SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

Civil Division

West District, Santa Monica Courthouse, Department M

21SMCP00655 July 26, 2022
JASON RIDDICK, et al. vs CITY OF MALIBU, et al. 2:26 PM

Judge: Honorable Mark A. Young
Judicial Assistant: K. Metoyer
Courtroom Assistant: None

CSR: None
ERM: None
Deputy Sheriff: None

APPEARANCES:

For Plaintiff(s): No Appearances

For Defendant(s): No Appearances

NATURE OF PROCEEDINGS: Court Order

The Court, having taken the matter under submission on 7/25/22, now rules as follows:

FINAL RULING

LEGAL STANDARD

A writ of mandate lies "for the purpose of inquiring into the validity of any final administrative order or decision made as the result of a proceeding in which by law a hearing is required to be given, evidence is required to be taken, and discretion in the determination of facts is vested in the inferior tribunal, corporation, board, or officer[.]" (CCP, § 1094.5(a).) Pertinent questions include "whether the respondent has proceeded without, or in excess of, jurisdiction; whether there was a fair trial; and whether there was any prejudicial abuse of discretion. Abuse of discretion is established if the respondent has not proceeded in the manner required by law, the order or decision is not supported by the findings, or the findings are not supported by the evidence." (CCP, § 1094.5(b).)

When not involving a fundamental vested right, the Court's inquiry into abuse of discretion revolves around whether the findings are supported by substantial evidence in the light of the whole record. (CCP, § 1094.5(c); see Alpha Nu Assn. of Theta XI v. University of Southern California (2021) 62 Cal.App.5th 383, 408-409 ["review is limited to examining the administrative record to determine whether the adjudicatory decision and its findings are supported by substantial evidence in light of the whole record"].) Substantial evidence may be described as relevant evidence that a reasonable mind might accept as adequate to support a conclusion (California Youth Authority v. State Personnel Board (2002) 104 Cal.App.4th 575, 584-85), or evidence of ponderable legal significance which is reasonable in nature, credible and of solid value. (Mohilef v. Janovici (1996) 51 Cal.App.4th 267, 305 fn. 28.) In other words, the Court "may reverse an agency's decision only if, based on the evidence before the agency, a

reasonable person could not reach the conclusion reached by the agency." (Sierra Club v. California Coastal Com. (1993) 12 Cal.App.4th 602, 610.)

The petitioner bears a high burden of proof to demonstrate, by citation to the administrative record, that the evidence supports their position. (Strumsky v. San Diego County Employees Retirement Assn. (1974) 11 Cal.3d 28, 32; see LASC Local Rule 3.231(i).) "A trial court must afford a strong presumption of correctness concerning the administrative findings, and the party challenging the administrative decision bears the burden of convincing the court that the administrative findings are" not supported by substantial evidence. (Fukuda v. City of Angels (1999) 20 Cal. 4th 805, 817; see also Evid. Code, § 664.)

EVIDENTIARY ISSUES

Riddicks' request for judicial notice is GRANTED.

The City's request for judicial notice is GRANTED.

DISCUSSION

Petitioners presents two issues for review. First, the denial of Petitioners' proposed Project and second, the denial of their accommodation request. Petitioners argue that the City does not have substantial evidence to support the accommodation denial, and that the project is exempt from the City's CDP requirements.

Underlying Facts

On July 10, 2020, the Riddicks submitted their ADU application to the City. (AR 196668.) The City processed the application as a CDP. (AR 1967.) The City sent a "letter of project incompleteness" and explained that the project could not obtain a CDP because it did not comply with the LCP's "setbacks and maximum allowed Total Development Square Footage (TDSF) area." (Pet. Ex. D; AR 2125–2128.)

Mr. Riddick responded that the project should not be required to obtain a CDP as an initial matter because it was exempt under the LCP, and he included a copy of an April 2020 memorandum which he argued bolstered his interpretation of the applicable law. (AR 2135-2146.) After some back-and-forth between the parties, the Riddicks submitted a letter formally requesting a RRA under Malibu LIP section 13.30. (AR 2304.)

At its hearing on June 7, 2021, the Planning Commission adopted Resolution No. 21-51, denying both the CDP and the RRA. (AR 2713.) The Commission denied the project because it could not be configured to comply with the LCP's TDSF setback, and total impermeable lot coverage (TILC) requirements. (AR 1475.) The Commission denied the RRA because it found that i) housing could be met through reconfiguration of existing floor area, ii) the reasonable accommodation would require ongoing monitoring and administrative costs to determine that the ADU is occupied by a disabled person, and iii) it would set a precedent for exceeding the TDSF via applications for ADUs even though such exceedance was not required to accommodate the disabled person. (AR 1474-1480; see LIP §§ 3.6(F), (H) & (I).)

The Riddicks appealed the decision, which was denied by Resolution No. 21-47. (AR 11, 1205, 2715–2718.) Councilmembers suggested that the true reason for denial was not the ADU but the compensatory additions to the primary residence. (AR 3598–3600.) The Riddicks then filed modified plans, so that no additional square footage would be added to the main residence. (AR 3148, 3153.) The Riddicks requested ministerial review of this new application. (AR 3312, 3325.) On October 25, 2021, the City indicated that it would still require a CDP and would not review the application. (AR 3455.)

Petitioners also notes that Ms. Riddick's mother, Renee Sperling, has a need for the ADU. (Pet. ¶ 26.) Ms. Sperling is elderly and suffers from numerous ailments, including glaucoma, arthritis, asthma, and osteoporosis. (AR 551, 3593–94). Ms. Sperling is disabled and severely immunocompromised, where a common cold would risk death. (AR 551.)

Analysis

1. Were Petitioners required to Obtain a CDP under the LIP

Petitioners argue that the City's denial presents a host of analytical errors, making numerous findings which cannot be supported by the evidence, and entering numerous conclusions which cannot be supported by its findings. Principally, Petitioners argue that their project was exempt from the requirement to obtain a CDP and that the City's interpretation otherwise is unreasonable. (LIP § 13.4.1)

The Coastal Act, Pub. Res. Code section 3000, et seq., generally requires local governments to adopt an LCP, typically comprised of both a Land Use Plan (LUP) and a Local Implementation Plan (LIP). (Security Nat'l Guaranty, Inc. v. Cal. Coastal Comm'n (2008) 159 Cal.App.4th 402, 408 n.2.) Malibu's LIP § 13.4.1 provides for certain exemptions to improvements to "existing single-family residences[.]" This is specifically defined as "all fixtures and structures directly

attached to the residence and those structures normally associated with a single-family residence, such as garages, swimming pools, fences, storage sheds and landscaping but specifically not including guest houses or accessory self-contained residential units." (LIP §13.4.1.A; see also (Pub. Res. Code § 30610 & CCR tit. 14, § 13250(a)(1)-(3).) The LIP also provides for exceptions to the above exemptions where there is a risk of adverse environmental impact. (LIP § 13.4.1.B.1-6.)

Petitioners argue that documents demonstrate "the construction or conversion of an [ADU] contained within or directly attached to an existing single-family residence" would generally be exempt as an improvement to a single-family residence. (AR 3553, 3560–61). By contrast, "[g]uest houses and 'self-contained residential units,' i.e. detached residential units" are not exempt (AR 3553, 3560–61). Plaintiff relies on a distinction between detached and attached residential units. Thus, Petitioners largely present an issue of ordinance interpretation. The standard for judicial review of agency interpretation of law is the independent judgment of the court, giving deference to the determination of the agency appropriate to the circumstances of the agency action.

Generally, the interpretation of statutes and ordinances presents a question of law, which is ultimately a judicial function. (MHC Operating Limited Partnership v. City of San Jose (2003) 106 Cal.App.4th 204, 217.) "Even so, the hearing officer's interpretation of the Ordinance is entitled to deference. The courts, in exercising independent judgment, must give appropriate deference to the agency's interpretation." (Id., quotations omitted.) The agency's "interpretation of an ordinance's implementation guidelines is given considerable deference and must be upheld absent evidence the interpretation lacks a reasonable foundation. The burden is on the appellant to prove the board's decision is neither reasonable nor lawful." (Id.)

"An agency interpretation of the meaning and legal effect of a statute is entitled to consideration and respect by the courts; however, ... the binding power of an agency's interpretation of a statute or regulation is contextual: Its power to persuade is both circumstantial and dependent on the presence or absence of factors that support the merit of the interpretation." (Yamaha Corp. of America v. State Bd. of Equalization (1998) 19 Cal.4th 1, 7.) "Courts must, in short, independently judge the text of the statute, taking into account and respecting the agency's interpretation of its meaning, of course, whether embodied in a formal rule or less formal representation. Where the meaning and legal effect of a statute is the issue, an agency's interpretation is one among several tools available to the court. Depending on the context, it may be helpful, enlightening, even convincing. It may sometimes be of little worth." (Id., at 7-8.) "[B]ecause the agency will often be interpreting a statute within its administrative jurisdiction, it may possess special familiarity with satellite legal and regulatory issues. It is this 'expertise,'

expressed as an interpretation ..., that is the source of the presumptive value of the agency's views." (Id. at 11.) That said, because an interpretation is an agency's legal opinion, it commands a commensurably lesser degree of judicial deference. (Id.) For instance, when an agency did not have a longstanding interpretation of a statute and did not adopted a formal regulation interpreting the statute, courts have simply disregarded the opinion offered by the agency. (Interinsurance Exchange of Automobile Club v. Superior Court, (2007) 148 Cal.App.4th 1218, 1235-36; State of California ex rel. Nee v. Unumprovident Corp. (2006) 140 Cal.App.4th 442, 451.) Furthermore, an agency does not have the authority to alter or amend a statute or enlarge or impair its scope. (Morris v. Williams (1967) 67 Cal.2d 733, 748.)

In this case, the proper interpretation of the LIP is a question of law for the Court's independent determination. The Court is certainly not bound by the City's (or Commission's) interpretation. Furthermore, the City's interpretation is not a long-standing opinion on this issue. In fact, the City (and the Commission) has admittedly reversed course with this decision. These circumstances would weigh against finding deference.

Notably, the Riddicks raised certain Coastal Commission guidance confirming their position that an attached ADU is exempt from the CDP requirement, and specifically interpreting the terms "guest house or accessory self-contained unit" as referring only to detached structures. (AR 1111, 1213–14, 1624, 1496, 2163–64, 2306) Petitioners cite evidence that from April 2017 to April 2020, the Coastal Commission issued three guidance memoranda intended to help local governments implement state ADU law in the coastal zone. With specific regard to the CDP exemptions, the memos state that "the construction or conversion of an [ADU] contained within or directly attached to an existing single-family residence" would generally be exempt as an improvement to a single-family residence. (AR 3553, 3560–61.) In opposition, the City argues that it and the Commission "reevaluated its position and found that 'the creation of a selfcontained living unit, in the form of an ADU, is not an 'improvement' to an existing SFR. Rather, it is the creation of a new residence. This is true regardless of whether the new ADU is attached to the existing SFR or is in a detached structure on the same property.'" (AR 3563, 3567.)

The Court concludes that the plain language of the statute fits Petitioners' interpretation far better than the City's interpretation. The LIP clearly creates two categories of exemptions: "[1] all fixtures and structures directly attached to the residence and [2] those structures normally associated with a single family residence, such as garages, swimming pools, fences, storage sheds and landscaping but specifically not including guest houses or accessory self-contained residential units." (LIP §13.4.1.A, emphasis added.) The list of examples, including the exception for guest houses/ADUs, only relates to the second category of unattached structures.

This interpretation is bolstered by the virtually identical provision contained in the Coastal Act, which divided the two categories of exemptions into two separate subdivisions, with the exclusion only applying to the second category. (Cal. Code Regs., Tit. 14, § 13250(a)(1)–(2).) To adopt the City's interpretation would require the Court to ignore the plain language of the LIP, including the fact that "all" "attached" "structures" are exempted. Based on the plain language of the statute, Petitioners' proposed Project would be exempted.

2. Has the City adopted an ordinance governing accessory dwelling units so that Government Code section 65852.2(b) would not apply.

In their papers and at oral argument, Petitioner contended that if the attached ADUs are exempt under 13.14.1 from needing commission approval, then the City has not adopted an ordinance governing ADUs and Government Code section 65852.2(b) would apply. As an initial matter, whether "attached structures" are exempt from the CDP would not change whether the City adopted an ordinance pursuant to section 65852.2(a). The City, however, does not argue that Malibu has adopted such an ordinance, but that the CDP requirement alone prevents the application of section 65852.2. Malibu concedes that "It is only if a CDP is not required that a duty to process an ADU application could apply." (Citing Gov. Code section 65852.2(l) ["Nothing in this section shall be construed to supersede or in any way alter or lessen the effect or application of the California Coastal Act"].) Notably, section 65852.2 (a)(3) would also require the same 60-day, non-discretionary, ministerial review. As discussed, the project is for an attached structure to a single-family residence, and thus exempt under the LIP. Since the CDP does not apply, the proper procedure would be a ministerial review.

3. Does Section 13.13.1 requires an administrative CDP (by the planning manager) "always" for a proposed second dwelling unit.

At argument, the parties also discussed the impact of LIP 13.13.1 on the potential requirement for an administrative CDP. The same "deference" standard would apply as to this statutory interpretation. (Yamaha Corp. of America v. State Bd. of Equalization (1998) 19 Cal.4th 1, 7-8.) That said, the Court cannot abdicate its duty to resolve a question of law concerning the proper interpretation of a statute. (Id.)

Here, the Court must determine the section's meaning principally by its plain text, and in context of the entire LIP. Turning to the text, Chapter 13 generally pertains to CDPs. Section 13.3 generally requires people to obtain CDPs for development in the coastal zone. Section 13.4 provides for various exemptions "from the requirement to obtain a Coastal Development Permit", including all structures attached to single-family homes. Section 13.7 provides who may

take action on CPDs, indicating that administrative permits be decided by the Planning Manager. Section 13.13 provides rules on such administrative permits, specifically setting out the "applicability" of ACDPs in section 13.13.1. Section 13.13.1.B provides that "Notwithstanding any other provisions of the LCP, attached or detached second dwelling units shall be processed as administrative permits[.]"

The Court recognizes that taken in context, there are two potential interpretations of this section. The City's offered interpretation is that this section would always require a CDP, specifically an "ACDP" per section 13.13 for proposed second dwelling units. Alternatively, Petitioner's interpretation is that this section merely requires that permits for an ADU be processed as an ACDP, but would not provide an exception from the previously stated exemptions.

Here, the City's interpretation has some textual support, since the section does state that ADUs "shall be processed as" ACDPs. There are, however, flaws with this conclusion. First, it requires the Court to read a contradiction into chapter 13: i) All attached structures are exempt from obtaining a CDP under section 13.4; versus ii) All ADUs, whether attached or not, must obtain a CDP (specifically, an ACDP) under section 13.13. It is difficult to harmonize the conflicting provisions under this construction. The City argues that the "notwithstanding" provision in section 13.13 gives that section priority over the rest of the chapter, and concludes that ADUs are never exempt—no matter the application of section 13.4. This statutory construction, however, would not give full meaning to terms found in section 13.4.1, and in fact, render the exemptions noted there meaningless. Section 13.13.1.B's specific use of the terms "process as" suggests that the section is only referring to which process to apply when dealing with ADUs (i.e., the ACPD process), rather than stating that all ADUs require CDPs in all instances even when exempted.

This interpretation is consistent with the context and content of the other sections of the LIP. Petitioners' interpretation gives meaning to the text of both sections 13.4 and 13.13 without the contradiction present in the City's interpretation. The Court notes that 13.13.1 provides the "Applicability" of "Administrative Permits," which reinforces this interpretation. Further, this interpretation is consistent with section 13.10, which provides for the Planning Manager to "first determine whether the proposed development is:

1. Subject to the requirement for a Coastal Development Permit or permit amendment from the Coastal Commission;
2. Appealable to the Coastal Commission consistent with Chapter 2 of the Malibu LIP (Definitions);
3. Exempt from the Coastal Development Permit requirements as defined in Section 13.4 of the Malibu LIP;

4. Subject to the requirement of securing a Coastal Development Permit to be issued by the City. (Ord. 303 § 3, 2007).

This section only instructs the Planning Manager to determine the exemptions from section 13.4, without mention of ADUs or section 13.13's purported exception to the exemptions. The section otherwise does not imply that there would be an additional and separate analysis for ADUs under section 13.13. The legislative history supports this interpretation. The Coastal Commission described the language in Section 13.13.1.B as "intended to provide an expedited process for the approval of second units that is required pursuant to AB 1866," which was "a procedural change within the coastal zone, i.e., the elimination of local public hearings for residential second units in residential zone districts . . . In this case, all of the policies and provisions of the LCP will still be applied to second unit development, only the permit process will be altered." (Pet. RJN, Ex. A, at p. 26.) In conclusion, the Court agrees with Petitioners' interpretation, as the City's interpretation is unreasonable in light of the above identified issues. Thus, Petitioner's remedy is not an administrative CDP handled by the planning manager.

4. Relief

With respect to relief, Petitioners requested in paragraph 2 of the Prayer for Relief that the Court compel respondents to "ministerially approve" the revised ADU under section 65852.2. However, the court cannot grant the requested relief to compel approval. The Record does not show that the City improperly denied the application on a ministerial basis. Instead, the City indicated would not review the application at all. (AR 3455.) Petitioners only justify that the City must decide the application within 60 days from the date it receives a completed application pursuant to Government Code section 65852.2. The Court does not order the City to grant or approve the application since the only prior determination was that the application required a CDP.

5. RRA

Petitioners also argue that the RRA should have been granted. Petitioners contend that Ms. Sperling has a need for a self-contained unit. To grant the RRA, the City needed to find all the following:

1) The housing…will be occupied by a person with a disability…(2) The approved reasonable accommodation is necessary to make housing available to a person with a disability…(3) The approved reasonable accommodation would not impose an undue financial or administrative burden on the City, (4) approved reasonable accommodation would not require a fundamental

alteration in the nature of the LCP, (5) The approved reasonable accommodation would not adversely impact coastal resources, and (6) The project that is the subject of the approved reasonable accommodation conforms to the applicable provisions of the LCP and the applicable provisions of this section, with the exception of the provision(s) for which the reasonable accommodation is granted.

(LIP §13.30(E).)

Substantial evidence supports the City's finding that not all of the elements were met. Further, unlike the exemption issue above, the Court finds that increased deference for this decision of fact is appropriate. Specifically, the Court agrees that substantial evidence exists in support of the City's finding that the RRA was not necessary to make housing available to Ms. Sperling, that the RRA would require a fundamental alteration in the nature of the LCP, and the project did not otherwise conform to the applicable provisions of the LCP. (See AR 3-5.) For instance, the City reasonably concluded that the expansion of the master bedroom and bath was not necessary to accommodate a disabled individual. Moreover, the City found the RRA not "necessary" because other space in the house could have been converted to provide housing.

6. Housing Accountability Act

The Project is not a "housing development project" within the meaning of the Housing Accountability Act (HAA). A "housing development project" is defined as a use consisting of "residential units only." (Gov. Code §65589.5(h)(2).) No case has interpreted "residential units only" to mean only one unit. Because the term "units" is plural, a development has to consist of more than one unit to qualify. The Department of Housing and Community Development's own guidance provides that a project has to consist of more than one unit to qualify. (RJN Ex. D.)

END OF FINAL RULING

Clerk to give notice.

Certificate of Mailing is attached.

Kiren Mathews

From: Brian T. Hodges
Sent: Wednesday, July 27, 2022 11:06 AM
To: Incoming Lit
Subject: Fw: Riddick V. Malibu: Final Order
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Cc: elizabethriddick@hotmail.com <elizabethriddick@hotmail.com>
Subject: Riddick V. Malibu: Final Order

Hot off the press- let us discuss