

VARIANCE OR APPEAL APPLICATION



RECEIVED 11-12-19 @ 3:30 p.m. by
SABRINA M. OLIVER
TOWN CLERK

TOWN OF CHAPEL HILL
Planning Department
405 Martin Luther King Jr. Blvd.
phone (919) 969-5040 fax (919) 969-2014
www.townofchapelhill.org

Parcel Identifier Number (PIN): 9788581261

Date: November 1, 2019

Section A: Project Information

Project Name: Chi-Omega Damaged Sidewalk Replacement

Property Address: 313 East Franklin Street

Zip Code: 27514

Existing Zoning District:

Description of Request: Overturn the decision of the Historic District Commission

Section B: Applicant, Owner, and/or Contract Purchaser Information

Applicant Information (to whom correspondence will be mailed):

Name: Samuel A. Slater, attorney for Epsilon Beta of Chi Omega Foundation, Inc. (Property Owner)

Address: 4101 Lake Boone Trail, Suite 300

City: Raleigh

State: NC

Zip Code: 27607

Phone: 919865-1119

Email: sslater@wyrick.com

The undersigned applicant hereby certifies that, to the best of their knowledge and belief, all information supplied with this application is true and accurate.

Signature:

Samuel A. Slater, attorney for owner/
applicant

Date: 11/12/19

Owner/Contract Purchaser Information:

☒ Owner

☐ Contract Purchaser

Name: Epsilon Beta of Chi Omega Foundation, Inc.

Address: 313 East Franklin Street

City: Chapel Hill

State: NC

Zip Code: 27514

Phone:

Email:

The undersigned applicant hereby certifies that, to the best of their knowledge and belief, all information supplied with this application is true and accurate.

Signature:

Date:



VARIANCE OR APPEAL APPLICATION
SUBMITTAL REQUIREMENTS
TOWN OF CHAPEL HILL
Planning & Development Services

Variances and Appeals may be granted by the Board of Adjustment for dimensional regulations, water and sewer regulations, steep slope regulations, house size limitations, Resource Conservation District regulations, Jordan Buffer regulations, and Watershed Protection District regulations. The following must accompany your application. Failure to do so will result in your application being considered incomplete.

\$630	Application fee (refer to fee schedule)	Amount Paid \$	630
n/a	Digital Files – provide digital files of all plans and documents		
	Mailing list of owners of property within 1,000 foot perimeter of subject property (see GIS notification tool)		
\$140	Mailing fee for above mailing list	Amount Paid \$	140
	Written Narrative describing the proposal		
	Statement of Justification – Respond to subsection 4.12.2(a)(1-4) of the Land Use Management Ordinance.		
	Recorded Plat or Deed of Property		
n/a	Stream Determination – necessary for all submittals		
n/a	Jurisdictional Wetland Determination – if applicable		
n/a	Reduced Site Plan Set (reduced to 8.5" x 11")		

Type of Variance or Appeal (Choose one of the following):

- ☐ Dimensional Variance ☐ Water and Sewer Variance ☐ Steep Slope Variance
- ☐ House Size Variance
- ☐ Resource Conservation District Variance
- ☐ Jordan Watershed Riparian Buffer Variance
- ☐ Watershed Protection District Variance
- ☒ Appeal

Standing: Explain to the Board how the applicant is an aggrieved party (NC General Statute Sec. 160A-388(b1)(1))
Statement of Justification: Provide justification for decision that is being appealed.



**VARIANCE OR APPEAL APPLICATION
SUBMITTAL REQUIREMENTS**
TOWN OF CHAPEL HILL
Planning & Development Services

Plan Sets (2 copies to be submitted no larger than 24" x 36")

Plans should be legible and clearly drawn. All plan set sheets should include the following:

- Project Name
- Legend
- Labels
- North Arrow (North oriented toward top of page)
- Property Boundaries with bearing and distances
- Scale (Engineering), denoted graphically and numerically
- Setbacks
- Streams, RCD Boundary, Jordan Riparian Buffer Boundary, Floodplain, and Wetlands Boundary, where applicable

☐

Area Map

- a) Overlay Districts
- b) 1,000 foot notification boundary

☐

Detailed Site Plan

STATEMENT OF JUSTIFICATION
Appeal from Town of Chapel Hill Historic District Commission Decision
Denying Certificate of Appropriateness
Case No. 19-0710; 313 E. Franklin Street

This Statement of Justification is submitted in connection with the completed Variance or Appeal Application provided by the Town of Chapel Hill Planning Department. Epsilon Beta of Chi Omega Foundation, Inc., the owner of 313 E. Franklin Street (the "Owner") and David L. Phillips (the "Applicant") timely appeal the decision of the Town of Chapel Hill Historic District Commission ("HDC") dated October 18, 2019 (attached as Exhibit A (the "HDC Decision")).

The HDC wrongly denied the Owner and Applicant's application for a Certificate of Appropriateness. The Owner and Applicant respectfully requests that the Board of Adjustment, after considering the law, record evidence, and arguments of counsel, reverse the decision of the HDC and order the proper grant of a Certificate of Appropriateness.

Appellant Owner has standing to appeal decisions of the Historic District Commission to the Board of Adjustment. N.C. Gen. Stat. § 160A-388(b1)(1) and (3) and § 393(d)(1)(c). Appellant Applicant has standing to appeal as the applicant for a Certificate of Appropriateness that was denied. N.C. Gen. Stat. § 160A-388(b1)(1) and § 393(d)(1)(c).

Factual Background

In early 2019, the walkways surrounding the Chi Omega House at 313 E. Franklin Street were crumbling and posed an immediate safety hazard. The red brick and paver walkways had been indiscriminately repaired over the years as needed, resulting in a jumbled mix of materials, installation patterns, and levels of damage. Evidence submitted at two HDC hearings on this case included images of broken and uneven red bricks and pavers with holes and gaps throughout. The Owner, a non-profit existing solely for the benefit of the students and Chi Omega members living in the Chi Omega House, determined that the unsafe conditions of the walkway had to be remedied. The Owner hired Construction Manager David L. Phillips to perform the work on the walkways.

Before commencing work, the Applicant contacted the Town of Chapel Hill by telephone seeking approval to commence the work. The Town of Chapel Hill representative explained to the Applicant that as long as he stayed within the same dimensions as the existing pavers, the applicant did not need any permits or additional approvals. Consistent with color not being a criterion on which to base approval or denial of a Certificate of Appropriateness, the Town of Chapel Hill representative did not state that the sidewalk needed to be red or any other color.

With permission from the Town of Chapel Hill secured (or so he thought), the Applicant proceeded to remove the broken and cracked bricks that had been assembled over the years and replace them with a nearly identical product in all manner except for one—the color. Evidence submitted shows that the replacement materials are the same size and shape as what was replaced. The replacement materials were also installed in a herringbone pattern consistent with portions of the existing walkway. The materials chosen are far more durable and will provide a much longer-lasting and safe walkway than the outdated and no-longer available materials composing the

crumbled walkway that was replaced. In all manner except for color, the replacement materials look like the brick and pavers that they replaced.

After the walkway was completed, the Town of Chapel Hill contacted the Applicant and notified him of a problem. The Town explained that the color of the pavers was not approved, and that the Applicant would need to apply for an after-the-fact Certificate of Appropriateness to secure approval of the new walkways. The Applicant did so, and after two hearings before the HDC, the Certificate of Appropriateness Application was denied.

Grounds for Appeal

The HDC Decision should be overturned for the following reasons.

1. The HDC Decision was not based on competent, material, and substantial evidence in the record. The competent, material, and substantial evidence in the record demonstrated that the materials used to replace the crumbling brick walkways located at 313 E. Franklin Street are appropriate and meet all requirements for the granting of a Certificate of Appropriateness. The evidence on which the HDC fixated was the color of the walkway replacement materials—a criteria not identified in the HDC's controlling ordinances and Design Review Guidelines.
2. The HDC Decision was the product of bias and contempt based on an earlier HDC case from the Owner, as demonstrated by the statements directed to the Owner and Applicant from members of the HDC. The open bias and contempt prevented the Owner and Applicant from receiving a decision from a neutral and impartial decision-maker, in violation of their due process rights.
3. The HDC Decision was based on an incorrect application of North Carolina General Statutes and Town of Chapel Hill Ordinances, Procedures, and Guidelines. The evidence on which the HDC fixated was the color of the walkway replacement materials—a criteria not identified in the HDC's controlling ordinances and Design Review Guidelines.
4. The HDC Decision was arbitrary and capricious.
5. Applicant and Owner reserve all rights to assert additional grounds for appeal consistent with N.C. Gen. Stat. § 160A-388(b1)(8).

Following receipt of the written transcripts from the two HDC meetings considering this case and in advance of the Board of Adjustment hearing on his matter, the Applicant and Owner will supplement this Statement of Justification with additional evidence and argument demonstrating that the HDC Decision should be overturned and the requested Certificate of Appropriateness should be granted.

WYRICK ROBBINS YATES & PONTON LLP

By: _____

Samuel A. Slater (N.C. Bar 43212)

4101 Lake Boone Trail

Raleigh, North Carolina 27607

Phone (919) 781-4000

Fax (919) 781-4865

Counsel for Appellants



BRITTANY CAIN
bcain@wyrick.com

Wyrick Robbins Yates & Ponton LLP
ATTORNEYS AT LAW

4101 Lake Boone Trail, Suite 300, Raleigh, NC 27607

PO Drawer 17803, Raleigh, NC 27619

P: 919.781.4000 F: 919.781.4865 www.wyrick.com

November 12, 2019

VIA HAND DELIVERY

Town of Chapel Hill
Town Hall
405 Martin Luther King Jr. Blvd.
Chapel Hill, NC 27514

Re: Variance or Appeal Application

Dear Sir or Ma'am:

Enclosed please find an original and one copy of the Variance or Appeal Application for Project #19-128 in regard to 313 East Franklin Street. Please also find check number 164959 in the amount of \$770.00 for the corresponding fee. Please "file stamp" the original and copy, keep the original for your file, and return the copy to our office by way of the courier delivering the original and copy.

Should you have any questions, please do not hesitate to contact us.

Sincerely,

WYRICK ROBBINS YATES & PONTON

Brittany Cain
Legal Administrative Assistant