



Historic Landmarks and Preservation Districts Commission

Report to the Commission

To:	Historic Landmarks and Preservation Districts Commission
From:	Savannah Darr, Historic Preservation Officer
Date:	October 7, 2022

Case No: 22-COA-0149
Property Address: 1728 Payne Street

Request

Appeal of a Clifton Architectural Review Committee (ARC) decision to deny a request for new multi-family construction.

Case Summary/Background

The Clifton ARC met on August 3, 2022 at 5:30 pm in room 101 of the Metro Development Building at 444 S. 5th Street. Committee members in attendance were Committee Chair Edie Nixon, Phil Samuel, Pam Vetter, and Tamika Jackson. Ms. Vetter made a motion to deny the proposed new construction, finding that the submitted plans did not meet Design Guidelines NCR-3, NCR-4, NCR-7, NCR-10, NCR-12, and NCR-18. Mr. Samuel seconded the motion. The motion passed 3 to 1 (Nixon, Vetter, and Samuel - yes and Jackson - no). Please see the "Report of the Committee" for further details on the August 3, 2022 hearing (attached to this report).

On September 2, 2022, Matt Eldridge of Eldridge Company, the COA applicant, filed a written appeal of the Clifton ARC's decision. Pursuant to LMCO Sec. 32.257(K), any applicant whose application is denied by the Committee may appeal such a decision to the Commission within 30 days of the date of the decision.

In addition to reviewing this report, the Commission and interested parties should review the application, the plans, the audio record of the proceeding, and the written appeal. This report is only intended to summarize the facts of the case, the decision, and the appeal.

Conclusions

As detailed in the original staff report to the ARC, staff determined that the proposed multi-family construction met the applicable Clifton Design Guidelines, including those for New Construction-Residential and Site. Please see the "Report to the Committee", dated July 27, 2022, to review the staff findings (attached to this report). While staff respects the Committee's decision and will enforce if upheld, the information and testimony presented at the August 3, 2022 meeting

would not alter staff's findings in respect to Design Guidelines NCR-3, NCR-4, NCR-7, NCR-10, NCR-12, and NCR-18.

In summary of the proposed development, an existing CMU building at the rear of the lot was to be retained and utilized, so no buildings were proposed for demolition. The proposed new buildings were sited in front of the existing building to fill in the vacant street wall along Payne Street and align with surrounding primary structures. The proposed construction of two smaller buildings, rather than one larger building, helps keep the massing more in scale with the neighboring buildings. While the new buildings are slightly taller than the immediate adjacent buildings, that is in the context of this portion of Payne Street. There are a mix of historic and modern buildings of varying styles, sizes, and heights.

The motion passed by the Clifton ARC stated that the project did not meet NCR-3, NCR-4, NCR-7, NCR-10, NCR-12, and NCR-18, which contradicts staff's findings presented to the Committee. While the motion cited these Design Guidelines, specific reasoning was not provided by the Committee as to why the project did not meet these specific guidelines. Typically, such reasoning is clearly and specifically expressed at the meeting and/or provided in a motion when a finding by the Committee is in conflict with a finding by staff in order to satisfy LMCO Sec. 32.257(J).

Pursuant to LMCO Sec. 32.257(J), the staff and the Committee shall, in their decision-making capacities, each make a written finding of fact based upon the information presented which supports a written conclusion that the application demonstrates or fails to demonstrate that the proposed exterior alteration is in compliance with the Design Guidelines. Staff's written findings are presented in the staff report, which is published before the meeting, and the Committee's written findings are presented in the Report of the Committee, which is published after the meeting. Staff was unable to craft such written finding in the Report of the Committee as staff arrived at different conclusions, and it was not clear how the Committee collectively found that the application failed to meet NCR-3, NCR-4, NCR-7, NCR-10, NCR-12, and NCR-18.

NCR-3 says that the height, scale, massing, etc. of a new building should reflect the architectural context of surrounding structures. NCR-4 states that the new construction should not conflict with the historic character of the district as a whole. NCR-7 says that the design should reflect and reinforce the human scale of the neighborhood as a whole. NCR-10 focusses on the spatial organization of surrounding buildings and the character of the streetscape. There should be a visual continuity with new construction. NCR-12 states that a new building's mass (proportions of solid surface walls to window and door openings) should be similar as surrounding buildings. NCR-18 says infill construction should be compatible with the average height and width of surrounding buildings.

Standard of Review

Per LMCO Sec. 32.257(K), “the Commission shall review the application and the record of the prior proceedings and, at the discretion of the Chairman, may take additional testimony from the applicant, the property owner, appellant, or other interested parties for the purpose of supplementing the existing record or for the introduction of new information. Upon review of the record and any supplemental or new information presented at the meeting, the Commission shall make a written determination that the decision shall be upheld or overturned. *A decision of the staff or the Committee shall be overturned by the Commission only upon the written finding that the staff or Committee was clearly erroneous as to a material finding of fact related to whether the proposed exterior alteration complied with the guidelines.* When the Commission overturns a denial of an application, it shall approve the application, or approve the application with conditions.”

The Commission should only review how the application/decision followed the process outlined in the ordinance and the findings related to the decision. Specifically, the Commission should focus its review on the application and its relationship to Design Guidelines NCR-3, NCR-4, NCR-7, NCR-10, NCR-12, and NCR-18. The appeal filed by the applicant asserts that the application met all applicable Design Guidelines. Another appeal has not been filed, so there is not another party asserting that the application failed to meet additional Design Guidelines. As such, there is no need for the Commission to review the application in full as it cannot amend or overturn any findings related to other Design Guidelines.

If the Commission finds that the Committee adequately justified its decision that the application failed to meet one or more Design Guidelines, it may deny the appeal. While the Committee referenced several Design Guidelines in the decision, the Commission may only need to find that the process was properly followed and that the Committee appropriately justified that the application failed to meet one of the cited Design Guidelines to uphold the decision.

If the Commission opts to overturn the Committee’s decision, the application shall be approved or approved with conditions. In the event that the Commission opts to overturn the Committee’s decision, staff strongly recommends that the Commission add the conditions proposed by staff to the Committee on August 3, 2022. See sample motion handout.