



## MEMORANDUM

Agenda Item # 37

TO: Metropolitan Planning Commission

FROM: Mike Reynolds, Planner II  
Mark Donaldson, Executive Director

DATE: June 5, 2013

SUBJECT: Appeal of Downtown Design Review Board Decision  
Demolition of 710 & 712 Walnut Street

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### **Request:**

Arthur Seymour, Jr., on behalf of St. John's Cathedral ("Church"), has appealed the decision of the Downtown Design Review Board ("Board") to deny a Certificate of Appropriateness for the demolition of the two structures at 710 and 712 Walnut Street.

### **Authority for the Appeal:**

Article IV, Section 5.5.F of the Knoxville Zoning Ordinance provides that "any person who was a party for or against the application at the downtown design review board meeting may appeal approval, conditions of approval, or disapproval of such application to the metropolitan planning commission."

### **Authority for the Downtown Design Review Board Action:**

The Board is authorized to review and approve private development plans, based on the adopted design guidelines as set forth at the time of amendments to the zoning map.

The Board is authorized to grant a Certificate of Appropriateness with or without attached conditions or deny said certificate, and shall state the reasons for denial or the conditions attendant with the granting of a certificate in writing.

Article IV, Section 5.5.F (D-1, downtown design overlay district) of the Knoxville Zoning Ordinance was amended in July, 2008, concurrently with the Downtown Knoxville Design Guidelines ("Guidelines"), to require a Certificate of Appropriateness for the demolition of buildings and building features facing a publicly-oriented space.

### **Background:**

The Church has owned 710 and 712 Walnut Street for many years and has leased them as office space. The Church has owned many properties in their block over the years and sold most as they determined their future needs.

The Church applied for a Certificate of Appropriateness in October 2011 because of the cost to maintenance the buildings and their long term goal to create a new accessible entrance to the rear of the building.

## **AGENDA ITEM# 37**

At the October 2011 Board meeting, the Church first presented a plan to demolish the buildings, clear the site building materials and stabilize the site. The staff recommendation was to approve the demolition with the condition that they come into compliance with the buffering guidelines for parking lot which requires a fence, landscaping or a wall adjacent to sidewalks. During the meeting the Church stated that they are willing to meet these requirements. The Board voted to postpone until the next board meeting to allow the Church time to produce a plan.

At the November 2011 Board meeting, the Church presented a plan for the site that incorporates landscaping, fencing, pedestrian gateway and a lawn. In addition, the Church stated that they are in continued discussions with Knox Heritage to explore alternatives to demolition and would like more time to continue these discussions. The Board voted to postpone until the next board meeting to allow the continued discussion for alternatives to demolition.

The Church thereafter requested postponement monthly or bi-monthly until May 2013. The Board approved the postponement requests to allow the continued discussion for alternatives to demolition.

At the May 2013 Board meeting, the Church stated that they reviewed all options presented to them to find alternatives to demolition and the Church would like to pursue the request to demolish the two buildings and landscape the site as proposed in November 2011. The Church stated in this meeting that the landscape plan is a short term plan for the site with a long term plan to build a new driveway across this site to provide access to a new covered entry to the rear of the building, facing the parking lot.

### **Analysis:**

The Guidelines have two sections that cover demolition requests, Section 1.B.8 (Private Realm) and Section 1.C.12 (Historic Resources). The Historic Resources section is used only when an application involves modifying the exterior of a structure listed on the National Register of Historic Places, either individually or as part of a district. The structures at 710 and 712 Walnut Street are not listed on the National Register of Historic Places, which means the applicable demolition guidelines are in Section 1.B (Private Realm), as follows:

Section 1.B.8 (demolition and removal of buildings or building features)

The demolition of buildings in areas of downtown outside of Historic Overlay Districts and National Register Districts, or properties listed individually on the National Register of Historic Places, may be appropriate when in compliance with the guidelines. Also, the removal of building features may be approved with appropriate façade treatment.

Guidelines:

- 8a. If a building is demolished, all visible unutilized building materials must be removed, all visible unutilized building material must be removed and the site must be vegetated or otherwise brought into compliance with the guidelines.
- 8b. Any building features facing a publicly-oriented space (not including alleys) shall not be removed/demolished without a Certificate of Appropriateness.
- 8c. See Section 1.C: Historic Resources for guidance on demolition and removal of building features in National Register Districts.

Staff reviewed the Guidelines and determined only the guidelines in Section 1.B.8 apply to the requested demolition. Staff further found, in some instances, the guidelines do not treat similar types of requests equally. For example, if the Church requested to replace the buildings with a surface parking lot, the guidelines recommend decorative walls, fencing and landscaping (Section 1.A.3.d). Staff determined that the replacement of the buildings with an empty lot is akin to that of surface parking in that there is still a need to delineate the public and private realms.

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**Findings:**

The Board, through its discussion, found that the church did not submit a design for their long term vision of the site and would need to do so before the Board can consider approving the request.

The Board also acknowledged that the Guidelines are vague in describing what sections need to be met to be in compliance and do not provide guidance on how to determine when it is appropriate to demolish a building.

**Staff Recommendation:**

Staff finds that the applicant has considered alternative uses of the buildings, stated the long term proposed use for the property and proposed appropriate landscaped treatment at the street edge in accordance with the guidelines. Therefore, Staff recommends the approval of the Certificate of Appropriateness to allow the demolition of 710 and 712 Walnut Street and the installation landscaping, fencing and pedestrian gateway as shown in the attached plans submitted by St. John's Cathedral.

**Attachments:**

Minutes of the May 2013 Downtown Design Review Board

**MINUTES**  
**KNOXVILLE DOWNTOWN DESIGN REVIEW BOARD**  
**MEETING OF MAY 15, 2013**  
**MAIN ASSEMBLY ROOM**  
**4:00 P.M.**

<i>Chad Boetger</i>	Resident Representative
<i>Kim Henry</i>	Urban Design Representative
<i>Brandon Pace</i>	AIA Representative
<i>Joe Petre</i>	Business Representative
<i>Matt Synowicz</i>	CBID Representative
Kim Trent	Knox Heritage
Arthur Seymour, Jr.	<i>For St. John's Church</i>
Jeff Gaylon	PBA
Nathan Honeycutt	MHM
Melvin Wright	City of Knoxville
Rick Emmett	City of Knoxville
Mike Reynolds	MPC

The meeting was called to order by Chair Kim Henry. It was established that there was a quorum. Ex Officio Members or Visitors present were introduced: Melvin Wright, City of Knoxville, Plans Review and Inspections and Rick Emmett, City of Knoxville, Downtown Coordinator. Attendees who wished to speak were asked to sign in. Board members present are shown in italics.

**Action: A Motion was made by Chad Boetger and seconded by Matt Synowicz to approve the April 17, 2013 Minutes. The Motion carried unanimously.**

**Certificates of Appropriateness:**

***Certificate No. 10-H-11-DT***

710 & 712 Walnut Street – Total Demolition Services, Inc.  
Pre-development – 10/18/2011

**Description of Work**

Demolition of 710 and 712 Walnut Street and removal of all structures, foundations and footings.

Add new landscaping, fencing and pedestrian gateway as shown in the attached plans. There will be a courtyard that is accessible by the public.

**Staff Comments**

These two buildings are not in a National Register Historic District or individually listed on the National Register of Historic Places, so Section 1.B.8 (page 19) of the Downtown Knoxville Design Guidelines would apply. The Downtown Knoxville Design Guidelines state that “The demolition of buildings... may be appropriate when in compliance with the guidelines”. It also states, “If a building is demolished, all visible unutilized building material must be removed and the site must be vegetated or otherwise brought into compliance with the guidelines”.

**Staff Recommendation**

APPROVE Certificate 10-H-11-DT as submitted.

**Discussion:** Arthur Seymour, Applicant representative, noted there have been multiple expansions and renovations since the church was built in 1891, replacing the actual original church there, built in 1844. The original sanctuary entrance was off of Walnut St. They have found in recent years that most people, mainly due to parking issues, use the north side of the church as the main entrance, coming from the parking lot.

The church continues to grow and they continue to deal with parking challenges associated with their current footprint. They acquired property for long term future use over the years as they know they are land locked at their current location. He noted their goal is to create drive through access to the main entrance to the church. Mr. Seymour noted they were requesting this demolition to create access to the church for people who cannot walk up the steps to the church as well as folks with families and young children. Since the church filed this application in 2011, they had discussion with Kim Trent, Knox Heritage, developer David Dewhirst and others and they have looked at every angle whereby they could save these buildings and still do what they need to do as a downtown church. There are extremely limited in land space. He further noted the governing bodies of the church have decided they need to proceed with demolition request at this time. The buildings are simply too expensive to maintain, are no longer eligible for tax exemption and are in significant disrepair. Kim Trent, Knox Heritage, noted they are a preservation advocacy organization in the City of Knoxville and Knox County. She noted they specialize in working with owners who are having problems with historic properties and work with them to create designs and find financial solutions to solve their problems. They have been working with the church to identify a solution outside of demolition. Knox Heritage presented an option to the church last week and Ms. Trent briefly reviewed what was presented. Mr. Dewhirst would be engaged to manage the properties for them. Knox Heritage believes the buildings would be National Register eligible due to their age. It was clarified that in order to obtain a demolition permit from the City they would need to obtain a Certificate of Appropriateness from the Board. The drawings submitted in the original application reflect a temporary design until the church has the funds to completely redo the “back” side of the church, creating a new entrance that is more accessible. Mr. Seymour noted they wanted to complete that work in 5-6 years. Mr. Seymour was not aware of the details of the option presented to the church by Knox Heritage. He noted the church met with David Dewhirst and his proposal was reviewed as well. However, the church feels they need to proceed with their plan as presented. Mr. Seymour noted there was also concern that vacant buildings often attract the wrong kind of people. He also noted they are very sensitive to the nature of downtown and historic preservation. There was discussion surrounding the length of time this application has been on the Agenda. It was clarified that the church did not have a finalized design for their long term vision. Joe Petre noted he did not see demolition as the best solution but felt the church was within its rights to request it and did not feel we [the Board] was within its purview to decline it.

**Action: A Motion was made by Joe Petre to approve the application as submitted and per staff recommendation. Matt Synowicz seconded the Motion noting that although he also has a strong displeasure towards demolition of historic structures he was a supporter of owner and property rights.**

**Additional Discussion:** It was noted that an issue at hand is the Board is looking at an intermediate step of what this may ultimately be with there being no final design presented. Joe Petre noted the rationale for his Motion is that the church can appeal the Board’s decision and he sees no grounds for them to lose such an appeal. He stated he felt that if the Board did not like the way the guidelines were written they should enlist the City’s assistance to change them.

**A vote on the Motion on the floor was taken: Joe Petre and Matt Synowicz vote yes. Brandon Pace, Kim Henry and Chad Boetger vote no. The Motion does not carry by majority vote.**

Mike Reynolds noted the Board needed to approve an actual denial if this is their intent, which would need to include a reason for denial. **Brandon Pace** noted he agreed with Mr. Petre that unfortunately he does not think that on appeal, the church will be denied. Mr. Petre further noted that the Applicant has complied within the guidelines and he did not feel it was right for the Board to force them to do something they do not want to do. Mr. Petre, again noting he was not advocating for demolition itself, stated he felt the Applicant would win on appeal and if they [the Board] restrict anyone from doing something that was within their rights. There was significant discussion regarding the type of design plans needed for future requests concerning in this site. **Mr. Boetger** also noted he did not want to see these buildings be demolished but also said he did not see how they would lose upon appeal, and agreed that the Applicant’s plan did satisfy the guidelines. He stated he felt the issue at hand was with the guidelines themselves.

**Action: A Motion was made by Brandon Pace and seconded by Chad Boetger by to deny the application based on the lack of a presentation of a long term plan for the site.**

**Additional Discussion:** Arthur Seymour spoke noting statues in Tennessee as well as with the Federal government regarding land use for religious organizations that give them extra protection from local regulation on limitation of their land use.

**A vote on the Motion on the floor was taken: Bandon Pace, Kim Henry and Chad Boetger vote yes. Joe Petre and Matt Synowicz vote no. The Motion carries by majority vote.**

Chair Kim Henry stated the Applicant's next step would be to appeal the decision to the Metropolitan Planning Commission and subsequently to the City Council is applicable. She then noted that anyone else attending the meeting that wants to be part of the appeal process needed to ensure they sign in as attending today's Board meeting.

***Certificate No. 5-A-13-DT***

510 S Gay St. (City of Knoxville)  
Pre-development – N/A

**Description of Work**

Relocate the Regal Riviera Cinema sign from the roof structure that was removed over the escalators to the east elevation of the elevator tower next to the new pedestrian bridge (see the attached plans). The sign will face State Street.

This request will replace Certificate 3-C-13-DT if approved.

**Staff Recommendation**

RECOMMEND Certificate 5-A-13-DT as submitted to relocate the Regal Cinema sign to the east elevation of the elevator tower (facing State Street).

**Discussion:** Nathan Honeycutt, architect of record on the garage, briefly addressed the Board.

**Action: A Motion was made by Joe Petre and seconded by Matt Synowicz to approve the application as summited and per staff recommendation. The Motion carried unanimously.**

Mr. Honeycutt asked to present a future project proposal to the Board for comment. There were no comments from the Board. Mr. Reynolds stated that when staff receives an application for this project, it will be reviewed to determine if it can be approved by Staff or brought before the Board.

**Staff Report: Mr. Reynolds reviewed the Staff approvals since the April meeting.**

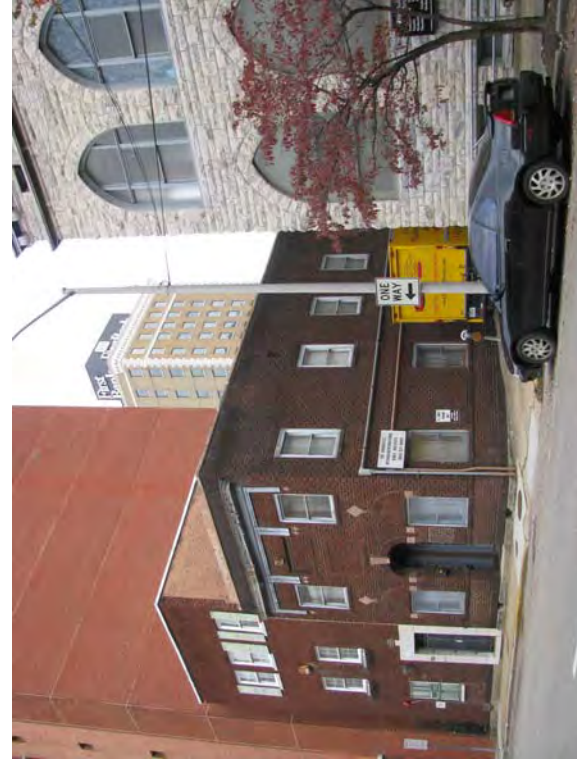
1. 505 Market Street (6-A-13-DT) – Non-illuminated projecting sign that meets the guidelines.
2. 603 W Main Street (6-B-13-DT) – Renovations that do not alter appearance of the structure.

**Review of Tabled Items:**

1. 100 S Broadway (11-B-12-DT) – Minor Alteration to an Existing Structure. There was no discussion.

**Other Business:** There was no other business.

**Action: A Motion was made by Joe Petre to adjourn.**

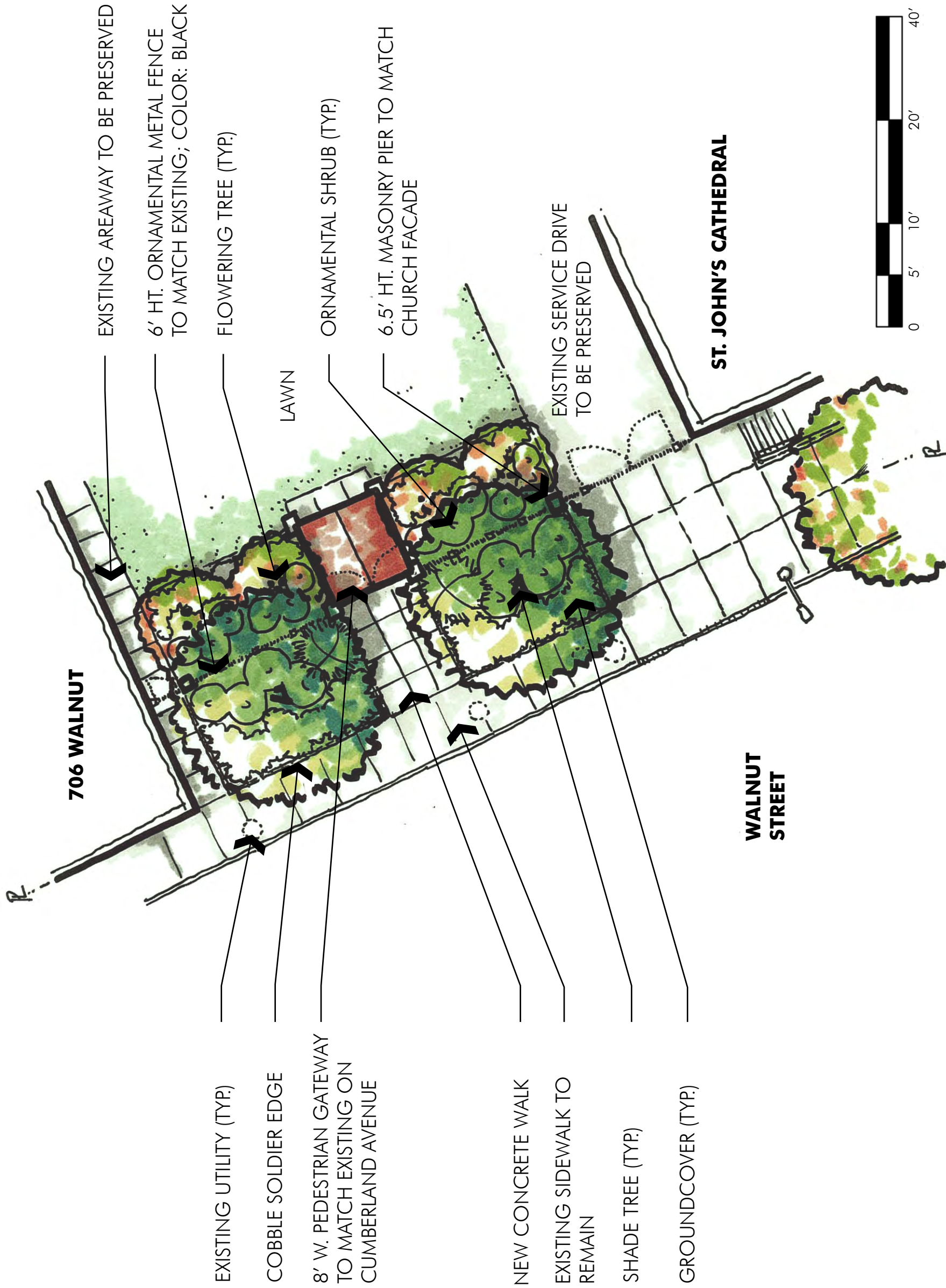


EXISTING CONDITIONS



SITE PRECEDENTS









BEFORE



AFTER



KNOXVILLE-KNOX COUNTY

# MPC

METROPOLITAN  
PLANNING  
COMMISSION  
TENNESSEE

Suite 403 • City County Building  
400 Main Street  
Knoxville, Tennessee 37902  
865 • 215 • 2500  
FAX • 215 • 2068  
www.knoxmpc.org

# APPEAL OF DECISION

(Please Note: Original application and staff report are made a part of this application.)



Type:  One Year Plan Amendment  Sector Plan Amendment  Rezoning  
 Use on Review  Street Name Change  Right-of-Way Closure  
 Certificate of Appropriateness  Other: \_\_\_\_\_

Decision by:  MPC  BZA  Other: DOWNTOWN DEVELOPMENT REVIEW BOARD Date of Decision: 3/15/13

Jurisdiction:  City \_\_\_\_\_ Councilmanic District  County \_\_\_\_\_ Commission District

Original Applicant Name: WATER DEVELOPMENT SERVICES INC Original File Number: 6-A-11-DT

Name of Owner of Subject Property: ST. JOHN'S CATHEDRAL

Description of Subject Property (Include city block and parcel number or lot number): 710 - 712 WOODLUT ST. PARCEL IDS 06104063

Zoning map of all property within 300 feet of the subject property is attached.

### DECISION BEING APPEALED

RECALL OF CERTIFICATE OF APPROPRIATENESS TO DISCOUNT 710 - 712 WOODLUT STREET. REMOVAL OF ALL STRUCTURE FOUNDATIONS, FOOTING

### REASON FOR THE APPEAL

Attach additional pages, if necessary. SEE ATTACHED

### PETITIONER INFORMATION

Name of Petitioner: ST. JOHN'S CATHEDRAL

Petitioner's Interest in the Matter (Include a description of affected property owned by Petitioner): 710 - 712 WOODLUT ST - OWNER

Application Authorization: I hereby certify that I am the applicant/authorized representative for the above named petitioner.

Signature: [Signature]

All correspondence should be sent to: Name (Print): ANTHONY G. SEYMOUR JR  
P.O. Box 39; Knoxville, TN 37901  
Street Address City State Zip

Phone: 546-9321 Fax: 637-5249 E-mail: ANTSEY@FUSHP.COM

### For MPC Staff Use Only

Application Accepted by MPC Staff Member: [Signature]  
Appeal Fee Amount: \$ 200.00 Date Appeal Received: 5/17/2013

### BODY WHO WILL HEAR THE APPEAL & MEETING DATE OF THE APPEAL

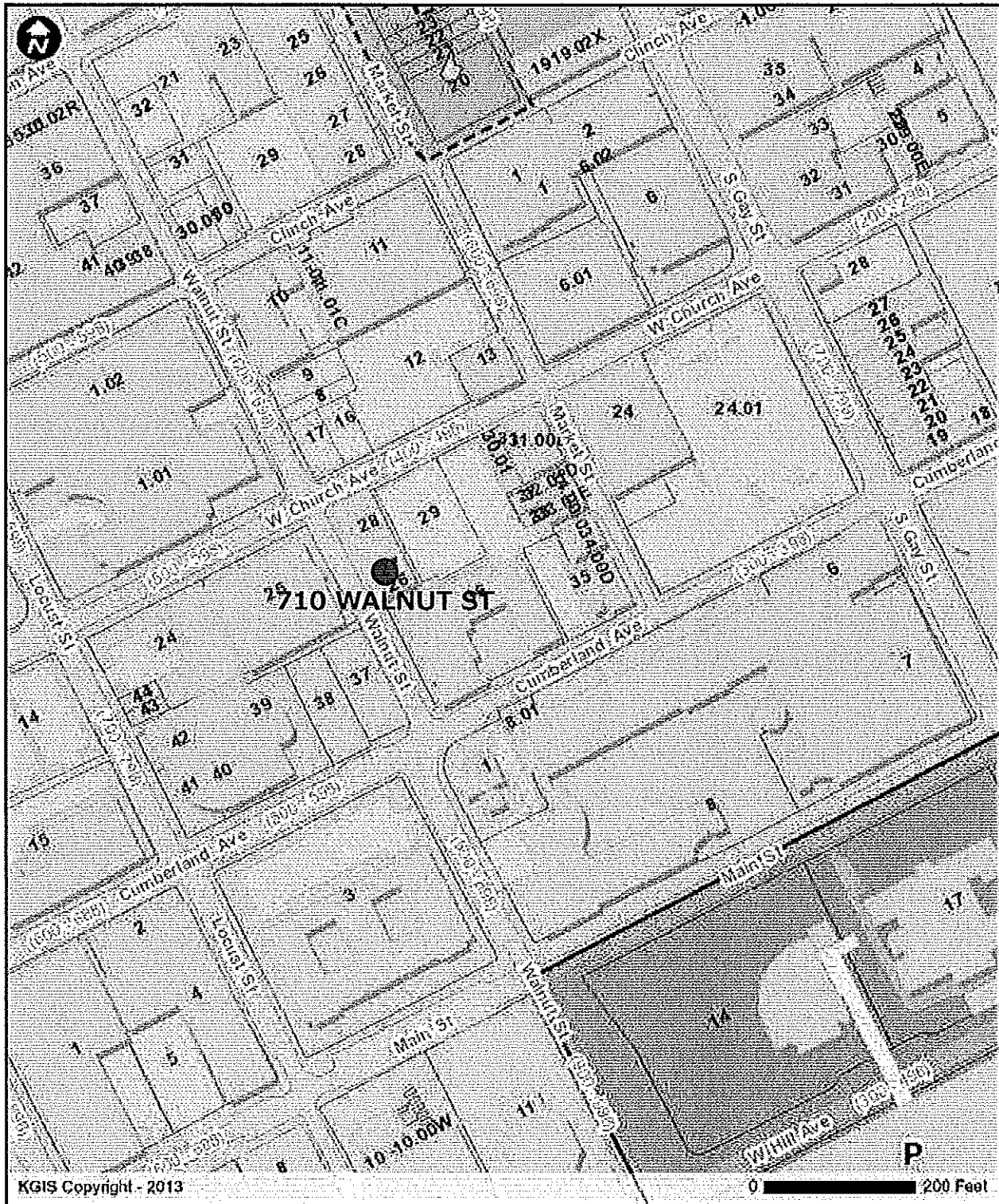
<input type="checkbox"/> City Council - 7 p.m. _____ Month • Date • Year	<input type="checkbox"/> County Commission - 5 p.m. _____ Month • Date • Year	<input type="checkbox"/> City BZA - 4 p.m. _____ Month • Date • Year	<input type="checkbox"/> MPC - 1:30 p.m. <u>6 13 2013</u> Month • Date • Year
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## Reason for Appeal

The application met all criteria for a Certificate of Appropriateness as noted by the Staff Report. The denial by the Downtown Design Review Board (hereinafter "Board") was illegal, arbitrary and capricious as evidenced by the following:

1. The Board was unable to articulate a reason for denial because there was none. One member on the prevailing side even stated that he expected the decision to be overturned on appeal.
2. The Board violated the provisions of T.C.A. §4-1-407, Preservation of Religious Freedom Act, by placing an impermissible burden on St. John's Cathedral in violation of the statute and Article I, Section 3 of the Constitution of the State of Tennessee and the First Amendment of the United States Constitution.
3. The Board violated the provisions of 42 U.S.C. §2000cc, Protection of land use as religious exercise, by placing an impermissible and substantial burden on St. John's Cathedral.

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# Downtown Knoxville Design Overlay District Certificate of Appropriateness

Name of Applicant: Total Demolition Services, Inc.  
 Owner  Contractor  Architect  Engineer  Other \_\_\_\_\_  
 Date Filed: 10/12/11 Application accepted by: Michael Reynolds  
 Fee Amount: 100.00 Review Date: 10/19/11 File Number: 10-H-11-DT

**PRE-APPLICATION CONFERENCE** Date Completed: 10-11-11

**PROPERTY INFORMATION**  
 Building or Project Name: St. John's Church  
 Street Address: 710 + 712 Walnut Street  
 Parcel Identification Number(s): 06104063  
+ 061040631

**PROJECT ARCHITECT/ENGINEER**  
 PLEASE PRINT  
 Name: \_\_\_\_\_  
 Company: \_\_\_\_\_  
 Address: \_\_\_\_\_  
 City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_  
 Telephone: \_\_\_\_\_  
 Fax: \_\_\_\_\_  
 E-mail: \_\_\_\_\_

**PROPERTY OWNER**  
 PLEASE PRINT  
 Name: St. John's Church  
 Company: \_\_\_\_\_  
 Address: 413 W. Cumberland Avenue  
 City: Knoxville State: TN Zip: 37902  
 Telephone: 865-525-7347  
 Fax: 865-673-0893  
 E-mail: pdunlap@stjohnscathedral.org

**PROJECT CONTRACTOR**  
 PLEASE PRINT  
 Name: Jason Shymlock  
 Company: Total Demolition Services, Inc.  
 Address: 10529 Lexington Drive  
 City: Knoxville State: TN Zip: 37923  
 Telephone: 865-675-5544  
 Fax: 865-675-4781  
 E-mail: jason@totaldemolition.net

**ACCOMPANYING MATERIALS**  
 Please see the reverse side of this form for a list of information required as part of this application

**FOR OFFICE USE ONLY**

**PROJECT INFORMATION**  
 LEVEL 1: \$50  
 Minor Alteration of an Existing Building/Structure  
 Sign  
 LEVEL 2: \$100  
 Major Alteration of an Existing Building/Structure  
 Addition to an Existing Building/Structure  
 LEVEL 3: \$250  
 Construction of New Building/Structure

**PROJECT CONTACT**  
 All application-related correspondence should be directed to:  
 PLEASE PRINT  
 Name: Jason Shymlock  
 Company: Total Demolition Services, Inc.  
 Address: 10529 Lexington Drive  
 City: Knoxville State: TN Zip: 37923  
 Telephone: 865-675-5544  
 Fax: 865-675-4781  
 E-mail: jason@totaldemolition.net

NOTE: Payment is due at time of application. Please make check payable to Knoxville Knox County Metropolitan Planning Commission.