

THE RECORD

338 S Fleming Avenue

APPEAL

CD223-003(RD)

City Plan Commission

Hearing

03/23/2023

INDEX

338 S Fleming Avenue CD223-003(RD)

Certificate of Demolition	Section 1
---------------------------	-----------

Landmark Commission Agenda, January 9, 2023	Section 2
---	-----------

Docket Material	Section 3
-----------------	-----------

Landmark Commission Minutes, January 9, 2023	Section 4
--	-----------

Transcript of the January 9, 2023, Landmark Commission Hearing	Section 5
--	-----------

City of Dallas Demolition Standards Dallas Development Code §51A-4.501	Section 6
---	-----------

Correspondence	Section 7
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SECTION 1

Certificate of Demolition

338 S Fleming Avenue
CD223-003(RD)

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



1 Name of Applicant Randy Shear
MAILING Address 7027 Gaston Parkway City Dallas State TX Zip 75214
Daytime Phone 214 914-9969 Alternate Phone _____
Relationship of Applicant to Owner architectural designer
ADDRESS OF PROPERTY TO BE DEMOLISHED 338 S. Fleming Ave # 15203
Historic District 10-Tenth Street District

Proposed Work:

2 Indicate which demolition standard you are applying (choose one option ONLY)

- ☐ Replace with more appropriate/compatible structure
☐ No structurally 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 § 11A.4.501(a) 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)

Bedrock Report 81Oct21. Photographs of current condition-maintenance repairs
Study regarding the costs of restoration in place, architectural analyses of current condition

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 58N Dallas Texas 75201. (See official calendar for exceptions to deadline and meeting dates).

Use Section 51A-3.193 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 214.670-4204 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 Randy Shear Date November 23rd, 2022
5 Signature of Owner Amanda Bate Date November 23rd, 2022

(IF NOT APPLICANT)

Review the enclosed Review and Action Form

Memoandum 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 take action.
DENIED WITHOUT PREJUDICE: Please do not release the building permit or take action.

Rhonda Durr 1/9/2023
Office of Historic Preservation Date

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

Certificate for Demolition & Removal City of Dallas Historic Preservation

Rev. 10/2022

Affidavit

Before me the undersigned on this day personally appeared Randy Shear 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.

Affiant's signature

Subscribed and sworn to before me this 10th day of March, 2023

Randy Shear

Notary Public



RECEIVED BY RP

JAN 09 2023

Office of Historic Preservation (OHP)

SHEAR

SECTION 2

Landmark Commission Agenda

January 9, 2023

See Page 13 - 14 Item #4

Landmark Commission Agenda Monday, January 9, 2023

specifications dated 1/9/23 with the following condition: that exterior casing of front gable window be painted white. Implementation of the recommended condition would allow the proposed work to be consistent with preservation criterion Section 3.7 pertaining to facades; the standards in City Code Section 51A-4.501(g)(6)(C)(i) for contributing structures; and the Secretary of the Interior's Standards for Rehabilitation.

6. That the request for a Certificate of Appropriateness to alter front facade fenestration: add one window and one door; shift existing door to the left be denied without prejudice. The proposed work is inconsistent with preservation criteria Sections 3.10 and 3.11 pertaining to fenestration and openings; the standards in City Code Section 51A-4.501(g)(6)(C)(i) for contributing structures; and the Secretary of the Interior's Standards for Rehabilitation.

Task Force Recommendation:

1. No quorum -- Comments only. Non-supportive, not in compliance with district's ordinance regarding fencing height and location.
2. No quorum -- Comments only: Non-supportive. Parking is not allowed in the front of the property. Applicant must replace the gravel with grass, replace the sidewalk from the front porch to the city sidewalk, and replace the ribbon driveway.
3. No quorum -- Comments only: Non-supportive. Alteration is inconsistent with the architectural features of the house.
4. No quorum -- Comments only. Supportive with the condition that applicant must provide a sample and that sample must be within the guidelines of the Munsell color chart.
5. No quorum -- Comments only. Supportive with the condition that trim in the front gable shall also be painted white.
6. No quorum -- Comments only. Non-supportive, the new door and window as well as the relocation of the original door has negatively altered the solid to void ratio of this house.

Request:

A Certificate of Demolition to demolish primary residential structure.

Applicant: Shear, Randy

Application Filed: 12/1/22

Staff Recommendation:

4. 338 S FLEMING AVE

Tenth Street Neighborhood Historic District
CD223-003(RD)

Rhonda Dunn

Landmark Commission Agenda Monday, January 9, 2023

That the request for a Certificate of Demolition to demolish primary residential structure be denied without prejudice. The proposed work is inconsistent with the standards in City Code Section 51A-4.501(h)(4)(C).

Task Force Recommendation:

That the request for a Certificate of Demolition to demolish primary residential structure be denied without prejudice.

5. 3714 DUNBAR ST

Wheatley Place Historic District
CA223-135(RD)
Rhonda Dunn

Request:

1. A Certificate of Appropriateness to alter fenestration on protected facades, including modifying window openings and removal of side entry door.
2. A Certificate of Appropriateness to replace existing windows with vinyl framed windows.
3. A Certificate of Appropriateness to replace missing skirting (more than 50 percent).
4. A Certificate of Appropriateness to replace exterior doors: front, side, and rear.

Applicant: Ruiz-Gutierrez, Marcela

Application Filed: 12/1/22

Staff Recommendation:

1. That the request for a Certificate of Appropriateness to alter fenestration on protected facades, including modifying window openings and removal of side entry door be denied without prejudice. The proposed work is inconsistent with preservation criteria Section 4.1(b) pertaining to protected facades and Section 5.7 pertaining to windows and doors; the standards in City Code Section 51A-4.501(g)(6)(C)(i) for contributing structures; and the Secretary of the Interior's Standards for Rehabilitation.
2. That the request for a Certificate of Appropriateness to replace existing windows with vinyl framed windows be denied without prejudice. The proposed work is inconsistent with preservation criterion Section 5.3 pertaining to windows and doors; the standards in City Code Section 51A-4.501(g)(6)(C)(i) for contributing structures; and the Secretary of the Interior's Standards for Rehabilitation.
3. That the request for a Certificate of Appropriateness to replace missing skirting (more than 50 percent) be approved in accordance with specifications dated 1/9/23 with the following condition: that replacement material be impervious to moisture and rot; the existing skirting is aluminum. Implementation of the recommended condition would allow the proposed work to be consistent with preservation criteria Section 4.1(b) pertaining to

SECTION 3

CD223-003(RD)
Docket Material

**LANDMARK COMMISSION****JANUARY 9, 2023**

FILE NUMBER: CD223-003(RD)
LOCATION: 338 S. Fleming Ave.
STRUCTURE: Non-Contributing
COUNCIL DISTRICT: 4
ZONING: PD-388

PLANNER: Rhonda Dunn, Ph.D.
DATE FILED: December 1, 2022
DISTRICT: Tenth Street Neighborhood
MAPSCO: 55-E
CENSUS TRACT: 0041.00

APPLICANT: Shear, Randy

REPRESENTATIVE: N/A

OWNER: Bristow, Annemarie

REQUEST

A Certificate of Demolition (CD) is requested to:

- Demolish primary residential structure.

BACKGROUND / HISTORY:

The subject property is a one-story, wood-framed cottage presently zoned as commercial; identified as non-contributing to the Tenth Street Neighborhood Historic District.

Previous applications for Certificates of Appropriateness (and/or Demolition) filed for this property that are pertinent to this CD include:

Case Number	Review Type	Date	Owner	Decision
CD212-006(MP)	Standard	12/6/2021	Jara, Karen	
<ul style="list-style-type: none">• Demolish a noncontributing structure using the standard "replace with more appropriate/compatible structure".				Denied without prejudice
CA212-066(MP)	Standard	12/6/2021	Jara, Karen	
<ul style="list-style-type: none">• Construct a single-story main structure.				Denied without prejudice

CA212-367(MGM)	Standard	6/6/2022	Jara, Refugio	
<ul style="list-style-type: none"> Construct a new residence. 				Approved with conditions
CD212-014(MGM)	Standard	8/1/2022	Bristow, Annemarie	
<ul style="list-style-type: none"> Demolish existing residence. Standard: "replace with more appropriate/compatible structure". 				Denied without prejudice

RELEVANT DALLAS CITY CODE:

Section 51A-4.501(h)(4)(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.

PROJECT DESCRIPTION AND ANALYSIS:

The applicant is requesting to demolish a one-story, wood-framed residential building based on the premise, "the structure poses an imminent threat to public health or safety." The structure however is sited on private property secured by pad-locked chain link gates, with a "No Trespassing" sign installed on the encircling fence; a sign clearly visible, from the public right of way.

Staff has been in communication with the owner's daughter and representative regarding future plans for rehabilitation and adaptive reuse, of the existing building. Furthermore, the owner has applied for grant funds available to homeowners of the Tenth Street Historic District; funds earmarked for home repair and administered by the City of Dallas Housing and Neighborhood Revitalization Program. [Presently, the owner is on the waiting list for funding.]

Given that the public does not have access to the subject property and the owner's current plans for adaptive reuse, demolition due to imminent threat to public health or safety is not appropriate, at this time.

STAFF RECOMMENDATION:

That the request for a Certificate of Demolition to demolish primary residential structure be denied without prejudice. The proposed work is inconsistent with the standards in City Code Section 51A-4.501(h)(4)(C).

TASK FORCE RECOMMENDATION:

That the request for a Certificate of Demolition to demolish primary residential structure be denied without prejudice.

SITE MAP
338 S Fleming Ave.



The yellow rectangle highlights 338 S Fleming Ave. The orange shading denotes Tenth Street Neighborhood coverage. *Basemap Source: Google Earth*

CURRENT PHOTO
338 S Fleming Ave.



Subject property. Front: west elevation. Depicts encompassing locked, chain-link fence. Source: Google Maps (May 2022).

ATTACHMENTS:

- **Task Force Recommendation Form**
- **Certificate of Appropriateness Application**

**TASK FORCE
RECOMMENDATION(S)
338 S FLEMING AVE**

TASK FORCE RECOMMENDATION REPORT
WHEATLEY PLACE / TENTH STREET

DATE: **12/6/2022**

TIME: **4:00 pm**

MEETING PLACE: **Preservation Dallas/Videoconference**

Applicant Name: Anne Marie Bristow

Address: 338 S Fleming Ave (Tenth St Neighborhood HD)

Date of CA/CD Request: 12/1/2022

RECOMMENDATION:

___ Approve ___ Approve with conditions ___ Deny ☒ Deny without prejudice

Recommendation / comments/ basis:

CA Deny without prejudice (wait on pending application)

Task force members present

☒ Brenda Gonzalez ___ Connie Reyes
☒ Larry Johnson ___ ☒ Barbara Wheeler
___ Kathleen Lenihan ___

Ex Officio staff members Present: ☒ Dr. Rhonda Dunn

Simple Majority Quorum: ___ yes ___ no (three makes a quorum; no more than seven can vote)

Maker: *AM*

2nd: *BL*

Task Force members in favor: *3*

Task Force members opposed:

Basis for opposition:

CHAIR, Task Force

Barbara Wheeler

DATE 12/6/2022

The task force recommendation will be reviewed by the landmark commission in Briefing Room 6ES, starting with a Staff briefing. The Landmark Commission public hearing begins at 1:00 pm in Room 6ES, which allows the applicant and citizens to provide public comment.

Discussion Item #4: 338 S Fleming Ave.

District: Tenth Street

Request(s)

A Certificate of Demolition (CD) is requested to:

- Demolish primary residential structure.

Staff Recommendation(s)

- Deny without prejudice.

Task Force Recommendation(s)

- Deny without prejudice.



Background/History

Case Number	Review Type	Date	Owner	Decision
CD212-006(MP)	Standard	12/6/2021	Jara, Karen	
Demolish a noncontributing structure. Standard: "replace with more appropriate/compatible structure".				Denied without prejudice
CA212-066(MP)	Standard	12/6/2021	Jara, Karen	
Construct a single-story main structure.				Denied without prejudice
CA212-367(MGM)	Standard	6/6/2022	Jara, Refugio	
Construct a new residence.				Approved with conditions
CD212-014(MGM)	Standard	8/1/2022	Bristow, Annemarie	
Demolish existing residence. Standard: "replace with more appropriate/compatible structure".				Denied without prejudice

LOCATION MAP

338 S Fleming Ave

Basemap Source: Google Earth





Red rectangle denotes current property lines. Source: 1922 Sanborn Map

Subject Property



West elevation. Structure's orientation is due south.

Source: Google Maps (04/2022)

Demolish Primary Residential Structure

Standard: The structure poses an imminent threat to public health or safety.

Section 51A-4.501(h)(4)(C) [Dallas City Code]

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.

Staff Recommendation(s):

That the request for a Certificate of Demolition to demolish primary residential structure be **denied without prejudice**. The proposed work is inconsistent with the standards in City Code Section 51A-4.501(h)(4)(C).

QUESTIONS



Certificate for Demolition and
Removal CD Application
Imminent threat to public health/safety

338 S. Fleming Ave. Dallas Texas

TENTH STREET HISTORICAL DISTRICT
NON-CONTRIBUTING/COMMERICAL PROPERTY

Re-submitted November 29th 2022
RECEIVED BY *sd*

JAN 09 2023

Office of Historic Preservation (OHP)

SHEAR

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

2025 Form 1040-10
5-000

2025 Form 1040-10
5-000

United States Department of the Interior
National Park Service

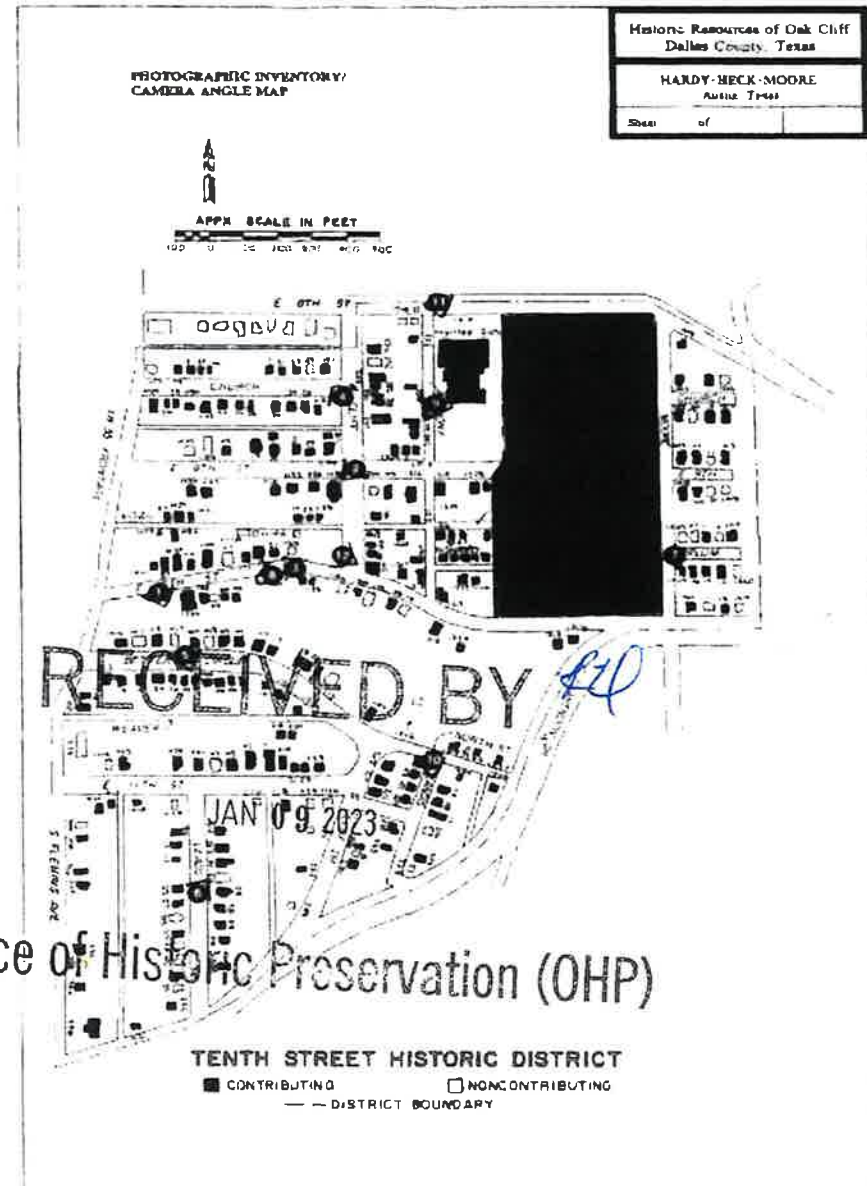
National Register of Historic Places Continuation Sheet

Section number 7 Page 6

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

L7 - 1968	1121	8	Levansh	Contributing	1930	See listing
L7 - 1968	1123	8	Levansh	Contributing	1930	See listing
L7 - 1976	1124	8	Levansh	Noncontributing	1930	See listing
	1125	8	Levansh	Contributing		
L7 - 1977	1126	8	Levansh	Contributing	1930	See listing
	388	8	Fleming	Contributing		
	310	8	Fleming	Contributing		
	330	8	Fleming	Contributing		
L7 - 1958	304	8	Fleming	Contributing	1930	See listing
L7 - 1957	306	8	Fleming	Contributing	1930	See listing
L7 - 1956	316	8	Fleming	Contributing	1930	See listing
L7 - 1955	322	8	Fleming	Contributing	1930	See listing
L7 - 1954	334	8	Fleming	Contributing	1930	See listing
L7 - 1953	388	8	Fleming	Contributing	1930	See listing
L7 - 1952	384	8	Fleming	Contributing	1930	See listing
L7 - 1951	386	8	Fleming	Contributing	1930	See listing
L7 - 1951	381	8	Landis	Contributing	1930	See listing
L7 - 1950	383	8	Landis	Contributing	1930	See listing
L7 - 1949	384	8	Landis	Contributing	1930	See listing
L7 - 1948	388	8	Landis	Contributing	1930	See listing
L7 - 1947	387	8	Landis	Contributing	1930	See listing
L7 - 1946	389	8	Landis	Contributing	1930	See listing
L7 - 1945	312	8	Landis	Contributing	1930	See listing
L7 - 1943	314	8	Noncontributing	Contributing	1930	See listing
L7 - 1942	315	8	Landis	Contributing	1930	See listing
L7 - 1941	384	8	Landis	Contributing	1930	See listing
L7 - 1940	325	8	Landis	Contributing	1930	See listing
	388	8	Landis	Contributing	1930	See listing
L7 - 1931	318	8	Landis	Contributing	1930	See listing
L7 - 1927	311	8	Landis	Contributing	1930	See listing
L7 - 1926	312	8	Landis	Contributing	1930	See listing
L7 - 1921	315	8	Landis	Contributing	1930	See listing
L7 - 1919	316	8	Landis	Contributing	1930	See listing
L7 - 1918	317	8	Landis	Contributing	1930	See listing
L7 - 1917	320	8	Landis	Contributing	1930	See listing
L7 - 1917	324	8	Landis	Contributing	1930	See listing
L7 - 1916	325	8	Landis	Contributing	1930	See listing
L7 - 1914	326	8	Landis	Contributing	1930	See listing
L7 - 1913	327	8	Landis	Contributing	1930	See listing
L7 - 1912	333	8	Landis	Contributing	1930	See listing
L7 - 1911	334	8	Landis	Contributing	1930	See listing
L7 - 1910	338	8	Landis	Contributing	1930	See listing
L7 - 1909	334	8	Landis	Contributing	1930	See listing
L7 - 1908	341	8	Landis	Contributing	1930	See listing
L7 - 1907	343	8	Landis	Contributing	1930	See listing
L7 - 1906	344	8	Landis	Contributing	1930	See listing
L7 - 1905	351	8	Landis	Contributing	1930	See listing
L7 - 1904	359	8	Landis	Contributing	1930	See listing
L7 - 1903	1000	8	Levansh	Contributing	1930	See listing
L7 - 1902	1100	8	Levansh	Contributing	1930	See listing
L7 - 1901	1101	8	Levansh	Contributing	1930	See listing
L7 - 1900	1102	8	Levansh	Contributing	1930	See listing
L7 - 1900	1103	8	Levansh	Contributing	1930	See listing
L7 - 1900	1104	8	Levansh	Contributing	1930	See listing
L7 - 1900	1105	8	Levansh	Contributing	1930	See listing
L7 - 1900	1106	8	Levansh	Contributing	1930	See listing
L7 - 1900	1107	8	Levansh	Contributing	1930	See listing
L7 - 1900	1108	8	Levansh	Contributing	1930	See listing
L7 - 1900	1109	8	Levansh	Contributing	1930	See listing
L7 - 1900	1110	8	Levansh	Contributing	1930	See listing
L7 - 1900	1111	8	Levansh	Contributing	1930	See listing
L7 - 1900	1112	8	Levansh	Contributing	1930	See listing
L7 - 1900	1113	8	Levansh	Contributing	1930	See listing
L7 - 1900	1114	8	Levansh	Contributing	1930	See listing
L7 - 1900	1115	8	Levansh	Contributing	1930	See listing
L7 - 1900	1116	8	Levansh	Contributing	1930	See listing
L7 - 1900	1117	8	Levansh	Contributing	1930	See listing
L7 - 1900	1118	8	Levansh	Contributing	1930	See listing
L7 - 1900	1119	8	Levansh	Contributing	1930	See listing
L7 - 1900	1120	8	Levansh	Contributing	1930	See listing
L7 - 1900	1121	8	Levansh	Contributing	1930	See listing
L7 - 1900	1122	8	Levansh	Contributing	1930	See listing
L7 - 1900	1123	8	Levansh	Contributing	1930	See listing
L7 - 1900	1124	8	Levansh	Contributing	1930	See listing
L7 - 1900	1125	8	Levansh	Contributing	1930	See listing
L7 - 1900	1126	8	Levansh	Contributing	1930	See listing

Office of Historic Preservation (OHP)



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

Note: As of DCAD Map had experience a cyber attack so this plate is not up to date

DCAD Property Map

Search by: Assessment, Property Address, Owner's Name

Search: 338 S Fleming Ave

338 FLEMING AVE

Parcel ID: 000000000000000000
 Assessed Value: 000000000000000000
 Market Value: N/A
 City Address: 338 FLEMING AVE
 Map Code: 00-0 (DALLAS)
 Account Type: Commercial
 Legal Description: 000000000000000000
 Legal Description: 00-0 (DALLAS) 00-0 (DALLAS)
 County: Tarrant
 Owner: N/A
 Owner Address: 1111 WASHINGTON ST
 Owner City: DALLAS
 Owner State: TX
 Owner Zip: 75242
 Owner Phone: 214-751-1111
 Certified Value: \$ 0.00
 Registered Value: \$ 0.00
 Unit Value: \$ 0.00
 Market Value: \$ 0.00
 Area: 0.00
 Assessed Value: 0000

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JAN 09 2023

Office of Historic Preservation (OHP)

119/3102

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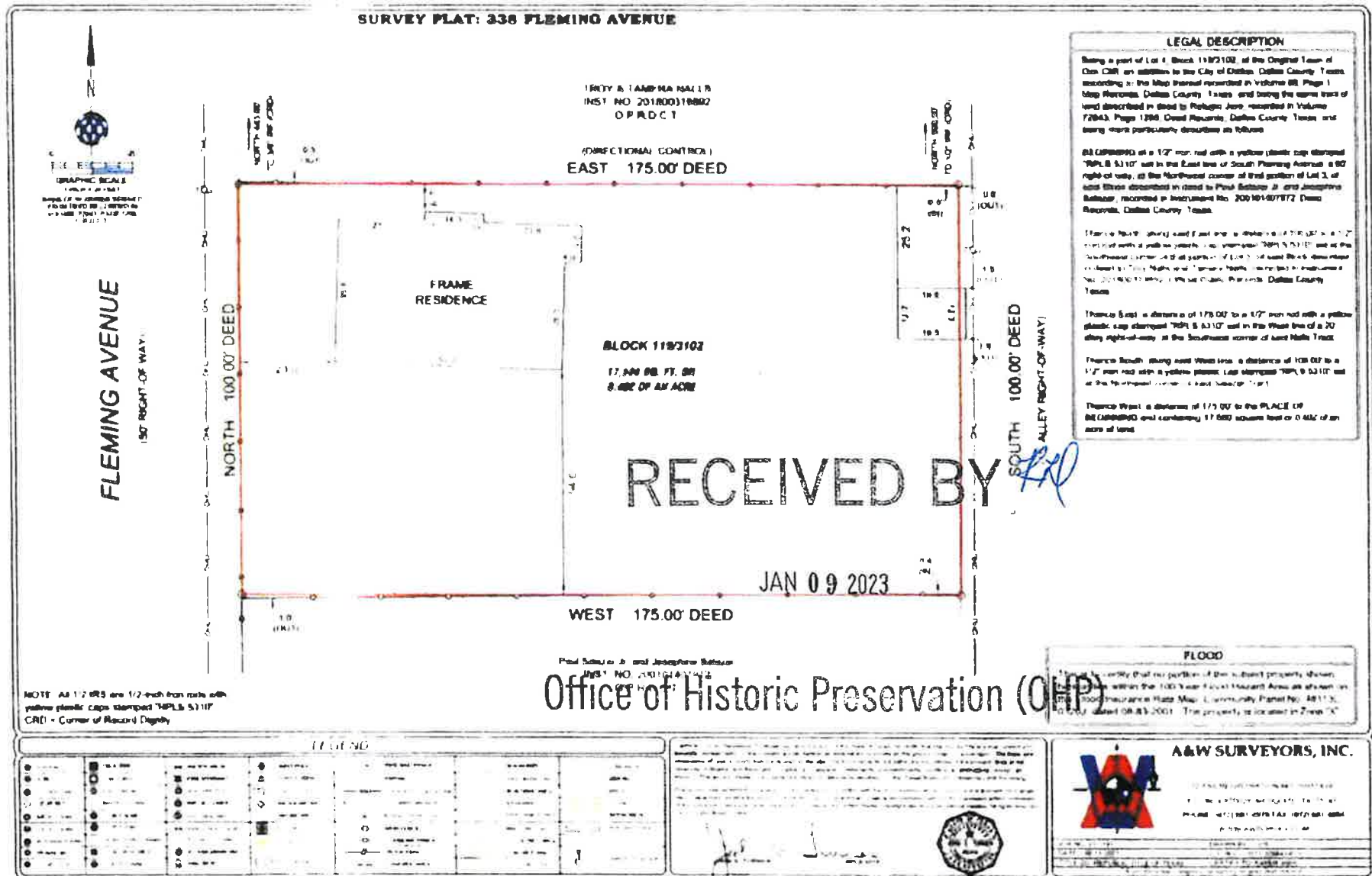
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338 S. Fleming Ave-Survey Plat Plan



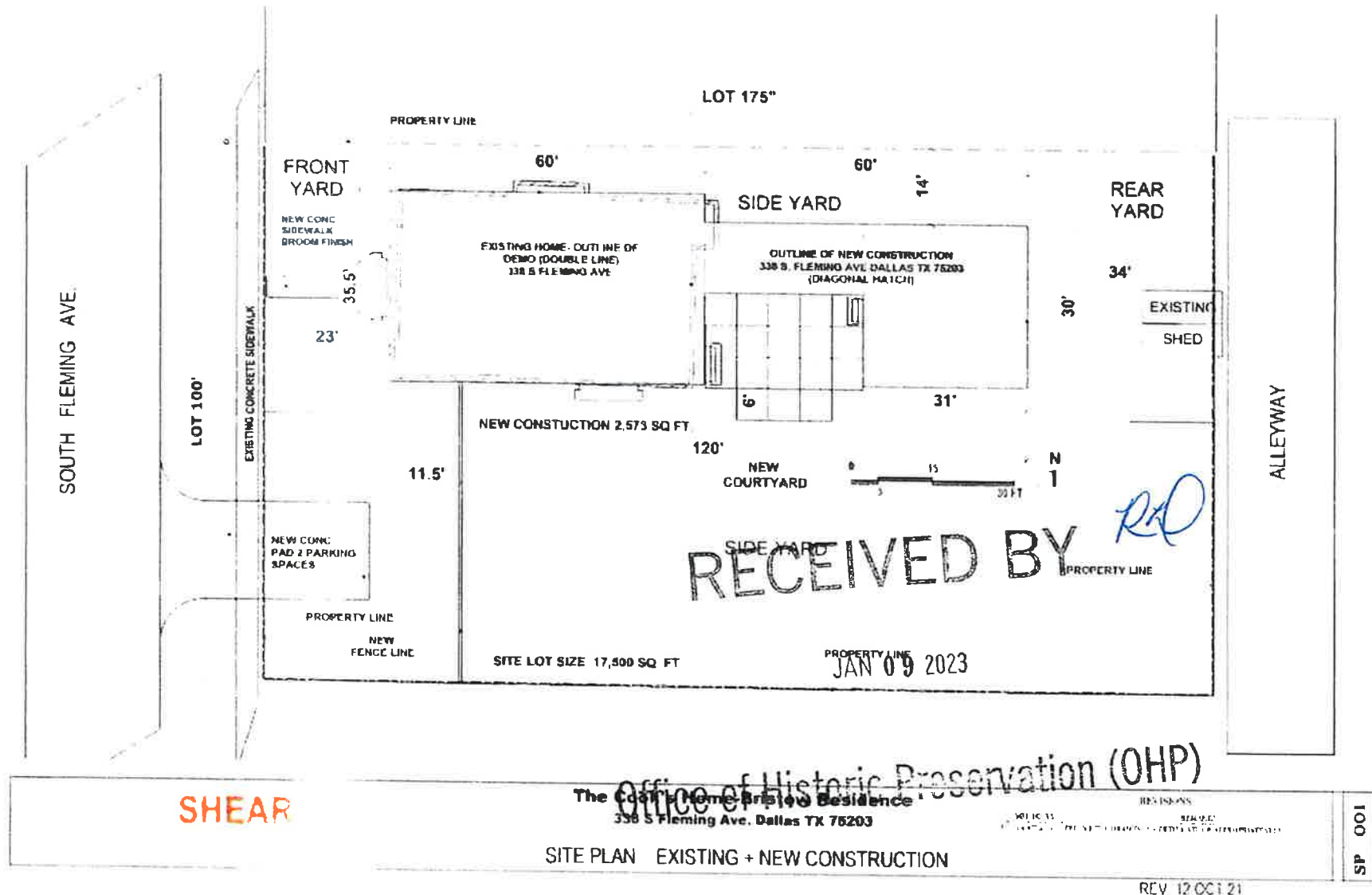
338 S. Fleming Ave-1922 Sanborn Insurance Map + Tenth Streets District



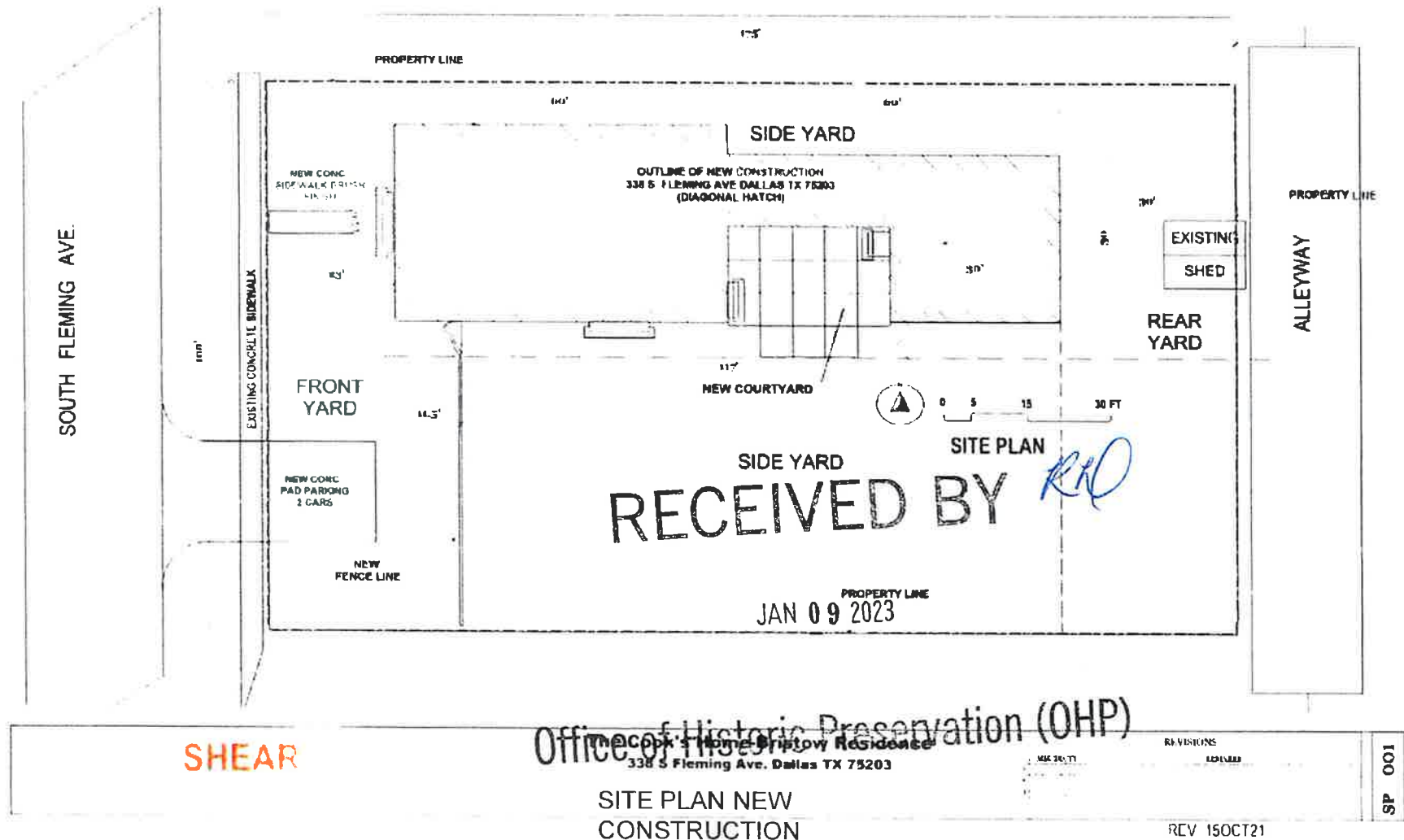
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SHEAR

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



338 S. Fleming- Site Plan-New Construction



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

GUARANTEE AGREEMENT

WHEREAS, the structure located at 338 S. Fleming Ave (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-4.301(b)(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 arrangement 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:

Printed Name: Annemarie Bristow

Title: Owner

CITY OF DALLAS

Neva Dean, Interim Director of Office of Historic Preservation

SUBSCRIBED AND SWORN TO ON
THIS 01 OF 20
IN DALLAS COUNTY STATE OF TEXAS

CARLOS J. ROMERO / NOTARY PUBLIC
MY COMMISSION EXPIRES 01/30/20

RECEIVED BY

By:

Assistant City Attorney

ATTEST: 01-19-2023 APPROPRIATE ACKNOWLEDGEMENTS FOR ALL SIGNATORIES

Revised 01-02-2020

Office of Historic Preservation (OHP)

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 considered 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
POCX PROJECT 2110081001 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'

Side yard setbacks: LEFT SIDE 8'-14' RIGHT SIDE 56'

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 SIDE JAN 09 2023

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

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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

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JAN 09 2023

Office of Historic Preservation (OHP)
J. S. Barton, P. E.
(214) 824-1211



October 5, 2021

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:

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.

Roof Conditions

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" or more. 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-and-beam.



October 5, 2021

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

Bedrock Foundation Repair, L.L.C. (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.



October 5, 2021

Bedrock Foundation Repair, L.L.C. (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, L.L.C. 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.

JAN 09 2023

J. S. Barton, P. E.

Office of Historic Preservation (OHP)



October 5, 2021

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

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 the water must find 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

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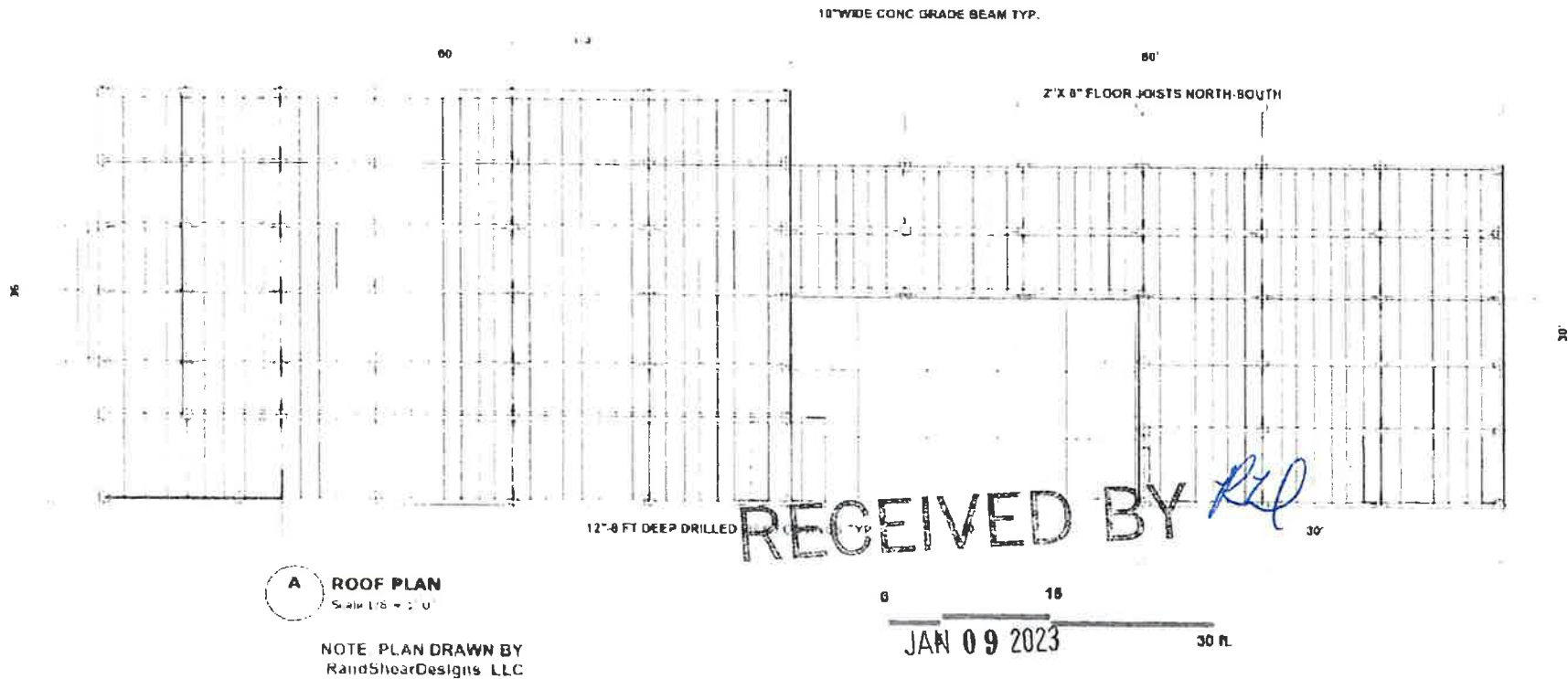
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JAN 09 2023

Office of Historic Preservation (OHP)

SHEAR

338 S. Fleming Ave—Proposed Foundation Plan



SHEAR

RandShearDesigns LLC

214-913-9969

Office of Historic Preservation (OHP)

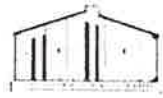
The Cook Home-Bristow Residence
338 S Fleming Ave. Dallas TX 75203

FOUNDATION PLAN

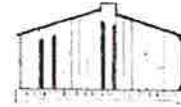
REVISIONS:

100
A

New Evidence — Structured Foundation Costs August 16 2021



www.StructuredFoundation.com
info@structuredfoundation.com
Office 872.454.1200 FAX
872.454.1215
14101 Trinity Blvd #100
Dallas, TX 75240



www.StructuredFoundation.com

Detail Plan

Date: Aug 16 2021

Site Address: 3801 Fleming Avenue Dallas, TX 75209

Client Details

www.structuredfoundation.com

Structural Analyst

info@structuredfoundation.com
Office 872.454.1200 FAX
872.454.1215
14101 Trinity Blvd #100
Dallas, TX 75240

Dallas, TX 75209

Product List

Description

Quantity

2X6 Joist

5FR Floor Joist 2X6

4X8 Beams

5FR Floor Joist 4X8 Beam

PadBlocks

Pad Block Type 2X6 Floor Joist 1X6 1X6 Joist

Subfloor

5FR Floor Joist 5X8 Beam Joist

Final Engineering

Final Estimate - 5FR Floor Joist 5X8 Beam

Initial Engineering

Foundation Support Image - 5FR Floor Joist

Dallas Permit

City of Dallas Foundation

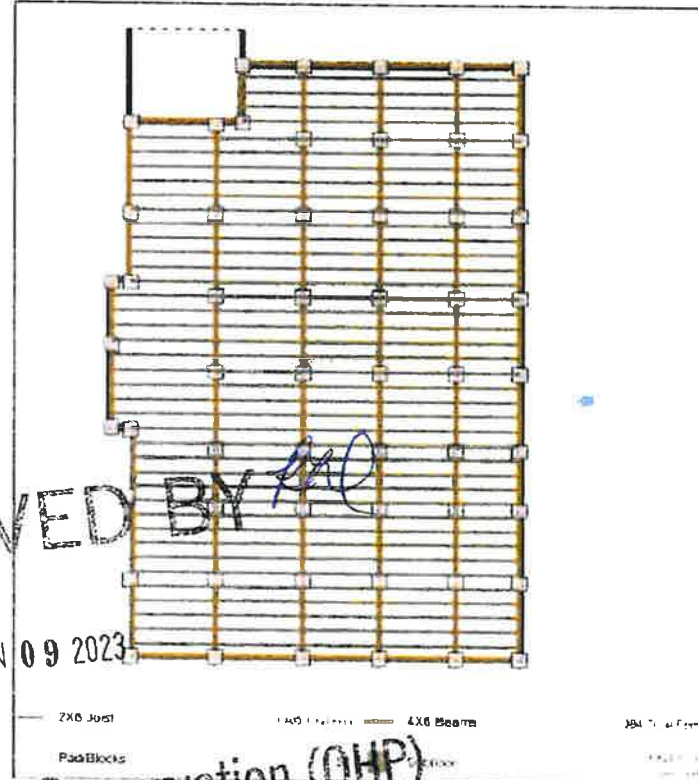
2021

\$94,433.50
\$89,435.50

Total

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Office of Historic Preservation (OHP)
Page 4 of 6

SHEAR





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SHEAR



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North Façade

SHEAR

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South Façade

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SHEAR

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338 S. Fleming Ave.-CD Application— Existing Property Images 2022



South Façade

SHEAR

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Office of Historic Preservation (OHP)



South-East Facade Details Corner 'What's in the Wall'

SHEAR

338 S. Fleming Ave.-CD Application— Existing Property Images 2022



Office of Historic Preservation (OHP)

West Façade

SHEAR



East Facade (Fleming Ave.

SHEAR

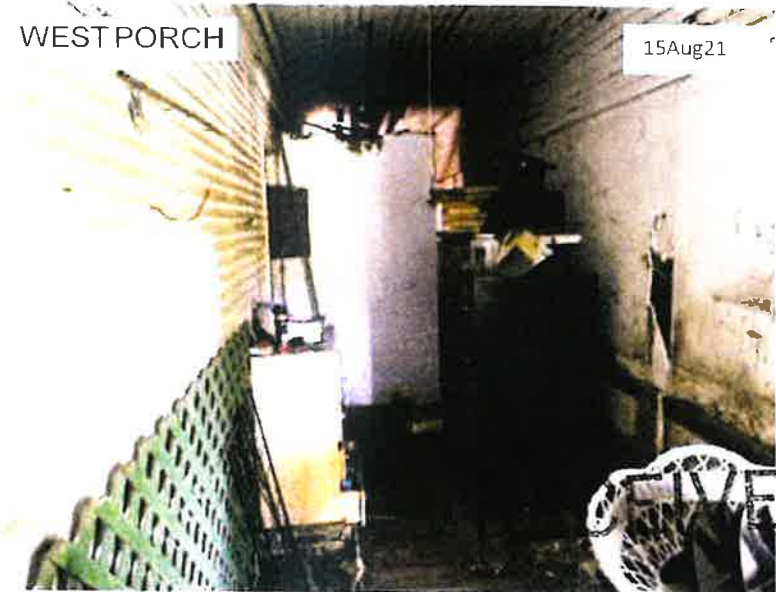


EAST PORCH

15Aug21

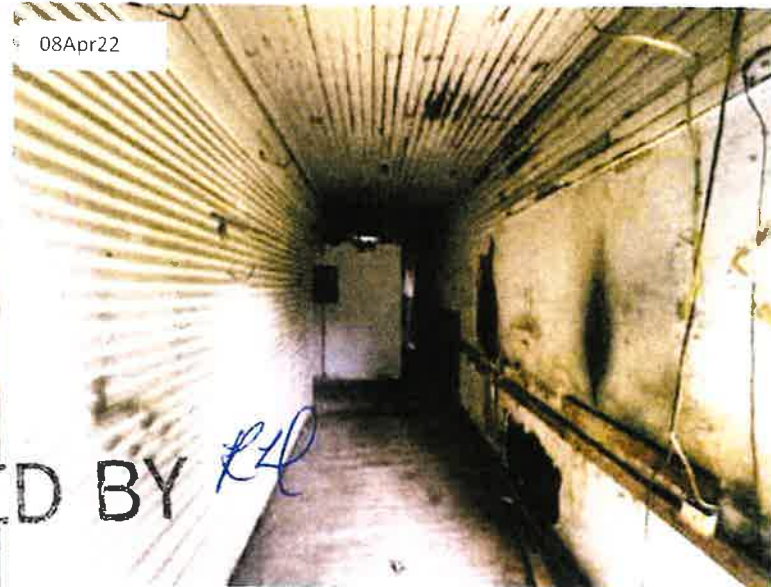


08Apr22



WEST PORCH

15Aug21



08Apr22

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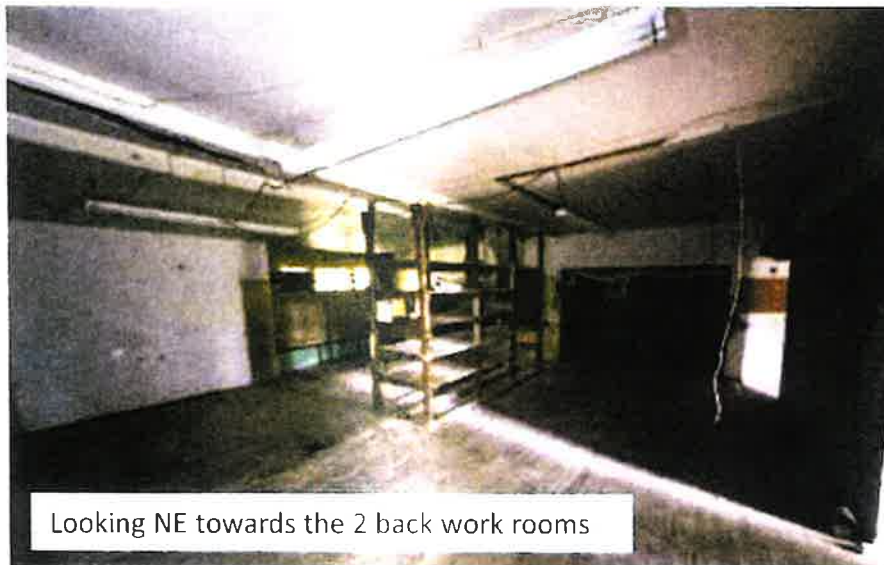
JAN 09 2023

SHEAR

Office of Historic Preservation (OHP)



Looking SE towards center shelf



Looking NE towards the 2 back work rooms



Ceiling water damage at center shelf

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SHEAR

Interior Main Space

Office of Historic Preservation (OHP)



15Aug21



15Aug21



15Aug21



15Aug21

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JAN 09 2023

Porch Ceiling Details

Office of Historic Preservation **SHEAR** (OHP)

SECTION 4

Landmark Commission Minutes

January 9, 2023

See Page 10, Item #4

LANDMARK COMMISSION MINUTES

January 9, 2023

the decision with the City Plan Commission for a fee.

4. 338 S FLEMING AVE

Tenth Street Neighborhood Historic District

CD223-003(RD)

Rhonda Dunn

A Certificate of Demolition to demolish primary residential structure.

Speakers:

For:

Randy Shear
David Cossum

Against:

No Speakers

Motion

That the request for a Certificate of Demolition to demolish primary residential structure be **denied without prejudice**. The proposed work is inconsistent with the standards in City Code Section 51A-4.501(h)(4)(C).

Maker:	Swann				
Second:	Renaud				
Results:	14/1				
		Ayes:	-	14	Commissioner Anderson, Commissioner Guest, Commissioner Gibson, Commissioner Hajdu, Commissioner Hinojosa, Commissioner Livingston, Commissioner Montgomery, Commissioner Renaud, Commissioner Sherman, Commissioner Slade, Commissioner Spellicy, Commissioner Swann, Commissioner Rothenberger, Commissioner Velvin,
		Against:	-	1	Commissioner Offutt
		Absent:	-	0	
		Vacancies:	-	1	District 3

The Chair declared the motion denied without prejudice by the Landmark Commission and stated that if the applicant feels that the Landmark Commission erred in their decision, may appeal the decision with the City Plan Commission for a fee.

5. 3714 DUNBAR ST

Wheatley Place Historic District

CA223-135(RD)

Rhonda Dunn

1. A Certificate of Appropriateness to alter fenestration on protected facades, including modifying window openings and removal of side entry door.
2. A Certificate of Appropriateness to replace existing windows with vinyl framed windows.
3. A Certificate of Appropriateness to replace missing skirting (more than 50 percent)
4. A Certificate of Appropriateness to replace exterior doors: front, side, and rear.

Speakers:

For:

Julio Gutierrez

Against:

No Speakers

SECTION 5

Transcript of the
January 9, 2023
Landmark Commission
Hearing
338 S Fleming Avenue
CD223-003(RD)

:
IN RE: :
338 S. Fleming Ave. :
:
:
:
-----:

LANDMARK COMMISSION MEETING
JANUARY 9TH, 2023

COMPUTER-AIDED TRANSCRIPTION
SAMANDA J. RIOS, COURT REPORTER

TRANSCRIPTIONIST'S DISCLAIMER:

Speaker identifications contained herein have been done to the best of my ability. Misidentification of speakers may occur due to things beyond my control, e.g., similar voice tones, poor audio quality, overspeaking, overlapping room noises, etc. Likewise, use of quotation marks is to help with clarity of context, but may not necessarily reflect a direct quote.

1 - - -

2 (Transcription start time 52:50.)

3 - - -

4 MADAM CHAIR MONTGOMERY: All right.

5 Next up we have on our rearranged
6 agenda is D4.

7 STAFF: Yes.

8 MADAM CHAIR MONTGOMERY: And that
9 is a Fleming Ave.

10 STAFF: Dr. Rhonda Dunn presenting
11 on behalf of City Staff, discussion item D4.
12 The subject property is located at 338 South
13 Fleming Avenue in the 10th Street neighborhood
14 Historic District. The case No.
15 CD223-003(RD).

16 The request is for a certificate of
17 demolition to demolish primary residential
18 structure. And we do have a speaker on this
19 case.

20 MADAM CHAIR MONTGOMERY: We do
21 indeed.

22 Welcome back, Mr. Shear.

23 MR. SHEAR: Thank you.

24 MADAM CHAIR MONTGOMERY: Again, I

1 need you to give me your name and address.

2 MR. SHEAR: Yes, yes. My name is
3 Randy Shear, S-H-E-A-R. And I live at 7027
4 Gaston Parkway in Dallas, Texas.

5 MADAM CHAIR MONTGOMERY: And you
6 swear or affirm to tell the truth?

7 MR. SHEAR: Yes, I swear to tell
8 the truth.

9 MADAM CHAIR MONTGOMERY: Okay.
10 And you are here as the
11 representative of the owner; is that correct?

12 MR. SHEAR: Yes, I'm here as the
13 representative of the owner.

14 MADAM CHAIR MONTGOMERY: Alrighty.
15 And we had another speaker listed,
16 Mr. David Cossum, is he joining you are not;
17 do you know?

18 MR. SHEAR: He's going to be
19 online.

20 MADAM CHAIR MONTGOMERY: Okay.
21 So we will let you go first and you
22 have three minutes, which Elaine will set
23 timing to share with us whatever you wish to
24 communicate with us, and then we'll ask you

1 questions later.

2 MR. SHEAR: I actually wrote almost
3 five pages here, but I'm going to make it very
4 brief because this project has a lot of
5 history to it.

6 MADAM CHAIR MONTGOMERY: It does
7 indeed and we've been there for a lot of it.
8 So you just begin and if you run out of time,
9 then we'll talk about that one.

10 MR. SHEAR: If I do run out of
11 time, could you just ask me to continue?

12 MADAM CHAIR MONTGOMERY: Yeah, we
13 can. If someone makes a motion that's what we
14 usually do and then we get more. So just go
15 ahead with your three minutes first and then
16 we'll --

17 MR. SHEAR: First, I'm going to
18 talk about the things that have happened more
19 recently. That the grant money that -- we
20 applied for grant money in probably November,
21 but it continued into December because it
22 wasn't completed. At the same time,
23 unfortunately, then Marie's husband, Larry,
24 had succumbed to cancer and died on the 16th

1 of December, last year.

2 In the funding they have recently
3 told us that we're actually on a waiting list.
4 That was accepted, the application was
5 accepted, but we're actually on a waiting list
6 to get funding. But that doesn't exactly
7 change the condition of property and so we're
8 moving forward with this considering the fact
9 that the CA was approved last June of last
10 year. And we're -- they're actually going to
11 move forward with both the engineer report and
12 the code inspection on the property. It's
13 possible that the property in this state is
14 going to be condemned because the condition
15 over the year has deteriorated even further.

16 Just last week I was at the house
17 and I was able to get interior shots of the
18 condition as it stands right now. It is a
19 public threat because we actually disconnected
20 the Encore power line, which was tethered to
21 the building. And actually each time they
22 came out to loosen the cable it tightened up
23 because the building is shifting off of its
24 Bodark foundations.

1 And it's collapsed now about -- I
2 think when the bedrock report was done in July
3 or it was published in October of '21, that
4 had given the explanation that the building is
5 80 percent on the ground. And right now it's
6 more in the 95 percent, it's collapsed
7 further. I have a whole list of items about
8 the conditions so I'm not going to repeat them
9 right now. You can ask if you'd like.

10 Also, that condition allowed Anne
11 Marie to say that she is keeping the existing
12 structure and the funding would go towards
13 pretty much the foundation. She had one
14 condition that the CA remains the same.

15 COMMISSIONER UNKNOWN: I move that
16 we provide the applicant an additional three
17 minutes.

18 COMMISSIONER HAJDU: I'll second.

19 MADAM CHAIR MONTGOMERY:

20 Everybody's second. Okay. Mr. Hajdu, you
21 seconded that. All in favor?

22 THE COMMISSION: Aye.

23 MADAM CHAIR MONTGOMERY: All right.

24 Go ahead. So you have another

1 three minutes.

2 MR. SHEAR: So separate from the
3 actual condition of the house, the funding was
4 an incentive for Anne Marie to fix the house,
5 so to speak. But the over the year the
6 reports that come in to save the house no
7 matter what, the actual CA that was approved
8 was not signed by the director and as we know
9 they had the seven aspects of integrity. And
10 their building now and this "CJ Castle" brief
11 was completed for the CPC meeting. And at the
12 CPC meeting, we weren't able to actually show
13 them the design of the building. So -- or the
14 CA was not submitted to the CPC. So most of
15 the questions at that meeting were around what
16 did it look like?

17 In fact, one commissioner even
18 asked she said your design looks like what?
19 Because that was under the category to replace
20 it with a more appropriate structure. That's
21 the correct term. But we were always in the
22 position of saying that the property itself is
23 irretrievably lost because of its condition
24 and that still remains. The house is still a

1 non-contributing commercial structure. The
2 director was wrong in the briefing of the
3 demolition by neglect to say that both he did
4 not know what the property was used for. It
5 was a commercial business that had plaster and
6 statuette company and concrete, those added
7 weight to the property, which contributed to
8 the structure collapsing.

9 And Anne Marie then had seven
10 dumpsters take everything on the interior so
11 that we could actually see the corridors that
12 we show in the pictures. I think I added one
13 picture just to show you how much junk was in
14 this building. And we estimate maybe 2 tons
15 or even more were removed from the structure.
16 And in some funny way you think that she was
17 doing good to the building, but maybe that
18 disturbed the building even further or made it
19 more unstable will be the word.

20 Together with the condition of the
21 building, the building still remains
22 commercial and it is non-contributing. We
23 feel that we're asking you to -- oh, just one
24 more paragraph about --

1 STAFF: That is your time.

2 MADAM CHAIR MONTGOMERY: I moved we
3 give the applicant one more minute.

4 COMMISSIONER UNKNOWN: Second.

5 MADAM CHAIR MONTGOMERY: Thank you,
6 sir.

7 All in favor?

8 COMMISSIONER UNKNOWN: Aye.

9 MADAM CHAIR MONTGOMERY: All right.
10 Proceed. One minute.

11 MR. SHEAR: So in a letter to the
12 mayor I wrote about trying to find a
13 compromise. And I actually had something in
14 mind and when at the CPC meeting I said there
15 was actually a Plan B that's available to us.
16 And that was really deconstruction they asked
17 me and I said I wasn't going to talk about it,
18 but they finally looked like they wanted to
19 know. So I told them that it was
20 deconstruction, which was actually adopted by
21 the EPA in 2015. And has been adopted and
22 have new ordinances in San Antonio that's been
23 approved August of last year.

24 I think that some form of

1 deconstruction has to happen on the structure.
2 So we're here to actually ask you and I think
3 that we've been on the same page from the very
4 beginning and I'll tell you why. Because Anne
5 Marie got up here a year-and-a-half ago and
6 she said that she would save every piece of
7 wood in that building to use in the new
8 building. She also -- also --

9 STAFF: That is your time, sir.

10 MR. SHEAR: Just a few sentences,
11 ma'am?

12 Mr. Cummings had talked about a
13 selective demolition, more recently Dr. Dunn
14 talked about a manual demolition. And they
15 actually asked in the task force meeting in
16 the first go around for a -- I'm sorry, I just
17 keep forgetting the word. But it's another
18 word for salvage plan, that's it. The salvage
19 plan. And so we're here today to ask this
20 forum to let the building go through so under
21 conditions, the conditions would be developed
22 by you guys, to have the building go forward.

23 We also submitted a letter for an
24 extension on the CA, but that's not for this

1 discussion.

2 MADAM CHAIR MONTGOMERY: Yeah,
3 okay. I think we get where you're headed with
4 this. We can let Mr. Cossum continue now. I
5 see he's here. He's online, we just need to
6 see his face.

7 MR. COSSUM: Good afternoon,
8 Commissioner, David Cossum, 10407 Silver Rock
9 Drive in Dallas, Texas 75218.

10 And really, I'm just curious --

11 MADAM CHAIR MONTGOMERY: Okay.

12 And you do you swear or affirm to
13 tell us the truth today, sir?

14 MR. COSSUM: Yes, ma'am.

15 MADAM CHAIR MONTGOMERY: Okay.

16 You'll have to speak up because
17 when you started we could barely hear you so
18 your microphone needs to be high.

19 MR. COSSUM: Will do.

20 I really just wanted to make a
21 couple of observations about the case in that,
22 you know, it just seems clear that the owner
23 has had the best intentions from this when she
24 initially acquired the property back in, I

1 think it was June of '21. She knew it was a
2 historic district, she was aware that it was
3 listed as non-contributing at the time. But
4 she still wanted to come up with a solution
5 that recognized the district and the
6 historical fabric of the district.

7 She met with historic preservation
8 staff almost immediately upon acquiring the
9 property. Then had met with them a few times,
10 then got the engineer's report, I think in
11 October of '21. That engineer's report I
12 think you've seen showed some substantial
13 difficulties with the foundation of the
14 structure. Some of the boat arch piers that
15 actually toppled over. The joists are rotted
16 from sitting on the ground. There were just a
17 number of structural issues that affected the
18 integrity of the overall house.

19 At the time it seems the Historic
20 Preservation Office staff given that the
21 structure was listed as non-contributing had
22 made a recommendation that the applicant
23 pursue a demolition to provide a structure
24 that was more conforming than the existing

1 structure.

2 And there were reasons why that
3 structure in the original survey was listed as
4 non-contributing. The enclosure of the
5 porches, other factors that pretty much
6 diminished the architectural significance of
7 the structure that's historic.

8 I appreciate staff's re-analysis of
9 that last year saying just the fact that it
10 was constructed originally in the period of
11 significance is significant. I don't argue
12 with that. But there are also valid reasons
13 why the structure had initially been listed as
14 non-contributing. So for that reason I
15 believe staff directed them towards pursuing a
16 CD for that purpose to replace it with a more
17 -- more contributing structure.

18 This commission did, in fact,
19 approve a CA that would have been appropriate.
20 And I think that also shows the good faith of
21 the applicant and the owner at the time to
22 come up with a solution that is consistent
23 with the historical integrity of the district.
24 But of course, the CA was tied to a CD being

1 approved. And ultimately that was not approved
2 based on the re-interpretation of staff that
3 the period of significance, the fact that the
4 original structure had been built during that
5 time was so significant that perhaps the
6 structure needed to be re-evaluated as
7 contributing.

8 So I -- you know, I can't argue one
9 way or the other with that, but I do think
10 it's important to note that the applicant and
11 the owner we're always following --

12 STAFF: Excuse me, that's your
13 time.

14 MR. COSSUM: Okay.

15 MADAM CHAIR MONTGOMERY: Hang on
16 for questions.

17 I do want to clarify for some of
18 our newer commissioners who weren't around
19 during the events that he has just described.
20 It is our normal procedure when someone would
21 like to remove an existing structure and
22 replace it with a new one, first, we have to
23 look at the proposed new one and rule on
24 whether it's acceptable or not. But that does

1 not in any way mean that we're going to say
2 that they are allowed to demolish the existing
3 structure.

4 So that is what happened. We said,
5 yes, this is a nice new house she proposed to
6 build, and then we said we rejected their
7 certificate of demolition.

8 Also, between that original time
9 when we recommended to do the selective
10 deconstruction and save all the pieces, staff
11 got a chance to get inside of the structure,
12 inside of that enclosure that's on the outside
13 and see the inside and see that it was in
14 their judgment in more salvageable state than
15 previously they had been able to tell from
16 outside that surrounding enclosing structure,
17 which appears to have been put on when a
18 previously domestic building was used for
19 commercial purposes. That's different than
20 just being a commercial structure, it's an
21 adaptive structure. It happens a lot to old
22 houses, they become a business.

23 So I just want to make sure
24 everyone who has not had the pleasure of being

1 here for this entire thing because it has
2 dragged on forever, and I know that's hard on
3 the applicant, that we all understood.

4 Now, who has questions for our
5 applicant?

6 COMMISSIONER OFFUTT: I have
7 question or questions.

8 MADAM CHAIR MONTGOMERY: Go ahead,
9 sir.

10 COMMISSIONER OFFUTT: As I recall,
11 the engineer reports that we have seen
12 essentially confirmed that this thing is a
13 danger to anybody attempting to even enter it,
14 plus just walking around it. And based upon
15 what you said its continued to shift and its
16 continued to be damaged. So my sense is that
17 we're in a worse situation than we were a year
18 ago. Is that a correct statement?

19 MR. SHEAR: Yes. Do you hear me?
20 Yes.

21 COMMISSIONER OFFUTT: Right. Okay.

22 MADAM CHAIR MONTGOMERY: I think
23 you have to speak up a little bit for the mic
24 to pick up.

1 COMMISSIONER OFFUTT: At the -- I'm
2 sorry --

3 MR. SHEAR: And I do have a list of
4 items that are worse as of last week that I
5 went to record the building.

6 COMMISSIONER OFFUTT: And you had
7 made a comment and I just wanted to clarify
8 that you had had one off discussion with one
9 or more commissioners about this project. Is
10 that what you said, in terms of reclaiming
11 wood or whatever?

12 MR. SHEAR: You might have to
13 repeat the question, but early on I had -- I
14 had done some research on deconstruction. As
15 everything was going on for the whole last
16 year, I've done extensive research on
17 deconstruction and I pretty much know all the
18 players in Dallas who do it. It's kind of
19 interesting, but yes. Does that answer your
20 question?

21 COMMISSIONER OFFUTT: No. You made
22 -- I thought you made specific reference to
23 having a discussion or discussions, one off,
24 with individual Commissioners about the

1 reclamation or this project? Is that correct
2 or not correct?

3 MR. SHEAR: No, I haven't had any
4 discussions with one off commissioners. I did
5 mention that as I said in the CBC meeting.

6 COMMISSIONER OFFUTT: Thank you.

7 MR. SHEAR: And actually the letter
8 to the mayor said that we have to find some
9 kind of common ground. I happen to think that
10 common ground is something we can all agree on
11 that the building is in very bad shape and it
12 needs to be deconstructed before it is
13 reconstructed.

14 Now, I also have two examples of
15 that condition for other historic buildings
16 that have been deconstructed that I think are
17 very interesting.

18 MADAM CHAIR MONTGOMERY: Are you
19 finished Mr. Offutt or did you have further
20 questions?

21 COMMISSIONER OFFUTT: That's it.
22 Thank you.

23 MADAM CHAIR MONTGOMERY: Alrighty.

24 Who else has questions? Mr. Swann?

1 COMMISSIONER SWANN: Yes.

2 Mr. Shear?

3 MR. SHEAR: Yes, sir.

4 COMMISSIONER SWANN: What do you
5 see as the chief threat to public safety at
6 this moment as the building stands?

7 MR. SHEAR: Well, first of all, the
8 building had -- Anne Marie, because of the
9 demolition by neglect, I had instructed Anne
10 Marie to make some needed repairs. And so she
11 tarped the roof, she blocked holes where
12 vagrants were going into the building. And as
13 you know, if the vagrants go inside the
14 building then it is a threat to them. And if
15 they make a fire because it's cold it could
16 just burn down. Not to mention the fact that
17 the Encore service was the meter was very hot
18 when they removed it few weeks ago.

19 And they said -- the guy from
20 Encore said that because there's no circuit
21 board inside the building, the biggest threat
22 would have been fire from electrical service.
23 But you also have other threats about the gas
24 line being old and rusted. And so combine all

1 of these things I would believe that the
2 building collapsing on somebody is a
3 possibility. And I actually don't exactly
4 like going inside the building at this point
5 in time.

6 COMMISSIONER SWANN: Okay.

7 But now staff may need to help me
8 with this and maybe code enforcement, too.
9 But securing the building envelope against
10 intrusion is the homeowner's or the property
11 owner's responsibility, correct?

12 MR. SHEAR: It is and she did make
13 sure that there is nobody able to access it.
14 But they do get around that, you know, they
15 take boards off and they get inside.

16 COMMISSIONER SWANN: Right. Oh,
17 no, I understand. I mean, it requires
18 constant vigilance in a case where people will
19 ply to the plywood right off the buildings.

20 Now, the threat of fire from the
21 connected electrical service that has been
22 remediated, correct? So that is no longer an
23 imminent threat to the building, correct?

24 MR. SHEAR: That is.

1 COMMISSIONER SWANN: Okay. And the
2 gas has been shut off. So if we're talking
3 about deteriorated gas mains, we're talking
4 about supply mains that come from the gas
5 service; is that correct?

6 MR. SHEAR: Yes. I would say the
7 supply link, yes, but there were two meters on
8 property there so we don't know if they're
9 connected or not.

10 COMMISSIONER SWANN: Okay.
11 And currently the building has an
12 additional line of defense, so to speak,
13 against intruders as much as it is fenced. Is
14 that not correct?

15 MR. SHEAR: No.

16 COMMISSIONER SWANN: Okay.
17 I'm sorry, I think I misunderstood
18 that then. I thought there was a fence around
19 the property? No?

20 MR. SHEAR: No, it's just a fence
21 on the street line and that's just a normal
22 3-foot fence.

23 COMMISSIONER SWANN: Okay. Okay.

24 Now, does the building -- we've

1 acknowledged it -- and no one has ever
2 suggested to you on this commission or
3 anywhere else that the foundation would not
4 need to be replaced, have they? I mean, the
5 foundation has always been acknowledged to be
6 in need of replacement; is that not correct?

7 MR. SHEAR: That would be correct.
8 But unfortunately legal counsel based their
9 argument on the fact that they got an email
10 from staff members and that email stated that
11 the foundation did not need to be replaced, it
12 needed to be fixed as is in place.

13 COMMISSIONER SWANN: That's almost
14 a semantic argument to me because I don't see
15 how the foundation would be fixed without
16 raising the building. I mean, raising it up.

17 MR. SHEAR: Well, they claimed and
18 it was in the seven aspects of the condition.
19 The foundation was in the seven aspects of
20 integrity.

21 COMMISSIONER SWANN: Right.
22 Because there -- you know, of course, there
23 are many buildings standing.

24 MR. SHEAR: And it was possible --

1 it was plausible deniability on the directors
2 part. That, oh, well, if the building is 80
3 percent on the ground, how did they get
4 underneath it to study the foundation is
5 irretrievably lost. So that's what was said.

6 COMMISSIONER SWANN: Okay.

7 MR. SHEAR: As for the report, it
8 came from the fact that Mr. Johnson, Task
9 Force member, came and inspected the structure
10 himself. And in that email he gave his aspect
11 that it's fixable.

12 COMMISSIONER SWANN: Okay.

13 MR. SHEAR: So the city argument
14 then went into the CJ Castle brief, the
15 lawyers brief that I can get it for you to
16 read it, but they basically said everything is
17 fine. They had doubts they said about the
18 foundation and the non-contributing status.

19 COMMISSIONER SWANN: Okay. Now,
20 visually do you -- you discern substantial
21 racking or tilting out of "Guam." And when I
22 say substantial, I mean substantial because
23 these -- many of these occupied homes have a
24 little bit of lean to them. But I'm talking

1 about the kind of racking, you know, the term
2 that I mean, parallelogram of walls and
3 twisting of the buildings that would indicate
4 that it's about to -- that the structure
5 supporting the roof is in danger of imminent
6 failure.

7 In other words, we've seen that the
8 building has fallen the distance of the crawl
9 space. Okay. So that it's on the ground.
10 The crawl space is gone. But are we seeing
11 evidence that the structural integrity above
12 the building is compromised to the point where
13 it would fall on someone?

14 MR. SHEAR: The building was
15 surveyed at a 2.5 degree rotation. I'm pretty
16 sure they didn't build the building
17 unparalleled to the street line.

18 COMMISSIONER SWANN: No, but would
19 you not also agree that the failure, the
20 tipping over of the bodark supports could
21 create that degree of rotation?

22 MR. SHEAR: There is rotation, yes.
23 And there's further rotation as it's
24 collapsing down to the south side really and

1 it's actually rotating also because the bodark
2 tree trunks, not the -- they're not stubbed
3 into the ground, they're actually just tree
4 trunks of various sizes which have been
5 pictured. Because right now the interior
6 wall, be it the wall between the porch and the
7 inside of the building, has separated from the
8 porch decking. So it was this much and I was
9 able to very carefully not drop my iPhone to
10 get pictures of the further bodark evidence
11 further into underneath the home.

12 And I actually took more pictures
13 because the walls have started to crack so
14 that's evidence of collapse of the roof down.
15 Also, the floorboards are buckling as it's
16 collapsing so there's more evidence of
17 buckling. And so --

18 COMMISSIONER SWANN: Okay.

19 But would you not also agree that
20 if you have a foundation that is failing by
21 degrees you are inevitably going to have
22 buckling? Because some parts will be supported
23 and some parts will not be as it progressively
24 fails. And when I'm talking about failure,

1 I'm talking about the bodark. Because
2 wouldn't you also agree that if it came down
3 in what we would call a catastrophic failure,
4 a sudden, not a gradual failure, that would
5 create some progressive shock to the structure
6 of the building Above the floor, correct?

7 MR. SHEAR: Yes, of course.

8 COMMISSIONER SWANN: Which wouldn't
9 you agree from the pictures that it appears to
10 have withstood that shock fairly well?

11 MR. SHEAR: No, the pictures I've
12 taken over the few times that I've been there
13 I've shown catastrophic collapse. It's just a
14 matter of how big the storm will be. Well,
15 we're just waiting for another storm to have
16 it collapse further.

17 COMMISSIONER SWANN: But without
18 bracing that was essentially doing its job,
19 whether it be a kind of plate structure effect
20 created by the intact siding, wouldn't we
21 expect to see more racking and lean in the
22 building that has essentially fallen off its
23 foundation if it were not essentially sound in
24 terms of its basic structure from the floor

1 level above?

2 MR. SHEAR: Well, look, look, I
3 mean, you've got this email from three people.
4 You have it from Director Miller, Carlos and
5 owner and the task force member. And that
6 email had given their version of what the
7 structure condition was. They -- none of them
8 including myself as an engineer. How can I
9 talk about all these things, about racking and
10 stuff like that? It was already in the bedrock
11 report that the building had collapsed. And
12 so it's just a matter of how much more the
13 building can collapse and if it can be
14 fixable. And my claim is that the building
15 has to come down to be rebuilt. It has to be
16 --

17 MADAM CHAIR MONTGOMERY: Could I
18 insert one question that you have just made me
19 think of in your line of questioning? As its
20 lean and its twist has gotten worse, could you
21 have helped support it at any time by building
22 some sort of external supports that would have
23 helped hold it in place as its foundation
24 seems to hold it adequately in place?

1 MR. SHEAR: I don't think any kind
2 of bracing at the beginning of this process or
3 at the process now is available to hold up
4 that building.

5 MADAM CHAIR MONTGOMERY: All right.
6 Thank you.

7 MR. SHEAR: You can't get
8 underneath it so it just keeps going down and
9 twists and down. Plus, the code official that
10 examines the building, the roof itself is made
11 of 2 by 4 and is supported by a shelf in the
12 middle of the building that people have seen
13 that has six posts to it. That's everything
14 that's holding up the roof at this point. If
15 you remove that shelf system in the middle of
16 the building, then you'll see catastrophic
17 collapse.

18 MADAM CHAIR MONTGOMERY: I'm glad
19 you're aware of that because then you won't
20 remove the shelf which would be sort of, you
21 know, make it all worse. What I was actually
22 getting at is had we started holding it up
23 better before it was quite as bad, could we be
24 in a better position than we are now? And you

1 have said that you feel we could not have done
2 anything to improve our current condition. So
3 let me let Mr. Swann continue.

4 COMMISSIONER SWANN: Okay.

5 I'm going to address the next
6 questions to staff. How do you in terms of
7 city of Dallas, how does the city of Dallas
8 make determinations of contributing versus
9 non-contributing?

10 STAFF: Well, this, in other words,
11 the reason why it's listed as
12 non-contributing, it was a part of a study, a
13 survey. In other words, historic resources
14 surveys are conducted. And this survey that
15 was done in 1994, I think it was Hardy Heck-
16 Moore was done in 1994. And according to that
17 survey, it was listed as non-contributing.
18 But some things we don't know is if they
19 actually came onto the property and actually
20 examined the building, those things we don't
21 know.

22 COMMISSIONER SWANN: I think you're
23 about to answer -- you almost answered my next
24 question. So what you're saying is this was a

1 determination made in order to prepare the
2 nomination form for the National Registered
3 listing?

4 STAFF: Correct.

5 COMMISSIONER SWANN: Okay. And
6 isn't it true that a lot of those -- because
7 when we're dealing with historic districts
8 with a lot of structures, many of those
9 surveys are essentially curb surveys.

10 STAFF: Correct. Windshield
11 surveys as well.

12 COMMISSIONER SWANN: Thank you.
13 That's the term I wanted, windshield surveys.
14 And if you would please describe a windshield
15 survey?

16 STAFF: A windshield survey is
17 basically what it says you're in a car, you
18 have your paperwork in front of you, your
19 addresses you're supposed to be investigating.
20 And you basically go from residence to
21 residence in this case, you make a
22 determination while you're sitting in the car
23 of whether or not the structure you're looking
24 at or investigating is or is not contributing.

1 In this case I could see if you did
2 a windshield survey why would be
3 non-contributing because the major historic
4 feature of the property is a wraparound porch.
5 And that wraparound porch was covered at that
6 time with board and batten -- not horizontal,
7 vertical siding.

8 COMMISSIONER SWANN: And at one of
9 the first landmark meetings this was it not
10 discussed that that was likely the reason that
11 it was deemed non-contributing? And I believe
12 it was Commissioner Cummings who pointed out
13 that some exploratory, at least the removal of
14 the sheathing would be required to make a --
15 to revisit the assessment of contributing
16 versus non-contributing?

17 STAFF: Correct.

18 COMMISSIONER SWANN: Okay. And was
19 that visit made to get behind the sheathing?

20 STAFF: Well, that's the July 25th
21 visit that Mr. Shear is referring to, the
22 seven points of integrity.

23 COMMISSIONER SWANN: Okay.

24 STAFF: Where Director Miller,

1 staff member Carlos Winona and myself, I was
2 new at that time, maybe I was here for a week
3 or two. But we actually went onto the property
4 with Mr. Shear and went inside, took pictures
5 both of the interior and the exterior. And
6 that's when Mr. Miller made the assessment
7 looking at the fact that behind that board and
8 batten siding is actually 117. Like there's
9 the actual porch and then there's behind the
10 porch, the front facade that faces the south
11 yard. So you could see where it did indeed at
12 some point have that wraparound porch that we
13 do see in the Sanborn map of 1922.

14 COMMISSIONER SWANN: Okay. And did
15 Director Miller have the experiencing
16 qualifications to make that professional
17 assessment?

18 STAFF: I would think that he did.
19 He's a licensed architect.

20 COMMISSIONER SWANN: All right.
21 Thank you.

22 MR. SHEAR: I have to say that he
23 is not a licensed architect.

24 MADAM CHAIR MONTGOMERY: You

1 haven't (indiscernible.)

2 MR. SHEAR: No, but if he was going
3 to -- let's say, Mr. Swann, is going to change
4 the status from non-contributing to
5 contributing, he'd have to do the seven
6 aspects of integrity. But he'd also have to
7 confirm the fact that the building itself and
8 the structure is not irretrievably lost. So
9 he cannot --

10 MADAM CHAIR MONTGOMERY: Sir, we
11 have occasionally found that something was
12 ruled non-contributing in error, for instance,
13 because they couldn't see what it really was
14 behind an exterior covering. So that is the
15 process we will go through to that. And
16 Mr. Miller always seemed to firmly understand
17 those seven attributes of integrity and so I
18 would trust his judgment in interpreting what
19 he saw there.

20 I must say that sometimes I found
21 his writings a little bit confusing so I could
22 imagine the memo reporting what he came to
23 know from looking at it might be a little hard
24 to read, but that doesn't mean he was wrong in

1 his thinking. So I'm inclined to believe that
2 he did have the qualifications to understand
3 about that. He's seen a few buildings in his
4 time.

5 MR. SHEAR: Yeah, but if I -- you
6 know, there's this beautiful little Victorian
7 white structure around the corner that's off
8 the historic district. Why is Mr. Miller not
9 going for status on that property because it
10 have more integrity than our property?

11 MADAM CHAIR MONTGOMERY: That is a
12 completely different process to bring a
13 building into being covered by historic
14 preservation ordinance. It doesn't have
15 anything to do with evaluating those that have
16 already been in. So let's move onto
17 Mr. Renaud's question. He is a licensed
18 architect, correct, Mr. Renaud?

19 COMMISSIONER RENAUD: That's
20 correct, in the state of Texas.

21 Mr. Shear, I have some questions
22 for you in particular. Have you worked on
23 other historic homes of this period, of this
24 vintage?

1 MR. SHEAR: You know, I have a
2 history and I've sent -- actually in Toronto I
3 ended up doing some historic work in finding a
4 book on EJ Lennox and I actually saved the
5 home from demolition in Toronto. So that was
6 way back. And more recently, like I had sent
7 the letter that I wrote to Michelle Obama to
8 try to save the Phillis Wheatley School in New
9 Orleans. And so I dabbled in trying to
10 preserve these buildings. So I came into this
11 job because Anne Marie hired me to fulfill her
12 dream of fixing this building at the beginning
13 and doing an addition to the building.

14 COMMISSIONER RENAUD: Right.

15 MR. SHEAR: But I mean at this
16 point in time I -- I designed bigger things.

17 COMMISSIONER RENAUD: So my second
18 question or the follow up question is that or
19 at least what I've found in the past of homes
20 of this vintage of, you know, built in the
21 early 1900's is that 2 by 4 was very common
22 construction type for both the ball framing
23 and for the roof framing. In fact, you know,
24 center rafters would be a 1 by 4, not a 2 by

1 4. There's a gigantic difference between the
2 quality of wood produce, you know, 150 years
3 ago compared to today. It was a lot more
4 dense. In fact, at this point it's become
5 almost as strong as steel, it becomes
6 petrified. The cells are a lot tighter.
7 There's just a lot more structural integrity.

8 And, in fact, you know, you look at
9 the rafters of the roof today, I see very
10 little sag in those and really what's
11 collapsing is the foundation as we've seen in
12 the photographs. Bodark interior posts were
13 very, very common again. In fact, perimeter
14 -- when they were concrete around the
15 perimeter those were poured just right on the
16 surface of the soil, they didn't even drop
17 below the surface. So these are very common,
18 you know, constructed. It's a very common
19 construction type for this period so I don't
20 see anything sort of out of the ordinary or
21 poorly built originally. It's really just
22 been a lack of maintenance.

23 Those are my comments and my
24 questions. Thank you.

1 MADAM CHAIR MONTGOMERY: Any other
2 commissioners? Any of you at home? Anyone
3 else here?

4 I will say my home stands on little
5 bodark post just sitting there on the ground.
6 Does it stand still? Not exactly. But has it
7 stood for over 100 years? Indeed and it
8 functions as our house. A once in a while we
9 go in and we replace one with concrete.
10 There's 112 of them, we're not up there yet.
11 So a foundation like that moves a bit and can
12 be replaced piecemeal until it reaches a point
13 of no return like perhaps this one has.

14 So no other -- because if no one
15 has any comments then I am looking for a
16 motion. And if we could reiterate the three
17 reasons, either staff or our attorney, perhaps
18 our attorney should do it. The three reasons
19 that would lead us to need to approve this
20 demolition.

21 STAFF: It says the Landmark
22 Commission must deny an application to
23 demolish or remove a structure that poses an
24 imminent threat to public health or safety

1 unless it finds that, one, the structure
2 constitutes a documented major and imminent
3 threat to public health and safety; two, to
4 the demolition or removal is required to
5 alleviate the threat to public health and
6 safety. And three, there is no reasonable way
7 other than demolition or remove to eliminate
8 the threat in a timely manner.

9 MADAM CHAIR MONTGOMERY: Go ahead,
10 Commissioner Swann.

11 COMMISSIONER SWANN: Otherwise
12 known -- oh, thank you. Let me -- I'm sorry.
13 Let me make sure this gets on the recording.

14 I move that in the matter of
15 CD-223-003(RD) otherwise known as 338 South
16 Fleming Avenue, in the 10th Street
17 neighborhood historic districts, that we deny
18 the request for the certificate of demolition
19 to demolish primary residential structure
20 without prejudice with a finding that the
21 posed work is inconsistent with the standards
22 and city code section 51a-4.501H4C.

23 MADAM CHAIR MONTGOMERY: Do I have
24 a second?

1 COMMISSIONER RENAUD: Second.

2 MADAM CHAIR MONTGOMERY: Thank you,
3 Commissioner Renaud.

4 Any further discussion before we
5 call for a vote?

6 COMMISSIONER SWANN: I really think
7 some further discussion is appropriate.
8 Because this is a project that everyone here
9 wants to see come to a good end on both sides
10 of this horseshoe. And our -- well --

11 MR. SHEAR: But Mr. Swann, it's
12 become impossible to deal with you people
13 because you've changed your minds.

14 MADAM CHAIR MONTGOMERY: We're
15 actually at the point where only we get to
16 talk. I know that may seem unfair, but it is
17 just our rule.

18 COMMISSIONER SWANN: We're beyond
19 the questioning period, but I think I've been
20 fairly consistent on this case from the very
21 beginning. I would be surprised if you can
22 point to a situation where I've changed my
23 mind.

24 MR. SHEAR: You said it was a

1 sticky one. What do you mean by that?

2 STAFF: Sir, the public hearing is
3 closed so it's just comments of the
4 Commission. Thank you.

5 COMMISSIONER SWANN: Okay. There
6 is a great deal of integrity remaining in this
7 building. I think the points made by
8 Commissioner Renaud are well taken about the
9 value and strength of old growth timber, which
10 you will never see again, the hardness of the
11 wood. The fact that the connections that were
12 made when this building was constructed are
13 original. It has not been dismantled, it has
14 not been subjected to the potential for
15 splitting and compromise a pin joints that you
16 would get from dismantling. You have a
17 valuable structure with a great deal of
18 integrity that needs a new foundation.

19 And I hope that the powers that be
20 that are making the determination on grants
21 see this and reward you with a substantial
22 grant to make necessary repairs to that
23 foundation, which in this case do mean a
24 replacement of that foundation because it is

1 that important. And we were, I think, very
2 warm to the design that was proposed because
3 it was in many ways faithful to the original
4 structure. What it was not is the original
5 structure. There are some ways in which you
6 could never be faithful to the things that we
7 value in historic districts when we're
8 assessing integrity. And materials and the
9 irreplaceable materials are a big issue in a
10 district 10th Street that is built
11 substantially where things are original of old
12 growth timber.

13 I don't think the argument can be
14 successfully made that this building poses an
15 imminent danger to anyone. It has been
16 appropriately mothballed and secured against
17 intrusion, which we've acknowledged is an
18 ongoing process. I think this commission has
19 been very friendly to the addition as well.
20 Yeah, we've massaged a little bit, but it was
21 approved.

22 Now, it was approved as part of a
23 process proceeding under a different standard.
24 And that standard has changed now and we are

1 bound to satisfy to our satisfaction the three
2 elements of the standard or to deny the
3 certificate of demolition. And that's why the
4 motion that is on the floor is on the floor.

5 MADAM CHAIR MONTGOMERY: Thank you,
6 Mr. Swann.

7 I would like to also add that it's
8 our own rules that say we have to deny a
9 request for certificate of demolition. Unless
10 we find it has been proven that it's a major
11 and imminent threat to public health and
12 safety, it is currently boarded up if that is
13 not effective, perhaps a fence could be added.
14 But it is not about to fall over on passers
15 by. And if there are ways for you to prevent
16 passers by and intruders getting close enough
17 to it, more effort needs to be put into that.

18 But the other thing that we
19 absolutely must meet, which I don't think has
20 been met, is there no reasonable way other
21 than demolition or removal to eliminate the
22 threat in a timely manner? I do not believe
23 you have thoroughly explored those ways or
24 even kept up with trying to keep the building

1 in shape and as secure as it could be during
2 this time that has past. I know it's been a
3 lot of time, but we had a pandemic and things
4 happen and that's what goes on.

5 So we are not -- we must deny it.
6 That's the word they use unless we find those
7 things to be true that there's just no other
8 way. And I do not find there to be no other
9 way around this house. No new house is
10 probably going to be more authentic than the
11 one that's there and did the things that have
12 been done to it over time. And that's real
13 standard, a lot of houses have disappeared in
14 businesses, but they're still under there and
15 could be a nice place to live and a
16 contributing factor to that.

17 MR. SHEAR: I'm not suggesting that
18 this building be demolished in the sense that
19 it's demolished.

20 MADAM CHAIR MONTGOMERY: I know, I
21 know, I know. (Indiscernible.)

22 MR. SHEAR: I don't know why you
23 don't understand that we are going to use
24 every piece of wood we possibly can and the

1 owner had stated that a year-and-a-half ago.

2 MADAM CHAIR MONTGOMERY: And that's
3 better than just knocking it down and throwing
4 it away, but it's still not the highest
5 option.

6 MR. SHEAR: Don't change the
7 narrative. Mr. Swann's been changing the
8 narrative. Also, Mr. Anderson said why didn't
9 you do B instead of A.

10 MADAM CHAIR MONTGOMERY: Sir, sir,
11 you have to stop. And I would point out
12 you've had a narrative, we all have, we've had
13 our discussion.

14 COMMISSIONER SLADE: Can I ask --

15 MADAM CHAIR MONTGOMERY: There's
16 always appealing?

17 MADAM CHAIR MONTGOMERY: Yes, who
18 is online and wishes to ask something?

19 COMMISSIONER SLADE: This is
20 Commissioner Slade. For the sake of order,
21 could we please mute his microphone? He's
22 being disrespectful of the order for this
23 public hearing.

24 MADAM CHAIR MONTGOMERY: He has

1 left the microphone. I believe he has waved
2 goodbye to me in a friendly manner. All
3 right. Clearly this has become an extremely
4 emotional issue for all of us. It's
5 inappropriate for me to respond in that way,
6 but sometimes we can't help it and I can
7 understand why he feels quite frustrated.

8 Are there any other comments
9 anybody wishes to make?

10 COMMISSIONER RENAUD: I would like
11 just from a planning standpoint, just looking
12 at this lot I don't think all opportunities
13 have been considered by the owner of this
14 property considering its size, considering
15 what's existing there now. So I just wanted
16 to make put that on the record.

17 MADAM CHAIR MONTGOMERY: You mean
18 all opportunities for securing it?

19 COMMISSIONER RENAUD: No, all
20 opportunities regarding the size of the
21 property when I'm looking at the zoning of the
22 site I just think if somebody wanted a new
23 house there's an opportunity on the remainder
24 of the tract for that to occur. And with

1 proper subdivision and work done in order to
2 achieve that. So there are other options
3 available from my opinion. Thank you.

4 MADAM CHAIR MONTGOMERY: All right.

5 Are we ready to call for a vote?

6 All right. All those in favor of the motion
7 please say aye.

8 THE COMMISSION: Aye.

9 MADAM CHAIR MONTGOMERY: Any
10 opposed?

11 COMMISSIONER OFFUTT: Oppose.

12 MADAM CHAIR MONTGOMERY: All right.

13 Mr. Offutt is in opposition to this
14 motion. Everyone else was in favor and
15 therefore the Aye's win. And since it is a
16 denial you will inform Mr. Shear that he could
17 go back to CPC if he wants to.

18 All right. Because I just love to
19 take risks I have made my argument here and I
20 think Mr. Swann has supported me that more
21 could have been done over this past year-
22 and-a-half now to hold the building in stasis
23 while it moves through this process, which was
24 the duty of the owner both for public safety

1 and for historic preservation.
2 Therefore, not as a Landmark Commissioner
3 or as the chair, but as an interested
4 party, I will be sending a note to the
5 director requesting that we reconsider a
6 demolition by neglect process which
7 allows staff to work with the owner and
8 her representative to rectify any
9 failures and move forward with seeing if
10 they can save this building. This is not
11 an attack on anybody. I'm friends with
12 the building, I'm just supporting the
13 building and its value to historic
14 preservation. The humans I don't care
15 about, I'm not for or against any of you.
16 I just want the building to be the best
17 thing it can be.

18 Alrighty, let's move on to No.
19 5.

20 - - -

21 (Transcription stop time 1:43:52.)

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C E R T I F I C A T I O N

I hereby certify that the recorded proceedings and evidence are contained fully and accurately in the notes taken by me of the above case, and this copy is a correct transcript of the same.

Samanda J. Rios

Samanda J. Rios
Court Reporter
Notary Public of Pennsylvania

(The foregoing certification of this transcript does not apply to any reproduction of the same by any means unless under the direct control and/or supervision of the certifying reporter.)

SECTION 6

Historic Preservation Criteria Dallas Development Code § 51A-4.501

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.

(A) The procedure for adopting an ordinance to establish or amend a historic overlay district may be initiated by five members of the city council, three members of the city plan commission, one member of the landmark commission for an individual property and three members of the landmark commission for an expansion of an existing district or creation of a new district, or by the owner(s) of the property.

(i) Statement of intent for historic designation. The five city council members, three city plan commissioners, or one landmark commissioner if it is an individual property, or three landmark commissioners if it is an expansion of an existing district or creation of a new district, must prepare and present a statement of intent for historic designation at the public hearing to initiate the historic designation procedure. The purpose of the statement of intent for historic designation is to provide justification of the action under consideration. The statement of intent must be provided to the property owner(s) at the time the agenda for the meeting is posted. The statement of intent of historic designation must contain the following:

- (aa) List of characteristics on which the initiation is based;
- (bb) A brief description of the historical significance of the potential building, site, district or expansion;
- (cc) Purpose of the proposed designation; and

(dd) For district expansions, a statement including the history and timeline of the existing district designation process and information on why the expansion area was not originally included with the initial district designation, if available.

(ii) Procedure for individual properties. The procedure to designate an individual property requires a minimum of one public hearing of the initiating body. The purpose of the hearing is to determine whether sufficient information is presented to initiate the historic designation procedure.

(iii) Procedures for expansions and new districts.

(aa) The procedure to expand an existing district or create a new district involves a minimum of two public hearings and a community meeting. The purpose of the first public hearing is to determine whether enough information is presented to consider a historic designation. This first public hearing does not initiate the historic designation procedure. If the city council, the city plan commission, or the landmark commission determines that sufficient information has been presented in the statement of intent for historic designation for consideration, the department shall conduct a community meeting. The purpose of the community meeting is for the proposing commissioners or city council members to present the statement of intent for historic designation to the property owners, neighbors, and interested parties to the proposed initiation, and to provide an opportunity for public comment. The meeting must be held at a facility open to the public within the neighborhood of the proposed historic district. The information presented must include the following:

- (I) Statement of intent for historic designation;
- (II) List of potential impacts of historic preservation;
- (III) List of neighborhood planning concerns and goals; and
- (IV) Any other information that may be relevant.

(bb) Prior to the second public hearing to initiate the historic designation procedure, the proposing commissioners or city council members must revise the statement of the intent for historic designation. The revised statement of intent must include the following, as applicable:

- (I) original statement of intent;
- (II) transcription of the community meeting;
- (III) benefits and incentives of preservation;
- (IV) additional neighborhood planning goals;
- (V) concepts for additional development incentives paired with historic preservation;
- (VI) summary of concerns; and

(VII) summary of economic incentives available to the property owners such as city of Dallas historic tax exemption, tax increment financial districts, and federal or state opportunities.

(VIII) statement reflecting the property owner(s) position, if available.

The purpose of the second public hearing is to review the revised statement of intent and determine whether sufficient information is presented to initiate the historic designation procedure.

(B) The director shall provide property owners with notice of a public hearing to initiate the historic designation procedure, a statement that describes the impact that a historic designation of the owner's property may have on the owner and the owner's property, and information about the process at least 15 days before the date set for the initial hearing using the procedure outlined in Section 51A-4.701(a)(1). The historic designation impact statement must include the following:

- (i) regulations that may be applied to any structure on the property after the designation;
- (ii) procedures for the designation;

- (iii) tax benefits that may be applied to the property after the designation; and
- (iv) rehabilitation or repair programs that the city offers for a property designated as historic.

(C) No permits to alter or demolish the property may be issued after provision of this notice until action is taken at that initial hearing by the city council, city plan commission, or landmark commission.

(D) 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 the city plan commission, the property owner may appeal the initiation to the city council by filing a written notice with the director within 15 days after the action of the landmark commission or city plan commission. The written notice must include why the property owner thinks the criteria used to justify the initiation does not apply. Within 90 days after the filing of the appeal or 180 days after filing the appeal, if a 90 day extension is requested by the property owner within 45 days of filing the initial written notice of appeal with the director, the director and the chair of the landmark commission shall present the statement of intent for historic designation if it is an individual property, or the revised statement of intent for historic designation if it is an expansion or new district to the city council. After submission of the statement of intent for historic designation if it is an individual property, or revised statement of intent for historic designation if it is an expansion or new district, 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) Designation procedure. For purposes of Section 51A-4.701, "Zoning Amendments," once the designation report has been voted on by the landmark commission, the designation shall be treated as a city plan commission authorized public hearing and may not be appealed to city council if the city plan commission recommends denial. The notice of authorization in Section 51A-4.701 (a)(1) is not required.

(7) Historic designation. The city may not designate a property a historic district unless:

- (A) the owner of the property consents to the designation; or
- (B) the designation is approved by a three-fourths vote of:
 - (i) the landmark commission;
 - (ii) the city plan commission; and
 - (iii) the city council.

(C) The owner of the property may withdraw consent at any time during the designation process by filing a written notice with the director.

(D) If the property is owned by an organization that qualifies as a religious organization under Section 11.20 of the Texas Tax Code, the city may designate the property as a historic district only if the organization consents to the designation.

(8) Computation of time.

(A) Unless otherwise provided in this paragraph, computing any period of time prescribed in this subsection shall be in accordance with Section 1-5 of the Dallas City Code.

(B) If the last day of any period is a Saturday, Sunday, or official holiday observed by the city, the period is extended to include the next day that is not a Saturday, Sunday, or official holiday observed by the city.

(C) Except as otherwise specified, time periods will be calculated based on calendar days.

(9) 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 (o). In reviewing the landmark commission decision the city plan commission shall use the substantial evidence standard in Subsection (o). 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 appropriate-ness 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 (o). In reviewing the landmark commission decision the city plan commission shall use the substantial evidence standard in Subsection (o). 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 non-contributing 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 non-contributing 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 (o). In reviewing the landmark commission decision the city plan commission shall use the substantial evidence standard in Subsection (o). 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 or the city attorney for appropriate enforcement action to prevent demolition by neglect.

(I) 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, 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

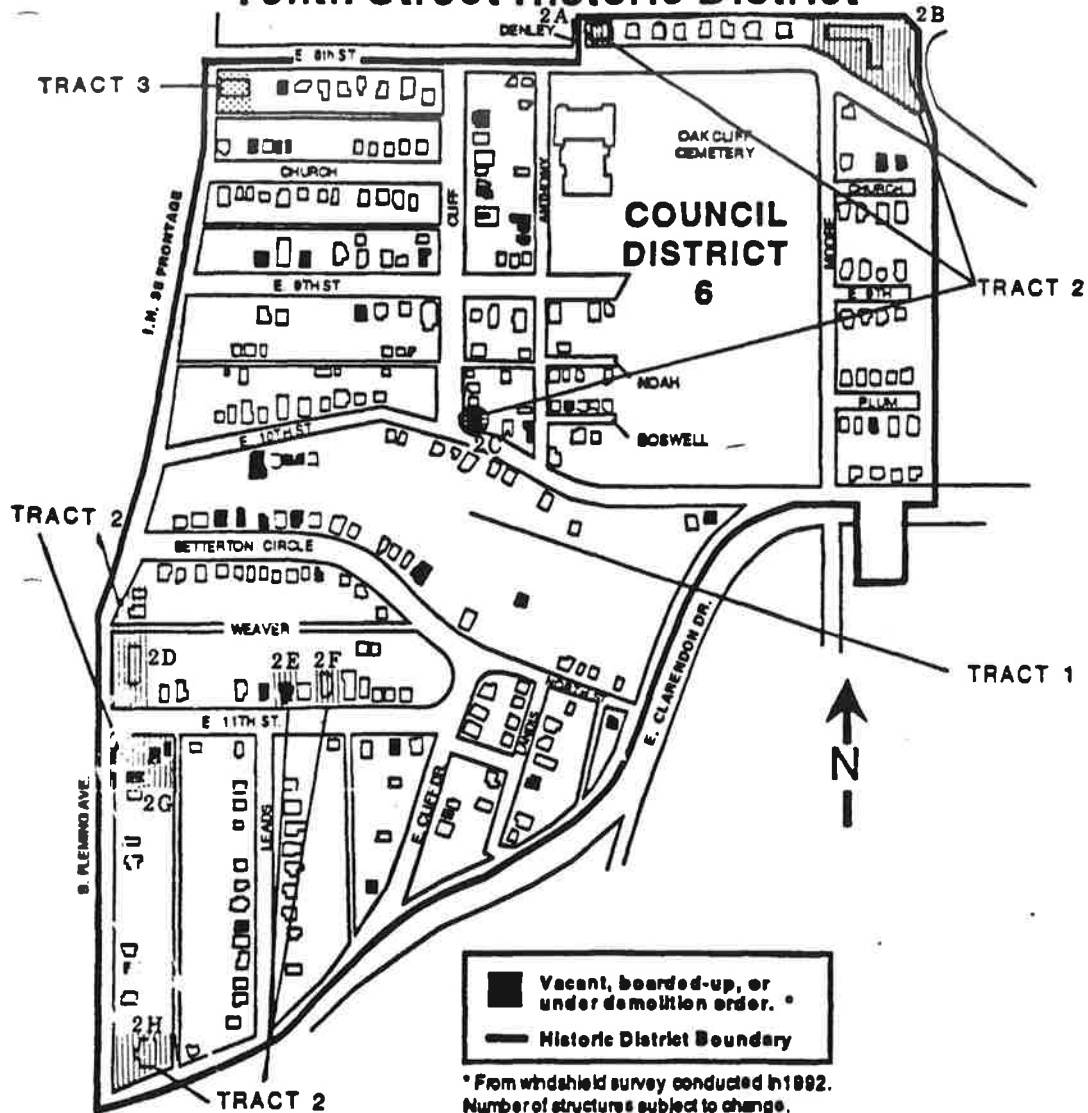
(C) was not reasonably supported by substantial evidence considering the evidence in the record.

(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; 28073; 28553; 29478, eff. 10/1/14; [31433](#))

EXHIBIT B

933758

Tenth Street Historic District



Census Tract - 41
City Services Analysis Area
Near Southwest

* From windshield survey conducted in 1992.
Number of structures subject to change.

Prepared By The Department Of Planning And Development
City Of Dallas, Texas
May 1993

**PLANNED DEVELOPMENT DISTRICT FOR
THE TENTH STREET NEIGHBORHOOD**

(a) **Definitions.** Unless otherwise stated, the definitions contained in CHAPTER 51A, "PART II OF THE DALLAS DEVELOPMENT CODE," of the Dallas City Code, as amended, apply to this ordinance. In the event of a conflict, this section controls. In this ordinance:

(1) **ADDITION** means an enclosed living space added to a main structure.

(2) **APPLICANT** means an owner of property within this district, or an owner's duly authorized agent.

(3) **CERTIFICATE OF APPROPRIATENESS** means a certificate issued by the city in accordance with Section 51A-4.501 of the Dallas City Code, as amended, to authorize the alteration of the physical character of real property in the district or any portion of the exterior of a structure in the district, or the placement, construction, maintenance, expansion, or removal of any structure in or from the district.

(4) **COLUMN** means the entire column including the base and capital, if any.

(5) **COMMISSION** means the Landmark Commission of the City of Dallas.

(6) **CORNERSIDE FACADE** means a building facade facing a side street.

(7) **CORNERSIDE YARD** means a side yard that abuts a street.

(8) **DEPARTMENT OF THE INTERIOR STANDARDS** means the set of Historic Preservation standards established by the U. S. Department of the Interior National Park Service.

(9) **DIRECTOR** means the director of the Department of Planning and Development or that person's representative.

(10) **DISTRICT** means the Tenth Street Historic Overlay District. This district contains the property described in Section 1 of this ordinance.

(11) **ERECT** means to build, attach, hang, place, suspend, fasten, fix, maintain, paint, draw or otherwise construct.

(12) **FENCE** means a structure or hedgerow that provides a physical barrier, including a fence gate.

(13) NEW CONSTRUCTION means new structures built or moved on the property.

(14) MAIN BUILDING means a building on a lot intended for occupancy by the main use.

(15) PRESERVATION CRITERIA means the standards considered by the director and commission in determining whether a certificate of appropriateness should be granted or denied.

(16) PROTECTED FACADE means a facade that must maintain its original appearance, as near as practical.

(20) REAL ESTATE SIGN means a sign that advertises the sale or lease of an interest in real property.

(b) Interpretations.

(1) Unless otherwise stated, all references to code articles, divisions, or sections in this ordinance refer to articles, divisions, or sections in CHAPTER 51A, "PART II OF THE DALLAS DEVELOPMENT CODE," of the Dallas City Code, as amended.

(2) All attached exhibits are part of this ordinance.

(3) Section 51A-2.101, "Interpretations," applies to this ordinance.

(4) The following rules apply in interpreting the use regulations of this ordinance:

(A) The absence of a symbol appearing after a listed use means that the use is permitted by right.

(B) The symbol [L] appearing after a listed use means that the use is permitted by right as a limited use only.

(C) The symbol [SUP] appearing after a listed use means that the use is permitted by specific use permit only.

(D) The symbol [DIR] appearing after a listed use means that a site plan must be submitted and approved in accordance with the requirements of Section 51A-4.803. ("DIR" means "development impact review." For more information regarding development impact review generally, see Division 51A-4.800).

(E) The symbol [RAR] appearing after a listed use means that, if the use has a residential adjacency as defined in Section 51A-4.803, a site plan must be submitted and approved in accordance with the requirements of that section. ("RAR" means "residential adjacency review." For more information regarding residential adjacency review generally, see Division 51A-4.800).

(5) For purposes of determining the applicability of regulations in this ordinance and in Chapter 51A triggered by adjacency or proximity to another zoning district, and for purposes of interpreting the DIR and RAR requirements of Division 51A-4.800, this district is considered to be a residential zoning district.

(6) Creation of separate tracts.

This district is divided into three (3) tracts. A map showing the boundaries of the three (3) tracts is attached as Exhibit A.

(c) Main uses permitted for Tract 1.

- Duplex.
- Single family.
- Cemetery or mausoleum.
- Child-care facility (SUP).
- Church.
- Foster home (SUP).
- Public or private school (SUP).

(d) Main uses permitted for Tract 2.

(1) Commercial and business services uses.

- Building repair and maintenance shop.

(2) Institutional and community service uses.

- Cemetery or mausoleum.
- Child-care facility (SUP).
- Church.
- Community service center (SUP).
- Foster home (SUP).
- Library, art gallery, or museum (SUP).
- Public or private school (SUP).

(3) Office uses.

- Financial institution without drive-in window.
- Office (to include medical office).

(4) Recreation uses.

- Public park, playground, or golf course.

(5) Residential uses.

- Multifamily (above retail buildings only).
- Duplex.
- Single family.

(6) Retail and personal service uses.

- Custom print shop.
- Dry cleaning or laundry store.
- Furniture store.
- General merchandise or food store 3,500 square feet or less.
- Hardware store 3,500 square feet or less.
- Household equipment and appliance repair.
- Nursery, garden shop, or plant sales.
- Personal service uses.
- Restaurant without drive-in or drive-through service.
- Stationary shop/book store
- Temporary retail use.
- Theater.

(7) Utility and public service uses.

- Police or fire station.
- Post office.

(e) Main uses permitted in Tract 3

- All uses in Tract 2
- Motor vehicle fueling station.

(f) Accessory uses. As a general rule, an accessory use is permitted in any district in which the main use is permitted. Some specific types of accessory uses, however, due to their unique nature, are subject to additional regulations contained in Section 51A-4.217. For more information regarding accessory uses, consult Section 51A-4.217.

(g) Yard, lot, and space regulations. (Note: The yard, lot, and space regulations in this subsection must be read together with the yard, lot, and space regulations contained in Division 51A-4.400. In the event of a conflict between this subsection and Division 51A-4.400, this subsection controls).

(1) Front yard setback:

(a) A main building on an interior lot must have a front yard setback that is within five percent of the average setback of other main buildings in the same blockface. Documentation establishing average setbacks to be submitted by applicant.

(b) A main building on a corner lot must have front yard setback that is within five percent of the average setback of other main buildings in the same blockface. Documentation establishing average setbacks to be submitted by applicant.

(2) Rear and side yard:

(a) Rear and side yard setbacks must be within five percent of the average setback of other main buildings in the same blockface. Documentation establishing average setbacks to be submitted by applicant.

(b) Lots that are thirty feet or less in width have no side yard setback.

(c) Front, rear, side, and corner side yards are illustrated in attached Exhibit B.

(d) Construction or restoration of original buildings is encouraged to preserve the historic nature of the neighborhood.

(3) The board of adjustment may grant a special exception to the setback requirement(s) if the board finds after the public hearing:

- A special exception will not adversely affect the neighboring properties, and
- The improvement is within the general building patterns of the neighborhood.

In granting the special exception to the setback requirement(s), the board may impose any other reasonable condition that would further the purpose and intent of the setback restriction(s)/requirement(s).

(4) Height:

(a) The height of new construction, accessory buildings, or vertical or horizontal additions to existing non-protected structures or facades must not exceed thirty-six feet.

(4) Width requirements of structures:

(a) The width of a new single family residence shall not exceed 42 feet and:

(b) be no more than 20 percent greater than the average width of single family dwellings on the blockface.

(5) Environmental performance standards. See Article VI.

(a) Signs. Signs must comply with the provisions for non-business zoning districts contained in Article VII.

(b) Additional provisions. Development and use of the Property must comply with all applicable federal and state laws and regulations, and with all applicable ordinances, rules, and regulations of the City of Dallas.

PRESERVATION CRITERIA

Except as otherwise provided in these Preservation Criteria, all public and private right-of-way improvements, renovation, repairs, demolition, maintenance, site work and new construction in this district shall conform to the following guidelines and a certificate of appropriateness must be obtained for such work prior to its commencement.

Except as otherwise provided in these Preservation Criteria, any such alterations to the property must conform to the regulations contained in CHAPTER 51A, "PART II OF THE DALLAS DEVELOPMENT CODE" of the Dallas City Code, as amended. In the event of a conflict, these Preservation Criteria control.

Unless otherwise specified, preservation and restoration materials and methods used shall conform to those defined in the Preservation Briefs published by the United States Department of the Interior, copies of which are available at the Dallas Public Library.

SITE AND SITE ELEMENTS

- (a) New construction is prohibited in all front yards within the district.
- (b) The existing original and historic structures must be retained and protected.
- (c) New sidewalks, walkways, steps, and driveways must be of brush finish concrete, brick, stone, or other material if deemed appropriate. No exposed aggregate, artificial grass, carpet, asphalt or artificially-colored monolithic concrete paving is permitted.
- (d) No circular drives are allowed in front yards.
- (e) Exterior lighting must be appropriate to and enhance the structure.
- (f) Landscape plant material must be appropriate and compatible, must enhance the structure and surroundings, and must not obscure significant views of the main building or from the main building. It is recommended that landscape modifications reflect the original historic landscaping design when appropriate.

- (g) After the effective date of this ordinance, any new mechanical equipment must be erected in side or rear yards and must be screened from the street.
- (h) Existing mature trees must be protected. Unhealthy or damaged trees may be removed if deemed appropriate.
- (i) Fences in the rear yard and rear 50% of the side yard cannot exceed 9 feet in height from grade or top of retaining wall.
- (j) Fences that are permitted in the front yard shall have a maximum height of three feet six inches. These fences must be appropriate to the district. Chain link fences are not allowed in the front yard. Fence locations can be found in Appendix C.
- (k) Fences above three feet six inches in the side yards must be located a minimum of 10 feet back from the front facade of the main building. Fences with a maximum height of three feet six inches can be located anywhere in the side yard and may connect to front yard fence.
- (l) Fences in cornerside yards must not be located directly in front of the cornerside facade except that the commission may allow a fence directly in front of all or any portion of the rear 50 percent of the cornerside facade if:
 - 1. more screening is necessary to insure privacy due to unusually high pedestrian or vehicular traffic; and
 - 2. the fence is less than four feet in height and is compatible with the architectural character of the home.
- (m) Fences in side, rear or cornerside yards must be constructed of one or more of the following materials: wood, brick, stone, iron, a combination of those materials, or other materials if deemed appropriate.
- (n) Tops of fences shall be horizontal, stepped or parallel to grade per Exhibit D.

STRUCTURE

Facades

- (a) The front and side facades are protected facades.
- (b) Reconstruction, renovation or repair of the opaque elements of the protected facades must employ materials similar to the original materials in texture, color, pattern, grain and module size as much as practical.

- (c) The existing solid-to-void ratios of non-protected facades must be maintained as much as practical. All additions and alterations must be architecturally sensitive and appropriate to the overall design of the existing structure.
- (d) Brick must match in color, texture, module size, bond pattern and mortar color. Brick surfaces not previously painted must not be painted unless the applicant establishes that
 - 1. the color and texture of replacement brick cannot be matched with that of the existing brick surface;
 - 2. the brick is not original or compatible with the style and period of the main building and the district; or
 - 3. Painting is the only method that the brick may be repaired or restored.
- (e) Stone, cast stone, and concrete elements must be renovated or repaired only with materials similar in size, grain, texture, and color to the original materials.
- (f) Wood siding, trim, and detailing shall be carefully restored wherever practical. Historic materials should be repaired; they should be replaced only when necessary. Badly deteriorated paint should be removed in accordance with the Department of Interior standards prior to refinishing. All exposed wood must be painted, stained, or otherwise protected. No resurfacing with vinyl or aluminum siding or stucco is permitted on main structures. Imitation materials are allowed on accessory structure only if they are keeping with the style and materials on the main structure.
- (g) COLOR: All colors must comply with the Acceptable Color Range Standards contained in Exhibit E. Fluorescent and metallic colors are not permitted on the exterior of any structure in this district.

Dominant and trim colors. All structures must have a dominant or body color and no more than three trim colors, including any accent colors. Proper location of dominant trim, and accent colors is shown in Exhibit F. The colors of a structure must be complementary of each other and the overall character of this district. Complimenting color schemes are encouraged through the blockface.
- (h) Exposing and restoring original historic finish materials is encouraged.
- (i) Exterior cleaning must be accomplished in accordance with Department of Interior standards. No sandblasting or other mechanical abrasive cleaning processes are permitted.

Fenestration and Openings

- (a) Original doors and windows and their openings must remain intact and be preserved. Where replacement of an original door or window is necessary due to damage or structural deterioration, replacement doors and windows must express mullion size, light configuration, and material to match the original doors and windows. Replacement of windows and doors which have been altered and no longer match the historic appearance is strongly recommended.

Exterior storm windows and doors are permitted if they are sensitive additions and match the existing windows and doors in frame width and portion, glazing material, and color. Painted or factory finished aluminum storm doors, storm windows or screens are permitted. Mill finished aluminum is not permitted.

- (b) New door and window openings on the front and corner facade are permitted only in locations where there is evidence that original openings have been infilled with other material.
- (c) Decorative ironwork or burglar bars are permitted only on rear facades. Interior mounted burglar bars are permitted on protected facades.
- (d) Glass and glazing shall match original materials as much as practical. Tinted, reflective glazing or reflective film is not permitted.
- (e) Materials placed on or behind window glazing must be appropriate to the district.
- (f) The Department of the Interior standards should be referred to for acceptable techniques to improve the energy efficiency of historic fenestrations.

Roofs

- (a) The slope, massing, configuration and materials of the roof must be preserved and maintained. Original gables, dormers, and porch & roofs must be preserved. Existing parapets, cornices and coping eaves, roof trim and dormers must be retained and when repaired, should be done so with material matching in size, finish, module and color.
- (b) The following roofing materials are allowed: wood shingles, composition shingles, or terra-cotta tiles and other materials if deemed appropriate.
- (c) Solar panels, skylights, and mechanical equipment must be set back or screened so that it is not visible to a person standing at ground level on the opposite side of any adjacent right-of-way.

Porches and balconies

- (a) Existing original porches and balconies on protected facades must be retained and preserved; no porches may be enclosed on protected facades.
- (b) All original columns, railings, and other trim and detailing that are part of the porch or balcony configuration must be preserved.
- (c) It is encouraged that existing enclosed porches on protected facades be restored to their original appearance.
- (d) Front porch floor finishes shall be of concrete, wood or other materials if deemed appropriate. Porch floors may not be covered with carpet. Wood floors must be painted or stained. Concrete, brick or stone floors may not be painted. A clear sealant is acceptable.

NEW CONSTRUCTION AND ADDITIONS

- (a) The form, materials, general exterior appearance, color and details of any new construction of accessory building or vertical extension to existing structures must be compatible with the existing historic structure.
- (b) New construction, additions to historic structures, accessory buildings, porches, and balconies must be of appropriate massing, roof form, shape, materials, detailing and color and have fenestration patterns and solids-to-voids ratios that are typical of the historic structure.
- (c) Vinyl and aluminum, or other imitation materials are not acceptable cladding materials for the construction of a new main structure in this district or addition to existing historic structure in this district.
- (d) Chimneys visible from the public right of way must be clad in brick, or stucco. Imitation brick will be reviewed through the certificate of appropriateness process.
- (e) New construction and connections between new and existing construction must be designed so that they are clearly discernible from the existing historic structures as suggested by the Secretary of the Interior in Preservation Brief No. 14. A clear definition of the transition between new and existing construction shall be established and maintained.
- (f) Historic details at parapets and coping must be preserved and maintained where abutting new construction.

ACCESSORY BUILDINGS

- (a) Are only permitted in the rear yard;
- (b) Must be compatible with the scale, shape, roof form, materials, detailing, and color of the main building;
- (c) Must be at least eight feet from the main building; and
- (d) May have garage doors located at the established rear yard setback from the alley if electric garage door openers are installed.

SIGNS

- (a) Temporary political campaign signs (as defined in Chapter 15A of the Dallas City Code, as amended) and real estate signs may be erected.
- (b) Street signs, protective signs, movement control signs, and historical markers may be erected. A certificate of appropriateness is required to erect one of these signs to ensure that the sign is sensitive and compatible with the appearance of the structure.
- (c) All signs must conform with all applicable provisions of the Dallas City Code, as amended and be compatible with the architectural qualities of the historic structure.

REVIEW PROCEDURES FOR CERTIFICATES OF APPROPRIATENESS

- (a) The review procedure outlined in Section 51A-4.501 of the Dallas City Code, as amended, applies to this district except that a certificate of appropriateness is not required to erect temporary political campaign signs (as defined in Chapter 15A of the Dallas City Code, as amended) or real estate signs.
- (b) Certificate of appropriateness denied by the Landmark Commission, may be appealed to the city council in accordance with Section 51A-4.501 of the Dallas Development Code, as amended.

EXHIBIT B

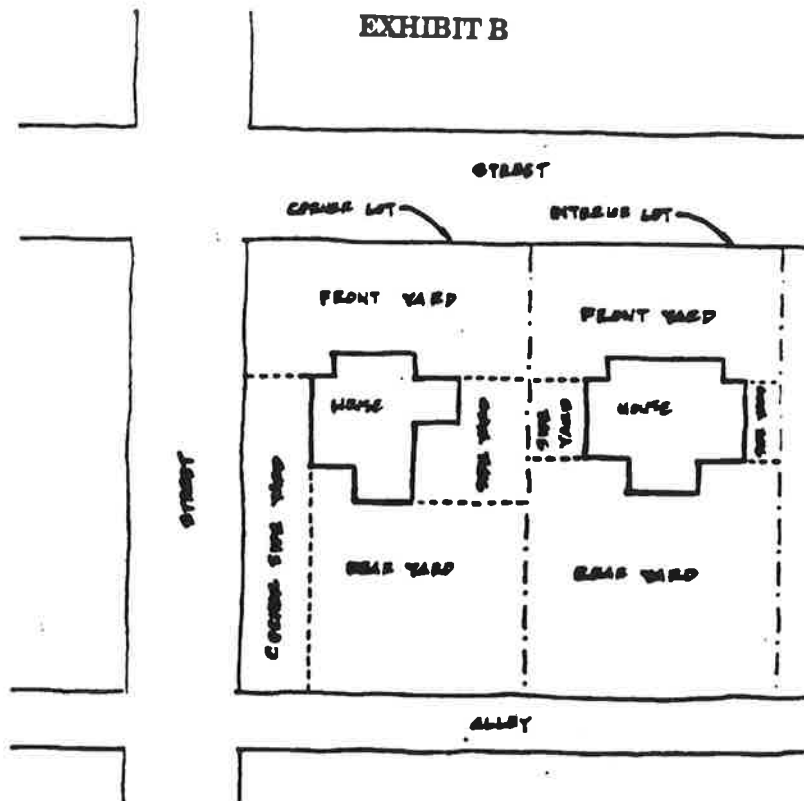


EXHIBIT C

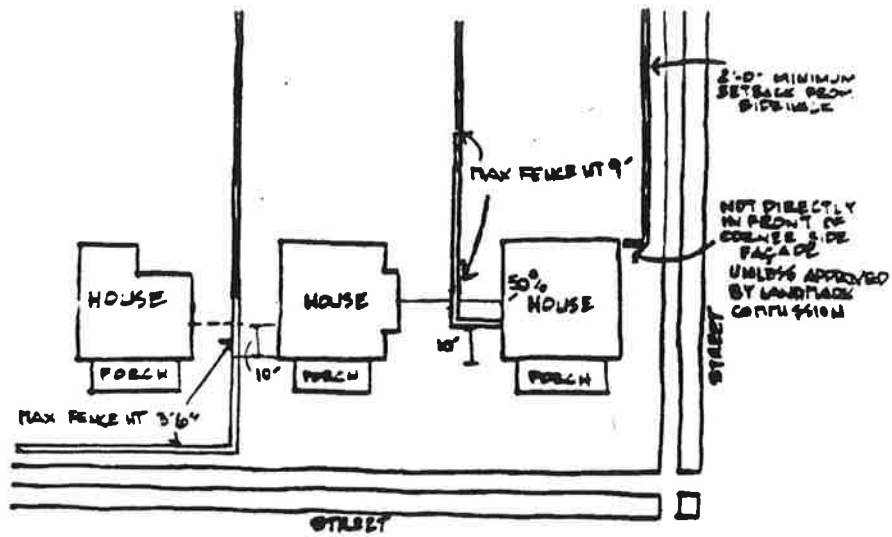


EXHIBIT D



EXHIBIT E

Color and color scheme shall be evaluated according to the Munsell Book of Color Systems (Neighboring Hues Edition -1973).

The Munsell color ranges or their equivalents in value (V) and Chroma (C) for primary or body trim or accent colors:

Body: 9 through 6V/1 through 4C

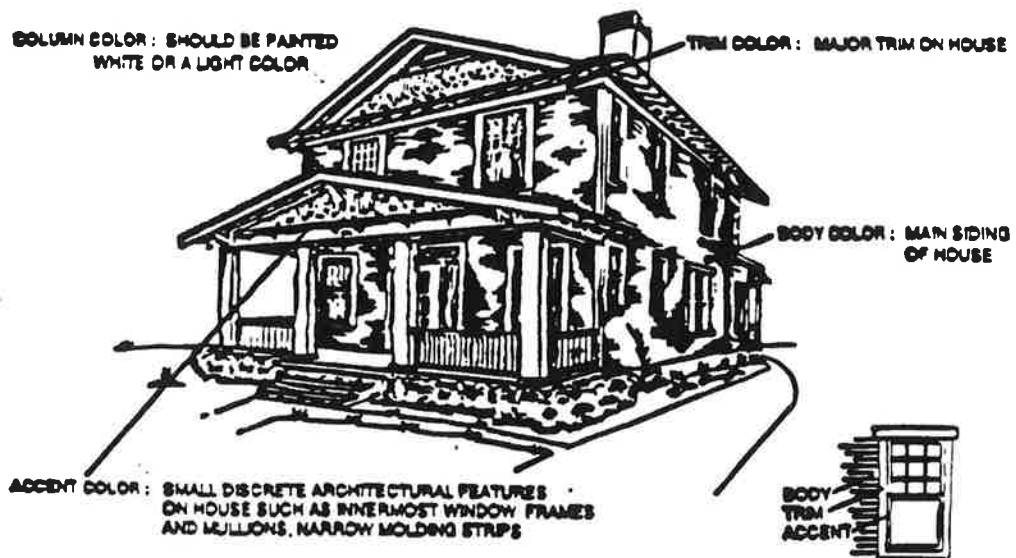
Trim: 9 through 3V/1 through 6C

Hue symbols 2.5-10 for: R (Red) G (Green) B (Blue) Y (Yellow) YR (Yellow-Red) GY (Green-Yellow)

Neutral gray and absolute white may also be permitted. Neutral gray must be equivalent in value to those ranges specified above. Any colors or color schemes that are not within the specified allowable Munsell ranges must be reviewed by the Landmark Commission and approved or denied based on their appropriateness to and compatibility with the structure, blockface, and this district. The Commission shall not approve any colors or color schemes (or their equivalents) that are specifically excluded by this ordinance.

EXHIBIT F

COLOR PLACEMENT



SECTION 7

Correspondence

- Notice of January 9, 2023 Landmark Hearing
- Notice of application denied without prejudice
- Request to Appeal from applicant
- Appeal Procedures

Invitation to Landmark Commission Meeting – Monday, January 9th, 2023

Rhonda Dunn <rhonda.dunn@dallas.gov>

Thu 12/22/2022 6:47 PM

Bcc: Annemarie Bristow <AnneMarieBristow@gmail.com>; Pop Nora <pop@thai-cottage.com>; Evan Stack <Evan.Stack@aspencapital.com>; good evening i would like to ge some information on how to submit residential permit application please <susancardenas20@gmail.com>; permitsbarragan@yahoo.com <permitsbarragan@yahoo.com>; Manny Fernandez <manny@honeybeehomebuyers.com>; Marcela Ruiz <marcela.i.ruiz@gmail.com>; Henry Marshall <newatmos.2020@gmail.com>; Marco Hagens <marco.hagens@lemonade.com>; jcg98@msn.com <jcg98@msn.com>; Randy Shear <rand.shear@gmail.com>

📎 5 attachments (5 MB)

DallasCityCode_S1A-4,400_Lot Setbacks.pdf; PeaksSuburbanOrdinance.pdf; TenthStreetOrdinance.pdf; WheatleyOrdinance.pdf; COD_Preservatio Code + HP Tax Incentives Info.pdf;

Dear Applicants,

This email provides details about the upcoming Landmark Commission (LMC) meeting on **Monday, January 9th, 2023**. For those of you who performed work, prior to a Landmark Commission review; or for those of you who are appealing, a prior Landmark Commission decision: you are strongly encouraged to attend. This is your opportunity to speak and to share your design decisions with the Landmark Commission.

****Note:** If you were asked by the Task Force or Staff to provide updated drawings, plans or specifications, please do so by **5 P.M. today!**

MONDAY, JANUARY 9th, 2023

10:00 AM – Briefing (Staff Presentations to the Landmark Commission.)

1:00 PM – Public Hearing (Your opportunity to speak. Three minute limit!)

The meeting will be held virtually, though City Council Chambers on the 6th 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.

The **January 9th** meeting agenda should be posted by Friday afternoon, on **January 6th**. You may access the agenda once it is posted on the City Secretary's Office website here:

<https://dallascityhall.com/government/citysecretary/Pages/Public-Meetings.aspx>

The **10:00 AM** Briefing meeting is optional for you to attend. Be aware that the public can listen in but may not participate in the Briefing discussion. The public hearing at **1:00 PM** which you should plan to attend is where the Commission will make their decision on your application or provide comments, if your application is a Courtesy Review. Discussion with applicants is reserved for the 1:00 PM public hearing.

Below you will find the web link and teleconference number for the January 9th Landmark Commission meeting. **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, January 9th by 9:00 AM, so be sure that you and/or anyone who plans to speak on your behalf has emailed Elaine and signed up on time. There is not a way to sign 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.

Videoconference

To join via computer:

[https://dallascityhall.webex.com/dallascityhall/onstage/g.php?](https://dallascityhall.webex.com/dallascityhall/onstage/g.php?MTID=e23ed60a548ccf544ae29bb7560194dad)

[MTID=e23ed60a548ccf544ae29bb7560194dad](https://dallascityhall.webex.com/dallascityhall/onstage/g.php?MTID=e23ed60a548ccf544ae29bb7560194dad)

Event number: 2493 390 5578

Event password: JAN23LMC

To join via phone only:

Call-in (audio only): +1-408-418-9388

Access code: 2493 390 5578

Per state law, you may not speak before the Landmark Commission using audio only.

Speaker Sign-Up:

Email: Elaine Hill at phyllis.hill@dallas.gov

Deadline: **Monday, January 9th at 9:00 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.

FYI:

Historic District Preservation Criteria, City of Dallas Setback Requirements and the City of Dallas Historic District Overlay Ordinance are attached.

Please let me know if you have any questions.

Kind Regards,



Rhonda Dunn, Ph.D.

Senior Planner

City of Dallas | www.dallascityhall.com

Office of Historic Preservation

1500 Marilla St, Room 5DN

Dallas, TX 75201

rhonda.dunn@dallas.gov

(214) 671-5173



*****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.*****

January 18, 2023

RANDY SHEAR
7027 GASTON PARKWAY,
DALLAS, TX 75214

**RE: CD223-003(RD)
REVIEW OF YOUR CERTIFICATE OF DEMOLITION APPLICATION 338 S
FLEMING AVE**

Dear RANDY SHEAR:

Enclosed is a copy of the Certificate of Demolition (CD) application that you submitted for review by the Landmark Commission on January 9, 2023.

Please see the enclosed Certificate of Demolition 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 February 8, 2023. For information regarding the appeals process, please email Elaine Hill at 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) 671-5173 or email at rhonda.dunn@dallas.gov.



Rhonda Dunn
Senior Planner

Certificate of Demolition

January 9, 2023

Standard	January 9, 2023	PLANNER:	Rhonda Dunn
FILE NUMBER:	CD223-003(RD)	DATE FILED:	December 9, 2022
LOCATION:	338 S FLEMING AVE	DISTRICT:	Tenth Street Neighborhood Historic Distr
COUNCIL DISTRICT:	4	MAPSCO:	55-E
ZONING:	PD-388	CENSUS TRACT:	0041.00

APPLICANT: RANDY SHEAR**REPRESENTATIVE:****OWNER:** BRISTOW, ANNEMARIE

The Landmark Commission decision is: Denied without Prejudice

Information regarding requests:

1) Demolish primary residential structure.

Deny without Prejudice

Conditions: That the request for a Certificate of Demolition to demolish primary residential structure be denied without prejudice. The proposed work is inconsistent with the standards in City Code Section 51A-4.501(h)(4)(C).



Landmark Commission Chair

January 9, 2023

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 February 8, 2023

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.: CD223-003(RD)

Property Address: 338 S FLEMING AVE

Date of Landmark Commission Action: January 9, 2023

Applicant's Name: _____

Applicant's Mailing Address: _____

City: _____ State: _____ Zip: _____

Applicant's Phone Number: _____ Fax: _____

Applicant's Email: _____

IF DIFFERENT FROM ABOVE, PROVIDE PROPERTY OWNER'S INFORMATION.

Owner's Name: _____

Owner's Mailing Address: _____

City: _____ State: _____ Zip: _____

Owner's Phone Number: _____ Fax: _____

Owner's Email: _____

Applicant's Signature

Date

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

<u>Type of Application</u>	<u>Application Fee</u>	<u>Area of Notification for Hearing</u>
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	\$200.00	
Request for a sidewalk width waiver under Section 51A-4 (2)(a)(3)(c), (v)	\$300.00	
Request for an administrative parking reduction under Section 51A-4(3)(b)	\$75.00 and \$25 per space over 10 spaces	

Note: The director shall also send notification of minor plan amendments to the city plan commission members, unknown neighborhood associations covering the property, and persons on the early notification list at least 10 days prior to the public hearing.

(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.

APPLICATION FOR APPEAL OF LANDMARK COMMISSION DECISION

The Deadline to Appeal this application is February 8, 2023

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.: CD223-003(RD)

Property Address: 338 S FLEMING AVE

Date of Landmark Commission Action: January 9, 2023

Applicant's Name: ANNE MARIE BRISTOW

Applicant's Mailing Address: 802 HAINES AVE

City: DALLAS State: TX Zip: 75208

Applicant's Phone Number: 1-(972) 400-2969 Fax:

Applicant's Email: annemariebristow@gmail.com

IF DIFFERENT FROM ABOVE, PROVIDE PROPERTY OWNER'S INFORMATION.

Owner's Name:

Owner's Mailing Address:

City: State: Zip:

Owner's Phone Number: Fax:

Owner's Email:

Applicant's Signature

Date

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

#10863
RECEIVED

JAN 30 2023

BY: 42-140



CITY OF DALLAS

March 8, 2023

****CORRECTION****

Via Certified Mail: 7014 2120 0003 4355 9578

Annemarie Bristow
802 Haines Avenue
Dallas, TX 75208

RE: Appeal of Certificate of Demolition:
Hearing – January 9, 2023
338 S Fleming Ave., Case No. CD223-003(RD)

Dear Annemarie Bristow:

Good afternoon, Annemarie Bristow,

Due to an error with the original transcription of the minutes, a correction was required to show the full transcript. See the attached corrected record for your review.

Please accept my sincerest apologies for any inconveniences this may have caused and let me know if you have any questions.

*Sincerely,
Elaine Hill*

We have received your correspondence appealing the Landmark Commission's denial without prejudice of a Certificate of Appropriateness application for 338 S. Fleming Avenue. Please be advised that the City Plan Commission hearing for **this appeal is scheduled for Thursday, March 23, 2023.** The City Plan Commission meeting will be held in person and by video conference. Individuals who wish to speak, remotely via WebEx, in accordance with the City Plan Commission Rules of Procedure, should contact the Current Planning division at 214-670-4209 by the close of business Tuesday prior to the scheduled CPC Meeting date. Individuals can also register online at: <https://dallascityhall.com/government/meetings/Pages/city-plan-commission.aspx>.

Public Affairs and Outreach will also stream the public hearing on Spectrum Cable Channel 96 or Channel 99 and 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 Appropriateness is a quasi-judicial action. No communication with City Plan Commission members may occur outside the hearing of **March 23, 2023.**

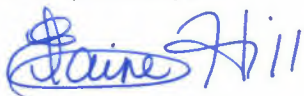
The Dallas Development Code, Section 51A-4.501(g)(6)(E) provides the procedures applicable to a Certificate of Appropriateness appeal. For your convenience, I have enclosed a copy of the ordinance containing the applicable section and a copy of the Appeal Procedures.

Annemarie Bristow
338 S. Fleming Avenue
Dallas, TX 75208

Included with this letter is the Landmark Commission record and other related paperwork. The Landmark Commission record includes all documents related to your specific case including a transcript of the January 2023 Landmark Commission hearing. As I mentioned in the email on February 9, 2023, should you wish to provide the City Plan Commission a brief on the matter, submit a copy to me at Dallas City Hall, 1500 Marilla Street, Room 5CN, Dallas, TX 75201 or to phyllis.hill@dallas.gov by **5:00 p.m. Wednesday, March 8, 2023.** I will then distribute a copy of your brief to the City Plan Commission. I will also send you a copy of the brief by the Assistant City Attorney's office.

You may contact me @ 214-670-4206 or email me at 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
Office of Historic Preservation

cc: Julia Ryan, Interim Director, Office of Historic Preservation
Stacy Rodriguez, Executive Assistant City Attorney
Daniel Moore, Assistant City Attorney
Theresa Pham, Assistant City Attorney
Dr. Rhonda Dunn, Senior Planner,
Office of Historic Preservation