

**CITY OF HENDERSONVILLE**  
**Historic Preservation Commission**

**Minutes of the Meeting of November 15, 2023**

**Commissioners Present:** Jim Welter (Vice-Chair), Cheryl Jones, (Chair), Jim Boyd, Jane Branigan, Crystal Cauley, John Falvo and Ralph Hammond-Green

**Commissioners Absent:**

**Staff Present:** Alexandra Hunt, Planner I, Angela Beeker, City Attorney, Daniel Heyman, Staff Attorney, Lew Holloway, Community Development Director

I **Call to Order.** Chair called the regular meeting of the Hendersonville Historic Preservation Commission to order at 5:00 pm.

II **Public Comment.**

No one spoke during public comment.

III **Agenda.** On motion of Commissioner Welter and seconded by Commissioner Boyd the agenda was approved.

IV **Minutes.** Commissioner Hammond-Green made a few corrections to the minutes. On motion of Commissioner Hammond-Green and seconded by Commissioner Boyd the revised minutes of the meeting of October 18, 2023 were approved.

V **Old Business**

V(A) **Certificate of Appropriateness,** Allen, Stahl & Kilbourne, PLLC, 225 N. Main Street (File No. H23-067-COA). Prior to the opening of the public hearing, Chair announced that there is one new application for a COA in the Druid Hills Historic District and they will also be continuing agenda item 5 from the last meeting and there are new persons that need to be sworn. Any persons desiring to testify at any of the public hearings must first be sworn as witnesses and will be subject to cross-examination by parties or persons whose position may be contrary to yours. A copy of the procedure and rules for a quasi-judicial hearing is provided on the back table next to the agenda. Since this is a quasi-judicial hearing, it is very important that we have an accurate record of the hearing. Therefore, we must ask that you refrain from speaking until recognized by the Chair and, when recognized, come forward to the podium and begin by stating your name and address. Anyone present who has knowledge of anything of value that has been given or promised in exchange for a position to be taken on these applications should disclose it now. Anyone wishing to speak during the public hearing should come forward and be sworn in. Chair swore in all potential witnesses. Alexandra Hunt and Lawrence Hogan were sworn in.

Chair opened the public hearing.

Ms. Beeker stated there have been no changes since the last meeting. The applicant stated correct. He does have paper copies.

Staff had no comments.

Jesse Swords, Attorney with Allen, Stahl & Kilbourne, PLLC stated his name for the record. Mr. Swords stated he is representing Hendersonville Holdings, LLC. His office address is 20 Town Mountain Road, Asheville NC. He stated he had gone through the minutes from the last hearing and prepared a set of materials. He handed out those copies. He submitted these copies as evidence to be put into the record. It is evidence of the materials requested from the last hearing. Chair accepted the copies into the record as Exhibit D. He stated he does not have any witnesses, he is relying largely on the evidence before you. He had brick samples and railing samples. Jill from Dunlap Construction did not want to appear tonight. She is backing away from this project because it has become so contentious. The affidavit that was submitted into evidence at the last hearing provides some of the testimony that was requested on the placement of the stair enclosure.

Mr. Swords wanted to take a look at the Main Street Guidelines and he quoted “these guidelines are not intended to prevent change rather the Commission offers assistance to the property owner in shaping change while meeting the requirements of the ordinance. This will ensure that property changes are within the spirit and character of the historic property. Design Guidelines are intended to guide rather than mandate the way changes should be accomplished”. He thinks this is important because he read statements from the last meeting and he wants to make sure the correct standard is applied here. He stated there are applicable standards to historic landmarks and there are applicable standards to historic districts.

The NC General Statute from 160D defines this Commission’s responsibility and authority regarding Certificates of Appropriateness. He read “the Commission shall take no action under this section except to prevent the construction, reconstruction, alteration, restoration, moving or demolition of building, structures, appurtenant fixtures, outdoor advertising signs or other significant features in the district that would be incongruous with the special character of the landmark or district. The distinction between landmark and district is not bold face in the statute. But it is an important distinction. North Carolina courts have interpreted this language it uses to be in a different section of the statute, it was in 160A . The changes to 160D, they kept the same language and just relocated it. North Carolina courts have interpreted it as and they have repeatedly held for a building and historic districts as opposed to a specifically designated landmark. The Historic Preservation Commission vote must determine congruity based on the total physical environment of the historic district. That quote is from Sanchez vs. the Town of Old Fork. He discussed other cases which are included in the hand out.

Mr. Swords stated in the context of the historic district Certificate of Appropriateness, again as opposed to landmark, building specific regulations are actually prohibited according to the Meers and Sanchez cases. In those cases there was a height limitation, it was 24’ or if they could prove it had been higher they could go to that height. The Court of Appeals said that was outside the bounds of the Commission’s statutory authority. The applicable standard here is whether the proposed construction is congruent with the total physical environment of the historic district. He mentions this because of comments directed at this building and preserving aspects of it and not wanting to allow changes to this building.

Mr. Swords discussed the placement of the stair enclosure for the rooftop patio. He went back to the guidelines (Section 4.3). He quoted "in an urban environment such as downtown Hendersonville especially with the amount of residential; property owners may wish to construct patios/rooftop decks, balconies and terraces. This type of residential amenity is certainly encouraged and is an important element in the success of the downtown community and movability. Decks, balconies and terraces are appropriate provided they do not damage or alter and historic architectural features of the existing building." He stated that is a permissive standard.

The affidavit does speak to the stair enclosure and the location of the enclosure. He directed them to the new exhibit on page 12 and stated the Commission could read through this.

Chair stated within those statutes the Commission is permitted to adopt standards and the standards are what they are adhering to. It's not building specific but where the discussion was last time is based on the side windows. She stated 3.4.2.10 states it is not appropriate to introduce new windows or doors if they would diminish the original design of the building or damage historic materials and features. Keep new windows and doors compatible with existing units in portion, shape, positioning, location, size, materials and details. The question the whole time has been, do we need something presented or at least the opportunity to present, the burden is with you to present something showing the standards have been met. We are getting there with the materials, that is helpful but she still personally has not heard anything that says the standards have been met. Cutting holes into the building, how is that not damaging historically significant materials when this is the only historic property built like this that we have.

Mr. Swords stated what we have here is this blank wall on the side and it is being considered a significantly historic detail. Chair stated yes, we have to pertain and preserve historic façade details and materials on side and rear elevations and there is another one that talks about it. If you are distinguishing that this façade is not historically significant within a building that is, why is that? Mr. Swords stated the building is historically significant in this district but he does not think it has been designated as a landmark. Chair stated it is in the Main Street Historic District. It doesn't have to individually be a landmark. Mr. Swords stated it is important because the standards for landmarks do look at the individual features of the building and they are much less permissive than the standards that are allowed for historic districts in general. And it explains that in the cases he referred to. It is the total environment of the historic district and not the building itself. Chair asked if he could demonstrate within the historic district any windows that have been cut in the side of a contributing structure. That would make it at least a consideration for compatible.

Mr. Swords stated he does not think that is considering the standard correctly because it doesn't even have to be or have a specific analog in the district as long as it is congruent which means if you want to look up the definition, generally in harmony and similar to and in his mind, not sticking out like a sore thumb.

Chair stated if you have a façade that is solid and was constructed that way and is the only evidence of a structure that has a historical type and architectural type and you cut holes in it, how is that not sticking out like a sore thumb when it has been that way for 100+ years. Mr. Swords stated he thinks they disagree on whether this is a historically significant detail. He believes there was a building there originally, built directly next to it. It was designed obviously to have a building built directly next to it,

completely up against it. Chair asked if he had evidence of a second story on the other building or that there was another building there that he can present. Commissioner Welter talked about research on the building and reinforced concrete technique, which in their mind is a significantly historic part of that building. Chair stated the whole building is unique because it was a whole concrete building that was not done anywhere else or in that manor. Richard Sharp Smith created for that reason and that was a historic period way to do it which was unique then and is certainly unique now.

Commissioner Welter stated they have testimony from Dunlap Construction about how it is actual construction done with reinforced concrete slabs were slid into place as a single unit specifically for the back.

Mr. Swords discussed the Commission having jurisdiction over the exterior elements of this and there would be no way to alter the exterior elements or build anything new if no alteration of the historic exterior is permitted. So there must be some room here. Chair stated they are not saying they cannot make alterations but some alterations go further than others. You can't replace what is done, once you cut holes in the side of the building it is done. Something like the window that is in the rear and rooftop deck there was much less concern with discussion of those because they did not have materials to make a decision can we take the side windows off the table and discuss the elliptical and the stairway and focus on those for a minute. Can he consider removing the side windows if the Commission can get to a decision or the other items on the application so they can get to a point of agreement on the rear elliptical window and the rooftop. Mr. Swords stated they can discuss these things in a different order if they want to make a decision on the rear window and rooftop. He doesn't have authority from his client just to drop something. He would also point out that there was originally eight windows and it has been paired down to two. He stated since this is a flat concrete façade, if these windows were cut in and installed, the exterior of the building could be restored actually quite easily to the condition it is now by simply taking out the windows. Chair asked in repouring a whole façade of concrete? Mr. Swords stated no but filling in the gap seamlessly so it would look like it did before. Chair stated 100+ year old concrete. Mr. Swords stated yes. Chair asked if he was aware as part of the record where they cut rear windows and the whole structure came down because it was not structurally sound? Mr. Swords stated he did read that part. He doesn't recall when that was and he does think it was some time ago and he wants to point out that nobody is going to cut a hole in this wall without a permit. The Building Permit Department is not satisfied that this is going to be structurally sound, they won't issue the permit. He thinks structural issues are outside of the purview of this Board.

Mr. Swords stated the stair enclosure will be as small as possible and designed to be minimally visible from the street. No element of the rooftop patio or stairway interferes with the existing skylights, touches the buildings front, side or rear facades. He discussed the design and façade and had a sample for the Commission to see. He directed them to the color chart for the railing. It is the same material as what is on Shine. His client told him the Commission could chose the color between dark bronze and almond. He stated it is designed not to interfere with the building. This is the sort of thing if someone wanted to restore the building to its original look, in every way all of this could be taken down.

He also has authority from his client to offer a condition requiring the railing instead of this design, requiring the railing to match what is on the front balcony.

The Commission asked what the material was for the stairwell enclosure exterior. Mr. Swords stated around the exterior will be the brick, once you are past the brick there is no longer the exterior element.

Chair asked how far this would extend above the current roofline. Mr. Swords stated the height is called out on that revised sheet. The rendering shows 7'3" at the highest point. Chair asked if there was any consideration on trying to reconfigure where the stairwell would not be seen from Main Street. Shine has there rooftop patio in the rear. Mr. Swords stated it was studied various ways. The way it is placed is designed around the skylights and the interior closet they are using as the stairwell. This is discussed in the Lopez affidavit which the Commission has. Chair stated the affidavit only speaks to the closet and this being the convenient place to put it due to the interior. Mr. Swords stated his understanding is that this stair enclosure does not obscure, damage or destroy any features of the building and being placed away from the façade itself and being designed such with the existing supports, means there is the least possible loss of historic fabric.

Commissioner Welter asked the drawing that is up on the screen now, that show the 7 foot quarter inch and then the front of the building façade that looks very different than this drawing that shows it protruding much higher in the front of the building. Is one of them correct? Which is correct? He stated the Commission did not think that looked nice with it sticking over the top but in the other drawing it does not protrude that much. Mr. Swords stated if you look at the revised sheet beside the other sheet you can see how much taller it is. This is the previous drawing. If you look at the top of it verses the railing you can see how much smaller it is on the revised drawing. Chair pointed out the current drawing which does not protrude as high. Mr. Swords stated the rendering showing the view from the street was not updated but what it is showing in that rendering it will be much smaller. Chair stated that was a concern at the last meeting, the height and view from Main Street.

Chair asked if they are cutting the top of the wall for the railing to affix it. Mr. Swords stated his understanding is it does not touch the perimeter.

Discussion was made on the patio and railing. Mr. Swords showed the rooftop patio and it is not in contact with the rear or side façade. It will be interior.

Chair asked about the design of the railing. Mr. Swords stated there are two alternatives. He stated it will either be the sample he brought or like what is on the front balcony.

Chair stated the roof stairwell is either almond or dark bronze. Mr. Swords stated yes.

Mr. Swords stated if the Commission wanted to add a condition that would require final approval by staff, they are open to this. He thinks that is within their authority to delegate that.

Chair asked about the decking being wood or composite. Mr. Swords stated composite is permissible for the decking itself only.

Chair asked about the artificial landscaping. Mr. Swords stated attachment F of the Lopez affidavit is almost ridiculous. Chair was concerned about this looking like a jungle on the rooftop. They need to figure out a general guideline where it's not going to be visible from the street something to be able to approve because they do not have any specifics for it. Mr. Swords stated he is open to suggestions on how to deal with that.

Discussion was made on the landscaping and 4.3.4. Chair was trying to figure out if they wanted that much greenery. Mr. Swords understanding is it being not permanent and they do not have to include that in this approval. The greenery was included to give a better idea of what they intended for the space. Mr. Swords stated his client said the greenery is along the roofline but if the Commission would like to specify that would be fine as well. He doesn't think it needs to be addressed in this approval. Chair stated she disagrees. She doesn't want to approve it and leave it wide open. She would like to have the opportunity to address the greenery. Mr. Swords stated sure and his client said if you do not want it they will not have it anywhere.

Mr. Swords stated the materials for the windows, if they look at the new exhibits 1-5 they are Anderson E Series a high end nice window and they are made of wood with aluminum cladding that would be for the side windows as well as the other window and it is the same type of window as on the front. He believes that was approved last year. He discussed the details that was shown on the plan. In discussions with Hannah and Ms. Beeker and reviewing Richard Sharp buildings they found an example of another bank designed by him around the same time in Bryson City which is included in the Lopez affidavit. Almost every Richard Sharp Smith building does not have side windows because they were designed where you would not be able to see out. Chair stated doesn't that make this distinguishable as he designed the bank to not have side windows. That would be an important design feature, if it is distinguishable from his other designs. Mr. Swords stated based on his understanding the only reason it would have been built this way is because there was a building intended to be up against this one. Chair stated there is a building against it there is just not a second story. If he is wanting the building to look like it does as the architect then that is his style, without windows. Mr. Swords stated he thinks there was a second story there and there was a fire at some point and when it was rebuilt it was only one story. Chair stated the point being when the architect designed the building it was designed with no windows, regardless of the reason the building was designed with no windows. Mr. Swords stated that is correct and if this was a designated landmark then this would be a very different discussion but he doesn't think this Commission's authority allows it to reject adding these windows simply because there weren't windows there before. Chair stated if the building has no bearing why are they bringing in the uniqueness of this other buildings. Mr. Swords stated because he was trying to go above and beyond. He stated he does respect what the Commission does and feels it is important. The goal with providing these details and background was to go above and beyond and reach a design the Commission would be satisfied with.

Discussion was made on the Mian Street Historic District and the design of the Richard Sharp Smith buildings. Mr. Swords stated the windows could be made to look like the windows never happened. Chair asked if he was an expert in this. He stated he was confident an engineer could do it. Chair asked if the windows were a necessity or did they just want to do this. Is there a reason they would need it for a fire escape or a building code reason. Mr. Swords stated the windows would be for light and air. He doesn't think they are necessary for a fire escape or anything like that. He doesn't think being necessary is a valid standard to apply to this situation. He discussed promoting downtown living in the district.

Chair asked if these were for light and air have looked at adding more skylights. Mr. Swords stated he does not know the different designs that were reviewed for this. There were originally eight windows and his client paired it down to two windows. If a future owner wanted to get rid of these windows they could.

Chair's concern was there is no testimony or evidence that shows the windows would not destroy the side of the building in some compacity to cut in. It is not so much the aesthetics. They have the burden of demonstrating that this does meet the standards and not destroying or harming a historical feature of the building. Mr. Swords stated as he mentioned before no one is going to cut into the building without a permit. It will be evaluated by the building department. If you want to add a condition to draw it to the building department's attention that will be fine. The structure, he doesn't think the Board has jurisdiction over the structure itself. These could be removed and the wall completely restored.

Commissioner Welter asked if Mr. Swords did not think this Commission had jurisdiction over a structure of a building in the historic district. Mr. Swords stated correct and referred to the statute in the last item of the packet he presented to the Commission. He discussed this again and read the section again.

Chair stated on that same page where it says the Commission shall take no action after this section except to prevent the construction in which would be incongruous with the special character of the landmark or district. Isn't that what they are deciding? Whether this construction project would be incongruous with the district according to the standards. It says they have that authority.

Angela Beeker, City Attorney stated the Commission could go into closed session to get guidance on the standards. Chair did not feel that was necessary.

Mr. Swords talked about the total physical environment of the district and directed the Commission's attention to that statute.

Chair asked if Mr. Swords could direct the Commission to a structure in the district that had cut windows into a building where windows were not already there. He stated he could and one is on the north side of this building. Chair asked if they were original to that design. He didn't know but these same type windows exist on the Shine. She asked if they were original to the design. Mr. Swords stated he did not think it matters if they are original or not. They exist in the district, they are part of the character of the district and the courts say building specific regulations are not permitted when we are talking about a building in the historic district as opposed to a designated landmark. Those concerns are heavily mitigated by the fact this could be restored and he is not sure why they do not believe him on that. He would stake his reputation on this could be restored like it never happened if it were so desired. Chair stated it could also remain as it has originally been like it never happened. Mr. Swords stated property owners have a right and these historic guidelines put restrictions on that and they are valid. Chair asked if they had knowledge of the guidelines when they bought the property. Mr. Swords stated there is no dispute that his clients knew about the guidelines but they have to be applied within the bounds of the Commission's authority. Otherwise it is nothing short of depriving a property owner in downtown Hendersonville of due process and their property rights.

Commissioner Boyd had discussion on if this would be different in a neighborhood where there was a homeowners association pertaining to property rights. Mr. Swords explained they are different rights. He is not an expert on HOA laws. He discussed land use regulations. He felt his mention of property rights got them in a far field from where they need to be.

Mr. Swords stated if they are seeing this blank façade as a historic detail that would be destroyed by the windows, that concern should be mitigated by the fact that it would be able to be restored in a manner where you would not know it was ever there. Commissioner Boyd stated Section 3.4.2.10 also says if they would diminish the original design, so would this not diminish the original design if you cut holes in the side of this building that is original. Mr. Swords stated he asked his client to do these windows in a way that was complimentary to the front façade and again the fact that this could be restored to its original condition should mitigate that. Commissioner Boyd stated the original design on the side of this building is without windows so cutting windows into this building could possibly diminish the original design.

Chair discussed the design of the building and having windows on one side but not on the other side.

Chair stated let's move to the elliptical on the back of the building.

Mr. Swords stated the rear and side windows are addressed in the Lopez affidavit paragraph 12. The rear window was designed as a replica of another window on Main Street. They provided evidence in the affidavit that it is congruent with the character of other windows in the district. They found in the Henderson County Heritage Museum that there are arch windows on all sides except the front. Chair asked if they were original to the building. He stated it looks original to him if you look at the detailing of the building. There is an arch monteith designed by Richard Sharp in the City of Asheville and they have added that. This is a feature that exists in the historic district. It is congruous with the historic district because it exists in several places. It is in line with the guidelines.

Chair stated it will be a wood frame with aluminum cladding. She asked if it would be double hung. Mr. Swords stated he didn't know if that was called out. Some of them are fixed. He was not sure what double hung meant. Commissioner Welter stated single hung is one pane and double hung is two. Chair stated the sheet labeled Exhibit C says single hung. Chair stated you have to approve plans as presented and there are conflicting plans. Chair stated Exhibit C is what they are going with. Mr. Swords stated that is the drawing that was prepared by the company and he would think that included everything. Chair stated page five is Exhibit C.

Discussion was made about conflicting parts of the application. Mr. Swords talked about the block detail on the revised sheet. Discussion was made on not having the block detail. He stated they could either approve it with the block detail as shown or that could be another staff approved condition on the specifics of the border and the façade.

Discussion was made on window details and what the drawing shows. The window on page five of the new exhibit was the correct drawing.

Attachment A of the affidavit was the window that was designed.

Chair asked if the Commission had any more questions. No one had any questions. Chair asked if Mr. Swords would like to say anything else.



Mr. Swords stated he appreciates the Commission's time. He hopes he was able to give them the information they wanted to see. He feels like the side windows are the most contentious aspect obviously and for those he would simply say that this building could be restored to remove the side windows and the exterior could be restored as if they were never there. The structure could be made sound as if they were never there. And the interior could also be restored as if they were never there. He thinks they are in compliance with the guidelines.

Chair asked if there was anyone that would like to speak in favor of the application or if there was anyone that would like to speak against the application.

Lawrence A. Hogan, 655 East Sunset Drive, Hendersonville stated he is the owner of the center portion of this building and he use to also own the northern portion of it. The building was built in 1906 he thinks. It was all built at the same time with concrete. Concrete is a lot different now than it was back then. He learned this lesson the hard way. He started working on the building he had bought and the whole back end collapsed as soon as they started working on it. And he got to buy the building there, the back of that building and someone had a new truck parked there and he got to buy that too. He thinks that we should not be cutting holes in buildings that are 115 years old. It's dangerous and it's foolish. The other thing is this building was all poured at the same time so that wall goes down, that sags the building and then a few more buildings are gone too. That is just how life is. He represented the concrete company in town for 40 years as a lawyer and he has tried every concrete case that has been tried here as far as he knows. Concrete is entirely different now than it was then. The formulas are different. The way it is done is different. These were forms that were put up, they take them down and put up another form and the concrete would dry where they started and then they pour wet concrete on top of that. Those joints are all weak. This is just not a good idea to do this. He would be happy to answer anyone's questions. He still owns the middle portion and not the northern side put there are no windows on that side. The original drawings for this are in an architect's office in Asheville and he had seen them at an exhibition years ago. He thinks that elevator, that thing sticking up there will look like an infected toe nail. It will be ugly.

Chair asked if there was anyone that wishes to speak before they close the public hearing.

Mr. Swords stated he read through the transcript from the hearing a year or two ago and similar thoughts were shared by Mr. Hogan. The technical aspects of how this construction is accomplished he thinks are outside of the purview of this Board. They are under the purview of someone else being the Building Permit Department and his client is the owner of this building and if the building crumbles he loses his building too. So there is an incentive to do this right before he does it. Also the fact that these walls were poured with a certain method, the fact that that is known partly because of Mr. Hogan's experience before gives the engineers that will be working on this the information they need to know whether they can do it safely. This is just a preliminary approval of the aesthetics. There is more work to come before anybody can cut holes in this building. The incentives are aligned to make sure his client does this right. It is his building, He does not want it to fall down either. While Mr. Hogan has experience and firsthand knowledge to the statements he is making, he is not an engineer and so his statements about the structure per say he doesn't think are competent evidence. Commissioner Boyd stated Mr. Swords is not an engineer either. Mr. Swords stated he is not but what he is pointing out is the engineers will have to do their work before this happens and what they are approving now is the aesthetics of it.

Chair stated it has been said a couple of times that the rear wall came down. Do they know what the wall is made of behind the brick façade on the rear. Mr. Swords stated he bets Mr. Hogan does. Mr. Hogan stated it is framed. They are sitting on a big concrete beam. They put it back better than what it was. Mr. Hogan stated the back of the building that fell down was wood framed and covered with brick. Mr. Swords stated and that is where that window would be going. Mr. Hogan stated yes.

Ms. Beeker asked Mr. Hogan if he put the wood framing up when he built the wall. She stated it wasn't original to the building. Mr. Hogan stated no the original fell down. Chair stated the back wall is a completely different wall than the rest of the building. It is not the original in any way anymore. Mr. Hogan stated that is right.

Commissioner Hammond Green stated he had mentioned that if the building fell down the owner would lose his money but the other side of that is, is that any different than demolition by neglect of a building? In other words you let the building deteriorate and it falls down or has to be taken down because it becomes unsafe. In this case we have a solid wall there and you think you can cut holes in it successfully without it coming down but if it does come down, then the building is lost and it is the same as a demolition by neglect, the end effect. Mr. Swords stated he is not fully familiar with the demolition by neglect issue but if someone does let their building fall down, what is the remedy? Commissioner Hammond Green stated there is no remedy. What they do in demolition by neglect is they try to prevent the neglect which leads to the building having to come down. Mr. Swords stated he does believe this is different because it is not neglect, it is a construct procedure that will be thought out beforehand and permitted by the city beforehand. If something were to go horribly wrong, he suspects it would be built back in one way or another. He doesn't know what the remedies are for that sort of thing. Chair stated it wouldn't matter because they couldn't get the original structure back. Commissioner Welter stated and they are charged with protecting the original structure. Mr. Swords stated you could certainly get something indistinguishable from the original structure and he thinks that is what this Board's purview is, it is the exterior elements. If you are making a decision based on the structure, please note that when you make the decision. But again this is a positive process that will have to be studied by the engineers and permitted by the city before it happens. He guarantees his client has insurance on this building. The contractor will also be insured. It is not like there would be no remedy. It could be built back.

Commissioner Boyd stated the remedy would be losing a historic building. Chair talked about it being a replica if it was built back. She stated they have not heard anything that would show if the standard has been met that it will not damage the building cutting holes into it. Mr. Swords stated it can't be that no destruction is permitted because you cannot remodel anything without some type of destruction first. If this were a unique detail that could not be replicated the fact is it could be completely replicated and made the same.

Chair asked if there was anyone that wished to speak before they closed the public hearing. When no one spoke, Chair closed the public hearing.

The Commission had discussion on the side windows. Chair stated you can't talk about the structure integrity unless it is tied to the standard. They talked about the burden being on the applicant. Discussion was made on 3.4.2.10. They discussed rebuilding the wall and having to patch it.

Chair reopened the public hearing.

Mr. Swords stated that whole wall could be finished with stucco which is the same type of material. It wouldn't be a patch. These are all future hypotheticals. Chair stated the concern is they are taking an original design that is unique and that is contributing to the historic structure and property and the landscape of what made this district permissible and be admitted in historical records anyway and cutting windows in it that the testimony has been are unnecessary and there has been no testimony that they are congruous with the design standards. Mr. Swords stated he totally disagrees with there was no testimony that they are congruent. He stated with all due respect, the rear wall did come down when Mr. Hogan worked on it and the building is still standing. Chair stated they are not talking about the structure coming down. They are talking about cutting windows into the south side where they are cutting holes into if it is congruous with the standards. Mr. Swords stated he thinks it is congruent with the standards because they aren't designed or permitted to prevent all change. Side windows exist elsewhere in the district. Chair stated but not original to the building. They are distinguishable if they are original to the building and you haven't presented anything that states if they are or not. If we were talking about windows that had been added, that would be helpful. He didn't think the evidence exists about which windows have been added downtown and which are original. Chair said they have Baker Barber Mr. Swords stated he doesn't believe this is relevant. Chair stated it is their duty to determine if the standards have been met. He thinks he has met the standards and in fact gone above and beyond. The important thing tonight is to vote up or down. If this Board oversteps its authority and the court finds that. He doesn't want to threaten. Commissioner Boyd stated it seems like a threat.

Ms. Beeker stated it is time to make a decision. She thinks it has been argued and argued and argued and they will have their chance again. If they were to turn it down and you appeal, you will have your chance to make that argument. She feels like there is not anything new that he could say that hasn't already been said.

Mr. Swords stated he thinks the boundaries of their authority are important to his client but also to this Board and important to the city for the appeal process.

Chair closed the public hearing.

Chair discussed the standards. Discussion was made on the standards and the testimony they have received. The Commission felt like they did not have enough testimony that aligns with the standards for the side windows.

The Commission discussed the rear window. The Commission felt like the testimony was clear. Section 3.4.2.10 was discussed. They did not think there windows like that on the rear of any buildings but it is better than what was there. It is not out of character. The Commission was okay with the split design of the window. No objections were made to the flux stone.

The Commission discussed the rooftop patio. They didn't have materials last time or the height of the structure. They have presented more information this time. The Commission discussed the information they have received at this meeting. The decking material will be either wood or composite. The greenery was discussed. The Commission agreed to the greenery as long as it is not visible from the street. The railing was discussed. The Commission was okay with the railing. Chair asked about the colors of almond or dark bronze. The Commissions preference was almond.

**Commissioner Welter moved the Commission to find as fact that the proposed application for a Certificate of Appropriateness, as identified in file # H23-067-COA and located within the Main Street Historic District, if added according to the information reviewed at this hearing and, with any representations made by the applicant on record of this hearing, is not incongruous with the character of the Hendersonville Historic Preservation Commission Design Standards (Main Street) for the following reasons: 1. The subject property is a contributing structure. 2. The proposed rooftop deck is compatible with existing rooftop decks in the district. 3. The proposed rooftop deck will be constructed so that there is the least possible loss of historic fabric. [Sec. 4.3.3] 4. The proposed rooftop deck does not obscure, damage, or destroy character defining features of the historic building. [Sec. 4.3.3] 5. The proposed greenery will not be visible from public streets and the design of the railings will match the front balcony design or the sample provided and they are offset from the exterior wall, not touching the exterior wall. The stairwell roof is almond and the deck can be wood or composite. Commissioner Hammond Green seconded the motion which passed unanimously.**

Chair asked to have the motion for the rear window.

**Commissioner Welter moved the Commission to find as fact that the proposed application for a Certificate of Appropriateness, as identified in file # H23-067-COA and located within the Main Street Historic District, if added according to the information reviewed at this hearing and, with any representations made by the applicant on record of this hearing, is not incongruous with the character of the Hendersonville Historic Preservation Commission Design Standards (Main Street) for the following reasons: 1. The subject property is a contributing structure. 2. The proposed rear window does not diminish the original design of the building or damage historic materials and features. [Sec. 3.4.2.10] 3. The proposed rear window is compatible with existing units in proportion, shape, positioning, location, size, materials, and details. [Sec. 3.4.2.10] 4. The window as designed on page five of the new Exhibit C presented tonight and the amended Exhibit B from the last meeting with the flux stone border and the brick to match the flux stone or the rear façade of the building and the windows are wood aluminum clad design. Commissioner Boyd seconded the motion which passed unanimously.**

Chair stated they now need a motion for the side windows.

**Commissioner Welter moved the Commission to find as fact that the proposed application for a Certificate of Appropriateness, as identified in file # H23-067-COA and located within the Main Street Historic District, if added according to the information reviewed at this hearing and, with any representations made by the applicant on record of this hearing, is incongruous with the character of the Hendersonville Historic Preservation Commission Design Standards (Main Street) for the following reasons: 1. The subject property is a contributing structure. 2. The proposed windows would diminish the original design of the building or damage historic materials and features. [Sec. 3.4.2.10] 3. The proposed windows are not compatible with existing units in proportion, shape, positioning, location, size, materials, and details. [Sec. 3.4.2.10] Commissioner Falvo seconded the motion which passed unanimously.**

The Commission took a five-minute recess.

VI **New Business**

- VI(A) **Certificate of Appropriateness**, Laura Lynn Hutton (applicant) and Daniel and Amy Yoder (property owners), 1704 Clairmont Drive (File No. H23-083-COA). Chair sworn in all potential witnesses that wanted to speak during this portion of the public hearing. Sworn in were Alexandra Hunt, Planner and Tara Jordan.

Chair opened the public hearing.

Alexandra Hunt stated the city is in receipt of a COA application from Laura Lynn Hutton (architectural designer) and Daniel and Amy Yoder (property owners) for the addition of a second-floor addition to be built above an existing room at the rear of the home. The subject property is located at 1704 Clairmont Drive and possesses a PIN 9569-43-6952 and is located within the Druid Hills Local Historic District. The applicant has submitted site images and elevations that were part of the agenda packet and a large printed copy has been provided as well for the Commission's review. This COA application is considered a major work according to the Residential Historic District Design Standards.

Ms. Hunt showed the historic overlay map which is included in the staff report and the presentation. The subject property was shown in red.

An aerial view of the subject property was shown and is included in the staff report and presentation.

Ms. Hunt gave a history of the subject property which is included in the staff report and the presentation. Past COA approvals for the property were also listed.

Site photos of the property were shown and are included in the staff report and the presentation. Site photos from the applicant were also included.

The applicant also provided a site plan and elevations.

The Design Standards that apply to this application were included in the staff report and the presentation.

Chair asked if there were any questions for staff.

Commissioner Welter stated the rear of the lot abuts outside of the historic district. Ms. Hunt stated yes. Chair asked if those properties behind just didn't qualify. Ms. Hunt stated they are residential but she did not know why they were not included in the district.

Chair stated it says the contributing was one-story do we know if there were any additions? Ms. Hunt stated not that was identified as far as the survey report that was done. It just identifies this as having a rear basement level which looks from the photos that were provided it would be like a walkout basement level. The information in your packet was taken directly from the survey report.

Commissioner Welter asked if the original bungalow was wood siding. Ms. Hunt wasn't positive. He asked if they would match and paint it. Chair stated he could ask the applicant.

Commissioner Hammond Green asked if there was going to be enough distinction to. Ms. Hunt the applicant representative is prepared to talk about the distinction between the addition and the original structure. They can talk more about the design and the materials.

Ms. Hunt gave Chair a set of plans. The Commission reviewed the plans and discussed them.

There were further no questions for staff.

Tara Jordan, 318 Creeks End Circle stated the property owners wanted to make sure it did not sit too high above the roofline. They have five kids and they need another bedroom. It is a bedroom and a bathroom, so being able to add that made the most sense on the back of the house on top where they can add stairs to reach that level.

Chair stated she guesses it is not feasible to go off the bottom. Ms. Jordan stated no.

Chair stated with this being a traditional bungalow she is not aware of any additions, this is the shell as it was originally. Ms. Jordan stated she is not aware of any so she cannot speak to that.

Ms. Jordan stated they wanted to add that metal roof to separate it as an addition from the historical property. They wanted the dormers to have the windows underneath and also bringing the ridgeline out more like that bungalow style.

Chair stated the part that will be visible from the street it looks like it says 30 inches above the ridge. How is that the top? Ms. Jordan stated from the existing roofline it would be if you scale it around 30 inches, if you read the numbers on their plan it does say plus or minus because there is one that says 39 inches. It will not be above 39 inches. It will be between 30 to 39 inches. When you scale it with an actual scale on the drawings it comes to 30 inches. Chair asked if it would be a full 30 to 39 inches above. Ms. Jordan stated yes.

Ms. Jordan stated when you drive that street she does not think it will be visible at all.

Commissioner Welter asked if the original bungalow is wood siding. Ms. Jordan stated yes. She stated it has a four and half reveal is just Lapp siding on the new addition wouldn't have the beadboard but would have beadboard on the gables in the front.

Chair asked why the change in roofing from the asphalt shingles. Ms. Jordan stated she thinks to separate the two roofs so that you would have the asphalt plus the metal roofing and separate that as an addition. Chair asked if they would be willing to do an asphalt shingle instead of the metal. Ms. Jordan stated yes.

Chair asked how much alteration would be to the actual structure. They will have to take off that roof so it is the roof, the shingles and build up. It wouldn't touch the siding or anything like that. Just taking off that roof.

Commissioner Welter asked about the windows. Ms. Jordan stated the ones on the home now are wood and they can do wood or aluminum clad with wood interiors.

Chair asked if any other properties in the neighborhood had similar additions or renovations. Ms. Jordan stated she is not sure.

Chair stated the standard does say not appropriate to construct an addition that will detract from the overall character of the building. If you look at this being the original design and the added dormers. Ms. Jordan stated they were just trying to match the roofline. The bungalow roof is somewhat lower and they are trying to match it and add a design aesthetic to the dormer. It is more of a design with the architect.

Chair stated she was trying to figure out if this design aesthetic would be consistent with what a bungalow with a story or story and half would be with a design of that style. It is a pretty big alteration when you look at the design. Three feet above is a distinct difference from what it use to be or the original bungalow design.

Commissioner Hammond Green stated they want to make the addition compatible but distinguish it from the original. Part of their decision is if it is compatible.

Discussion was made on the dormers. Chair discussed 4.2.6 Discussion was also made about the height of the addition. Ms. Jordan did not think it would be very visible from the street. She stated it is three feet above the ridge but not from your viewpoint.

The materials were discussed.

Chair closed the public hearing.

The Commission discussed the standards.

Chair reopened the public hearing and asked the applicant if they would be willing to do asphalt shingles and wood windows. Ms. Jordan stated yes.

Chair closed the public hearing.

***Commissioner Welter moved the Commission to find as fact that the proposed application for a Certificate of Appropriateness, as identified in file # H23-083-COA and located within the Druid Hills Historic District, if added according to the information reviewed at this hearing and, with any representations made by the applicant on record of this hearing, is not incongruous with the character of the Hendersonville Historic Preservation Commission Design Standards (Residential) for the following reasons: 1. The new addition creates the least possible loss of historic fabric and does not destroy, damage, or obscure character-defining features of the historic building. [Sec. 4.2.1] 2. The new addition is located on the rear of the building. [Sec. 4.2.5] 3. The size and scale of the addition does not diminish or visually overpower the building. [Sec. 4.2.6] 4. The design of the addition is compatible with the historic building in mass, materials, and relationship of solids to voids in the exterior walls and is discernible from the original. [Sec. 4.2.7] 5. The new addition does not detract from the overall historic character of the principal building and the site [Sec. 4.2.8] 6. They will use asphalt shingles and wood windows. Commissioner Hammond Green seconded the motion which passed unanimously.***

VII     **Other Business** – Staff gave updates on the staff approved COA's and on the Committees.

VIII    ***Adjournment.*** The Chair adjourned the meeting at 8:22 p.m.

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Chair