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December 26, 2018

Peter Warner  
Office of the City Attorney  
CITY OF ST. PAUL  
15 West Kellogg Boulevard West  
400 City Hall  
St. Paul, MN 55102

Re: Heritage Preservation Commission / 524-526 Portland Avenue

Dear Mr. Warner:

Please substitute this appeal letter in place and instead of the notice of appeal dated November 24, 2017 and the amended the notice of appeal dated November 29, 2017 regarding the above referenced property. The property owner requests that this letter serve as the basis of the appeal of the decision of the Heritage Preservation Commission (HPC) to deny the application to install a new concrete driveway. Ray and Sheila Meyer, the owners of the property at 524-526 Portland Avenue, applied for a permit to replace an existing broken and deteriorated concrete driveway with a new concrete driveway. The HPC voted to deny the application for the new driveway.

The driveway being replaced is not original construction or historic in any way. The original driveway material is unknown. It could have been dirt, gravel, sand, stone, pavers, brick or some other material. Concrete driveways were not used in 1890 when the house was constructed. Replacing the broken concrete with something that is certainly more compatible with the historic character rather than grey cement driveway should be permitted.

The color and pattern of a driveway are not anything that the HPC ordinance allows the HPC to dictate.

The denial was simply because the new concrete would not be flat and gray, but rather would be imprinted with a pattern and tinted. The HPC did not consider any objective criteria for making its decision, but rather based the denial on subjective opinion. The staff report dated November 10, 2017 set forth five statutory findings upon which to base denial of the application. As explained below, none of the five bases support denial of the application or are even relevant to the question of the color or pattern of a cement driveway.

The HPC staff report and HPC decision adopting the following five findings were incorrect. The five findings do not justify denying the application for a new driveway.

A. Secretary of Interior’s Standards #5. The Staff Report uses Standard #5 to support denial. The Staff Report quotes the 1990 **Secretary of the Interior's Standards for Rehabilitation** as follows: Distinctive materials, features, finishes and construction techniques or examples of craftsmanship that characterize a property will be preserved.<sup>1</sup>

RESPONSE: There is nothing “distinctive” about a concrete driveway that is hardly visible from the street. It is approximately 50 years old. The driveway has no historic significance. The original driveway material is unknown, but it was not grey concrete.

B. Legislative Code Section 74.64(b)(3). The Staff Report uses this Code section to support denial: The original color and texture of masonry surfaces should be retained.

RESPONSE: This section is not applicable. The section refers to the masonry and foundations of **buildings**. A driveway is not a building. It is misguided to refer to a poured concrete driveway as masonry in an attempt to justify denying the permit. Even if it could be called “masonry,” **it is not original**.

The HPC Code specifically states that paint color is not subject to commission approval. See: Sections 74.64(c)(2) and 74.65(d)(4).

C. Legislative Code Section 74.65(a). The Staff Report uses this Code section to support denial: New construction should be compatible with the size, scale, massing, height, rhythm, setback, color, material, building elements, site design, and character of surrounding structures and the area.

RESPONSE: This section is not applicable. This is **not new construction**. The section applies to new buildings, not replacing an old concrete driveway with a new one. Even if the section did apply, the new driveway would be compatible with the area.

D. Legislative Code Section 74.65(d)(1). The Staff Report attempts also to use this Code section to justify denial: ... thread of continuity provided by the range of materials commonly used by turn-of-the-century builders and by the way these materials were used. This thread of continuity is threatened by the introduction of new industrial materials...

RESPONSE: This section is also not applicable. Again, this is **not new construction**. The concrete driveway was poured around 50 years ago. It was not crafted by turn-of-the-(20<sup>th</sup>) century builders. There is no thread of continuity between the original driveway (whether dirt, sand, gravel, or pavers) and the present to be disrupted.

E. Legislative Code Section 74.65(g)(1). Lastly, the Staff Report attempts also to use this Code section out of context to deny the application: The traditional pattern of public streets, curbs, boulevards and sidewalks in the area should be maintained.

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<sup>1</sup> The Secretary’s Standard #5 that the Staff Report references is not adopted by the City. Standard #5 that is referenced in the City Code reads as follows: Distinctive stylistic features or examples of skilled craftsmanship which characterize a building, structure, or site shall be treated with sensitivity (Sec. 74.64(a)(5)).

RESPONSE: This section is also completely inapplicable. The section applies to public infrastructure. This application is for a private driveway, **it is not public infrastructure**. The owners are not proposing to change the “traditional pattern” of the public infrastructure.

CONCLUSION. The property owners propose to replace a deteriorated concrete driveway with a new concrete driveway. The concrete driveway is not an important feature in defining the home’s historic character. The new concrete driveway will have a color that is historically appropriate. The concrete will have a herringbone pattern that is also appropriate. It will match the existing portion of the driveway. The new driveway is compatible with the historic character of the home and neighborhood.

The HPC denied the application without any objective criteria or legal basis to support the denial. The decision should be reversed and Ray and Sheila Meyer should be allowed to finish their driveway.

Very truly yours,  
McClay•Alton, PLLP



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