

**MEETING OF THE
GREENSBORO BOARD OF ADJUSTMENT
JANUARY 28, 2019**

The meeting of the Greensboro Board of Adjustment was held on Monday, January 28, 2019 in the Plaza Level Conference Room of the Melvin Municipal Office Building. Board members present were: Chair, Chuck Truby, James Waddell, Ted Oliver, Deborah Bowers, Leah Necas and Mary Skenes. Representing the Planning Department staff was Shayna Thiel, Mike Kirkman, and Andrew Kelly and Terri Jones, City Attorney's Office.

Chair Truby called the meeting to order and explained the policies and procedures of the Board of Adjustment. He further explained the way the Board conducts its hearings and method of appealing any ruling made by the Board. The Chair advised that each side, regardless of the number of speakers, would be allowed a total of 20 minutes to present evidence.

APPROVAL OF MINUTES

November 26, 2018 Minutes and December 17, 2018 Minutes

Shayna Thiel stated that the November minutes should reflect that Laura Blackstock was in attendance.

Ms. Skenes moved approval of the November and December 2018 minutes, with the correction noted, seconded by Mr. Waddell. The Board voted 6-0 in favor of the motion. (Ayes: Truby, Skenes, Oliver, Waddell, Bowers and Necas. Nays: None.)

SWEARING IN OF STAFF

Shayna Thiel, Mike Kirkman, Mike Cowhig, Stefan-leih Geary, Planning Department, were sworn in for their testimony in the following cases.

CONTINUANCES/WITHDRAWALS: NONE

OLD BUSINESS: NONE

NEW BUSINESS

VARIANCE

- a. **BOA-18-54: 3400 REGENTS PARK LANE** Marie Coggins requests two variances. 1. To allow a proposed addition to encroach 20 feet into a required 30 foot rear setback. The addition will be 10 feet from the rear property line. Section 30-7-3.2 – Table 7-1. 2. To allow a proposed addition to encroach 11 feet into a required 15 foot side street setback. The addition will be 4 feet from the side property line. Section 30-7-3.2 – Table 7-1. Zoning R-3 (Residential Single-Family); Cross Street – Great Castle Court. **(GRANTED)**

Shayna Thiel stated that the applicant requests two variances. Variance #1: To allow a proposed addition to encroach 20 feet into a required 30 foot rear setback. The addition will be 10 feet from the rear property line. Variance #2: To allow a proposed addition to encroach 11 feet into a required 15 foot side street setback. The addition will be 4 feet from the side property line. The corner lot is located on the north side of Regents Park Lane, at the intersection of Great Castle Court, and is zoned R-3. Tax records indicate the lot contains

approximately 14,810 square feet and the house was constructed in 1972. Based on the submitted site plan, the applicant proposes to construct an addition at the back of the house that would encroach 20 feet into the required 30 foot rear setback. The proposed addition would also encroach 11 feet into the required 15 foot side street setback. The R-3 (Residential Single-Family) District is primarily intended to accommodate low density single-family detached residential development. The overall gross density in R-3 will typically be 3.0 units per acre or less.

Chair Truby asked if there was anyone wishing to speak in favor of this matter.

Marie Coggins, the applicant, 3400 Regents Park Lane, was sworn in and stated that she has a letter of support from the neighbor behind her that she provided to the Board. She is trying to build storage onto the back of her carport. It is a corner lot and was built in 1972 and she is very restricted to as where she can build on the lot. Her 94-year-old mother lives with her and they are trying to put some exercise equipment out there, so she can get some rehabilitation. Mr. Oliver asked if they had already dug out a portion of the lot in anticipation of this project. Ms. Coggins stated that when they first looked at it they thought they only needed a three (3) foot setback, but instead they needed a 30-foot setback. They went ahead and dug out the larger section because she had the concrete already poured and she did not want to bring heavy equipment in if they were not able to do this project. It was a total misunderstanding on her part. Ms. Necas asked if the land that was cleared is more land than she will need for the final construction of the addition. Ms. Coggins stated yes and noted the actual structure will be at least 10 feet back from this side of the property.

Chair Truby asked if there was anyone wishing to speak in opposition to this matter and no one came forward. There being no other speakers, the public hearing was closed.

Board Discussion:

Chair Truby stated that corner lots are tough, and he did not see any issues with it.

Mr. Waddell moved that in regard to **BOA-18-54, 3400 Regents Park Lane**, that the findings of fact be incorporated into the record and the Zoning Enforcement Officer be overruled and the variances granted based on the following: If the applicant complies with the provisions of the ordinance, unnecessary hardship will result to the property by applying strict application of the ordinance because the variance is required to construct the addition in the most suitable location. The hardship of which the applicant complains results from conditions that are peculiar to the property and unique circumstances related to the applicant's property because the property is rectangular in shape and is a corner lot. Due to the existing infrastructure the most reasonable location to the addition would be in the proposed location. The hardship is not the result of the applicant's own actions because the house was originally constructed in 1972. The variance is in harmony with the general purpose and intent of the ordinance and preserves its spirit and assures public safety, welfare and substantial justice because granting of the variances will not have a negative impact on the public, seconded by Ms. Skenes. The Board voted 6-0 to grant the variance requested. (Ayes: Truby, Waddell, Oliver, Necas, Ramsey, and Skenes. Nays: None).

- b. BOA-19-01: 3003 HENDERSON ROAD** Corey and Megan Williams request a variance to allow a proposed porch addition to encroach 19.2 feet into a required 66 foot front setback. The proposed porch addition will be 46.8 feet from the front property line. Zoning R-3 (Residential Single-Family); Section 30-7-1.4; Cross Street – Kemp Road East. **(GRANTED)**

Shayna Thiel stated that the applicants request a variance to allow a proposed porch addition to encroach 19.2 feet into a required 66 foot front setback. The house will be 46.8 feet from the front property line. The subject lot

is located on the south side of Henderson Road, west of Kemp Road East, and is zoned R-3. Tax records indicate the lot contains approximately 20,473 square feet and the house was constructed in 1966. The existing house is considered a nonconforming structure as it encroaches into the required 66 foot front setback. The applicants propose to construct a porch addition at the front of the existing house that will encroach 19.2 feet into the required 66 foot front setback and be 46.8 feet from the front property line. The Land Development Ordinance allows an open air/covered porch addition to encroach up to 10 feet into a required setback. However, since the existing house already encroaches into this setback, the proposed porch addition will encroach more than the allowed 10 feet and a variance is required for approval. The R-3 (Residential Single-Family) District is primarily intended to accommodate low density single-family detached residential development. The overall gross density in R-3 will typically be 3.0 units per acre or less. Ms. Skene asked, if prior to the Land Development Ordinance, R-3 had a 25-foot setback.

Chair Truby asked if there was anyone wishing to speak in favor of this matter.

Corey & Megan Williams, 3003 Henderson Road, the applicants, were sworn in and stated that they were renovating a 1966 old colonial style home in the Starmount area. They want to put a front porch on this house to help with updating the house. They noted that the house tilts a little bit left and the back yard tilts a little bit right, which impacts where the front of the house is relative to the front property line. For the front porch to be functional, it needs to be expanded to the back. They concluded that even with the addition, the porch would still be 46 feet from the road.

Chair Truby stated that he lives in the neighborhood and is very familiar with the house. He is glad to see them doing something with it. Ms. Necas stated that it is already 11.2 feet into the setback and they said it used to be 25 feet. Chair Truby stated that the current owners probably did not know their house was grandfathered when the rules changed with the LDO and in order to come into conformity they needed a variance.

Chair Truby asked if there was anyone wishing to speak in opposition to this matter and no one came forward. There being no other speakers, the public hearing was closed.

Board Discussion:

Ms. Skenes moved that in regard to **BOA-19-01, 3003 Henderson Road**, that the findings of fact be incorporated into the record and the Zoning Enforcement Officer be overruled and the variance granted based on the following: If the applicant complies with the provisions of the ordinance, unnecessary hardship will result to the property by applying strict application of the ordinance because the front porch cannot be added due to average front setback dimensions under the current ordinance. The hardship of which the applicant complains results from conditions that are peculiar to the property and unique circumstances related to the applicant's property because the house was built prior to the current LDO which requires a greater front setback than before. Prior to adoption of the new LDO, the front setback would have been 25 feet. The hardship is not the result of the applicant's own actions because the new LDO was adopted changing front setback requirements. The variance is in harmony with the general purpose and intent of the ordinance and preserves its spirit and assures public safety, welfare and substantial justice because the open front porch will be in harmony with the other houses in the neighborhood and the porch will still be 49 feet from the street, seconded by Ms. Necas. The Board voted 6-0 to grant the variance requested. (Ayes: Truby, Waddell, Oliver, Necas, Ramsey, and Skenes. Nays: None).

APPEAL OF HISTORIC PRESERVATION COMMISSION DECISION

Chair Truby suggested that the following two matters be discussed together as they are for the adjacent properties with the same owner and involve similar issues. However, he added that the Board would make separate motions on each matter.

- a. **BOA-19-02: 820 SPRING GARDEN STREET** Evagelia Eustathiou appeals the decision of the Historic Preservation Commission to deny an application for a Certificate of Appropriateness to replace a side door after the fact. Zoning C-N (Commercial-Neighborhood); Section 30-4-12.4(G) and 30-4-12.4(H); Cross Street – South Mendenhall Street. **(REMAND BACK TO HPC)**
- b. **BOA-19-03: 551 SOUTH MENDENHALL STREET/822 SPRING GARDEN STREET** Evagelia Eustathiou appeals the decision of the Historic Preservation Commission to deny an application for a Certificate of Appropriateness to construct a second floor addition after the fact. Zoning C-N (Commercial-Neighborhood); Section 30-4-12.4(G) and 30-4-12.4(H); Cross Street – Spring Garden Street. **(DELETED)**

Terri Jones, Counsel representing the Historic Preservation Commission, stated that she is the assigned counsel to the Historic Preservation Commission for the City of Greensboro. She noted this is not your typical administrative appeal. The Historic Preservation Commission is a quasi-judicial body, which means that the Board of Adjustment is sitting like a court reviewing a decision that another body would make that would be appealed to the Superior Court. This is not a new hearing on the evidence that was presented to the Historic Preservation Commission, but the Board is required to look at the records that have been presented, which includes the verbatim transcript and the unofficial minutes from the October 31, 2018 meeting, which are not official because the Historic Preservation Commission has not had a meeting since that point to approve them. Counsel Jones noted that in this appeal the Board of Adjustments shall make sure the Appellant's rights have not been prejudiced because the Historic Preservation Commissions findings of facts, conclusions, or decisions were based on the prescribed factors; the violation of constitutional provisions including those protecting procedural due process rights; excess of authority conferred upon the City or the authority conferred upon the Historic Preservation Commission, inconsistent with applicable procedures specified by statute or ordinance; other issues affected by other error of law; unsupported by substantiary evidence in view of the entire record, or arbitrary or capricious decisions. The Board can affirm the decision of the Historic Preservation Commission to deny the Certificate of Appropriateness. If The Board reverses the Historic Preservation Commission decision then they will be granting the Certificate of Appropriateness. In order to do so they will have to find that there is evidence in the record for granting that COA. If there is a procedural error, they can remand it back to the HPC for further hearing or with instructions to make additional findings. Counsel Jones then noted that the appellant's appeal application fails to state any reasons for the appeal. The reference said to see attachment, but no attachment was ever provided to City staff or HPC. The HPC findings did not violate any Constitutional rights including those protecting the appellant's due process rights. The HPC held a public hearing on October 31, 2018 where the appellant was present, and she testified at that hearing. The HPC decision was reduced to writing on November 2, 2018 that includes the applicant's appeal rights. The findings of the decision were not in excess of statutory authority. State law requires that no exterior of any building can be altered until after a Certificate of Appropriateness has been submitted and approved by the HPC for that jurisdiction. That is found in Section 160A-400.9 of the North Carolina General Statutes. Exterior features include the type and style of all doors and other features. The other State statutory authority is found in Section 160A-400.1-160A-400.15. The City's Land Development Ordinance establishes the City's Historic Preservation Commission in Section 30-3-8 as well as the review process of COA, which can be

found in Section 30-4-12. The City's LDO also requires that the City's Historic Preservation Commission refer to the City's Historic District Program Manual and Design Guidelines, which was adopted in 2003 and the Doors and Window Guidelines are included in the Board's record. The appellant has made no allegations that the HPC exceeded its statutory authority. The Commission's findings were not inconsistent with the applicable procedure specified in the ordinance. The applicable procedures for COA are found in Section 30-4-12.4 of the LDO and a copy is in the record. The HPC held a public hearing and the appellant was present and testified. The HPC considered the Historic District Program Manual and Design Guidelines. The Guidelines are in Exhibit 4 of the Board's record. Exhibit Seven (7) is the Staff comments that were presented to the Commission. The findings, conclusions and decisions were not affected by any other error of law. The findings, conclusion and decisions were not unsupported by substantial and competent evidence in the record. The photo in Exhibit 6 shows the new door and it does not match the other doors. The Guideline under Windows and Door on page 57 of the manual, number one (1) requires that new door openings be compatible in proportion, location, shape, pattern, size, materials and details to existing doors and windows. The appellant could not tell the Commission what material the new door was made of and that is found in the transcript on page 12 lines six (6) and seven (7). The new door does not maintain the character of the building's Queen Ann architectural style as required by the Guideline under Changes to Non-contributing Structures found on page 68 Section 3 of the Guidelines. At the public hearing, an opponent Joe Wheby was opposed due to inappropriate materials and that is found in the transcript page 28, line eight. The findings, conclusions and decisions were not arbitrary or capricious. The HPC found the work to be incongruous and Counsel Jones is asking the Board to affirm the decision of the HPC and deny the COA for the door.

Mr. Oliver stated that he is confused about the picture of the door; it looks like a Queen Ann door and a Queen Ann style but because there is a picture of the door with the oval opening and that is the kind of door they put up. Is that irrelevant because they did not go through proper procedure first? Counsel Jones stated that the Staff's recommendation found that the door did not match the style of the other doors on the building and did not include compatible materials to the other doors. It was a synthetic door and not a wood door. Chair Truby asked if it was the door or the door opening? Counsel Jones stated that the COA was to replace a side door. When Staff went to look at the request and they started looking at archival photographs and Google Maps it did not appear that an opening previously existed. An opening for any new window or door would require a COA as well as any replacement door. Some members of the HPC stated that they would not approve the opening and all of them did not like the style or the material of the door. They denied the application for that door. Chair Truby stated that the way it was denied she must go back and fill that opening in and make it look like it did before. Mr. Oliver asked what would have been the proper procedure. Counsel Jones stated that the COA was first and then the building permit. She stated that it would depend on whether a building permit is required. There are some things that a permit is not required for. Generally, if they apply for the permit first they are told to get a COA or the permit will not be processed until a COA is received. Ms. Necas asked if the side door was entirely new. Counsel Jones stated that the application requested to replace that side door. After the application was accepted it appeared that it was also a new opening. City Staff relied on Google Maps photos to see that it did not appear that there was an opening in that location. Ms. Necas asked if staff had any proof of that. Counsel Jones stated that the only thing they had on record was the appellant's testimony that there had been a door there. It was not visible from the exterior but was alleged to be visible on the interior. At some point it had siding over where the door is now. Ms. Skenes stated that in the minutes Staff had commented that "if the property owner had come in ahead of time and worked with us and could have been able to go to Architectural Salvage to find a door we were comfortable with it could have been done at the Staff level." Counsel Jones stated that in Exhibit four (4) there is a heading that says the door opening requires a COA. Exposing a previously covered window unit with replacement

could be done with Staff approval. This was not a window unit, but Staff stated that this would have fallen under this had she gone through proper procedures. If you are replacing something that was already there then the Staff could approve. Mr. Oliver asked if the applicant was were told at closing that they were in the Historic District? Counsel Jones stated that she did not know what was disclosed at closing, but on the City's web page there is a list of all the streets that are in the Historic District. If a property owner calls in, the Staff would tell them that they were in the Historic District.

Andrew Kelly, Counsel representing the Board of Adjustment, stated that these appeals from the Historic Preservation Commission are considered in the nature of certiorari under State law. That means that they are acting in review of the processes that the Historic Preservation Commission took. The law is the authority and the facts that they provide in the minutes before the Board. The Board of Adjustment is not here to litigate the case, but to review what has already been done. There were materials in front of the members to help them in their analyses of whether there was any error in law that was committed, whether the Commission was acting consistent with their procedures, whether due process was given to any kind of appellant or person of interest, whether the decision of the Historic Preservation Commission was supported by substantial and competent evidence and whether or not the Commission's decision would be considered arbitrary or capricious. Ms. Skenes stated that there seemed to be a lot of debate in the Commission meeting as to whether that side door would have even been allowed due to how close it was to the side lot linen She asked if that determination was ever made. Counsel Kelly stated that he could not tell them whether that determination was ever made or not. He doesn't know if that is a requirement. What the Board is being asked to review is what they did review and the decision they made. If they are going to bring that before them and say that was something that had to be a necessary finding, then Counsel Jones would tell them whether that is something that the Historic Preservation Commission must decide before making the decision. Mr. Oliver asked if the decisions the Board would make today were to affirm, reverse or remand. Counsel Kelly stated that was correct. Mr. Oliver asked if the six criteria that were listed earlier are the six things the Board should use to make their decision. Counsel Kelly stated that the criteria list is the framework for which the Board is to make their decision. Affirming would be upholding the decision that HPC made. Overturning would be changing the decision that HPC made. Remanding would be saying that any one of these factors may not have been meet in the Board's opinion and they will be sending it back to HPC so that they could address that. He does not think it was an issue to hear the items together, but that any motions should be separated.

Harry Gordon, Counsel representing the Appellant, stated that on the matter of the roof, the applicant is going to proceed with repairing the roof, though that will only be a temporary fix. Probably two years from now she would be coming back to HPC with a new design and asking for the Board's approval before she goes forward. He does not think they need to spend a lot of time on the roof matter since she is going to take off the elevated roof and repair the roof. Counsel Jones asked if the appellant was withdrawing the appeal for 822 Spring Garden Street. Counsel Gordon stated that was correct and his client would not be going forward with that appeal. He did add that in that same Historic district, about 95% of the buildings have a sloped roof but his client must have a flat roof. His client is going to remove the elevated roof that she did not get permission to build and live with it until she gets approval to get the elevated roof. Counsel Jones stated that she does not need a COA to restore the roof to its original prework condition, but she will need a building permit because she has made alterations to the building and she must make additional alterations to restore it back to its original state. Chair Truby stated that it sounded as if the appeal to the roof has been removed and everyone agreed. Chair Truby stated that the Board would then just address the door appeal.

Shayna Thiel stated that the applicant appeals the decision of the Historic Preservation Commission to deny an application for a Certificate of Appropriateness to replace a side door after the fact. The subject lot is located on the north side of Spring Garden Street, east of South Mendenhall Street, and is zoned C-N. Tax records indicate the lot contains approximately 5,563 square feet and the house was constructed in 1902. The applicant installed a new side door without securing appropriate building permits and a Certificate of Appropriateness. The City issued a Notice of Violation on October 8, 2018 noting need for a Certificate of Appropriateness for exterior changes to property within a Historic District. The applicant filed a Certificate of Appropriateness Application on October 12, 2018, and the request was heard by the Historic Preservation Commission on October 31, 2018. Following a public hearing, the Historic Preservation Commission denied the COA request. A letter confirming this decision was issued to the applicant on November 2, 2018. The applicant then filed an appeal of this decision on November 9, 2018, within the required 15 day appeal period. The C-N (Commercial-Neighborhood) District is primarily intended to accommodate a mix of low intensity office, retail, and personal service and upper story residential uses within or abutting residential areas.

Harry Gordon, 330 S. Green Street, attorney for the appellant, stated that he heard Counsel Jones state that the new door was not consistent with other doors. He doesn't know if she means not consistent with other doors in the neighborhood because the Board heard that this application came on quickly. The HPC doesn't have much time to go out and look at other doors. Therefore, he does not think they went out and looked at any other doors in making this determination. Counsel Jones stated that staff looked at Archival Google Maps for the property, which included pictures from October 2017. They were not archival or going back through history. The one person who knows about that door is the applicant who owns the building and did the work. She had come forward at the HPC meeting and testified that there was a door there previously. Council Gordon noted that you do not get a building permit to do something to your home unless it is more than \$15,000. It used to be \$5,000. He also noted that there are all kinds of exceptions and a ton of work done without permits. The rules change when you get into commercial, as there are no exclusions. If they looked through the minutes, the HPC kept asking what kind of building is this. Is this a commercial or residential building? Did they do any research before this application came forward? The front door has nothing to do with history. They need to go see that building and they didn't need to come to that meeting without knowing whether this was a commercial or residential building. To answer the question is this commercial or residential, it's commercial in the front, and in the back it is residential. There are two (2) apartments in the rear of the building. One is entered from a back door that is undersized and the other one you go through the commercial part and go upstairs to get to the apartment. His client found an old door that used to be there and put in another door. It would have been useful to the residential tenants and a second door and fire escape for the people in the units. She made some repairs and certain changes, but she crossed the line. His client is content to take the roof off and make the temporary repairs to the other building.

Council Gordon then stated that the Board of Adjustment should remand this back to the HPC and have them do their job. He argued that the HPC did not stay in their own lane, because they asked the same question why she did not get a building permit before she came to the HPC and she did not. Had she gone for the building permit then she would have been sent over to the HPC. The rules are if you didn't go to get the building permit then the standard is they act as if the change was never made. If that is the guideline, why is everybody giving her a hard time because she didn't get the permit? By Code today, the door must be 78 inches tall. Her new door is 78 inches. A question by one of the Commissioners was, "Is there a compelling need for this door?", and that is not what they are supposed to be asking. Mr. Gordon then wanted the Board to look at the comments made by Commissioner Wayne Smith. He threatens to leave because they would not follow his advice or conclusions. He was told repeatedly to stay in his lane. The only way to appease him was to go ahead and vote, but what were

they voting on? It is hard to tell what they are voting on. Google Maps should not have been used to decide what was there and what wasn't there. They had direct testimony from the applicant stating that the door was there. If they looked at page 7 of the minutes Stefan-leih Geary stated that the middle door is a new door opening which is certainly allowed under their Guidelines. This was the opening of the meeting. Mr. Gordon then asserted that his client was told in advance that the recommendation was that the doorway was okay, but the roof was a problem. Therefore, his client gets told that the doorway was okay because it was a side elevation. The door itself was not found to be in keeping with the Guidelines in terms of materials and design. Now they are not looking at the opening anymore, but the door. She was told that the door was okay and that she was only there for the roof. This is not how you treat citizens. That property was condemned and in line to be destroyed. He would not have fixed it and Lisa (his client) was willing to take this on. He wishes that they could see some of the work she has done to the property. He thinks they should remand this back to the HPC and let his client deal with the permit people. She should be allowed to put her door up.

Mr. Gordon noted that Mr. Smith wanted to know early on whether she obtained a permit and why she did not get a permit. On page 13, Mr. Smith asked if she got a permit to build that door. She answered that she did not. On page 17, Mr. Smith stated that he was going to excuse himself, that he was there to give advice on building Code issues. Mr. Gordon argued that Mr. Smith is a Commissioner and he is not there to do that. Mr. Smith stated they must have permits and be inspected and that the Commission always looks over the fact applications. He asked to be excused and was told he would have to ask his fellow Commissioners that. Mr. Smith was not willing to look at the Historical issue without looking at the permit issue. Mr. Smith threatened to quit at the end of the meeting. So, they had to appease him. His client is asking to have the Commissioners look at all the other doors that look like her doors such as 709 Walker Avenue. He can show the Board pictures of steel doors of the same design repeatedly. They can't rule this door out because it's metal. If one person can have metal doors why can't she? They have got to be fair to people. So, let her come in and bear the burden, show all the others that are in the area that are metal and same design. There are 90 different styles of doors on commercial buildings in that area. It is the same thing with the sloped roof. On page 31, Ms. Hodiernie calls the door superfluous and on page 22, she states that she is trying to get past the hurdle that there was some compelling reason to add the door. He wants to know what reason his client has to have a "compelling reason" to add a door. There is a compelling reason, most states require that they have two doors in case of fire. However, North Carolina does not have that law, but the fire department will make you have two exits. There are two apartments there and she added a door that was previously there, and its 78 inches and the building Code says that you must have a 78-inch door at least one exit. The roof and failure to get permits made some people mad, but he also must follow the rule that his lane is historical which means the material and the design. He would go out and look at all the others and take into consideration that she is willing to put in the time, money and the effort to restore these old buildings. He doesn't think he would come down too hard on her if he was part of an HPC. He has pictures of other doors if anybody wanted to see them.

Mr. Oliver asked if the subject building was commercial or residential. Counsel Gordon stated that the door was put on the residential side. Mr. Oliver asked if the \$15,000 threshold was applicable to this work. Counsel Gordon stated that he thinks it was. Mr. Oliver asked how much this project would cost. Counsel Gordon stated that he would think no more than \$2,000. Counsel Jones stated that she would need a COA no matter what the cost of work would be. The building Code standard does not apply. You must get a COA to plant a tree in the yard. Ms. Bowers stated that it has no monetary threshold. When this house was built, it was a residence. It was later converted and altered and they understand that. When HPC looks at the exterior features they are looking at something that appears to be a house. This is not her home it is a rental property and she doesn't think the

\$15,000 applies to this property. Counsel Gordon stated that he is a licensed attorney and he doesn't agree. There were other things that come into play and that is whether it is a structural change. He does agree with Counsel Jones about coming before the HPC. Ms. Necas asked if he was wanting this to be remanded and HPC would approve contingent on a new design of the door? Counsel Gordon stated that he thinks remand is the right thing to do. He wants them to look at the other similar design doors and see if this one qualifies for an exception. He thinks that due process requires that she be accorded clear charges for what she has done wrong and remedied. They don't need an angry architect in there demanding that she abide by the permit issues. That is not a basis for denying the application. Maybe they need to do a better job on their part bringing before the HPC, all the other doors to show them what is being done in that area. Ms. Bowers asked if the COA was supposed to be obtained before the building permit? Counsel Gordon stated that was correct. Ms. Bowers asked if the HPC was supposed to determine if she was to get a COA and then she would get a building permit? Counsel Gordon stated that was correct. Ms. Bowers asked if the HPC was supposed to decide if she got the building permit? Counsel Gordon stated that was correct. Ms. Bowers asked if the way it was supposed to work is they get the COA first, then the building permit. Counsel Gordon stated that was correct.

Counsel Jones stated that the City of Greensboro is a certified local government under Federal and State laws. The City Council must make a good faith effort to appoint professional members from the disciplines of architectural history, planning, architecture and other related disciplines. So, the "stay in your lane" comment from Counsel Gordon is not applicable to the HPC. City Council has a requirement to appoint people from the historic districts. There was a lot of discussion about the timing of the project. Part of Mr. Smith's role is to give them advice about architecture and building processes. This is the first time she has heard of the appellant being an engineer. She was never recognized as an expert engineer at the HPC hearing. The standards of Section 160A-393(k) talk about competent evidence. So, the HPC is looking at the structure as it was originally built. When they look at the photo that is in the Board's packet they can see that the two doors on the same side of the building are not consistent. There was no evidence presented at the HPC that these doors would predate the Historic District. It is hard to say just because there are other doors doesn't necessarily decide to deny one application. Mr. Oliver asked if the remedy is to close it back in and then apply for a building permit. Counsel Jones stated that if they remand it the applicant would have to go back and get a COA. If the COA is not approved, she must restore it back to the way it was. That is why they look at it as if the work had not been done. If they affirm tonight, then she must restore the property. On the other hand, the Board could remand this back with instructions for the HPC to consider additional information or make additional findings. Ms. Eustathiou would have an opportunity to appeal the HPC decision or she can go with a different application and go through the process. Ms. Skenes stated that Google photos would not show a door there because it had been covered over with siding. Counsel Jones stated they did not have any archival photos of this property. So, there is a conflict between what could be best as they could see and the testimony of the applicant. If the appellant were getting a building permit, then they would have gone inside and been able to see the door that was there before. The HPC discussion did not include a motion that says the door would not be allowed. You can create new openings in historic structures, but there are Guidelines to be followed. The statement by Stefan-leih Geary was not incorrect. A new opening could be allowed by the Commission under certain circumstances. Ms. Skenes asked if staff could approve the door design. Counsel Jones stated that if it is a replacement, yes.

Chair Truby stated that he read the entire transcript of the meeting. However, reading a transcript and being there and hearing the tone of the voice or the attitude of the speakers is different. He stated he has never been in a meeting where someone threatened to leave or quit. Counsel Jones stated that she has sat at many meetings and she has never seen that happen before either. Chair Truby asked if Commissioner Smith was mad. Counsel

Jones said that it was not a friendly and cordial exchange. Chair Truby asked if that would be a reason to remand it, if she did not get the proper hearing. Counsel Kelly stated that he didn't know if temperament is a reason to remand. Counsel Jones stated that if it was remanded Commissioner Smith may be there, or he may not be there. Counsel Kelly stated that if they thought because of those comments that the appellant did not get a fair hearing then that would be a reason to remand. Counsel Jones stated that the HPC also has an opportunity for a reconsideration. Sometimes that is based on evidence that was not presented at the time of the hearing. The applicant has asked for an appeal not a reconsideration.

Counsel Gordon stated that they all needed to come together on this. If they can all come together on how to fix this, he thinks that the fix is to remand. They need to encourage people to restore these buildings. If they don't remand this she will have to close that in, but first she will have to have a building permit. This should have a reconsideration, but they will get there.

Chair Truby asked if there was anyone wishing to speak in favor of this matter.

David Arneke, 922 Carr Street, stated that he is a member of the HPC and needs to respond to a couple of points that Counsel Gordon made. The way that the Commission works is that they make their decisions based on the facts of the specific property before them. To say that a door that is approved for one property must be approved for another property can't be done because there is a great variation to all the buildings. The roof for example is a flat roof and he lives in a two-story house that was built in 1895. If he wanted to put a flat roof on it, that would look very out of place. By Counsel Gordon's logic because there is a building with a flat roof in College Hill then he should be able to put a flat roof on this property. It would not further the objective of maintaining the historic character of the district to make decisions on one property based on the facts of another property. That is why they were being asked if that door was appropriate for this specific building. One thing Counsel Gordon didn't mention in his discussion was the basis of the decision. Mr. Arneke himself made the motion on the Findings of Fact. He stated that the Staff comments, Windows and Doors guidelines and Changes to Non-contributing Structures were the Findings of Fact. The vote was not based on permits. It was based on the Guidelines, the information in the application, and the Staff comments. Members of the Commission went by and looked at that building. They do that routinely as individuals before deciding on these applications go by and looked at the structure. The basis of the decision had nothing to do with building permits. Ms. Bowers asked if the reference to the project being incongruous was about the style of door or the opening. Mr. Arneke stated that was about the style of the door. The Windows and Doors guidelines shows examples of doors that can be approved. That does not mean any of those doors could be put on that specific property. Mr. Oliver stated that if this was remanded, it sounds like the Commission would not change its determination. Mr. Arneke stated that it depends on what the facts of the case are.

James Keith, 303 S. Mendenhall Street, stated that he is the President of the College Hill Neighborhood Association. They are asking that the Board uphold the HPC decision to deny, because they see this process as a very simple one. He noted that he had added an entry onto his home and he went through the process of finding the appropriate door and it cost a lot of money. It had to be made of the right material. He accepts that as an owner in College Hill and they all must accept that there are Guidelines that dictate how they treat the exterior of their home. It is no different than buying a new house in a neighborhood with an HOA.

Stefan-leih Geary stated that she works for the Planning Department as an historic preservation planner and she is one of the Staff members for the HPC. She stated she had done the presentation the evening of the HPC meeting. Ms. Skenes stated that she was interested in Stefan-leih Geary's comment about if the appellant had come in and sat down and worked through the design and material issues, that it could have been approved at the staff level.

Ms. Skenes asked if staff was even concerned about whether there had been a door opening there previously. Stefan-leih Geary stated that they received a COA application that simply said replace the door. After getting a COA application staff does research, visits the site, and do archival research that can use Google Maps. When she did that she found the image that showed the opening was covered by siding. Staff is only able to look at the exterior of the property that there is no way of knowing if there is framing for a door on the inside. When they are contacted by a property owner they always visit the site, meet with the property owners and their contractors. Most likely they would be taken into the building where they would have been able to tell that there was a door there previously.

Ms. Geary then noted that when they are talking about matching door styles they are talking about the two doors on the side of the building. Staff did offer to look at different door designs and the applicant was not willing to do that. Ms. Skenes asked if the Board agrees with the denial from the HPC, the applicant can apply for a COA with an appropriate door, design and material is that enough of a change to warrant her being able to come back and not have to close that door up until she went through the process the second time. Stefan-leih Geary stated that there must be a substantial change. They would have to show some evidence that the opening has some historic merit. She does not recall the argument about having a second fire escape door was made at the HPC meeting. Procedurally, if the denial is upheld then yes, the applicant would be required to come in and remove the door and framing and put siding back in place. If they wanted to pursue the fire safety issue there would be some discussion on that. If the Building Inspector came in and said that they have to have two entrances and that is what Ms. Hodierne was trying to get at when she asked about a compelling reason for this opening. Ms. Skenes stated that if they remand it back they can document whether that door was there or bring into play fire safety and talk about proper materials and design. Stefan Leih Geary stated that would be up to the applicant to provide that level of documentation. Ms. Skenes asked to clarify if everything would stay the way it is until it went through the full procedure, Counsel Jones stated that when after-the-fact COAs are denied, they normally would say you have to restore the property in so many days. Stefan-leih Geary stated that if they are leaning toward remanding it is there a time limit that requires the applicant to come back to HPC. The earliest it could be heard is at the February meeting. Counsel Jones stated that if they affirmed the HPC decision then it becomes the decision of the Zoning Administrator as to when to start imposing civil penalties for noncompliance since the applicant is under a Notice of Violation. If they remand it no enforcement action would be taken, but they would have to give them instructions on the remand as to why it was not enough and what they need to do. Mr. Oliver asked them to clarify when the COA was applied for. Stefan-leih Geary stated that application was received on October 12, 2018 and it was heard on October 31, 2018. Mr. Oliver stated that the application was made after they had already done the door. Stefan-leih Geary stated that was correct.

Chair Truby asked if there was anyone wishing to speak in opposition to this matter and no one came forward. There being no other speakers, the public hearing was closed.

Board Discussion:

Chair Truby stated that he knows nothing about historic stuff or roofs. It is the HPC's decision to decide what goes on with this house. The applicant knows they live in an Historic District and they know what the rules are. He doesn't think it is fair that she didn't go through the process like everybody else in College Hill has to do. The Board is caught in a situation that if they uphold the HPC decision, the appellant will have to fill in that door opening and start all over again. If they remand it back, then maybe they could come up with a design that would satisfy the HPC. Remanding it back to the HPC gives them the opportunity to work something out. If they don't remand it back, they may have to wait a year to reapply unless there is substantial change. Mr. Waddell stated

that he agrees with Chair Truby that they should remand. He has questions about the actual review period and the time that was available to look at this case. Reading through the minutes there was a lot of confusion about the fire Codes and its use. Ms. Bowers stated that she agrees they should remand. It was unclear about what was being voted on, the door or the door opening. Mr. Oliver also agrees with remanding. Ms. Bowers stated that they need to make it clear on what they are voting on. Ms. Skenes stated that she suggests that they remand it back to the HPC to consider with the opportunity to present evidence regarding; the existing of the door opening; to work with Staff regarding the proper material and design with the replacement door; and to present evidence regarding fire safety. Ms. Necas stated that she agrees with everyone else. Ms. Skenes stated that she suggests remanding it back to HPC to consider those items. Counsel Kelly stated that they could do that. Mr. Waddell wanted the Commissioners and Staff to have time to get that evidence, to do their due diligence and to be clearer on what facts they are using to make their decision. Chair Truby suggests that they get somebody to see if that door can even be there based on Building Code requirements. Counsel Kelly stated that the application said only "change side doors" and he thinks one of the things they want HPC to consider is whether a door opening is appropriate and what type of door would be appropriate. He wonders how that would work when that was not originally applied for. Ms. Skenes stated that they talked all around it. Ms. Bowers stated that they are not asking them to consider it. They did consider that and what was the vote based on. They were told tonight that it was based on not agreeing that the door was the appropriate style, but that is not apparent from the record. Counsel Kelly stated that when they are remanding it, remand it to consider what they do. Remand for them to rehear the case and let them do what they normally do. Ms. Skenes stated she was going to put in to reconsider the following items.

Ms. Skenes moved that in regard to BOA-19-02, 820 Spring Garden Street, to remand this case back to the Historic Preservation Commission to reconsider with the opportunity to present evidence regarding; the existence of the previous door opening; to work with Staff regarding the proper material and design for replacement door if found reasonable; to present evidence regarding fire safety, seconded by Mr. Waddell. The Board voted 6-0 to remand the matter back to HPC. (Ayes: Truby, Waddell, Oliver, Necas, Ramsey, and Skenes. Nays: None).

OTHER BUSINESS: NONE

ACKNOWLEDGEMENT OF ABSENCES

The absence of Ms. Blackstock and Mr. Ramsey were acknowledged as excused.

ADJOURNMENT

There being no further business before the Board, the meeting ended at 7:33 p.m.

Respectfully submitted,

Chuck Truby, Chair

Greensboro Board of Adjustment

CT/jd:pr