

**EXHIBIT C**

**DECISION  
HISTORIC CONSERVATION BOARD  
CITY OF CINCINNATI  
DATE OF DECISION: September 27, 2022**

**APPLICANT:** New Republic Architecture/ Suder LLC

**CASE TYPE:** COA/ Zoning Relief

**CASE NO.:** COA2022032/ ZH20210183

**PROPERTY:** 2000 Dunlap Street

**SUMMARY OF REQUEST:**

Over-the-Rhine Community Housing, an Ohio nonprofit corporation (“OTRCH”), requests a Certificate of Appropriateness (“COA”) and zoning relief to construct a four-story, 44-unit congregate housing development with a zero-lot-line rear setback in a Urban Mix (“UM”) zoning district in the Over-the-Rhine Historic District (the “Historic District”).

**SUMMARY OF DECISION:**

COA is **APPROVED**.

Zoning Relief is **APPROVED** in part and **DENIED** in part.

**PUBLIC HEARING:**

The Historic Conservation Board (“Board”) is a quasi-judicial body empowered to approve a COA when an applicant has demonstrated credible evidence that the proposal substantially conforms to the applicable local historic district conservation guidelines. The Board functions as the Zoning Hearing Examiner concerning requests for zoning relief from the Cincinnati Zoning Code (“CZC”) in the city’s local historic districts.

The Board conducted a public hearing over multiple meeting sessions on January 24, 2022, June 27, 2022, and August 8, 2022 (referred to collectively hereafter as the “Hearing”) on the above-cited application and is charged with evaluating the credibility of all witnesses and issuing findings of fact and conclusions of law based on the testimony and evidence presented to it.

The Board mailed notice to all persons entitled to receive notice of the application. Also, the Board published prior notice of the Hearing on the application in The City Bulletin. A quorum of Board members under Section 5 of the Rules of Procedure were present throughout the Hearing.

The Board recorded the Hearing, and a copy of the recording is available for review and transcription from the Office of Administrative Boards. Similarly, a representative from Elite Court Reporting Agency, LLC recorded the Hearing stenographically, and a transcript of the proceeding is available upon request.

**FINDINGS OF FACT:**

1. This matter concerns certain real property that is commonly identified as 2000 Dunlap Street and more particularly identified as Hamilton County, Ohio Auditor's Parcel No. 096-0005-0116-00 (-0116, -0117, -0118, -0119 Cons.) (the "Property").
2. The Property is in a UM zoning district in the Historic District.<sup>12</sup>
3. OTRCH, through New Republic Architecture, applied for zoning relief to construct a four-story, 44-unit congregate housing development with a zero-lot-line rear setback (the "Structure") on or about December 10, 2021. The zoning relief application dated December 10, 2021, did not include design specifications or a request for a COA.
4. CMC Section 1410-07 requires 700 square feet of lot area per residential unit. OTRCH requires a dimensional variance to allow 226 square feet of lot area per residential unit. CMC Section 1410-07 imposes a rear yard setback requirement of ten feet. OTRCH requires a dimensional variance to allow a zero-foot rear setback for 36 feet and 11½ inches along the rear property line.
5. The Board scheduled the zoning relief application for its regularly scheduled meeting on January 24, 2022.

**JANUARY 24, 2022 PUBLIC MEETING**

6. Richard B. Tranter, Esq. appeared before the Board on January 24, 2022, as legal counsel for OTRCH.
7. Peter Koenig, Esq. appeared before the Board on January 24, 2022, as legal counsel for Cincinnati Industrial Auctioneers, Inc.; Dunlap Street Properties, LLC; Jeffrey Luggen; and Robert Selhorst.
8. Jeff Nye, Esq. appeared before the Board on January 24, 2022, as legal counsel for The F.L. Emmert Company.
9. Dan McCarthy, Esq. appeared before the Board on January 24, 2022, as legal counsel for the City Lofts on Dunlap Condominium Association, an Ohio nonprofit corporation.
10. Mary Burke Rivers, OTRCH's Executive Director, appeared before the Board on

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<sup>1</sup> Cincinnati Municipal Code Section 1400-17 and Map Section 1400-17.  
<sup>2</sup> Ordinance No. 195-2003.

January 24, 2022, to support the application for zoning relief. Ms. Burke Rivers testified to OTRCH's history and mission, stating that the merger of two community-development corporations: Race Street Tenant Organization Co-Operative ("RESTOC") and Over-the-Rhine Housing Network, formed OTRCH. Ms. Rivers asserted that OTRCH's mission is to develop and manage resident-centered affordable housing to benefit low-income residents, declaring that OTRCH has an inventory of approximately 490 dwelling units in 105 buildings throughout the Over-the-Rhine neighborhood.

11. Ms. Burke Rivers provided background on OTRCH's ownership of the Property. She stated that OTRCH had owned the Property since 1992. The Property formerly contained a four-story structure that the City of Cincinnati razed in 1994 due to a roof collapse, and OTRCH subsequently constructed a parking lot on the Property.
12. Bob Carbon appeared before the Board to discuss the proposed zoning relief. Mr. Carbon described the developmental character of the area surrounding the Property, showing images of structures to the north and west of the Property constructed with zero-lot lines. Mr. Carbon showed a photograph of the building that formerly occupied the Property, asserting that it was a four-story structure likely measuring between 40-45 feet tall and constructed with a zero-lot line.
13. On cross-examination by Mr. Nye, Mr. Carbon conceded that a traffic impact study had not been performed for the proposed development.
14. Mr. Koenig objected to the bifurcation of the application to hear the COA separately from the requested zoning relief. He argued that it is also erroneous not to consider the use in weighing zoning relief hardship factors.
15. Mr. Koenig argued that the development is incompatible with the surrounding neighborhood, stressing that the requested density is unprecedented for the zoning district and the Historic District. He further argued that the Property has no exceptional, special, or unique characteristics to justify the requested zoning relief.
16. Jeff Luggen testified that he is a business owner that owns several properties proximate to the Property. Mr. Luggen expressed concerns about the compatibility of the use concerning surrounding properties, parking, and adverse impacts to surrounding businesses during construction.
17. Robert Selhorst testified that he owns property within 200 feet of the development site. He argued against the proposed use of the Property.
18. On cross-examination by Mr. Tranter, Mr. Selhorst conceded that he believed that he knew or was aware that OTRCH owned the Property when he purchased his property.
19. Mr. McCarthy argued that OTRCH had not met its burden of proof to show that they are entitled to the requested variances. He asserted that a hearing on the application was premature and inappropriate.

20. Neil Marquardt testified that he owns property at 42 W. McMicken Avenue and 1908 Dunlap Street. Mr. Marquardt stated that a hearing on the application was premature because OTRCH should present final design plans to surrounding property owners before proceeding.
21. Ben Eilerman, Graham Kalbli, Amy Silver, Andy Hutzal, Bonnie Neumeier, David Elkins, Joele Newman, and Margy Waller appeared before the Board to testify in support of the application.
22. Brian Conner, Vice-President of the OTR Community Council, appeared before the Board to testify about community outreach related to the project. He stated that OTR Community Council had not taken a position on the application as of the public meeting date.
23. Agostino Fede, Denny Dellinger, Julie Fay, Guy Peters, Joey Luggen, Ryan Luggen, Jeff Luggen, Jr., Steven Fink, and John Walter appeared before the Board to testify in opposition to the application.
24. Mr. Nye argued the general standards applicable to variance requests under the Cincinnati Municipal Code and Ohio law. He maintained that the variances are inappropriate under CZC Section 1445-13 because OTRCH failed to demonstrate how the increased density suits anticipated traffic, neighborhood compatibility, and potential adverse effects. Mr. Nye asserted that granting zoning relief under CZC Section 1445-15 is inappropriate because the Property lacks unique or distinctive circumstances or characteristics to entitle OTRCH to zoning relief. Additionally, he argued that granting zoning relief under CZC Section 1435-05-4 is inappropriate because denial of the request will not deprive OTRCH of all economically viable use of the Property or adversely affect the historic architectural or aesthetic integrity of the Historic District.
25. Mr. McCarthy argued that OTRCH failed to meet its burden of proof to demonstrate that it is entitled to variance relief. He stressed that the proposed variances are materially detrimental to the public health, safety, welfare, and injurious to his clients' adjacent properties because the project size and scope are too large for the lot size. He argued that OTRCH failed to meet its burden of proof to show that the zoning relief is necessary and appropriate, and in the interest of historic conservation. He asserted that OTRCH would not be denied all economically viable use of its property upon denial because OTRCH presently uses the Property in an economically viable manner as a public pay parking lot.
26. Mr. Koenig echoed the arguments presented by Mr. Nye and Mr. McCarthy.
27. Mr. Tranter argued that OTRCH satisfies the applicable standards for being entitled to zoning relief. He maintained that the zoning setback requirements are unreasonable because surrounding structures are without setbacks. He stated that OTRCH desires to return the Property to its former condition, occupied by a four-

story, zero-lot line building. Mr. Tranter argued that the former structure suffered a severe casualty event that caused OTRCH to forego reconstructing it until now. He stressed that the proposed density is insignificant because the zoning code would allow more residents to occupy fewer multi-family units and would not unduly burden traffic circulation because the proposed inhabitants are unlikely to own cars.

28. The Board voted to table the zoning relief application to allow OTRCH to submit a COA application.
29. OTRCH submitted a COA application on or about May 12, 2022, and the Board scheduled the COA and zoning relief applications for the Board's regularly scheduled meeting on June 27, 2022.
30. On or about June 17, 2022, Chris Finney, Esq. and Jessica Gibson, Esq., legal counsel for Cincinnati Industrial Auctioneers, Inc. and Dunlap Street Properties, LLC, filed a letter in opposition to the project comprising ten pages, including exhibits A-K, comprising 104 pages.
31. On or about June 24, 2022, Mr. Finney and Ms. Gibson submitted additional materials to the Board to support their clients' positions, arguments, and contentions against the project, identified as exhibits L-P. Tim Voss, the Board Chairman, accepted exhibits L-O into the record.

#### JUNE 27, 2022 PUBLIC MEETING

32. Sean Suder, Esq. and J.P. Burleigh, Esq. appeared before the Board on June 27, 2022, as legal counsel for OTRCH.
33. Ben Eilerman appeared before the Board on June 27, 2022, to testify in support of the COA and zoning relief. Mr. Eilerman testified about his work with OTRCH and how OTRCH determined the unit density for the project. Mr. Eilerman testified that OTRCH would use low-income housing tax credits administered by the Ohio Housing Finance Agency for the project, emphasizing that low-income housing tax credits require that tenants' rents cover the project's operational costs. Mr. Eilerman said that he calculated that OTRCH must construct 44 units at the Property for the project to be viable. He declared each proposed unit would range from 450 to 611 square feet and house a single occupant.
34. Mr. Eilerman asserted that the project was consistent with the neighborhood's character, citing that a nearby property, Griffin Apartments, contains 66 units, and a second property nearby, Logan Towers, comprises 63 units.
35. Chris Finney, Esq. and Jessica Gibson, Esq. appeared before the Board on June 27, 2022.
36. On June 27, 2022, the Board voted to continue the Hearing in progress. The Board continued the Hearing to its regularly scheduled meeting on August 8, 2022.

37. On or about July 22, 2022, Mr. Finney and Ms. Gibson filed a written *Motion to Reconsider the Use* (the “Motion to Reconsider”). The Motion to Reconsider argued the City’s Zoning Administrator inaccurately classified the proposed use of the Structure. Mr. Finney and Ms. Gibson contended the zoning code does not permit the proposed use in the UM zoning district.
38. On or about August 1, 2022, Mr. Suder and Mr. Burleigh filed a written response to the Motion to Reconsider. They argued that the Board does not have the power to overrule the Zoning Administrator’s use classification.
39. On or about August 1, 2022, Mr. Finney and Ms. Gibson filed additional materials to the Board to support their clients’ positions, arguments, and contentions against the project, identified as exhibits Q-Z.

#### AUGUST 8, 2022 PUBLIC MEETING

40. Sean Suder, Esq. and J.P. Burleigh, Esq. appeared before the Board on August 8, 2022.
41. Mary Burke Rivers, Ben Eilerman, Andy Hutzler, and Graham Kalbli appeared before the Board on August 8, 2022, as witnesses supporting OTRCH’s project.
42. Chris Finney, Esq. and Jessica Gibson, Esq. appeared before the Board on August 8, 2022.
43. Jeff Nye, Esq. appeared before the Board on August 8, 2022, on behalf of the F.L. Emmert Company.
44. Mr. Suder requested the Board to exclude the evidentiary submissions made by Mr. Finney and Ms. Gibson on or about August 1, 2022.
45. The Board voted to exclude from the record the August 1, 2022, evidentiary submission made by Mr. Finney and Ms. Gibson.
46. Mr. Finney made several oral motions during the Hearing. He requested to incorporate the records of the January 24, 2022, meeting and the June 27, 2022, meeting into the record of the August 8, 2022, meeting. He objected to the bifurcation of the Hearing from January 24, 2022, and June 27, 2022. He petitioned the Board to strike all letters and testimony in support of the Structure that discusses or mentions the proposed use. He proffered his August 1, 2022, evidentiary submission to the Board.
47. Mr. Kalbli detailed the Structure’s design. He explained that it is divided into three horizontal sections: base, middle, and top. The base consists of a light gray masonry product, the middle consists of field brick, with windows throughout, and a top marked by a cornice. Additionally, Mr. Kalbli testified about how he thought the Structure complied with the Historic District’s guidelines concerning the roof, window patterns, setbacks, height, and materials.

48. Mr. Kalbli explained that the proposed setbacks and height are consistent with the character and historical use of the Property. He stated that he designed the proposed zero-lot line at the rear of the Structure to accommodate an outdoor space for residents, allow access for emergency and public service vehicles, and house certain functional and mechanical features required for the Structure.
49. Jeff Luggen appeared before the Board on August 8, 2022. Mr. Luggen echoed his testimony from the January meeting and argued that the Structure's design is inconsistent with the aesthetics of the Historic District.
50. Robert Selhorst appeared before the Board on August 8, 2022. Mr. Selhorst echoed his testimony from the January meeting and asserted that the proposed density is inappropriate in the neighborhood.
51. Amy Silver, Bonnie Neumeier, Catherine Engle, Christine Wooten, David Elkins, Josh Spring, Michael Flood, Robert Killins, Rosanne and Kevin Hassey, Lauren Stoll, and Francis Russell appeared before the Board to testify in support of the project.
52. John Walter, Ron Holbrook, and Ryan Luggen appeared before the Board to testify in opposition to the project.
53. Mr. Nye argued the Structure's design is incompatible with adjacent properties. He echoed his arguments from the January meeting, challenging the appropriateness and necessity of the requested variances. He advocated for the Board to impose conditions on the Structure's design concerning the location of the entrance and during the construction phase of development so that the construction and use of the Structure did not adversely impact the F.L. Emmert Company.
54. Mr. Finney argued against the proposed density variance, contending that OTRCH failed to satisfy its burden of proof. He claimed the sole reason OTRCH desired the requested density was to build as many units as possible at the Property. He declared that the dimensional variance is inconsistent with the general purposes and intent of the zoning code and is inappropriate because the Property has no unique or defining features. Also, he argued that the massing, size, and window arrangements do not conform to the Historic District guidelines.
55. Mr. Suder argued the density variance would not adversely affect the neighborhood because the neighborhood historically supported greater densities. He argued that the design substantially conforms to the Historic District guidelines, emphasizing the experience of the project's architect in working within the Historic District and the support of the OTR Foundation's infill committee. He asserted the setback variance is appropriate given the programmatic and practical difficulties presented by developing in a dense, urban environment and the location of utility infrastructure. He argued that the strict application of the zoning code presents practical difficulties to OTRCH because the code would not allow OTRCH to affect its mission unless the Board granted relief to allow greater density.



56. Urban Conservator, Doug Owen submitted to the Board a report concerning the project (the "Report"). The Report is 17 pages and dated January 6, 2022 amended June 17, 2022. The Report contains a summary of the request, as well as a professional analysis and opinion, including a recommendation. The Report recommends approval of the COA and requests for zoning relief.

#### **CONCLUSIONS OF LAW:**

1. City Administrative Code ("CAC") Article XXX, Section 4 establishes the Board and empowers it to "have the duties and powers imposed by ordinance and [administrative] code."

#### **MOTION TO RECONSIDER THE PROPOSED USE OF THE PROPERTY**

2. CMC Section 1439-09 provides that the Board has the following duties and powers under the Cincinnati Zoning Code:
  - a. To hear applications for designation of historic districts, structures or sites and to make recommendations to the City Planning Commission on designation applications. See § 1435-07.
  - b. To approve, conditionally approve or deny applications for Certificate of Appropriateness. See § 1435-13.
  - c. To assume the powers and duties of the Zoning Hearing Examiner to hear and approve, conditionally approve or deny applications for conditional uses, nonconforming uses, variances or special exceptions for those applications relating to property wholly or partially within a designated historic district or site or involving a designated landmark. See § 1435-27.
3. Mr. Finney and Ms. Gibson argued the City's Zoning Administrator inaccurately classified the proposed use of the Structure and filed with the Board a written *Motion to Reconsider the Use* petitioning the Board to determine whether OTRCH proposed a proper use of the Property under the Cincinnati Zoning Code.
4. The movant has the burden of proof.
5. The *Motion to Reconsider the Use* is not well taken and the Board denies the said motion. As set forth above, Cincinnati City Council has not empowered the Board to decide determinations or interpretations of the Cincinnati Zoning Code made by the Zoning Administrator in the administration of the Cincinnati Zoning Code.

## CERTIFICATE OF APPROPRIATENESS

6. Cincinnati Municipal Code (“CMC”) Section 1435-09 sets forth the procedure for which the Board is to consider certificate of appropriateness applications and provides that “[n]o one shall make an alteration or undertake a demolition, or receive any permit to do so, without first obtaining a Certificate of Appropriateness.”
7. CMC Section 1435-09-1-B provides that “[t]he Board may approve, approve with conditions, or deny an application for a Certificate of Appropriateness.”
8. CMC Section 1435-09-2 establishes that “[t]he Board may approve or approve with conditions an application for a Certificate of Appropriateness when it finds either:
  - a. That the property owner has demonstrated by credible evidence that the proposal substantially conforms to the applicable conservation guidelines; or
  - b. That the property owner has demonstrated by credible evidence that the property owner will suffer economic hardship if the certificate of appropriateness is not approved.”
9. OTRCH has the burden of proof.
10. Upon being fully apprised of the issues based on the evidence and testimony submitted by OTRCH, other interested persons providing oral and written testimony to the Board, and the analysis and recommendation submitted to the Board in the Report, the Board **APPROVES** the certificate of appropriateness for the Structure per the drawings submitted by New Republic Architecture dated April 4, 2022. The Board hereby adopts the Urban Conservator’s analysis of the certificate of appropriateness application set forth on pages 11-15 of the Report. The Board hereby incorporates the certificate of appropriateness analysis on pages 11-15 of the Report herein and it shall become a part hereof. The Board approves the certificate of appropriateness subject to the following condition:
  - a. The building permits must be issued within four years of the decision date or the certificate of appropriateness shall expire.

## REAR YARD SETBACK VARIANCE

11. CMC Section 1435-05-4 empowers the Board to assume the powers and duties of the Zoning Hearing Examiner to hear and approve, conditionally approve or deny applications for conditional uses, nonconforming uses, variances or special exceptions for those applications relating to property wholly or partially within the Historic District.

12. Upon being fully apprised of the issues based on the evidence submitted and representation made by OTRCH, testimony received at the Hearing, and the professional analysis and recommendation presented by the Urban Conservator in the Report, upon motion duly made and seconded, a majority of the Board members present voted to **APPROVE** the requested zoning variance from CMC Section 1410-07 to allow a zero-foot setback for 36 feet and 11½ inches along the rear yard of the Property. The Board finds such relief from literal implication of the zoning code will not be materially detrimental to the public health, safety and welfare or injurious to property within the district or vicinity where property is located and is necessary and appropriate in the interest of historic conservation so as not to adversely affect the historic architectural or aesthetic integrity of the district.

DENSITY VARIANCE

13. Upon being fully apprised of the issues based on the evidence submitted and representation made by OTRCH, testimony received at the Hearing, and the professional analysis and recommendation presented by the Urban Conservator in the Report, upon motion duly made and seconded, a majority of the Board members present voted to **DENY** the requested zoning variance from CMC Section 1410-07 to allow 226 square feet of lot area per residential unit. The Board finds that the evidence and testimony provided at the Hearing indicates that OTRCH failed to satisfy its burden that owing to special circumstances or conditions pertaining to the Property, the strict application of the provisions or requirements of Cincinnati Zoning Code are unreasonable and would result in practical difficulties.

14. The following is a record of the votes cast by members of the Board concerning the motion to approve the COA application and setback zoning relief and deny the request for density zoning relief:

**Aye**

Mr. Tim Voss  
Mr. Bob Zielasko  
Ms. Allison McKenzie  
Mr. Herbert Weiss  
Mr. Thomas Sundermann

**Nay**

**Absent**

Ms. Pamela Smith-Dobbins

**ORDERED:** September 27, 2022:

/s/ Thomas Sundermann  
Thomas Sundermann, Vice-Chair  
Historic Conservation Board

/s/ Trisa Wilkens  
Trisa Wilkens, Staff Attorney  
Historic Conservation Board

**APPEALS:**

This decision represents the final appealable order of the Historic Conservation Board and may be appealed to the Zoning Board of Appeals under Chapter 1449 of the Cincinnati Zoning Code. Any appeal must be filed within thirty days of the date of the mailing of this decision.

The Board transmits by electronic mail a true and accurate copy of this decision on the 27<sup>th</sup> day of September 2022, to:

Suder LLC  
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Jeff Nye  
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Transmitted this 27<sup>th</sup> day of September 2022, by interdepartmental mail to:

Douglas Owen  
Department of City Planning and Engagement