

CITY OF HENDERSONVILLE
Historic Preservation Commission

Minutes of the Meeting of October 18, 2023

Commissioners Present: Jim Welter (Vice-Chair), Cheryl Jones, (Chair), Chris Battista, Jim Boyd, Jane Branigan, Crystal Cauley, John Falvo and Ralph Hammond-Green

Commissioners Absent: Anthony Baltiero

Staff Present: Alexandra Hunt, Planner I, Angela Beeker, City Attorney, Daniel Heyman, Staff Attorney, Lew Holloway, Community Development Director

- I **Call to Order.** Chair called the regular meeting of the Hendersonville Historic Preservation Commission to order at 5:00 pm.

- II **Public Comment.** Chair stated anyone wishing to speak would be allowed two minutes for public comment. Thomas Applebee asked if he could have four minutes. Chair stated they had a packed agenda and allowed three minutes. Mr. Applebee was still upset with the kiosks and has done some investigation into this and went to the City Council who said the reason they did not need the HPC's approval on this is because the kiosk are solar. He came back to the HPC and asked if there were any exceptions for solar and you told him no. He wants to know how the City Council gets away with putting up kiosks. He was concerned about having parking meter maids on the street instead of police officers. This is disturbing. He heard merchants were losing money but the kiosk are making money and he feels the revenue made from the kiosks should be distributed to the merchants. He talked about the parking garage and taxes. He discussed the struggles involved in using the kiosks and being overcharged. Would you rather look at a kiosk or look at a bear? He thinks the city should remove the kiosks and doesn't know why the HPC is not upset about it. He feels like the reason this lady got shot at McDonald's is because of police distraction because they are so worried about this parking meter stuff. He wishes there was something he could do but when he calls City Council they hang up and he never gets a return call. The city administrator never calls him back either.

No one else spoke during public comment.

- III **Agenda.** On motion of Commissioner Battista and seconded by Commissioner Welter the agenda was approved.

- IV **Minutes.** On motion of Commissioner Hammond-Green and seconded by Commissioner Branigan the minutes of the meeting of July 19, 2023 were approved.

- V **Old Business**
 - V(A) **Approval of the Findings of Fact.** On motion of Commissioner Welter and seconded by Commissioner Branigan the Findings of Fact for H23-045-COA were approved.

- VI **New Business**

VI(A) **Certificate of Appropriateness**, Tatjana Kopp, 1619 Kensington Road (File No. H23-079-COA). Prior to the opening of the public hearing, Chair announced that there are three applications for COA's tonight for the Commission to consider. One in the Druid Hills Historic District and two in the Main Street Historic District. Any persons desiring to testify at any of the public hearings must first be sworn as witnesses and will be subject to cross-examination by parties or persons whose position may be contrary to yours. A copy of the procedure and rules for a quasi-judicial hearing is provided on the back table next to the agenda. Since this is a quasi-judicial hearing, it is very important that we have an accurate record of the hearing. Therefore, we must ask that you refrain from speaking until recognized by the Chair and, when recognized, come forward to the podium and begin by stating your name and address. Anyone present who has knowledge of anything of value that has been given or promised in exchange for a position to be taken on these applications should disclose it now. We will now officially take up agenda item H23-079-COA. Anyone wishing to speak during the public hearing should come forward and be sworn in. Chair swore in all potential witnesses.

Chair opened the public hearing.

Alexandra Hunt stated the city is in receipt of a COA application from Tatjana Kopp for the addition of a shed in the rear yard of the subject property located at 1619 Kensington Road. It possesses a PIN of 9569-43-6385 and is located in the Druid Hills Historic District. The application is considered a major work according to the standards of the Residential Historic District Design Standards.

Ms. Hunt showed the historic overlay map which is included in the staff report and the presentation. The subject property was shown in red.

Ms. Hunt gave a history of the subject property which is included in the staff report and the presentation. Past COA approvals for the property were also listed.

Site photos of the property were shown and are included in the staff report and the presentation.

The proposed shed and the site plan were shown and are included in the staff report and the presentation. Specifications state the shed will have to be assembled on-site. If approved the applicant will have to obtain a zoning permit for the shed at which time the Planning staff will review the site plan and determine if the setbacks are met.

The Design Standards that apply to this application were included in the staff report and the presentation.

Chair asked if there were any questions for staff.

Ms. Hunt stated Tatjana Kopp resides in California but a representative was there to answer any questions the Commission may have.

There were no questions.

Chair closed the public hearing.

Chair discussed the shed being screened from the road. Discussion was made on the applicable Design Standards.

Commissioner Welter moved the Commission to find as fact that the proposed application for a Certificate of Appropriateness, as identified in file # H23-079-COA and located within the Druid Hills Historic District, if added according to the information reviewed at this hearing and, with any representations made by the applicant on record of this hearing, is not incongruous with the character of the Hendersonville Historic Preservation Commission Design Standards (Residential) for the following reasons: 1. The shed is compatible with the traditional relationship of accessory buildings to the main structure and the site in the district. (Sec. 2.5.7) 2. The shed is compatible in size, form, height, proportion, materials and details with historic accessory structures in the historic district. (Sec. 2.5.8) 3. The shed is screened from view from the street. (sec. 2.5.8) Commissioner Hammond-Green seconded the motion which passed unanimously.

VI(B) **Certificate of Appropriateness, Patty Adamic, 303 N. Main Street (File No. H23-068-COA).** Chair sworn in all potential witnesses that wanted to speak during this portion of the public hearing.

Chair opened the public hearing.

Alexandra Hunt, Planner stated the city is in receipt of a Certificate of Appropriateness application from Patty Adamic for the replacement of existing vinyl windows with new vinyl window at the subject property located at 303 N. Main Street (PIN 9568-77-8873) and located within the Main Street Historic District. The replacement is considered a major work to be reviewed by the Commission.

The subject property is a contributing two-story brick building and is currently the location of Mike's On Main restaurant.

The Main Street Local Historic District Overlay Map was shown and is included in the staff report with the subject property in yellow.

An aerial view of the property was shown and is outlined in red. This is included in the staff report.

A history of the subject property was included in the staff report and the presentation. The subject property is a contributing two-story brick building and is currently the location of Mike's On Main restaurant.

Sometime prior to the local historic district being established the windows were replaced with vinyl which is what is currently there today. Prior COA's for the property were listed and included in the staff report.

Site images submitted by the applicant were shown and are included in the staff report and presentation.

The scope of the work and the estimate by Dunlap Construction was submitted with the COA application and included in the staff report.

The proposal is to replace 17 total windows. The design is single hung vinyl windows.

The Design Standards that apply are included in the staff report. Ms Hunt stated she would be happy to answer any questions and the applicant is here as well.

Chair asked if there were any questions for staff.

Commissioner Hammond-Green asked if the applicant was informed about vinyl windows. Ms. Hunt stated the applicant was provided the Design Standards and reference to the artificial materials policy and the applicant may have provided additional quotes since the last meeting was canceled. The applicant can speak to this.

There were no further questions for staff.

Chair asked the applicant to come forward. Patty Adamic, 128 Apache Drive stated her name and address for the record.

Ms Adamic stated she would like to replace the windows in her building. When she reached out to Dunlap Construction he came in and did a quote on the windows for what was already in there. She had asked for the windows not to open from top to bottom because through the tremors the building shifted so it is hard to push the windows back up. Currently they have windows that will not stay up and they have sticks holding them up. When they came back with the proposal for the vinyl they just open up instead of up and down. They want to replace all four windows in the front and all of the windows on the side of the building. On the back of the building there are four windows but they perfectly fine. There are power lines on the back of the building which make replacing them difficult. The property owner Love In An Apothecary, she came up in September and agreed they should not replace the four windows in the back. They can replace the wood and caulk in and the windows will be fine in the back. That took them from 21 windows down to 17.

Ms. Adamic stated since then they found out that vinyl is not in the standards and 20 years ago when she did the renovations it was ok. Sometime between then and now vinyl is not ok. She did get bids for aluminum and wood. She was told the Commission would prefer wood but aluminum may be considered. She has those estimates and is hoping the Commission will consider the vinyl because the cost difference is rather large.

Ms. Adamic worried about the building with the replacement of 17 windows. The owner recently passed away but the lady in charge of the estate wants to bring the building up to good standards. Ms. Adamic stated she would really like the Commission to consider the vinyl windows because it is just cost effective. She stated the original bid for vinyl is \$36,000, the aluminum is \$46,000 and the wood is \$53,277. They have been here for a long time and they have to replace the façade as well and she would like for the Commission to please consider the vinyl. She pointed out the cracks that have appeared on the façade from the tremors. They did put in a roof and a new kitchen floor which is costing about \$40,000.

Chair asked Ms. Adamic to tell the Commission more about the quotes she received. Is the quote for aluminum clad? Ms. Adamic stated the quote says aluminum clad window replacement and the other one is wood.

Chair motioned for the quotes to be labeled as Applicant's Exhibit A (aluminum) and Exhibit B (wood). Ms. Adamic stated these windows have been in for 20 years and they basically haven't been too bad until the last couple of years. The reason they are replacing them instead of fixing them is because you cannot get the material any longer and they do not want it to look bad. She stated there is a cracked window upstairs and they want \$600 just to replace the glass. She stated duct tape is covering everything.

Chair explained that last year the guidelines were changed to standards so they do not have the luxury of deviating. The standards now say it is not permissible or proper to replace vinyl with vinyl.

Chair asked if there were any questions for the applicant.

Commissioner Branigan wanted clarification on the replacement of windows or just the trim on some of the windows. Ms. Adamic stated the smaller windows on the side are just the trim. There are three of them and they are original. She stated the building is in really good shape. She would like to see the windows replaced opposed to repairing them.

Commissioner Welter asked if she had looked at other vendors for pricing. Ms. Adamic stated she felt that this one had done their homework. She had reached out to several folks and no one wants to take on the building. They don't put commercial windows in historic districts any longer because it is too hard. Dunlap is the only one that said that they would do the work. Ms. Adamic stated a guy from Asheville that does historic preservation had turned down the job. He didn't actually turn it down, he just never showed up for the meeting with the owner. She did reach out and he came and looked and did not get back to her.

Chair asked no matter what window she uses they will look the same. Is she going with the one over one? And it will fill the opening? Ms. Adamic stated absolutely. They measured each window and they have to be built to spec. They are all being built and based on your decision it will take six weeks to get them.

Chair asked if the Commission or if anyone in the audience had any questions for the applicant. There were no further questions.

Chair asked if anyone would like to speak in favor of the application or if anyone would like to speak against the application. When no one spoke, Chair closed the public hearing.

The Commission discussed the motion and the Design Standards.

Commissioner Battista stated he knew Ms. Adamic and has known her for a very long time. She did contact him previously about this but he told her they could not talk about it. He wanted to disclose this and let the Commission know they have not had any conversation about this application. Chair asked if he felt like their relationship would impact his decision. Commissioner Battista stated no. Angela Beeker, City Attorney stated as long as he feels like he can remain fair and impartial, he can remain.

Commissioner Welter stated he thinks it is pretty clear that vinyl cannot be used. Chair stated now that they have standards it is pretty clear. It clearly says vinyl is not appropriate. The Commission discussed the wood aluminum clad or wood windows being acceptable.

Chair reopened the public hearing.

Chair asked staff if they could approve in one motion as long as Exhibit A or Exhibit B is presented. Ms. Beeker asked you mean give her a choice. Chair stated yes, because they both meet the standards.

Chair closed the public hearing.

Discussion was made on the motion.

Commissioner Welter moved the Commission to find as fact that the proposed application for a Certificate of Appropriateness, as identified in file #H23-068-COA and located within the Main Street Historic District, if added according to the information reviewed at this hearing and, with any representations made by the applicant on record of this hearing, is not incongruous with the character of the Hendersonville Historic Preservation Commission Design Standards including Exhibit A and B and that the subject property is a contributing structure and the proposed windows do not diminish the original design of the building or damage historic materials and features. (Sec. 3.4.2.10). The proposed windows as presented in Exhibit A and B are set forth in Section 3.8.1 of the Artificial Materials Policy replacing vinyl with traditional materials. Commissioner Falvo seconded the motion which passed unanimously.

Chair made a motion to go into closed session to consult with their attorney to preserve the attorney/client privilege as allowed by N.C. General Statutes Section 143-318.11. Commissioner Welter seconded the motion which passed unanimously.

VI(C) **Certificate of Appropriateness**, Hannah Michalove of Allen, Stahl & Kilbourne, PLLC, 225 N. Main Street (File No. H23-067-COA). Chair stated before they swear witnesses she asked if there was anyone here that wishes to be a party, instead of a witness. Jason Krauss stated he was corporate representative for the applicant Hendersonville Holdings. Chair stated they were asking members of the public that may want to be a party instead of a witness. Chair continued that is there was anyone that wishes to speak during the public hearing as a witness to please come forward and be sworn in.

Chair opened the public hearing.

Alexandra Hunt, Planner stated the City is in receipt of a Certificate of Appropriateness application from Allen, Stahl & Kilbourne, PLLC for a rooftop deck with access from the second-floor residential unit located at 225 N. Main Street and the addition of two windows on the south façade and one window on the rear façade on the second story of the building.

The subject property is located at 225 N. Main Street (PIN 9568-77-8673) and is located within the Main Street Local Historic District.

The applicant has provided elevations which are shown as Exhibit B. This is considered a Major Work according to the standards of the Main Street Historic District Design Standards.

A vicinity map was shown, subject property located in yellow and is included in the staff report.

An aerial view was shown of the vicinity outlined in red and is included in the staff report.

The history of the subject property was shown and is included in the staff report and presentation.

Site images of the subject property were shown and are included in the staff report and presentation.

The proposed roof top elevations submitted by the applicant were shown and included in the staff report.

The proposed windows on the south and the rear were shown and are included in the staff report and presentation.

The Design Standards that pertain to this application were included in the staff report.

Chair asked if there were any questions for staff.

There were no questions for staff.

Chair asked if the applicant would come address the Commission.

Bo Carpenter, Attorney with Allen, Stahl & Kilbourne, stated Hannah Michalove has submitted this application on behalf of their clients, Hendersonville Holdings. Their law firm is in Asheville at 20 Town Mountain Road. He is here to represent Hendersonville Holdings in this application. This is an application to improve the building. There are side and rear windows and also a rooftop deck that they are proposing for approval of a COA tonight.

Mr. Carpenter first addressed the side and rear windows. Chair stated that they have already heard an application on this previously she asked Mr. Carpenter to tell the Commission why this application is different and why it would be a new matter. Mr. Carpenter stated he believes it is substantially different in the design and application itself and the purpose of this application as well is to include all of the changes at one time so they will not have to come back before this Board again. They thought it was more appropriate for the Board to consider everything at once as opposed to the piece mill that was initiated earlier this year. He spoke to his client earlier today and if these are approved they will withdraw the appeal that is out there currently. This would replace what happened earlier this year. Chair stated what they can do is listen to his reasoning why and they have some concern that windows may not be substantially different and the rooftop deck they have clearly not heard before so they will listen to his reasoning.

Mr. Carpenter stated the element 3.3.9 which is concerning compatibility of the existing side and rear façade. Mr. Carpenter stated he would pass out photos that were taken today and he will move these be submitted into evidence but not at this time. But they will show that the windows are compatible.

Mr. Carpenter asked the Commission to take and look at the photos and compare it with the design. He pointed out the matching art design on the windows. He stated the side windows are similar to a number of structures in downtown. Chair asked if this was the same building or a separate building. Mr. Carpenter stated he is not sure but he believes they have shared walls and it is the same structure. Mr. Carpenter stated compatibility will be easy for them to meet. Another element 3.4.2 that is where

the changes would not diminish the design of the building or damage historic materials and features. That element is met here. The new design windows do not diminish the design of the building. They are designed to complement the façade. The rear window is pretty different from what is there right now. The new design is very close to other designs that you see in downtown. There is no damage to historic materials with these plans at all. The final factor is the 4.3.3. This gets into the rooftop patio. In your packet there is a conceptual drawing, this would be potentially similar to that. This deck/patio will be hard to see from the front or the sides. It doesn't mess with the existing skylights. They chose the location of this very carefully and the design matches very closely with the Shine restaurant across the street. It will be consistent with downtown.

Mr. Carpenter went over the affidavit from the architect. It addresses all the elements that apply here. He asked that the Commission consider the affidavit and the pictures as part of the evidence. The affidavit and photos constitute clear competent and substantial evidence for this hearing. He asked that the attachment and the exhibits be submitted into evidence.

Mr. Carpenter stated he believes this application does meet the standards and the guidelines. This is a pretty straightforward application of the elements that you are here to consider.

Chair stated they would discuss the windows first and then the rooftop deck.

Chair asked if there any questions for the applicant related to the windows.

Chair stated Section 3.4.2.10 states it is not appropriate to introduce new windows or doors if they would diminish the design of the building or damage historic materials or features and his testimony was that he doesn't think it would damage historic materials or features if you cutting through historically significant concrete and cement which is through the design guidelines being significant, how is that not diminishing or effecting them? Mr. Carpenter asked if she was referring to the rear windows or side windows. Chair stated all the windows. He doesn't know the history of when the back window was installed. Taking the rear window out and replacing would align more with historical downtown and it will look a lot better. Chair stated no evidence was presented at the last hearing. Staff brought a window that was on Bliss, it was a window that was historically accurate to the building and there was no evidence or testimony about the window, has that changed since the last hearing? Mr. Carpenter stated he does not know, he was not here at the last hearing. Chair stated the window that is submitted is the same one submitted by staff at the last hearing. He would ask the Board to consider what is before it today and not consider the previous application. He thinks it is appropriate to only consider what is before you today. Chair stated if it is distinguishable from what was previously heard then they would consider it today. She is trying to figure out if there is anything new for them to consider. They have already decided this issue once. Mr. Carpenter stated if that is the Board's decision to not consider what is brought before them today then that is their prerogative to make. Chair stated the burden is on the applicant to show if there was windows that were actually on this building and if they meet the design standards. Mr. Carpenter stated he is not here to present evidence. The evidence they have is in the application that has been submitted with the affidavit and the pictures.

Chair asked if there was anything new in this application for the previous hearing. Mr. Carpenter stated he did not know. The request is for the Commission to consider what is before them today and not what was previously submitted.

Mr. Carpenter explained he was not part of the original proceeding and he does not know what is on the appeal. From a factual perspective, he does not know what is new or what was previously considered. It is the Board's responsibility to compare what is presented today and vote on it. If there is objection to the Board hearing today because it is not substantially different, that is the first he has heard of that. And that is the first his law firm has heard of that issue. This is new information to him and he believes to the firm and he believes to his client as well. He would ask the Board to consider what was before it and not what was brought to them previously. His understanding is there are differences to what was brought before but he cannot explain those differences. He asks the Board to only consider what is before it today and to see if it meets those standards. They plan to withdraw the previous application and the appeal and his client is open to any conditions the Board may have for the approval. One of those conditions could be to withdraw the application and withdraw the appeal. His client is happy to consider any reasonable conditions the Board would like to put on these changes.

Mr. Carpenter discussed there were no objections to this application. Chair stated no one has been asked to speak yet so there could be objections. Mr. Carpenter stated unless you have standing no one should be able to speak concerning this application. You can hear evidence but they would not have the right to stand up and object to anything. Given there is no objections he would be concerned if the Board was looking back at an issue that has not been raised by any of the parties and was just raised by the Board. He stated he is at a bit of a disadvantage because he stepped in to fill the attorneys' shoes handling this case as she had to take a leave of absence. He asked the Board to look at the application and the affidavit and make a decision based on that.

There were no further questions on the windows.

Chair stated since the rooftop part is new, did anyone have any questions on this for the applicant.

Chair asked about what could be seen concerning the railing, etc. Mr. Carpenter stated the goal is not to be able to see much. If there are any concerns with the railing or height, etc., he would be happy to consider those with the building code being what it is. The goal is to make it as minimally applicable as possible.

Chair stated 4.3.1 discusses terraces in the rear. Does he know why they wanted this in the front. Mr. Carpenter stated he does not know. He suspects it had something to do with access to the rooftop. They wanted to do the least amount possible on the interior to allow access so that the stairwell up there is replacing a closet as opposed to altering the building. He is speculating on that.

Discussion was made on the balcony and changes to the stairwell.

Mr. Carpenter stated the goal is make the materials consistent with the district. He asked the affidavit to be entered into evidence and they believe it shows the materials are consistent with the district. Chair stated they need to make a decision on the materials and if those are not disclosed they cannot make a decision. He read part of the affidavit and stated it is compatible with what is already there. The design will be minimally visible from street level. This affidavit is considered testimony and evidence.

Chair asked if anyone had any questions for the applicant. There were none. Chair asked if anyone in the audience had any questions. There were no questions.

Chair asked if anyone would like to speak in favor or against the application.

Sherry Wull, 229 N. Main Street stated she wanted clarification on the photos of the side windows where it is the People's National Bank she wanted to point out that is not the People's National Bank windows in the photo.

Chair asked if anyone wished to speak before she closed the public hearing.

Mr. Carpenter asked if the affidavit and photos been accepted into the record. Chair stated she had an objection because part of it is not accurate or it appears not to be. Ms. Beeker stated there is a difference in admitting something and the weight that you place on it after admitting it. You can admit it and then decide on what credibility that you give it. Mr. Carpenter felt the circumstances were reasonable and the affidavit should be admitted into the record.

The Commission discussed admitting the evidence into the record. Chair accepted the affidavit and pictures as evidence. This was labeled Exhibit A.

Chair closed the public hearing.

Chair made a motion to go into closed session to consult with their attorney to preserve the attorney/client privilege as allowed by N.C. General Statutes Section 143-318.11. Commissioner Welter seconded the motion which passed unanimously.

The Commission resumed their discussion. Chair asked the Commission to review the affidavit.

Ms. Beeker asked that the hearing be opened and let the one revised sheet be submitted into the record.

Chair reopened the public hearing.

Mr. Carpenter stated a revised sheet A 2.1 was submitted today. This addresses the different aspect that the Commission was talking about with respect to the side windows. If you look at the A2 previously all the windows are just squares. There are new design details and he passed that out to the Commission. Mr. Carpenter moved to submit the revised drawing as Exhibit B.

The Commission discussed some irregularities in the photos.

Mr. Carpenter stated the design for the windows was to make it consistent with the front and match the front.

Chair marked the revised sheet as Exhibit B and moved to include it as evidence. There was no discussion by the Commission. Exhibit B was accepted into the record.

Chair asked if there was anyone that wished to speak before they closed the public hearing.

Chair closed the public hearing.

Chair stated there was no objection so they can consider this a new application for the windows and the rooftop deck. They can consider the evidence or the lack there of and form a decision tonight. She did note these items were on the previous application. The Commission agreed that since there was no objection raised from the windows on the previous application, they would hear this application as a new one and take into consideration the evidence and make a decision on this application.

The Commission discussed the south windows with the amended design. Commissioner Welter stated everyone seems to be missing the fact that the concrete wall in the structure is the historic part of the building. Chair stated they did not get a clear answer as to why this is not damaging to the historic features. There is no way you can't damage historic features because you are cutting a window. Chair talked about the uniqueness of this building. This building was very intentionally designed without windows. There is nothing presented that shows windows on the side of this building. Chair doesn't see, based on what they have heard that this meets the standards.

The Commission discussed it was an attractive design, but it is not the original. The Commission discussed 3.4.2.10. There has been no testimony that this is a necessary design. This is elective.

The Commission discussed the rear façade window. They do have testimony that is not the original rear façade. The brick is older than 40 years which would meet the historic guidelines for preservation on its own. But it is not part of the original design. The Commission discussed the standards that would apply.

Chair stated if they decide this meets the standards they could put on there a condition that any fill would have to match.

The Commission discussed the standards for new design. Chair also discussed reconstruction. She discussed not knowing what the windows are and not having that information.

Chair stated the materials are up for discussion. They can address those and the structural concerns. The Commission discussed if this would fit the standards. Chair stated not knowing the materials if they are looking at approving this they will need to add conditions to make it compatible.

Chair stated her concern is, with the applicant carrying the burden she does not know that they have received enough testimony or evidence to tell us if this specific design fits the standards for this specific building. If the burden is on the applicant strictly speaking she doesn't know there has been a lot new to determine if this fits the standards or not.

The Commission felt like more specific information should be submitted to them.

Chair reopened the public hearing.

Mr. Carpenter stated he wants to make sure you are applying the right standards here. The standard is not that they can't make any changes to the historical building otherwise they would never be allowed to put a new window in a historic building. The standards do allow the installation of new windows. And there is a whole section 3.4.2 on windows and doors. And 4.2.10 addresses new windows. And that is the standard you are looking at, not whether it changes the building. Chair stated they do not have any specific details on if the standards are met and no details of the materials.

Mr. Carpenter stated as far as the materials go he does not care. If she wants to dictate the materials that are going there that's fine. As far as consistency with the existing details, the redesign was very specific in making the windows consistent with the details that are existing, in particular the balcony and the front façade. The side and the rear windows match the ones on the front. At some point that balcony was added is his understanding. How was that allowed to be added and not the windows on the rear and side. He believes the Commission is applying to high of a standard on this. For new design 3.3.9 new construction on the side and rear to make sure it is compatible with the existing side and rear facades in the district. Not on the building but the district and that is why there is so much evidence about what the district looks like, not so much the building. The job of the Commission is to look and see if these proposed changes fit with the historic nature of the district. Any change the historic building will have is a change to the building but the job of the Commission is to make sure it is consistent with district. And it is not so different than is what is there now.

Chair asked if his testimony is for 3.3.9 and the new construction is necessary. Mr. Carpenter stated he can't testify but it is necessary for the plans. When you are talking about applying codes like this as a general matter if there is any question about the interpretation of a language, ambiguity goes to the property owner. The law is very clear that the law does not like zoning ordinances and restrictions on personal property rights and if there is any confusion at all about what should apply, the standards are interpreted in favor of the property.

Chair and Mr. Carpenter discussed the standards and whether or not the standards were met. Mr. Carpenter felt like the standards have been met and that the Commission should approve it.

Chair closed the public hearing.

The Commission discussed the standards and it being the burden of the applicant to present evidence that the standards have been met. They also discussed putting conditions on the approval. The Commission took a vote and felt like the windows did not meet the design standards.

Chair stated the rooftop deck is completely new construction. They discussed it being very visible from the street. Chair stated new construction still needs to be compatible and they do not have a materials list. The Commission discussed not having a list of materials to be able to determine if the deck is compatible or not. They discussed the deck being obtrusive. They also discussed the stairwell. The Commission discussed the compatibility of the stairwell and the design. Chair stated she just hasn't heard evidence that this is compatible with the design elements on Main Street.

The Commission discussed leaving this open to give the applicant more opportunity to bring evidence to the Commission that the standards have been met.

Chair reopened the public hearing.

Chair stated they have come to a point where they can make a decision on the windows or the question would be if you or your client would like the Commission to hold this open based on the comments that have been heard and stated to redesign or provide additional information. Mr. Carpenter stated he has been listening to the comments on this and with all due respect they have been all over the place with their feedback. He hears concerns about it being too close to the front, the stairwell is too high, and he

is not hearing anything that is tied to the regulations. Chair asked if he would like them to hold this open or make a decision. Mr. Carpenter stated there is plenty of information before you to make a decision tonight. He hasn't heard from the Commission what specific information is lacking. Chair stated they do not have a material list. There is no evidence that the front positioned stairwell, that there is any others in the district or that it meets the design in keeping with the building. It's a building with a flat top and now they have a new protrusion. Those are the questions they are asking because they did not have any testimony or documentation. Mr. Carpenter asked if she wanted a materials list and what else. Chair stated testimony or evidence as to how the positioning of this meets the standards.

Mr. Carpenter suggested a condition that the materials be compatible with the building and have staff be able to approve that. Chair stated the standards require that the application be complete and it is supplemented with testimony and evidence on the record. They can't make a determination because they do not have all the materials and that is spelled out portion of the standards. Mr. Carpenter stated his interpretation is it is not necessary to list out all the materials as part of the application. Chair stated it is the applicants responsibility to carry the burden and present evidence that the standards have been met.

Chair asked if he would like them to make a decision or hold this open for more information. He would like to consult with his client first.

Chair took a recess for the applicant to consult with his client.

Mr. Carpenter stated he had talked with his client and he is eager to address the Commissions concerns and would like to hold it open and he asked that they hold open the whole application and not have a decision on the windows tonight. Thank you for holding open for the rooftop deck but he asks that the whole application be held open.

Chair stated the request has been made to hold open the whole application.

Chair discussed the applicant speaking with staff concerning the application. Ms. Beeker did not have a problem with this. Lew Holloway, Community Development Director stated he did not see that staff would have much to offer concerning this. The applicant has been made aware of what the Commission is looking for.

Chair stated no decision was made on the application and the application has been continued to next month.

VII *Adjournment.* The Chair adjourned the meeting at 8:26 p.m.


Chair