

EXECUTIVE BRIEF SPECIAL MEETING

AGENDA DATE: June 30, 2020

DEPARTMENT: Community Sustainability

TITLE:

Appeal of the Historic Resources Preservation Board's decision to approve the construction of a new single-family structure at 403 South M Street

SUMMARY:

At the February 12, 2020, HRPB regular meeting, the Board voted unanimously to approve a new single-family residence on the vacant lot at 403 South M Street with conditions of approval. The conditions of approval included the initial staff recommended conditions as well as modifications to conditions 7 & 8 which were amended by the Board at the meeting.

The Applicant, Dan Walesky, on behalf of Royal Building Group LLC, is appealing the decision by the City's Historic Resources Preservation Board (HRPB) approving the new construction of the single-family structure. The Applicant contends that the Board amended conditions (Conditions 7 & 8) were arbitrary and not supported by any historic context, code, or ordinance existing in the City of Lake Worth Beach.

As stated in the Staff Report, the structure's design featured elements that were reminiscent of the Masonry Vernacular or Masonry Minimal Traditional architectural style, but the proposal lacked general features, massing, and detailing of any discernable architectural style. The Applicant contends that the front façade detailing was consistent with the Masonry Vernacular architectural style, particularly regarding the front porch configuration and front window. The Applicant stated in the Basis of Appeal that the Board amended conditions of approval are in contradiction with the City's Historic Preservation Design Guidelines (HPDG) portion on the Masonry Vernacular architectural style.

At the February 12, 2020 HRPB meeting, the Board determined that the proposed single-family residence did not represent a distinct architectural style and contained incompatible front yard site features. The Board discussion focused on the modification of the conditions based on the neighborhood context in order to increase visual compatibility and compliance with the Historic Preservation Ordinance. Conditions 7 & 8 were modified as follows:

Staff Report (2/12/20) Condition 7: Compatibly sized windows shall be added to the north and south facades to avoid the long expanses of blank façade.

HRPB Modification to Condition 7: The front porch window and column configuration shall be changed to be symmetrical with two (2) vertically oriented single-hung windows with columns spaced evenly across.

Condition Discussion: The proposed elevations depicted long expanses of unbroken façades, particularly the north and south facades, which have very few windows. Neighboring historic structures utilize many windows at regular intervals for light and ventilation into the structure. In the Staff Report, Staff recommended that the Applicant add additional windows or details in order to avoid the long expanses of unbroken façades. The Board amended the condition based on neighboring historic properties, which feature vertically proportioned windows. The porch column

configuration was also changed to create symmetry in the front porch. Vertically proportioned windows and balanced front porches are prevalent within the Southeast Lucerne Local Historic District.

Staff Report (2/12/20) Condition 8: The driveway shall be reduced in size so that a walkway connecting the front door with sidewalk can be added without going over the front yard impermeable surface provision.

HRPB Modification to Condition 8: The driveway shall be reduced from 12 feet to 10 feet wide with flares at the sidewalk.

Condition Discussion: The proposal included an oversized forward facing 1.5 car garage door on the south end of the front elevation that takes up nearly half of the front façade and is atypical for this district. Integral car garages are typically found on Masonry Vernacular or Masonry Minimal Traditional residences in the districts, but they are generally only 9'-0" wide, and are accompanied by other features that delineate these home styles; such as low-sloped hipped roofs, recessed front porches, divided light windows, and balanced facades. The proposed driveway is also 12'-6" wide, which maxes out the impermeable surface provision for the front yard. In the Staff Report, Staff recommended that the driveway be reduced in width so that a walkway connecting the house to the street could be included while maintaining an impermeable surface calculation under the allowable amount. The Board amended the condition to indicate the maximum driveway width allowed. The requirement to provide a walkway connecting the front door with the sidewalk was removed but highly encouraged.

PROJECT REVIEW HISTORY:

The subject property is a vacant lot measuring 50' x 135' in the Southeast Lucerne Local Historic District, on the west side of South M Street between 4th Avenue South and 5th Avenue South. In July of 2017, the same Applicant requested a Certificate of Appropriateness for the new construction of a single-family residence on the parcel. The Board denied the request as it was found to not be in compliance with the Section 23.5-4(k)3 "Additional guidelines for new construction; visible compatibility" and the City's Comprehensive Plan. A revised proposal for the single-family residence was brought before the HRPB at the December 12, 2017 meeting. The revised proposal was approved with conditions and the Department for Community Sustainability (DCS) issued a Development Order for the project.

On December 12, 2018, the DCS received a request from the Applicant for a six (6) month time extension to provide sufficient time for the Applicant to submit the necessary building permit applications. On June 13, 2019, a second request for a six (6) month extension was submitted by the Applicant and administratively approved by Staff.

On December 12, 2019, the Applicant requested an additional COA extension, which Staff was unable to grant due to the provisions of LDR Sec. 23.5-4(j).

At the February 12, 2020, HRPB meeting, the Applicant submitted plans for the construction of a new one-story, single-family residential structure. The building was generally the same as it was when presented to the HRPB in December 12, 2017. The Applicant changed the initial design by altering the roofing material from a dimensional asphalt shingle to a flat concrete tile.

Quasi-Judicial Appeal Process

Section 23.5-4(n)(2) of the City's code, outlines the process for appealing decisions regarding certificates of appropriateness. It states:

2. *Appeal of HRPB decisions.* Within thirty (30) days after the date of written confirmation of a HRPB decision, the applicant or any affected party may appeal to the city commission any decision of the HRPB regarding an application for a certificate of appropriateness pursuant to the procedures of section 23.2-17 of these LDRs. The city commission shall consider the record made before the HRPB in reaching its decision and shall not take new testimony. The city commission shall reverse the HRPB decision only if it was contrary to law or arbitrary and capricious.

Section 23.2-17(b) and (b)(1) of the City's code, outlines the process for appealing decisions of the planning and zoning board/historic resources preservation board to the City Commission. It states:

b) *To city commission.* Should an applicant for development approval or an affected party with demonstrated standing decide to appeal a decision of the planning and zoning board or the historic resources preservation board, he shall submit to the development review official a notice of appeal within fourteen (14) days of the issuance of the written decision. Thereafter, the applicant or affected party shall submit to the development review official in writing the basis for the appeal within thirty (30) days of the board's written decision; except appeals from decisions pertaining to variances shall be appealed directly to circuit court as described in subsection c). The development review official shall forward the appeal and the board's decision to the city commission for review.

1. After courtesy notice as provided in this article, the city commission shall conduct a quasi-judicial hearing, and shall consider those applications on appeal from the planning and zoning board or the HRPB based on the record made in the proceeding below. The city commission shall convey its decision in writing to the appellant and the development review official. The considerations substantiating the decision of the city commission shall be documented.

The Applicant has filed a notice of appeal and has timely submitted its basis for appeal with exhibits as set forth in the aforementioned code sections.

Although a quasi-judicial appeal hearing will be conducted, it will not be a *de novo* hearing, meaning that the commission will not hear the case all over again or consider new evidence. Instead, it will consider the information presented at the Historic Resources Preservation Board meeting, information that has been provided to the Commission as noted above, along with a transcript of the proceedings. In addition, under the City's Rules and Procedures (resolution 26-2017), it states in Rule 6 that an Applicant will be given ten minutes to make a presentation. For purposes of this quasi-judicial appeal, Staff contends it would be appropriate to allow both Staff and the Applicant to make comments or give a presentation within this ten minute time frame. The comments of course will be limited to the information discussed or voted on at the Historic Resources Preservation Board meeting. Thereafter, the commission members may make comments, ask questions, and review the information presented at the Historic Resources Preservation Board meeting.

As stated in section (b)(1), "*the considerations substantiating the decision of the city commission shall be documented.*" This means that the commission's reasons for upholding or rejecting the Historic Resources Preservation board's decision should be placed in a written order and the

considerations substantiating the decision should be based on whether the Historic Resources Preservation board's decision was based on competent, substantial evidence. The courts have defined substantial evidence as that which will establish a substantial basis of fact from which the fact at issue can be reasonably inferred. It is such relevant evidence as a reasonable mind would accept as adequate to support a conclusion. Competent means that the evidence relied upon to sustain the ultimate finding should be sufficiently relevant and material that a reasonable mind would accept it as adequate to support the conclusion reached. See e.g., Village of Palmetto Bay v. Palmer Trinity Private School, Inc. 128 So. 3d 19 (Fla. 3d DCA 2012).

Finally, although the City's code does not address public comment for this type of quasi-judicial appeal, the Commission would be within its authority to allow public comment even though its decision cannot be based upon any new evidence that may be presented by a member of the public.

At the June 16, 2020, regular meeting, the City Commission opened the quasi-judicial hearing and following staff's presentation continued the hearing to a date certain of June 30.

MOTION:

Move to uphold/reverse the decision of the Historic Resources Preservation Board decision to approve the construction of a new ± 2,267 square foot single-family structure at 403 South M Street with modifications to Conditions 7 & 8 as set forth in the Board's Development Order.

ATTACHMENT(S):

February 12, 2020 HRPB Agenda
February 12, 2020 HRPB #20-00100006 Staff Report and Attachments
February 12, 2020 HRPB Meeting Minutes
HRPB #20-00100006 Transmittal Letter and Development Order
Applicant Notice of Appeal HRPB #20-00100006
Applicant Basis of Appeal HRPB #20-00100006
LDR Section 23.2-7 Historic resources preservation board