

MEMORANDUM

TO: Chapel Hill Board of Adjustment

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

SUBJECT: 412 & 417 W Patterson Place: Appeal of Historic District Commission Decision
(PINs 9788-25-2298 & 9788-25-2240, Projects #19-027 & 19-026)

DATE: May 2, 2019

RECOMMENDATION

Town Staff recommends that the Board of Adjustment hear this appeal of the Historic District Commission's decision to deny applications for a Certificate of Appropriateness for two new single family residences at 412 & 417 W Patterson Place.

While there are separate appeal applications for 412 and 417 W Patterson Place, reflecting the two Certificate of Appropriateness applications submitted to the Historic District Commission, the properties are adjacent and under same ownership. The Historic District Commission chose to hold one public hearing and discuss them jointly, ultimately making a single motion to deny both Certificate of Appropriateness applications. Town Staff recommends that the Board of Adjustment review the appeals jointly, based on the same record, but make separate motions and take separate action for each individual property, reflecting the distinct Certificates of Appropriateness (Attachments 1-4).

INTRODUCTION

Jim Kitchen, represented by his architect, Keith Shaw, has appealed the Town of Chapel Hill Historic District Commission's February 12, 2019 decision to deny applications for a Certificate of Appropriateness for a two new single family residences at 412 & 417 W Patterson Place.

The subject lots are located at 412 & 417 W Patterson Place, at the end of Patterson Place, west of its intersection with Ransom Street. The properties are located in the Residential – 3 (R-3) zoning district and the Cameron-McCauley Historic District (HD-2). The properties are identified as Orange County Property Identifier Numbers 9788-25-2298 and 9788-25-2240.

Attached application materials include four resolutions for the Board's consideration: Resolution A1 would overrule the Historic District Commission's decision to deny a Certificate of Appropriateness for 412 W Patterson Place (Attachment 1) and Resolution B1 would uphold the Historic District Commission's decision to deny a Certificate of Appropriateness for 412 W

Patterson Place (Attachment 2). Resolution A2 would overrule the Historic District Commission's decision to deny a Certificate of Appropriateness for 417 W Patterson Place (Attachment 3) and Resolution B2 would uphold the Historic District Commission's decision to deny a Certificate of Appropriateness for 417 W Patterson Place (Attachment 4).

The Board's options are not limited by these draft resolutions. Based on the record of the Historic District Commission's decision and the Board's own hearing, the Board could consider taking some other action (for example, remanding the case to the Commission with instructions to approve the application, but also affording the Commission an opportunity to include conditions or to require adjustments to the application as proposed).

Additional attachments include the appeal applications and exhibits (Attachments 5 and 6), the record of the Historic District Commission's decision from February 12, 2019 (Attachment 7), and an area map of the subject property (Attachment 8).

SUMMARY OF APPEAL

The appeal pertains to the Historic District Commission's decision to deny applications for a Certificate of Appropriateness for a two new single-family residences at 412 & 417 W Patterson Place.

The appellant's argument is that the Historic District Commission made multiple errors pertaining to the Certificate of Appropriateness applications for 412 & 417 W Patterson Place as specified in detail in the appellant's Statement of Justification (Attachments 5 and 6).

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.”

Jim Kitchen, as the property owner, and as represented by his architect Keith Shaw, as the applicant 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\(b\)](#)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.*”

¹ <http://chplan.us/NCGS-COA>

² <http://chplan.us/LUMO-Appeals>

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 based 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 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 properties are located at 412 & 417 W Patterson Place in the Cameron-McCauley Historic District. For additional information please refer to the area map of the subject property (Attachment 8).

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.

BACKGROUND

May 18, 2018	Jim Kitchen acquired subject properties.
September 21, 2018	A recombination plat for 415, 412, and 417 W Patterson Place was recorded with the Register of Deeds.
December 12, 2018	Keith Shaw, architect, on behalf of Jim Kitchen, submitted applications for a Certificate of Appropriateness for two new single family residences at 412 & 417 W Patterson Place.
February 21, 2019	The Historic District Commission (HDC) denied Certificates of Appropriateness for two new single-family residences at 412 & 417 W Patterson Place (Attachment 7).

³ <http://chplan.us/LUMO-Appeals>

⁴ <http://chplan.us/2qepScX>

⁵ <http://chplan.us/2qeAc4C>

March 5, 2019

Keith Shaw, architect, on behalf of Jim Kitchen, filed an appeal of the Historic District Commission's decision to deny applications for a Certificate of Appropriateness for two new single family residence at 412 & 417 W Patterson Place (Attachments 5 and 6).

ATTACHMENTS

1. Resolution A1 - Appeal Approved: A Resolution Overruling the Historic District Commission's Decision to Deny a Certificate of Appropriateness for 412 W Patterson Place.
2. Resolution B1 - Appeal Denied: A Resolution Upholding the Historic District Commission's Decision to Deny a Certificate of Appropriateness for 412 W Patterson Place.
3. Resolution A2 - Appeal Approved: A Resolution Overruling the Historic District Commission's Decision to Deny a Certificate of Appropriateness for 417 W Patterson Place.
4. Resolution B2 - Appeal Denied: A Resolution Upholding the Historic District Commission's Decision to Deny a Certificate of Appropriateness for 417 W Patterson Place.
5. 412 W Patterson Place application materials including an application form, notification materials, statement of justification, and Certificate of Appropriateness application materials.
6. 417 W Patterson Place application materials including an application form, notification materials, statement of justification, and Certificate of Appropriateness application materials.
7. Record of the Historic District Commission's February 12, 2019 decision, including Certificate of Appropriateness applications and supplement; staff reports, links to videos, and meeting minutes for the January 8, 2019 meeting and February 12, 2019 meeting; Certificate of Appropriateness denial letters, dated February 22, 2019; and relevant sections of the Land Use Management Ordinance and Historic District Design Guidelines.
8. Area Map of the Subject Properties.

ATTACHMENT 1

**RESOLUTION A
(OVERRULING THE HISTORIC DISTRICT COMMISSION'S DECISION)**

**RESOLUTION OVERRULING THE HISTORIC DISTRICT COMMISSION'S
DECISION TO DENY A CERTIFICATE OF APPROPRIATENESS APPLICATION
FOR THE PROPERTY LOCATED AT 412 W PATTERSON PLACE, TO CONSTRUCT
A NEW SINGLE-FAMILY RESIDENCE, AND APPROVING THE CERTIFICATE OF
APPROPRIATENESS (PIN 9788-25-2298, PROJECT #19-027).**

Having reviewed the transcript and record of evidence submitted to the Historic District Commission pertaining to the application for a Certificate of Appropriateness to construct a new single-family residence at 412 W Patterson Place, and having heard arguments of the appellants and others, the Board of Adjustment finds that the decision of the Historic District Commission on February 12, 2019 to deny a Certificate of Appropriateness for this property, owned by Jim Kitchen, is not supported by competent, material and substantial evidence in the record before the Commission;

THE BOARD FURTHER concludes that the evidence before the Historic District Commission did not support the determination of the Commission to deny the Certificate of Appropriateness application to construct a new single-family residence at 412 W Patterson Place and rejects the decision and reasons of the Commission as the determination and reasons of the Board.

NOW, THEREFORE, BE IT RESOLVED THAT THE BOARD OF ADJUSTMENT hereby OVERRULES the Historic District Commission's decision on February 12, 2019, to deny the Certificate of Appropriateness application to construct a new single-family residence at 412 W Patterson Place and further identified as Orange County parcel identifier number 9788-25-2298 and hereby approves the Certificate of Appropriateness, based on the 412 W Patterson Place application submitted at the February 12, 2019 Historic District Commission meeting.

BE IT FURTHER RESOLVED that the appeal is hereby approved.

Signed - Board of Adjustment Chair, James A. Bartow

This the 2nd day of May, 2019.

ATTACHMENT 2

**RESOLUTION B
(UPHOLDING THE HISTORIC DISTRICT COMMISSION'S DECISION)**

RESOLUTION UPHOLDING THE HISTORIC DISTRICT COMMISSION'S DECISION TO DENY A CERTIFICATE OF APPROPRIATENESS APPLICATION FOR THE PROPERTY LOCATED AT 412 W PATTERSON PLACE, TO CONSTRUCT A NEW SINGLE-FAMILY RESIDENCE, AND DENYING THE CERTIFICATE OF APPROPRIATENESS (PIN 9788-25-2298, PROJECT #19-027).

Having reviewed the transcript and record of evidence submitted to the Historic District Commission pertaining to the application for a Certificate of Appropriateness to construct a new single-family residence at 412 W Patterson Place, and having heard arguments of the appellants and others, the Board of Adjustment finds that the decision of the Historic District Commission on February 12, 2019 to deny a Certificate of Appropriateness for this property, owned by Jim Kitchen, is supported by competent, material and substantial evidence in the record before the Commission;

THE BOARD FURTHER concludes that the evidence before the Historic District Commission did support the determination of the Commission to deny the Certificate of Appropriateness application to construct a new single-family residence at 412 W Patterson Place and accepts the decision and reasons of the Commission as the determination and reasons of the Board.

NOW, THEREFORE, BE IT RESOLVED THAT THE BOARD OF ADJUSTMENT hereby UPHOLDS the Historic District Commission's decision on February 12, 2019 to deny the Certificate of Appropriateness application to construct a new single-family residence at 412 W Patterson Place and further identified as Orange County parcel identifier number 9788-25-2298.

BE IT FURTHER RESOLVED that the appeal is hereby denied.

Signed - Board of Adjustment Chair, James A. Bartow

This the 2nd day of May, 2019.