

## **Historic Landmarks and Preservation Districts Commission Minutes**

**January 19, 2017**

A meeting of the Louisville Metro Historic Landmarks and Preservation Districts Commission was held on Thursday, January 19, 2017 at 9:00 a.m. at the Old Jail Building located at 514 W. Liberty Street, Louisville, Kentucky.

### **Commission Members present:**

Bob Vice, Chair  
Emily Liu  
Amin Omidy  
Joanne Weeter  
Carrye Jones  
Tamika Jackson  
Robert Kirchdorfer  
Jay Stottman  
Reba Doutrick  
Chris Hartman

### **Commission Members absent:**

Milton Haskins Jr.  
Roberto Bajandas

### **Staff Members Present:**

Bob Keesaer, Urban Design Supervisor  
Joe Haberman, Planning & Design Manager  
Cynthia Elmore, Historic Preservation Officer  
Savannah Darr, Historic Preservation Specialist  
Becky Gorman, Historic Preservation Specialist  
Burcum Keeton, Architectural Projects Coordinator  
John Carroll, Legal Counsel  
Paul Whitty, Legal Counsel  
Sue Reid, Management Assistant

The following matters were considered:

**00:00:36** On a motion by Commissioner Weeter, seconded by Commissioner Liu, the absences of Commissioners Bajandas and Haskins are **EXCUSED**. The motion carried by a unanimous vote.

# **Historic Landmarks and Preservation Districts Commission Minutes**

**January 19, 2017**

## **APPROVAL OF MINUTES**

**Approval of the minutes of the November 17, 2016 Historic Landmarks and Preservation Districts Commission meeting.**

**00:34:33** On a motion by Commissioner Omidy, seconded by Commissioner Weeter, the following resolution was adopted:

**RESOLVED**, the Louisville Metro Historic Landmarks and Preservation Districts Commission does hereby **APPROVE** the minutes of the meeting conducted on November 17, 2016.

**The vote was as follows:**

**Yes: Commissioners Jones, Jackson, Weeter, Omidy and Chair Vice**  
**Abstain: Commissioners Liu, Hartman, Stottman, Doutrick and Kirchdorfer**  
**Absent: Commissioners Bajandas and Haskins**

# **Historic Landmarks and Preservation Districts Commission Minutes**

**January 19, 2017**

## **NEW BUSINESS**

### **16COA1204\_Appeal**

Request: Appeal of case# 16COA1204,1359 Ouerbacker Ct. – Becky Gorman  
Project Name: Appeal of case #16COA1204,1359 Ouerbacker Ct.  
Jurisdiction: 6- David James  
Case Manager: Becky Gorman

**An audio/visual recording of the Historic Landmarks and Preservation Districts Commission meeting related to this case is available on the Planning & Design Services website, or you may contact the Customer Service staff to obtain a copy.**

### **Agency testimony:**

**00:08:09** Becky Gorman presented the case and showed a Powerpoint presentation. Ms. Gorman reviewed the guidelines and checklist used in determining staff's decision. Ms. Gorman responded to questions from the Commissioners (see recording for detailed presentation).

### **The following spoke in favor of the appeal:**

Erica Kibbe, 1359 Ouerbacker Court, Louisville, KY 40208  
Lira Johnson, 1371 S. 1<sup>st</sup> Street, Louisville, KY 40208  
Joan Stewart, 1358 Ouerbacker Court, Louisville, KY 40208  
Todd N. Burks, 1102 Meadow Ct., Goshen, KY 40026

### **Summary of testimony in favor of the appeal:**

**00:16:33** Erica Kibbe spoke in favor of the appeal. Ms. Kibbe stated a complete assessment was not performed. Ms. Kibbe stated she found staff's findings incomplete; not all of the broken panes were noted. Ms. Kibbe requested the Commissioners review the photos she had submitted with her original application. Ms. Kibbe stated what she is trying to do with this replacement project satisfies five of Landmarks goals and doesn't have any negative impact on the other ones. Ms. Kibbe stated these replacement windows are approved in other parts of the district. Ms. Kibbe responded to questions from the Commissioners. Ms. Kibbe stated she did inquire about an ARC review, and she was advised that because she had already submitted an application and it had been denied she was not eligible to take this to ARC. Ms. Kibbe stated she did check on restoration of the existing windows compared to replacing them

# Historic Landmarks and Preservation Districts Commission Minutes

January 19, 2017

## NEW BUSINESS

### 16COA1204\_Appeal

and she decided that was not an acceptable alternative. Commissioner Stottman discussed restoration versus replacement with Ms. Kibbe. Commissioner Weeter asked Ms. Kibbe if she didn't think the Landmarks Commission did a thorough job in completing their window survey if there's not an opportunity for a return visit to look at the windows so that she would be satisfied with the level of scrutiny. Ms. Kibbe stated she thinks that with that being only one part of her appeal, and she thinks that she covered that in her appeal in stating the other windows that have cracks and disagreeing with a broken, missing window being routine maintenance, she thinks that's covered. Chair Vice reviewed Guideline W-1. Chair Vice asked Ms. Kibbe if her point is that she ought to be allowed to use the replacement windows without regard to the window's condition because it is a suitable replacement or if she's contesting the fact that it's not severely deteriorated. Ms. Kibbe stated she thinks the first part of that is the main crux for the full project, and the second part is that she thinks there are some windows that qualify. Ms. Kibbe stated it's a project of twelve windows and they don't all have the same condition. Ms. Kibbe stated one of the things she would like as a homeowner is to bring a singular aesthetic and a singular quality to her home. She stated right now she has three different periods of windows on her house (see recording for detailed presentation).

**00:34:58** Lira Johnson spoke in favor of the appeal. Ms. Johnson stated when she purchased her home it had been redone completely and the contractor told her when he sold the home he left the original windows on it because of this standard and that she should let them rot so that she could get them replaced. Ms. Johnson said she wonders if that really is the standard. She stated she has observed in her neighborhood that people have in fact let their windows rot to the point where they're sagging from the hinges. Ms. Johnson stated she cares very much about the historical integrity of her home and her neighborhood, but she also cares about the environment (see recording for detailed presentation).

**00:39:10** Joan Stewart spoke in favor of the appeal. Ms. Stewart stated, as Chair of the Ouerbacker Court Neighborhood Association, they voted as a Neighborhood Association in November that they support Erica's petition to replace the downstairs windows for all the reasons that Lira just mentioned (see recording for detailed presentation).

**00:44:12** Todd Burks spoke in favor of the appeal (see recording for detailed presentation).

# **Historic Landmarks and Preservation Districts Commission Minutes**

**January 19, 2017**

## **NEW BUSINESS**

### **16COA1204\_Appeal**

#### **The following spoke in opposition of the appeal:**

No one spoke.

#### **00:47:00 Commissioners' deliberation**

**00:47:31** Bob Keesaer responded to questions by the Commissioners regarding how it is determined whether a case is reviewed by Staff or the ARC (see recording for detailed presentation).

**00:52:14** Ms. Kibbe stated she also looked at some other municipalities to see how they interpreted whatever the national recommendations are for historic preservation neighborhoods. Ms. Kibbe stated in districts she looked at, they interpreted this application and approval process more of one as does it meet the historic aesthetic and is it aesthetically congruent with the historic district and neighborhood, if so, okay. There wasn't this threshold of needing to have the entire project, the scope, severely deteriorated before getting approval (see recording for detailed presentation).

**00:53:10** Becky Gorman stated when staff gets an application like this they have to look at their design guidelines. Ms. Gorman stated their design guidelines are based on the Secretary of the Interior Standards, which is a national standard that is set. Ms. Gorman stated what they look at is that you're in a preservation district, and the object is to first, preserve. So you're looking at those materials; do they still have integrity, and these do. Ms. Gorman stated if a window had some rot in it, we would say, replace the rail or replace the stile; so the parts of the window that you're talking about that gets the most weather exposure and may take on the most water, they would recommend that those parts and pieces get replaced. Ms. Gorman said if you got a flat tire on your car would you go out and buy a new car; just an analogy – you would fix the tire just like you would replace the pane of glass, you would replace the ropes and the weights so that your window is working again. Ms. Gorman responded to questions from the Commissioners (see recording for detailed presentation).

**00:55:23** Commissioner Hartman asked counsel what's our standard here. Commissioner Hartman stated typically when they have an appeal from one of the ARC's they can only overturn it if there's a clearly erroneous statement of fact (see recording for detailed presentation).

**00:55:48** Counsel Whitty stated the threshold would be the same; you would have to find that the Staff's finding is clearly erroneous.

## Historic Landmarks and Preservation Districts Commission Minutes

January 19, 2017

### NEW BUSINESS

#### 16COA1204\_Appeal

**00:56:13** Commissioner Stottman thanked the speakers for coming today. Commissioner Stottman stated they have to determine how do you apply guidelines. He stated if they approach every single case differently, then that's not fair to you all, and it's not fair to the people who live in the districts. So we have guidelines and we have to apply those guidelines as evenly as possible because there's such a thing called precedent. Commissioner Stottman said unfortunately, we're seeing the consequences of that because of an after-the-fact approval. Commissioner Stottman stated there are ways to change guidelines or revise guidelines. That's why you might see from district to district there might be different opinions about windows. Commissioner Stottman said when we talk about the severity of deterioration of a window there is some subjectivity to that. He said the reason we have the window checklist is to bring some objectivity to that. Commissioner Stottman stated you're never going to get rid of subjectivity, there's always going to be some degree of that. Commissioner Stottman stated he thinks Staff did due diligence in seeing how other districts have dealt with this issue. Commissioner Stottman stated in his opinion these windows are in great shape compared to what he's seen before. He stated he does see a serious problem though when people are saying they're going to willfully let their windows deteriorate. He said he understands why people think that they should do that. Commissioner Stottman stated he does want to warn, though, that you would be violating property code which is against the law. He stated that everyone in this city, regardless of where you live, has to maintain their property properly. Commissioner Stottman stated that Landmarks is about character and historic fabric. Commissioner Stottman stated he does not see anything going on here in the staff decision that is erroneous or procedurally inaccurate, and the exact same thing would have happened if you had gone through the ARC (see recording for detailed presentation).

**01:06:08** Commissioner Weeter stated she does believe that the window checklist guideline has been applied objectively and consistently through the years. She stated she believes this checklist is consistent with the Secretary of the Interior Standards which are the national standards which we try to uphold. Commissioner Weeter advised Ms. Kibbe that she might find additional guidance that would be helpful from either the Kentucky Heritage Council or particularly from one of her neighbors, Gary Klier. Commissioner Weeter stated that in the past he has conducted window workshops and she wonders if it could be arranged for him to do a window workshop for Ouerbacker Court .

**01:07:40** Joan Stewart stated that Gary has put on many of the workshops. She stated it's still just as expensive if you do what Gary says to do because he's saying to do exactly what has already been said, and what Erica has found out

# Historic Landmarks and Preservation Districts Commission Minutes

January 19, 2017

## NEW BUSINESS

### 16COA1204\_Appeal

by having other people come in. Ms. Stewart stated as far as the tax credit, that is extremely difficult and time consuming.

**01:09:03** Commissioner Liu stated she has a comment. She told Ms. Kibbe that Old Louisville is one of great neighborhoods in America and she hopes this does not discourage her. Commissioner Liu stated she applauds Ms. Kibbe for doing the right thing and coming to our office for approval first. She told Ms. Kibbe we are here to help her as much as we can. Commissioner Liu stated there are guidelines and procedures we have to follow, but those guidelines can be changed. Commissioner Liu stated that is something the citizens and staff can work on together (see recording for detailed presentation).

**01:11:20** Commissioner Stottman stated we appreciate Ms. Kibbe participating in the process because that's something that doesn't always happen. Commissioner Stottman stated he will point out that one of the reasons that Old Louisville is one of the greatest neighborhoods in the country is because of the Landmarks District (see recording for detailed presentation).

**01:11:44** Ms. Kibbe stated she had previously rented an apartment in Old Louisville and she fell in love with the aesthetics of the neighborhood. She stated when she moved here from Seattle that's one of the reasons she decided to buy her home, not knowing that in instances of maintaining her home, forgiveness is easier to obtain than permission. Ms. Kibbe stated she doesn't think the analogy of replacing her car if she got a flat tire is appropriate. She stated she would get a new set of tires, maybe two or maybe four, and that's what she is trying to do with her home; she's not trying to tear it down and build a new one because the windows are broken and non-functional. Ms. Kibbe stated with respect to maintaining and performing repairs, that's going to be continually a dog chasing its own tail; it's going to be putting a bandaid on a festering wound, whereas with replacement windows she could expect them to not need such stringent and regular repairs (see recording for detailed presentation).

**01:13:18** Commissioner Stottman stated just because they're old doesn't mean they're always problematic (see recording for detailed presentation).

**01:13:42** Chair Vice stated Ms. Kibbe's neighbor had made the comment that years ago, probably thirty or more, someone put storm windows on, and that's the key too. If you can get them back to a condition where they're operable and fixed there's a lot of new technologies now for protective storm windows, then you really can stabilize that whole situation. Chair Vice stated we still have to ultimately decide when to allow replacement windows, what's the threshold, but

## Historic Landmarks and Preservation Districts Commission Minutes

January 19, 2017

### NEW BUSINESS

#### 16COA1204\_Appeal

he does know that each historic preservation district can vary the guidelines. Chair Vice stated he knows that at least one other preservation district has gone back and reviewed the guidelines, and of course, Commissioner Liu mentioned there's an overall review process going on right now. Chair Vice stated the Old Louisville ARC and Neighborhood Association have always been passionate about review in their district and conformity with the guidelines, but if conditions have changed or you feel like there's some tweaking that's required, he would encourage them to work with the ARC and us to see if there's some guideline reviews and changes that you want to undertake. Chair Vice stated he still thinks there's going to be circumstances where we're not going to allow window replacement, but the facts here, we don't have a choice now he doesn't think, but to uphold. On the other hand, if you all wanted to look at the guidelines and say should we permit certain exceptions in certain cases and work with us on that to again maintain uniformity then at least it may be worth looking at (see recording for detailed presentation).

**01:17:01** Ms. Kibbe stated many have mentioned the cost of the project, and she thinks that should be her responsibility. Ms. Kibbe stated the metal frame storm windows which is what she has on her house, are not historically accurate to the craftsman era. Those would have been wood framed windows, and so that put her in the situation where if she does anything to her aluminum framed storm windows then she's maintaining a non-historic aesthetic, unless she replaced them with wood frame storm windows which would somehow require an application to set her house straight (see recording for detailed presentation).

**01:18:00** Commissioner Stottman stated that's a good point and it's one they've heard many, many times. Commissioner Stottman stated the thing about storm windows though is they don't damage the historic window. When you apply a storm window you have to be able to see the detailing of it so it has to be in an orientation that would allow you to see the detailing of the original wood window and that the storm window doesn't damage the wood window at all. If you replace the wood window or the original window then it's no longer there and it's not preserving the fabric, so that's how that works and that's how storm windows can be approvable because you can take them off if you want and have the original wood window back the way it was (see recording for detailed presentation).

**01:18:56** Commissioner Kirchdorfer told Mr. Keesaer he's just trying to learn the process; when they came up with the checklist, it went through the approval process, and it's his understanding it's been used for the last nine years through all the processes of staff reviews (see recording for detailed presentation).



## Historic Landmarks and Preservation Districts Commission Minutes

January 19, 2017

### NEW BUSINESS

#### 16COA1204\_Appeal

**01:19:24** Mr. Keesaer stated the checklist was developed just as a tool, it wasn't officially approved or adopted. It was used as a definitive element to be able to define the severely deteriorated element. It was based on Secretary of Interiors as Joanne Weeter had said; replace like-kind with like-kind materials, one of the basic fundamentals when you do replace something under the Secretary of Interiors guidelines. Mr. Keesaer stated it has been in place, we developed it basically throughout communicating with other districts, particularly Chicago, New York and Virginia (see recording for detailed presentation).

**01:20:23** Commissioner Kirchdorfer asked Mr. Keesaer if since they started using this this was included in every staff report and the case (see recording for detailed presentation).

**01:20:30** Mr. Keesaer stated for the last nine years, for every single window case that they've had to assess they've used that checklist (see recording for detailed presentation).

**01:20:57** Commissioner Omidy asked if they also had the option, if the applicant wishes, to allow her the opportunity to sit in front of the ARC at this point (see recording for detailed presentation).

**01:21:16** Mr. Keesaer stated typically it works the same with an ARC; once a determination is made by an ARC or for a Staff Level Review and determination, the next course would be for the Landmarks Commission to hear it to basically see if we were erroneous or not (see recording for detailed presentation).

**01:21:47** Commissioner Hartman stated he is the Landmarks Commissioner assigned to the Old Louisville ARC, so one thing he will do is make the commitment that at their next ARC meeting he will move for them to review the window guidelines and start a process there. Commissioner Hartman stated he doesn't know if they will come to any different conclusion, but it's probably time to go ahead and review. Commissioner Hartman stated he thinks today our legal obligation unfortunately is a very high threshold and it's clear what we are obligated to do (see recording for detailed presentation).

**01:22:30** On a motion by Commissioner Hartman, seconded by Commissioner Omidy, the following resolution was adopted:

# **Historic Landmarks and Preservation Districts Commission Minutes**

**January 19, 2017**

## **NEW BUSINESS 16COA1204\_Appeal**

**WHEREAS**, the Louisville Metro Historic Landmarks and Preservation Districts Commission finds that the windows are not severely deteriorated and therefore replacement does not meet the guidelines, and

**WHEREAS**, the Commission further finds there was **NO CLEARLY ERRONEOUS FINDING OF FACT** by Planning & Design Services Staff related to the whether the window replacement complied with the applicable guidelines; now therefore be it

**RESOLVED**, the Louisville Metro Historic Landmarks and Preservation Districts Commission in Case Number 16COA1204\_Appeal, does hereby **DENY** the Appeal and **UPHOLD** the denial of the Certificate of Appropriateness by Planning & Design Services Staff.

**The vote was as follows:**

**Yes: Commissioners Jones, Jackson, Hartman, Liu, Stottman, Weeter, Kirchdorfer, Omidy and Chair Vice**

**No: Commissioner Doutrick**

**Absent: Commissioners Bajandas and Haskins**

# **Historic Landmarks and Preservation Districts Commission Minutes**

**January 19, 2017**

## **BUSINESS SESSION**

### **Info\_2017\_LMC\_Annual\_Mtg**

Request: Info. on 2017 LMC Annual Meeting - Bob Keesaer  
Project Name: LMC Annual Meeting  
Jurisdiction: Louisville Metro Government  
Case Manager: Bob Keesaer

**An audio/visual recording of the Historic Landmarks and Preservation Districts Commission meeting related to this case is available on the Planning & Design Services website, or you may contact the Customer Service staff to obtain a copy.**

### **Agency testimony:**

**01:24:40** Bob Keesaer presented information regarding the 2017 Historic Landmarks and Preservation Districts Commission Annual Meeting. Mr. Keesaer stated the Annual Meeting will be Thursday, February 16, 2017 at 9:00 a.m. at Union Station in the Board Room (see recording for detailed presentation).

**NOTE: This agenda item was for information purposes only; therefore, no vote or action was taken.**

# Historic Landmarks and Preservation Districts Commission Minutes

January 19, 2017

## **BUSINESS SESSION**

### **Policy\_ARC\_Quorum**

Request: Policy for allowing LM Commissioners to replace other LM Commissioners on ARC's to make quorum - Bob Keesaer  
Project Name: Policy -LMC Commissioners  
Jurisdiction: Louisville Metro Government  
Case Manager: Bob Keesaer

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### **Agency testimony:**

**01:25:12** Bob Keesaer stated they are presenting a policy change for Landmarks to allow Emily Liu to be able to make a quorum or to add to a quorum where a Landmarks Commissioner designated to an ARC cannot attend. This will allow us to meet quorum, and also allow us to add to a decision-making body of an ARC. Mr. Keesaer stated typically you would have to sit on an ARC to be able to substitute for another Landmarks Commissioner. Mr. Keesaer stated Emily does not sit on an ARC, so this would allow some flexibility to make quorum and to add to an ARC body. The Commissioners briefly discussed this policy change (see recording for detailed presentation).

**NOTE: Formal action on this item was reserved for the Annual Meeting; therefore, no vote or action was taken today.**

# **Historic Landmarks and Preservation Districts Commission Minutes**

**January 19, 2017**

## **CHAIRMAN OR COMMISSION DIRECTOR'S REPORT**

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**01:29:41** Chair Vice stated they have had a couple of requests from members of the public to talk about the house on Tremont and the eventual resolution of that. Chair Vice stated we've now passed the period for any appeal, and the Annual Meeting is in February. Chair Vice stated this is the kind of topic where we could talk about that case with all of the ARC members present. Chair Vice stated obviously this case has been resolved, but he thinks the Annual Meeting would be a good forum because while it affected an Individual Landmark, there could be issues that come up in the districts and the ARC members may have interests and opinions as well. Chair Vice suggested setting aside some time at the Annual Meeting to discuss not necessarily the specifics of that case, but the whole framework of how that came up and how it was handled because it may come up again in the future. Bob Keesaer stated we would definitely put that as an agenda item for the Annual Meeting. Commissioner Weeter noted the Tremont house has been demolished (see recording for detailed presentation).

# **Historic Landmarks and Preservation Districts Commission Minutes**

**November 17, 2016**

**The meeting adjourned at approximately 10:38 a.m.**

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**Chairman**

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**Division Director**