I. CALL TO ORDER

PRESENT: Montoto
REMOTE: Rupp, Koski, Moroney, Weaver, Richter
ABSENT: Valderrama-Echavarria

II. MINUTES ACCEPTANCE

1. Historic Preservation Commission Minutes / June 29, 2020

RESULT: APPROVED [UNANIMOUS]
MOVER: Cindy Montoto, Chairperson
SECONDER: Ericka Rupp, Commissioner
AYES: Montoto, Rupp, Koski, Moroney, Weaver, Richter
ABSENT: Carolina Valderrama-Echavarria

III. CONSENT AGENDA

5. DRH20-00290 / Dan & Stefani Dawson
Location: 907 N. 17th Street
Certificate of Appropriateness request to demolish an existing garage and to construct a 1 ½ -story garage with accessory dwelling unit. A pergola structure will be attached to the side of the garage, in a R-1CH (Single-family Residential with Historic overlay) zone.

RESULT: APPROVED [UNANIMOUS]
MOVER: Cindy Montoto, Chairperson
SECONDER: Ericka Rupp, Commissioner
AYES: Montoto, Rupp, Koski, Moroney, Weaver, Richter
ABSENT: Carolina Valderrama-Echavarria
IV. DEFERRALS

3. DRH20-00278 / Merlin Stark
Location: 1109 E. Warm Springs Avenue
Certificate of Appropriateness request to demolish an existing barn and garage, move the swimming pool, construct a new pool house, and construct a two-story garage with accessory dwelling unit, in a R-2H (Medium Density Residential with Historic overlay) zone.

RESULT: TABLED [UNANIMOUS] Next: 8/31/2020 6:00 PM
MOVER: Noah Richter, Commissioner
SECONDER: Cindy Montoto, Chairperson
AYES: Montoto, Rupp, Koski, Moroney, Weaver, Richter
ABSENT: Carolina Valderrama-Echavarría

4. DRH20-00282 / Todd Heist
Location: 714 E. McKinley
Certificate of Appropriateness request to construct an addition to the rear of the house and to construct a two-story garage with accessory dwelling unit, in a R-2H (Medium Density Residential with Historic overlay) zone.

RESULT: TABLED [UNANIMOUS] Next: 8/31/2020 6:00 PM
MOVER: Noah Richter, Commissioner
SECONDER: Ericka Rupp, Commissioner
AYES: Montoto, Rupp, Koski, Moroney, Weaver, Richter
ABSENT: Carolina Valderrama-Echavarría

V. NEW BUSINESS

1. DRH20-00150 / Ken Litzinger
Location: 1521 N. 5th Street
Certificate of Appropriateness request to construct a partial two-story, single-family structure and associated site improvements, in an R-1CH (Single-family Residential with Historic overlay) zone. (This item was deferred at the June 29, 2020 hearing.)

Ted Vanegas (City of Boise): You have your packet and we’ve been through a lot of the plans and photos of the building, so I’ll go through that a little quicker and get to the meat of the discussion.
This is the house that was previously standing on the property prior to being demolished. This is the lot on the corner of 5th and Sherman. This is the site plan. Again, these plans were previously approved for the house that did exist on the property as an extensive remodel and was approved in 2017 by the Commission. These are some elevations. Interior and rear elevations and then the front and street side elevations.

A quick background. As I mentioned, in 2017 the Commission approved an extensive remodel to the contributing home on the property. In March of 2020, staff was called by a neighbor stating the house had been demolished. Upon confirming this a stop-work order was placed on the property and then on May 8, 2020, the applicant submitted plans. Essentially the same plans for the extensive remodel...they are now using those plans for new construction.

On June 29, 2020, the Commission reviewed the request and deferred the application to the July 27, 2020 Commission Meeting. At the hearing the Commission expressed concern that the contributing house was demolished without the required approvals or permits. The Commission asked that staff return with information on demolition and how the City handles illegal demolition in the historic districts and how the City may plan to prevent this from occurring in the future. You saw this in the work session, but I’ll bring it up in the actual hearing. For the record this is a condition that we are starting to add on applications to remove some of the gray out there. We do get feedback from the public, contractors and homeowners that our process isn’t black and white enough. It is hard to understand what is allowed and what is not allowed. So, we massaged these out to try to make things more clear. So, sometimes we’ll change our conditions or add conditions like we’ve done in the past to try to make things clear on what is expected and what is inappropriate.
We also went over these in the work session. Again, and maybe down the road a work session can be set up with the Commission to look at our code and what we have in there and look at what we could do better as far as penalties for illegal demolition of our historic resources. Again, construction delay is what a lot of City across the country use to discourage illegal demolition and those range broadly on how much of a delay. We’ve talked about that a bit just between staff on what that would look like. Another item we talked about is requiring City Council approval for any new construction on an illegally demolished property. This would implement a process delay of a couple of months and it would put that issue right in front of the City Council. The Commission may recommend amendments or additions to City Code concerning penalties for illegal demolition. The proposals would require a public hearing by the Commission and final approval by City Council. Whatever the Commission may determine through a work session would be appropriate. That would have to be...of course our Legal Department would be involved, and City Council would be the final approval on that process.

On this application you did receive a letter from the North End Neighborhood Association (NENA) and an attorney representing the NENA asking about further action on this property and the applicant. NENA has indicated, as you see there, a desire for the Commission to hold the application until appropriate consequences are levied. Again, under City Code it is not the role of the Commission to impose penalties or exact punishment upon an applicant. Rather, it is certainly the duty of the Commission to promote, preserve and protect our historic buildings and resources. However, the penalties and whatever action would be taken through the department and the City Attorney’s Office. Again, the underlying portion is that Legal strongly cautions the Commission that any decision on this application made for the implicit or explicit purpose to punish the applicant would be the subject of an appeal. Further you see the third point below, a deferral when an application must comply with Boise City Code. Without agreement by the applicant to the deferral a decision must be made by the Commission within 60-days of the initial hearing date.

This is the second part of the letter from NENA’s counsel. As they urge, “A reclassification of this site from contributing to non-contributing must take place or the application must be denied”.
As you’ve had a chance to read the memo the City takes the position of such reclassification as discretionary providing the Commission with three options for its decision with regard to the application. The Commission may decline any action to reclassify the property and there are advantages and disadvantages you’ll see in the memo.

- The advantage of declining any action to reclassify provides efficiency in the procedure and protects the due process rights of the applicant.

- The disadvantage would be a potential appeal from NENA to City Council though that may be difficult to show that lack of such a hearing violated a substantial right of NENA or its members.

The Commission may defer the decision on this application to hold a hearing on a motion to reclassify the property. Due to the required notice requirements under Section 11-5-9, should the Commission decide to have a hearing to reclassify the decision to approve or deny for a Certificate of Appropriateness it would have to be scheduled for a later date. This would really push out the process. In theory, a new hearing for a reclassification would come first and then potentially a hearing on the decision of the actual application before you. Though both could possibly occur at the same time.

- Advantages would be to eliminate any possibility of appeal from NENA. That the decision or approval to deny the COA (Certificate of Appropriateness) was made upon eligibly unlawful procedure.

- Disadvantage is once a final decision on the application is made this deferral and hearing can be used as a basis for appeal by the applicant if the deferral causes the approval or denial of the application to occur more than 60-days from the initial hearing date.

The Commission may just deny the application for a Certificate of Appropriateness. If the Commission denies the application, it should provide a very clear and concise reasoned statement of its findings as to why the application does not meet the criteria laid out in code. As noted above, this decision should be forward looking as a decision based on prior conduct could be construed as a punitive measure.
The advantage of the issue of reclassification would be moot at that point. The disadvantage is likely an appeal from the applicant that the decision is arbitrary and capricious given these plans were previously approved by the Commission when proposed with the remodel.

With that, staff at this point does recommend that the Commission provide an approval or denial decision on the application. The recommended options would be to approve DRH20-00150 based on staff’s analysis and findings or move to deny. I’ll stand for questions.

**Commissioner Koski:** Clarify for me on the plans that were submitted by the applicant, if I’m looking at those, are those the same plans that were submitted initially for the initial application and they’ve gone unchanged except for the status of being new construction versus renovation?

**Ted Vanegas:** These are essentially the same plans that were approved for the extensive remodel. The same plans that came before you last month as well.

**Applicant Testimony**

**Steve Vaught (Owner/Applicant):** Commissioners thank you for your time. I appreciate you listening to us again. We come before you asking for approval so that the stop-work order will be lifted on the property to enable us to finish the construction of the project at 1521 N. 5th. The end result is that a home will be built on this property regardless of the underlying issues or concerns.

At the last meeting no immediate homeowner testified in opposition to this project. The nearest neighbor was Mr. Aldana who lived one block away and spoke as a concerned neighbor and as a builder in support of the project moving forward. And, the previous history of the property being used by squatters, drug users and the poor condition of the structure.

The present plan fits harmoniously in the area and to say otherwise would be a tragedy when the project was previously approved by the Historical Commission and the basement, including plumbing rough-ins, are completed.

Regarding the illegal action of us demolishing the home we simply refute it as a false accusation. If our intent was to demolish the
structure it would have been done long before incurring tens of thousands of dollars in expenses for lifting the home and paying the additional costs for contractors to work under the said structure. We went through those procedures to preserve the historical structure in good faith. Upon lowering the structure, framing, and false support walls to keep the home from collapsing, the true condition of the subfloor was revealed illustrating its poor condition and being uneven almost seven inches in some areas. Then while taking off the roof for renovation the trusses were crumbling, and the home started swaying. It became clear that we needed to take a different approach to the renovation for both worker and public safety.

In March, Mr. Vanegas deemed this home a total demolition despite our preservation of some wall segments to be used after replacement of the subfloor. I would argue that Mr. Vanegas prematurely made this decision. We were then ordered by Mr. Vanegas and Mr. Archibald to clean up the site, remove all debris, and resubmit the project as new construction since he said a contributing home was lost. Since the stop-work order we have completed all those items at the City's request which leaves us before the Historical Commission tonight seeking reapproval.

Mr. Vanegas and I have exchanged e-mails regarding our interpretation of demolition and the preservation of property which lead to the stop-work order. In addition, we have discussed the vivification of the two government agencies controlling the historical district having conflicting written opinions. Furthermore, we have agreed that there are numerous ways to preserve the essence of a historical home. Each home being renovated in this district has a different set of circumstances, conditions, challenges, and unknown obstacles that cannot be governed by a blanket set of rules. This project could be the impetus for the immediate need for the City and the historical district to revisit and possibly redraft the entire process and code with more clarity and expectations, and possibly removing its vivification of the two agencies in the future. I believe some of the previous prelude to this, that Ted laid out, has worked on that clarity going forward.

Mr. Archibald and the City granted permission to allow site work to reduce the liability of exposed basement by back filling, finishing window wells and reducing further erosion of dirt onto the public right-of-ways for the City due to public concern. We have continued to comply with the City’s request to complete this.
Now we have the North End Neighborhood Association trying to intervene with a retained attorney asserting that our request be denied due to a new home being constructed requiring another hearing regarding the conversion of a contributing to a non-contributing status due to the stop-work order and demolition being a possible instant approval tactic to circumvent City code’s process. I request that NENA’s letter be ignored by the Commission for this decision since Mr. Vanegas at the City instructed us to proceed down this path for reapproval today.

We are approaching five months since the stop-work order was issued which I contend is hardly defined as an instant approval especially when I am the person incurring the lost time and baring the burden of the holding cost of the project. In addition, we have never requesting that the home have its contributing status removed since we deny that the home was demolished prior to the stop-work order. If this is an issue now, this a matter between NENA, the Historical Commission and the City. Not me, the property owner since I have been following the City’s instructions to obtain the reapproval. I simply want to move forward towards a solution where the Commissioners will make a decision tonight allowing us to commence with construction again and not be tabled for another month.

As to the underlying issues of demolition and the contributing status reclassification it simply is not part of the application process tonight. However, I am willing to collectively meet with the City’s historical district and NENA separately to discuss and resolve these matters prior to next month if that will help. I’m truly sorry for the position that we are in today. Our intention was never to demolish a contributing historical home and ask for your approval of the project again tonight. I appreciate your time and I will field any questions that you may have for me. I am the property owner and I don’t know if I disclosed that.

Commissioner Koski: I have a question for the applicant. It is regarding the design of the home in the plans. Being that they weren’t changed, is your intent to copy the home that was there?

Steve Vaught: Our intention is to rebuild the home exactly as the plans show so we’re not changing anything. Whether interior or exterior we’re building it as the plans show.
Neighborhood Association Testimony

Sherri Battazzo (North End Neighborhood Association / NENA): I’m here alongside Mark Baltes and we’re here on behalf of the North End Neighborhood Association. Mark is president and myself as Historic Preservation Commission liaison.

We’re here specifically on behalf of the neighboring residents to the subject property. Who, as the owner noted in his letter of explanation, were in an uproar over the illegal demolition of this historically contributing structure that was once located at 1521 N. 5th Street. And more than that, not to be seen as just an association, but here on behalf of the neighbors and the owners within the district who do comply with what it takes to remodel and perform construction inside the district. We’re all clear that there is value added for constructing a home or remodeling a home or preserving history inside the district which I suggest is why the applicant selected his location for this project.

As we went on record at the last hearing on June 29, we fully supported the Commission’s decision to table the consideration of new construction plans that were presented for the replacement of this illegally demolished structure. We agreed that the request for review and approval for new construction plans was unacceptable until an appropriate action has been taken to address the demolition for a contributing structure that cannot be brought back. It was intended to be preserved. Replication is not preservation. The applicant who performed the illegal demolition has provided both written and verbal account before this Commission that demonstrated either a lack of understanding or a willful disregard for historic preservation along with a lack of competency for performing construction that requires preservation. In the homeowner’s joint letter of explanation provided on March 25, they pointed to several areas where a competent contractor may have taken other actions that could have saved the structure. A house that has stood for over 100 years will in fact sway and be on the verge of collapse once its siding, lead based or otherwise, which serves as shear has been removed. A house that is disintegrated and torn limb by limb may in fact collapse during elevation to replace upon a new foundation. The record should reflect that countless contributing structures have been preserved during the remodeling process in each and every one of Boise’s historic districts for years. Examples include:
All of these homeowners went through the cost and the competency to perform these remodels which involved lifting the home, sitting it back down and preserving a contributing structure. While a select few have attempted to cite safety concerns as excuses for the need to demolish a historic structure, this excuse has never been accepted as an acceptable reason for demolition by this Commission. It is important to note that, as stated in the homeowner’s letter of explanation, reusing good lumber and preserving a subfloor does not capture in anyway the essence or intent of historic preservation.

Almost equally as alarming as the applicant’s disregard for preservation ordinances are the multiple references made at the last hearing regarding the project at 1004 N. 15th Street where a contributing house was also removed in a similar manner and replaced without consequence. The applicant seemed to indicate this was a precedent for action. It is for this purpose that NENA has taken this stand. Lack of enforcement is not a defense. It is incumbent upon the City, and I agree with the applicant, that uniform enforcement is required for this preservation ordinances that govern the illegal demolition and destruction of historic contributing structures and by implementing appropriate penalties and consequences for noncompliance. It impacts us all. Lack of enforcement not only reduces the likelihood for compliance, but it diminishes the value that is placed upon areas of preservation. And, most importantly it creates a hardship for the property owners who do comply with regulations and design review process. Mark will continue.

Mark Baltes (North End Neighborhood Association / NENA): I can’t hear you guys very well so I’m just going to go ahead and speak out. I don’t know how much time I’ve got left. As Sherri eluded to in her statement in representing the neighbors of the North End Neighborhood Association, it’s really unfortunate that NENA has to find itself in this position of enforcement. We look upon the City to do what we believe is the right thing to do in enforcing its codes. These are arbitrary laws put in place and then excuses are made to oversee or make exceptions and that sort of thing. So, in this particular instance, especially where there’s pointing to a pattern of
behavior, in the eyes of NENA is becoming prevalent. As Sherri said, the property on 15th seems to have set the precedent for bad behavior in this particular case.

I want to talk a little bit about the demolition. As far as I can see there are two distinct demolitions that occurred here. One, it’s just a simple demolition without a permit as though somebody up on the bench or anywhere tore down their garage and just didn’t notify the City of its actions. The other of course is the demolition within a historic district. Which again, is similar but different in that demolition within a historic district as the Commission knows, you have to make findings. You have to make three of five criteria in order to justify demolition of a contributing home within the district. Now to say that wasn’t the intent of the owner or the contractor is not an excuse because as he described removing all of the components that would hold the structure sound and then taking it down for safety reasons, I think is just ludicrous. If anything, that qualifies as demolition by neglect or by negligence. So, therefore is every bit as deserving of prosecution as any other kind of demolition.

It is our recommendation that this be denied and that the Certificate of Appropriateness for this particular application be denied because it is an attempt to just ask forgiveness where asking permission was clearly the right thing to do.

I think that there is an opportunity here, through enforcement, for the City to make a statement that this sort of behavior going forward is not going to be tolerated. And, if the City is not going to enforce these things in a manner that’s uniform and fair...we want fairness as well as the applicant would want, then NENA will always step in and do what needs to be done on behalf of the residents here who, as Sherri said, play by the rules, go through the review processes at all sorts of additional time and expense and all of that. If we did not pursue prosecution of...these are misdemeanor offenses that carry with them a $1,000 fine. If we pursued this through demolition of neglect of historic property it could carry $1,000 a day penalty for as long as that condition exists. Again, you’ve got two distinct demolition violations in which to review. We understand clearly that this was not the job of the Commission to designate some sort of punitive action, but it is incumbent upon the City to do what is right. I think if the Commission were to make that recommendation, the City would follow through with enforcement of its ordinances. I think that is important.
In addition to this I want to make a statement as well because we are serious about it. NENA intends to file a complaint with the Idaho Division of professional licenses against the contractor for behavior that we think is unprofessional. That concludes my comments.

Public Testimony

Brian Erst (Retained Attorney / NENA): I thought I would give some context as it relates to the reclassification question in the procedural deprivation that has taken place. Normally, if there is going to be a reclassification or if a structure or object of value is determined or classified as contributing there is a process that everyone gets to participate in to debate and make factual findings related to whether or not and to what extent that object or structure should be considered contributing to historic values in the neighborhood. Everyone in the neighborhood including NENA’s members have a unique and cognizable interest in those factual findings, in those processes and those procedures and that is the reclassification process.

So, while the staff and/or the applicant might be arguing that folks should just, “Look, it is water under the bridge”, we don’t know what water is under the bridge. There is a process for that under Boise City Code. That is the reclassification process where the structure, the remnants or the object are to be...a factual finding is to be made as to whether or not they’re contributing. So, is there subfloor left, are there walls left? The applicant indicated that they may be interested in repurposing some of those. There is no doubt we can never get back the historical values that we’re deprived. There is a factual finding process that NENA has a right to be involved in hearing upon through which those factual determinations might be made. Are the walls contributing that remain? Are the walls even still there? The applicant in the application materials indicated that they intended to save the walls, but there’s no real mention as are there any contributing objects or pieces of structure that might still be salvaged and required to be utilized. That’s why it is important that the reclassification process be endeavored and that those factual findings be made prior to a Certificate of Appropriateness determination on an entire new structure.

I want to lodge that objection and encourage a denial on that procedural point as well. With that, I thank you for your time.
Derek Hurd: Thank you for your tireless energy and insight into what you contribute to preserving the character and charm of our historic districts. It does not go unnoticed.

I’ve been designing homes in the historic district for coming on 20 years now. This isn’t the first time someone, through ignorance and willful disregard for the rules or a combination of both, has performed an illegal demolition. I think this is a disgrace and a disservice to the neighborhood and to the builders, architects and designers that do work within the guidelines in these awesome historic districts that we do have. Without strict adherence to the rules or penalties when they are violated, we diminish the value of the whole district.

This Commission, the City Council and the neighborhood at large must stand up to this wanton disregard for the preservation measures that have been put in place for the benefit of the whole. These are established rules that those working in the district must adhere to. To be ignorant or to not care is not an excuse. Every time the story seems to be the same, “We didn’t know”, “We tried really hard”, “The wind blew it down”, on an on. You’ve heard it all. Some of you have been sitting there a long time and you’ve heard a lot of those excuses. Some of you are just hearing the excuses for the first time. I think this builder, future builders and homeowners that do blatantly disregard these rules need to be held accountable. For me to best service my current clients and my future clients I need to know if this Commission and the City Council is going to back up the rules and regulations. Many of us are working in this district and it is a disadvantage to us if following the rules is optional. I’d love to see some teeth behind this from the Commission and the City Council.

I appreciate NENA standing up and going to bat on this one. NENA is representing 5,000 households in this district and those of us that are following the rules sure do appreciate that and those of us that are living in the district sure do appreciate that. So, thank you NENA for your tireless energy on this effort. I just wanted to add my voice as a homeowner and as someone who has been designing and creating homes for people according to the rules for coming on two decades. Thank you again Commissioners for sitting up there and listening to all these hearings.

Applicant Rebuttal
Steve Vaught: Thank you for your information. I’ve heard NENA’s information and obviously they don’t have an understanding of what went on which is apparent from the testimony that they provided tonight. The shear and the siding were on the home and part of the roof was still on the home, when it was swaying, and things were disintegrating and starting to collapse. So, there is some lack of understanding and a lack of knowledge and some lack of information that they do not have or in the whole process which is back to my original statement in the beginning.

There is going to be a home built on this property at some point and time. I’m not here to say what happened was right or wrong. I’m truly sorry for what happened. I’m an unintended victim. I hired a contractor to do a job. Obviously, it hasn’t gone right. I’m just trying to move forward as the property owner to get the thing completed so that I can have a home to move into in the near future.

The underlying issues of the demolition and this reclassification, that I never requested or never asked for, and I believe Ted brought to attention, "I don’t know if a public hearing or something needs to be said on the issue because no home is there now".

We were ordered to haul off all the debris and that, so no wall segments exist. Some old dilapidated 2x4’s from the subfloor are there. We preserved the sandstone foundation blocks because we did want to reuse them. They don’t make that type of product anymore. That is a historical product and we want to reuse it.

I know this process and I know what has happened now and I am truly sorry, but the underlying issue of the appropriateness of the home and mass on the application at hand...that is what I’m hoping you’ll approve so we can continue down that path. Like I said before, I’m willing to meet with everybody regarding the two underlying issues. I don’t want this to become a long protracted legal matter, but those are underlying issues that are going to be resolved at some point in time. A home is eventually going to be built on the property. That’s just a fact. At some point in time it will.

We’ve already started the process. The foundation is in. The rough-in plumbings are in. The structure needs completed. If anything, if it is going to be a long drawn out process, the basement should still be framed, and a subfloor put on to cover up the 9-foot hole in the
basement. I believe the basement has 9½-foot ceilings. Things need to be tidied up and finished. A home needs to be built.

I know we can work through these other matters whether NENA regarding...there needs to be things done. Let’s work through this issue and find out what we can do together so this process doesn’t happen again and other homeowners who are hiring contractors don’t have to sit here like I am today to go through this. It’s not fun and trust me it has been long and I’m looking forward to putting this behind us, but it’s going to take a long, long time. I hope you vote in favor of getting this done tonight. I am truly sorry for us all being in this position.

Public Portion Closed

Chairman Montoto: For the sake of the complexity of this application and situation we should jump right into discussion as opposed to entertaining a motion. I will say that this is the trickiest application I’ve ever seen in my five plus years on the Commission. This is really tough. I do want to remind my fellow Commissioners that the plans that are before us tonight were previously approved back in 2017. That is what we’re looking at and we as a Commission are not legally in a position to be punishing applicants. It is our job and responsibility to be hearing the application before us tonight. I’ll go ahead and open up some discussion from my fellow Commissioners.

Commissioner Richter: I would like to make a really, really, really clear clarification that the application and the plans that are put before us tonight were drawn based on their remodel of a contributing historical structure within the North End Neighborhood Association. The plans that are set before us tonight are not of new construction. I will make that comment and I would like the discussion to go on further and see where it goes.

Chairman Montoto: Thank you so much for that comment. Does anyone else have additional comments?

Commissioner Koski: I do feel it is appropriate to have a motion and a second to offer discussion, but I do understand the gravity of this topic and the application in front of us. I think that while the application is for the new construction being built on top of this existing foundation that currently has a stop-work order for violation of code and that the stop-work order was issued by Code
Enforcement, if we are going to approve or entertain approving this we are in affect operating in a way of enforcement, penalty or lack of. I agree that as a Commission it is not our job to worry about enforcement or penalties. I am struggling greatly on approving something for a project that has a stop-work order because of illegal activity.

I disagree greatly with the testimony from the applicant that they were saving items to reuse in wall sections because I was there the day it was demolished and saw that. If we go into public record, there will be photos of the demolition on the complaints that were issued for demolition and those photos will show that demolition was done without approval. This applicant has stated, and they have shown they knew they could not demolish it because of the work they did to raise it and lower it and try to keep it. They’ve shown that they knew it could not be demolished and that they knew of the procedures to go through to get approval. They knowingly did not do that and now, by their application for a new structure, they are trying to say, “Oops, sorry” and move on. I understand the homeowner’s position in that this is a long time and he wants a house. I get that.

I also know that we as a Commission our job isn’t penalty of any kind of punitive action against him. That is the job of City Council and the Mayor. That is the job of our City. We can’t do that as a Commission. I would like to see the applicant appeal a denial to go in front of City Council and the Mayor to explain to the City Council and the Mayor why and how they went against the demolition. For this reason, as well as couple others, but for this specific reason I would like to move that we deny this application and with a second, I would like to offer up some more discussion.

**Commissioner Koski moved to deny DRH20-00150.**

**Commissioner Richter seconded.**

**Chairman Montoto:** Let’s further that discussion before we call the roll.

**Commissioner Koski:** Thank you for offering more discussion. I think it is really important that all of us, as Commissioners, chime in on this. This is something that I would like to see resolved quickly so the homeowner can move on. We’re not about delaying the
homeowner’s ability to move forward. We’re about making sure that the rules are followed and so on and so forth.

I do want to state that one other thing that should be looked at and a reason for denial would be that in Chapter 5 of our Design Guidelines it is specifically stated that, “It is preferred to design congruous contemporary structures rather than duplicate or mimic the design of historic buildings in the district”. It has been made clear in testimony today and through the plans that this is a copy of the historic structure. An exact mimic of the historic structure. We have to go by, as a Commission, the Secretary of Interior Standards and as stated in Standard 9 of the National Secretary of Interior Standards, “New construction should also be distinct from the old and must not attempt to replicate historic buildings”. The Secretary of Interior does advise that replication and mimicry are unacceptable approaches to design. As far as merit for denying the existing plans I believe there is full merit in that and that it should be redesigned.

More importantly, I would try to encourage the applicant to be in front of the Mayor and City Council to help us a City and to help the applicant understand what the consequences are for breaking the rules.

Commissioner Richter: Commissioner Koski pretty much nailed it on the head there and I definitely agree with every point that he made.

Chairman Montoto: I concur. With that, if no one has any additional comments...seeing none, we’ll have the clerk call roll.

RESULT: DENIED [UNANIMOUS]
MOVER: Devin Koski, Commissioner
SECONDER: Noah Richter, Commissioner
AYES: Montoto, Rupp, Koski, Moroney, Weaver, Richter
ABSENT: Carolina Valderrama-Echavarria

2. DRH20-00231 / James Byron
DRH20-00231 / James Byron Location: 1417 E. Franklin Street Certificate of Appropriateness request to demolish an existing one-car garage and to construct a two-story garage with accessory dwelling unit, in a R-1CH (Single-family Residential with Historic overlay) zone. Ted Vanegas
Ted Vanegas (City of Boise): This site is located at 1417 E. Franklin Street. You can see the lot highlighted in pink on this slide. The applicant has provided before and after site plans. The top shows the existing conditions and the bottom shows the proposed site plan.

As proposed the project will meet setbacks required by the Zone. However, the backup space from the doors of the garage are not 25 feet. There’s 22 feet of backup space plus 3 feet of buffer space for a total of 25 feet required from the doors of the garage. If approved, the applicant would either need to redesign to meet that extra 3 feet from the door or apply for a variance.

These are the elevations of the garage and Accessory Dwelling Unit (ADU). The peak height is about 18 feet. These are some renderings and photos of the existing structure and the house. The house is one-story and then these (photos) are the garage and some of the neighboring structures in the background. Here is a view along the alley. As you can see there are some different structures along the alley.

We did receive some public comment on this. We had one comment opposing the project due to the height. We had one comment in support of the project and then the applicant provided a petition with signatures from the neighborhood in support of the project.

Potential areas of concern:

- Proposed lot coverage is about 38-percent. The existing garage contributes about 7-percent to the lot coverage and the new garage contributes about 9-percent to the lot coverage so about a 2-percent difference approximately in lot coverage.

- The height of the proposed garage will be about 4-feet taller than the non-contributing house. So, again, the peak height will be about 18 feet which is relatively modest for garages with ADU’s above.
Additionally, the house is non-contributing. We’ve discussed this in the past where there is a garage / ADU that is going to be higher than the house. When the house is non-contributing potentially that non-contributing one-story house could be changed. It could be increased in height. Another story could be added onto it. It could be demolished someday and rebuilt with a taller house. With a relatively modest peak height of 18 feet and the non-contributing status of the house the staff did not add a condition of approval requiring that the garage be shorter than the house due to some of these issues explained here.

With that we recommend approval of DRH20-00231 with the recommended conditions of approval in the project report.

Commissioner Koski: You mentioned the new building in relation to the house and it being taller and that the house is non-contributing so it could be up for additions of a second story. Do we have photos of the homes on either side of this property and are they one-stories, two-stories or 1½ stories? Do you have a picture of street view?

Ted Vanegas: I don’t have a picture of the house. I believe the house right next door is a one-story and the house to the other side, the west side, is a 1½ story. So, you have a one-story and 1½ story adjacent.

Applicant Testimony

Chairman Montoto: The applicant is here.

Ted Vanegas: I’ll bring up the applicant’s presentation and then work through the slides for her.

Krista Stump (Applicant): My husband, James Byron, and I are the applicants of 1417 E. Franklin Street. I believe Ted’s presentation said W. Franklin so to clarify. Thank you for hearing me tonight. I wanted to point out the unique position that our home is in. We purchased the home in 1998 because it was a historic home although the district didn’t exist at the time. In the early 2000’s when the district was formed, we actually opted in because I think historic preservation is important and I had hoped some of my neighbors on the street would have done the same, but...
I’m the funny little square in the East End that everyone asks about. In 2011 we remodeled the home and worked very hard with staff and the Preservation Commission to do so in a way that we thought added to the historic nature of the home. So here today, in 2020, we are submitting a plan for a garage and ADU.

I have some pictures. Actually, the Assessor came by after we had remodeled and brought us that picture from the 50’s. The home in 1998 with the garage and you can see even at that time next door there was quite a tall structure and then today with our house and garage and pandemic swimming pool this summer.

I wanted to hit on our proposal. These are similar to what we submitted in the package, but just a couple of key points. The proposed garage is about 3½ feet taller. The pitch of the house is 14½ feet. We worked really hard to make this structure as low as possible and still be useable. We kept the side load, and an 18-foot roofline provides 23 by 26 feet with interior stairs and the 38-percent lot coverage. So, it offers an ADU of about 365 square feet.

I have a couple of other pictures. In this image we’re trying to show that, and this was my largest criteria that from the sidewalk view the garage did not overwhelm the existing house and I think we’ve done a pretty good job there. You can see what that would look like. Then we have a couple other images. You don’t see the front door here, but our architect worked these up. Standing at the front corner of our house...that is the view from the sidewalk, west side. You just see the structure in the back. Here is the side of the house. You can see that you probably wouldn’t be able to see this from the sidewalk because of course this is in our backyard here. This would be from the alley view and this is what you would see. This is the other corner of the alley view.

To hit on a couple of things. Originally, I actually was aiming for a remodel of the garage, but it has a really shallow foundation and the wood is touching the dirt. I think it would end up being that one post was maintained there. We wanted to keep the side load and we did experiment with some others. Right now, as it is designed and as Ted mentioned, there is 22 feet of maneuver space so we will have to apply for a variance. The setback...the garage is currently on the property line and the alley and we would set it back the 5 feet as proposed here.
The roofline is lower, and I'll show you some photos of surrounding structures on the alley and some of the homes on Franklin and Washington. And, again, we worked really hard on the mass of the garage. In terms of lot coverage this is something that is also important, and I think I've testified on this matter, but we are in-line with many other homes in the East End that have been approved. And, again, we worked really hard to keep this a small space. Of course, the ADU provides additional housing and off-street parking.

I'll go quickly through here. Like I said, we worked really hard. Actually, we hired a different architect and then our current architect came up with some alternative plans. This was the first plan which you can see has a 7½-foot difference in the house. We don't have to linger here, but I just wanted the Commission to know that we gave it a lot of consideration. This is the same just different elevations. Then this was done by our current architect, but still shows the exterior staircase and something that is quite common in the East and North Ends. This kind of box in the back. We didn't feel like that meant our needs even though it would give us more space. That is the front elevation of what could have been.

We did want to get support so the East End Neighborhood Association (EENA) I believe submitted a letter. I talked to Sheila and she was supportive of the project. Then we contacted all of the neighbors on both sides of the alley and only one was concerned about the height as Ted indicated. I'll show you that her home behind us is taller. So that's the next slide. This is kind of a funny picture, but if you see on the left side of the slide 1422 E. Washington, that house height is 20 feet, 8 inches. Our neighbor's garage at 1415 E. Franklin is at least 19 feet tall. Of course, our house is 14½ and we're proposing 18 feet there. Then this is from Haynes Street walking towards Coston and you can see there the blue garage and home are quite a bit taller. If you keep going, next slide, down the alley you can see that the home right there by that garage on the first picture is the Boise Boy's new house and that is a very large home. Then moving towards our home at 1415 E. Franklin which again, was taller than our home. Just a couple more pictures of what is existing.

Thank you for your time.

**Chairman Montoto:** I have to say I love those pictures. It's so great that you were able to get ahold of that 1950's photo. It's awesome.
Commissioner Weaver: Just out of curiosity, I know you did a remodel on your house. In the past have you done any other additions on it or is the garage the first exterior work you’ve done?

Krista Stump: Other than the remodel in 2011 which did add-on to the home we have not made any other changes.

Commissioner Weaver: Did you by chance and I’m sure it was in there and I just didn’t see it, but what is the size of your lot?

Krista Stump: My husband would know, but he is on the phone. It’s a standard East End. It’s not substandard. It’s a standard East End lot. I know they’re all different...maybe 55.

Ted Vanegas: It’s in the packet. It’s 6,100 square feet which makes it a standard size lot.

Chairman Montoto: I wanted to piggyback with that question. Do you have plans in the future to do any additional exterior remodeling or adding a second story on the main structure?

Krista Stump: Not at this time. It’s hard to predict the future. In 2011 when we worked on the remodel of our home, we considered a second story and actually working with Trout Architects and the City staff at the time they discouraged that. I realize things are different now. While Ted has a point that is something, we or a future homeowner could consider...we don’t have any immediate plans. You won’t see me back in a year.

Chairman Montoto: Any final questions for the applicant? Thank you for your time. Do we have a letter from EENA?

Ted Vanegas: I didn’t receive one.

Commissioner Koski: I have a question for staff. While I’m posing this question maybe you can pull up the East End District map that shows the little bump out of that house she has. The question I have for staff is, since this house is on a street as the only historic district home are the lot coverage and setbacks required by Planning & Zoning and the City the same for the non-historic sites on either side or across the street from her? Is it still 35-percent and then 25 feet required for a garage backup?
Ted Vanegas: There isn’t a lot coverage maximum for non-historic properties. If it is a substandard lot, there are substandard lot rules and it has to comply with our Substandard Lot Ordinance. I think the corner house is not in the historic district, but I believe it is a substandard corner lot. It wouldn’t comply with lot coverage. That wouldn’t be a thing for them, but they would have to comply with the maximum floor area ratio for substandard lots. They would still have to comply with the standard 22 feet of backup space plus the buffer area. That’s City Code which is why you’d need a variance to reduce that. But as far as lot coverage and as far as restrictions to height of a detached accessory structure they wouldn’t have to comply the same way that the historic structure would.

Applicant Rebuttal

Krista Stump: I don’t have any further remarks.

No Public Testimony

Chairman Montoto: I will consider a motion prior to some discussion.

COMMISSIONER WEAVER MOVED TO APPROVE DRH20-00231 WITH STAFF’S RECOMMENDATIONS.

COMMISSIONER MORONEY SECONDED.

Commissioner Weaver: The height is fine in my opinion. I think the garage is set nicely behind the house and I agree with one of the renderings that showed you would barely see the garage behind the house. It looks good and I appreciate the owner’s willingness to try to work to make the garage compact and as low as possible.

My only concern was the lot coverage and part of the reason I had asked about additional remodels was because of the fact they’ve done a remodel and maxed out the lot coverage already and now we’re adding on more to it. It kind of keeps chipping away at it.

I appreciated Commissioner Koski’s questions about the other parts of the neighborhood and if they would have to comply if they hadn’t done what they did. In my mind it’s probably more important that they wanted to keep their house and put it in the historic district than the lot coverage because I would imagine that there are probably a lot tighter lots around them than what they’re doing here which is why ultimately I decided I would approve this.
**Commissioner Koski:** I applaud the applicant and I wish I could see you and wish I was in front of you to say, I applaud you for opting in to be part of the historic district when it first was put together. That little overhead map kind of tells the story of your commitment to preservation and to the different things that the historic districts are all about.

I applaud that and I think your design is great. I was and I guess I am a little concerned about the height being above that of the house and being that you don’t have taller houses or garages on either side of you. Actually, you did have some in taller height, but you don’t have two-story garages on either side. But the fact of the matter is your neighbors aren’t in the historic district. My concern about the height has been taken away. You’ve done a great job as Commissioner Weaver said, to limit your height and with that you’ve gone over the lot coverage to 38-percent from 35. I’m a little concerned about that.

I’m concerned about the 25 feet of space for the garage, but I’m willing to overlook or approve the lot coverage based on where your lot is and who your neighbors are in that they are not held to the same standard. My concern is 25 feet which is required for the backup space of the garage including the buffer so my thought is to approve this, but with concern that you can get that handled through a variance or other means.

**Commissioner Richter:** I appreciate my fellow Commissioner’s comments and I do appreciate the energy and the effort that the applicant has gone through in order to put together a hopefully viable project for them.

I think the design is good. The three things that we’re talking about is height, massing, lot coverage and backup space. I think we all know where I stand on garages being subordinate to houses so that’s one thing I have a pretty big problem with and also, with lot coverage. Backup space I don’t have that big of a problem with because it is a variance that can be taken care of through other meetings.

Although the design is good and the intent is there, I don’t know if I could approve this application with the peak height exceeding the existing home and lot coverage exceeding 35-percent.
**Commissioner Koski:** I have an additional question for Commissioner Richter. Again, lot coverage is a concern of mine also. Commissioner Richter, if a condition of approval was put in to reduce the size of the garage to meet the 35-percent lot coverage which I imagine would then also put them in a position to meet the backup space of 25 feet including the buffer...would that be something you’d be more likely to approve or is the height still something too significant?

**Commissioner Richter:** I think the lot coverage is definitely a little bit more of a concern of mine. The peak, although it is higher than the home, we’ve seen applications where the peak is considerably higher than this. The way it is designed, like I said, I do appreciate how it is designed and where it is located on the lot. I could possibly overlook the peak height. It’s not in my favor, but I think if the lot coverage was reduced, I would be agreeable to approving the application. I don’t know if it would be a useable garage at that point though. That would be my only concern.

**Commissioner Koski:** I wonder if I could get Commissioner Weaver’s comment on possibly amending her motion to include lot coverage be reduced to 35-percent and the driveway backup space equal 25 feet including the buffer?

**Commissioner Weaver:** My thought on that is that I’m kind of with Commissioner Richter that I don’t know how useable that garage will be and if you could just cut off that? I would prefer, if that’s your choice, that you deny the application and have them go back and rethink how they are actually going to design it rather than just asking them to chop off some amount to it because the garage that was there before made it right at the 35-percent so they don’t really have a choice as far as I tell of anything they can do. I would prefer to go ahead and if you deny it with their understanding that that’s the reason for denial and that they go back and think and come back with a new proposal for us.
Chairman Montoto: I want to share my thoughts. Ted, do you mind going back to the map of the historic district? Basically, all the surrounding properties...not on the alley side, but to the north, east and to the west are not a part of the historic district and like the applicant said, they opted in which I think is fantastic and I think we can see their appreciate for the historic elements that they've maintained in the remodel and in this design as well. If this application does get approved they're already going to have to get a variance for their garage which all of their neighbors are not held to that same standard so my thought process is I see that there is a little bit of wiggle room here in this application so I will be voting in favor of this. That's just my thought process and I wanted to have that on the record.

Commissioner Moroney: I’m going to say I agree. This is a unique situation. Usually I’d vote against it if it’s taller than the house and I’m a pretty big stickler about lot coverage, but given that the purpose is to maintain the character of the historic district and of the blocks that these houses are on and knowing that the rest of the houses on the block, that this house is located on, can change I find it really admirable that they have opted into the historic district already. They’ve gone through several redesigns trying to meet our standards that their neighbors aren’t going to have to do so I will be voting in favor of this project.

Commissioner Richter: I appreciate all the comments the Commissioners have made including yourself. Just to say this, they did opt in and they know what the guidelines are, and the home and this property should be designed under the guidelines.

RESULT: APPROVED [5 TO 1]
MOVER: Danielle Weaver, Commissioner
SECONDER: Jillian Moroney, Commissioner
AYES: Montoto, Rupp, Koski, Moroney, Weaver
NAYS: Noah Richter
ABSENT: Carolina Valderrama-Echavarria

VI. ADJOURNMENT