MAKING DEFENSIBLE DECISIONS

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BASIC LEGAL ISSUES AND FRAMEWORK

• Historic Preservation Laws (Federal, State, and Local)
• Constitutionality of Ability to Regulate/Control/Direct Preservation Efforts
• Due Process/Equal Protection—5th, 10th, and 14th Amend. to US Constitution; GA Constitution
  • Substantive
  • Procedural
• Key State Laws:
  • HP Act (O.C.G.A. § 44-10-20, et seq.)
  • Sunshine Laws (O.C.G.A. § 50-14-1, et seq.)
  • Open Records (O.C.G.A. § 50-18-70, et seq.)
• Ethics (State and Local Rules) (O.C.G.A. §§ 36-30-6, 16-10-6, 36-67A-2)
PRESERVATION IS IN THE EYE OF THE BEHOLDER

“Where it all Began”  Penn Station, NYC
PRESERVATION IS IN THE EYE OF THE BEHOLDER
A CHECKLIST FOR DECISIONS

(1) Describe application and establish HPC jurisdiction (e.g., Is a CoA required? Why?)
(2) Make factual findings as to each of the ordinance criteria for CoA, citing specific evidence in the record.
(3) State conclusion in terms of ordinance standard (e.g., Has applicant shown that requirements are met for CoA approval?)
(4) Are any conditions necessary? Why?
(5) State decision, including any condition.
(6) Decide similar matters in a consistent manner.
WHAT MAKES A DECISION “DEFENSIBLE”?  
WHAT MAKES A DECISION STRONG?

✓ CLARITY
✓ CITATION (of the design guidelines)
✓ CONSISTENCY (in applying standard procedure to establish due process)
✓ CONSIDERATION (of the value of precedent and to applicants and to the process)
CLARITY

Put some thought into the motion before you make it.

State outright whether you move to approve or deny.

If it is complicated or likely to be contested, go ahead and be detailed.

Clarity doesn’t always mean short.

Remember that you can also go hybrid—approve with modifications.
You don’t have to put every one in … but get the important ones and the most relatable ones.

Think about helping the body who will be hearing the appeal—a body that doesn’t have as much knowledge or experience in preservation as you do.

Make sure you do this when you move to deny the CoA, particularly, but also when approving.
CONSISTENTLY FOLLOW PROCEDURE TO ENSURE DUE PROCESS IS MET

Modify Robert’s Rules of Order to fit the structure of your meetings.

Put that procedure in your Bylaws.

Follow it on every application.

Allow opportunity for applicant, supporters, opposition, and the commission to speak.

Don’t be afraid to deny an application.
CONSIDER THE VALUE OF PRECEDENT IN THE DECISION

Try to be consistent.

If you are carving out an exception for hardship or some other reason, explicitly state it in the motion... but don’t go overboard with it... Don’t assume there is a hardship until applicant raises it.

Be careful to avoid allowing everything in on hardship exceptions.

The more sophisticated your tracking system is, the easier it is for staff to verify precedent in earlier decisions that may be similar.

Do all of this, and you will be showing a necessary level of consideration to both the applicants and to the entire process!
HOW TO MAKE A DEFENSIBLE MOTION

Examples from DeKalb County Historic Preservation Commission
WHAT DO THE FACTS AND EVIDENCE SUGGEST? WHAT DOES STAFF SUGGEST?

Before you make a motion, consider staff’s recommendation. Do you agree or disagree?

What about the facts presented in the application? Is there room to qualify to avoid setting bad precedent? Can or should you work specific facts into your motion?

Does the evidence support the finding?
APPROVAL

I move to approve this application for a Certificate of Appropriateness at {address} because the proposed changes appear to meet the relevant guidelines and requirements of the county preservation code (Cite as Appropriate) and will not have a substantial adverse impact or effect on the aesthetic, historic, or architectural significance and value of the historic property or the historic district as a whole.
I move to approve this application for a Certificate of Appropriateness at {address} with modifications because the proposed changes with modification appear to meet the relevant guidelines and requirements of the county code and will not have a substantial adverse impact or effect on the aesthetic, historic, or architectural significance and value of the historic property or the historic district as a whole. The modifications are as follows: {list modifications}. 
DENIAL

I move to deny this application for a Certificate of Appropriateness at {address} because the proposed changes will have a substantial adverse impact or effect on the aesthetic, historic, or architectural significance and value of the historic property or the historic district as a whole because {explain why}, and thus do not comply with the following guidelines: {list guidelines}. 
THE HARDEST PART SOMETIMES . . .

ACTUALLY MAKING A DECISION
PUTTING THE PIECES TOGETHER—A PRACTICAL EXAMPLE.

• Scenario: Midcentury commercial building on edge of residential area in historic district with commercial corridor overlay on adjoining properties in other direction. Nonhistoric structure next to historic residence, across street is empty lot and apartments, contributing commercial buildings on other side of subject property.

• Facts: Applicant has been before commission to seek comment from us about redesign of building to add brick façade, change side entrance to front, add porch extension on front, paint brick, and other design changes. Property is over 50 years old but not contributing based on language in guidelines.
Staff Report

Regular Agenda

M. 1534 North Decatur Road (DH). Replace the existing cladding with a brick veneer, relocate the entry, relocate and replace the windows and add a front walk.

1235267

Built 1965. (18 053 02 028)

This property is in the Druid Hills National Register Historic District, but not in a designated character area.

This is a nonhistoric property. (Druid Hills Design Manual, Glossary, page ii: Nonhistoric — Nonhistoric properties within the district are those properties constructed after 1946. Nonhistoric properties are identified on the Historic District Map.)

The plans and support statement from the September application are included behind the new material.

This property is outside the Emory Village Character Area and does not need to comply with Emory village design standards. Those standards are included here as a reference, not a requirement.

Recommendation

Staff has not had the opportunity to review the application.

The text below is from the September staff report and address the revised plans submitted on September 14th. Parts will not be relevant to this application.

Revised plans were received 9:12 a.m. on Friday 9-14. This report has been updated, but parts are just in note form.

The building does not need to be made to look historic, but should not detract from its setting any more than the existing building. The area of influence will contribute to the difficulty with appropriate design. The house to the left is a historic, two-story brick house (built 1929), converted for nonresidential use. The property across the street is an apartment complex (built 1960), diagonally opposite, across both the creek and the street, is the Panera Bread building, (built 1962, but heavily remodeled), and immediately across the creek is the small commercial building that houses Dave's Cosmic Subs (built 1962) and the CVS parking lot. The Emory Village Character Area ends at the creek, but the Druid Hills Character Area 1 begins at the left property line of this property.
Concrete panels with a pebbled surface. The right side is clad with metal panels and windows, the rear with CMU and the left side CMU and what appear to be large metal panels.

The two-story section of the adjacent house is about 35.5’ wide, growing to 45.5 when the one-story wing is added. These figures include the overhangs.

**Architectural design**

The proposed design adds false historical details to a noncontributing building, and in this case, false historical details that are not found elsewhere in the district. The redesign appears to be an amalgam of commercial design elements from late 19th/early 20th century with some nods toward earlier residential design. This has been reduced in the 9-14 revised plans.

The applicant may consider emulating either the mostly 1940s/1950s commercial buildings in the village or the 1920s residential in the vicinity. If commercial, Emory Village Design Standards would be the guide. The relevant standards are included in the list at the end of the report. Among other things, the guidelines require 2-story new buildings although there aren’t any now. The arguments in favor of a commercial design are the difficulty in adapting the building to look like a house and the visual relationship of the building to Emory Village.

Alternatively, the building could be made to resemble a house. In that case chapter 7.0 would apply. A building of this size and massing does not easily lend itself to residential design.

**Concerns with the original plan**

The nearby commercial buildings are from the mid to later 20th century. (Two more elaborate buildings are on the corner of North Decatur and Oxford, but are too far away to serve as good models.) The architectural elements of the plan are quite different from those of the buildings in Emory Village. The remodeled building is ornate, using stylistic elements more associated with pre-WW I construction than the simple, utilitarian structures in Emory Village. For example, but not necessarily a complete list:

1. Insufficient glass in the doors;
2. Insufficient glass on the ground floor front façade.

Other concerns may be adding brick on all four sides; the size and design of the parapet; wide stringcourse; stone panel sign and decorative precast panels; paired windows on the front; the use of double-hung windows on the front ground floor.

**Architectural drawings received 9-14**

- A1.3 says some sections of exterior wall will remain, but A1.0 makes it appear as if the walls will be removed. It is possible the walls exist behind the metal panels.
- 4 sides brick running bond
- All windows are to be primed wood with simulated divided lights.
• Brick sills and soldier course headers.
• Most of the ground floor windows are an unusual 6/6 design, with three lights set vertically on either side of a center vertical muntin. The upstairs windows are smaller 4/4.
• The windows nearest the front and nearest the rear are paired, with the rest set singly.
• Some windows on north are inset brick faux windows.
• Decorative precast panels on front parapet flanking a centered stone panel with text.
• Brick pilasters in all four corners. Raise parapet 2.5'.
• Slight corbeling at top of parapet.
• Brick inset panels in parapet on both sides.
• Large lamps flank he entry. The drawings do not provide much detail. Similar lamps are set on the rear.
• Elevator override is required at the top of the elevator. This projects 2'11" above the roof.
• On rear install stairs with a porch at the top. Standing seam metal roof over the porch at the top of the stairs.
• The concrete front porch will be centered in the façade. It will be 16' wide and will project 10' from the building. Low brick with concrete caps walls will wrap around both sides of the porch, with the walkway access in the middle. The concrete walkway will curve toward the driveway and will meet ADA standards. The driveway is lower than the front porch. The drawings shows the area of the existing side porch and part of the side planting strip as being paved as an extension of the walkway. The walkway and part of the porch appear to be in the 75' stream buffer.
• Cantilevered metal canopy over front porch, but appears to be supported by cables from above. Pilasters flank the front double doors. Transom over doors. Four light windows over wood panels. Paired 6/6 windows flank the entry and three pairs of 4/4 windows are set on the second floor.

The Emory Village buildings generally have low, plain parapets or lack parapets. CVS has a high parapet at the front but low elsewhere. The high section was probably added when the addition was made to the west side of the building. One element of an earlier design that might help the subject building relate to its immediate neighbor is the clay tile faux-roof on the building where Wa Ga Ya is located. Although not found on the newer buildings in the village, the use of something similar might ease the transition better than plain parapet. The adjacent house and several other houses in that block have clay tile roofs.

September Recommendation
This plan does not relate to the house next door, the only historic structure in the area of influence. In this particular circumstance, it might be appropriate to use nearby commercial buildings as models, but this plan does not do so.

The proposed changes are not in character with the area of influence and do not comply with the relevant guidelines in 7.0. These changes would have a substantial adverse effect on the building and the district and staff recommends denial.
7.1 Defining the Area of Influence (p64) Guideline - In considering the appropriateness of a design for a new building or addition in a historic district, it is important to determine the area of influence. This area should be that which will be visually influenced by the building, i.e. the area in which visual relationships will occur between historic and new construction.

7.2 Recognizing the Prevailing Character of Existing Development (p65) Guideline - When looking at a series of historic buildings in the area of influence, patterns of similarities may emerge that help define the predominant physical and developmental characteristics of the area. These patterns must be identified and respected in the design of additions and new construction.

7.2.2 Directional Emphasis (p67) Guideline - A new building’s directional emphasis should be consistent with dominant patterns of directional emphasis within the area of influence, if such patterns are present.

7.2.3 Shape: Roof Pitch (p68) Guideline - The roof pitch of a new building should be consistent with those of existing buildings within the area of influence, if dominant patterns are present.

7.2.3 Shape: Building Elements (p68) Guideline - The principal elements and shapes used on the front facade of a new building should be compatible with those of existing buildings in the area of influence, if dominant patterns are present.

7.2.3 Shape: Porch Form (p68) Guideline - The shape and size of a new porch should be consistent with those of existing historic buildings within the area of influence, if dominant patterns are present.

7.2.4 Massing (p69) Guideline - The massing of a new building should be consistent with dominant massing patterns of existing buildings in the area of influence, if such patterns are present.

7.2.7 Scale/Height (p72) Guideline - New construction in historic areas should be consistent with dominant patterns of scale within the area of influence, if such patterns are present. Additions to historic buildings should not appear to overwhelm the existing building.

7.2.8 Individual Architectural Elements (p73) Guideline - New construction and additions should be compatible and not conflict with the predominant site and architectural elements—and their design relationships—of existing properties in the area of influence.

7.3.1 Additions (p74) Recommendation - These guidelines do not recommend adding false historical details to a noncontributing building in an effort to make it more compatible with surrounding historic buildings. Every effort should be made, however, to ensure that additions and alterations to the property do not detract further from the character of the historic environment, keeping in mind the design concepts discussed in Section 7.2.

7.3.2 New Construction and Subdivision Development (p75) Guideline - To be compatible with its environment, new construction should follow established design patterns of its historic neighbors, including building orientation, setback, height, scale, and massing.

8.3 Protection of the Historic Watershed Design and Design Concept (p79) - Guideline - All construction within the Druid Hills Local Historic District should follow a 75’ setback requirement from the top of bank of creek corridors and drainage ways, as delineated on the official “Historic District Map.”
9.7 Residential Landscape Design (p91) Recommendation - For residential yards, created without the assistance of landscape designers, historic landscape plans for other residential lots within the district should be used for guidance. These plans can be interpreted to create a new landscape plan that is based on historic traditions. Care should be taken to select designs for yards of similar size containing houses of similar style and scale.

11.0 Nonhistoric Properties (p93) Guideline - In reviewing an application for a Certificate of Appropriateness for a material change to a nonhistoric building, the Preservation Commission should evaluate the change for its potential impacts to any historic development (architecture and natural and cultural landscapes) in the area of influence of the nonhistoric property. Guidelines presented in Section 7.0: Additions and new Construction are relevant to such evaluations.

Emory Village Design Standards

16.3.A.5 Entrances. All first story uses adjacent to a sidewalk shall have a primary pedestrian entrance, which faces, is visible from, and is directly accessible from said sidewalk. Entrance doors shall remain unlocked and operable during normal business hours. All first story businesses with more than sixty (60) feet of frontage along sidewalks shall provide one (1) pedestrian entrance for every sixty (60) linear feet of frontage or fraction thereof.

16.3.A.6 Storefront canopies at least five feet in depth extending over the sidewalk are recommended at all retail frontage in the Village for relief from inclement weather and for shade. These should be roofed with glass, metal, or fabric wholly supported by brackets or cables attached to the building façade. Columns to support canopies are not permitted in the public right of way (hereafter called “R.O.W.”). Awnings and canopies shall not include signage on them, except when such signage is located within an apron that is less than twelve inches in height and is subject to all other applicable sign requirements of this document.

16.3.A.7 Building Finish Materials. Each street-facing building facade shall have an exterior finish skin of one or a combination of no more than three of the following primary materials: exterior brick, cementitious stucco, rustic or cut stone, architectural cast concrete, decorative terra cotta, and glass panels. Decorative embellishments shall be permanent in nature and shall be of the following materials: copper, brass, bronze, cast concrete, formed exterior plaster, solid plastic, porcelain tile, terra cotta, formed metals, glass, wood, and artificial materials having the appearance of wood, and/or stone. Window and storefront systems shall be painted wood or painted metal, and all glazing shall be clear glass; no tinted glass will be accepted. Materials that match those used historically in the Village, such as black reflective glass tile, red terra cotta roof tile, stone, stucco and brick are recommended. Non-street-facing building facades may be of any of the materials authorized for street-facing facades, plus wood siding. Architectural concrete masonry units (CMU), MDF plywood and Exterior Insulation Finish Systems (EIFS) are not permitted as building finishes. Other building materials may be permitted in the Village if included as part of a building system or assembly designed to improve building energy and/or environmental performance or to limit adverse impacts of the building on the environment, or to limit airborne pollutants from the building. Primary building façade materials shall be combined only horizontally, with the heavier appearing one(s) below the lighter appearing (ones). This shall not apply to embellishments, storefronts systems, or windows frames.

16.3.A.8 First Story Fenestrations. All street-fronting first stories shall have windows that meet the following requirements along the portion of the building fronting a public street or public sidewalk. They shall be of clear, unpainted or similarly treated glass to allow views of store interior or display windows. Windows shall be located along a minimum of seventy five (75) percent of street frontage. They shall start a maximum of three feet above the sidewalks and shall have a minimum height of ten feet above the sidewalks. The maximum façade length without windows shall be ten feet. Glass doors may count towards fenestration requirements.

16.3.A.9 Upper story fenestrations. All building stories above the first story shall have windows and doors that equal a minimum of thirty (30) percent of the total façade area, with each story being calculated independently. Additionally, all street-facing upper story windows shall be taller than they are wide and shall be predominantly arranged in a grid, subject to individual window variation.
16.3.A.10 Building Signage. Allowable signs shall include those documented to have existed in Emory Village prior to 1980 may be considered provided that they meet other criteria herein and are approved by the Historic Preservation Commission. Furthermore, the number of signs and metrics thereof shall be as established for non-residential zoning districts in Chapter 21, Section 21-20 of the Code of Ordinances of DeKalb County, subject to the modifications contained herein.

Signage shall be designed to complement the architectural features of the buildings it is on, and such signage shall be consistent with respect to size, scale, material, and design of such buildings. Signs may be lit by duck/gooseneck lamps, and back/silhouette lighting. Individual sign lettering shall be a maximum of 15 inches in height. Appropriate locations for signage within traditional storefronts includes at lintels which separate storefronts from the upper floors, the space above the transoms in the storefronts, and the windows.

16.3.A.11 Awnings. Awnings shall be of canvas and similar fabrics, fixed metal, or similar materials. Internally lit awnings and canopies that emit light through the awning or canopy material are prohibited.

16.3.A.12 Lighting. Building facades facing a public R.O.W. shall be illuminated for safety and aesthetics. Lighting shall be designed to avoid producing glare in the public R.O.W. Light spillage onto adjacent residential properties shall be minimized by cutoff luminaires.

16.3.A.15 Rooftop Mechanical features shall be set at least ten (10) feet from the edges of roofs and screened vertically from view through use of parapet walls or similar features. Additionally, all such features greater than five (5) feet in height shall be set a least twenty (20) feet behind front building façades.

16.3.B.3 Landscaping. All areas in the Village not developed with buildings or prepared surfaces for parking, circulation, utilities or the like, shall be landscaped and permanently maintained with ornamental plantings. In surface parking lots, shade trees shall be planted at a minimum rate of one tree per ten cars. These shall be arranged so that at least 50% of the paved area is shaded at midday in midsummer in order to reduce the heat island effect. Paved areas of the site shall be limited in size to the area required to accommodate the intended use.
SO HOW DOES A DECISION GET OVERTURNED?

- Arbitrary and capricious findings or application
- Violation of other procedural process
- Violation of guidelines or standards
OOPS, WE GOT OVERTURNED, WHAT HAPPENS NOW?

• It depends.
MORE OLD ANALYSIS LEADS TO PARALYSIS.
AHHH, ANALYSIS PARAYLSIS
DON’T BE A “FREDITE.”
GO WITH YOUR GUT . . .
JUST DON’T LET THAT BE THE SOLE RATIONALE.

Otherwise, the decision may be considered arbitrary and capricious.

Be confident in your thinking. You are knowledgeable about the subject matter.