

APPELLANT’S SUPPLEMENT TO APPEAL

APPEAL OF)	Historic Preservation Commission
HAMISH CALDWELL)	Property 1354 The By Way NE
& DALIA JUDOVITZ)	Decision Dated 20 May, 2021

Introduction: The Dekalb Historic Preservation Commission (“DHPC”) decision to approve a Certificate of Appropriateness (“COA”) is an abuse of discretion: (1) DHPC did not take into consideration “pertinent features of other properties that are in the immediate neighborhood”, as required per § 13.5-8(3). (2) Contrary to § 13.5-8(12) the decision by HPC is “arbitrary and capricious” in two distinct ways as discussed below. Exhibits supporting this appeal were offered but denied by Staff despite precedent in public record of 11/2/20 Hurwitz appeal.

Item 1: For over 20 years, at the bottom of a wooded ravine 12 birch trees had grown into mature, **overstory trees on the stream bank** that fulfilled historic guidelines, provided erosion, soil stabilization and water quality protection. Within 6 months of moving in the new owner **clear-cut them without required permission**. They were part of the total of 27 stumps identified in the 12/30/21 Environmental Incident Report. Listed as “Large Trees” in the Druid Hills Recommend Plant Materials list, the birches had provided visual continuity with the natural **woodland landscape that remains on the west and east-side abutting lots** along that same stream bank, per photos received by DHPC staff on 3/8/21. As replacements for the 12 overstory trees the decision permits the stream bank to have only “three kousa dogwoods” which are shallow-rooted and listed as a “small tree” in the Plant Materials list. The decision provides “Plant 31 trees” **but that includes “22 Nellie Stevens hollies”, which are “shrubs”, not “Large” nor even “Small” Trees** per the plant list. The hollies which “will be planted 3-5’ back from the street as a hedge” and the “Five canopy trees” **will not be in the stream bank**. The decision permits a) greatly reduced number of actual trees (i.e. 9) compared to the 21 or more removed, b) no overstory

replacement trees on the stream bank, c) replacement shrubs, **not trees**, located far from where the illegally removed stream bank large trees had been and d) a failure to fulfill the intent of recommendations in Sections 8 (“**Replacement trees should be of identical or similar varieties to the original trees.**”) & 9 (“**historic landscape plans for other residential lots within the district should be used for guidance**“) of the Historic District Guidelines. The **decision creates a long-lasting “gap tooth” appearance** in the middle lot of the three contiguous street-frontage Oakdale Commons Subdivision lots and is also contrary to a licensed arborist recommendations (recently provided to Dekalb staff). The lot will no longer fit the prevalent neighborhood historic woodland appearance. **Thus the decision fails to take into account pertinent features of other properties in the immediate neighborhood.**

Item 2.a: The March 2021 COA application planting drawing requested replacing the existing native ground cover by installing a lawn and replacing the existing grass pavers in the stream buffer. The March HPC meeting transcript shows DHPC members Hart and Stoddard **discussed at length their concerns** about these requests and saw them as grounds for denial of the application. In May, the submitted landscape plan gave an **inaccurate portrayal of the situation by now labelling that same part of the stream buffer area as “existing lawn” and omitted the existing pavers and natural ground cover.** The current actual conditions of natural ground cover, not lawn, were shown in a photo at the May DHPC. DHPC Commissioner Stoddard asked the owner to confirm if the existing pavers will remain but the transcript shows the **discussion did not address the natural ground cover.** Not having documents that show an accurate portrayal of the real situation and relying on a brief discussion of what amounted to a moving target of what was documented versus what is intended, has caused the DHPC to accept the owner statement “leave what’s there” to allow for a lawn that does not exist. **The decision violates Georgia Dept. of**

Natural Resources guidance and Dekalb ordinance § 14-44.1(a)(1) that requires the stream buffer must remain in a natural, undisturbed state and contradicts the DHPC March position against lawn in the stream buffer. This is arbitrary and capricious.

Item 2.b: When platted in Sept. 1996 the 3 contiguous Oakdale Commons Subdivision lots with street-frontage on The By Way would have non-historic buildings but be **required to comply with having historic landscape** per the June 1996 Druid Hills historic district designation. The subdivision received zoning approval from the Board of Commissioners with the condition that explicitly applied to the stream buffer and stated that development “involve no land disturbance and all trees over 12” diameter shall be undisturbed....”. In the 1997 conditional COA approval for development on the subject lot, DHPC accepted the owner’s commitment to conform with then-new Historic District Guidelines sections 8 (Natural Landscapes-Protecting the Design Context) and 9 (Cultural Landscapes Guidelines-Maintaining "The Look"). These conditions addressed Druid Hills Civic Association and neighborhood concerns as per documents provided to Dekalb Staff on 3/19/21. **But for these reasons approvals would not have been permitted.** These approvals confirm that **in two separate decisions Dekalb County affirmed subject lot landscape is historic, then affirmed the compliance of the landscape with Historic District Guidelines**. In 1997, the original owner complied by planting the twelve birches on the stream bank. By permitting only “three kousa dogwoods” small tree replacements and lawn in the buffer, **the May 2021 decision overturns prior requirements for historic landscape by the BOC and the former DHPC and so is arbitrary and capricious.**

Conclusion: The decision must be reversed and the application remanded to the preservation commission with direction to modify planting plan to have at least 10 overstory trees on the stream bank and no lawn in the stream buffer.