

MEMORANDUM

TO: Chapel Hill Board of Adjustment

FROM: Ben Hitchings, Director of Planning and Development Services
Jake Lowman, Planner

SUBJECT: 704 E Franklin Street: Appeal of Historic District Commission Decision
(PIN 9788-78-1421, Project #18-037)

DATE: September 6, 2018

RECOMMENDATION

Town Staff recommends that the Board of Adjustment hear this appeal of the Historic District Commission's decision to deny an application for an After-the-Fact Certificate of Appropriateness for a standing seam metal roof at 704 E Franklin Street.

INTRODUCTION

Oakwood Properties and BuildSense, Inc, have appealed the Town of Chapel Hill Historic District Commission's March 13, 2018 decision to deny an application for an After-the-Fact Certificate of Appropriateness for a standing seam metal roof at 704 E Franklin Street.

The subject lot is located at 704 E Franklin Street, near the intersection of Park Place. The property is located in the Residential-2 (R-2) zoning district and the Franklin-Rosemary Historic District (HD-1). The property is identified as Orange County Property Identifier Number 9788-78-1421.

When a decision of the Historic District Commission is appealed, the Board of Adjustment must consider the application and take action in place of the Historic District Commission, based on the record. The Board of Adjustment may hear arguments of any interested party, but is not to receive additional evidence. To grant the appeal, a majority of the 10-member Board of Adjustment (6 members) must vote to overrule the Historic District Commission's decisions.

Attached application materials include two resolutions for the Board's consideration: Resolution A would overrule the Historic District Commission's decision to deny an After-the-Fact Certificate of Appropriateness (Attachment 1), Resolution B would uphold the Historic District Commission's decision to deny a Certificate of Appropriateness (Attachment 2). Additional attachments include the appeal application and exhibits (Attachment 3), the record of the Historic District Commission's decision from March 13, 2018 (Attachment 4), and an area map of the subject property (Attachment 5).

SUMMARY OF APPEAL

The appeal pertains to the Historic District Commission's decision to deny an application for an After-the-Fact Certificate of Appropriateness to construct a standing seam metal roof at 704 E Franklin Street.

The appellant's argument is that the Historic District Commission made multiple errors pertaining to the After-the-Fact Certificate of Appropriateness application for 704 E Franklin Street as specified in detail in the appellant's Statement of Justification (Attachment 3).

PROCEDURE

State statutes [[§160A-400.9\(e\)](#)]¹ set forth the responsibilities of the Board of Adjustment in appeals of the Historic District Commission decisions as follows:

“An appeal may be taken to the Board of Adjustment from the commission's action in granting or denying any certificate, which appeals (i) may be taken by any aggrieved party, (ii) shall be taken within times prescribed by the preservation commission by general rule, and (iii) shall be in the nature of certiorari. Any appeal from the Board of Adjustment's decision in any such case shall be heard by the superior court of the county in which the municipality is located.”

BuildSense, Inc, as the applicant before the HDC, and Oakwood Properties, Inc, as property owner, are parties aggrieved by the HDC decision and thus have standing under the applicable State statute to bring this appeal to the Board of Adjustment.

Subsection [4.10.1\(b\)](#)² of the Land Use Management Ordinance provides that, “*An application for appeal shall be filed, with the town clerk, within thirty (30) days of the filing of the decision being appealed or the delivery of any required written notice of the decision, whichever is later.*”

Subsection [4.10.1\(a\)](#)³ of the Chapel Hill Land Use Management Ordinance states that any decision of the Historic District Commission may be appealed to the Board of Adjustment, and shall be reviewed on the record. The Board of Adjustment's review and determination of the Historic District Commission's decision is “in the nature certiorari.” This means that the Board is to review the record of the case brought before the Historic District Commission ([N.C.G.S. 160A-388\(b1\)\(9\)](#)).⁴, and may hear arguments of any interested party, but is not to receive additional evidence.

The Board of Adjustment's responsibility to hear and decide appeals can involve 1) interpreting the meaning of provisions of the Ordinance that are unclear; 2) applying the meaning of the Ordinance to specific factual situations; and if necessary 3) correcting abuses of discretion or mistakes that may have occurred in administering the Ordinance. The scope of the Board's

¹ <http://chplan.us/NCGS-COA>

² <http://chplan.us/LUMO-Appeals>

³ <http://chplan.us/LUMO-Appeals>

⁴ <http://chplan.us/2qepScX>

review of the Historic District Commission is provided [in N.C.G.S. Sec. 160A-393\(k\)](#).⁵ To grant this appeal, a majority of the 10-member Board of Adjustment (6 members) must vote to overrule the Historic District Commission's decisions.

VISITING THE SITE

The property is located at 704 E Franklin Street, near the intersection of Park Place, in the Franklin-Rosemary Historic District. For additional information please refer to the area map of the subject property (Attachment 5).

We ask that any Board member interested in visiting the site do so separately from other Board members. Or, if you would like to view the site as a group, please arrange the visit through the Planning Department so that proper procedure can be followed in accordance with the State's open meetings law.

Any member who visits the site prior to the hearing is urged to share information with the other Board members during the hearing.

BACKGROUND

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| March 9, 2016 | Oakwood Properties acquired subject property. |
| May 12, 2017 | BuildSense, Inc. submitted an application for Certificate of Appropriateness for 704 E Franklin Street (Attachment 4). |
| June 28, 2017 | The Chapel Hill HDC approved a request to extend the existing porch and renovate the existing south stair and entry at 704 E Franklin Street (Attachment 4). |
| January, 2017 | Chapel Hill staff contacted BuildSense, Inc with a courtesy notice that an After-the-Fact Certificate of Appropriateness was required for the change in the roof material from composition shingles to a standing seam metal roofing. |
| February 7, 2018 | BuildSense, Inc submitted an application for an After-the-Fact Certificate of Appropriateness for 704 E Franklin Street (Attachment 4). |
| March 13, 2018 | The Historic District Commission (HDC) denied an After-the-Fact Certificate of Appropriateness to construct a standing seam metal roof at 704 E Franklin Street (Attachment 4). |
| April 20, 2018 | Leann Nease Brown, attorney, on behalf of Oakwood Properties and BuildSense, Inc filed an appeal of the Historic District Commission's decision to deny an application for an After-the-Fact Certificate of |

⁵ <http://chplan.us/2qeAc4C>

Appropriateness to construct a standing seam metal roof at 704 E Franklin Street (Attachment 3).

ATTACHMENTS

1. Resolution A - Appeal Approved: A Resolution Overruling the Historic District Commission's Decision to Deny an After-the-Fact Certificate of Appropriateness.
2. Resolution B - Appeal Denied: A Resolution Upholding the Historic District Commission's Decision to Deny an After-the-Fact Certificate of Appropriateness.
3. Application materials including an application form, notification materials, and statement of justification.
4. Record of the Historic District Commission's March 13, 2018 decision, including a Certificate of Appropriateness application, staff report, link to March 13, 2018 meeting video, a transcript of the March 13, 2018 meeting, March 13, 2018 meeting minutes, a Certificate of Appropriateness denial letter, dated March 22, 2018, relevant sections of the Land Use Management Ordinance and Historic District Design Guidelines, and prior Certificate of Appropriateness application and approval letter, dated July 11, 2017.
5. Area Map of the Subject Property.