

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION

KRISTY KAY MONEY and ROLF §  
JACOB STRAUBHAAR §  
*Plaintiffs,* §

v. §

Civil Action No. 1:23-cv-00718-RP

CITY OF SAN MARCOS, AND §  
DIRECTOR OF PLANNING §  
AND DEVELOPMENT SERVICES §  
AMANDA HERNANDEZ in her official §  
capacity, §  
*Defendants.* §

**PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT**

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Plaintiffs Kristy Money and Rolf Straubhaar file this motion for summary judgment of their constitutional claims against Defendants City of San Marcos and Director of Planning and Development Services Amanda Hernandez, in her official capacity (collectively, “the City”).

## **INTRODUCTION**

This civil rights lawsuit challenges a local ordinance that requires private property owners to keep unwanted objects on their property for purely aesthetic purposes.

Plaintiffs Kristy Money and Rolf Straubhaar (“Homeowners”) own a home in San Marcos, Texas where they live with their five children. On the front of that home is a small metal decoration bearing the initial of a previous homeowner with historical ties to the Ku Klux Klan. Because this association clashes with Homeowners’ values and their aesthetic preferences, they would like to remove it.

Unfortunately, under a local ordinance, any aesthetic change to the front of their home must receive approval by the City—which the City refuses to grant. As a result, Homeowners are forced to maintain an unwanted object on their home that is contrary to their values in order to appease the aesthetic sense of the City.

This is unconstitutional. The takings clause of the United States Constitution prohibits cities from mandating that private property owners maintain objects on their property for the public benefit without compensation. And the Texas Constitution prohibits cities from regulating private property for purely aesthetic reasons. Homeowners therefore seek relief in this Court.

Since no genuine issue of material fact exists, summary judgment on these claims is proper.

## **ISSUES TO BE DECIDED BY THE COURT**

1. Does an ordinance which requires a property owner to keep and

maintain an object on their property for the public benefit without compensation violate the takings clause of the U.S. Constitution?

2. Does an ordinance which regulates private property based solely on aesthetic values exceed the local police power in violation of Article I Section 19 of the Texas Constitution?

## STATEMENT OF FACTS

### *Background*

This case involves a home within the Burleson Historic District in San Marcos, Texas. Ex 1 (Declaration of Kristy Money), ¶ 5. While the home is in the historic district, the home itself is not a designated historic home. *Id.*

Homeowners purchased the property in 2017. *Id.* at ¶ 3. At the time, the home had been vacant for multiple years, needed repairs, and was designated a low historical priority by the City. *Id.* at ¶ 6. The condition of the home, as well as its location, made it an affordable option for Homeowners, who needed extra room for their five children and somewhere close to work. *Id.* at ¶ 7.

Homeowners soon discovered, however, the significant burdens the City places on homes in the historic district.

### *The Challenged Ordinance*

For most of Texas history, Texas governments largely lacked authority to take action to preserve historic structures. Eventually, the Texas Legislature amended the Zoning Enabling Act to provide some limited authority for local actions to encourage preservation. TEX. LOCAL GOV'T CODE § 211.003. Under that authority, both the State and several cities have often taken a “carrot” approach to historic preservation, by providing tax incentives and other inducements to encourage property owners to preserve their property. See, e.g., 13 TEX. ADMIN. CODE §§ 13.2, 13.8 (providing tax credits).



San Marcos, by contrast, has chosen the “stick” of regulations. Under the San Marcos Development Code, a property owner may not, among other things, alter, relocate, or demolish any visible portion of a property within a historic district without first receiving a “certificate of appropriateness” (hereafter, “Certificate”) from the Historic Preservation Commission (the “Commission”). Dev. Code § 2.5.5.1(B).

To receive a Certificate, the property owner must pay \$165 and submit an application to the City. <https://tinyurl.com/yc5hmc24>. Consideration of that application is not based on public health or safety concerns. Rather, the Commission will deny the application if it deems the proposed changes are incompatible with broad aesthetic concerns, such as “architectural or cultural character” of the district, or the other guidelines cited in § 4.5.2.1 of the development code. Dev. Code § 2.5.5.4. The guidelines in § 4.5.2.1 are likewise based solely on aesthetics and “visual compatibility.” Dev. Code § 4.5.2.1(I)(1).

The Commission may also deny the application if it deems the proposed change to conflict with the “Historic District Guidelines located in Appendix C of the San Marcos Design Manual,” or “the current Standards for Historic Preservation Projects issued by the United States Secretary of the Interior”—both of which uniformly turn on visual appearance and aesthetic considerations. Dev. Code § 4.5.2.1(I)(2).

If a homeowner removes objects from the visible façade of the property without the approval of the Commission, they can be subject to criminal penalties and fines. Dev. Code § 2.3.7.4. The Ordinance provides no mechanism to compensate property owners for this occupation of their property.

While a denial of an application can be appealed to the Zoning Board of Adjustment (ZBOA), appeals are costly, and the jurisdiction of the ZBOA is limited to claims where “the record reflects the lack of substantial evidence in support of the decision of the Historic Preservation Commission.” Dev. Code § 2.5.5.5(C)(3). The ZBOA “may not substitute its judgment for the judgment of the Historic Preservation

Commission on the weight of the evidence,” nor is the ZBOA permitted to consider the constitutionality of the Development Code or the Commission — either under the Texas or United States Constitutions. Dev. Code § 2.5.5.5.

***Homeowners Apply to Remove the Decoration from Their Home***

In March of 2023, Homeowners decided that they wanted to remove a metal decoration from the façade of their home. Ex. 1, at ¶ 8. The decoration displays a large letter “Z.”



The Z is significant because it was installed by a previous owner, Frank Zimmerman, and reflects his initial. Mr. Zimmerman was a prior owner of a local theatre known for, among other things, hosting Ku Klux Klan Day in the 1920s. Ex. 2 (collection of documentation of Klan ties). Homeowners do not think the decoration reflects their family’s values or their aesthetic preferences, and therefore filed an application for a Certificate so that they could have the decoration removed. Ex. 1 at ¶ 10.

On May 4, 2023, that application was denied. Ex. 3 (written denial of application). At the hearing denying the application, the Commission was clear that the application was denied due to the effect of removal on the aesthetic of the property. Video of hearing denying COA - [https://san-marcos-tx.granicus.com/player/clip/1985?view\\_id=18&redirect=true&h=e01e0b0a45d4c58532b2d66a59fb7d4f](https://san-marcos-tx.granicus.com/player/clip/1985?view_id=18&redirect=true&h=e01e0b0a45d4c58532b2d66a59fb7d4f). The written notice of denial likewise made clear that the application was denied for aesthetic reasons. Ex. 3.

Under the Development Code, the Commission’s decision is final as to the application of Dev. Code § 2.5.5.1 *et seq* (the “Ordinance”) to Homeowners’ property. Homeowners are therefore required to keep the unwanted decoration on their home for a public benefit—namely the City’s aesthetic preferences—without compensation. Homeowners therefore seek relief in this Court.

#### **STANDARD OF REVIEW**

Summary judgment is appropriate whenever a summary-judgment motion “that is properly supported by the evidence” shows “there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” *Young Conservatives of Tex. Found. v. Univ. of N. Tex.*, 597 F. Supp. 3d 1062, 1071 (E.D. Tex. 2022) (quoting Fed. R. Civ. P. 56(a)). The “‘existence of *some* alleged factual dispute’ is insufficient to defeat a motion for summary judgment;” instead, the nonmovant must “show with ‘significant probative evidence’ that the resolution of a legitimate factual dispute “might govern the outcome of the suit.” *Id.* (quoting *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247-48 (1986), and *Hamilton v. Segue Software Inc.*, 232 F.3d 473, 477 (5th Cir. 2000)). The court must “view the evidence and the inferences to be drawn therefrom in the light most favorable to the non-moving party,” but “unsubstantiated assertions, improbable inferences, and unsupported speculation are not sufficient to defeat a motion for summary judgment.” *Nuwer v. Mariner Post-Acute Network*, 332 F.3d 310, 313-14 (5th Cir. 2003); *accord Harrison*

*Co., L.L.C. v. A-Z Wholesalers, Inc.*, 44 F.4th 342, 346 (5th Cir. 2022).

## ARGUMENT

### I. THIS COURT HAS JURISDICTION TO HEAR THESE CLAIMS

As a threshold matter, a movant for summary judgment must establish: (1) that the Court has subject matter jurisdiction, (2) that the movant has standing, and (3) that the movant's claims are ripe. These burdens are easily met here.

#### A. This Court has subject matter jurisdiction.

This Court has subject matter jurisdiction over both of Homeowners' claims. The Court has jurisdiction over Homeowners' *per se* takings claims under 28 U.S.C. § 1331, because those claims arise "under the Constitution, laws, or treaties of the United States." See *Duke Power Co. v. Carolina Envtl. Study Grp.*, 438 U.S. 59, 71 n.15 (1978) (holding that 28 U.S.C. § 1331 provides subject matter jurisdiction for suits seeking a declaration that a law is a taking).

This Court also has supplemental jurisdiction under 28 U.S.C. § 1367(a) for Homeowners' Texas Constitutional claims, because those claims are "part of the same case or controversy" as the federal claims, seek the same relief, and would require no additional factual development. *ESI/Employee Sols., L.P. v. City of Dall.*, 450 F. Supp. 3d 700, 728 (E.D. Tex. 2020).

#### B. Homeowners have standing to challenge the regulation of their property.

Homeowners also clearly have standing. To establish standing, a plaintiff must allege: (1) a personal injury; (2) that is fairly traceable to the challenged regulation; and (3) likely to be redressed by the requested relief. *Contender Farms, L.L.P. v. United States Dep't of Agric.*, 779 F.3d 258, 264 (5th Cir., 2015). When, as in this case, the plaintiff is the object of the regulation he challenges, these three criteria are easily met because "there is ordinarily little question that the action or inaction has caused him injury, and that a judgment preventing or requiring the

action will redress it.” *Id.*

Here, there is no dispute that Homeowners are the objects of the regulation they challenge. The Ordinance applies to Homeowners’ property on its face and the City has already applied it to limit their use of their property. That is more than sufficient for standing. *Contender Farms*, 779 F.3d at 264.

**C. Homeowners’ claims are ripe.**

Finally, there is no reasonable dispute that Homeowners’ claims are ripe. A facial challenge to a land use regulation is ripe the moment the regulation is passed. *Lucas v. S.C. Coastal Council*, 505 U.S. 1003, 1042, n.4 (1992). Homeowners’ facial challenges are therefore ripe.

Homeowners as-applied challenges are likewise ripe. An as-applied challenge to a land-use regulation is generally ripe once the property owner has applied for and been denied a permit to use their property. *Pakdel v. City & Cty. of S.F.*, 141 S. Ct. 2226, 2228 (2021). Because those steps have been taken here, Homeowners’ as-applied challenges are ripe.

**II. THE ORDINANCE CONSTITUTES A *PER SE* TAKING BECAUSE IT REQUIRES PHYSICAL OCCUPATION OF HOMEOWNERS’ PROPERTY.**

Turning to the merits, the City’s historic preservation ordinance violates the Fifth Amendment, as incorporated against the states through the Fourteenth Amendment, to the U.S. Constitution, because it forces the Homeowners to keep a decoration on their property for the aesthetic pleasure of their neighbors without compensating them. Under the Fifth Amendment, the government cannot force an individual to give up their property for public use without just compensation.

The Supreme Court has recognized at least three ways a regulation can amount to a taking. First, when the government mandates that a property owner maintain an unwanted object on the property for a public benefit. *Loretto v.*

*Teleprompter Manhattan CATV Corp.*, 458 U.S. 419 (1982). Second, when a regulation deprives the property owner of “all economically beneficial use” of his property. *Lucas v. S.C. Coastal Council*, 505 U.S. 1003 (1992). And third, when the burden of a regulation goes “too far” under the *ad hoc* balancing test articulated in *Penn Central Transp. Co. v. New York City*, 438 U.S. 104 (1978).

This case involves the simplest of these theories—a mandatory physical occupation. While “total takings” under *Lucas* and “*ad hoc* takings” under *Penn Central* can involve complicated multi-factor balancing and considerations of property values, the test for physical occupation takings is simple. “When faced with a constitutional challenge to a permanent physical occupation of real property, [the Supreme] Court has invariably found a taking.” *Loretto*, 458 U.S. at 427.

In *Loretto*, for example, the Court held that a statute which required a property owner to keep a small cable box on her property constituted a “traditional” *per se* taking under the Takings Clause. *Id.* at 441. The Court explained that forbidding the removal of the cable box was tantamount to “physical occupation authorized by government [and was] a taking without regard to the public interests that it may [have] serve[d].” *Id.* at 426. This remained true, the Court explained, despite the fact that the interference involved “relatively insubstantial amounts of space and d[id] not seriously interfere with the landowner’s use of the rest of [the] land.” *Id.* at 430.

This was recently reaffirmed in *Cedar Point Nursery v. Hassid*, 141 S. Ct. 2063 (2021). As the Supreme Court explained in that case, “government-authorized invasions of property—whether by plane, boat, cable, or beachcomber—are physical takings requiring just compensation.” *Id.* at 2074. Indeed, this traditional rule stretches back almost to the nation’s founding. See, e.g., *Hendler v. United States*, 952 F.2d 1364 (Fed. Cir. 1991) (mandatory physical occupation is a taking); *Pumpelly v. Green Bay Co.*, 80 U.S. 166 (1871) (same); *Gardner v. Trs. of Newburgh*, 2 Johns.

Ch. 162 (N.Y. 1816) (same).

Here, just like the property owners in *Loretto*, the Homeowners are required to keep an unwanted object—in this case, a small decorative grate—on their property for an alleged public benefit. Just like the property owners in *Loretto*, Homeowners cannot alienate that object, use the space occupied by that object for something else, or dispose of that object without facing civil and criminal penalties. Therefore, just like the property owners in *Loretto*, the Homeowners have been denied the use of their property without just compensation in violation of the Fifth and Fourteenth Amendments, and the City’s Ordinance should be enjoined.

### **III. THE ORDINANCE PLACES AN ARBITRARY BURDEN ON HOMEOWNERS’ PROPERTY RIGHTS IN VIOLATION OF ARTICLE 1, SECTION 19 OF THE TEXAS CONSTITUTION.**

The Ordinance also violates the Texas Constitution. Article 1, Section 19 of the Texas Constitution provides that “[n]o citizen of this State shall be deprived of life, liberty, property, privileges or immunities, or in any manner disfranchised, except by the due course of the law of the land.” Like the Federal Due Process Clause, Texas’s Article 1, Section 19 has a substantive as well as procedural component. *Tex. Workers’ Comp. Comm’n v. Garcia*, 893 S.W.2d 504, 525 (Tex. 1995). To prevail on a substantive Due Course of Law challenge to a land-use ordinance, a plaintiff must show that the ordinance: (1) restricts a property right, and (2) the restriction is not rationally related to an interest within the police power, or (3) is unduly burdensome given the government interest at stake. *Patel v. Tex. Dep’t of Licensing & Regulation*, 469 S.W.3d 69, 87 (Tex. 2015). That burden is met.

#### **A. The Ordinance restricts well-established private property rights.**

First, there can be no reasonable dispute that the Ordinance restricts property rights. The “right to acquire and own property, and to deal with it and use it as the

owner chooses, so long as the use harms nobody, is a natural right.” *Zaatari v. City of Austin*, 615 S.W.3d 172, 200 (Tex. App.—Austin, 2019) (quoting *Spann v. City of Dallas*, 235 S.W. 513, 515 (Tex. 1921)). This view of property predates Texas to the time of William Blackstone. As Blackstone put it, “[t]he third absolute right, inherent in every Englishman, is that of property: which consists in the free use, enjoyment, and disposal of all his acquisitions . . . .” William Blackstone, *Commentaries on the Laws of England*, 1:134 (1765). See also *Loretto v. Teleprompter Manhattan Catv Corp.*, 458 U.S. 419, 435 (1982) (The right to own property includes the rights “to possess, use and dispose of it.”).

There is no dispute that the Ordinance implicates these rights. Under the Ordinance, Homeowners cannot exercise *any* right on the visible portions of their property beyond mere possession without Commission approval. San Marcos Dev. Code 2.5.5.1(B). They cannot exclude unwanted objects, like the decoration in this case. Ex. 3. They cannot build new structures or repair old ones. San Marcos Dev. Code 2.5.5.1(B)(2). They cannot even put up an ordinary fence to prevent their children from roaming into the street. Ex. 4, p. 7-19 (Application to San Marcos Historic Preservation Commission (June 7, 2018)). In short, under the Ordinance, Homeowners hold these traditional common law property rights wholly at the “sufferance” of the Commission. *Spann*, 235 S.W. at 516. Such restrictions are sufficient to trigger review under Article 1, Section 19. *Id.*

**B. Both on its face and as applied, the Ordinance’s restriction on property rights does not serve a legitimate government interest within the local police power because it is based purely on aesthetics.**

Having established the existence of a right, the next step is to determine whether the Ordinance’s restrictions on private property rights are rationally related to a legitimate government interest. In engaging in this analysis, it is important to



remember that not every reason that a government may want to restrict property is a legitimate one. See, e.g., *St. Joseph Abbey v. Castille*, 712 F.3d 215, 222 (5th Cir. 2013) (holding under rational basis scrutiny that naked economic protectionism is not a legitimate government purpose). Rather, the purpose of the restriction must find its footing in the police power. *Lombardo v. Dallas*, 73 S.W.2d 475, 478-79 (1934).

This question is particularly important for Texas property rights claims. Texas Courts have taken a narrower view of the police power over property rights than many of their federal counterparts. See, *Tex. Rice Land Partners, Ltd. v. Denbury Green Pipeline-Texas, LLC*, 363 S.W.3d 192, 204 (Tex. 2012) (the Texas “Constitution and laws enshrine landownership as a keystone right, rather than one ‘relegated to the status of a poor relation.’”). As the Federal Circuit recently recognized, Texas law “expressly tie[s] the exercise of the police power to the abatement of nuisances.” *Milton v. United States*, 36 F.4th 1154, 1161 (Fed. Cir. 2022) (citing *Severance v. Patterson*, 370 S.W.3d 705 (Tex. 2012); *City of Dallas v. Stewart*, 361 S.W.3d 562, 569 (Tex. 2012); *Lombardo*, 73 S.W.2d 475). Under this approach, zoning regulations must be based in harm. See *Lombardo*, 73 S.W.2d at 479. A restriction on private property rights “founded upon purely aesthetic consideration” is unconstitutional. *Id*; *Spann*, 235 S.W. at 516, 517.

The Ordinance at issue here falls into this prohibited category of purely aesthetic regulation. Both on its face and as applied, the Ordinance prohibits alteration or removal of objects from private property based *solely* on the aesthetic preferences of the Commission.

For example, the Ordinance applies only to certain *visible* portions of the property, regardless of the historical or structural significance of the portion of the property sought to be modified. San Marcos Dev. Code 2.5.5.1(D). Under the Ordinance, a back-porch swing built by Davy Crockett himself would receive no protection (because it is not visible from the street), but a tacky set of vinyl front

window shutters from 1985 would have to remain a permanent fixture of the home unless the Commission approved the aesthetics of removing them. See, *id.* Indeed, just this year, the Commission spent over thirty minutes considering whether to approve a fence pertaining to a house built in 1989. San Marcos Historic Preservation Meeting (March 2, 2023) (video available at <https://tinyurl.com/2p9pt7j5> (7:55–39:24)).

Moreover, when the Commission considers an application, the criteria applied under the Ordinance all turn on aesthetics. The Commission does not—and cannot—consider health, safety, or nuisance concerns. San Marcos Dev. Code § 2.5.5.4. Rather, each criteria considered involves the “appearance” of the property with regard to vague and subjective criteria such as “rhythm of solids to voids in front facades” or “relationship of materials, texture and color.” San Marcos Dev. Code §§ 4.5.2.1(I)(d), (g). Indeed, each criteria in Section 4.5.2.1(I) turns on the nebulous requirement that things “shall be visually compatible.”

In practice, this means that a proposed change to the property can be denied for a host of purely subjective aesthetic reasons. For example, an application can be denied because the proposed structure would be too similar from the historic structure. Ryan Patrick Perkins, San Marcos Historic Preservation Commission Meeting, 1:01:07 (Jan. 5, 2023) (available at: <https://tinyurl.com/2p8ht7nb>) (explaining his reasons for denying certificate of appropriateness). At the same time (and without a hint of irony) the Commission may also deny an application if the proposed structure would be too different. Peter Dedek, San Marcos Historic Preservation Meeting, 43:26 (May 4, 2023) (available at: <https://tinyurl.com/mr39z323>) (explaining his reason for denying an almost identical application from the same individual). Last year, the Commission denied a request to build a concrete driveway, instead only approving a ribbon driveway because a member of the commission thought that it would look better. San Marcos Historic

Preservation Meeting, 18:05 (January 6, 2022) (available at: <https://tinyurl.com/3654hvpb>).

The Texas Constitution does not allow this sort of arbitrary aesthetic-based regulation of property. As the Texas Supreme Court has explained, the “very essence of American constitutions is that the material rights of no man shall be subject to the mere will of another.” *Spann*, 235 S.W. at 517. Accordingly, because the Ordinance requires the Commission to regulate property for purely aesthetic reasons, it is unconstitutional on its face. *Lombardo*, 73 S.W.2d at 479.

But even if the Ordinance could survive a facial challenge—and it cannot—it is unconstitutional as applied here. Homeowners applied to remove a purely decorative metal grate from the front of their home. There is no dispute that the removal is safe and will not cause a nuisance for their neighbors. Likewise, there is no claim that the grate is of overwhelming historical significance. When the home was purchased, the City considered it a low historical priority. Ex. 4, p. 7. Nevertheless, the City denied Homeowners’ application to remove wrought iron decoration solely because removal would affect the appearance of the home. Ex. 3. This purely aesthetic restriction on private property is unconstitutional and should be enjoined.

**C. Even if the Ordinance served a legitimate government interest, it is unduly burdensome given the government interest at stake.**

Finally, even if there were a rational basis for the restriction of Homeowners’ property rights, the Texas Constitution also requires that the restriction not be unduly burdensome on the property owner given the real-world government interest at stake. *Patel*, 469 S.W.3d at 87. In other words, Texas law requires at least some consideration of proportionality as well as rationality. *Id.* at 90. If the “loss to the property owner affected, in proportion to the good accomplished [by the ordinance]” is unreasonable, then the ordinance must fail. *W. U. Place v. Ellis*, 134 S.W.2d 1038,

1040 (Tex. 1940); *Id.* at 1041 (“the seriousness of the restriction upon the private right is to be considered in balance with the expediency of the public interest.”)

Here, as discussed *supra*, the Ordinance severs virtually every strand of the bundle of sticks we call property with regard to the visible portions of Homeowners’ property. As a result, Homeowners are forced to keep a decoration on their property representing a man whose values they reject, solely to meet the aesthetic sense of the Commission. This injury to traditional fundamental property rights is grossly disproportionate when balanced against the alleged government interest asserted here which, at best, amounts to an alleged public interest in looking at a partially obstructed metal grate on someone else’s home that the City itself admits is not a high historic priority. This arbitrary interference with property rights is unconstitutional and should be enjoined.

### CONCLUSION

An “overriding respect for the sanctity of the home...has been embedded in our traditions since the origins of the Republic.” *Wilson v. Layne*, 526 U.S. 603, 610 (1999). The Texas Supreme Court put it well:

If the citizen is not to be left free to determine the architecture of his own house, and the lawful and uninjurious use to which he will put it; if he is not to be permitted to improve his land as he chooses without hurt to his neighbors; if by law he is to be allowed to do these things only as officials or the public shall decree, or as may for the time suit the taste of a part of the community, the law might as well deal candidly with him and assert that he holds his property altogether at public sufferance.

*Spann*, 235 S.W. at 516.

As shown above, the Ordinance at issue in this case invades the sanctity of the home by forcing Homeowners to keep an object on their home; not to protect the public from nuisance or harm, but solely to appease the unbridled aesthetic sense of an

unelected board of their neighbors. This unchecked invasion of the most fundamental of private property rights is unconstitutional.

Because the Homeowners have shown they are entitled to summary judgment on their claims and entitled to the requested relief, the Court should grant the Homeowners summary judgment on each claim and provide the relief requested in the Complaint.

Date: June 28, 2023,

Respectfully submitted,

/s/Chance Weldon

ROBERT HENNEKE

Texas Bar No. 24046058

rhenneke@texaspolicy.com

CHANCE WELDON

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TEXAS PUBLIC POLICY FOUNDATION

901 Congress Avenue

Austin, Texas 78701

Telephone: (512) 472-2700

Facsimile: (512) 472-2728

*Counsel for Plaintiffs Kristy Kay Money  
and Rolf Jacob Straubhaar*

**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing document was electronically filed on June 28, 2023, with the Clerk of the Court for the Western District of Texas using the CM/ECF system and served via certified mail on all parties as follows:

City of San Marcos  
c/o Jane Hughson, Mayor  
630 E. Hopkins  
San Marcos, Texas 78666

Amanda Hernandez,  
in her official capacity as  
Director of Planning & Development Services  
630 E. Hopkins  
San Marcos, Texas 78666

*/s/Chance Weldon*  
\_\_\_\_\_  
CHANCE WELDON

# **EXHIBIT 1**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION**

KRISTY KAY MONEY and ROLF  
JACOB STRAUBHAAR  
*Plaintiffs,*

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Civil Action No. 1:23-cv-00718-RP

v.

CITY OF SAN MARCOS, AND  
DIRECTOR OF PLANNING  
AND DEVELOPMENT SERVICES  
AMANDA HERNANDEZ in her official  
capacity,  
*Defendants.*

**DECLARATION OF KRISTY KAY MONEY**

I, Kristy Kay Money, hereby declare as follows:

1. I am over the age of 18, of sound mind, and capable of making this declaration.

The facts stated in this declaration are within my personal knowledge and are true and correct.

2. I am the co-owner of the home made the basis of this lawsuit with my husband Rolf Jacob Straubhaar.

3. We purchased the home in 2017.

4. We live in the home with our five children.

5. While the home is located in the Burleson Historic District in San Marcos, Texas, it is not a designated by the state of Texas as an historic home.

6. At the time we purchased the home, it had been vacant for multiple years and needed repairs.



7. We chose the home as an affordable way for us to have room for our children and a home close to our jobs.

8. In March of 2023, we decided that we wanted to remove a metal decoration from the façade of our home.

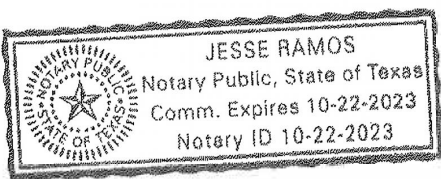
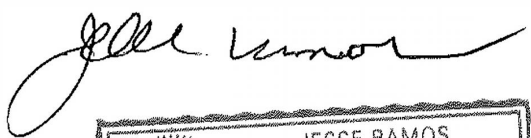
9. The decoration displays a large letter "Z" which is a reference to a previous owner—Frank Zimmerman.

10. Because Mr. Zimmerman was known to have promoted Ku Klux Klan films and activities at his theatre, we do not believe that the decoration bearing his initial is consistent with our family's values or aesthetic sensibilities and would like to remove it.

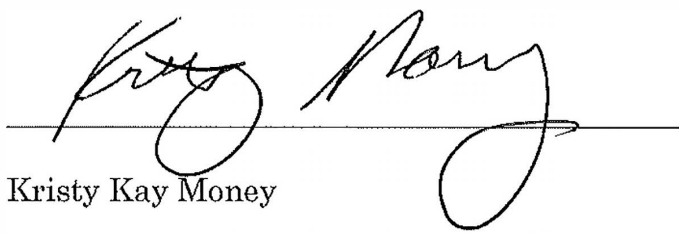
11. Unfortunately, we cannot remove the decoration without permission from the City, which has denied our application for removal.

12. But for the City's historic regulations, we would remove the decoration from our home.

13. Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct. Executed on this 28th day of June, 2023.



6-28-23



Kristy Kay Money

# **EXHIBIT 2**

# New Evidence Suggests Frank Zimmerman, San Marcos Mayor Commemorated with a Bronze Plaque on the Square, Hosted "Ku Klux Klan Day" at his Palace Theater

🕒 January 12, 2016 🗨️ 0 📖 1 minute read

Stunning Revelation of the Celebrated Civic Leader Lands on the Eve of the "Imposed Separateness" Series: Films & Panels Spotlighting the Legacy of Segregation in Texas

The engraved bronze plaque staked across from the Hays County Historic Courthouse at the entry to The Marc, honoring Frank W. Zimmerman, mayor from 1949-1951, states he "came to San Marcos in 1922, beginning a 47-year career in the theater industry with the purchase of the Grand Opera House and the original Palace Theater."

A Palace Theater advertisement in the San Marcos Record dated March 28, 1924 – uncovered by Cinema Club members last week in the public library's microfiche collection – promotes "KU KLUX KLAN DAY," boasting "hundreds of scenes of Klan activities – in connection with big regular picture program." (See attached photos.)

An article titled "Klan Picture Coming," in the same issue, reads:

A treat is in store for every person within 20 miles of San Marcos. The Palace Theatre has been fortunate in booking the two-reel motion picture showing the Ku Klux Klan activities at the recent Dallas fair. It will be shown in connection with the regular admission price of 10, 20 and 30 cents, next Wednesday and Thursday.

In July 1924, a few months after Zimmerman's theater hosted Ku Klux Klan Day, roughly 20,000 Klansmen descended upon San Marcos – an enormous statewide gathering documented inside the Calaboose African American History Museum, a co-sponsor of the "Imposed Separateness" film series.

The series kicks off Monday at the San Marcos Public Library with The Stand Ins, a new documentary on the Central Texas protest movement that sparked desegregation at scores of movie theaters throughout the South in the early 60s. Film starts at 7 PM, followed by a Q&A with the filmmakers.

On Tuesday, Centro Cultural Hispano de San Marcos features Giant, the 1956 Hollywood blockbuster that denounced injustices against Texans of Mexican heritage, at 5:30 PM.

On Thursday, at 6:30 PM, the San Marcos Unitarian Universalist Fellowship hosts a special sneak preview, ahead of its spring premiere, of Insecurus, exposing a new trend toward the elimination of in-person visitation in Texas county jails, replaced by a costly "video visitation" system. Award-winning criminal-justice advocates from Grassroots Leadership will speak afterward.

*David BELASCO'S*

GREAT STAGE PLAY

# "Tiger Rose"

A story of the mighty Northwoods and the Northwest Mounted Police. It's a great picture.

**Today-Tomorrow**  
REGULAR PRICES!

## KuKlux Klan Day

AT THE PALACE

1 1/4 Reels of motion pictures showing hundreds of scenes of Klan activities—in connection with big regular picture program.

### "The Go Getter"

Story by Peter B. Kyne  
T. Roy Barnes, Seena Owen  
Are Featured

COMEDY REVIEW

**Wed. - Thursday**  
NO ADVANCE IN PRICES



## **KLAN PICTURE COMING**

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A treat is in store for every person within 20 miles of San Marcos. The Palace Theatre has been fortunate in booking the two-reel motion picture showing the Ku Klux Klan activities at the recent Dallas fair. It will be shown in connection with the regular program at the regular admission price of 10, 20 and 30 cents, next Wednesday and Thursday.

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Imported Easter toys, rabbits, baskets, eggs. Best assortment ever brought to San Marcos. Hofheinz Confectionery.

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# **EXHIBIT 3**



**5/5/2023**

Kristy Money  
804 Burleson Street  
San Marcos, TX 78666

VIA: noreply@mygovernmentonline.org ([www.mypermitnow.org](http://www.mypermitnow.org))

RE: HPC-23-09 804 Burleson Street – Removal of Balcony

Dear Ms. Money:

Your request for a Certificate of Appropriateness to allow the removal of the wrought iron Juliette balcony on the second story of the front façade was **denied** by the Historic Preservation Commission on May 4, 2023. The action taken by the Commission was as follows:

**MOTION: A motion was proposed by Commissioner Dake to deny the removal of the wrought iron Juliette balcony on the second story of the front façade as the request was not consistent with Secretary of the Interior’s Standards 2, 3, 4, and 5. The motion was seconded by Commissioner Baker. The motion passed with a vote of 6-0.**

Per [Section 2.5.5.5](#) of the San Marcos Development Code “*an applicant or other person within the four-hundred foot (400’) personal notification area may appeal a final decision of the Historic Preservation Commission on an application for a certificate of appropriateness to the Zoning Board of Adjustments within ten (10) days of the Historic Preservation Commission’s action on the application. The Zoning Board of Adjustments shall decide the appeal in accordance with [Section 2.8.1.1](#).”*

Should you choose to appeal the decision of the Historic Preservation Commission, the Appeal Application Form, attached, is required to be submitted via My Government Online ([www.mygovernmentonline.org](http://www.mygovernmentonline.org)) no later than **May 14, 2023**.

Sincerely,

*Alison E. Brake*

Alison E. Brake, CNU-A  
Historic Preservation Officer  
512.393.8232  
[abrake@sanmarcostx.gov](mailto:abrake@sanmarcostx.gov)



# **EXHIBIT 4**



**Regular Meeting of the  
San Marcos Historic Preservation Commission  
Thursday, June 7, 2018  
5:45 P.M.  
Council Chambers, City Hall, 630 E. Hopkins**

**AGENDA**

*The Historic Preservation Commission may adjourn into executive session to consider any item on the agenda if a matter is raised that is appropriate for Executive Session discussion. An announcement will be made on the basis for the Executive Session discussion. The Historic Preservation Commission may also publicly discuss any item listed on this agenda for Executive Session.*

1. **Call to order.**
2. **Roll call.**
3. **30 Minute Citizen Comment Period.** The Commission welcomes citizen comments. Anyone wishing to speak must sign in with the secretary before the meeting and observe a three-minute time limit.

**Consent Agenda**

4. Consider approval of the minutes of the Regular Meeting of May 3, 2018.

**Public Hearings:**

5. **HPC-18-12** Hold a public hearing and consider a request for a Certificate of Appropriateness by Kristy Money to allow the installation of a wood and wire fence at 804 Burleson Street.
6. **HPC-18-13** Hold a public hearing and consider a request for a Certificate of Appropriateness by Root Cellar Enterprises to allow a change in material for an approved fence for a sidewalk café along the North LBJ Drive façade and a change in design and material for an approved metal canopy at the property located at 215 North LBJ Drive.
7. **HPC-18-14** Hold a public hearing and consider a request for a Certificate of Appropriateness by Susan Rodriguez to allow the demolition of the existing detached garage and construction of a new garage with accessory dwelling unit at the property located at 803 West Hopkins Street.

**Non-Consent Agenda:**

8. Presentation and discussion from the City's Purchasing Manager regarding the City's procurement policies and processes.
9. Presentation and discussion from Staff regarding the Council directive on establishing guidelines for the City's Boards and Commissions.

10. Discussion and possible direction to Staff regarding potential State historic marker applications for areas pertaining to music and cultural significance in San Marcos.
11. Discussion and possible direction to Staff regarding the historic resources survey.
12. **Questions from the Press and Public.** *This is an opportunity for the Press and Public to ask questions related to items on this agenda.*
13. **Adjourn.**

*Notice of Assistance at the Public Meetings:*

*The City of San Marcos does not discriminate on the basis of disability in the admission or access to its services, programs, or activities. Individuals who require auxiliary aids and services for this meeting should contact the City of San Marcos ADA Coordinator at 512-393-8000 (voice) or call Texas Relay Service (TRS) by dialing 7-1-1. Requests can also be faxed to 512-393-8074 or sent by e-mail to [ADArequest@sanmarcostx.gov](mailto:ADArequest@sanmarcostx.gov)*

**MINUTES OF THE REGULAR MEETING OF THE  
SAN MARCOS HISTORIC PRESERVATION COMMISSION  
May 3, 2018  
Council Chambers, City Hall, 630 East Hopkins Street**

**COMMISSIONERS PRESENT:**

Griffin Spell, Chair  
Thea Dake  
Diana Baker  
Bob Holder  
Alex Arlinghaus  
Ryan Patrick Perkins  
Greg Standard

**STAFF PRESENT:**

Alison Brake, Planner  
Abby Gillfillan, Planning Manager  
Sam Aguirre, Assistant City Attorney

Chair Spell called the meeting to order at 5:45 p.m.

**Citizen Comment Period:**

No one spoke.

**Consent Agenda:**

**Consider the minutes of the Regular Meeting of April 5, 2018.**

**COMMISSIONER ARLINGHAUS MOVED TO APPROVE THE MINUTES. COMMISSIONER HOLDER SECONDED. ROLL WAS CALLED AND THE MOTION PASSED 6-0-1 WITH COMMISSIONERS SPELL, BAKER, HOLDER, DAKE, ARLINGHAUS, AND STANDARD VOTING YES. COMMISSIONER PERKINS ABSTAINED.**

**Public Hearings:**

**HPC-18-10 Hold a public hearing and consider a request for a Certificate of Appropriateness by David Marrs to allow a new accessory structure at the rear of the property located at 1016 West San Antonio Street.**

Alison Brake gave a presentation outlining the request. She concluded that Staff found the request met the criteria of the Historic Design Guidelines as well as the Land Development Code and recommended approval of the request as submitted.

Chair Spell opened the public hearing. The applicant made themselves available for questions. There were no further questions and Chair Spell closed the public hearing.

**COMMISSIONER BAKER MOVED TO APPROVE THE REQUEST WITH THE CONDITION THAT THE ACCESSORY STRUCTURE BE LOCATED BEHIND THE EXISTING GREENERY. COMMISSIONER HOLDER SECONDED. ROLL WAS CALLED**

Historic Preservation Commission

May 3, 2018

Regular

**AND THE MOTION PASSED 7-0 WITH COMMISSIONERS SPELL, DAKE, BAKER, HOLDER, ARLINGHAUS, PERKINS, AND STANDARD VOTING YES.**

**HPC-18-11 Hold a public hearing and consider a request for a Certificate of Appropriateness by Matt Akins to allow various exterior improvements at 704 West Hopkins Street.**

Alison Brake gave a presentation outlining the request. She concluded that Staff found the request met the criteria of the Historic Design Guidelines as well as the Land Development Code and recommended approval of the request as submitted.

Chair Spell opened the public hearing. The applicant made themselves available for questions. There were no further questions and Chair Spell closed the public hearing.

**COMMISSIONER BAKER MOVED TO APPROVE THE REMOVAL OF THE EXISTING WINDOW UNITS AND THE INSTALLATION OF A NEW HVAC SYSTEM AS SUBMITTED AS IT MET THE CRITERIA OF THE HISTORIC DESIGN GUIDELINES AS WELL AS THE LAND DEVELOPMENT CODE. COMMISSIONER ARLINGHAUS SECONDED. ROLL WAS CALLED AND THE MOTION PASSED 7-0 WITH SPELL, DAKE, BAKER, HOLDER, ARLINGHAUS, PERKINS, AND STANDARD VOTING YES.**

**COMMISSIONER BAKER MOVED TO APPROVE THE EXTENSION OF THE FRONT YARD FENCE WITH THE INSTALLATION OF THE ARBOR ASD SUBMITTED AS IT MET THE CRITERIA OF THE HISTORIC DESIGN GUIDELINES AS WELL AS THE LAND DEVELOPMENT CODE. COMMISSIONER PERKINS SECONDED. ROLL WAS CALLED AND THE MOTION PASSED 7-0 WITH SPELL, DAKE, BAKER, HOLDER, ARLINGHAUS, PERKINS, AND STANDARD VOTING YES.**

**COMMISSIONER BAKER MOVED TO TABLE THE REQUEST FOR THE INSTALLATION OF THE BICYCLE RACKS TO THE JUNE 7, 2018 REGULAR MEETING. COMMISSIONER PERKINS SECONDED. ROLL WAS CALLED AND THE MOTION PASSED 7-0 WITH SPELL, DAKE, BAKER, HOLDER, ARLINGHAUS, PERKINS, AND STANDARD VOTING YES.**

**Non-Consent Agenda:**

**Discussion and possible direction to Staff regarding the historic resources survey.**

Discussion was held between the Commission and Staff regarding the procurement process. Staff explained that they would check with the Finance Department to see if City's Purchasing Manager would be willing to present the procurement process to the Commission at the June meeting.

**Discussion and possible direction to Staff regarding State Historic Markers.**

Staff presented the Commission with the requirements for applying for historic markers through the Texas Historical Commission; both the Recorded Texas Landmark Program as well as the Undertold Markers Program. The Commission discussed utilizing the San Marcos Heritage Association in

Historic Preservation Commission

May 3, 2018

Regular

assisting with applying for a State markers. Commissioner Holder stated it would be good to highlight the various musical influences here in San Marcos. Commissioner Dake stated it would be a great project for a student seeking a Master's Degree. Commissioner Holder asked if the Commission could recommend areas for markers. Discussion ensued. The Commission directed Staff to place an item on the agenda to discuss potential marker applications for areas pertaining to music and culture in San Marcos. Staff highly encouraged speaking to the property owner when conducting research if the potential landmark was on private property.

**Questions from the press and public.**

There were no questions from the press and public.

**THERE BEING NO FURTHER BUSINESS, CHAIR SPELL DECLARED THE MEETING  
ADJOURNED AT 7:43 P.M.**

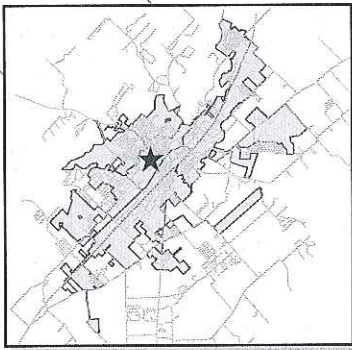
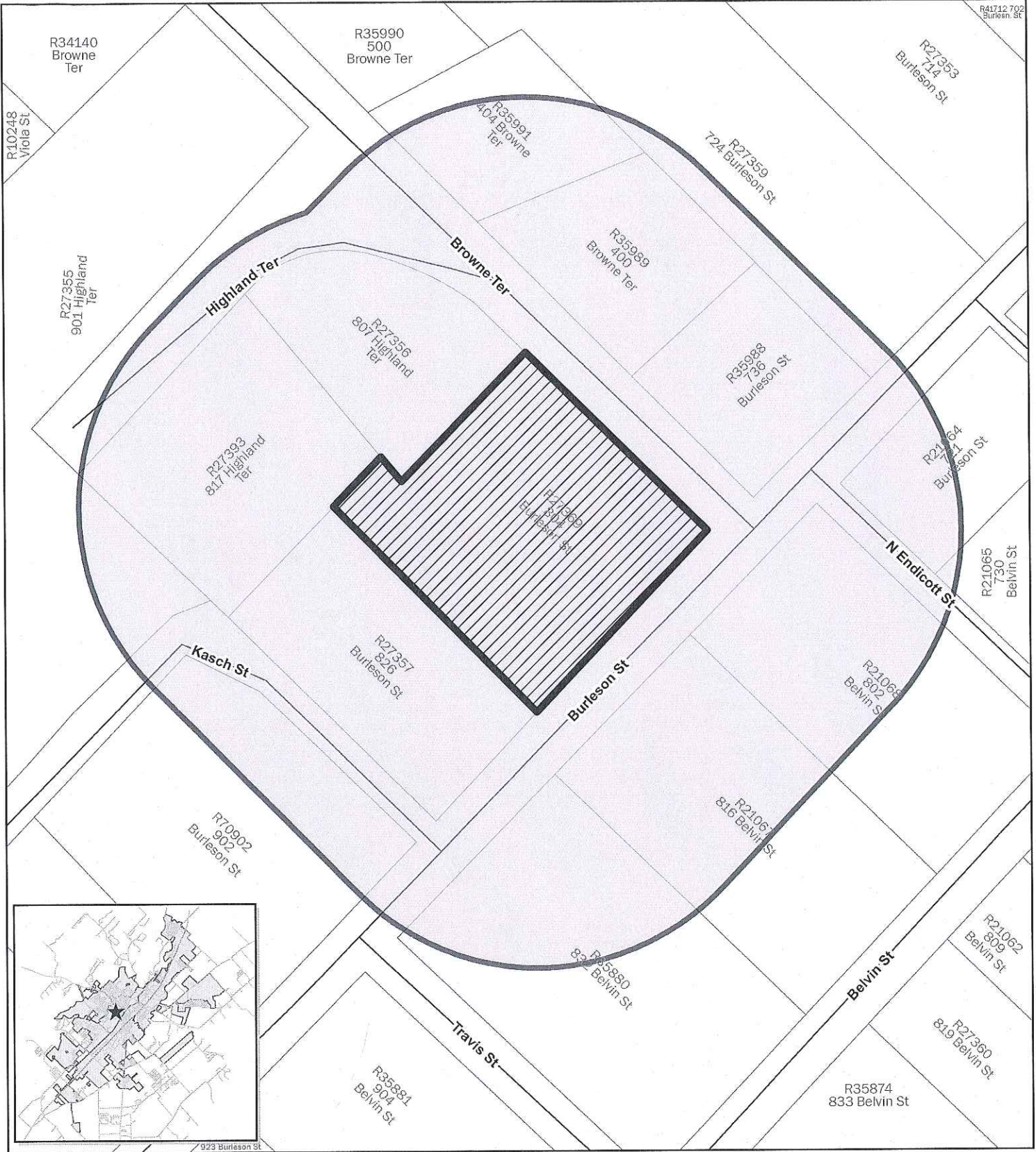
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Griffin Spell, Chair

**ATTEST:**



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Alison Brake, Planner



**HPC-18-12**  
**804 Burleson St.**  
**Fence**  
**Map Date: 5/21/2018**

 Site Location  
 200ft Buffer


  

  
 This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of property boundaries.



**Staff Report**  
**Historic Preservation Commission**  
**HPC-18-12**

Prepared by: Alison Brake, CNU-A, Planner  
 Date of Meeting: June 7, 2018

**Applicant Information:**

**Applicant:** Kristy Money  
 804 Burleson Street  
 San Marcos, TX 78666

**Property Owner:** Same

**Public Hearing Notice:**

**Mailed:** May 25, 2018  
**Response:** None as of report date.

**Subject Property:**

**Location:** 804 Burleson Street  
**Historic District:** Burleson  
**Description:** Neotraditional – built c. 1932 (per Hays Central Appraisal District); built c. 1960 per *San Marcos Heritage Neighborhood Historical Survey* (1997)  
**Priority Level:** Low (per 1997 survey)

**Applicant Request:**

To allow the installation of a wood and wire fence around the property along with a decorative entrance gate.

**Staff Recommendation:**

- Approval* - appears to meet criteria for approval
- Approval with conditions* – see comments below
- Denial* - does not appear to meet criteria for approval
- Commission needs to address policy issues regarding this case.

**Staff Comments:**

The subject property is located at the intersection of Burleson Street and Browne Terrace ("EXHIBIT A"). The property is listed in the *San Marcos Heritage Neighborhood Historic Resources Survey* as a rock, Neotraditional style home built around 1960 ("EXHIBIT B"); it was given a Low Priority. However, Hays Central Appraisal District states that the home was built circa 1932. Either way the home has reached an age of historic significance (50+ years old). The description of the proposed work submitted with the application states that a four (4) foot fence constructed of wood and wire will be installed around the property; an example of the style of fence was also included ("EXHIBIT C"). The fence will enclose the property as shown in the site plan and allow the applicant's children to play safely in the front yard ("EXHIBIT D"). The description states that the new fence will mirror the original fence, some of which still stands on the property ("EXHIBIT E"). The original fence dates from the early to mid-1930s. The applicant included photographs dating from the 1930s and 1940s with the fence in the background ("EXHIBIT F"). In addition to the fence, the applicant is proposing to install two stone pillars and a Mediterranean-style wrought iron gate at the end of the walkway leading from Burleson Street to the front door. The applicant included examples of the gate as well as the stone pillars with the application and they are included in the packet ("EXHIBIT G").

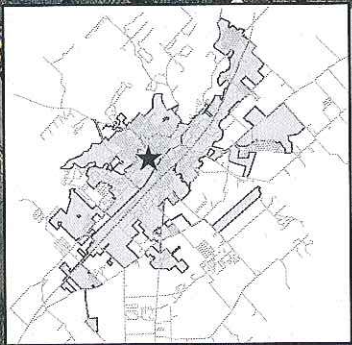
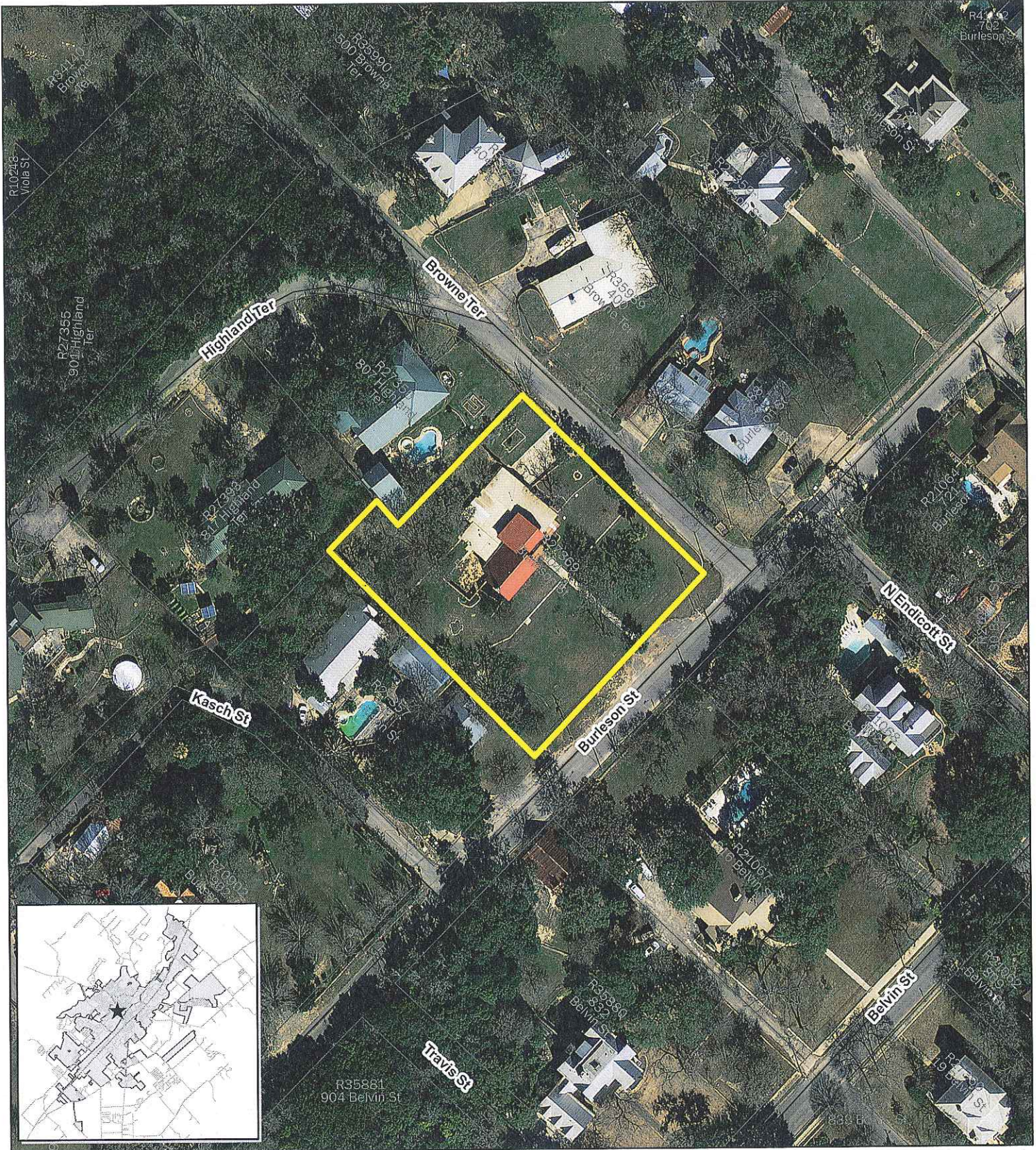


The Historic Design Guidelines discuss the rhythm of the street which adds to the visual continuity for a neighborhood. In addition to the rhythm of the neighborhood, the Guidelines state that the front of each building, including the walls, porch alignment, and fences, aide in defining the wall of continuity of a neighborhood. Staff finds the request consistent with the Historic Design Guidelines recommendation to locate the fence at or behind the setback line. The house will not be obscured by the fence and still be visible from both Browne Terrace and Burleson Street. Staff finds the wall of continuity along both Browne Terrace and Burleson Street is not disturbed and the request consistent with Section 4.5.21(I)(1)(g). The design and material of the fence appears to be compatible with the style of the existing original fence.

Staff finds that the requests meet the regulations of the San Marcos Development Code and are consistent with the Historic Design Guidelines. Therefore, staff concludes that the request will have no negative effect on the historical, architectural or cultural character of the historic district and recommends **approval as submitted**.

#### **EXHIBITS**

- A. Aerial Map
- B. Inventory Sheet from *San Marcos Heritage Neighborhood Historic Resources Survey*
- C. Description of Proposed Work and Fence Style Example
- D. Site Plan
- E. Photographs of Existing Original Fence
- F. Photographs from 1930s and 1940s
- G. Gate and Stone Pillars Example
- H. San Marcos Development Code Sections 2.5.5.4 and 4.5.2.1(I)



**HPC-18-12**  
**804 Burleson St.**  
**Fence**  
**Map Date: 5/21/2018**

 Site Location



0 75 150 300 Feet

This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of property boundaries.

EXHIBIT B

KEYSTONE ARCHITECTS  
August 26, 1997

San Marcos Heritage Neighborhood Historical Survey  
Survey Inventory

Sorted by Address

Priority	Address	Address	Address	Identification	Subtype	Stylistic Influence	Exterior Materials	Date	Photographic Reference	Slide
H	M	L	Street Number	Street Name	Property Type				Roll/Frame	
*			618	BURLESON	RESIDENTIAL	MODIFIED L-PLAN	WOOD	C. 1900	4:12	S2:5
			618	BURLESON					4:13	
			618	BURLESON					4:14	
*			626	BURLESON	RESIDENTIAL	CENTER PASSAGE PLAN	WOOD	c. 1910	4:15	S2:6
			626	BURLESON					4:16	
*			702	BURLESON	RESIDENTIAL	MODIFIED L-PLAN	WOOD	1888	2:10	S1:9
			702	BURLESON					2:12	23
			702	BURLESON					2:11	23
	X		713	BURLESON	RESIDENTIAL	BUNGALOW	WOOD	c. 1920	5:15	90
			713	BURLESON						
*			714	BURLESON	RESIDENTIAL	CENTER PASSAGE PLAN	WOOD	1905	2:04	S1:8
			714	BURLESON					2:05	
			714	BURLESON			RED-WOOD		2:08	22
			714	BURLESON					2:09	
			714	BURLESON					2:06	22
			714	BURLESON					2:07	22
X			719	BURLESON	RESIDENTIAL	BUNGALOW	WOOD	c. 1920	5:12	89
			719	BURLESON					5:13	
			719	BURLESON					5:14	89
X			721	BURLESON	RESIDENTIAL	BUNGALOW	WOOD/STONE	c. 1920	5:10	88
			721	BURLESON					5:11	
*			724	BURLESON	RESIDENTIAL	ASYMMETRIC PLAN	WOOD	1890	1:33	S1:7
			724	BURLESON					1:34	
			724	BURLESON					1:35	
			724	BURLESON					1:36	21
			724	BURLESON					1:37	21
			724	BURLESON					1:38	
			724	BURLESON					2:01	21
			724	BURLESON					2:02	
			724	BURLESON					2:03	
X			736	BURLESON	RESIDENTIAL	ASYMMETRIC PLAN	WOOD/STONE	c. 1980	1:32	20
X			804	BURLESON	RESIDENTIAL	MULTI-FAMILY	POCK	c. 1960	1:31	19
X			828	BURLESON	RESIDENTIAL	BUNGALOW	SHINGLE	p. 1950	1:30	18
*			902	BURLESON	RESIDENTIAL	L-PLAN	WOOD	1895	1:24	S1:5
			902	BURLESON					1:25	
			902	BURLESON					1:26	

#### Description of Proposed Work:

We are proposing an attractive and tasteful 4 ft tall wood and wire fence to enclose our property. It will mirror the original 1932-35 fence that originally surrounded the property, some of which still stands in the northeast corner of the property. A Mediterranean-style black iron gate and two stone pillars will bookend the long walkway to our door on Burleson Street.

We wish we could save the costs and hassle of a fence, but need to on the recommendation of our children's pediatrician and multiple pest control companies. Fleas are hopping onto our children from the front and back yard where they play, causing painful bites and are a health risk, even though we do not have any pets. Neighborhood cats and dogs at all hours (including the middle of the night) lounge on our grounds and create flea colonies all around our property. Professionals have tried to control the problem with spraying insecticide, but the property is extensive and because animals bring them in from all around, "new arrivals" are impossible to control and the cycle begins all over. We have been advised from medical and pest control professionals that a fence is the only way to fix this yard flea problem. Additionally, our neighbor to the west whose 3 rental properties border our yard has a large pool that is not completely fenced in, so we worry for our young children's safety (five ages 6 and under).

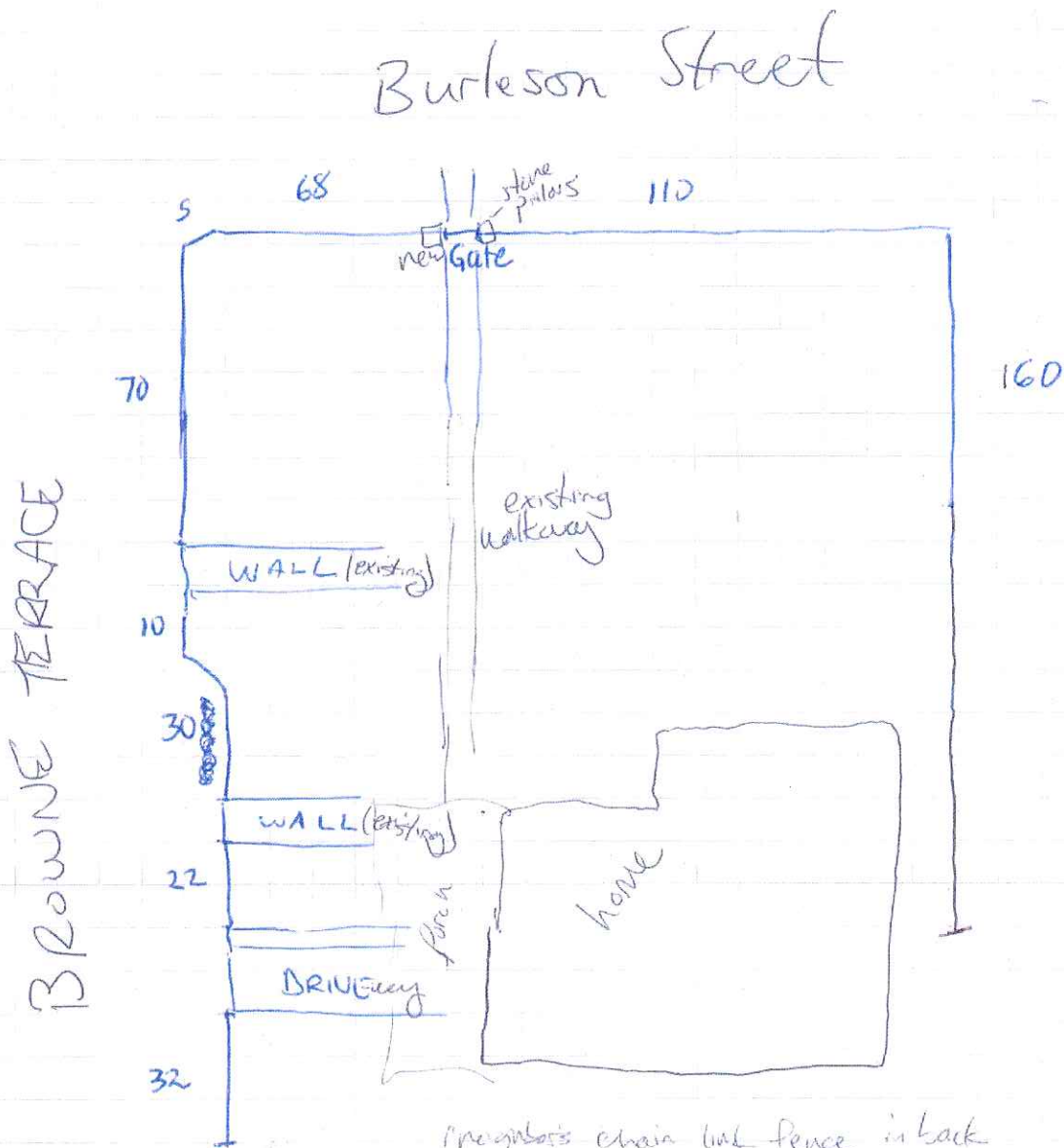
The wood will be natural color, pine posts 6 ft in length (2 ft will be buried) from McCoy's building supply. Each post will be placed 10 ft apart. The wire will be silver color, steel material with galvanized coating to prevent rust--top of the line field fencing. It will be compatible with existing wood and wire fence that has been there since at least the 30s: Please see attached photos from 1937 (woman with 2 boys on Burleson St, Frank and Roger Zimmerman born 1933 and 35) and 1949 (Zimmerman family photo with Browne Terrace in backdrop). A close-up of the nails on the original posts shows how old the fence was as well, attached. Historically on Burleson Street, the large +/- 1 acre lots were subdivided from larger farm lots and many of the large homes/properties kept fencing elements from the original field fences that bordered their properties, thus preserving both farm and neighborhood feel (1997 Architectural Survey, San Marcos). We are trying to respect this historicity.

The fence will run along the South, east, and west side of the property (North side already has neighbor's chain link fence). On the South (Burleson) st elevation, it will stop 8 feet from the property line, following instead a 1 ft x 1ft concrete landscaping feature that serves as an early border for the property. The gate will be made of iron with filigree accents similar to iron gate to our courtyard also visible from Burleson St, and the 2 stone pillars will be made of natural limestone of similar color to the home itself.



"EXHIBIT D"

# Fence Map & Dimensions



(neighbor's chain link fence in back)  
property = .94 acres

EXHIBIT E









MAR. 1949 - Stuart S.A. TEX

"EXHIBIT G"





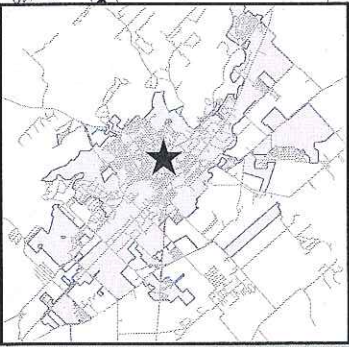
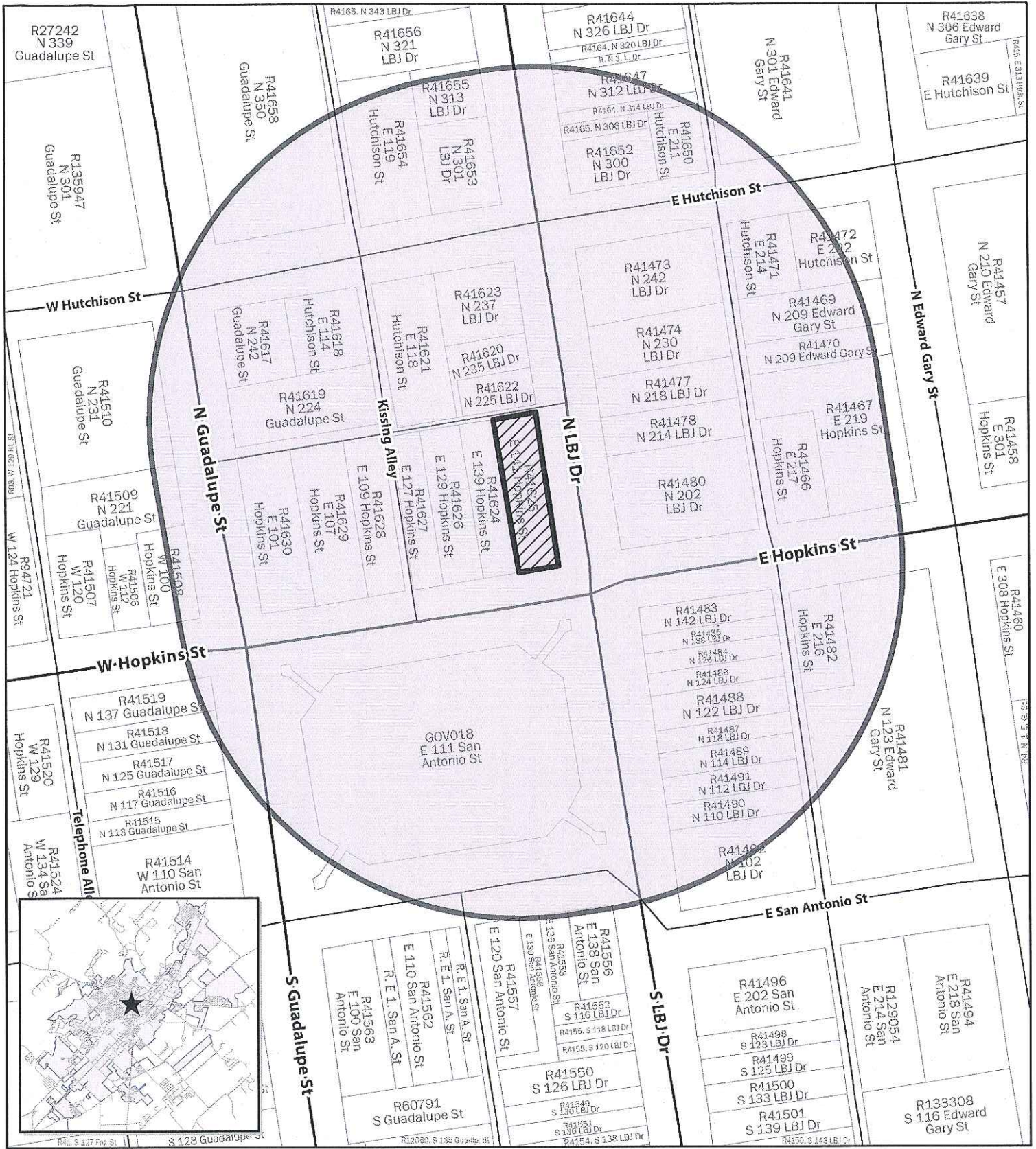
**Section 2.5.5.4 Criteria for Approval**

The following criteria shall be used to determine whether the application for a certificate of appropriateness shall be approved, conditionally approved or denied:



- (1) Consideration of the effect of the activity on historical, architectural or cultural character of the Historic District or Historic Landmark;
- (2) For Historic Districts, compliance with the Historic District regulations;
- (3) Whether the property owner would suffer extreme hardship, not including loss of profit, unless the certificate of appropriateness is issued;
- (4) The construction and repair standards and guidelines cited in Section 4.5.2.1

**Section 4.5.2.1 Historic Districts****I. Construction and Repair Standards.**

- (1) New construction and existing buildings and structures and appurtenances thereof within local Historic Districts that are moved, reconstructed, materially altered or repaired shall be visually compatible with other buildings to which they are visually related generally in terms of the following factors; provided, however, these guidelines shall apply only to those exterior portions of buildings and sites visible from adjacent public streets:
  - a. **Height.** The height of a proposed building shall be visually compatible with adjacent buildings.
  - b. **Proportion of building's front facade.** The relationship of the width of a building to the height of the front elevation shall be visually compatible to the other buildings to which it is visually related.
  - c. **Proportion of openings within the facility.** The relationship of the width of the windows in a building shall be visually compatible with the other buildings to which it is visually related.
  - d. **Rhythm of solids to voids in front Facades.** The relationship of solids to voids in the front facade of a building shall be visually compatible with the other buildings to which it is visually related.
  - e. **Rhythm of spacing of Buildings on Streets.** The relationship of a building to the open space between it and adjoining buildings shall be visually compatible to the other buildings to which it is visually related.
  - f. **Rhythm of entrance and/or porch projection.** The relationship of entrances and porch projections to sidewalks of a building shall be visually compatible to the other buildings to which it is visually related.
  - g. **Relationship of materials, texture and color.** The relationship of the materials, and texture of the exterior of a building including its windows and doors, shall be visually compatible with the predominant materials used in the other buildings to which it is visually related.
  - h. **Roof shapes.** The roof shape of a building shall be visually compatible with the other buildings to which it is visually related.
  - i. **Walls of continuity.** Appurtenances of a building including walls, fences, and building facades shall, if necessary, form cohesive walls of enclosure along a street, to ensure visual compatibility of the building to the other buildings to which it is visually related.
  - j. **Scale of a building.** The size of a building, the mass of a building in relation to open spaces, the windows, door openings, porches and balconies shall be visually compatible with the other buildings to which it is visually related.
- (2) The Historic Preservation Commission may use as general guidelines, in addition to the specific guidelines contained this section, the Historic Design Guidelines located in Appendix C of the San Marcos Design Manual and the current Standards for Historic Preservation Projects issued by the United States Secretary of the Interior.



**HPC-18-13**  
**215 N LBJ Dr.**  
**Streetscape Improvements**  
**Map Date: 5/25/2018**

-  Subject Property
-  400' Notification Buffer



This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of property boundaries.



**Staff Report**  
**Historic Preservation Commission**  
**HPC-18-13**

Prepared by: Alison Brake, CNU-A, Planner  
 Date of Meeting: June 7, 2018

**Applicant Information:**

**Applicant:** Wesley Oldfather  
 Root Cellar Enterprises  
 215 North LBJ Drive  
 San Marcos, TX 78666

**Property Owner/Manager:** Brian Scofield  
 141 East Hopkins Street  
 San Marcos, TX 78666

**Public Hearing Notice:**

**Mailed:** May 25, 2018  
**Response:** None as of report date.

**Subject Property:**

**Location:** 215 North LBJ Drive  
**Historic District:** Downtown  
**Description:** The Donaldson Building  
**Date Constructed:** c. 1885

**Applicant Request:**

To allow a change in material for an approved fence for a sidewalk café along the North LBJ Drive façade and a change in design and material to an approved metal canopy.

**Staff Recommendation:**

- Approval* - appears to meet criteria for approval
- Approval with conditions* – see comments below
- Denial* - does not appear to meet criteria for approval
- Alternative*- See below

**Staff Comments:**

The subject property is located on the northwest corner of the Square across from the A.B. Rodgers Building ("EXHIBIT A"). In May of 2016, the Commission approved a Certificate of Appropriateness to allow the installation of a metal fence for a sidewalk café along the North LBJ Drive façade. The following October, the Commission approved a change in material and design for the fence and approved the replacement of the fabric awning that runs the length of the patio with a metal canopy.

The applicant applied for and received a grant from the City's Business Improvement & Growth (BIG) Grant Program in 2017. As the project was nearing completion, it was noted by City Staff the fence and the canopy that was installed was inconsistent with what was approved in 2016 by the Commission as well as with the approved permit. Staff spoke with the applicant on the process for changes in design and materials and the applicant submitted the current request. The renderings submitted with the application show the new fence was constructed using metal slats and posts rather than wooden slats that wrap around wooden posts ("EXHIBIT B"). The light fixtures have also been changed from what was approved. Gooseneck lighting, common in the Downtown Historic District, was installed rather than the two decorative lamps installed on either

end of the patio. The new canopy was installed in the approved location underneath the second floor windows and at the same height as the awning that is located over the entrance. The approved metal tension rods were also installed. Rather than metal, however, the canopy has been constructed using a metal frame with cedar shingles as shown in "EXHIBIT B".

The Historic Design Guidelines recommend maintaining rhythm and visual continuity along the façade wall. Staff finds installing the fence does not break the rhythm or the visual continuity along either façade. The fence is also opaque which allows the windows of the building, a key architectural feature, from being obscured. The Secretary of the Interior's Standards state that "New additions... shall be undertaken in such a manner that, if removed in the future, the essential form and integrity of the historic property and its environment would be unimpaired." Staff finds the request consistent as the fence will be bolted to the sidewalk, not the façade, and can easily be removed without affecting the overall appearance. Surety was posted for the café and any damages to the sidewalk as a result of bolting will need to be remedied and that the sidewalk be brought back to original conditions.

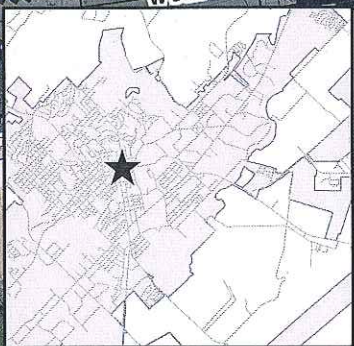
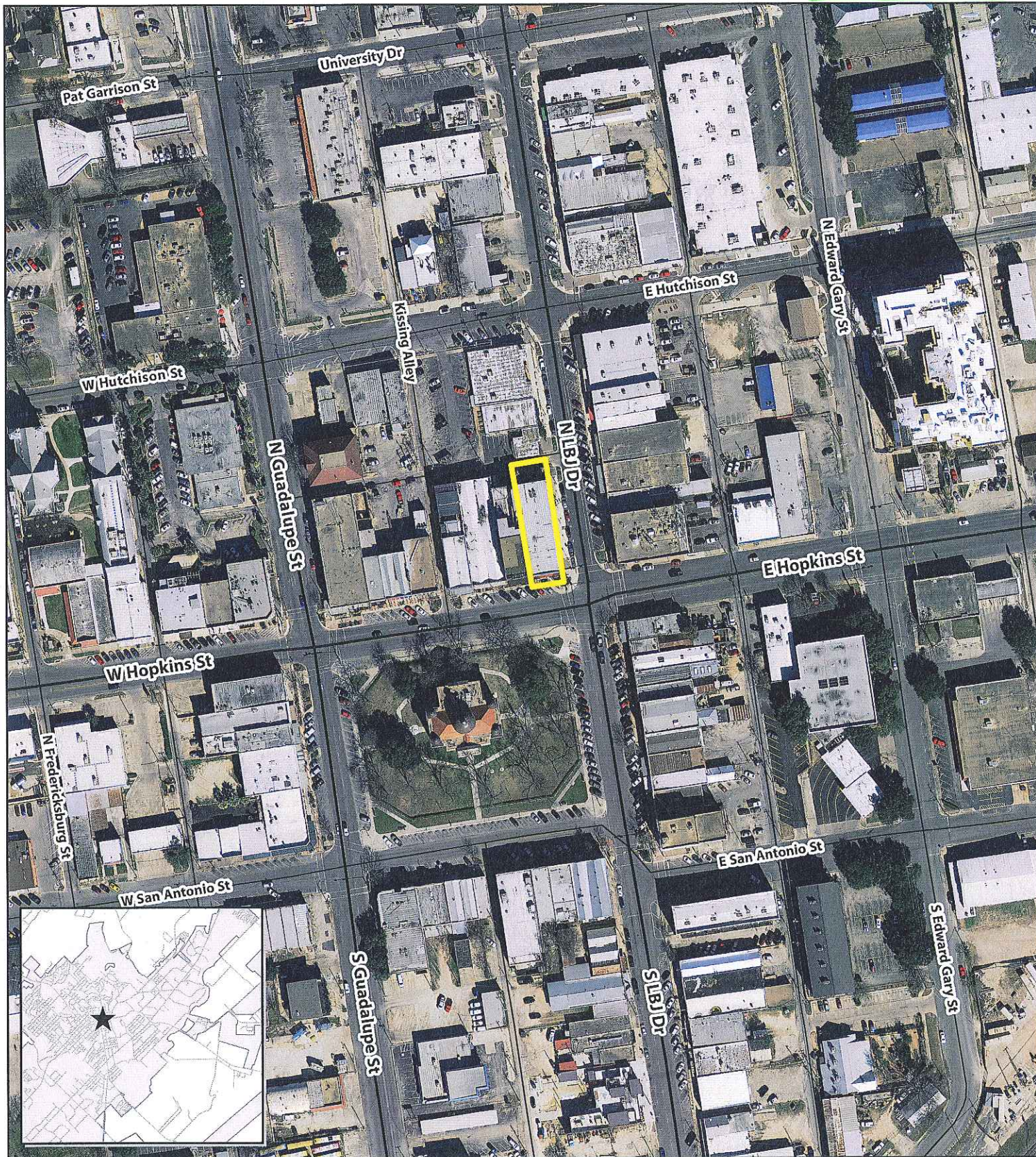
The Historic Design Guidelines state that canopies are common on commercial buildings in the Downtown Historic District as they create a common, human scale. They state that these canopies are often hung from buildings with rods. Staff finds the request consistent with the Historic Design Guidelines. The Guidelines go on to state that canopies should not conceal character defining features. Staff finds the request consistent with this recommendation as the windows are still visible above and below the canopy. Staff also finds the request consistent with the Secretary of the Interior's Standards as stated earlier. The canopy appears to be able to be removed without damaging the historical integrity of the property. Both wood and metal are frequently used materials in the Downtown Historic District.

Staff finds that the request is consistent with the Design Guidelines and meets the regulations of the San Marcos Development Code. Therefore, staff concludes that the request will have no negative effect on the historical, architectural or cultural character of the historic district and recommends **approval as submitted**.

#### **EXHIBITS**

- A. Aerial
- B. Site Plans and Renderings
- C. San Marcos Development Code Sections 2.5.5.4 and 4.5.2.1(l)

EXHIBIT A



**HPC-18-13**  
**215 N LBJ Dr.**  
**Streetscape Improvements**  
**Map Date: 5/25/2018**



0 137.5 275 550 Feet

 Subject Property

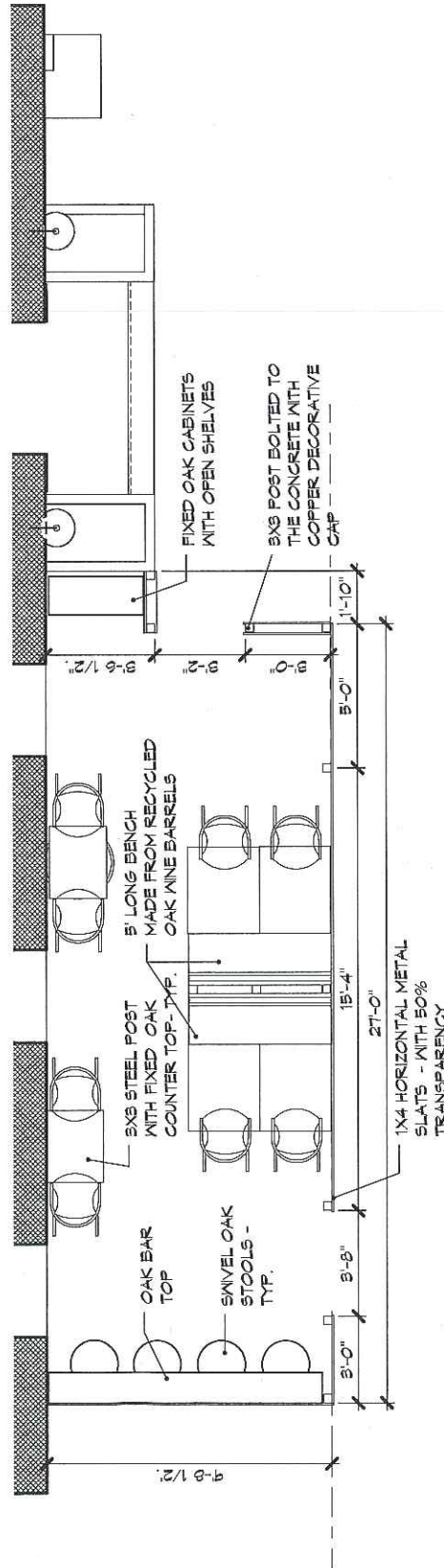
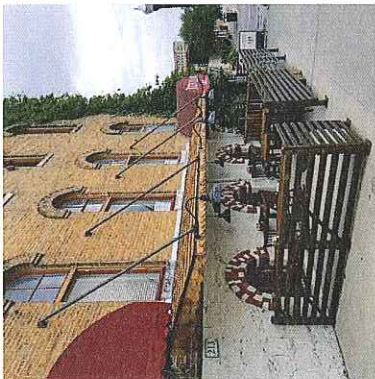
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EXHIBIT B

# Root Cellar Cafe Streetscape Improvements

215 N LBJ Dr,  
San Marcos, Texas 78666



## FINISHES

10 STEEL FRAMING FINISH: BRONZE FX & BLACK FX CHEMICAL STAIN WITH A PROTECTIVE AUTOMOTIVE URETHANE CLEAR COAT

20 WOOD FRAMING FINISH: OAK WOOD, TORCHED FINISH WITH A URETHANE CLEAR PROTECTIVE COAT.

## SITE PLAN / FLOOR PLAN

SCALE: 1/4" = 1'-0"





EXISTING  
AWNING  
AND SIGNAGE  
TO REMAIN  
EXISTING AWNING  
TO BE  
REPLACED

EXISTING STEEL  
COLUMNS  
HOLDING UP  
AWNINGS TO BE  
REMOVED

**PREVIOUS EXTERIOR IMAGE**

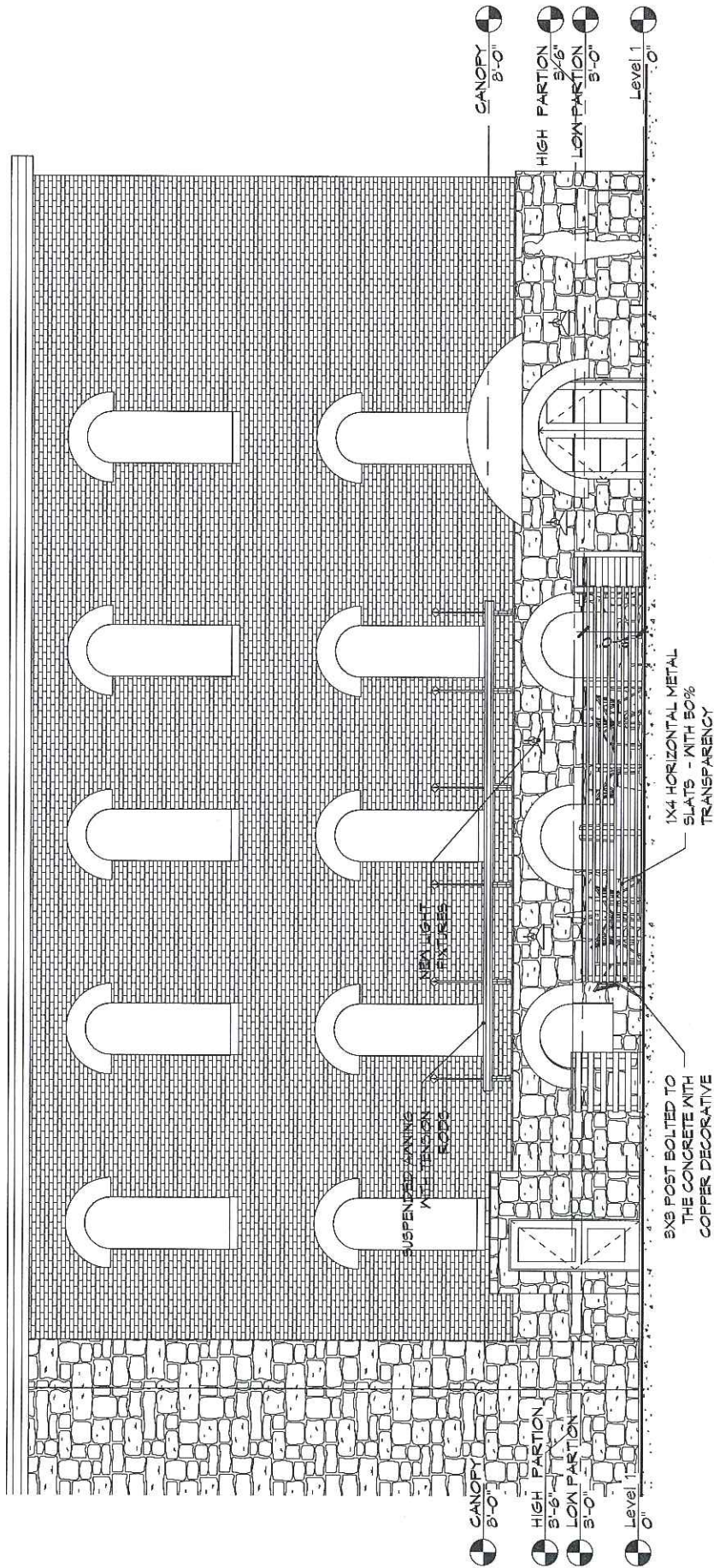
**Root Cellar Cafe  
Streetscape Improvements**



### FINISHES

1.0 STEEL FRAMING FINISH: BRONZE FX & BLACK FX CHEMICAL STAIN WITH A PROTECTIVE AUTOMOTIVE URETHANE CLEAR COAT.

2.0 WOOD FRAMING FINISH: OAK WOOD, TORCHED FINISH WITH A URETHANE CLEAR PROTECTIVE COAT.



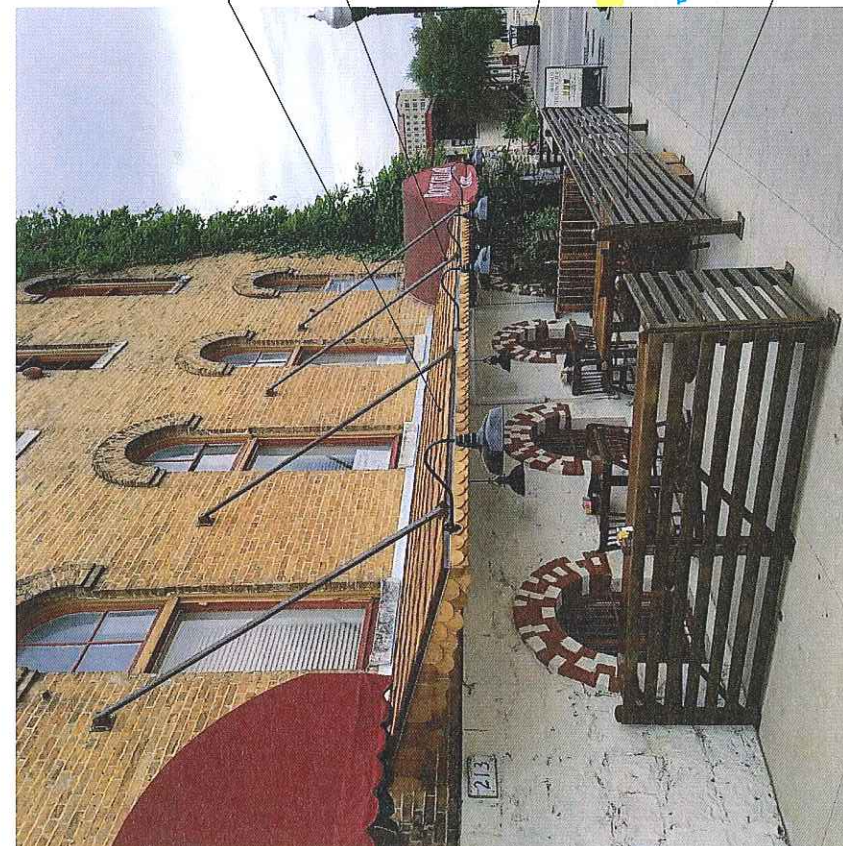
### LBJ STREET ELEVATION

Root Cellar Cafe  
Streetscape Improvements

**FINISHES**

1.0 STEEL FRAMING FINISH: BRONZE FX & BLACK FX CHEMICAL STAIN WITH A PROTECTIVE AUTOMOTIVE URETHANE CLEAR COAT.

2.0 WOOD FRAMING FINISH: OAK WOOD, TORCHED FINISH WITH A URETHANE CLEAR PROTECTIVE COAT.



EXISTING AWNING AND SIGNAGE

CEDAR SINGLES  
\*metal, flat

SUSPENDED AWNING WITH TENSION RODS

NEW LIGHT FIXTURES

1X4 HORIZONTAL METAL SLATS - WITH 50% TRANSPARENCY

\*wood slats

3X3 POST BOLTED TO THE CONCRETE WITH COPPER DECORATIVE CAP

\* = previous approved material & design (Approved in October 2016)



**Root Cellar Cafe Streetscape Improvements**

**FINISHES**

1.0 STEEL FRAMING FINISH: BRONZE FX & BLACK FX CHEMICAL STAIN WITH A PROTECTIVE AUTOMOTIVE URETHANE CLEAR COAT.

2.0 WOOD FRAMING FINISH: OAK WOOD , TORCHED FINISH WITH A URETHANE CLEAR PROTECTIVE COAT .



SUSPENDED  
AWNING  
WITH TENSION  
RODS

NEW LIGHT  
FIXTURES

OAK BAR  
TOP

SNVEL OAK  
STOOLS -  
TYP.

X4 HORIZONTAL METAL  
SLATS - WITH 80%  
TRANSPARENCY

8X8 POST  
BOLTED TO THE  
CONCRETE WITH  
COPPER  
DECORATIVE CAP



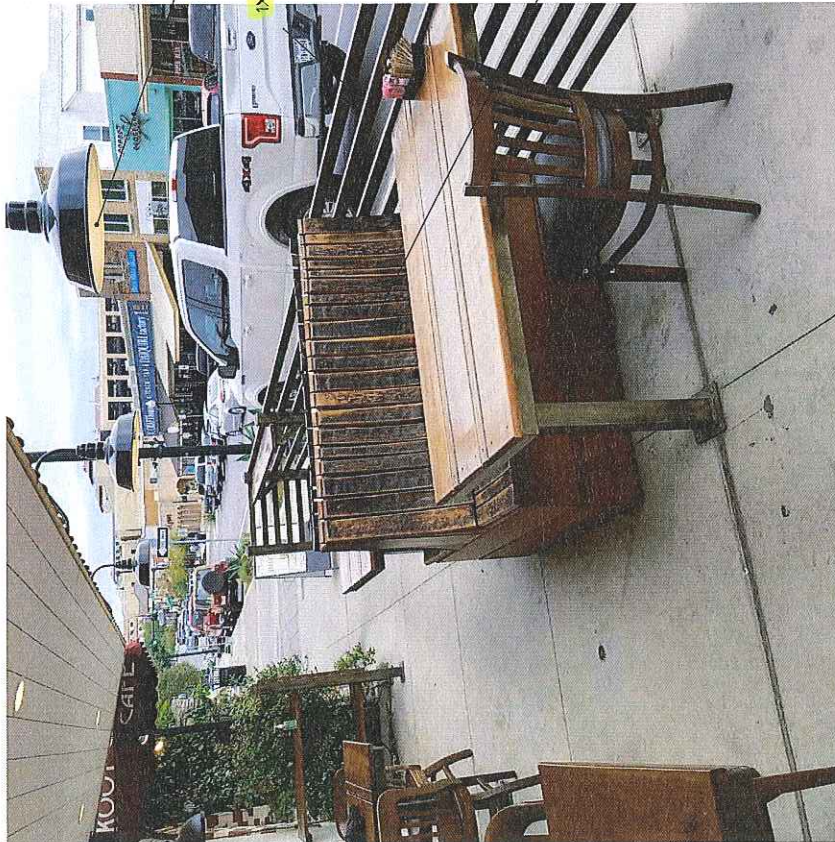
**Root Cellar Cafe  
Streetscape Improvements**



### FINISHES

1.0 STEEL FRAMING FINISH: BRONZE FX & BLACK FX CHEMICAL STAIN WITH A PROTECTIVE AUTOMOTIVE URETHANE CLEAR COAT.

2.0 WOOD FRAMING FINISH: OAK WOOD, TORCHED FINISH WITH A URETHANE CLEAR PROTECTIVE COAT.



NEW LIGHT FIXTURES

1X4 HORIZONTAL METAL SLATS - WITH 80% TRANSPARENCY

5' LONG BENCH MADE FROM RECYCLED OAK WINE BARRELS

6X6 POST BOLTED TO THE CONCRETE WITH COPPER DECORATIVE CAP



## Root Cellar Cafe Streetscape Improvements

### FINISHES

1.0 STEEL FRAMING FINISH: BRONZE FX 4 BLACK FX CHEMICAL STAIN WITH A PROTECTIVE AUTOMOTIVE URETHANE CLEAR COAT.

2.0 WOOD FRAMING FINISH: OAK WOOD, TORCHED FINISH WITH A URETHANE CLEAR PROTECTIVE COAT.



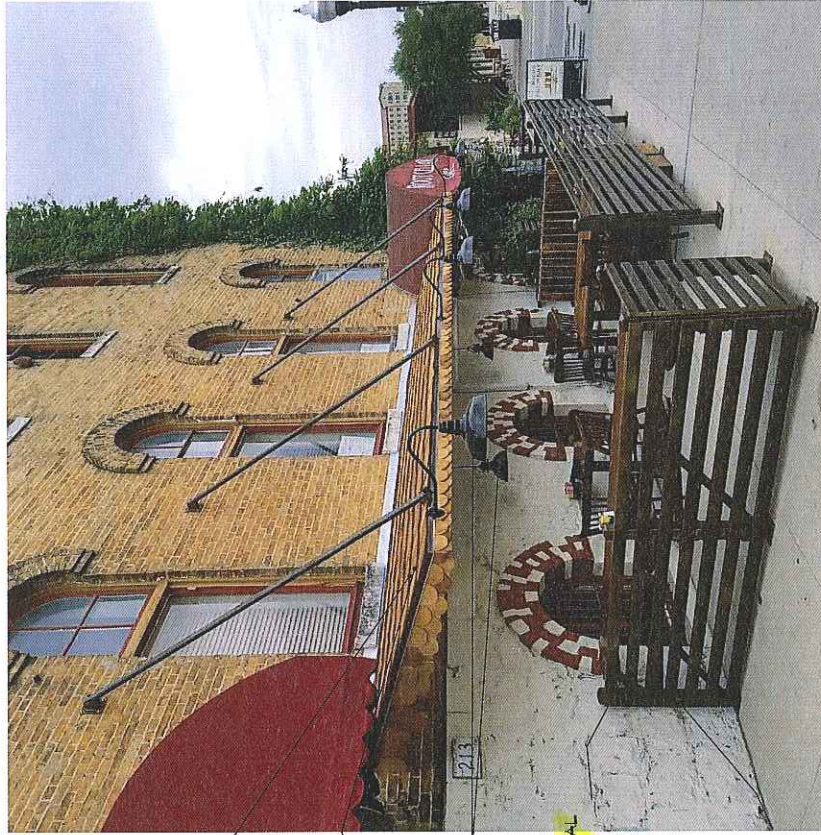
CEDAR SINGLES

SUSPENDED AWNING WITH TENSION RODS

NEW LIGHT FIXTURES

4X4 HORIZONTAL METAL SLATS - WITH 80% TRANSPARENCY

6X6 POST BOLTED TO THE CONCRETE WITH COPPER DECORATIVE CAP



## Root Cellar Cafe Streetscape Improvements



#### Section 2.5.5.4 Criteria for Approval

The following criteria shall be used to determine whether the application for a certificate of appropriateness shall be approved, conditionally approved or denied:

- (1) Consideration of the effect of the activity on historical, architectural or cultural character of the Historic District or Historic Landmark;
- (2) For Historic Districts, compliance with the Historic District regulations;
- (3) Whether the property owner would suffer extreme hardship, not including loss of profit, unless the certificate of appropriateness is issued;
- (4) The construction and repair standards and guidelines cited in Section 4.5.2.1

#### Section 4.5.2.1 Historic Districts

##### I. Construction and Repair Standards.

- (1) New construction and existing buildings and structures and appurtenances thereof within local Historic Districts that are moved, reconstructed, materially altered or repaired shall be visually compatible with other buildings to which they are visually related generally in terms of the following factors; provided, however, these guidelines shall apply only to those exterior portions of buildings and sites visible from adjacent public streets:
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  - c. **Proportion of openings within the facility.** The relationship of the width of the windows in a building shall be visually compatible with the other buildings to which it is visually related.
  - d. **Rhythm of solids to voids in front Facades.** The relationship of solids to voids in the front facade of a building shall be visually compatible with the other buildings to which it is visually related.
  - e. **Rhythm of spacing of Buildings on Streets.** The relationship of a building to the open space between it and adjoining buildings shall be visually compatible to the other buildings to which it is visually related.
  - f. **Rhythm of entrance and/or porch projection.** The relationship of entrances and porch projections to sidewalks of a building shall be visually compatible to the other buildings to which it is visually related.
  - g. **Relationship of materials, texture and color.** The relationship of the materials, and texture of the exterior of a building including its windows and doors, shall be visually compatible with the predominant materials used in the other buildings to which it is visually related.
  - h. **Roof shapes.** The roof shape of a building shall be visually compatible with the other buildings to which it is visually related.
  - i. **Walls of continuity.** Appurtenances of a building including walls, fences, and building facades shall, if necessary, form cohesive walls of enclosure along a street, to ensure visual compatibility of the building to the other buildings to which it is visually related.
  - j. **Scale of a building.** The size of a building, the mass of a building in relation to open spaces, the windows, door openings, porches and balconies shall be visually compatible with the other buildings to which it is visually related.
- (2) The Historic Preservation Commission may use as general guidelines, in addition to the specific guidelines contained this section, the Historic Design Guidelines located in Appendix C of the San Marcos Design Manual and the current Standards for Historic Preservation Projects issued by the United States Secretary of the Interior.







**Staff Report**  
**Historic Preservation Commission**  
**HPC-18-14**

Prepared by: Alison Brake, CNU-A, Planner  
 Date of Meeting: June 7, 2018

**Applicant Information:**

**Applicant:** Susan Rodriguez  
 803 West Hopkins Street  
 San Marcos, TX 78666

**Property Owner:** Same

**Public Hearing Notice:**

**Mailed:** May 25, 2018

**Response:** None as of report date.

**Subject Property:**

**Location:** 803 West Hopkins Street  
**Historic District:** Hopkins Street  
**Description:** Victorian L-Plan – built c.1910  
**Priority Designation:** Medium

**Applicant Request:**

*To allow the demolition of the existing detached garage and construction of a new garage with accessory dwelling unit at 803 West Hopkins Street.*

**Staff Recommendation:**

- Approval - appears to meet criteria for approval
- Approval with conditions – see comments below
- Denial - does not appear to meet criteria for approval
- Commission needs to address policy issues regarding this case.

**Staff Comments:**

The subject property is located at the corner of West Hopkins and Endicott Streets in the Hopkins Street Historic District (“EXHIBIT A”). The property is listed in the *San Marcos Heritage Neighborhood Historic Resource Survey* as a wood, Victorian L-Plan style home constructed around 1910; it was given a Medium priority designation (“EXHIBIT B”). The Hays Central Appraisal District (Hays CAD) lists the year built as 1904. There is an existing detached four bay garage located on Endicott Street, behind the main structure (“EXHIBIT C”). Hays CAD also lists the year built for the garage as 1904; it is not listed in the resources survey.

The applicant is proposing to demolish the existing garage and construct a two-story structure in its place. The first floor of the new structure is proposed to be a 1,040 square foot garage with space for 3 cars. The second floor of the new structure is proposed to be a 620 square foot accessory dwelling unit (ADU) for the property owner’s brother and sister-in-law to live in (“EXHIBIT D”). The new San Marcos Development Code allows for accessory dwelling units as a limited use within single-family zoning districts subject to the standards within Section 2.1.3.1(b). The accessory dwelling unit as proposed meets these standards. The request packet submitted by the applicant includes photographs of the existing structure and states the existing garage is in a state of disrepair which would not support a second story. The packet also states that the back of the structure has been altered at some point to allow room for a modern car to fit. According to the

applicant, despite the disrepair, much of the board and batten siding the existing garage is in good shape which the applicant plans to reuse on the front of the garage facing Endicott Street ("EXHIBIT E"). The rest of the structure will be constructed with new board and batten siding that will match. The applicant is proposing to construct new garage doors utilizing the same style bead board that exists on the garage currently. Four panel windows are proposed at the top of the new garage doors and an entry door that will lead to an internal staircase to access the ADU will be constructed. The applicant is proposing to refurbish the side slide rails that are currently being used for the existing garage doors and install them on the new ones. The entry door is proposed to mirror the front door of the main structure, a wood door with a single glass panel. The applicant is proposing a corrugated tin roof to mirror what currently exists on the garage.

The Secretary of the Interior Standards states "Where the severity of deterioration requires replacement of a distinctive feature, the new feature will match the old in design, color, texture and, where possible, materials." Staff finds the applicant's willingness to reuse material from the existing structure consistent with this recommendation.

The Historic Design Guidelines recommend constructing garages to the rear of the property behind the face of the house. Staff finds the request consistent with this recommendation. While the Design Guidelines recommend orienting garage doors away from the street, the new garage doors will be in the same orientation as the existing ones which face Endicott Street. Staff finds the request to keep the orientation helps to maintain the historic integrity of the site.

The Historic Design Guidelines do not provide specific guidance for accessory dwelling units in historic neighborhoods but do provide guidance on new construction:

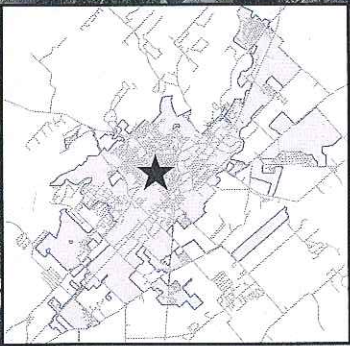
- Respect and maintain the overall height of buildings in the immediate vicinity  
*The new unit is a two-story building and is no taller than the main residence. The new structure will also be located in the same location as the existing structure which is setback from the street.*
- Maintain the building relationship to the street  
*By facing Endicott Street, the new unit will retain the same visual continuity as the existing garage.*
- Maintain the established rhythm of the entrances and porch projections in surrounding buildings  
*The rhythm of the new unit reflects that of the main house. The main house has two entry doors. While these doors are oriented towards Hopkins Street, there is a wraparound porch which allows for entry to the porch from Endicott Street.*
- Respect the overall proportion and form  
*The new unit meets the development standards for size and location and is well-proportioned in comparison to the main residence.*
- Utilize floor heights common to adjacent buildings  
*The floor height appears to be the same as the main residence.*
- Roof forms and roof lines should be consistent in shape and detail  
*The forms and lines are consistent and compatible with the main residence.*
- Maintain the solid to void pattern established in window openings in front façades  
*The window pattern is compatible with that of the main residence.*

- Materials should reflect the period in which they are built but also respect the scale of adjacent buildings  
*The applicant is proposing to reuse as much material as possible from the existing structure on the most visible portion of the structure, along Endicott Street. Staff finds the reuse of materials consistent with the Secretary of the Interior Standards which state: "Where the severity of deterioration requires replacement of a distinctive feature, the new feature will match the old in design, color, texture and, where possible, materials."*
- Avoid creating a false sense of history when constructing new buildings  
*The new unit will be very similar in style to the main residence, but should provide enough differentiation using door, window, and roofline details to make it distinguishable from the historic main house.*

Staff finds that the request to construct an accessory dwelling unit meets the regulations of the San Marcos Development Code and is consistent with the Historic Design Guidelines. Therefore, staff concludes that the request will have no negative effect on the historical, architectural or cultural character of the historic district and recommends **approval as submitted**.

#### **EXHIBITS**

- A. Aerial Map
- B. Inventory Sheet from *San Marcos Heritage Neighborhood Historic Resources Survey*
- C. Google Streetview of Existing Garage
- D. Architectural Renderings
- E. Request Packet
- F. San Marcos Development Code Sections 2.5.5.4 and 4.5.2.1(l)



**HPC-18-14**  
**803 W Hopkins St.**  
**Garage**  
**Map Date: 5/25/2018**

 Subject Property



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EXHIBIT B

San Marcos Heritage Neighborhood Historical Survey  
Survey Inventory

KEYSTONE ARCHITECTS  
August 26, 1997

SORTED BY ADDRESS

Priority	Address	Address	Identification	Subtype	Stylistic Influence	Exterior Materials	Date	Photographic Reference		Sta. #
								Street Number	Street Name	
		734						7:24		125
*		735	RESIDENTIAL	BUNGALOW	CRAFTSMAN	WOOD	c. 1920	12:07	S5:3	201
		735						12:08		
		735						12:09		201
*		802	RESIDENTIAL	L-PLAN	VICTORIAN	WOOD	c. 1900	8:02	S3:8	127
		802						8:03		
		802						8:04		127
X		803	RESIDENTIAL	L-PLAN	VICTORIAN	WOOD	c. 1910	12:01		197
		803						12:02		
		803						12:03		197
		810	RESIDENTIAL	MULTI-FAMILY	NEOTRADITIONAL	ASPH. SHINGLE	p. 1950	8:05		128
		811	RESIDENTIAL	CENTER PASSAGE PLAN	CLASSICAL REVIVAL	WOOD	p. 1922	11:35	S5:1	196
*		811						11:36		
		816	RESIDENTIAL	L-PLAN	VICTORIAN	WOOD	c. 1900	8:06		129
X		816						8:07		
		816						8:08		130
		816.5 A & B						11:30	S4:12	195
*		819	RESIDENTIAL	ASYMMETRIC PLAN	CLASSICAL REVIVAL	WOOD	1911	11:31		
		819						11:32		
		819						11:33		
		819						11:34		195
*		826	RESIDENTIAL	CENTER PASSAGE PLAN	CLASSICAL REVIVAL	WOOD	p. 1910	8:09	S3:10	131
		826						8:10		
		826						8:13		
		826						8:14		131
		826						8:11		131
X		827	RESIDENTIAL	L-PLAN	CLASSICAL REVIVAL		c. 1910	11:26		194
		827						11:27		
		827						11:28		
		827						11:29		
X		831	RESIDENTIAL	MULTI-FAMILY	CONTEMPORARY	WOOD		11:25		193
		834	RESIDENTIAL	L-PLAN	VICTORIAN QUEEN ANNE	WOOD	c. 1910	8:12	S3:11	132
*		835	RESIDENTIAL	L-PLAN	VICTORIAN	WOOD	c. 1910	11:22		192
		835						11:23		
		835						11:24		
*		902	RESIDENTIAL	BUNGALOW	CRAFTSMAN	WOOD	c. 1930	8:15	S3:12	133
		902						8:16		133

EXHIBIT C

**Existing Four Car Garage (Endicott Street)**



*Credit: Google Streetview*





"EXHIBITE"

# 803 W Hopkins Street

CoA request for NEW garage





Currently the floor is dirt and rock.

We would like to pour a concrete slab.



The back of the garage bows. The structure seems to be torqued.



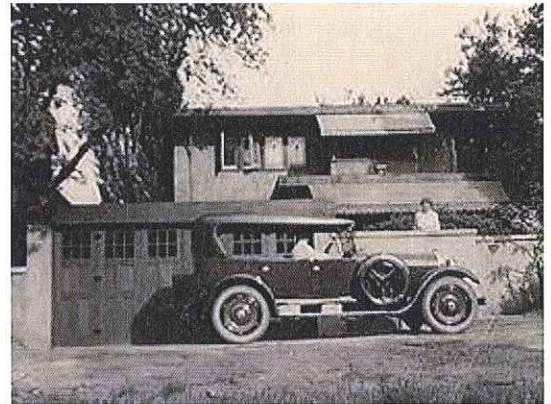
There is a deep hole, at least 10", under that post.

We need a structurally sound garage for the addition of the ADU.



All the doors have either rot or damaged to the point that it is difficult to open them. It is also impossible to get them closed properly. On one latch we use a hammer to force it closed.

We would like to construct new doors, with the same bead board at the bottom but add windows to the top. In my research I found many garages from the 1920s with a 4 panel design for each section of the sliding door. I know this structure pre-dates that. If preferred, a solid door with bead board recesses can be constructed.



When we purchased the home, there were cut outs in the back of the garage. These were, we were told, to make sufficient room for a modern car.

Much of the board and batten is in good shape, at least 5' vertically. We would like to reuse as much as we can. All of the salvaged pieces would be used street side to maintain as much visual appeal and historic integrity as possible. The rest of the structure will have new board and batten to match.



None of the garage is sealed. We have dirt and mud daubers on anything we store in here. It currently h also has rusted corrugated tin roofing.



Side slide rails currently used for garage doors. We would like to refurbish them and reuse them in the new garage. As well as install a corrugated tin roof on new structure.



## Summary

- Remove current structure
  - Salvage as much board and batten as possible
  - refurbish and reuse door rails
- Concrete slab
- Doors with bead board with addition of glass panes
- Entry door to match front door to house
- Color scheme to match house
- Use of original board and batten street side.
- Corrugated tin roof

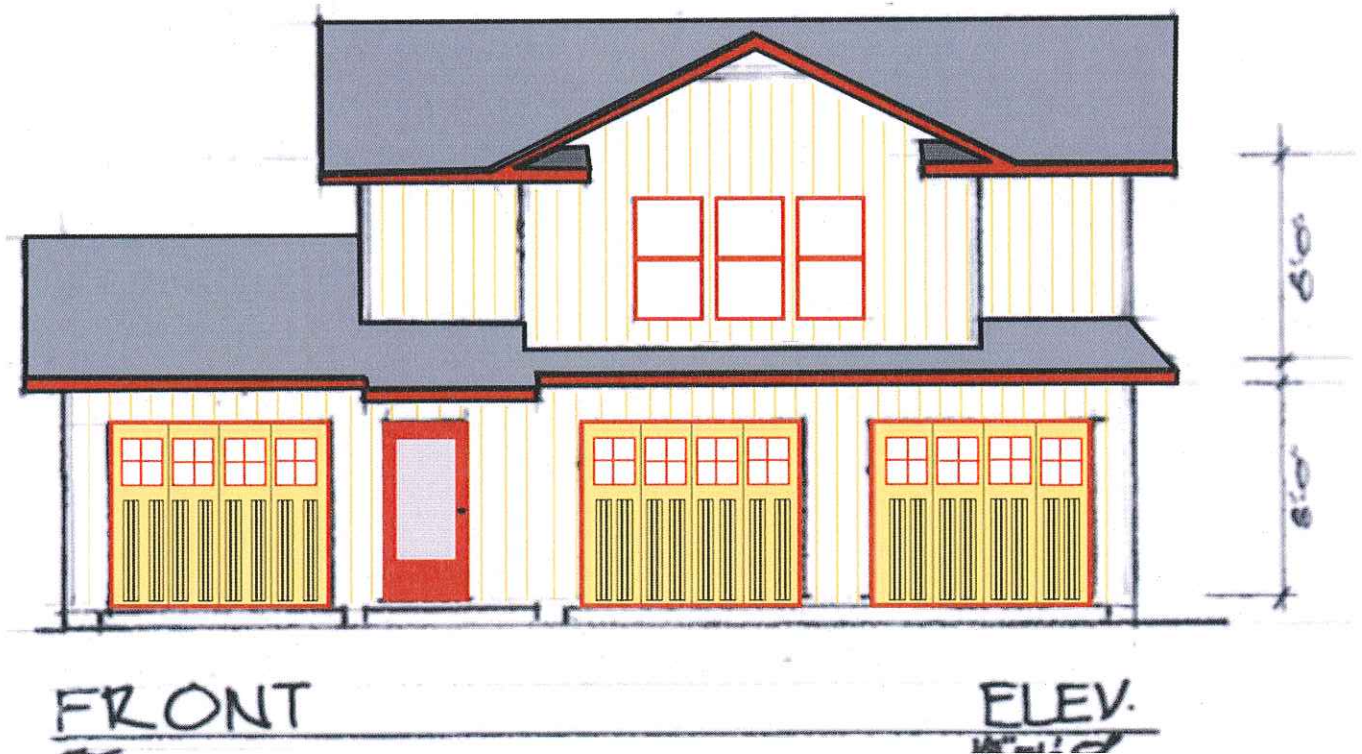
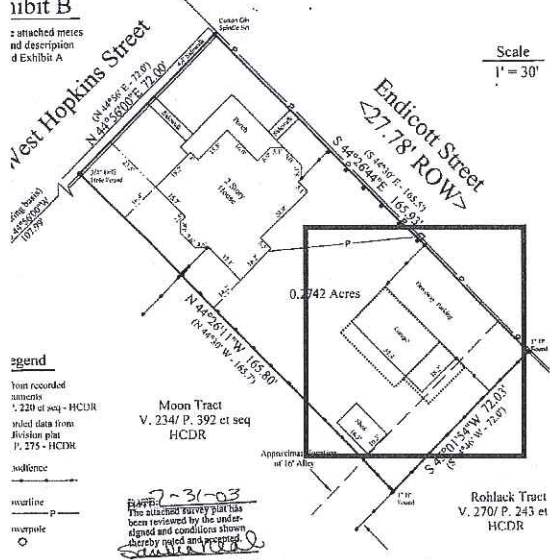


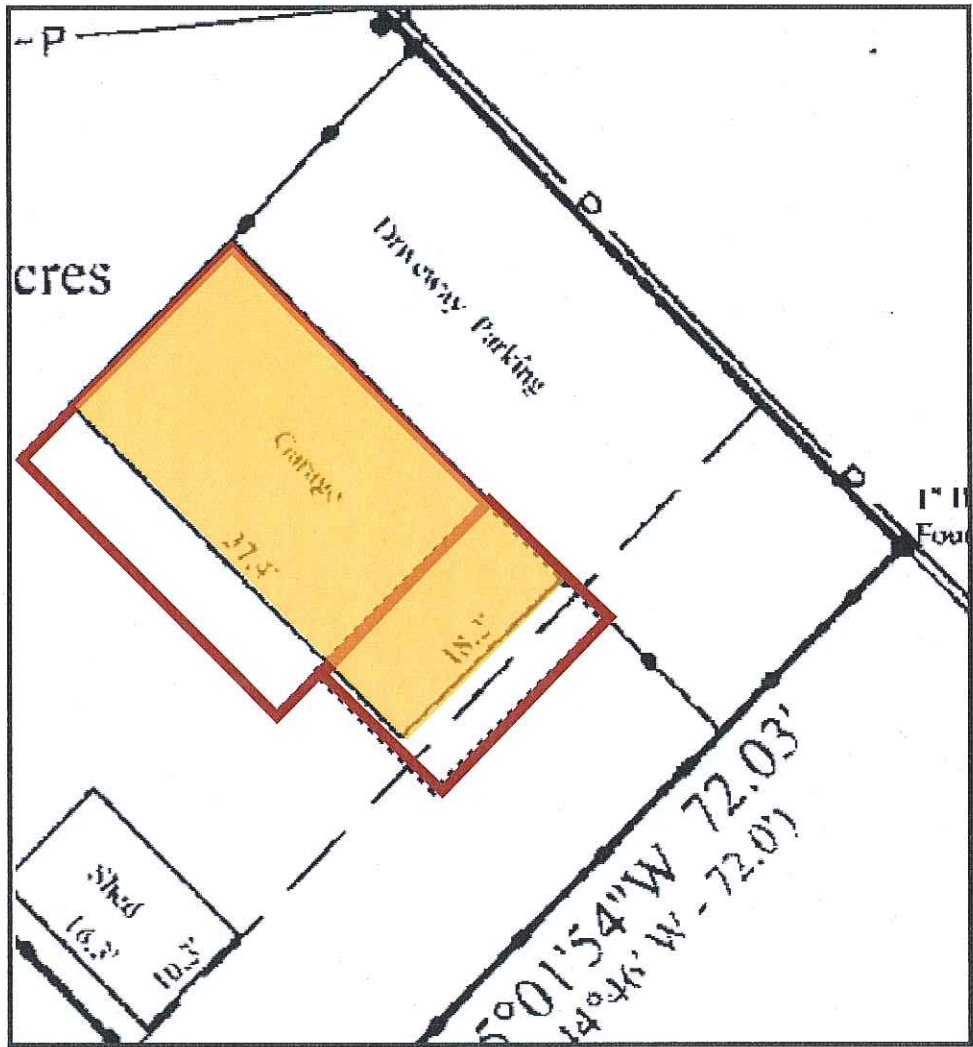
Exhibit B  
 Attached exhibits  
 full description  
 of Exhibit A



- Existing garage
- New garage (approx.)

Legend  
 Iron recorded  
 monuments  
 1/220 et seq - HCDR  
 Survey data from  
 Division plat  
 P. 275 - HCDR  
 Evidence  
 boundary  
 marine  
 waterpole

2-3-03  
 The attached survey plat has  
 been reviewed by the undersigned  
 and conditions shown  
 hereby noted and accepted  
 [Signature]



**Section 2.5.5.4 Criteria for Approval**

The following criteria shall be used to determine whether the application for a certificate of appropriateness shall be approved, conditionally approved or denied:

- (1) Consideration of the effect of the activity on historical, architectural or cultural character of the Historic District or Historic Landmark;
- (2) For Historic Districts, compliance with the Historic District regulations;
- (3) Whether the property owner would suffer extreme hardship, not including loss of profit, unless the certificate of appropriateness is issued;
- (4) The construction and repair standards and guidelines cited in Section 4.5.2.1

**Section 4.5.2.1 Historic Districts****I. Construction and Repair Standards.**

- (1) New construction and existing buildings and structures and appurtenances thereof within local Historic Districts that are moved, reconstructed, materially altered or repaired shall be visually compatible with other buildings to which they are visually related generally in terms of the following factors; provided, however, these guidelines shall apply only to those exterior portions of buildings and sites visible from adjacent public streets:
  - a. **Height.** The height of a proposed building shall be visually compatible with adjacent buildings.
  - b. **Proportion of building's front facade.** The relationship of the width of a building to the height of the front elevation shall be visually compatible to the other buildings to which it is visually related.
  - c. **Proportion of openings within the facility.** The relationship of the width of the windows in a building shall be visually compatible with the other buildings to which it is visually related.
  - d. **Rhythm of solids to voids in front Facades.** The relationship of solids to voids in the front facade of a building shall be visually compatible with the other buildings to which it is visually related.
  - e. **Rhythm of spacing of Buildings on Streets.** The relationship of a building to the open space between it and adjoining buildings shall be visually compatible to the other buildings to which it is visually related.
  - f. **Rhythm of entrance and/or porch projection.** The relationship of entrances and porch projections to sidewalks of a building shall be visually compatible to the other buildings to which it is visually related.
  - g. **Relationship of materials, texture and color.** The relationship of the materials, and texture of the exterior of a building including its windows and doors, shall be visually compatible with the predominant materials used in the other buildings to which it is visually related.
  - h. **Roof shapes.** The roof shape of a building shall be visually compatible with the other buildings to which it is visually related.
  - i. **Walls of continuity.** Appurtenances of a building including walls, fences, and building facades shall, if necessary, form cohesive walls of enclosure along a street, to ensure visual compatibility of the building to the other buildings to which it is visually related.
  - j. **Scale of a building.** The size of a building, the mass of a building in relation to open spaces, the windows, door openings, porches and balconies shall be visually compatible with the other buildings to which it is visually related.
- (2) The Historic Preservation Commission may use as general guidelines, in addition to the specific guidelines contained this section, the Historic Design Guidelines located in Appendix C of the San Marcos Design Manual and the current Standards for Historic Preservation Projects issued by the United States Secretary of the Interior.



**PLANNING AND DEVELOPMENT SERVICES**

**TO:** Historic Preservation Commission  
**FROM:** Alison Brake, CNU-A, Planner  
**DATE:** May 29, 2018  
**RE:** **ITEM 8: City of San Marcos Procurement Procedures and Policies**

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Lynda Williams, the City's Purchasing Manager, will be presenting an overview of the policies and procedures of the procurement process. She will be available for questions.





CITY CLERK

# MEMO

**TO:** Shannon Mattingly  
**FROM:** Jamie Lee Case, City Clerk  
**DATE:** May 31, 2018  
**RE:** **ITEM #9 ON HPC AGENDA**

A handwritten signature in blue ink, appearing to be "JLC", written over the "FROM:" line of the memo header.

---

On January 19, 2018, the City Council provided direction to me to do a number of items related to our Boards and Commissions. The Council directed me, the City Clerk, to propose an ordinance that would standardize rules and regulations for boards and commissions that currently are not allowed to adopt bylaws within their ordinance. The Council wanted me to specifically address the following topics while drafting the document:

- The process of placing an item on an agenda
- The period of time in which an item can be added to an agenda for a recommendation to be provided to the City Council
- Ensure that items are germane to the assigned scope of work or charge of the board or commission.

The Council directed that I provide the recommendations to them via memo as soon as they are available. I notified them at that time that this would be a large undertaking and that I would have a proposed document to them in the month of June. During my evaluation on May 29, I informed the Council that I hoped to have a proposal to them by June 22, pending our City Attorney's review of the document.

Once the document has been submitted to the City Council I will work with the Mayor and City Manager to have the discussion placed on the first available City Council Work Session or Regular Meeting Agenda so that formal direction can be provided to finalize the process.

Please let me know if you need any other information from me regarding this topic.

Best regards,  
Jamie Lee Case  
City Clerk



**PLANNING AND DEVELOPMENT SERVICES**

**TO:** Historic Preservation Commission  
**FROM:** Alison Brake, CNU-A, Planner  
**DATE:** May 29, 2018  
**RE:** **ITEM 10: Texas Historic Landmarks**

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At the May 3 Regular Meeting, the Commission directed Staff to place an item on the agenda to discuss potential State historic marker applications for areas pertaining to music and cultural significance in San Marcos, such as Cheatham Street Warehouse. It was discussed that the Commission conduct research on potential areas they would like to see designated as a State Recorded Texas Landmark. The research would be brought before the Commission at the meeting where it could be discussed and a recommendation could be given.

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION**

KRISTY KAY MONEY and ROLF  
JACOB STRAUBHAAR  
*Plaintiffs,*

v.

Civil Action No. 1:23-cv-00718-RP

CITY OF SAN MARCOS, AND  
DIRECTOR OF PLANNING  
AND DEVELOPMENT SERVICES  
AMANDA HERNANDEZ in her official  
capacity,  
*Defendants.*

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**[PROPOSED] ORDER GRANTING PLAINTIFFS’  
MOTION FOR SUMMARY JUDGMENT**

The Court, having considered Plaintiffs’ Motion for Summary Judgment and all memoranda submitted in support of and in opposition to the motion, as well as the applicable law, concludes that the motion has merit and should be, and hereby is GRANTED. The City is enjoined from enforcing the ordinance.

SIGNED this \_\_\_\_ day of June, 2023.

\_\_\_\_\_  
U.S. DISTRICT JUDGE