

DISTRICT OF COLUMBIA COURT OF APPEALS

Embassy Real Estate Holdings, LLC v. District of Columbia Mayor's Agent for Historic Preservation

944 A.2d 1036 (D.C. 2008) · No. 06-AA-1083 · Decided March 20, 2008

SUMMARY

The District of Columbia Court of Appeals reviewed a Mayor's Agent for Historic Preservation decision voiding construction permits for the former Italian Embassy after the property became the subject of a historic-landmark designation application and was subsequently designated. The court held that the Historic Landmark and Historic District Protection Act and implementing regulations authorized review of permit applications pending when the designation application was filed. It affirmed the decision, rejecting the petitioner's jurisdictional, laches, estoppel, substantial-evidence, and economic-hardship arguments.

CASE DETAILS

COURT	District of Columbia Court of Appeals
WRITING FOR THE COURT	Ruiz, Associate Judge; Reid, Associate Judge; Kern, Senior Judge
JURISDICTION	District of Columbia
DECIDED	March 20, 2008
DOCKET	06-AA-1083
DISPOSITION	other
PROCEDURAL POSTURE	Petition for judicial review of the Mayor's Agent for Historic Preservation's decision voiding construction permits and denying approval of the proposed development of a property designated as a historic landmark.
STANDARD OF REVIEW	Review is limited and narrow; the court upholds factual findings supported by substantial evidence in the record as a whole and legal conclusions that flow rationally from those findings. The agency's interpretation of the statutes and regulations it administers is sustained unless unreasonable.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Embassy Real Estate Holdings, LLC v. District of Columbia Mayor's Agent for Historic Preservation

TOPICS

judicial review of agency action

administrative law

municipal law

real estate

takings clause

PRACTICE AREAS

administrative law

historic preservation

municipal law

real estate

constitutional takings

QUESTIONS PRESENTED

1. Whether the Historic Landmark and Historic District Protection Act and its implementing regulations authorized review of permit applications that were filed before the historic-landmark designation application.
2. Whether laches or estoppel barred application of the Act or denial of the permits.
3. Whether the Mayor's Agent acted arbitrarily or without substantial evidence in finding that the project was not necessary in the public interest, lacked special merit, and was incompatible with the historic landmark.
4. Whether denial of the permits caused unreasonable economic hardship amounting to an unconstitutional taking.

HOLDINGS

1. The Historic Landmark and Historic District Protection Act applied to the pending permit applications because the property became protected by the Act when the landmark-designation application was officially filed, and the Historic Preservation Review Board made its designation decision within the applicable ninety-day period.
2. The Mayor's Agent properly denied the permits because the proposed demolition and construction were inconsistent with the purposes of the Act, the project was incompatible with the historic landmark, and the project did not qualify as one of special merit.
3. The petitioner failed to establish unreasonable economic hardship or a regulatory taking because the property retained reasonable economic uses, the proposed development remained potentially modifiable, and the petitioner's investment-backed expectations were not reasonable.

KEY QUOTATIONS

"At most, a property owner with pending permit applications will have to wait ninety days for a final decision on landmark designation." (944 A.2d at 1048)

"This court's review of the Mayor's Agent's decision is "limited and narrow."" (944 A.2d at 1050)

"There is no single "test," however, based on meeting each of the three factors; rather these factors describe general considerations that have been considered by the Court in answering the only question at issue in any takings case: whether the government has gone too far through its regulations and arrogated property to itself without the payment of just compensation to the owner." (944 A.2d at 1052)

FACTUAL BACKGROUND

Embassy Real Estate Holdings sought to convert the former Italian Embassy property in Washington, D.C., into a condominium development involving substantial demolition, renovation, and new construction. While construction permits were pending, the Historic Preservation Office filed an application to designate the property as an historic landmark; the property was subsequently designated, and the Historic Preservation Review Board found the proposed development inconsistent with historic-preservation objectives. The Mayor's Agent voided permits issued after the designation application and found that the project lacked special merit and that denial of the permits would not cause unreasonable economic hardship amounting to a taking.

PROCEDURAL HISTORY

The Historic Preservation Office applied to designate the former Italian Embassy property as an historic landmark while several construction permits were pending. The Historic Preservation Review Board designated the property and concluded that the proposed development was inconsistent with the Historic Landmark and Historic District Protection Act. The Mayor's Agent voided permits issued after the designation application and rejected petitioner's arguments concerning jurisdiction, laches, estoppel, special merit, and unreasonable economic hardship. The District of Columbia Court of Appeals denied the petition for review.

DISPOSITION

other

CASES CITED

- District of Columbia v. Place, 892 A.2d 1108, 1113 (D.C. 2006)
- D.C. Preservation League v. D.C. Department of Consumer & Regulatory Affairs, 711 A.2d 1273, 1275 (D.C. 1998)
- D.C. Preservation League v. D.C. Department of Consumer & Regulatory Affairs, 646 A.2d 984, 990 (D.C. 1994)
- Metropolitan Baptist Church v. D.C. Department of Consumer & Regulatory Affairs, 718 A.2d 119, 123-24 (D.C. 1998)
- Office of Personnel Management v. Richmond, 496 U.S. 414, 419-24 (1990)
- Rann v. Chao, 346 F.3d 192, 197 (D.C. Cir. 2003)
- Wieck v. D.C. Board of Zoning Adjustment, 383 A.2d 7, 10-12 (D.C. 1978)
- Reneau v. District of Columbia, 676 A.2d 913, 917 (D.C. 1996)
- Kalorama Heights Ltd. Partnership v. D.C. Department of Consumer & Regulatory Affairs, 655 A.2d 865, 868, 871, 873 (D.C. 1995)
- Nova University v. Educational Institution Licensure Commission, 483 A.2d 1172, 1190 (D.C. 1984)
- Hotel Tabard Inn v. D.C. Department of Consumer & Regulatory Affairs, 747 A.2d 1168, 1175 (D.C. 2000)
- Penn Central Transportation Co. v. New York City, 438 U.S. 104, 124, 130-31, 136 (1978)
- Pennsylvania Coal Co. v. Mahon, 260 U.S. 393, 412-15 (1922)
- Goldblatt v. Hempstead, 369 U.S. 590, 594 (1962)

- 900 G Street Associates v. Department of Housing & Community Development, 430 A.2d 1387, 1390-92 (D.C. 1981)
- Donnelly Associates Ltd. Partnership v. D.C. Historic Preservation Review Board, 520 A.2d 270, 280 (D.C. 1987)

Retrieved from lawtools.ai · <https://lawtools.ai/cases/state/district-of-columbia-district-of-columbia-court-of-appeals/2008/embassy-real-estate-holdings-llc-v-district-of-columbia-2u1guzjg>