



AGENDA ITEM SUMMARY

City Council

STAFF

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SUBJECT

1306 West Mountain Avenue Landmark Design Review Appeal.

EXECUTIVE SUMMARY

The purpose of this quasi-judicial item is to consider an appeal of the Historic Preservation Commission's (HPC) Decision on July 20, 2022, regarding proposed alterations to the City landmark at 1306 West Mountain Avenue, also known as the Jackson-Bailey House & Garage.

This appeal is regarding the final design review decision of the applicants' project by the HPC. The HPC is tasked by Municipal Code Chapter 14, Article IV, with assessing whether a proposed exterior project on a City Landmark meets the *Secretary of the Interior's Standards for Rehabilitation*, and to issue, with or without conditions, or to deny, a Certificate of Appropriateness. In the application that was the subject of the July 20, 2022, decision being appealed, the applicant proposed an addition onto the rear elevation of the main historic building along with related rehabilitation including the modification of windows along the north end of the west elevation. The HPC approved the addition but denied the modification of windows and the Appellant is appealing the denial of the windows both on fair hearing and interpretation and application grounds.

A previous application to make alterations to the same property was approved by the HPC on February 16, 2022, with the written decision issued on and dated February 17, 2022, and included demolition of a non-historic accessory structure, construction of a new garage building, and modification of basement windows for egress compliance under the *International Existing Building Code*. The previous application included an addition to the house that was denied but a modified addition was approved as part of the July 20, 2022, HPC decision.

A Notice of Appeal was filed on August 2, 2022, under the following grounds:

1. The HPC failed to properly interpret and apply relevant provisions of the City Code, the Land Use Code, and Charter, specifically City Code Sec. 14-53, the Secretary of the Interior's Standards for Rehabilitation (Standards 2 and 5), and the Secretary of the Interior's "Interpreting Standards" Bulletin #14 regarding Modifications to Windows on Secondary Elevations.
2. The HPC was biased against the appellant by reason of conflict of interest or other close business, personal or social relationship that interfered with the HPC's independence of judgement.

The HPC's sole consideration was whether the project proposed at 1306 West Mountain Avenue met the City's adopted standards for reviewing projects on historic buildings, the *Secretary of the Interior's Standards and Guidelines for the Treatment of Historic Properties*, specifically those for adaptive reuse, or *Rehabilitation*.

STAFF RECOMMENDATION

Not applicable.

BACKGROUND / DISCUSSION

SUMMARY OF HISTORIC PRESERVATION COMMISSION HEARING

Subject:

The subject of the July 20, 2022 HPC hearing was the evaluation of a proposal for an addition and window modification to the City Landmark known as the William & Violet Jackson/Robert Bailey Property at 1306 West Mountain Avenue. The property was designated as a City Landmark by Council on December 2, 2014 under Standard 3, Design/Construction as an outstanding example of a Craftsman Cottage in Fort Collins. Projects on properties that have been designated City Landmarks are subject to the review process and requirements of Municipal Code Chapter 14, [Article IV](#).

In this case, the project came to the attention of staff on January 12, 2021, when the applicant applied for demolition permits for both garages on the property, followed by an application for a building permit to construct an addition. Staff has provided an annotated review timeline for the project below to provide context on the HPC's July 20, 2022, decision:

- [January 12, 2021](#) – Demolition permit application received for both garages at the property.
- [January 19, 2021](#) – Building permit application received for rehab with a large-scale addition onto the historic residence.
- [January 22 & February 2, 2021](#) - staff contacted the applicant to let them know that the demolition of the historic 1942 garage, and the addition design, were not compatible with the character-defining features of the property based on the 2014 Landmark nomination. A virtual meeting was offered to discuss alternatives.
- [February 4, 2021](#) – Zoom meeting with applicant to discuss Standards, review process, and alternatives; no resolution; scheduled for March 2021 HPC meeting for a conceptual review.
- [February 25, 2021](#) – Zoom meeting held with applicant and contractor to re-discuss Standards and options to move ahead.
- [March 17, 2021](#) – HPC Conceptual Review - Item was continued from March 17, 2021, at applicant's request due to late hour on agenda. This included an offer to use the Design Assistance Program to help resolve project conflicts with the Standards. Seventeen (17) public comments in opposition to project received.
- [May 11, 2021](#) – In-person meeting with applicant and City staff to discuss options including offer of Design Assistance grant to help resolve project conflicts with the Standards; no resolution;
- [June 28, 2021](#) – Meeting with code officials, Preservation staff, and applicant to discuss project and options, including offer of Design Assistance grant to help resolve project conflicts with the Standards; no resolution.
- [October 27, 2021](#) – Process follow-up with applicants on revised plans and process
- [November 19, 2021](#) – HPC Conceptual Review (1st round); HPC generally found addition did not meet Standards, largely based on size, footprint, and degree of demolition of the historic house; 17 written comments received opposing project – 2 also appeared in person in opposition.

- January 22, 2022 – HPC Conceptual Review (2nd round); HPC found the proposal improved but still inconsistent with the Standards, mostly due to size and east bump-out; 32 written comments received (31 against and 1 in favor); 1 also attended to speak against the proposal in-person.
- February 16, 2022 – HPC Final Design Review; HPC approved non-historic garage demolition and basement window modifications. HPC denied addition. Motion passed 5-0 (1 recusal, 1 absent, 2 vacant); 55 written public comments received (54 opposed, 1 in favor); 10 individuals also appeared in person to express opposition. (The HPC written decision and minutes of the meeting are included in the appeal record)
- April 27, 2022 – In-person meeting with HPS staff and applicant at property to walk through plans. At this meeting, staff noted the new addition plans were compliant but that the northwest window treatment may be a cause for concern.
- May 18, 2022 – HPC Conceptual Design Review; HPC generally found addition met the Standards but treatment of northwest windows to be problematic; 1 public comment at meeting expressing concern on window treatment;
- May 20, 2022 – Staff correspondence to applicant recommending no changes to the addition and recommending modification to the northwest window treatment to retain the existing window opening;
- July 20, 2022 – HPC Final Design Review; HPC approved project with conditions (addition approved with no conditions; northwest window treatment denied); 1 public comment at meeting expressing concern on window treatment. Motion passed 4-2 (1 recusal, 2 vacant). The motion in question is as follows (from verbatim transcript):

The Historic Preservation Commission adopted the following motion on a 4-2 vote: that the Historic Preservation Commission approve all plans and specifications for the Jackson/Bailey property located at 1306 West Mountain Avenue, except the proposed changes to the northwest bedroom window, finding that all but the window proposal meet the *Secretary of the Interior's Standards for Rehabilitation*, and that the Commission deny approval of the proposed treatment of the windows on the northwest bedroom's west wall, which would inappropriately result in the removal of a historic window and the creation of two new window openings, which does not meet Secretary of Interior standards two or five, nor follow the guidance in standards bulletin number 14. (*Verbatim Transcript p. 15, starting at line 24*)

Staff would note that under this decision, and based on the HPC's decision and discussion, modification to the northwest windows could include the replacement of the window unit within the existing opening to allow for modern egress compliance, without demolishing any of the brick wall. This alternative was discussed in depth during the HPC's discussion period at both the conceptual review on May 18, 2022, and the final review on July 20, 2022.

City Code Requirements:

The City requires that most exterior projects on designated City Landmarks must be reviewed by either City staff or the Historic Preservation Commission and approved or denied based on their compliance with the *Standards for Rehabilitation* (Municipal Code 14, [Article IV](#)).

The Standards themselves provide a basis for decision-making, while the National Park Service's library of Guidelines help to interpret the Standards for specific situations, including the construction of additions onto historic houses, and the modification of historic window patterns on historic buildings. While the City retains some flexibility to interpret those Standards and Guidelines in a manner that is consistent with our local legal jurisdiction, environment, architectural history, and community priorities, the expectation of City Code is that the Standards will be met for a project to be approved. Historic Preservation staff or the Historic Preservation Commission are the decision-maker for exterior projects on designated City Landmarks.

Under Article IV, projects sent to the Historic Preservation Commission complete a two-step process for approval: first, a conceptual review with the HPC to gather feedback related to a project concept; and second, a final design review where a decision is made about the project. This allows the owner to gather more informal feedback at the conceptual review and affords them the ability to modify project concepts before going through the time and expense of formal construction drawings for a building permit. This can

be waived at the discretion of the property owner if they would like to proceed to final review immediately, although this is rarely recommended for building additions due to the care needed in design to ensure the addition meets the Standards. If a project receives final approval, the City can issue permits and the project can proceed.

The City does protect historic resources from non-compatible, unpermitted work under Secs. 14-6 and 14-10 of the Municipal Code.

Decision and Findings: To arrive at a decision for the project proposed at 1306 W. Mountain Avenue, the HPC considered the property's City Landmark nomination, which included the reasons why the property was designated (Standard 3, Design/Construction as an outstanding example of a Craftsman Cottage), as well as the material submitted by the applicant and the relevant guidelines related to the proposed work to assist in interpreting the *Standards for Rehabilitation*.

The HPC voted on July 20, 2022, on a vote of 4-2 to approve the proposed project, with the following motion (*Verbatim Transcript p. 15*, starting at line 24):

MOTION from verbatim transcript: The Historic Preservation Commission approve all plans and specifications for the Jackson/Bailey property located at 1306 West Mountain Avenue, except the proposed changes to the northwest bedroom window, finding that all but the window proposal meet the *Secretary of the Interior Standards for Rehabilitation*, and that the Commission deny approval of the proposed treatment of the windows on the northwest bedroom's west wall, which would inappropriately result in the removal of a historic window and the creation of two new window openings, which does not meet *Secretary of Interior Standards* two or five, nor follow the guidance in standards bulletin number 14.

The HPC found that the proposed addition met the Standards, with much of the discussion centering on the treatment of the west-facing windows on the historic building, which included removal and infill of an historic window, and the creation of two new windows. The HPC's discussion noted that for egress compliance, although not required in this case, a replacement window in the historic opening could be allowed, such as a casement with a faux meeting rail to replicate the historic window pattern.

Note: A verbatim transcript of the HPC's hearing, along with a link to the FCTV recording on this item, is part of the record provided to Council for this appeal.

APPEAL ALLEGATION

The Notice of Appeal alleges the following:

1. The HPC failed to "properly interpret and apply relevant provisions of the City Code, the Land Use Code, and Charter, specifically Municipal Code 14-53 pertaining to approval of projects on City Landmarks, and failed to properly interpret *Rehabilitation* Standards 2 and 5, and the guidelines in the National Park Service's *Interpreting the Standards* Bulletin Number 14 pertaining to the modification of windows on historic buildings.
2. The HPC was biased against the applicant by reason of a conflict of interest or other close business, personal or social relationship that interfered with the HPC's independence of judgement.

Despite the order in which arguments are made in the Notice of Appeal by the applicant, Council must consider argument #2 first as it deals with hearing fairness. If Council finds that an unfair hearing was held, it need not analyze the appellant's argument regarding interpretation or application of Section 14-22 of the City Code. Staff analysis will deal with the allegations in the order Council should consider them.

Allegation #2:

“Commission Member conflict of interest in a personal and social relationship that [sic - interfered?] with the Decision Maker's independence of judgement:

- Commission member Meg Dunn stated that she knew and was acquaintances of the former property owner Mr. Bob Baily [sic].
 - *Staff note: this disclosure was not made at the July 20 meeting, but rather at both the November 17, 2021 and January 19, 2022 conceptual review hearings.*
- Commission member Meg Dunn was also a member of the board on September 10th of 2014 when Mr. Baily [sic] applied to have the property designated and was unanimously approved by the Board to recommend to City Council to designate the property at 1306.
- Commission member Meg Dunn made statements in both the May 18th Design Review hearing as well as in the July 20th Final Design Review hearing "that if the new owners can not fit their furniture into a 1922 home maybe they should not have bought an old house and go buy something different". This is a bias statement and does not support the role of the commission to determine the facts of appropriateness.
- After working with staff and the commission for 18 months, 13 meetings along with 6 plan modifications, questions are asked if some commission members have created a bias because we have made so many changes to the plans.

Other Facts Alleged by Appellant:

- After working with staff on the latest design for the May 18th Conceptual Review, at the hearing a couple of commission members stated they still do not like the current plan, and we should come back to them with something different. This is just to continue and delay the process along with costing more money for everyone involved including the city.
- The comment was made in the May 18th hearing by Commissioner Meg Dunn that we could go up to 50% of the existing building size and square off the back, when in previous meetings we were clearly told the rule of thumb for expansions of historic properties is 33% of the existing building size is appropriate to add onto an existing home.
- It was also stated in the May 18th Design Review hearing that we could remove a 12-foot section of the north existing brick wall if needed for a better design. When in previous meetings were told clearly that the existing exterior north brick wall cannot be removed. Which is why we are proposing to retain the existing 12-feet of brick wall to comply with the commissioners' comments during previous meetings.
- The question of bias comes after each Historic Preservation Commission hearing or meeting, we were given inconstant direction or guidance as to changes that need to be made or modified for the commission to issues a certificate of appropriateness. All we heard from some commission members, is that "we just didn't like the plan and told we should go back to the drawing board to bring back a new design". Even the Chair Mr. Kurt Knierim stated in his closing remarks that "you must be more confused now than when you walked in the door for this hearing tonight".
- We have made numerous changes and modifications to the plans along the 18 months to comply with staff and the commissions wishes, but after the May 18th hearing you wonder if some of the commission members did not want to see anything happen to this property at all.”

Allegation #1:

“1306 West Mountain Historic Preservation Commission Appeal Justification Item One: City Code 14-53:

- Staff did not interpret the Secretary of the Interior's Standards for Rehabilitation number 2 or 5 regarding the west facing window or interpreting the Standards Bulletin 14.
 - (See verbatim transcript of 7-20 hearing, p2 [line 36] to p4 [line 23])
- In the Secretary of the Interior's or National Park Service standards and guidelines, there is no documentation that does not allow you to remove one window and or add a new window opening into the existing Historic Wall Fabric. These standards and guidelines are just that, they are not codifiable or a requirement to comply with standards 2 or 5.
 - (See verbatim transcript of 7-20 hearing, p2 [line 36] to p4 [line 23])
- In the Certificate of Appropriateness that was issues [sic] on February 17th for the property after the February 17th hearing. It clearly states in SOI #2 "The modification of the west bathroom window from one historic unit to two non-historic is not ideal, but by itself may be considered consistent with this Standard due to its location on the side elevation, the reduced visibility of this window, and considering the context of the proposed preservation and rehabilitation of most of the remaining windows on the historic building". It also clearly states in SOI #5, "While the modification of the bathroom window on the west elevation is not recommended, it does not appear to conflict with the Standard". The only difference from the previous plan to the current proposed plan is to move that same window modification further to the rear of the west elevation wall and not modify the bathroom window in the middle of the west elevation.
- In the Secretary of the Interior's Standards, they provide a Technical Bulletin 14 that describes how to add new window opening into a Secondary Elevation. The window that we are proposing to remove along with adding new windows is on the west elevation or secondary elevation and it is all the way to the north corner [sic] of the structure. This window elevation is not on the primary or street fronting elevation. If someone was looking you can see the window walking down the street, but you would have to be looking for it. Also, we are proposing with the new windows to match the look and charter of the existing window details. This way when you are walking down the street and look back you would not tell they are new windows.
- We are also proposing to repurpose the existing brick and fill in the existing window so no one walking down the street would tell that there was a window in the current location. Again, in the Secretary of the Interior's or National Park Services standards and guidelines, there is no documentation that states you cannot fill in an existing opening in an existing Historic Wall Fabric.

Other Facts Alleged by Appellant:

- During the May 18th Conceptual Design Review meeting with the Commission. There were conversations about the windows not disrupting the existing brick bond line. The proposed windows at that hearing to meet egress showed them breaking the brick bond line. There was not a conversation that we should not or could not add two new windows or fill in the existing window. There was a question about if we could use a different window in the existing location to meet current egress code but nothing about adding a window. The current plans show we modified the window size to not break the existing brick bond line with a different size window that still complies with current egress building code for life, health, and safety.
- During the July 20th Commission Hearing, Mr. Guenther who is the neighbor to the west or the most impacted with these modifications spoke highly in support of these window modifications. So, the person that is the most impacted spoke in support of the project in its entirety.

In conclusion, it is our option [sic] staff, and some members of the commission did not interrupt [sic] the Secretary of the Interior's Standards for the Treatment of Historic Properties correctly as it pertains to SOI # 2 and 5 and that staff has made a different interpretation from their review of Appropriateness from the February 17th hearing and findings of fact that was issued.”

CITY FINANCIAL IMPACTS

Designated City Landmarks qualify property owners to apply for certain financial incentives funded by the City, as well as allows private property owners to leverage State tax incentives for repairs and modifications that meet national preservation standards. These include a 0% interest revolving loan program and Design Assistance mini-grant program through the City, and the Colorado State Historic Tax Credits.

COMMISSION RECOMMENDATION

On a vote of 4-2 (1 recusal, 2 vacancies), the HPC voted to approve the addition as proposed with no conditions and voted to deny the northwest window treatment. The HPC held significant discussion over how important or visible the proposed modification of the northwest window treatment would be, and whether this modification would still meet the Standards and supporting Guidelines, or if it was required for future occupancy in the residence.

Note: A verbatim transcript of the HPC’s hearing, along with a link to the FCTV recording on this item, is part of the record provided to Council for this appeal.

PUBLIC OUTREACH

The HPC’s recommendation was made at a properly noticed public hearing.

ATTACHMENTS

1. Notice and Mailing List
2. Notice of Appeal
3. Staff Report to Historic Preservation Commission
4. Staff Presentation to Historic Preservation Commission
5. Verbatim Transcript of Historic Preservation Commission Meeting
6. Link to Video of Historic Preservation Commission Meeting
7. Historic Preservation Commission Decision Letter
8. Additional Documents Related to Historic Preservation Commission Meeting, February 16, 2022
9. Additional Documents Related to Historic Preservation Commission Meeting, May 18, 2022
10. Presentation