

Dunlavy
Law Group, LLC

1026 B Atlanta Avenue
Decatur, Georgia 30030

Ms. Viviane Ernstes
DeKalb County Law Department
1300 Commerce Drive, 5th Floor
Decatur, GA 30030

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November 12, 2020

VIA USPS AND EMAIL TO: bhsander@dekalbcountyga.gov

Ms. Barbara Sanders
Clerk to the CEO and BOC
DeKalb County Government
1300 Commerce Drive
Decatur, GA 30030

2020 NOV 19 AM 10:16
RECORDED
LAW DEPARTMENT

RE: Eugene Hurwitz appeal – 935 Springdale

Dear Ms. Sanders:

On behalf of the opposition to the referenced appeal, enclosed are certified copies of the following sections from the Code of Ordinances, which are cited in the opposition filed by 929 Springdale Family Trust:

- o Section 13.5-8 (7) and (8)
- o Section 12 of the Organizational Act
- o Section 27-7.3.7
- o Section 27-7.3.8
- o Section 27-7.4.8
- o Section 27-7.4.9

I ask that you include these documents in the record. Please contact me or Linda Dunlavy if you have any questions or concerns.

Sincerely,

DUNLAVY LAW GROUP, LLC



Gloria Woodward-Glasser
Paralegal

CC with enclosures: Vivian Ernstes
David Cullison

November 10, 2020

VIA USPS AND EMAIL TO: bhsander@dekalbcountyga.gov

Ms. Barbara Sanders
Clerk to the CEO and BOC
DeKalb County Government
1300 Commerce Drive
Decatur, GA 30030

RE: Open Records Act Request

Dear Ms. Sanders:

Please consider this letter as a request for records pursuant to the Georgia Open Records Act, O.C.G.A. §50-18-70, et seq. to DeKalb County to provide us with the following documentation:

- Certified copies of the following from the Code of Ordinances:
 - Section 13.5-8 (7) and (8)
 - Section 12 of the Organizational Act
 - Section 27-7.3.7
 - Section 27-7.3.8
 - Section 27-7.4.8
 - Section 27-7.4.9

Please advise me as to any cost associated with this request so that we may arrange for copying and delivery or pick up. I look forward to hearing from you within three (3) business days regarding this matter. If you have any questions in the meantime, please do not hesitate to contact me. I thank you for your immediate attention to this request.

Sincerely,

DUNLAVY LAW GROUP, LLC



Gloria Woodward-Glasser
Paralegal


Sec. 7.3.8. - Action by the board of commissioners.

At the next scheduled board of commissioners meeting pursuant to the applicant zoning calendar following appearance of the matter on the planning commission agenda, the board of commissioners, after conduct of a public hearing with public notice as required by this article, shall vote to approve the proposed amendment pursuant to this division, approve with conditions, approve to a less intense zoning district or land use category than that requested by the applicant, deny the proposed amendment, defer the proposed amendment, or, upon request of the applicant, permit withdrawal without prejudice. No proposed amendment pursuant to this division shall be approved except by the affirmative vote of four (4) members of the board of commissioners. No zoning decision shall become law unless approved by either the member of the commission representing the district or the super district in which the subject property is located. In the approval of any proposed amendment to the official zoning map, the board of commissioners may impose conditions in accordance with section 7.3.9. For each proposed zoning decision, the analysis submitted by the applicant, if any, the analysis prepared by the planning department, and the record prepared by the planning commission shall be presented in written form to each member of the board of commissioners. A limited supply of said findings shall be available at the public hearing and available upon request to the public. All decisions of the board of commissioners relating to each proposed amendment to the official zoning map shall be made based on each of the standards and factors contained in sections 7.3.4 and 7.5.3 or 7.5.4, as appropriate. All decisions of the board of commissioners relating to amendments to the comprehensive plan maps shall be made based on each of the standards and factors contained in section 7.3.4. Any proposed amendment or any proposed substitute ordinance considered by the board of commissioners shall be presented in written form prior to being voted on by the board, or made a part of the motion.

(Ord. No. 15-06, 8-25-2015)

I, the undersigned, Barbara H. Sanders-Norwood
 Clerk of The Board of Commissioners, DeKalb
 County, Georgia, DO HEREBY CERTIFY that the
 foregoing is a true and correct copy of an ordinance
 adopted by said Board meeting lawfully assembled
 on this 23 day of July, 2015
 And same is entered in Minutes of said Board this
 day of Nov, 2015

 Clerk of the Board of Commissioners
 DeKalb County, Georgia




Sec. 7.3.7. - Action by the planning commission.

The secretary of the planning commission shall provide the members of the planning commission complete information on each proposed application requiring a public hearing by the planning commission, including a copy of the application and all supporting materials. The planning commission, after conducting a public hearing with prior public notice as required by this article, shall consider the proposal and vote on its recommendation to the board of commissioners. Deferral of an application by the planning commission shall not be binding on the board of commissioners. The planning commission may recommend approval of the application, approval to a less intense zoning district or land use category than that requested by the applicant, approval of the application with conditions, denial of the application, deferral of the application, or, upon request of the applicant, withdrawal of the application without prejudice. In its recommendation of any application, the planning commission may recommend the imposition of conditions in accordance with section 7.3.9. All findings and recommendations of the planning commission relating to amendments to the official zoning map shall be made based on each of the standards and factors contained in section 7.3.5. All recommendations of the planning commission relating to amendments to the comprehensive plan maps shall be made based on each of the standards and factors contained in section 7.3.4. The secretary of the planning commission shall make and maintain a written record of the planning commission's consideration and recommendations, which shall be public record.

(Ord. No. 15-06, 8-25-2015)

I, the undersigned, Barbara A. Sanders-Norwood
 Clerk of the Board of Commissioners, DeKalb
 County, Georgia, DO HEREBY CERTIFY that the
 foregoing is a true and correct copy of an ordinance
 adopted by said Board meeting lawfully assembled
 on this 26 day of August, 2015
 And read 11:15 in Minutes of said Board this
 day 26 of August, 2015
Barbara A. Sanders-Norwood
 Clerk of Commissioners
 DeKalb County, Georgia



Sec. 7.4.9. - Action by the board of commissioners.

- A. The board of commissioners, after conducting the public hearing with public notice as required by this chapter, shall vote to approve the application, approve the application with conditions, deny the application, defer the application, or, upon request of the applicant, to permit withdrawal of the application without prejudice.
- B. The board of commissioners may impose conditions based upon the facts of a particular application in accordance with section 7.4.9.
- C. The decision of the board of commissioners on each application for special land use permit shall be based on a determination as to whether or not the application satisfies the criteria contained in section 7.4.6, the criteria contained in section 7.4.7 where applicable to the use proposed, and the requirements of the zoning district in which such use is proposed to be located.
- D. The board of commissioners may specify the duration of each such special land use permit approved.

(Ord. No. 15-06, 8-25-2015)

I, the undersigned, Barbara Sanders Norwood
 Clerk of The Board of Commissioners, DeKalb
 County, Georgia, DO HEREBY CERTIFY that the
 foregoing is a true and correct copy of an ordinance
 adopted by said Board meeting lawfully assembled
 on this 25 day of August, 2015

And same appears in Minutes of said Board this
day of 20 Nov, 2015



Sec. 13.5-8. - Certification of appropriateness.

After the designation by ordinance of a historic property or of a historic district, no material change in the appearance of such historic property, or of any building, structure, site, object, landscape feature or work of art within such historic district shall be made or be permitted to be made by the owner according to the DeKalb County tax records or an authorized agent unless or until an application for a certificate of appropriateness has been submitted and approved by the preservation commission.

- (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. The Georgia Department of Transportation and contractors performing work funded by the Georgia Department of Transportation are exempt from provisions of this chapter. Local governments are also exempt from obtaining certificates of appropriateness but shall notify the preservation commission at least forty-five (45) days prior to beginning or undertaking any work that would otherwise require a certificate of appropriateness, so as to allow the preservation commission an opportunity to comment. All applications for certificates of appropriateness shall be accompanied by drawings, photographs, plans and documentation as required by the preservation commission. Written authorization of the property owner shall be required if the applicant is not the owner of record.
- (2) *Public notice.* Prior to reviewing an application for a certificate of appropriateness, the preservation commission shall take such action as may reasonably be required to inform the owners of any property likely to be affected materially by the application (i.e. any owner of adjoining property or owner of property whose property line is within two hundred fifty (250) feet of the applicant's property according to the DeKalb County tax records) and shall give the applicant and such owners an opportunity to be heard. In cases where the preservation commission deems it necessary, or upon the written request of the applicant or an abutting property owner, the preservation commission shall hold a public hearing concerning the application. A request for public hearing must be made by the applicant at the time of filing the application or by an abutting property owner within three (3) days of receipt of notice that an application is pending before the commission. Written notice of a public hearing shall be mailed by the preservation commission to all owners and occupants of the proposed property and all abutting property owners as shown by the DeKalb County tax records not less than ten (10) nor more than twenty (20) days prior to the date set for hearing of the application.
- (3) *Review of applications.* When reviewing applications for certificates of appropriateness, the preservation commission shall consider, in addition to any other pertinent factors, historical and architectural value and significance; architectural style; scale; height; setback;

landscaping; general design; arrangement; texture and 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 the Treatment of Historic Properties with Guideline for Preserving, Rehabilitating, Restoring and Reconstructing Historic Buildings, shall be used as a guideline. All local guidelines must be adopted in accordance with federal guidelines.

- (4) *Interior changes.* In its review of applications for certificates of appropriateness, the preservation commission shall not consider interior arrangements or uses having no effect on exterior architectural features. The preservation commission may delegate the responsibility for determining the extent of interior change and its effect on the exterior appearance to the planning director or his designee.
- (5) *Demolition.* A decision may be made by the preservation commission approving or denying a certificate of appropriateness for the demolition of buildings, structures, sites or objects.
- (6) *Ordinary maintenance and repair.* Ordinary maintenance or repair of any exterior architectural feature in or on a historic property, that does not involve a material change in design, material, or outer appearance thereof, is excluded from review.
- (7) *Approval.* The preservation commission shall approve the application and issue a certificate of appropriateness if it finds that the proposed material change(s) in appearance would not have a substantial adverse effect on the aesthetic, historic or architectural significance and value of the historic property or the historic district. The preservation commission may approve the application as proposed, approve it with modifications, or deny the application. The preservation commission shall approve, approve with modifications or deny an application for a certificate of appropriateness within forty-five (45) days after the filing thereof by the applicant unless an extension is requested by the applicant and granted by the preservation commission. Evidence of approval shall be by certificate of appropriateness issued by the preservation commission. Failure of the preservation commission to act within said forty-five (45) days shall constitute approval and a certificate of appropriateness shall be issued.
- (8) *Final action.* The preservation commission's decision, whether to accept or reject an application shall be in writing. The written decision shall be signed by the chair, or the vice-chair, or a designee and must clearly set forth the reasons for the decision, including whether the guidelines have been met and specifically which factors, as set forth in section 13.5-8(3), were considered in reaching the decision. Approval of an application shall also result in the issuance of a certificate of appropriateness. Notice of the issuance or denial of a certificate of appropriateness shall be sent to the applicant and all other persons who have filed a written request for such notice with the preservation commission. All work performed pursuant to a certificate of appropriateness shall conform to the requirements of such certificate and by

other applicable laws. In the event work is performed which is not in accordance with such certificate or laws, the county shall issue a cease and desist order and all work shall cease. A certificate of appropriateness shall become void unless construction is commenced within twelve (12) months of the date of the issuance and completed within eighteen (18) months of the date of issuance. Certificates of appropriateness are not renewable.

- (9) *Revised applications.* The preservation commission may suggest alternative courses of action if it denies the application submitted. The applicant may make modifications to the plans and may resubmit the application at any time after making such modifications as suggested by the preservation commission.
- (10) *Prohibition on issuance of development permits.* In cases where the application covers a material change in the appearance of a property or structure, which would require the issuance of a permit of any kind, the denial of the application for a certificate of appropriateness shall be binding upon the county and no permit related to the rejection of the application for a certificate of appropriateness shall be issued by the county.
- (11) *Official record.* The preservation commission shall keep a public record of all applications for certificates of appropriateness and of all the preservation commission's proceedings in connection with applications. Such records shall be maintained by the planning director. In the event of an appeal to the governing authority, the official record of the preservation commission's decision shall consist of the application, any accompanying drawings, renderings or photographs, written comments from planning department staff, written comments of any participant at the hearing before the commission and the preservation commission's written decision. Such records shall be available for review in the planning department within ten (10) days of a final decision by the preservation commission on the certificate of appropriateness.
- (12) *Appeal to the governing authority.* The applicant or any owner of property whose property line is within one thousand five hundred (1,500) feet of the applicant's property may appeal any decision made by the preservation commission to the governing authority. The appeal shall be limited to a review of the record of the proceedings before the preservation commission. The standard of review shall be an abuse of discretion. An abuse of discretion exists where the record presented to the governing authority shows 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 section 13.5-8(3) or the guidelines adopted by the preservation commission pursuant to section 13.5-6 or 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 reverse the preservation commission's decision, or it may reverse the preservation commission's decision and remand the application to the preservation commission with direction. All appeals must comply with the procedures set forth below:

- a. Any appeal must be filed in writing with the clerk to the board of commissioners using an appeal form provided by the planning director, within fifteen (15) days after the date of issuance or denial of the certificate of appropriateness. The appellant shall also deliver copies of the appeal to the planning department and the county attorney.
- b. In the written appeal, 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 (1) 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 section 13.5-8(3) or on the guidelines adopted by the preservation commission pursuant to section 13.5-6, or that the preservation commission's decision was otherwise arbitrary and capricious.
- c. In addition to the appeal form, 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 (3) pages and must be typewritten and double-spaced using a twelve-point font with a one-inch margin on all four (4) sides. The governing authority will not consider text in excess of the page limit set forth herein.
- d. Any adversely affected person may also submit a written supplementary explanation that must comply with all of the requirements set forth in section 13.5-8(12)c, in support of, or in opposition to the appeal. All written supplementary explanations authorized by this subsection must be filed within five (5) days after the appeal is filed. Such written supplementary explanations must be filed with the clerk to the board of commissioners with copies to the planning director, and the county attorney.
- e. The planning department shall submit appeals of the decisions of the historic preservation commission to the governing authority for consideration at any of the board of commissioners' regularly scheduled meetings within sixty (60) days of the issuance of the decision from the preservation commission.
- f. The agenda item shall set forth the standard of review to be used by the governing authority in deciding the appeal. The official record of the preservation commission's decision together with the appeal and all properly filed written supplemental explanations in support and in opposition to the appeal, will be attached to the governing authority's agenda item. The governing authority may not consider any written document that is not attached as the official record to the governing authority's agenda item for the appeal. The appellant and any person who has filed a statement in opposition to, or in support of

the appeal may attend the meeting 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.

- g. The governing authority shall render a decision on the appeal within forty-five (45) days of the first appearance of the appeal on the board of commissioners' agenda.
 - 1. *Appeals to superior court.* An appeal from a decision of the governing authority shall be made by a petition for writ of certiorari to the superior court of DeKalb County.
 - 2. *Court action.* The governing authority is authorized to institute any appropriate action or proceeding in a court of competent jurisdiction to prevent any material change in the appearance of a designated historic property or district, except those changes made in compliance with the provisions of this chapter, or to prevent any illegal act or conduct with respect to such historic property or district.

(Ord. No. 94-09, § 8, 4-26-94; Ord. No. 26-03, Pt. I, 10-28-03; Ord. of 9-10-19(2), Pt. I)

I, the undersigned Deborah Sanders Norwood
 Clerk of The Board of Commissioners, DeKalb
 County, Georgia, DO HEREBY CERTIFY that the
 foregoing is a true and correct copy of an ordinance
 adopted by said Board meeting lawfully assembled
 on this 26 day of April, 2014 as amended.

And same appears in Minutes of said Board this
 day of 16 April, 2014

Deborah Sanders Norwood
 Clerk of Commissioners
 DeKalb County, Georgia

