

**COMMISSION OF ARCHITECTURAL REVIEW  
MEETING OF APRIL 22, 2010**

**Members Present**

Luis Abreu  
Susan Stilwell  
Jeffrey Carson  
Robin Crews  
Richard Morris

**Members Absent**

Cynthia Castle  
Fred Meder

**Staff**

Renee Blair  
Clarke Whitfield  
Christy Taylor

Vice Chairman, Jeffrey Carson called the meeting to order at 3:32 pm.

**I. ITEMS FOR PUBLIC HEARING**

**Item 1. Request for a Certificate of Appropriateness to remove rail from front porch steps at 826 Green Street.**

Present on behalf of the request was Richard Morris. Mr. Morris stated that the request was not to remove the rail; it was to not put one up. There is not one there.

Mr. Carson stated we will correct the agenda to reflect the actual request.

Mr. Morris stated that he went to court for the rail around the porch. Mark Willard went on my behalf. He came back and said they did not vote in your favor because there is another item. Mr. Morris stated that he asked what the item was because there were three (3) violations and I took care of all three (3) of them. They said no, you need a rail on the porch steps.

Mr. Abreu asked who is they?

Mrs. Blair responded General District Court.

Mr. Abreu asked what context did they site those?

Mrs. Blair responded Building Code Violation.

Mr. Morris stated I discussed the rail going up the steps with the building inspector at the beginning of the whole project. The Building Inspector stated it is not there, it is grandfathered and you do not have to put it in. So after the Courts decision, I went back to the Building Inspector and asked what is going on? The Building Inspector said you do not have to do that, it is for the CAR (Commission of Architectural Review) to decide. There is no evidence of any rail ever being there.

Mrs. Stilwell asked hand rails?

Mr. Morris responded yes, pipe hand rail.

Mr. Abreu asked has there been a court decision and do you have a copy?

Mrs. Blair responded that it has been continued until May 7, 2010.

Mr. Abreu stated that no action has been taken and if I understand you correctly, they would like to know what you find out from here. The building inspector says that you do not have to put a railing up because you are grandfathered. Otherwise, the building code requires you to have a hand rail for safety and other reasons.

Mrs. Blair stated that there is an outstanding violation from the Inspections Division based on the final approval for a Certificate of Occupancy. There is a picture with a pipe railing on the front steps. We do not know when that was removed. Mr. Morris stated that was prior to his purchase. There are no records to indicate whether it was done with or without approval.

Mrs. Stilwell stated I can see it vaguely. It looks like it was painted white when it was there. It was gone before you purchased the property, so any violation of CAR is not pertinent to the current owner.

Mrs. Blair stated that according to the evidence there was a pipe railing there and now it is not. It follows the property not the owner. We need you to say yes, it is ok for it to be removed and it can remain that way, if that is the choice of the Board.

Mr. Abreu asked Mr. Whitfield We cannot tell the City when it is safe or not. We can only say what we think is architecturally correct. Is this someone trying to pass the buck?

Mr. Whitfield responded the Building Inspector said that it is grandfathered from the building code, but because it was there at some point CAR has to give its approval to replace or remove it because it is an exterior element that you can see from public right-of-way.

Mr. Abreu stated so in the context that it is there, to remove it is ours to say whether that would have been architecturally correct within the purview of the CAR.

Mr. Whitfield responded yes, that is the way I understand it.

Mr. Abreu asked what is being grandfathered?

Mr. Whitfield responded the safety issue is being grandfathered because of the age of the house.

Mr. Carson asked can a homeowner be forced to put this pipe rail in even though when the person bought the property it did not exist?

Mr. Morris responded he already told me I do not have to do it. This is a CAR issue.

Mr. Abreu stated I am not in any way saying I do not believe you, but when somebody tells me that someone said something that is not here, well rules of evidence come in. I see that there was a railing. I know building codes with railings and stairs are there for a purpose.

Mr. Morris stated the only thing I can show is the original violations they told me to correct in order to get my Certificate of Occupancy. He gave me three (3) violations, and each one of those was corrected. There is nothing on there about a stair rail.

Mr. Whitfield stated if you decide today to allow him from an architectural perspective to not replace it, then whatever the building code inspector said is not relevant. If the building code inspector gave him permission to not replace it, then he is fine. If the building code inspector told him he did have to replace it then he has got to come back and replace it with an appropriate material.

Mr. Abreu asked why does the building code exist in the first place if you are not going to say this is for safety reasons. Did you do anything to the front steps?

Mr. Morris responded no.

Mr. Abreu stated this is where you are being held responsible for what did or did not happen before you bought that house.

Mr. Morris stated that the porch itself, I restored. The stairs are totally separate. You can take the stairs and pull those right off. They are concrete. They are exactly the same, I have not touched them.

Mr. Abreu asked if they were put in at some point because the building code was passed saying that if you have stairs you are required to have railings. I have no idea how long that code was in existence but if the code was in existence at any time in the past and the previous owner complied with it and put up this railing, does a city code have the ability to say these are standards and you have to have railings?

Mr. Whitfield responded yes.

Mr. Abreu asked are you saying that if the city inspector says it is not architecturally required to be here then I will not enforce the code?

Mr. Whitfield responded no. He is saying because of the age of the house and the age of the steps one of those structures was apparently there at the time that it was not required. If was not required at that time then they are not going to come back and require you to comply. The only reason they are asking you to comply now is because this is a violation being it has been removed and it is in the historic district. You have to get CAR approval to remove or not to replace it.

Mr. Abreu asked what if at some point in the past thirty (30) or twenty (20) years there was a building code that said you were supposed to have the railings?

Mr. Whitfield responded then it would not be grandfathered.

Mr. Abreu asked if the owner put up a steel pipe rail then whoever became an owner subsequent to that could not say I am grandfathered?

Mr. Whitfield responded that they would be grandfathered as to what was required at that time.

Mr. Abreu stated since this house was built someone has complied with the law and the current owner cannot.

Mr. Whitfield stated that there was no evidence that it was ever required.

Mr. Abreu asked how long ago did the code exist that said you were supposed to have railings on stairs?

Mr. Whitfield responded I would not have any idea.

Mr. Morris stated if I built a new set of stairs then I would have to comply and have a rail.

Mr. Abreu stated if the building code existed ten (10) years ago, which would have been before you bought the house, and there was a railing there; then someone in the interim took it off, it wasn't you. Can a building code say sorry I have evidence that there was compliance, there is no grandfathering going back to when the house was built and this is for safety reasons? I do not think it is for us to say you are not supposed to have that railing.

Mr. Whitfield stated that is not what they are saying.

Mr. Carson stated we are approaching this purely from the historic point of view.

Mr. Carson called for a motion.

**Mrs. Stilwell made a motion that the applicant not be required to return or replace the missing pipe hand rail at the front stairs. Mrs. Crews seconded the motion. The motion was approved by a 3-1-1 vote (Mr. Morris abstained).**

Mr. Carson stated I am saying yes with reservations. One (1), I do not think the stairs are original to the house. The porch is wood which appears to be supported by wood tiers. I am just wondering if the original steps were wood. If they are not original to the house to begin with then we have a whole conundrum of problems with those steps. In order to really address this is a can of worms and I prefer that we not force this issue. You may be liable for someone falling down your steps because there was no railing. If you have made the decision not to have the railing, I would urge you to put the rail up.

Mr. Abreu stated I would join in that because of safety. A pipe rail is not the issue; there are other kinds of railings that would be suitable. The issue is not that I want you to put up a pipe railing, I want you to be in compliance with the code and it is only in this content.

Mr. Abreu asked do you want to and are you able to ask this commission today for approval to put up a railing that matches?

Mr. Carson stated it would be a concept approval only.

Mrs. Blair stated that it is not on the agenda.

Mr. Abreu stated a rail that is consistent with the architecture.

Mr. Morris responded the only way to be consistent would be to put a rail like the sawed rail on my porch and the way my steps configure you cannot do it. It is very difficult. There is no railing there for people going down the stairs to grab on to. There are huge piers that they could grab on to so it is not hazardous. It is not exactly a rail.

Mrs. Stilwell stated I think at some point somebody will come into that house and will want to return to wooden stairs and at that time they will add an appropriate railing.

Mr. Carson stated I just feel that you should not be forced to put up a rail that did not exist at the time of your purchase of the property. I also feel that you are asking for trouble. Especially, when you are before a body like this and have been warned that there could be a future problem. You cannot plead ignorance.

## II. APPROVAL OF MINUTES

Mr. Carson stated I have a few suggestions. Page two (2) where Mr. Willard was talking about the original use of the building. It should read "Laundromat" not laundry mat. At the bottom of that page, Mrs. Blair responded to removal of the paint "in" harming because the paint has not been removed yet. Page three (3) I am suggesting things about shutters and awnings. At the end of that paragraph it should say "on" awnings. The next paragraph down, just for clarification it says "one linear foot." I just want to make sure it is clear. Item three (3) under other business, I believe the word is "about" rather than at 826 Pine Street.

Mr. Carson stated giving those suggestions and corrections, may we hear a call for approval.

**Mr. Abreu made a motion to approve the March 25, 2010 minutes with suggestions. Mrs. Stilwell seconded the motion. The minutes were approved by a 5-0 vote.**

## III. OTHER BUSINESS

Mr. Abreu asked it has been brought to my attention my tour of duty ends in August. I think I am no longer eligible. Is that correct?

Mr. Whitfield responded yes.

Mrs. Stilwell asked does his position have to be an attorney?

Mr. Whitfield responded the code as amended, it is preferred to be.

Members had discussion about possible candidates for the position.

With no further business, the meeting adjourned at 4:00 p.m.

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APPROVED