

**NEW BERN BOARD OF ADJUSTMENT
MINUTES**

September 24, 2012

The New Bern Board of Adjustment held its regular scheduled meeting on Monday, September 24, 2012 at 6:30 PM in the City Hall Courtroom, 2nd floor, 300 Pollock Street.

Members Present: Ms. Sarah Afflerbach
Ms. Lois Jamison
Mr. Benjamin Beasley
Mr. Kenneth Brown
Mr. Willie Newkirk, Sr.
Mr. David Herndon
Ms. Beth Walker
Mr. Phil Urick
Mr. Barry Evans
Mr. Jeffrey Midgette

Members Excused: None

Members Absent: Ms. Renee Murphy
Mr. John Reichenbach

Staff Present: Mr. Bernard George, Planning Division Manager
Ms. Tharesa Lee, Development Services Staff

Acting Chairman Sarah Afflerbach opened the meeting noting that retiring Chairman Risty was unable to attend due to illness, and she would be acting chair for the duration of this meeting.

Staff Bernard George opened with a prayer.

Retiring board member Thomas Hardin was recognized for his service. Alderman Kinsey offered his thanks for the service Mr. Hardin had provided to the city.

Acting Chairman Afflerbach requested any persons offering direct testimony for the record be sworn in. Staff Bernard George swore in three attendees

Development Services staff member, Tharesa Lee, swore in new board members Lois Jamison, Benjamin Beasley and Kenneth Brown. Alderman Taylor and Alderman Kinsey offered their appreciation to the new members.

Roll call was taken and a quorum declared.

Minutes: Reading of the minutes from the previous meeting was waived by unanimous consent. Minutes were approved with motion by Mr. Barry Evans, second by Mr. Herndon and unanimous vote of the Board.

New Business:

A. Consideration of an appeal from the decision of the Historic Preservation Commission to deny a Certificate of Appropriateness for incongruous roofing materials used to replace a standing seam roof at 1015 N. Craven Street.

Mr. George advised the board members that their packets included an application for an appeal of the decision of the HPC who determination that the appellant's roofing material was incongruous. This meeting was held August 22, 2012. Notices were provided to the public, which were also included in the Board's packet. The HPC's decision to deny the applicant's application for a Certificate of Appropriateness was based on the materials used. Mr. George explained the process taken by the HPC Board in coming to this decision. Mr. George stated that the Board is asked to focus on the merits of this appeal and if the HPC Board followed due process in reaching its decision. He further stated the applicant is in attendance to make his appeal argument. In addition, City Attorney Scott Davis is also in attendance. According to Mr. George, the required process is to examine the decision and determine if the HPC followed its rules of procedure, not to re-hear the case. Two points made by the applicant will be re-iterated; 1) Was a roof sample provided to Mr. George? Yes – verified by the meeting minutes and transcript from the HPC meeting. 2) And has the HPC ever approved a roof of this type with Certificate of Appropriateness?

Applicant Comments: W. Hugh Howard came forward to discuss the specifics of his appeal. Item number 10-D & E of the appeal were discussed. According to Mr. Howard there was no competent material or substantial evidence provided to support the decision. Mr. Howard noted he provided a sample of the material he was going to use for his roof, but Mr. George did not have the piece of roofing material with him during the August 22nd meeting, so the HPC members went off of pictures to make their decision. 10-E: The decision was arbitrary and capricious. Mr. Howard advised on August 22nd, the day of the HPC meeting, Mr. George called requesting a meeting. Mr. Howard met with Mr. George and Chief Building Inspector John Clark. In their discussion, it was mentioned there were 4 other houses within the Historic District that share the same roof material as Mr. Howard's. They drove to these locations and confirmed that at least 3 of these houses did indeed have the same material as Mr. Howard's roof. Mr. Howard noted that during the August 22nd HPC meeting, Mr. George did not provide that information to the Board.

Acting Chairman Afflerbach asked Mr. Howard if during the August 22nd HPC meeting, he presented to the HPC that there were these 4 other houses in the Historic District that shared his roofing material. Mr. Howard advised he did not, as it was his expectation that Mr. George would advise the Board of this, which he did not. He feels due to this, the Board members did not have all the necessary information to make an educated decision.

Board member Brown asked if Mr. Howard currently resides in the Historic District, to which he answered he did not, but has owned for the past five years two homes in the District. Board member Hardin questioned if he understood the requirements of repair within a historic district. Mr. Howard noted he did understand, but did not realize how specific he had to be with his repairs. He advised he had a metal roof prior, and he replaced it with a metal roof.

Board member Herndon questioned if he considered speaking with someone on the HPC about requirements prior to repairing his roof. Mr. Howard noted he did not, nor did he know he was required to get a Certificate of Appropriateness. Mr. Howard also advised after the August 22nd HPC meeting, there was a suggestion made that the city's requirements of repair of Historic District homes be provided to the property owners in this district, upon which about one week later, he received a packet of guidelines in the mail.

Acting Chair Afflerbach advised most realtors selling homes within the Historic District are aware of the requirements for ownership. Mr. Howard noted when he purchased his first historic home 5 years ago, his realtor did not advise him of this.

Acting Chair Afflerbach reiterated that during the August 22nd HPC meeting neither Mr. Howard nor Staff Mr. George did not advise the board of the other four homes in the Historic District with similar roofs, nor did the HPC board members see the piece of roofing material Mr. Howard provided to Mr. George. She questioned if there were any other procedural issues that happened that night that needed to be discussed. There were none.

Board member Brown questioned if Mr. Howard was aware of the other four homes with similar material prior to the appeal. He advised he knew of the homes prior to the appeal, but did not have knowledge of them prior to putting on the new roof.

Board member Jamison questioned Mr. Howard in his decision to replace a standing seam roof with a wavy roof, if he felt that was like material. Mr. Howard noted both were metal roofs, so yes, he considered it like material.

Board member Newkirk questioned if Mr. Howard used corrugated steel material or v-crimp steel. Mr. Howard advised the old roof had a ¾ inch raised seam, every 18 inches. He then asked Mr. Howard if as a property owner of a historic home, he was required to go by a guidelines when making any repairs or changes to the home. Mr. Howard agreed, yes a homeowner does. Board member Newkirk then asked if Mr. Howard spoke with anyone prior to putting the new roof on, to which Mr. Howard answered that he did not.

When asked if he had ever done prior exterior work, Mr. Howard noted he changed the handrail on the front steps when he first purchased the home, and advised the HPC told him the changes did not meet the expectation, and therefore had to redo it to meet their requirements.

Board member Brown asked Mr. Howard if he felt the replacement roof was the same as the previously existing roof. Mr. Howard advised he felt the replacement roof was better than what was on there. Board member Brown advised the roof was not the same as what was there. Mr.

Howard disagreed.

Board member Jamison asked Staff Mr. George what the statute is on like material and design. Mr. George advised there was information provided within their packet on the Historic District Guidelines. One item states the HPC jurisdiction stands over the entire property and those changes could adversely affect the district, which is why a Certificate of Appropriateness is required to ensure the character of the neighborhood. Mr. George provided additional comments pertaining to the roof materials and the reasons behind why they are so specific.

Board member Herndon asked Mr. George about providing instructions to property owners and if he was able to provide guidance to Mr. Howard prior to him starting the roof repairs. Mr. George advised he did not speak with Mr. Howard prior to the roof installation. When the roof was about 90% complete, he received a complaint about the type of roof that was being installed. At that time he met with Mr. Howard and advised him of the process. Later a Certificate of Appropriateness application was completed. Mr. George noted he did indeed have a sample of the roofing that was in his office during the August 22nd HPC meeting and asked the HPC members if they would like to have a brief pause while he went back to his office to retrieve this sample. The HPC members did not feel it was needed based their onsite inspection of the roof and the photographs that were provided at the meeting.

Board member Phil Urick advised he did not see the specifics within the guidelines that are being discussed during this meeting. Member Afflerbach advised replacement must be in kind. Mr. Urick noted within the guidelines Mr. Howard did not have to replace metal with metal, but with a number of other options noted.

Board member Beth Walker questioned if Mr. Howard felt if his sample had been provided to the Board, if their decision might have been different. Mr. Howard advised he had no way of knowing that.

Chairman Afflerbach asked Mr. Howard if the roof was complete at this time. He replied it was not as he received a stop work order and complied.

Board members Newkirk and Brown and Mr. George had additional discussion regarding the four homes previously that had similar roofing material and expectations of the rules and regulations within the district.

Board member Midgette asked Mr. George to speak with clarity to the intent of the HPC's attention towards the existing roofs that did not have a Certificate of Appropriateness that are similar to the one Mr. Howard installed. Mr. George advised that the noncompliant roofs and the resulting enforcement actions were not the responsibility of the HPC. Rather the Development Services Department will be the entity involved in following up with enforcement to ensure compliance is met.

Chairman Afflerbach asked Mr. George if the four roofs are new. Mr. George advised they are anywhere from 5-12 years old and were installed without HPC approval.

Mr. Urick asked Mr. George if indeed these four roofs are out of compliance, what will be done to get these into compliance. Mr. George advised that the Development Services Department and the city attorney will seek a solution to bring the roofs in compliance. Mr. Urick then asked Mr. Howard if he himself put the roof on, or if he hired a contractor. Mr. Howard advised he hired a New Bern roofing contractor who has been in business for 35 years.

Public Comments: Mr. Rich Frye spoke, advising he is a 5-year member of the Historic Preservation Commission and lives on Queen Street. He advised that Mr. Howard's house is a contributing structure in the Riverside Historic District which puts it on a bit of an elevated platform. He noted the applicant purchased the house after the Riverside Historic District had been designated, therefore he believes some historic district guideline information should have been provided to him when he purchased the house. Mr. Frye also explained that the second property Mr. Howard owns in the Historic District, has had non-compliance issues in the past, which were discussed during the August 22nd HPC meeting. Regarding the roofing materials, HPC members are required to inspect the properties prior to the meeting. After having inspected the roofing materials onsite, Commissioners did not think it necessary to view sample materials at the meeting. Mr. Frye emphasized that, to his knowledge, the HPC had never approved stamped metal roofing material.

Ms. Sharon Buhawkis, owner of a home next to Mr. Howard's properties, spoke in favor of the changes Mr. Howard has made to his properties. She questioned where the Board was while the previous owner was installing ill-fitting windows that did not meet the guidelines. She has had issues with the high cost of metal roofs and poor installation. She did note that she felt architectural shingles would have been a better way to go for his home, considering proximity to the water and cost. Being an historic homeowner herself, she encouraged Mr. Howard to not take an inexpensive fix with these homes because it compromises the neighborhood. She stated her extreme dissatisfaction with his installation of a cheap metal roof.

Mr. Greg Ellerson spoke, noting his wife's family owns property next to Riverside Church and additional homes in Riverside. He advised his home was destroyed by Hurricane Irene and he is living on Guion Street while repairs are made being made. He advised Mr. Howard's home is a great improvement on what used to be there. He stated he used to be embarrassed driving down that street, but isn't anymore. He feels the Riverside District is "not equal across the board," with some residents following the rules, and others not.

City Attorney Scott Davis spoke, stating the two main issues are very narrow issues. The first being was it a mistake that the HPC Board did not see and touch the piece of roof material that Mr. Howard provided. The second being whether or not the board acted arbitrarily, due to the fact there are 4 existing nonconforming roofs in the district. He stated the board did not allow one home to use this material and not another. According to city files, a Certificate of Appropriateness was not issued for any of the noncompliant homes. There is a continuing probe into the four homes and their compliance.

Board member Brown asked Mr. Davis what would be required of Mr. Howard if the board denies the appeal. His advice was to work with property owners consistently to minimize

hardships while also achieving compliance. The time frame for reaching compliance is unknown, but he would encourage assistance in reaching compliance. Ms. Walker asked if the Board upholds the decision of the HPC, how it should best be handled. Mr. Davis advised the solution for Mr. Howard would be to take the sample back to the HPC, making the HPC look at the sample, and then make a decision. Mr. Davis advised he does not feel the current owners of the additional four properties being discussed are aware they are out of compliance. They will be notified and advised of their non-compliance.

There being no additional public comments, Acting Chair Afflerbach closed the public comment period.

Motion by Mr. Urick that the appeal be approved based on the fact that the sample of the roof was not provided to the HPC, nor were the facts brought to the HPC regarding the existing roofs in the district. Second by Ms. Jamison and an individual roll call was taken. Motion failed with a vote of seven (7) No's, and three (3) Yes's.

Motion by Mr. Urick that the applicant's motion for appeal is denied based upon the record was examined for no errors, procedures were followed, appropriate due process was provided, and the decision was supported by competent, material evidence, and was not arbitrary. Motion was seconded by Mr. Evans. An individual roll call was taken. Motion passed with a vote of eight (8) Yes's, and two (2) No's.

Mr. George reiterated the Board voted to deny Mr. Howard's appeal and advised Mr. Howard he had thirty (30) days to appeal the decision to the Craven County Superior Court.

Ms. Jamison noted every contractor in the city should have the same information regarding the guidelines required within the Historic District, the same as home owners to assist owners with not having to go through this process and monetary hardship.

B. Appointment of Nominating Committee for Chair and Vice Chair positions.

Mr. George advised the chosen committee would come back to the next meeting and elect officers at the beginning of the meeting. He noted the term is for one (1) year. Three board members volunteered for the nominating committee.

Mr. George handed out an appointment roster with board member names, appointment dates and terms. He stated there is one vacancy on the board due to the resignation of Mr. Starlin Beatty.

With no further discussion, meeting adjourned

Sarah Afflerbach, Acting Chairman

Bernard George, AICP, Secretary