

October 8, 2018

RECEIVED

OCT 08 2018

APPEAL (HPC)

HAND DELIVERY

Ms. Barbara Sanders
Clerk to the Board of Commissioners
1300 Commerce Drive, 6th Floor
Decatur, Georgia 30030

**Re: Notice of Appeal of Decision of the DeKalb County Historic
Preservation Commission to the Board of Commissioners
1534 North Decatur Road**

Dear Barbara:

Please find enclosed an Application to Appeal a Decision of the DeKalb County Historic Preservation Commission along with a three page Supplementary Explanation as per DeKalb County Section 13.5-8(12). This is the appeal of Matthew Stoddard on behalf of Lullwater Wharf, LLC of the enclosed Notice of Denial by the DeKalb County Historic Preservation Commission dated September 20, 2018, to the Board of Commissioners.

If you have any questions or concerns, please do not hesitate to contact me. Otherwise, please let me know when this item will appear on the Board of Commissioners' agenda. As always, I thank you for your assistance.

Sincerely,

DUNLAVY LAW GROUP, LLC

Linda I. Dunlavy



LID: gwg
Enclosure

cc: David Cullison, Historic Preservation Planner (with enclosures)
O. V. Brantley, County Attorney (with enclosures)
Matthew Stoddard (with enclosures)

DEPARTMENT OF PLANNING & SUSTAINABILITY

Authorization of a Second Party to Apply for a Certificate of Appropriateness

This form is required if the individual making the request is not the owner of the property.

(I) / (We),

Matthew Stoddard, Lullwater Wharf, LLC

being (owner) (owners) of the property 1534 North Decatur Road

hereby delegate authority to Linda I. Dunlavy, Dunlavy Law Group, LLC

to file an application in (my) (our) behalf.



Signature of Owner/Date

Please review the following information

Approval of this Certificate of Appropriateness does not release the recipient from compliance with all other pertinent county, state, and federal regulations.

Before making any changes to your approved plans, contact the preservation planner (404/371- 2155). Some changes may fall within the scope of the existing approval, but others will require review by the preservation commission. If work is performed which is not in accordance with your certificate, the Preservation Commission will issue a cease and desist order and you may be subject to other penalties including monetary fines and/or required demolition of the non-conforming work.

If your project requires that the county issue a Certificate of Occupancy at the end of construction, the preservation planner will need to inspect the completed project to ensure that the work has been completed in accord with the Certificate of Appropriateness. The review may be conducted either before or after your building inspection. If you will be requiring a Certificate of Occupancy, please notify the preservation planner when your project nears completion. If the work as completed is not the same as that approved in the Certificate of Appropriateness you will not receive a Certificate of Occupancy. You may also be subject to other penalties including monetary fines and/or required demolition of the non-conforming work.

If you do not commence construction within twelve months of the date of approval, your Certificate of Appropriateness will become void. You will need to apply for a new certificate if you still intend to do the work.

Please contact the preservation planner, David Cullison (404/371-2155), if you have any questions.

Chief Executive Officer
Michael Thurmond

DEPARTMENT OF PLANNING & SUSTAINABILITY

Director
Andrew A. Baker, AICP

**Application to Appeal a Decision of the DeKalb County Historic
Preservation Commission**

All appeals must comply with the procedures set forth herein.

An application to appeal a decision of the Historic Preservation Commission on a certificate of appropriateness application must be filed within fifteen (15) calendar days after the issuance or denial of the certificate of appropriateness.

To be completed by County:
Date Received:

To be completed by appellant:

Name: Lullwater Wharf, LLC

Address of appellant: 5447 Roswell Rd., Suite 204, Atlanta, GA 30342

Address of Property: 1534 North Decatur Road

This appeal is a review of the record of the proceedings before the preservation commission by the governing authority of DeKalb County, Georgia. The governing authority is looking for an abuse of discretion as revealed by the record. An abuse of discretion exists where the record presented to the governing authority shows that the preservation commission: (a) exceeded the limits of its authority; (b) that the preservation commission's decision was not based on factors set forth in the section 13.5-8(3) or the guidelines adopted by the preservation commission pursuant to section 13.5-6 or; (c) that the preservation commission's decision was otherwise arbitrary and capricious.

If the governing authority finds no abuse of discretion, then it may affirm the decision of the preservation commission. If the governing authority finds that the preservation commission abused its discretion in reaching a decision, then it may; (a) reverse the preservation commission's decision, or; (b) it may reverse the preservation commission's decision and remand the application to the preservation commission with direction.

Date(s) of hearing, if any: 9/17/18

Date of Historic Preservation Commission decision: 9/21/18



DEPARTMENT OF PLANNING & SUSTAINABILITY

Historic Preservation Commission
Appeal Form
Page 2 of 2


In the space provided below the Appellant must describe how the preservation commission's decision constitutes an abuse of discretion. Specifically, the appellant must, citing to the preservation commission's written decision, show at least one of the following: that the preservation commission exceeded the limits of its authority, or that the preservation commission's decision was not based on factors set forth in the section 13.5-8(3) of the DeKalb County Code or on the guidelines adopted by the preservation commission pursuant to section 13.5-6 of said code or that the preservation commission's decision was otherwise arbitrary and capricious.

Grounds for appeal:

Per Section 13.5-8 (12) of the Historic Preservation Ordinance the HPC abused
its discretion by using a mere Recommendation in Section 7.3.1 of the Guidelines
as a basis for denial. There was no evidence in the Record to support a finding
of a substantial adverse effect on the District, but there was evidence in the
Record that the actual basis for denial were factors outside the scope of the
Ordinance and Applicable Guidelines.

The appellant may submit a written supplementary explanation in support of the appeal. The supplementary explanation shall be submitted with the appeal. The supplementary explanation may not exceed three pages and must be typewritten and double-spaced using a twelve-point font with a one-inch margin on all four sides. The governing authority will not consider text in excess of the page limit set forth herein.

Date: 10/18/18

Signature: 

Instructions: The appellant shall also deliver copies of this appeal to the planning department and the county attorney. The appellant and any person who has filed a statement in opposition to, or in support of the appeal may attend the meeting at which the appeal is considered and may be called upon by any member of the governing authority to provide information or answer questions. There shall be no other public participation in the appeal.



404.371.2155 (o)
404.371.4556 (f)
Ga:KalbCountyGa.gov

Clark Harrison Building
330 W. Ponce de Leon Ave
Decatur, GA 30030

Chief Executive Officer
Michael Thurmond

DEPARTMENT OF PLANNING & SUSTAINABILITY

Director
Andrew A. Baker, AICP

September 20, 2018

NOTICE OF DENIAL

SITE ADDRESS: 1534 NORTH DECATUR RD
PARCEL ID: 18-053-02-028

APPLICANT: Linda I. Dunlavy
MAILING ADDRESS: 1026 B Atlanta Ave
Decatur, GA 30030

THIS IS TO ADVISE YOU THAT THE DEKALB COUNTY HISTORIC PRESERVATION COMMISSION, AT ITS PUBLIC MEETING ON September 17, 2018 REACHED THE FOLLOWING DECISION ON THIS APPLICATION:

ACTION: DENIAL

The proposed modifications do not comply with guideline 7.3.1, being the addition of false historical details to a noncontributing building. The changes would have a substantial adverse effect on the historic district.

This decision is in accord with the sections of the DeKalb County Code and the Druid Hills Design Manual listed below.

Sec. 13.5-8(1) Application for Certificate of appropriateness. Owners of historic property or of property in a historic district, or their duly authorized agents, must make application for a certificate of appropriateness on forms and according to procedures promulgated by the preservation commission for such purpose. All applications for certificates of appropriateness shall be accompanied by drawings, photographs, plans and documentation as required by the preservation commission. Notarized authorization of the property owner shall be required if the applicant is not the owner of record.

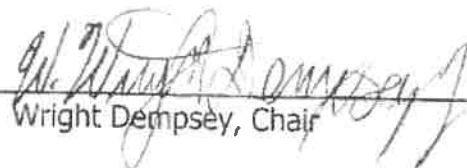
Sec. 13.5-8(3) Review of Applications When reviewing applications for certificates of appropriateness, the preservation commission shall consider, in addition to any other pertinent factors, the historical and architectural value and significance; architectural style; scale, height, setback, landscaping; general design; arrangement, texture and

DEPARTMENT OF PLANNING & SUSTAINABILITY

materials of the architectural features involved and the relationship thereof to the exterior architectural style and pertinent features of other properties in the immediate neighborhood. When considering applications for existing buildings, the Secretary of the Interior's *Standards for Historic Preservation Projects*, including the *Standards for Rehabilitation* shall be used as a guideline.

The Design Manual for the Druid Hills Local Historic District

7.3.1 Additions (p74) Recommendation - These guidelines do not recommend adding false historical details to a noncontributing building in an effort to make it more compatible with surrounding historic buildings. Every effort should be made, however, to ensure that additions and alterations to the property do not detract further from the character of the historic environment, keeping in mind the design concepts discussed in Section 7.2.


Wright Dempsey, Chair

9/21/18
Date

SUPPLEMENTAL EXPLANATION IN SUPPORT OF APPEAL

The Subject Property is on the north side of North Decatur Road adjacent to the Chabad Emory Jewish Student Center (built in 1929). It was developed in 1965 (non-historic as after 1946) with a two story office building most recently used by the Darden Research Corporation. It is not in the Emory Village Overlay or in any designated character area and appears to be the only purpose built two story office building in the District. The Appellant proposed to retain the existing foundation, concrete block walls and roof structure but proposed to demolish parts of the interior (walls and interior stairs) and replace the existing metal, glass and aggregate panels on the façade with four sides brick veneer. The design was intended to be comparable to and compatible with 1940's office buildings common to the Atlanta/Decatur area and with existing buildings in Emory Village. The HPC heard the application on September 17, 2018, and denied it finding it did not comply with one of three **Recommendations** in Guideline 7.3.1., namely the Recommendation **(not a Guideline)** which states, "These guidelines do not recommend adding false historical details to a noncontributing building in an effort to make it more compatible with surrounding historic buildings." The HPC also decided that the changes would have a substantial adverse effect on the historic district without pointing to the basis for this conclusory statement. The HPC's decision is in error and constitutes an abuse of discretion within the meaning of Section 13.5-8(12) because it was arbitrary and capricious and there was no evidence in the Record to support it. The HPC substituted its own personal preferences for the factors it is limited to consider by law. The neighbors and community support the proposed improvements. The arbitrary denial of the application sends a negative message to future businesses—"buy elsewhere because the HPC process is costly, arbitrary, time consuming and unpredictable."

The proposed changes are compatible with the historic character of the area.

Guideline 11 states that “[i]n reviewing an application for a Certificate of Appropriateness for a material change to a non-historic building, the Preservation Commission should evaluate the change for its potential impacts to any historic development in the area of influence of the non-historic property. Guidelines in Section 7.0: Additions and New Construction are relevant to such evaluations... **[e]ffects to the [nonhistoric] building would not be relevant.**”¹ Orientation, proportion, directional emphasis, rhythm, shape, scale/height and massing are all unchanged in the proposed design. The only exterior changes proposed are to the material and architectural elements. The brick proposed is dominant in the District. The windows, doors and canopies proposed are all similar to those found elsewhere in the District. This is totally consistent with the Preamble to Guideline in 7.0 which indicates that, the goal in designing new additions is “not to prevent change but to ensure...it is compatible with the historic character of the area...A building is compatible with its historic setting when it borrows design characteristics and materials from adjacent buildings and integrates them.” p. 63. This is exactly what the Appellant’s design did only to be told that it was then guilty of adding “false historical” detail to the building. Finally, Recommendations in 7.3.1 are inapplicable, where, as in the instant matter, there is no discernible pattern or prevailing character within the area of influence (the only historic structure is the Chabad home). Moreover, the Recommendation should not be applied because it conflicts directly with other Guidelines and Recommendations.

¹ 4 Commissioners repeatedly expressed concerns about the design impacts on the exiting non-historic building. i.e. “look to the building”, “embrace the existing building and work with it” — articulation of non-existent and incorrect standards.

The decision to deny was arbitrary and capricious-it failed to identify the false historical details or the elements which allegedly caused a substantial adverse effect on the District

Review of the transcript of the proceedings before the HPC makes it clear that the members were desperate to find a means of denying the application because they did not like the fact that the existing building was considered “non-historic” and they did not like the attempt at a 1940s office building design, even though they had recommended the Appellant explore that as an appropriate design for this transitional property. 7.3.1 was clearly a pretext for denial. One HPC member urged the Appellant to “embrace the existing building and work with it” while acknowledging that there was nothing in the guidelines to require this and that she was merely urging him to comply with the “spirit of the law” knowing the letter of the law did not mandate it. Another member noted it would be “hard to deny based on the grey area. I don’t think we have the strongest case based on the guidelines and the law.” Yet another member acknowledged that “there are elements that can work here but I am disappointed that the client did not embrace the building even though the building is not a historic building by the guidelines.” The Planning staff summed up the Catch 22 into which the HPC was putting the Appellant when he observed that “the details are too much an imitation of historical design and not a design found in the area”. How can one avoid imitating historical design when one is admonished to look to designs in the area? The District has not been adversely effected by the existence of the 1965 mid-century modern building on the Subject Property for more than 50 years. How can the proposed renovation of this building with brick, windows, doors and canopies all found elsewhere in the District have such a drastic effect? “Substantial adverse effect” is not simply a phrase one tacks onto a motion in an attempt to justify denial. It is intended to mean something and needs to be supported by evidence. There was no such evidence in this case. To maintain the integrity of the process and the meaning of “substantial adverse effect”, this Appeal must be sustained.