

# SECTION 5

Transcript of the  
July 1, 2019  
Landmark Commission  
Hearing  
4902 Swiss Avenue  
CA189-579(MLP)

TRANSCRIPTION OF EXCERPT OF AUDIO RECORDING

LANDMARK COMMISSION PUBLIC HEARING

CITY OF DALLAS, TEXAS

CASE CA189-579 (MLP)

4902 SWISS AVENUE

SWISS AVENUE HISTORIC DISTRICT

DATE OF HEARING: JULY 1, 2019

DATE OF TRANSCRIPTION: AUGUST 27, 2019

## 1 T R A N S C R I P T I O N

2 UNKNOWN SPEAKER: D-7.

3 UNKNOWN SPEAKER: Discussion Item No. 7,  
4 4902 Swiss Avenue, CA189-579 (MLP), request No. 1,  
5 install new eight-foot wood fence in front corner side  
6 yard were completed without certificate of  
7 appropriateness.

8 Request No. 2, plant five Christmas jewel  
9 holly trees in front corner side yard.

10 Staff recommendation, item No. 1, deny  
11 without prejudice. The completed work does not meet the  
12 standards in City Code section 51A-4.501(g)60, romanette  
13 i, because it is inconsistent with the preservation  
14 criteria, section 51P-63.116-2(b)4cc that prohibits  
15 fencing in front of a corner side facade.

16 Item No. 2, deny without prejudice. The  
17 proposed work does not meet the standards in City Code  
18 51A-4.501(g)60, romanette ii, on the basis that the  
19 proposed work will have an adverse effect on the  
20 historical overlay district.

21 Task force recommendation, item No. 1, deny  
22 without prejudice. Location of fence is not consistent  
23 with ordinance, reference 64.116 (2) and Exhibit 8 of 8.

24 No. 2, deny without prejudice, task force  
25 did not review this request separately.

1 UNKNOWN SPEAKER: Thank you.

2 Mr. Harrington, your name and address, please.

3 MR. HARRINGTON: James Harrington, 4902  
4 Swiss Avenue in Dallas, 75214. Can we restart the  
5 clock, please, it's at 13-something. Thank you.

6 UNKNOWN SPEAKER: Do you have a presentation  
7 for us or are you just open for questions?

8 MR. HARRINGTON: Yes, ma'am. My wife,  
9 Jeannie, my wife of 35 years this September, she and I  
10 are coming before you today to make this request. And  
11 what we're requesting of you is that you grant an  
12 exception to the -- where the fence is allowed to be on  
13 the side yard, the return fence on the side yard.

14 And we're asking that you do this based on  
15 security and privacy reasons. Now, I believe you have  
16 the discretionary authority to grant this exception,  
17 which is very reasonable, based on section  
18 51P-63.116(2)B44, cc, paragraphs 1 and 1.

19 Those are lists -- that section is actually  
20 listed on D7-12 at the top. And it says that the  
21 Commission may allow a fence that is directly in front  
22 of all or any portion of the rear 50 percent of the  
23 corner facade, if; one, more screening is necessary to  
24 ensure privacy due to unusually high pedestrian or  
25 vehicular traffic; and, two, the fence does not screen

1 any -- all or any portion of the significant -- of a  
2 significant architectural feature of the main building.

3 I would suggest to you that this property  
4 has very unique pedestrian traffic, which I'll explain  
5 in a minute, and a very high volume of vehicular  
6 traffic.

7 Now, one of the reasons I believe this is a  
8 very reasonable request is because our lot sides onto  
9 Fitzhugh. The lot across the street sides on Fitzhugh.  
10 These two properties, I'm of the opinion, need to have a  
11 little bit of an understanding that we face a unique  
12 situation that the other members of Swiss Avenue do not.

13 They don't side on Fitzhugh. They don't  
14 have to deal with all the pedestrian traffic and all the  
15 vehicular traffic.

16 Basically, to give you an idea of some of  
17 the pedestrian traffic, I'd like to share some of our  
18 experiences over the last 18 years. Those two windows  
19 that we're enclosing, we've had rocks thrown through  
20 those windows.

21 Those windows go to our dining room, our  
22 main dining room is inside those two windows. And we've  
23 never been able to open those blinds or open even the  
24 windows when we're having dinner or guests over or  
25 family over because of the people that are on Fitzhugh.

1                   There's just no privacy there whatsoever  
2                   without the fence being in place. Several years ago,  
3                   there was a shooting right there on Fitzhugh outside  
4                   those two windows, five people involved. Witnessed it  
5                   myself, I was upstairs, looked out the window, saw some  
6                   of the guys running across our front yard.

7                   The street was shut down for most of the  
8                   next day where they were collecting the bullet casings  
9                   and evidence from the shooting. Someone was shot. An  
10                  ambulance showed up, took him away.

11                  I've had to run very aggressive people out  
12                  of my backyard before from -- that had entered from the  
13                  driveway or was about to enter from the driveway off of  
14                  Fitzhugh. Now, I have a concealed carry license and  
15                  both times I had to use my weapon basically to scare  
16                  them off.

17                  The first time I didn't have to pull my  
18                  weapon. The first week of April after I told the guy to  
19                  stop and let him see that I was holding my weapon, he  
20                  kept coming. I pulled my weapon, told him you need to  
21                  stop. He didn't stop.

22                  I held it up to make sure the flood light  
23                  was on it and real aggressively told him he needed to  
24                  stop and finally he stopped. Now, that was not a fun  
25                  experience for me. I'm really glad it didn't happen to

1 my wife because she doesn't have a weapon.

2           The other guy that I had to run off I didn't  
3 have to pull my weapon, but he was all the way in the  
4 yard looking at the items that we have between our  
5 garage and our fence. I came out the back door and just  
6 told him, you need to leave.

7           He turned around, gave me a go-to-hell look,  
8 stuck his chest out at me, didn't say anything. I  
9 interpreted that as (indiscernible). So I moved around  
10 to where he could see my hand on my weapon. At that  
11 point he decided he would leave.

12           So that gives you a little bit of an idea,  
13 but let me continue. There's prostitutes that work that  
14 street on a regular basis. When we first moved on to  
15 Swiss, there was a prostitute stabbed in the alley. But  
16 most recently, back in April, when I took my trash cans  
17 out one night, there was a prostitute working the  
18 sidewalk where it intersects with the alley behind our  
19 house.

20           UNKNOWN SPEAKER: Technically, your time is  
21 up, but if you have anything you want to say here at the  
22 end.

23           MR. HARRINGTON: I don't think there's  
24 anyone else speaking. May I have the next five minutes,  
25 please? I'll be through within the next five minutes.

1 Thank you.

2 We've had several of the windows shot out on  
3 that side of the house. The two -- as you're looking at  
4 that picture -- the two on the top front have been shot  
5 out and right now there's a bullet hole in the top  
6 window on the left. You can drive by there this evening  
7 and look at it if you'd like to.

8 Last summer had a man come off of Fitzhugh,  
9 come on to our porch, crawl into our bushes. When I  
10 confronted him, he ran across the street and tried to  
11 get into our neighbor's house. The door was locked. He  
12 went to the next house and tried to get in.

13 I called 911. I followed him for the next  
14 45 minutes on the phone with 911 in my car. He tried to  
15 get in almost every house on Griggsby. Finally, after  
16 45 minutes, the police got there and arrested him, but  
17 it took 45 minutes.

18 As far as the suggestions about the  
19 landscaping and the cameras, the cameras also do  
20 nothing. I've had to run people out of my yard with my  
21 weapon. I don't think a camera is going to stop anyone  
22 of that nature.

23 And the landscaping, well, there used to be  
24 some large bushes in that area. And basically the  
25 homeless people would sleep under them. I can't tell



1 you how many sleeping bags and blankets and beer cans  
2 and beer bottles and wine bottles and whiskey bottles  
3 we've cleaned out from underneath those bushes.

4 And they would lean up against the house  
5 right underneath those two windows. So I ask that you  
6 please remember that the City of Dallas is a thousand  
7 police officers short right now.

8 Mrs. Harrington wasn't feeling well today so  
9 she wasn't able to come today, but she did ask me to let  
10 you-all know that over the past couple of months as  
11 we've been dealing with this with those two windows  
12 secure, that her degree of stress that she experiences  
13 being concerned about those windows being exposed to  
14 Fitzhugh has gone way down. There's a noticeable  
15 difference. So she asked me to express that to you.

16 So in summary, we're respectfully requesting  
17 that this Landmark Commission grant this very reasonable  
18 exception based upon the serious security and privacy  
19 concerns my wife and I have to deal with.

20 I personally am asking this Commission to  
21 place my wife and my six-year-old grandson who stays  
22 with us the majority of the time, their health, safety,  
23 and welfare ahead of a couple of words written on a  
24 piece of paper.

25 I please ask you to exercise your

1     discretionary authority that you have to grant this  
2     exception because there is more screen that is necessary  
3     to ensure privacy and I would add security due to the  
4     unusually high pedestrian and vehicular traffic on  
5     Fitzhugh.

6                     The fence does not screen all or any portion  
7     of a significant architectural feature of the main  
8     building and a reasonable sense of safety and privacy  
9     should be the right of every tax paying homeowner in the  
10    City of Dallas.

11                    And a home should be a safe haven and you  
12    can help me make our home a safe haven by granting this  
13    exception. Thank you for your time today. I'd be glad  
14    to try and answer any questions.

15                    UNKNOWN SPEAKER: Thank you, Mr. Harrington.  
16    Commissioner Montgomery.

17                    COMMISSIONER MONTGOMERY: Hello,  
18    Mr. Harrington. I actually live only about four blocks  
19    down from you in the Peaks part of Swiss. I've lived  
20    there 21 years and I fully understand that you're  
21    telling the truth about the many exciting interventions  
22    you've had with some of the traffic around our  
23    neighborhood though I have noticed it to be getting much  
24    better in the most recent time and perhaps that's  
25    because I don't live on such a busy cross street. I

1 live in a tiny cross street.

2 But I do have a question for you about the  
3 process by which we got to this point and I just have to  
4 know because I did see them working on your fence as I  
5 was walking past your house and pulled up the  
6 certificate of appropriateness for which you had applied  
7 on that day.

8 And it did show that you were just going to  
9 replace the fence you had in the place it was. And tell  
10 me if I'm wrong about this, but you had applied to  
11 replace the fence you had and then you just decided to  
12 put the fence forward.

13 Did staff hear about your preference for  
14 doing that? Did they give you permission to do that?

15 MR. HARRINGTON: The contractor that we  
16 hired to do the fence handled the permitting and I  
17 clearly let him know where we wanted to put the fence.  
18 I didn't check the permit when he came back and  
19 literally the posts in that portion of the fence went up  
20 the day we got the permit.

21 So I had asked him to include in the  
22 application placing the fence up at the front of the  
23 house and that didn't happen.

24 COMMISSIONER MONTGOMERY: May I ask staff if  
25 that is what the applicant --

1 UNKNOWN SPEAKER: He asked specifically for  
2 just a replacement and the site plan that he gave me was  
3 showing just the outline of where the previous fence was  
4 located. That was all that was going to be replaced,  
5 which is why it was allowed to give it as a routine CA  
6 because it was just a replacement of what was already  
7 there and what had already been approved.

8 Otherwise, I would have had to bring it to  
9 the Landmark Commission if I had known that you had  
10 requested all the way to the front. But I think that  
11 your contractor, I don't know if it was a  
12 miscommunication between you or between me, but that is  
13 not what he stated to me when he submitted the CA.

14 MR. HARRINGTON: I understand and after the  
15 issue came up, I looked at the permit and I agree, you  
16 granted where the fence is. So the fence where it is  
17 now is in violation, that's very obvious. But we're  
18 asking you to grant an exception to keep it where it is.

19 COMMISSIONER MONTGOMERY: I felt it was very  
20 important because people sometimes get themselves into  
21 this position where they've done something without  
22 permission and then we're never quite sure what to do  
23 about that because it seems wrong to impose upon them  
24 the burden of removing something they've already built  
25 even though they kind of weren't following the law when

1 they did that because it's not just words on a paper.

2 It's an actual law that was passed and it  
3 governs our lives and I live within an historic district  
4 so I live with it too. But the good news is I would  
5 argue that in your case there is not a character  
6 defining feature on that corner that you wanted to cover  
7 up, but it's just so far forward right there on the  
8 corner where the entry gate to the famous Swiss Avenue  
9 Historic District is.

10 So since I've asked someone else this once  
11 already today, would you be amenable to a more open  
12 fence in that forward portion which would not prevent  
13 the bullets, but this fence won't prevent bullets  
14 either. It might kind of skew them or something. But  
15 it would keep people out from there.

16 MR. HARRINGTON: No. I wanted to move ahead  
17 with the request the way it is.

18 COMMISSIONER MONTGOMERY: Okay. Thank you.

19 UNKNOWN SPEAKER: Commissioner Sherman.

20 COMMISSIONER SHERMAN: I'm not trying to  
21 shift the conversation. I understand everything you've  
22 said about the fence and I don't think I need more  
23 information there.

24 I had a quick question about the landscaping  
25 materials, the hollies, I can't tell where they are.

1 I've looked at all the pictures. I don't know. They're  
2 in question 2 so I'm trying to understand where they  
3 are.

4 MR. HARRINGTON: If you look on sheet D7-8  
5 where we were proposing to put them was in front of the  
6 fence where it is right now, the five circles, and it  
7 points to it, five 15-gallon Christmas jewel holly  
8 trees. They haven't been planted yet.

9 COMMISSIONER SHERMAN: Oh, I see it now,  
10 thank you.

11 UNKNOWN SPEAKER: Mr. Harrington, I have a  
12 question. On the landscape material that you're  
13 proposing in front of the fence, it does seem that five  
14 might be a little excessive and that the growth might  
15 overcome the area in which they're supposed to be, which  
16 would be up against the fence. So I'm wondering if you  
17 might consider fewer than five.

18 And then my second part of the question is  
19 did you choose this because you wanted something that  
20 would grow all the way to the ground to keep people from  
21 sleeping under it? Is that your choice?

22 MR. HARRINGTON: The purpose, first of all,  
23 yes, we would consider fewer. We were thinking five  
24 would help screen the fence, make it more aesthetically  
25 pleasing. And what was the second part of the question?

1 UNKNOWN SPEAKER: Well, you mentioned that  
2 you had interlopers sleeping underneath so I was  
3 wondering if that was the reason you chose Christmas  
4 jewel holly because it grows to the ground.

5 MR. HARRINGTON: They are prickly and we  
6 don't want people sleeping under them.

7 UNKNOWN SPEAKER: So it's an added  
8 deterrent. Thank you. Commissioner Hinojosa.

9 COMMISSIONER HINOJOSA: I have a concern,  
10 while you made a very credible argument for your  
11 fencing, my concern is that we just rejected another  
12 applicant with a request to also do similar things with  
13 their fence. I'm mixed up on that.

14 MR. HARRINGTON: May I say something?

15 UNKNOWN SPEAKER: Yes, you may.

16 MR. HARRINGTON: I believe that was an  
17 interior lot. They weren't dealing with the pedestrian  
18 traffic right next to their house and those windows.  
19 And it's also a different historic district that had  
20 slightly different wordings. The regulations over this  
21 gives you-all the specific authority to grant this if  
22 more screening is necessary because of a unique  
23 situation.

24 And I would submit to you this is a unique  
25 situation because of the criminal traffic, pedestrian

1 traffic that's on the sidewalk.

2 UNKNOWN SPEAKER: Thank you, Mr. Harrington.  
3 Commissioner Montgomery.

4 COMMISSIONER MONTGOMERY: I believe that  
5 earlier incident was also on a corner. That was part of  
6 their reason for wanting it and part of our reason for  
7 not wanting it. So it was a similar corner situation  
8 that Commissioner Hinojosa is referring.

9 If there are no other questions, I'm ready  
10 to make a motion.

11 UNKNOWN SPEAKER: Thank you, Commissioner.

12 COMMISSIONER MONTGOMERY: No other  
13 questions? In the matter of 4902 Swiss Avenue, Swiss  
14 Avenue Historic District, CA189-579 (MLP), I move that we  
15 deny without prejudice on both requests according to  
16 staff recommendations and for the reasons enumerated in  
17 the staff recommendations.

18 I encourage the applicant to work with staff  
19 for a compromise possibility that might be brought  
20 before us at a future time which could involve prickly  
21 hollies and see-through fencing. But right now I move  
22 this way.

23 UNKNOWN SPEAKER: Do we have a second?  
24 Thank you, Commissioner De Le Harpe and Commissioner  
25 Montgomery.



1 Do we have any discussion? Well, I -- oh,  
2 Commissioner Hinojosa.

3 COMMISSIONER HINOJOSA: Can I ask him a  
4 question? Can I ask the applicant a question?

5 UNKNOWN SPEAKER: Yes.

6 COMMISSIONER HINOJOSA: Okay. The fence  
7 that you had before, did it go all the way up like this  
8 one does?

9 MR. HARRINGTON: No, ma'am. If you look on  
10 sheet D7-9, it shows where it was before, behind the two  
11 windows.

12 COMMISSIONER HINOJOSA: And the contractor  
13 that you hired, you were going to go up to the --

14 MR. HARRINGTON: I let him know we wanted to  
15 go up in the front window and that was not added to the  
16 application that he made.

17 COMMISSIONER HINOJOSA: So the contractor  
18 erred and he or she could be brought back, since it was  
19 their fault, to fix it the way it was before. Oh, you  
20 told them to go to the very front, the way it is now?

21 MR. HARRINGTON: I asked him to apply for  
22 the permit with the fence up at the front. I didn't  
23 follow up to make sure that he did that. They just,  
24 here's the permit and they put that section of the fence  
25 in.

1 UNKNOWN SPEAKER: Do we have any other  
2 discussion? If not, we'll call for a vote. And as a  
3 reminder the motion is to deny without prejudice,  
4 according to staff recommendations.

5 All those in favor? Opposed? Commissioner  
6 Payton opposed, and the motion carries.

7 So Mr. Harrington, you have -- if you would  
8 like to return with a new application since you were  
9 denied without prejudice, you need to do that if you  
10 want to make it on the next docket by Wednesday at noon,  
11 July 3rd, because of the July 4th holiday.

12 And then also you have the option to appeal  
13 our decision to the City Planning Commission within  
14 30 days for a fee if you believe our vote was in error.

15 MR. HARRINGTON: Thank you for your time.

16 (End of audio file.)

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1 STATE OF TEXAS )

2 COUNTY OF DALLAS)

3 I, Leslie McDonald Wilkins, Registered Professional  
4 Reporter No. 029319, certify that the foregoing  
5 proceeding was transcribed from an audio recording and  
6 that it was transcribed to the best of my ability.

7 GIVEN UNDER MY HAND on this the 27th day of August,  
8 2019.

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