



## Certified City Council Decision Preliminary Subdivision

City of Raleigh  
Development Plans Review Center  
One Exchange Plaza  
Raleigh, NC 27602  
(919) 996-2626  
www.raleighnc.gov

**Case File / Name:** S-73-16, Lots 21 & 22 Addition to Idlewild

**General Location:** The overall site is located on the southeast corner of the intersection of East Lane Street and North State Street, and is inside the city limits.

**CAC:** North Central

**Nature of Case:** Proposal to approve the subdivision of two lots totaling .35 acres into 3 lots all zoned Residential-10 (R-10).

This proposal is subject to the Unified Development Ordinance. Review and recommendation by the Raleigh Historic Development Commission (RHDC) and City Council approval is required for all subdivisions containing a historic landmark (See Section 10.1.8).

Currently onsite a detached house containing multiple dwellings across two lots exists. The detached house is to be converted to one dwelling unit and the existing two lots are to be subdivided into three lots, lot one being 7260 square feet, lot 2, 4000 square feet, and lot three, 4284 square feet.

The existing dwelling, the Lemuel and Julia Delaney House, located at 210 and 212 North State Street was designated a Raleigh Historic Landmark on 10/22/2009. See Ordinance No. 638 (2009).

On 2/6/17, the Board of Adjustment granted a 12' variance to the minimum lot width requirements for interior lots (2.2.1) such that the two existing lots could become three lots. The Board of Adjustment also granted relief from the 5' side yard, and the 10' side street setback requirements, and the sum of the side setbacks (2.2.1) for the existing detached house, thus resulting in an allowed 0' side setback, 0' side street setback, and a 0' sum of side setbacks. This resulted in a 33' wide additional interior lot created out of the two existing lots resulting in a three lot subdivision. The variance (A-10-17) was approved by the Board of Adjustment by a vote of 5-0, the motion was adopted and the variance granted. (A-10-17)

The RHDC is responsible for review and recommendation regarding subdivision approvals of all historic designations. At its December 20, 2016 meeting, the RHDC recommended with a 10/1 vote that the amended subdivision application be approved. A prior subdivision request reviewed by the COA Committee of the RHDC was also recommended for approval at the November 28, 2016 COA Committee meeting. The committee determined that buildings that are not incongruous with the character of the landmark could be built on the proposed new lot and that easements be placed on the property to protect the house and the apartment.

Since the dwelling is designated as a historic landmark, the City Council is responsible for final action of this subdivision approval. A Quasi-Judicial Public Hearing is required, as per the City of Raleigh Unified Development Ordinance (UDO) Section 10.1.8. and 10.2.5.

**Contact:** Stoney Chance, Chance and Associates

**Design Adjustment:** One Design Adjustment has been approved by the Public Works Director for this project, noted above.

1. In an effort to assist in the preservation of the existing Delaney House, a Design Adjustment in the form of an alternative streetscape cross section for this portion of both N. State Street, and E. State Street has been granted allowing three shade trees along North State Street, and four understory trees along E. Lane Street to be planted behind the existing sidewalk. A fee in lieu will be required for the additional two street trees required along E. Lane Street.

# Design Adjustment Staff Response



**DEVELOPMENT SERVICES DEPARTMENT**

Development Services Customer Service Center | 1 Exchange Plaza, Suite 400 | Raleigh, NC 27601 | 919-996-2495  
Litchford Satellite Office | 8320 - 130 Litchford Road | Raleigh, NC 27601 | 919-996-4200

Per Section 10.2.18.C of the Unified Development Ordinance, the Development Services Director, or designee, shall consult with the heads of other City Departments regarding the review of the request. The Development Services Director, or designee, shall approve, approve with conditions or deny the request, but must do so within 60 days of the receipt of a completed application. Additional time may be necessary if a municipal or state entity is incorporated in the review process or if a detailed engineering study is submitted in conjunction with the request.

<b>PROJECT</b>	Project Name	Lots 21 & 22, Addition to Idlewild	Date completed Application received	3/15/17
	Case Number	S-73-16	Transaction Number	493377

<b>DEPARTMENT RESPONSE/RECOMMENDATION</b>	Staff <b>SUPPORTS</b> the Design Adjustment based upon the findings in these applicable code:			
	<input type="checkbox"/> UDO Art. 8.3 Blocks, Lots, Access	<input type="checkbox"/> UDO Art. 8.4 New Streets	<input type="checkbox"/> Other	
	<input checked="" type="checkbox"/> UDO Art. 8.5 Existing Streets	<input type="checkbox"/> Raleigh Street Design Manual		
	DEPARTMENT	REPRESENTATIVE SIGNATURE	DEPARTMENT	REPRESENTATIVE SIGNATURE
	<input type="checkbox"/> Dev. Services Planner		<input type="checkbox"/> City Planning	
<input checked="" type="checkbox"/> Development Engineering	Caddell Hall <i>Carter</i>	<input type="checkbox"/> Transportation		
<input type="checkbox"/> Engineering Services		<input checked="" type="checkbox"/> PRCR	<i>Mary Ann Metcalf</i> Mary Ann Metcalf	
<input type="checkbox"/> Public Utilities				
<b>Findings:</b> Staff is in support of the Design Adjustment for the alternate streetscape along the frontages of North State Street and East Lane Street. Street trees will be planted behind existing sidewalks on both street frontages. Due to the preservation of the existing Delany house, a Raleigh Historic Landmark, a fee-in-lieu will be paid for two shade trees along East Lane Street.				

**Development Services Director or Designee Action:** Approve  Approval with Conditions  Deny

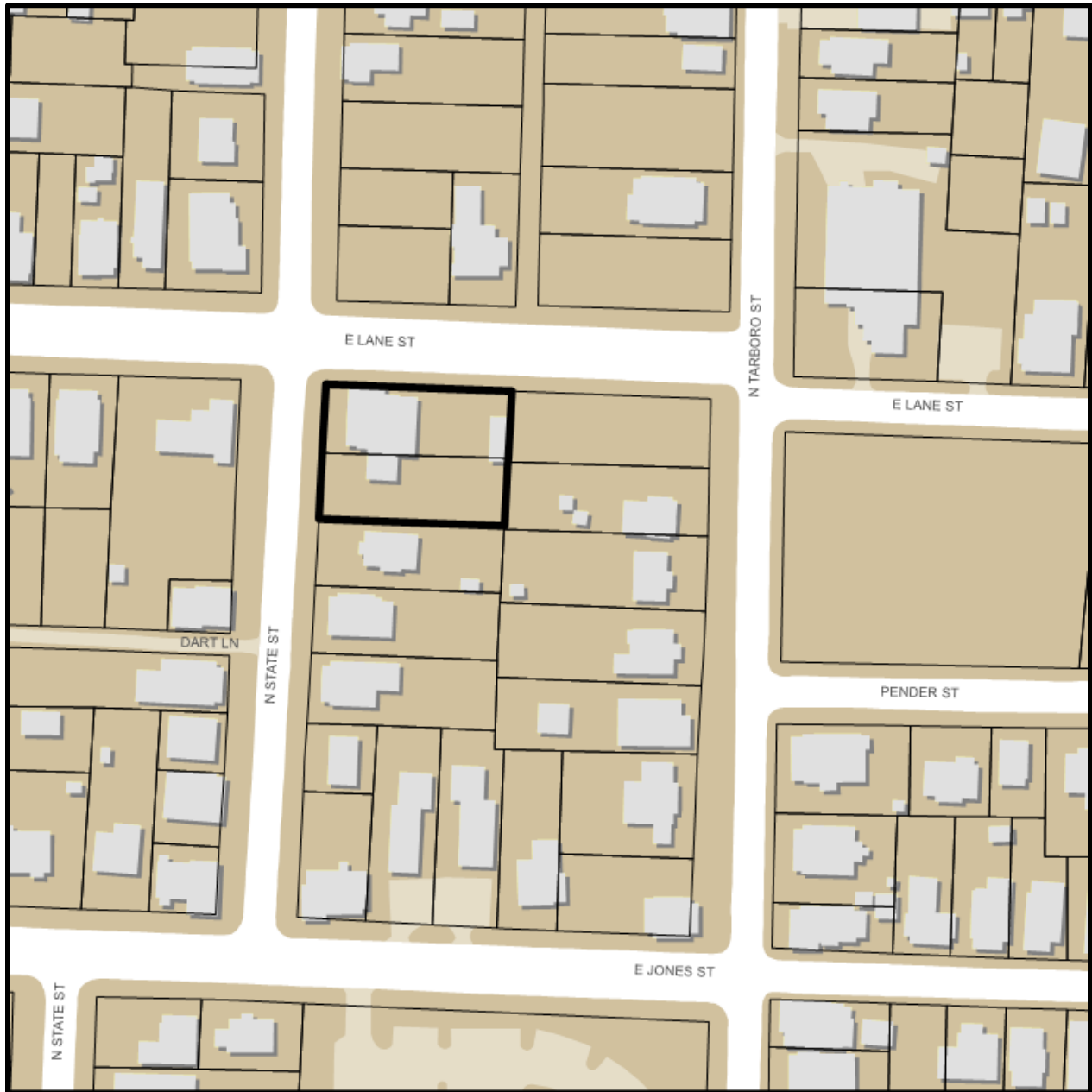
*[Signature]*  
 Authorized Signature KENNETH W. PITCHER, PE 3/16/2017  
 DEVELOPMENT SERVICES MANAGER Date

\*The Development Services Director may authorize a designee to sign in his/her stead. Please print name and title next to signature.

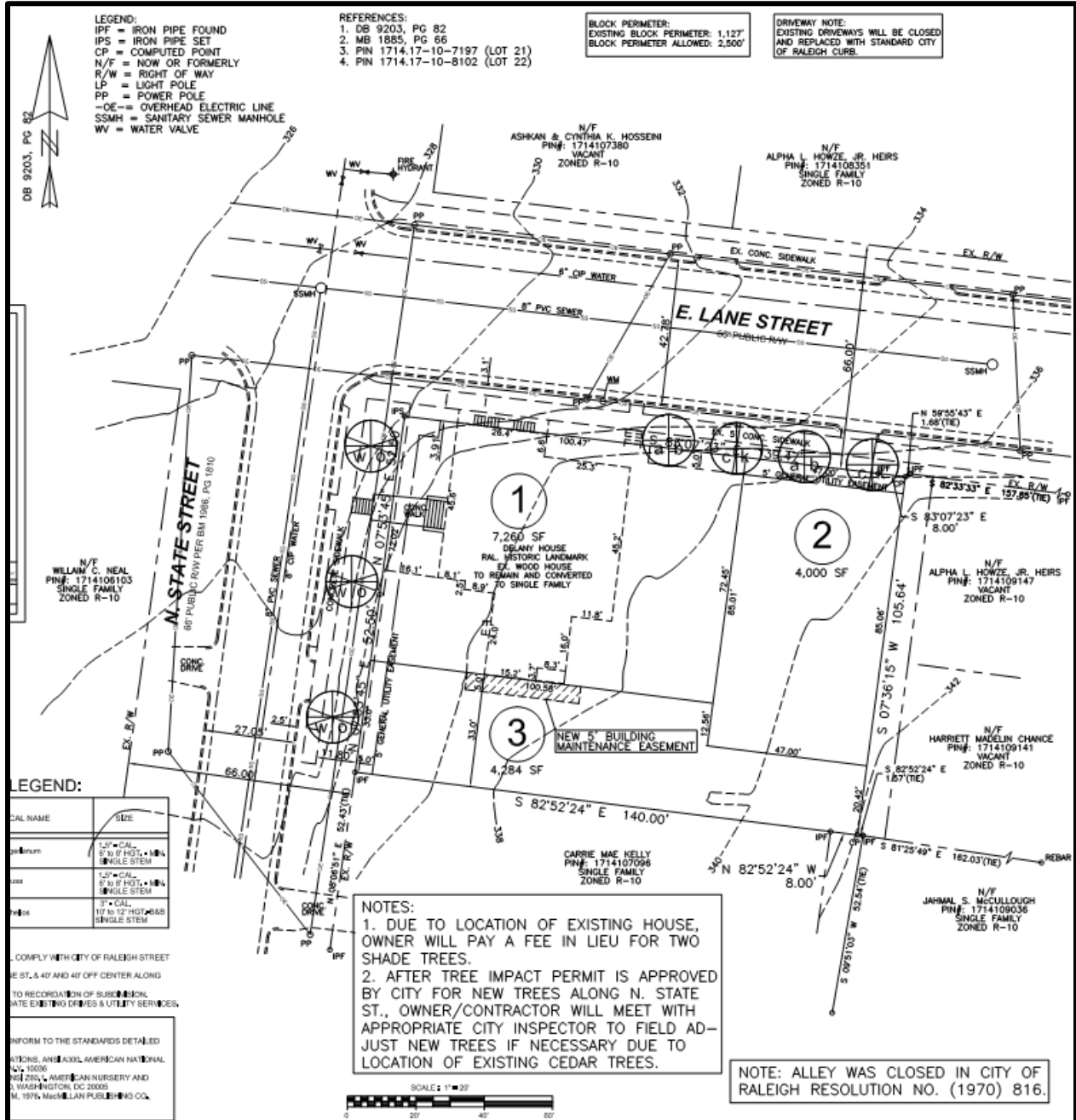
<b>CONDITIONS</b>	
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Appeal of the decision from the Development Services Director, or his or her designee, shall be made in writing within 30 days to the Board of Adjustment (see Section 10.2.18.C3b).

### Location Map – Lots 21 & 22 Addition to Idlewild Subdivision



# Subdivision Map for S-73-16



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**SUBJECT:** S-73-16, Lots 21 & 22 Addition to Idlewild

**CROSS-  
REFERENCE:** Transaction # 493377, A-10-17, ORD. NO. 2009 638

**LOCATION:** The overall site is located on the southeast corner of the intersection of E. Lane Street and N. State Street, and is inside the city limits.

**PIN(S):** 1714108102 and 1714107197

**REQUEST:** This request is to approve the subdivision of two lots totaling .35 acres into 3 lots zoned Residential - 10 (R-10).

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**OFFICIAL ACTION:** Approval with conditions

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**CONDITIONS OF  
APPROVAL:**

**City Council Actions:**

- (1) That the City Council approve the proposed subdivision; The City Council finds that with the following conditions of approval being met, this request conforms to the Unified Development Ordinance including Sections 10.1.8, and 10.2.5. This approval is based on a preliminary plan dated 3/6/16/2016 owned by North State Street LLC., submitted by Stoney Chance, Chance & Associates.
- (2) That the front building wall of any new house to be constructed to the immediate south of the Delany House on Lot 3 on the proposed Subdivision Map ("New House") shall be located at least 24.2 feet and no more than 33.1 feet from the front property line of said Lot 3.
- (3) That any New House shall be located at least 5 feet from the southern property line of Lot 3 on the proposed Subdivision Map, in order to provide a minimum five foot side setback adjoining the neighboring property at 208 N. State Street.
- (4) That the owner of Lot 1 on the proposed Subdivision Map shall enter into an Historic Preservation Agreement with The Historic Preservation Foundation of North Carolina, Inc., or a similar preservation entity, in general accordance with the draft agreement attached hereto as Exhibit A, providing for the preservation of the Delany House.

**Administrative Actions:**

***Prior to authorization to record lots:***

- (1) That a fee-in-lieu payment for (2) street trees along E. Lane Street is to be paid to the City of Raleigh;
- (2) That a building permit and certificate of occupancy is issued for the conversion of the existing structure to a single dwelling unit;
- (3) That a demolition permit be issued for the existing garage proposed to be removed;
- (4) That A fee-in-lieu for 1' of sidewalk width for the entire frontage length of N State St and E Lane St is paid to the City of Raleigh;
- (5) That an encroachment agreement for the existing concrete walk located within the public right-of-way of N Street and E Lane Street is approved by the City Council by separate action. An application for encroachment into the

public right of way shall be submitted to the City's Encroachment Coordinator in the Development Services Department for review, and that the City Council approves the encroachment request. Following City Council approval of the encroachment, an encroachment agreement, prepared in accordance with Raleigh City Code Sections 12-1001 and 12-1021(a), shall be filed with the Development Services Department, and the encroachment agreement is to be recorded with the Wake County Register of Deeds. Maintenance of the encroachment shall be the responsibility of the owner;

- (6) That a tree impact permit is obtained from the City of Raleigh;
- (7) That in accordance with Part 10A Section 8.1.3, a surety equal to 125% of the cost of development related improvements, including 4 streetscape trees on E. Lane Street, and 3 streetscape trees on N. State Street is paid to the Development Services Department;

***Prior to building permit issuance:***

- (8) That any proposed future construction comply with conditions of approval numbers 2, 3 and 4, above;

***Prior to certificate of occupancy:***

- (9) That any existing driveways proposed for closure shall be replaced with curb and gutter to City of Raleigh standards.

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**Staff Coordinator:** Michael Walters

SEE LAST PAGE FOR IMPORTANT INFORMATION ON THE NEXT STEP IN THE SUBDIVISION PROCESS.

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**FINDINGS:** The City Council finds that with the above conditions of approval being met, this request conforms to the Unified Development Ordinance including Sections 2.2.1, 10.1.8, and 10.2.5. This approval is based on a preliminary plan dated 3/6/2017 owned by North State Street LLC., submitted by Stoney Chance, Chance & Associates.

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**ZONING:**

**ZONING DISTRICTS:** Residential-10, (R-10)

**TREE CONSERVATION:** The subject parcel is smaller than two acres. Compliance with UDO Article 9.1 Tree Conservation is therefore not required.



**PHASING:** There is one phase in this development.

**COMPREHENSIVE PLAN:**

**GREENWAY:** There is no Greenway on this site.

**STREET PLAN MAP:**

Street Name	Designation	Exist R/W	Required R/W	Existing street (b to b)	Proposed street (b to b)	Slope Easement
E. Lane Street	Neighborhood Street	66'	64'	42.78'	42.78'	N/A
N. State Street	Neighborhood Streets	66'	64'	27.05'	27.05'	N/A

**TRANSIT:** This section of E. Lane Street is served by Route 10 Longview.

**COMPREHENSIVE PLAN:**

This site is located in the North Central CAC in an area designated for moderate density residential development.

**SUBDIVISION STANDARDS:**

**LOT LAYOUT:** The minimum lot size in Residential -10 (R-10), is 4,000 square feet. The minimum lot depth in R-10 zoning district is 60'. The minimum lot width of an interior lot in this zoning district is 45 feet (33' as a variance of 12' was granted). The minimum lot width of a corner lot in this district is 60'. Lots in this development conform to these minimum standards.

**PUBLIC UTILITIES:** City water and sewer services are available. The subdivider is responsible for installation of all lines necessary to provide service to this site.

**SOLID WASTE:** Individual lot service by the City is to be provided.

**BLOCKS / LOTS / ACCESS:** Block perimeters, lot arrangement and access conform to Chapter 8 of the UDO.

**STREETSCAPE**

- TYPE:** UDO Section 8.5.1 is being met via the approved Design Adjustment allowing an alternative streetscape cross section for this portion of both N State Street, and E Lane Street. Three shade trees along N State Street, and four understory trees along E. Lane Street are to be planted behind the existing sidewalk. A fee in lieu will be required for the additional two street trees required along E. Lane Street.
- PEDESTRIAN:** A 5' sidewalk currently exists along both sides of N. State Street and E. Lane Street. A fee-in-lieu for 1' of sidewalk width along the entire property frontage of N. State Street and E. Lane Street will be required. Access to the public right of way is provided in accordance with 8.3.4 of the UDO.
- FLOOD HAZARD:** There are no flood hazard areas on this site.
- STORMWATER MANAGEMENT:** The proposed use for this project is single-family detached housing as part of a subdivision less than one acre and therefore exempt from active stormwater control measures per TC-6-15 and 9.2.2.A.3.
- WETLANDS / RIPARIAN BUFFERS:** No wetland areas or riparian buffers are required on this site.
- STREET NAMES:** No new streets are being proposed with this development.
- OTHER REGULATIONS:** Developer shall meet all City requirements, including underground utility service, flood protection measures, and the soil erosion ordinance, unless specifically varied by this approval.
- SUNSET DATES:** If significant construction has not taken place on a project after preliminary subdivision approval, that approval may "sunset" and be declared void, requiring re-approval before permits may be issued. To avoid allowing this preliminary approval to "sunset", the following must take place by the following dates:
- 3-Year Sunset Date:** July 5, 2020  
Record at least ½ of the land area approved.
- 5-Year Sunset Date:** July 5, 2022  
Record entire subdivision
- WHAT NEXT?:**
- MEET ALL CONDITIONS OF APPROVAL.
  - HAVE A REGISTERED SURVEYOR PREPARE FINAL PLATS FOR RECORDING. These also must be submitted to Development Services for authorization and signature prior to recording with the Wake County Register of Deeds.
  - MEET THE REQUIREMENTS OF THE SUNSET THRESHOLDS AS NOTED



*City Of Raleigh*  
NORTH CAROLINA

August 23, 2017

Isabel Worthy Mattox, Esq.  
P.O. Box 946  
Raleigh, NC 27602-0946

**RE: Preliminary Subdivision Plan – S-73-16**  
**Lots 21 and 22 Addition to Idlewild Subdivision**

Dear Isabel:

Following an evidentiary hearing held on June 20, 2017 and continued on July 5, 2017, the Raleigh City Council approved the preliminary subdivision of property located at 210 and 212 North State Street (Lots 21 and 22 Addition to Idlewild Subdivision/case number S-73-2016). The property is zoned Residential-10 (R-10) and contains the Lemuel and Julia Delaney House, which was designated a Raleigh Historic Landmark on October 22, 2009. Enclosed is a copy of the Findings of Fact and Conclusions of Law adopted by the Council on August 15, 2017.

Please contact Michael Walters in the Planning Department (919-996-2636) to determine the steps necessary to proceed.

Sincerely,

Leslie H. Eldredge  
Deputy City Clerk

Enclosure

c: Planning – Michael Walters  
Mr. Stoney Chance – Chance and Associates  
500 Benson Road – Suite 207, Garner, NC 27529-3947

**BEFORE THE CITY COUNCIL  
RALEIGH, NORTH CAROLINA**

In Re: )  
Raleigh City Council June 20, 2017 Meeting )  
Case No. S-73-16 )  
Property: 210 & 212 North State Street )  
          Delany House Subdivision )  
Applicant: North State Street, LLC )

**FINDINGS OF FACT  
AND CONCLUSIONS OF LAW**

The Raleigh City Council, held a quasi judicial public hearing on Tuesday, June 20, 2017 at 2:00 pm, which was continued to Wednesday, July 5, 2017 at 7:00 pm, to consider, a Preliminary Subdivision request filed by North State Street, LLC (the "Property Owner") requesting approval of a subdivision (the "Subdivision") of a historic landmark property located at 211-212 North State Street (the "Property") and in connection therewith do make the following Findings of Fact and Conclusions of Law.

**FINDINGS OF FACT**

1. The Property Owner has requested approval of a subdivision of the Property zoned R-10 containing .35 acres pursuant to S-73-16 (the "Subdivision").
2. The Property contains two (2) legal lots.
3. If the Subdivision is approved, the Property will contain three (3) legal lots.
4. The Property contains an existing dwelling, the Lemuel and Julia Delany House, which was designated a Raleigh Historic Landmark on October 22, 2009 (Ordinance No. 638) (the "Delany House").
5. The Delany House has been vacant and deteriorating for many years.
6. The Subdivision is subject to the subdivision requirements of the Raleigh Unified Development Ordinance ("UDO").

7. Under UDO Section 10.1.8, a proposed subdivision of a historic landmark property is required to be reviewed by City Staff and the Raleigh Historic Districts Commission (“RHDC”) and a recommendation regarding approval or disapproval is to be made by RHDC to the City Council.

8. Under UDO Section 10.1.8, following the recommendation by RHDC, a proposed subdivision is to be considered by the City Council in a quasi judicial evidentiary hearing.

9. On December 20, 2016, the RHDC recommended approval of the Subdivision to the City Council.

10. On February 6, 2017, the Raleigh Board of Adjustment granted a 12-foot variance to the minimum lot width requirement for proposed Lot 3 of the Subdivision, reducing the minimum lot width for Lot 3 to 33 feet (the “Variance”).

11. On March 16, 2017 Raleigh Planning Staff approved a Design Alternate to address landscaping issues on the proposed Subdivision property (the “Design Alternate”).

12. RHDC Executive Director Tania Tully confirmed the Subdivision’s compliance with the RDHC Guidelines and compatibility with the historical context of the neighborhood.

13. Historic Preservation Consultant Dan Becker confirmed (by affidavit) the compatibility of the Subdivision with the context of the neighborhood.

14. City Planner Mike Walters confirmed the Subdivision’s compliance with the UDO subdivision requirements, as modified by the Variance and Design Alternate.

15. Professional Land Planner Stoney Chance confirmed compliance with the UDO subdivision requirements, as modified by the Variance and Design Alternate.

16. The Property Owner made significant community outreach efforts to explain the Subdivision by hosting several open houses during the month of February 2017 at the Tarboro Road Community Center and at the Delany House.

17. Notarized letters of support of the Subdivision from two members of the Delany family, Brandi Delany and Esther Delany, were offered into evidence.

18. A notarized letter of support for the Subdivision from the immediate next door neighbor, Carrie Kelly, was offered into evidence.

19. The Property Owner has agreed to enter into a Preservation Agreement for the Delany House with Historic Preservation North Carolina, Inc. if the Subdivision is approved.

20. There are numerous other lots in the neighborhood of the Subdivision which are 35 feet wide or smaller in width.

21. The Property Owner agreed to 3 conditions of Subdivision.

### **CONCLUSIONS OF LAW**

1. The Raleigh City Council is authorized by City Code and the Unified Development Ordinance to approve or deny the requested Subdivision based on evidence presented at a quasi judicial hearing.

2. The Subdivision is in compliance with all UDO subdivision requirements, as modified by the Variance and Design Alternate.

3. The protective conditions offered by the Property Owner will provide additional protections to the neighborhood and will facilitate the preservation of the Delany House.

ACCORDINGLY, based on the foregoing FINDINGS OF FACT and CONCLUSIONS OF LAW, the Raleigh City Council hereby approves the Subdivision requested in S-73-16, with the following conditions:

1. The Front building wall of any new house to be constructed to the immediate south of the Delany House on Lot 3 on the proposed Subdivision Map ("New House") shall be located at least 24.2 feet and no more than 33.1 feet from the front property line of said Lot 3.
2. Any New House shall be located at least 5 feet from the southern property line of Lot 3 on the proposed Subdivision Map in order to provide a minimum five foot setback adjoining the neighboring property at 208 N. State Street.
3. The owner of Lot 1 on the proposed Subdivision Map shall enter into a Historic Preservation Agreement with The Historic Preservation Foundation of North Carolina, Inc., or a similar preservation entity, in general accordance with the draft agreement attached hereto as **Exhibit A**, providing for the preservation of the Delany House.

This the 15th day of August, 2017.



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Gail G. Smith  
City Clerk

EXHIBIT A

Prepared by and return to: Preservation North Carolina, P.O. Box 27644, Raleigh, NC 27611-7644

**STATE OF NORTH CAROLINA  
COUNTY OF WAKE**

**HISTORIC PRESERVATION AGREEMENT**

**THIS AGREEMENT**, made this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, by and between **NORTH STATE STREET LLC**, a Limited Liability Company organized and existing under the laws of the State of North Carolina with its principal office being in Raleigh, Wake County, North Carolina (hereinafter referred to as the "Grantor"), and **THE HISTORIC PRESERVATION FOUNDATION OF NORTH CAROLINA, INC.**, a non-profit corporation organized and existing under the laws of the State of North Carolina with its principal office being in Raleigh, North Carolina (hereinafter referred to as the "Foundation");

**W I T N E S S E T H:**

**WHEREAS**, the Grantor owns certain real property (hereinafter referred to as the "Subject Property"), a description of which is attached hereto as Exhibit A and incorporated herein by reference; and

**WHEREAS**, the Subject Property currently has certain permanent improvements consisting of a one-story Classical Revival House important for its associations with one of Raleigh most prominent African-American families of the early 20<sup>th</sup> century and with St. Augustine's College, hereinafter referred to as the **Lemuel and Julia Delany House**; and

**WHEREAS**, the Lemuel and Julia Delany House, located at 212 North State Street (aka 210 North State Street), Raleigh, Wake County, North Carolina, is a property of recognized historical and architectural significance; and

**WHEREAS**, the Foundation and Grantor both desire that the Subject Property shall retain its historically and architecturally significant features, while being sympathetically adapted and altered, where necessary, to provide for contemporary uses; and

**WHEREAS**, the Foundation and Grantor both desire that the Subject Property shall not be subdivided in order to preserve its integrity of site; and

**WHEREAS**, the Foundation is a charitable organization which accepts preservation easements on buildings having historical or architectural importance, said easement subjecting such buildings to restrictions that will ensure that they are preserved and maintained for the benefit of future generations; and

**WHEREAS**, the North Carolina General Assembly has enacted the Historic Preservation and Conservation Agreements Act validating restrictions, easements, covenants, conditions, or otherwise, appropriate to the preservation of a structure or site significant for its architecture, archaeology or historical associations.

**NOW, THEREFORE**, for and in consideration of the Grantor's interest in historic preservation and their support for the Foundation and its purposes, and for and in consideration of the sum of **ONE DOLLAR (\$1.00)**, the Grantor, for himself,



his successors and assigns, hereby covenants and agrees to abide by the following restrictions (hereinafter referred to as "covenants"), said covenants to be restrictions of record to attach to the land described in Exhibit A:

1. These covenants shall be administered solely by The Historic Preservation Foundation of North Carolina, Inc., its successors in interest or assigns; and in all subsequent conveyances of Subject Property, the Foundation, its successors in interest or assigns shall be the sole party entitled to administer these covenants. In the event that the Foundation, or its successors in interest by corporate merger cease to exist, then in such event the Foundation shall assign all of its rights and interests in these easements, covenants, and conditions subject to such duties and obligations which it assumes hereby to a non-profit corporation of responsibility which exists for substantially the same reasons as the Foundation itself (as described hereinabove); if no such corporation be available for such assignment then, under such circumstances such assignment shall be made to the State of North Carolina which shall be the sole party entitled to administer those covenants.

#### **Maintenance**

2. The Grantor covenants and agrees to continuously maintain, repair, and administer the Lemuel and Julia Delany House herein described in accordance with the Secretary of the Interior's Standards for the Rehabilitation of Historic Properties (1992) so as to preserve the historical integrity of features, materials, appearances, workmanship and environment of the Subject Property. Maintenance shall be continuously provided. Said standards are attached hereto and incorporated in these covenants by reference.

#### **Prior Approval Required For Modifications**

3. Unless prior written approval by the President or Chairman of the Board of Directors of the Foundation is obtained, no alteration, physical or structural change, or changes in the color, material or surfacing to the exterior of the Lemuel and Julia Delany House shall be made.

4. Unless the plans and exterior designs for such structure or addition have been approved in advance in writing by the President or Chairman of the Board of Directors of the Foundation, no addition or additional structure shall be constructed or permitted to be built upon the Subject Property. The Foundation in reviewing the plans and designs for any addition or additional structure shall consider the following criteria: exterior building materials; height; fenestration; roof shapes, forms, and materials; surface textures; expression of architectural detailing; scale; relationship of any additions to the main structure; general form and proportion of structures; orientation to street; setback; spacing of buildings, defined as the distance between adjacent buildings; lot coverage; use of local or regional architectural traditions; and effect on archeological resources. Contemporary designs for additions or additional structures shall not be discouraged when such alterations and additions do not destroy significant historical, architectural, or cultural material, and such design is compatible with the size, color, material and character of the property and its environment.

5. The Grantor and the Foundation hereby agree that the interior architectural features listed below are elements which contribute to the architectural significance of the Lemuel and Julia Delany House:

- Two paneled plinths with square columns and pilasters in the entry hall
- Three Classical Revival mantels: Mantel with pilasters and overmirror in the front left room; mantel with pilasters and overmirror with Art Moderne influence in the dining room; and mantel with curving surrounds in the front right room

Unless prior written approval by the President or Chairman of the Board of Directors of the Foundation is obtained, no removal, relocation, or alteration of the above mentioned architectural features shall be made.

6. Neither the Lemuel and Julia Delany House nor any part thereof may be removed or demolished without the prior written approval of the President or Chairman of the Board of Directors of the Foundation.

7. No portion of the Subject Property may be subdivided.

8. Express written approval of the Foundation is required for removal of living trees greater than 12 inches in diameter at a point 4 feet above the ground from the Subject Property unless immediate removal is necessary for the protection of any persons coming onto the Subject Property or of the general public; for the prevention or treatment of disease; or for the

protection and safety of the Lemuel and Julia Delany House or other permanent improvements on the Subject Property. Any tree of the aforementioned size which must be removed shall be replaced within a reasonable time by a new tree of a substantially similar species. If so requested, the Foundation may approve the use of an alternate species.

#### **Covenant to Obey Public Laws**

9. The Grantor shall abide by all federal, state, and local laws and ordinances regulating the rehabilitation, maintenance and use of the Subject Property.

#### **Right of First Refusal**

10. In case of any contemplated sale of the Subject Property or any portion thereof by the Grantor or any successor in title thereto, first refusal as to any bona fide offer of purchase must be given to the Foundation, its successors or assigns. If the Foundation so decides to purchase, it shall notify the then owner of its willingness to buy upon the same terms within thirty (30) days of receipt of written notice of such bona fide offer. Failure of the Foundation to notify the then owner of its intention to exercise this right of first refusal within such thirty (30) day period shall free the owner to sell pursuant to the bona fide offer. The Foundation may, in its discretion, waive its right of first refusal in writing, upon written receipt of such bona fide offer. Provided, however, that if there are any outstanding deeds of trust or other encumbrances against the property, any right to repurchase shall be subject to said deeds of trust or encumbrances, and they shall either be satisfied or assumed as part of the purchase price.

#### **Inspection**

11. Representatives of the Foundation shall have the right to enter the Subject Property at reasonable times, after giving reasonable notice, for the purpose of inspecting the buildings and grounds to determine if there is compliance by the Grantor with the terms of these covenants.

#### **Public Access**

12. Researchers, scholars, and groups especially interested in historic preservation shall have access to view the interior of the rehabilitated property by special appointment at various times and intervals. Nothing shall be erected or allowed to grow on the Subject Property which would impair the visibility of the property and the buildings from the street level or other public rights of way.

#### **Hazardous Materials**

13. The properties the Foundation seeks to protect may contain certain hazards as a result of outdated building practices or use of certain materials that may contain lead paint, asbestos, or some other hazards that may need to be removed or encapsulated before the buildings are habitable. Addressing these problems is one of the challenges of owning and restoring a historic property. The Foundation does not have the resources to correct these problems and cannot take responsibility for the condition of the properties being sold. The Foundation is not liable in any way for any hazards, defects, or other problems with the properties under covenants.

#### **Extinguishment**

14. The Grantor and the Foundation recognize that an unexpected change in the conditions surrounding the Subject property may make impossible or impractical the continued use of the Subject Property for conservation purposes and necessitate the extinguishment of this Historic Preservation Agreement. Such an extinguishment must comply with the following requirements:

(a) The extinguishment must be the result of a final judicial proceeding.

(b) The Foundation shall be entitled to share in the net proceeds resulting from the extinguishment in an amount in accordance with the then applicable regulations of the Internal Revenue Service of the U. S. Department of the Treasury.

(c) The Foundation agrees to apply all of the portion of the net proceeds it receives to the preservation and conservation of other property or buildings having historical or architectural significance to the people of the State of North Carolina.

(d) Net proceeds shall include, without limitation, insurance proceeds, condemnation proceeds or awards, proceeds from a sale in lieu of condemnation, and proceeds from the sale or exchange by Grantor of any portion of the Subject Property after the extinguishment.

### **Remedies**

15. In the event of a violation of covenants contained in Paragraphs 2, 3, 4, 5, and 6 hereof, the Foundation then shall have an option to purchase the Subject Property, provided that it shall give the Grantor written notice of the nature of the violation and the Grantor shall not have corrected same within the ninety (90) days next following the giving of said notice. The purchase of the Subject Property, pursuant to the exercise of the option retained hereby, shall be at a price equal to the then market value of the Subject Property, subject to restrictive covenants, as determined by agreement of the then owner and the Foundation, or, in the absence of such agreement, by a committee of three appraisers, one to be selected by the Foundation, one to be selected by the then owner, and the other to be designated by the two appraisers selected by the Foundation and the owner respectively. Provided, however, that if there are outstanding deeds of trust or other encumbrances against the property, any right to purchase shall be subject to said deeds of trust or encumbrances, and they shall either be satisfied or assumed as part of the purchase price.

16. In the event of a violation of these covenants and restrictions, all legal and equitable remedies, including injunctive relief, specific performance, and damages, shall be available to the Foundation. No failure on the part of the Foundation to enforce any covenant or restriction herein nor the waiver of any right hereunder by the Foundation shall discharge or invalidate such covenant or restriction or any other covenant, condition or restriction hereof, or affect the right of the Foundation to enforce the same in event of a subsequent breach or default. In any case where a court finds that a violation has occurred, the court may require the Grantor to reimburse the Foundation for all expenses incurred in stopping, preventing and correcting the violation, including but not limited to reasonable attorney's fees.

### **Transfer Fee**

17. Except as otherwise provided herein, there shall be assessed by the Foundation and collected from the purchasers of the Subject Property, or any portion thereof subject to these covenants and restrictions, a transfer fee equal to twenty-five one-hundredths of one percent (0.25%) of the sales price of such property, or any portion thereof, which transfer fee shall be paid to the Foundation and used by the Foundation for the purpose of preserving the historical, architectural, archeological or cultural aspects of real property. Such fee shall not apply to inter-spousal transfers, transfers by gift, transfers between parents and children, transfers between grandparents and grandchildren, transfers between siblings, transfers between a corporation and any shareholders in the same corporation who owns 10 percent (10%) or more of the stock in such corporation and transfers between a limited liability corporation and any member who owns more than ten percent (10%) of such limited liability corporation, transfers by Will, bequest, intestate succession or transfers to the Foundation (each of the foregoing hereinafter referred to as an "Exempt Transfer"); *provided, however*, that such fee shall not apply to the first two non-exempt transfers of the Subject Property, but shall apply to each non-exempt transfer thereafter. In the event of non-payment of such a transfer fee, the amount due shall bear interest at the rate of 12% (twelve percent) per annum from the date of such transfer, shall, together with accrued interest, constitute a lien on the real property, or any portion thereof, subject to these covenants and restrictions and shall be subject to foreclosure by the Foundation. In the event that the Foundation is required to foreclose on its lien for the collection of the transfer fee, and/or interest thereon, provided for herein, the Foundation shall be entitled to recover all litigation costs and attorney's fees incurred at such foreclosure, which litigation costs and attorney's fees shall be included as part of the lien and recoverable out of proceeds of the foreclosure sale. The Foundation may require the purchaser and/or seller to provide reasonable written proof of the applicable sales price, such as executed closing statements, contracts of sale, copies of deeds, affidavits or such other evidence, and purchaser shall be obligated to provide such information within forty-eight (48) hours after receipt of written request for such information from the Foundation.

### **Insurance**

18. Grantor shall insure the Subject Property against damage by fire or other catastrophe. If the original structure is damaged by fire or other catastrophe to an extent not exceeding fifty percent (50%) of the insurable value of those portions of the building, then insurance proceeds shall be used to rebuild those portions of the Subject Property in accordance with the standards in Exhibit B. The Grantor shall keep the Subject Property insured under a comprehensive general liability policy that protects the Grantor and the Foundation against claims for personal injury, death and property damage.

**Mortgage Subordination**

19. All mortgages and rights in the property of all mortgagees are subject and subordinate at all times to the rights of the Foundation to enforce the purposes of these covenants and restrictions. Grantor will provide a copy of these covenants and restrictions to all mortgagees of the Subject Property and has caused all mortgagees as of the date of this Historic Preservation Agreement to subordinate the priority of their liens to these covenants and restrictions. The subordination provisions as described above relates only to the purposes of these covenants and restrictions, namely the preservation of the historic architecture and landscape of the Subject Property.

**Duration of Covenants**

20. The Grantor does hereby covenant to carry out the duties specified herein, and these restrictions shall be covenants and restrictions running with the land, which the Grantor, his heirs, successors, and assigns, covenant and agree, in the event the Subject Property is sold or otherwise disposed of, will be inserted in the deed or other instrument conveying or disposing of the Subject Property.

21. Unless otherwise provided, the covenants and restrictions set forth above shall run in perpetuity.

**IN WITNESS WHEREOF**, the Grantor has hereunto set their hand and seal, and The Historic Preservation Foundation of North Carolina, Inc., has caused this instrument to be signed in its corporate name by its duly authorized officer by the authority of its Board of Directors, the day and year first above written.

NORTH STATE STREET, LLC

By: \_\_\_\_\_ (Seal)

Name/Title: \_\_\_\_\_

THE HISTORIC PRESERVATION FOUNDATION  
OF NORTH CAROLINA, INC.

By: \_\_\_\_\_  
J. Myrick Howard, President

\_\_\_\_\_ COUNTY, NORTH CAROLINA

I, \_\_\_\_\_, a Notary Public for \_\_\_\_\_ County, North Carolina, do hereby certify that Stuart Cullinan personally appeared before me this day and acknowledged he is \_\_\_\_\_ of NORTH STATE STREET, LLC, and that he, as \_\_\_\_\_, being authorized to do so, executed the foregoing instrument on behalf of the corporation.

Witness my hand and official seal, this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_

NORTH CAROLINA  
WAKE COUNTY

I, \_\_\_\_\_, a Notary Public for Wake County, North Carolina, certify that J. Myrick Howard personally came before me this day and acknowledged that he is President of THE HISTORIC PRESERVATION FOUNDATION OF NORTH CAROLINA, INC., a non-profit North Carolina corporation, and that he, as President, being authorized to do so, executed the foregoing instrument on behalf of the corporation.

Witness my hand and official seal, this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_

**EXHIBIT A**

**Legal Property Description**

## EXHIBIT B

### SECRETARY OF THE INTERIOR'S STANDARDS FOR THE REHABILITATION OF HISTORIC PROPERTIES (1992)

**REHABILITATION** is defined as the act or process of making possible a compatible use for a property through repair, alterations, and additions while preserving those portions or features which convey its historical, cultural, or architectural values.

#### STANDARDS FOR REHABILITATION

1. A property shall be used as it was historically or be given a new use that requires minimal change to its distinctive materials, features, spaces, and spatial relationships.
2. The historic character of a property shall be retained and preserved. The removal of distinctive materials or alteration of features, spaces, and spatial relationships that characterize a property shall be avoided.
3. Each property shall be recognized as a physical record of its time, place, and use. Changes that create a false sense of historical development, such as adding conjectural features or elements from other historic properties, shall not be undertaken.
4. Changes to a property that have acquired historic significance in their own right shall be retained and preserved.
5. Distinctive materials, features, finishes, and construction techniques or examples of craftsmanship that characterize a property shall be preserved.
6. 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, where possible, materials. Replacement of missing features shall be substantiated by documentary and physical evidence.
7. Chemical or physical treatments, if appropriate, shall be undertaken using the gentlest means possible. Treatments that cause damage to historic materials shall not be used.
8. Archeological resources shall be protected and preserved in place. If such resources must be disturbed, mitigation measures shall be undertaken.
9. New additions, exterior alterations, or related new construction shall not destroy historic materials, features, and spatial relationships that characterize the property. The new work shall be differentiated from the old and shall be compatible with the historical materials, features, size, scale, and proportion, and massing to protect the integrity of the property and its environment.
10. New additions and adjacent or related new construction shall be undertaken in such a manner that, if removed in the future, the essential form and integrity of the historic property and its environment would be unimpaired.