Council that the use and area used that was proposed by the owner in Application No. 12-0010 for a parking variance has not changed, and is permitted in the MUC district. It is clear from the proceedings, minutes and record of the proceedings of the Planning Commission on the subject property that Application No. 12-0010 for a parking variance was granted by Planning Commission in October 2012 along with a valet parking plan. That application, variance and parking plan has been finally determined and is not before City Council for reconsideration.

Council further finds that Planning Commission did consider, examine and finally determine site plans and parking for the subject property in 2012 and the property owner and applicants are not required to have those issues reviewed and re-determined each time they are required to have plans reviewed in the Main Street District. There is nothing in the exterior elevations proposed by the Applicants and approved by Planning Commission that alters or changes the owner's proposed use of property, including its dimensions or square footage, or requires modification of the parking plan that was approved by Planning Commission in 2012. Exhibits 1, 2, 3, 5 and 6 presented to Council by the Appellant in this case were exhibits that were from the application and hearing before the Planning Commission for a parking variance in Application No. 12-0010.

Bexley Code Section 1224.03(b) does not require a property owner to have a redetermination of previous approvals, including parking, each time the external appearance of the building comes before the city for review, especially when, as here, the external appearance has no impact upon the use or previously approved parking for the site.

This Council finds and determines that the Appellant, Maureen Ingram, has failed to prove, by a preponderance of the evidence, that the general design and elements of the exterior elevations of the building at 2521/2525 E. Main Street as provided in Application No. 13-0008 do not meet the requirements of Chapter 1224 of the Bexley Codified Ordinances and the Main Street Guidelines. This Council further finds and determines that the general design and elements of the exterior elevations of the building at 2521/2525 E. Main Street comply with the Bexley Code and the Main Street Guidelines and all the applicable requirements of the Main Street District have been met by the Applicants by the requisite evidence. The decision of the Planning Commission is supported by a preponderance of substantial, reliable and probative evidence and is affirmed by Council.

Adopted _____, 2014

President of Council

Attest: _____, 2014

Clerk of Council

Approved as to Form:

Law Director