

8/22/94

ORDINANCE NO. 22158

An ordinance amending Ordinance No. 21391, which amended CHAPTER 51A, "PART II OF THE DALLAS DEVELOPMENT CODE," of the Dallas City Code, as amended, and re-established Historic Overlay District No. 2 (the West End Historic District); amending the preservation criteria contained in Exhibit B of that ordinance, as amended; changing the criteria for structure heights, parking lots, construction and renovation, review procedure, and demolitions; providing a penalty not to exceed \$2000; providing a saving clause; providing a severability clause; and providing an effective date.

WHEREAS, the city plan commission and the city council, in accordance with the Charter of the City of Dallas, the state law, and the applicable ordinances of the city, have given the required notices and have held the required public hearings regarding the rezoning of this historic overlay district; and

WHEREAS, the city council finds that it is in the public interest to amend the preservation criteria governing this historic overlay district; Now, Therefore,

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF DALLAS:

SECTION 1. That the preservation criteria contained in Exhibit B of Ordinance No. 21391, as amended, are amended to read as follows:

"EXHIBIT B

PRESERVATION CRITERIA

WEST END

SECTION 1. DEFINITIONS.

Unless provided below or the context clearly indicates otherwise, the definitions contained in Sections 51A-2.102 and 51A-7.102 of the Dallas City Code, as amended, apply.

- 1.1 ACCENT COLOR means the color used to call attention to and accentuate special details and features of the building's facade and which is not classed as predominant building color or trim color.
- 1.2 APPLICANT means an owner of property within the district, or the owner's duly authorized agent.
- 1.3 BUILDING SERVICE FACILITIES means facilities related to supporting the primary uses of a building including but not limited to trash and refuse collection access points and equipment, loading docks, ingress/egress points for on-site parking facilities, alleys and other areas.
- 1.4 CERTIFICATE OF APPROPRIATENESS means a certificate issued by the city in accordance with Section 51A-4.501 of the Dallas City Code, as amended, to authorize the alteration of the physical character of real property in the district or any portion of the exterior of a structure in the district, or the placement, construction, maintenance, expansion, or removal of any structure in or from the district.
- 1.5 COMMISSION means the landmark commission of the City of Dallas.
- 1.6 CONTRIBUTING STRUCTURE means a structure that retains its essential architectural integrity of design and whose architectural style is typical or integral to this district.
- 1.7 DIRECTOR means the director of the department of planning and development or that person's representative.

- 1.8~~[1.7]~~ DISTRICT means the West End Historic Overlay District.
- 1.9~~[1.8]~~ ERECT means to build, attach, hang, place, suspend, fasten, affix, maintain, paint, draw, or otherwise construct.
- 1.10~~[1.9]~~ FACADE OPENING means any penetration of the solid material comprising the building facade including but not limited to window openings, doors, and archways, but exclusive of openings for mechanical and electrical utilities. The area of facade openings shall be measured on an orthographic projection from the facade elevation.
- 1.11 PARTIAL STORY means a story that contains only a stairwell or mechanical or electrical equipment.
- 1.12 PARTY WALL is a common wall between two buildings.
- 1.13~~[1.10]~~ PREDOMINANT BUILDING COLOR means the natural or as applied color of the predominant building material.
- 1.14~~[1.11]~~ PREDOMINANT FACADE MATERIAL means the building material that makes up more than 60 percent of the opaque elements of a building's facade.
- 1.15~~[1.12]~~ RENOVATION means any alteration to the exterior of a building.
- 1.16~~[1.13]~~ TRIM COLOR means the natural or as applied color of trim elements.
- 1.17~~[1.14]~~ TRIM ELEMENTS means those elements which comprise lintels, sills, jambs, cornices, pilasters and free standing columns, string courses, quoins, rustication, plinth, and exposed structural framework. The window frame is not a trim element.

SECTION 2. HEIGHT.

A new structure shall not be constructed to exceed 100 feet in height. An existing structure which is equal to or greater than 100 feet in height shall not be renovated to exceed its present height. An existing structure which is less

than 100 feet in height shall not be renovated to exceed the allowable height of a new structure. This section does not apply to a partial story except when the vertical distance measured from the floor to the ceiling of that story exceeds the vertical distance measured from the floor to the ceiling of the average story of that building.

SECTION 3. BUILDING SERVICES FACILITIES.

No building service facility constructed after June 16, 1976 shall front onto any designated major landscaped open space or landscaped mall located in the district. Such open spaces and malls shall be shown in plans adopted by resolution of the ~~c~~[C]ity ~~c~~[C]ouncil.

SECTION 4. PARKING LOT STANDARDS.

~~[Surface parking lots which abut public rights of way shall be provided with walls of brick, brick textured cast in place concrete or wood not less than 18 inches in height along such public rights of way. Such walls shall be uninterrupted except for pedestrian and necessary vehicular access.]~~ No new surface parking lots may be constructed.

SECTION 5. CONSTRUCTION AND RENOVATION CRITERIA.

No construction of new buildings or renovation of existing buildings shall adversely affect any historical or architectural feature of such building or the district as a whole. All constructions of new buildings and renovations of existing buildings must generally~~[shall]~~ comply with the following guidelines~~[criteria]:~~

- 5.1 Color. Although any color may be deemed appropriate depending on the circumstances, predominant building color and trim color should generally~~[shall]~~ comply with the hue, value, and chroma specified in Exhibit ~~C~~[B], which is attached hereto and made a part hereof for all purposes, as such ratings are specified in the Munsell Book of Color, Neighboring Hues Collection, 1973. All colors except fluorescent colors may be used as accent colors.
- 5.2 Facade materials. Predominant facade material shall be fired brick, as defined by American Standards Testing Materials designation C-126-75A, type grade FBA-SW or FBS-SW, or metal. All brick and metal should be appropriate to the historic district. Trim elements

shall be either brick, cast stone, stone, cast iron, ~~[or]~~ concrete, or a similar material. Only two-way glass shall be used in the windows, and no reflective or spandrel glass may be used. Renovations of buildings in existence as of June 16, 1976 may include their predominant facade materials.

- 5.3 Facade opening. The allowable area~~[amount]~~ of facade openings shall not be greater than 50 percent nor less than 30 percent of the facade area.
- 5.4 Distribution of facade openings. Facade openings shall be distributed in such a manner that there are both vertical and horizontal repetition of the facade openings. The distribution of facade openings shall be reasonably compatible with other buildings in the district.
- 5.5 Window setback. A minimum window setback of four~~[six]~~ inches shall be provided from the sash of ~~[for]~~ windows above the first floor, as measured from the vertical plane created by the predominant facade material. All windows must be appropriate to the building.
- 5.6 Signs. ~~When [Signs which are attached to the facade shall not project above the uppermost terminus of the wall. Signs shall not cover or obscure any portion of a building's cornice. Otherwise, when]~~ determining the appropriateness of a proposed sign, the regulations contained in Division 51A-7.1000, "~~[Provisions for]~~ West End Historic Sign District," of the Dallas City Code, as amended, apply.
- 5.7 Facade appearance. No solid brick facade may face a public right-of-way. The design of a facade must convey the district's cohesiveness. The design, materials, and color must be indicative of warehouse or railroad buildings at the beginning of the twentieth century.
- 5.8 Exceptions. Construction and renovation criteria 5.3, 5.4, and 5.5 apply only to those facades that face on public rights-of-way or onto ~~[permanent]~~ open space shown in plans adopted by the city council in accordance with Section 3 and not to those facades along interior lot lines that may eventually become party walls.

SECTION 6. REVIEW PROCEDURES FOR CERTIFICATES OF APPROPRIATENESS.

- 6.1 Applicable law. Except as specified in this ~~[Subsection (b) of this]~~ section, the review procedure outlined in Section 51A-4.501 of the

Dallas City Code, as amended, applies to this district when a certificate of appropriateness is required.

- 6.2 Small attached signs. The director shall review an application to erect an attached sign having an effective area of 50 square feet or less. The director shall consult with a task force appointed by the c[~~C~~]ommission and approve or deny a certificate of appropriateness for that sign within five days of the receipt of the application by the director. Any interested person may appeal the director's decision by submitting a written request for appeal to the director within five days of the decision. The written request for appeal starts the standard certificate of appropriateness review procedure by the c[~~C~~]ommission.
- 6.3 Some additional considerations. When reviewing a proposed alteration, the commission shall consider whether it is required by the Americans with Disabilities Act, improves ingress and egress to a structure, or enhances public safety.

SECTION 7. REVIEW PROCEDURES FOR DEMOLITIONS.

- 7.1 Determination of procedure. An owner seeking demolition of a structure shall submit an application to the building official. The building official shall immediately forward the application to the director. Upon receipt of the application, the director shall determine within ten days whether the structure proposed for demolition is a contributing structure. If the director determines the structure is a contributing structure, the application is governed by the procedure and standards of this section; otherwise, the application is governed by the procedure and standards contained in Section 51A-4.501(c) of the Dallas Development Code, as amended. Any aggrieved person may appeal the decision of the director to the commission by submitting to the director a written notice of appeal within ten days of the decision. Within 45 days of receipt of the notice, the commission shall determine whether the structure is a contributing structure. If the commission determines the structure is a contributing structure, the application is governed by the procedure and standards of this section; otherwise, the application is governed by the procedure and standards contained in Section 51A-4.501(c) of the Dallas Development Code, as amended.
- 7.2 Applications. An application to demolish a contributing structure must be signed by the owner of the property and be accompanied by the following documentation before it is complete:

- (1) An affidavit in which the owner swears or affirms that all information submitted with the application is true and correct.
- (2) An indication that the demolition is sought for one or more of the following reasons:
 - (A) The proposed replacement structure is more appropriate and compatible with the historic character of the district than the structure proposed for demolition.
 - (B) No economically viable use of the property will exist unless the application is approved.
 - (C) The structure poses an imminent threat to public health or safety.
- (3) For an application to replace the demolished structure with a new structure:
 - (A) Records depicting the original construction of the structure, including drawings, pictures, or written descriptions.
 - (B) Records depicting the current condition of the structure, including drawings, pictures, or written descriptions.
 - (C) Any conditions proposed to be placed voluntarily on new development that would mitigate the loss of the contributing structure.
 - (D) Architectural drawings for the new structure that is proposed to replace the structure to be demolished.
 - (E) A guarantee agreement between the owner and the city that demonstrates the owner's intent and financial ability to construct the proposed structure. The agreement must:
 - (i) contain a covenant to construct the proposed structure by a specific date in accordance with the architectural drawings approved by the city pursuant to Section 51A-4.501(b) of the Dallas City Code, as amended;

22158

- (ii) require the construction contractor to post a performance and payment bond in 100 percent of the estimated construction cost amount;
- (iii) be secured by an adequate performance bond, a letter of credit, an escrow agreement, a cash deposit, or other arrangement, acceptable in each instance to the director; and
- (iv) be approved as to form by the city attorney.

For an application of no economically viable use:

- (A) The past and current uses of the structure and property.
- (B) The name and federal income tax bracket of the owner.
- (C) If the owner is a legal entity, the type of entity and states in which it is registered.
- (D) The date and price of purchase or other acquisition of the structure and property, and the party from whom acquired.
- (E) The relationship, if any, between the owner and the party from whom the structure and property were acquired (if one or both parties to the transaction were legal entities, any relationships between the officers and the board of directors of the entities must be specified).
- (F) The assessed value of the structure and property according to the two most recent tax assessments.
- (G) The current fair market value of the structure and property as determined by a licensed appraiser.
- (H) All appraisals obtained by the owner or prospective purchasers within the previous two years in connection with the potential or actual purchase, financing, or ownership of the structure and property.
- (I) All listings of the structure and property for sale or rent within the previous two years, prices asked, and offers received.

- (I) If the structure or property has produced any income during the previous two years, a profit and loss statement containing:
- (i) The annual gross income for the previous two years.
 - (ii) Itemized expenses (including operating and maintenance costs) for the previous two years, including proof that adequate and competent management procedures were followed.
 - (iii) The annual cash flow, if any, for the previous two years.
 - (iv) Proof that the owner has made reasonable efforts to obtain a reasonable rate of return on the owner's investment and labor.
- (K) A mortgage history of the property during the previous five years, including the principal balances and interest rates on the mortgages and the annual debt services on the structure and property.
- (L) All capital expenditures during the current ownership.
- (M) Records depicting the current condition of the structure and property, including drawings, pictures, or written descriptions.
- (N) A study regarding both the cost of restoration of the structure or property and the feasibility (including architectural and engineering analyses) of adaptive use or restoration of the structure and property, as performed by a licensed architect or engineer.
- (O) Any consideration given by the owner to profitable adaptive uses for the structure and property.
- (P) Plans, if any, for proposed improvements on the site.

- (O) Any conditions proposed to be placed voluntarily on new development that would mitigate the loss of the landmark.
- (R) Any other evidence that shows that the affirmative obligation to maintain the structure or property makes it impossible to realize a reasonable rate of return.
- (5) For an application to demolish a structure that poses an imminent threat to public health or safety:
 - (A) Records depicting the current condition of the structure, including drawings, pictures, or written descriptions.
 - (B) A study regarding the nature, imminence, and severity of the threat, as performed by a licensed architect or engineer.
 - (C) A study regarding both the cost of restoration of the structure and the feasibility (including architectural and engineering analyses) of restoration of the structure, as performed by a licensed architect or engineer.
- (6) Cumulative. If the owner seeks to demolish a contributing structure for more than one reason, he shall provide all documentation required for each reason.
- (7) Other evidence.
 - (A) The owner may submit other evidence to support his application.
 - (B) City departments and private persons and organizations may submit evidence.

7.3 Decision of the commission.

- (1) Form of decision. Upon the filing of a complete application, the commission shall approve or deny the application within 45 days of the filing date. If the commission does not make a final decision within that time, the building official shall issue a demolition permit to the owner.

22158

- (2) Incomplete applications. The time periods in this section do not begin to run until the owner provides all the information required in Section 7.2. In cases where the commission requests the required information, the time periods do not begin to run until the owner provides the required information.
- (3) Burden of proof. The owner has the burden of proof to establish by clear and convincing evidence the necessary facts to warrant favorable action by the commission.
- (4) If the application is one to replace a demolished structure with a new structure, the commission must first approve the certificate of appropriateness for the proposed new structure and the guarantee agreement to construct the new structure before it may consider the demolition application.
- (5) Independent bases for demolition. The commission shall approve the application if the owner meets the burden of proof for any of the subparagraphs of Paragraph (6).
- (6) Demolition standards.
 - (A) Replacement structures. The commission shall deny an application to replace a demolished structure with a new structure unless it finds:
 - (i) the proposed replacement structure is more appropriate and compatible with the district than the structure proposed for demolition;
 - (ii) the owner intends to build the replacement structure; and
 - (iii) the owner has the financial ability to build the replacement structure.
 - (B) Viable use. The commission shall deny an application of no economically viable use unless it finds:
 - (i) the owner cannot realize a reasonable rate of return on the property unless the demolition is allowed, regardless of whether the return represents the most profitable return possible;

- (ii) the structure cannot be adapted for any other use, whether by the owner or by a purchaser, which would result in a reasonable rate of return on the property; and
 - (iii) the owner has failed to find a purchaser or tenant for the property during the last two years, despite having made substantial ongoing efforts during that time to do so.
- (C) Public health or safety. The commission shall deny an application to demolish a structure that poses an imminent threat to public health or safety unless it finds:
- (i) the structure constitutes an imminent threat to public health or safety; and
 - (ii) there are no reasonable ways to eliminate the threat in a timely manner.

7.4 Appeal.

- (1) Any aggrieved person may appeal the decision of the commission to the city council by filing a written notice with the director within 10 days of the decision. If no appeal is made of a decision to approve the demolition within the 10-day period, the building official shall issue the demolition permit.
- (2) In considering an appeal, the sole issue before the city council shall be whether the commission erred in its decision. The council shall consider the same standards and evidence that the commission was required to consider in making the decision.

7.5 West End Historic District Fund. Monies forfeited to the city because of an owner's failure to construct a replacement structure in a timely manner in accordance with a guarantee agreement shall be placed in an account, to be known as the "West End Historic District Fund," for the enhancement of this district.

7.6 Reconciliation. This section controls over Section 51A-4.501(c) of the Dallas Development Code."

22158

SECTION 2. That the director of planning and development shall correct Zoning District Map No. J-7 in the offices of the city secretary, the building official, and the department of planning and development to reflect the changes in zoning made by this ordinance.

SECTION 3. That a person who violates a provision of this ordinance, upon conviction, is punishable by a fine not to exceed \$2000. In addition to punishment by fine, the City may, in accordance with state law, provide civil penalties for a violation of this ordinance, and institute any appropriate action or proceedings to prevent, restrain, correct, or abate the unlawful erection, construction, reconstruction, alteration, repair, conversion, or maintenance of a building, structure, or land on the Property.

SECTION 4. That CHAPTER 51A, "PART II OF THE DALLAS DEVELOPMENT CODE," of the Dallas City Code, as amended, and Ordinance No. 21391, as amended, shall remain in full force and effect, save and except as amended by this ordinance.

SECTION 5. That the terms and provisions of this ordinance are severable and are governed by Section 1-4 of CHAPTER 1 of the Dallas City Code, as amended.

EXHIBIT C

Predominant building color	Trim color	Predominant building color	Trim color
<p>5R</p> <p>6/2 6/4 5/2 5/4 4/2 4/4 4/6</p>	<p>8/2 8/4 7/2 7/4 7/6 7/8 6/2 6/4 6/6 6/8 5/2 5/4 5/6 5/8 4/2 4/4 4/6 4/8 3/2 3/4 3/6 2.5/2</p>	<p>7.5R</p> <p>7/2 7/4 7/6 6/2 6/4 6/6 5/2 5/4 5/6 4/6 4/8</p>	<p>8/2 8/4 7/2 7/4 7/6 7/8 6/2 6/4 6/6 6/8 5/2 5/4 5/6 5/8 4/2 4/4 4/6 4/8 3/2 3/4 3/6 2.5/2</p>
<p>10R</p> <p>7/2 7/4 7/6 6/2 6/4 6/6 5/2 5/4 5/6 5/8 4/4 4/6 4/8</p>	<p>8/2 8/4 8/6 8/8 7/2 7/4 7/6 7/8 6/2 6/4 6/6 6/8 5/2 5/4 5/6 5/8 4/2 4/4 4/6 4/8 3/2 3/4 2.5/2</p>	<p>2.5YR</p> <p>7/2 7/4 7/6 6/2 6/4 6/6 6/8 5/4 5/6 5/8 4/4 4/6 4/8</p>	<p>8/2 8/4 8/6 8/8 7/2 7/4 7/6 7/8 6/2 6/4 6/6 6/8 5/2 5/4 5/6 5/8 4/2 4/4 4/6 4/8 3/2 3/4 2.5/2</p>
<p>5YR</p> <p>8/2 8/4 7/2 7/4 7/6 6/2 6/4 6/6 6/8 5/4 5/6 5/8 4/4 4/6</p>	<p>8/2 8/4 8/6 8/8 7/2 7/4 7/6 7/8 6/2 6/4 6/6 6/8 5/2 5/4 5/6 5/8 4/2 4/4 4/6 3/2</p>	<p>7.5YR</p> <p>8/2 8/4 8/6 7/4 7/6 6/4 6/6 6/8 5/4 5/6 5/8 4/4 4/6</p>	<p>8/2 8/4 8/6 8/8 7/2 7/4 7/6 7/8 6/2 6/4 6/6 6/8 5/2 5/4 5/6 5/8 4/2 4/4 4/6 3/2</p>
<p>10YR</p> <p>8/2 8/4 8/6 7/2 7/4 7/6 6/4 6/6 5/4 5/6 4/4</p>	<p>8/2 8/4 8/6 8/8 7/2 7/4 7/6 7/8 6/2 6/4 6/6 6/8 5/2 5/4 5/6 5/8 4/2 4/4 3/2</p>	<p>2.5Y</p> <p>8.5/4 8.5/6 8/2 8/4 8/6 7/2</p>	<p>8/2 8/4 8/6 8/8 7/2 7/4 7/6 7/8 6/2 6/4 6/6 6/8 5/2 5/4 5/6 4/2 4/4 3/2</p>

22158

SECTION 6. That this ordinance shall take effect immediately from and after its passage and publication in accordance with the provisions of the Charter of the City of Dallas and it is accordingly so ordained.

APPROVED AS TO FORM:
SAM A. LINDSAY, City Attorney

By Chris Bowas
Assistant City Attorney

Passed AUG 24 1994

Zoning File No. Z934-201/9270-N