

## NOTICE OF APPEAL

**Action Being Appealed:** Denial of the property owner's appeal of the determination of eligibility as landmarks for 724 & 726 S College

**Date of Action:** 09/16/2020      **Decision Maker:** Landmark Preservation Commission

**FOR CITY CLERK'S  
USE ONLY:**

**DATE FILED:** 09/30/20

**INITIALS:** RRK

### Appellant/Appellant Representative (if more than one appellant):

**Name:** Nicole R. Ament, Esq.

**Phone #:** (303) 223-1174

**Address:** 410 17th Street, Suite 2200  
Denver, Colorado 80202

**Email:** nament@bhfs.com

### INSTRUCTIONS

For each allegation marked below, **attach a separate summary of the facts contained in the record which support the allegation** of no more than two pages, Times New Roman 12-point font. Please restate allegation at top of first page of each summary.

### GROUNDS FOR APPEAL

**The Decision Maker committed one (1) or more of the following errors** (check all that apply):



Failure to properly interpret and apply relevant provisions of the City Code, the Land Use Code, and Charter. **List relevant Code and/or Charter provision(s) here, by specific Section and subsection/subparagraph:**

Municipal Code Sec. 14-22 - Standards for determining the eligibility of sites, structures, objects and districts for designation as landmarks or landmark districts.

Failure to conduct a fair hearing in that:



(a) The Board, Commission, or other Decision Maker exceeded its authority or jurisdiction as contained in the Code or Charter. *[New evidence not allowed]*



(b) The Board, Commission or other Decision Maker substantially ignored its previously established rules of procedure. *[New evidence not allowed]*



(c) The Board, Commission or other Decision Maker considered evidence relevant to its findings which was substantially false or grossly misleading. *[New evidence allowed]*



(d) The Board, Commission or other Decision Maker improperly failed to receive all relevant evidence offered by the appellant. *[New evidence allowed]*



(e) The Board, Commission or other Decision Maker was biased against the appellant by reason of a conflict of interest or other close business, personal or social relationship that interfered with the Decision Maker's independence of judgment. *[New evidence allowed]*

### NEW EVIDENCE

**All new evidence the appellant wishes Council to consider at the hearing on the appeal must be submitted to the City Clerk within seven (7) calendar days after the deadline for filing a Notice of Appeal and must be clearly marked as new evidence.** No new evidence will be received at the hearing in support of these allegations unless it is submitted to the City Clerk by the deadline (7 days after the deadline to file appeal) or offered in response to questions posed by Councilmembers at the hearing.

## APPELLANTS

*Parties-in-interest* have the right to file an appeal.

A party-in-interest is a person who, or organization which, has standing to appeal the final decision of a board, commission or other decision maker. Such standing to appeal is limited to the following:

- The applicant.
- Anyone who owns or occupies the property which was the subject of the decision made by the board, commission or other decision maker.
- Anyone who received the mailed notice of, or spoke at, the hearing of the board, commission or other decision maker.
- Anyone who provided written comments to the appropriate City staff for delivery to the board, commission or other decision maker prior to or at the hearing on the matter that is being appealed.
- A City Councilmember.

<b>Signature:</b> 	<b>Date:</b> 09/30/2020
<b>Name:</b> Nicole R. Ament	<b>Email:</b> nament@bhfs.com
<b>Address:</b> 410 17th St., Ste. 2200, Denver, CO 80202	<b>Phone #:</b> (303) 223-1174
<b>Describe how you qualify as a party-in-interest:</b> Appellant spoke at the hearing of the Commission and is counsel to the owners of the subject property.	

<b>Signature:</b>	<b>Date:</b>
<b>Name:</b>	<b>Email:</b>
<b>Address:</b>	<b>Phone #:</b>
<b>Describe how you qualify as a party-in-interest:</b>	

<b>Signature:</b>	<b>Date:</b>
<b>Name:</b>	<b>Email:</b>
<b>Address:</b>	<b>Phone #:</b>
<b>Describe how you qualify as a party-in-interest:</b>	

**ATTACH ADDITIONAL SIGNATURE SHEETS AS NECESSARY**

*Failure to properly interpret and apply relevant provision of the City Code, the Land Use Code, and Charter – Municipal Code Sec. 14-22*

At their September 19, 2020 meeting, The Landmark Preservation Commission (“LPC”) determined the subject properties located at 724 & 726 S. University Avenue, Fort Collins, CO (“Properties”), and, specifically, the two residential structures thereon (“Buildings”), possessed the requisite “significance” and “integrity” required under Municipal Code Sec. 14-22 (“Code”), and were thus eligible for landmark status. The applicant and owners of the Properties maintain and agree with the prior determinations of the LPC which found that the Properties and Buildings do not meet the requirements for landmark status and are not historically significant, and further assert that the LPC failed to properly interpret and apply the Code.

Under the Code, buildings eligible for landmark designation must possess both significance and integrity with characteristics satisfying each of these prongs included and evident. In asserting the novel idea that the Buildings are eligible as landmarks, the LPC and staff relied upon the purported significant historical design and/or construction value of the Buildings on the Properties under the Code Subsection (a)(3) – as they purported the Buildings serve as examples of early-20<sup>th</sup> century wood-frame vernacular single-family houses. The report and survey also note, despite the evident decay of the Buildings, that the integrity of such historic value is not diminished and retains the integrity of design, materials and workmanship required under the Code.

We disagree on both items. The Buildings are not significant examples of a building style and architecture that is still evident throughout the City and State. Further, we hope councilmembers will take the time to visit the Properties, as the poor condition is better visualized beyond the pictures supplied in the LPC staff’s report. The Properties were explicitly not included in the Laurel School Historic District immediately adjacent to the Properties, which contains substantially similar and better maintained examples of the significant aspects alleged by the LPC, and we are not aware of any other intended historic district expansion or new district to encapsulate the Properties.

The initial determination by staff of the latest eligibility was released earlier in 2020. This determination was based on reports produced by city staff and historic surveys of the Properties and Buildings conducted by 3<sup>rd</sup> party contractors, with a single surveyor responsible for compiling the evidence that the staff interpreted as in favor of eligibility. The 2020 determination is adverse to the Property owner’s intended revitalization of the Properties and only came after initial documentations of the Property owner’s intended redevelopment project came to light. If the eligibility of the Properties was to stand, it would trigger additional requirements and conditions to development noted in Municipal Code Section 3.4.7 that would be unduly burdensome on the Property owners and make the owners’ intended development impossible.

The 2020 decisions also came after multiple prior determinations of non-landmark status since the 1980s, each having confirmations from the city and professionals that the Properties and Buildings were not historic and do not meet the qualifications set forth in the Code. A severe diminishment of integrity of Setting, Feeling, and Association, resulting from decades of redevelopment directly adjacent to and surrounding the Properties, played a significant role in previous determinations.

Property owner's relied on these prior determinations in moving forward with their project. We would contend that no new events or circumstances have arisen since the last LPC determination in 2014 that deemed the Properties ineligible for landmark or historic status. The reports presented by staff did not provide any new information with regard to landmark criteria from that available when LPC previously determined the properties ineligible, and thus the reversal is arbitrary and without justification. The same structures and buildings existed and were reviewed by staff and/or 3<sup>rd</sup> parties in the same manner. If anything, the Buildings and Property have only continued to decay during the past 5 years.

As it relates to the discussions of significance and integrity, the LPC contends that the Properties retain integrity under all seven aspects, as noted in the Code, contradicting previous determinations that integrity of Setting, Feeling, and Association had been compromised and, therefore, the Properties did not meet the aforementioned qualifications. Perhaps most importantly, however, was LPC's determination of significance under Criterion 3 in the area of architecture. As the previous determinations noted that the Properties lacked significance for individual eligibility, staff's contention that integrity of Design, Materiality, and Workmanship should have been considered secondary to integrity of Setting, Feeling, and Association.

The owners of the Properties and the applicant hold that neither Property, nor the Buildings, qualifies individually as significant in any historic or architectural context. Specifically, in regards to the uniqueness and quality of workmanship, the evidence of these qualities have long since decayed to a level that the Buildings no longer adequately represent our early architecture pioneers and some of the enduring architectural features our commercial and residential buildings still embody today.

After taking into consideration the above, we humbly ask the Council to overturn the determination of the LPC and staff that the Properties are eligible as landmarks under the Code.