

## **MEMORANDUM**

TO: Chapel Hill Board of Adjustment

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

SUBJECT: 1 Mint Springs Lane: Appeal of Historic District Commission Decision  
(PIN 9788-59-2423, Project #18-136)

DATE: March 7, 2019

## **RECOMMENDATION**

Town Staff recommends that the Board of Adjustment hear this appeal of the Historic District Commission's decision to deny an application for a Certificate of Appropriateness for the addition of a single bay garage, roof extension, and driveway expansion at 1 Mint Springs Lane.

## **INTRODUCTION**

William and Marcie Ferris, represented by their attorney, LeAnn Nease Brown, Brown and Bunch, PLLC, have appealed the Town of Chapel Hill Historic District Commission's October 16, 2018 decision to deny an application for a Certificate of Appropriateness for the addition of a single bay garage, roof extension, and driveway expansion at 1 Mint Springs Lane.

The subject lot is located at 1 Mint Springs Lane, at the end of Mint Springs Lane which intersects with North Street. The property is located in the Residential – 1 (R-1) zoning district and the Franklin-Rosemary Historic District (HD-1). The property is identified as Orange County Property Identifier Number 9788-59-2423.

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 a Certificate of Appropriateness (Attachment 1) and 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 October 16, 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 a Certificate of Appropriateness for the addition of a single bay garage, roof extension, and driveway expansion at 1 Mint Springs Lane.

The appellant's argument is that the Historic District Commission made multiple errors pertaining to the Certificate of Appropriateness application for 1 Mint Springs as specified in detail in the appellant's Statement of Justification (Attachment 3).

## PROCEDURE

State statutes [\[§160A-400.9\(e\)\]](#)<sup>1</sup> 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.”

William and Marcie Ferris, as the property owners, and as represented by their attorney LeAnn Nease Brown, as the applicants before the HDC, 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\(b\)](#)<sup>2</sup> 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\(a\)](#)<sup>3</sup> 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\(b1\)\(9\)](#)).<sup>4</sup>, and may hear arguments of any interested party, but is not to receive additional evidence.

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<sup>1</sup> <http://chplan.us/NCGS-COA>

<sup>2</sup> <http://chplan.us/LUMO-Appeals>

<sup>3</sup> <http://chplan.us/LUMO-Appeals>

<sup>4</sup> <http://chplan.us/2qepScX>

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 review of the Historic District Commission is provided [in N.C.G.S. Sec. 160A-393\(k\)](#).<sup>5</sup> 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 1 Mint Springs Lane 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**

March 9, 2016	Oakwood Properties acquired subject property.
May 10, 2018	William and Marcie Ferris submitted an application for Certificate of Appropriateness for 1 Mint Springs Lane (Attachment 4).
June 12, 2018	The Chapel Hill HDC continued the public hearing for the Certificate of Appropriateness application for 1 Mint Springs Lane to its next meeting (Attachment 4).
July 17, 2018	The Chapel Hill HDC approved several elements of the Certificate of Appropriateness application for 1 Mint Springs Lane, and took no action on the removal of an existing door and the addition of a single bay garage, roof extension, and driveway expansion.
October 9, 2018	The Chapel Hill HDC approved an additional element of the Certificate of Appropriateness application for 1 Mint Springs Lane, including the removal of an existing door.
October 16, 2018	The Historic District Commission (HDC) denied a Certificate of Appropriateness for the addition of a single bay garage, roof extension, and driveway expansion at 1 Mint Springs Lane (Attachment 4).

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<sup>5</sup> <http://chplan.us/2qeAc4C>

December 21, 2018    Leann Nease Brown, attorney, on behalf of William and Marcie Ferris, filed an appeal of the Historic District Commission's decision to deny an application for a Certificate of Appropriateness for the addition of a single bay garage, roof extension, and driveway expansion at 1 Mint Springs Lane (Attachment 3).

### **ATTACHMENTS**

1. Resolution A - Appeal Approved: A Resolution Overruling the Historic District Commission's Decision to Deny a Certificate of Appropriateness.
2. Resolution B - Appeal Denied: A Resolution Upholding the Historic District Commission's Decision to Deny a Certificate of Appropriateness.
3. Application materials including an application form, notification materials, statement of justification, and exhibits A through F.
4. Record of the Historic District Commission's October 16, 2018 decision, including a Certificate of Appropriateness application; transcripts and links to videos for the June 12, 2018 meeting, July 17, 2018 meeting, and October 9, 2018 meeting; meeting minutes for the July 17, 2018 meeting, October 9, 2018 meeting, and October 16, 2018 meeting; staff reports for the October 9, 2018 meeting and October 16, 2018 meeting; a Certificate of Appropriateness denial letter, dated November 26, 2018; and relevant sections of the Land Use Management Ordinance and Historic District Design Guidelines.
5. Area Map of the Subject Property.