

NOTICE OF APPEAL

FOR CITY CLERK'S
USE ONLY:

DATE FILED: 8/2/2022
INITIALS: JS

Action Being Appealed: 1306 W. Mountain Ave. Final Design Review

Date of Action: 07/27/2022 Decision Maker: Historic Preservation Commission

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

Name: Jeffrey J. Schneider

Phone #: (970) 472-1113

Address: 375 E. Horsetooth Rd, BLD 4 suite 102
Fort Collins, CO 80525

Email: Jeff@armsteadconstruction.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.

GROUNDINGS 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:

City Code 14-53

Secretary of the Interior Standards for Rehabilitation SOI # 2 & 5

Secretary of the Interior Standards for Rehabilitation Technical Preservation Services or ITS Number 14

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.

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| Signature:  | Date: 07/31/2022 |
| Name: Jeffrey J. Schneider | Email: jeff@armsteadconstruction.com |
| Address: 375 E. Horsetooth Rd, BLD 4 suite 102 FC 80525 | Phone #: (970) 472-1113 |
| Describe how you qualify as a party-in-interest: Contractor for the project | |

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|---|--|
| Signature:  | Date: 07/31/2022 |
| Name: Brian Berkhausen | Email: bberkhausen@gmail.com |
| Address: 1306 W. Mounatin Ave, FC 80521 | Phone #: (949) 244-4887 |
| Describe how you qualify as a party-in-interest: Property Owner | |

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|---|--|
| Signature:  | Date: 07/31/2022 |
| Name: Barbara Berkhausen | Email: barbaraberkhausen@gmail.com |
| Address: 1306 W. Mounatin Ave, FC 80521 | Phone #: (949) 278-1156 |
| Describe how you qualify as a party-in-interest: Property Owner | |

ATTACH ADDITIONAL SIGNATURE SHEETS AS NECESSARY

1306 West Mountain Historic Preservation Commission Appeal Justification Item One:

City Code 14-53:

- Staff did not interpret the Secretary of the Interior's Standards for Rehabilitation number 2 or 5 regarding the west facing window or interpreting the Standards Bulletin 14.
- In the Secretary of the Interior's or National Park Service standards and guidelines, there is no documentation that does not allow you to remove one window and or add a new window opening into the existing Historic Wall Fabric. These standards and guidelines are just that, they are not codifiable or a requirement to comply with standards 2 or 5.
- In the Certificate of Appropriateness that was issued on February 17th for the property after the February 17th hearing. It clearly states in SOI #2 "The modification of the west bathroom window from one historic unit to two non-historic is not ideal, but by itself may be considered consistent with this Standard due to its location on the side elevation, the reduced visibility of this window, and considering the context of the proposed preservation and rehabilitation of most of the remaining windows on the historic building". It also clearly states in SOI #5, "While the modification of the bathroom window on the west elevation is not recommended, it does not appear to conflict with the Standard". The only difference from the previous plan to the current proposed plan is to move that same window modification further to the rear of the west elevation wall and not modify the bathroom window in the middle of the west elevation.
- In the Secretary of the Interior's Standards, they provide a Technical Bulletin 14 that describes how to add new window opening into a Secondary Elevation. The window that we are proposing to remove along with adding new windows is on the west elevation or secondary elevation and it is all the way to the north corner of the structure. This window elevation is not on the primary or street fronting elevation. If someone was looking you can see the window walking down the street, but you would have to be looking for it. Also, we are proposing with the new windows to match the look and character of the existing window details. This way when you are walking down the street and look back you would not tell they are new windows.
- We are also proposing to repurpose the existing brick and fill in the existing window so no one walking down the street would tell that there was a window in the current location. Again, in the Secretary of the Interior's or National Park Services standards and guidelines, there is no documentation that states you cannot fill in an existing opening in an existing Historic Wall Fabric.

Other Facts:

- During the May 18th Conceptual Design Review meeting with the Commission. There were conversations about the windows not disrupting the existing brick bond line. The proposed windows at that hearing to meet egress showed them breaking the brick bond line. There was not a conversation that we should not or could not add two new windows or fill in the existing window. There was a question about if we could use a different window in the existing location to meet current egress code but nothing about adding a window. The current plans show we modified the window size to not break the existing brick bond line with a different size window that still complies with current egress building code for life, health, and safety.
- During the July 20th Commission Hearing, Mr. Guenther who is the neighbor to the west or the most impacted with these modifications spoke highly in support of these window modifications. So, the person that is the most impacted spoke in support of the project in its entirety.

In conclusion, it is our opinion staff, and some members of the commission did not interrupt the Secretary of the Interior's Standards for the Treatment of Historic Properties correctly as it pertains to SOI # 2 and 5 and that staff has made a different interpretation from their review of Appropriateness from the February 17th hearing and findings of fact that was issued.

1306 West Mountain Historic Preservation Commission Appeal Justification Item Two:

Commission Member conflict of interest in a personal and social relationship that with the Decision Maker's independence of judgement:

- Commission member Meg Dunn stated that she knew and was acquaintances of the former property owner Mr. Bob Baily.
- Commission member Meg Dunn was also a member of the board on September 10th of 2014 when Mr. Baily applied to have the property designated and was unanimously approved by the board to recommendation to City Council to designate the property at 1306.
- Commission member Meg Dunn made statements in both the May 18th Design Review hearing as well as in the July 20th Final Design Review hearing "that if the new owners can not fit their furniture into a 1922 home maybe they should not have bought an old house and go buy something different". This is a bias statement and does not support the role of the commission to determine the facts of appropriateness.
- After working with staff and the commission for 18 months, 13 meetings along with 6 plan modifications, questions are asked if some commission members have created a bias because we have made so many changes to the plans.

Other Facts:

- After working with staff on the latest design for the May 18th Conceptual Review, at the hearing a couple of commission members stated they still do not like the current plan, and we should come back to them with something different. This is just to continue and delay the process along with costing more money for everyone involved including the city.
- The comment was made in the May 18th hearing by Commissioner Meg Dunn that we could go up to 50% of the existing building size and square off the back, when in previous meetings we were clearly told the rule of thumb for expansions of historic properties is 33% of the existing building size is appropriate to add onto an existing home.
- It was also stated in the May 18th Design Review hearing that we could remove a 12-foot section of the north existing brick wall if needed for a better design. When in previous meetings were told clearly that the existing exterior north brick wall cannot be removed. Which is why we are proposing to retain the existing 12-feet of brick wall to comply with the commissioners' comments during previous meetings.

- The question of bias comes after each Historic Preservation Commission hearing or meeting, we were given inconstant direction or guidance as to changes that need to be made or modified for the commission to issues a certificate of appropriateness. All we heard from some commission members, is that “we just didn’t like the plan and told we should go back to the drawing board to bring back a new design”. Even the Chair Mr. Kurt Knierim stated in his closing remarks that “you must be more confused now than when you walked in the door for this hearing tonight”.
- We have made numerous changes and modifications to the plans along the 18 months to comply with staff and the commissions wishes, but after the May 18th hearing you wonder if some of the commission members did not want to see anything happen to this property at all.