

**Excerpt from the  
HERITAGE PRESERVATION COMMITTEE MEETING  
Community Planning & Economic Development (CPED)  
250 South Fourth Street, Room 300  
Minneapolis, MN 55415-1385**

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The following actions were taken by the Heritage Preservation Committee on April 19, 2016. The Heritage Preservation Committee's decisions on items are final subject to a ten calendar day appeal period.

Commissioners present: Mr. Paul Bengtson, Ms. Laura Faucher, Mr. Chris Hartnett, Ms. Susan Hunter Weir, Ms. Ginny Lackovic, Ms. Linda Mack, Mr. Dan Olson, Mr. Ian Stade and Ms. Constance Vork

Committee Clerk: Fatimat Porter 612.673.3153

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## **ITEM SUMMARY**

### **Description:**

#### **I. 1900 Colfax Avenue South, Ward 7**

**Staff report by [Hilary Dvorak](#), BZH 29041**

**This item was continued from the March 22, 2016 HPC meeting.**

The Department of Community Planning and Economic Development recommends that the Heritage Preservation Commission adopt staff findings for the applications by St. Paul Development Corporation for the F. E. Day House located at 1900 Colfax Avenue South:

##### **A. Certificate of Appropriateness.**

Action: Notwithstanding staff recommendations, the Heritage Preservation Commission **denied** the certificate of appropriateness to allow the construction of a new four-story, five-unit residential building on the southern half of the property next to the landmark building, based on the following findings:

- The proposed development would be Incompatible with the preservation of the property and other properties in the area.
- The proposed development would impact the setting of the landmark building.

**Aye:** Bengtson, Faucher, Hartnett, Hunter Weir, Lackovic, Mack, Olson, Stade

**Nay:** Vork

**Motion passed**

##### **B. Historic Variance for setbacks.**

Action: Notwithstanding staff recommendations, the Heritage Preservation Commission **denied** the historic variance to maintain the existing setbacks for the landmark from the interior property line, based on the following findings:

- The variance isn't necessary to alleviate a practical difficulty due to special conditions or circumstances unique to the property.
- The proposed development would impact the setting of the landmark building.

**Aye:** Bengtson, Faucher, Hartnett, Hunter Weir, Lackovic, Mack, Olson, Stade

**Nay:** Vork

**Motion passed**

## TRANSCRIPTION

**Staff Hilary Dvorak presented the report.**

**Chair Faucher:** Any questions of staff? Commissioner Mack.

**Commissioner Mack:** <inaudible>

**Staff Dvorak:** I don't know if the applicant brought additional samples but I could run and get them. I apologize for that.

**Chair Faucher:** Other questions of staff? Commissioner Lackovic or Vork.

**Commissioner Vork:** Hilary you mentioned that the two properties came under one ownership, so that was the time that the PID (property identification) was combined, and was that an automatic thing?

**Staff Dvorak:** It's not an automatic thing. At lot of property owners who own adjacent properties would rather receive one tax bill than two. And so a lot of times when property owners own the adjacent property they combine the PIDs but the underlying lots are still there. And you can go to the county and achieve one tax bill and you can also go to the county and separate them.

**Chair Faucher:** Commissioner Hunter Weir.

**Commissioner Hunter Weir:** Just to clarify, did you say that the two lots have been owned by the same person for, not obviously the current person, but by the same person or owners for...

**Staff Dvorak:** I don't know the history of the property ownership. I wasn't able to find a lot of information. The Sandborn map, which is hardly ever the case, was incorrect because it still showed the second house here in the 1930s but all of our records say that it was demolished in 1916. And so it's hard to find property owner names associated with those properties going back that far. I'm hoping that the applicant could speak to when they purchased the property and if they combined the two lots or not.

**Chair Faucher:** Anything further of staff? We'll let the applicant present but maybe if you'd go get the materials. Commissioners would like to see those, I think that'd be good. Is the applicant here and do you want to present anything?

**Sylvia Frank (Carlson and Frank Architects):** We are the architects for the proposed project at 1906 Colfax Avenue South. I have some additional information. To fill in some issues that were brought up at the last meeting. And I have a few items here to pass out. The first item I have there is a historic map from, a fire insurance map, from 1912. Here it shows the corner lot where the Day House is and the property immediately to the south where the

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proposed project is. And that property had a house on it dating from 1895 to 1916. So, at the time the Day House was built, a house existed on that property and continued to exist after the Day House was built. The Day's never owned this piece of property next to them. When they sold their house, somebody else owned that property. So really, the applicant does question why this piece of property was included in the historic designation since nothing really of historic significance happened on this property. As was mentioned, the proposed project meets all the zoning requirements. It doesn't require a single variance. Although no parking is required for this property, the owner has proposed to use the existing four car garage for parking. And to use the existing easement that goes across the Day property for access. That easement has existed for decades. It's really an established easement and it probably has existed for more than 40 or 50 years. In the previous meeting here, it was suggested that this easement should be abandoned and instead a driveway be cut along the side of the new property to provide parking. Although parking isn't an issue for the HPC, the applicant really would like to avoid that option because that would mean that a curb cut would have to be made off of Colfax Avenue. Colfax really is the more parked up street of the two, Lincoln or Colfax. And simply cutting a curb cut would eliminate at least two parking spaces along Colfax Avenue. It would also require that we decrease the permeable surface on the property and the green space to put a long driveway in. So we're trying to maintain green space and be efficient about bringing parking into this site. The F.E. Day House, there is another drawing that I included in the packet. Because there was a concern about the setback of the F.E. Day, of the proposed project, relative to the other properties in the immediate neighborhood, I went over to the site with a laser measuring tool. Stood on the sidewalk and took the dimension for the property setbacks to the neighboring houses, 300 feet to the north and 300 feet to the south along Colfax Avenue and also on Lincoln Avenue from the site. The map I included in your packet shows this a lot more clearly than this does, you really can't read this, but, what I found is there are properties, residential properties that have a setback of 0 feet, apartment buildings. There are properties that have 10 inches as the front yard setback. There are properties that have a setback within half a block of this property, four story condominium buildings that have a setback of 5 feet 10 inches. Then at the more generous range, you have homes that have a setback of 17 or 20 or 21 feet. So really the setbacks on the properties near this property are all over the map. And then another thing I wanted to point out, so what we're proposing here is within the range that you'd expect to see in this neighborhood. The established pattern in this neighborhood or the historic pattern is a 50 foot wide lots, which typically would have a 4 foot side yard setback and because the lots on either side of Colfax Avenue don't have alleys, people had to put driveways in along the other side of their property. So you'll see a pattern on a 4 foot setback on one side and then a more generous 8 or 9 foot setback on the other side where the driveway is located. And so, really the Day House was constructed fitting this existing pattern. Where it has a 4 foot setback to the south, next to the 1906 lot and then it's, along Lincoln Avenue it has access so it doesn't need a driveway there. So really, when the Day House was built, it conformed to the zoning codes and presumably building codes at the time it was built. And what's being asked now is to retroactively go back and grant a variance for the Day property because it has a 4 foot side yard setback and that doesn't conform to the current zoning for that property. Well I would question why that even needs to be done because these lots have existed as

separate lots since they were plotted as separate lots. They've never become one piece of property. Then, let's see, the applicant would really hope that the HPC doesn't over reach its responsibilities regarding this site as more significantly, significant historically than it really is. Nothing historic really happened on this site. And there's not a good reason to apply, other than for some reason that it had a tax id number on it, that the HPC should really be looking at it as a historic property. So, I would just ask that you be reasonable about this and not try to rewrite history. Or assume that because that some technical error might have been made, that people should be misled about what the history of this property really is. Thank you.

**Chair Faucher:** Thank you. Questions of the applicant? Commissioner Hunter Weir.

**Commissioner Hunter Weir:** In my reading of this, the same, the property was owned by the same people when it was designated in 2010. Am I right about that? The Saint Paul Development Corporation, is that correct?

**Sylvia Frank:** Yes. It was under the same ownership.

**Commissioner Hunter Weir:** The thing, when that designation study was passed, all the maps showed both 1900 and 1906 as the area for designation. Did anyone raise that issue then that they should be separate?

**Sylvia Frank:** I don't know if that issue was raised at the time. But they have historically existed as separate lots and when I went into the sewer and water department to find out about sewer and water connections, they have these to lots listed under separate addresses. They have them listed as 1900 and 1906.

**Commissioner Hunter Weir:** I understand that, but both, I think they were still designated, I mean the map included them both as 1900 and 1906. I'm thinking. We'll save that for later.

**Chair Faucher:** You mean of the historic, of the designation it includes both.

**Commissioner Hunter Weir:** The designation study, what was approved, yes, shows both.

**Chair Faucher:** Ok, other questions of the applicant? No, doesn't look like it. Thank you. Again, we will have a public hearing on this, and I know will open the public hearing but ask that if you did speak at the last meeting that you not testify again. And I have in my notes that we have eight people that testify primarily against, one for, and one was undecided and then we also had some emails that were provided. So, if there is anyone tonight that wishes to speak, please step forward and state your name.

**Commissioner Mack:** Before we open the public hearing, unfortunate Hilary had to leave, but could staff just clarify whether this issue of the property is up to us. I mean it seems like its determined and we just deal with it.

**Staff Dvorak:** No. There's no question that both lots are part of the designation and there's no process to delist a property. So both lots are part of this. This is similar to, examples that I can think of for you are, Handicraft Guild, although one was designated, and one was not. The Florence Court site, one historic building on a really large lot that included several single family homes, all of those single family homes had been moved from other location, all were demolished and a new building was constructed; without design guidelines for the Flo Co (Florence Court) building but subject to the Secretary of the Interior standards. So we have these, you reviewed a brand new garage on a property where the designated property purchased the property next door, and our Attorney's Office said, now you've incorporated that and made it one zoning lot. And even though the garage was on the other side of that line, it's subject to the HPC reviews because it's part of the property; which is somewhat slightly different because they re-platted into one lot and here they did not. But no, there's no question, we wouldn't be here tonight if this was not part of the designation study and its nothing for the commission to debate or change. Not in this process.

**Chair Faucher:** Commissioner Hunter Weir.

**Commissioner Hunter Weir:** I just had sort of a curious question and maybe it's a layer like question but, it has to do with the idea of easements. If it's your own property, is that an easement?

**Staff Dvorak:** Yes.

**Commissioner Hunter Weir:** It is, ok. It just seems odd to me that you're giving yourself an easement.

**Staff Dvorak:** Sherman and Associates owns the entire Whole Foods block, not Whole Foods, Trader Joes block downtown. There are three lots. He's giving himself access easement over all of them because people are going to park on the adjacent lots and access those lots from adjacent lots because all of the parking is under ground. So yes, you can give yourself access easement over it. It's not for the property owner John McCarty, it's for the residents in the two building trying to cross over and legally protect everyone if there's a fall or fender bender or whatever. But no, that happens a lot of times where property owners give themselves or their development, access easements over platted lot lines.

**Commissioner Lackovic:** Hilary before you go, this is kind of a continuation of that, just for clarity. So, we have a variance for setbacks as part of our purview. But is the easement, not part of our purview?

**Staff Dvorak:** Correct. It's a legal issue.

**Commissioner Lackovic:** That means we can just throw our opinion out but we don't get a chance to influence...

**Staff Dvorak:** It's happening today. The only difference is there would be a building in front of the parking garage.

**Chair Faucher:** Hold on one more, Commissioner Bengtson.

**Commissioner Bengtson:** I would question though if we have the ability to do a certificate of appropriateness on the new building. We have the ability to determine whether a driveway access would be allowed at that spot, correct? Since we are reviewing the new construction for that new site, we can say that, no, that is not...

**Staff Dvorak:** I think you could but there is access to that existing garage already across the 1900 Colfax site.

**Commissioner Bengtson:** Right, but that access could go to nothing essentially. If we required that it be landscaping in that area.

**Chair Faucher:** Technically I suppose. I think the point you're making is, if we didn't want to see a paved area and wanted to see a landscaped area that would be something that would be in our jurisdiction. Alright, any other questions of staff? Then we will continue with the public hearing which did already open. So please step forward and state your name and address for the record.

**Clint Connor:** I'm with the Lowry Hill Neighborhood Association. I won't say that I will be speaking on behalf of the association but I'd like to share some views that have been expressed. It sounds like the issue of whether to treat the two properties as one has been resolved. But to get on the point about the easement and I am a lawyer, although I do patent litigation so I can't talk about easements in particular in this situation. But, regarding the point you brought up Bengtson, that I think is a very good one, is regarding the easement in that one main concern we have here is the diminishment of the value of the 1900 lot based on what is being proposed on the south side. If there is an easement cutting through that property to the apartment, we think that would diminish the value of the 1900 lot. There's another aspect here that if the south lot is allowed to be developed as proposed, we are now basically segmenting those to lots, separating them to some extent. The 1900 building has seven units. It's zoned for five units only, if we then look only at the 1900 lot. If we take apart those, separate those two lots. So, the only way that the seven units can be allowed at the existing 1900 complex is if the whole thing is treated as one property. So we think that if you segment and allow the new structure to be built, there could be some zoning questions about whether that seven unit structure is following the zoning guidelines. And if the decision is that it's not following the zoning guidelines then the value of that home diminishes. Now, taking a step back, we think as an association, Lowry Hill is a treasure. As a whole the neighborhood could be considered something that should be preserved historically. We think the piecemeal way that we're going about this may be the wrong way to look at things. The way we understand it is that, about 30 percent of Lowry Hill is owners, about 70 percent renters. From a very high level, 40,000 foot view, we are creeping more towards diminishing the number of owners and increasing the number of

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rental units. Which we think as a whole diminishes the value of the area. And the more we allow this to go forward, the less value a property is, holds in the area. So, one thing we do understand is that if you look at Colfax there are some other apartments there, right? This is not the first apartment complex to be proposed or built on Colfax. And frankly speaking some of the other apartment buildings on that street are less than esthetically pleasing. The thing that I think is giving us concern is the fact that there is more of this development with multiple dwelling units being proposed. It doesn't match; the proposal does not match anything on the street. It does not go toward trying to match 1900 Colfax which I think would be something that we would all like to see. The brick is not made to match 1900 Colfax. The windows don't seem to match. There hasn't been a lot of thought, in our minds, to the design process and how to make it somewhat cohesive with the 1900 Colfax unit. It seems to us, there was some independent design that was proposed and forced upon the committee and we hope that you consider that seriously. And we, as a whole, at least the sentiment of, so far the neighborhood association is that, we're overall not in favor of the development at least as its being proposed now esthetically. So I think there should be a major redesign. We also would be in favor of not allowing an easement. And we're very concerned about the parking issue. Of course the parking is not an issue for the commission but, it's something in the backdrop that has its concerns. Thank you very much.

**Chair Faucher:** Is there anyone else that wishes to speak to this item?

**Jimmy Fogel (1783 Colfax Ave):** I live one block to the north of the proposed site. I am very concerned as a homeowner of the continued eroding of our values. As these things creep further and further to the north. I'm also a real estate broker in the area, have been for the better part of 40 years. And have been selling this neighborhood and understand completely what it is and what values are. I had an incident this last year selling a home up the street, at 1807 Colfax, where it took some time and the house sold for significantly less than one would have thought because of what was going on down the block and people concerned about the buildings and so on and so forth. This will continue to bring that to the forefront if we build a building that high, that close. I am very concerned about it. I have nothing more to say but let's go home.

**Chair Faucher:** Thanks. Is there anyone else that wishes to speak to this item?

**Neil Meyer (200 S 6<sup>th</sup> St):** Madam Chair, I spoke a month ago, but I spoke as a resident of Lowry Hill. I've since gotten myself attained as the attorney for the applicant and I'd like to respond to some of the statements that have been made. The key thing that I think this commission needs to take...

**Chair Faucher:** I'm sorry, what was your name again?

**Neil Meyer:** Neil Meyer. The key thing this commission ought to take in consideration is as the staff points out, there's going to be no modification made to the F.E. Day House. That's your purview. Your purview is to look at how this development impacts upon that property. Not about diminution in values or zoning considerations. The city has already zoned this

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property, this area and as Ms. Frank has already said, the purposed development complies with all of the zoning requirements of the City. This new construction is not going to physically alter the Day House, this historic residence. Therefore, the criteria of significance, period of significance in exterior designation are not going to be impacted at all. As pointed out in the staff report, there are seven factors that you need to take into consideration when evaluating this development. None of those factors are any of the matters that have been mentioned by the residents. Including parking which was mentioned the last time. And I think that considering this easement, it would be inappropriate not to allow access to these garages by the owners of this, or the tenants of this new construction, because it would just exacerbate the problem of parking on the street. There are commercial developments at the end on Franklin and Colfax, and patrons of those developments are parking on the street. And I am sympathetic to the neighbors who would like to be able to park in front of their homes. But the seven factors, the design of the property, there's no physical alteration of the design, none of the materials, the workmanship, or the feeling or the association with links to Mr. Healy, the architect. The two issues that you might want to consider are location. How will locating this property immediately adjacent to the Day home, impact the Day home. Well, in the original historic report that was done for this in 2010, there was a quote from the inventory report prepared by Mead and Hunt, describing this neighborhood. They talked about, and I'll quote, "The large lots at least 50 feet by 135 feet on small blocks were offered to buyers at high prices." There were restrictions put in there. You had to build at least a \$5,000 home. But the houses, as pointed out by Ms. Frank, are it's a city home, it's a city block. It's not a suburban area with large expansions between homes. This is the plat that was taken off of the Hennepin County site. This is the location of the Day House; this is the bare land immediately adjacent to it. This is the property identification number that was given to it, but if you look at this, its lot one and lot two. And there's the property line that continues to exist. Nothing will be altered by what the applicant is proposing. As noted by Ms. Frank, there originally was a house at 1906, and the Hennepin County records support that house. As to the setting or the physical environment of the house, this bare land was not noted in the original report as integral to the significance of the landmark. And in answer to your question, that issue was not raised as there were two lots. Everybody just looked at the PID number and glossed over the fact that there were two property lots here. And so it's not a consideration, at least to my recollection and what I've been able to read in the staff report or in the commissions to designate the Day House as historical. This property is going to be setback; the new construction is going to be setback such that there will be a 15 foot span between these two houses. That's half the width of a city street. I just think that if you look at this and consider these factors and only these factors, and I'm sympathetic to my neighbor's emotional pleas but the rules of law need to obtain(?) here. And to act in another fashion would be capricious. We believe that it is perfectly appropriate for this commission to support the staff's report. We support the staff's report and we ask you to do the same. Thank you for consideration.

**Chair Faucher:** Thank you. Is there anyone else that wishes to speak to this item? No, sorry we don't do rebuttal.

Off microphone talking from the public.

**Chair Faucher:** He is on behalf of the applicant though. We will then close the public hearing unless there is anyone in the back row there? Ok, we will keep the public hearing open.

**Toni D'eramo (1920 Colfax Ave S):** I'm speaking for Jean Deatruck who was trying to come tonight and asked me if I could speak for her if she didn't make it. Her address is 1821 Dupont Ave S. Some of the points that she was making, this is the streetscape of the west side of Colfax Ave S. There is the one apartment building there, the anomaly. And then here's the F.E. Day. This is the empty lot in here. (Inaudible), as you can see the appropriateness and what happens when we allow those other types of structures. I'm going to read her comments if that's ok. She says I:

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To Whom It May Concern:

I live around the corner from 1900 Colfax Avenue South. I strongly oppose an apartment house on the side lot of 1900 Colfax.

The beautiful old home at 1900 Colfax was declared historic. A large apartment built right next to it would destroy any potential for restoration of that lovely home. I bought my home in 1992 and since then, the neighborhood homes have increased in value and our high taxes reflect that. Our residents are responsible homeowners and take pride in their homes. This will be blight on our neighborhood and our efforts.

The block of Colfax from Franklin to Lincoln is already extremely congested. Parking is restricted; large trucks and vans often block the street while unloading goods for the restaurants that now occupy that space.

Street parking is very limited on Colfax and also on Lincoln and on Dupont. In the evenings it is difficult for visitors to my home at the corner of Lincoln and Dupont to find a place to park.

The driveway to 1900 Colfax exits on Lincoln across from my house and will probably be used as an entrance/exit for the new building which means that Lincoln will be even busier than it is now. And visitors to that new building will also be looking for a place to park on our already overcrowded streets. Today at 3:00pm there are eleven vehicles parked on Lincoln and by 6pm, the street will be full.

This is an outrageous proposal by owners who care nothing for our neighborhood and only care about the amount of money they can squeeze from their house at 1900 Colfax. Why should we allow a developer from another city to diminish our neighborhood?

Because I am unable to attend today due to an illness in my family, I appreciate the opportunity to share my thoughts.

  
Jean Deatruck

**Chair Faucher:** Thank you. Is there anyone else that wishes to speak to this item? Alright seeing none we'll close the public hearing. Commissioners? Commissioner Mack.

**Commissioner Mack:** There are a lot of issues that can and did, have taken a stab at the rabbit hole on this one. But, we need to focus on what our job is. And our job is to make a judgement about the compatibility of the design of this project. And whether we have the right to make that judgment or not is not really our decision. That decision has been made. And so it strikes me as what we need to do is just think about that. Is this a compatible design or not. It does meet the zoning but that is a separate issue. And because the property, the F.E. Day House is designated, we have the right and actually the responsibility to determine whether this design is compatible or not. In my judgement it is not. That is the one point that I disagree with in the staff report. Under the certificate of appropriateness number three, it says the design of the proposed new construction will not physically alter the landmark and therefore will not impact its design. The new building is of a simple modern style and would be compatible with the design of the landmark building. It is true that it will not physically alter the landmark but I would take issue with the statement that it is compatible. I find it incompatible because of scale and the design in general.

**Chair Faucher:** Ok. Commissioner Hunter Weir I saw yours next.

**Commissioner Hunter Weir:** I agree with Commissioner Mack. I would also, oddly enough, I think one of the pieces we're missing here is, sort of the history of the designation to begin with. The thing that prompted that designation was a request to demolish the Day House. Which was denied and was appealed to the City Council and the HPC decision was upheld. And the reason that was so striking to me was the wording of the motion that was finally approved which, I've never seen wording like this before where it says, the entire property is designated, not the subject property, not the property, the entire property. And every map in that designation study shows 1900 and 1906 as linked properties. And I would also say that of the seven criteria, the one that was really striking to me is feeling. Absolutely to me there is a question that it will alter the feeling for this house. There are references in that study to its prominent place sitting on two lots. And I think that that is more or less telling. It says in the report, the historic integrity of a property is its ability or a measure of its authenticity and its present day ability to convey its past significance. And I think that that extra yard if you will, is an important piece in conveying that feeling. I guess there are two separate things here. One is whether this particular plan would be inappropriate building. But also whether any building on that space is something that we should be saying is ok. And I welcome other comments about that. You know, there are all kinds of comments about transitioning and how other blocks look different. And yes, I think I'm pretty clear on the notion that one unfortunate decision doesn't warrant a whole bunch more. And I'm kind of worried that the current design would add to that and perhaps if something better that could happen to that space.

**Chair Faucher:** Commissioner Bengtson.

**Commissioner Bengtson:** I have a couple of questions for staff actually, clarifying points. But before I say those two, I will say that, it's a short statement. The concern that we have as a commission is not about property value but rather heritage value. So that is the focus

of how we should be looking at this. So what I would ask staff is, number one, would a historic variance be possible or required for the number of units that are in the existing structure should the lots be divided? And then the other one is does the City allow for a garage, a detached garage to be built on a vacant lot, if those lots had never been combined in the first place?

**Staff Dvorak:** The density in the existing house needs to be address through a variance. As far as vacant lots, no we do not allow new garages to be constructed on vacant lots. When there's no property owner there, it's probably more of a business than a garage for your family car and lawn mower and what not. So we do not allow construction of garages on lots.

**Chair Faucher:** Even in conjunction with a residential building next to it.

Staff Dvorak: No we would. The question has to do with, our building permit history doesn't show when the garage and the 1906 property was built. I don't know if that was where you were going with your line of questioning but we have no record and that is indicated in the designation study as well. We don't know when that was done.

**Commissioner Bengtson:** That's all the questions I had. I guess what I would say is, I, my concerns with this request is that approving this request will put this landmark property at a point where it will never be returned back to its true period of significance status. By having that driveway go through there that allows the access to the other lot, this house will never return, there's no possibility that anyone will ever think of it as a single family home again. It will forever lose that significance and that is the significance that the building has. I have no problem, no hesitation whatsoever in having the lot divided and having that other lot be available for construction. But to me the fact that this access agreement would continue and be allowed to create a situation that takes us further away from the historic significance of this site is the problem that I have. And by approving any of these variances, we would be moving in that direction and so I have significant reserves as far as the findings that are associated with those variances which do talk about the compatibility with the preservation of the landmark or the district. I guess I do have one more question for Hilary. As far as the process for variance, this variance, the other variance they would need, and then the certificate of appropriateness, if that was approved, shouldn't the variances be approved prior to any consideration of the certificate of appropriateness for new construction?

**Staff Dvorak:** Our practice in our office is that HPC acts first in applications and then Planning Commissioner.

**Commissioner Bengtson:** Ok, so the variances for the dwelling units is not a historic variance, it is a....

**Staff Dvorak:** Correct.

**Commissioner Bengtson:** Thank you.

**Chair Faucher:** Commissioner Olson.

**Commissioner Olson:** I'll try not to repeat everything that's been said but I do agree with a lot of what's been said. There's been a lot of talk tonight what we're not, what's not under our purview, but I think we have to remember what is under our purview. And that is to, as was just stated, to make sure that a historically designated building is not negatively impacted by new construction. I understand, as other people have pointed out, that this new construction is not physically altering or impacting the historic building. However, I think the applicant could have designed this building to be more compatible with the historic building. Right now to me, the word that comes to mind is, overbearing. It really diminishes that historic building. It takes away from its, the reason that it was designated. If this building is built, that's a long time that it would be like that. We expressed comments at the last meeting that we were not exactly thrilled with the design of this new buildings and the applicant chose not to do anything about that, and came back with the same exact design as they previously presented. To me the big issue is the setting of this environment for the historic building is compromised with this new building. And so, I think that that is just really problematic for me and I struggle with this. I understand that the zoning gives certain rights to the property owner of this "new lot". And I'm not opposed to a building going there eventually, but I think it has to really respect the historic building. Because it is, due to a very unique situation where tis been located right next to that building and so I think it has to defer to the historic building first and not try to take away from its historic character.

**Chair Faucher:** Commissioner Lackovic.

**Commissioner Lackovic:** More of the same. I know I understand we are not here to; it is not our purview to talk about the easement specifically. However, don't think we can, not acknowledge it because of the impact it has on setting, which is within our purview. For me, I think this project; you can't have it both ways. You can't say that the one side of the lot doesn't need to play to the historic, tis new construction, its modern, it fits in, it doesn't have to, none of these rules apply and then ask for an easement through a historic property. If it wants to be completely dissociated from the historic property, it needs to be completely dissociated. It needs to be self-supporting. If we argue it the other way and say, you know, the easements fine, it's been like this forever, it's part of that lot, its one lot, then I think the design has to be much, much more sensitive to the historic character of the building that it's going to share the lot with. So I think in this case, no matter which way you argue it, the impact on the historic setting, which for me, the setting, it's a traditional residential lot. It has a house, it has a garage. To have an easement through the lot to support a second building on the lot, to me, it just totally disrupts the historic character for a typical residential setting. I think this one has some serious flaws in it on either way you want to argue it. Just the compatibility issues are significant and I'm not in support of it.

**Chair Faucher:** I want to ask Hilary a quick question, related approvals. I don't think there isn't an easement that would be required for that driveway is what you had said before correct?

**Staff Dvorak:** I think I need to clarify that there is already a driveway that goes over the back half of both properties that comes from Lincoln to both garages, the one that was built with the Day House and the newer garage.

**Commissioner Lackovic:** I guess what....

**Chair Faucher:** But an easement isn't required because, unless they separate the...

**Commissioner Lackovic:** If you separate the lots though, you would have to reapply or the easement.

**Staff Dvorak:** They would need to give themselves an easement.

**Chair Faucher:** It just sounded like you were saying...

**Commissioner Lackovic:** Well, I guess the way I'm looking at it, I mean you can't, if you argue it, that this doesn't have to follow any historic design guidelines because it's a separate part of the property. Yet, you're still treating it as a combined lot, the argument doesn't follow through. So..

**Staff Dvorak:** I don't think if someone wanted to put a driveway on a historic property that we would bring it before you for a CofA (certificate of appropriateness). Especially with there being an existing drive.

**Commissioner Lackovic:** Looking at the, you know the impact on the lot though. And the relationship these buildings would have moving into the future. I think you can look at it in a broader perspective. Yeah, I just don't think it's, as designed and conceived, I don't think the new construction is at all compatible or sensitive to the historic character. And I think it does really have a negative impact on the setting.

**Chair Faucher:** Alright, thanks. Commissioner Vork.

**Commissioner Vork:** I agree 100% with the negative impact on the settings, the distortion of residential character and if I lived in this neighborhood I would be very upset about this project. And I would like to be a fly on the wall at the Planning Commission hearing which is where I think this project belongs. Because as I said last time, I don't see any evidence that the lot was intended to be part of the landmark as a vacant lot for perpetuity. I think it's very unfortunate that we're in this position because of this vacant lot being included. And I think it's erroneous and an inappropriate use of our authority to treat it like a landmark

when it's a vacant lot. So that's kind of what I said last time I guess. But it's a perplexing situation no doubt. But they're two different lots.

**Chair Faucher:** Thanks. Commissioner Stade you had your card up. Did you have something to add?

**Commissioner Stade:** Well, I guess I was just thinking about the previous situations, the Florence Court and the Handicraft Guild. I wasn't here for Florence Court, but this is a better situation than we got with the Handicraft Guild. At least it's not connected to it and it's not a big glass block of ugliness. So I guess from that context, and I look at another context where we approved somebody in Kenwood or in Lowry Hill, we approved letting the homeowner destroy the potentially house next to him so he could get a nice side yard. So I guess we gotta, I really gotta think about the context here and put this in perspective. I think this is fine from my point of view, it's better than what's happened at Florence Court and Handicraft Guild. And the reason I see that this was historically designated was to preserve the house which is happening. But I don't see why we need to preserve the vacant lot.

**Staff Dvorak:** I'm just going to answer a question that hasn't been asked yet. Just to clarify, I think the lot issue is its two platted lots, one property identification number. We have a zoning tool that would allow them to build the second building without going to the county and getting two tax bills. It's called a cluster development. It's a process that goes through Planning Commission. It still would need to be reviewed by you though because the designation study includes both lots, and the property. Maybe that's how I should have been referring to it the whole time; it's the property, regardless of how many lots are sitting underneath the land. So there is a zoning mechanism to do this. The attorney's office thought that if they did separate them, that they wouldn't have to do a cluster because technically they are both on their own lot. And if they're tied together under one PID then we have two residential structures on a property or a zoning lot. That's not allowed by zoning unless you do a cluster. That would allow two buildings on the zoning lot. I hope, did I confuse you more? We have zoning tools that would allow this but a lot of times, not this property, but a lot of times, if you're building next to yourself, you sub-divide because your mortgage lender or your banking, your lender won't give you money to build a new building.

**Chair Faucher:** I think we should just kind of take a step back like Linda said at the beginning and consider what is in our purview. And to me the lot point is almost a moot issue because as Hilary said also, you know, it's one lot and that's what the designation study says. So we therefore have the right to review this. It is in our purview. To me the scale of this building is not compatible with the neighborhood. And that means it doesn't meet what's outlined in our ordinance as far as setting and feeling and whether or not it meets the Secretary of the Interior standards. So personally to me, if it were a story less in height and slightly more compatible in design with the surrounding buildings, it wouldn't be so overbearing and I wouldn't have a problem with it. I think that, a house, a building on this lot, a residential

building, is appropriate because that's the context of the neighborhood. Yes it's been an open lot for a long time but, the neighborhood the way it was built, the way it was when the F.E. Day House was built, there was a building there. So I don't have a problem with that either. But, I do think it comes down to the scale and compatibility. So, Commissioner Bengtson had a question, one more question for staff.

**Commissioner Bengtson:** Depending on, of course what happens this evening, the ordinance does allow for design guidelines to be created for landmark designated properties.

**Staff Dvorak:** I'm sorry say that again.

**Commissioner Bengtson:** Design guidelines, the ordinance does allow for design guidelines to be created, if we wanted to create guidelines for the site, would we be able to do that as an action this evening or would that have to be some other type of application?

**Staff Dvorak:** You cannot. You can direct staff to write design guidelines but they can't be done at this meeting. I don't think that's what you meant but yeah.

**Commissioner Bengtson:** Then I'd like to make a motion. My motion would be to deny the historic variance to maintain the existing setbacks for the landmark from the interior property line based on the fact that it is incompatible with the preservation of the property and with other properties in the area. And that the variance is not necessary to relieve a practical difficulty due to special conditions or circumstances unique to the property and not created by the applicant, and also to deny the certificate of appropriateness, and finally to direct staff to create design guidelines for this landmark property.

**Chair Faucher:** Is there a second?

**Commissioner Lackovic:** Second.

**Chair Faucher:** Thank you Commissioner Lackovic. Discussion? Commissioner Mack.

**Commissioner Mack:** Wondering if we could possibly separate the denial and the request for design guidelines. I mean there are design guidelines that apply. The Secretary of Interior design guidelines and I'm not quite seeing the reason to....

**Staff Dvorak:** You can't condition a denial so it has to be a staff direction after the action on the denial of the two applications.

**Commissioner Bengtson:** Then I withdraw that comment.

**Commissioner Mack:** Thank you.

**Chair Faucher:** Ok. So then basically your motion is to deny both the certificate of appropriateness and the historic variance?

**Commissioner Bengtson:** Correct.

**Chair Faucher:** Commissioner Olson.

**Commissioner Olson:** I don't have a huge problem denying B, the historic variance, but, to me there's nothing wrong with approving the variance and making that existing building conforming to zoning regulations by doing that. Isn't that what we're doing?

**Chair Faucher:** I'm sorry, say that again? The existing building....

**Commissioner Olson:** Aren't we, by approving, the variance request for the historic building is to allow it to remain 4 feet from the property line, is that not correct?

**Chair Faucher:** Yes that is correct.

**Commissioner Olson:** I don't know why we wouldn't want to do that because it would make the building conforming.

**Staff Dvorak:** Their only applicable if the property owners were to get two PID's. All of a sudden we have a property line 4 feet from a house that needs to be five. Even though it's existing we still need to give it a variance, or it would need a variance.

**Chair Faucher:** And if there's not a building there, it doesn't need it, basically.

**Staff Dvorak:** Correct.

**Chair Faucher:** Alright, any further discussion? No? Alright, will the clerk call the roll?

#### **A. Certificate of Appropriateness.**

Action: Notwithstanding staff recommendations, the Heritage Preservation Commission **denied** the certificate of appropriateness to allow the construction of a new four-story, five-unit residential building on the southern half of the property next to the landmark building, based on the following findings:

- The proposed development would be Incompatible with the preservation of the property and other properties in the area.
- The proposed development would impact the setting of the landmark building.

**Aye:** Bengtson, Faucher, Hartnett, Hunter Weir, Lackovic, Mack, Olson, Stade

**Nay:** Vork

**Motion passed**

#### **B. Historic Variance for setbacks.**

*Heritage Preservation Commission Meeting – Minutes excerpt*

Action: Notwithstanding staff recommendations, the Heritage Preservation Commission **denied** the historic variance to maintain the existing setbacks for the landmark from the interior property line, based on the following findings:

- The variance isn't necessary to alleviate a practical difficulty due to special conditions or circumstances unique to the property.
- The proposed development would impact the setting of the landmark building.

**Aye:** Bengtson, Faucher, Hartnett, Hunter Weir, Lackovic, Mack, Olson, Stade

**Nay:** Vork

**Motion passed**