

**CITY OF EL PASO, TEXAS  
AGENDA ITEM  
DEPARTMENT HEAD'S SUMMARY FORM**

**AGENDA DATE:** August 1, 2023

**PUBLIC HEARING DATE:** August 1, 2023

**CONTACT PERSON(S) NAME AND PHONE NUMBER:** Philip F. Etiwe, (915) 212-1553  
Providencia Velazquez, (915) 212-1567

**DISTRICT(S) AFFECTED:** 2

**STRATEGIC GOAL:** #3 Promote the Visual Image of El Paso

**SUBGOAL:** 3.1 Provide business friendly permitting and inspection process  
3.2 Set one standard for infrastructure across the city

**SUBJECT:**

Discussion and action on an appeal by the property owner of 3535 Aurora Avenue, El Paso, Texas 79930 in the Manhattan Heights Historic District regarding a decision rendered by the Historic Landmark Commission (HLC) in HLC Case PHAP23-00033 on June 12, 2023, to APPROVE WITH MODIFICATIONS a Certificate of Appropriateness for the referenced property. (District 2)

**BACKGROUND / DISCUSSION:**

In April 2023, the contractor for 3535 Aurora Avenue requested a re-roof permit from the Historic Preservation Office and, upon review, it was discovered that the windows had been previously replaced without approvals or permits. On June 12, 2023, the Historic Landmark Commission voted unanimously to APPROVE the application for a Certificate of Appropriateness for re-roofing with the modifications that, prior to the roof being installed, the south window and two adjacent windows to the main entry be brought into compliance with historically appropriate windows to match the original and that no new permits or approvals be issued until the window permit is received. The applicant is appealing City's policy to withhold approval of new work when property is not in compliance.

**PRIOR COUNCIL ACTION:**

N/A

**AMOUNT AND SOURCE OF FUNDING:**

N/A

**HAVE ALL AFFECTED DEPARTMENTS BEEN NOTIFIED?**  YES  NO

**PRIMARY DEPARTMENT:** Planning & Inspections, Planning Division

**SECONDARY DEPARTMENT:** N/A

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\*\*\*\*\*REQUIRED AUTHORIZATION\*\*\*\*\*

**DEPARTMENT HEAD:**

*Philip Etiwe*

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**MARIO A. GONZALEZ**  
ATTORNEY AT LAW

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El Paso, Texas 79902

915/543-9802  
Email: mario@gonzalezlawfirm.com

June 20, 2023

City Council  
c/o City Clerk  
300 N. Campbell (City Hall)  
El Paso, Texas 79901

**Via Certified Mail, RRR, #70192970000112317639**  
**and Email to: [cityclerk@elpasotexas.gov](mailto:cityclerk@elpasotexas.gov)**

RE: Notice of Appeal of HLC Decision to Conditionally Grant Maria Dolores Lucas'  
Application for Administrative Review to Re-Roof House Located at  
3535 Aurora Avenue, El Paso, Texas

Dear Members of City Council:

I represent Maria Dolores Lucas in this appeal of the decision of the Historic Landmark Commission ("HLC") of the City of El Paso, as it relates to her application for administrative review to the HPO for a permit to re-roof her residence. This application was submitted on her behalf by her roofing contractor, Legacy Construction, so that she could obtain a permit to re-roof her residence located at 3535 Aurora Avenue, El Paso, Texas 79930. Ms. Lucas and I both appeared before the HLC on June 12, 2023, to appeal the denial by the Historic Preservation Office ("HPO") of the City of El Paso of her application for administrative review for a re-roof permit. Ms. Providencia Velazquez of the HPO denied the application and request for a re-roof permit because a company on the Westside, currently operating under the business name "Window World of Southwest Texas," had, unbeknownst to Ms. Lucas, failed to obtain a permit for window installation on her residence when it installed the windows on this residence 7 years earlier.

In orally denying the application for administrative review, the HPO did not find any flaw with the plan submitted in the application for administrative review submitted by Legacy Construction for a re-roof permit. Everything in this plan submitted with the application for Legacy Construction to re-roof her residence with asphalt shingles was deemed acceptable. From the start, Ms. Providencia Velazquez of the HPO clarified that her decision to deny the application for administrative review submitted by Legacy Construction was based on the failure of "Window World of Southwest Texas" to obtain a permit for the windows at the time these windows were

installed. She insisted at the hearing of the HLC appeal on June 12<sup>th</sup> that Ms. Lucas should be ordered to replace all of the windows of her residence with windows she approved, before Ms. Lucas was granted a permit to re-roof her residence.

The HLC did not adopt Ms. Velazquez' recommendation that all of the windows in the residence needed to be replaced. It instead determined that Ms. Lucas should be required to install some type of divider on the side windows of the picture window facing Aurora Street, before she was granted a re-roof permit for her residence. Even though this ruling or decision by the HLC was certainly a more compliance-friendly decision than the insistence by Ms. Velazquez that all windows in the residence should be replaced, it still rendered a wrongly decided decision. It is Maria Dolores Lucas' contention that the HLC and HPO were not authorized to consider whether the windows to her home were improperly installed, without HPO approval, in acting on the application for administrative review that related to her request for a re-roof permit. Whether window installation should be corrected and whether a roof needs to be re-roofed are completely unrelated issues. The HLC should have approved the application for review on the basis of the roof plan submitted, without any consideration to how the windows were installed.

Section 20.20.080 of the El Paso Municipal Code limits the authority of the HPO in several ways. Initially, subsection "A" of this code provision limits the authority of the HPO to building maintenance or remodeling projects that fall within one of two subdivisions, neither of which encompasses Ms. Lucas' residence. First, her residence is not listed on the National Register of Historic Places or listed as a Texas Antiquities Landmark, so as to bring it within (A)(1) of Section 20.20.080. Second -- as a "noncontributing property" with no historical value or significance, built in 1953, Ms. Lucas' residence is not a building, object, site, landscape architectural feature, or group of such designated with an H-Overlay, so as to bring it within subdivision (A)(2) of Section 20.20.080. This residence has never been of historical value. Consequently, it cannot be subjected to any "Design Guidelines" as can true historical properties within this historic district. Therefore, Ms. Lucas' residence is not subject to the HPO provisions codified in Section 20.20.08 of the El Paso Municipal Code.

But even if Section 20.20.08 did apply to Ms. Lucas' residence, the authority granted to the HPO is limited by subsection E of this municipal code provision. Subsection E (1) states that an officer of the HPO "shall review and approve, approve with modifications or deny all administrative review applications in accordance with the administrative review design guidelines, for the following types of requests: ... j. Routine maintenance, including but not limited to: painting, re-roofing, repair of walks, driveways, fences;" The plain meaning of this provision establishes that an HPO officer is only authorized to take action on the application submitted, and is not to consider

unrelated grounds for denial of the application that clearly fall outside the scope of the application. The only authority the City has to enforce violations under Chapter 20.20 of the Municipal Codes are found in (1) Section 20.20.140 (which deals with the penalty for demolition or alteration of any historic landmark) and (2) Section 20.24.030 (which authorizes the City to pursue injunctive relief or a civil penalty of up to a \$500.00 for violating any provisions of this title (which is "Zoning") when committing acts in violations of this title, after receiving notice not to commit the acts).

The window issue that Ms. Velazquez and the HLC insist be corrected by Ms. Lucas have nothing to do with the re-roof permit Ms. Lucas has requested through the application for administrative review Legacy Construction submitted to the HPO to re-roof Ms. Lucas' home at 3535 Aurora Avenue. The decisions of the HPO and the HLC are "under color of law" because they are illegal, unauthorized, and have deprived Ms. Lucas of property, in violation of 42 U.S.C. Section 1983.

Subsection G (6) of Section 20.20.080 states that "Applicants aggrieved by a decision of the historic landmark commission may appeal to city council, using the procedure outlined in Section 20.20.190." Section 20.20.190 in turn states that the "...owner of any property within the same historic district as the subject of the appeal" has 15 days after the ruling of the HLC to appeal the ruling of the HLC. The provision further states "Following a public hearing to be held within sixty days of the filing of such notice of appeal, the city council may, by a simple majority vote, uphold or overturn any ruling of the HLC made pursuant to this chapter."

This Notice of Appeal is therefore submitted to the City Council for the City of El Paso, Texas, with a demand for a public hearing. At this time, the undersigned attorney, as Ms. Lucas' legal representative, does not submit a claim for damages against the City of El Paso, Texas. Any claim for damages, if any, Ms. Lucas asserts against the City of El Paso, Texas, and or its employees, agents, and officers will depend in large part on how the City Council rules on this appeal. Therefore, no demand for money damages is made at this time.

Sincerely,



MARIO A. GONZALEZ

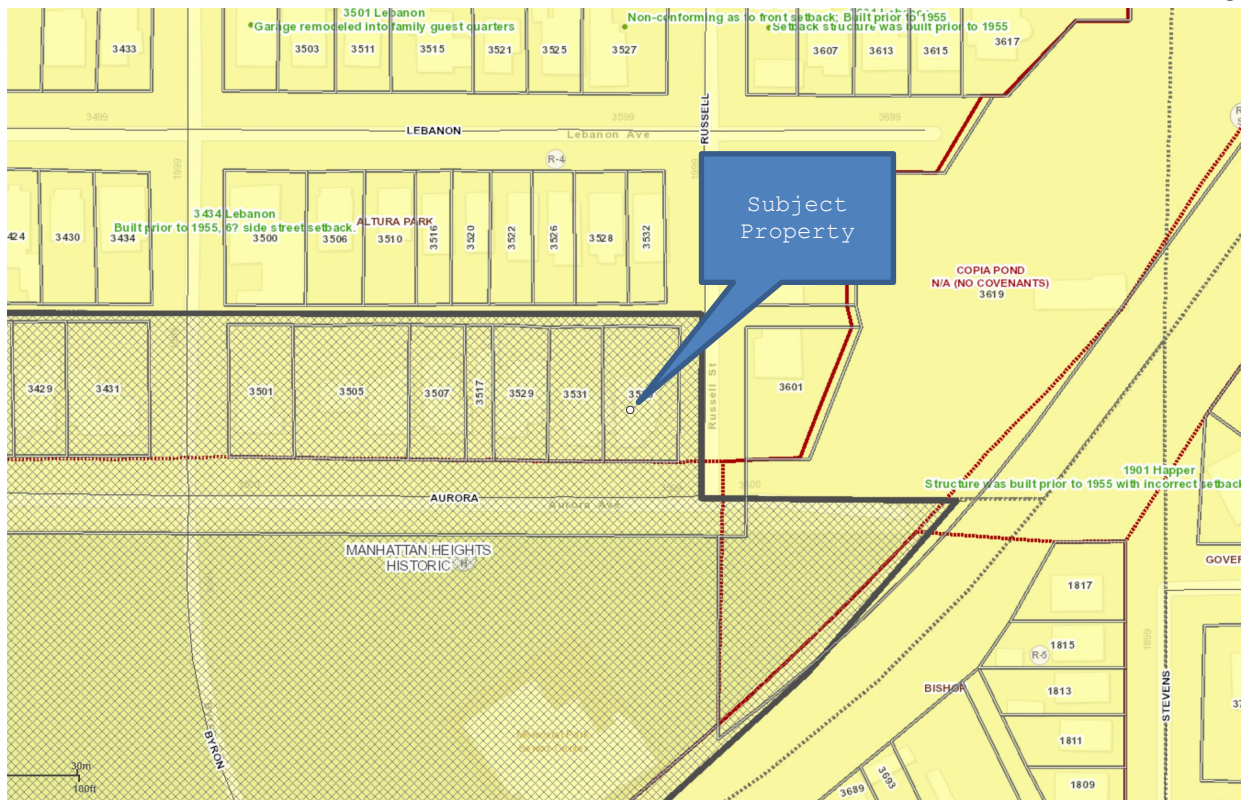
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## PHAP23-00033

**Date:** June 12, 2023  
**Application Type:** Certificate of Appropriateness  
**Property Owner:** Maria Dolores Lucas  
**Representative:** Mario Gonzalez  
**Legal Description:** 6 Altura Park 15 & 16 (6000 Sq Ft), City of El Paso, El Paso County, Texas  
**Historic District:** Manhattan Heights  
**Location:** 3535 Aurora Avenue  
**Representative District:** #2  
**Existing Zoning:** R-4/H (Residential/Historic)  
**Year Built:** 1954  
**Historic Status:** Non-Contributing  
**Request:** Certificate of Appropriateness for re-roofing  
**Application Filed:** 5/26/2023  
**45 Day Expiration:** 7/10/2023

### ITEM #3



**GENERAL INFORMATION:**

The applicant seeks approval for:

Certificate of Appropriateness for re-roofing

**STAFF RECOMMENDATION:**

The Historic Preservation Office recommends APPROVAL WITH A MODIFICATION of the proposed scope of work based on the following recommendations:

*The Design Guidelines for El Paso's Historic Districts, Sites, and Properties* recommend the following:

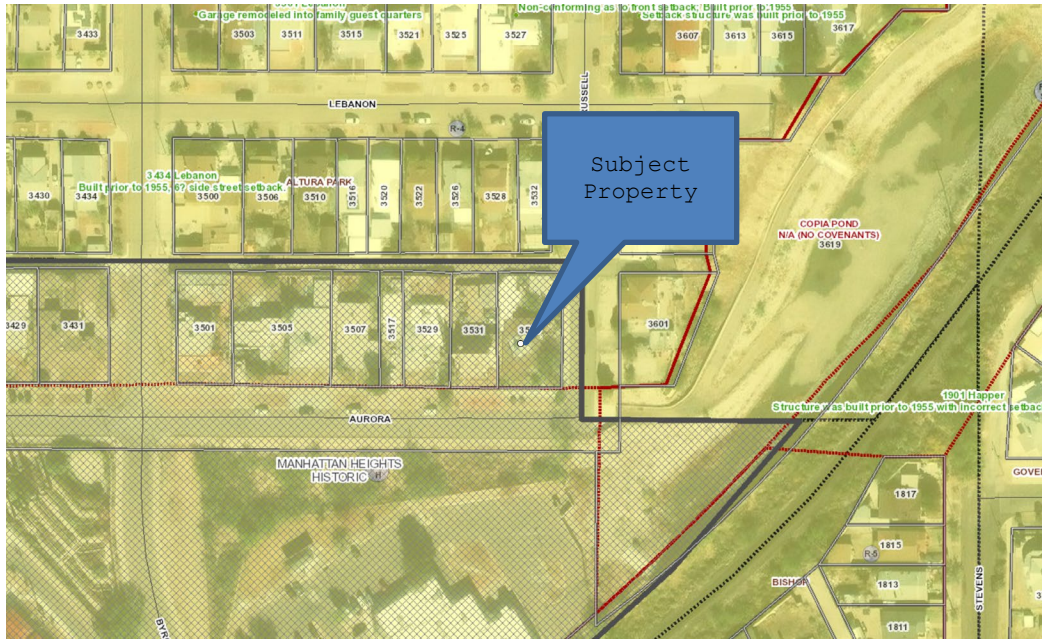
- *The distinctive features of each roof type should be retained as they are character-defining elements. If a roof requires repair, the replacement materials must match the original or existing materials as closely as possible.*
- *Do not change the style or construction of the roof. For example, constructing a gable or hip roof on top of an existing historic flat roof would be inappropriate.*

*The Secretary of the Interior's Standards for Rehabilitation* recommend the following:

- *The historic character of a property shall be retained and preserved. The removal of historic materials or alteration of features and spaces that characterize a property shall be avoided.*
- *Deteriorated historic features shall be repaired rather than replaced. Where the severity of deterioration requires replacement of a distinctive feature, the new feature shall match the old in design, color, texture, and other visual qualities and, where possible, materials. Replacement of missing features shall be substantiated by documentary, physical, or pictorial evidence*

*The modification is that, prior to the roof being installed, the windows be replaced with historically appropriate windows to match the original and that no new permits or approvals be issued until the windows are in compliance.*

# AERIAL MAP





**BEFORE AND AFTER PHOTOS**







**CERTIFICATE  
OF  
APPROPRIATENESS  
Issued by the El Paso Historic Landmark Commission**

This is to certify that the El Paso Historic Landmark Commission at its regular meeting scheduled on June 12, 2023 *reviewed and approved plans submitted by:*

**Property Owner:** Maria Dolores Lucas  
**Location:** 3535 Aurora Avenue  
**Legal Description:** 6 Altura Park 15 & 16 (6000 Sq Ft), City of El Paso, El Paso County, Texas

**For:**

**Certificate of Appropriateness for re-roofing with the modifications that prior to the roof being installed the south window and two adjacent windows to the main entry be brought into compliance with historically appropriate windows to match the original and that no new permits or approvals be issued until the window permit is received**

The Commission finds that the proposed scope of work will not adversely affect the architectural or historical significance of the Manhattan Heights Historic District, within which this site is located.

THEREFORE, appropriate building permits may be issued. All construction must conform to existing City Code requirements.

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Edmund Castle, PE, Chair  
El Paso Historic Landmark Commission

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Date