

# Historic Ordinance Amendment Sub-Committee Meeting

**Monday, September 29, 2014**

Good Evening Members of the Committee:

My name is Kent Marsh and I live at 1538 Arlington in the Houston Heights East Historic District. I am a professional urban planner holding the American Institute of Certified Planners membership credential for over 33 years and recently achieved an advanced certification as the first, and currently only, Certified Urban Designer in the State of Texas. I have been continually active in the preservation process in the Heights including the Prevailing Setback and Prevailing Lot Size process, implementation and enforcement of individual lot-by-lot deed restrictions, establishing the original Houston Heights East Historic District (HHEHD), and most recently, establishing a communication process for homeowners within the Historic District to provide comments regarding the Certificate of Appropriateness applications received monthly by the Houston Archaeological and Historic Commission for the Houston Heights East Historic District, known as the HHEHD Development Review Committee (DRC).

During my 38 years as a homeowner in the area of the HHEHD, I have seen many changes in both the visual character and the homeowner “personality” in the Heights. Most of these changes have been for the long-term good of historic preservation. Many of these changes were achieved through an active collaboration process. Lately, however, there seems to be more animosity and a self-serving attitude than collaboration. I believe most of this animosity has been brought about by confusion and frustration regarding the technical regulations in the current Historic Ordinance and the lack of a defined role of participants in the process portion of the current ordinance. I would like to address concerns and potential solutions to those two major portions of the current ordinance.

First, on the technical side, many of the recent contentions regarding the ordinance revolve around the meaning of the word “typical”, especially as it is used in Sec 33-242 (“typical setbacks, typical proportions, typical height”). While most would agree that it does not mean “all” or “some”, the range between those two extremes is not clear. I would recommend consideration be given to a similar concept as it is used in the current Special Minimum Building Line Requirements “Minimum Setback” and Special Minimum Lot Size Requirements “Minimum Lot Size” determination process used in Chapter 42-173 and 42-202. I believe that most would consider this process as appropriate for the term “typical”. In both of these sections, the allowable amount, within a designated historic district, is related to 60 percent of the existing condition in the applicable area. By adding a definition for “typical” that would include this relationship of 60 percent of the existing condition within the district, the resulting dimensional number should be quite valid and clear. This relationship could apply to both linear dimensions and area.

The second most contentious word needing further definition is “scale”. Using the expression “It’s just too big” or “It overpowers the scale of the existing historic structure” does not provide a measurable relationship that can be corrected. Many other jurisdictions have wrestled with this same issue. Most have resolved the confusion by establishing a frontal plane area of the existing condition that indicates a

constructed area as a percentage of the total frontal plane of the lot width times the existing building height. Proposed additional taller construction is allowed up to the typical height as long as the percentage of the total constructed area is no greater than the original existing percentage. New construction to the side of an existing structure could be allowed as long as the height was not increased. If the height is also increased, the additional constructed area frontal plane of the new construction to the side would also be included in the maximum percentage calculation.

Another area of conflicting terminology is the prohibition in Sec 33-202 (b) to regulate the use of any building, structure, or property and the terminology in Sec 33-241 (C) (2) (b and c) that relates to a non-contributing structure used or intended for use for residential purposes or for commercial purposes. The words “residential” and “commercial” should be further defined so that there is no vagueness in the term. Additionally, in regard to Sec 33-241 (C) (2) (b and c), clarification should be made to define what uses are not included, for instance, schools, churches, and public buildings, in these two categories.

Other terms that need clarification include:

Sec 33-202 (c) regarding interior structural characteristics, including structural ship-lap

Sec 33-202 (d) regarding the ability to approve a Certificate of Appropriateness when a possible deed restriction violation is discovered

Sec 33-241 (b) (1, 2, and 3) regarding the allowance of only one condition of “shall approve” and not a combination of conditions

Regarding the process portion of the existing Historic Ordinance, the following procedural elements have been problematic in the past:

First, regarding the Certificate of Appropriateness application process, while Sec 33-238 is silent about the publication of application documentation that is copy righted, the current City policy prohibits designated copy-righted information to be distributed as a part of the initial application posting on the City website. This delay until posting of the Staff reports prevents a complete review of applications by the public prior to the action meeting. One solution might be a change in the application noting to the applicant that all submitted copy-righted materials will be exempt from copy-right protection as a condition of submission.

Second, there is a wide-spread false impression that “the neighborhoods don’t really care about what goes on in the historic districts”. One of the reasons this impression continues is that there is inadequate notice of the location of applications for Certificate of Appropriateness. This lack of knowledge could be substantially reduced if a sign were posted at each proposed Certificate of Appropriateness location. This is done for just about every other public notice process – plat variances, replats requiring notice, demolition permits, etc. and should also be done for the C of A process. The notice sign could be smaller, perhaps 2 feet by 4 feet, in context with the usual scale of residential neighborhoods, and certainly smaller than the 4 feet by 8 feet required for the other notices. The posting of this sign would alert neighbors that a C of A was in progress. Many times I talk to persons

near an on-going C of A and they had no idea it was being considered. How would they? Go to the City Planning website every month and check? NOT REASONABLE.

Finally, the appeal process needs some careful attention regarding roles and responsibilities. Members of both the Houston Archaeological and Historical Commission and the Planning Commission serve at the pleasure of Houston City Council. These commissions have been established with expectations for specific experience, knowledge and expertise. The HAHC was established to decide on issues of historic preservation and historic context. That is their intended expertise. The Planning Commission was established to decide on issues of process. The Planning Commission should not assume expertise on issues regarding historic preservation and historic context. Any appeal to the Planning Commission should be regarding process points only and the information provided to the Planning Commission should only be the exhibits and documentation presented at the HAHC meeting in question. If the public is not allowed additional comment on an appeal, the applicant should not be allowed additional comment. The evidence, as presented at the HAHC meeting should stand alone and the fairness of the process should be judged by the Planning Commission.

Lastly, that point, of process fairness, should be the sole issue for an appeal to the City Council. Thank you for taking time to address these concerns. I look forward to a better Historic Ordinance and offer my professional assistance should you so desire.