

## Attachment C



### City of Phoenix

PLANNING & DEVELOPMENT DEPARTMENT  
HISTORIC PRESERVATION OFFICE

## Appeal of Commission's Decision

The **HISTORIC PRESERVATION COMMISSION** agenda for 11/20/17 is attached. The decision made by the **COMMISSION** will become final unless a request to appeal that decision is filed by the close of business on 11/27/17.

Any member of the public may, within five (5) days of the **COMMISSION'S** action, request a hearing by the **CITY COUNCIL** on any application. If you wish to request such a hearing, fill out and sign the form below and return it to the Historic Preservation Office in person by the close of business on 11/27/17.

### APPEAL FORM

I hereby request that the City Council hold a public hearing regarding application number HPCA 1700399 for the property at 837 N. 5th Ave. designated ☒ as a part of the Roosevelt Historic District / ☐ individually as \_\_\_\_\_.

*I am aware that the entire application will be up for review and that the City Council may uphold, reverse, or modify the decision of the Historic Preservation Commission.*

☒ Opposition ☐ Applicant

Name (please print) Jeff Swan

Street Address: 833 N. 5th Ave

City & State Phoenix AZ

ZIP Code 85003

Telephone 602-799-1126

E-mail: Jeff@swanarchitects.com

Signature \_\_\_\_\_

Date 11/27/17

Reason for appeal:

The CHPO/Staff's finding/recommendation for placing new construction of much larger size, scale, and mass in front of the uniform historic setback and adjacent historic houses does not comply with the City of Phoenix Historic Preservation Philosophy, the Secretary of the Interior's Standards for Rehabilitation, the General Design Guidelines, the PreserveHistoricPHX Preservation Plan, or Chapter 8 of the Zoning Ordinance. Refer to attached response to the CHPO finding/recommendation.

### FOR STAFF USE ONLY

This decision was appealed from the 11/20/17 Historic Preservation Commission meeting to the \_\_\_\_\_ City Council meeting.

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For more information or for a copy of this publication in an alternate format, contact Planning & Development at 602-262-7811 Voice or TTY use 7-1-1.

STAFF  
Submitted for Administrative Review  
NOV 27 2017  
CITY OF PHOENIX  
PLANNING & DEVELOPMENT DEPARTMENT  
HISTORIC PRESERVATION OFFICE

## Case No. HPCA 1700399 - City Council Appeal

### CHPO/Staff's Finding

"The Historic Preservation Office's General Design Guidelines for Historic Properties states on page 13, Within the historic residential areas, new construction should be similar in height, shape and materials to the historic structures in its vicinity. **Where changes in size must occur, the visual impact of the new construction should be minimized by stepping back the new construction from the historic buildings**". The proposed building is two stories and almost 29' in height and will dwarf the two one-story buildings flanking it. However, especially in this section of the Roosevelt Historic District, two-story multifamily buildings are common, three line the west side of 5<sup>th</sup> Avenue across from the subject property. In order to minimize the proposed building's impact on its lower-slung neighbors, the setback should be increased from 25' to that of its northern neighbor 841 N. 5<sup>th</sup> Avenue. The house to the north has a setback of 29'-2" to its front porch, whereas its body measures 36'-8" to the front property line. To the south 833 N. 5<sup>th</sup> Avenue is set back 30' at the porch and 38'-3" at its body. Shifting the new building eastward should lessen the impact of the two-story building on the one-story buildings."

### What does CHPO/Staff's Finding recommend – Refer to Attachment "A"

Even though the General Design Guideline referenced in the Finding says to step back the new construction from the historic buildings CHPO is recommending aligning the new building's 29-foot high two-story body wall with the 3-foot high porch wall of the north historic building. This recommendation completely contradicts the referenced guideline by placing the new building's 29-foot high two-story body wall approximately 8 feet in front of the north historic house's body wall and approximately 11 feet in front of the south historic house's body wall. ***This is nonsensical, how does this finding/recommendation comply with the referenced guideline or the Secretary of Interior Standards for Rehabilitation? How does this recommendation minimize or lessen the impact that the two-story building of much greater size, scale, and mass has on the adjacent one-story historic houses? This recommendation is baseless in historic preservation principles, standards, and guidelines and defies the principles of perspective.***

### What this Appeal is About

***Preserving the historic character, settings, and setbacks within the Roosevelt Historic Overlay District*** by requiring new construction to adhere to the City's Historic Preservation Philosophy, the Historic Preservation Zoning Ordinance, the Secretary of Interior's Standards for Rehabilitation, and the General Design Guidelines. ***Also, this appeal is about the infringement of the adjacent property owner's rights.*** The property owners involved purchased their properties after the City Council adopted the Historic Overlay designation. The applicant should not be entitled to special rights or considerations that subvert the City's Historic Preservation Philosophy, the Secretary of Interior's Standards for Rehabilitation, and/or the General Design Guidelines.

## **What this Appeal is not About**

This appeal is not about stopping new construction within the Historic Districts. In fact, we believe new construction can improve the district when it is integrated in accordance with the City's Historic Preservation Philosophy. *We are simply asking in this case that the design of the new construction of much greater size, scale, and mass follow the City's adopted historic preservation philosophy, standards, and guidelines and move back such that its 29-foot high primary/body wall aligns with the primary/body walls of the adjacent smaller historic houses. Refer to Attachment "C".*

## **Question for the City Council**

*"How does Staff's finding which recommends placing new construction of much greater size, scale, and mass in front of the adjacent much smaller historic houses in a historic overlay district meet the City of Phoenix Historic Preservation Philosophy, the Secretary of Interior's Standards for Rehabilitation, the Historic Preservation Zoning Ordinance, or the General Design Guidelines"?*

*The answer is obvious it does not! The finding is based on indefensible deal making which subverts the city's historic preservation philosophy, nullifies the intent of the historic overlay, and infringes on the adjacent property owner's rights. The finding literally contradicts itself by referencing the guideline which states new construction should step back from the historic building then recommends the new construction remain in front of the adjacent historic buildings. There are no supporting historic preservation principles, guidelines, or standards that support the CHPO recommendation.*

*As the adjacent property owner whose property will undoubtedly decrease in value if this finding is upheld I deserve an explanation that first identifies at least one historic preservation principle, standard, or guideline that supports or justifies this recommendation and secondly, why this developer does not have to comply with the City's Historic Preservation Philosophy, Secretary of Interior's Standards for Rehabilitation, and the General Design Guidelines.*

## **Inconsistencies with Staff's finding – Refer to Attachment "B"**

- *The Staff's finding establishes the historic setback on 5<sup>th</sup> Avenue arbitrarily or by using noncontributing (historically insignificant) properties.* The historic buildings are the contributory properties that define the historic setback during its period of significance from 1895-1930, not newer insignificant construction. **The average historic setback is approximately 38 feet. The finding arbitrarily recommends a 29-foot setback.**
- *The Staff's finding does not comply with the City's historic preservation policy which is to adhere to the principles of the Secretary's Standards for Rehabilitation.* The guidance offered in these standards is that the historic buildings must remain predominant and the addition or new construction must be subordinate to the adjacent historic building(s). **The finding makes the new construction predominant in a historic district by placing it in front of the adjacent historic buildings.**

- ***The Staff's finding does not meet the General Design Guideline for new construction of similar size (even though it is of much greater size) referenced in the finding which states; "Within the residential areas, new construction should be similar in height, shape, and materials to the historic structures in its vicinity. Where changes must occur, the visual impact of new construction should be minimized by stepping back the new construction from the historic buildings". The finding clearly recommends placing the two-story new construction of much greater size, scale, and mass in front of the adjacent smaller historic buildings.***
- ***The Staff's finding does not comply with the General Design Guideline for new construction on page 14 which states; "Primary new structures should correspond with the setbacks, spacing, alignment, and orientation of the adjacent primary buildings". The finding does not respect the historic uniform setback, nor does it align the primary/body wall of the new structure with the primary/body wall of the adjacent historic houses. The finding aligns the 29-foot high primary/body wall of the new construction with the 3-foot high porch wall of the adjacent historic house.***
- ***The Staff's finding does not comply with Section 802 of the zoning ordinance. Section 802.B.1 states the purpose is "to assure new construction and subdivision of lots in a Historic Preservation District are compatible with the character of this Historic Preservation District". The finding recommends placing the new construction approximately 10 feet in front of the uniform historic setback which is probably the most visually significant character defining element on 5<sup>th</sup> Avenue. This finding diminishes the historic integrity of the uniform setbacks established by the historic buildings during its period of significance.***
- ***The Staff's finding does not comply with the Phoenix Streetscape Conservation Guide written by Vincent Murray and Sam Morse with assistance from the Arizona State Historic Preservation Office and the City of Phoenix Historic Preservation Office. This guide states as a Neighborhood Streetscape Rehabilitation Treatment "Keep front setbacks and street-facing side building setbacks consistent with historic patterns and designs". This finding ignores the obvious historic patterns and designs.***

#### **Result of Staff's Finding – Refer to attachments "C" and "D"**

- ***This finding in direct contrast with the City's Historic Preservation Philosophy, zoning ordinance, and general design guidelines will diminish the historic character, streetscape, and setting (established during the Roosevelt Historic District's period of significance between 1895 and 1930 not 2017) on 5<sup>th</sup> Avenue between Roosevelt and McKinley streets.***
- ***This finding in direct contrast to the current City's Historic Preservation Philosophy, zoning ordinance, and general design guidelines recommends a new approach to infill projects that consist of placing new construction of much larger scale, size, and mass in front of smaller adjacent historic houses. Even though, the City's current policy/approach to infill projects consisting of new construction of similar size (not much greater size) is to align it with the setbacks of its adjacent neighbors.***
- ***This finding in direct contrast to the Secretary of Interior's Standards for Rehabilitation, recommends that the new construction be placed in a predominant position rather than subordinate to the adjacent historic houses within a historic overlay district.***

- ***This finding unquestionably infringes on the rights of the adjacent property owner and negatively impacts the value of the adjacent properties by removing the protections provided for under the historic overlay and chapter 8 of the zoning ordinance.*** Since all property owners involved in this case purchased their properties after the Historic Overlay designation was adopted, shouldn't they expect the City's Historic Preservation Philosophy, standards, and guidelines to be enforced? The hardship imposed on the Appellant is being created by the Applicant.
- ***The finding has no basis in the City's Historic Preservation Philosophy, standards, and guidelines and will establish a precedent that will weaken them on all future projects.*** Standards and guidelines are established to provide consistency in decisions. ***What is appropriate or inappropriate for one person or entity should be afforded to all persons.***

## **Conclusion**

The Staff's finding is not supported by the City's Historic Preservation Philosophy, Chapter 8 of the Zoning Ordinance, the General Design Guidelines, the Secretary of Interior's Standards for Rehabilitation, or any other historic preservation principle. ***This is an egregious, indefensible finding based on a deal-making process that places developers rights above the property rights of the adjacent property owners and others who believed their properties were protected by the Historic Overlay.*** It is deeply saddening that after spending 32 years working in the field of historic preservation that I find myself having to defend these long-standing historic preservation principles, standards, and guidelines from those who know or do not understand the importance of preserving the historic character and settings of this historic overlay district for future generations.

***I am asking the City Council to follow the City's Historic Preservation Philosophy, standards, and guidelines and modify this egregious finding by moving the new construction's 29-foot high primary/body wall back to align with the uniform historic setback and the primary/body walls of the adjacent smaller historic houses.***



**NEW CONSTRUCTION**

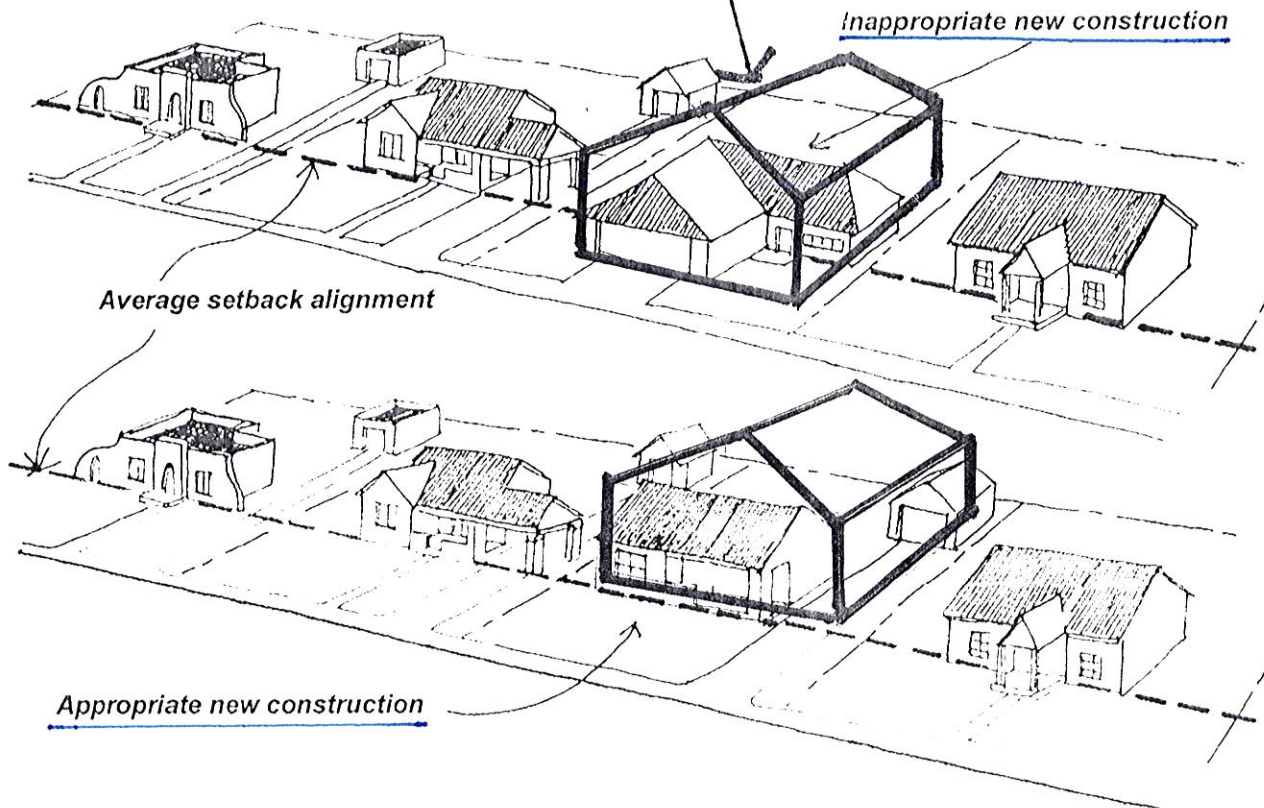
New construction, located on vacant land within historic districts or adjacent to historic buildings, is encouraged when appropriately sited and designed. New construction should be clearly discernible as "new" and reflect the technology, building materials and design ideas of the present era. However, like additions to existing buildings, the design of new construction should be compatible with and respectful of its historic setting. It is recognized that new construction can occur that is similar in scale to the pattern of historic building or, in selected circumstances, new construction may involve development that is of substantially greater scale. Consequently, two types of guidelines have been prepared to assist in the planning of new construction relative to historic buildings and areas.

**Similar Scale New Construction**

- Within the historic residential areas, new construction should be similar in height, shape and materials to the historic structures in its vicinity. Where changes in size must occur, the visual impact of the new construction should be minimized by stepping back the new construction from the historic buildings.
- Building features, such as roof lines, window and door openings, porches, entrances, pergolas, porte-cocheres or carports should resemble those related forms found on adjacent or surrounding historic structures.

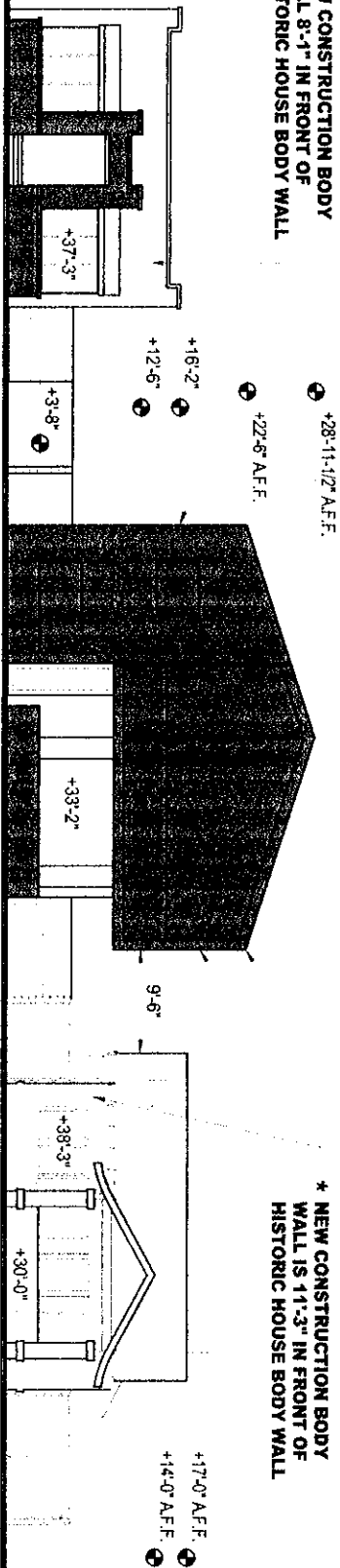
**Proposed New Construction is NOT***SIMILAR SCALE, FORM & MASSING*

**Contrary to this guideline, Staff's finding recommends stepping the much larger new construction forward not back from the adjacent historic buildings.**



SHADE INDICATES PORTION OF BUILDING(S) ALIGNED WITH OR IN FRONT OF THE  
29'-2" SETBACK RECOMMENDED IN FINDINGS. THE BUILDING PORTIONS NOT  
SHADE ARE STEPPED BACK FROM THE NEW CONSTRUCTION.

\* NEW CONSTRUCTION BODY  
WALL 8'-1" IN FRONT OF  
HISTORIC HOUSE BODY WALL



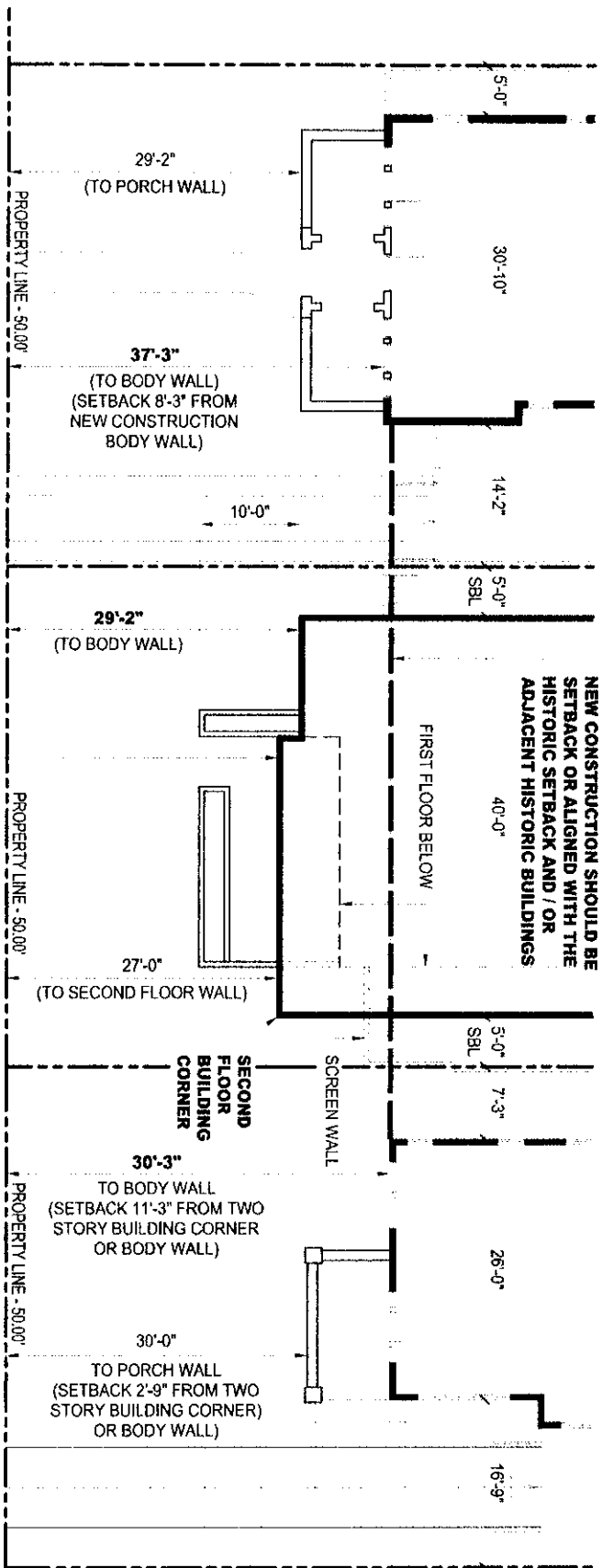
SECOND FLOOR BUILDING  
CORNER

\* NEW CONSTRUCTION BODY  
WALL IS 11'-3" IN FRONT OF  
HISTORIC HOUSE BODY WALL

841 N. 5TH AVE - 1911

837 N. 5TH AVE - 2018

833 N. 5TH AVE - 1914



# STREETSCAPE PLAN AND ELEVATIONS



THE CITY OF PHOENIX HISTORIC PRESERVATION PHILOSOPHY,  
SECRETARY OF INTERIOR'S STANDARDS FOR REHABILITATION,  
AND THE GENERAL DESIGN GUIDELINES ALL STATE TO STEP BACK  
OR ALIGN BODY WALL OF NEW CONSTRUCTION WITH THE  
HISTORIC SETBACK AND / OR ADJACENT HISTORIC BUILDINGS

SCALE: 1" = 10'





**Photograph 1** – This historic two-story multifamily building and adjacent historic single-story house are located directly across the street from the subject site. ***This photograph exemplifies the historic character, setting, and uniform setback in the immediate vicinity.*** The much larger multifamily building's primary or body wall is aligned with the smaller houses body wall. Likewise, the porch walls are also aligned.

*Staff's recommendation for siting new construction of much greater size, scale, and mass should be compatible with the historic setting shown in this photograph but instead it places the new construction predominately in front of the adjacent historic buildings. There is no historic preservation standard, guideline, or principle that supports the CHPO finding/recommendation.*





**Photograph 2** – This photograph shows a two-story multifamily building adjacent to a single-story historic house on 6<sup>th</sup> Avenue just south of Roosevelt Street. The two-story primary or body wall of the newer construction of much greater size, scale, and mass is placed in front of the adjacent single-story historic house's body wall similarly to Staff's recommendation on this case.

It is obvious that the much larger newer construction overwhelms the adjacent smaller historic house and completely disrupts the uniform historic setback. The applicant used this example to illustrate a nearby site where the historic preservation standards and guidelines were not followed. However, the newer multifamily building is located on a site that is not included in the historic overlay and therefore is not subjected to the historic preservation guidelines.

***Does anyone really believe this is an appropriate siting in a historic overlay district?***