

ORDINANCE NO. 27270

An ordinance changing the zoning classification on the following property:

BEING all of Blocks 4438 and 4439 at the southwest corner of Hatcher Street and Cason Street, and containing 15.25 acres,

by establishing Historic Overlay District No. 135 (L. Butler Nelson Cemetery); providing procedures, regulations, and preservation criteria for structures and property in the district; providing a penalty not to exceed \$2,000; providing a saving clause; providing a severability clause; and providing an effective date.

WHEREAS, the city plan commission and the city council, in accordance with the Charter of the City of Dallas, the state law, and the ordinances of the City of Dallas, have given the required notices and have held the required public hearings regarding the rezoning of the Property hereinafter described; and

WHEREAS, the city council finds that the Property is an area of historical, cultural, and architectural importance and significance to the citizens of the city; and

WHEREAS, the city council finds that it is in the public interest to establish this historic overlay district; Now, Therefore,

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF DALLAS:

SECTION 1. That the zoning classification is changed by establishing Historic Overlay District No. 135 on the following property ("the Property"):

BEING all of Blocks 4438 and 4439 at the southwest corner of Hatcher Street and Cason Street, and containing 15.25 acres.

SECTION 2. That the establishment of this historic overlay district shall not affect the existing underlying zoning classification of the Property, which shall remain subject to the regulations of the underlying zoning district. If there is a conflict, the regulations in this ordinance control over the regulations of the underlying zoning district.

SECTION 3. That a person shall not alter the Property, or any portion of the exterior of a structure on the Property, or place, construct, maintain, expand, demolish, or remove any structure on the Property without first obtaining a certificate of appropriateness or certificate for demolition or removal in accordance with the Dallas Development Code, as amended, and this ordinance. All alterations to the Property must comply with the preservation criteria attached to and made a part of this ordinance as Exhibit A.

SECTION 4. That the building official shall not issue a building permit or a certificate of occupancy for a use on the Property until there has been full compliance with this ordinance, the Dallas Development Code, the construction codes, and all other ordinances, rules, and regulations of the City of Dallas.

SECTION 5. That the director of development services shall correct Zoning District Map No. K-8 in the offices of the city secretary, the building official, and the department of development services to reflect the changes in zoning made by this ordinance.

SECTION 6. That a person who violates a provision of this ordinance, upon conviction, is punishable by a fine not to exceed \$2,000. In addition to punishment by fine, the City may, in accordance with state law, provide civil penalties for a violation of this ordinance, and institute any appropriate action or proceedings to prevent, restrain, correct, or abate the unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance, demolition, or removal of a building, structure, or land on the Property.

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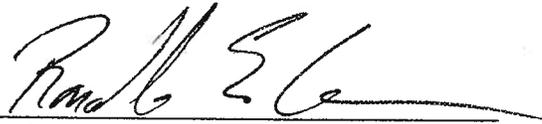
SECTION 7. That the zoning ordinances of the City of Dallas, as amended, shall remain in full force and effect, save and except as amended by this ordinance.

SECTION 8. That the terms and provisions of this ordinance are severable and are governed by Section 1-4 of Chapter 1 of the Dallas City Code, as amended.

SECTION 9. That this ordinance shall take effect immediately from and after its passage and publication in accordance with the provisions of the Charter of the City of Dallas, and it is accordingly so ordained.

APPROVED AS TO FORM:

THOMAS P. PERKINS, JR., City Attorney

By 
Assistant City Attorney

Passed AUG 13 2008

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EXHIBIT A
PRESERVATION CRITERIA
L. Butler Nelson Cemetery
2900 Hatcher Street, Dallas, Texas

1. GENERAL.

- 1.1 All demolition, maintenance, new construction, public works, renovations, repairs, and site work in this district must comply with these preservation criteria.
- 1.2 Any alterations to property within this district must comply with the regulations in Chapter 51A of the Dallas City Code, as amended. If there is a conflict, these preservation criteria control.
- 1.3 A person may not alter a site within this district, or any portion of the exterior structure on the site, or place, construct, maintain, expand, demolish, or remove any structure in the historic district without first obtaining a certificate of appropriateness or certificate for demolition or removal in accordance with Section 51A-4.501 of the Dallas Development Code, as amended, and the provisions of this ordinance. A person who violates this provision is guilty of a separate offense for each day or portion of the day during which the violation is continued, from the first day the unlawful act was committed until either a certificate of appropriateness is obtained or the property is restored to the condition it was in immediately prior to the violation.
- 1.4 The certificate of appropriateness review procedure outlined in Section 51A-4.501 of the Dallas Development Code, as amended, applies to this district.
- 1.5 A certificate of appropriateness for routine maintenance work must be reviewed by the Director with 20 days of receipt of a completed application. To be considered complete, an application must include any exhibits or attachments deemed necessary by the Director.
- 1.6 Preservation and restoration materials and methods used must comply with the Secretary of the Interior's Standards for Rehabilitation and Preservation Briefs published by the United States Department of the Interior, copies of which are available at the Dallas Public Library.
- 1.7 The Landmark Commission may approve a certificate of appropriateness for work that does not strictly comply with these preservation criteria upon a finding that:
 - a. the proposed work is historically accurate and is consistent with the spirit and intent of these preservation criteria; and

- b. the proposed work will not adversely affect the historic character of the property or the integrity of this historic district.

2. DEFINITIONS.

- 2.1 Unless defined below, the definitions in Chapter 51A of the Dallas City Code, as amended, apply.
- 2.2 APPROPRIATE means typical of the historic architectural style, compatible with the character of this district, and consistent with these preservation criteria.
- 2.3 CERTIFICATE OF APPROPRIATENESS means a certificate required by Section 51A-4.501 of the Dallas Development Code, as amended, and these preservation criteria.
- 2.4 DIRECTOR means the Director of the Department of Development Services or the Director's representative.
- 2.5 DISTRICT means Historic Overlay District No. 135, the L. Butler Nelson Cemetery Historic Overlay District. This district contains the property described in Section 1 of this ordinance and as shown on Exhibit B.
- 2.6 ERECT means to attach, build, draw, fasten, fix, hang, maintain, paint, place, suspend, or otherwise construct.
- 2.7 FENCE means a structure or hedgerow that provides a physical barrier, including a fence gate. Metal fences that enclose a gravesite, gravesites or other memorial or monuments are considered fences.
- 2.8 GRAVE means the space of ground used or intended to be used for the permanent interment of human remains.
- 2.9 GRAVE MARKER means a permanent marker that identifies the locations of one or more graves. Grave markers may be stone or metal and typically are inscribed with the name and dates of birth and death; these can be located at the head, foot of a single grave or located to mark a family group of graves.
- 2.10 LOCATIONAL MARKERS means in-ground markers that provide location information within the cemetery.
- 2.11 MEMORIAL MONUMENT means a commemorative marker, pylon, or sculpture that memorializes a person, place, or historic event.
- 2.12 PROTECTED means an architectural or landscaping feature that must be retained and maintain its historic appearance, as near as practical, in all aspects.

- 2.13 REINTERMENT means the reburial of human remains.
- 2.14 REMAINS means the body, or parts of the body, of a deceased person.

3. SITE AND LANDSCAPING.

- 3.1 Other than impervious paths, no structures, parking areas, or other hard paving areas are allowed within 15 feet of graves.
- 3.2 Activities that require the disturbance of more than six inches (depth) of surface soil within the boundaries of the historic designation will require a certificate of appropriateness in advance of the activities. Archeological studies should be considered as part of the certificate of appropriateness to prevent the inadvertent disturbance of unmarked graves.
- 3.3 New sidewalks, walkways, paths, and steps must be constructed of crushed gravel, decomposed granite or other appropriate material. Artificial grass, artificially-colored concrete, asphalt, brick, exposed aggregate, outdoor carpet, and stone are not permitted.
- 3.4 Driveways and parking areas must be constructed of crushed gravel, decomposed granite or other similar materials. If necessary for handicapped accessibility, concrete or asphalt may be used in driveways and parking areas.
- 3.5 No path or walkway may be extended over a grave.
- 3.6 Outdoor lighting must be appropriate. Light poles may not exceed 16 feet in height.
- 3.7 Lawnmowers without bumpers and weedwhackers with metal wire may not be used directly around grave markers and memorial monuments as these cause irreversible damage to the stone when they strike or touch the stone. Lawnmower bumpers, fabricated from rubber tires or inner tubes, may be attached to lawnmowers to provide a buffer between the machine and the grave markers and memorial monuments. Weedwhackers with soft nylon whips may be used around grave markers and memorial monuments.
- 3.8 Landscaping must be appropriate, enhance the district and surroundings, and may not obscure significant views of protected memorial monuments and fences.
- 3.9 Existing trees are protected, except that unhealthy or damaged trees may be removed.
- 3.10 No new or replacement shrubs or trees may be planted on a grave.

- 3.11 No new destructive or invasive ground cover, such as Boston Ivy or Asian Jasmine, may be planted on or allowed to extend over a grave.
- 3.12 Perimeter fencing of the Property is allowed. Fences must be appropriately located for a cemetery setting, 70 percent open, and may not exceed six feet in height. Decorative metal is preferred. Dumpsters must be screened by brick, stone, wood, or a combination of materials.
- 3.13 Replacement fences or curbs at individual gravesites or at a collection of graves (family gravesites) is allowed if evidence exists that there was a fence or curb at this location, and adequate documentation exists that may be used as a guide for reconstruction. "Pink" granite may not be used as curb materials.

4. GRAVE MARKERS AND MEMORIAL MONUMENTS.

- 4.1 Existing grave markers, and memorial monuments shall be retained and protected.
- 4.2 It is recommended that existing or relocated grave markers and memorial monuments be preserved and restored and that damaged grave markers and memorial monuments be repaired.
- 4.3 Existing locational markers may be retained. New locational markers must be in-ground and be similar to existing markers.
- 4.4 The identification of unidentified graves is encouraged. Following research to determine the deceased or other pertinent information, marking of unidentified graves is encouraged.
- 4.5 It is encouraged that grave markers that are no longer in place, missing, or irreplaceably damaged be replaced with grave markers that are similar in design, material, color, and size to existing grave markers at that location.
- 4.6 Replacement markers for veterans graves are permitted and encouraged.
- 4.7 If the design of the original grave marker is not known, new flat grave markers may be used.
- 4.8 Historical markers, such as those from the Texas Historical Commission, or appropriate commemorative markers may be placed at gravesites.
- 4.9 New replacement family grave markers may be used.

5. EXHUMATION AND REINTERMENTS.

- 5.1 In the event that human remains, or artifacts suggestive of the presence of a grave, are encountered during any activity, the site of the discovery must be secured, the city historic preservation staff must be notified, and all ground-disturbing activities in the immediate area must cease. A certificate of appropriateness to restore the site or relocate the grave must be obtained before any activities can resume.
- 5.2 When graves cannot be preserved in place, the data collection associated with the exhumation of graves must comply with the following:
- a. If unmarked historic graves are believed to be over 50 years of age, and no historical archival data can be found that identifies the individuals contained within the grave locations, the exhumations must be performed with the assistance of a physical anthropologist or forensic pathologist who is capable of gathering basic demographic data (i.e., sex, age, height, possible cause of death, etc.) from the human remains being exhumed. Marked historic graves for which there is no date of death and/or name of the deceased, the grave shall be treated as an unmarked grave.
 - b. Marked historic graves with a date of death of more than 75 years old may be exhumed only by a professional archeologist with the assistance of a physical anthropologist or forensic pathologist who is capable of gathering basic demographic data from the human remains being exhumed. This is intended to protect graves for individuals with no known relatives. If there is a known relative of the deceased, that relative has the right to make other arrangements for the exhumation and reinterment of the remains.
 - c. All associated archaeological studies must be described in a final report. Casket morphology, casket hardware and any grave goods (i.e, grave offerings, clothing items, personal objects) and basic demographic must be examined and identified in the report. The report must submitted to the Texas Historical Commission and City of Dallas Historic Preservation Program.
 - d. All exhumations of graves must comply with any other laws that pertain to the exhumation of human remains.
- 5.3 Any relocation of marked or unmarked graves must be coordinated with the State Archaeologist, must be performed by qualified professional archaeologists and physical anthropologists, and may require a Texas Antiquities permit. A certificate of appropriateness to relocate the gravesites must be approved before any activities can occur at the site.

- a. Grave goods directly associated with an individual must be reburied with the human remains after they have been documented.
- b. Reinterment of remains must be conducted in a dignified and respectful manner. Remains must be reinterred in appropriate containers (such as cedar, oak, or cherry boxes of sufficient sizes to hold human remains and grave goods). Individuals must be buried in the same order they were found historically.
- c. Reinterment of remains within the district is allowed. Locations of proposed reinterments of existing gravesites shall be reviewed through the certificate of appropriateness process.

6. PROTECTED ELEMENTS.

6.1 The following elements are considered important features and are protected:

- a. Grave markers.
- b. Memorial monuments.
- c. Historic site.
- d. Pastoral setting of cemetery.

7. CONSERVATION, REPAIR, AND MAINTENANCE OF GRAVE MARKERS AND MEMORIAL MONUMENTS.

- 7.1 It is encouraged that grave markers and memorial monuments be cleaned on a regular basis, but not more than once every 18 months.
- 7.2 Routine cleaning of grave markers and memorial monuments that are in good condition must be done by washing with water, then softly brushing with mild detergent, then thoroughly rinsing with water.
- 7.3 Grave markers that have a friable or surgery surface; a grainy surface that readily falls away; or other indications that the stone is delicate, brittle, or otherwise vulnerable should not be cleaned.
- 7.4 Removal of lichen and algae from grave markers and memorial monuments that are in good condition must be done by thoroughly soaking the stone with water and then using a wood scraper to gently remove the biological growth. It may be necessary to repeat this process several times to fully remove lichen or algae.

- 7.5 If a grave marker falls or is otherwise damaged, a temporary grave marker must be installed at the grave marker location before the damaged grave marker is removed for repair.
- a. Grave markers that have broken into two or more pieces must be repaired using standards accepted by The Association for Grave Stone Studies (278 Main Street, Suite 207, Greenfield, MA 01301, ph. 413-772-0836 or <http://www.gravestonestudies.org>) or in "A Graveyard Preservation Primer" by Lynette Stranstad.
 - b. Fallen or broken gravestones may not be repaired by embedding them (typically face up) in concrete or using metal splints because both methods are detrimental to the integrity of the stone.

8. NEW CONSTRUCTION.

- 8.1 New construction is not permitted.

9. SIGNS.

- 9.1 Only building, park, and cemetery identification signs; street signs; interpretive signs; movement control signs; and historic markers may be erected.
- 9.2 A certificate of appropriateness is required to erect any sign to ensure that the sign is sensitive and compatible with the district.
- 9.3 All signs must comply with the provisions of the Dallas City Code, as amended.

10. ARCHEOLOGICAL STUDIES.

- 10.1 Archeological studies must have a certificate of appropriateness prior to any ground-disturbing activities. Studies must be conducted by a Registered Professional Archeologist (RPA) or a physical anthropologist, and performed according to the Texas Archeological guidelines.

11. RESOURCES FOR ADDITIONAL INFORMATION.

Conservation of Cemetery Structures

Dennis, John R.; article included in Preservation Plan for Plano Historic Cemeteries. Report produced by Geo-Marine, Inc. (Plano, Texas), September 2000.

Conservation of Building and Decorative Stone Volumes 1 and 2

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Ashurst, John and Francis G. Dimes, Editors. London, Butterworth-Heinemann, 1990.

Maintenance of Outdoor Sculpture: Who's Job Is It?

Program at the 20th Annual Meeting of the American Institute of Conservation (AIC), June 2-3, 1992, Buffalo, NY.

Metals in America's Historic Buildings: Uses and Preservation Treatments

Gayle, Margot, David W. Look, AIA and John G. Waite. Washington, DC, National Park Service, 1980.

Keeping It Clean, Removing Exterior Dirt, Paint, Stains and Graffiti from Historic Masonry Buildings

Grimmer, Anne E. Washington, DC, National Park Service, 1990.

Ancient and Historic Metals, Conservation and Scientific Research

Scott, David A., Jerry Podany, and Brian B. Considine, Editors. Proceeding from a Symposium by the J. Paul Getty Museum, November 1991. Getty Trust Publications, Getty Conservation Institute, 1995.

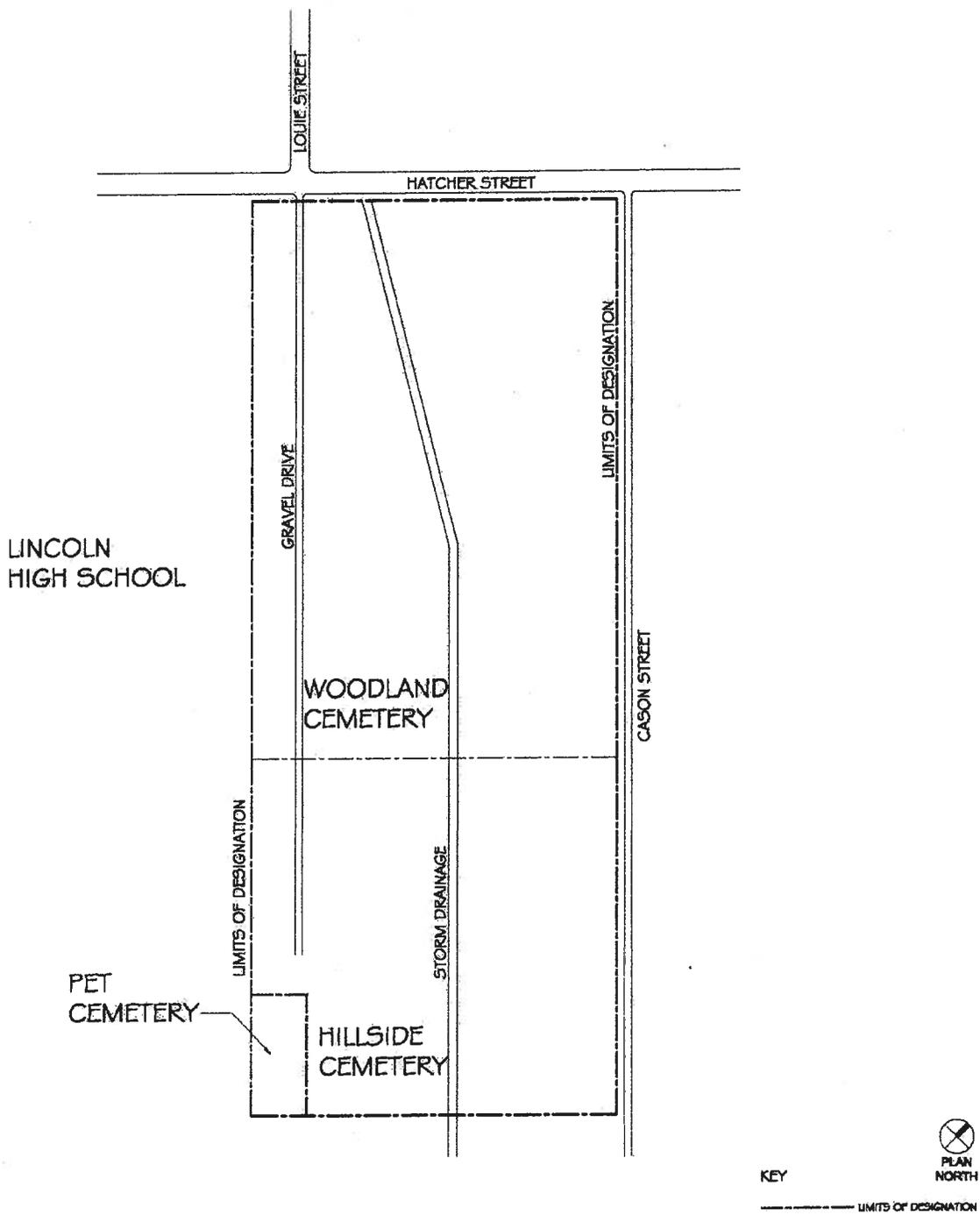
A Graveyard Preservation Primer

Stranstad, Lynette (American Association for State and Local History Book Series) Alta Mira Press, 1995.

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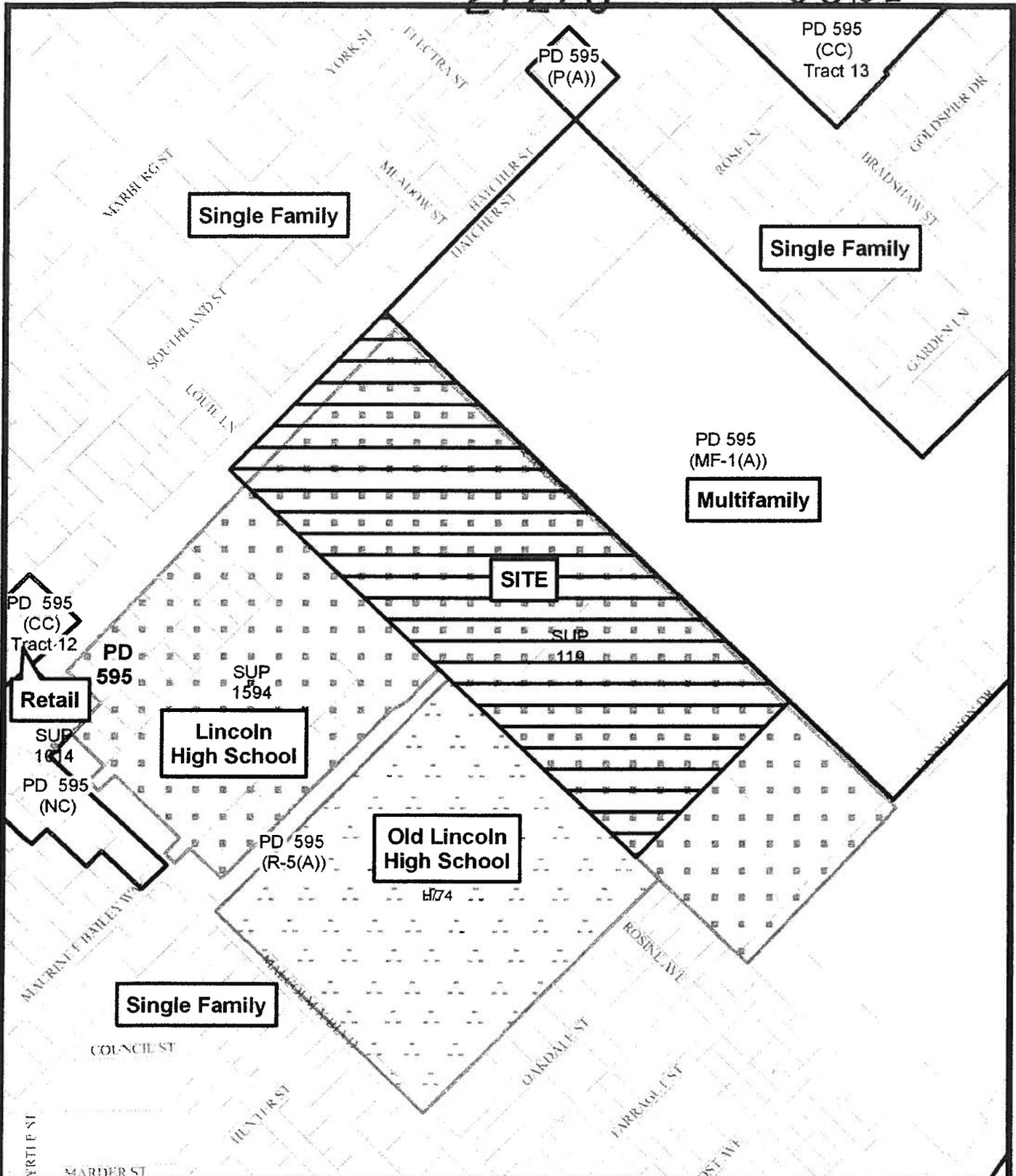
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EXHIBIT B
L. BUTLER NELSON CEMETERY
2900 HATCHER STREET, DALLAS



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ZONING AND LAND USE

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 Case no: Z078-156 MW