

# **Notice of Appeal**

Filed by  
Angela Hygh

## NOTICE OF APPEAL

**Action Being Appealed:** Denial of the property owner's appeal of the determination of historic eligibility for 2601 S. College Avenue

**Date of Action:** 04/17/2024      **Decision Maker:** Historic Preservation Commission

FOR CITY CLERK'S  
USE ONLY:

DATE FILED: 4.30.2024

INITIALS: JAE

### Appellant/Appellant Representative (if more than one appellant):

**Name:** Angela Hygh

**Phone #:** (303) 223-1143

**Address:** 675 15th Street, Suite 2900, Denver, CO 80202

**Email:** ahygh@bhfs.com

### INSTRUCTIONS

For each allegation marked below, attach a separate summary of the facts contained in the record which support the allegation of no more than two pages, Times New Roman 12-point font. Please restate allegation at top of first page of each summary.

### GROUND(S) FOR APPEAL

The Decision Maker committed one (1) or more of the following errors (check all that apply):



Failure to properly interpret and apply relevant provisions of the City Code, the Land Use Code, and Charter. List relevant Code and/or Charter provision(s) here, by specific Section and subsection/subparagraph:

Municipal Code Section 14-22 - Standards for determining the eligibility of sites, structures, objects and districts for designation as landmarks or landmark districts.

Failure to conduct a fair hearing in that:



(a) The Board, Commission, or other Decision Maker exceeded its authority or jurisdiction as contained in the Code or Charter. [New evidence not allowed]



(b) The Board, Commission or other Decision Maker substantially ignored its previously established rules of procedure. [New evidence not allowed]



(c) The Board, Commission or other Decision Maker considered evidence relevant to its findings which was substantially false or grossly misleading. [New evidence allowed]



(d) The Board, Commission or other Decision Maker improperly failed to receive all relevant evidence offered by the appellant. [New evidence allowed]



(e) The Board, Commission or other Decision Maker was biased against the appellant by reason of a conflict of interest or other close business, personal or social relationship that interfered with the Decision Maker's independence of judgment. [New evidence allowed]

### NEW EVIDENCE

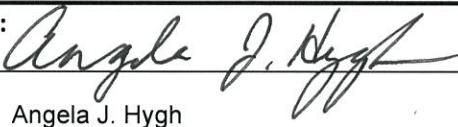
All new evidence the appellant wishes Council to consider at the hearing on the appeal must be submitted to the City Clerk within seven (7) calendar days after the deadline for filing a Notice of Appeal and must be clearly marked as new evidence. No new evidence will be received at the hearing in support of these allegations unless it is submitted to the City Clerk by the deadline (7 days after the deadline to file appeal) or offered in response to questions posed by Councilmembers at the hearing.

## APPELLANTS

*Parties-in-interest* have the right to file an appeal.

A party-in-interest is a person who, or organization which, has standing to appeal the final decision of a board, commission or other decision maker. Such standing to appeal is limited to the following:

- The applicant.
- Anyone who owns or occupies the property which was the subject of the decision made by the board, commission or other decision maker.
- Anyone who received the mailed notice of, or spoke at, the hearing of the board, commission or other decision maker.
- Anyone who provided written comments to the appropriate City staff for delivery to the board, commission or other decision maker prior to or at the hearing on the matter that is being appealed.
- A City Councilmember.

<b>Signature:</b> 	<b>Date:</b> 4/30/2024
<b>Name:</b> Angela J. Hygh	<b>Email:</b> ahygh@bhfs.com
<b>Address:</b> 675 15th Street, Suite 2900, Denver, CO 80202	<b>Phone #:</b> (303) 223-1143
<b>Describe how you qualify as a party-in-interest:</b> Appellant spoke at the hearing of the Commission and is counsel to the owners of the subject property.	

<b>Signature:</b>	<b>Date:</b>
<b>Name:</b>	<b>Email:</b>
<b>Address:</b>	<b>Phone #:</b>
<b>Describe how you qualify as a party-in-interest:</b>	

<b>Signature:</b>	<b>Date:</b>
<b>Name:</b>	<b>Email:</b>
<b>Address:</b>	<b>Phone #:</b>
<b>Describe how you qualify as a party-in-interest:</b>	

**ATTACH ADDITIONAL SIGNATURE SHEETS AS NECESSARY**

*Failure to properly interpret and apply relevant provisions of the City Code, the Land Use Code, and Charter – Municipal Code Sec. 14-22.*

At the Historic Preservation Commission (“**HPC**”) meeting on April 17, 2024, the HPC determined by a 4-2 vote that the automobile dealership located at 2601 S. College Avenue (the “**Property**”), Fort Collins (the “**City**”), CO, fulfilled the criteria for “significance” and “integrity” set forth in Section 14-22 of the Municipal Code (the “**Code**”) and was thus eligible for historic designation. This determination by the HPC was the result of an appeal by the property owner Dracol LLC (the “**Property Owner**”) of a determination by City staff that the Property was eligible for historic designation. However, the Property Owner agrees with the prior determination by the Fort Collins City Council (“**City Council**”) in 2018 that the Property does *not* meet the criteria for historic eligibility in Section 14-22 of the Code, and further asserts that in making its determination, the HPC failed to properly interpret and apply Section 14-22 of the Code to the facts and evidence contained in the record.

Pursuant to Section 14-22 of the Code, to be considered eligible for historic designation, a property must fulfill the criteria for “significance” and “integrity” set forth in Section 14-22 of the Code. As described in more detail in the Official Determination issued on April 17, 2024 (the “**Official Determination**”), the HPC determined that the Property met the criteria for significance of “events” and “design/construction” in subsections 14-22(a)(1) and (2) of the Code, respectively, and that the Property met the criteria for integrity of “location,” “design,” “setting,” “materials,” and “workmanship” set forth in subsections 14-22(b)(1), (2), (3), (4), and (5) of the Code, respectively.

With respect to significance, the HPC failed to properly apply the criteria to the evidence in the record, including the Cultural Resource Survey provided on behalf of the Property Owner (the “**Appellant Survey**”) and testimony at the hearing provided by Natalie Feinberg Lopez of Built Environment Evolution, a historic preservation expert approved by the City. Although the Cultural Resource Survey prepared by the City stated that the Property was significant for “events,” as a reflection of the post-war movement of City businesses, and specifically automobile dealerships, away from downtown, the evidence in the record shows that this Property did not individually contribute significantly to this facet of urban development, as urban expansion to suburbia was happening everywhere in the United States, and had been in progress for two decades by the time this dealership was built.<sup>1</sup> Therefore, the HPC erred in finding that the criterion of “events” was met.

Further, although the Cultural Resource Survey prepared by the City stated that the Property was significant for “design/construction” as a resource that embodies Modern Contemporary design, the evidence in the record shows that this Property does not represent the work of a master, nor high artistic value, nor a distinguishable entity, as required by the criteria, and in fact the design and details are “very common” and in “no way remarkable” for the period, as documented in the

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<sup>1</sup> As Commissioner Chris Conway mentioned during the HPC meeting, “Some of these trends are things that were going to happen to Fort Collins anyway. If you go to Loveland or Greeley or Longmont, you’ll see the same patterns. While that event did happen, I don’t see it as significant in the historical sense. . . . I think Fort Collins would look the same whether or not the Ghents had opened up their dealership [i.e., the Property] in 1966 in the south side of town.” 2:22:30

Appellant Survey. Therefore, the HPC erred by finding the “design/construction” criterion for significance was met.

With respect to integrity, the HPC again failed to properly apply the seven criteria for integrity to the evidence in the record. First, the HPC erred by finding that even five of the seven criteria for integrity were met. As demonstrated by the evidence in the record, including the Property Owner’s cover letter, the Appellant Survey, and the testimony of Ms. Feinberg Lopez, none of the seven criteria are met. However, even if such five criteria had been met, the HPC still erred in making a finding that the criteria for integrity *as a whole* were met. This is true even though the Code states that not all seven criteria need to be met “as long as the overall sense of past time and place is evident.” As documented in the Official Determination, the HPC found that the criteria for integrity of “feeling” (“a resource’s expression of the aesthetic or historic sense of a particular period of time”) and “association” (“the direct link between an important event or person and a historic or prehistoric resource”) were not met. If a resource fails to express the aesthetic or historic sense of its time period, and there is no apparent link between the historic resource and its significance, then it is not possible that the “overall sense of past time and place” could be “evident,” and therefore the failure of these criteria to be met should have led to a determination that the Property did not contain sufficient integrity for historic designation. Further, in coming to its conclusion, the HPC relied on a belief that the Property is one of only two remaining commercial buildings from the era in the area,<sup>2</sup> but the record demonstrates that in fact there are many more than two. The Appellant Survey provides examples of at least nine commercial buildings in addition to the Property that were constructed along College Avenue within 10 years of the Property, some of which are auto dealerships. Therefore, the HPC improperly applied the criteria to the facts in the record with respect to integrity.

Please note that in 2017, in connection with the proposed redevelopment of the Property, City staff determined that the Property was eligible for historic designation. The HPC upheld this determination on appeal, and the Property Owners appealed to City Council. City Council overturned the determination on April 3, 2018, finding that the Property and its improvements did not meet the criteria for eligibility for historic designation in the Code, and determining that the property was *not* eligible for designation. City Council’s determination recently expired on April 3, 2023. The record shows that since City Council’s determination on April 3, 2018, there have been no new discoveries about the historic significance of the site, and the criteria for eligibility in the Code have not changed to a degree sufficient to warrant a different finding.

If the determination of historic eligibility of the Property were to be upheld, then additional requirements and conditions to development in Code Section 3.4.7 would be triggered in connection with any redevelopment of the Property. Such requirements and conditions would be unduly burdensome on the Property Owners and would preclude redevelopment of the site in the manner envisioned in the Fort Collins City Plan and Midtown Plan. Furthermore, as mentioned in the testimony of Ms. Feinberg Lopez, a finding of historic eligibility for “marginal structures” like those on the Property undermines faith by the community in the historic designation process.

We respectfully request that City Council overturn the determination of the HPC and staff that the Property is eligible for historic designation and, if possible, request a hearing date of June 4, 2024.

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<sup>2</sup> See Hearing Video, Timestamp: 3:10:31.