



Community & Economic Development  
Office of the Director

# Communication to City Council

To: City Council Members

From: Wilf Sommerkorn, Planning Director

Date: August 12, 2010

CC: David Everitt, Chief of Staff  
Frank Gray, Community and Economic Development Director  
Cheri Coffey, Assistant Planning Director  
Joel Paterson, Planning Manager

Re: Planning Commission and Historic Landmark Commission Recommendations relating to the Proposed Yalecrest Demolition and Front Setback Ordinance

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This memorandum confirms the Historic Landmark Commission and Planning Commission actions on regarding Petitions PLNPCM2010-00448 and PLNPCM2010-00461, known as the proposed Yalecrest demolition and front setback ordinance. The proposed ordinance is attached.

On August 4, 2010 the Historic Landmark Commission conducted a public hearing on the proposed ordinance. Following the hearing, the Commission voted unanimously to recommend to the Planning Commission and City Council denial of the proposed ordinance for the following reasons:

- The ordinance would derail a thoughtful consideration of other tools for preserving the area;
- The ordinance, as is, has ill defined terms; and
- The standards for economic hardship need to address single-family residential.

On August 11, 2010 the Planning Commission conducted a public hearing on the proposed ordinance. Following the hearing, the Planning Commission voted 8 to 1 to forward a recommendation of denial to the City Council. The Planning Commission also voted unanimously to form a subcommittee to discuss issues related to infill development in the Yalecrest neighborhood.

Additional detail can be provided to the City Council at the briefing. This memo is provided for the purposes of the public record to meet the City Council's deadline for distribution of agenda materials.

DRAFT  
July 20, 2010

**21A.34.125 YNC Yalecrest Neighborhood Character Overlay District**

**A. Purpose Statement:** The area included in the Yalecrest Neighborhood Character Overlay District (YNC) is known regionally for its importance in the residential development of the East Bench and the unique and irreplaceable, visually cohesive collection of early 20<sup>th</sup> century architecture of the City. The purpose of the Yalecrest Neighborhood Character Overlay District is to protect, preserve, and retain the historic integrity of this residential neighborhood by minimizing demolitions and maintaining the cohesive patterns which define the character of the neighborhood.

**B. Overlay District Boundary:** The YNC overlay district applies to all property located within the area defined on Figure 21A.34.XXX except those properties located within an H Historic Preservation Overlay District.

**C. Definitions:** The following terms used in this section shall have the following meanings:

1. "Demolition" means an act or process which results in the removal or intentional destruction of a principal building more particularly described as:
  - a. Fifty percent (50%) or more of the roof area as measured in plan view;
  - b. Fifty percent (50%) or more of the exterior walls of a building as measured contiguously around the exterior of the building walls;
  - c. Any exterior wall facing a public street;
2. "Retained Wall" means an exterior wall that is not included in a demolition calculation. A wall shall meet the following minimum standards to be considered a retained wall:
  - a. The wall shall retain studs or other structural elements and the entire exterior wall finish;
  - b. The wall shall not be covered or otherwise concealed by a wall that is proposed to be placed in front of the retained wall. Open, covered porches shall not be considered a concealing wall; and
  - c. The retained wall must be attached to an adjacent contiguous wall on at least one corner.
3. "Economic Hardship" means the application of the standards and regulations of this section deprives the applicant of all reasonable economic use or return on the subject property.
4. "Significant Structure" means a principal structure that contributes to the character of the YNC Overlay District pursuant to subsection E of this section.

**D. Demolitions:** In the YNC, no Significant Structure shall be demolished unless:

1. The structure is determined a Dangerous Building by the Building Official according to the process and standards stated in Chapter 18.48 of this Title; or

2. The Historic Landmark Commission determines that demolition is appropriate pursuant to subsection F of this section; or

3. The Historic Landmark Commission finds that the demolition is required to rectify a condition of economic hardship, as defined and determined pursuant to the provisions of subsection K of this section.

**E. Determination of Significant Structure:** In the YNC a principal structure shall be considered a Significant Structure in accordance with the following standards and procedures:

1. Standards for Determination of Significant Structure:

a. The structure is fifty (50) years in age or older. The age of the building shall be determined according to Salt Lake City building permit records. In the event that building permit records cannot be found, the Planning Director may use other relevant and verifiable records to make the determination; and

b. The building meets at least one of the following criteria:

(1). The building is historically or architecturally significant because of period, style, method of building construction, or important association with a famous architect or builder; or

(2). The building has an important association with one or more historic persons or events, or with the broad architectural, cultural, political, economic, or social history of the City; or

(3). The building is one whose loss would have a significant negative impact on the historical or architectural integrity or urban design character of the neighborhood; and

c. The original integrity and character has been retained and preserved since the building was constructed. This may include original scale, massing, materials, architectural features, and associated spaces that characterize the structure.

2. Application for Determination of Significant Structure: An application for a Determination of Significant Structure shall be made on a form prepared by the planning director and shall be submitted to the planning division. The planning director shall make a determination of completeness pursuant to section **21A.10.010** of this title.

a. Materials Submitted With Application: The application shall include photographs, drawings, and other documentation specified on the application form or deemed necessary to consider the application properly and completely.

b. Notice of Application and Public Comment Period: Upon receipt of a complete application, the Planning Director shall mail notice to any recognized or registered

organization pursuant to [title 2, chapter 2.62](#) of this code and to all property owners within 300 feet of the subject property that an Application for Determination of Significant Structure is being considered. The notice shall state that the public has thirty (30) days to provide written comment regarding the application.

c. Standards for Determination: The application shall be reviewed according to the standards set forth in subsection E1 of this section.

d. Review and Decision by the Planning Director: Following the public comment period and on the basis of written findings of fact, the planning director shall approve, deny or forward the application to the Historic Landmark Commission for consideration. The decision of the planning director shall be issued in writing and shall be effective at the time the decision is made.

e. Referral of Application by Planning Director to Historic Landmark Commission: The Planning Director may refer any application to the Historic Landmark Commission due to the complexity of the application.

f. Appeal of Administrative Decision To Historic Landmark Commission: The applicant, any owner of property located within the YNC, or any recognized or registered organization pursuant to [title 2, chapter 2.62](#) of this code, aggrieved by the administrative decision, may appeal the decision to the Historic Landmark Commission within ten (10) calendar days following the date on which a decision is issued. The filing of the appeal shall stay the decision of the Planning Director pending the outcome of the appeal.

g. Appeal of Historic Landmark Commission Decision to Land Use Appeals Board: The applicant, any owner of property located within the YNC, or any recognized or registered organization pursuant to [title 2, chapter 2.62](#) of this code, aggrieved by the historic landmark commission's decision, may object to the decision by filing a written appeal with the land use appeals board within ten (10) calendar days following the date on which a record of decision is issued. The filing of the appeal shall stay the decision of the historic landmark commission pending the outcome of the appeal.

**F. Standards for Demolition of a Significant Structure in the YNC Overlay District:** In considering an application for demolition of a Significant Structure as determined pursuant to subsection E of this section, the historic landmark commission shall consider and may approve a demolition based on the following factors:

1. Standards for Zoning Approval for Demolition:

a. The streetscape within the context of the YNC District would not be negatively affected;

b. The reconstruction plan is consistent with the standards outlined in subsection I of this section;

c. The site has not suffered from willful neglect, as evidenced by the following:

- (1) Willful or negligent acts by the owner that deteriorates the structure,
- (2) Failure to perform normal maintenance and repairs, and
- (3) Failure to secure and board the structure if vacant.

2. Historic Landmark Commission Determination of Compliance with Standards of Approval: The historic landmark commission shall make a decision based upon the standards of approval stated in subsection F1 of this section. The Historic Landmark Commission may approve, approve with conditions, deny, or defer the decision for up to one (1) year to allow time for consideration of designation of the structure as a Landmark Site to the Salt Lake City Register of Cultural Resources.

**G. Final Decision for Permit for Demolition Following One Year Deferral:** Upon the completion of the one year period, the historic landmark commission shall approve, approve with modifications or deny the application for demolition.

**H. Recordation Requirement for Approved Permit for Demolition:** Upon approval of a permit for demolition of a significant structure, the historic landmark commission shall require the applicant to provide archival quality photographs, plans or elevation drawings, as available, necessary to record the structure(s) prior to its demolition.

**I. Standards for Demolition Reconstruction Plan:** In considering an application for a reconstruction plan in association with an application for demolition of a Significant Structure the historic landmark commission shall determine whether the project substantially complies with all of the following standards, as well as all applicable zoning standards, that pertain to the application and is in the best interest of the city:

1. Scale and Form:

a. Height and Width: The proposed height and width shall be visually compatible with surrounding structures and streetscape;

b. Proportion of Principal Facades: The relationship of the width to the height of the principal elevations shall be in scale with surrounding structures and streetscape;

c. Roof Shape: The roof shape of a structure shall be visually compatible with the surrounding structures and streetscape; and

d. Scale of A Structure: The size and mass of the structures shall be visually compatible with the size and mass of surrounding structure and streetscape.

2. Composition of Principal Facades:

a. Proportion of Openings: The relationship of the width to the height of windows and doors of the structure shall be visually compatible with surrounding structures and streetscape;

b. Rhythm of Solids To Voids In Facades: The relationship of solids to voids in the facade of the structure shall be visually compatible with surrounding structures and streetscape;

c. Rhythm of Entrance Porch And Other Projections: The relationship of entrances and other projections to sidewalks shall be visually compatible with surrounding structures and streetscape; and

d. Relationship of Materials: The relationship of the color and texture of materials (other than paint color) of the facade shall be visually compatible with the predominant materials used in surrounding structures and streetscape.

### 3. Relationship to Street:

a. Walls Of Continuity: Facades and site structures, such as walls, fences and landscape masses, shall, when it is characteristic of the area, form continuity along a street to ensure visual compatibility with the structures, public ways and places to which such elements are visually related;

b. Rhythm Of Spacing And Structures On Streets: The relationship of a structure or object to the open space between it and adjoining structures or objects shall be visually compatible with the structures, objects, public ways and places to which it is visually related;

c. Directional Expression Of Principal Elevation: A structure shall be visually compatible with the structures, public ways and places to which it is visually related in its orientation toward the street; and

d. Streetscape; Pedestrian Improvements: Streetscape and pedestrian improvements and any change in its appearance shall be compatible to the historic character of the YNC Overlay District.

**J. Definition and Determination of Economic Hardship:** The determination of economic hardship shall require the applicant to provide evidence sufficient to demonstrate that the application of the standards and regulations of this section deprives the applicant of all reasonable economic use or return on the subject property.

1. Application For Determination Of Economic Hardship: An application for a determination of economic hardship shall be made on a form prepared by the planning director and shall be submitted to the planning division. The application must include photographs, information pertaining to the historic significance of the significant structure

and all information necessary to make findings on the standards for determination of economic hardship.

2. Standards For Determination Of Economic Hardship: The historic landmark commission shall apply the following standards and make findings concerning economic hardship:

a. The current level of economic return on the property as considered in relation to the following:

(1) The amount paid for the property, the date of purchase, and party from whom purchased, including a description of the relationship, if any, between the owner of record or applicant, and the person from whom the property was purchased,

(2) The annual gross and net income, if any, from the property for the previous three (3) years; itemized operating and maintenance expenses for the previous three (3) years; and depreciation deduction and annual cash flow before and after debt service, if any, for the previous three (3) years,

(3) Remaining balance on any mortgage or other financing secured by the property and annual debt service, if any, during the previous three (3) years,

(4) Real estate taxes for the previous four (4) years and assessed value of the property according to the two (2) most recent assessed valuations by the Salt Lake County assessor,

(5) All appraisals obtained within the previous two (2) years by the owner or applicant in connection with the purchase, financing or ownership of the property,

(6) The fair market value of the property immediately prior to its designation as a significant structure and the fair market value of the property as a significant structure at the time the application is filed,

(7) Any state or federal income tax returns on or relating to the property for the previous two (2) years;

b. The marketability of the property for sale or lease, considered in relation to any listing of the property for sale or lease, and price asked and offers received, if any, within the previous two (2) years. This determination can include testimony and relevant documents regarding:

(1) Any real estate broker or firm engaged to sell or lease the property,

(2) Reasonableness of the price or rent sought by the applicant, and

(3) Any advertisements placed for the sale or rent of the property;

c. The infeasibility of alternative uses that can earn a reasonable economic return for the property as considered in relation to the following:

(1) A report from a licensed engineer or architect with experience in rehabilitation as to the structural soundness of any structures on the property and their suitability for rehabilitation,

(2) Estimate of the cost of the proposed construction, alteration, demolition or removal, and an estimate of any additional cost that would be incurred to comply with the decision of the historic landmark commission concerning the appropriateness of proposed alterations,

(3) Estimated market value of the property in the current condition after completion of the demolition and proposed new construction; and after renovation of the existing property for continued use, and

(4) The testimony of an architect, developer, real estate consultant, appraiser, or other professional experienced in rehabilitation as to the economic feasibility of rehabilitation of the existing structure on the property;

d. Economic incentives and/or funding available to the applicant through federal, state, city, or private programs.

3. Procedure For Determination Of Economic Hardship: The historic landmark commission shall establish a three (3) person economic review panel. This panel shall be comprised of three (3) real estate and redevelopment experts knowledgeable in real estate economics in general, and more specifically, in the economics of renovation, redevelopment and other aspects of rehabilitation. The panel shall consist of one person selected by the historic landmark commission, one person selected by the applicant, and one person selected by the first two (2) appointees. If the first two (2) appointees cannot agree on a third person within thirty (30) days of the date of the initial public hearing, the third appointee shall be selected by the mayor within five (5) days after the expiration of the thirty (30) day period.

a. Review Of Evidence: All of the evidence and documentation presented to the historic landmark commission shall be made available to and reviewed by the economic review panel. The economic review panel shall convene a meeting complying with the open meetings act to review the evidence of economic hardship in relation to the standards set forth in subsection J2 of this section. The economic review panel may, at its discretion, convene a public hearing to receive testimony by any interested party; provided, that notice for such public hearing shall be in accordance with chapter 21A.10, "General Application And Public Hearing Procedures", subsection [21A.10.020E](#) and section [21A.10.030](#) of this title.



b. Report Of Economic Review Panel: Within forty five (45) days after the economic review panel is established, the panel shall complete an evaluation of economic hardship, applying the standards set forth in subsection J2 of this section and shall forward a written report with its findings of fact and conclusions to the historic landmark commission.

c. Historic Landmark Commission Determination of Economic Hardship: At the next regular historic landmark commission meeting following receipt of the report of the economic review panel, the historic landmark commission shall reconvene its public hearing to take final action on the application.

(1) Finding Of Economic Hardship: If after reviewing all of the evidence, the historic landmark commission finds that the application of the standards set forth in subsection J2 of this section results in economic hardship, then the historic landmark commission shall issue zoning approval for demolition.

(2) Denial Of Economic Hardship: If the historic landmark commission finds that the application of the standards set forth in subsection J2 of this section does not result in economic hardship then the zoning approval for demolition shall be denied.

(3) Consistency With The Economic Review Panel Report: The historic landmark commission decision shall be consistent with the conclusions reached by the economic review panel unless, based on all of the evidence and documentation presented to the historic landmark commission, the historic landmark commission finds by a vote of three-fourths ( $\frac{3}{4}$ ) majority of a quorum present that the economic review panel acted in an arbitrary manner, or that its report was based on an erroneous finding of a material fact.

4. Appeal of Historic Landmark Commission Decision to Land Use Appeals Board: The applicant, any owner of property located within the YNC, or any recognized or registered organization pursuant to [title 2, chapter 2.62](#) of this code, aggrieved by the historic landmark commission's decision, may object to the decision by filing a written appeal with the land use appeals board within ten (10) calendar days following the date on which a record of decision is issued. The filing of the appeal shall stay the decision of the historic landmark commission pending the outcome of the appeal.

5. Review By City Attorney: Following the filing of an appeal to the land use appeals board of a decision of the historic landmark commission to deny or defer zoning approval for demolition, the planning director shall secure an opinion of the city attorney evaluating whether the denial or deferral of a decision of the demolition would result in an unconstitutional taking of property without just compensation under the Utah and United States constitutions or otherwise violate any applicable constitutional provision, law, ordinance or regulation.

**K. Front Yard Setback:** The minimum depth of the front yard for all principal buildings in the YNC District shall be equal to the depth of the front yard setback of the existing principal building measured at the closest point from the front property line. In the case of demolition of a principal building, the minimum front yard setback of the replacement structure shall be equal to the principal building being replaced. The front yard setback shall be measured from the front property line to the finished surface of the building or to the front of any post supporting a roof. Obstructions allowed in the front yard as indicated in Table 21A.36.020B shall not be included in the front yard setback calculation.