

BOARD OF ADJUSTMENT CASE NO. BOA-145-099

IN RE: 5500 SWISS AVENUE                   §     IN THE BOARD OF ADJUSTMENT  
   §  
   §     DALLAS COUNTY, TEXAS

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HARRYETTE EHRHARDT, VIRGINIA McALESTER, AND LARRY OFFUTT’S  
AMICUS BRIEF IN OPPOSITION TO BARBARA McDANIEL’S APPLICATION TO  
THE BOARD OF ADJUSTMENT TO SET A COMPLIANCE DATE FOR THE  
NONCONFORMING USE AT 5500 SWISS AVENUE

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TO THE HONORABLE BOARD OF ADJUSTMENT:

COME NOW Harryette Ehrhardt (“Ehrhardt”), Virginia McAlester (“McAlester”), and Larry Offutt (“Offutt”) (collectively the “SAHD Founders”), and file this *Amicus* Brief In Opposition To Barbara McDaniel’s Application to the Board of Adjustment to Set a Compliance Date for the Nonconforming Use At 5500 Swiss Avenue (the “Application”), and would respectfully show the Board of Adjustment (the “BOA”) as follows:

I.  
THE SAHD FOUNDERS

Harryette Ehrhardt, Virginia McAlester, and Larry Offutt are each long-time residents of the Swiss Avenue area, and they were each **founding members** of the Historic Preservation League (now known as Preservation Dallas), which in turn was instrumental in founding the Swiss Avenue Historic District (“SAHD”). They live in the immediate vicinity of Aldredge House.

Dr. Ehrhardt has lived on Swiss Avenue since 1970, and holds a doctorate in education. She is a former trustee of DISD and a former member of the Texas Legislature. She is also a member of the Dallas County Medical Society Alliance (“DCMSA”)<sup>1</sup> that currently owns and operates Aldredge House. DCMSA is a non-profit. Contrary to the assertions in the Application, DCMSA does not operate Aldredge House as a for profit business.<sup>2</sup> Dr. Ehrhardt is filing this *Amicus* Brief, however, in her individual capacity, and acknowledges that the DCMSA is represented by separate counsel. Dr. Ehrhardt’s sworn affidavit is attached to this *Amicus* Brief as Exhibit 2.

Mrs. McAlester resides just a short distance from Aldredge House, and she has lived on Swiss Avenue for over fifty (50) years. She is an architectural historian, and she is a recognized author on historical architecture and preservation. She co-authored the book *The Making of a Historic District – Swiss Avenue*, which was published by the National Trust for Historic Preservation. Mrs. McAlester’s’ sworn affidavit, which chronicles the history and preservation efforts in the SAHD, is also attached to this *Amicus* Brief as Exhibit 3.

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<sup>1</sup> DCMSA received the Aldredge House as a gift in 1975 from Rena Aldredge. In 1980, DCMSA was issued a Certificate of Occupancy with the stated land use “civic and fraternal associations.” Exhibit 15. “[DCMSA] is a philanthropic organization (501c3) whose mission is to promote health education through community programming and to preserve and maintain the historic Aldredge House. Founded in 1917, [DCMSA] was the first medical auxiliary in the country. The organization served as a model for other medical auxiliaries throughout the United States that were founded in the early twentieth century. Members are physicians and physicians’ spouses who are dedicated to supporting the healthcare needs of Dallas residents.” Exhibit 1 at p. 2.

<sup>2</sup> Exhibit 37, E-mail from Communities Foundation confirming DCMSA’s nonprofit status.

Mr. Offutt has lived in the SAHD for over sixty (60) years, and is one of the original founders of the SAHD. His affidavit is attached as Exhibit 4.

The SAHD Founders submit this *Amicus* Brief in support of the DCMSA, and to specifically support the legal non-conforming use of Aldredge House under the stewardship of the DCMSA. This *Amicus* Brief presents *overwhelming evidence* why the current Application should be rejected, and it includes personal testimonials and sworn statements from the SAHD Founders, as well as from other current and past community leaders, activists and recognized experts in architecture and historical preservation. In addition, this *Amicus* Brief attaches to it thousands of signatures and comments that have been submitted in support of Aldredge House and its current use.

## **II.** **SUMMARY OF POSITION**

Aldredge House is located at 5500 Swiss Avenue, Dallas, Texas, and has operated since 1985 under a legal non-conforming use designation. This designation occurred long before the current Applicant (and her few supporters) moved into the SAHD.<sup>3</sup> Indeed, of the eleven affidavits filed in support of the Application, only one affiant lived in the SAHD before the 1985 designation. Several of these affiants moved into the area only within the last few years.

The current Application, which seeks a determination whether continued operation of Aldredge House will have an adverse impact on nearby properties, does

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<sup>3</sup> See generally Affidavits attached to and submitted in support of Application.

not properly account for the historical significance of Aldredge House. Although it concedes that “Swiss Avenue stands as the finest example of an early 20<sup>th</sup> Century neighborhood in the entire Southwest,”<sup>4</sup> the Application fails to acknowledge the extent to which Aldredge House (and its related public access) has played a pivotal role in the positive transformation of the neighborhood. Nor does it acknowledge that “nearby properties” include the entire SAHD and the Junius Heights Historic District that is just over half a block away and in which DCMSA’s parking lot is located.<sup>5</sup> The Application also blurs operative facts. Indeed, the Application tends to take trivial or isolated instances, and then exaggerates those instances to bolster a more general attack. As demonstrated in this *Amicus* Brief, however, the truth is that Aldredge House is not a nuisance, but is a valuable, important and enduring landmark that must be protected.

Pursuant to Section 51A-4.704(a)(1)(B) of the Dallas City Code, the BOA should limit its inquiry to nine (9) criteria when considering the pending Application. These criteria include:

- (1) the character of the surrounding neighborhood;
- (2) the degree of incompatibility of the use with the Zoning District in which it is located;
- (3) the manner in which the use is being conducted;
- (4) the hours of operation of the use;

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<sup>4</sup> Applicants Brief at p.3.

<sup>5</sup> Exhibit 13.

- (5) the extent to which continued operation of the use may threaten public health or safety;
- (6) the environmental impacts of the use of operation, including impacts of noise;
- (7) the extent to which public disturbances may be created or perpetuated by the use;
- (8) the extent to which parking problems may be created or perpetuated by the use; and
- (9) any other relevant facts relating to potential impacts on nearby properties.

This *Amicus* Brief is supported by numerous letters and affidavits of community leaders, historic preservation experts, architectural experts, interior design experts, members of DCMSA, and long-time residents of Swiss Avenue and surrounding areas. When considered, this evidence constitutes *overwhelming evidence* that demonstrates that each of the nine (9) criteria, when considered in the context of the Application, compels but one conclusion – that the BOA should permit continued operation of Aldredge House according to its current legal use under the stewardship of the DCMSA.

Preservation of Aldredge House under the stewardship of DCMSA is important for the SAHD, the City of Dallas and to an overwhelming majority of those who reside

in the relevant area.<sup>6</sup> Indeed, the Application was inspired by a small minority of individuals (less than 8 in over 200 homes in the SAHD) who seek to turn a blind eye to history and the on-going value of Aldredge House, and the role that it has played (and continues to play) in the revival of Swiss Avenue, the SAHD and surrounding areas. It is also noteworthy that the current Board of SAHDA passed a resolution supporting Aldredge House and its current operations.<sup>7</sup>

### **III. EVIDENCE RELIED UPON**

This *Amicus* Brief is supported by the following evidence which is incorporated herein as if fully set forth:

1. The Dallas County Medical Society Alliance founded 1917 The Aldredge House completed 1917 A Double Centennial Celebration (Exhibit "1");
2. Affidavit of Harryette Ehrhardt (Ex. "2");
3. Affidavit of Virginia Savage McAlester (Exhibit "3");
  - A. 1973 SAHDA Ordinance
  - B.1 Pictures of Munger Place Before and After Renovation
  - B.2. Pictures of Swiss Avenue Before and After Renovation
  - B.3. Aldredge House, ca 1970s
  - B.4. Aerials of Swiss on Narrow Peninsula
  - B.5. Elevation of Proposed High Rise
  - C. French Eclectic Chapter Excerpts
  - D. Articles of Social Events
4. Larry Offutt Affidavit (Exhibit "4");

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<sup>6</sup>Additionally, as of October 9, 2015, 2,848 people have signed a petition on <https://www.change.org/p/dallas-board-of-adjustment-save-the-aldredge-house> to "Save the Aldredge House. Exhibit 35.

<sup>7</sup> McAlester Affidavit, Exhibit 3 at ¶56.

5. PD 63 (Exhibit “5”);
6. Henry T. Tatum Affidavit (Exhibit “6”);
7. Adam Palmer Affidavit (Exhibit “7”);
8. Sue Miller Affidavit (Exhibit “8”);
9. Correspondence from Katherine E. Seale, Current Chair of the Dallas Landmark Commission (Exhibit “9”);
10. Donna Rogers Affidavit (Exhibit “10”);
11. Steve Clicque Affidavit (Exhibit “11”);
12. Lyn Dunsavage Young Affidavit (Exhibit “12”);
13. Letter of Rene Schmidt, President – Junius Heights Historic District (Exhibit “13”);
14. Glenn Offutt Affidavit (Exhibit “14”);
15. June 16, 1980 Certificate of Occupancy (Exhibit “15”);
16. Jacqueline F. Winslett Affidavit (Exhibit “16”);
17. Jim Anderson Affidavit (Exhibit “17”);
18. Dr. Evelyn Montgomery Affidavit (Exhibit “18”);
19. Christopher Brazzle Affidavit (Exhibit “19”);
20. Frank Rinaldi Affidavit (Exhibit “20”);
21. Letter from Martha Heimberg (Exhibit “21”);
22. Elizabeth Gunby Affidavit (Exhibit “22”);
23. Lindalyn Bennett Adams Affidavit (Exhibit “23”);

24. Karen Casey Affidavit (Exhibit "24");
25. Margaret Lackey Fraker Affidavit (Exhibit "25");
26. Nancy B. Shelton Affidavit (Exhibit "26");
27. Affidavit of Kathleen Cox (Exhibit "27");
28. June 21, 1973 Letter from Ann Courtin, then President of the Historic Preservation League to Mrs. Michael Kurilecz, then House Chairman of the Women's Auxiliary to the Dallas County Medical Society (Exhibit "28");
29. Linda Thacker Solomon Affidavit (Exhibit "29");
30. Dr. Sandra Z. Brothers Affidavit (Exhibit "30");
31. Robert "Bob" Cox Affidavit (Exhibit "31");
32. Bill "Bulldog" Cunningham Letter (Exhibit "32");
33. Jordan Kaiser Affidavit (Exhibit "33");
  - A. Map
  - B. Photos
34. Dallas City Code Sec. 51A-4.704 (Exhibit "34");
35. Change.org Petition (Exhibit "35");
36. Witness Statement of Mr. Willis Washington (Exhibit "36");
37. E-mail from Communities Foundation confirming DCMSA's nonprofit status (Exhibit "37");
38. Janis Adams Correspondence (Exhibit "38");
39. Roger Carroll Affidavit (Exhibit "39");

40. October 7, 2015 Letter from David Preziosi, Executive Director of Preservation Dallas to Harryette Ehrhardt (Exhibit “40”);
41. October 7, 2015 Edward Thacker Letter (Exhibit “41”);
42. September 20, 2015 Letter from R. Lynn O’Neal to Dallas Board of Adjustment (Exhibit “42”); and
43. Beth Bentley Affidavit (Ex “43”).

#### IV. HISTORICAL BACKGROUND

##### A. Aldredge House

Aldredge House has been an *engine* driving historical preservation within the SAHD for decades. Much of what Dallasites know today as the SAHD, and Swiss Avenue Boulevard, would not exist but for Aldredge House and the 40 year stewardship provided by the DCSMA.

Henry T. Tatum, former Associate Editor of the Dallas Morning News, succinctly states in his Affidavit, attached to this *Amicus* Brief as Ex. 6, that:

In my mind, there were two critical things that ensured the successful creation of the historic district -- a court battle that turned back plans to build a high rise residential tower on a lot in the center of Swiss Avenue, and the protection of the Aldredge House as a centerpiece of the SAHD.<sup>8</sup>

Aldredge House, which was completed in 1917, was designed in the French Eclectic Style. It was ranked as one of only three nationally significant houses in the City

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<sup>8</sup> Tatum Affidavit Exhibit 6 at ¶4.

of Dallas in the 1975 Dallas Historic Landmarks Survey.<sup>9</sup> As confirmed by the current Chair of the Dallas Landmark Commission, Mrs. Katherine Seale, one of the unique features of Aldredge House is that it retains the same floor plan of the home when occupied by the Aldredge Family, and has a fully intact interior with period furniture original to the house. Mrs. Seale further states:

It is exceedingly rare that a house of this age retains its original floor plan as well as a fully-intact interior, which includes original wall moldings, mantels, wood casings, staircases, and other interior architecture. The interiors of the Aldredge House, a Recorded Texas Historic Landmark (1982), are regarded as the best preserved of an early twentieth-century home in Dallas. Its remarkable condition can be attributed to the fact that the house has had just two major owners since 1921, George N. and Rena Munger Aldredge and the Dallas County Medical Society Alliance.<sup>10</sup>

Dr. Evelyn Montgomery, who resides approximately  $\frac{3}{4}$  of a mile from Aldredge House on Swiss Avenue, holds “degrees in interior design, architecture and history,” and also notes:

The Aldredge House is a wonderfully maintained physical record of architecture and interiors of the early to mid-nineteenth century. Such a level of preservation is rarely seen in private homes that are no longer occupied by the original family. All of the public rooms are currently furnished and decorated in an authentic manner, allowing visitors to experience history by being in an historic atmosphere. This is the goal of museum period rooms, historic villages and house museum interiors, and it is well achieved here. . . [V]isitors seeing this house, and comparing

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<sup>9</sup> Exhibit 1 at p. 1.

<sup>10</sup> Exhibit 1 at p.18.

it with the updated and often eclectic furnishings and finishes of the other tour houses, can better appreciate two versions of historic preservation: a house which has been kept intact inside, and those that have been updated and adjusted for modern styles.<sup>11</sup>

In the early 1970s, Rena Munger Aldredge sought a non-profit organization to permanently preserve her home and to maintain it.<sup>12</sup> At the same time, the DCMMSA was seeking a permanent home.<sup>13</sup> It was at this time, however, that many of the stately homes on Swiss Avenue had been neglected and were deteriorating. Some of these homes had been subdivided into apartments, cars were “jacked up” in front yards, and old appliances were rusting on front porches. Some homes had become physically dilapidated. Halfway houses were not uncommon. Most realtors would not show homes on Swiss Avenue, and some lenders would not make loans to purchasers in what is now the SAHD. “It was in this atmosphere that the Dallas County Medical Auxiliary accepted the Aldredge House, and responsibility of its preservation... for the Medical Auxiliary to agree to undertake the restoration and preservation of one of the largest and most elaborate houses in the Swiss Avenue district in 1973-74 was very bold and very important.”<sup>14</sup>

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<sup>11</sup> Montgomery Affidavit Exhibit 18 at ¶¶8-9.

<sup>12</sup> Exhibit 1 at p.4.

<sup>13</sup> *Id.*

<sup>14</sup> McAlester Affidavit Exhibit 3 at ¶¶ 16-20.

## B. Recorded Texas Historic Landmark

In 1982, Aldredge House was designated as a Recorded Texas Historic Landmark. Mrs. McAlester, an SAHD Founder, and a recognized and published architectural historian, lives .2 miles from Aldredge House. She notes in her affidavit that there are a number of different reasons for a house to be designated as historic, all of which apply to Aldredge House:

**Architect.** Being designed by an important architect is one criterion that can make a house eligible for historic status. The Aldredge House was a rare collaboration between Hal Thomson, arguably the best domestic architect in early 20th century Dallas and Fooshee (later of Fooshee and Cheek).

**Important Owners.** Both the original owners, William J. and Willie Newberry Lewis and the Aldredges, who lived there, for about fifty years, were prominent families, active in various aspects of Dallas social, commercial and political life.

**Architectural importance.** The Aldredge House could be declared a landmark for this reason alone. It has extraordinary stylistic and architectural details.<sup>15</sup>

On June 21, 1973, Anne Courtin, then President of the Historic Preservation League, wrote in her letter to Mrs. Michael Kurilecz, then House Chairman of the Womens Auxiliary to the Dallas County Medical Society<sup>16</sup> the following:

We are writing each [Dallas City] Councilman urging them to adopt the single family residential **with the provision that 5500 Swiss Avenue be taken over by the Auxiliary as a museum and meeting place.** . . . We feel this is desirable for

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<sup>15</sup> McAlester Affidavit Exhibit 3 at ¶¶26-30.

<sup>16</sup> Predecessor to DCMSA.

several reasons. **First, every historic district needs one house that can be opened to the public regularly.** . . . Secondly, this is the ideal house as it is one of the three most architecturally outstanding and is therefore of crucial importance to Swiss Avenue...<sup>17</sup> [Emphasis added]

The importance of having Aldredge House open and accessible to the Public cannot be overstated. “As one of the few historic houses in Dallas that is open to the public, the Aldredge House is an invaluable teaching tool, representing the history of an important period in the City’s past.”<sup>18</sup> “The Aldredge House has been and remains an amazing asset to the SAHD, and has provided thousands of people the opportunity to see an historic home in its original, excellent condition. The Aldredge House has been and still is a symbol of our historic district. Many people know about our beautiful homes in the SAHD only because of an event they attended at the Aldredge House.”<sup>19</sup>

PD 63, where the Aldredge House is located, was established on September 10, 1973. It has been amended four times, most recently on January 23, 1985. While the Aldredge House was specifically called out as a permitted use in 1973, the property was identified as a nonconforming use in 1985. “The medical society auxiliary social club use currently operated by the Dallas County Medical Society Auxiliary at 5500 Swiss Avenue is expressly recognized as a nonconforming use.”<sup>20</sup>

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<sup>17</sup> Exhibit 28. (Emphasis added).

<sup>18</sup> Jann Patterson Mackey, Ph.D., Lecturer, Southern Methodist University, Exhibit 1 at back cover page.

<sup>19</sup> Solomon Affidavit Exhibit 29 at ¶¶ 5-6.

<sup>20</sup> Exhibit 5 at Sec. 51P-63.114

A nonconforming use of land or buildings is a use that existed legally when the zoning restriction became effective and has continued to exist.<sup>21</sup> Thus, from 1973 to 1985, the DCMSA operated Aldredge House as a permitted use; for the past 30 years, since 1985, Aldredge House has been expressly recognized as a legal nonconforming use.

As a clear recognition of the importance of public access to Aldredge House, the drafters of the 1985 Ordinance provided a unique provision under Section 4(b)(c) that *“if a nonconforming single-family main building is damaged or destroyed it may be rebuilt at the same location without the approval of the Board of Adjustment.”* Thus, the 1985 Ordinance reveals the hope and expectation that the current legal non-conforming use would endure.

## V.

### LEGAL CONSIDERATIONS: NONCONFORMING USE FACTORS

The Dallas City Code instructs the BOA to “consider the following factors when determining whether continued operation of the non-conforming use will have an adverse effect on nearby properties:

- (i) The character of the surrounding neighborhood.
- (ii) The degree of incompatibility of the use with the zoning district in which it is located.
- (iii) The manner in which the use is being conducted.

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<sup>21</sup> *City of University Park v. Benners*, 485 S.W.2d 773, 777 (Tex.1972), appeal dismissed 411 U.S. 901, 93 S.Ct. 1530, 36 L.Ed.2d 191 (1973).

- (iv) The hours of operation of the use.
- (v) The extent to which continued operation of the use may threaten public health or safety.
- (v) The environmental impacts of the use's operation, including but not limited to the impacts of noise, glare, dust, and odor.
- (vi) The extent to which public disturbances may be created or perpetuated by continued operation of the use.
- (viii) The extent to which traffic or parking problems may be created or perpetuated by continued operation of the use.
- (ix) Any other factors relevant to the issue of whether continued operation of the use will adversely affect nearby properties."<sup>22</sup>

**A. The character of the surrounding neighborhood.**

Although the Application discusses the historical nature of the SAHD, it conveniently ignores the significant role that Aldredge House has played as part of the SAHD. This history should not be overlooked. Bill "Bulldog" Cunningham, a past Commissioner of the City Plan Commission, states in his letter, attached as Exhibit 32 that:

"I was fortunate to learn and appreciate the many assets that the Aldredge House provided to the immediate community and the city of Dallas. There is no way to express the value of the important footprint that the Aldredge House has provided in the way of services and commitments and

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<sup>22</sup> Exhibit 34.

development for all that have had the opportunity to be a part of its existence.”<sup>23</sup>

Dallas prides itself for being a City of the *new*. But, it is important to not forget the past. The Aldredge House is a rare exemplar of this past, and it has been a part of community life within the SAHD and the City for decades. This endurance is further validation of its architectural significance characterized by the work of Hal Thompson, among the finest residential architects of his generation.<sup>24</sup>

Any evaluation of Aldredge House should not be divorced from its larger (and equally important) role in the SAHD community. As the Current Chairperson of the Dallas Landmark Commission, Ms. Seale, has noted: “The Aldredge House continues to be an asset for the public through educational tours, lectures, and programs open to the public and FREE of charge. The Aldredge House provides free meeting space to the neighborhood and other non-profits. And, it’s charming architecture and interior continues to inspire and teach us as we enjoy its beauty and timelessness.”<sup>25</sup>

In the SAHD, as in most other historic districts, a major part of the character of the neighborhood is its visual and architectural character--not just its use. Not only is Aldredge House compatible with the visual character of Swiss Avenue, but it is one of its finest architectural examples. Further, in deference to the architectural character of

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<sup>23</sup> Cunningham Letter Exhibit 32.

<sup>24</sup> Mark Lamster, Architect Critic, The Dallas Morning News, Exhibit 1 at p.4.

<sup>25</sup> Katherine Seale, Chair, Dallas Landmark Commission, Seale Correspondence Exhibit 9.

the street, Aldredge House had never displayed any signage that would set it visually apart from other residences on the street.

The Application seeks to narrowly define "compatible with" in terms of only "use" when indeed there is also visually compatibility. Aldredge House is not an industrial plant out of character with the look and feel of the neighborhood. Nor is it a motel sitting in the midst of a small scale residential neighborhood. It is similar in both look and feel to the other homes on the boulevard.

The pending Application risks misleading the reader when it says that "SAHD is a residential district"<sup>26</sup> or that Swiss Avenue is a "serene boulevard". It should be obvious to even the casual observer that the SAHD is far more diverse, and not a homogenous area as suggested by the Applicant. When the surrounding neighborhood is narrowly drawn, as the Applicant suggests, it is clear that Aldredge House, as it has been for 40 years, is compatible with other uses and that it has served as the cornerstone of the SAHD. However, when the surrounding neighborhood is more realistically drawn, it is also apparent that Aldredge House continues to mesh well with the significant non-single family residential uses that clearly characterize surrounding areas. This is especially true when consideration is given to the presence of a church,

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<sup>26</sup> Applicant's Brief at p.3.

and the many retail establishments that directly abut the SAHD. As Mrs. McAlester effectively discusses in her affidavit, the SAHD is on an “urban edge.”<sup>27</sup>

The SAHD is best described as an area of historical, architecturally significant homes. However, Jordan Kaiser, who lives approximately .3 miles from Aldredge House on Bryan Parkway, also provides a more complete description of the surrounding neighborhood that contradicts the Applicant’s suggestion that the BOA should consider only a narrow sliver:

[w]hile from the street it may appear to be a calm single-family neighborhood, in actuality we are a narrow peninsula of single-family zoning in the midst of multi-family and commercial uses. Many parts of our district are only one block wide and others a mere one-half block in depth. Only three half-blocks of Swiss and Bryan Parkway actually share an alley with a single-family use. A majority of the houses in the SAHD share an alley with multi-family zoned apartments. The high density of these neighboring properties creates additional traffic, trash, noise, and petty crime and other disturbances that are not found in neighborhoods comprised completely of single-family residences. The surrounding neighborhood on Live Oak, La Vista and Gaston is a mix of multi-family, and retail establishment, including liquor stores, bars and car wash. The alleys immediately adjoining the district evidence the high-density usage of the neighboring properties. Graffiti, discarded furniture and shopping carts, open dumpsters, and razor wire fences are a few of the features of the boundaries adjoining the Swiss Avenue Historic District (“SAHD”)<sup>28</sup>

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<sup>27</sup> McAlester Affidavit Exhibit 3 at ¶36.

<sup>28</sup> Kaiser Affidavit, Exhibit 33 at ¶¶ 4-8.

Ms. McAlester, one of the SAHD Founders, also describes SAHD as a neighborhood which has an urban edge:

Almost every part of our historic district has some sort of urban edge. Some houses back up to a car wash, others to bars, parking lots, outdoor patios and even a liquor store. The majority of our homes back up to apartment complexes. These often have open dumpsters that attract people to walk along the alley and search through them. Apartment residents also work on their cars in the parking lots sometimes with loud music turned up. Mattresses and furniture are dumped in the alley when people move, and trash from the dumpsters that are left open litters nearby. . The Swiss Avenue Historic District is a narrow peninsula of single-family zoning (only one- to two-blocks wide) that is completely surrounded by a relatively dense urban setting.<sup>29</sup>

Based on the foregoing, the SAHD Founders submit that Aldredge House is not only visually compatible with the SAHD, but is one of the primary contributors to the visual and architectural character of the district. In addition, they submit that the current use of Aldredge House is, and has been, compatible with the surrounding neighborhood, and that its current use should not be altered. Because Aldredge House and its current use were intentionally included in the first ordinance that established the SAHD, there would be no way to reasonably conclude, 40 years after the fact, that the current use of Aldredge House is not compatible with the historic district. The ordinance that bestowed single family zoning upon the homes in the SAHD community concurrently bestowed the charitable and philanthropic use upon Aldredge House, and

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<sup>29</sup> McAlester Affidavit, Exhibit 3 at ¶36.

the two continued entwined in the 1985 revision that expressly recognized the continued use at Aldredge House as a legal non-conforming use. The two were birthed together and have remained inextricably linked together—and should not now be separated.

The pending Application seeks to artificially narrow the scope of the BOA’s inquiry. But, the BOA should not indulge this request and should look objectively at the entire area – the SAHD and neighboring areas.

**B. The degree of incompatibility of the use with the zoning district in which it is located.**

Aldredge House is *the* crown jewel of SAHD. It is *the premier historic home* in this district. While Aldredge House was specifically called out as a permitted use in 1973, the property was identified as a legal nonconforming use in 1985. It has operated as such for the past 30 years. To now assert that its use is somehow incompatible is contrary to this established 40 year history, and the ordinances that created its current use, and the great weight of testimony of those who support the current use of the Aldredge House.

The Application before the BOA submits evidence that criticizes specific events at the Aldredge House, and then extrapolates discrete (albeit few) instances into a broader indictment of the DCMSA’s stewardship. The Application misses the mark, however, and exaggerates the “evidence”.

Donna Rogers, who has lived at 5518 Swiss Avenue since 1999, is only one house separated from the Aldredge House. Mrs. Rogers testifies as follows:

The Aldredge House is maintained to perfection...We have never had trash left on our property as a by-product of one of the events that took place at the Aldredge House. There has never been noise coming from the Aldredge House that has been a disturbance to us. It has been our experience that any circulating trash comes from the overflowing dumpsters belonging to the apartments on Gaston Avenue and pedestrian traffic unrelated to the Aldredge House...I have heard an occasional toast, laughter, and happy music coming from the Aldredge House. On rare occasions, I have heard bag pipes from the Aldredge House. However, the sounds coming from the Aldredge house are no louder than the other sounds coming from our neighbor's parties and parties hosted from our own house. We would never want our neighbors to stop having parties.<sup>30</sup>

Furthermore, as reflected in Mrs. McAlester's Affidavit (Ex. 3), entertaining and hosting festive occasions throughout the SAHD is not uncommon, but frequent. Many residents within the SAHD hold charitable events, fundraisers and large celebrations at their homes, and these events do result in parking issues, outside music and revelry. Although Ms. McAlester is not critical of these occurrences, her testimony confirms that Aldredge House should not be singled out. Indeed, in some instances, Aldredge House has been unfairly criticized for "loud music" when the music actually emanated from a neighbor's house.<sup>31</sup>

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<sup>30</sup> Rogers Affidavit Exhibit 10 at ¶¶ 6-12.

<sup>31</sup> McAlester Affidavit, Exhibit 3 at ¶46.

Contrary to the imagery of a “nightclub” atmosphere described in the Application, the current use of Aldredge House is far more subdued and non-intrusive. This is demonstrated by the many affidavits submitted with this *Amicus* Brief.

**C. The manner in which the use is being conducted.**

Chris Brazzle, Manager of Food Glorious Food, has provided sworn testimony which discusses annual attendance at Aldredge House for events which have been held at Aldredge House over the last several years. He confirms that there were less than 100 attendees at a significant majority of these events.<sup>32</sup>

Likewise, Sue Miller, who has lived in the same block as Aldredge House for 30 years, testifies that:

My experiences concerning the Aldredge House have only been positive. There has never been noise emitting from the Aldredge House that negatively affects my family. We sometimes hear the toasts from the Aldredge House and we enjoy them...Any infrequent parking issue in front of my house is short lived and only a few hours in duration. My family believes that the Aldredge House is a good neighbor; it has also expressed willingness to address the concerns of its closest neighbors. I believe the Aldredge House is a great asset to the neighborhood and should remain open as an historic home to the public as it currently does so.<sup>33</sup>

The Application also seeks to indict the leadership of DCMSA regarding an alleged “forgery”. Mr. Brazzle confirms, however, that any such issue is not fairly attributed to Aldredge House or the Alliance. Mr. Brazzle clearly states:

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<sup>32</sup> Brazzle Affidavit Exhibit 19 at ¶4.

<sup>33</sup> Miller Affidavit Exhibit 8 at ¶¶3-8.

On the rare occasion that we would need to put a tent up in the back yard because of inclement weather, Food Glorious Food was responsible for hiring the company to obtain the permit through the City of Dallas. I gathered signatures from neighbors on the street and surrounding the house in order to submit the signed petitions to the rental company who was then responsible for filing all of the paperwork themselves with the City. At no point did Food Glorious Food or I forge any signatures of any kind. Also, the DCMSA was not involved in gathering the signatures, hiring the rental company or filing for the permit with the City. Since these recent allegations came about, we . . . no longer . . . use the rental company at the Aldredge House for any rental reason.<sup>34</sup>

The Application then identifies “parking” as an issue. Any parking problems,<sup>35</sup> however, are short lived and rare, and certainly no worse than parking issues that occur frequently in front of other homes for other reasons. This fact is again supported by numerous affidavits attached to this *Amicus* Brief.<sup>36</sup> For these reasons, the manner in which the Aldredge House is being operated is compatible.

#### **D. The Hours of Operation of the Use.**

The Brazzle Affidavit (Ex.19) separately confirms that there were only three occasions during the calendar year 2014 when there were two events booked on the same day; in 2015 there were only two days in which two events occurred.<sup>37</sup> Thus, “back to back” events, as alleged in the Application, are not commonplace, but rare.

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<sup>34</sup> Brazzle Affidavit Exhibit 19 at ¶11.

<sup>35</sup> DCMSA owns a parking lot on Gaston Avenue that is utilized for its events.

<sup>36</sup> See e.g. Miller Affidavit, Exhibit 8, Rogers Affidavit, Exhibit 10, and Casey Affidavit, Exhibit 24.

<sup>37</sup> Brazzle Affidavit Exhibit 19 at ¶7.

The use of Aldredge House for weddings and parties is not unusual for many other homes throughout the SAHD. The Applicant's assertions of "screaming party goers" are belied by numerous affidavits who attest to the fact that there is no unreasonable noise or nuisance from event attendees. Mr. Willis Washington lived on Swiss Avenue immediately adjacent to Aldredge House for many years. In fact, he lived in the home purchased by the McCune family. He stated in his witness statement (Ex. 36) that the weddings and parties at Aldredge House "were never disturbing to us."

Only a minority of the events at Aldredge House last later than 10:00 p.m., and even fewer events last past 11:00 p.m. Mr. Brazzle further testifies that of the total of 78 weddings, meetings and fundraisers at Aldredge House in 2014 "no event ended later than 11:30 p.m."<sup>38</sup> Many of the events were during the daytime hours. Furthermore, the so-called "send offs" are rarely undertaken outside of Aldredge House. Although the application appears critical of "send offs", in reality the current rule is that "send offs" will not be conducted in the front yard.<sup>39</sup>

Based on the foregoing, the SAHD Founders submit that the current hours of use of Aldredge House is compatible with the surrounding neighborhood.

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<sup>38</sup> Brazzle Affidavit Exhibit 19 at ¶4.

<sup>39</sup> Brazzle Affidavit Exhibit 19 at ¶7.

**E. The extent to which continued operation of the use may threaten public health or Safety.**

The Application attempts to link purported instances of crime to Aldredge House. Frankly, any such correlation is not credible.

By way of example, the Application uses a physical attack on Adam Palmer, who lives in the guest house behind Aldredge House, as an important incident for the BOA to consider. But, Mr. Palmer himself confirms what many already know – that Aldredge House, and the entire SAHD, are in the middle of an inner city neighborhood that is vulnerable to crime *generally*. Mr. Palmer’s “attack” had nothing to do with Aldredge House, and any attempt to establish a causal link is nonsensical. Mr. Palmer states:

My physical attack on September 11, 2014 was in no way related to the Aldredge House. One of the primary crime areas in Dallas is less than one (1) mile away from Swiss and Parkmount. Many neighbors near me have experienced break-ins and attacks. The alley behind the Aldredge House, like other alleys in the neighborhood, can be a hub for crime. I have never observed any crime in the last three years related to any action taken or not taken by the Aldredge House. I frequently observe homeless people wandering in the alley behind Aldredge House. The Aldredge House is surrounded by the inner-city. I have observed homeless individuals urinate in the alley behind the Aldredge House. I have observed homeless individuals leaving lots of trash in the alley behind the Aldredge House. These people also frequently leave clothes and shoes in the alley and in the area surrounding the Aldredge House.”<sup>40</sup>

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<sup>40</sup>Palmer Affidavit Exhibit 7 at ¶¶4-11.

Larry Offutt, a resident and founding member of SAHD, also testifies about crime in the neighborhood surrounding Aldredge House, and notes:

While revitalization has taken place throughout the SAHD, the neighborhood is under constant pressure to maintain, protect and further establish itself. An example of this threat is the fact that, as set forth in a Dallas Police Department and Dallas Morning News crime study, the number one center of crime in Dallas is less than one mile from Aldredge House, and just blocks from the boundaries of the SAHD.

Furthermore, the Aldredge House is located just a few hundred feet from a public park in which homeless individuals sleep, urinate, litter, change clothing, and where sexual trysts occasionally occur – on weekends in particular. Furthermore, the cross streets are a thoroughfare from one high crime area with prostitution, drug sales, and drug usage to another area (Ross to Gaston to Columbia). Moreover, at times individuals consume alcohol in their jazzed up cars while parked on the street adjacent to the park and blare loud music.

This crime and sordid activity happens in the middle of SAHD in the immediate vicinity of the Aldredge House, and has transpired for years. This activity is a reality of part of living in a diverse, socio-economic, inner-city neighborhood.<sup>41</sup>

Mr. Offutt concludes that “allegations that the DCMSA’s use of the Aldredge House for social events is a major source of criminal activity in the area is inane at best.”<sup>42</sup>

The Application’s suggestion that crime in the area is attributable to events hosted and attended at Aldredge House is clearly overreaching.

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<sup>41</sup> L. Offutt Affidavit, Exhibit 4 at ¶16-18.

<sup>42</sup> L. Offutt Affidavit, Exhibit 4 at ¶19.

**F. The environmental impacts of the use's operation, including but not limited to the impacts of noise, glare, dust, and odor.**

Mr. Brazzle confirms in his affidavit that:

“The DCMSA has put new rules into place that state that no events may take place at the Aldredge House for more than 150 people, events must end by 10:00 pm, and that send-off must not be done in the front of Aldredge House. The front porch of the home is used for cocktail hour after the ceremony and before guests move inside or into the backyard for dinner. There were no events ever held in the front yard.”<sup>43</sup>

With respect to alleged noise pollution, the Application also cites to “idling trucks”. There was a situation caused by heavy rains and an incomplete alley improvement project that made the alleyway behind the Aldredge House too muddy and in a state of disrepair that, as a result, impeded vehicle traffic. The City delayed addressing the issue. That pushed large delivery trucks to the side of Aldredge House. However, this issue has now been effectively addressed and large deliveries to the Aldredge House are now in the rear. The issue of “idling trucks” should be moot.<sup>44</sup>

In addition, Willis Washington, who lived next door to Aldredge House for many years, has stated that the weddings and events “were never disturbing.” This directly contradicts the Application.

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<sup>43</sup> Brazzle Affidavit Exhibit 19 at ¶11.

<sup>44</sup> McAlester Affidavit Exhibit 3 at ¶55.

Based on the foregoing, Founders submit that there are no environmental impacts to the surrounding neighborhood to justify ending the Aldredge House's legal non-conforming use.

**G. The extent to which public disturbances may be created or perpetuated by continued operation of the use.**

The Application complains that no one lives at Aldredge House, and then alleges that this creates undefined issues with the neighborhood. However, Mr. Palmer testifies that he lives on the premises of Aldredge House, and that he is accessible to his neighbors:

"I have made myself available to the community for questions or concerns. My personal number is listed on the Swiss Avenue Historic District ("SAHD") website and posted on the front door of the Aldredge House. I have also tried hard to meet the neighbors of the Aldredge House."<sup>45</sup>

Likewise, Dr. Sandra Z. Brothers testifies:

"I was appointed as the liaison for the DCMSA and the Swiss Avenue Historic District in March 2013. Since that time, my name and contact information have been available on the DCMSA's website, and I have been easily reachable by anyone needing access the DCMSA. I live only a few blocks from the Aldredge House. I attend most of the Swiss Avenue Historic District ("SAHD") meetings, and I am recognized by many of the residents of the District."<sup>46</sup>

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<sup>45</sup> Palmer Affidavit Exhibit 7 at ¶¶ 2-4.

<sup>46</sup> Brothers Affidavit Exhibit 30 at ¶4.

Any assertion that DCMSA is an absentee landlord, and that this somehow contributes to issues at Aldredge House, is grossly overstated. DCMSA has been and remains an easily accessible and careful steward of this historic landmark.

**H. The extent to which traffic or parking problems may be created or perpetuated by continued operation of the use.**

Swiss Avenue is a five (5) lane divided boulevard. Aldredge House, which has its own offsite parking lot, does not contribute negatively to parking or traffic issues.

Ms. Karen Casey, a nearby neighbor, has testified that:

I have spent many years walking Swiss Avenue and enjoying its shady, wide sidewalks along with the legion of other walkers and bikers. One of the highlights of my walks has always been walking by the Aldredge House and seeing the house lit up for visitors. The unique opportunity for a varied group of Dallas citizens to come into a home in the Swiss Avenue Historic District, and take a step back in time, has provided them with a moment of Dallas history that educates and delights the visitor.

On my many, many walks down Swiss Avenue, I have witnessed the orderly arrival and departure of visitors for weddings and other gatherings, but have never noted any inconvenience for pedestrians or vehicular traffic.<sup>47</sup>

Based on the foregoing, the SAHD Founders submit that there are no material parking or traffic problems caused by the current use of the Aldredge House.

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<sup>47</sup> Casey Affidavit Exhibit 24 at ¶¶4-6.

**VI.**  
**CONCLUSION**

The overwhelming evidence is that Aldredge House is a treasured landmark, a valuable asset to SAHD and a valuable asset to the City of Dallas. The chorus supporting Aldredge House is loud and clear. The current operations are compatible with the neighborhood and a positive force within the SAHD. Hundreds, indeed thousands of people support Aldredge House and its current use.

The Application fails to demonstrate the types of adverse impacts necessary to modify the current legal non-conforming use. As such, the Application should be rejected.

Dated: October 12, 2015

Respectfully submitted,

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