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Dispute brings scrutiny to Austin preservation law

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By LILLY ROCKWELL - Associated Press - Friday, January 2, 2015

AUSTIN, Texas (AP) - A white mid-century modern house that has sat on Red River Street for six decades will now be designated historic, making the owner eligible for property tax breaks, thanks to a vote by the Austin City Council at a December meeting.

There's just one problem. The owner didn't want it.

Owner Gwyn Shive, 96, wants to demolish the 1,900-square-foot, International-style house, saying it has fallen into disrepair and would cost more than \$475,000 to fix up. Shive owns the house through the name Delta H Corp.

While the decision to give the house historic landmark status was celebrated by the city's preservationists, Shive, who has used the house as a rental since 1963, said it amounts to an unjust six-figure penalty.

"The city and those in favor of historic zoning of this house have crossed the line by effectively executing an uncompensated taking of this property," the Shive family said in a statement through attorney Matt Williams.

Williams was contacted by private property rights advocates and lawyers who say this historic designation could be a perfect test case to challenge the city of Austin's "overreach," he said, in the area of historic zoning. "They like that the city is serving up a half-a-million-dollar bill on an elderly woman in her 90s and that it is totally against her will and in response to nothing more than a demolition permit."

This unusually epic battle between preservationists and a landowner began back in May, winding its way through various levels of city bureaucracy, from the Historic Landmark Commission to the Planning Commission before reaching the City Council for a final vote in December.

Typically, owners want the historic designation because it comes with property tax breaks.

By gaining historic status, the owners are prevented from making any significant changes to the house's exterior. Shive would also get a tax break of \$5,216, cutting her tax bill roughly in half, though she told the American-Statesman (http://bit.ly/1A09T4C) she won't accept it. The house is valued by the Travis Central Appraisal District at \$438,560.

Since Austin's historic zoning designation program began in the 1970s, there have only been two other times that a house has been deemed historic against the owner's wishes, according to Lin Team, a board member of Preservation Austin.

"It's a very, very rare situation," said Team, a Realtor who specializes in historic properties. "When we started on this case, we didn't expect to win."

Since the city's historic landmark program began in the 1970s, it has named about 580 homes and buildings historic landmarks.

After receiving a glut of historic landmark applications in 2009, the city tightened the standards. The new criteria require buildings to be at least 50 years old, retain their historical integrity and represent a significant architectural style or have community value or noteworthy former occupants.

The two-story Red River house has a white stucco facade and dark red trim and was built in 1947 by residential construction firm Ann Brothers. It persisted as the years churned by and Red River morphed from a sleepy residential road into a bustling semicommercial thoroughfare.

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Team said Preservation Austin doesn't fight every demolition permit in the city, but, in this case, the stakes were too high to ignore. The house's prominent location, and the fact that it is only one of two international-style houses in Austin caused preservation groups to get behind the effort.

The Red River house is also described under the architectural style "Streamline Moderne." Steve Sadowsky, the city's historic preservation officer, said its Streamline Moderne features include cantilevered overhang, glass block accents, vertical fins and portholes.

Karen Browning, Shive's daughter, says the council's decision forces Shive to pay for an estimated \$476,685 in repairs, such as fixing a cracked slab. If the family doesn't make those repairs, they could be charged with code violations.

Browning submitted letters to the council from a structural engineer and a foundation repair expert who said the foundation wasn't repairable and urged demolition. A restoration company, Realty Restoration, provided the repair estimate, which included demolishing part of the slab and roof repairs as well as interior changes.

But Sadowsky and Preservation Austin lined up their own estimates from experts, who reached different conclusions. One construction firm estimated the repairs at \$287,000 to \$374,000, while the other said it would cost \$360,000 to \$540,000 to rehabilitate.

Sparks Engineering, a structural engineering firm, said, "Rehabilitation of the house is feasible, and there is no structural reason the house should be demolished."

Browning said if the family was granted permission to demolish, they would leave the land empty for a few years, with the hope of eventually building another residential home on the property.

Shive is the sole remaining owner of the Delta H Corp., which was formed in the early 1960s to buy up a bunch of Hancock neighborhood homes in the hopes of keeping that area residential after the Hancock Shopping Center was built nearby. Shive is adamant about keeping the home's site a residence and fears selling it would risk turning the property over to commercial interests.

But Team said she did find a buyer for the property who wanted to restore it and keep it residential.

Noted developer Clark Lyda, who has been involved in major housing restoration projects in Austin before, toured the house and wanted to put in an offer.

"It's architecturally significant and, to my eyes at least, a beautiful small home of its era and worthy of preservation," Lyda said.

But Browning said Shive doesn't want to sell.

"The only way to ensure, at least at this point in time, that this property stays residential is for Ms. Shive to own it," Browning said in an email.

Information from: Austin American-Statesman,
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