



CITY OF DALLAS

September 9, 2022

**Via Certified Mail: 7013 3020 0001 1420 9014**

Annemarie Bristow  
802 Haines Avenue  
Dallas, TX 75208

RE: Appeal of Certificate of Demolition: Hearing – October 6, 2022  
338 S Fleming Ave., Case No. CD212-014(MGM)

Dear Annemarie Bristow:

We have received your correspondence appealing the Landmark Commission's denial of a Certificate of Demolition application for 338 S. Fleming Avenue. Please be advised that the City Plan Commission hearing for **this appeal is scheduled for Thursday, October 6, 2022.** The City Plan Commission meeting will be held by videoconference and in Council Chambers, 6<sup>th</sup> Floor at City Hall. Individuals who wish to speak in accordance with the City Plan Commission Rules of Procedure, should contact the Department of Planning and Urban Design at 214-670-4209 by 5:00 p.m. on Tuesday, October 4, 2022 or register online at: <https://dallascityhall.com/government/meetings/Pages/city-plan-commission.aspx>. This link will be available on Friday, September 30<sup>th</sup> and will close at 5p Tuesday, October 4<sup>th</sup>. You may also register to speak in person the day of the appeal hearing.

[The public is encouraged to attend the meeting virtually; however, City Hall is available for those wishing to attend the meeting in person following all current pandemic-related public health protocols.](#)

Public Affairs and Outreach will also stream the public hearing on Spectrum Cable Channel 96 or Channel 99 and [bit.ly/cityofdallastv](http://bit.ly/cityofdallastv) or [YouTube.com/CityofDallasCityHall](https://www.youtube.com/CityofDallasCityHall).

The appeal of the decision of the Landmark Commission regarding the application for a Certificate of Demolition is a quasi-judicial action. **No communication with City Plan Commission members may occur outside the hearing of October 6, 2022.**

The Dallas Development Code, Section 51A-4.501 provides the procedures applicable to a Certificate of Demolition appeal. For your convenience, I have enclosed a copy of the ordinance containing the applicable section and a copy of the Appeal Procedures.

Annemarie Bristow  
802 Haines Avenue  
Dallas, TX 75208

The Landmark Commission record includes all documents related to your specific case. Should you wish to provide the City Plan Commission a brief on the matter, please submit a copy to me at Dallas City Hall, 1500 Marilla Street, Room 5DN, Dallas, TX 75201 or to [phyllis.hill@dallas.gov](mailto:phyllis.hill@dallas.gov) by **5:00 p.m. Thursday, September 15, 2022**. I will distribute your brief to the City Plan Commission. I will also send you a copy of the brief prepared by the City Attorney's office.

Please contact me through email at [Phyllis.hill@dallas.gov](mailto:Phyllis.hill@dallas.gov) if there are any questions regarding the deadline dates. You are encouraged to contact Assistant City Attorney Daniel Moore at 214-670-7027 if you have any questions regarding the format of the City Plan Commission hearing or other related matters.

Respectfully,

Elaine Hill  
Landmark Commission  
Coordinator

cc: Murray G. Miller, Director, Office of Historic Preservation  
Stacy Rodriguez, Executive Assistant City Attorney  
Daniel Moore, Assistant City Attorney  
Theresa Pham, Assistant City Attorney  
Bertram Vandenberg, Assistant City Attorney

# **THE RECORD**

338 S Fleming Avenue  
**APPEAL**  
CD212-014(MGM)

City Plan Commission  
Hearing  
10/06/2022

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338 S Fleming Avenue CD212-014(MGM)

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# SECTION 1

Certificate of Demolition

338 S Fleming Avenue  
CD212-014(MGM)



# SECTION 2

## Landmark Commission Agenda

August 1, 2022

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Landmark Commission Agenda  
Monday, August 1, 2022

existing structures in Tract A & Tract C; City Code Section 51A-4.501(g)(6)(C)(ii) for noncontributing structures; and the Secretary of the Interior's Standards.

**Task Force Recommendation:**

That the request for a Certificate of Appropriateness to construct addition to previously approved new construction be denied without prejudice. Proposed building design is not compatible with the Harwood Street Historic District or the design criteria of the Harwood Street Historic District Ordinance. The following items are a few of, but not limited to, the examples of the incompatibility of the proposed design with the historic district ordinance: 1. The ground floor glass coverage does not meet the requirements of the ordinance sections 4.7, 4.8 and 4.10; 2. The overall height of the building is not compatible with the Historic District; 3. The design of the building exterior is not compatible with the historic district; 4. There is no expressed entrance to the building which is called for in section 4.1 of the ordinance; 5. The facade color scheme is not compatible with the historic district.

*After the Task Force meeting, the applicant submitted revisions and clarifications in response to comments from Task Force and Staff.*

**Request:**

A Certificate for Demolition/Removal to demolish a noncontributing structure using the standard 'replace with more appropriate/compatible structure'.

**Applicant:** Bristow, Annemarie

**Application Filed:** 7/7/22

**Staff Recommendation:**

That the request for a Certificate for Demolition/Removal to demolish a noncontributing structure using the standard 'replace with more appropriate/compatible structure' be denied without prejudice with finding the that the proposed demolition would not satisfy the standard in City Code Section 51A-4.501(h)(4)(A)(i).

**Task Force Recommendation:**

No quorum – comments only. Task Force is not supportive of review proceeding until entry access is granted to property.

**3. 338 S FLEMING AVE**

Tenth Street Neighborhood Historic District

CA212-014(MGM)

Murray Miller



# SECTION 3

CA212-014(MGM)  
Docket Material



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**LANDMARK COMMISSION****AUGUST 1, 2022**

FILE NUMBER: CD212-014(MGM)  
LOCATION: 338 S Fleming St  
STRUCTURE: Main & Noncontributing  
COUNCIL DISTRICT: 4  
ZONING: PD-388

PLANNER: Murray G. Miller  
DATE FILED: July 7, 2022  
DISTRICT: Tenth Street  
MAPSCO: 55-E  
CENSUS TRACT: 0041.00

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**APPLICANT:** Annemarie Bristow

**OWNER:** Annemarie Bristow

**REQUEST:**

A Certificate for Demolition/Removal to demolish a noncontributing structure using the standard 'replace with more appropriate/compatible structure.'

**BACKGROUND / HISTORY:**

On December 6, 2021, a request for a Certificate of Appropriateness to construct a single-story primary structure (CA212-066(MP)) was considered by the Landmark Commission. The request was denied without prejudice, as it would have a negative effect on the district, because the existing building is potentially a contributing structure currently called a non-contributing structure.

On December 6, 2021, a request for a Certificate for Demolition/Removal to demolish a single-story primary structure (CD212-006(MP)) using the standard 'replace with more appropriate/compatible structure' was considered by the Landmark Commission. The request was denied without prejudice, with the finding of fact that a determination of contributing status has not yet been determined and such an assessment would need to be conducted with the overview.

The applicant subsequently appealed the Landmark Commission's denial of a Certificate of Demolition application for 338 Fleming Avenue. The appeal hearing was scheduled to occur in March 2022, however, the applicant withdrew the appeal prior to the hearing.

On June 6, 2022, a request for a certificate of Appropriateness to construct a single-story primary structure was considered by the Landmark Commission. The request (CA212-367(MGM)) was approved subject to conditions.

The main structure is listed as noncontributing to the Tenth Street Historic District.

The base zoning, PD 388 (Tract 1) sets out the following permitted uses for the subject property:

**SEC. 51P-388.106. MAIN USES PERMITTED.**

(a) Main uses permitted on Tract I.

- Duplex.
- Single family.
- Cemetery or mausoleum.
- Child-care facility. [SUP]
- Church.
- Foster home. [SUP]
- Handicapped group dwelling unit. [SUP required if spacing component of Section 51A-4.209(3.1) is not met.]
- Public or private school. [SUP]

**PROJECT DESCRIPTION:**

The proposed work consists of the demolition of a ca. 1920-1921 primary structure that is listed as being noncontributing.

**RELEVANT DALLAS CITY CODE:**

**Section 51A-4.501. Historic Overlay District**

(h) Certificate for demolition or removal.

(2) Application.

- (B) An indication that the demolition or removal is sought for one or more of the following reasons:
  - (i) To replace the structure with a new structure that is more appropriate and compatible with the historic overlay district.

(4) Standard for approval The landmark commission shall deny the application unless it makes the following findings:

- (A) The landmark commission must deny an application to replace a structure with a new structure unless it finds that:
  - (i) **the new structure is more appropriate and compatible with the historic overlay district than the structure to be demolished or removed; and**

(ii) The landmark commission must first approve the predesignation certificate of appropriateness or certificate of appropriateness for the proposed new structure and the guarantee agreement to construct the new structure before it may consider the application to demolish or remove.

## **ANALYSIS:**

### Contributing Status

From a preservation perspective, it may not be possible to replace the existing structure at 338 S Fleming Avenue with a more appropriate and compatible new structure because the existing structure adds historic value to the district, whereas a new structure would not add historic value. A commonly accepted definition of a “contributing property” is one that “adds historic value to a historic district.”

For example:

Texas Administrative Code, Title 13, Part 2, Chapter 13, Rule §13.3, (f)

The Texas Administrative Code requires applicants to request that the Texas Historical Commission determine whether a property contributes to a historic district by applying the following standards:

- (1) A property contributing to the historic significance of a district is one which by location, design, setting, materials, workmanship, feeling, and association adds to the district's sense of time and place and historical development.
- (2) A property does not contribute to the historic significance of a district if it does not add to the district's sense of time and place and historical development, or if its location, design, setting materials, workmanship, feeling, and association have been so altered or have so deteriorated that the overall integrity of the building has been irretrievably lost.
- (3) Generally, buildings that have been built within the past 50 years shall not be considered to contribute to the significance of a district unless a strong justification concerning their historical or architectural merit is given or the historical attributes of the district are considered to be less than 50 years old at the date of application.
- (4) Certification of significance will be made on the basis of the appearance and condition of the property before beginning the rehabilitation work.
- (5) If a non-historic surface material obscures a building's façade, it may be necessary for the owner to remove a portion of the surface material so that a determination of significance can be made. After the material has been removed, if the obscured façade has retained substantial historic integrity

and the property otherwise contributes to the significance of the historic district, it will be considered eligible to be a certified historic structure.

A structure that was “listed” as being non-contributing in 1994 is not inherently an inaccurate reflection of its historic status today. A structure that is “deemed” to be non-contributing after a recent evaluation is considered more relevant. If a structure is deemed to be non-contributing based on a current evaluation that takes into account aspects of significance and integrity, then its demolition would not have an adverse effect on the historic character and integrity of the district because such a determination would conclude that the property does not add historic value.

It has been suggested that the existing structure is non-contributing because it was determined to be non-contributing in the HHM Survey of 1994. Surveys are not intended to be finite, rather, it is best practice that they be updated every five years or so or as conditions change. This means that the subject property could have been re-evaluated in 1999, 2004, 2009, 2014, and 2019, or as conditions changed. That a property has never been re-evaluated since 1994 is perhaps one key indicator that a re-evaluation having regard to the Seven Aspects of Integrity is appropriate. Reliance on a 1994 evaluation as a measure of whether a structure contributes to a district in 2022 would be inconsistent to best preservation practice.

Example Illustrating the Importance of Evaluating the Contributing Status of a Property

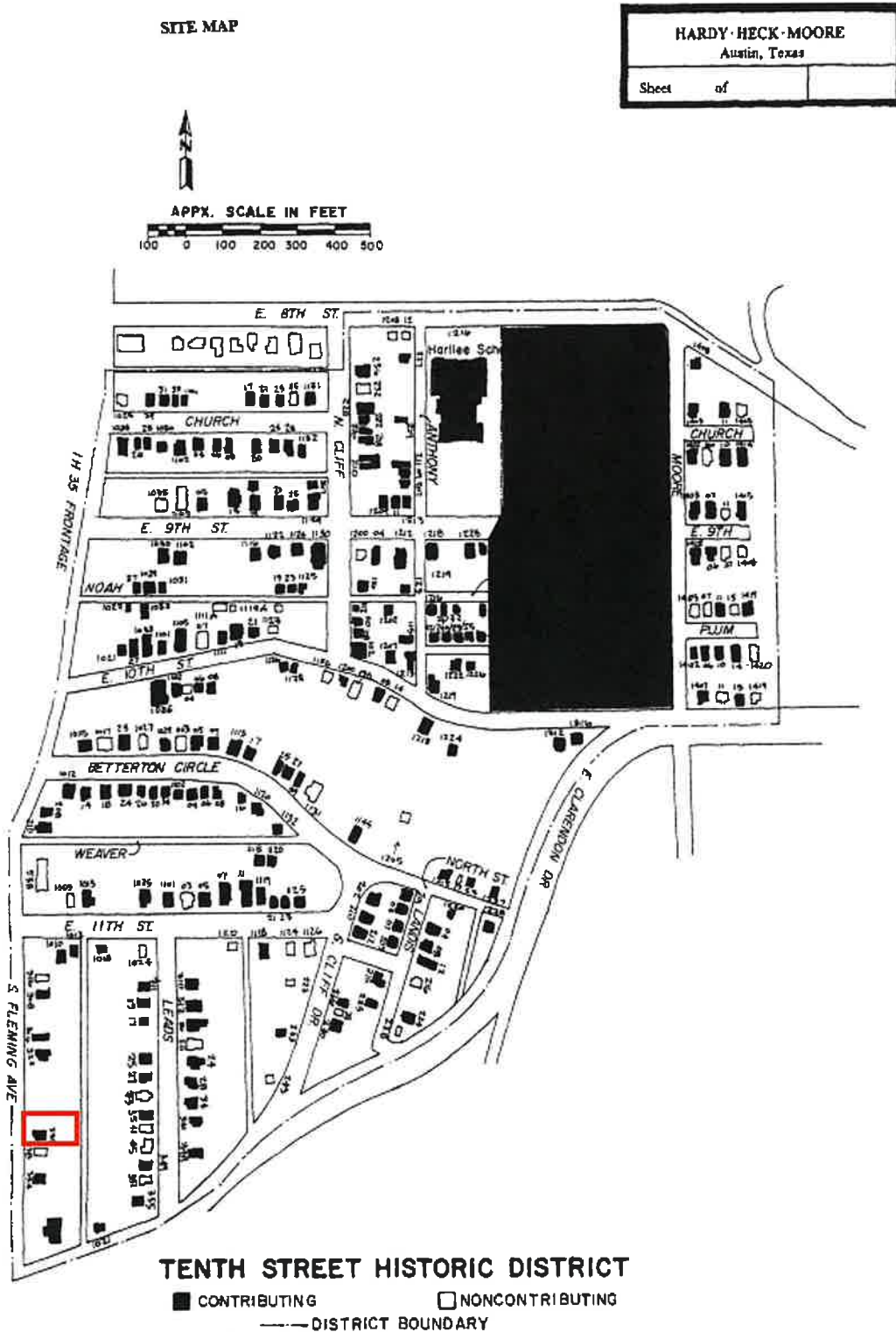


Figure 1 – 334 S Fleming, highlighted on the above map, shows the property just north of the subject property as a “contributing” property, according to the 1994 Hardy Heck Moore survey



Figure 2 – 334 S Fleming as it appears in July 2022, is “listed” as a contributing property in the 1994 Hardy Heck Moore survey

Figures 1 and 2 constitute just one example, where the 1994 survey does not reflect current conditions and where re-evaluation is a key method for gaining an understanding of whether properties contribute to the character and appearance of a district. As a corollary, to imply that since the 1994 survey listed the property at 334 S Fleming Avenue as contributing and that since its status has not been questioned previously as evidence that the property remains contributing would obviate the need for an evaluation of existing conditions and it would be inconsistent with best preservation practice. The same applies to the subject property at 338 S Fleming, where it has been suggested that it must be non-contributing in 2022 because it was listed as such in 1994.

When this matter is explored further, it will become evident that a number of the structures “listed” in the 1994 survey as contributing or non-contributing may not even exist today, which means a re-evaluation is necessary to understand the current ability of a property to contribute to the significance of the district. In addition, properties initially listed as contributing may have been significantly altered or they may show signs of extensive deterioration. Even the most significant landmarks undergo alteration including inappropriate alteration – therefore, to imply that because a property is not in its original condition disqualifies it as a contributing property avoids the need for a preservation-based evaluation and would therefore not be consistent with best preservation practice.

In this regard, consider:

- a. properties that were deemed non-contributing because they may not have been eligible for evaluation, however, twenty-eight years later, they may be eligible for evaluation.
- b. properties that may have been deemed non-contributing as part of a windshield survey in 1994 that might be considered contributing in 2022, having regard to significance and the Seven Aspects of Integrity<sup>1</sup>.
- c. that most historic properties have been altered, including contributing properties. Many contributing properties have been neglected or used for different purposes, which are matters that do not necessarily impact whether a property is considered contributing or non-contributing, however, an understanding of significance and an evaluation of integrity would be relevant.
- d. that many contributing structures show signs of deterioration or damage and are deemed unsafe. These matters do not necessarily impact whether a property is considered contributing or non-contributing, however, an understanding of significance and an evaluation of integrity would be relevant.
- e. that an interior addition within the porch space, boarding up the porch, and covering over broken windows are matters that do not necessarily impact whether a property is considered contributing or non-contributing and are typically reversible interventions that do not have historic value, however, an understanding of significance and an evaluation of integrity would be relevant.

### **UNDERSTANDING SIGNIFICANCE**

The Tenth Street Historic District includes modestly scaled residences that may have little stylistic ornamentation; nevertheless, these vernacular buildings provide a tangible link to a significant, yet often overlooked part of Dallas' past. Indeed, few historic African American neighborhoods survive in Dallas, and those that do often lack the integrity evident in the Tenth Street Historic District. Many of the buildings have experienced some deterioration but retain much of their historic character.

The district remains one of the earliest settlement areas for African Americans in Dallas. The period of significance extends from its platting in 1890 to 1944, the fifty-year cut off at the time of nomination. The district retains sufficient integrity and associations as an important African American enclave of Oak Cliff.

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<sup>1</sup> U.S. Department of the Interior, National Park Service, National Register Bulletin, "How to Evaluate the Integrity of a Property". Within the concept of integrity, the National Register criteria recognizes seven aspects or qualities that, in various combinations, define integrity.



### **Criteria A – Events**

The significance of the district as set out in the National Register Nomination relates to Criterion A, meaning that the district is associated with events that have made a significant contribution to the broad patterns of our history.

### **EVALUATING INTEGRITY**

Integrity is the ability of a property to convey its significance. The evaluation of integrity must always be grounded in an understanding of a property's physical features and how they relate to its significance.

### **Seven Aspects of Integrity**

- Location
- Design
- Setting
- Materials
- Workmanship
- Feeling
- Association

**Location** is the place where the historic property was constructed or the place where the historic event occurred. The relationship between the subject property and its location is important to understanding why the property was created – it was created in association with district's significance – one of the earliest settlement areas for African Americans in Dallas. The actual location of the historic property, complemented by its setting along a street of properties constructed within the same general time period, is particularly important in recapturing the sense of the historic event that makes the Tenth Street Historic District significant.

The subject property at 338 S Fleming Avenue therefore retains integrity of location because it is physically situated at the place where it was originally constructed.

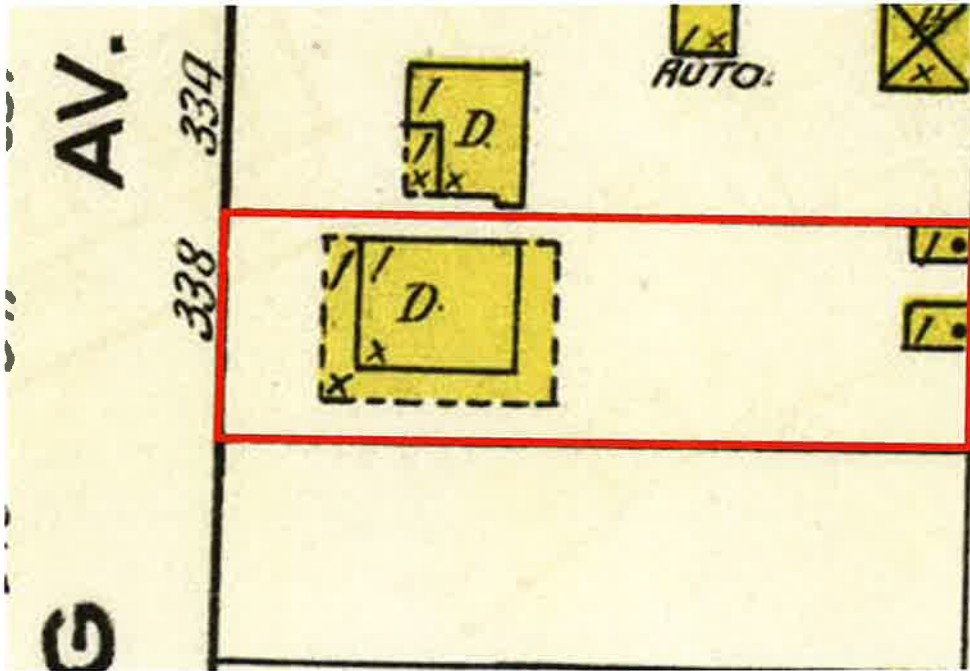


Figure 3 – 1922 Sanborn Map, showing 338 S Fleming Avenue, with the subject property highlighted

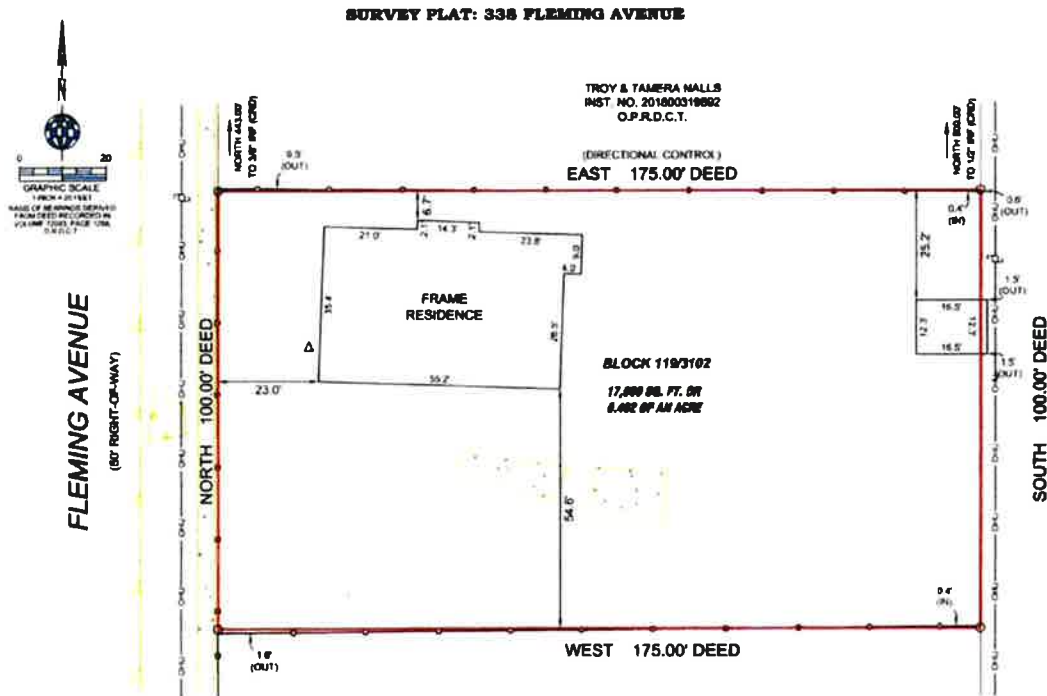


Figure 4 – Survey of 338 S Fleming Avenue (applicant submission, July 2022) confirming that the subject property retains integrity of location in relation to the 1922 Sanborn map in Figure 3

**Design** is the combination of elements that create the form, plan, space, structure, and style of a property. It results from conscious decisions made during the original conception and planning of a property (or its significant alteration) and applies to activities as diverse as community planning, engineering, architecture, and landscape architecture. Design includes such elements as organization of space, proportion, scale, technology, ornamentation, and materials. The subject property's design reflects its historic function as a primary residence. Its structural system is still evident; its massing; relationship of the character-defining space occupied by the wrap-around porch; pattern of fenestration as evidenced on the north elevation and from interior conditions; textures and colors of surface materials; and style of detailing are all visible as physical evidence of its design.



Figure 5 – This view of the subject property contributes to an understanding of the form, plan, space, and style of the structure. Views from the interior further contribute to an understanding of form, plan, and space, which are key aspects of design integrity (photograph taken July 25, 2022)

While there have been alterations to the original design, including alterations to the character-defining wrap-around porch, which diminishes integrity of design, access to the interior on July 25, 2022 made it possible to understand much of the spatial characteristics and materials associated with the front porch and aspects of fenestration patterns. A detailed forensic understanding of the porch design is not necessary for the purpose of understanding the degree to which the general character of the property conveys the significance of the district. For clarification, the interior layout of rooms does not need to remain intact to understand the exterior character of the property.

Having regard to the foregoing, it is considered that the subject property at 338 S Fleming Avenue, while altered, still retains sufficient integrity of design because its current state allows for the understanding of the elements that created the form, plan, space, historic

function, structural system, fenestration pattern, exterior materials, and style of the property.

**Setting** is the physical environment of a historic property. Whereas location refers to the specific place where a property was built. The setting of the subject property has changed with the loss of a couple of houses since the 1990s, however, the character of the street in which the subject property played its historical role remains recognizable as a predominantly residential street of modest vernacular single-story bungalows on the east side of S Fleming Avenue.



Figure 6 – The setting of the subject property remains recognizable as a predominantly residential street of modest vernacular single-story bungalows (photograph taken July 25, 2022)

Its relationship to surrounding homes, features, and open space remains recognizable and the basic physical conditions under which the subject property was built and the functions it was intended to serve are clearly evident. In addition, the way in which the wrap-around porch (albeit altered) was positioned in its environment reflects the designer's concept of nature and aesthetic preferences. The alteration still allows the general form, location, and setting characteristics to be understood.

The block face upon which the subject property at 338 S Fleming Avenue exists, while having lost a couple of houses since the 1990s, still retains sufficient integrity of setting because the character of the street and the property's relationship to surrounding homes, features, and open space remains recognizable as that which would have existed during the district's period of significance.

**Materials** are the physical elements that were combined or deposited during a particular period of time and in a particular pattern or configuration to form a historic property. The choice and combination of materials that were used on the subject property reveal the preferences of those who created it in the 1920s and indicate the availability of particular

types of materials that were in common use at the time. Indigenous materials are often the focus of regional building traditions and thereby help define an area's sense of time and place.



Figure 7 – Partial view of the north elevation (photograph taken July 25, 2022)

The subject property retains the key exterior materials dating from the period of its historic significance as evidence from the exterior and aspects that are visible from the interior where exterior spaces have been enclosed/boarded.

The subject property at 338 S Fleming Avenue, while certain aspects of materials have been altered, retains sufficient integrity of materials because the choice and combination of materials that were used on the subject property are evident and reveal the preferences of those who created it in the 1920s during the district's period of significance.

**Workmanship** is the physical evidence of the crafts of a particular culture or people during any given period in history or prehistory. It is the evidence of artisans' labor and skill in constructing or altering a building, structure, object, or site. While the workmanship associated with the front porch has been partially obscured by later alterations, the subject property sufficiently expresses the vernacular methods of construction and plain finishes that characterize the exterior.



Figure 8 – Detail view showing the character of workmanship that is evident (photograph taken July 25, 2022)

The workmanship evident reflects common traditions in the construction of timber-framed bungalows that were executed in the 1920s in the Tenth Street Historic District.

The subject property at 338 S Fleming Avenue, while certain aspects of workmanship have been altered, retains sufficient integrity of workmanship because its current state allows for an understanding of the labor and skill in constructing the subject property in the 1920s during the district's period of significance.

**Feeling** is a property's expression of the aesthetic or historic sense of a particular period of time. It results from the presence of physical features that, taken together, convey the property's historic character. For example, the subject property is in its original location, it retains sufficient integrity of design, setting, materials, and workmanship, which relates to the feeling of one of the earliest settlement areas for African Americans in Dallas.

The subject property at 338 S Fleming Avenue therefore retains sufficient integrity of feeling because the presence of physical features that are sufficiently expressed in its location, design, setting, materials, and workmanship, when taken together, convey the property's historic character and conveys the significance of the district.

**Association** is the direct link between an important historic event or person and a historic property. A property retains association if it is the place where the event or activity occurred and is sufficiently intact to convey that relationship to an observer. Like feeling, association requires the presence of physical features that convey a property's historic character. The subject property, whose elements have remained intact since the 1920s retains its quality of association with the Tenth Street Historic District as one of the earliest settlement areas for African Americans in Dallas.

The subject property at 338 S Fleming Avenue therefore retains sufficient integrity of association because the property is sufficiently intact to convey a direct link between an important historic event (i.e., significance) and the physical evidence of the historic property to an observer.

#### Physical Condition

The web site of Bedrock Foundation Repair, LLC<sup>2</sup> describes "repairing a pier and beam structure when there is little or no crawlspace" and it would appear as though cost and the potential for water accumulation at pier excavations are acknowledged challenges.

The Bedrock Foundation Repair report that accompanied the CD application indicates that 80% of the structure is sitting directly on the ground. It is unclear how access was gained to inspect the entire foundation, given this constraint since the report goes on to conclude that the foundation is not repairable. The report indicates that "if inspectors don't have access under the house, they cannot inspect, install, or repair a foundation."

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<sup>2</sup> <http://bedrockfoundationrepair.com/pier-and-beam-foundation-repair-dallas-tx.html> (accessed July 28, 2022)

If only 20% of the structure's pier and beam foundation was accessible, it is unclear what may have informed the conclusion that "most, if not all of the lumber is damaged and not salvageable."



Figure 9 – View gained from one of several areas showing the underside of the structure (photograph taken July 25, 2022)

While aspects of deteriorated condition are acknowledged, it is also acknowledged that historic properties having similar or even worse conditions have and continue to be stabilized and rehabilitated. Condition itself is not an aspect of integrity unless a structure's condition is so physically deteriorated that the overall integrity of the building is irretrievably lost.

## **SUMMARY**

In considering the request for a Certificate for Demolition/Removal to demolish a noncontributing structure using the standard 'replace with more appropriate/compatible structure', the Landmark Commission will now need to determine whether the new structure that was considered on June 6, 2022 to be "compatible" with the character and appearance of the historic district (CA212-367(MGM)) is more appropriate and compatible with the historic overlay district than the existing 1920s structure that is proposed to be demolished.



A key issue to be resolved when considering whether the new structure is more appropriate and compatible than the subject property is whether the subject property contributes to the Tenth Street Historic District. A 1994 listing that indicates that the property is non-contributing may be considered unsubstantiated without a recent evaluation to confirm or refute such a determination. In a district that has lost a great deal of historic resources, it is considered necessary to rest upon a high degree of certainty that the degree to which a historic structure contributes to a district is appropriately evaluated. The remaining historic properties within the Tenth Street Historic District are becoming more and more rare – safeguarding those properties, which have significance and sufficient integrity demands that best practices be brought to bear on such important non-renewable resources. A best practice basis for determining whether the subject property contributes to the district is set out by the understanding of the significance of the district and a current evaluation of the property having regard to the Seven Aspects of Integrity.

It is acknowledged that the Tenth Street Historic District is significant as one of the earliest settlement areas for African Americans in Dallas – an event that has made a significant contribution to the broad patterns of our history.

If a property is significant, retains sufficient integrity, and displays the physical evidence that conveys its significance, we can say that the property contributes or “adds historic value to the historic district”. Ultimately, the question of integrity is answered by whether the property retains the identity for which it is significant.

It is considered that the subject property located at 338 S Fleming Avenue retains sufficient integrity to convey the significance of the district because its physical characteristics are sufficiently recognizable as a 1920s bungalow that remains part of a predominantly residential streetscape that is associated with one of the earliest settlement areas for African Americans in Dallas dating from the district’s period of significance (1890-1944).

It is also considered that the subject property’s location, design, setting materials, workmanship, feeling, and association have not been so altered or so deteriorated that the overall integrity of the building is irretrievably lost.

Given the foregoing, and having regard to the request for a Certificate for Demolition to replace the existing structure with a new structure that is more appropriate and compatible with the historic overlay district and the relevant standards for approval, the following findings inform the staff recommendation:

### **Standard for Approval**

51A-4.501(h)(4)(A) The landmark commission must deny an application to replace a structure with a new structure unless it finds that:

(i) the new structure is more appropriate and compatible with the historic overlay district than the structure to be demolished or removed

From a preservation perspective, it is unlikely that the replacement of the existing structure at 338 S Fleming Avenue with a more appropriate and compatible new structure is possible because the existing structure adds more historic value to the district than a replacement new structure. A commonly accepted definition of a “contributing property” is one that “adds historic value to a historic district.”

**STAFF RECOMMENDATION:**

That the Certificate for Demolition/Removal to demolish a noncontributing structure using the standard ‘replace with more appropriate/compatible structure’ be denied without prejudice.

This recommendation is made with the finding that the proposed demolition would not satisfy the standard in City Code Section 51A-4.501(h)(4)(A)(i).

**TASK FORCE RECOMMENDATION:**

No quorum – comments only – Task Force is not supportive of review proceeding until entry access is granted to property.

After the Task Force meeting, access to the property was granted to City Staff and a representative of the Task Force on Monday July 25, 2022. Task Force comments resulting from this visit have been included in the docket.

**SUPPLEMENTARY INFORMATION**

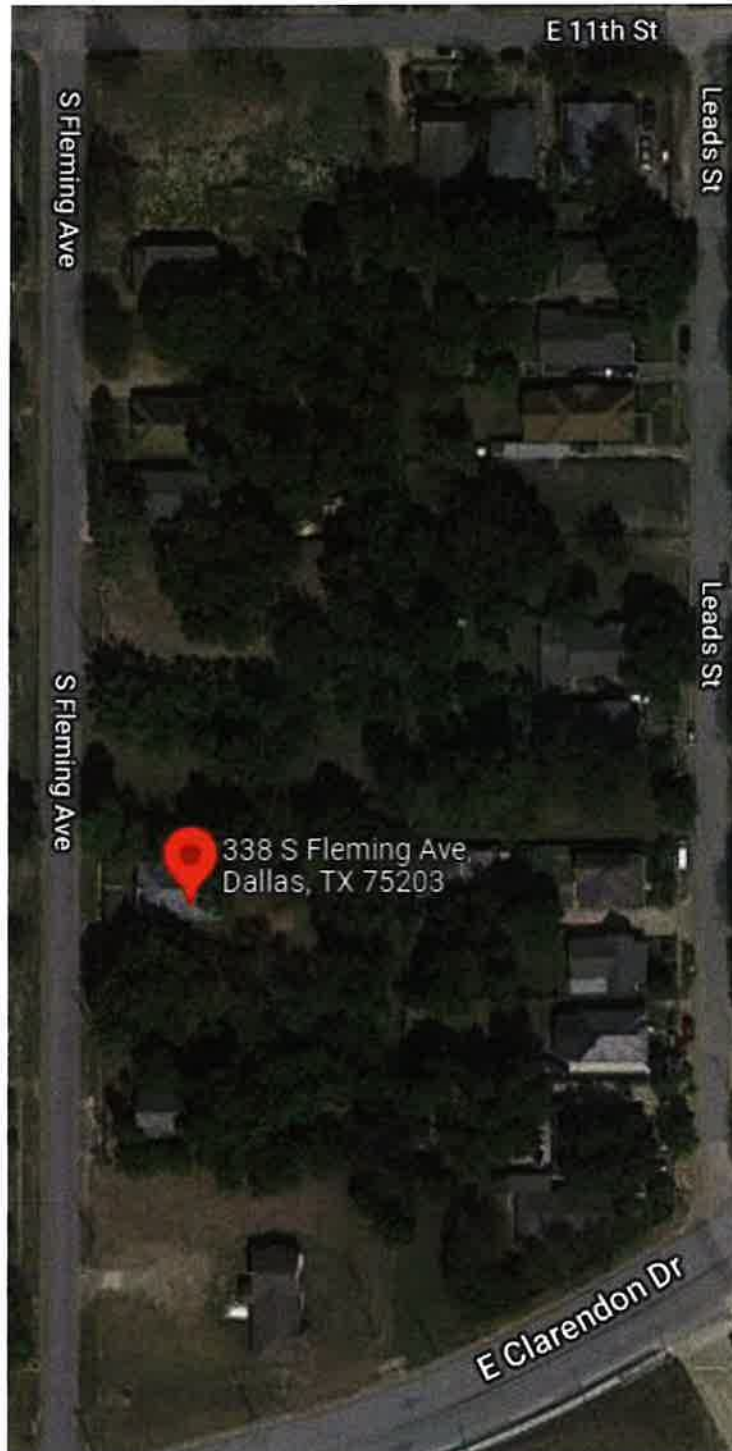
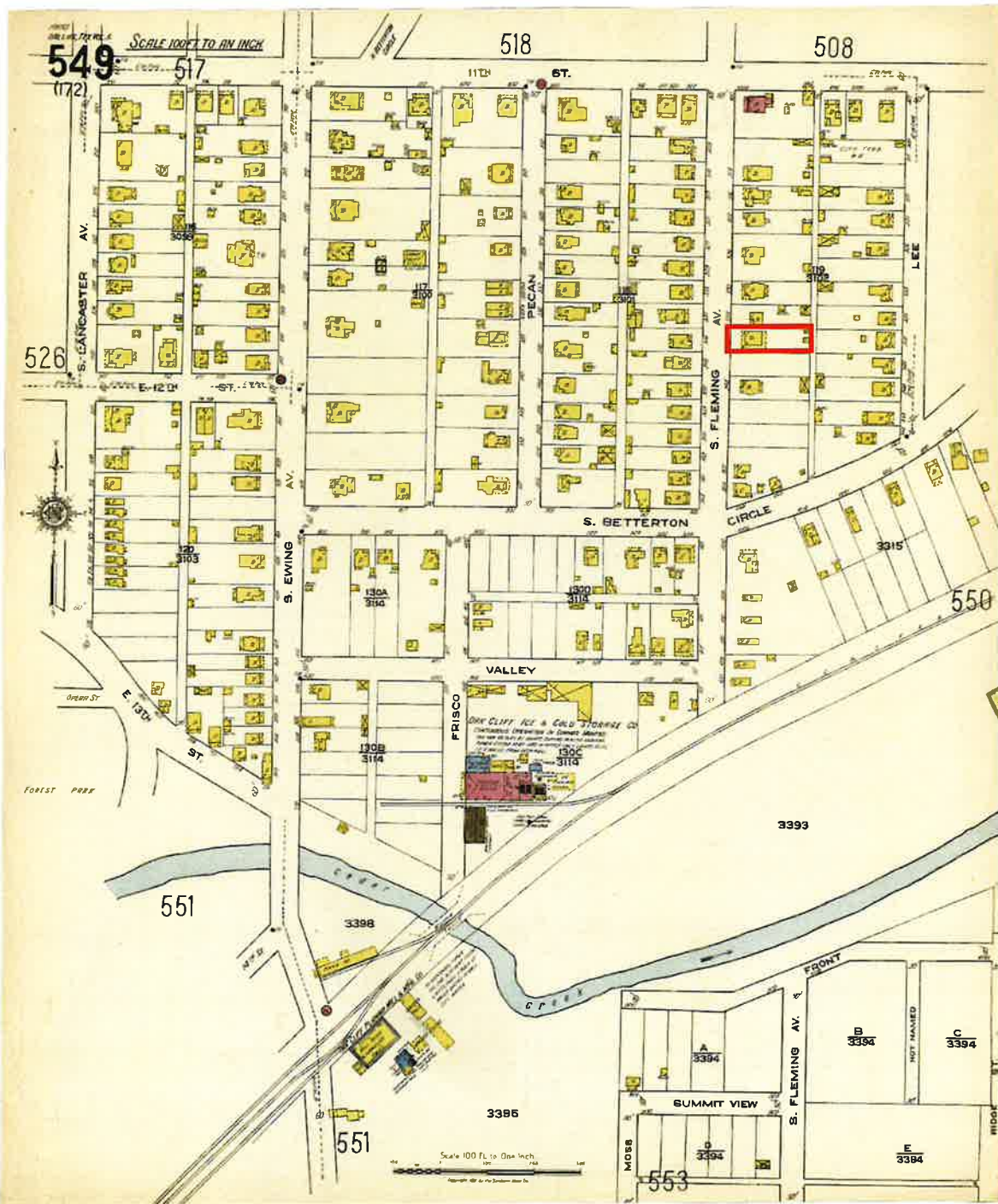


Figure 10 – Aerial view of the subject property.



Original located at the Dolph Briscoe Center for American History, University of Texas at Austin  
 Figure 11 – 1922 Sanborn Map, with the subject property highlighted (University of Texas at Austin)

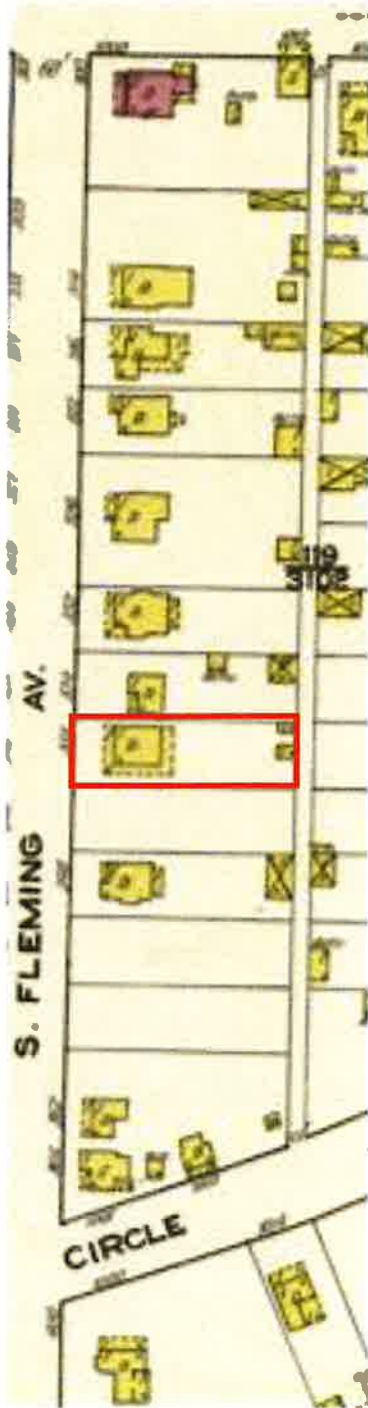


Figure 12 – 1922 Sanborn Map, showing S Fleming Avenue, with the subject property highlighted



Figure 13 – View of the subject property as seen from S Fleming Street (photograph taken July 25, 2022)



Figure 14 – View of the subject property as seen from the south side (photograph taken July 25, 2022)



Figure 15 - View of the subject property as seen from the southwest corner (photograph taken July 25, 2022)



Figure 16 – Partial view of the north side of the subject property (photograph taken July 25, 2022)





Figure 17 – Partial view of the enclosed wrap-around porch (photograph taken July 25, 2022)



Figure 18 - Detail view showing the character of workmanship that is evident within the space occupied by the wrap-around porch (photograph taken July 25, 2022)



Figure 19 - Detail view revealing an understanding of fenestration that is evident within the space occupied by the wrap-around porch (photograph taken July 25, 2022)



Figure 20 – This southeast view of the subject property contributes to an understanding of the form, plan, space, and style of the structure (photograph taken July 25, 2022)



Figure 21 - Partial view of the north side of the subject property (photograph taken July 25, 2022)



Figure 22 - Partial view of the north side projecting bay showing evidence of fenestration patterns and character (photograph taken July 25, 2022)



Figure 23 - View gained from one of several areas showing the underside of the structure (photograph taken July 25, 2022)

# CD 3<sup>rd</sup> Re-Submittal

## Foundation and Existing Condition

338 S. Fleming Ave. Dallas Texas

TENTH STREET HISTORICAL DISTRICT  
NON-CONTRIBUTING COMMERCIAL PROPERTY

Re-submitted July 01<sup>st</sup> 2022 for Landmark commission  
Meeting on Monday August 1<sup>st</sup>.



# 338 S. Fleming Ave-Historical Survey-Existing Property Status-Non

NPS Form 10-485a  
(8-83)

OMB Approval No. 1024-0112

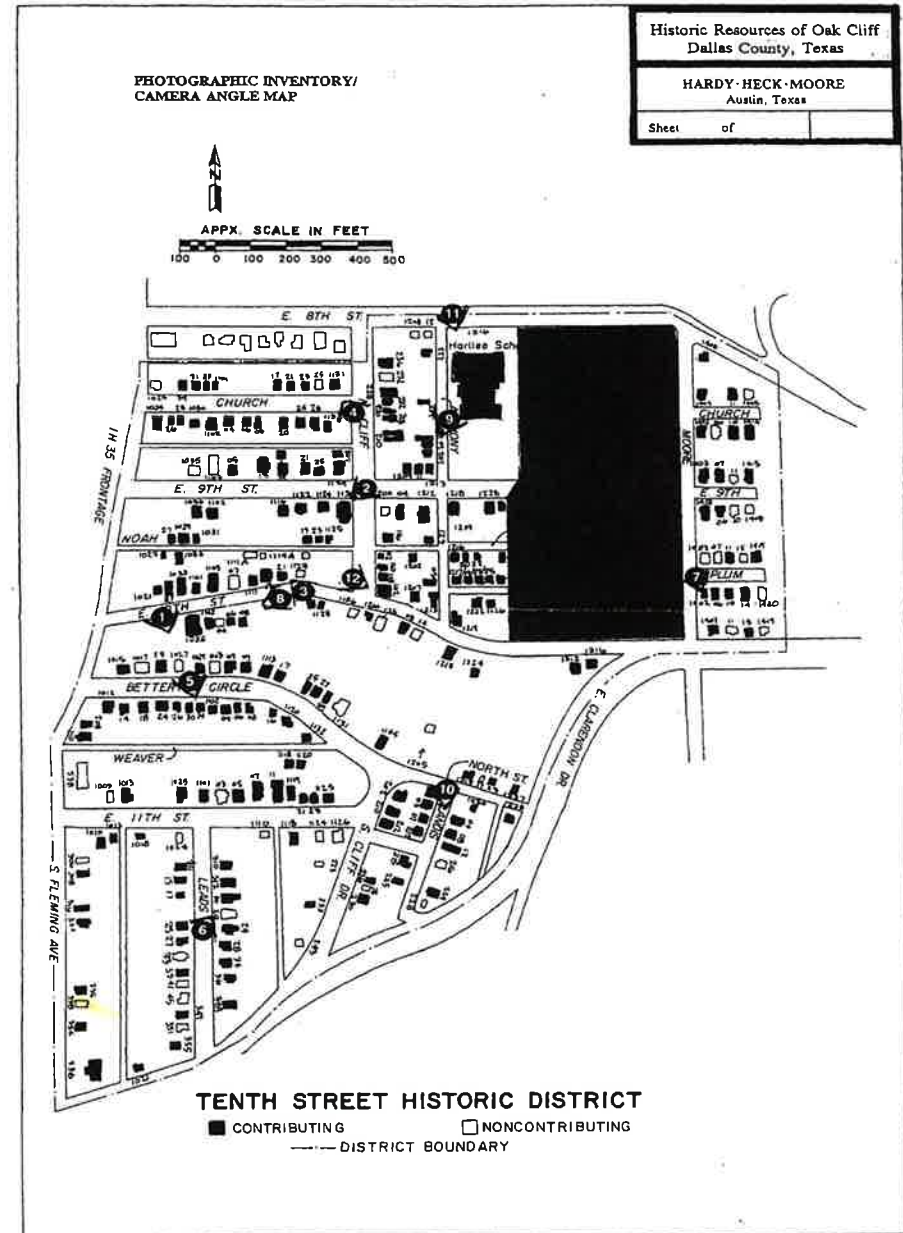
United States Department of the Interior  
National Park Service

## National Register of Historic Places Continuation Sheet

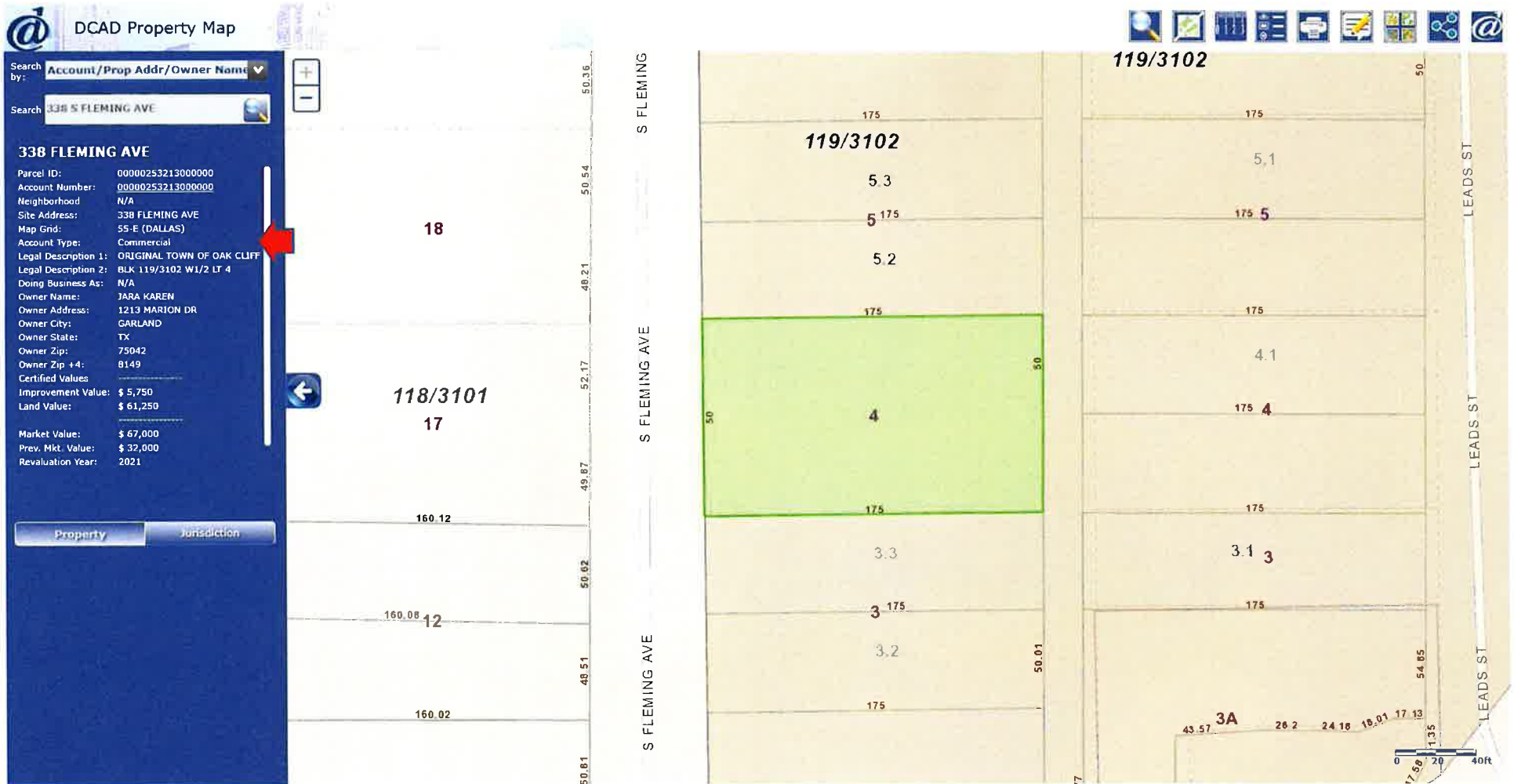
Section number 7 Page 6

Tenth Street Historic District (Oak  
Cliff MPS) Dallas, Dallas County, Texas

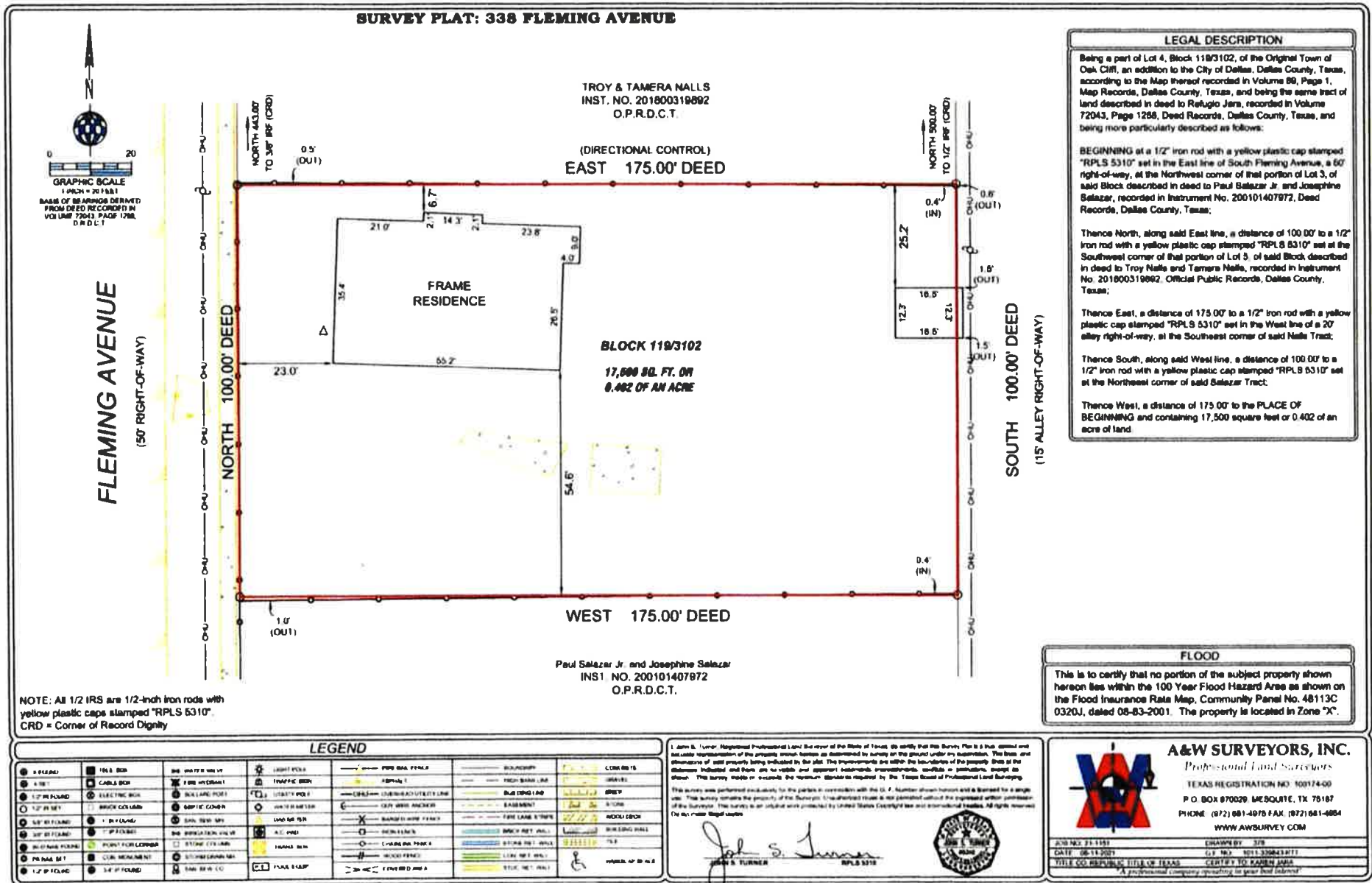
L7 -1968	1121	E Eleventh	Contributing	1925	Residence
L7 -1969	1123	E Eleventh	Contributing	1930	Residence
L7 -1976	1124	Eleventh	Noncontributing	1930	Residence
	1125	E Eleventh	Contributing		
L7 -1977	1126	E Eleventh	Noncontributing	1930	Residence
	208	S Fleming	Contributing		
	210	S Fleming	Contributing		
	538	S Fleming	Noncontributing	post-1944	
L7 -7558	306	S Fleming	Contributing	1935	Residence
L7 -7557	308	S Fleming	Noncontributing	1935	Residence
L7 -7556	316	S Fleming	Contributing	1925	Residence
L7 -7555	322	S Fleming	Contributing	1925	Residence
L7 -7554	334	S Fleming	Contributing	1925	Residence
L7 -7553	338	S Fleming	Noncontributing	1925	Residence
L7 -7552	354	S Fleming	Contributing	1925	Residence
L7 -7531	366	S Fleming	Contributing	1930	Institutional
L7 -7651	201	Landis	Contributing	1920	Residence
L7 -7650	203	Landis	Contributing	1925	Residence
L7 -7656	204	Landis	Contributing	1925	Residence
L7 -7655	206	Landis	Contributing	1925	Residence
L7 -7649	207	Landis	Contributing	1925	Residence
L7 -7648	209	Landis	Contributing	1925	Residence
L7 -7654	212	Landis	Contributing	1925	Residence
L7 -7653	216	Landis	Noncontributing	1925	Residence
L7 -7647	215	Landis	Contributing	1930	Residence
L7 -7652	224	Landis	Contributing	1920	Residence
L7 -7646	225	Landis	Contributing	1940	Residence
	228	Landis	Noncontributing	post-1944	
L7 -7581	310	Leads	Contributing	1930	Residence
L7 -7572	311	Leads	Contributing	1920	Residence
L7 -7580	312	Leads	Contributing	1925	Residence
L7 -7571	315	Leads	Contributing	1925	Residence
L7 -7579	316	Leads	Contributing	1910	Residence
L7 -7570	317	Leads	Contributing	1920	Residence
L7 -7578	320	Leads	Noncontributing	1900	Residence
L7 -7577	324	Leads	Contributing	1925	Residence
L7 -7569	325	Leads	Contributing	1905	Residence
L7 -7576	328	Leads	Contributing	1920	Residence
L7 -7568	327	Leads	Contributing	1925	Residence
L7 -7567	333	Leads	Noncontributing	1910	Residence
L7 -7575	334	Leads	Contributing	1920	Residence
L7 -7566	335	Leads	Contributing	1920	Residence
L7 -7574	336	Leads	Contributing	1910	Residence
L7 -7575	341	Leads	Noncontributing	1910	Residence
L7 -7564	345	Leads	Noncontributing	1900	Residence
L7 -7573	348	Leads	Contributing	1930	Residence
L7 -7543	349	Leads	Contributing	1920	Residence
L7 -7562	351	Leads	Noncontributing	1925	Residence
L7 -7561	355	Leads	Contributing	1925	Residence
	1035	E Ninth	Noncontributing		
L7 -1481	1030	E Ninth	Contributing	1920	Residence
L7 -1482	1102	E Ninth	Contributing	1920	Residence
L7 -1617	1103	E Ninth	Noncontributing	1950	Commercial Building
L7 -1618	1105	E Ninth	Contributing	1920	Residence
L7 -1619	1113	E Ninth	Contributing	1910	Residence
L7 -1483	1116	E Ninth	Contributing	1925	Residence
L7 -1620	1119	E Ninth	Contributing	1925	Residence
L7 -1621	1121	E Ninth	Contributing	1930	Residence
L7 -1484	1122	E Ninth	Contributing	1910	Residence
L7 -1685	1124	E Ninth	Contributing	1930	Residence
L7 -1622	1125	E Ninth	Contributing	1930	Residence
L7 -1623	1129	E Ninth	Contributing	1930	Residence



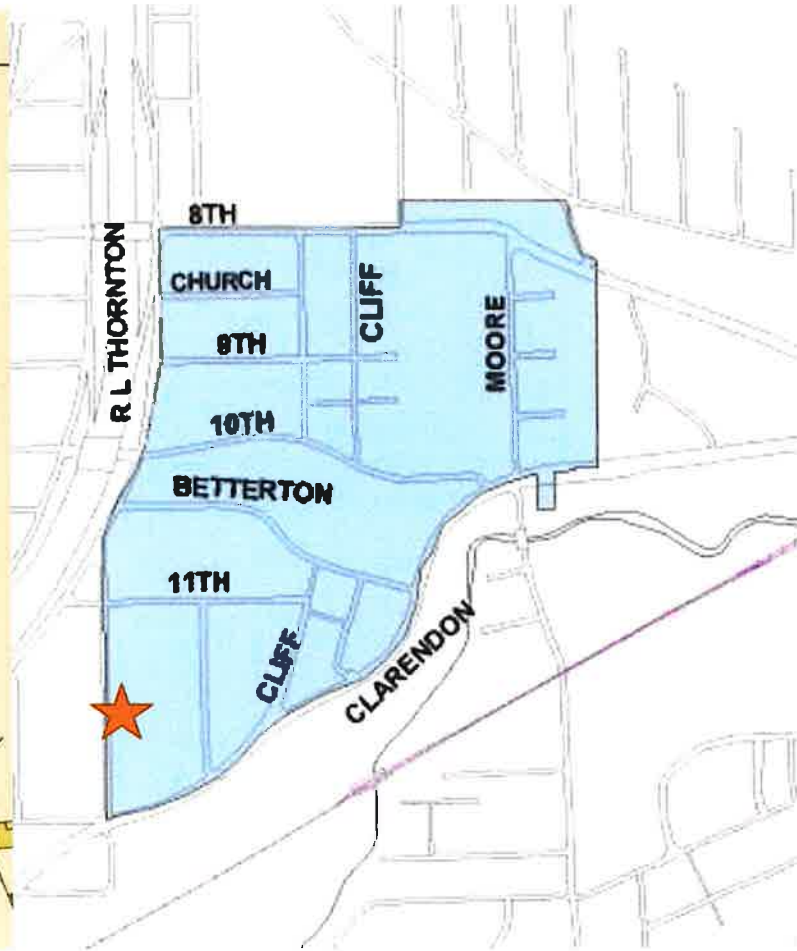
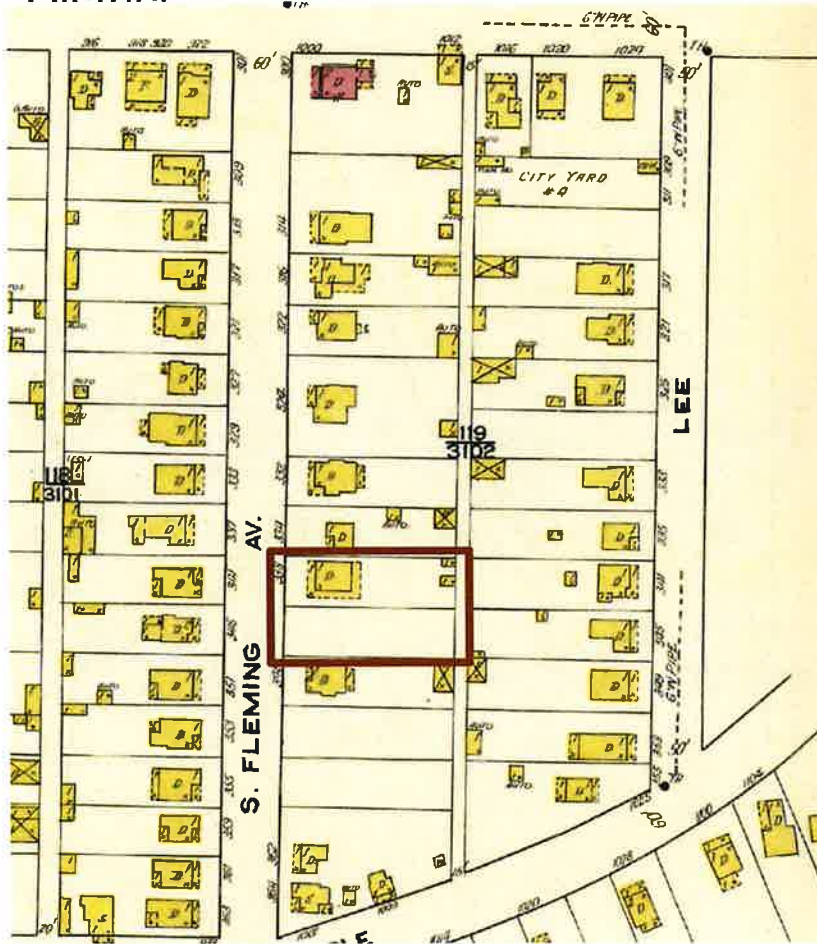
# 338 S. Fleming Ave- DCAD Property Map- Account Type COMMERCIAL-Dallas Appraisal Re Evaluation Map 2021



# 338 S. Fleming Ave-Survey Plat Plan

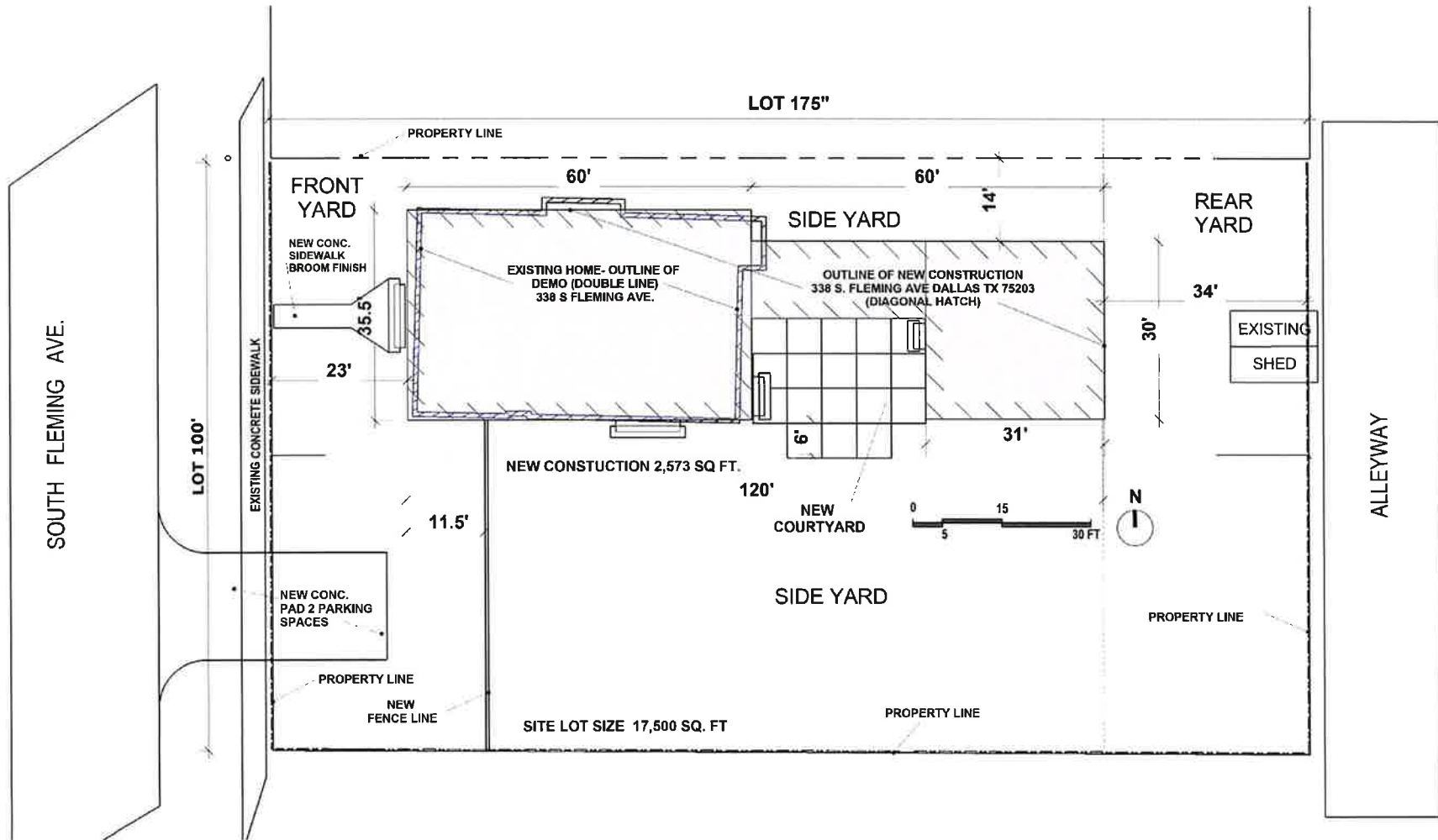


# 338 S. Fleming Ave-1922 Sanborn Insurance Map + Tenth Streets District



33  
8

# 338 S. Fleming Ave- Site Plan-Existing Home--Overlay-- New Construction



Ranch **SHEAR** designs  
ARCHITECTURE

**The Cook's Home-Bristow Residence**  
338 S Fleming Ave. Dallas TX 75203

SITE PLAN EXISTING + NEW CONSTRUCTION

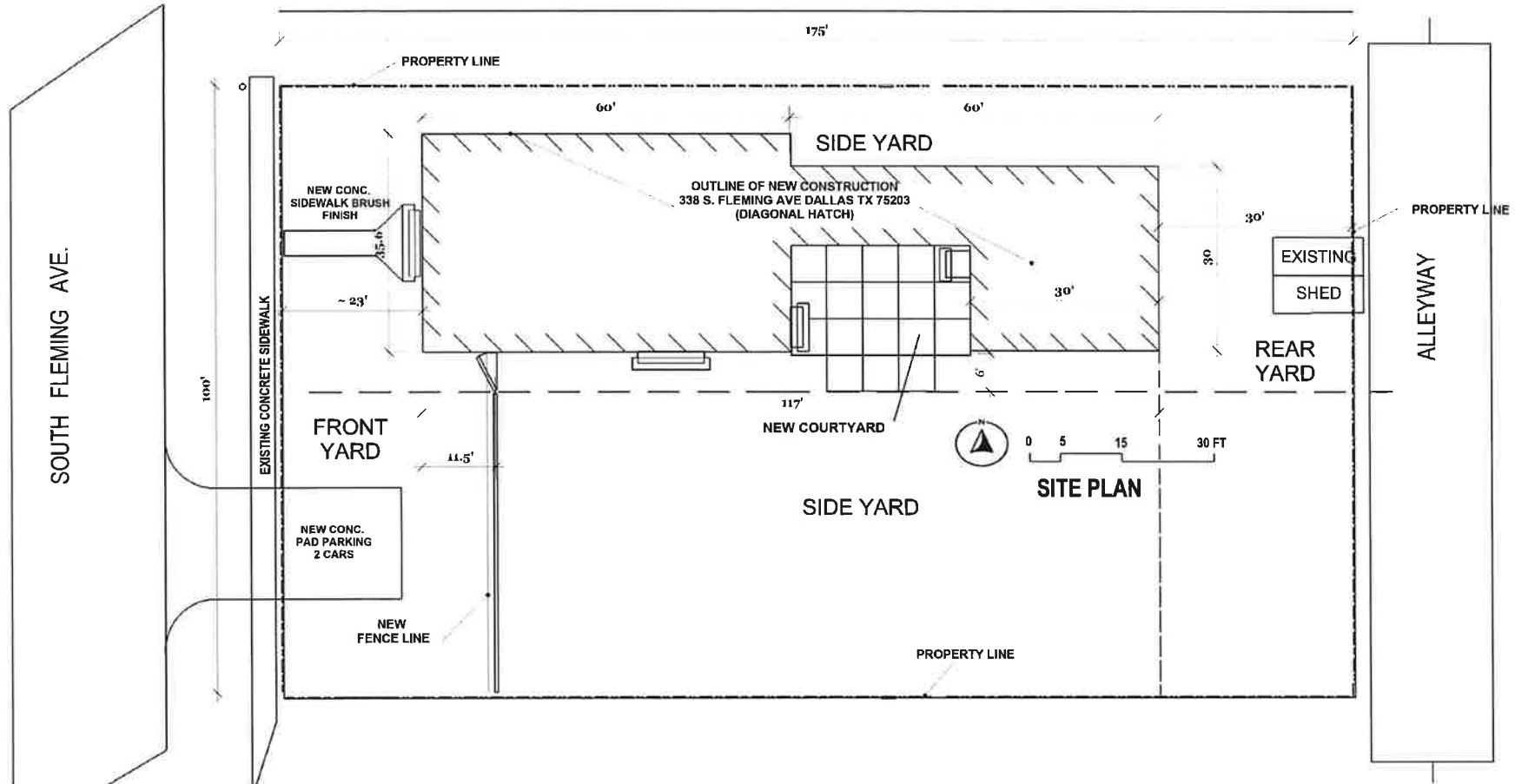
REVISIONS

NO.	DATE	REVISIONS
1	10/21/21	PREPARED DRAWINGS CERTIFICATE OF APPROPRIATENESS
2		
3		

001  
SP

REV. 12 OCT 21

# 338 S. Fleming- Site Plan-New Construction



Rand **SHEAR** designs  
ARCHITECTURE

**The Cook's Home-Bristow Residence**  
338 S Fleming Ave. Dallas TX 75203

**SITE PLAN NEW CONSTRUCTION**

REVISIONS

NO.	DATE	DESCRIPTION
1	10/15/21	REDCURS
2	10/15/21	REDCURS
3	10/15/21	REDCURS

REV. 15OCT21

SP 001

Rand **SHEAR** designs  
ARCHITECTURE

**Certificate for Demolition and Removal (CD)**  
**City of Dallas Landmark Commission**

CD _____
Office Use Only

1. Name of Applicant: Annemarie Bristow  
 MAILING Address: 802 Haines Ave. City Dallas State TX Zip \_\_\_\_\_  
 Daytime Phone: (972) 400-2969 Cell Alternate Phone: \_\_\_\_\_  
 Relationship of Applicant to Owner: Applicant/Owner

ADDRESS OF PROPERTY TO BE DEMOLISHED: 338 S Fleming Ave Dallas Texas Zip 75203  
 Historic District: Tenth Street Historical District-Freedmans Town

**Proposed Work:**

- Indicate which demolition standard you are applying (choose one option only)
- Replace with more appropriate/compatible structure
  - No economically viable use
  - Imminent threat to public health / safety
  - Demolition noncontributing structure because newer than period of significance Intent to apply for certificate of demolition pursuant to 51-A-4.501(i) of the Dallas City Code.
- Certificate of Demolition for residential structures with no more than 3,000 square feet of floor area pursuant to a court order

3. Describe work and submit required documents for the demolition standard you are applying (see checklist):

Enclosed is the 1) CD application, Letter of Intent, 2) Structure Engineer report (Photographs of Existing Structure and 3) Architecture Document (Including architecture Historical Survey, Images of 3d Model and Elevations of new construction)

**Application Deadline:**

This form must be completed before the Dallas Landmark Commission can consider the approval of any demolition or removal of a structure within a Historic District. This form along with any supporting documentation must be filed by the first Thursday of each month by 12:00 Noon so it may be reviewed by the Landmark Commission on the first Monday of the following month, 1500 Marilla SBN, Dallas, Texas, 75201 (See official calendar for exceptions to deadline and meeting dates).

Use Section 51A-3.103 OF THE Dallas City Code and the enclosed checklist as a guide to completing the application. Incomplete applications cannot be reviewed and will be returned to you for more information. You are encouraged to contact a Preservation Planner at 214/670-4209 to make sure your application is complete.

Other: In the event of a denial, you have the right to an appeal. You are encouraged to attend the Landmark Commission hearing the first Monday of each month. Information regarding the history of certificates for individual addresses is also available for review.

4. Signature of Applicant: Annemarie Bristow Date: April 7th 2022  
 5. Signature of Owner: Annemarie Bristow Date: April 7th 2022

(IF NOT APPLICANT)

Review the enclosed Review and Action Form Memorandum to the Building Official, a Certificate for Demolition and Removal has been:

- APPROVED. Please release the building permit.
- APPROVED WITH CONDITIONS. Please release the building permit in accordance with any conditions.
- DENIED. Please do not release the building permit or allow work.
- DENIED WITHOUT PREJUDICE. Please do not release the building permit or allow work.

Office of Historic Preservation \_\_\_\_\_ Date \_\_\_\_\_

**NOTE: THIS APPLICATION WILL EXPIRE 180 DAYS AFTER THE APPROVAL DATE**

**Affidavit**

Before me the undersigned on this day personally appeared ANNAMARIE B BRISTOW who on his or her oath certifies that the statements contained in the application for a certificate of demolition and removal are true and correct to the best of his or her knowledge and that he or she is the owner, principle, or authorized representative of the subject property.

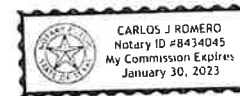
Annemarie Bristow

Affiant's signature

Subscribed and sworn to before me this 10th day of March, 2022

Carlos J. Romero

Notary Public



# 338 S. Fleming Ave- Annemarie Bristow- Signed Guarantee Agreement

## GUARANTEE AGREEMENT

WHEREAS, the structure located at 338 S FLEMING (Street Address), Dallas, Texas has been altered to the extent that it is no longer a contributing structure to Historic Overlay District No. 10 (Tenth Street District) (Name of District);

WHEREAS, Annemarie Bristow ("Owner") wishes to demolish the structure and intends to replace it with a new structure that is more appropriate and compatible with the historic overlay district;

WHEREAS, on \_\_\_\_\_, 2022/ the Landmark Commission granted a certificate for demolition for the structure;

WHEREAS, on \_\_\_\_\_, 2022/ the Landmark Commission approved a certificate of appropriateness for the replacement structure.

NOW, THEREFORE, Owner and the City of Dallas ("City") enter the following guarantee agreement pursuant to Dallas Development Code § 51A-4.501(h)(2)(C)(v) documenting the owner's intent and financial ability to construct the new structure.

### I.

Owner agrees to replace the structure by December 31, 2023 (Date) with a new structure in accordance with architectural drawings approved by City through the certificate of appropriateness process. The approved architectural drawings are attached as Exhibit A.

### II.

Owner agrees that Owner or Owner's construction contractor will post a performance and payment bond, letter of credit, escrow agreement, cash deposit, or make other arrangements acceptable to the Director of Sustainable Development and Construction to ensure the construction of the replacement structure. Documentation evidencing the financial arrangements entered pursuant to this paragraph is attached as Exhibit B.

### III.

Owner acknowledges that City has the right to enforce this agreement by any lawful means, including filing an action in a court of competent jurisdiction, at law or in equity, against any person violating or attempting to violate this agreement, either to prevent the violation or to require its correction. If the City substantially prevails in a legal proceeding to enforce this agreement against a person, Owner agrees that City shall be entitled to recover damages, reasonable attorney's fees, and court costs from that person.

### IV.

Owner agrees to defend, indemnify, and hold harmless City from and against all claims or liabilities arising out of or in conjunction with this agreement and City granting, revoking, or withholding a building permit and/or demolition permit by reason of this agreement.

### V.

Owner and City understand and agree that this agreement is governed by the laws of the State of Texas.

### VI.

The definitions and provisions of CHAPTER 51A of the Dallas City Code, as amended, apply and are incorporated into this agreement as if recited in this agreement.

### OWNER

Annemarie Bristow  
By: OWNER

Printed Name: ANNEMARIE BRISTOW

Title: OWNER

### CITY OF DALLAS

Neva Dean, Interim Director of Office of Historic Preservation

Date: \_\_\_\_\_

APPROVED AS TO FORM

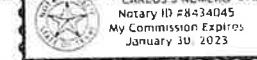
Anna Holmes, City Attorney

By: \_\_\_\_\_  
Assistant City Attorney

ATTACH THE APPROPRIATE ACKNOWLEDGEMENTS FOR ALL SIGNATORIES.

Revised 01-02-2020

SUBSCRIBED AND SWORN TO ON  
THIS 10th OF 12 2022  
IN DALLAS COUNTY STATE OF TEXAS  
Date: 12/10/22  
Carlos J. Romero  
CARLOS J. ROMERO / NOTARY PUBLIC  
MY COMMISSION EXPIRES 01/30/23





# 338 S. Fleming Ave- New Construction Form

## NEW CONSTRUCTION FORM - TO BE FILLED OUT BY APPLICANT

This form must be completed by the applicant and submitted with any Certificate of Appropriateness application for new construction. Incomplete applications will not be docketed for consideration by the Landmark Commission. Please refer to the preservation criteria in the historic district ordinance or contact a City Preservation Planner for further information.

Y  N Will the proposed new construction require demolition of any structure(s) on the site? If yes, you must submit a Certificate of Demolition form with your application.

Y  N Have you completed a preliminary review of the drawings with Building Inspection? NOTE: This step is required for construction of a main structure and strongly recommended for accessory structures. Preliminary review does not guarantee final approval of a permit.

Preliminary review: DATE 10/18/21 NAME OF PLANS EXAMINER: BRYANT THOMPSON  
POOX PROJECT 2-110081001-SFD

### LOT COVERAGE

Existing lot coverage 11.6 % (lot coverage includes all structures with a permanent roof, including porches and patios)

Proposed lot coverage 19.2 % NOTE LOT: 17,500 SF

### SETBACKS AND BUILDING HEIGHT

Proposed main structure (skip if no new main structure is proposed):

Front yard setback 23 ft

Average front yard setback on blockface 25 ft

Side yard setbacks LEFT SIDE 8-14 ft RIGHT SIDE 56 ft

Rear yard setback 34 ft OR distance to accessory structure N/A ft

Roof height 26 ft Average roof height on blockface 23 ft NOTE: SLOPING SITE

~~Proposed accessory structure (skip if no new accessory structure is proposed):~~

~~Distance from main structure \_\_\_ ft~~

~~Side yard setbacks LEFT SIDE \_\_\_ ft RIGHT SIDE \_\_\_ ft~~

~~Rear yard setback \_\_\_ ft~~

~~Roof height of proposed accessory \_\_\_ ft Main structure roof height \_\_\_ ft~~

# 338 S. Fleming Ave.-CD Application— Bedrock Engineering Report

## **BEDROCK FOUNDATION REPAIR, LLC (F-10832) Engineering Division**

**1018 Fletcher, Dallas, Texas 75223 (972) 261-4711 (800) 880-1811 fax  
www.bedrockfoundation.com email: office@bedrockfoundation.com**

### **General Structural Initial Foundation Inspection**

**338 S. Fleming Ave.  
Dallas, Texas 75203**

**October 1, 2021**

#### **Client:**

**Annemarie Bristow  
802 Haines  
Dallas, Texas 75208  
(214) 946-9486  
annemariebristow@gmail.com**

**J. S. Barton, P. E.  
(214) 824-1211**



**Bedrock Foundation Repair, LLC (972) 261-4711**

**Re: 338 S. Fleming Ave. – Dallas, Texas**

The foundation of the structure at 338 S. Fleming Ave., Dallas, Texas was inspected on October 1, 2021. This is a one story wood siding structure with perimeter and interior piers and wood beams type foundation. For orientation purposes the structure faces approximately west.

Reportedly this structure sat vacant and neglected for many years.

#### **OBSERVATIONS:**

A visual inspection of the foundation included the following observations:

The property slopes down generally from the left front to the right rear. The grade appears to slope down away from the structure on the right side and rear. The left side is relatively level. There is a negative slope on the front that appears to divert drainage to the right side.

#### **Exterior:**

Damage was noted in the siding.

#### **Interior:**

There are cracks in the walls and ceiling throughout the interior of the structure.

#### **Interior floors:**

The interior floors deflect down exceeding the tolerance of 1/16" per foot in various directions.

#### **Crawl space:**

The crawl space was not accessible. The structure appears to have collapsed 18" +/- . Most of the structure is sitting directly on the ground. Some area of the crawl space was visible. A lot of the structural members visible were rotten. The piers are wood post/bois d'arc.



# 338 S. Fleming Ave.-CD Application— Bedrock Engineering

**Report**  
**Bedrock Foundation Repair, LLC** (972) 261-4711

Re: 338 S. Fleming Ave. – Dallas, Texas

## CONCLUSIONS:

As a result of this inspection, the following conclusions were developed:

The distress noted is attributed to failure of the piers causing the collapse of the structure. The pier failure was caused by neglect and the normal volume change of the soil due to moisture fluctuations. The soil in this area is predominantly clay. Clay soil swells when wet and shrinks when dry. The piers are not salvageable. Approximately 80% of the structure is sitting directly on the ground. The visible structural lumber for the foundation was rotten. It is concluded that most, if not all, of the lumber is damaged and not salvageable. If lifting the structure is attempted, the rotten lumber will crush, therefore, it is concluded the structure will need to be demolished and reconstructed from the ground up. The foundation can't be reconstructed with the structure left in place.

Adequate ventilation of the crawl space is recommended to maintain a more consistent moisture content of the soil to minimize the volume changes. Minimizing the volume changes will increase the stability of the piers. Persistent moisture in the crawl space can promote wood rot and mold growth. Cross vents provide ventilation. Maximum ventilation efficiency is achieved when cross vents are on all 4 sides.

Adequate drainage around the structure is recommended to minimize the moisture fluctuations of the soil minimizing the movement of the perimeter grade beam. Poor drainage may allow moisture to seep into the crawl space as well. The drainage is considered marginal around the structure. Drainage corrections will be necessary when the structure is reconstructed. Comments on site drainage are based on visual inspection of the property with emphasis on poor drainage that may negatively affect the structure. It is impossible to predict how drainage will behave in heavy rain events.

Seasonal moisture fluctuations cause minor foundation movements on all structures built on clay soils. It should be understood that most structures have some tolerance to unequal settlement, but when the support is stressed beyond the elastic limit, ultimate failure is unavoidable without the immediate strengthening of the foundation.



**Bedrock Foundation Repair, LLC** (972) 261-4711

Re: 338 S. Fleming Ave. – Dallas, Texas

## RECOMMENDATIONS:

Demolish the structure.

Reconstruct the foundation with reinforced concrete perimeter grade beams and reinforced concrete interior piers.

## AGREEMENTS:

Opinions expressed in this report are based on sound engineering judgment and evaluation regarding past performance of the property inspected on the day of this inspection.

The report also gives engineering advice with regard to the best and most economical method to stabilize and maintain the property.

This advice assumes normally expected subsurface conditions and conventional construction methods.

No warranty is expressed or implied as to the performance of this foundation. Bedrock Foundation Repair, LLC report does not warrant or predict the future performance of the structure.

The information provided in this report is intended for the private use of our client. If you have any questions or comments regarding this report or if we can be of further assistance, please call.

J. S. Barton, P. E.



# 338 S. Fleming Ave.-CD Application— Bedrock Engineering

**Donor**  
**Bedrock Foundation Repair, LLC**      **(972) 261-4711**

Re: 338 S. Fleming Ave. – Dallas, Texas

## Maintenance Procedures for Foundations on Expansive Clay Soils

Foundation problems caused by expansive clay soils usually develop when the amount of water in the soil changes non-uniformly under the foundation structure. The climate is such that these clay soils shrink when dry and swell when wet, resulting in up and down movement of the house. If this occurs unevenly (one area of the soil under the house gets more water or dries out faster), the house may become twisted, strained and damaged. Foundation maintenance, in general, consists of one major concept: The moisture in the soil under the house and around the house should be as uniform as possible at all times. Some measures to help accomplish this are:

- 1. Install good ground cover.** This will prevent excessive moisture from seeping deep into the soil, causing problems to the foundation structure. This will also prevent erosion of the soil. Good ground cover also prevents excessive "drying out" of the soil through evaporation. Good ground cover will help maintain a more constant uniform moisture level in the soil beneath.
- 2. Water the soil around the house during dry periods just enough to keep the grass green.** More watering is needed in areas with more abundant shrubbery, plants, and trees. The south and west sides of the house are more exposed to the sun, and may need more watering to offset rapid evaporation.
- 3. NEVER water too close to the foundation.**  
Stay about 3 feet away with the water.

### **NEVER pour water into the cracks of the ground.**

These cracks usually go a few feet deep, and the water will reach soil that is normally undisturbed by concentrated amounts of moisture. Depending upon the shrink/swell potential of the soil, the soil may upheave, or it may consolidate and lose volume; either way, undermining the foundation and causing problems.

### **NEVER place sand, sandy loam, or rocks around the foundation.**

They are very porous, and allow water to pass quickly to the soil below, where the sun and wind cannot dry it out. Clay soils are non-porous, and are recommended for proper water drainage away from the foundation.

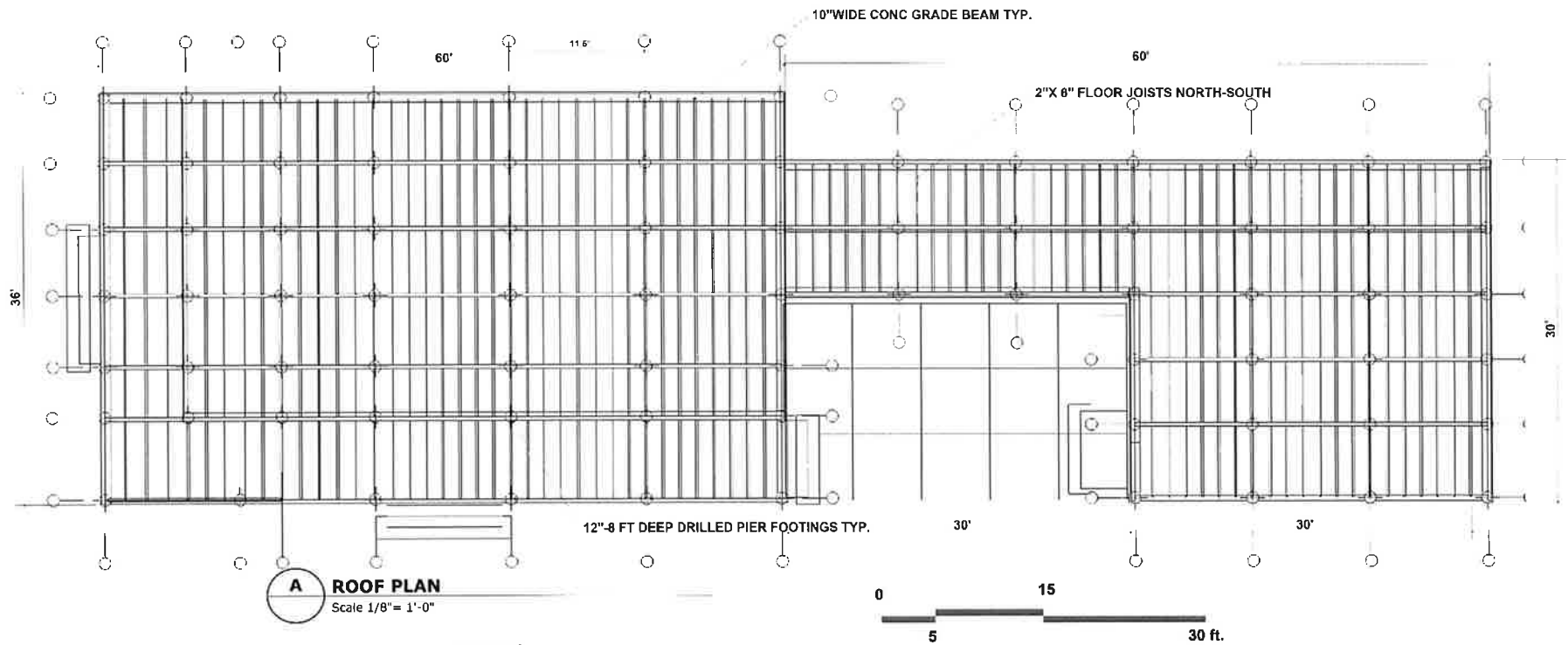
### **NEVER allow water to pond around the foundation.**

If water stands for very long, it will seep under the foundation, causing problems.

**Bedrock Foundation Repair, LLC**

Ranch **SHEAR** Designs  
ARCHITECTURE

# 338 S. Fleming Ave—Proposed Foundation Plan



**A ROOF PLAN**  
Scale 1/8" = 1'-0"

NOTE: PLAN DRAWN BY  
RandShearDesigns LLC

338 S. Fleming Ave.-CD Application— Existing Property Images



Photographs taken by Randy Shear of RandShearDesignsLLC Email: [rand.shear@gmail.com](mailto:rand.shear@gmail.com)



North Facade



North Facade Details



Visible hole in composite shingle roofing



Photographs taken by Randy Shear of RandShearDesignsLLC Email: [rand.shear@gmail.com](mailto:rand.shear@gmail.com)

Rand **SHEAR** designs  
ARCHITECTURE



Exposed bay shows no evidence of balustrade or columns



## West Facade Details Corner

Photographs taken by Randy Shear of RandShearDesigns LLC Email: [rand.shear@gmail.com](mailto:rand.shear@gmail.com)

# 338 S. Fleming Ave.-CD Application— Existing Property Images



Detail of Existing East Elevation



Detail of Existing East Elevation Corner at North Elevation

Photographs taken by Randy Shear of RandShearDesignsLLC Email: [rand.shear@gmail.com](mailto:rand.shear@gmail.com)

Rand **SHEAR** designs  
ARCHITECTURE



North elevation pier exposed @ edge over 2 ft.-skirt flared and water damages visable

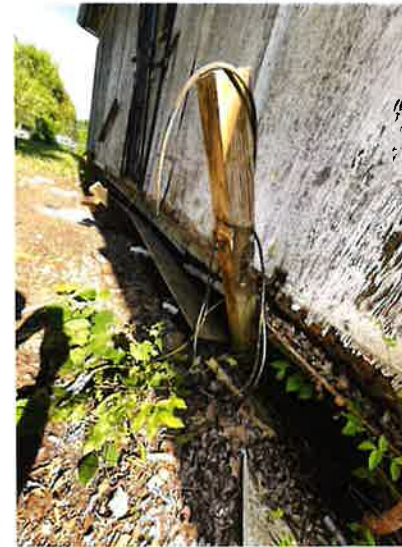


South elevation base @ column location seen at porch decking (no columns existing)



## Skirt Base Details of Collapsed Foundation

# 338 S. Fleming Ave-Existing Elevation Study-South Facade



Photographs taken by Randy Shear of RandShearDesignsLLC Email: [rand.shear@gmail.com](mailto:rand.shear@gmail.com)

Randy **SHEAR** designs  
ARCHITECTURE



Looking SE towards center shelve



Looking NE towards the 2 back work rooms



Ceiling water damage at center shelve

## Interior Main Space

Photographs taken by Randy Shear of RandShearDesigns LLC Email: [rand.shear@gmail.com](mailto:rand.shear@gmail.com)

Rand **SHEAR** Designs  
ARCHITECTURE



Bathroom Enclosure added at later date



## Interior Views-Porch Areas



Interior View Porch ceiling damage  
SE corner looking west



# 338 S. Fleming Ave-Existing Condition



SE Roof Breach Existing



NE Workroom Floor Damages



View towards north of collapsed foundation

Bailey & Galyen  
1300 Summit Avenue, Suite 650  
Fort Worth, TX 76102  
Attention: Paul F Wieneski  
Phone: 817-438-2141  
Fax: 817-276-6010

Re: 338 S Fleming Dallas Texas 75203  
NON-CONTRIBUTING STATUS

Documents attached:

National Register of Historic Places May 1994 One of 51 Non-Contributing Structures Listed as built in 1925 Non-Contributing Structure Section Number 7 Page 6  
Shown in the Hardy Heck Moore map as noncontributing  
338 Fleming DCAD Map found in the records owner Annemarie Bristow Location 55-E Dallas as a Account Type- Zoning as a Commercial Property

Dear Mr. Wieneskie:

The question of 'Non-Contributing' status came up in the last Landmark Commission Meeting on December 6th, 2021, and was debated to determine if there was enough evidence present in the existing structure to have that Non-Contributing status possibly changed.

The existing property clearly met the criteria needed for the National Registers' Non-Contributing' determination. This status has never been questioned since the report was issued in 1994. Changing this status to 'Contributing' was seen as a delay-tactic by the city and a direct challenge to the CD and CA applications now re-submitted twice.

In an email response to questions regarding the property status- director Murray Miller responded and explained as follows;

Quote:

Good Afternoon Randy,

In relation to the matter of contributing vs non-contributing, there are circumstances where the Landmark Commission may consider that a current evaluation of the status of a property is warranted to make an informed decision.

In this case, the Landmark Commission considered that such an assessment was necessary to inform both applications that were submitted – resolving the central matter as to whether the

existing structure would be considered non-contributing according to a current evaluation and whether the proposed construction would therefore be more “compatible” as a result of such an assessment.

Trusting that this is helpful-Murray

We feel that in direct contrast to Mr Miller's assessment, we worked with Marsha Prior and Anna-Liz Casso for over a 3 month period, during that time period, we had been guided through the process of a CA and CD packages.

Everything we had in the packages were well beyond what the city needs to have an informed decision. All requests, including a 'Street Survey' were dealt with and provided to the city. If the city now needs more information on the property, we can provide the city with anything we have, once it is requested.

Our response is clear:

1. A current evaluation of the status of a property is not warranted (we have provided multiple photographs of the interior and exterior facade, this included in the first submittal computer facade overlay images) We used these drawings of the existing to re-create the new design.
2. There is no clear new evidence to support whether the existing structure is contributing or has any architectural details that cannot be re-created in the new design. Plus, the existing structure has remained a non-contributing structure since 1994.
3. The property has been altered and neglected for over a decade The home was used for commercial purposes and has not been well preserved. Presently the structure has sustained foundation collapse and has visible roof damage. The property has been deemed unsafe by a qualified engineering company that deals with historical properties.
4. NRHP (National Register of Historic Places) survey designation has already determined the property does not meet the criteria nor qualifies as a contributing property in the Tenth Streets District. This property was one of 51 properties with the same status. We contend that we had provided more than what was required over a 3-month period and that the status should remain without any additional evaluation.  
We reiterate, the property at 338 S Fleming Ave. is clearly a non-contributing-commercial property.

We strengthened the 'non-contributing' status with further investigation of the existing structure on December 23 2021(following comments made in the last landmark meeting) on the (south-west corner of the exterior wall). Photographic evidence showed alterations and changes

when the property was used for a commercial plaster business and storage facility. These changes included a toilet added to the 'south porch area', insulating and boarding up the porch and plywood covering over existing broken windows.

Photographs show no evidence of any historical significance or character—there was, however, evidence the columns were 2-2x4 cut off the top. There were no original balustrades found (most likely the house had no balustrades) within the covered porch areas. The fascia was a simple box truss. The foundation at bay showed signs of collapse of over a foot. We found no evidence of any 'architectural detailing' or any 'archaeological values' to warrant a change of status of any kind.

Furthermore, the commercial property had been used for a plaster statuary and mold company and remained empty over a decade. During that time the property was empty the structure, roof and foundation had deteriorated and altered the structure beyond repair. (refer to the Structural Engineering report).

Also, major alterations have taken place including cladding the porch and removal of windows, which damaged the historic integrity of the structure. Moreover, any historic nature of the building has been so "severely compromised" as to be irreversible

There are few details in this property that possess historical integrity or any architectural details that would signify information about a style of architecture. The structure does not yield any information important in the history of this historical neighborhood.

Using the general rule for registration, this property is 'non contributing' and should remain so moving forward with the new design, which is clearly more compatible than the remains of the original structure built in 1920.



fdsaf

United States Department of the Interior  
National Park Service

National Register of Historic Places  
Continuation Sheet

Tenth Street Historic District (Oak  
Cliff MPS) Dallas, Dallas County, Texas

Section number 7 Page 6

L7 -1966	1121	E Eleventh	Contributing	1925	Residence
L7 -1969	1123	E Eleventh	Contributing	1930	Residence
L7 -1976	1124	E Eleventh	Noncontributing	1930	Residence
	1125	E Eleventh	Contributing		
L7 -1977	1126	E Eleventh	Noncontributing	1930	Residence
	208	S Fleming	Contributing		
	210	S Fleming	Contributing		
	538	S Fleming	Noncontributing	post-1944	
L7 -7558	306	S Fleming	Noncontributing	1935	Residence
L7 -7557	308	S Fleming	Contributing	1935	Residence
L7 -7556	316	S Fleming	Contributing	1925	Residence
L7 -7555	322	S Fleming	Contributing	1925	Residence
L7 -7554	334	S Fleming	Contributing	1925	Residence
L7 -7553	338	S Fleming	Noncontributing	1888	Residence
L7 -7552	354	S Fleming	Contributing	1925	Residence
L7 -7551	366	S Fleming	Contributing	1930	Institutional
L7 -7651	201	Landis	Contributing	1920	Residence
L7 -7650	203	Landis	Contributing	1925	Residence
L7 -7656	204	Landis	Contributing	1925	Residence
L7 -7655	208	Landis	Contributing	1925	Residence
L7 -7649	207	Landis	Contributing	1925	Residence
L7 -7648	209	Landis	Contributing	1925	Residence
L7 -7654	212	Landis	Contributing	1925	Residence
L7 -7653	216	Landis	Noncontributing	1925	Residence
L7 -7647	215	Landis	Contributing	1930	Residence
L7 -7652	224	Landis	Contributing	1920	Residence
L7 -7646	225	Landis	Contributing	1940	Residence
	228	Landis	Noncontributing	post-1944	
L7 -7581	310	Leads	Contributing	1930	Residence
L7 -7572	311	Leads	Contributing	1920	Residence
L7 -7580	312	Leads	Contributing	1925	Residence
L7 -7571	315	Leads	Contributing	1925	Residence
L7 -7579	316	Leads	Contributing	1910	Residence
L7 -7570	317	Leads	Contributing	1920	Residence
L7 -7578	320	Leads	Noncontributing	1900	Residence
L7 -7577	324	Leads	Contributing	1925	Residence
L7 -7569	325	Leads	Contributing	1905	Residence
L7 -7576	328	Leads	Contributing	1920	Residence
L7 -7568	327	Leads	Contributing	1925	Residence
L7 -7567	333	Leads	Noncontributing	1910	Residence
L7 -7575	334	Leads	Contributing	1920	Residence
L7 -7566	335	Leads	Contributing	1920	Residence
L7 -7574	336	Leads	Contributing	1910	Residence
L7 -7575	341	Leads	Noncontributing	1910	Residence
L7 -7564	345	Leads	Noncontributing	1900	Residence
L7 -7573	348	Leads	Contributing	1930	Residence
L7 -7563	349	Leads	Contributing	1920	Residence
L7 -7562	351	Leads	Noncontributing	1925	Residence
L7 -7561	355	Leads	Contributing	1925	Residence
	1035	E Ninth	Noncontributing		
L7 -1681	1030	E Ninth	Contributing	1920	Residence
L7 -1682	1102	E Ninth	Contributing	1920	Residence
L7 -1417	1103	E Ninth	Noncontributing	1950	Commercial Building
L7 -1618	1105	E Ninth	Contributing	1920	Residence
L7 -1619	1113	E Ninth	Contributing	1910	Residence
L7 -1683	1116	E Ninth	Contributing	1925	Residence
L7 -1620	1119	E Ninth	Contributing	1925	Residence
L7 -1621	1121	E Ninth	Contributing	1930	Residence
L7 -1684	1122	E Ninth	Contributing	1910	Residence
L7 -1685	1124	E Ninth	Contributing	1930	Residence
L7 -1622	1125	E Ninth	Contributing	1930	Residence
L7 -1623	1129	E Ninth	Contributing	1930	Residence

**ELECTRONIC CORRESPONDENCE – REC'D THURSDAY, JULY 27, 2022**

**FROM: MR. LARRY JOHNSON – WHEATLEY PLACE/TENTH STREET TASK FORCE**

**RE: REQUEST FOR A CERTIFICATE OF DEMOLITION FOR 338 S FLEMING AVE**

**CD212-014(MGM)**

**Carlos van Onna**

---

**From:** Larry Johnson [REDACTED]  
**Sent:** Thursday, July 28, 2022 3:51 PM  
**To:** Carlos van Onna  
**Subject:** Re: 338 S Fleming  
**Attachments:** 20220725\_150844.jpg; 20220725\_150821.jpg; 20220725\_150543.jpg; 20220725\_150751.jpg; 20220725\_150517.jpg

External Email!

Good afternoon

338 S. Fleming does not need to be demolished but rather restored.

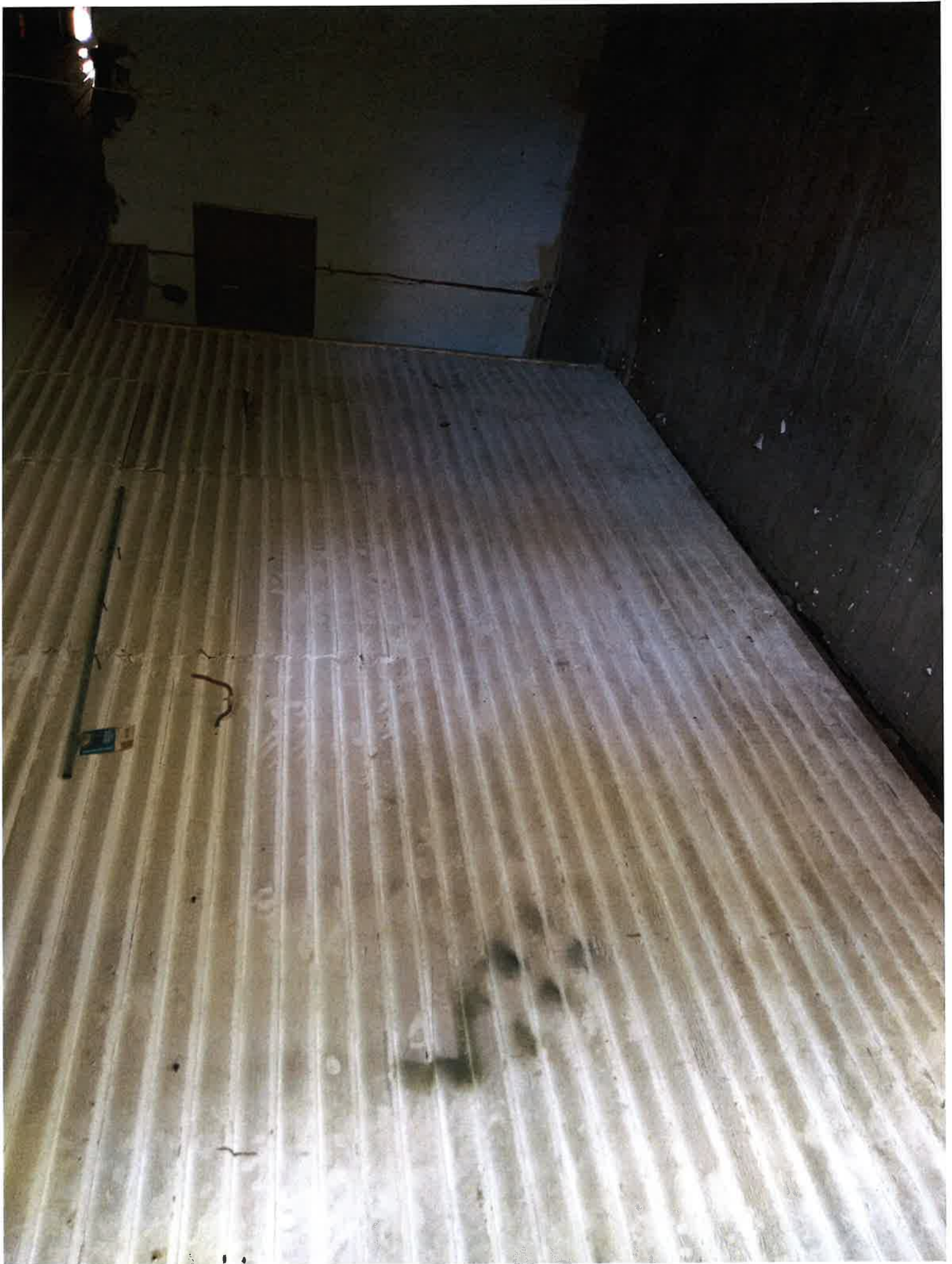
On July the 25th at 3:00 p.m., I met with preservation staff and the lawyer for the applicant at 338 South Fleming. I was allowed access to the property for the purposes of verifying whether the property needed to be demolished. Up on entering the property I immediately noticed that I stepped on what used to be part of a wraparound porch. The porch wrapped around the front, right side and rear facades of the house. Direction wise the porch wrapped around the western, southern and eastern facades of the house. I knew that this was a porch because of the bead board ceilings and the 117 siding facing outward. Also under Eastern facade of the house, which would face the backyard, there were windows that once looked out on a large backyard. The porch has been enclosed with walls that were made of standard 2x4 studs and plywood. As I entered the living quarters of the house I noticed that the floors were the original pine flooring, intact, and the ceiling was supported by columns inside of what was most likely the living room of the house. The foundation is in need of repair and can be repaired. Contrary to what I was told and to what the engineer report said, the foundation is not laying on the ground, the house is still elevated and a foundation crew is able to get underneath to lift the house. Attached are pictures of the all facades of the house, what used to be portions of the wraparound porch and the Columns inside the house that support the ceiling.

[REDACTED]

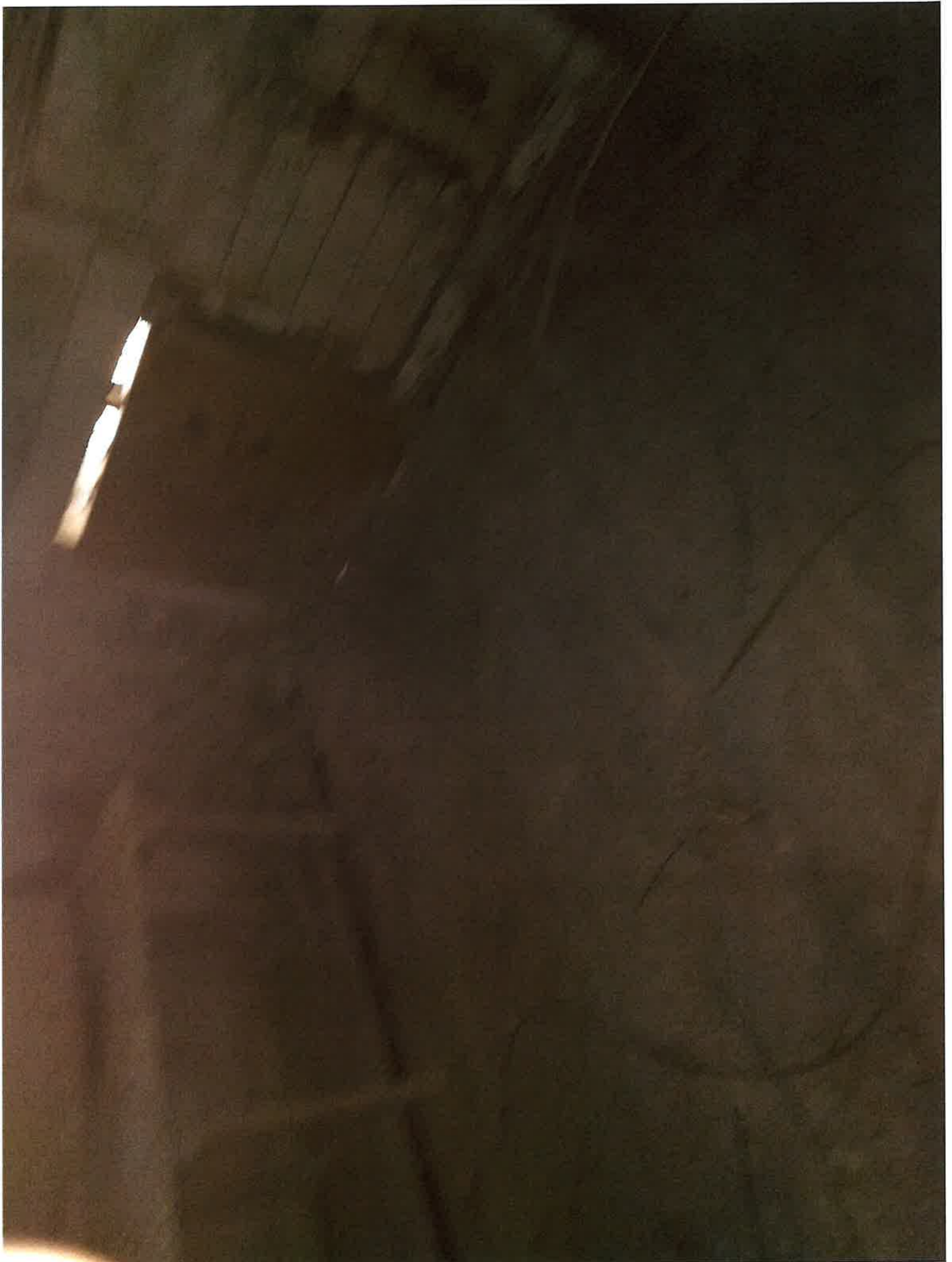
[REDACTED]

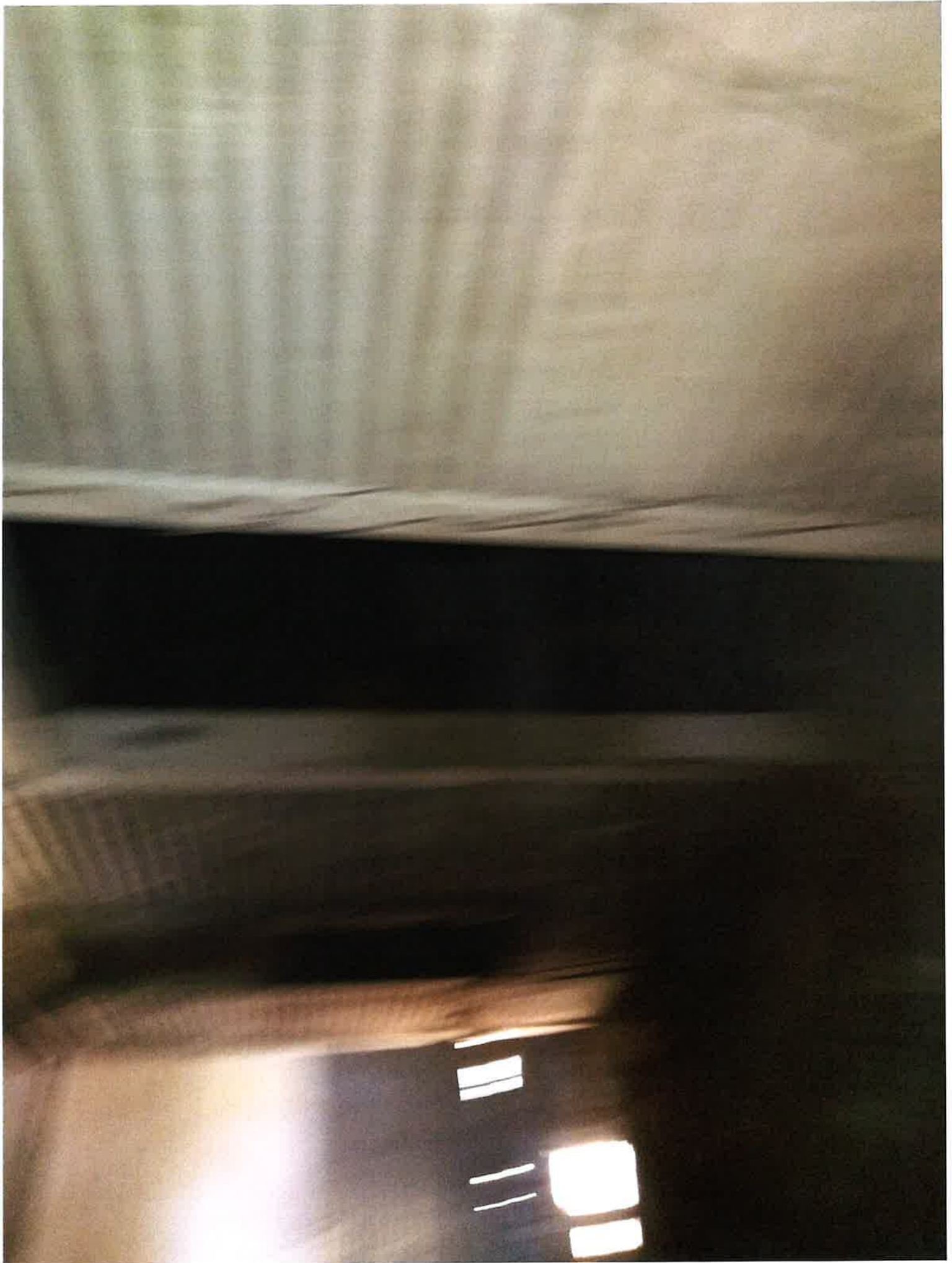
[REDACTED]

[REDACTED]













# SECTION 4

## Landmark Commission Minutes

August 1, 2022

See Pages 9 - 10, Item #3

compatible with the historic district; 4. There is no expressed entrance to the building which is called for in section 4.1 of the ordinance; 5. The facade color scheme is not compatible with the historic district, to give the applicant an opportunity to revisit with Task Force based on Task Force concerns. (Note: Task Force has not seen the new design)

Maker:	Sherman				
Second:	Rothenberger				
Results:	13/0				
		Ayes:	-	13	Anderson, Guest, Hinojosa, Montgomery, Offutt, Renaud, Rothenberger, Sherman, Slade, Spellicy, Swann, Taylor, Velvin
		Against:	-	0	
		Absent:	-	2	Livingston, Hajdu
		Vacancies:	-	2	Districts 3 and 11

**3. 338 S FLEMING AVE**

Tenth Street Neighborhood Historic District

CD212-014(MGM)

Murray Miller

A Certificate for Demolition/Removal to demolish a noncontributing structure using the standard 'replace with more appropriate/compatible structure'.

Speakers: For: Randy Shear  
Paul Wieneskie

Against: No Speakers

**Motion #1**

That the request for a Certificate for Demolition/Removal to demolish a noncontributing structure using the standard 'replace with more appropriate/compatible structure' be **approved** with finding the that the proposed demolition would not satisfy the standard in City Code Section 51A-4.501(h)(4)(A)(i).

Maker:	Offutt				
Second:	Taylor				
Results:	2/11				<b>MOTION FAILED</b>
		Ayes:	-	2	Offutt, Taylor
		Against:	-	11	Anderson, Guest, Hinojosa, Montgomery, Renaud, Rothenberger, Sherman, Slade, Spellicy, Swann, Velvin
		Absent:	-	3	Livingston, Hajdu

**Motion #2**

That the request for a Certificate for Demolition/Removal to demolish a noncontributing structure using the standard 'replace with more appropriate/compatible structure' be **denied without prejudice** with finding the that the proposed demolition would not satisfy the standard in City Code Section 51A-4.501(h)(4)(A)(i).

Maker:	Swann				
Second:	Guest				
Results:	11/2				
		Ayes:	-	11	Anderson, Guest, Hinojosa, Montgomery, Renaud, Rothenberger, Sherman, Slade, Spellicy, Swann, Velvin
		Against:	-	2	Offutt, Taylor
		Absent:	-	2	Livingston, Hajdu
		Vacancies:	-	2	Districts 3 and 11

**4. 2903 WARREN AVE**

Wheatley Place Historic District  
CA212-460(CVO)  
Carlos van Onna

1. A Certificate of Appropriateness to install burglar bars on all windows – Work completed without a Certificate Appropriateness
2. A Certificate of Appropriateness to repaint exterior (Body: Sherwin Williams SW1083 “Architectural Gray”; Trim: Sherwin Williams HGSW1391 “Delft Pottery”) – Work completed without a Certificate of Appropriateness.
3. A Certificate of Appropriateness to install fencing – Work completed without a Certificate of Appropriateness.
4. A Certificate of Appropriateness to install faux shutters and modify dormer window – Work completed without a Certificate of Appropriateness.
5. A Certificate of Appropriateness to paint concrete porch floor and walkway – Work completed without a Certificate Appropriateness.
6. A Certificate of Appropriateness to apply stain (Valspar Pre-tinted “Redwood”) to existing fencing.

Speakers: For: Claudette Mike

Against: No Speakers

**Motion**

1. That the request for a Certificate of Appropriateness to install burglar bars on all windows be **approved with the condition** that burglar bars be removed from windows on protected facades. The proposed work is inconsistent with the Wheatley Place preservation criteria Section 5.5; City Code Section 51A-4.501(g)(6)(C)(i); and the Secretary of the Interior’s Standards.
2. That the request for a Certificate of Appropriateness to repaint exterior (Body: Sherwin Williams SW1083 “Architectural Gray”; Trim: Sherwin Williams HGSW1391 “Delft Pottery”) **be denied**

# SECTION 5

Transcript of the  
August 1, 2022  
Landmark Commission  
Hearing  
338 S Fleming Avenue  
CD212-014(MGM)



In Re:

- - -

CD212-014 (MGM) 338 S Fleming Ave.

Audio Transcription of  
LANDMARK COMMISSION HEARING

August 1, 2022

Transcribed By:

Maureen Cunningham Brzycki, Court Reporter

MAGNA LEGAL SERVICES

1 THE CHAIRPERSON: Yes. We're  
2 hearing D3, Commissioner Anderson has  
3 returned because he's no longer recused.  
4 We have two speakers, who we will hear  
5 from after we hear from the staff on D3.

6 MR. MILLER: Discussion Item D3,  
7 CD212-014 (MGM) is a request for a  
8 certificate of demolition, removal of a  
9 primary structure located at 338 South  
10 Fleming Avenue.

11 This photo shows the existing  
12 structure as seen from South Fleming  
13 Avenue. The north elevation is depicted  
14 in the top image and the south elevation  
15 is depicted in the bottom image. The  
16 rear elevation is depicted here at the  
17 top, and the front elevation at the  
18 bottom. A key issue related to this  
19 request is whether the property is  
20 contributing or noncontributing. I  
21 wanted to show the map of the  
22 contributing and noncontributing  
23 structures that is associated with the  
24 district. The property that is

1 highlighted in red, which is 334 South  
2 Fleming Avenue is listed as  
3 contributing. This is 334 South Fleming  
4 Avenue today, which underscores that it  
5 is not adequate to rely on a list from  
6 1994 without undertaking a current  
7 evaluation. These are the seven aspects  
8 of integrity that should be considered  
9 when evaluating whether a property  
10 contributes to a historic district.

11 The subject property is in the  
12 location where it was constructed.  
13 Therefore, it retains integrity of  
14 location. While the subject property  
15 still retains sufficient integrity of  
16 design because its current state allows  
17 for the understanding of the elements  
18 that created the form, plan, space  
19 historic function, structural system,  
20 fenestration pattern, exterior materials  
21 and tile of the property.

22 The block face upon which the  
23 subject property at 338 South Fleming  
24 Avenue exists, while having lost a

1 couple of houses since the 1990s, still  
2 retains sufficient integrity of setting  
3 because the character of the street and  
4 the property's relationship to  
5 surrounding homes features an open  
6 space, remains recognizable as that  
7 which would have existed during the  
8 district's period of significance.  
9 While certain aspects of materials have  
10 been altered, the subject property  
11 remains sufficient integrity of  
12 materials because the choice and  
13 combination of materials that were used  
14 on the subject property are evident and  
15 they reveal the preferences of those who  
16 created it in the 1920s during the  
17 district's period of significance.

18 While certain aspects of the  
19 workmanship have been altered, the  
20 subject property remains sufficient  
21 integrity of workmanship because its  
22 current state allows for an  
23 understanding of the labor and skill in  
24 constructing the subject property in the

1           1920s during the district's period of  
2           significance.

3                   The subject property retains  
4           sufficient integrity of feeling because  
5           the presence of physical features that  
6           are sufficiently expressed in its  
7           location, design, setting materials, and  
8           workmanship, when taken together, convey  
9           the property's historic character and  
10          conveys the significance of the  
11          district.

12                   The subject property retains  
13          sufficient integrity of association  
14          because the property is sufficiently  
15          intact to convey a direct link between  
16          an important historic event and the  
17          physical evidence of the historic  
18          property to an observer.

19                   In relation to the standard for  
20          approval, 51A-4.501H4A, indicates that  
21          the landmark commission must deny an  
22          application to replace a structure with  
23          a new structure, unless it finds that  
24          the new structure is more appropriate

1 and compatible with the historic overlay  
2 of district than the structure to be  
3 demolished or removed.

4 From a preservation  
5 perspective, it is unlikely that the  
6 replacement of an existing structure at  
7 338 South Fleming Avenue with a more  
8 appropriate and compatible new structure  
9 is possible. Because the existing  
10 structure adds more historic value to  
11 the district than a replacement new  
12 structure. A commonly accepted  
13 definition of a contributing property is  
14 one that adds historic value to a  
15 historic district. Staff, therefore  
16 recommend the request for a certificate  
17 of demolish and removal to demolish a  
18 noncontributing structure use the  
19 standard, replace with a more  
20 appropriate and compatible structure, be  
21 denied without prejudice.

22 This recommendation is made  
23 where the finding that the proposed  
24 demolition would not satisfy the

1 standard in City Code Section  
2 51A-4.501H4, Romanette I.

3 This concludes the staff  
4 presentation.

5 THE CHAIRPERSON: Thank you, Mr.  
6 Miller, for your very intriguing and  
7 extensive examination of the qualities  
8 of this existing structure.

9 After we hear from the  
10 applicants, who are here to speak, I'm  
11 probably going to ask our city attorney  
12 to comment upon some of the  
13 suggestions Mr. Miller has made about  
14 how this lines up with our -- our  
15 ordinance and our legal expectations.  
16 But first let us hear from our speakers.

17 ELAINE: We didn't read in the task  
18 force. Sorry.

19 THE CHAIRPERSON: Oh, sorry.

20 Y'all just won't let me get  
21 away with making any mistakes; will you?

22 MALE VOICE: Task force  
23 recommendation, no quorum comments only.  
24 Task force is not supportive of review

1 proceedings until entry access is  
2 granted to property.

3 After task force meeting,  
4 access to the property was granted to  
5 city staff and a representative of the  
6 task force on Monday, July 25. Comments  
7 resulting from this visit have been  
8 included in the docket.

9 THE CHAIRPERSON: All right.

10 So first we're going to -- do  
11 you want to go before the speakers?

12 First we're going to hear from  
13 our speakers. Randy Sheer, are you  
14 here?

15 Good evening, Mr. Sheer.  
16 Please begin by stating your name and  
17 address. The microphone is not on?

18 MR. SHEER: I think it's on now.  
19 Thank you.

20 THE CHAIRPERSON: All right. Good.

21 MR. SHEER: My name is Randy Sheer.  
22 I live at 7027 Gaston Parkway in Dallas,  
23 Texas, and I swear to tell the truth.

24 THE CHAIRPERSON: Thank you.



1 Note that he has affirmed to  
2 swear to tell the truth.

3 Okay. You have three minutes.  
4 Elaine will time you.

5 MR. SHEER: Right.

6 We predict after the tour of  
7 the property on July 25th that the bill  
8 of report today will represent a  
9 predetermined verdict -- will cement a  
10 vote of a denial on the project, as the  
11 commissioners had done in the video  
12 meeting last December.

13 However, our prediction -- if  
14 our prediction is wrong, we will comply  
15 with the approved conditions. Last  
16 November the task force approved with  
17 the conditions both the CA and CD. The  
18 question remains, if this tour was so  
19 consequential, why did it take Mr.  
20 Miller one year to implement the house  
21 tour? Why isn't it the home tour  
22 mandatory or a requirement? Why were  
23 the new staff members not fully briefed  
24 on our project? In the plan land use

1 development workshop of 2021, Mr.  
2 Miller's team suggested a gross restore  
3 of a pharmacy in the same location along  
4 the block of Fleming Avenue, a pharmacy.

5 Mr. Johnson spoke to me during  
6 the property tour. He admitted he had  
7 not seen or read the bedrock report,  
8 explaining -- I'm paraphrasing -- the  
9 owners always want to knock down these  
10 homes. I don't trust those reports.  
11 Those companies will say anything if you  
12 pay them enough money. Moreover, he  
13 claimed he would trust and prefer Brown  
14 Foundation company. He also estimated  
15 the cost at a mere 8000 dollars, which I  
16 told them I could pay for.

17 It's concluded that -- this is  
18 the bedrock report conclusion. It is  
19 concluded that most, if not all, the  
20 lumbar is damaged and not salvageable.  
21 If lifting the structure is attempted,  
22 the rot lumbar will crush. It's  
23 concluded that structure will need to be  
24 demolished -- demolished -- demolished

1 and reconstructed off the ground. The  
2 foundation can't be reconstructed with  
3 the structure left in place, end quote.

4 I have to say that the owner,  
5 Ann Marie Bristo, is a structural  
6 engineer. And David Presiocia, maybe I  
7 said it wrong, highly recommended the  
8 bedrock engineer company.

9 Project cost. The landmark  
10 commission voted on the CA, approved the  
11 new proposal design with more compatible  
12 than the existing structure. A denial  
13 vote is a vote against your own  
14 collective determination, approving the  
15 CA package in June of this year.

16 In other words, we would be  
17 starting over. Here's the present  
18 reality. Slippage in the schedule of 8  
19 months has increased all new  
20 construction by at least 35 percent  
21 across the board. Renovation or  
22 rehabilitation of the existing structure  
23 is cost prohibitive. It's clear from  
24 the bedrock report the structure cannot

1 be leveled, lifted, or moved without  
2 emanant collapse. In other words, no  
3 foundation will be put in there.  
4 Further delays or denial of the CD would  
5 force my client to sell the property  
6 outright, and it's possible there maybe  
7 a pharmacy at the location once they  
8 knock it down.

9 If the project -- I have to say  
10 finally, Mr. Swan said at the last  
11 landmark meeting, if the project is  
12 excellent, we love the spirit of it. We  
13 just because of it's tremendous  
14 opportunity, want to set an example, we  
15 want to do it right.

16 ELAINE: Excuse me. That's your  
17 time.

18 MR. SHEER: Oh, yes.

19 THE CHAIRPERSON: Mr. Winesky, I'm  
20 sorry. I don't have my mic on. Here  
21 I'm asking you to turn your mic on.

22 We see you. Please turn on  
23 your mic and give me your name and  
24 address.

1 MR. WINESKY: (Inaudible) Winesky.  
2 1300 Summit Avenue, Fort Worth, Texas.  
3 And I swear to tell the truth.

4 THE CHAIRPERSON: Thank you.

5 We look forward to the truth.  
6 You now have three minutes to speak.  
7 And Elaine here will time you.

8 MR. WINESKY: Thank you.

9 I'd like to start off by just  
10 letting you know I spent a collective 40  
11 years as a city attorney or assistant  
12 city attorney in Northeast (inaudible)  
13 City, so I do understand the City's  
14 viewpoint on things.

15 The very material that is  
16 included in your packet, the Texas  
17 Administrative Code Provisions are  
18 setout for the Texas Historical  
19 Commission, and one of those items  
20 states property does not contribute to  
21 the historic significance of the  
22 district if its location, design,  
23 setting, materials, workmanship, and  
24 association have been so deteriorated

1 the overall integrity of the building  
2 has been irretrievably lost. And I  
3 believe Mr. Sheer just gave you guys the  
4 information that demonstrates that it  
5 is -- it's irretrievably lost. And  
6 cannot be restored in its present state.

7 And I have to say that the  
8 continued refusal of the Commission to  
9 allow Ms. Bristo to demolish the  
10 unsalvageable existing structure and  
11 construct one that this board already  
12 determined is appropriate and compatible  
13 with the area would come dangerously  
14 close to a regulatory (inaudible). The  
15 impact on the economic -- this decision  
16 on the claimant would be great since  
17 it's cost prohibitive to restore it in  
18 its present condition. And the -- the  
19 refusal to allow this to move forward  
20 would seriously frustrate and interfere  
21 with the distinct and reasonable backed  
22 expectations of Ms. Bristo when she  
23 bought the property. And being a  
24 retired structural engineer, she knew

1           what she was getting into and hired the  
2           appropriate experts to determine whether  
3           that foundation could be saved, and it  
4           can't. So I would simply -- despite the  
5           staff report, which is quite elaborate  
6           in detail, I would urge this board to go  
7           ahead and approve the certificate of  
8           demolition and let this project move  
9           forward.

10           THE CHAIRPERSON: Thank you, sir.

11                   I am so sorry for the owner's  
12           perfectly justified irritation because  
13           this is taking so long. But we do, you  
14           know, we're talking about taking down a  
15           building. We don't want to make a  
16           mistake because we can't get the  
17           building back once we say take it down.

18                   The judgment of whether  
19           something retains integrity is a  
20           judgment call about seven different  
21           things. So it's not even just like one  
22           sliding scale, it's like 7. So we have  
23           to consider this carefully. I was,  
24           after you spoke, going to ask our own

1 city attorney, Mr. Vandenberg, to opine  
2 on some of the points either in Mr.  
3 Miller's presentation that he thought we  
4 should have his viewpoint on. And I  
5 also wish him to respond to Mr.  
6 Winesky's because you're an attorney,  
7 and I'm not an attorney, and I'd like to  
8 thoroughly understand where you think we  
9 stand.

10 MR. VANDENBERG: Thank you Madam  
11 Chair. Burt Vandenberg, assistant city  
12 attorney.

13 You've asked me some rather  
14 broad things, so I'm going to try to  
15 wing it.

16 THE CHAIRPERSON: (Inaudible).

17 MR. VANDENBERG: Thanks.

18 Whether or not the existing  
19 structure meets the definition of a  
20 contributing structure or  
21 noncontributing structure, defined  
22 either by Director Miller or the 1994  
23 survey, while it has bearing on this  
24 issue, the actual standard for approval,



1           which was read earlier, and we've been  
2           talking about, is that the landmark  
3           commission shall deny the application  
4           unless it makes the following findings.

5                       And you guys have already  
6           approved a new structure. And so now  
7           the question in your judgment, which you  
8           have been charged with, regardless of  
9           the legal assertions made earlier, is in  
10          your opinion, is the new structure that  
11          you approved more appropriate and  
12          compatible with the historic district  
13          than the structure to be demolished or  
14          removed.

15                      I think that is -- there's also  
16          a second prong of financial ability.  
17          But I think we can do that. The  
18          second -- but really it is your opinions  
19          as to whether or not the new structure  
20          is this more appropriate and compatible,  
21          regardless of the definition or semantic  
22          label contributing or noncontributing.  
23          It's whether or not it is more  
24          appropriate and compatible.

1                   Again, I would say that it is  
2                   in your judgment and it is the standard  
3                   in the code, while I understand Mr -- I  
4                   believe it's Winesky's comments, is that  
5                   right? Mr. Winesky's comments, again, I  
6                   would urge the landmark commission to  
7                   stick to the standard that they have  
8                   before them and not take those other  
9                   items into account. You guys are  
10                  charged with a very limited -- limited  
11                  scope of what you should do. And I  
12                  don't know what you'll find, but I'm not  
13                  a historic expert.

14                 THE CHAIRPERSON: Thank you,  
15                 Mr. Vandenberg. We always want to hear  
16                 about the law.

17                 Okay. I'm going to open this  
18                 up for questions either of our speakers  
19                 or Mr. Miller or Mr. Vandenberg on what  
20                 he knew.

21                 MALE VOICE: I do have a question  
22                 for the city attorney.

23                 They chose the replacing a  
24                 building is more architecturally or

1           culturally important than the one that  
2           was there; is that correct?

3           MR. VANDENBERG: The standard --  
4           Madam Chair --

5           MALE VOICE: Please read the whole  
6           standard for me, please.

7           MR. VANDENBERG: Madam Chair, the  
8           standard for approval, 51A-4.501H4, I  
9           believe. Standard for approval, the  
10          Landmark Commission shall deny the  
11          application unless it makes the  
12          following findings:

13                 The Landmark Commission must  
14          deny an application to replace a  
15          structure with a new structure, unless  
16          it finds that the new structure is more  
17          appropriate and compatible with the  
18          historic overlay district than the  
19          structure to demolish or remove. And  
20          the owner has the financial ability and  
21          intent to build the new structure.

22                 The Landmark Commission -- this  
23          is a little irrelevant, but must first  
24          approve the predesignation certificate

1 of appropriateness or certificate of  
2 appropriateness for the proposed new  
3 structure and guarantee they're going to  
4 construct the new structure before  
5 making the application to demolish or  
6 remove.

7 I can't -- that is -- that is  
8 the end of that particular --

9 MALE VOICE: Okay.

10 Then I have a question for the  
11 applicant.

12 There are several criteria or  
13 reasons for a building can be  
14 demolished. Is the reason you chose  
15 this as opposed to immanent public  
16 health and safety, which maybe more  
17 germane? Did you choose this on your  
18 own? How did you come up with this  
19 criteria for demolition of this  
20 structure?

21 MR. SHEER: Would you repeat the  
22 question? I'm so sorry.

23 MALE VOICE: There are different  
24 reasons or criteria for demolition of a

1 building in a historic district. One is  
2 the one you used, which is the building  
3 that replacing this building is more  
4 appropriate than the one that is being  
5 removed. And the other -- that you  
6 could use is an emanant threat to public  
7 health and safety that this building is  
8 in bad shape. It's going to fall down.  
9 It's going to hurt somebody.

10 What was the rationalization  
11 for choosing this criteria why -- how  
12 did the criteria come to be what you  
13 chose to use?

14 MR. SHEER: Let me tell you a little  
15 history about the project. Last year --  
16 in about July of last year Ann Marie had  
17 me design the project --

18 MALE VOICE: I'm sorry. I can't  
19 hear you.

20 MR. SHEER: Ann Marie had me design  
21 a project for her. And we had this  
22 house that was existing there. And at  
23 first we had designed it around this  
24 historic home. We tried to save it.

1 But it wasn't until the second we  
2 applied three times during the year up  
3 until the landmark meeting in December.  
4 So we actually came up with -- to save  
5 the home the first round, but then in  
6 the second round, we had the engineer's  
7 report, which was conclusive that this  
8 house couldn't be saved, and it was  
9 collapsed, that you really can't even  
10 get underneath it nor could you lift it  
11 because of this things that were rotted.  
12 So we then changed the plan to making it  
13 more compatible structure. If that's  
14 understood. And as for the safety of  
15 the building, I mean the staff showed up  
16 with hard hats. That how safely it is  
17 --

18 MALE VOICE: But what I'm getting  
19 to, there's at least two criteria. You  
20 chose one saying the building replacing  
21 the building is better than the one  
22 that's there. And you might have used  
23 the criteria is an emanant threat to  
24 health and safety. It's my

1           understanding after hearing the city  
2           attorney, we don't -- at this type of  
3           criteria, we don't really look at the  
4           structure's stability. We look at -- we  
5           have A, and we have B. Do we like B  
6           better than A? It doesn't say the  
7           building is falling down and it's going  
8           to be a problem. So my --

9           MR. SHEER: Well, we have to --

10          MALE VOICE: So it's -- my concern  
11          is we don't have the ability in my  
12          understanding to say this building has  
13          got structural problems. We need to say  
14          this building -- the old building is  
15          better than or not as good as the new  
16          building.

17                    Is that correct? We don't  
18          really look at the structural stability  
19          of it.

20          THE CHAIRPERSON: I believe even  
21          though the applicant may not have  
22          officially stated part of the reason  
23          they chose to take the building down is  
24          because it is physically unsalvageable,

1           structurally unsound -- that's what they  
2           claim -- we can still consider that  
3           because it's obviously pertinent. So  
4           even if they didn't bring it up, we can  
5           bring it up.

6           MALE VOICE: Okay.

7           MR. SHEER: I mean, to cherry pick  
8           what Mr. Miller had done in his  
9           presentation all the little details,  
10          that doesn't have any bearing on what  
11          the structure safety is. And also the  
12          fact that the floors are sloping and  
13          most of the foundation is already rotted  
14          and collapsed.

15          Not only has the building  
16          collapsed, but it's shifted because of  
17          the -- I don't know what the reason  
18          is -- the structure and the foundation  
19          had collapsed. So the building not only  
20          fell, but it actually tilted and fell.  
21          So it's on an angle. It's kind of like  
22          the Wizard of Oz home that landed on the  
23          wicked witch of the west. It's on an  
24          angle and if you're going to technically



1 get underneath it, you can't. You can't  
2 can jack it. You can't lift it nor can  
3 you level it out.

4 Mr. Johnson was terribly  
5 mistaken that for 8,000 dollars we can  
6 fix this problem. We can't it. Can't  
7 be done.

8 MALE VOICE: I guess my point was  
9 there might have been a better criteria  
10 to use to talk about the instability and  
11 instead of having all these new  
12 construction stuff getting in the way.

13 MR. SHEER: Well, we knew this  
14 building was in bad shape when she  
15 bought the property. But the thing is  
16 once we had the engineer report, and I'm  
17 going on the engineer report, I can't  
18 make my own opinion about how bad shape  
19 the building is in, other than I can see  
20 it's collapsed.

21 THE CHAIRPERSON: Okay.

22 I think we established we can  
23 consider the condition of the building  
24 as well as we make our discussion.

1 Obviously, a building that cannot  
2 continue to stand doesn't have much  
3 integrity. So if we were to rule it --  
4 accept it was going to fall over, that's  
5 a loss of integrity.

6 Does anybody else have any  
7 questions for applicants, staff? Who?  
8 Commissioner Offit. Okay. Yes.

9 COMMISSIONER OFFIT: I'm sorry. I  
10 don't have a question. I'm ready to  
11 make a motion.

12 THE CHAIRPERSON: Is there anyone  
13 else who wishes to ask a question before  
14 we have Commissioner Offit make his  
15 motion?

16 MALE VOICE: Yes.

17 THE CHAIRPERSON: Commissioner Sp --  
18 oh, let's ask -- let Commissioner Taylor  
19 make his motion. I'm sorry your little  
20 girl left.

21 COMMISSIONER TAYLOR: It's not a  
22 motion. It's a question. So if this  
23 home can't be demolished or it's not  
24 deemed a contributing structure, what is

1 the steps forward for this home to be  
2 repaired if it's unrepairable, and it  
3 can't be demolished? What's the plan  
4 for if they're not allowed to build a  
5 home that is contributing or meets the  
6 criteria of that district?

7 MR. SHEER: Am I supposed to answer  
8 that?

9 THE CHAIRPERSON: Let's probably go  
10 with having Mr. Miller answer that. I  
11 do believe the applicant said something  
12 about perhaps selling it if we wouldn't  
13 move forward, but if we were to say they  
14 could not take it down, Mr. Miller, what  
15 would you see as the way forward?

16 MR. MILLER: Thank you for the  
17 question.

18 I think there are probably  
19 several options, but I think that is  
20 probably also not the subject of the  
21 application, so I'm not sure how much we  
22 can get engaged into what is possible  
23 because what is before us is different.

24 THE CHAIRPERSON: All right.

1                   But if we deny the request to  
2                   demolish the building, they would be  
3                   unable to get a permit to demolish, and  
4                   so they would not demolish it. And if  
5                   it's in as bad of shape as we've been  
6                   told, I supposed it could present a  
7                   danger to the public, and they would  
8                   have to approach it that way if they  
9                   wish to, or they could sell it and walk  
10                  away. That is an option for them.

11                   Did you have any other  
12                  questions, Mr. Taylor?

13                  COMMISSIONER TAYLOR: No.

14                  THE CHAIRPERSON: Commissioner Swan  
15                  has a question.

16                  COMMISSIONER SWAN: Yes, Madam  
17                  Chair.

18                   First of all, question directed  
19                   to Attorney Vandenberg, are we not  
20                   straying from the purpose of the hearing  
21                   if we are considering anything beyond  
22                   whether the proposed -- proposed new  
23                   structure would bring more historic  
24                   value to this site than an existing

1 historic structure?

2 MR. VANDENBERG: Madam Chair, it's  
3 hard to answer that without me just  
4 going back to the standard. People are  
5 repeating the standard different ways,  
6 but the standard -- the pertinent part  
7 of the standard is fundamentally that  
8 the new structure, which is the CA you  
9 guys did is more appropriate and  
10 compatible with the historic overlay  
11 district than the structure to be  
12 demolish or removed.

13 My understanding, and again,  
14 I'm -- I'm not an architect or anything.  
15 I'm just a humble zoning attorney -- is  
16 that -- is that part of the presentation  
17 was that the integrity of the building  
18 goes to it's -- whether -- how much it  
19 adds to it. And maybe I misheard, but  
20 that was part of it. So I think that is  
21 within the scope of what you guys are  
22 talking about, the history value of the  
23 home, the integrity of the home, as  
24 Madam Chair said. I think that's on

1 point.

2 When you start going into the  
3 possibility of the future, that is  
4 perhaps beyond the scope of the  
5 Saturday. Because you guys have already  
6 defined the future by the CA you  
7 approved.

8 COMMISSIONER SWAN: Right.

9 Okay. But for it to satisfy  
10 the standard, the new structure would  
11 have to be more appropriate than the  
12 existing structure, correct?

13 MR. VANDENBERG: That is correct.

14 And what is more appropriate  
15 and I'm sorry -- more appropriate and  
16 compatible is why you guys are paid the  
17 big bucks to make that determination.

18 COMMISSIONER SWAN: Right.

19 That's exactly what I'm asking.  
20 I just wanted to bring our focus back to  
21 that determination because it seems we  
22 are straying from that.

23 Now, I would also -- I would  
24 like to really ask everybody to look

1           Figure 17, let's see, which is on D3,  
2           page 24. And this is a question to  
3           staff, the applicant, anyone: Have we  
4           seen this -- not this image because I  
5           realize this image was taken on July 25,  
6           but have we seen this view of the  
7           interior porch -- wrap around porch  
8           behind the wall, have we seen this at  
9           any previous hearing or in any previous  
10          material submitted to us?

11           MR. MILLER: Thank you for the  
12          question. No because access to the  
13          interior was restricted, and that is why  
14          we were dealing with an application  
15          months and months down the road.  
16          Because we didn't have access.

17           COMMISSIONER SWAN: Thank you.

18           MR. SHEER: Can I say something  
19          about that?

20           COMMISSIONER SWAN: Sure.

21           MR. SHEER: Oh.

22           COMMISSIONER SWAN: My question is,  
23          have we seen this view before?

24           MR. SHEER: We had taken in the

1 first package -- first of all, in the  
2 first submittal last year, I notice that  
3 the city has edited the package that we  
4 actually sent in. And in that package  
5 they never did show the north elevation.  
6 It was edited only because they couldn't  
7 take a picture of the north elevation  
8 because of the growth.

9 In terms of that package and  
10 the other packages that have been sent  
11 in, we've shown plenty of interior shots  
12 of the project, even when it was filled  
13 with a bunch of statuettes and garbage.  
14 And so this time around, our package did  
15 include those interior views, and the  
16 porch areas that Mr. Miller is speaking  
17 of.

18 COMMISSIONER SWAN: Okay.

19 MR. SHEER: So the answer is yes,  
20 you did see it.

21 COMMISSIONER SWAN: No, I did not  
22 see it. I have never seen this.

23 Has any other commissioner seen  
24 this view? I have not seen this view



1           before. This is full of information  
2           that the brand new to me.

3           MR. SHEER: Well, I don't actually  
4           have access to the pictures you're  
5           looking at. So if you can put them on  
6           up on the screen, I can speak to it.

7           COMMISSIONER SWAN: Well, it's in  
8           the agenda. I mean, it's in the public  
9           agenda.

10          THE CHAIRPERSON: Perhaps staff can  
11          pull it up and put it on the big screen.  
12          Because it's hard for him to talk about  
13          a picture he can't see. We can see it,  
14          but we can look for it on our own  
15          computers, but it's not up for the  
16          applicant to see.

17          COMMISSIONER SWAN: And I don't want  
18          to get hung up on this image. But this  
19          is full of brand new information to me,  
20          and I -- I guess I'm just curious if I'm  
21          the only one.

22          MR. SHEER: Are you speaking of the  
23          third leg of the porch area? Is that  
24          what you're talking of?

1           COMMISSIONER SWAN: I'm speaking  
2 of -- let's see. It's figure 17 in the  
3 agenda on page -- it would help if staff  
4 could bring it up, actually. D3, page  
5 24 in the -- in the agenda. It's a --  
6 it's a view of a corner. I'm not sure  
7 exactly which corner it is. My guess  
8 would be it's the southwest corner. But  
9 that's a guess. I don't know. It might  
10 be -- it might be the southeast corner.

11           THE CHAIRPERSON: Commissioner Swan,  
12 can I ask you to share with us any --  
13 any specifics of this new information  
14 that this photo reveals to you? It  
15 reveals new things to me.

16           COMMISSIONER SWAN: Well, I think  
17 I'm raising the question because I wish  
18 Commissioner Cummings were here today. In  
19 the initial discussion of -- of forensic  
20 analysis of the building or a little bit  
21 of building archeology, we were asking  
22 to know what was behind the wall.  
23 And -- and my reelection is we were  
24 assured nothing stable, valuable,

1           informative was behind the wall. And  
2           I'm looking at a picture that tells me  
3           all kinds of things about this building  
4           that I didn't know until I saw this  
5           picture.

6                         That's why I'm asking.

7                         THE CHAIRPERSON: All right. Thank  
8           you.

9                         Do you have any further  
10          questions, Mr. Swan, or --

11                        All right.

12                        So I think to clarify the point  
13          is that we had asked before, what does  
14          it look like behind that wall in this  
15          enclosed porch, and now we have some  
16          very new information. And perhaps it  
17          gives us some ideas about the condition  
18          of the existing building.

19                        MR. SHEER: Mr. Cummings asked me at  
20          the last landmark --

21                        THE CHAIRPERSON: Excuse me, sir.  
22          You only get to answer questions,  
23          unfortunately. And I'll try to think of  
24          one to ask you.

1                   What is your opinion of where  
2                   Mr. Cummings says in relation to what  
3                   Mr. Swan just asked you.

4                   MR. SHEER:   Mr. Cummings  
5                   discussion -- and I didn't include it  
6                   because I didn't have time to include it  
7                   in my comments, but it was surrounded  
8                   around a selective demolition, where  
9                   Mr. Cummings thought that what was in  
10                  the wall was very important.  And at the  
11                  time in December we actually took off  
12                  some of the panels on the exterior east  
13                  south corner just to investigate if  
14                  there was a balustrade or a column or a  
15                  some kind of architectural detail we  
16                  might have missed, and we found nothing.  
17                  So those images on the exterior were  
18                  included on the package.

19                  THE CHAIRPERSON:  All right.  Thank  
20                  you.

21                  MR. SHEER:  The other issue is that  
22                  this photograph is -- I actually don't  
23                  know where that photograph has been  
24                  taken.  So that's an interior view, and

1 the porch was compromised by a toilet  
2 that they put on the porch. So there  
3 was no architectural details other than  
4 the siding, and the lap -- the decking  
5 out on the porch area. So we found no  
6 evidence of any kind of fantastic  
7 architectural detailing in this  
8 building. But it's very unclear if the  
9 selective demo he was suggesting that  
10 the engineers can do this, they can take  
11 it apart piece by piece to investigate  
12 the structure as we take it down.

13 THE CHAIRPERSON: Okay.

14 If I may interrupt, sir,  
15 because I'm famous for interrupting, I  
16 get what you're saying. And he's not --  
17 Mr. Cummings is not here to say what he  
18 meant, so we'll just do without his view  
19 at this point.

20 I can see from this picture, I  
21 must tell you, some interesting things  
22 that seem quite in tact; the way the  
23 siding goes on, the way it meets the  
24 corner boards, as Mr. Miller pointed out

1           to us. There's some trim at the top in  
2           place. The pattern of the flooring. A  
3           lot of revealed in some of these  
4           pictures that the staff took while they  
5           were out there that are pertinent to  
6           deciding whether if you took out that  
7           outside wall enclosing the porch, it  
8           might be a meaningful and contributing  
9           structure, and I don't know if you're --  
10          are you aware, sometimes, sir, something  
11          that originally is called  
12          non-contributing, if we look at it again  
13          or if it is repaired, we have changed  
14          things to the status of contributing.  
15          And if that were to happen, all the  
16          money put into fixing this house could  
17          be put towards the tax credits that the  
18          city offers. I'm not going to go into  
19          the detail of that because I'm going to  
20          get it wrong, but the staff could help  
21          with that. It could significantly help  
22          the bottom line. If -- if we don't  
23          allow you to demolish it, and it is  
24          repaired instead, that could really be

1 helpful in some ways. So that is  
2 something I wanted to throw in and have  
3 someone think about.

4 Okay. Mr. Anderson, it's your  
5 second round.

6 COMMISSIONER ANDERSON: I have a  
7 question for the applicant.

8 How long have you guys owned  
9 the building? How long has this been in  
10 ownership?

11 MR. SHEER: Since last July.

12 COMMISSIONER ANDERSON: So about a  
13 year.

14 MR. SHEER: Yes, it's been one year.  
15 In fact, it's our anniversary, actually.

16 COMMISSIONER ANDERSON: I share  
17 Commissioner Swan's concern. I've been  
18 by this building before. It's been  
19 successfully mothballed. I mean, it's  
20 been quite a mothball job to cover the  
21 entire building with plywood as if it's  
22 being saved for another day. And I  
23 guess I'm a little shocked that we're  
24 talking about the demolition of this

1 building. And it's been on our docket  
2 for a while. And until either the  
3 neighborhood or the city requested to go  
4 inside, we didn't know what was in  
5 there. I'm just a little bit surprised  
6 that this information wasn't part of  
7 your application.

8 We're talking about, is this  
9 building better than that building. But  
10 there's been a lot of stuff in this  
11 building that have been boarded up. I  
12 mean, there's likelihood if you take all  
13 the boards off, you might have --  
14 notwithstanding the foundation -- you  
15 may have a pretty pristine full Cottage  
16 that has never seen the light of day for  
17 the last twenty years. So I'm just a  
18 little bit surprised we're learning this  
19 at this late date.

20 MR. SHEER: Well -- oh, I didn't  
21 really get a question.

22 MALE SPEAKER: Yeah. I didn't  
23 really hear a question either. But I  
24 was about to say that I let you go



1 second for your second time, and I  
2 missed that Commissioner Spellacy. And  
3 so if you don't gave an actual question  
4 can Commissioner Spellacy talk?

5 Or do you have a question?

6 COMMISSIONER ANDERSON: Well, my  
7 question was why didn't they submit the  
8 photographs of the interior -- you've  
9 been inside the building before; haven't  
10 you?

11 MR. SHEER: Of course, yes. Like I  
12 said, it was a plaster -- it's been a  
13 plaster business for over 3 decades, and  
14 it was completely filled with garbage.  
15 And it's been empty for over ten years  
16 now, at least.

17 COMMISSIONER ANDERSON: Right.

18 I guess my question is, why did  
19 we not see these photographs until the  
20 city or neighborhood wants to go inside?

21 MR. SHEER: Because it's just been  
22 cleaned out a month ago. She had seven,  
23 she told me, dumpsters of garbage from  
24 this building. And you couldn't get a

1 good shot of all these details.

2 But I have to admit, we  
3 measured all these details, including  
4 the soffit lights and the fascia board  
5 and we -- and the porch depth, and we've  
6 recreated it in the CA packet.

7 THE CHAIRPERSON: All right.

8 Commissioner Spellacy?

9 COMMISSIONER SPELLACY: I have a  
10 question for Mr. Miller.

11 I was wondering why was a case  
12 for demolition by neglect not started by  
13 the city?

14 I mean, regardless of whether  
15 or not we were able to go in, in terms  
16 of understanding whether or not the  
17 property should be demolished at this  
18 point?

19 MR. MILLER: Thank you for the  
20 question.

21 I think once an application for  
22 certificate of appropriateness is  
23 submitted, very difficult to then switch  
24 over to a demolition by neglect. We're

1 looking for an a appropriate outcome. I  
2 guess, had we not had an application  
3 then that might have been an appropriate  
4 route.

5 COMMISSIONER SPELLACY: Why is it  
6 hard to switch over?

7 MR. MILLER: Well, the  
8 application -- if one submitted an  
9 application for a certificate of  
10 appropriateness or certificate for  
11 demolition, you're kind of in motion to  
12 consider the request, which is somewhat  
13 different that going down the path of  
14 demolition by neglect. You know, you  
15 kind of have to let the application take  
16 its course, I think.

17 COMMISSIONER SPELLACY: So does that  
18 continue throughout the appeals process  
19 as well? Because part of what I'm  
20 curious about in terms of evaluating  
21 this property is really the creation  
22 strategically to apply for a CA, if you  
23 drag that process out for a year or  
24 more, while the property continues to

1           deteriorate. So my question then is  
2           throughout the appeals process, which  
3           they of course have the right to do, do  
4           you initiate it or are you still sort of  
5           hards off in regards to a case like  
6           that?

7           MR. MILLER: Thank you for the  
8           question.

9           I think I would have to look at  
10          that in discussion with our city  
11          attorney, if that were the case. But  
12          certainly if -- if there isn't a look at  
13          practical reasonable alternatives, that  
14          may be best way of signaling this is  
15          really important, really, really  
16          important.

17          THE CHAIRPERSON: All right.

18          I think -- Mr. Swan, do you  
19          have further questions right now?  
20          Because I was about to say I need  
21          someone to make a motion. Then we can  
22          discuss. All righty. Good because we  
23          talked a lot. And I think it would be  
24          better if we had a motion to respond to.

1           COMMISSIONER SWAN: First of all, my  
2 question is for Mr. Miller. And this is  
3 with reference to the building  
4 inventories or structure inventories  
5 that are provided on the national  
6 register (inaudible), where they  
7 indicate contributing, and they usually  
8 supply a -- a date of construction for  
9 the building. In the case of the date  
10 of construction for a building, were  
11 subsequent research undertaking 10, 15,  
12 20 years after the creation of the  
13 inventory for designation purposes  
14 reveal, like research through, say city  
15 directory, census records, building  
16 inspectors records, were to yield a  
17 different date of construction that then  
18 is listed in the national registry the  
19 listing, would we defer to the date in  
20 the national register listing or to the  
21 date provided by the primary source  
22 evidence?

23           MR. MILLER: Thank you for the  
24 question.

1                   I think any time that new  
2 information becomes available, that has  
3 to be considered.

4                   MALE SPEAKER: Okay.

5                   In this particular case, the  
6 new information, would it be given more  
7 consideration than a date in a building  
8 inventory on the national registry?

9                   MR. MILLER: I think that depends on  
10 whether that fell within or outside of  
11 the period of significance. Because if  
12 it fell within, it would be meet, I  
13 think, because then you'd be looking at  
14 everything else other than the date.

15                  MALE SPEAKER: Okay. I see. Okay.

16                  Then the second part of the  
17 question is: When it comes to  
18 contributing or noncontributing, would  
19 we -- should we find evidence in a  
20 building, in a structure, that tells us,  
21 gives us information as to the  
22 significance location -- the 7 points of  
23 integrity, which evidence is the more  
24 compelling? The evidence in the

1 building, or the line the national  
2 register structure inventory?

3 MR. MILLER: Thank you for the  
4 question. The evidence that is on the  
5 ground today is given the weight and  
6 that is the whole purpose of the best  
7 practice requirement to update and  
8 reevaluate surveys every five years or  
9 so or as conditions change. So that  
10 best practice acknowledges that the  
11 information we need to rely onto make  
12 good sound decisions has to do with  
13 currency and accuracy.

14 COMMISSIONER SWAN: Thank you.

15 All right. If no one else has  
16 questions, I have a motion.

17 All right.

18 COMMISSIONER OFFIT: I have a  
19 motion.

20 THE CHAIRPERSON: Mr. Swan had  
21 already said he was going to go ahead  
22 and propose a motion. So let's hear  
23 what he has to say.

24 MALE VOICE: I'm sorry. I believe I

1           said I was going to about 30 minutes  
2           ago.

3           COMMISSIONER SWAN:   Okay.

4           THE CHAIRPERSON:   Okay.

5                        I hope it wasn't that long ago.  
6           Time flies when you're having fun.

7           MALE SPEAKER:   I think it was.

8                        And unless staff or a  
9           commissioner can tell us or believes  
10          that the structural engineer foundation  
11          reports are somehow fraudulent, then I  
12          move to grant the certificate of  
13          demolition removal demolish the  
14          nonconforming structure using the  
15          standard replaced with a more  
16          appropriate, compatible structure.

17          ELAINE:   Excuse me.

18                        You -- we needed you to read in  
19          the whole -- the date, the case number,  
20          and all of that.

21          MALE VOICE:   Item number 3, 338  
22          South Fleming Avenue, 10th Street  
23          Historic District, CA212-014 (MGM), move  
24          to grant the certificate of demolition,



1 removal to demolish and noncontributing  
2 structure using the standard replacement  
3 with a more appropriate, compatible  
4 structure.

5 THE CHAIRPERSON: Do we have a  
6 second on this motion?

7 COMMISSIONER TAYLOR: Second.

8 THE CHAIRPERSON: Mr. Taylor has  
9 seconded. Now, I invite the  
10 customers -- commissioners to discuss  
11 this motion.

12 Commissioner Spellacy?

13 COMMISSIONER SPELLACY: I'm not  
14 going to support to motion today.

15 Part of the reason why -- I  
16 certainly understand and am sensitive to  
17 Commissioner Offit's contention that to  
18 do so is essentially calling into  
19 question the integrity of the -- the  
20 reports. But I think it's important to  
21 remember that Mr. Sheer specifically  
22 pointed out that the property owner is a  
23 structural engineer.

24 If the structural engineer felt

1 at this point, post purchasing of the  
2 property that there was a structural  
3 problem, why did you begin doing a  
4 design in the first place with the  
5 structure intact? That, to me is what I  
6 find to be a compelling reason frankly,  
7 as to why we would not move forward with  
8 that. Because I think the information  
9 you provided is what's important, so I  
10 won't be supporting that motion today.

11 Thank you.

12 THE CHAIRPERSON: Any other  
13 discussion from anyone? I'm trying to  
14 look at the screen.

15 I don't see anybody. To what  
16 Commissioner Spellacy said, I would like  
17 to add, I'm really on the fence about  
18 this. But I hate for us to condemn  
19 structural engineers like they're all  
20 dishonest or something. I don't think  
21 we intend to do this. We all discussed  
22 this before, that is structural  
23 engineer, because of their dedication to  
24 protecting life and their insurance that

1           they must carry, is going to tend to  
2           always want err on the side of safety,  
3           so err on the side of saying a building  
4           could cause damage, unless they're  
5           absolutely certain it could not possibly  
6           fall over on anybody. And I think  
7           that's perfectly understandable, but  
8           since we have seen some engineer's  
9           reports come through saying the building  
10          looked like it was going to collapse and  
11          we looked at the pictures, and the  
12          architects among us say that's easily  
13          repairable, we sometimes do tend to  
14          wonder. I hope we haven't become jaded,  
15          and we don't mean to impugn an entire  
16          industry, but we do have to balance out  
17          what might have been in their mind when  
18          they made their determination.

19                            Anybody else have discussion?

20                            Commissioner Swan?

21                            COMMISSIONER SWAN: Yeah.

22                            Yeah. I'm trying to keep this  
23          squarely on what we are charged to do as  
24          Commission, which is not to make a

1 judgment about the structural engineer's  
2 report.

3 This one figure, Figure 17, is  
4 the figure that I wish I had seen when  
5 this had come in front of us the first  
6 time. And the reason I asked Mr. Miller  
7 the question about evidence is because  
8 this -- this single image -- and as the  
9 applicant pointed out -- I said, this is  
10 an excellent project, and it's very  
11 important that we get it right. And in  
12 this case part of getting it right is  
13 determining whether a new structure can  
14 bring more historic value in the 10th  
15 street historic district than the  
16 building structure that is here. And  
17 just looking at this one image -- and  
18 there are others that yield more  
19 information, but by looking at the -- at  
20 the way the ceiling meets the walls, the  
21 part -- partial walls that used to come  
22 down on top of the columns, I can tell  
23 you from that how this building is  
24 framed.

1                   You know, because there is so  
2 much more depth. And when you look on  
3 the outside, the soffits are lower than  
4 the height of the ceiling, I know they  
5 used a birds mouth type of rafter in the  
6 framing.

7                   The way that the porch boards  
8 are mitered, I've never seen a three  
9 sided wrap-around porch on 10th Street.  
10 I think is the only one that exists.  
11 And I made a wrong assumption at a  
12 previous meeting because I never seen  
13 this before. I said they would not have  
14 mitered the corner. And now evidence  
15 showed me that they did, and I  
16 understand why they did. Because when  
17 you have a three-sided porch, you got  
18 long porch lengths, and you have long  
19 lengths of porch boards that are running  
20 parallel to the building and wouldn't be  
21 draining as effectively. Whereas, when  
22 you got an L type configuration, it's  
23 not worth making the miter because you  
24 can introduce enough of a slope in those

1 boards to let them drain themselves, but  
2 not when you have a situation like this.  
3 I'm learning from this building, and if  
4 we take a building like this out, we're  
5 removing valuable evidence from 10th  
6 Street. We already lost too much of it.

7 THE CHAIRPERSON: That you,  
8 Mr. Swan, who I will note is also a  
9 trained architect and a longtime  
10 resident of 10th Street, and he's been  
11 studying the houses out of passion, so I  
12 always respect his opinion about the  
13 construction of houses on 10th Street  
14 because I don't know.

15 Any other comments?

16 ELAINE: Madam Chairperson? Yes,  
17 Madam Chairperson, this is Commissioner  
18 (inaudible).

19 THE CHAIRPERSON: Okay.

20 You're next.

21 ELAINE: Can you repeat the motion,  
22 please? There's been so much discussion  
23 that I'm -- I'm thinking I'm on the  
24 fence too, so I'd like to have the

1 motion repeated.

2 THE CHAIRPERSON: Thank you. You're  
3 right. The motion before us is to  
4 approve their request for a demolition  
5 permit. And that would be based on the  
6 idea that the new design that we did  
7 approve last time or another time is  
8 more compatible than this building that  
9 we're looking at right now.

10 ELAINE: So I got a followup  
11 question then.

12 To approve the demolition is  
13 that the same thing as what the staff  
14 recommendation has, which is to deny  
15 without prejudice?

16 THE CHAIRPERSON: No. To approve it  
17 would be we're saying we will -- that we  
18 wish to have them issued a permit no  
19 demolish. The staff recommendation is  
20 to deny that without prejudice and their  
21 reasoning is now they've seen the house.  
22 They think it does not satisfy the  
23 requirement that the new we design that  
24 we saw before is more compatible. That

1           this one is in fact more compatible. So  
2           we're trying to decide that. And I want  
3           to take a moment just to put in that  
4           part of compatibility, as I said this  
5           before, is its condition. That's why we  
6           talked about the condition so much. If  
7           it's salvageable, it's integrity is --  
8           any integrity it has is still there. It  
9           it's going to fall over, the integrity  
10          is gone, so --

11                   ELAINE: Right.

12                           I thought so. So I have my  
13                   final question for staff.

14                           Did staff see the pictures that  
15                   we were just shown when they made the  
16                   recommendation to deny without  
17                   prejudice?

18                           MR. MILLER: Thank you for the  
19                   question.

20                           Are you referring to the photos  
21                   that are in your packets?

22                           ELAINE: Yes.

23                           MR. MILLER: Yes.

24                           Those were taken by staff.



1 ELAINE: Okay.

2 And based off those photos that  
3 the staff then decided to deny without  
4 prejudice the demolition?

5 MR. MILLER: No.

6 I wouldn't -- thank you for the  
7 question. I wouldn't say it was  
8 strictly based on those photos. It was  
9 based on a better understanding of the  
10 structure having regard to the seven  
11 aspects of integrity.

12 ELAINE: Got it. Got it. Okay.  
13 Thank you very much.

14 THE CHAIRPERSON: Any other  
15 discussion? In that case, it's time to  
16 call for a vote.

17 On the proposed -- on the  
18 motion in front of us, all those in the  
19 favor of it, please say aye.

20 COMMISSIONER OFFIT: Aye.

21 THE CHAIRPERSON: All those opposed  
22 say aye or raise your hand.

23 MULTIPLE VOICES: Nay.

24 THE CHAIRPERSON: Say nay.

1                   Okay. Commissioner Velvin, I  
2                   did not see what side you were on.

3                   COMMISSIONER VELVIN: (Inaudible).

4                   THE CHAIRPERSON: Okay. All right.  
5                   It appears that this motion --

6                   COMMISSIONER OFFIT: Madam Chair, do  
7                   a role call vote, please.

8                   THE CHAIRPERSON: All righty. We'll  
9                   do that. That's Elaine's job. Elaine,  
10                  please do a role call vote.

11                  ELAINE: Yes, yes.

12                  District 1, Commissioner  
13                  Sherman?

14                  COMMISSIONER SHERMAN: Commissioner  
15                  Sherman from District 1 votes nay.

16                  ELAINE: District 2, Commissioner  
17                  Montgomery.

18                  THE CHAIRPERSON: That'd be me. I  
19                  vote nay too.

20                  ELAINE: District 4, Commissioner  
21                  Swan?

22                  COMMISSIONER SWAN: Nay.

23                  ELAINE: District 5, Commissioner  
24                  Offit.

1 COMMISSIONER OFFIT: For.

2 ELAINE: Districted 6, Commissioner  
3 Henajosa?

4 COMMISSIONER HENAJOSA: Nay.

5 ELAINE: District 8, Commissioner  
6 Spellacy?

7 COMMISSIONER SPELLACY: Nay.

8 ELAINE: District 9, Commissioner  
9 Reneau?

10 COMMISSIONER RENAUEU: Nay.

11 ELAINE: District 12, Commissioner  
12 Rothenberger.

13 COMMISSIONER ROTHENBERGER: Nay.

14 ELAINE: District 13, commissioner  
15 Slade?

16 COMMISSIONER SLADE: Nay.

17 ELAINE: District guess -- I'm  
18 sorry. District 14, Commissioner Guess.

19 COMMISSIONER GUESS: I vote nay.

20 ELAINE: District 15, Commissioner  
21 Velvin.

22 COMMISSIONER VELVIN: Nay.

23 ELAINE: Commissioner Jim Anderson?

24 COMMISSIONER ANDERSON: Nay.

1 ELAINE: Commissioner Taylor?

2 COMMISSIONER TAYLOR: Yes.

3 ELAINE: Okay.

4 We have two yeses.

5 THE CHAIRPERSON: The motion has  
6 therefore failed. We'll entertain  
7 another motion.

8 Commissioner Swan has a motion.

9 COMMISSIONER SWAN: In the matter of  
10 Discussion Item Number 3, 338 South  
11 Fleming Avenue, 10th Street Historic  
12 District, CA212-014 (MGM), I move that  
13 the certificate for demolition, removal  
14 to demolish a contributing structure  
15 using a noncontributing structure using  
16 the standard replace with a more  
17 appropriate compatible structure be  
18 denied without prejudice with the  
19 finding that the proposed demolition  
20 would not satisfy the standard in City  
21 Code Section 51A-4.501H4A, Romanette I.

22 THE CHAIRPERSON: Thank you,  
23 Mr. Swan.

24 So our new motion is that we

1 deny this request without prejudice  
2 because we feel the existing building  
3 has not been proven to be less  
4 compatible and important to the district  
5 than the new proposed structure.

6 Any further discussion?

7 MALE VOICE: I'll second that.

8 THE CHAIRPERSON: Oh, yeah. A  
9 second.

10 I need so many helpers to keep  
11 me going in the right direction.

12 All right. We have our motion,  
13 our second.

14 Any discussion? I guess,  
15 Mr. Offit?

16 COMMISSIONER TAYLOR: I guess my --  
17 I --

18 THE WITNESS: Oh, sorry.

19 COMMISSIONER OFFIT: I think  
20 Mr. Taylor was first.

21 THE CHAIRPERSON: Okay.

22 Mr. Taylor. I saw Mr. Offit  
23 first.

24 Doesn't matter.

1           COMMISSIONER TAYLOR: My only motion  
2           for discussion is -- and I'll agree with  
3           the second motion, but as someone who  
4           lives in the 10th Street area, who has  
5           seen dozens of cases come over the last  
6           ten years, whether I been on task force,  
7           Landmark Commission, as an applicant, as  
8           someone trying to help another neighbor,  
9           it's extremely hard to navigate and get  
10          through this process when a lot of  
11          people don't understand the language  
12          that we just discussed for the last  
13          almost hour on this particular case.  
14          And I think there has to be motions that  
15          lead to either repair or some kind of  
16          renovation or construction that can help  
17          this neighbor, and it has been a pride  
18          of mine for the last ten years. And I  
19          just don't know sometimes how -- how is  
20          this house going to get repaired or  
21          repaired or rebuilt if it's this hard to  
22          navigate this process.

23                 THE CHAIRPERSON: And I -- are  
24                 you -- I was going to respond?

1                   Anything else? I was going to  
2                   respond. I -- I appreciate. You are  
3                   right, and I'm sure we sometimes use  
4                   terminology that sometimes people  
5                   don't -- do not understand, but we do, I  
6                   believe, have a professional architect  
7                   involved in this one. So Mr. Sheer was  
8                   probably familiar with all these terms.  
9                   But we do rely upon the staff to try to  
10                  help people interpret the way we talk  
11                  for the way other people will easily  
12                  understand who think about other things  
13                  for the rest of their life.

14                  As for how -- can we have in  
15                  our motion some guidance of what happens  
16                  next to this building, no, we cannot.  
17                  Because we're not asked about that. And  
18                  it was not within our purview to do  
19                  anything but occasionally give friendly  
20                  advice outside of the motion that  
21                  suggests, you know, why don't you try  
22                  doing this or that. So we would be  
23                  overstepping our boundaries and  
24                  answering a question we hadn't been

1           asked. And the City doesn't like us to  
2           do that. But I wish we could because  
3           you're right. People need help and that  
4           would be very helpful. But  
5           unfortunately, I don't think we can  
6           really do that today.

7                           Mr. Offit?

8                   COMMISSIONER OFFIT: Yes. I'm not  
9           going to support that motion. We've  
10          strung these people along for a year,  
11          and approved something a year ago. New  
12          information -- new information is that  
13          the foundation company, reputable  
14          foundation company, perhaps not the  
15          foundation company that somebody on City  
16          staff wanted them to go with, said it  
17          can't be done. Not the owner, who is a  
18          structural engineer, but the engineering  
19          company, once they had the engineering  
20          separate person come in there and do it,  
21          that this can't be done.

22                           And to suddenly look at some  
23          pictures from the interior and come up  
24          with all of these reasons to let this



1           thing set there after leading these  
2           people down this path for a year is  
3           reprehensible as far as I'm concerned.

4                         And Mr. Taylor, you're right.  
5           The 10th Street District has been  
6           ignored since it's been established.  
7           And not just ignored, it's been abused.

8                         THE CHAIRPERSON: Thank you,  
9           Mr. Offit. I understand you're very  
10          passionate about this -- this situation.  
11          And I am sorry that it's taken so long.  
12          I'm not sure it's quite that long, but  
13          we still come up with -- we have to come  
14          up with the right judgment, no matter  
15          how inconvenient it turned out to be for  
16          everybody. We can only apologize. I  
17          believe that Mr. --

18                        COMMISSIONER ROTHENBERGER: --  
19          Rothenberger, thank you.

20                        THE CHAIRPERSON: Is it Rothenberger  
21          or Rothenberger?

22                        COMMISSIONER ROTHENBERGER:  
23          Rothenberger. Thank you.

24                        THE CHAIRPERSON: Rothenberger.

1 COMMISSIONER ROTHENBERGER: Yes.

2 As my esteemed colleagues here  
3 were speaking about more detailed  
4 things, I was looking through the past  
5 agendas, and I found it interesting what  
6 I did see. Obviously, the Landmark  
7 Commission did err on the side of  
8 caution December 6th of last year in  
9 voting to deny the certificate of  
10 demolition against the recommendations  
11 of staff and the task force.

12 Because there was not enough  
13 information provided, and I think there  
14 is discussions tonight as to why that  
15 wasn't the case. But we erred on the  
16 side of caution at that point. The  
17 applicant then proposed a certificate of  
18 appropriateness that we approved June  
19 6th. And that was, from what I  
20 understand, the applicant's decision to  
21 do so. As to why it was done before the  
22 certificate of demolition was approved  
23 is the big question I have. But as to  
24 this being a process that's taken over a

1 year, the Landmark Commission's denial  
2 of the certificate of demolition last  
3 December should have given a pretty  
4 clear hint that more evidence should  
5 have been provided at that time. And  
6 it's still, from what I was looking at  
7 the June 6th meeting of the certificate  
8 of appropriateness, interior shots of  
9 this building still were not provided  
10 when I looked through this packet. That  
11 was months after that request -- as that  
12 discussion point was made on December  
13 6th of last year. Thank you.

14 THE CHAIRPERSON: Thank you, sir.

15 And I might point out so  
16 there's no confusion some of the  
17 internal notes that we saw were actually  
18 just inside the porch, so we're seeing  
19 the exterior of the actual house. It  
20 just looked like the interior of the  
21 hall because of the enclosure.

22 If there's no other discussion,  
23 I think it's time to vote on this  
24 motion. All those in favor of this

1 motion that we deny without prejudice,  
2 please say aye.

3 MULTIPLE VOICES: Aye.

4 THE CHAIRPERSON: All those opposed  
5 to this motion, please say nay.

6 COMMISSIONER OFFIT: Nay.

7 THE CHAIRPERSON: All right.

8 I do not think we need a role  
9 call vote on this. Because I believe it  
10 pretty much followed the voting pattern  
11 of last time, which means that it has  
12 passed. Now, what this means to the  
13 applicant is that you have received a  
14 denial and you have the right to appeal  
15 to CPC for a fee, within 30 days, so no  
16 daddling if you're going to do that.

17 All right. Let's move on to  
18 the next one.

19 - - -

20 (Whereupon, the next case was introduced.)

21 - - -

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CERTIFICATE

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Dated: September 1, 2022

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# SECTION 6

Historic Preservation Criteria  
Dallas Development Code  
§ 51A-4.501

Division 51A-4.500. Overlay and Conservation District Regulations.

SEC. 51A-4.501. HISTORIC OVERLAY DISTRICT.

(a) Purpose. The purpose of this section is to promote the public health, safety and general welfare, and:

(1) to protect, enhance and perpetuate places and areas which represent distinctive and important elements of the city's historical, cultural, social, economic, archeological, paleontological, ethnic, political and architectural history;

(2) to strengthen the economy of the city;

(3) to increase public knowledge and appreciation of the city's historic past and unique sense of place;

(4) to foster civic and neighborhood pride and a sense of identity;

(5) to promote the enjoyment and use of historic resources by the people of the city;

(6) to preserve diverse architectural styles, patterns of development, and design preferences reflecting phases of the city's history;

(7) to create a more livable urban environment;

(8) to enhance property values;

(9) to provide financial incentives for preservation;

(10) to protect and enhance the city's attraction to tourists and visitors;

(11) to resolve conflicts between the preservation of historic resources and alternative land uses;

(12) to integrate historic preservation into public and private land use planning;

(13) to conserve valuable resources through use of the existing building environment;

(14) to stabilize neighborhoods;

(15) to increase public awareness of the benefits of historic preservation;

(16) to maintain a harmony between new and historic structures so that they will be compatible in scale, form, color, proportion, texture and material; and

(17) to encourage public participation in identifying and preserving historic resources.

(b) Establishment of historic overlay districts. A historic overlay district may be established to preserve places and areas of historical, cultural, or architectural importance and significance if the place or area has three or more of the following characteristics:

(1) History, heritage and culture: Represents the historical development, ethnic heritage or cultural characteristics of the city, state, or country.

(2) Historic event: Location as or association with the site of a significant historic event.

(3) Significant persons: Identification with a person or persons who significantly contributed to the culture and development of the city, state, or country.

(4) Architecture: Embodiment of distinguishing characteristics of an architectural style, landscape design, method of construction, exceptional craftsmanship, architectural innovation, or contains details which represent folk or ethnic art.

(5) Architect or master builder: Represents the work of an architect, designer or master builder whose individual work has influenced the development of the city, state, or country.

(6) Historic context: Relationship to other distinctive buildings, sites, or areas which are

eligible for preservation based on historic, cultural, or architectural characteristics.

(7) Unique visual feature: Unique location of singular physical characteristics representing an established and familiar visual feature of a neighborhood, community or the city that is a source of pride or cultural significance.

(8) Archaeological: Archaeological or paleontological value in that it has produced or can be expected to produce data affecting theories of historic or prehistoric interest.

(9) National and state recognition: Eligible for or designated as a National Historic Landmark, Recorded Texas Historic Landmark, State Archeological Landmark, American Civil Engineering Landmark, or eligible for inclusion in the National Register of Historic Places.

(10) Historic education: Represents an era of architectural, social, or economic history that allows an understanding of how the place or area was used by past generations.

(c) Historic designation procedure and predesignation moratorium.

(1) Purpose. Temporary preservation of the status quo upon initiation of the historic designation procedure is necessary to allow time to evaluate each proposed historic overlay district, to consider appropriate preservation criteria, and to prevent circumvention of the purposes of this section. Relief from the predesignation moratorium may be obtained by applying for a predesignation certificate of appropriateness or certificate for demolition or removal.

(2) Initiation of historic designation procedure. The procedure for adopting an ordinance to establish or amend a historic overlay district may be initiated by the city council, the city plan commission, the landmark commission, or by the owner(s) of the property. The director shall provide property owners with notice of a public hearing to initiate the historic designation procedure at least 10 days before the date set for the hearing using the procedure outlined in Section 51A-4.701(a)(1). No permits to alter or demolish the property may be

issued after provision of this notice until action is taken at that hearing by the city council, city plan commission, or landmark commission. The historic designation procedure is considered to be initiated immediately when the city council, the city plan commission, or the landmark commission votes to initiate it or, in the case of initiation by the property owner(s), when the zoning change application is filed with the director.

(3) Appeal. If the historic designation procedure is initiated by the landmark commission or city plan commission, the property owner may appeal the initiation to the city council by filing a written notice with the director within 10 days after the action of the landmark commission or city plan commission. Within 180 days after the filing of the appeal, the director shall prepare, and the landmark commission shall adopt, a designation report and submit it to the city council. After submission of the designation report, the city council shall hold a public hearing on the appeal. The sole issue on appeal is whether the landmark commission or city plan commission erred in evaluating the significance of the property based on the characteristics listed in Section 51A-4.501(b). Appeal to the city council constitutes the final administrative remedy.

(4) Enforcement. Upon initiation of the historic designation procedure, the historic preservation officer shall immediately notify the building official. The building official shall not accept any application for a permit to alter, demolish, or remove the structure or site subject to the predesignation moratorium, unless a predesignation certificate of appropriateness or certificate for demolition or removal has been issued.

(5) Designation report. Upon initiation of the historic designation procedure, the historic preservation officer shall coordinate research to compile a written report regarding the historical, cultural, and architectural significance of the place or area proposed for historic designation. This report must include a statement on each of the following to the extent that they apply:

(A) A listing of the architectural, archaeological, paleontological, cultural, economic, social, ethnic, political, or historical characteristics upon which the nomination is based;



(B) A description of the historical, cultural, and architectural significance of the structures and site;

(C) A description of the boundaries of the proposed historic overlay district, including subareas and areas where new construction will be prohibited; and

(D) Proposed preservation criteria for the proposed historic overlay district.

(6) Termination of the predesignation moratorium. The predesignation moratorium ends on the earliest of the following dates:

(A) The day after the city council, city plan commission, or landmark commission that voted to initiate the historic designation procedure, votes to terminate the historic designation procedure.

(B) The day after the city council, in an appeal from an initiation by the city plan commission or landmark commission, votes to terminate the historic designation procedure.

(C) In the case of initiation by the property owner(s), the day after the zoning change application is withdrawn.

(D) If the proposed historic overlay district zoning change is approved, the effective date of the ordinance establishing the historic overlay district.

(E) If the proposed historic overlay district zoning change is denied, the day after either the city council makes its final decision denying the change or the expiration of the time period for appeal to the city council from a city plan commission recommendation of denial.

(F) Two years after the date the historic designation procedure was initiated, regardless of who initiated the procedure.

(d) Predesignation certificate of appropriateness.

(1) When required. A person shall not alter a site, or alter, place, construct, maintain, or

expand any structure on the site during the predesignation moratorium without first obtaining a predesignation certificate of appropriateness in accordance with this subsection.

(2) Penalty. A person who violates this subsection is guilty of a separate offense for each day or portion of a day during which the violation is continued, from the first day the unlawful act was committed until either a predesignation certificate of appropriateness is obtained or the property is restored to the condition it was in immediately prior to the violation.

(3) Application. An application for a predesignation certificate of appropriateness must be submitted to the director. The application must include complete documentation of the proposed work. Within 10 days after submission of an application, the director shall notify the applicant in writing of any additional documentation required. No application shall be deemed to be filed until it is made on forms promulgated by the director and contains all required supporting plans, designs, photographs, reports, and other exhibits required by the director. The applicant may consult with the department before and after the submission of an application.

(4) Predesignation certificate of appropriateness review procedure. Upon receipt of an application for a predesignation certificate of appropriateness, the director shall determine whether the structure is contributing or noncontributing. Within 40 days after a complete application is filed for a noncontributing structure, the landmark commission shall hold a public hearing and shall approve, deny with prejudice, or deny without prejudice the application and forward its decision to the director. Within 65 days after a complete application is filed for a contributing structure, the landmark commission shall hold a public hearing and shall approve, deny with prejudice, or deny without prejudice the application and forward its decision to the director. The landmark commission may impose conditions on the predesignation certificate of appropriateness. The applicant has the burden of proof to establish the necessary facts to warrant favorable action. The director shall immediately notify the applicant of the landmark commission's action. The landmark

commission's decision must be in writing and, if the decision is to deny the predesignation certificate of appropriateness, with or without prejudice, the writing must state the reasons why the predesignation certificate of appropriateness is denied.

(5) Standard for approval. The landmark commission must approve the application if it determines that:

(A) for contributing structures, the application will not adversely affect the character of the site or a structure on the site; and the proposed work is consistent with the regulations contained in this section and the proposed preservation criteria; or

(B) for noncontributing structures, the proposed work is compatible with the historic overlay district.

(6) Issuance. If a predesignation certificate of appropriateness has been approved by the landmark commission or if final action has not been taken by the landmark commission within 40 days (for a noncontributing structure) or 65 days (for a contributing structure) after a complete application is filed:

(A) the director shall issue the predesignation certificate of appropriateness to the applicant; and

(B) if all requirements of the development and building codes are met and a building permit is required for the proposed work, the building official shall issue a building permit to the applicant for the proposed work.

(7) Appeal. If a predesignation certificate of appropriateness is denied, the chair of the landmark commission shall verbally inform the applicant of the right to appeal to the city plan commission. If the applicant is not present at the hearing, the director shall inform the applicant of the right to appeal in writing within 10 days after the hearing. The applicant may appeal the denial to the city plan commission by filing a written notice with the director within 30 days after the date of the decision of the landmark commission. The director shall forward to the city plan commission a complete record of the matter being appealed,

including a transcript of the tape of the hearing before the landmark commission. In considering an appeal, the city plan commission shall review the landmark commission record and hear and consider arguments from the appellant and the representative for the landmark commission. The city plan commission may only hear new testimony or consider new evidence that was not presented at the time of the hearing before the landmark commission to determine whether that testimony or evidence was available at the landmark commission hearing. If the city plan commission determines that new testimony or evidence exists that was not available at the landmark commission hearing, the city plan commission shall remand the case back to the landmark commission in accordance with Subsection (m). In reviewing the landmark commission decision the city plan commission shall use the substantial evidence standard in Subsection (m). The city plan commission may reverse or affirm, in whole or in part, modify the decision of the landmark commission, or remand any case back to the landmark commission for further proceedings. Appeal to the city plan commission constitutes the final administrative remedy.

(8) Reapplication. If a final decision is reached denying a predesignation certificate of appropriateness, no further applications may be considered for the subject matter of the denied predesignation certificate of appropriateness unless the predesignation certificate of appropriateness has been denied without prejudice or the landmark commission finds that there are changed circumstances sufficient to warrant a new hearing. A simple majority vote by the landmark commission is required to grant the request for a new hearing.

(9) Suspension of work. After the work authorized by the predesignation certificate of appropriateness is commenced, the applicant must make continuous progress toward completion of the work, and the applicant shall not suspend or abandon the work for a period in excess of 180 days. The director may, in writing, authorize a suspension of the work for a period greater than 180 days upon written request by the applicant showing circumstances beyond the control of the applicant.

(10) Revocation. The director may, in writing, revoke a predesignation certificate of appropriateness if:

(A) the predesignation certificate of appropriateness was issued on the basis of incorrect information supplied;

(B) the predesignation certificate of appropriateness was issued in violation of the regulations contained in this section, the proposed preservation criteria, or the development code or building codes; or

(C) the work is not performed in accordance with the predesignation certificate of appropriateness, the development code, or building codes.

(11) Amendments to a predesignation certificate of appropriateness. A predesignation certificate of appropriateness may be amended by submitting an application for amendment to the director. The application shall then be subject to the standard predesignation certificate of appropriateness review procedure.

(12) Effect of approval of the historic overlay district. A predesignation certificate of appropriateness will be treated as a certificate of appropriateness after the effective date of the ordinance implementing the historic overlay district.

(e) Additional uses and regulations.

(1) A historic overlay district is a zoning overlay which supplements the primary underlying zoning district classification. A historic overlay district is subject to the regulations of the underlying zoning district, except the ordinance establishing the historic overlay district may permit additional uses and provide additional regulations for the historic overlay district.

(2) If there is a conflict, the regulations contained in the historic overlay district ordinance control over the regulations of the underlying zoning district. If there is a conflict, the regulations contained in the historic overlay district ordinance control over the regulations of this section.

(3) The historic overlay district ordinance may include preservation criteria for the interior of historic structures if the interior is customarily open and accessible to the public and the interior has extraordinary architectural, archaeological,

cultural, economic, social, ethnic, political or historical value. Unless there are specific provisions for the interior, the preservation criteria in the historic overlay district ordinance and the Secretary of the Interior's Standards for the Rehabilitation of Historic Properties apply only to the exterior of structures within a historic overlay district.

(4) The landmark commission shall consider the Secretary of the Interior's Standards for the Rehabilitation of Historic Properties ("the Standards"), as amended, when reviewing applications for predesignation and standard certificates of appropriateness. Rehabilitation is defined as the act or process of making possible a compatible use for a property through repair, alterations, and additions while preserving those portions or features which convey its historical, cultural, or architectural values. The Standards are common sense principles in non-technical language developed to help promote consistent rehabilitation practices. It should be understood that the Standards are a series of concepts about maintaining, repairing, and replacing historic materials, as well as designing new additions or making alterations; as such, they cannot, in and of themselves, be used to make essential decisions about which features of a historic property should be saved and which might be changed. The director shall make the current Standards available for public inspection at all times. For informational purposes, the Standards published at Section 68.3 of Title 36 of the Code of Federal Regulations (current through January 1, 2001) are set forth below:

(A) A property will be used as it was historically or be given a new use that requires minimal changes to its distinctive materials, features, spaces and spatial relationships.

(B) The historic character of a property will be retained and preserved. The removal of distinctive materials or alteration of features, spaces, and spatial relationships that characterize a property will be avoided.

(C) Each property will be recognized as a physical record of its time, place and use. Changes that create a false sense of historical development, such as adding conjectural features or elements from other historic properties, will not be undertaken.

(D) Changes to a property that have acquired historic significance in their own right will be retained and preserved.

(E) Distinctive materials, features, finishes, and construction techniques or examples of craftsmanship that characterize a property will be preserved.

(F) Deteriorated historic features will be repaired rather than replaced. Where the severity of deterioration requires replacement of a distinctive feature, the new feature will match the old in design, color, texture, and, where possible, materials. Replacement of missing features will be substantiated by documentary and physical evidence.

(G) Chemical or physical treatments, if appropriate, will be undertaken using the gentlest means possible. Treatments that cause damage to historic materials will not be used.

(H) Archeological resources will be protected and preserved in place. If such resources must be disturbed, mitigation measures will be undertaken.

(I) New additions, exterior alterations, or related new construction will not destroy historic materials, features, and spatial relationships that characterize the property. The new work will be differentiated from the old and will be compatible with the historic materials, features, size, scale and proportion, and massing to protect the integrity of the property and its environment.

(J) New additions and adjacent or related new construction will be undertaken in such a manner that, if removed in the future, the essential form and integrity of the historic property and its environment would be unimpaired.

(f) Notice of designation.

(1) Upon passage of a historic overlay district ordinance, the director shall send a notice to the owner or owners of property within the historic overlay district stating the effect of the designation, the regulations governing the historic overlay district, and the historic preservation incentives that may be available.

(2) Upon passage of a historic overlay district ordinance, the director shall file a copy of the ordinance in the county deed records to give notice of the historic regulations. Pursuant to Texas Local Government Code Section 315.006, the director shall also file in the county deed records a verified written instrument listing each historic structure or property by the street address, if available, the legal description of the real property, and the name of the owner, if available.

(3) The director may erect suitable plaques appropriately identifying each historic overlay district.

(g) Certificate of appropriateness.

(1) When required. A person shall not alter a site within a historic overlay district, or alter, place, construct, maintain, or expand any structure on the site without first obtaining a certificate of appropriateness in accordance with this subsection and the regulations and preservation criteria contained and in the historic overlay district ordinance.

(2) Penalty. A person who violates this subsection is guilty of a separate offense for each day or portion of a day during which the violation is continued, from the first day the unlawful act was committed until either a certificate of appropriateness is obtained or the property is restored to the condition it was in immediately prior to the violation.

(3) Application. An application for a certificate of appropriateness must be submitted to the director. The application must include complete documentation of the proposed work. Within 10 days after submission of an application, the director shall notify the applicant in writing of any additional documentation required. No application shall be deemed to be filed until it is made on forms promulgated by the director and contains all required supporting plans, designs, photographs, reports, and other exhibits required by the director. The applicant may consult with the department before and after the submission of an application.

(4) Director's determination of procedure. Upon receipt of an application for a certificate of appropriateness, the director shall determine

whether the application is to be reviewed under the routine work review procedure or the standard certificate of appropriateness review procedure.

(5) Routine maintenance work review procedure.

(A) If the director determines that the applicant is seeking a certificate of appropriateness to authorize only routine maintenance work, he may review the application to determine whether the proposed work complies with the regulations contained in this section and the preservation criteria contained in the historic overlay district ordinance and approve or deny the application within 20 days after a complete application is filed. The applicant must supply complete documentation of the work. Upon request, staff will forward copies of applications to the task force. The director may forward any application to the landmark commission for review.

(B) Routine maintenance work includes:

(i) the installation of a chimney located on an accessory building, or on the rear 50 percent of a main building and not part of the corner side facade;

(ii) the installation of an awning located on an accessory building, or on the rear facade of a main building;

(iii) the replacement of a roof of the same or an original material that does not include a change in color;

(iv) the installation of a wood or chain link fence that is not painted or stained;

(v) the installation of gutters and downspouts of a color that matches or complements the dominant trim or roof color;

(vi) the installation of skylights and solar panels;

(vii) the installation of storm windows and doors;

(viii) the installation of window and door screens;

(ix) the application of paint that is the same as the existing or that is an appropriate dominant, trim, or accent color;

(x) the restoration of original architectural elements;

(xi) minor repair using the same material and design as the original;

(xii) repair of sidewalks and driveways using the same type and color of materials;

(xiii) the process of cleaning (including but not limited to low-pressure water blasting and stripping), but excluding sandblasting and high-pressure water blasting; and

(xiv) painting, replacing, duplicating, or stabilizing deteriorated or damaged architectural features (including but not limited to roofing, windows, columns, and siding) in order to maintain the structure and to slow deterioration.

(C) The applicant may appeal the director's decision by submitting to the director a written request for appeal within 10 days of the decision. The written request for appeal starts the standard certificate of appropriateness review procedure by the landmark commission.

(6) Standard certificate of appropriateness review procedure.

(A) If the director determines that the applicant is seeking a certificate of appropriateness to authorize work that is not routine maintenance work, or if the director's decision concerning a certificate of appropriateness to authorize only routine maintenance work is appealed, the director shall immediately forward the application to the landmark commission for review.

(B) Upon receipt of an application for a certificate of appropriateness, the director shall determine whether the structure is contributing or noncontributing. Within 40 days after a complete

application is filed for a noncontributing structure, the landmark commission shall hold a public hearing and shall approve, deny with prejudice, or deny without prejudice the application and forward its decision to the director. Within 65 days after a complete application is filed for a contributing structure, the landmark commission shall hold a public hearing and shall approve, deny with prejudice, or deny without prejudice the certificate of appropriateness and forward its decision to the director. The landmark commission may approve a certificate of appropriateness for work that does not strictly comply with the preservation criteria upon a finding that the proposed work is historically accurate and is consistent with the spirit and intent of the preservation criteria and that the proposed work will not adversely affect the historic character of the property or the integrity of the historic overlay district. The landmark commission may impose conditions on the certificate of appropriateness. The applicant has the burden of proof to establish the necessary facts to warrant favorable action. The director shall immediately notify the applicant of the landmark commission's action. The landmark commission's decision must be in writing and, if the decision is to deny the certificate of appropriateness, with or without prejudice, the writing must state the reasons why the certificate of appropriateness is denied.

(C) Standard for approval. The landmark commission must grant the application if it determines that:

(i) for contributing structures:

(aa) the proposed work is consistent with the regulations contained in this section and the preservation criteria contained in the historic overlay district ordinance;

(bb) the proposed work will not have an adverse effect on the architectural features of the structure;

(cc) the proposed work will not have an adverse effect on the historic overlay district; and

(dd) the proposed work will not have an adverse effect on the future preservation,

maintenance and use of the structure or the historic overlay district.

(ii) for noncontributing structures, the proposed work is compatible with the historic overlay district.

(D) Issuance. If a certificate of appropriateness has been approved by the landmark commission or if final action has not been taken by the landmark commission within 40 days (for a noncontributing structure) or 65 days (for a contributing structure) after a complete application is filed:

(i) the director shall issue the certificate of appropriateness to the applicant; and

(ii) if all requirements of the development and building codes are met and a building permit is required for the proposed work, the building official shall issue a building permit to the applicant for the proposed work.

(E) Appeal. If a certificate of appropriateness is denied, the chair of the landmark commission shall verbally inform the applicant of the right to appeal to the city plan commission. If the applicant is not present at the hearing, the director shall inform the applicant of the right to appeal in writing within 10 days after the hearing. The applicant may appeal the denial to the city plan commission by filing a written notice with the director within 30 days after the date of the decision of the landmark commission. The director shall forward to the city plan commission a complete record of the matter being appealed, including a transcript of the tape of the hearing before the landmark commission. In considering an appeal, the city plan commission shall review the landmark commission record and hear and consider arguments from the appellant and the representative for the landmark commission. The city plan commission may only hear new testimony or consider new evidence that was not presented at the time of the hearing before the landmark commission to determine whether that testimony or evidence was available at the landmark commission hearing. If the city plan commission determines that new testimony or evidence exists that was not available at the landmark commission hearing, the city plan commission shall remand the

case back to the landmark commission in accordance with Subsection (m). In reviewing the landmark commission decision the city plan commission shall use the substantial evidence standard in Subsection (m). The city plan commission may reverse or affirm, in whole or in part, modify the decision of the landmark commission, or remand any case back to the landmark commission for further proceedings. Appeal to the city plan commission constitutes the final administrative remedy.

(F) Reapplication. If a final decision is reached denying a certificate of appropriateness, no further applications may be considered for the subject matter of the denied certificate of appropriateness for one year from the date of the final decision unless:

(i) the certificate of appropriateness has been denied without prejudice; or

(ii) the landmark commission waives the time limitation because the landmark commission finds that there are changed circumstances sufficient to warrant a new hearing. A simple majority vote by the landmark commission is required to grant the request for waiver of the time limitation.

(G) Suspension of work. After the work authorized by the certificate of appropriateness is commenced, the applicant must make continuous progress toward completion of the work, and the applicant shall not suspend or abandon the work for a period in excess of 180 days. The director may, in writing, authorize a suspension of the work for a period greater than 180 days upon written request by the applicant showing circumstances beyond the control of the applicant.

(H) Revocation. The director may, in writing, revoke a certificate of appropriateness if:

(i) the certificate of appropriateness was issued on the basis of incorrect information supplied;

(ii) the certificate of appropriateness was issued in violation of the regulations contained in this section, the preservation

criteria contained in the historic overlay district ordinance, the development code, or building codes; or

(iii) the work is not performed in accordance with the certificate of appropriateness, the development code, or building codes.

(I) Amendments to a certificate of appropriateness. A certificate of appropriateness may be amended by submitting an application for amendment to the director. The application shall then be subject to the standard certificate of appropriateness review procedure.

(8) Emergency procedure. If a structure on a property subject to the predesignation moratorium or a structure in a historic overlay district is damaged and the building official determines that the structure is a public safety hazard or will suffer additional damage without immediate repair, the building official may allow the property owner to temporarily protect the structure. In such a case, the property owner shall apply for a predesignation certificate of appropriateness, certificate of appropriateness, or certificate for demolition or removal within 10 days of the occurrence which caused the damage. The protection authorized under this subsection must not permanently alter the architectural features of the structure.

(h) Certificate for demolition or removal.

(1) Findings and purpose. Demolition or removal of a historic structure constitutes an irreplaceable loss to the quality and character of the city. Therefore, demolition or removal of historic structures should be allowed only for the reasons described in this subsection.

(2) Application. A property owner seeking demolition or removal of a structure on a property subject to the predesignation moratorium or a structure in a historic overlay district must submit a complete application for a certificate for demolition or removal to the landmark commission. Within 10 days after submission of an application, the director shall notify the applicant in writing of any additional documentation required. The application must be accompanied by the following documentation before it will be considered complete:

(A) An affidavit in which the owner swears or affirms that all information submitted in the application is true and correct.

(B) An indication that the demolition or removal is sought for one or more of the following reasons:

(i) To replace the structure with a new structure that is more appropriate and compatible with the historic overlay district.

(ii) No economically viable use of the property exists.

(iii) The structure poses an imminent threat to public health or safety.

(iv) The structure is noncontributing to the historic overlay district because it is newer than the period of historic significance.

(C) For an application to replace the structure with a new structure that is more appropriate and compatible with the historic overlay district:

(i) Records depicting the original construction of the structure, including drawings, pictures, or written descriptions.

(ii) Records depicting the current condition of the structure, including drawings, pictures, or written descriptions.

(iii) Any conditions proposed to be placed voluntarily on the new structure that would mitigate the loss of the structure.

(iv) Complete architectural drawings of the new structure.

(v) A guarantee agreement between the owner and the city that demonstrates the owner's intent and financial ability to construct the new structure. The guarantee agreement must:

(aa) contain a covenant to construct the proposed structure by a specific date in accordance with architectural drawings approved by the city through the predesignation certificate of

appropriateness process or the certificate of appropriateness process;

(bb) require the owner or construction contractor to post a performance and payment bond, letter of credit, escrow agreement, cash deposit, or other arrangement acceptable to the director to ensure construction of the new structure; and

(cc) be approved as to form by the city attorney.

(D) For an application of no economically viable use of the property:

(i) The past and current uses of the structure and property.

(ii) The name of the owner.

(iii) If the owner is a legal entity, the type of entity and states in which it is registered.

(iv) The date and price of purchase or other acquisition of the structure and property, and the party from whom acquired, and the owner's current basis in the property.

(v) The relationship, if any, between the owner and the party from whom the structure and property were acquired. (If one or both parties to the transaction were legal entities, any relationships between the officers and the board of directors of the entities must be specified.)

(vi) The assessed value of the structure and property according to the two most recent tax assessments.

(vii) The amount of real estate taxes on the structure and property for the previous two years.

(viii) The current fair market value of the structure and property as determined by an independent licensed appraiser.

(ix) All appraisals obtained by the owner and prospective purchasers within the previous two years in connection with the potential or



actual purchase, financing, or ownership of the structure and property.

(x) All listings of the structure and property for sale or rent within the previous two years, prices asked, and offers received.

(xi) A profit and loss statement for the property and structure containing the annual gross income for the previous two years; itemized expenses (including operating and maintenance costs) for the previous two years, including proof that adequate and competent management procedures were followed; the annual cash flow for the previous two years; and proof that the owner has made reasonable efforts to obtain a reasonable rate of return on the owner's investment and labor.

(xii) A mortgage history of the property during the previous five years, including the principal balances and interest rates on the mortgages and the annual debt services on the structure and property.

(xiii) All capital expenditures during the current ownership.

(xiv) Records depicting the current conditions of the structure and property, including drawings, pictures, or written descriptions.

(xv) A study of restoration of the structure or property, performed by a licensed architect, engineer or financial analyst, analyzing the physical feasibility (including architectural and engineering analyses) and financial feasibility (including pro forma profit and loss statements for a ten year period, taking into consideration redevelopment options and all incentives available) of adaptive use of restoration of the structure and property.

(xvi) Any consideration given by the owner to profitable adaptive uses for the structure and property.

(xvii) Construction plans for any proposed development or adaptive reuse, including site plans, floor plans, and elevations.

(xviii) Any conditions proposed to be placed voluntarily on new development that would mitigate the loss of the structure.

(xix) Any other evidence that shows that the affirmative obligation to maintain the structure or property makes it impossible to realize a reasonable rate of return.

(E) For an application to demolish or remove a structure that poses an imminent threat to public health or safety:

(i) Records depicting the current condition of the structure, including drawings, pictures, or written descriptions.

(ii) A study regarding the nature, imminence, and severity of the threat, as performed by a licensed architect or engineer.

(iii) A study regarding both the cost of restoration of the structure and the feasibility (including architectural and engineering analyses) of restoration of the structure, as performed by a licensed architect or engineer.

(F) For an application to demolish or remove a structure that is noncontributing to the historic overlay district because the structure is newer than the period of historic significance:

(i) Documentation that the structure is noncontributing to the historic overlay district.

(ii) Documentation of the age of the structure.

(iii) A statement of the purpose of the demolition.

(G) Any other evidence the property owner wishes to submit in support of the application.

(H) Any other evidence requested by the landmark commission or the historic preservation officer.

(3) Certificate of demolition or removal review procedure.

(A) Economic review panel. For an application of no economically viable use of the property, the landmark commission shall cause to be established an ad hoc three-person economic review panel. The economic review panel must be comprised of three independent experts knowledgeable in the economics of real estate, renovation, and redevelopment. "Independent" as used in this subparagraph means that the expert has no financial interest in the property, its renovation, or redevelopment; is not an employee of the property owner; is not a city employee; is not a member of the landmark commission; and is not compensated for serving on the economic review panel. The economic review panel must consist of one person selected by the landmark commission, one person selected by the property owner, and one person selected by the first two appointees. If the first two appointees cannot agree on a third appointee within 30 days after submission of the documentation supporting the application, the third appointee will be selected by the director within 5 days. Within 35 days after submission of the documentation supporting the application, all appointments to the economic review panel shall be made. Within 35 days after appointment, the economic review panel shall review the submitted documentation; hold a public hearing; consider all options for renovation, adaptive reuse, and redevelopment; and forward a written recommendation to the landmark commission. The historic preservation officer shall provide administrative support to the economic review panel. The economic review panel's recommendation must be based on the same standard for approval to be used by the landmark commission. An application of no economically viable use will not be considered complete until the economic review panel has made its recommendation to the landmark commission. If the economic review panel is unable to reach a consensus, the report will indicate the majority and minority recommendations.

(B) Within 65 days after submission of a complete application, the landmark commission shall hold a public hearing and shall approve or deny the application. If the landmark commission does not make a final decision within that time, the building official shall issue a permit to allow the

requested demolition or removal. The property owner has the burden of proof to establish by clear and convincing evidence the necessary facts to warrant favorable action by the landmark commission.

(4) Standard for approval. The landmark commission shall deny the application unless it makes the following findings:

(A) The landmark commission must deny an application to replace a structure with a new structure unless it finds that:

(i) the new structure is more appropriate and compatible with the historic overlay district than the structure to be demolished or removed; and

(ii) the owner has the financial ability and intent to build the new structure. The landmark commission must first approve the predesignation certificate of appropriateness or certificate of appropriateness for the proposed new structure and the guarantee agreement to construct the new structure before it may consider the application to demolish or remove.

(B) The landmark commission must deny an application of no economically viable use of the property unless it finds that:

(i) the structure is incapable of earning a reasonable economic return unless the demolition or removal is allowed (a reasonable economic return does not have to be the most profitable return possible);

(ii) the structure cannot be adapted for any other use, whether by the owner or by a purchaser, which would result in a reasonable economic return; and

(iii) the owner has failed during the last two years to find a developer, financier, purchaser, or tenant that would enable the owner to realize a reasonable economic return, despite having made substantial ongoing efforts to do so.

(C) The landmark commission must deny an application to demolish or remove a structure that poses an imminent threat to public health or safety unless it finds that:

(i) the structure constitutes a documented major and imminent threat to public health and safety;

(ii) the demolition or removal is required to alleviate the threat to public health and safety; and

(iii) there is no reasonable way, other than demolition or removal, to eliminate the threat in a timely manner.

(D) The landmark commission must deny an application to demolish or remove a structure that is noncontributing to the historic overlay district because it is newer than the period of historic significance unless it finds that:

(i) the structure is noncontributing to the historic overlay district;

(ii) the structure is newer than the period of historic significance for the historic overlay district; and

(iii) demolition of the structure will not adversely affect the historic character of the property or the integrity of the historic overlay district.

(5) Appeal. The chair of the landmark commission shall give verbal notice of the right to appeal at the time a decision on the application is made. If the applicant is not present at the hearing, the director shall inform the applicant of the right to appeal in writing within 10 days after the hearing. Any interested person may appeal the decision of the landmark commission to the city plan commission by filing a written notice with the director within 30 days after the date of the decision of the landmark commission. If no appeal is made of a decision to approve the certificate for demolition or removal within the 30-day period, the building official shall issue the permit to allow demolition or removal. If an appeal is filed, the city plan commission shall hear and decide the appeal within 65 days after the date of its filing. The director shall forward to the city plan commission a complete record of the matter being appealed, including a transcript of the tape of the hearing before the landmark commission. In considering an appeal, the city plan

commission shall review the landmark commission record and hear and consider arguments from the appellant and the representative for the landmark commission. The city plan commission may only hear new testimony or consider new evidence that was not presented at the time of the hearing before the landmark commission to determine whether that testimony or evidence was available at the landmark commission hearing. If the city plan commission determines that new testimony or evidence exists that was not available at the landmark commission hearing, the city plan commission shall remand the case back to the landmark commission in accordance with Subsection (m). In reviewing the landmark commission decision the city plan commission shall use the substantial evidence standard in Subsection (m). The city plan commission may reverse or affirm, in whole or in part, modify the decision of the landmark commission, or remand any case back to the landmark commission for further proceedings. Appeal to the city plan commission constitutes the final administrative remedy.

(6) Reapplication. If a final decision is reached denying a certificate for demolition or removal, no further applications may be considered for the subject matter of the denied certificate for demolition or removal for one year from the date of the final decision unless:

(A) the certificate for demolition or removal has been denied without prejudice; or

(B) the landmark commission waives the time limitation because the landmark commission finds that there are changed circumstances sufficient to warrant a new hearing. A simple majority vote by the landmark commission is required to grant the request for waiver of the time limitation.

(7) Expiration. A certificate for demolition or removal expires if the work authorized by the certificate for demolition or removal is not commenced within 180 days from the date of the certificate for demolition or removal. The director may extend the time for commencement of work upon written request by the applicant showing circumstances beyond the control of the applicant. If the certificate for demolition or removal expires, a new certificate for demolition or removal must first be obtained before the work can be commenced.

(i) Certificate for demolition for a residential structure with no more than 3,000 square feet of floor area pursuant to court order.

(1) Findings and purpose. Demolition of a historic structure constitutes an irreplaceable loss to the quality and character of the city. Elimination of substandard structures that have been declared urban nuisances and ordered demolished pursuant to court order is necessary to prevent blight and safeguard the public health, safety, and welfare. Therefore, the procedures in this subsection seek to preserve historic structures while eliminating urban nuisances.

(2) Notice to landmark commission by email. A requirement of this subsection that the landmark commission be provided written notice of a matter is satisfied if an email containing the required information is sent to every member of the landmark commission who has provided an email address to the director.

(3) Referral of demolition request to landmark commission and director. When a city department requests the city attorney's office to seek an order from a court or other tribunal requiring demolition of a residential structure with no more than 3,000 square feet of floor area on a property subject to a predesignation moratorium or in a historic overlay district, that department shall provide written notice to the landmark commission and director of that request within two business days after the date it makes the request. The notice must include a photograph of the structure, the address of the property, and (if known) the name, address, and telephone number of the property owner. If the city attorney's office determines that the department did not provide the required notice, the city attorney's office shall provide that notice within two business days after the date it determines that the department did not provide the notice.

(4) Notice of court proceedings to landmark commission and director. The city attorney's office shall provide written notice to the landmark commission and director at least 10 days before any hearing before a court or other tribunal where the city attorney's office seeks an order requiring demolition of a residential structure with no more than 3,000 square feet of floor area subject to a

predesignation moratorium or in a historic overlay district. If a court or other tribunal orders demolition of the structure subject to a predesignation moratorium or in a historic overlay district, the city attorney's office shall provide written notice to the landmark commission and director within five days after the order is signed and provided to the city attorney's office.

(5) Application. If the city or a property owner seeks demolition of a residential structure with no more than 3,000 square feet of floor area subject to a predesignation moratorium or in a historic overlay district pursuant to an order from a court or other tribunal requiring demolition obtained by the city, a complete application for a certificate for demolition must be submitted to the landmark commission. Within 10 days after submission of an application, the director shall notify the city's representative or the property owner in writing of any documentation required but not submitted. The application must be accompanied by the following documentation before it will be considered complete:

(A) An affidavit in which the city representative or the property owner affirms that all information submitted in the application is correct.

(B) Records depicting the current condition of the structure, including drawings, pictures, or written descriptions, and including Historic American Buildings Survey or Historic American Engineering Records documentation if required by law or agreement.

(C) A signed order from a court or other tribunal requiring the demolition of the structure in a proceeding brought pursuant to Texas Local Government Code Chapters 54 or 214, as amended.

(D) A copy of a written notice of intent to apply for a certificate for demolition that was submitted to the director and the landmark commission at least 30 days before the application.

(E) Any other evidence the city representative or property owner wishes to submit in support of the application.

(6) Hearing. Within 40 days after submission of a complete application, the landmark commission shall hold a public hearing to determine whether the structure should be demolished. If the landmark commission does not make a final decision on the application or suspend the granting of the certificate of demolition pursuant to this subsection within that time, the building official shall issue a demolition permit to allow the demolition. The city representative or the property owner has the burden of proof to establish by a preponderance of the evidence the necessary facts to warrant favorable action by the landmark commission.

(7) Standard for approval. The landmark commission shall approve the certificate for demolition if it finds that:

(A) a court or other tribunal has issued a final order requiring the demolition of the structure pursuant to Texas Local Government Code Chapters 54 or 214, as amended; and

(B) suspension of the certificate for demolition is not a feasible option to alleviate the nuisance in a timely manner.

(8) Suspension. The purpose of the suspension periods is to allow an interested party to rehabilitate the structure as an alternative to demolition.

(A) Residential structures with no more than 3,000 square feet of floor area.

(i) Initial suspension period.

(aa) The landmark commission may suspend the granting of the certificate for demolition until the next regularly scheduled landmark commission meeting (the initial suspension period) to allow time to find a party interested in rehabilitating the structure.

(bb) If during the initial suspension period no interested party is identified, the landmark commission shall grant the certificate for demolition.

(cc) If during the initial suspension period an interested party is identified, the landmark commission shall suspend the granting of the certificate for demolition for no more than two more regularly scheduled landmark commission meetings (the extended suspension period).

(ii) Extended suspension period.

(aa) During the extended suspension period, the interested party shall:

[1] submit an application for a predesignation certificate of appropriateness or a certificate of appropriateness;

[2] provide evidence that the interested party has or will obtain title to the property and has authority to rehabilitate the structure, or is authorized to rehabilitate the property by a party who has title to the property or has the right to rehabilitate the property;

[3] provide evidence that the structure and property have been secured to prevent unauthorized entry; and

[4] provide a guarantee agreement that:

[A] contains a covenant to rehabilitate the structure by a specific date, in accordance with the predesignation certificate of appropriateness process or certificate of appropriateness, which the landmark commission may extend if the interested party shows circumstances preventing rehabilitation of the structure by that date that are beyond the control of the interested party;

[B] is supported by a performance and payment bond, letter of credit, escrow agreement, cash deposit, or other similar enforceable arrangement acceptable to the director to ensure rehabilitation of the structure; and

[C] is approved as to form by the city attorney.

(bb) If during the extended suspension period the interested party does not meet the requirements of Subparagraph (A)(ii), the landmark commission shall grant the certificate for demolition.

(cc) If during the extended suspension period the interested party meets the requirements of Subparagraph (A)(ii), the landmark commission shall continue to suspend the granting of the certificate for demolition (the continuing suspension period).

(iii) Continuing suspension period.

(aa) The interested party must rehabilitate the structure to comply with Dallas City Code Chapter 27 and request an inspection by the city before the end of the continuing suspension period.

(bb) At each landmark commission meeting during the continuing suspension period, the interested party shall provide a progress report demonstrating that reasonable and continuous progress is being made toward completion of the rehabilitation.

(cc) If during the continuing suspension period the landmark commission finds that the interested party is not making reasonable and continuous progress toward completion of the rehabilitation, the landmark commission shall grant the certificate for demolition, unless the interested party shows circumstances preventing reasonable and continuous progress that are beyond the control of the interested party.

(dd) If during the continuing suspension period the landmark commission finds that the interested party has rehabilitated the structure to comply with Dallas City Code Chapter 27, the landmark commission shall deny the certificate for demolition.

(9) Appeal. The city representative or property owner may appeal a decision of the landmark commission under this subsection to the city plan commission by filing a written notice with the director within 10 days after the date of the decision of the landmark commission. The city plan

commission shall hear and decide the appeal at the next available city plan commission meeting. The standard of review shall be *de novo*, but the director shall forward to the city plan commission a transcript of the landmark commission hearing. In considering the appeal, the city plan commission may not hear or consider new evidence unless the evidence corrects a misstatement or material omission at the landmark commission hearing or the evidence shows that the condition of the property has changed since the landmark commission hearing. The city plan commission chair shall rule on the admissibility of new evidence. The city plan commission shall use the same standard required for the landmark commission. The city plan commission may reverse or affirm, in whole or in part, modify the decision of the landmark commission, or remand any case back to the landmark commission for further proceedings; however, the city plan commission shall give deference to the decision of the landmark commission. Appeal to the city plan commission constitutes the final administrative remedy.

(10) Expiration. A certificate for demolition expires if the work authorized by the certificate for demolition is not commenced within 180 days after the date of the certificate for demolition. The director may extend the time for commencement of work upon written request by the city representative or the property owner showing circumstances justifying the extension. If the certificate for demolition expires, a new certificate for demolition must first be obtained before the work can be commenced.

(11) Procedures for all other structures. If the city or a property owner seeks demolition of any structure other than a residential structure with no more than 3,000 square feet of floor area subject to a predesignation moratorium or in a historic overlay district pursuant to an order from a court or other tribunal requiring demolition obtained by the city, an application must be filed under Subsection (h) of this section.

(j) Summary abatement by fire marshal. If the fire marshal finds that conditions on a structure subject to a predesignation moratorium or in a historic overlay district are hazardous to life or property and present a clear and present danger, the fire marshal may summarily abate those conditions without a

predesignation certificate of appropriateness, certificate of appropriateness, or certificate for demolition.

(k) Demolition by neglect.

(1) Definition. Demolition by neglect is neglect in the maintenance of any structure on property subject to the predesignation moratorium or in a historic overlay district that results in deterioration of the structure and threatens the preservation of the structure.

(2) Demolition by neglect prohibited. No person shall allow a structure to deteriorate through demolition by neglect. All structures on properties subject to the predesignation moratorium and in historic overlay districts must be preserved against deterioration and kept free from structural defects. The property owner or the property owner's agent with control over the structure, in keeping with the city's minimum housing standards and building codes, must repair the structure if it is found to have any of the following defects:

(A) Parts which are improperly or inadequately attached so that they may fall and injure persons or property.

(B) A deteriorated or inadequate foundation.

(C) Defective or deteriorated floor supports or floor supports that are insufficient to carry the loads imposed.

(D) Walls, partitions, or other vertical supports that split, lean, list, or buckle due to defect or deterioration, or are insufficient to carry the loads imposed.

(E) Ceilings, roofs, ceiling or roof supports, or other horizontal members which sag, split, or buckle due to defect or deterioration, or are insufficient to support the loads imposed.

(F) Fireplaces and chimneys which list, bulge, or settle due to defect or deterioration, or are of insufficient size or strength to carry the loads imposed.

(G) Deteriorated, crumbling, or loose exterior stucco or mortar.

(H) Deteriorated or ineffective waterproofing of exterior walls, roofs, foundations, or floors, including broken or open windows and doors.

(I) Defective or lack of weather protection for exterior wall coverings, including lack of paint or other protective covering.

(J) Any fault, defect, or condition in the structure which renders it structurally unsafe or not properly watertight.

(K) Deterioration of any exterior feature so as to create a hazardous condition which could make demolition necessary for the public safety.

(L) Deterioration or removal of any unique architectural feature which would detract from the original architectural style.

(3) Demolition by neglect procedure.

(A) Purpose. The purpose of the demolition by neglect procedure is to allow the landmark commission to work with the property owner to encourage maintenance and stabilization of the structure and identify resources available before any enforcement action is taken.

(B) Request for investigation. Any interested party may request that the historic preservation officer investigate whether a property is being demolished by neglect.

(C) First meeting with the property owner. Upon receipt of a request, the historic preservation officer shall meet with the property owner or the property owner's agent with control of the structure to inspect the structure and discuss the resources available for financing any necessary repairs. After the meeting, the historic preservation officer shall prepare a report for the landmark commission on the condition of the structure, the repairs needed to maintain and stabilize the structure, any resources available for financing the repairs, and the amount of time needed to complete the repairs.

(D) Certification and notice. After review of the report, the landmark commission may vote to certify the property as a demolition by neglect case. If the landmark commission certifies the structure as a demolition by neglect case, the landmark commission shall notify the property owner or the property owner's agent with control over the structure of the repairs that must be made. The notice must require that repairs be started within 30 days and set a deadline for completion of the repairs. The notice must be sent by certified mail.

(E) Second meeting with the property owner. The historic preservation officer shall meet with the property owner or the property owner's agent with control over the structure within 30 days after the notice was sent to inspect any repairs completed and assist the property owner in obtaining any resources available for financing the repairs.

(F) Referral for enforcement. If the property owner or the property owner's agent with control over the structure fails to start repairs by the deadline set in the notice, fails to make continuous progress toward completion, or fails to complete repairs by the deadline set in the notice, the landmark commission may refer the demolition by neglect case to the code compliance department, the urban rehabilitation standards board, or the city attorney for appropriate enforcement action to prevent demolition by neglect.

(l) Historic preservation incentives. Consult Article XI, "Development Incentives," for regulations concerning the tax exemptions, conservation easements, and transfer of development rights available to structures in historic overlay districts.

(m) Historic preservation fund.

(1) The department of development services, in cooperation with community organizations, shall develop appropriate funding structures and shall administer the historic preservation fund.

(2) The historic preservation fund is composed of the following funds:

(A) Outside funding (other than city general funds or capital funds), such as grants and donations, made to the city for the purpose of historic preservation and funding partnerships with community organizations.

(B) Damages recovered pursuant to Texas Local Government Code Section 315.006 from persons who illegally demolish or adversely affect historic structures.

(3) The outside funding may be used for financing the following activities:

(A) Necessary repairs in demolition by neglect cases.

(B) Full or partial restoration of low-income residential and nonresidential structures.

(C) Full or partial restoration of publicly owned historic structures.

(D) Acquisition of historic structures, places, or areas through gift or purchase.

(E) Public education of the benefits of historic preservation or the regulations governing historic overlay districts.

(F) Identification and cataloging of structures, places, areas, and districts of historical, cultural, or architectural value along with factual verification of their significance.

(4) Damages recovered pursuant to Texas Local Government Code Section 315.006 must be used only for the following purposes:

(A) Construction, using as many of the original materials as possible, of a structure that is a reasonable facsimile of a demolished historic structure.

(B) Restoration, using as many of the original materials as possible, of the historic structure.

(C) Restoration of another historic structure.



(n) Enforcement and criminal penalties.

(1) A person is criminally responsible for a violation of this section if:

(A) the person owns part or all of the property and knowingly allows the violation to exist;

(B) the person is the agent of the property owner or is an individual employed by the agent or property owner; is in control of the property; knowingly allows the violation to exist; and fails to provide the property owner's name, street address, and telephone number to code enforcement officials;

(C) the person is the agent of the property owner or is an individual employed by the agent or property owner, knowingly allows the violation to exist, and the citation relates to the construction or development of the property; or

(D) the person knowingly commits the violation or assists in the commission of the violation.

(2) Any person who adversely affects or demolishes a structure on property subject to the predesignation moratorium or in a historic overlay district in violation of this section is liable pursuant to Texas Local Government Code Section 315.006 for damages to restore or replicate, using as many of the original materials as possible, the structure to its appearance and setting prior to the violation. No predesignation certificates of appropriateness, certificates of appropriateness, or building permits will be issued for construction on the site except to restore or replicate the structure. When these restrictions become applicable to a site, the director shall cause to be filed a verified notice in the county deed records and these restrictions shall be binding on future owners of the property. These restrictions are in addition to any fines imposed.

(3) Prosecution in municipal court for an offense under this section does not prevent the use of other enforcement remedies or procedures provided by other city ordinances or state or federal laws applicable to the person charged with or the conduct involved in the offense.

(o) Substantial evidence standard of review for appeals. The city plan commission shall give deference to the landmark commission decision and may not substitute its judgment for the landmark commission's judgment.

(1) The city plan commission shall remand the matter back to the landmark commission if it determines that there is new testimony or evidence that was not available at the landmark commission hearing.

(2) The city plan commission shall affirm the landmark commission decision unless it finds that it:

(A) violates a statutory or ordinance provision;

(B) exceeds the landmark commission's authority; or

(C) was not reasonably supported by substantial evidence considering the evidence in the record.

(p) Judicial review of decisions. The final decision of the city planning commission regarding an appeal of a landmark commission decision may be appealed to a state district court. The appeal to the state district court must be filed within 30 days after the decision of the city planning commission. If no appeal is made to the state district court within the 30-day period, then the decision of the city plan commission is final and unappealable. An appeal to the state district court is limited to a hearing under the substantial evidence rule. (Ord. Nos. 19455; 19499; 20585; 21244; 21403; 21513; 21874; 22018; 23506; 23898; 24163; 24542; 24544; 25047; 26286; 27430; 27922)

SEC. 51A-4.502.

INSTITUTIONAL OVERLAY DISTRICT.

(a) General provisions.

(1) The institutional overlay district promotes cultural, educational, and medical institutions, and enhances their benefit to the community while protecting adjacent property.

(2) The following main uses may be permitted in an institutional overlay district:

- Ambulance service.
- Ambulatory surgical center.
- Cemetery or mausoleum.
- Church.
- College dormitory, fraternity or sorority house.
- College, university, or seminary.
- Community service center.
- Convalescent and nursing homes, hospice care, and related institutions.
- Convent or monastery.
- Day care center.
- Foster home.
- Halfway house.
- Hospital.
- Library, art gallery, or museum.
- Medical clinic.
- Medical or scientific laboratory.
- Overnight general purpose shelter.
- Post office.
- Public or private school.

(3) All uses permitted in the underlying zoning district are allowed in an institutional overlay district.

(4) The zoning regulations of the underlying zoning district are applicable to an institutional overlay district unless otherwise provided in this section.

(b) Special yard, lot, and space regulations.

(1) In an institutional overlay district, additional setbacks, if any, for institutional buildings greater than 36 feet in height may be established by the site plan process.

(2) Buildings in an institutional overlay district must comply with applicable height regulations.

(3) If any portion of a structure is over 26 feet in height, that portion may not be located above a residential proximity slope originating in an R, R(A), D, D(A), TH, or TH(A) district. Exception: Structures listed in Section 51A-4.408(a)(2) may project through the slope to a height not to exceed the maximum structure height, or 12 feet above the slope, whichever is less.

(c) Special parking regulations.

(1) Required off-street parking for institutional uses may be located anywhere within the boundaries of the institutional overlay district or outside the district if the parking meets the requirements of Division 51A-4.320.

(2) Reserved.

(3) Reserved.

(d) Procedures for establishing an institutional overlay district.

(1) The applicant for an institutional overlay district shall comply with the zoning amendment procedure for a change in the zoning district classification.

(2) A site plan must be submitted after the institutional district is established and before a building permit or certificate of occupancy is issued.

(e) Site plan process.

(1) The building official shall not issue a building permit for additions to existing structures or for new structures except in accordance with an approved site plan and all applicable regulations.

(2) Preapplication conference. An applicant for site plan approval shall request, by letter, a preapplication conference with the director. The letter must contain a brief, general description of the nature, location, extent of the proposed institutional use and the list of any professional consultants advising the applicant concerning the proposed site plan.

# SECTION 7

## Correspondence

- Notice of August 1, 2022 Landmark Hearing
- Notice of application denied without prejudice
- Request to Appeal from applicant
- Appeal Procedures

**From:** [Carlos van Onna](#)  
**To:** [Carlos van Onna](#)  
**Bcc:** [Paul F. Wieneskie](#); [Randy Shear](#); [Annemarie Bristow](#)  
**Subject:** !! START TIME CHANGE !! - Landmark Commission Public Hearing Information - August 1, 2022  
**Date:** Friday, July 29, 2022 5:43:02 PM  
**Attachments:** [image001.png](#)  
[image002.png](#)  
[image003.png](#)  
[image004.png](#)

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Good afternoon applicants,

I am writing to notify you of a new start time of **5:00 p.m.** for the upcoming Landmark Commission meeting on **Monday, August 1, 2022**. The briefing meeting and the public hearing will happen concurrently. The link provided below can still be used to access the meeting. The agenda has been posted and can be found on this City web page:

<https://dallascityhall.com/government/citysecretary/Pages/Public-Meetings.aspx>

We apologize for any inconvenience this change in time may cause.

**From:** Carlos van Onna  
**Sent:** Friday, July 29, 2022 4:20 PM  
**To:** Carlos van Onna <carlos.van@dallas.gov>  
**Subject:** !! START TIME CHANGE !! - Landmark Commission Public Hearing Information - August 1, 2022

Hello applicants,

The start time for the August 1 Landmark Commission hearing on Monday has been changed to **4:00pm**. The regular briefing and public hearing sections will be combined. Those that signed up to speak are still registered to speak. No action is required from you.

Below is the connection info for attendees, this remains unchanged from the previous notification:

#### **Videoconference**

##### **To join via computer:**

<https://dallascityhall.webex.com/dallascityhall/onstage/g.php?MTID=ed2aa27846db133266e46c4544a92cc72>

**Event Password:** AugustLMC22

##### **To join via phone only:**

Call-in (audio only): 408-418-9388

Access code: 2496 934 9709

***Per state law, you may not participate using audio only.***

**In person:**

-  
City Council Chambers, 6<sup>th</sup> Floor at City Hall (Room 6ES)

Thank you,



**Carlos van Onna**

Senior Planner

City of Dallas | [www.dallascityhall.com](http://www.dallascityhall.com)

Office of Historic Preservation

1500 Marilla St, Room 5BN

Dallas, TX 75201

[carlos.van@dallas.gov](mailto:carlos.van@dallas.gov)



*\*\*OPEN RECORDS NOTICE: This email and responses may be subject to the Texas Open Records Act and may be disclosed to the public upon request. Please respond accordingly.\*\**

**From:** Carlos van Onna

**Sent:** Wednesday, July 27, 2022 4:41 PM

**Subject:** Landmark Commission Public Hearing Information - August 1, 2022

Good afternoon applicants,

This e-mail is just a reminder about the upcoming Landmark Commission meeting on **Monday, August 1, 2022**. The meeting will be held virtually, though City Council Chambers on the 6<sup>th</sup> Floor at City Hall (Room 6ES) will be available for those who wish to attend in person or who are not able to attend virtually. Those attending in person will be required to follow all current pandemic-related public health protocols.

Below you will find the web link and teleconference number for the July 5th Landmark Commission meetings. **In addition, you will find an email address for our admin, Elaine Hill, that you will need for signing up to speak at the meeting. The deadline to sign up to speak is Monday, August 1, by 8:30 AM, so be sure that you and/or anyone who plans to speak on your case has emailed Elaine and signed up on time. There is not a way to sign you up to speak after this deadline closes. When emailing Elaine, be sure you include the speakers full name as well as the address for the case you are requesting to speak on. Also be aware that speakers who attend the meeting virtually will be required to use video during the meeting discussion. Per state law, you may not participate using audio only.**

The August 1<sup>st</sup> meeting agenda should be posted by Friday afternoon on July 29. Once posted you

should be able to view the agenda and docket (which includes the staff reports on each case) on our website here: [https://dallascityhall.com/government/meetings/Pages/landmark\\_commission.aspx](https://dallascityhall.com/government/meetings/Pages/landmark_commission.aspx).

There are two meetings that will happen Monday. There is the public hearing at 1:00 PM which you should plan to attend because that is where the Commission will make their decision on your application, or will provide comments if your application is a Courtesy Review. But there is also a morning Briefing meeting which is optional for you to attend. The start time for the August 1<sup>st</sup> Briefing meeting is 10:30 AM. Be aware that the public can listen in but may not participate in the Briefing discussion. Discussion with applicants is reserved for the 1:00 PM public hearing.

Below is the **Monday, August 1** Landmark meeting connection info for attendees, as well as the Speaker Sign Up email.

### **Videoconference**

#### **To join via computer:**

<https://dallascityhall.webex.com/dallascityhall/onstage/g.php?MTID=ed2aa27846db133266e46c4544a92cc72>

**Event Password:** AugustLMC22

#### **To join via phone only:**

Call-in (audio only): 408-418-9388

Access code: 2496 934 9709

***Per state law, you may not participate using audio only.***

#### **Speaker Sign-Up:**

Email: Elaine Hill at [phyllis.hill@dallas.gov](mailto:phyllis.hill@dallas.gov)

Deadline: **Monday, August 1 at 8:30 AM**

**You must sign up by email by the above deadline to speak at the Landmark Commission hearing. Be sure your email to Elaine includes the full name of the speaker, as well as the address for the case you wish to speak on.**

Please let me know if you have any questions.



**Carlos van Onna**

*Senior Planner*

City of Dallas | [www.dallascityhall.com](http://www.dallascityhall.com)

Office of Historic Preservation

1500 Marilla St, Room 5BN

Dallas, TX 75201

[carlos.van@dallas.gov](mailto:carlos.van@dallas.gov)





CITY OF DALLAS

September 9, 2022

**Via Certified Mail: 7013 3020 0001 1420 9014**

Annemarie Bristow  
802 Haines Avenue  
Dallas, TX 75208

RE: Appeal of Certificate of Demolition: Hearing – October 6, 2022  
338 S Fleming Ave., Case No. CD212-014(MGM)

Dear Annemarie Bristow:

We have received your correspondence appealing the Landmark Commission's denial of a Certificate of Demolition application for 338 S. Fleming Avenue. Please be advised that the City Plan Commission hearing for **this appeal is scheduled for Thursday, October 6, 2022.** The City Plan Commission meeting will be held by videoconference and in Council Chambers, 6<sup>th</sup> Floor at City Hall. Individuals who wish to speak in accordance with the City Plan Commission Rules of Procedure, should contact the Department of Planning and Urban Design at 214-670-4209 by 5:00 p.m. on Tuesday, October 4, 2022 or register online at: <https://dallascityhall.com/government/meetings/Pages/city-plan-commission.aspx>. This link will be available on Friday, September 30<sup>th</sup> and will close at 5p Tuesday, October 4<sup>th</sup>. You may also register to speak in person the day of the appeal hearing.

[The public is encouraged to attend the meeting virtually; however, City Hall is available for those wishing to attend the meeting in person following all current pandemic-related public health protocols.](#)

Public Affairs and Outreach will also stream the public hearing on Spectrum Cable Channel 96 or Channel 99 and [bit.ly/cityofdallastv](http://bit.ly/cityofdallastv) or [YouTube.com/CityofDallasCityHall](https://www.youtube.com/CityofDallasCityHall).

The appeal of the decision of the Landmark Commission regarding the application for a Certificate of Demolition is a quasi-judicial action. **No communication with City Plan Commission members may occur outside the hearing of October 6, 2022.**

The Dallas Development Code, Section 51A-4.501 provides the procedures applicable to a Certificate of Demolition appeal. For your convenience, I have enclosed a copy of the ordinance containing the applicable section and a copy of the Appeal Procedures.

Annemarie Bristow  
802 Haines Avenue  
Dallas, TX 75208

The Landmark Commission record includes all documents related to your specific case. Should you wish to provide the City Plan Commission a brief on the matter, please submit a copy to me at Dallas City Hall, 1500 Marilla Street, Room 5DN, Dallas, TX 75201 or to [phyllis.hill@dallas.gov](mailto:phyllis.hill@dallas.gov) by **5:00 p.m. Thursday, September 15, 2022**. I will distribute your brief to the City Plan Commission. I will also send you a copy of the brief prepared by the City Attorney's office.

Please contact me through email at [Phyllis.hill@dallas.gov](mailto:Phyllis.hill@dallas.gov) if there are any questions regarding the deadline dates. You are encouraged to contact Assistant City Attorney Daniel Moore at 214-670-7027 if you have any questions regarding the format of the City Plan Commission hearing or other related matters.

Respectfully,

Elaine Hill  
Landmark Commission  
Coordinator

cc: Murray G. Miller, Director, Office of Historic Preservation  
Stacy Rodriguez, Executive Assistant City Attorney  
Daniel Moore, Assistant City Attorney  
Theresa Pham, Assistant City Attorney  
Bertram Vandenberg, Assistant City Attorney



August 11, 2022

Annemarie Bristow  
802 Haines Ave,  
Dallas, TX 75208

**RE: CD212-014(MGM)  
REVIEW OF YOUR CERTIFICATE OF APPROPRIATENESS APPLICATION  
338 S FLEMING AVE**

Dear Annemarie Bristow:

Enclosed is a copy of the Certificate of Appropriateness (CA) application that you submitted for review by the Landmark Commission on August 1, 2022.

Please see the enclosed Certificate of Appropriateness for Details.

PLEASE NOTE: You have the right to appeal this decision within 30 days from the Landmark Commission review date. The enclosed ordinance lists the fee schedule for appeals. Also enclosed is an application for appeal which is due in our office by 5:00 P.M on August 31, 2022. For information regarding the appeals process, please email Elaine Hill at [Phyllis.hill@dallas.gov](mailto:Phyllis.hill@dallas.gov)

Please make checks payable to the City of Dallas.

Encl. Application for Appeal  
Ordinance No. 19455

If you have any questions, please contact me by phone at (214) 671-9260 or email at [murray.miller@dallascityhall.com](mailto:murray.miller@dallascityhall.com).

A handwritten signature in black ink that reads "Murray Miller". The signature is written in a cursive style and ends with a long horizontal stroke that tapers into an arrowhead pointing to the right.

Murray Miller  
Historic Preservation Officer

**Certificate of Demolition**

August 1, 2022

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Standard	August 1, 2022	<b>PLANNER:</b>	Murray Miller
<b>FILE NUMBER:</b>	CD212-014(MGM)	<b>DATE FILED:</b>	July 14, 2022
<b>LOCATION:</b>	338 S FLEMING AVE	<b>DISTRICT:</b>	Tenth Street Neighborhood Historic Distr
<b>COUNCIL DISTRICT:</b>	4	<b>MAPSCO:</b>	55-E
<b>ZONING:</b>	PD-388	<b>CENSUS TRACT:</b>	0041.00

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**APPLICANT:** Annemarie Bristow  
**REPRESENTATIVE:**  
**OWNER:** BRISTOW ANNEMARIE

The Landmark Commission decision is: Denied without Prejudice

Information regarding requests:

- 1) A Certificate for Demolition of existing residence  
Deny without Prejudice

Conditions: That the request for a Certificate for Demolition/Removal to demolish a noncontributing structure using the standard "replace with more appropriate/compatible structure" be denied without prejudice with finding the that the proposed demolition would not satisfy the standard in City Code Section 51A-4.501(h)(4)(A)(i).



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Landmark Commission Chair

August 1, 2022

Date

Please take any signed drawings to Building Inspection for permits.

# APPLICATION FOR APPEAL OF LANDMARK COMMISSION DECISION

The Deadline to Appeal this application is August 31, 2022

Director, Development Services Department  
Dallas City Hall  
1500 Marilla St., RM 5/B/N  
Dallas Texas 75201  
Telephone 214-670-4209

Office Use Only  
Date Received

Landmark Case/File No.: CA212-014(MGM) - CD212-014(MGM)

Property Address: 338 S FLEMING AVE DALLAS TEXAS 75203

Date of Landmark Commission Action: August 1, 2022

Applicant's Name: Randy Shear-RandShearDesign LLC

Applicant's Mailing Address: 7027 Gaston Parkway

City: Dallas State: Texas Zip: 70214

Applicant's Phone Number: 214-914-9969 Fax: N/A

Applicant's Email: rand.shear@gmail.com

IF DIFFERENT FROM ABOVE, PROVIDE PROPERTY OWNER'S INFORMATION.

Owner's Name: Annemarie Bristow

Owner's Mailing Address: 802 Haines Ave.

City: Dallas State: Texas Zip: 70208

Owner's Phone Number: 972-400-2969 Fax: N/A

Owner's Email: annemariebristow@gmail.com

*rand shear* Aug 9, 2022  
Applicant's Signature Date

*Annemarie Bristow* Aug 9, 2022  
Owner's Signature (if individual) Date  
or Letter of Authorization (from corporation/partnership)

Fee for Single Family use/structure: \$300.00  
Fee for any other use/structure: \$700.00

Receipt # 10700  
**RECEIVED**  
AUG 11 2022  
BY: .....

(3) Fee schedule.

<u>Type of Application</u>	<u>Application Fee</u>	<u>Area of Notification for Hearing</u>
Minor plan amendment	\$825.00	
Appeal of the decision of the director to city plan commission or the decision of the city plan commission to the city council for a minor plan amendment	\$300.00	
Detailed development plan when submitted after passage of an ordinance establishing a planned development district	\$600.00 for each submission	
Waiver of the two year waiting period under Section 51A-4.701(d)(3)	\$300.00	
Extension of the development schedule under Section 51A-4.702(g)(3)	\$75.00	
Waiver of the requirement of proof that taxes, fees, fines, and penalties are not delinquent under Section 51A-1.104.1	\$200.00	
Appeal to the city council of a moratorium on a zoning or nonzoning matter handled by the department	\$300.00	
Request for a letter from the department explaining the availability of water services for a development site	\$200.00	
Request for a letter from the department explaining the availability of wastewater services for a development site.	\$200.00	
Request for performance of a wastewater capacity analysis on an existing wastewater line to determine its capacity for a proposed development or land use	\$2,500.00	
Appeal of an apportionment determination to the city plan commission	\$600.00	
Appeal an apportionment determination decision of the city plan commission to the city council	\$600.00	

<u>Type of Application</u>	<u>Application Fee</u>	<u>Area of Notification for Hearing</u>
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Appeal a decision of the landmark \$300.00 commission on a predesignation certificate of appropriateness, certificate of appropriateness, or certificate for demolition or removal to the city plan commission regarding a single family use or a handicapped group dwelling unit use \$300.00

Appeal a decision of the landmark commission on a predesignation certificate of appropriateness, certificate of appropriateness, or certificate for demolition or removal to the city plan commission regarding any other use \$700.00

Request for a sidewalk width waiver under Section 51A-4.124(a)(8)(C)(v) \$300.00

Request for an administrative parking reduction under Section 51A-4.313 \$375.00 and \$25 per space over 10 spaces

Note: The director shall also send notification of minor plan amendments to the city plan commission members, any known neighborhood associations covering the property, and persons on the early notification list at least 10 days prior to the public hearing.

(1) Fees for a street name change.

(1) The following fees are required for a street name change.

(A) A street name change fee must be paid to the director before an application will be processed.

(B) A fee for new street identification signs must be paid to the director of sustainable development and construction within 60 days of the approval of a street name change by the city council.

(C) A fee for change of official address records must be paid to the building official within 60 days of the approval of a street name change by the city council.

**PROCEDURE FOR APPEAL OF  
CERTIFICATES OF APPROPRIATENESS  
TO THE CITY PLAN COMMISSION**  
(Revised April 2014)

1. **Postponements.**

- a. The City Plan Commission may grant a postponement if it wishes.
- b. Dallas Development Code §51A-4.701(e), regarding postponement of zoning applications by the applicant, does not apply.

2. **Content of the record.**

- a. Copies of the complete record will be distributed by staff to the City Plan Commission two weeks before the scheduled hearing.
- b. The parties may request that the record be supplemented.

3. **Additional correspondence and briefs.**

- a. Additional correspondence or briefs, if any are desired to be submitted by the parties, should be provided to the planning staff for distribution to the City Plan Commission.
- b. The parties should provide each other with copies of any information they submit to the City Plan Commission.
- c. Interested parties should not make any contacts with commission members other than those submitted through the city staff.

4. **Representation of the Landmark Commission.**

- a. The Landmark Commission will be represented by Laura Morrison.

5. Order of the hearing.

- a. Each side will receive 20 minutes (exclusive of questions from the City Plan Commission) with 5 minutes for rebuttal by appellant.
- b. Order of the hearing.
  - (1) Preliminary matters.
    - (A) Introduction by the Chair
  - (2) Appellant's case (20 minutes). \*
    - (A) Presentation by the appellant's representative.
    - (B) Questions from Commission Members.
  - (3) Landmark Commission's case (20 minutes). \*
    - (A) Presentation by the Landmark Commission's representative.
    - (B) Questions from Commission Members.
  - (4) Rebuttal/closing by the appellant's representative (5 minutes).
  - (5) Decision by the City Plan Commission. \*\*

\* If a party requires additional time to present its case, including testimony and evidence concerning the previous recommendations and actions of the city staff and the Landmark Commission and its task forces, the party shall request that additional time be granted by the City Plan Commission. If the Commission grants one party additional time, the opposing party shall also be granted a similar time extension.

\*\* In considering the appeal, the City Plan Commission shall hear and consider testimony and evidence concerning the previous recommendations and actions of the city staff and the Landmark Commission and its task forces.

6. Introduction of new evidence at the hearing.

- a. The City Plan Commission may only hear new testimony or consider new evidence that was not presented at the time of the hearing before the Landmark Commission to determine whether that testimony or evidence was available at the Landmark Commission hearing.
- b. If the City Plan Commission determines that new testimony or evidence exists that was not available at the Landmark Commission hearing, the City Plan Commission shall remand the case back to the Landmark Commission.
- c. The party attempting to introduce new evidence bears the burden of showing that the evidence was not available at the time of the Landmark Commission's hearing.
- d. Newly presented evidence is subject to objection and cross examination by the opposing party.

7. Remedies of the City Plan Commission.

- a. The City Plan Commission may reverse or affirm, in whole or in part, or modify the decision of the Landmark Commission.
- b. The City Plan Commission shall give deference to the Landmark Commission decision and may not substitute its judgment for the Landmark Commission's judgment. The City Plan Commission shall affirm the Landmark Commission decision unless it finds that it:
  - (1) violates a statutory or ordinance provision;
  - (2) exceeds the Landmark Commission's authority; or
  - (3) was not reasonably supported by substantial evidence considering the evidence in the record.
- c. The City Plan Commission may remand a case back to the Landmark Commission for further proceedings.

**Case No. CD212-014 (MGM)**

<b>ANNEMARIE BRISTOW,</b>	§	
Appellant,	§	
	§	<b>In re 338 S. Fleming Avenue</b>
	§	
vs.	§	
	§	<b>Appeal to the City Plan Commission</b>
	§	
<b>LANDMARK COMMISSION,</b>	§	
Appellee.	§	

**BRIEF IN SUPPORT OF THE LANDMARK COMMISSION**

TO THE HONORABLE COMMISSIONERS OF THE CITY PLANNING COMMISSION:

Now comes the City of Dallas Landmark Commission (“Landmark”) and submits this brief in support of the Commission’s decision to deny without prejudice Appellant’s application for a Certificate of Demolition to demolish a noncontributing structure using the standard “replace with more appropriate/compatible structure.”

**A. Facts and Background**

The purpose of the historic district preservation program is to protect, enhance, and perpetuate places that represent distinctive and important elements of the City of Dallas’s historical and architectural history, and to preserve diverse architectural styles, patterns of development, and design preferences reflecting phases of the City of Dallas’s history. Dallas City Code § 51A-4.501(a). To advance this purpose, all members of Landmark are required to have “demonstrated experience in historic preservation and outstanding interest in the historic traditions of the city and have knowledge and demonstrated experience in the fields of history, art, architecture, architectural history, urban history, city planning, urban design, historic real estate development, or historic preservation.” *Id.* § 51A-3.103(a)(1).



The structure at issue is located in the Tenth Street Neighborhood Historic District (“Tenth Street”). (Record § 2, p. 8.)<sup>1</sup> The Dallas City Code recognizes Tenth Street as an endangered historic district, meaning a “district that is in danger of being irreplaceably lost from severe deterioration or damage or impending demolition of structures . . . .” Dallas, Tex., Code § 51A-11.102(4.1). On July 7, 2022, Appellant filed an application for a certificate of demolition and removal (“CD”) using the standard “replace with more appropriate/compatible structure.” (Record §§ 1, 2, pp. 6, 8.) Appellant had previously filed applications for a certificate of appropriateness (“CA”) to construct a new structure on the property and a CD in 2021, but both were denied without prejudice by Landmark on December 6, 2021. (Record § 3, p. 10.) In addition to refile her CD application, Appellant refile her CA application to construct a new structure on the property. That application was considered at the June 6, 2022 Landmark meeting and approved subject to conditions. (*Id.*)

The structure at issue was listed as a non-contributing structure in Tenth Street in 1994, but additional analysis by the planner, Murray Miller, the director of the Office of Historic Preservation, raised questions about the accuracy of the 1994 listing. (*See generally* Record § 3, pp. 12-25.) Based on his analysis, Mr. Miller recommended denial without prejudice. (Record § 3, p. 26.) The Tenth Street Task Force did not have a quorum for its meeting but commented that it was not supportive of Landmark’s “review proceeding until entry access is granted to property.” (*Id.*) After the task force meeting, City staff and a representative of the task force were granted access to the property on July 25, 2022. (*Id.*) After entering the property, the task force

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<sup>1</sup> All Record references are to the section number and the page number in the pdf copy of the Record.

representative sent an email with comments for the record, which recommended restoration rather than demolition. (Record § 3, p. 71.)

Landmark heard Appellant’s application for a CD at its August 1, 2022 meeting. (Record §§ 2, 4, pp. 8, 78-79.) Two speakers spoke on behalf of Appellant in favor of the application. (Record § 4, p. 78.) Commissioner Offutt moved to approve the request, but the motion failed by a vote of 2 to 11. (*Id.*) Commissioner Swann then moved to deny the request without prejudice, and the motion was approved by a vote of 11 to 2. (Record § 4, p. 78-79) Appellant filed a timely appeal to the City Plan Commission (“CPC”). (Record § 7, p. 179.)

**B. The Standard of Review for the CPC**

On appeal to the CPC, the CPC “shall give deference to the landmark commission and may not substitute its judgment for the landmark commission’s judgment” and must affirm unless the CPC finds that the decision:

- (A) violates a statutory or ordinance provision;
- (B) exceeds the landmark commission’s authority; or
- (C) was not reasonably supported by substantial evidence considering the evidence in the record.

Dallas City Code § 51A-4.501(o). The substantial evidence review is very limited in that it requires only more than a mere scintilla of the evidence to support the decision. Thus, even if a preponderance of the evidence in the record may actually be contrary to the decision, the remaining evidence may nonetheless amount to substantial evidence. *City of Dallas v. Stewart*, 361 S.W.3d 562, 566 (Tex. 2012).

Because “[d]emolition or removal of a historic structure constitutes an irreplaceable loss to the quality and character of the city,” a property owner seeing demolition or removal of any structure on a property in a historic overlay district must choose one of four reasons for the

demolition or removal. *Id.* § 51A-4.501(h)(1), (2)(B). Each reason has its own separate application requirements and criteria for Landmark to consider. *See generally id.* § 51A-4.501(h)(2), (4). For a CD application using the standard “replace with more appropriate/compatible structure,” the Dallas City Code requires Landmark to “deny an application to replace a structure with a new structure unless it finds that:

- (i) the new structure is more appropriate and compatible with the historic overlay district than the structure to be demolished or removed; and
- (ii) the owner has the financial ability and intent to build the new structure. The landmark commission must first approve the predesignation certificate of appropriateness or certificate of appropriateness for the proposed new structure and the guarantee agreement to construct the new structure before it may consider the application to demolish or remove.”

*Id.* § 51A-4.501(h)(4)(A). Appellant had the burden of proof to establish the necessary facts by clear and convincing evidence to warrant a favorable action on a CD. *Id.* § 51A-4.501(h)(3)(B). This is a higher burden than for a CA. *Compare id., with id.* § 51A-4.501(g)(6)(B) (providing that applicant has burden of proof but not imposing clear and convincing evidence standard).

### **C. Argument**

The record in this case is clear, and there is more than a scintilla of evidence to support the decision. First, Appellant had the burden of proof to establish the necessary facts by clear and convincing evidence, but Appellant did not meet this burden. In addressing the Landmark Commission, Appellant’s representatives focused primarily on the question of whether the foundation could be repaired and the 1994 survey that determined that the structure was non-contributing. (*See Record* § 5, pp. 88-96 (transcript pp. 8-16).) Appellants never made any serious

attempt to argue that the proposed structure would be more appropriate and compatible with the historic overlay district, only that the old structure could not be repaired. (*See id.*) One of Appellant’s representatives also wrongly stated that denying the CD was “a vote against” Landmark’s June 6, 2022 vote to approve the CA because he contended that, in that vote, Landmark had determined the “new proposal design [was] more compatible than the existing structure.” (Record § 5, p. 91 (transcript p. 11).) In fact, the standard for approving the CA for the new structure was “[t]he landmark commission must grant the application if it determines that . . . for noncontributing structures, the proposed work is compatible with the historic overlay district.” Dallas, Tex., Code § 51A-4.501(g)(6)(C). Therefore, while Landmark had previously determined that the new structure was compatible with the historic district, it had made no determination as to whether it was more compatible with the district than the existing structure. If the standards were the same, it would render the determination as to the CD superfluous since the CA for the proposed new structure must be granted first. Furthermore, as noted above, there is a higher burden of proof on the applicant for approval of a CD than a CA because as both the Dallas City Code and the chair of Landmark recognized, demolition is irreversible. *See id.* § 51A-4.501(h)(1) (“Demolition or removal of a historic structure constitutes an irreplaceable loss to the quality and character of the city.”); (Record § 5, p. 95 (transcript p. 15) (“But we do, you know, we’re talking about taking down a building. We don’t want to make a mistake because we can’t get the building back once we say take it down.”)).

As to the issues raised by Appellant about the foundation and the 1994 determination that the structure was noncontributing, the evidence before Landmark was not clear. Staff and the representative of Landmark that were given access to the structure both expressed doubt about the opinion that the foundation was damaged beyond repair. (*See* Record § 3, pp. 23-24, 39, 71.) As

to the 1994 determination that the structure was noncontributing, staff explained in detail why that determination was outdated and not dispositive. (*See* Record § 3, pp. 12-24; *see also* Record § 5, pp. 82-86 (transcript pp. 2-6)). In fact, although there is a different standard for approving a CA based on whether a structure is contributing or noncontributing, that is not true for a CD. *Compare* Dallas, Tex., Code § 51A-4.501(g)(6)(C), *with id.* § 51A-4.501(h)(4). While there is one standard for a CD application that is specifically for noncontributing structures, it only applies to noncontributing structures that are “newer than the period of historic significance” and requires an additional finding that “demolition of the structure will not adversely affect the historic character of the property or the integrity of the historic overlay district.” *See* Dallas, Tex., Code § 51A-4.501(h)(4)(D). That is, the Dallas City Code does not provide for Landmark to approve a CD simply because a structure is noncontributing. For the property at issue here, that standard was not even available because it was constructed during the period of historic significance for Tenth Street. (*See, e.g.*, Record § 3, pp. 16, 21, 23, 25.)

Ultimately, a significant majority of the members of Landmark determined that the proposed new structure was not more appropriate and compatible with the historic overlay district than the structure to be demolished. Commissioner Swann, who made the motion to deny without prejudice, is “a trained architect and a longtime resident of 10th Street, and he’s been studying the houses [in Tenth Street] out of passion . . . .” (Record § 5, p. 134 (transcript p. 54).) Commissioner Swann noted at the meeting, as did other Commissioners, that many of the images that staff had taken on July 25, 2022 when granted access to the structure provided important new information about the historic value of the structure to Tenth Street. (Record § 5, p. 132 (transcript p. 52); *see also* Record § 5, p. 117-20 (transcript pp. 37-40).) In fact, he noted that certain of the architectural features of this structure are the only example of those features in Tenth Street from the period of

historic significance, stating “I’m learning from this building, and if we take a building like this out, we’re removing valuable evidence from 10th Street. We already lost too much of it.” (Record § 5, p. 133-34 (transcript p. 53-54).)

This opinion and Landmark’s ultimate decision are consistent with the fact the Dallas City Code’s classification of Tenth Street as an endangered historic district and the high standard that must be met to demolish an “irreplaceable” structure in any historic district. Landmark’s determination was reasonably supported by substantial evidence and entirely consistent with the applicable ordinances. Therefore, the CPC must affirm the decision.

Respectfully submitted,

CITY ATTORNEY OF THE CITY OF DALLAS  
Christopher J. Caso  
City Attorney

*/s/ Kathleen M. Fones*

Kathleen M. Fones  
Senior Assistant City Attorney  
Texas State Bar No. 24050611  
[kathleen.fones@dallascityhall.com](mailto:kathleen.fones@dallascityhall.com)

7DN Dallas City Hall  
1500 Marilla Street  
Dallas, Texas 75201  
Telephone: 214-670-3519  
Facsimile: 214-670-0622

**ATTORNEY FOR THE LANDMARK  
COMMISSION AND THE CITY OF DALLAS**

APPEAL HEARING: CD212-014(MG)  
October 6th, 2022  
City Planning Commission Meeting

PROPERTY: 338 S. Fleming Ave (10th Streets District)  
STATUS: Non-Contributing  
ZONING: COMMERCIAL Tract 1  
OWNER: Annemarie Bristow  
APPLICANT: Randy Shear

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Document Date: September 12, 2022  
Dear; CPC Staff -Director Miller (OHP), Ms. Hill;

Disclaimer: Since we did not have the minutes of the meeting for the (01Aug22) LMC meeting which was of the utmost importance in writing this report. It was done manually-there may be some mistakes and omissions made, but for the most part, is accurate. (R-S)

(R-S) Mr. Shear

I want to thank the City Planning Commission for reviewing the appeal for our project at 338 S. Fleming Ave in the historical 10th Streets District we have been working on figuring out how to mediate what would satisfy the Office of Historic Preservation (Letter to the mayor Johnson 09Sept22), but so far they have said our proposal was excellent and in June approved the CA but since the foundation and the stucture is continuing each day to deteriorate and since the weight inside the structure the building has become increasingly more unstable and safe.

Your approval would allow my client-Annemarie Bristow to move forward and build a house that supports and respects the original home Mr. Cook built in 1920. With your support, the neighborhood development can also move forward, and become an example for other land owners who want to start designing and building new homes.

We knew the project (the Cook Home-Bristow Residence) would be challenging from the beginning, but what we didn't know was the troubling history surrounding the district, the multiple public fights about demolitions, and the multiple discussions about the area's rehabilitation/restoration/community involvement efforts and goals.

(R-S) Mr. Shear

There are two (2) things about this specific project that are very important;

- 1) FACT: The Cook Home-Bristow Residence project/proposal is a dichotomy.
- 2) SOLUTION: How does the collective group of stakeholders solve and move forward with this dichotomy?

The dichotomy is more a paradox now, a Kobayashi Maru situation, where Director Miller has created a fail-safe situation where—without the CA you can't get the CD and,---without the CD you can't get the CA, simply put a no-win scenario, or no choice or path leads to a net gain. As I always say, if I am wrong great.

[https://en.wikipedia.org/wiki/Kobayashi\\_Maru](https://en.wikipedia.org/wiki/Kobayashi_Maru)

In contrast to that statement, the Cook Home-Bristow Residence should be a success for the people who live in the 10th Streets District (old and young), the community of the Oak Cliff neighborhood, And, is a win-win for Dallas.

#### LANDMARK COMMISSIONERS MEETING DECEMBER 6th. 2021 (CA + CD)

(R-S) Mr. Shear (06DEC21)

December 6th. 2021 meeting which spent zero time reviewing the design proposal (CA) before the commissioners, but was an outright attack on process and intent. Finally, in the end, both the CA and the CD were Denied without Prejudice (DWP)- but the meeting was a round-table-discussion more about contributing and non-contributing status. The word contributing/noncontributing was used over fifty (50) times in this meeting.

The meeting was also in purpose counter to six (6) months of working with two (2) seasoned Office of Historic Preservation staff members Liz Casso and Marsha Prior, who guided us through the convoluted and somewhat confusing historic process. Every decision on anything we made was under their guidance and expertise-we trusted their opinions. Unfortunately, these two staff members left the Office of Historic Preservation months after the LMC meeting in December 2021, sometime in early 2022.



*(LC) Liz Casso explained the process of presenting the CA first; (06DEC21) Madame Chair; Excuse me. Liz, if you could go ahead and respond to that?*

*MS. CASSO:*

*Sure. What I wanted to say, was, so, the standard for demolition that is being used, which is to replace with another, you know, structure, one of the requirements to request a demolition using that standard is that the new construction design is already approved.*

*That's one of those items that is required in the application. Which is why you all are hearing the new construction, you know, first. Should you all deny the new construction design, you all would not hear the next item, which is the demolition because the design, which is part of the requirement for the demolition application, would not have been heard.*

*And this is very similar to the State Thomas case that Commissioner Spellicy had mentioned. Although I think in that case you all never did approve -- I don't think you all ever did approve the new construction design. It was denied, I think, three times. And then -- yeah, and then -- so the demolition never came forward and I think that particular applicant walked away and was no longer going to do that. But that was why you all were seeing new construction first. And until that was approved, then you all could see the demolition. So, that's why it's in this particular order on the agenda.*

*(RBS) Robert Swann's statements from the meeting ; (06DEC21)*

*1) We are very friendly to this proposal, It is excellent. We love the spirit of it. We just because this is a tremendous opportunity to set an example, we want to do it right.*

*2) In a situation where confirmation of evidence is of paramount importance because we have very little evidence of what was in Tenth Street owing to years of demolition, and we must conserve everything we have.*

*3) I'm going to ask for help from the director because it seems to me like what we're doing is beginning to authorize the demolition of a construct(ion) -- of a structure that we have not determined under what criteria we could demolish it because we haven't decided whether it's contributing or non-contributing.*

*4) This is a very sticky one-I've never seen one like it.*

5) *In addition to the demolition, I think that there is a lot that can be documented with measured drawings and must be documented with measured drawings so that we can review it here.*

6) *We need evidence, and that building, I would say it has excellent historic integrity from the breeze board up—Anywhere where there are two or three pieces of wood and they come together and show evidence of being original, we would like to know the dimensions, the configurations, and the proportions.*

(R-S) Mr. Shear (06DEC21)

Technically speaking, as for Item (4), as Ms. Spellicy also said the Commissioners mentioned one proposal before; the Landmark Commissioners compared our project to the State-Thomas Project, where after three (3) 'Denials without Prejudice' on the CD, the owner abandoned the project and walked away. Note: we do not know which project the (LMC) commissioners are referring to.

Using the State-Thomas as an example this was not encouragement but a premonition of what to expect!

Still, we didn't expect the application process would become an unresolved stalemate after 18 months and counting, down the road. But it is understandable in hindsight after extensive research on the loaded historical/development fights and tensions that developed over the years between city development groups and historic preservationists.

As Mr. Swann stated in several articles (Ten drops in the Bucket and Fear and hope in Dallas) and (Tenth Street is Bleeding AIA) No Date

*(RBS) Robert Swann*

*By 1991, however, Dallas' "most intact freedman's town" was in trouble. Dallas responded with a city landmark designation for the district in 1993. The National Register of Historic Places listed the district in 1994, noting that "the greatest threat to the integrity of the neighborhood has been through demolition."*

(R-S) Mr. Shear (06DEC21)

So it's clear to see the statements made by multiple Landmark staff and Task force members over the years they all had very strong opinions and goals for the 10th Streets District. These also are the same people who have been tasked to give their opinions on preservation issues that come in front of them. It seems that this could lead to predetermination outcomes and predictable solutions. Some could call it prejudice.

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## LANDMARK COMMISSIONERS MEETING JUNE 6TH. 2022-CA ONLY

(R-S) Mr. Shear (06JUN22)

The review of the (CA) was strategically separated when we had been told in the past they should go together. We are not sure why the CA was isolated for the June review, but in any case, the CA was an Approval with Conditions (AWC) on the design concept we proposed and it was the same proposal that had been presented in the Landmark December 6th, 2021 meeting. At this time we have no comments on what was said.

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## LANDMARK COMMISSIONERS MEETING 1ST. AUGUST 2022-CD ONLY

(R-S) Mr. Shear (01AUG22)

The August 1st, 2022 (LMC) Landmark Commissioners meeting was all about INTEGRITY, not DERELICTION and NEGLECT

We didn't expect you-all would still be debating or speaking of historical values, appropriateness, integrity, and compatibility issues just a few weeks ago at the August 1st, 2022 Landmark Commissioners meeting (LMC). Directors Miller, rather professorial and pedantic, Seven Aspects of Integrity presentation and the written report filed weeks ahead on (July 7th) before the open-house tour on July 25, 2022

These predetermined actions actively challenged the non-contributing status and searched for new valued evidence (as they did in LMC meeting on December 06, 2021) while showing selective few photographs of the project which show no damage, especially the exterior roof condition, the base of the damaged facades, the interior compromised sloping floors, and more importantly the collapsed foundation.

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Director Miller, in his report, refers to the 1994 National Register of Historic Places, which the director referred to as a 'drive-by-survey' he stated;

*(MGM) Murray G Miller (01AUG22)*

*A 1994 listing that indicates that the property is non-contributing may be considered unsubstantiated with a recent evaluation to confirm or refute such a determination. Surveys are not intended to be finite, rather, it is a best practice that they be updated every five years or so as conditions change.*

*This means that the subject property could have been re-evaluated in 1999, 2004, 2009, 2014 and 2019, or as conditions change. That property has never been re-evaluated since 1994 is perhaps one key indicator that a re-evaluation having regard to the 'Seven Aspects of Integrity' is appropriate. Reliance on a 1994 evaluation as a measure of whether a structure contributes to a district in 2022 would be inconsistent to (with) best preservation practices.*

*(R-S) Mr. Shear (01AUG22)*

But contrary to what the Director repeatedly said, we found a review of these properties was completed called the 10th Street Historic District Property List by Preservation Dallas. This list/update dated May 2006; sub-titled the-National Reg Survey- found on the Dallas City Hall website- also sub-titled Field Work conducted by Christina Smith/Katherine Seale and showed in spreadsheet categories of; Address, Year Built, Contributing/Noncontributing status, Style, Style Notes, Condition Code, Vacant/Occupied and Code Compliance-for properties in the 10th Street District.

The first motion given by Commissioner Offutt had two pertinent statements in a motion to accept the CD presented-which he stated;

*(LO) Larry Offutt (01AUG22)*

*I had a motion 30 minutes ago, and I was the first to give a motion;  
Unless staff or commissioners can tell me that the Structural Engineer Report- that they found- that the foundation report is fraudulent, then I move to grant the CD for this non-contributing structure-to replace with a more appropriate structure.*

*(LO) Larry Offutt-And at the end of the meeting,(01AUG22)*

*(Yes, I am not going to approve that motion (2nd motion for denial) we have strung these people along for a year and approved something a year ago New information is the foundation company -a reputable foundation company perhaps, not the foundation company a city staff wanted them to go with who said it could be done. (8 grand)*

*Not the owner who is an Engineer, but the (stamped) Engineering a separate-person who comes in to do it (inspection)-who said this can't be done ( fix the foundation) and we suddenly look at some pictures from the interior and come up with all of these reasons to let this sit there after leading these people down this path a year is reprehensible, as far as I'm concerned.*

*And, Mr. Taylor your right the 10th Street District has been ignored since it was established, and not just ignored its been abused.*

*(R-S) Mr. Shear (01AUG22)*

This motion failed, but at least both Mr. Offut and Mr. Taylor made pertinent points-that CD submitted including the Bedrock Engineering Report, which was completely ignored in lieu of the Director's presentation. More specifically, the new images of damages we sent to the director, who chose not to show them. Also, it has been a contention of mine that what we send to the city is edited.

*(JT) Jay Taylor earlier asked Director Miller for 'steps forward';*

*Not a motion it's a question-so if the structure cannot be demolished or it is not a contributing structure, what are the steps forward for this home to be repaired if it is unreparable and can't be demolished? What is the plan forward-If they (applicant) are not allowed to build a home that is contributing or that meets the criteria of that district?*

Please see Mr. Miller's response in the transcripts

*(R-S) Mr. Shear (01AUG22)*

Also, several commissioners-more specifically Mr. Swann and Mr. Anderson asked for more images and documentation multiple times during the meeting, somewhat distorting the facts already given. Attached is a photo essay showing all the images but the structure was cleared of all debris in mid-June (7 dumpsters) so up until then photographs taken were dark and they had debris in them. These Parry Mason 'got you moments' to me personally are just theatrical showmanship and are unprofessional at best.

*(JA) Jim Anderson quizzed me in the 'A or B' questioning  
What I am getting at there is two criteria-you choose one saying that replacing the  
building is better than the one that's there and you might have to use the criteria  
imminent threat to public health and a danger (safety) to the public.*

*JA) Jim Anderson We have A+B do we like B better than A? It doesn't say the building  
is falling down and it's going to be a problem, so my concern is we don't have the ability,  
in my understanding to say this building has structural problems-we need to say the old  
building is better than or not as good as the new building-is that correct?  
We don't really look at the structure's stability.*

*1)(RBS) Robert Swann-Commissioner Swann's  
'I have not seen this' questioning-This is a question to staff, the applicant, or anyone.  
Have we seen this not this image because it was taken on July 25th but (home-tour)?  
Have we seen this view of the interior of the wrap-around porch behind the wall-have  
we seen this at any previous hearings or in any previous material submitted to us?*

*2)(RBS) Laughs, I have never seen this has any other commissioner seen this view? I  
have not seen this view before or it is full of information brand new to me.*

*3)(RBS) I have never seen anything like it. I have never seen a three (3) sided  
wrap-around porch in the 10th streets-this is the only one that exists. And I made a  
wrong assumption in a previous meeting (CA) because I have never seen this before.*

*4)(RBS) I am learning from this building. And, if we are taking a building like this out we  
are removing valuable evidence from the 10th.Streets.  
We have already lost too much of it!*

*(R-S) Mr. Shear (01AUG22)*

First, the unnecessary home tour was for four city staff workers and there were four or so pictures taken, the owner asked for a 'simple liability' legal release form to be signed-Mr. Miller responded to that request to get a court order. Early in the process, we encouraged the OHP to see the existing structure. So we still don't know why Mr. Miller was adamant and persistent on this issue.

Mr. Miller's only restriction was those signed forms.

These accusations by Mr. Swann were redundant since Figure 17 photo mentioned is taken on the South Fleming Ave street-side S-W porch area-not the East-Side (3rd leg) Mr. Swann mentions- this rarely seen rear facade of the existing structure is the least important facade with reference to historical integrity. And, then the Sanborn Map-Mr. Miller included in this report clearly shows a third leg of the porch. List of statements made about engineers; (01AUG22), not in any sequence.

*(MC) Madame Chair-Montgomery*

*Ok, I think we established-we can consider- the condition of the building as well as we make our discussion-obviously a building that cannot continue to stand doesn't have much integrity, so if (laughs) we were to accept it is going to fall over that is a loss of integrity.*

*(CS) Courtney Spellicy*

*Mr. Shear specifically pointed out that the owner is a structural engineer if the structural engineer felt at some point post purchasing of this property that there is a structural problem, why did you begin doing a design in the first place?*

*(RBS) Robert Swann*

*What I am trying to do is keep this on what we are charged to do as commissioners which is not to make a judgment on an engineering report.*

*(MC) Madame Chair-Montgomery*

*I hate to condemn structural Engineers like they are all dishonest or something we don't intend to do that, we discussed this before, structural engineers because of their dedication to protecting life and their insurance, they must carry, they are going to tend to always want to air on the side of safety. So air on the side of a building that could cause damage to absolutely certain it will not fall over on anyone.*

*And I think that is perfectly understandable.*

*(MC) Madame Chair-Montgomery*

*But since we have seen some Engineer reports come through saying a building looks like it is going to collapse we look at the pictures and architects among us say that is easily repairable, we do sometimes tend to wonder, I hope we haven't become jaded and we don't mean to impune an entire industry but we do have to balance about what was in their mind when they made that determination.*

*(LJ) Larry Johnson-Task Force*

*Mr. Johnson said to me (Mr. Shear) at the open house when asked if he read the Bedrock Engineer report- paraphrasing; The owners always want to knock down these homes-I don't trust those reports-those companies will say anything if you pay them enough money!*

## LIZ CASSO EMAIL

September 21, 2021, 12:24 PM

(R-S) Mr. Shear (21SEPT21)(Figure 01)

We firmly feel that the attached email from Liz Casso explains what was happening during the period early on in the project (Reconstruction or Demolition from Neglect), was decided. I contacted Mr. Vandenberg and we submitted a packet for both the CA and CD. (with the existing structure rehabilitated) At the same milestone, Director Miller at that point; had held the ultimate command and responsibility of directing all historical projects, including this project.

The Casso Email gives a glimpse of what was going on a month after we filed our first CA and CD packages to the office of city planning (OHP) (June 2021). We then received a reply with a list of items; as Ms. Casso states, her reply was 3 weeks late.

I also want to focus on three items in this email that could help clarify the project's timeline and history. The fact is; that we did everything in our power to comply/provide all the listed items to the (OHP); we were working closely with two seasoned staff members, and it seems Director Miller had a rather stealthy-incognito role throughout the overall process. More importantly, we chose the path to replace the existing damaged structure.

*Ms. Casso; Good Afternoon, Randy and Annamarie (sp).*

*My apologies that it has to take(n) me so long to circle back to you. We have been overwhelmed lately with all that is going on in our Office of Historic Preservation (??). (not sure what this means) It is not typical that it takes us so long to respond.*



1)(LC) Liz Casso;

*First, I want to say I am happy to see you all want to reconstruct the historic house. I also think that the design of the addition (annex) piece is very well don(e) with the glass connector (we still call it a connector). But there are some things missing from the application(s).*

2)(LC) Liz Casso;

*A new requirement our director (Murray G Miller)(MGM) has asked for is a context study of all the existing setbacks on the block to be compared to the ones you propose. Attached is an example of a context study. (This was an extra non-index item)*

3)(LC) Liz Casso;

*Missing complete structural report by (an) engineer or licensed restoration contractor. The submitted report was not signed and stamped by an engineer or licensed professional. In addition, the document did not include an assessment of the condition of the structure by an engineer. (I)t only includes a product list and job notes. It doesn't really tell us any details about the condition or give a sense of how much of the structure is compromised and how much isn't. The submitted information does not prove the existing historic structure is beyond repair.*

(R-S) Mr. Shear (21SEPT21)(Figure 01)

The Applicant/Owner Annemarie Bristow and I (R-S) Mr. Shear did everything requested, including a street-context survey, an urban design study-which was unnecessary, and photographic-lined elevation overlay images of the existing structure. We first applied for the CA (only), and the plans reflected keeping the existing structure-in July of 2021. We had an engineering report done, but as Ms. Casso pointed out, the report did not reflect the existing condition, nor was the engineering report professionally stamped. Since the (LC) email was issued on September 21, 2021, the Engineer stamped report was done by J. S Barton P. E. of Bedrock Foundation Repair LLC (recommended by David Preziosi of Dallas Preservation), and the inspection/report was issued nine days later on October 1st. 2021.

## CONCLUSION

(R-S) Mr. Shear-Conclusion

Despite the lack of progress in having the project realized (yet), I am confident we successfully designed a project that looks both to the past and its future for its inspiration. It represents what we believe is a new beginning for Dallas-The Tenth Streets and Historical District in general; it represents a positive, not negative, path forward.

The project also begins the urban renewal that the historic neighborhood desperately needs. We have calculated that 35% of the land within the Tenth Street Historic District is empty (not counting damaged existing structures) (Figure 03), which means this whole neighborhood can remain undeveloped and frozen for years.

Technically speaking the area is and has been frozen for a decade.

How many permits have been issued in the last five years-I rest my case?

This project is a tasteful blend of the historic and the new and how they can complement each other style-wise; as Historic-Coeval. I think that having the Landmark (LMC) vote of 'Approval with Conditions' of the CA on June 6th, 2022 was a confirmation of our design solution.

Like the original owners, Benji Benjamin Cook and his wife Tonie, Annemarie Bristow risked everything to move into Tenth Street and build her dream home.

Annemarie's goal was to have a design that would re-create the existing non-contributing home-working the normal process backward we had to design a home that re-creates the original (by inches) and then process those designs and demands of the historical board demands for approval. This has been a difficult journey, we have been transparent in our process and honest in documenting the existing structure as much as possible.

Annemarie always had great respect for the original owners and she asked me to research them and so I did-we even found their grave. Benji and his wife came from Alabama and Mississippi, they had one son Ben. We found his death certificate and they were a caucasian family, most likely immigrants from eastern Europe. Benjamin, his father's profession was listed as a carpenter.

As Ms. Bristow tells me when I tell her she's a pioneer- she reminds me of the quote: "*Pioneers take the arrows, settlers take the land*"

I am hoping you prove her pessimism is wrong and the CPC will allow her to move forward to build her dream home at the same time this project will set an example of what could be done for the revitalization of the 10th Streets and inspire others.

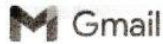
And, as Mr. Swann said is excellent!

Best Rand

'Imagine the future today.'

A handwritten signature in black ink that reads "rand shear". The signature is written in a cursive, lowercase style.

RandShearDesigns LLC



Randy Shear <rand.shear@gmail.com>

**338 S Fleming Ave CA and CD Applications**

1 message

Casso, Ana <liz.casso@dallascityhall.com>

Tue, Sep 21, 2021 at 12:24 PM

To: Randy Shear <rand.shear@gmail.com>, "annemariebristow@gmail.com" <annemariebristow@gmail.com>

Cc: "Prior-Robertson, Marsha" <marsha.prior@dallascityhall.com>

Good Afternoon Randy and Annamarie,

My apologies that it has take me so long to circle back to you. We have been overwhelmed lately with all that is going on in our Office of Historic Preservation. It is not typical that it takes us so long to respond.

So, I have gone through both the CA and CD applications for 338 S Fleming Ave. The following is what is missing from them:

CA Application for New Construction

First, I want to say that I am happy to see you all want to reconstruct the historic house. I also think that the design of the addition piece is very well don with the glass connector. But there are some things missing from the application:

- Missing the north elevation drawing
- All elevation drawings must be to scale and should call out dimensions on them. None of the submitted elevation drawings include a scale or have called out dimensions of any kind.
- Provide a detail drawing and section showing the proposed window and door trim. The trim as shown in the drawings look as though the windows would be framed almost like a picture frame. They don't seem to include a windowsill – which they should.
- Provide an image, info and specs from the manufacturer for the proposed siding, for all proposed windows, for all proposed doors, for roof shingle material, etc. The info submitted must specify the material for these elements – are you proposing a wood door vs. metal vs. other. The specs for the roof shingles should indicate the specific color of shingle you chose.
- Provide information on paint colors, stains and finishes. We need to know the specific brand colors to be used. Be sure you are clear what color is to be for the body of the house, and what colors are for trim.
- Missing new construction form (see attached form).
- If you are proposing to install new landscaping, your application should include a landscape plan and list the plants to be planted.
- A new requirement our director has asked for is a context study of all the existing setbacks on the block, to be compared to the ones you propose. Attached is an example of context study/drawing.
- Are you proposing brush finished concrete for the driveways and walkways? Paving material was not called out in the submission. Please provide.

CD Application

- Missing complete structural report by engineer or licensed restoration contractor. The submitted report was not signed and stamped by an engineer or licensed professional. In addition, the document did not really include an assessment of the condition of the structure by an engineer. I only includes a product list and job notes. It doesn't really tell us any details about condition or give a sense of how much of the structure is compromised and how much isn't. The submitted information does not prove the existing historic structure is beyond repair.
- Missing complete architectural drawings of the new structure. The submitted drawings are missing the north elevation. Also, these drawings need to be to scale; must include the scale used; should have important dimensions called out on the drawings themselves.
- Missing guarantee agreement between owner and the City. This agreement must be in a format approved by the City Attorney's. The approved guarantee agreement can be found on our website here: <https://dallascityhall.com/departments/sustainabledevelopment/historicpreservation/HP%20Documents/Applications%20Page/GUARANTEE%20AGREEMENT.pdf>

Please let me know if you have any questions.

Liz Casso

Sr. Planner

Office of Historic Preservation

Fig. 01 Liz Anna Casso email dated September 21, 2021

"You miss 100% of the shots you don't take."

Wayne Greatsky



Figure 02 Hardy Heck Moore- 1994

"You miss 100% of the shots you don't take."  
Wayne Greatsky

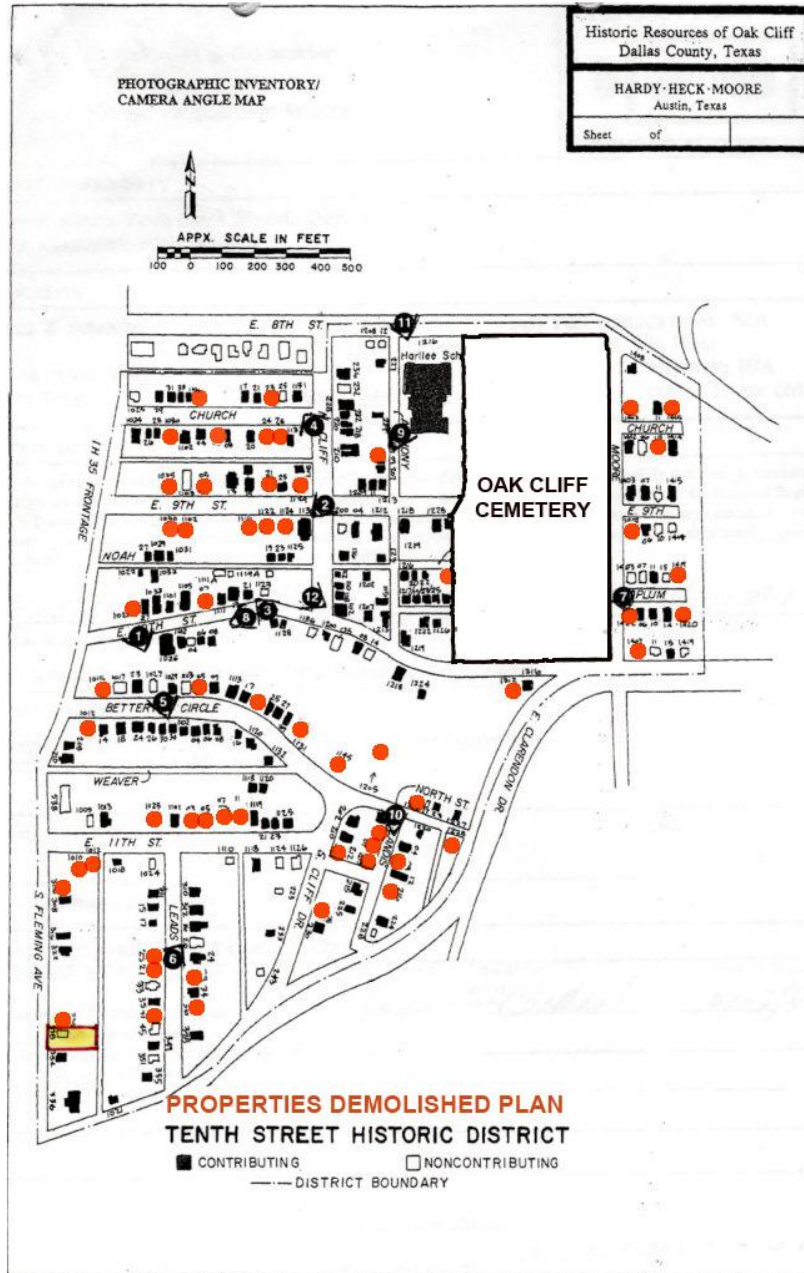


Figure 03 Hardy Heck Moore- Properties Demolished Plan 2022

"You miss 100% of the shots you don't take."  
Wayne Greatsky

## Historical Survey

Updated: 10th March 2022

Location: 338 S Fleming Ave Dallas Texas/Oak Cliff 75203  
Tenth Street Historic District  
Freedmans Town  
Coordinates 32.74N, -96.80W  
Block 119/3102--Lot 4 W1/2

Built Date: Approximately 1920-1921

Status: **NON-CONTRIBUTING**  
As per: NPS Form 10-900 Oct 1990 National Register of Historic Places  
Tenth Street Historic District  
Section number 7 Page 6 Listing and Hardy Heck Moore Map (Attached)

Zoning: Commercial

Sanborn Insurance Map: Dallas Volume 5 Oak Cliff 1922 Map 549  
<https://maps.lib.utexas.edu/maps/sanborn/d.html>

Present Owner: Annemarie Bristow (2021-) ownership

Historical Owners: Benj(amin)) Ira Cook (b1892-d1975) (Alabama-carpenter  
Tonie A Cook b1884-d1969) (Tennessee)  
Son Benny Larry Cook born (b 1925-d August 27,1983)

Refugio "Jay" Jara,(b1944-d 2004- Architectural Detail/Plasterer  
Ted Jara-(b.1962-d2017)  
Karen Jara (Owner)  
Architectural Detail company Jara Statuary and Mold Dallas  
(Closed 2004) Ownership

Statement of Significance:

The original home was built around (1920-1921 (architect unknown) (Sanborn Ins. Maps of 1922 show the home) Original owner Mr. Cook was a carpenter. The main house faces west (338) South Fleming Ave. in Oak Cliff. The home was a wood framed, single-story-bungalow (cottage style) (pyramidal roofed) in which the mainly visible street facades are from west and south. The house is notable since it did have a 6.5ft porch on three sides. We believe Mr. Benj(amin) Ira Cook (1892-1975) (Alabama) carpenter and his wife Tonie A Cook (1884-1969) (Tennessee) lived in the home in 1922 and had a son Benny Larry Cook born in (b.1925-d1983). The Dallas directories show Cook's name but there is no listing for 1980 at that address. Both Mr. and Mrs Cook are buried at Restland Memorial Cemetery in Dallas Garden Plot Section G-ID (204532252).



Property Description:

The existing property consists of two combined lots that measures 100 ft (north-south) x 175 ft (east-west). The existing topography has a slope of approximately 3'-0" rise across the 100' combined lot line along S Fleming Ave (north high point). There are no noticeable 'original' columns, doors nor entries on the structure. The main structure of the house rotates approximately 2.1 degrees clockwise from the west-north corner. There are presently 'chain link' fences on the north-west-south property lines-the alley (east) presently has a wire collapsed fence. The painted exterior color of the house is presently peeling light-grey in color. There are no chimney or fireplace structures in the home. The site also has several mature pecan trees.



### Outbuildings

There is an existing red-shed structure, wood clad, approximately 12x16.5 ft located by the alley on the east side of the site; the survey shows the structure 1.5ft beyond the alley. (The alley is presently in poor condition. This structure has no historical or architectural significance other than its age.

### The Roof Condition

The roof to the main house is a moderately pitched (hip)(pyramidal) and with a single centered gable on the front-west Fleming Ave. facade. Note: presently, the electrical service (meter ) is located here. Top ridge is estimated (25'-0" off the finished floor). The eave-soffit line extends out nine (9 inches) from the building edge. The roof condition presently is unstable, with noticeable indentations on the west-south ridge and a sizable (breach-hole) on the south-east corner slope pitch. The roof presently is composite shingle ( light grey tone) There are presently half-round metal gutters that run along the perimeter eave.

### The Porch

The house has a single floor interior space of 1190 sf, which has an integrated (under same roof) covered porch (approximately 6'-6" wide)(no balustrade exists or is visible) with a 2'-6" soffit (frieze)beam. The porch runs along the west-south-and partial east sides, it can be assumed that the porch had column supports (style unknown). No column or foundation piers exist on the present structure. The porch is presently enclosed on both sides with plywood boards and corrugated metal. The porch decking seems to be original and slightly pitched and is deformed, cracked and rotted in places. The west porch area shows an extreme noticeable slope from edge to interior wall.

### Windows and Siding

The assumed original (north facade) windows were rectangular (approximately 6'-0" x 2'-6") plain (single glazed) 'single hung' windows with no muntin-pane divisions. The exterior structure for the house is approximately 35'-4" x 56'-2" with a small extension of 2'-1" on the north side facade which has a triple window set 8'-4" wide (total) with a center window 3'-6" x 6'-0". It is unknown the total number of windows on the existing structure (covered). There is one window on the interior-porch which is 6'-0" x 2'-6" (Typical) All the windows have 1x5 trim-board surround trims. The north facade exterior cladding is assumed original with (double or triple ogee) teardrop clap-board siding with 5 inch square corner board detail. All existing windows are double hung and single glazed.

### Foundation

The main home had a pier and beam supported foundation which is presently unstable with noticeable sinkage. The original footing seems to have had square timber and 2x4 joists (as per inspection), piers are not visible-no foundation wall or original skirt is visible. The north-side of the facade appears to be below grade with a banded skirt visible-the porch level on the south elevation is approximately 21" off grade. Temporary, wood timber-concrete blocks and tree stumps were visible as wedges to support the house along the south facade skirt. (refer to photos) Most of the home is clad with painted 4 x 8 plywood. Since the north facade is below grade the exterior wood has rotted and is pushed up. There are no porch steps existing to the house except two riser concrete steps on the main west facade. Note: Please refer to the engineers report for the foundation description and condition.

-end-