[Cite as *Ingram v. Bexley*, 2015-Ohio-1011.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

Maureen Ingram et al.,	:	
Appellants-Appellants,	:	
		No. 14AP-627
v.	:	(C.P.C. No. 14CV-3090)
City of Bexley, Ohio et al.,	:	(ACCELERATED CALENDAR)
Appellees-Appellees.	:	

D E C I S I O N

Rendered on March 19, 2015

Vorys, Sater, Seymour and Pease LLP, Bruce L. Ingram, and *Christopher L. Ingram,* for appellants.

Kegler, Brown, Hill + Ritter Co. LPA, and *Catherine A. Cunningham,* for appellees.

APPEAL from the Franklin County Court of Common Pleas

BROGAN, J.

{¶1} Appellants, Maureen Ingram and 523 S. Fourth Street, Ltd., appeal from the judgment of the Franklin County Court of Common Pleas which denied their appeal from the decision of the Bexley City Council.

{¶2} This case originates from an administrative appeal of a 2013 decision of the Bexley Planning Commission approving "design plans" for the façade of an existing building at 2525 Main Street (the "Property") in the City of Bexley. Appellants own or have an interest in adjacent commercial property and are concerned about traffic and parking in the area. The Property is located in both the Main Street District and the Mixed Use Commercial ("MUC") zoning district, which is a sub-district of and located

within the Main Street District. In 2012, in a separate matter, the applicant (not a party to this appeal) received a parking variance for the Property and its use as a restaurant.

{¶3} The 2013 application did not address any proposed changes to the permitted use of the Property as a restaurant, nor did it revisit the parking variance granted under the 2012 application. The planning commission approved the general design and elements of the exterior elevations for the proposed changes, subject to further review and final approval of details such as materials, colors, and signage.

{¶4} Appellants filed an appeal to Bexley City Council from the planning commission's application approval. At the ensuing hearing, appellants conceded that they did not take a position with respect to the limited renovations to the Property described in the 2013 application proper. Council limited appellants' evidence to materials related to the proposed exterior design changes and did not permit appellants to submit additional evidence regarding traffic, parking, or restaurant use of the Property. Council did allow appellants to proffer the contested evidence in order to make a record.

{¶5} Appellants then brought an R.C. 2506.01 appeal to the common pleas court and again tried to submit the evidence that city officials refused to hear. The common pleas court overruled appellants' motion to submit additional evidence on parking and traffic issues and prohibited re-litigating or revisiting the parking variance granted to the Property in 2012. The court then affirmed the order of the Bexley City Council approving the exterior design of the Property and overruled the appeal. Appellants have timely appealed to this court pursuant to R.C. 2506.04 and bring the following three assignments of error:

> [I.] The trial court erred in denying Appellants' motion to supplement the record with additional evidence – evidence that Bexley's Code specifically required City Council to consider but Council refused to hear or consider in the administrative appeal hearing.
>
> [II.] The trial court erred by refusing to hear evidence required to be examined by the Zoning Code and as a result, its decision was unreasonable, arbitrary, illegal, capricious, unconstitutional and unsupported by the preponderance of substantial, reliable and probative evidence.

> [III.] The trial court erred by ruling that Bexley City Council could lawfully refuse to apply the express terms of the Zoning Code in order to approve a high intensity eating and drinking establishment.

{¶6} In appellants' first two assignments of error, they contend the trial court erred in denying their request to supplement the record with evidence related to parking and traffic issues. In their third assignment of error, appellants contend the trial court erred by ruling that the Bexley City Council could lawfully refuse to apply the express terms of the zoning code in order to approve a high intensity eating and drinking establishment.

{¶7} We begin by defining our standard of review. On initial appeal to the court of common pleas from the determination rendered by Bexley City Council, the court of common pleas reviewed the matter to determine if council's decision was "unconstitutional, illegal, arbitrary, capricious, unreasonable, or unsupported by the preponderance of substantial, reliable, and probative evidence on the whole record." R.C. 2506.04. On further review to this court, courts of appeal apply a more limited standard of review in an appeal pursuant to R.C. 2506.04. *Harr v. Jackson Twp.*, 10th Dist. No. 10AP-1060, 2012-Ohio-2030, ¶ 21, citing *Henley v. Youngstown Bd. of Zoning Appeals*, 90 Ohio St.3d 142, 147 (2000). "R.C. 2506.04 gives the common pleas court the authority to weigh the evidence, but the statute grants a more limited power to an appellate court to review the judgment of the common pleas court only on questions of law. This does not give an appellate court the same power to weigh the preponderance of substantial, reliable, and probative evidence which the common pleas court has." *Stovall v. Streetsboro*, 11th Dist. No. 2006-P-0077, 2007-Ohio-3381, ¶ 50, citing *Kisil v. Sandusky*, 12 Ohio St.3d 30, 34 (1984).

{¶8} We discuss the three assignments of error together. Because the present appeal presents only questions of law, we undertake a plenary review of whether the common pleas court correctly determined that Bexley City Council properly applied the appropriate law in upholding the approval of the general design elements in the applicant's application.

{¶9} Appellants do not argue in this appeal that the city erred in granting the specific changes to the building façade as proposed in the 2013 application. Instead appellants contend that, as a result of this latest decision, the city has in effect reiterated and perpetuated a zoning decision that approved the conversion of a vacant building with virtually no on-site parking and no easement access into a 7,000 square foot eating and drinking establishment, steps away from an elementary school and a suburban residential neighborhood. Appellants state that as property owners directly adjacent to the Property, the burden of accommodating this intensive use will fall on neighboring residents and businesses that already suffer from traffic and parking congestion. They argue that Bexley ordinances required the commission and council to consider these factors in connection with the proposed changes to the building façade and that the applicant was required to submit site plans, landscape details, and construction drawings to support its application, which it failed to do.

{¶10} Pursuant to Bexley ordinances governing the Main Street District, any time a building is "constructed, reconstructed, altered, moved, extended, razed, enlarged, or changed in external appearance," the "plans and specifications for such building, structure or space, including the landscape plan" must be approved by the planning commission. Codified Ordinances of Bexley 1224.03(b) (hereinafter "B.C. ____"). "The Commission, in reviewing such plans and specifications, *shall* examine the site plan, * * * parking, the landscape plan * * *, and the impact of the site and design elements of the project." (Emphasis added.) B.C. 1224.03(b).

{¶11} Appellants interpret this language as mandating that the planning commission require an applicant to present comprehensive evidence on all aspects of the subject property, even where the proposed alterations are limited in scope. Appellants accordingly argue that because the applicant here proposes to alter the Property's exterior to further the building's eventual conversion to a restaurant and bar, B.C. 1224.03(b) requires the applicant to demonstrate that the application satisfies specific criteria, including but not limited to establishing that: (1) adequate parking exists; (2) convenient and safe access to the site exists; and (3) there will be no substantial adverse impact on neighboring properties or the neighborhood.

{¶12} The city interpreted the ordinance language much more restrictively. The city chose to accept and review evidence only with respect to the impact of design changes to the building exterior and appearance, since that was the thrust of the application. Despite the ordinance's use of the mandatory language stating that the commission "*shall* examine" a site plan, parking, and landscape plan, the city would have the commission review the contested parking and access factors only to the extent that they are affected by changes directly resulting from the altered exterior design of the building.

{¶13} "Interpretation of a zoning ordinance raises a question of law within the court of appeals' limited review in an R.C. 2506.04 appeal." *JP Morgan Chase Bank, Inc. v. Dublin*, 10th Dist. No. 10AP-965, 2011-Ohio-3823, ¶ 11, *citing Ware v. Fairfax Bd. of Zoning Appeals*, 164 Ohio App.3d 772, 2005-Ohio-6516, ¶ 5. We interpret such ordinances with due deference to the zoning entity's administrative expertise in interpreting its own regulations. *Saine v. Bexley Bd. of Zoning Appeals*, 10th Dist. No. 97APE06-820 (Nov. 25, 1997); *see also Glass City Academy, Inc. v. Toledo*, 179 Ohio App.3d 796, 2008-Ohio-6391, ¶ 18 ("An administrative agency's reasonable interpretation of local zoning codes is recognized as an area of administrative expertise"); *Dick v. Kelleys Island Bd. of Zoning*, 6th Dist. No. E-86-63, (June 19, 1987); *Elbert v. Bexley Planning Comm.*, 108 Ohio App.3d 59, 69 (10th Dist.1995) (Commission's interpretation of a zoning ordinance "reasonable and entitled to weight").

{¶14} We find that Bexley City Council's interpretation of B.C. 1224.03(b) is reasonable. The city did not "arbitrarily" limit the scope of proceedings, as claimed by appellants, but reasonably applied its ordinance to limit the discussion to matters raised in the application at issue. To accept appellants' interpretation would mean that each new application for a given property would require the city to serially revisit, and potentially revoke, all prior use and parking decisions made regarding the subject property pursuant to previous applications. The city has reasonably rejected this obstructive interpretation and interpreted the ordinance as requiring the commission to examine only evidence related to the proposed alterations set forth in the current application and consider the contested parking and access factors as unaffected by the façade renovations. The city, it should be noted, does not argue that the contested factors could *never* be implicated in a

subsequent application that affected parking or access, only that they are not affected here by the proposed alterations.

{¶15} We conclude that the court of common pleas did not err in upholding Bexley City Council's interpretation of the ordinance at issue. As a result, we find no error in the court's refusal to allow additional evidence on appeal. R.C. 2506.03 allows an appellant before the court of common pleas to introduce additional evidence under limited circumstances. The additional evidence proposed by appellant was in fact available from the record due to the proffer allowed before city council so that no additional submission before the court of common pleas was necessary. *See* R.C. 2506.03(2)(c). Appellants' three assignments of error are overruled.

{¶16} In accordance with the foregoing, we overrule appellants' three assignments of error and affirm the judgment of the Franklin County Court of Common Pleas.

Judgment affirmed.

DORRIAN and LUPER SCHUSTER, JJ., concur.

BROGAN, J., retired, of the Second Appellate District, assigned to active duty under authority of the Ohio Constitution, Article IV, Section 6(C).
