

Attachment 2

City staff response to the appeal of the BAR's February 22, 2023 decision denying a certificate of appropriateness for demolition of the house and gardens at 104 Stadium Road, (BAR 22-03-02).

(Throughout this Response, references to "Staff" represent the collective positions of the BAR, the City's Preservation and Design Planner, and the City Attorney's Office.)

EXECUTIVE SUMMARY OF STAFF'S RESPONSE

This appeal has been taken by the development company working with the owner of 104 Stadium Road, the property that is the subject of this appeal. For the reasons stated below (within specific responses to each of the Appellants' separate contentions), Staff's position is that the concerns expressed by the Appellant do not provide a basis for the BAR to approve a Certificate of Appropriateness (CoA) for demolition under the standards set forth within Chapter 34 (Zoning) Article II (Overlay Districts), Division 2 (Historical Preservation and Architectural Design Control Overlay Districts).

Council's Role on Appeal: Reference §34-286(b) and (c) of the City Code. Council's role on appeal is to serve as the final decision-maker. Council must consider the appeal, consider the BAR's position (communicated in this Response as the "Staff Response"), and Council may consider any other information, factors or opinions it deems relevant to the application. Council should make a final decision on the application and not refer the matter back to the BAR.

Staff Response to Appellant's Contentions**Item 1**

Appellant: The structure, commonly referred to as the MacLeod house or Stone House, was built in 1927 for Malcom M. MacLeod, an English literature professor at the University of Virginia. The property has had numerous different owners since Mr. MacLeod, and it has been used as a rental property since as early as 1963.

Staff response: This is correct.

Item 2

Appellant: When the City was establishing the Oakhurst-Gildersleeve neighborhood as a historic district in 2009, the property was notably not included in the historic district, even though it is located directly across Jefferson Park Avenue from the historic neighborhood.

Staff response: Appellant refers to *Oakhurst-Gildersleeve Historic District* listed on the Virginia Landmarks Register (VLR, 2008) and the National Register of Historic Places (NRHP, 2009). (See <https://www.dhr.virginia.gov/historic-registers/104-5092/>) However, eligibility for or listing on the state or federal registers are not requisites for local designation, nor does state or federal listing result in a property or district being subject to BAR review.

The City-designated *Oakhurst-Gildersleeve Neighborhood ADC District* was established in 2005 and it is only due to this designation that the BAR has purview. [For the entire City, the BAR's purview is singularly due to local designation of historic districts and sites. For example, while there is a VLR/NRHP-listed *Oakhurst-Gildersleeve Historic District*, it is only because the City designated the Oakhurst-Gildersleeve ADC District that this area falls under the BAR's purview. Correspondingly, there are three VLR/NRHP districts—North Belmont, Fiveville/Tonsler, and Fry's Spring--that are not locally City-designated districts; therefore, the BAR does not have purview.]

From the February 22, 2023 BAR staff report: It is possible 104 Stadium Road was considered as part of the [VLR and NRHP] district, but staff found no evidence it was intentionally excluded from it. The draft PIF for the proposed district, completed in 2004, recommends JPA as the district's west boundary. (A Preliminary Information Form, or *PIF*, is the initial survey/documentation prepared to evaluate a district's eligibility for state and federal designation.)

Item 3

Appellant: In 2011, in connection with the current owner's acquisition of the adjacent parcel at 409 Stadium Road from the City, the current owner volunteered to have the 104 Stadium Road property designated [an IPP], and the City Council agreed to that offer. [...] the property's designation [was] a condition of a separate matter [...].

Staff response: On July 19, 2011, BAR recommended City Council designate 104 Stadium Road an IPP and on September 19, 2011, City Council approved that designation. The circumstances related to the sale of 409 Stadium Road are not germane to the BAR's review of the requested CoA for demolition. Additionally, 409 Stadium Road was not mentioned in the survey and recommendation submitted for designating 104 Stadium Road an IPP.

Item 4

Appellant: [...] the house at 104 Stadium does not meet the criteria of §34-278 – *Standards for considering demolitions* and which are identical to the criteria of §34-274 – *Additions to and deletions from districts or protected property list*.

Staff response: In the motion approved 6-0 denying the requested CoA, the BAR stated it had “**considered the standards set forth within the City Code, including the BAR's design guidelines and the standards for considering demolitions**” and “the proposed demolition of the house and gardens at 104 Stadium Road does not satisfy the BAR's criteria and guidelines and is not compatible with this property and other properties...” [*emphasis added*]

The *standards for considering demolitions* and the criteria for *additions to and deletions from districts or protected property list* are similar, but not identical. Again, after applying the *standards for considering demolitions* the BAR voted to deny the demolition CoA. In its discussions, the BAR expressed that, if proposed, they would not endorse removal of the IPP designation for 104 Stadium Road.

The following from BAR's discussion is illustrative. (See page 4 of the draft meeting minutes.)

Mr. Schwarz – I find this confusing. I did meet with Fred Wolf (the applicant) beforehand. I feel like I was encouraging this application. Now, I don't feel as encouraged. If this were part of a historic district—if it was a contributing structure in a historic district—it would not be such an easy decision to say that it is not worth it, demolish it. It would have a low likelihood of being [...] demolished, if it was just existing as part of a historic district as opposed to being an IPP. It is almost like we are being asked to decide: *Is this worthy of being an Individually Protected Property?*

Whether we allow the demolition or not, by zoning it stays as an IPP. That is also a little confusing. If we allow the demolition and the house comes down, the applicant can make an easy, legal argument in saying that there is nothing there protectable. Why is this still a protected property? The history of this site [the IPP designation] seems like a very deliberate decision by Council. It was part of a deal/an agreement between the owners and Council to purchase an adjacent property [referring to 409 Stadium Road]. It took two meetings, with a little haggling, to come up with this. An equal offer was turned down before this one. It was an offer to put a little apartment building on that corner lot that is now supposed to be left undeveloped. It feels like to vote for [demolition] would be to overturn something that was deliberately done by City Council. That City Council was from 12 years ago. [Staff note 5/2/2023: Mr. Schwarz's comment was not audibly clear; however, he confirmed the intent of his statement was that *approving demolition would conflict with Council's 2012 decision to designate 104 Stadium Road an IPP.*] [Staff note: Council designated the IPP in 2011.]

Mr. Gastinger – In our review criteria for demolition (#3): *[What is] the public purpose or interest in land or buildings to be protected?* What you're (Carl) saying, to me, says that if there is any record of what the public interest is in this land or this building is, that City Council decision is pretty strong. They are an elected body that chose to make that designation. We're not here to debate whether it should or should not be an IPP. That's the last record we have that there was an actual public body that felt strongly that it should be standing and the land next to it should not be developed. In the terms of our purview of our work, that would be for City Council to decide if they no longer agree with that.

I do thank [Mr. Wolf] for the report about the criteria for the historic designation. I will note that there are some slight differences between our guidelines for considering demolition. They are not necessarily one-to-one with the eligibility for the National Register.

Item 5

Appellant: To ensure that the property was professionally and accurately assessed, Subtext engaged the services of Mark McConnel of Summit Studio, a licensed Architect who ...reviewed the

property to determine its quality and the impact on the community should it be removed, and provided the following assessment of the property:

McConnel: This house (a) did not then, and (b) does not now, meet criteria for inclusion in the adjoining [Oakhurst-Gildersleeve neighborhood historic] district...Given the lack of singularity of the house, the urbanized setting, lack of nomination to state or federal registers, and lack of associations with historic events or persons, this resource can be documented per the requirements of the BAR and removed without causing the loss of significant historic fabric of the city.

Staff response: Being eligible for or having state or federal designation is not a requirement for City designation as a historic district or as an IPP. Per City Code §34-273, a landmark, building, or structure may be designated an IPP if deemed by city council to be of special historic, cultural, or architectural value. The Code does not refer to eligibility for or listing on the state or national registers as a pre-requisite for designation by City Council of locally significant historic properties and districts. In fact, of the 77 IPPs in the City, 31—including 104 Stadium Road—are not listed on the Virginia Landmarks Register (VLR) or the National Register of Historic Places (NRHP).

Listing on the VLR requires review by and a recommendation from the Virginia Department of Historic Resources staff and approval by the Virginia State Review Board and the [Virginia] Board of Historic Resources. Only if approved for the VLR can a nomination be then forwarded to the National Park Service for consideration for listing on the NRHP. See www.dhr.virginia.gov/historic-register/

McConnel: The property is not qualified for designation on the Virginia Landmarks Register, the National Register of Historic Places, or the adjacent Oakhurst-Gildersleeve National Register District.

Staff response: (See above)

McConnel: The house is no longer in a neighborhood setting – “the context for 104 Stadium has changed to the point of being unrecognizable from the original or early condition and the house has lost its value as a contributing resource to a neighborhood of similar structures.”

Staff response: The current context and setting for the house are essentially unchanged from 2011, when the property was designated an IPP. (See images in the Appendix.)

McConnel: The Property is not associated with the lives of persons significant in our past.

Staff response: From the February 22, 2023 BAR staff report: Staff concurs there is no known association with a historic event, architect or master craftsman. It has not been determined if the associations with the original owner, Malcolm M. MacLeod, and/or the frequent visitor, Edward R. Stettinius, Jr., meet the Criteria B of the NRHP (association with persons significant in our past), nor is staff qualified to make that judgement.

This house was built for Malcolm M. MacLeod, an English literature professor at the University of Virginia. MacCleod resided there until its sale in 1954. The house is also associated with Edward R. Stettinius, Jr., who attended UVA in the early 1920s. Becoming acquainted with MacCleod, Stettinius was a frequent visitor to the Stone House. He later served as the U.S. Secretary of State [1944-1945] under President Franklin Roosevelt and in 1946 was named the country's first delegate to the United Nations. From 1946 through 1949, Stettinius served on the UVa Board of Visitors as UVa's rector. That said, while Secretary Stettinius is the most historically significant individual associated with this property, there is no information regarding when he was here, how long he stayed, or what historic events or activities, if any, might have occurred here during those visits.

McConnel: The property is not associated with events that have made a significant contribution to the broad patterns of our history.

Staff response: From the February 22, 2023 BAR staff report: 104 Stadium Road is linked historically to a period of growth at the University of Virginia in the early twentieth century, which spurred the growth of residential neighborhoods near its campus to house professors and students, such as Oakhurst-Gildersleeve neighborhood.

McConnel: The property does not embody the distinctive characteristics of a type, period, or method of construction, or that represent the work of a master, or that possess high artistic values, or that represent a significant and distinguishable entity whose components may lack individual distinction. "104 Stadium Road is a nice example of Tudor revival architecture but it is not unique even in its own neighborhood, it does not represent the work of a master, possesses no high artistic value, and is not a significant and distinguishable entity."

Staff response: On September 19, 2011, City Council designated 104 Stadium Road an IPP. Per City Code Sec. 34-273 - *Individually protected properties*, the designation is intended for *landmarks, buildings and structures outside the city's major design control districts, which are deemed by city council to be of special historic, cultural, or architectural value*.

McConnel: [The] property can be documented and then removed without causing the loss of significant historic fabric in the City, a [CoA] application outlining these findings was subsequently filed on January 27, 2023 and heard at the BAR's February 22, 2023 Hybrid Meeting.

Staff response: Staff does not dispute that the property can be documented. Relative to the *loss of significant historic fabric in the City*, the BAR reviewed the information submitted and presented. In the motion approved 6-0 denying the requested CoA, the BAR stated it had "considered the standards set forth within the City Code, including the BAR's design guidelines and the standards for considering demolitions" and "the proposed demolition of the house and gardens at 104 Stadium Road does not satisfy the BAR's criteria and guidelines and is not compatible with this property and other properties..." [emphasis added]

Item 6.

Appellant: There were no questions or comments from the public.

Staff response: That is correct.

Item 7.

Appellant: The BAR comment and discussion period lasted for approximately 40 minutes.

Staff response: No comment.

Item 8.

Appellant: Over half of [the BAR's] discussion centered on the procedural processes for an IPP and the BAR's purview versus the City Council's purview as it relates to an IPP. Whether the structure met the criteria contained in Section 34-278 [*Standards for considering demolitions*] was not materially discussed, and only a few minutes were spent discussing the review criteria for demolition [...]. In fact, the BAR members even struggled to identify and state the reasons why the application did not meet the applicable criteria.

While it is not explicitly listed in the BAR's reasons for denial, what was discussed at multiple points during the meeting and ultimately seems to have driven the decision is the BAR's determination that its responsibility is to protect the properties that have been designated for protection, not to debate whether protection is appropriate. [The] BAR did not accurately assess the application against the applicable criteria, and thus that further review and consideration by the Council is appropriate.

Staff response: In evaluating a demolition request, the BAR considered the standards set forth within the City Code, including the BAR's design guidelines and the standards for considering demolitions. The BAR was not asked to make a recommendation to Council regarding retaining or removing the IPP designation, for which the BAR would evaluate the request as proscribed under Sec. 34-274 - *Additions to and deletions from districts or protected property* list.

Item 9.

Appellant: Subtext is planning to redevelop the property and several other adjacent parcels under common ownership to a vibrant, pedestrian-friendly community at the block bound by Stadium Road, Emmet Street, and Jefferson Park Avenue, which will increase the supply of housing, housing options and promote affordability. This is a Mixed Use B intersection as identified by the Streets that Work Design Guidelines and an ideal location for high density residential development immediately adjacent to UVA grounds, and has the potential to be a prominent part of the Entrance Corridor, while also furthering the goals of the Citywide Comprehensive Plan as well as the Draft Zoning Ordinance.

While the building's design is still in the preliminary stages, our project architects have spent a considerable amount of time on design visioning, precedent imagery, and conceptual site planning. These exercises have focused on design excellence and built form, enhancing the streetscape, walkability, people-focused amenities and programming, biking infrastructure, pedestrian safety, and promoting alternative transportation by improving the CAT transit stop at Jefferson Park Avenue.

Staff response: In evaluating a demolition request, the BAR considers the criteria under Sec. 34-278 - *Standards for considering demolitions*. The criteria proscribed by Sec. 34-278 do not include the consideration and/or design review of proposed development or construction.

Item 10.

Appellant: Enclosed you will find supplementary materials including a copy of the ordinance initiating the IPP, review of the BAR action and demolition criteria, a historic resource analysis, and conceptual project materials. We respectfully request your review of these materials and your consideration of our request to remove the structure at 104 Stadium Road since we have demonstrated that such removal can be supported by the applicable criteria and will not cause the loss of significant historic fabric of the City.

Staff response: In the motion approved 6-0 denying the requested CoA, the BAR stated it had “considered the standards set forth within the City Code, including the BAR’s design guidelines and the standards for considering demolitions” and “the proposed demolition of the house and gardens at 104 Stadium Road does not satisfy the BAR’s criteria and guidelines and is not compatible with this property and other properties...”

Item 11.

Appellant: In addition, the removal of the structure will permit the redevelopment of the property and surrounding parcels for a vibrant residential community in a location where it is particularly well-suited. Such redevelopment provides an opportunity for an early successful implementation of the goals of the new Comprehensive Plan and the draft zoning ordinance, which far outweighs any benefits of retaining a structure that a professional and eminently qualified historic resources consultant has determined does not qualify for, or warrant protection.

Staff response: In evaluating a demolition request, the BAR considers the criteria under Sec. 34-278 - *Standards for considering demolitions*. That review does not include an evaluation of any proposed new construction. In applying *standards for considering demolitions*, the BAR determined that preservation of the house and gardens at 104 Stadium Road is valid and therefore denied the demolition request. (Refer to the approved motion for denial.)

Additionally, 104 Stadium Road is a 0.2-acre parcel, representing only 7% of the proposed project area, which incorporates Woodrow Street. The applicant did not demonstrate how razing this IPP is necessary to *permit the redevelopment* of the surrounding 3.1-acres.

TMP	Address	Acres		% of Project Area	
160002000	104 Stadium Rd (IPP)	0.2	0.2	7%	7%
160004000	100 Stadium Rd	0.3	3.1	10%	93%
160003000	102 Stadium Rd	0.2		7%	
160005000	106 - 114 Stadium Rd	1.7		52%	
160008000	1705 Jefferson Park Ave	0.3		8%	
160001000	409 Stadium Rd	0.3		8%	
	Woodrow Street	0.3		9%	
	Total Project Area	3.3	3.3	100%	100%

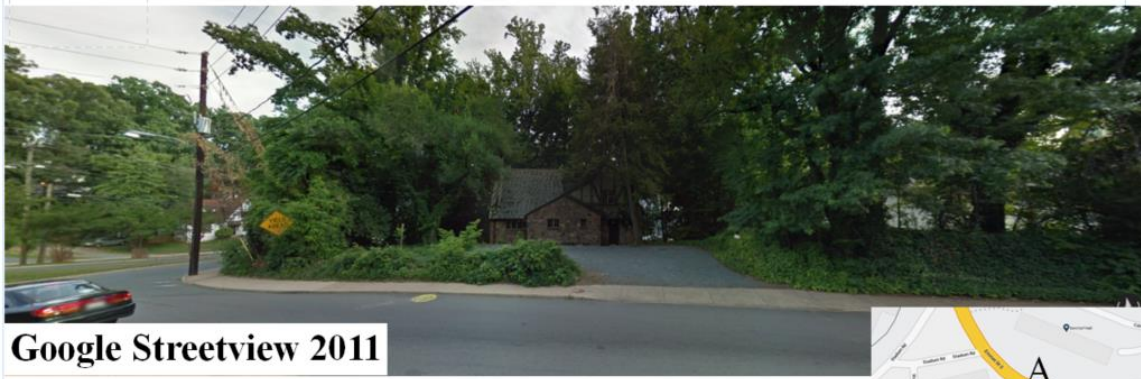


Appendix

Photos related to Item 5 re: context and setting when IPP was designated.



View A



View B



View C



View D



Referenced City Code Sections

Section Sec. 34-284. - BAR review and hearing.

[...]

- b) In considering a particular application the BAR shall approve the application unless it finds:
1. That the proposal does not meet specific standards set forth within this division or applicable provisions of the design guidelines established by the board pursuant to section 34-288(6); and
 2. The proposal is incompatible with the historic, cultural or architectural character of the district in which the property is located or the protected property that is the subject of the application

Sec. 34-273. - Individually protected properties.

- a) The City of Charlottesville seeks, through the creation of a protected property list, to protect community health and safety and to promote the education, prosperity and general welfare of the public, through identification, preservation, protection and enhancement of certain buildings, structures, and landmarks, together with their landscapes and settings, which are of special historic, cultural, or architectural significance, and which are located outside the city's major design control districts. To achieve these general purposes, the city seeks to pursue the following goals and objectives:
1. To enrich the quality of life for city residents, by protecting familiar landmarks and other treasured elements of the city;
 2. To protect historic and cultural resources, and thereby to promote tourism and to enhance business and industry;
 3. To maintain and improve property values by providing incentives for the upkeep, rehabilitation and restoration of historically and culturally significant structures;
 4. To promote local historic preservation efforts through identification and protection of historic resources throughout the city;
 5. To encourage nomination of historic properties to the National Register of Historic Places and the Virginia Landmarks Register; and
 6. To assure that additions, alterations, restorations, landscaping and related elements be in harmony with a building or structure and its setting.
- b) Following is a list of landmarks, buildings and structures outside the city's major design control districts, which are deemed by city council to be of special historic, cultural, or architectural value (each, individually, a "Protected Property"). Each parcel containing a protected property is hereby designated a minor design control district.

[...]

104	Stadium Road	Tax Map 16	Parcel 2
-----	--------------	------------	----------

Sec. 34-274. - Additions to and deletions from districts or protected property list.

- a) City council may, by ordinance, from time to time, designate additional properties and areas for inclusion within a major design control district; remove properties from a major design control district; designate individual buildings, structures or landmarks as protected properties; or remove individual buildings, structure or landmarks from the city's list of protected properties. Any such action shall be undertaken following the rules and procedures applicable to the adoption of amendments to the city's zoning ordinance and zoning map.

- b) Prior to the adoption of any such ordinance, the city council shall consider the recommendations of the planning commission and the board of architectural review ("BAR") as to the proposed addition, removal or designation. The commission and BAR shall address the following criteria in making their recommendations:
1. The historic, architectural or cultural significance, if any, of a building, structure or site and whether it has been listed on the National Register of Historic Places or the Virginia Landmarks Register;
 2. The association of the building, structure or site with an historic person or event or with a renowned architect or master craftsman;
 3. The overall aesthetic quality of the building, structure or site and whether it is or would be an integral part of an existing design control district;
 4. The age and condition of a building or structure;
 5. Whether a building or structure is of old or distinctive design, texture and material;
 6. The degree to which the distinguishing character, qualities or materials of a building, structure or site have been retained;
 7. Whether a building or structure, or any of its features, represents an infrequent or the first or last remaining example of a particular detail or type of architecture in the city;
 8. Whether a building or structure is part of a geographically definable area within which there exists a significant concentration or continuity of buildings or structures that are linked by past events or, aesthetically, by plan or physical development, or within which there exist a number of buildings or structures separated geographically but linked by association or history.

Sec. 34-277. - Certificates of appropriateness; demolitions and removals.

- a) No contributing structure located within a major design control district, and no protected property, shall be moved, removed, encapsulated or demolished (in whole or in part) unless and until an application for a certificate of appropriateness has been approved by the BAR, or the city council on appeal, except that:
1. The moving, removing, encapsulating or demolition, in whole or in part, of any contributing structure or protected property shall be allowed pursuant to an order of the city's building code official, without the permission of the BAR or city council on appeal, upon the determination of the building code official that the building or structure is in such a dangerous, hazardous or unsafe condition that it could reasonably be expected to cause death or serious injury before review under the provisions of this article. Upon such a determination, the building code official shall deliver a copy of his order to the director of neighborhood development services and to the chairman of the BAR; and
 2. Where the moving, removing, encapsulation or demolition of any contributing structure or protected property will disturb or affect fewer than twenty-five (25) square feet, total, of exterior wall, roof or other exterior surfaces, such activity shall be deemed an alteration subject to the review process set forth within section 34-275, above.
- b) Review of the proposed moving, removing, encapsulation or demolition of any contributing structure or protected property shall be limited to the factors specified in section 34-278, below.
- c) The BAR, or council on appeal, may make such requirements for, and conditions of approval as are necessary or desirable to protect the safety of adjacent buildings, structures, or properties, and of any persons present thereon; and, in the case of a partial removal, encapsulation or demolition:
1. To protect the structural integrity of the portion(s) of a building or structure which are to remain following the activity that is the subject of a permit, or

2. To protect historic or architecturally significant features on the portion(s) of a building or structure which are to remain following the activity that is the subject of a permit.
- d) Failure to obtain the permit required by this section shall subject the property owner to the civil penalty described within Article I, section 34-86(b) (i.e., not to exceed twice the fair market value of the building or structure).

Sec. 34-278. - Standards for considering demolitions.

The following factors shall be considered in determining whether or not to permit the moving, removing, encapsulation or demolition, in whole or in part, of a contributing structure or protected property:

- a) The historic, architectural or cultural significance, if any, of the specific structure or property, including, without limitation:
 1. The age of the structure or property;
 2. Whether it has been designated a National Historic Landmark, listed on the National Register of Historic Places, or listed on the Virginia Landmarks Register;
 3. Whether, and to what extent, the building or structure is associated with an historic person, architect or master craftsman, or with an historic event;
 4. Whether the building or structure, or any of its features, represent an infrequent or the first or last remaining example within the city of a particular architectural style or feature;
 5. Whether the building or structure is of such old or distinctive design, texture or material that it could not be reproduced, or could be reproduced only with great difficulty; and
 6. The degree to which distinguishing characteristics, qualities, features or materials remain;
- b) Whether, and to what extent, a contributing structure is linked, historically or aesthetically, to other buildings or structures within an existing major design control district, or is one (1) of a group of properties within such a district whose concentration or continuity possesses greater significance than many of its component buildings and structures.
- c) The overall condition and structural integrity of the building or structure, as indicated by studies prepared by a qualified professional engineer and provided by the applicant or other information provided to the board;
- d) Whether, and to what extent, the applicant proposes means, methods or plans for moving, removing or demolishing the structure or property that preserves portions, features or materials that are significant to the property's historic, architectural or cultural value; and
- e) Any applicable provisions of the city's design guidelines (see section 34-288(6)).

Sec. 34-288. - Responsibilities of BAR.

The function of the board of architectural review ("BAR") shall be to administer the provisions of this division. In carrying out this responsibility the BAR shall:

- 1) Approve, deny, or approve with conditions applications for certificates of appropriateness in accordance with the provisions of this division.
- 2) [...]
- 3) [...]
- 4) [...]
- 5) [...]
- 6) Develop and recommend to the city council for its approval design guidelines for the city's architectural design control districts ("design guidelines"), consistent with the purposes and standards set forth within this division. The BAR shall develop the design guidelines in consultation with the city's urban design committee and after seeking input from business and property owners in the various districts. Guidelines developed by the board shall become

effective upon approval by city council and thereafter shall have the status of interpretive regulations. The BAR shall undertake a comprehensive review and update the design guidelines at least once every five (5) years.