

ADMINISTRATIVE HEARING OF A LAND USE APPEAL
(Case No. **PLNAPP2018-00970**)
(Appealing Petition Nos. PLNHL2018-00517 and PLNHL2018-00676)
February 8, 2019

Appellant:	Dennis Webb
Decision-making entity:	Salt Lake City Historic Landmark Commission
Address Related to Appeal:	1017 East 1 st Avenue
Request:	Appealing the historic landmark commission’s denial of a certificate of appropriateness for a minor addition and denial of special exceptions for additional wall and building height.
Brief Prepared by:	Paul C. Nielson, Senior City Attorney

Historic Preservation Appeal Authority’s Jurisdiction and Authority

When selected by a land use applicant appealing a decision of the Salt Lake City Historic Landmark Commission, the historic preservation appeal authority, established pursuant to Section 21A.06.080 of the *Salt Lake City Code*, is the city’s designated land use appeal authority on appeals of historic landmark commission decisions. In this case, the appellant has opted to have the historic preservation appeal authority serve as the appeal authority. Consistent with the Municipal Land Use Development and Management Act, Section 21A.06.080 establishes that the Salt Lake City Mayor shall serve as the historic preservation appeal authority.

Standard of Review for Appeals to the Historic Preservation Appeal Authority

In accordance with Section 21A.16.030.A of the *Salt Lake City Code*, an appeal made to the historic preservation appeal authority “shall specify the decision appealed, the alleged error made in connection with the decision being appealed, and the reasons the appellant claims the

decision to be in error, including every theory of relief that can be presented in district court.” It is the appellant’s burden to prove that the decision made by the land use authority was erroneous. (Sec. 21A.16.030.F). Moreover, it is the appellant’s responsibility to marshal the evidence in this appeal. Carlsen v. City of Smithfield, 287 P.3d 440 (2012), State v. Nielsen, 326 P.3d 645 (Utah, 2014), and Hodgson v. Farmington City, 334 P.3d 484 (Utah App., 2014).

“The Appeals Hearing Officer or Historic Preservation Appeal Authority shall review the decision based upon applicable standards and shall determine its correctness.” (Sec. 21A.16.030.E.2.b). “The Appeals Hearing Officer or Historic Preservation Appeal Authority shall uphold the decision unless it is not supported by substantial evidence in the record or it violates a law, statute, or ordinance in effect when the decision was made.” (Sec. 21A.16.030.E.2.c).

This case deals with application of Section 21A.34.020.G (Standards for Certificate of Appropriateness for Alteration of a Landmark Site or Contributing Structure Including New Construction of an Accessory Structure) and Section 21A.52.060 (General Standards and Considerations for Special Exceptions) of the *Salt Lake City Code*. Video of the November 1, 2018 public meeting is part of the record of this matter and is found at <https://www.youtube.com/watch?v=Y4zmlwOlwXY> (from 2:34:50 to 3:04:45).

Background

This matter was heard by the historic landmark commission on November 1, 2018 on a petition by Dennis Web (Appellant) for construction of attic additions to the single-family dwelling located at 1017 East 1st Avenue (the “Property”). The petitions sought approval for construction that had commenced without required building permits and without the required

certificate of appropriateness and special exceptions. (See Planning Division Staff Report Dated November 1, 2018, p. 2)

Planning division staff prepared a report for the historic landmark commission's November 1, 2018 meeting in which staff determined that the attic additions failed to meet four of the eleven standards for a certificate of appropriateness for minor alterations and failed to meet four of seven standards required for approval of special exceptions for additional wall and building height. (See "Attachment G" and "Attachment H" of the Planning Division Staff Report Dated November 1, 2018). Therefore, planning division staff recommended that the commission deny the petition. (See Planning Division Staff Report Dated November 1, 2018, p. 1).

At its November 1, 2018 public meeting, the historic landmark commission heard presentations from planning division staff and the Appellant and testimony from members of the public.

By a 5-0 vote, the commission denied the petitions, agreeing with planning division staff's conclusions that Appellant's application failed to meet the required standards. (See Video of November 1, 2018 Historic Landmark Commission Meeting at 3:02:57 to 3:04:07 (showing that the commission's decision was based on the findings in the staff report as well as the information presented at the November 1, 2018 meeting)). The Record of Decision was sent to Appellant on November 2, 2018.

On December 3, 2018, Appellant filed an appeal of the commission's decision denying Appellant's petitions for a certificate of appropriateness for minor alterations and for special exceptions for additional wall and building height.

DISCUSSION

Appellant's appeal document can be broken into two parts: 1) justifications for allowing the attic additions not related to city standards, and 2) disagreement with planning division staff analysis and findings as contained in the staff report. (See Appellant's Appeal Letter Dated December 3, 2018 at p. 1). These arguments are addressed below.

A. Appellant's Justifications for Allowing the Attic Additions not Related to City Standards.

Appellant offers several justifications for approval of the completed attic additions that are not based in or related to city standards. Initially, Appellant argues that "these renovations were made to enhance the quality of life for my family and made with the intent to contribute to the historic preservation of this property, and other homes in the avenues." (Appellant's Appeal Letter Dated December 3, 2018 at p. 1). Appellant follows that with the contention that, "[t]here are many examples of diverse architectural designs and styles throughout the avenues; I based the current dormer in dispute on similar design styles currently existing in the avenues district." (Id.) Next, Appellant justifies the construction by claiming that "the historical standards are based on a national standard, which should allow other examples of architectural design constructions throughout the historical district in the avenues." (Id.) That argument is followed by Appellant's contention that "the superior quality of the materials used in this project protects and respects the eutectics and aesthetics of this historic structure..." (Id.) Finally, Appellant states that, "the area of renovation was constructed to provide an independent space" for his special needs child. (Id.)

While there may be good intentions that motivated Appellant's actions, those are entirely irrelevant since the historic landmark commission's decision is required to be based on criteria

established in applicable ordinances and adopted guidelines, and because Appellant is required to prove that the commission erred in its application of those criteria in order for his appeal to be granted. None of the adopted standards and associated guidelines that inform those standards have been cited, discussed or even mentioned in Appellant’s appeal letter. Accordingly, those assertions must be disregarded and summarily dismissed.

B. Appellant’s Responses to Planning Division Staff Analysis and Findings.

The second part of Appellant’s appeal letter attempts to respond to issues identified in the planning division staff report. First, it must be noted that the complete analysis of Appellant’s petitions vis-à-vis the relevant standards are provided in Attachments G and H of the planning division staff report. Analysis of the standards for a certificate of appropriateness for minor alterations is informed by the design guidelines provided in the city council-adopted policy document, *A Preservation Handbook for Historic Residential Properties & Districts in Salt Lake City*.¹ The planning division staff report identifies “key issues” relevant to those standards and related guidelines. Appellant’s arguments related to planning staff’s analysis and findings is limited to the “key issues” identified in the staff report.

Issue 1 provided in the staff report pertains to “mass and scale of the alterations to the rooflines [which] should be subordinate to and compatible with the scale of the historic building.” (Planning Division Staff Report Dated November 1, 2018, p. 6 (citing Design Guideline 8.14)). Appellant contends that “[t]he additions to the property are similar to other

¹ Salt Lake City Code Section 21A.34.020.B and the Handbook itself establish that the design guidelines supplement the general standards of the relevant ordinance provisions to interpret those general standards related to specific development activities.

constructions [*sic*] types throughout the avenues and are thus arguably both subordinate and compatible with existing buildings.” (Appellant’s Appeal Letter Dated December 3, 2018, p. 2).

This argument fails for two very clear reasons. First, the language of the guideline concerns subordination and compatibility of the “scale of *the* historic building” (emphasis added) to which the alteration is being made, not other structures in the district. Second, Appellant has not asserted or identified an error that the historic landmark commission made in its decision to adopt the related findings set forth in the staff report. These flaws are fatal to this argument as they misconstrue the guideline and because Appellant has failed to meet its statutorily required burden of proving that the land use authority erred in its application of the law.

Issue 2 provided in the staff report concerns the “roof form and slope of the additions” remaining “in character with the historic building.” (Planning Division Staff Report Dated November 1, 2018, p. 6-7 (citing Design Guideline 8.16)). Appellant’s response to this issue is that, “[t]he New [*sic*] dormers are located on the east side of the home with limited visibility and has no unpleasant distraction to the home and adds character rather than distraction.” (Appellant’s Appeal Letter Dated December 3, 2018, p. 2).

Just like Appellant’s arguments about Issue 1, Appellant has failed to address the actual standard, and, more importantly, has failed to assert an error made by the historic landmark commission in its application of the relevant standards and guidelines. Appellant may have a different opinion of whether the applicable criteria have been met, but that is not a permissible basis for the preservation appeal authority to disturb the decision of the historic landmark commission. Thus, Appellant’s arguments pertaining to Issue 2 must be rejected.

Issue 3 discussed in the staff report addresses the requirement that exterior materials and window styles be similar to materials and window styles found on the historic building or

historically used. (See Planning Division Staff Report Dated November 1, 2018, p. 7 (citing Design Guidelines 8.8 and 8.10)). Appellant contends that the wood shingles affixed to the attic additions “are exactly the same that were on the existing dormer prior to constructions [*sic*].” (Appellant’s Appeal Letter Dated December 3, 2018, p. 2). Appellant also contends that planning staff’s finding that the square window (atypical on historic buildings) is not actually square. (Id.)

As to the wood shingles, planning division staff notes that the installed shingles are rectangular, unlike the fishscale-patterned shingles on the front gables of the dwelling. (See Planning Division Staff Report Dated November 1, 2018, p. 7). Planning staff’s findings are clearly supported by the photographs in the staff report depicted in Figures 4-6, Figures 10-11, and Attachments B and C. As to the window shape that Appellant contends is not square, Figure 4 and Figure 10 (Appellant’s submitted elevation drawing) in the staff report tell a different story.

Appellant’s arguments regarding Issue 3 are clearly contradicted by the facts as included in the staff report. Moreover, Appellant has, again, failed to identify an error made by the historic landmark commission regarding its application of the relevant standards and guidelines, which failure requires the preservation appeal authority to reject the argument.

Issue 4 in the staff report addresses minimizing visual impacts of structural additions to historic structures. (See Planning Division Staff Report Dated November 1, 2018, p. 7 (discussing Design Guideline 8.2)). The staff report finds that “[t]he constructed attic additions, due to its [*sic*] mass, height and roof forms, have changed how the home is perceived from the street.” (Id.) The report also notes that the addition obscures a portion of the dwelling’s chimney, which is one of the dwelling’s significant features. (Id.)

Appellant's only response to planning staff's Issue 4 is that "[t]he chimney in question had limited visibility prior to the construction and still [*sic*] visible as it stands now." (Appellant's Appeal Letter Dated December 3, 2018, p. 2). Not only does Appellant ignore the main point of Issue 4--that the attic addition dramatically alters the perception of the structure--but it also attempts to marginalize the issue of obscuring the chimney as minimally impactful when the photographs in Attachments B and C of the staff report tell a different story. More importantly, Appellant has not asserted or identified any error the commission made with respect to the relevant standards and guidelines. For these reasons, Appellant's argument regarding Issue 4--whatever they may be--must be rejected.

Issue 5 pertains to the negative impacts that an addition to an historic building may have on the character of that building and the historic district in general. (See Planning Division Staff Report Dated November 1, 2018, p. 8 (discussing Design Guideline 8.2)). This issue identified by planning division staff points to the significant concern that the attic addition, if allowed, is such a significant alteration that it could cause the dwelling to lose its status as an historically contributory structure. Appellant responded to this issue as follows:

While considering the dormers in question, we used character defining elements through architectural design sensitive to the character of the avenues. I used may [*sic*] examples already existing in the historical district.

(Appellant's Appeal Letter Dated December 3, 2018, p. 2). This response is not only confusing, but is not responsive to the concern expressed by planning division staff. Moreover, there is nothing in this statement that can be construed as an assertion of error by the historic landmark commission. To repeat the city's position, the Appellant has failed to meet its required burden of showing that the historic landmark commission erred in the application of the applicable standards and guidelines. For that simple reason alone, this argument must be rejected.

Finally, Issue 6 briefly discusses the general standards for special exceptions. (See Planning Division Staff Report Dated November 1, 2018, p. 8). Planning division staff's complete analysis of the special exception standards is found in Attachment H of the staff report. As mentioned above, the special exceptions at issue are for additional wall and building height.

Appellant's response to Issue 6, is that,

The height in question is an essential design required to access the attic and has no negative visual impact. Adding this accessibility increases the value of the home, contributing to the historic preservation of not only the property, but of the historic preservation of the neighborhood.

(Appellant's Appeal Letter Dated December 3, 2018, p. 2). First, the notion that there is no visual impact is clearly contradicted by the record, the opinion of a professional municipal planner, the testimony of an adjacent neighbor², and what is clearly observable by human eyes. Second, the height of the addition being an essential design to access the attic has absolutely no relevance to any applicable standard in this matter (never mind the fact that the statement is unqualified by a design professional or licensed contractor). Third, whether the value of the subject dwelling may be increased is also irrelevant. The special exception standard at issue (SLC Code Sec. 21A.52.060.C) concerns the potential impact on property values of *other* property within the neighborhood. Fourth, Appellant's opinion that the attic addition will somehow contribute to the historic preservation of the property and the neighborhood is nothing more than Appellant's own, unsupported opinion. The city's planning professional prepared a robust and well-reasoned report detailing how this addition will harm the historic dwelling, the neighborhood and the historic district in general. Appellant's conclusory opinions do not amount to contrary evidence. Most importantly, Appellant's arguments regarding Issue 6 in the staff

² Some neighbors testified that the addition is an improvement to the structure and neighborhood. Regardless of the personal opinions offered regarding their positive perception of the addition, those opinions highlight the fact that there is an actual visual impact.

report do not identify, point out, describe, allege, or even hint at any possible error made by the historic landmark commission in its review of the petition and its application of the pertinent standards and guidelines to the facts presented in this matter. For that reason, Appellant's arguments regarding Issue 6 in the planning division staff report must be rejected.

CONCLUSION

For all of the reasons stated above, Appellant's arguments must be rejected and the historic landmark commission's decision be upheld.