

9-7-12

ORDINANCE NO. 28776

An ordinance changing the zoning classification on the following property:

BEING Tract 33 in City Block 8770; fronting approximately 200 feet on the south line of Haymarket Road southwest of Palomino Road; and containing approximately 2.83 acres,

by establishing Historic Overlay District No. 142 (Missionary Baptist Church 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 described in this ordinance; 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:

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SECTION 1. That the zoning classification is changed by establishing Historic Overlay District No. 142 on the property described in Exhibit A (“the Property”), which is attached to and made a part of this ordinance.

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 B.

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 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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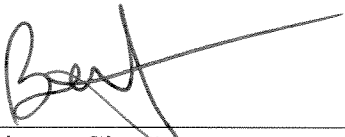
SECTION 6. That the zoning ordinances of the City of Dallas, as amended, shall remain in full force and effect, save and except as amended by this ordinance.

SECTION 7. 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 8. 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

SEP 12 2012

Passed _____

GIS_APPROVED

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EXHIBIT A

Legal Description Haymarket Cemetery

Being a 123,484.90 square foot or 2.83 acre tract of land taken from a 4.363 acre tract of land situated in the George W. Shaw Survey, Abstract No. 1387, City of Dallas Block 8770, Dallas County, Texas, and being more particularly described by metes and bounds as follows:

BEGINNING at a point in the centerline of Haymarket Road said point being described as being the Northwesterly corner of the herein described tract of land, set at the following corner (the Texas State Plane, North Central Zone 4202, ON GRID, North American Datum of 1983 Coordinates for this corner are: E=2538508.91(X); N=6929216.12 (Y):

THENCE, South 71°30'00" East, 200.00 feet;

THENCE, South 45°00'00" West, 717.26 feet;

THENCE, North 55°55'36" West, 182.29 feet;

THENCE, North 45°00'00" East, 662.57 feet; to the POINT OF BEGINNING and containing 123,484.90 square feet or 2.83 acres of land, more or less.

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EXHIBIT B**PRESERVATION CRITERIA****MISSIONARY BAPTIST CHURCH CEMETERY****33 HAYMARKET ROAD****DALLAS, TEXAS 75253****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 Certificate of appropriateness.
 - a. A person may not alter a site within this district, or alter, place, construct, maintain, or expand any structure on the site without first obtaining a certificate of appropriateness in accordance with Section 51A-4.501 of the Dallas Development Code, as amended, and these preservation criteria.
 - b. The certificate of appropriateness review procedure outlined in Section 51A-4.501 of the Dallas Development Code, as amended, applies to this district.
 - c. Any work done under a certificate of appropriateness must comply with any conditions imposed in the certificate of appropriateness.
 - d. After the work authorized by the certificate of appropriateness is commenced, the applicant must make continuous progress toward completion of the work, and the applicant shall not suspend or abandon the work for a period in excess of 180 days. The Director may, in writing, authorize a suspension of the work for a period greater than 180 days upon written request by the applicant showing circumstances beyond the control of the applicant.

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- 1.4 A person may not demolish or remove any structure in this district without first obtaining a certificate for demolition or removal in accordance with Section 51A-4.501 of the Dallas Development Code, as amended.
- 1.5 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.
- 1.6 No person shall allow a structure in this district to deteriorate through demolition by neglect. Demolition by neglect is neglect in the maintenance of a structure that results in deterioration of the structure and threatens preservation of the structure. All structures in this district must be preserved against deterioration and kept free from structural defects. See Section 51A-4.501 of the Dallas Development Code, as amended, for regulations concerning demolition by neglect.
- 1.7 Consult Article XI, "Development Incentives," of the Dallas Development Code, as amended, for tax incentives that may be available in this district.
- 1.8 The period of historic significance for this district is the period from 1900 to 1949.

2. DEFINITIONS.

- 2.1 Unless defined in this section, 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 ARTIFACTS means individual products of human manufacture, such as cutlery, glassware, pottery, metal, or textiles or natural objects such as shells that could be associated with gravesites. Artifacts were often 'broken' and arranged in a decorative manner at gravesites in rural cemeteries.
- 2.4 CERTIFICATE OF APPROPRIATENESS means a certificate required by Section 51A-4.501 of the Dallas Development Code, as amended, and these preservation criteria.
- 2.5 DIRECTOR means the Director of the Department of Sustainable Development and Construction or the Director's representative.
- 2.6 DISTRICT means Historic Overlay District No. 142, the Missionary Baptist Church Cemetery Historic Overlay District. This district contains the property described in Section 1 of this ordinance and as shown on Exhibit C.

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- 2.7 ERECT means to attach, build, draw, fasten, fix, hang, maintain, paint, place, suspend, or otherwise construct.
- 2.8 FENCE means a structure or hedgerow that provides a physical barrier, including a fence gate.
- 2.9 GRADE means the existing ground surface elevation.
- 2.10 GRAVE means the space of ground used or intended to be used for the permanent interment of human remains.
- 2.11 GRAVE MARKER means a permanent marker that identifies the location of one or more graves. Some of the grave markers found in this district are vernacular in style and design and made of fieldstone, cast or natural stone, concrete, masonry, metal, or other manufactured or natural materials. Grave markers may be inscribed with the name and dates of birth and death. Grave markers are located at the head or foot of a single grave, or located to mark a collection of graves (family gravesites).
- 2.12 MARKED CEMETERY means a historic cemetery identified by a governmental body, including state agencies such as the Texas Historical Commission.
- 2.13 PROTECTED means an architectural or landscaping feature that must be retained and maintain its historic appearance, as near as practical, in all aspects.
- 2.14 REINTERMENT means the reburial of human remains.
- 2.15 REMAINS means the body, or parts of the body, of a deceased person.
- 2.16 TRACTS A, B, and C mean the portions of the Property shown on Exhibit C.
- 3. BUILDING SITE AND LANDSCAPING IN TRACT A (NON-PROTECTED AREA).**
- 3.1 New construction is allowed.
- 3.2 New driveways, parking areas, sidewalks, walkways, and paths are allowed, and do not require approval through the certificate of appropriateness process.
- 3.3 Landscaping is allowed and does not require approval through the certificate of appropriateness process.
- 3.4 Fencing is allowed and does not require approval through the certificate of appropriateness process.

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3.5 Outdoor lighting is allowed and does not require approval through the certificate of appropriateness process.

4. BUILDING SITE AND LANDSCAPING IN TRACT B (AREA OF POTENTIAL GRAVESITES).

4.1 New construction is allowed.

4.2 Site activities, including landscaping, that require the disturbance of six inches (depth) or more of surface soil require a certificate of appropriateness in advance of the activities. Archeological studies must be considered as part of the certificate of appropriateness to prevent the inadvertent disturbance of unmarked graves. Any archeological activities must follow state archaeological guidelines for cemetery investigations as described in §7.3.

4.3 After site activities, changes to the existing grades may be allowed if these grading changes are consistent with original grading of the cemetery and meet the requirements of §4.2.

4.4 New sidewalks, walkways, paths, and driveways are allowed. No sidewalks, walkways, paths, or driveways may be located on top of or extended over a marked or known grave.

4.5 New walkways and paths must be constructed of gravel, decomposed granite, other material similar to original dirt path, or other appropriate material. Concrete, asphalt, artificially colored concrete, pavers, exposed aggregate, artificial grass, and outdoor carpet are not permitted.

4.6 Outdoor lighting is allowed. Light poles may not exceed 12 feet in height.

4.7 Landscaping.

a. A routine maintenance certificate of appropriateness is required to remove any trees or shrubs, or to install any landscaping material requiring digging of six or less inches in depth.

b. New or replacement shrubs or trees may not be planted on a marked or known grave.

c. New destructive or invasive ground cover, such as Boston Ivy or Asian Jasmine, may be not planted on or allowed to extend over a marked or known grave.

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- 4.8 Fencing is allowed and does not require approval through the certificate of appropriateness process.
- a. Fencing that is within 10 feet of Tract C must comply with the requirements for fencing on Tract C.
 - b. Fencing that is more than 10 feet and less than 20 feet from Tract C may be, solid or open in design and must be constructed of wood, wrought iron, masonry, or a combination of these materials. Chain link fencing is allowed in this area. Solid metal and industrial style fences are not allowed in this area.

5. BUILDING SITE AND LANDSCAPING IN TRACT C (MARKED CEMETERY).

- 5.1 New construction is prohibited.
- 5.2 Activities that require the disturbance of six inches (depth) or more of surface soil require a certificate of appropriateness in advance of the activities. Archeological studies must be considered as part of the certificate of appropriateness to prevent the inadvertent disturbance of unmarked graves. Any archeological activities must follow state archaeological guidelines for cemetery investigations as described in §7.3.
- 5.3 Walkway or paths may not be located on top of or extended over a marked or known grave.
- 5.4 New walkways and paths must be constructed of gravel, decomposed granite, other material similar to original dirt path, or other appropriate material. Concrete, asphalt, artificially colored concrete, pavers, exposed aggregate, artificial grass, and outdoor carpet are not permitted.
- 5.5 Sidewalks, steps, driveways, parking areas, or other hard paving areas are not allowed.
- 5.6 Outdoor lighting is allowed. Light poles may not exceed 12 feet in height.
- 5.7 Except for reinterments, no grading is allowed unless the grading is associated with an archeological investigation (scraping in search of grave sites). After a reinterment is completed, the grade of that area must be restored.
- 5.8 Landscaping.
- a. A routine maintenance certificate of appropriateness is required to remove any trees or shrubs, or to install any landscaping material requiring digging of six or less inches in depth.

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- b. New or replacement shrubs or trees may not be planted on a marked or known grave.
- c. New destructive or invasive ground cover, such as Boston Ivy or Asian Jasmine, may not be planted on or allowed to extend over a marked or known grave.

5.9 Fencing.

- a. Perimeter fencing of Tract C is allowed; fences within Tract C are not allowed.
- b. Fences must be 70 percent open, may not exceed six feet in height, and may be constructed of wood, wrought iron, masonry, or a combination of these materials. Chain link fencing is allowed up to four feet in height.

6. GRAVE MARKERS

- 6.1 Grave markers are protected in Tract C. Grave markers, if found or located in Tract B, are protected. It is recommended that existing or relocated grave markers be preserved and restored and that damaged grave markers be repaired.
- 6.2 The identification of unidentified graves through archeological investigation is encouraged to identify the extent of the cemetery. After research to determine the identity of the deceased or other pertinent information, marking of unidentified graves is encouraged.
- 6.3 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 the original grave markers at that location.
- 6.4 If the design of the original grave marker is not known, new flat grave markers may be installed.

7. BURIALS AND REINTERMENTS.

- 7.1 Unmarked graves might be located within the bounds and immediate vicinity of Missionary Baptist Church Cemetery. See §§4.2 and 5.2 for requirements for any ground-disturbing activities requiring digging six inches or greater depth in Tracts B and C.

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- 7.2 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.
- 7.3 Any future archaeological investigation or relocation of marked or unmarked graves must be conducted in compliance with Section 22.5, "Removal of Remains," of Chapter 22, "Cemeteries," of Part 2, "Texas Historical Commission," of Title 13, "Cultural Resources," of the Texas Administrative Code and coordinated with the state archaeologist, and if required, done pursuant to a Texas antiquities permit.
- 7.4 Reinterment is allowed in Tract C, subject to compliance with all applicable laws related to cemeteries and reinterment. Locations of proposed reinterments must be reviewed through the certificate of appropriateness process.
- 7.5 New burials are permitted if allowed by law.

8. PROTECTED ELEMENTS.

- 8.1 The following elements are considered important features and are protected:
- a. Graves and grave markers.
 - b. Artifacts associated with a grave.

9. CONSERVATION, REPAIR, AND MAINTENANCE OF EXISTING GRAVE MARKERS.

- 9.1 It is encouraged that existing grave markers be cleaned on a regular basis, but not more than once every 18 months.
- 9.2 Routine cleaning of grave markers that are in good condition must be done by washing with water, then softly brushing with mild detergent, then thoroughly rinsing with water.
- 9.3 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.

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- 9.4 Removal of lichen and algae from grave markers 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.
- 9.5 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.
- 9.6 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.
- 9.7 Fallen or broken grave markers 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.
- 9.8 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.

10. NEW CONSTRUCTION.

- 10.1 New construction is allowed in Tracts A and B. New construction must comply with Section 711.041, “Access to Cemetery,” of the Texas Health and Safety Code.
- 10.2 New construction in Tract B must be set back from Tract C a minimum of 12 feet. All other zoning requirements apply.
- 10.3 New construction is prohibited in Tract C.

11. SIGNS.

- 11.1 Only premise signs, park signs, cemetery identification signs, street signs, interpretive signs, movement control signs, and historic markers may be erected and must be compatible with the district.

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11.2 All signs must comply with the provisions of the Dallas City Code, as amended.

12. ARCHEOLOGICAL STUDIES.

12.1 Any archeological studies must have a certificate of appropriateness prior to any ground-disturbing activities. An archaeologist or a physical anthropologist must conduct any archeological studies in accordance with the Texas Historical Commission guidelines for preserving historic cemeteries.

13. ENFORCEMENT.

13.1 A person who violates these preservation criteria is guilty of a separate offense for each day or portion of a 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.

13.2 A person is criminally responsible for a violation of these preservation criteria if:

- a. the person knowingly commits the violation or assists in the commission of the violation;
- b. the person owns part or all of the property and knowingly allows the violation to exist;
- c. the person is the agent of the property owner or is an individual employed by the agent or property owner; is in control of the property; knowingly allows the violation to exist; and fails to provide the property owner's name, street address, and telephone number to code enforcement officials; or
- d. the person is the agent of the property owner or is an individual employed by the agent or property owner, knowingly allows the violation to exist, and the citation relates to the construction or development of the property.

13.3 Any person who adversely affects or demolishes a structure in this district in violation of these preservation criteria is liable pursuant to Section 315.006 of the Texas Local Government Code for damages to restore or replicate, using as many of the original materials as possible, the structure to its appearance and setting prior to the violation. No certificates of appropriateness or building permits will be issued for construction on the site except to restore or replicate the structure. When these restrictions become applicable to a site, the Director shall cause to be filed a verified notice in the county deed records and these restrictions shall be binding on future owners of the property. These restrictions are in addition to any fines imposed.

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- 13.4 Prosecution in municipal court for a violation of these preservation criteria does not prevent the use of other enforcement remedies or procedures provided by other city ordinances or state or federal laws applicable to the person charged with or the conduct involved in the offense.

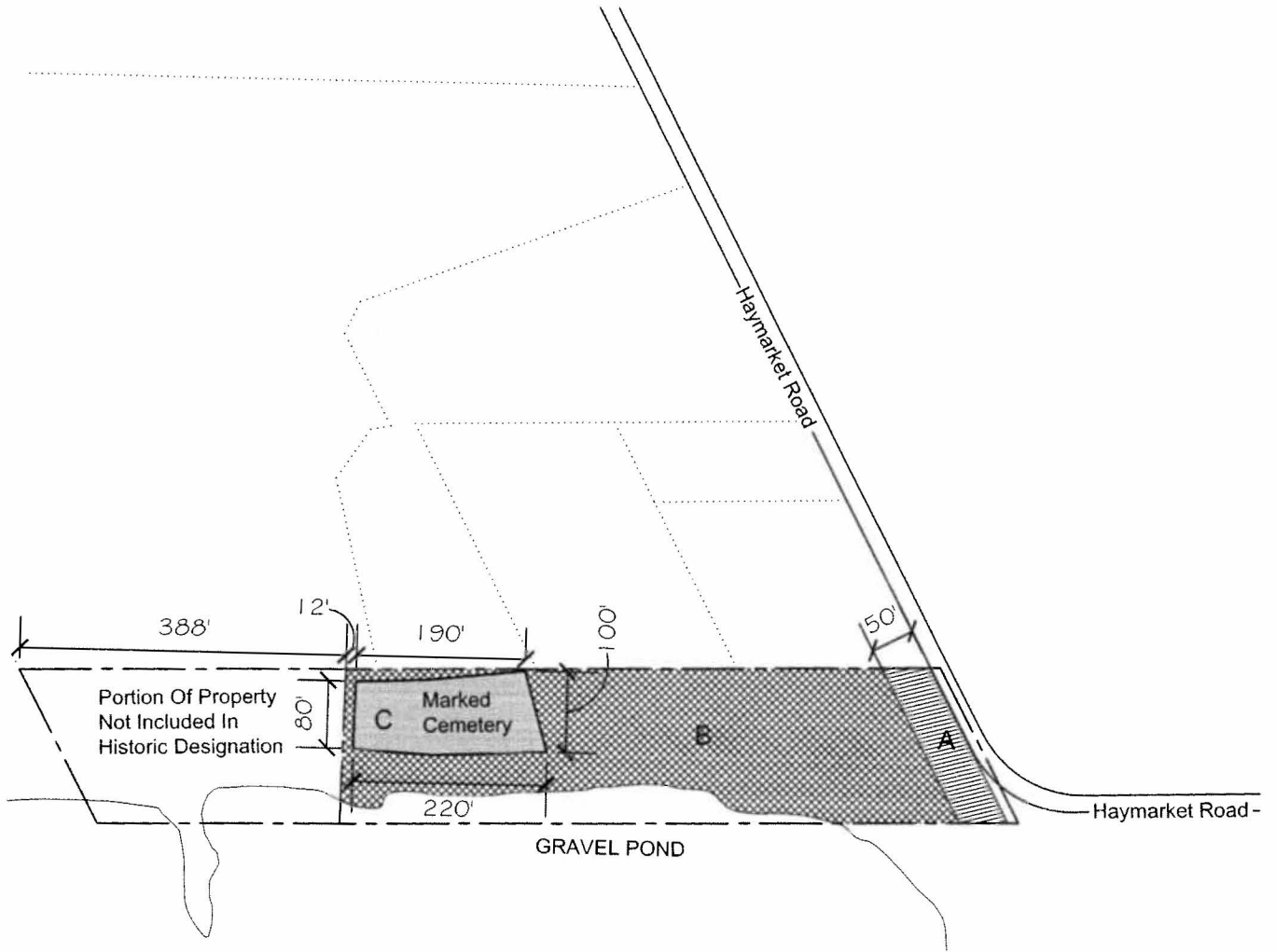
14. RESOURCES FOR ADDITIONAL INFORMATION.

- 14.1 "*Conservation of Cemetery Structures*" Dennis, John R: article included in Preservation Plan for Plano Historic Cemeteries.
- 14.2 *Conservation of Buildings and Decorative Stone*, Volumes 1 and 2, John Ashurst and Francis G. Dimes, Editors. London, ButterworthHeinemann, 1990.
- 14.3 *Metals in America's Historic Buildings: Uses and Preservation Treatments*, Margot Gayle, David W. Look, AIA, and John G. Waite. Washington DC, National Park Service, 1980.
- 14.4 "*Keeping it Clean, Removing Exterior Dirt, Paint, Stains, and Graffiti from Historic Masonry Buildings*," Anne E. Grimmer, Washington DC, National Park Service, 1990.
- 14.5 *Ancient and Historic Metals, Conservation and Scientific Research*, David A. Scott, Jerry Podany, and Brian B. Considine, Editors. Proceedings from a Symposium by the J. Paul Getty Museum, November 1991. Getty Trust Publications, Getty Conservation Institute, 1995.
- 14.6 *A Graveyard Preservation Primer*, Stranstad, Lynette (American Association for State and Local History Book Series) Alta Mira Press, 1995.
- 14.7 *Texas Graveyards*, Jordan, Terry, University of Texas Press, Austin, Texas, 1984.
- 14.8 *Preservation Plan for Plano Historic Cemeteries*, Angela Tine and John R. Dennis, (Geo-Marine, Inc.), report for City of Plano, Texas, September 2000.




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Exhibit C
Missionary Baptist Church Cemetery
33 Haymarket Rd.
Dallas, Texas 75217



LEGEND

- Limits of Designation/Property Line
-  Track A - Non-protected Area
-  Track B - Potential Gravesite Area
-  Track C - Marked Cemetery

Dimensions for Tract C Marked Cemetery are Approximate as based on aerial survey information.

September 07, 2012

