



# Staff Report

PLANNING DIVISION

**To:** Salt Lake City Appeals Hearing Officer  
**From:** Noah Elmore, Associate Planner, (801) 535-7971 or [Noah.Elmore@slcgov.com](mailto:Noah.Elmore@slcgov.com)  
**Date:** May 16, 2024  
**Re:** PLNAPP2024-00182

## Appeal of Administrative Decision

**PROPERTY ADDRESS:** 370 N 200 W  
**PARCEL ID:** 08-36-282-003-0000  
**ZONING DISTRICT/ORDINANCE SECTION:** H Historic Preservation Overlay District  
**HISTORIC DISTRICT:** Capitol Hill  
**APPELLANT:** Kevin Anderson, Property Owner

### ISSUE

Whether staff erred in issuing an administrative decision to deny a Minor Alteration application for the painting of historically unpainted masonry at 370 N 200 W. The work had already been completed without approval and an enforcement case is on hold pending the outcome of this appeal. The subject address is located within the Capitol Hill Local Historic District, therefore subject to the standards in the H Historic Preservation Overlay District.

### ADMINISTRATIVE DECISION

Based on the analysis in the administrative decision letter found in [Attachment A](#), the application does not comply with the standards found in 21A.34.020.G (Standards for Alteration of a Landmark Site or Contributing Structure Including New Construction of an Accessory Structure), specifically those in subsections 2, 3, 5, 7, 8, and 9.

### STANDARD OF REVIEW

This is an appeal of an administrative decision pertaining to the denial of a Minor Alteration application. The appeals hearing officer, established pursuant to Section 21A.06.040, is the City's designated land use appeal authority on appeals of administrative decisions. The standard of review is de novo. See Section 21A.16.030.I.1.

Per Section 21A.34.020.F.12, *"Any person adversely affected by a final decision of the historic landmark commission, or in the case of administrative decisions, the planning director or designee, may file an appeal in accordance with the provisions of Chapter 21A.16 of this title"*.

Per Section 21A.16.030.A, an appeal made to the appeals hearing officer shall identify *"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"*.

Per Section 21A.16.030.J, the appellant has the burden of proving the decision appealed is incorrect.

## ATTACHMENTS

- A. [ATTACHMENT A: Administrative Decision Letter](#)
- B. [ATTACHMENT B: Minor Alteration Application](#)
- C. [ATTACHMENT C: Appeal Application and Claims](#)
- D. [ATTACHMENT D: December 6<sup>th</sup> Email](#)

## BACKGROUND

The subject property is located in the Capitol Hill Local Historic District and is subject to the requirements in Section 21A.34.020, H Historic Preservation Overlay District. The regulations in the overlay are intended to “[p]rovide the means to protect and preserve areas of the City and individual structures and sites having historic, architectural or cultural significance.” Work done on the exterior of properties within the overlay must be approved via a certificate of appropriateness (“COA”) to ensure that the work is in conformance with the historic preservation and architectural integrity purpose of the overlay: “[N]o alteration in the exterior appearance of a structure, site, object or work of art affecting the landmark site or a property within the H Historic Preservation Overlay District shall be made or permitted to be made unless or until the application for a certificate of appropriateness has been submitted to, and approved by, the Historic Landmark Commission, or administratively by the Planning Director, as applicable.” Section 21A.34.020.E.

The historic status rating of the subject property is contributing, as identified in the 2006 Capitol Hill Historic District Reconnaissance Level Survey (RLS), which is the most recent historic resource survey on file with the Salt Lake City Planning Division. As the brick has already been painted without a COA, the subject property has an open enforcement case, HAZ2023-04146, with the City. A timeline of events is outlined below because the enforcement, application submittal and decision coincided with the adoption of a related text amendment to the historic overlay district chapter of the zoning ordinance, 21A.34.020.

### TIMELINE OF EVENTS:

**February 8, 2023:** Mayor initiates text amendment, PLNPCM2023-00123, to reorganize and update the Historic Preservation Overlay District. Included in the proposed amendment is a provision to deny a COA at an administrative level when the standards of review, found in 21A.34.020.G, are not met.

**October 25, 2023:** Enforcement case opened for painting brick without a COA, HAZ2023-04146.

**November 13, 2023:** Applicant submits Minor Alteration application for the approval of painted brick, PLNHLC2023-00932.

**November 14, 2023:** City Council adopts Ordinance 67 of 2023 (Ordinance 67), which includes the provision to allow for the denial of a COA at an administrative level when the standards of review are not met.

**December 1, 2023:** PLNHLC2023-00932 is assigned. Mayor signs Ordinance 67.

**December 5, 2023:** Ordinance 67 is published.

**December 6, 2023:** Staff informed the applicant that the application could not be approved as proposed, based on the standards in 21A.34.020.G. Staff offered to work with applicant on removal of the existing paint; the applicant declined.

**January 17, 2024:** Administrative Decision issued to deny COA.

## APPEAL

The appellant claims that the administrative decision issued on January 17, 2024 erred in the decision to deny the COA for the painting of unpainted masonry. The appellant claims the decision was based on incorrect interpretations of the H Historic Preservation Overlay District and, as a result, no COA should be required.

## PLANNING DIVISION RESPONSE TO APPEAL CLAIMS

To assist the Hearing Officer in reviewing the appeal, the Planning Division has provided the following responses to the appellant's arguments. The appellant's appeal application and information related to these claims are located in [Attachment C](#).

### **Claim 1:** A COA is Not Required to Paint the Duplex

In point A of section III of the appeal, the appellant claims "*The City Code expressly provides that a building permit is not required for painting a building*". Staff acknowledges that a building permit is not required for painting. However, the issue at hand is not the requirement of a building permit, but the requirement of a COA. The appellant refers to 21A.34.020.E (H Historic Preservation Overlay District: Certificate Of Appropriateness Required) as a "general policy statement", however, the ordinance is not a policy statement but it explicitly states when a COA is required, "[...] *no alteration in the exterior appearance of a structure, site, object or work of art affecting the landmark site or a property within the H Historic Preservation Overlay District shall be made or permitted to be made unless or until the application for a certificate of appropriateness has been submitted to, and approved by, the Historic Landmark Commission, or administratively by the Planning Director...*". Painting is indisputably an alteration to the exterior appearance of the subject property. Therefore, City Code dictates that a COA was required. Subsection E goes on to provide a non-exclusive list of examples of when a COA is required in order to alert property owners to situations when a COA is required even when a building permit is not required by state construction codes. Pertinent to this situation, Subsection 21A.34.020.E.8 specifies a COA shall be required for the following, "*Masonry work including, but not limited to, tuckpointing, sandblasting and chemical cleaning*". Since paint is a physical treatment on masonry, appellant's work would also be incorporated within this subsection. This provision of the City Code is clearly mandatory and not a "policy statement" as appellate contends. As a result, the City must enforce this requirement to obtain a COA. See Utah Code § 10-9a-509(2) ("A municipality is bound by the terms and standards of applicable land use regulations and shall comply with mandatory provisions of those regulations.")

In addition to the requirement for a COA by 21A.34.020.E, Section 21A.04.030 plainly states, "*Projects located within the boundaries of a Historic Preservation Overlay District, or on a landmark site shall submit an application for certificate of appropriateness for all improvements regardless of any building permit requirements*". The zoning ordinance defines "improvement" as "something that enhances value or excellence." As refreshing paint is typically considered to enhance value, it is within the scope of the definition of improvement. See

21A.62.010 (definition of “improvement” comes from Webster’s Collegiate Dictionary). Because the requirement to obtain a COA is a substantive requirement for any exterior alteration, appellant cannot eviscerate this requirement simply because the City did not list every exterior alteration that could be made to a property in the ordinance. Appellant’s interpretation of City Code is not reasonable and fails to acknowledge that City Code does specifically prohibit modifications to masonry without a COA.

**Claim 2:** The Decision is Illegal, Not Permitted, or Unfair

In points B, F, and I of section III of the appeal, the appellant alleges the denial of the COA is illegal, the remedy is not permitted, and the City’s enforcement action is unfair. Claiming the denial of the COA is illegal, the appellant states the standards in 21A.34.020.G “*do not plainly restrict the Application or prohibit painting the brick*”. However, the standards listed in 21A.34.020.G, as informed by the adopted design guidelines (Design Guidelines for Historic Residential Properties, Chapter 2: Building Materials & Finishes), do plainly restrict the painting of unpainted masonry.<sup>1</sup> More specifically, painting historically unpainted masonry does not comply with standards 2, 3, 5, 7, 8, and 9. The appellant has failed to address or otherwise discuss the specifics of staff’s findings concerning the standards as detailed in the administrative decision nor has evidence been provided that the proposed work complies with the standards of review found in Section 21A.34.020.G. The appellant’s arguments are merely conclusory statements and fail to show how staff erred in the application of relevant standards to the facts in the record.

Appellant argues that state law compels the City to approve painting the masonry on this historic structure. “If a land use regulation does not plainly restrict a land use application, the land use authority shall interpret and apply the land use regulation to favor the land use application.” Utah Code § 10-9a-306(2). It is difficult to understand how much clearer the City’s standards need to be in order to reach the “plainly restrict” threshold that Appellant seems to demand. A standard applicable to this application is that “[t]he removal of historic materials or alteration of features and spaces that characterize a property shall be avoided” and the guidelines state: “Painting traditional masonry will obscure and may destroy its original character.” They go on to direct: “Masonry that was not painted traditionally should not be painted.” Appellant’s position would effectively require the City to interpret “should not be painted” into “should be painted.” This is not what Utah law requires. As the standards and design guidelines plainly restrict the alteration to the property proposed by appellant, his claim that the City must approve such work should be rejected.

In points B and I, the appellant asserts removal of the paint would violate applicable standards and that it would also be unfair. The appellant claims the process to remove the paint would violate 21A.34.020.G.7, “*Chemical or physical treatments, such as sandblasting, that cause damage to historic materials shall not be used*”. While such treatments would not be allowed, it is possible to remove paint using a chemical treatment without damaging the historic material. In

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<sup>1</sup> The design guidelines are adopted in the same manner as a land use regulation i.e. by the Salt Lake City Council, and “provide guidance for the interpretation of the zoning ordinance standards.” 21A.34.020.B.



fact, other similar enforcement cases have been successfully resolved in this way. For example, less than a block away at 171 W 300 N, in 2020, white paint was removed from striated brick (similar to the striated brick at the subject property) without damaging the historic material. Conversely, the appellant has failed to provide any evidence that removal of the paint would unduly damage the structure.

### **Claim 3: Procedural Errors**

- A. *The planning director was entitled to review the application administratively and no hearing was required before an administrative decision was made.*

In points C, D, E, and H of section III, as well as in section IV, the appellant alleges a series of procedural errors and a perceived denial of due process, largely on the basis that a hearing was not held prior to the issuance of the administrative decision. Prior to Ordinance 67, a proposal which did not comply with the standards would have been referred to the Historic Landmark Commission. However, the applicant is not entitled to a hearing prior to the denial of COA by way of an administrative decision, per Section 21A.34.020.F.6, which was adopted as part of Ordinance 67. Appellant claims this deprived him of the opportunity to “present its evidence and arguments and confront any witnesses or evidence presented against it”. Appeal at 5. However, that ignores the procedure afforded to all administrative decisions. Such decisions are always made without a hearing in advance. That is why applicants/affected parties are entitled to a hearing in connection with an appeal of an administrative decision before the appeals hearing officer, pursuant to 21A.16, as is the case in this matter. Because appellant has a right to a hearing in connection with this appeal, and the matter will be reviewed de novo, there is no prejudice to appellant and no due process rights have been impaired. Appellant provides no authority for its position that a hearing cannot occur after an administrative decision is made if an appeal is filed. Utah Court have held the opposite. “Federal due process does not require a mandatory hearing in all cases prior to an administrative action. Nor does due process necessarily require a hearing at any particular point in an administrative proceeding as long as the requisite hearing is held before the final order becomes effective.” Vali Convalescent & Care Inst. v. Indus. Comm’n of Utah, 649 P.2d 33, 36 (Utah 1982). “The most fundamental requirement in this context is the opportunity to be heard ‘at a meaningful time and in a meaningful manner.’” V-1 Oil Co. v. Dep’t of Env’t Quality, Div. of Solid & Hazardous Waste, 939 P.2d 1192, 1197 (Utah 1997) (citations omitted). Here, appellant will receive a hearing before the final decision of the appeals hearing officer. Appellant can present any evidence he wishes at the hearing, and therefore any arguments about being unable to do so are completely premature. While the City acknowledges that filing fees apply to appeals, fees also apply to any land use application and those fees are higher when the City must conduct public noticing for hearings. Simply put, appellant would have to pay fees to have a hearing whenever that hearing was conducted in the process. Therefore, appellant has not been prejudiced by having the hearing once the decision is appealed to the appeals hearing officer.

City staff processed the application in accordance with the process established in the pending ordinance, but applied the standards in existence at the time the application was complete. Under Utah Code 10-9a-509, the application was vested under the substantive standards, but not the process in effect at the time the application was filed. Utah Code 10-9a-509(1)(a)(i) (“An applicant who has submitted a complete land use application as described in Subsection (1)(c), including the payment of all application fees, is entitled to *substantive* review of the application under the land use regulations. . . .”). Substantively, the standards applicable to alterations to a contributing structure did not change with Ordinance 67 and were the same on November 13<sup>th</sup> as they were on December 5<sup>th</sup>. Therefore, City staff complied with the requirement in Utah law to review the application in accordance with the substantive standards applicable to the application at the time it was complete.

Procedurally, Ordinance 67, which had been pending for more than 9 months before appellant submitted the Minor Alteration application, allowed City staff to review the application administratively and did not require City staff to forward the application for review by the historic landmark commission. While appellant claims he was harmed by the lack of review by the Historic Landmark Commission, appellant fails to identify what evidence he was not able to present to them, besides arguments regarding the plainness of the City's Code in prohibiting painted masonry for properties in the historic overlay district. Such arguments are not evidence. There are no material facts in dispute. Rather, this is merely a dispute over the interpretation of City Code, which is fundamentally well-suited for resolution at a staff level, with the opportunity for appeal before a neutral decisionmaker, all of which is afforded to appellant in this case.

*B. The planning director was not required to deny the application within 30 days.*

The appellant also claims a decision was required to be made “*within thirty (30) days following receipt of a completed application*” according to 21A.34.020.F.1.g: “*On the basis of written findings of fact, the Planning Director or the Planning Director's designee shall either approve or conditionally approve the certificate of appropriateness based on the standards in subsections G and H of this section, whichever is applicable, within thirty (30) days following receipt of a completed application*”. The plain language of this provision provides that this time limit only applies if an application is going to be approved. The provision does not require all decisions be made within thirty days. In this circumstance, the COA was formally denied and therefore the decision was not required to be issued within thirty days. However, this provision did not apply because it was eliminated by Ordinance 67. As this is also a procedural, and not substantive, standard City staff was permitted to apply this process change to this application. Even if this provision applied, the City complied with this provision by informing appellant by email on December 6, 2023, 23 days after the application was submitted, that it could not be approved. See [Attachment D](#). The fact that the City sent a formal denial later benefitted rather than harmed appellant because that gave him more time to appeal the City's decision. Therefore, appellant's claim of an untimely decision should be rejected by the appeals hearing officer.

*C. Appellant's other procedural arguments are either irrelevant or premature.*

The appellant claims the City selectively enforces on painted brick, which is contrary to the evidence in City records. While it is policy to enforce based on complaints, all cases opened for painted brick in the historic overlay have been enforced according to City Code. Because this appeal relates to the correctness of the administrative decision to deny the application, appellant's claims regarding enforcement should be disregarded.

Finally, the appellant claims no findings of fact were provided as part of the administrative decision ([Attachment A](#)). This is incorrect as the findings of fact are plainly provided in the administrative decision, of which the appellant has failed to prove that staff erred in the application of the relevant standards. Moreover, at the conclusion of this appeal, the appeals hearing officer will issue a decision with findings of fact and conclusions of law that will provide appellant with sufficient information to know the basis of the City's decision in the event that either party chooses to appeal such decision to third district court. Therefore, appellant's claim of inadequate findings is both plainly incorrect and premature.

**Claim 4: The Structure Should Not Be Contributing**

The remaining claim presented by the appellant is that the subject duplex should not be considered a contributing structure. Such a claim is irrelevant to this review because city records indicate the property as contributing. The appellant may question the contributory status of the building through a determination of contributing status, which is processed by way of an Administrative Interpretation pursuant to Section 21A.34.020.D. Because appellant has not

exhausted his administrative remedies to have the property reclassified, this claim must be rejected as part of this appeal.

## Conclusion

Under Section 21A.34.020.G, “*In considering an application for a certificate of appropriateness for alteration of a landmark site or contributing structure, or new construction of an accessory structure associated with a landmark site or contributing structure, the historic landmark commission, or the planning director, for administrative decisions, shall, using the adopted design guidelines as a key basis for evaluation, find that the project substantially complies with all of the following standards*”. Based on the evidence provided in the administrative decision, the proposal does not comply with all standards that pertain to the application in question. Specifically, the proposal does not comply with standards in Subsections 21A.34.020.G.2, 3, 5, 7, 8, and 9. The arguments presented by the appellant fail to address the evidence provided in the administrative decision or otherwise identify error in staff’s analysis of the standards of review. For all of the reasons stated above, appellant’s arguments must be rejected and the administrative decision be upheld.

## NEXT STEPS

If the administrative decision is upheld then the applicant will be required to submit a new Minor Alteration to remove the paint. Staff will work with the applicant to ensure the surface cleaning of the structure is undertaken using the gentlest means possible, in compliance with 21A.34.020.G.7.

If the administrative decision is overturned due to lack of Historic Landmark Commission review, then the application would be referred to the Historic Landmark Commission for a decision.

If the administrative decision is overturned on other grounds, then paint may remain as is.

The decision of the appeals hearing officer can be appealed to Third District Court within 30 days of the decision.

# **ATTACHMENT A: Administrative Decision Letter**

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## **Administrative Decision for Petition PLNHLC2023-00932 – Painted Brick at approximately 370 North 200 West**

January 17, 2024  
Kevin Anderson  
PO Box 459  
Huntsville, UT 84317

### **REQUEST**

Kevin Anderson submitted a minor alteration application for a Certificate of Appropriateness to retroactively approve painting the exterior of an unpainted masonry (brick) building (“Borden-Fairbanks Duplex”) located at approximately 370 North 200 West.

### **BACKGROUND**

The subject property is located in the Capitol Hill Local Historic District and subject to the requirements in Section 21A.34.020, H Historic Preservation Overlay District. The historic status rating of the subject property is contributing, as identified in the Capitol Hill Historic District Reconnaissance Level Survey (RLS), 2006, which is the most recent historic resource survey on file with the Salt Lake City Planning Division. As the brick has already been painted without a Certificate of Appropriateness, the subject property has an open enforcement case, HAZ2023-04146, with the City.

### **DECISION**

Based on the findings, as provided herein, it is Planning staff’s determination that the request does not meet the applicable standards of approval. Consequently, pursuant to 21A.34.020.F.6, the request to paint the exterior brick is denied.

### **STANDARDS OF REVIEW**

**Standards for Alteration of a Landmark Site or Contributing Structure Including New Construction of an Accessory Structure: In considering an application for a certificate of appropriateness for alteration of a landmark site or contributing structure, or new construction of an accessory structure associated with a landmark site or contributing structure, the historic landmark commission, or the planning director, for administrative decisions, shall, using the adopted design guidelines as a key basis for evaluation, find that the project substantially complies with all of the following standards:**

- 1. A property shall be used for its historic purpose or be used for a purpose that requires minimal change to the defining characteristics of the building and its site and environment;**

Staff Analysis: The existing structure on site was constructed in 1954 as a two-family dwelling. No change in use is proposed; the proposed work complies with this standard.

- 2. The historic character of a property shall be retained and preserved. The removal of historic materials or alteration of features and spaces that characterize a property shall be avoided;**

Staff Analysis: The Residential Design Guidelines describe masonry as “*one of the most important character-defining features of a historic building*”. The City’s design guidelines, including Residential Design Guidelines, do not support paint on masonry that was not traditionally painted. Residential Design Guideline 2.6 states “*Masonry that was not painted traditionally should not be painted*” and supplements this

stating, *“Painting masonry can trap moisture that would otherwise naturally evaporate through the wall, not allowing it to “breathe” and causing extensive damage over time”*.

The unpainted, striated brick of the Borden-Fairbanks Duplex is a distinctive feature of the property, indicative of the period in which it was constructed, thereby contributing to its historic character. The applied paint both prevents the preservation of the brick, alters a character-defining feature, and damages the historic masonry walls. Essentially, the paint contradicts the purpose of preservation by actively deteriorating a material that holds historic significance; the proposed work does not comply with this standard.

**3. All sites, structures and objects shall be recognized as products of their own time. Alterations that have no historical basis and which seek to create a false sense of history or architecture are not allowed;**

Staff Analysis: The masonry on the structure was not painted prior to what was applied in 2023. While there are houses within the City and the Capitol Hill Local Historic District that were historically painted, painting the subject building’s bricks may create a sense of historically painted brick and would not reflect its historic architectural character; the proposed work does not comply with this standard.

**4. Alterations or additions that have acquired historic significance in their own right shall be retained and preserved;**

Staff Analysis: The proposal does not include work that would modify or remove any existing alterations or additions that have acquired historic significance in their own right; this standard does not apply.

**5. Distinctive features, finishes and construction techniques or examples of craftsmanship that characterize a historic property shall be preserved;**

Staff Analysis: Residential Design Guidelines 2.2 and 2.3 state, respectively, *“Traditional masonry surfaces, features, details and textures should be retained”* and *“The traditional scale and character of masonry surfaces and architectural features should be retained”*. In its nomination form to the Utah State Historical Society, the striated brick of the Borden-Fairbanks Duplex is identified as a distinctive feature characteristic of its construction during the 1950s; it reflects both the craftsmanship and the traditional masonry construction of historic buildings in the district. Furthermore, Residential Design Guideline 2.6 goes on to state, *“Painting traditional masonry will obscure and may destroy its original character”*. The red color of the brick, with its contrast against the mortar joint’s light color, is another distinctive feature which adds to this building’s historic character. Therefore, to maintain the anachronistic paint not only obscures these features, but damages the brick’s original character and, by extension, the character of the entire building; the proposed work does not comply with this standard.

**6. Deteriorated architectural features shall be repaired rather than replaced wherever feasible. In the event replacement is necessary, the new material should match the material being replaced in composition, design, texture and other visual qualities. Repair or replacement of missing architectural features should be based on accurate duplications of features, substantiated by historic, physical or pictorial evidence rather than on conjectural designs or the availability of different architectural elements from other structures or objects;**

Staff Analysis: The scope of work does not include the repair of any deteriorated architectural features; this standard does not apply.

- 7. Chemical or physical treatments, such as sandblasting, that cause damage to historic materials shall not be used. The surface cleaning of structures, if appropriate, shall be undertaken using the gentlest means possible;**

Staff Analysis: Paint is a physical treatment which is known to damage historic brick akin to the kind used in the construction of the Borden-Fairbanks Duplex. Left unpainted, the porous nature of brick allows it to both absorb and release moisture (see Residential Design Guideline 2.6). In a home with unpainted brick, moisture may move from the inside of a home to the outside by passing through small openings in brick. However, paint creates a seal resulting in brick losing its ability to release moisture, so any moisture moving from inside the home toward the exterior wall will become trapped between the paint and brick face. Thus, any moisture trapped inside the wall will deteriorate the grout and, by extension, compromise the structural integrity of the home. Furthermore, in colder climates, the rate of deterioration is much faster due to the continuous freezing and thawing of water as part of the frost-thaw cycle; the proposed work does not comply with this standard.

- 8. Contemporary design for alterations and additions to existing properties shall not be discouraged when such alterations and additions do not destroy significant cultural, historical, architectural or archaeological material, and such design is compatible with the size, scale, color, material and character of the property, neighborhood or environment;**

Staff Analysis: While the alteration utilizes a contemporary design (white painted brick with black trim), over time the paint used will destroy the historic brick material and compromise the integrity of the overall historic structure. Therefore, the design and material are incompatible with the character of the property, having a decidedly negative effect on the historic home; the proposed work does not comply with this standard.

- 9. Additions or alterations to structures and objects shall be done in such a manner that if such additions or alterations were to be removed in the future, the essential form and integrity of the structure would be unimpaired. The new work shall be differentiated from the old and shall be compatible in massing, size, scale and architectural features to protect the historic integrity of the property and its environment;**

Staff Analysis: Paint is not easily removed from masonry, requiring professional expertise and extra care. Moreover, moisture trapped underneath the paint will cause damage to the masonry over time, shortening its lifespan and structural integrity; the proposed work does not comply with this standard.

- 10. Certain building materials are prohibited including the following:**

- a. Aluminum, asbestos, or vinyl cladding when applied directly to an original or historic material.**

Staff Analysis: The project does not involve the direct application of aluminum, asbestos, or vinyl cladding; this standard does not apply.

- 11. Any new sign and any change in the appearance of any existing sign located on a landmark site or within the H Historic Preservation Overlay District, which is visible from any public way or open space shall be consistent with the historic character of the landmark site or H Historic Preservation Overlay District and shall comply with the standards outlined in chapter 21A.46 of this title.**

Staff Analysis: The project does not involve changes to or any new signage; this standard does not apply.



## **APPLICABLE DESIGN GUIDELINES**

Design Guidelines for Historic Residential Properties & Districts in Salt Lake City, Chapter 2: Building Materials & Finishes are the relevant historic guidelines for this design review and are identified below for the Commission's reference.

### **Design Guidelines for Historic Residential Properties & Districts in Salt Lake City, Chapter 2: Building Materials & Finishes – Masonry**

Masonry includes a range of solid construction materials. The following guidelines apply to the masonry surfaces, features, and details of historic buildings in the city's designated residential districts.

Masonry in its many forms is one of the most important character-defining features of a traditional building. Brick, stone, adobe, terra-cotta, ceramics, stucco, cast artificial stone, and concrete are typical masonry construction materials used across the city, reflecting its sequence of settlement and development, as well as personal means and architectural style. Masonry materials of various types exist as walls, cornices, pediments, steps, chimneys, foundations, and functional and/or decorative building features and details.

In a brick wall, the particular size of brick used and the manner in which it is laid is a distinctive characteristic. Similarly, the pattern or 'bond' in the construction of a brick or stone wall helps to establish its character. This pattern combines with the choice and nature of the material, the choice of cut, rough and/or dressed stone, to create a unique physical and visual character.

Masonry is usually comprised of the masonry unit, e.g. the individual brick or stone, and the medium used to bind these units, e.g. the mortar, each with a mutually supporting role. The pattern used to lay the brick (the bond) is directly influenced by the hardness, color, thickness and profile of the mortar coursing with which it is laid. Historically, a soft mortar was used. In post-war years the use of a harder brick was matched by a harder mortar. The mortar should always be softer than the brick or the stone.

In earlier masonry buildings, a soft mortar was used, which employed a high ratio of lime. (Little, if any, Portland cement was used.) This soft mortar was usually laid with a finer joint than we see today. The inherent color of the material was also an important characteristic; mortars would be mixed using sand colors to match or contrast with the brick. The size of the bricks contributed to the sense of scale of the wall and building, expressed by the profile and color of the mortar joints; both express a range of construction patterns or brick bonds. When repointing such walls, it is important to use a mortar mix that approximates the original in color, texture and strength.

Most contemporary mortars are harder in composition than those used historically. They should not be used in mortar repairs because this stronger material is often more durable than the brick itself, causing the brick to fracture or spall during movement or moisture evaporation/freezing. When a wall moves during the normal changes in season and temperatures, the brick units themselves can be damaged and spalling of the brick surface can occur.

Normally, moisture within the wall should be able to evaporate through the softer ("sacrificial") mortar course, requiring repointing after a number of years. Where the mortar is harder than the brick, water evaporates through the brick, damaging and destroying its harder surface. If moisture in the brick freezes, it accelerates the deterioration

### **2.2 Traditional masonry surfaces, features, details and textures should be retained.**

### **2.3 The traditional scale and character of masonry surfaces and architectural features should be retained.**

- This includes original mortar joint characteristics such as profile, tooling, color, and dimensions.
- Retain bond or course patterns as an important character-defining aspects of traditional masonry.

## **2.6 Masonry that was not painted traditionally should not be painted.**

- Brick has a hard outer layer, also known as the ‘fire skin,’ that protects it from moisture penetration and deterioration in harsh weather.
- Natural stone often has a similar hard protective surface created as the stone ages after being quarried and cut.
- Painting traditional masonry will obscure and may destroy its original character.
- Painting masonry can trap moisture that would otherwise naturally evaporate through the wall, not allowing it to “breathe” and causing extensive damage over time.

## **FINDINGS**

Based on the preceding analysis, the proposal does not comply with the standards of review found in 21A.34.020.G. Specifically, the proposal does not comply with standards 21A.34.020.G.2, 21A.34.020.G.3, 21A.34.020.G.5, 21A.34.020.G.7, 21A.34.020.G.8, and 21A.34.020.G.9.

## **APPEAL PROCESS**

### Appeal by the Applicant

There is a **30-day** period in which the applicant may appeal the decision to the city’s Appeals Hearing Officer. Any appeal by the applicant, including the filing fee, must be filed by the close of business on February 16, 2024.

### Appeal by an Affected Party

There is a **10-day** appeal period in which any party entitled to appeal can appeal the decision to the city’s Appeals Hearing Officer. This appeal period is required in the City’s Zoning Ordinance and allows time for any affected party to protest the decision, if they so choose. Any appeal, including the filing fee, must be filed by the close of business on January 29, 2024.

Dated in Salt Lake City, UT, this 17<sup>th</sup> day of January 2024.

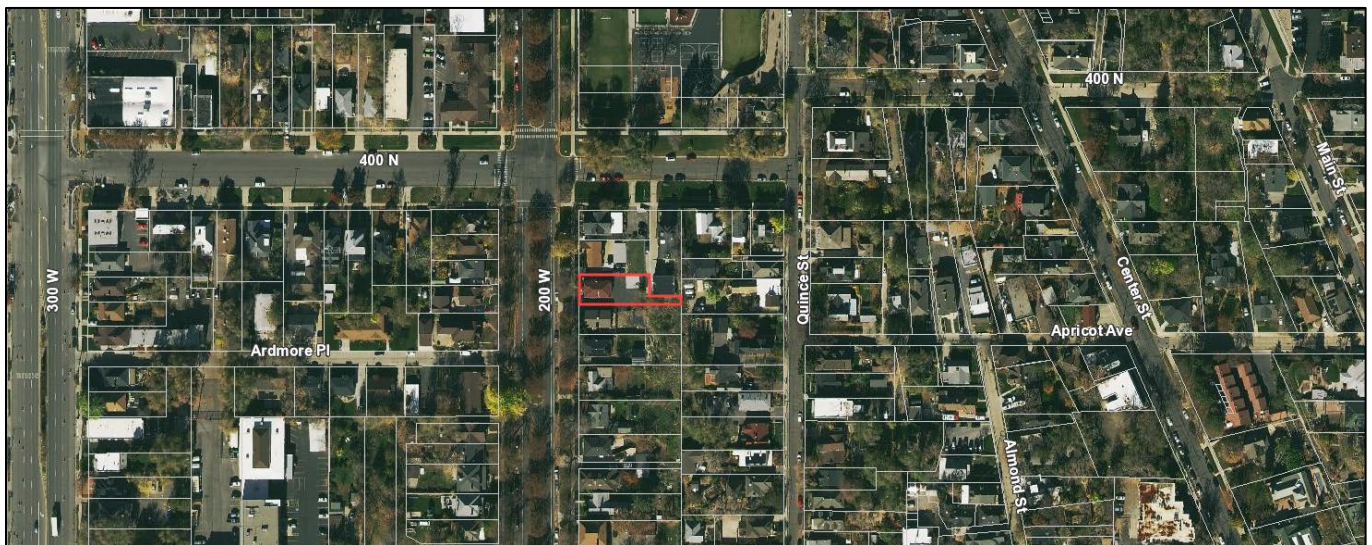
*Noah Elmore*

---

Noah Elmore, AICP  
Associate Planner

CC: Nick Norris, Planning Director  
Michaela Oktay, Deputy Planning Director  
Mayara Lima, Zoning Administrator

## ATTACHMENT A: Vicinity Map & Historic District Map



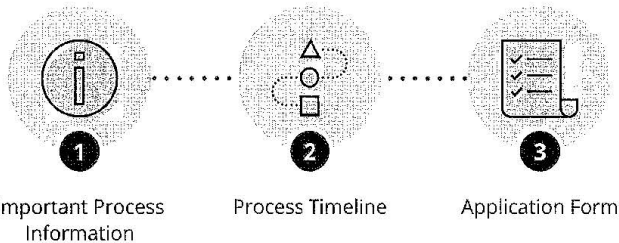


## HISTORIC PRESERVATION MINOR ALTERATION

### ABOUT THE APPLICATION

Thank you for your interest in submitting a Historic Preservation (HP): Minor Alteration application. The following packet will provide general information to get started on your project and guide you through the application process from start to finish. The package is broken down into three sections: Information about the application, a visual diagram of the application process, and the application form.

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PLANNING DIVISION  
451 SOUTH STATE STREET ROOM 406  
PO BOX 145480  
SALT LAKE CITY, UT 84114-5480

[SLC.GOV/PLANNING](http://SLC.GOV/PLANNING)  
[HISTORICPRESERVATION@SLCGOV.COM](mailto:HISTORICPRESERVATION@SLCGOV.COM)  
TEL 801-535-7757

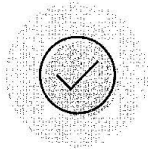
# IMPORTANT PROCESS INFORMATION

## ORDINANCE

21A.34.020

### PURPOSE & INTENT OF THE PROCESS

A minor alteration includes modifications that would not change the character of a contributing building, are reversible and easy to remove, and would not compromise its contributing status. It also includes modifications to noncontributing buildings and accessory structures. Example of minor alterations are:



- Additions to a landmark site or contributing building which are not visible from the street.
- Replacement of windows and doors of a landmark site or contributing building on facades that are not visible from the street.
- Reverting a landmark site or contributing building to its original state.
- Repairs and replacements like-for-like to landmark site or contributing building.
- Any changes to a noncontributing structure or accessory structures.
- New construction or demolition of accessory structures.
- Site improvements, mechanical equipment, solar panels, and seismic upgrades.

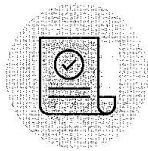
**Minor alterations may be approved administratively by Planning staff.**

### LANDMARK SITE



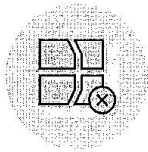
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### CONTRIBUTING STRUCTURE



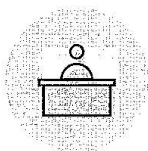
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### CONSULTATION



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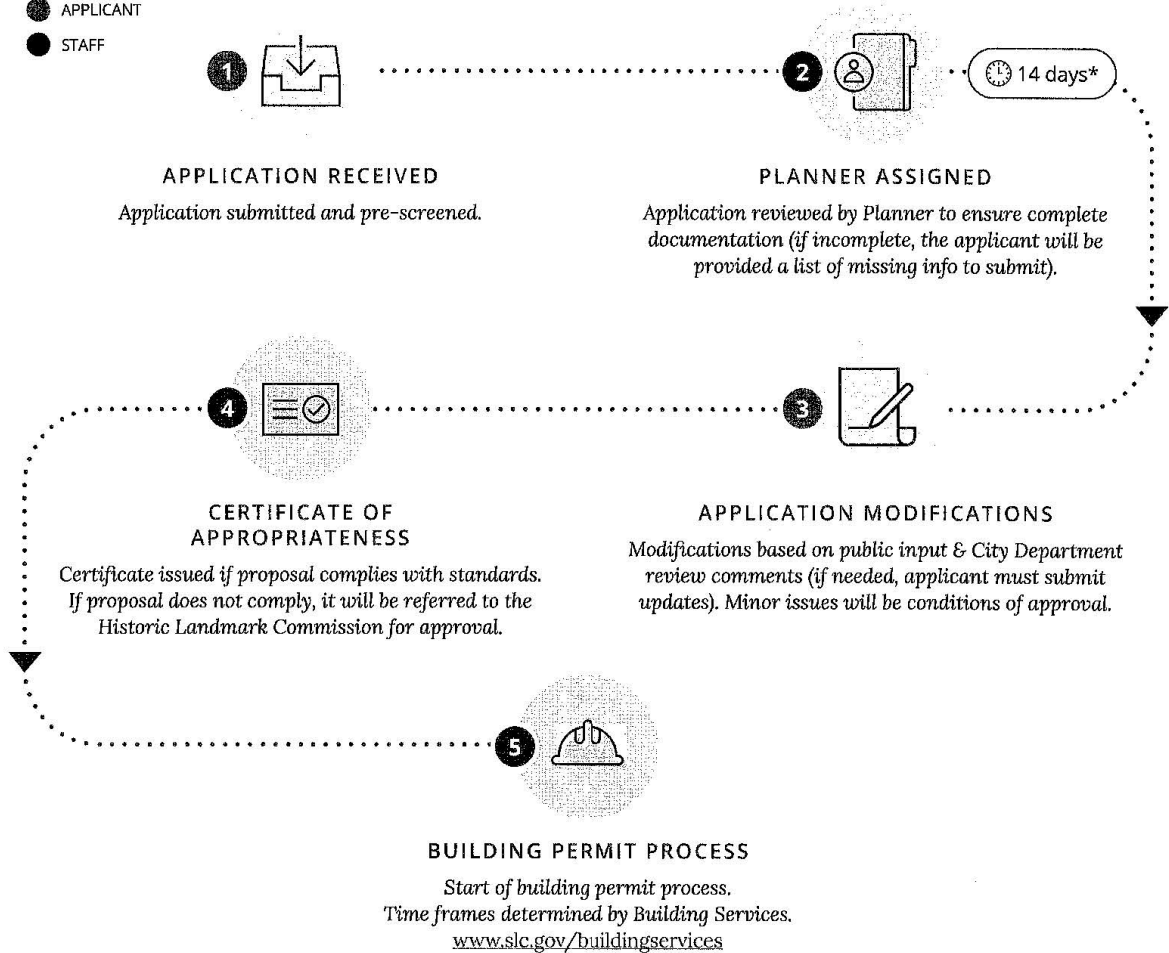
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# PROCESS TIMELINE

## TIME FRAME

🕒 2 - 4 WEEKS

● APPLICANT  
● STAFF

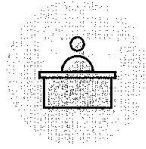


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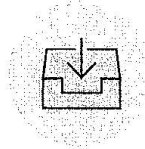
# HP MINOR ALTERATION

## IMPORTANT INFORMATION



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### SUBMISSION

Submit your application online through the [Citizen Access Portal](#). Learn how to submit online by following the [step-by-step guide](#).

## APPLICANT INFORMATION

### PROJECT NAME (OPTIONAL)

### ADDRESS OF SUBJECT PROPERTY

370-372 North 200 West, Salt Lake City, Utah 84111

### REQUEST

COA permitting the painting of 60's style rough ridged red bricks on a duplex

### NAME OF APPLICANT

Kevin Anderson TR for Kevin Anderson PC Defined Benefit Plan

### PHONE

801-554-4430

### MAILING ADDRESS

P.O. Box 459 Huntsville, Utah 84317

### EMAIL

kanderson@andersoncall.com

### APPLICANT'S INTEREST IN PROPERTY (\*owner's consent required)

☒ Owner ☐ Architect\* ☐ Contractor\* ☐ Other\*

### IF OTHER, PLEASE LIST

### NAME OF PROPERTY OWNER (if different from applicant)

Kevini Anderson and Julie Anderson as Trustees of Kevin Anders

### PHONE

801-554-4430

### MAILING ADDRESS

P.O. Box 459, Huntsville, Utah 84317

### EMAIL

kanderson@andersoncall.com

## OFFICE USE

### CASE NUMBER

### RECEIVED BY

### DATE RECEIVED

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### ACKNOWLEDGMENT OF RESPONSIBILITY

1. This is to certify that I am making an application for the described action by the City and that I am responsible for complying with all City requirements with regard to this request. This application will be processed under the name provided below.
2. By signing the application, I am acknowledging that I have read and understood the instructions provided for processing this application. The documents and/or information I have submitted are true and correct to the best of my knowledge. I understand that the documents provided are considered public records and may be made available to the public.
3. I understand that my application will not be processed until the application is deemed complete by the assigned planner from the Planning Division. I acknowledge that a complete application includes all of the required submittal requirements and provided documents comply with all applicable requirements for the specific applications. I understand that the Planning Division will provide, in writing, a list of deficiencies that must be satisfied for this application to be complete and it is the responsibility of the applicant to provide the missing or corrected information. I will keep myself informed of the deadlines for submission of material and the progress of this application.
4. I understand that a staff report will be made available for my review prior to any public hearings or public meetings. This report will be on file and available at the Planning Division and posted on the Division website when it has been finalized.

NAME OF APPLICANT

Kevin Anderson TR for Kevin Anderson PC Defined Benefit Plan

EMAIL

kanderson@andersoncall.com

MAILING ADDRESS

P.O. Box 459 Huntsville, Utah 84317

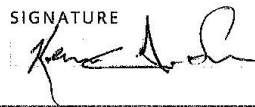
PHONE

801-554-4430

APPLICATION TYPE

Minor Alteration COA

SIGNATURE



DATE

11-10-2023

### LEGAL PROPERTY OWNER CONSENT

If the applicant is not the legal owner of the property, a consent from property owner must be provided. Properties with a single fee title owner may show consent by filling out the information below or by providing an affidavit.

**Affirmation of sufficient interest:** I hereby affirm that I am the fee title owner of the below described property or that I have written authorization from the owner to pursue the described action.

LEGAL DESCRIPTION OF SUBJECT PROPERTY

COMMENCING AT A POINT 102.5 FEET SOUTH OF THE NORTHWEST CORNER OF LOT 5, BLOCK 113, PLAT "A", SALT LAKE CI

NAME OF OWNER

Kevin Anderson and Julie Anderson as Trustees of Kevin Anders

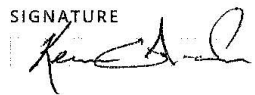
EMAIL

kanderson@andersoncall.com

MAILING ADDRESS

P.O. Box 459, Huntsville, Utah 84317

SIGNATURE



DATE

11-10-2023

1. If a corporation is fee titleholder, attach copy of the resolution of the Board of Directors authorizing the action.
2. If a joint venture or partnership is the fee owner, attach copy of agreement authorizing action on behalf of the joint venture or partnership.
3. If a Home Owner's Association is the applicant then the representative/president must attach a notarized letter stating they have notified the owners of the proposed application. A vote should be taken prior to the submittal and a statement of the outcome provided to the City along with the statement that the vote meets the requirements set forth in the CC&Rs.

**DISCLAIMER:** BE ADVISED THAT KNOWINGLY MAKING A FALSE, WRITTEN STATEMENT TO A GOVERNMENT ENTITY IS A CRIME UNDER UTAH CODE CHAPTER 76-8, PART 5. SALT LAKE CITY WILL REFER FOR PROSECUTION ANY KNOWINGLY FALSE REPRESENTATIONS MADE PERTAINING TO THE APPLICANT'S INTEREST IN THE PROPERTY THAT IS THE SUBJECT OF THIS APPLICATION.

# SUBMITTAL REQUIREMENTS

Please provide the following information with your application. Confirm that you have included each of the requirements listed below by adding a check mark for each item.

CHECK	STAFF	REQUIREMENTS (21A.34.020.F.1.c)
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<b>Project Description.</b> <ul style="list-style-type: none"><li>• Written description of your proposal.</li></ul>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<b>Materials:</b> <ul style="list-style-type: none"><li>• List of proposed building materials.</li><li>• Provide samples and/or manufacturer's brochures where applicable.</li></ul>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<b>Photographs:</b> <ul style="list-style-type: none"><li>• Current photographs of each side of the building (no google images).</li><li>• Close up images of details that are proposed to be altered.</li></ul>
<input type="checkbox"/>	<input type="checkbox"/>	<b>Site Plan, if applicable:</b> <ul style="list-style-type: none"><li>• Site plan with dimensions, property lines, north arrow, existing and proposed building locations on the property. (See <u>Site Plan Requirements</u> flyer for further details).</li></ul>
<input type="checkbox"/>	<input type="checkbox"/>	<b>Other Drawings, if applicable:</b> <ul style="list-style-type: none"><li>• Detailed elevation, sections and profile drawings with dimensions drawn to scale of the area of change.</li><li>• Show section drawings of windows, doors, railings, posts, porches, etc. If proposed also show type of construction where applicable.</li></ul>

INCOMPLETE INFORMATION WILL NOT BE ACCEPTED

INITIALS     **DISCLAIMER:** I ACKNOWLEDGE THAT SALT LAKE CITY REQUIRES THE ITEMS ABOVE TO BE SUBMITTED BEFORE MY APPLICATION CAN BE PROCESSED. I UNDERSTAND THAT PLANNING WILL NOT ACCEPT MY APPLICATION UNLESS ALL OF THE FOLLOWING ITEMS ARE INCLUDED IN THE SUBMITTAL PACKAGE.

### **MINOR ALTERATION COA APPLICATION ADDENDUM**

**For:** Kevin Anderson and Julie Anderson as Trustees of the Kevin Anderson Defined Benefit Profit Sharing Plan, owner of duplex

**Location:** 370-372 North 200 West, Salt Lake City, Utah

**Date:** Submitted November 10, 2023

### **PROJECT DESCRIPTION**

The project is the painting of exterior of a Duplex we own at 370-372 North 200 West in Salt Lake City. It is a 50's-60's red brick box type structure, with one duplex unit at ground floor and the second unit above the lower unit. We wanted to paint the brick white. We checked the City Website for information on whether a building permit was needed. The site said that a permit was not needed for exterior painting. See SLC.gov website which is excerpted below:

#### **FAQ's**

#### **BSCE – Frequently Asked Questions**

**Where is the Permits and Zoning office located?**

**Why do I need a permit?**

**When do I need a permit?**

Basically, all work being done requires a permit. The only exception to this is painting, laying flooring or other cosmetic issues. ....

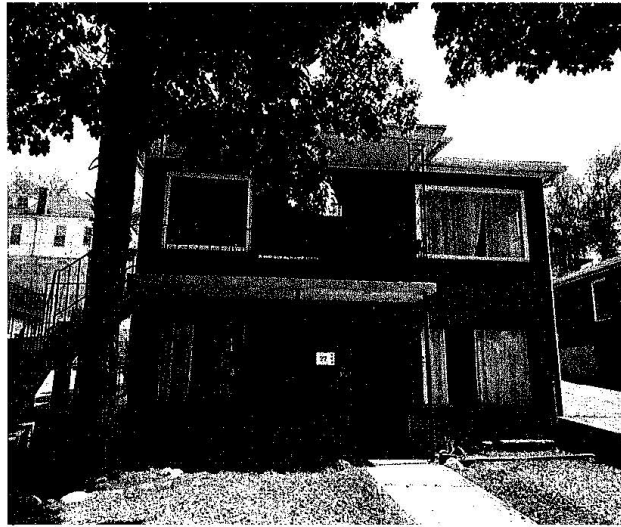
[The yellow highlighting is added]

Based on that excerpt we understood that we could paint the duplex bricks. After painting the bricks white, we subsequently received a notice from the City stating that the duplex bricks should not have been painted without a COA because the duplex is in a historic district. Therefore, we submit this application for the Minor Alteration COA to permit the painting of the exterior of the building, including painting the bricks white.

### MATERIALS

The materials used for painting the exterior brick: Benjamin Moore formula white paint.

### PHOTOGRAPH OF THE DUPLEX IN ITS ORIGINAL CONDITION



## ATTACHMENT C: Photographs

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*Image 1: 2006 reconnaissance level survey (RLS) photograph of the subject building.*



*Image 2: January 2024 photograph of the subject building.*



# ATTACHMENT D: 2006 Reconnaissance Survey Form

(printout date: 9/08/2006)

## Architectural Survey Data for SALT LAKE CITY Utah State Historic Preservation Office

Page 7 of 90

Address/ Property Name	Eval/ Ht	OutB N/C	Yr.(s) Built	Materials	Styles	Plan (Type)/ Orig. Use	Survey Year RLS/ILS/Gen	Comments/ NR Status
355 N 200 WEST DRUMMOND, JOHN E., HOUSE	A	0/1 1	1936	MULTI-COLOR BRICK HALF-TIMBERING	ENGLISH TUDOR	PERIOD COTTAGE SINGLE DWELLING	06 05	N05
360 N 200 WEST	B	0/1 2	1952	STRIATED BRICK	POST-WWII: OTHER	DOUBLE HOUSE / MULTIPLE DWELLING	06 05	DOUBLE HOUSE TYPE B; 360-362 N05
363 N 200 WEST WILSON, HENRY S., HOUSE	B	0/1 1	1939	MULTI-COLOR BRICK	ENGLISH COTTAGE	PERIOD COTTAGE SINGLE DWELLING	06 05	CONVERTED GARAGE IN REAR N05
367 N 200 WEST PATTERSON, WILLIAM, HOUSE	B	0/1 1	1927	REGULAR BRICK	BUNGALOW	BUNGALOW SINGLE DWELLING	06 05	TRANSITIONAL BUNGALOW N05
370 N 200 WEST	B	0/1 2	1952	STRIATED BRICK	POST-WWII: OTHER	DOUBLE HOUSE / MULTIPLE DWELLING	06 05	DOUBLE HOUSE TYPE B; 370-372 N05
373 N 200 WEST ROMNEY CO., GASKELL, HOUSE	B	0/1 1	1926	MULTI-COLOR BRICK	ENGLISH COTTAGE	PERIOD COTTAGE SINGLE DWELLING	06 05	N05
374 N 200 WEST	A	0/0 2	1953	STRIATED BRICK	EARLY RANCH (GEN.)	DOUBLE HOUSE / MULTIPLE DWELLING	06 05	374-374 1/2 N; DOUBLE HOUSE TYPE B N05
376 N 200 WEST MELLEM, JOSEPH W., HOUSE	B	0/0 2	c. 1910	REGULAR BRICK ALUM/VINYL SIDING	BUNGALOW	BUNGALOW SINGLE DWELLING	06 05	GABLE & PORCH ALTERATIONS N05
377 N 200 WEST	B	1/0 1	1940	STRIATED BRICK	MINIMAL TRADITIONAL	WWII-ERA COTTAGE SINGLE DWELLING	06 05	NICE FLOWER GARDEN N05
405 N 200 WEST	B	0/0 1.5	1951	REGULAR BRICK	POST-WWII: OTHER	OTHER APT./HOTEL MULTIPLE DWELLING	06 86	APARTMENT COMPLEX, 405-413, TWELVE UNITS; GEN FILE AKA 202-210 W 400 NORTH N05A
420 N 200 WEST WASHINGTON ELEMENTARY	D	0/0 2	2006	REGULAR BRICK CONCRETE: OTHER	NEO-ECCLECT.: OTHER	MODERN SCHOOL SCHOOL	06	UNDER CONSTRUCTION DURING 2006 RLS; IN CAPITOL HILL HD

?=approximate address

Evaluation Codes: A=eligible/architecturally significant B=eligible C=ineligible/alteted D=ineligible/out of period U=undetermined/lack of info X=demolished

CAPITOL HILL HISTORIC DISTRICT  
Salt Lake City, Salt Lake County, Utah

RECONNAISSANCE LEVEL SURVEY – 2006  
Page 7 of 90



355 N 200 West  
A



360-362 N 200 West  
B



363 N 200 West  
B



367 N 200 West  
B



370-372 N 200 West  
B



373 N 200 West  
B



374 N 200 West  
A



376 N 200 West  
B



377 N 200 West  
B



405 N 200 West  
B



405 N 200 West  
(aka 202-210 W 400 North)



420 N 200 West  
D



# **ATTACHMENT B: Minor Alteration Application**

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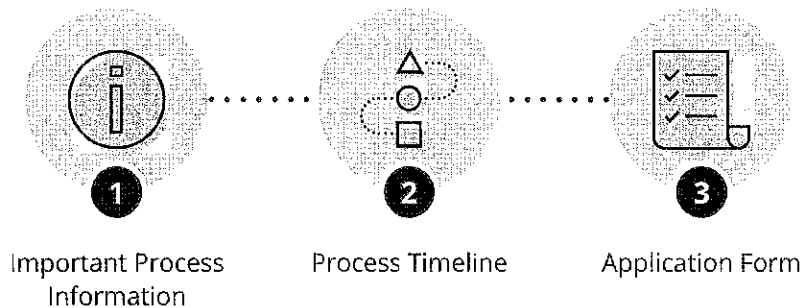


# HISTORIC PRESERVATION **MINOR ALTERATION**

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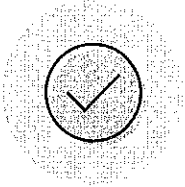


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### PURPOSE & INTENT OF THE PROCESS

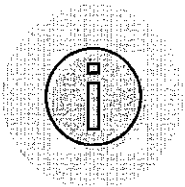
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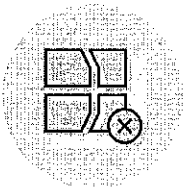
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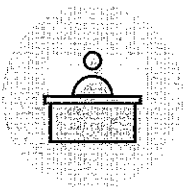
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# PROCESS TIMELINE

## TIME FRAME

🕒 2 - 4 WEEKS

- APPLICANT
- STAFF



### APPLICATION RECEIVED

*Application submitted and pre-screened.*

2



### PLANNER ASSIGNED

*Application reviewed by Planner to ensure complete documentation (if incomplete, the applicant will be provided a list of missing info to submit).*

🕒 14 days\*



### CERTIFICATE OF APPROPRIATENESS

*Certificate issued if proposal complies with standards. If proposal does not comply, it will be referred to the Historic Landmark Commission for approval.*

3



### APPLICATION MODIFICATIONS

*Modifications based on public input & City Department review comments (if needed, applicant must submit updates). Minor issues will be conditions of approval.*

5



### BUILDING PERMIT PROCESS

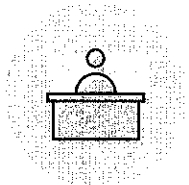
*Start of building permit process.  
Time frames determined by Building Services.  
[www.slc.gov/buildingservices](http://www.slc.gov/buildingservices)*

*\*Simple requests will be assigned within 2 days of the application pre-screen.*

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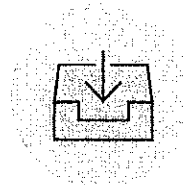
# HP MINOR ALTERATION

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P.O. Box 459 Huntsville, Utah 84317

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### IF OTHER, PLEASE LIST

### NAME OF PROPERTY OWNER (if different from applicant)

Kevin Anderson and Julie Anderson as Trustees of Kevin Anderson

### PHONE

801-554-4430

### MAILING ADDRESS

P.O. Box 459, Huntsville, Utah 84317

### EMAIL

kanderson@andersoncall.com

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### RECEIVED BY

### DATE RECEIVED

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1. This is to certify that I am making an application for the described action by the City and that I am responsible for complying with all City requirements with regard to this request. This application will be processed under the name provided below.
2. By signing the application, I am acknowledging that I have read and understood the instructions provided for processing this application. The documents and/or information I have submitted are true and correct to the best of my knowledge. I understand that the documents provided are considered public records and may be made available to the public.
3. I understand that my application will not be processed until the application is deemed complete by the assigned planner from the Planning Division. I acknowledge that a complete application includes all of the required submittal requirements and provided documents comply with all applicable requirements for the specific applications. I understand that the Planning Division will provide, in writing, a list of deficiencies that must be satisfied for this application to be complete and it is the responsibility of the applicant to provide the missing or corrected information. I will keep myself informed of the deadlines for submission of material and the progress of this application.
4. I understand that a staff report will be made available for my review prior to any public hearings or public meetings. This report will be on file and available at the Planning Division and posted on the Division website when it has been finalized.

NAME OF APPLICANT

Kevin Anderson TR for Kevin Anderson PC Defined Benefit Plan

EMAIL

kanderson@andersoncall.com

MAILING ADDRESS

P.O. Box 459 Huntsville, Utah 84317

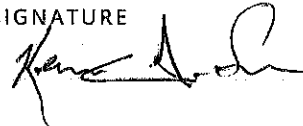
PHONE

801-554-4430

APPLICATION TYPE

Minor Alteration COA

SIGNATURE



DATE

11-10-2023

## LEGAL PROPERTY OWNER CONSENT

If the applicant is not the legal owner of the property, a consent from property owner must be provided. Properties with a single fee title owner may show consent by filling out the information below or by providing an affidavit.

**Affirmation of sufficient interest:** I hereby affirm that I am the fee title owner of the below described property or that I have written authorization from the owner to pursue the described action.

LEGAL DESCRIPTION OF SUBJECT PROPERTY

COMMENCING AT A POINT 102.5 FEET SOUTH OF THE NORTHWEST CORNER OF LOT 5, BLOCK 113, PLAT "A", SALT LAKE CI

NAME OF OWNER

Kevin Anderson and Julie Anderson as Trustees of Kevin Anders

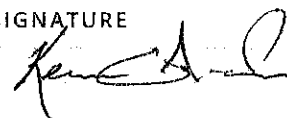
EMAIL

kanderson@andersoncall.com

MAILING ADDRESS

P.O. Box 459, Huntsville, Utah 84317

SIGNATURE



DATE

11-10-2023

1. If a corporation is fee titleholder, attach copy of the resolution of the Board of Directors authorizing the action.
2. If a joint venture or partnership is the fee owner, attach copy of agreement authorizing action on behalf of the joint venture or partnership.
3. If a Home Owner's Association is the applicant then the representative/president must attach a notarized letter stating they have notified the owners of the proposed application. A vote should be taken prior to the submittal and a statement of the outcome provided to the City along with the statement that the vote meets the requirements set forth in the CC&Rs.

**DISCLAIMER:** BE ADVISED THAT KNOWINGLY MAKING A FALSE, WRITTEN STATEMENT TO A GOVERNMENT ENTITY IS A CRIME UNDER UTAH CODE CHAPTER 76-8, PART 5. SALT LAKE CITY WILL REFER FOR PROSECUTION ANY KNOWINGLY FALSE REPRESENTATIONS MADE PERTAINING TO THE APPLICANT'S INTEREST IN THE PROPERTY THAT IS THE SUBJECT OF THIS APPLICATION.

# SUBMITTAL REQUIREMENTS

Please provide the following information with your application. Confirm that you have included each of the requirements listed below by adding a check mark for each item.

CHECK	STAFF	REQUIREMENTS (21A.34.020.F.1.c)
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<b>Project Description.</b> <ul style="list-style-type: none"> <li>• Written description of your proposal.</li> </ul>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<b>Materials:</b> <ul style="list-style-type: none"> <li>• List of proposed building materials.</li> <li>• Provide samples and/or manufacturer's brochures where applicable.</li> </ul>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<b>Photographs:</b> <ul style="list-style-type: none"> <li>• Current photographs of each side of the building (no google images).</li> <li>• Close up images of details that are proposed to be altered.</li> </ul>
<input type="checkbox"/>	<input type="checkbox"/>	<b>Site Plan, if applicable:</b> <ul style="list-style-type: none"> <li>• Site plan with dimensions, property lines, north arrow, existing and proposed building locations on the property. (See <u>Site Plan Requirements</u> flyer for further details).</li> </ul>
<input type="checkbox"/>	<input type="checkbox"/>	<b>Other Drawings, if applicable:</b> <ul style="list-style-type: none"> <li>• Detailed elevation, sections and profile drawings with dimensions drawn to scale of the area of change.</li> <li>• Show section drawings of windows, doors, railings, posts, porches, etc. If proposed also show type of construction where applicable.</li> </ul>

**INCOMPLETE INFORMATION WILL NOT BE ACCEPTED**

INITIALS     **DISCLAIMER:** I ACKNOWLEDGE THAT SALT LAKE CITY REQUIRES THE ITEMS ABOVE TO BE SUBMITTED BEFORE MY APPLICATION CAN BE PROCESSED. I UNDERSTAND THAT PLANNING WILL NOT ACCEPT MY APPLICATION UNLESS ALL OF THE FOLLOWING ITEMS ARE INCLUDED IN THE SUBMITTAL PACKAGE.



## **MINOR ALTERATION COA APPLICATION ADDENDUM**

**For:** Kevin Anderson and Julie Anderson as Trustees of the Kevin Anderson Defined Benefit

Profit Sharing Plan, owner of duplex

**Location:** 370-372 North 200 West, Salt Lake City, Utah

**Date:** Submitted November 10, 2023

### **PROJECT DESCRIPTION**

The project is the painting of exterior of a Duplex we own at 370-372 North 200 West in Salt Lake City. It is a 50's-60's red brick box type structure, with one duplex unit at ground floor and the second unit above the lower unit. We wanted to paint the brick white. We checked the City Website for information on whether a building permit was needed. The site said that a permit was not needed for exterior painting. See SLC.gov website which is excerpted below:

#### **FAQ's**

#### **BSCE – Frequently Asked Questions**

**Where is the Permits and Zoning office located?**

**Why do I need a permit?**

**When do I need a permit?**

Basically, all work being done requires a permit. The only exception to this is painting, laying flooring or other cosmetic issues. ....

[The yellow highlighting is added]

Based on that excerpt we understood that we could paint the duplex bricks. After painting the bricks white, we subsequently received a notice from the City stating that the duplex bricks should not have been painted without a COA because the duplex is in a historic district. Therefore, we submit this application for the Minor Alteration COA to permit the painting of the exterior of the building, including painting the bricks white.

## MATERIALS

The materials used for painting the exterior brick: Benjamin Moore formula white paint.

## PHOTOGRAPH OF THE DUPLEX IN ITS ORIGINAL CONDITION



# **ATTACHMENT C: Appeal Application and Claims**

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## PLANNING PROCESS

# APPEAL OF A DECISION

### ABOUT THE APPLICATION

Thank you for your interest in submitting an Appeal of a Decision application. The following packet will provide general information to get started on your project and guide you through the application process from start to finish. The package is broken down into three sections: Information about the application, a visual diagram of the application process, and the application form.

**We highly encourage you to work with our Planning staff prior to submitting an application.** For questions regarding any of the information listed in this packet or to set up a pre-submittal meeting please contact us at [zoning@slcgov.com](mailto:zoning@slcgov.com) or give us a call at 801.535.7757. Pre-submittal meetings are held on Thursdays in 30 minute slots between 1:30 and 3:30 pm.



PLANNING DIVISION  
451 SOUTH STATE STREET ROOM 406  
PO BOX 145480  
SALT LAKE CITY, UT 84114-5480

[SLC.GOV/PLANNING](http://SLC.GOV/PLANNING)  
[ZONING@SLCGOV.COM](mailto:ZONING@SLCGOV.COM)  
TEL 801-535-7757

### APPEAL PERIOD

**An appeal must be submitted within ten (10) days of the decision.** The applicant of an Historic Landmark Commission decision being appealed can submit within thirty (30) days of the decision.

### GUIDELINES FOR APPEALING A DECISION (SECTION 21A.16)

A person who challenges a decision bears the burden of showing that the decision made was in error. The hearing officer, according to state statute, must assume that the decision is correct and only reverse it if it is illegal or not supported by substantial evidence in the record.

“Substantial evidence” means information that is relevant to the decision and credible. Substantial evidence does not include public clamor and emotion. It involves facts and not mere speculation. A witness with particular expertise can provide substantial evidence, but conjecture and public opinion alone are not substantial evidence.

In case of a commission decision the record includes information, such as the application by the person seeking approval, the staff report, the minutes of the meeting, and any information submitted to the commission by members of the public, the applicant or others, before the decision was made. It does not include facts or opinion, even expert opinion, expressed after the decision is made or which was not available to the commission at the time the decision was made.

A decision is “illegal” if it is contrary to local ordinance, state statute or case law, or federal law. An applicant is entitled to approval if the application complies with the law, so a person challenging a denial should show that the application complied with the law; a person challenging an approval should show that the application did not conform to the relevant law. Issues of legality are not restricted to the record of the decision, but the facts supporting or opposing the decision are limited to those in the record.

With regard to the factual information and evidence that supports a decision, the person bringing the appeal, according to a long line of decisions handed down by the Utah State Supreme Court and the Court of Appeals, has a burden to “marshal the evidence” and then to demonstrate that the evidence which has been marshaled is not sufficient to support the decision.

#### **The appellant is therefore to:**

1. Identify the alleged facts which are the basis for the decision, and any information available to the commission when the decision is made that supports the decision. Spell it out. For example, your statement might begin with: “The following information and evidence may have been relied upon by the Commission to support their decision . . .”
2. Show why that basis, including facts and opinion expressed to the commission is either irrelevant or not credible. Your next statement might begin with: “The information and evidence which may have been relied upon cannot sustain the decision because . . .”

If the evidence supporting the decision is not marshaled and responded to, the hearing officer cannot grant your appeal. It may be wise to seek the advice of an attorney experienced in local land use regulation to assist you.



# PROCESS TIMELINE

## TIME FRAME

🕒 2 - 3 MONTHS

- APPLICANT
- STAFF



## APPEALS HEARING SCHEDULING

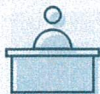
Appeals hearings are typically held the 3rd Thursday of the month. The assigned planner will coordinate the scheduling for the appeal.

**DISCLAIMER:** APPLICATION TIME FRAMES MAY VARY DEPENDING ON CURRENT WORKLOAD AND COMPLEXITY OF APPLICATIONS. INCOMPLETE OR MISSING INFORMATION ON DRAWINGS AND APPLICATION FORMS WILL DELAY THE PROCESS.



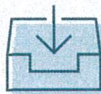
# APPEAL OF A DECISION

## IMPORTANT INFORMATION



### CONSULTATION

Available prior to submitting an application. For questions regarding the requirements, email us at [zoning@slcgov.com](mailto:zoning@slcgov.com).



### SUBMISSION

Submit your application online through the [Citizen Access Portal](#). Learn how to submit online by following the [step-by-step guide](#).



### REQUIRED FEES

- **\$303** filing fee submitted within required appeal period. Additional required notice and hearing fees will be assessed after submission.

## APPLICANT INFORMATION

### ADDRESS OF SUBJECT PROPERTY

370 - 372 NORTH 200 WEST, SALT LAKE CITY

### DECISION APPEALED

ADMINISTRATIVE DECISION FOR PETITION PLNHL 2023-00932 - PAINTED BRICK

### NAME OF APPELLANT

### PHONE

801-554-4430

KEYVIN ANDERSON, TR. FOR KEVIN E. ANDERSON P.C. DEFINED BENEFIT PLAN

### MAILING ADDRESS

### EMAIL

KANDERSON@ANDERSONCALL.COM

P.O. BOX 459, HUNTSVILLE, UTAH 84317

### APPELLANT'S INTEREST IN PROPERTY (\*owner's consent required) IF OTHER, PLEASE LIST

☒ Owner ☐ Architect\* ☐ Contractor\* ☐ Other\*

### NAME OF PROPERTY OWNER (if different from appellant)

### PHONE

801-554-4430

AND JULIE ANDERSON  
KEVIN ANDERSON, TRUSTEES OF THE KEVIN E. ANDERSON P.C. DEFINED BENEFIT PLAN

### MAILING ADDRESS

### EMAIL

KANDERSON@ANDERSONCALL.COM

P.O. BOX 459, HUNTSVILLE, UTAH 84317

## OFFICE USE

### CASE NUMBER BEING APPEALED

### RECEIVED BY

### DATE RECEIVED

### APPEALED DECISION MADE BY

Administration

Historic Landmark Commission

Planning Commission

**DISCLAIMER:** PLEASE NOTE THAT ADDITIONAL INFORMATION MAY BE REQUIRED BY THE PROJECT PLANNER TO ENSURE ADEQUATE INFORMATION IS PROVIDED FOR STAFF ANALYSIS. ALL INFORMATION REQUIRED FOR STAFF ANALYSIS WILL BE COPIED AND MADE PUBLIC, INCLUDING PROFESSIONAL ARCHITECTURAL OR ENGINEERING DRAWINGS, FOR THE PURPOSES OF PUBLIC REVIEW BY ANY INTERESTED PARTY.



## ACKNOWLEDGMENT OF RESPONSIBILITY

1. This is to certify that I am making an application for the described action by the City and that I am responsible for complying with all City requirements with regard to this request. This application will be processed under the name provided below.
2. By signing the application, I am acknowledging that I have read and understood the instructions provided for processing this application. The documents and/or information I have submitted are true and correct to the best of my knowledge. I understand that the documents provided are considered public records and may be made available to the public.
3. I understand that my application will not be processed until the application is deemed complete by the assigned planner from the Planning Division. I acknowledge that a complete application includes all of the required submittal requirements and provided documents comply with all applicable requirements for the specific applications. I understand that the Planning Division will provide, in writing, a list of deficiencies that must be satisfied for this application to be complete and it is the responsibility of the applicant to provide the missing or corrected information. I will keep myself informed of the deadlines for submission of material and the progress of this application.
4. I understand that a staff report will be made available for my review prior to any public hearings or public meetings. This report will be on file and available at the Planning Division and posted on the Division website when it has been finalized.

NAME OF APPLICANT

KEVIN ANDERSON TR. FOR KEYNE ANDERSON PC DEFINED BENEFIT PLAN

EMAIL

KANDERSON@ANDERSONCALL.COM

MAILING ADDRESS

P.O. Box 459, HUNTSVILLE, UTAH 84317

PHONE

801-554-4430  
801-554-4430

APPLICATION TYPE

SIGNATURE

DATE

APPEAL APPLICATION OF ADMINISTRATIVE DECISION FOR PETITION PLAN HLC 2023-00932  
PAINTED BRICK AT APPROXIMATELY 370 NORTH 200 WEST SLC

2-15-2024

## LEGAL PROPERTY OWNER CONSENT

If the applicant is not the legal owner of the property, a consent from property owner must be provided. Properties with a single fee title owner may show consent by filling out the information below or by providing an affidavit.

**Affirmation of sufficient interest:** I hereby affirm that I am the fee title owner of the below described property or that I have written authorization from the owner to pursue the described action.

### LEGAL DESCRIPTION OF SUBJECT PROPERTY

SEE EXHIBIT A ATTACHED HERETO AND INCORPORATED HEREIN BY THIS REFERENCE.

NAME OF OWNER

AND JULIA ANDERSON  
KEVIN E. ANDERSON AS TRUSTEE OF THE KEVIN E. ANDERSON PC DEFINED BENEFIT PLAN

EMAIL

KANDERSON@ANDERSONCALL.COM

MAILING ADDRESS

P.O. Box 459, HUNTSVILLE UTAH 84317

SIGNATURE

DATE

2-15-2024

1. If a corporation is fee titleholder, attach copy of the resolution of the Board of Directors authorizing the action.
2. If a joint venture or partnership is the fee owner, attach copy of agreement authorizing action on behalf of the joint venture or partnership.
3. If a Home Owner's Association is the applicant then the representative/president must attach a notarized letter stating they have notified the owners of the proposed application. A vote should be taken prior to the submittal and a statement of the outcome provided to the City along with the statement that the vote meets the requirements set forth in the CC&Rs.

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# SUBMITTAL REQUIREMENTS

Please provide the following information with your application. Confirm that you have included each of the requirements listed below by adding a check mark for each item.

CHECK

STAFF

## REQUIREMENTS (21A.16.030.A)



A written description of the alleged error and the reason for this appeal, see [page 2](#).

ATTACHED HERETO AS EXHIBIT B,  
INCORPORATED HEREIN BY THIS REFERENCE.

INCOMPLETE INFORMATION WILL NOT BE ACCEPTED

INITIALS

KEA

**DISCLAIMER:** I ACKNOWLEDGE THAT SALT LAKE CITY REQUIRES THE ITEMS ABOVE TO BE SUBMITTED BEFORE MY APPLICATION CAN BE PROCESSED. I UNDERSTAND THAT PLANNING WILL NOT ACCEPT MY APPLICATION UNLESS ALL OF THE FOLLOWING ITEMS ARE INCLUDED IN THE SUBMITTAL PACKAGE.

## **EXHIBIT "A"**

### **Legal Description of Duplex Located at 370 – 372 North 200 West**

AND PEDESTRIANS , AS DISCLOSED BY THAT CERTAIN WARRANTY DEED RECORDED JANUARY 05, 1954, AS ENTRY NO. 1356533, IN BOOK 1057, AT PAGE 501, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT A POINT 161.9 FEET SOUTH OF THE NORTHWEST CORNER OF LOT 5, SAID BLOCK 113; AND RUNNING THENCE NORTH 23.0 FEET; THENCE EAST 106 FEET, MORE OR LESS, TO THE WEST SIDE OF A CONCRETE RETAINING WALL; THENCE SOUTH 20.8 FEET, MORE OR LESS, TO THE INTERSECTION OF THE RETAINING WALL WITH THE NORTH SIDE OF A GARAGE; THENCE WESTERLY 106 FEET, MORE OR LESS, IN A DIRECT LINE TO THE POINT OF BEGINNING.



## EXHIBIT B - APPEAL OF:

### Administrative Decision for Petition PLNHLC2023-00932 -- Painted Brick at approximately 370 North 200 West

#### DESCRIPTION OF ALLEGED ERRORS AND THE REASONS FOR THIS APPEAL

##### **I. PRELIMINARY STATEMENT**

Kevin Anderson, Trustee of the Kevin E. Anderson PC Defined Benefit Plan, ("Applicant"), submitted an application, (the "Application"), for a Certificate of Appropriateness, ("COA") to paint the exterior of a duplex located at 370 – 372 North 200 West (the "Duplex"). The Application was filed at the recommendation of Salt Lake City, ("City"), because an enforcement action was filed by the City to compel Applicant to remove white exterior paint applied to the exterior of the Duplex. Before painting, Applicant checked to determine that a building permit was not required to paint. The City's website confirmed that no building permit was required, without any reference to any COA requirement in a historic preservation district. An associate planner ultimately prepared and submitted an "Administrative Decision," (the "Decision"), rejecting the Application on January 17, 2024, directing that the Applicant must file an appeal within 30 days, by February 16, 2024. Decision, p. 6. This Appeal is hereby timely filed with the City on February 15, 2024, consistent with the City's written directive in the Decision.

##### **II. LEGAL STANDARD ON APPEAL**

###### **A. Utah Code 10-9a-801(3)(b):**

A court shall presume that a final land use decision of a land use authority or an appeal authority is valid unless the land use decision is:

- i. arbitrary and capricious; or
- ii. Illegal.

###### **B. Utah Code 10-9a-801(3)(c):**

- (i) A land use decision is arbitrary and capricious if the land use decision is not supported by substantial evidence in the record.
- (ii) A land use decision is illegal if the land use decision:
  - (A) is based on an incorrect interpretation of a land use regulation;
  - (B) conflicts with the authority granted by this title; or
  - (C) is contrary to law.

###### **C. Utah Code 10-9a-306(2):**

"If a land use regulation does not plainly restrict a land use application, the land use authority shall interpret and apply the land use regulation to favor the land use application."

**D. Utah Code 10-9a-707(4):**

The appeal authority shall:

- (a) Determine the correctness of the land use authority's interpretation and application of the plain meaning of the land use regulations; and
- (b) Interpret and apply a land use regulation to favor a land use application unless the land use regulation plainly restricts the land use application.

**E. The City Cannot Rely on Requirements Not Specified in the City Code.**

The City land use authority cannot impose requirements not included in the City Code. *See* Utah Code 10-9a-509; 10-9a-801(c)(3); 10-9a-306(2); 10-9a-707(4); 10-9a-607.

**F. Case Law.**

Applicant relies on all relevant case authority relating to the legal issues, ordinances, codes, regulations, statutes, and constitutional provisions applicable in this case, including without limitation those discussed hereafter.

**III. THE CITY'S LAND USE DECISION IS ILLEGAL**

The City's land use Decision is illegal. It denies Applicant's Application for a COA permitting Applicant to paint the brick of its Duplex white. That Decision is based on an incorrect interpretation of land use regulations and is contrary to law and therefore illegal, including without limitation as set forth below. As a matter of law, no COA is required. In the alternative, if a COA is required, it should be granted as a matter of law under the circumstances presented.

**A. As a Matter of Law, a COA is Not Required to Paint the Duplex**

Before painting the Duplex, Applicant checked to see if a permit was required. The City Code expressly provides that a building permit is not required for painting a building. Applicant also checked the City website, which acknowledged that a building permit was not required to paint a building and made no reference to any COA requirement. Based on that, Applicant had the Duplex painted white, the most common color for painted brick in the Historic District. The City issued a citation claiming that a residence cannot be painted in the Capitol Hill Historic Preservation District (the "Historic District"), without first obtaining a COA. The City claims that a COA cannot be granted because painting exterior brick is not permitted. The position of the City is incorrect as a matter of law.

The City relies on 21A.34.020.E in its claim that a COA is required. But that provision does not require a COA to paint the exterior of the Duplex. The provision states:

- E. Certificate Of Appropriateness Required: After the establishment of an H Historic Preservation Overlay District, or the designation of a landmark site, no alteration in the exterior appearance of a structure, site, object or work of art affecting the landmark site



or a property within the H Historic Preservation Overlay District shall be made or permitted to be made unless or until the application for a certificate of appropriateness has been submitted to, and approved by, the Historic Landmark Commission, or administratively by the Planning Director, as applicable, pursuant to subsection F of this section. Certificates of appropriateness shall be required for:

1. Any construction needing a building permit;
2. Removal and replacement or alteration of architectural detailing, such as porch columns, railing, window moldings, cornices and siding;
3. Relocation of a structure or object on the same site or to another site;
4. Construction of additions or decks;
5. Alteration or construction of accessory structures, such as garages, etc.;
6. Alterations to windows and doors, including replacement or changes in fenestration patterns;
7. Construction or alteration of porches;
8. Masonry work including, but not limited to, tuckpointing, sandblasting and chemical cleaning;
9. The construction or alterations of site features including, but not limited to, fencing, walls, paving and grading;
10. Installation or alteration of any exterior sign;
11. Any demolition;
12. New construction; and
13. Installation of an awning over a window or door.

That provision of the City Code makes a general policy statement about the COA purpose and process in the Historic District, but then lists the specific circumstances where a COA is required. The first circumstance requires a COA if a building permit is required. As noted above a building permit is *not* required to paint the exterior of a residence. Moreover, none of the other 12 circumstances where a COA is required prohibits painting exterior brick in the Historic District. The requirements do not even mention or refer to painting exterior brick. Where a statute has general provisions and specific provisions, the specific provisions inform the meaning of the general provisions, and control over the more general provisions. *See Lyon v. Burton*, 2000 UT 10, ¶ 17, and numerous other cases. Moreover, general policy statements in an ordinance do not impose substantive obligations. The specific provisions which follow, the requirements set forth in subsections 1-13 of 21A.34.020.E, impose the substantive obligations. *See, e.g., Price Development Co. v. Orem City*, 2000 UT 26.

The City's Decision misinterprets and misapplies City Code 21A.34.020.E by claiming it prohibits painting brick without a COA. The City's interpretation of that ordinance is contrary to law, and therefore illegal. Utah Code 10-9a-801(3) (b) and (c), Utah Code 10-9a-306(2), and Utah Code 10-9a-707(4), and other supporting statutory law and case authority. Moreover, the Decision fails to follow the statutory mandate that it "*shall* interpret and apply a land use application to favor the land use application." Utah Code 10-9a-306(2) and 707(4)(b) (emphasis added), and case authority discussing the proper construction of ordinances. In addition, the City's Decision is contrary to the principles of *Patterson v. Utah County*, discussed above and below.

The Decision also ignores and fails to apply the appropriate canons of statutory construction and the case law interpreting and applying those canons. To determine whether a municipality correctly interpreted and applied its ordinance to a development application, a court will follow established rules of statutory construction. *Foutz v. City of South Jordan*, 2004 UT 75, ¶ 8, and many other cases.

Further, the City violates the statutory directive that it cannot require additional conditions or requirements for a land use approval which are not included in the City Code. Moreover, Utah case law affirms that no deference is given to a city's prior interpretation of its own ordinances. A strict correctness standard applies.

#### **B. The City's COA Denial is Contrary to Law and Therefore Illegal.**

The City's Decision states that the Application was denied based on the "Findings" that "the proposal does not comply with the standards of review found in 21A.34.020.G. Specifically, the proposal does not comply with standards 21A.34.020.G.2., 21A.34.020.G.3, 21A.34.020.G.5, 21A.34.020.G.7, 21A.34.020.G.8, and 21A.34.020.G.9." Decision p. 5.

However, in each instance, as to each subpart of the referenced City Code 21A-34-020.G, the Decision is incorrect, contrary to law, and illegal. The referenced land use regulations do not plainly restrict the Application or prohibit painting the brick of the Duplex. Even the City's Design Guidelines contains a photo showing approvingly a home that has had its bricks painted gray. Moreover, the paint used in this matter was specially formulated for painting brick, so the brick can breathe, avoiding concerns raised by the City. Moreover, The paint was not lathered on with a paint brush or roller in heavy, thick layers that smother the brick or obscure the architectural details. Instead, the paint was sprayed on with a very light, thin, clean, application that preserves the brick and accentuates the architectural details. The Decision misinterprets and misapplies each of the referenced standards, contrary to law. *See* Utah Code 10-9a-801(3)(b) and (c), Utah Code 10-9a-306(2), Utah Code 10-9a-707(4), Utah Code 10-9a-509, and other similar or supportive statutory law and case authority. Moreover, the Decision fails in each instance to follow the statutory mandate that it "*shall* interpret and apply a land use application to favor the land use application." Utah Code 10-9a-306(2) and 707(4)(b) (emphasis added).

The City's Decision also fails to comply with the requirement in *Patterson* and other cases and authority that because zoning ordinances are in derogation of a property owner's common-law right to unrestricted use of his or her property, provisions therein *restricting* property uses should be *strictly construed* and provision is *permitting property uses* should be *liberally construed* in favor of the property owner.

The Decision also ignores and fails to apply the appropriate canons of statutory construction and the case law interpreting and applying those canons. *Foutz v. City of South Jordan*, 2004 UT 75, ¶ 8, and other case authority. Further, no deference is given to a city's prior interpretation of its own ordinances.



Moreover, the City cannot impose requirements for land use approvals that are not required by the City Code. *See* Utah Code 10-9a-509; 10-9a-801(c)(3), 306(2), 707(4); Utah Code 10-9a-607.

**C. The Decision is Illegal as a Matter of Law Because No Hearing was Permitted.**

The City's Decision is also illegal as a matter of law because, directly contrary to law, the City did not permit Applicant a hearing at which it could present its evidence and arguments and confront any witnesses or evidence presented against it, ( the "Hearing"), *before* the City rendered its Decision. Under the United States Constitution and the Utah Constitution, failure to provide notice and a Hearing, with the opportunity to present one's evidence and arguments and confront the evidence presented against it is illegal, including without limitation as a violation of foundational due process rights.

The City may claim that it has ordinances which permit the Planning Director to make a Decision without a prior Hearing if a *de novo* hearing is subsequently permitted before the Appeal Authority, where evidence and arguments can be presented, and opposing evidence can be confronted. But the City's ordinances cannot contradict statutory or constitutional law. If it is contrary to the law, it is illegal. Stated plainly, the City cannot eliminate fundamental due process rights *before* the initial land use Decision is rendered. Neither does a subsequent *de novo* hearing before the Appeal Authority cure the denial of due process rights.

For example, under the City's ordinances permitting the Decision without a prior Hearing, the Applicant is required to file an appeal before it ever has a Hearing. To make matters worse, the applicant is required to pay the hefty *Appeal fee*, (\$303 dollars), before it can receive a Hearing. To add insult to injury the Decision, made without a prior Hearing, burdens the remaining proceedings because of a special presumption of validity which attaches to a Decision under certain circumstances. Utah Code 10-9a-801(3)(b).

When Applicant learned that the Associate Planner was preparing a Decision without a Hearing, Applicant contacted the Associate Planner to request a Hearing before a Decision was rendered. The Associate Planner did not grant that request, but instead, several weeks later, served Applicant with the written Decision made without a Hearing.

**D. The Decision is Illegal Because it was Not Timely Decided, Contrary to City Code.**

The Salt Lake City Code, Section 21A.34.020.F.1.b authorizes the Planning Director or designee to render an administrative decision. However, the City Code, subsection 21A.34.020.F.1.g requires that the Decision be made "within thirty (30) days following receipt of a completed application." The completed Application was submitted on or about November 11, 2023. The Decision was not submitted until *over sixty days later*, January 17, 2024. Consequently, the Decision violates the City Code timing requirement, and therefore contrary to law and illegal. Utah Code 10-9a-801(3) (b) and (c), Utah Code 10-9a-306(2), Utah Code 10-9a-707(4), and the canons of statutory construction and interpretive case law. Moreover, the City land use authority

cannot impose requirements not included in the City Code. *See* Utah Code 10-9a-509; 10-9a-801(c)(3), 306(2), 707(4); Utah Code 10-9a-607.

**E. The Decision's Purported Factual Support is Improper as a Matter of Law. It was Not Presented at a Hearing.**

The purported evidence supporting the Decision was not presented at a Hearing. Instead, it was simply unilaterally developed by the City to support its Decision. That is contrary to law and illegal. Further discussion on this issue follows below.

**F. The City's Proposed Remedy is Not Legally Permitted.**

The Decision observes that the City commenced an enforcement action because the Duplex brick was painted. The object of the enforcement action, as indicated by the City, is to compel removal of the paint by a chemical procedure. That process is extremely toxic. Moreover, requiring the removal of the paint using that chemical process is directly contrary to the City Code 21A.020.G.7, which mandates that neither chemical treatments nor sandblasting can be used to remove exterior paint. It is ironic that the City seeks to "preserve" the Historic District, which is filled with hundreds of painted brick houses, by attempting to compel the removal of exterior paint using a chemical process directly contrary to the City Code. The City cannot impose requirements not included in the City Code. *See* Utah Code 10-9a-509; 10-9a-801(c)(3), 306(2), 707(4); Utah Code 10-9a-607. The City's interpretation and application of its Code is contrary to statute, canons of statutory construction, and case authority.

**G. The Duplex Should Not be Considered a Contributing Structure.**

The City's Denial of the COA is not permissible to the extent the Duplex is not genuinely a contributing structure. Applicant believes that the Duplex is not, or should not be, classified as a Contributing Structure because it lacks the distinctive features which the Historic District seeks to preserve.

**H. The City's Actions Are Improper, Illegal, Selective Enforcement**

The City cannot selectively enforce the law. That is contrary to case authority, statutes, and constitutional requirements. The Historic District is filled with painted brick houses. Many were historically painted. Many others were painted more recently. It is contrary to law to permit and celebrate painted brick houses in the Historic District, on the one hand, but endeavor to selectively prosecute painting brick houses on the other. Even the City's Design Guidelines contains a photo showing approvingly a historic home that has had its bricks painted gray.

**I. The City's Decision and Enforcement Action are Illegal, Unfair and Punitive.**

The illegal Decision and enforcement action of the City is unfair, unjust, and terribly punitive in nature. Under the City Code, painting the exterior of the Duplex does not require either a building permit or a COA. Even if a COA were required, it was improperly denied. The City claims it is acting to preserve the Historic District. But the Historic District is filled with hundreds of brick structures that have been painted. That has become part of the historic character and charm of the neighborhood. The Decision indicates the painting is contemporary.



White painted bricks are the most common color in the Historic District. Moreover, City Code Standard 21A.34.020.G.8 specifically states that contemporary design for alterations and additions to existing properties “*shall not be discouraged*” when such alterations and additions do not destroy significant cultural, historical, architectural or archeological material and the design is compatible with the size, scale, color, material and character of the property, neighborhood or environment.” Emphasis added. Providing a cleaner, more contemporary paint color (white), which was also historically used in the neighborhood and is the most common paint color in the Historic District, is not prohibited by the City Code. The City’s Decision prohibiting issuance of a COA misinterprets and misapplies the City Code contrary to law.

Moreover, the City seeks the removal of the paint by a chemical process that would cause far greater injury to the Duplex, leaving the brick damaged, stained, miscolored, and marred. As observed above, the City’s Code prohibits the use of chemical treatments that cause damage to historic materials. City Code 21A.34.020.G(7). Instead of preserving historic structures, this improper effort damages the Duplex under the ironic guise of “protecting” structures in the Historic District.

#### **IV. THE DECISION IS NOT SUPPORTED BY SUBSTANTIAL EVIDENCE**

##### **A. There is No Substantial Evidence Supporting the Decision.**

There is no substantial evidence that supports the City’s Decision. No Hearing was ever held where the City received any evidence in this matter. Neither was the Applicant granted a Hearing as requested to provide evidence and argument supporting its position and to confront the evidence and argument presented against it. A Decision cannot unilaterally conjure up its own evidence without a Hearing. That is no different than a judge unilaterally creating evidence to support a decision instead of holding an evidentiary hearing. That unilateral process fails all due process requirements and violates bedrock principles of fundamental fairness. Instead, the process constitutes a decision by bureaucratic fiat. There is no valid, legal, admissible, or admitted evidence presented at a Hearing that supports the Decision.

##### **B. Applicant is Entitled to a Full Evidentiary Hearing Permitting the Presentation of Evidence.**

Applicant was denied a Hearing in this matter preventing it from presenting its evidence and confronting the evidence presented against it. Consequently, Applicant is entitled to a Hearing where it can present its evidence. Utah Code Utah Code 10-9a-801(8)(b).

##### **C. Marshaling the Evidence**

Because no Hearing was held, and no competent evidence was presented at a Hearing in this matter, there is no obligation to marshal evidence in this appeal. Any marshaling requirement applies only after competent evidence is presented in a Hearing. The City is not entitled to unilaterally devise its own evidence, outside of a Hearing, to support its own decision. The City acknowledges that a *de novo* hearing is required to be held with the Appeal Authority, at which time evidence will be presented.

**D. Findings of Fact Required.**

The City Code 21A.34.020.F(1)(g) requires that “[o]n the basis of written findings of fact” the Decision shall be decided. However, the Decision does not make Findings of Fact. Instead, it’s only reference to “Findings” which are really conclusions of law, not findings of fact. Consequently, the Decision is contrary to law and illegal for that reason as well.

**E. De Novo Hearing Required.**

Because a Hearing was requested by Applicant but not allowed by the City before the Decision was issued, a full evidentiary hearing is required under Utah Code 10-9a-801 so that Applicant can include into the record of this proceeding the evidence in support of its Application and confront the evidence presented against it.

**F. Sufficiency of the Evidence is Inapplicable if Issues are Illegal as a matter of law.**

In all events, Sufficiency of the Evidence becomes an issue only if a Decision is legally valid. In this matter the Decision is contrary to law and therefore illegal.

## **ATTACHMENT D: December 6<sup>th</sup> Email**

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**From:** [Elmore, Noah](#)  
**To:** [kanderson.andersoncall.com](mailto:kanderson.andersoncall.com)  
**Subject:** RE: (EXTERNAL) Re: PLNHL2023-00932  
**Date:** Wednesday, December 6, 2023 12:12:00 PM  
**Attachments:** [image001.png](#)

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Good morning,

It would appear your home is a contributing structure in the **Capitol Hill Local Historic District**; meaning that your home is historically intact (unaltered) and contributes to the historic fabric of the district. Building materials and finishes, such as striated brick, are a character defining feature of any building, and in particular historic buildings. Upon inspection, the building in question features brick which has historically been left unpainted. Masonry surfaces that have not been painted, or that were not painted historically, such as brick, should not be painted. Usually, materials were chosen for their decorative, as well as their functional, qualities. To paint over these characteristics will adversely affect the historic integrity of the building. With all of that in mind, I cannot approve the painting of the brick in this case. Furthermore, any paint that has already been applied will need to be removed, subject to approval of a Certificate of Appropriateness for the paint removal process. For reference, I have also included the following applicable sections of City Code (21A.34.020.G) highlighted in yellow that are relevant to your request:

G. Standards For Certificate Of Appropriateness For Alteration Of A Landmark Site Or Contributing Structure Including New Construction Of An Accessory Structure: In considering an application for a certificate of appropriateness for alteration of a landmark site or contributing structure, the Historic Landmark Commission, or the Planning Director, for administrative decisions, shall find that the project substantially complies with all of the following general standards that pertain to the application and that the decision is in the best interest of the City:

1. A property shall be used for its historic purpose or be used for a purpose that requires minimal change to the defining characteristics of the building and its site and environment;
2. The historic character of a property shall be retained and preserved. The removal of historic materials or alteration of features and spaces that characterize a property shall be avoided;
3. All sites, structures and objects shall be recognized as products of their own time. Alterations that have no historical basis and which seek to create a false sense of history or architecture are not allowed;
4. Alterations or additions that have acquired historic significance in their own right shall be retained and preserved;
5. Distinctive features, finishes and construction techniques or examples of craftsmanship that characterize a historic property shall be preserved;
6. Deteriorated architectural features shall be repaired rather than replaced wherever feasible. In the event replacement is necessary, the new material should match the material being replaced in composition, design, texture and other visual qualities. Repair or replacement of missing architectural features should be based on accurate duplications of features, substantiated by historic, physical or pictorial evidence rather than on conjectural designs or the availability of different architectural elements from other structures or objects;
7. Chemical or physical treatments, such as sandblasting, that cause damage to historic materials shall not be used. The surface cleaning of structures, if appropriate, shall be undertaken using the gentlest means possible;
8. Contemporary design for alterations and additions to existing properties shall not be discouraged when such alterations and additions do not destroy significant cultural, historical, architectural or archaeological material, and such design is compatible with the size, scale, color, material and character of the property, neighborhood or environment;
9. Additions or alterations to structures and objects shall be done in such a manner that if such additions or alterations were to be removed in the future, the essential form and integrity of the structure would be unimpaired. The new work shall be differentiated from the old and shall be compatible in massing, size, scale and architectural features to protect the historic integrity of the property and its environment;
10. Certain building materials are prohibited including the following:
  - a. Aluminum, asbestos, or vinyl cladding when applied directly to an original or historic material.
11. Any new sign and any change in the appearance of any existing sign located on a landmark site or within the H Historic Preservation Overlay District, which is visible from any public way or open space shall be consistent with the historic character of the landmark site or H Historic Preservation Overlay District and shall comply with the standards outlined in chapter 21A.46 of this title.

Further, the City has adopted design guidelines for historic residential properties in local historic districts.

These guidelines have been adopted to work in tandem with and provide support for the above referenced standards for alterations of contributing structures. The full set of residential design guidelines can be found at this site:

[www.slcdocs.com/historicpreservation/GuideRes/ResidentialGuidelines.pdf](http://www.slcdocs.com/historicpreservation/GuideRes/ResidentialGuidelines.pdf)

Chapter 2 specifically addresses “Building Materials & Finishes” and provides policy and guidance for the preservation of historic building materials and finishes in the City’s local historic districts.

<https://www.slcdocs.com/historicpreservation/GuideRes/Ch2.pdf>

As for the removal of the paint, the gentlest means possible should be used. In this case, the process to remove paint typically involves application of a paint remover, covering the surface for an extended period of time, followed by the gentle application of low-pressure hot water and steam, and finally removal with a soft bristle brush. Ideal paint remover products come in the form of a gel that either comes pre-applied on sheets or in a bucket. Abrasives, such as sand, are not likely to receive approval.

I understand this may not be what you were looking to hear regarding the paint request, and I am sympathetic to your application, however for the aforementioned reasons, based on City Code and adopted Residential Design Guidelines, I cannot approve the request. Additionally, please note, the enforcement case will remain active until the paint is removed, however, fees will not be assessed so long as progress is being made towards a resolution.

If you have questions regarding historic standards or the removal of paint, please feel free to reach out.

Thank you,



NOAH ELMORE, AICP  
Associate Planner  
PLANNING DIVISION | SALT LAKE CITY CORPORATION  
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Email: [Noah.Elmore@slcgov.com](mailto:Noah.Elmore@slcgov.com)  
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*Disclaimer: The Planning Division strives to give the best customer service possible and to respond to questions as accurately as possible based upon the information provided. However, answers given at the counter and/or prior to application are not binding and they are not a substitute for formal Final Action, which may only occur in response to a complete application to the Planning Division. Those relying on verbal input or preliminary written feedback do so at their own risk and do not vest any property with development rights.*

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**From:** kanderson andersoncall.com <kanderson@andersoncall.com>

**Sent:** Monday, December 4, 2023 2:12 PM

**To:** Elmore, Noah <Noah.Elmore@slcgov.com>

**Subject:** (EXTERNAL) Re: PLNHLC2023-00932

**Caution:** This is an external email. Please be cautious when clicking links or opening attachments.

Thanks, Noah. Feel free to contact me with any questions.

Best regards. Kevin Anderson

Sent from my iPad

On Dec 4, 2023, at 1:39 PM, Elmore, Noah <[Noah.Elmore@slcgov.com](mailto:Noah.Elmore@slcgov.com)> wrote:

Good afternoon,

I am reaching out to let you know I am the Planner assigned to this petition. I am still reviewing the materials and doing some research on the history of the site. If I have any questions, I will reach out.



Thank you,

<image001.png>

NOAH ELMORE, AICP  
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