



Historic Landmarks and Preservation Districts Commission

Report to the Commission

To:	Historic Landmarks and Preservation Districts Commission
From:	Savannah Darr, Historic Preservation Officer
Date:	August 4, 2023

Case No: 22-COA-0251
Property Address: 2354, 2356, 2358 Grinstead Drive

Request

Appeal of a Cherokee Triangle Architectural Review Committee (ARC) decision to deny a request for a certificate of appropriateness (COA) allowing for the demolition of the buildings known as Yorktown Apartments and the new construction of a parking area.

Case Summary/Background

The Cherokee Triangle ARC met on November 30, 2022 to review the subject application for a COA. Committee members in attendance were Committee Chair Gail Morris, Pete Kirven, Jennifer Schultz, David Morgan, and Robert Kirchdorfer. After hearing from staff, the applicant, and community members in attendance, Ms. Morris made a motion to defer the case for further information from staff. Mr. Kirven seconded the motion. The motion to defer passed unanimously with 5 yes votes. The ARC requested more information on how the block on which Collegiate School is located has changed over time. The ARC also requested a better context for the Yorktown Apartments to determine their contributing or noncontributing status. Please see the "Report of the Committee" for further details on the November 30, 2022 meeting (attached to this report).

The Cherokee Triangle ARC met again on March 8, 2023 to further consider the application. Committee members in attendance were Committee Chair Gail Morris, Robert Kirchdorfer, Pete Kirven, Jennifer Schultz, and Ashlyn Ackerman. After hearing from staff, the applicant, and community members in attendance, Ms. Schultz made a motion to deny the application. Ms. Ackerman seconded the motion with a friendly amendment to add findings that the ARC finds the proposal does not meet Demolition Guideline 1 ["the demolition will not adversely affect the district's (or the landmark's) distinctive characteristics, taken as a whole, retained over time"] or Guideline DE6 ["Do take measures to reestablish the street wall after demolition through the use of low fences, walls, and/or vegetation"] and that the buildings are contributing because they meet 5 of the 6 design elements typified in the Colonial Revival architectural style. The motion to deny the application passed with 3 yes votes (Schultz, Morris, and Ackerman) and 2 no votes (Kirven and

Kirchdorfer). Please see the “Report of the Committee” for further details on the March 8, 2023 meeting (attached to this report).

On April 6, 2023, Cliff Ashburner of Dinsmore & Shohl, the applicant’s legal counsel, filed a written appeal of the 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 recordings of the ARC proceedings, 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 initial staff report to the ARC and the updated memorandum, staff determined that the subject buildings were noncontributing to the Cherokee Triangle Preservation District. Please see the “Report to the Committee,” dated July 27, 2022, as well as the “Memorandum,” dated January 18, 2023, to review the staff findings (attached to this report). While staff accepts the ARC decision and will enforce if upheld, the information and testimony presented at the ARC meetings does not alter staff’s findings in respect to the Demolition Design Guidelines and opinion that the buildings are noncontributing.

Pursuant to LMCO Sec. 32.257(J), the staff and the ARC 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 ARC’s written findings are presented in the Report of the Committee, which is published after the meeting.

In their formal findings, the ARC stated that the project did not meet Demolition Guideline 1 “the demolition will not adversely affect the district’s (or the landmark’s) distinctive characteristics, taken as a whole, retained over time” or Guideline DE6 “Do take measures to reestablish the street wall after demolition through the use of low fences, walls, and/or vegetation” and that the buildings are contributing because they meet 5 of the 6 design elements typified in the Colonial Revival architectural style. The ARC adopted these findings to support their decision to deny. The findings deviate from the findings presented in the staff report and presentation.

While the ARC provided findings to support their decision to deny, the motion did not include a full explanation as to how the proposed demolition did not meet Guideline 1. The buildings and their association to the character or the integrity of the District as a whole was not discussed in detail at the meeting. Additionally, there is conflict with the determination related to DE6. The Demolition Guidelines, such as DE6, are only to be used in the case of demolishing noncontributing buildings. DE6 would not apply to a contributing building and the ARC concluded that the subject buildings were contributing.

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.”

In this matter, the Commission’s responsibility is to review the record and basis of appeal and determine if the process outlined in the ordinance was correctly followed and whether or not an error was made in the subject decision. Specifically, the Commission should focus its review on the application and its relationship to the cited Demolition Design Guidelines 1 and DE6. The Commission should also consider the ARC’s decision related to the contributing status of the subject buildings. The appeal filed by the applicant’s legal counsel asserts that the application met all applicable Design Guidelines and that the buildings should be identified as noncontributing.

If the Commission finds that the ARC adequately justified its decision that the application failed to meet one or more Design Guidelines, the appeal should be denied. The Commission may only need to find that the process was properly followed and that the ARC 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 ARC’s decision, the application shall be approved or approved with conditions. If the decision is overturned, staff strongly recommends that the Commission add the conditions proposed by staff to the ARC on November 30, 2022.