

Appeal Statement – File No: AR R 20-00418-HPB and AR R 20-00516-HPB

Michael Anderson, on behalf of the ONEN Board of Directors, submits this appeal of the decisions of the Historic Preservation Board at its July 6, 2020 and August 3, 2020 meetings to issue a report of acceptability for the proposed new single-family home at 15 W. Del Norte (“Project”). We believe the decisions are incorrect and should be reversed so as to deny the Applicant a report of acceptability. The following facts, law and arguments support this Appeal:

The application was not eligible to be heard by Historic Preservation Board

The City Planning Department’s own “General Application Form” used by Applicant includes a section describing prerequisites for review. It clearly states: “Any necessary nonuse variances or other zoning applications must have been approved by Land Use Review prior to scheduling the item for hearing.” The Project will require six non-use variances before it can be constructed legally. Those variances include requested exceptions for side setback (both sides), rear yard setback, front yard setback, lot coverage, lot size, and lot width. Applicant has not been granted these non-use variances. The Board lacks jurisdiction to grant requests for nonuse variances and may not consider an application for a report of acceptability before nonuse variances are granted by separate authority. Therefore, the Project reviewed by the Board at its July 6 and August 3 hearings is not legal. The Board violated the Historic Preservation Ordinance, its rules, regulations, and the Board's own practices and policies when it reviewed the application for this illegal Project. The Board's approval of a report of acceptability is void *ab initio*.

The Board did not properly apply the City Council adopted North End Historic Preservation Overlay Zone Design Standards in making its decisions

At the two Board hearings for this Project, the City Planning Department staff improperly instructed the Board that the City Council adopted “North End Historic Preservation Overlay Zone Design Standards” were only guidelines and that they were only advisory. The staff told the Board that the only standards and criteria it could use in its consideration and decisions regarding a report of acceptability for the application were the four general criteria included in 7.5.1605 C of the City Code. These instructions were contrary to 7.5.1601 (10) which provides that the Council adopted design standards serve as criteria to be used by the Board in the consideration of an application for a report of acceptability for properties with HP historic preservation overlay zoning.

Section 7.5.1602 of the Code defines “Design Standards” as being “Written statements adopted by City Council as criteria for use by the Board in the consideration of an application for a report of acceptability for properties with historic preservation overlay zoning.” That section also defines “Design Guidelines” as “Written statements, explanatory material, graphic renderings, and/or photographs which are intended to inform property owners and the public of historic characteristics suitable for preservation, and techniques and materials appropriate to achieve that goal.”

Following is a link to the “North End Historic Preservation Overlay Zone Design Standards” on the City’s historic preservation website:

<https://coloradosprings.gov/sites/default/files/planning/onendesignstandards.pdf>

Similarly, the “North End Historic District Design Guidelines”, which served to inform the above “Design Standards”, is also on the City’s historic preservation website:

<https://coloradosprings.gov/sites/default/files/planning/northend.pdf>

The Historic Preservation Board is not legally constituted and lacks jurisdiction

The Historic Preservation Board is created by and subject to the Historic Preservation Ordinance. This enabling legislation states that the Historic Preservation Board "shall " consist of seven members and provides for no lesser number to legitimately act. At both the June 6 and Aug 3 hearings, the Board lacked the requisite number to sit and decide. The decisions of this "Board" are *void ab initio*. (City Council's failure to appoint the requisite number of Board members and the reasons for this failure are irrelevant to the fact that the Board, as presently constituted, lacks legal authority.)

The Public was denied due process in these proceedings. Denial of Due Process voids the Board's jurisdiction and decisions

The Board should not have considered the Application at its 7/6/2020 meeting. Public notice provided for that agenda item was misleading and did not comply with the City's own rules. The Public Posting and mailed notices for the Application stated that it was a “Request for approval from the Historic Preservation Board for the construction of a **1,291** square feet single family detached residence and covered deck”. In reality, the Application, Application materials, and plans for the Project included in the agenda packet was for a **3,032** square residence on a lot having only 3,750 square feet. The 1,291 square feet presented in the posting was only the first-floor footprint of the two and 1/2 story building with an additional 900 sq. ft. basement suitable for a separate residence. The posting was clearly misleading. A 1,291 square foot home on a 3,750 square foot (implying a .34 building space to lot size floor area ratio (FAR)) could appear reasonable to many in the neighborhood who would therefore not participate to oppose the Project at the July 6 Board meeting. A proper posting of a 3,032 square foot house on a 3,750 square foot lot (implying a .81 FAR) would have resulted in much more neighborhood opposition at the July 6 meeting. Likewise, the description of the Project as a "single family detached residence" is likely misleading. The Project includes a 900 sq. ft. unfinished basement with an entrance door leading directly to the outside. This appears to be a separate entrance for a second residence. Applicants do not deny that they intend to finish the basement as a rental residence. The Project appears to be for a multi-family residential structure, not the single-family residence erroneously described in the public posting and mailings.

In addition to the false and misleading content of publicly posted and mailed notices, Applicant moved postings to various locations on the property during the posting periods,

some of which rendered the Posting difficult to notice and impossible for the public to read. At least one neighbor notified staff about these notice problems each time they occurred. It appeared that staff took no remedial action and interference with each public posting period continued for both the July 6 and Aug. 3 Board meetings.

During the July 6 session, the Historic Preservation Board Chair expressed concerns over the problems with the noticing of the meeting. At the meeting, the City attorney told the Chair that improper notices did not pose a problem and the Board could move forward with considering the item. This advice from the City Attorney's office was error as a matter of law and misled the Board into continuing the hearing.

Additionally, during the July 6 meeting, some Board members raised questions as to why there were not more citizens participating in the virtual meeting (held on City Webex). Before the meeting, some would-be participants could not log-in to the meeting since the phone-in number and conference ID number for the Board meeting that was published on the meeting agenda and posted on the City's website was incorrect. As a result, citizen attendance and participation in the Board meeting was obstructed and the public was denied due process.

Further, during the August 3 Board hearing of this item, several neighbors who had called in to oppose the Project using the City's Webex system were either unable to participate in the meeting or were restricted from participating until after the designated public input period.

Unfortunately, all of these actions and omissions, in combination with a whole separate string of mistakes by the City staff and the Applicant regarding the public notice of administrative consideration of the 6 non-use variances for this project, have served to shake the neighborhood's confidence in the City's land development review process. Even the most civic-minded and veteran residents of the Old North End Neighborhood (those having long working relationships and experience with City Planning) have expressed concerns regarding the public notice circus that has regrettably accompanied this application and review process.

The Application omitted required and critical information resulting in the Board's inability to review the Application under the criteria that must be applied for a sustainable decision.

- Neither the original nor the supplemental Application provided the required "General location of structures on adjacent properties" as required by the "General Application Form" (GAF). By omission, Applicant denied the Historic Preservation Board the opportunity to consider how the proposed plan affects the neighboring properties and how it conflicts with the spatial and architectural characteristics of the Cascade Ave.-Wood Ave. subarea of the Historic Preservation Overlay.

- The Application omits the parking formula information required by the Historic Preservation General Application Form: Site Plans.
- In the Application considered by the Board at the July 6 meeting, seven out of the ten specified “Materials” in Applicant’s original GAF are qualified by “or similar.” This phrase, “or similar” negates the Board’s ability to review and determine if final materials actually used in construction will meet Design Standards. The Amended Application considered by the Board at its August 3 meeting makes no changes to this open-ended materials description.
- For Tudor Revival, “a half-timbered appearance is obtained by applied decorative features...the boards (timbers) are commonly made of uPVC faux wood, plastic or fibre reinforced cement siding...” [Wikipedia](#). Applicant completely omitted any description of the material to be used for the decorative features of this proposed ersatz “Tudor Revival” construction. The Board could not and did not review this decorative material to determine if it complied with Historic Preservation Overlay Design Standards.
- This Project proposes a relatively massive sized building (3,032 sf) on a lot of only 3,750 sf. The application materials should have included a visual rendering of how the building is situated on the lot and a street view showing how the proposed plan affects the neighboring properties and conflicts with the spatial and architectural characteristics of the Cascade Ave.-Wood Ave. subarea of the Historic Preservation Overlay. Without this information, the Board could not, and did not, do its job of applying Old North End Preservation Overlay principles and Design Standards to the Project.

The Board did not make requisite findings to support its report of acceptability

The Board always makes certain “findings” in all motions to grant a report of acceptability for an application. These “findings” always include a reference to specific sections and provisions of the North End Historic Preservation Overlay Zone Design Standards. No such “findings” were included in any of the motions by the Board to approve a report of acceptability for the subject property at either the July 6 or the August 3 meetings. Without requisite findings, the Board’s decisions cannot be sustained.

The Board was incorrectly advised and therefore did not consider the mass and scale of the Project

The Project will require six non-use variances before it can be legally constructed. At the July 6 hearing for this property, the staff improperly advised the Historic Preservation Board that it could only consider the design of the structure and was not allowed to consider mass and scale in the conduct of its design review. Adequate consideration of how the Project

satisfies the Overlay Zone Design Standards must include consideration of the mass and scale of proposed new buildings and their relationship to adjacent properties and the visual and architectural integrity of the Historic District. Consideration of mass and scale is essential in the Board's application of North End Historic Preservation Overlay Zone Design Standards A-1, A-2, and B-4 as well as the general in 7.5.1605.C-1, 2, and 4. The mass and scale of the proposed structure violates those criteria and standards. The Board's inability to consider mass and scale because of staff's erroneous instructions voids its decision.

Application Does Not Satisfy the North End Overlay Zone Design Standards nor the General Criteria of 7.5.1605.C of the Zoning Ordinance

As described below, the application does not meet the North End Historic Preservation Overlay Zone Design Standards that were approved by the City in accordance with 7.5.1601 B.10. Those specific Design Standards were approved by the City to implement the general criteria contained in 7.5.1605.C. Specifically, the following North End Overlay Zone Design Standards have not been met: The Preamble, A-1, A-2, A-4, A-6, A-7, A-8, A-9, B-2; B-4, B-6, B-9, B-10, B-11 and B-12. Accordingly, the application doesn't satisfy the general criteria in 7.5.1605.C. Of particular concern is that the application will have a deleterious effect, under 7.5.1605.C.(4), "upon the protection, enhancement, perpetuation and use of the historic preservation overlay zone" in that it allows unprecedented development of an oversized home on a undersized lot and undermines the fundamental historic character and future of the Old North End.

- Preamble for Design Standards: "Traditional designs, practice and material should be used for ...new construction." The application fails to meet this standard. The proposed stucco construction meets none of the traditional design, practice or material criteria. In accordance with the Old North End "Interpretive Guide", stucco is only appropriate for the Craftsman style and bungalow form, Mission style, or Modern style. In some instances, stucco has been applied over original wood siding but only as a last resort for the repair and refinishing of failing or deteriorated siding. In Tudor Revival architecture prevalent during the 1880 to 1920 period (and in the Old North End), the predominant exterior siding is brick or stone for the lower half of the structure. The upper portion of the structure has extensive timbering. Stucco, brick, or tile is only used to fill the spaces in the half-timbering. The proposed structure has no proposed brick or stonework on the first level has no real half-timbering of the exterior of the second level, the only "timber" discernable on the plan submitted is tiny decoration above some windows.
- Preamble for Design Standards: "Construction of new buildings should be compatible in terms of materials, detailing and design with the surrounding buildings..." All of the houses facing on to Del Norte between Cascade and Wood are of wood construction, with conforming front setbacks, porches and landscaped lots that are more than two or three times the size of the landscaping proposed for 15 W. Del Norte. There are no stucco houses facing Del Norte between Cascade and Wood.

- Preamble for Design Standards: The preamble to the Design Standards very specifically states that “Preserving vacant lots which historically have been linked by ownership and landscaping to the adjacent house and lot is strongly preferred; however, if they are to be developed, new structures on these lots will subject to these standards in keeping with the size and style of neighboring structures.” For decades, the vacant lot at 15 W. Del Norte Street has been linked to the house and lot to its immediate west at 17 W. Del Norte Street. 15 W. Del Norte was created by subdivision, decades ago, to provide a yard for the adjacent property to the west, 17 W. Del Norte. Before the current owners of 17 W. Del Norte bought their property in 2016, 15 W. Del Norte was always owned by the same people as 17 W. Del Norte. The vacant lot at 15 W. Del Norte was treated as part of that property and provided a play yard, a garden, a work area and extra parking for the owners of the residence at 17 W. Del Norte. This coincidence of ownership resumed in 2019 when the owners of 17 W. Del Norte purchased 15 W. Del Norte. The historical linkage of the two lots by ownership, control, and usage is well established.
- As described in the Design Standards, “(N)ew structures ...shall be subject to these standards in keeping with the size and style of the architecture of neighboring structures.” They must be similar “in use, scale character and setting...” The application does not conform with neighboring styles of architecture or scales and proportion of land to improvement. Its ratio of improvement to land is not consistent with the Design Standards and is clearly not consistent with City zoning requirements as evidenced by the various non-use variances necessary for the structure to be built.
- The application does not meet Design Standards A-1, A-4, A-7, A-9, and B-9-12 as it squeezes a 3,000+ square-foot building into a lot that, at 3,750 square feet, is barely 40% of the City’s own minimum lot size for such a residence, with an orientation toward the side dirt alley and a seemingly nominal front façade and porch facing the street itself. The roofs and walls erect a twenty-five to thirty-foot barrier that, along with the requested reductions in setbacks, largely obliterate the westerly views and skyline from many rooms and the back porch of the adjacent home at 1632 N. Cascade and dramatically alter the rooflines visible from both North Cascade Avenue and Del Norte Street. Landscaping appears either uncertain or nonexistent.
- The Application shows no landscape plan. Landscaping appears either uncertain or nonexistent according to the Application and the ratio of improvement to land. The site plan allows no room for “traditional landscaping (that) will enhance the beauty of the street” as the Application asserts. If constructed, the improvement will jut out towards the front sidewalk on Del Norte and break the pleasing visual and historically correct uniform line of front porches (Design Standard A-1, A-2, A-6).
- Areawide Design Standards A-1 and A-2: The proposed Project calls for the construction of a very large home, in terms of mass and scale, relative to lot size. The Project, once

built, would result in a home with an excessively high floor area ratio (FAR) of .81 which is not keeping with the size, scale and style of architecture of neighboring structures. A review of Assessor's data shows that the FARs of surrounding properties are much lower (e.g. 23 W. Del Norte = .46; 1632 N. Cascade = .46; 20 W. Del Norte = .49; 1705 Wood = .40). The proposal is for the construction of a home too large for a uniquely undersized lot. While it is understood that the City Planning Department does not typically consider FARs in its review of land development applications, consideration of the mass and scale of proposed new structures and an assessment of its relationship to the lot size, mass and scale of other structures in the District is a critical and essential part of the design review responsibilities of the Historic Preservation Board.

- Areawide Design Standard A-2: The height of the proposed home is large enough to allow the home to be seen from the Cascade Avenue right of way over the home at 1632 N. Cascade. This is discouraged in the Design Guidelines of the Old North End and will serve to undermine the visual integrity of the Historic District.
- The front-yard setback should match the front-yard setbacks of the other houses on that block.
- Historic homes in the Old North End that are two-stories high typically have a full-length front porch. This home should have a full-length front porch to historically match the neighborhood.
- District Standard B-6: New construction should "Maintain the horizontal alignment patterns created by the repetition of common building elements including front gabled roofs, front corner windows and first floor porch roofs." This emphasizes the importance of architectural features lacking in the application and particularly the plan's conflict with the front porch focused architecture of the Old North End.
- The drawings call for a faux slate roof. Slate, nor faux slate, is listed as an acceptable roofing material in Design Standard B-2. Nor is faux slate listed as an acceptable roofing materials in the Design Guidelines or in the Old North End Neighborhood Interpretive Guide. The roof should be asphalt shingles colored dark grey to resemble original wood shingles that have weathered to dark grey.
- The drawings call for aluminum or vinyl window frames. The historically correct material for window frames in the Old North End would be wood.
- The shape of the roof is not typical of the Old North End. A gable-end roof design or a hipped roof would be more historical in character. (Design Standard B-6).

- Houses along this block of W. Del Norte have front porches, are of wood clapboard or brick; stucco is inappropriate. The Project, as currently designed, is not consistent with Areawide Design Standards A-1 and A-2.
- The proposed stucco construction does not meet the traditional design, practice or building materials criteria listed in Design Standard B-2. In accordance with the Old North End “Interpretive Guide”, stucco is only appropriate for the Craftsman style and bungalow form, Mission style, or Modern style. In some instances, in the Old North End, stucco has been applied over original wood siding as an inexpensive covering of failed or deteriorated siding. But that application of stucco is not a historical use appropriate for new structures and additions.
- The application contains the requisite description of architectural features and building materials to be used in the construction of the Project. In those descriptions, the applicant speaks of “specific materials” such as wrought iron, but continually amends each statement by saying “or similar.” This renders the determinations unsure. For example: the windows—divided panes; are these multi-paned windows divided by wood, or are they pasted on divisions, an unacceptable substitute? Therefore, it is unclear as to whether the Project, once built, will actually satisfy the Design Standards, and specifically A-8, B-2 and B-3.
- As currently proposed, this home will be non-contributing to the Old North End Historic District and will not have a positive impact on upon the general historical and architectural character of the historic preservation overlay zone.

To remedy all of the above, we believe the City Council should reverse the decision of the Historic Preservation Board and deny a report of acceptability for the Project. If the City Council chooses to remand the item back to the Historic Preservation Board, it should be with instructions to: 1. Consider how the proposed structure meets (or fails to meet) the City Council adopted “North End Historic Preservation Overlay Zone Design Standards”; and 2. Consider the mass and scale of the proposed building as a part of its design review process for this project. Further, that the public notice and posting for any reconsideration of this item by the Board must include accurate and fully transparent information regarding the size of the proposed Project.