File #: R-166-19, **Version:** 2

RESOLUTION NO. _____, SERIES 2019
A RESOLUTION OVERTURNING THE DECISION OF THE LANDMARKS COMMISSION DESIGNATING THE PROPERTY LOCATED AT 2914 S. 3RD STREET AND 2911 S. 4TH STREET IN LOUISVILLE METRO AS A LOCAL LANDMARK (CASE NO. 19DESGNATION1000) (AS AMENDED).
SPONSORED BY: COUNCIL MEMBER KEVIN TRIPLETT

WHEREAS, the Legislative Council of the Louisville/Jefferson County Metro Government (the "Council") has considered the evidence presented at the public hearings held by the Landmarks Commission (the "Commission") on August 29, 2019 and September 19, 2019 and the record reviewed at the public meeting held by the Council's Planning and Zoning Committee on November 12, 2019; and

WHEREAS, in 2018, the Legislative council of the Louisville/Jefferson County Metro Government ("Council") convened a committee comprised of various members of the Landmarks Commission, Metro Council, and their staff to work together, review, and identify various ways to strengthen the Louisville/Jefferson County Metro Government Code of Ordinances ("LMCO") Sections 32.250 to 32.263 (the "Landmarks Ordinance"); and

WHEREAS, on July 25, 2019, the Council, after receiving input on proposed changes to the Landmarks Ordinance from said committee and after receiving proposed amendments to the Landmarks Ordinance from the Landmarks Commission, adopted Ordinance No. 96, Series 2019 wherein the Council amended several sections of the Landmarks Ordinance to effect changes strengthening necessary public policies around preservation in Louisville Metro; and

WHEREAS, among the July 2019 amendments, the Council adopted language within Section 32.260 (O) (f) to allow the Landmarks Commission to consider whether the owner of the subject

structure of property ~~qualifies~~ would qualify for an economic hardship exemption pursuant to Section 32.257 (L) while it responds to a petition for designation of any individual landmarks; and

WHEREAS, in Case No. 19DESGNATION 1000, pursuant to Sections 32.260 (O) (f) and 32.257 (L) of the Landmarks Ordinance, the owner of the Subject Property requested considerable evidence of an economic hardship ~~exemption~~ should the Subject Property be adjudged appropriate to designate as a local landmark~~, presenting considerable evidence relevant to that exemption~~ at the public hearings held on August 29 and September 19, 2019; and

WHEREAS, at the conclusion of the Commission's September 19, 2019 public hearing for Case No. 19DESGNATION1000, the accepted motion to designate the Subject Property a local landmark was made by Commissioner Jay Stottman, who stated, "I think the issue here … is the consideration of economic hardship, which I don't think we need to consider - it just says we may consider economic hardship. And, and I think in Metro Council's ignorance, they have saddled us with, with this process, which is essentially putting the cart before the horse…And perhaps it's an oversight on Metro Council's part that, that allowed us to 'may consider' it, and I think we shouldn't. We shouldn't have to consider that;" and

WHEREAS, the Council disagrees with the decision of the Landmarks Commission dated September 19, 2019 designating the property at 2914 S. 3rd Street and 2911 S. 4th Street as a local landmark and makes the following alternative findings of fact:

(1) With respect to LMCO 32.260(O)(a)-(e)

a. The Designation Criteria Analysis contained in the Designation Report finds the Holy Name site has sufficient integrity to meet criterion (a). In order to be landmarked, then, the Holy Name site must also possess one or more of criteria (b) through (e). The designation report admits that item (b), (c), and (e) are not met. So, in order to be landmarked, the Holy Name site must meet item (d).

b. Item (d) has three sub-elements. The report admits that the site does not embody distinguishing characteristics of an architectural type or specimen or embody a significant architectural innovation. Instead, it rests upon the third sub-element, identification as the work of an architect…whose individual work has significantly influenced the development of the city, Commonwealth, or the nation. Despite a general association with the Catholic community having been found insufficient for item (c), the mere fact that Gaffney designed three of the buildings (and "influenced" the design of the fourth) seems to be the additional criteria on which the designation rested. However, just as all buildings associated with the Catholic community do not automatically meet item (c), nor should all buildings designed by any particular architect meet item (d). Were this the only Gaffney work in the city, or the primary example of Gaffney's work as celebrated and recognized by the architectural community, or some other way significantly associated with Gaffney himself so that the public would regularly recognize the site as one of Gaffney's design, then perhaps item (d) would be met. But, as the report states, Gaffney's work is spread across the city, and all buildings but building 1 have had some level of exterior alteration since their establishment.

c. Commissioner Stottman claimed in his motion to designate that items (a), (b), (d), and (e) were met. However, he made no findings regarding a significant historic event that met item (b), nor did he make findings referring to an underrepresented history within the city, the Commonwealth, or the nation that met item (e).

d. Commissioner Stottman did indicate that as for "criteria b" (referring to the previous version of the ordinance), "the Archdiocese's imprint on this history of this community is not in question, and that these buildings are especially of that time

period which was sort of the heyday of the Archdiocese's imprint on this community, and that those are examples of that". Based on this comment, he seems to have intended to refer to item (c), but did not, despite receiving a revised version of the ordinance during the hearing to confirm his references were correct. Regardless, as discussed above and in the report, the mere fact that the site is associated with the Catholic community is insufficient. Every community in Louisville can be said to have left an "imprint on the history of this community", so more than a mere association with a community must be required for landmark designation.

e. Commissioner Stottman also referred to Gaffney as having been the architect, but as discussed above, that alone is insufficient for landmark designation. Finally, he refers to the use and "modification" of architectural types but provides no additional findings to justify this. The revised ordinance does not refer to the blending or modification of architectural styles as a reason for landmark designation.

(2) With respect to LMCO 32.260(O)(f), the Commissioner's comment that the it ~~is~~ ~~evident from Commissioner Stottman's comment concerning~~ "Metro Council's ignorance" that economic hardship evidence presented was not at all considered and no finding was made with respect thereto. ~~as part of his motion to designate.~~ This was in error.

a. 32.260(O)(f) reads: "Additionally, in considering the designation of any individual landmark, the Commission may determine whether the structure or site owner(s) would qualify for an economic hardship exemption, pursuant to § 32.257 (L), from any exterior alteration specified in § 32.256 (C)."

b. Here, the site owner presented substantial information regarding the economic hardship which it faces, including a report from KY Licensed Structural Engineer Michael Childers of Icon Engineering, testimony from local developer and

preservationist Bill Weyland, and testimony of Architect Mark Trier. When a property owner devotes the time and resources necessary to file for economic hardship, they deserve to at least have their evidence considered and discussed.

c. The property owner's evidence of economic hardship in this matter was substantial and unrebutted. The property owner seeks to remove non-income producing, religious buildings to construct another non-income producing, religious building on its religious property. For a non-income producing building, economic hardship exemption ~~should~~ may be granted when the building: 1) cannot be put to any beneficial use; 2) bona fide efforts to sell or lease the building have become fruitless; 3) It is not economically feasible to rehab.

   i. As to beneficial use of the property, the report of Michael Childers, KY Licensed Structural Engineer with Icon Engineering and Inspection Services, concluded both buildings are inadequate to support the core loading requirements for office space. Local developer and preservationist Bill Weyland testified that he reviewed the property and determined it was economically infeasible to rehabilitate as affordable housing.

   ii. As to sale or use of the property, the property owner, the Archdiocese, uses the property as the campus for an active parish and needs the entire parcel to pursue its religious purposes. The record shows that the parish needs access to the whole site for parking and the needs of ministry. Accordingly a portion of the site cannot be sold or leased to tenants outside the Church. Father Bill Bowling, pastor of Holy Name Parish, and parish members testified to the need to demolish and build new structures on the property in order for the parish to thrive and survive.

   iii. Rehab is economically infeasible: Mark Trier of JRA Architects testified it would

cost almost $2 million over the cost of new construction to rehab the buildings to fit the needs of Holy Name parish and Catholic Charities. The property owner submitted a pro forma authored by Weyland showing an approximately $800,000.00 gap in financial feasibility to repurpose the school building as multi-family housing. The property owner submitted an appraisal report from 1970 wherein the former convent building was judged to be in year 33 of its 50-year useful life. At that time, almost 50 years ago, the value of the former convent building was estimated at $46,650.82.

iv. Per the Icon Engineering report, the poor condition of the buildings are the result of the buildings' age and materials used, not the result of neglect. Bruce Hines, business manager at Holy Name parish, and Lisa DeJaco Crutcher, chief executive officer at Catholic Charities, testified to the significant amounts of money spent each year in maintaining the existing buildings. The parish and Catholic Charities cannot afford the capital improvements and structural repairs needed.

v. Historic integrity is incompatible with any future use of the buildings. All the evidence showed that critical building systems in the former school and former convent are obsolete. The Icon Engineering report says the foundation and all support beams need replacing at the school, and all the mortar must be replaced in the brick exterior. The convent building needs substantial structural repairs and a new roof. Mark Trier of JRA Architects testified that rehabilitating the former school and convent buildings for any modern use would require a complete overhaul of all critical building systems. According to Trier's unrebutted testimony, changes needed to sufficiently outfit the buildings with updated, code-compliant building systems would sacrifice any historical integrity remaining in the buildings.

d. When the evidence presented, as here, strongly justifies the recognition of economic hardship, that consideration should be given significant weight by the Landmarks commission.

e. Balanced against a motion which, without sufficient justification, found designation appropriate because of the site's mere association with the Catholic community and Gaffney, it is clear that designation was inappropriate.

NOW THEREFORE BE IT RESOLVED BY THE LEGISLATIVE COUNCIL OF THE LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT AS FOLLOWS:

SECTION I: The September 19, 2019 decision of the Landmarks Commission designating the property at 2914 S. 3rd Street and 2911 S. 4th Street in Louisville Metro as a local landmark is overturned and set aside.

SECTION II: This Resolution shall take effect upon its passage and approval.

_____
H. Stephen Ott
Metro Council Clerk

_____
David James
President of the Council

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Approval Date

APPROVED AS TO FORM AND LEGALITY:

Michael J. O'Connell
Jefferson County Attorney

By: _____

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