



## Legislation Details (With Text)

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**Type:** Planning Case      **Status:** Passed

**File created:** 8/1/2020      **In control:** City Council

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**Title:** An appeal of the Historic Preservation Board’s approval of the Report of Acceptability for construction of a new single-family residence located at 15 West Del Norte Street.

(Quasi-Judicial)

**Presenter:**

Gaby Serrano, Planner II, Planning and Community Development  
Peter Wysocki, Planning and Community Development Director

**Sponsors:**

**Indexes:**

**Code sections:**

**Attachments:** 1. Appeal Statement, 2. Appeal Statement\_exhibits, 3. Public Comment Escovitz, 4. Applicant's Rebuttal to Appeal, 5. CC\_15 W Del Norte Street\_staff, 6. Staff Report - 08.03.pdf, 7. Staff Report - 07.06.20, 8. Project Statement - 08.03.20, 9. Project Statement - 07.06.20, 10. Site Plan and Elevations - 08.03.20, 11. Site Plan - 07.06.20, 12. Example of Architecture - 07.06.20, 13. Materials - 08.03.20, 14. 15 w del norte st rendering lr, 15. 15 w del norte street, 16. Support Comment, 17. Public Comments 08.03.20, 18. Additional\_Public Comments, 19. Public Comments - 07.06.20, 20. Colorado Certified Local Government Handbook, 21. National Register of Historic Places Inventory Nomination Form, 22. Section 7.5.1605(C), 23. 7.5.1601 Historic Preservation Board, 24. 7.5.1602 HPB Definitions, 25. 7.5.902 Public Notice, 26. 7.5.906 (B) Appeal, 27. July HPB minute – Del Norte only, 28. HPB\_Minutes\_15WDelNorte\_draft

Date	Ver.	Action By	Action	Result
8/25/2020	2	City Council	denied	Fail
8/25/2020	2	City Council	approved	Pass
8/3/2020	1	Historic Preservation Board		

An appeal of the Historic Preservation Board’s approval of the Report of Acceptability for construction of a new single-family residence located at 15 West Del Norte Street.

(Quasi-Judicial)

**Presenter:**

Gaby Serrano, Planner II, Planning and Community Development  
Peter Wysocki, Planning and Community Development Director

**Owner:** Adam and Ashely Ackerman

**Representative:** Lindsay Tysland

**Appellant:** Old North End Neighborhood (ONEN) Board of Directors

**Location:** 15 West Del Norte Street

The application is an appeal of the Historic Preservation Board's decision to approve an application for a Report of Acceptability. The application is for the development of a new single-family residence. (See "Appeal Statement 1" and "Appeal Statement 2")

**Previous Council Action:**

City Council previously took action on this property in 2000 when the Historic Preservation Overlay zone was created via Ordinance # 00-147.

**Background:**

The property is addressed as 15 West Del Norte Street, which is located within a Historic Preservation Overlay zone. In accordance with City Code Section 7.5.1605(A), *Work Requiring Building, Demolition, Moving or Sign Permit*, any proposed work within a Historic Preservation Overlay zone that is visible from the public right-of-way and requires a building permit must be reviewed by the City's Historic Preservation Board (herein referred to as "Board") and shall receive a Report of Acceptability prior to construction of any approved work.

The Board's responsibilities are to advocate, educate, survey, and review and take action or make recommendations regarding applications affecting historically and architecturally significant areas, buildings/structures, and resources within the City, per City Code Section 7.5.1601(B). The Board is tasked to review and take action on applications for alteration or construction of new buildings in Historic Preservation Overlay zone districts. The Board ensures, through a design review process, that the proposed work is not creating, changing or destroying the architectural character of the overlay. The Board's review of permits is also intended to help the homeowner ensure changes are compatible with the historic significance of the property and have no adverse effects on other resources in the area. Through their deliberations, the Board may postpone action until further information is provided or approve or deny the issuance of a Report of Acceptability. In making findings for a decision, the Board must determine whether the application, and proposed scope of work, meet the review criteria in City Code Section 7.5.1605(C) *Board Approval of Proposed Work* (See "Section 7.5.1605 (C)")

The application before City Council is an appeal of the Board's affirmative decision to approve reports of acceptability for a new single-family detached residence and an amendment to the report of acceptability at 15 West Del Norte Street. (See "Appeal Statement 1" and "Appeal Statement 2"). Pursuant to City Code Section 7.5.1605(K), *Appeals of Decisions*, appeals of the Historic Preservation Board are heard by the City Council. The procedures for City Council's hearing of the appeal is set forth in City Code Section 7.5.906, *Appeals*.

The owner of 15 West Del Norte Street is proposing a new single-family residence with a covered deck and attached one-car garage on the currently vacant, legal lot. The owner is proposing a "Tudor" style home with a façade clad with stucco. The roofing material is proposed to be of a slate composite roofing. As designed, the new home includes a number of design elements (i.e. decorative timber accents, steeply pitched roof, diamond and colonial vinyl casement windows, etc.) that are characteristic of the Tudor style. (See "Example of the architecture home", "Materials List" "Elevations")

Below is a brief history of the Old North End Neighborhood, Adoption of the Historic Preservation Overlay and Proposal of the single-family residence:

- On December 17, 1982, the Old North End Neighborhood was listed on the National Register of Historic Places (NRHP). At the time, was a vacant parcel, so the NRPH listing for the North End Historic District did not document any known historically significant aspects of the property. One of the architecture styles that are identify in the NRPH is the “Tudor” architecture style. More specifically the character elements of the “Tudor” architecture style are its “small-paned windows, little turrets and rusticated brick or stone punctuating an otherwise smooth stucco façade”.
- In November of 1988, City Council adopted the first Historic Preservation Ordinance establishing the Historic Preservation Board, a Historic Preservation Overlay zone district, and permitting the review of changes and modifications to properties that are covered by the Historic Preservation Overlay zone district. The ordinance was adopted to formalize the commitment of preserving the distinctive historic character of Colorado Springs by supporting historic preservation.
- On September 26, 2000, City Council passed Ordinance 00-147, which created a Historic Preservation (HP) overlay zone encompassing the Old North End Historic District. The purpose of the overlay was to preserve and protect the historically significant portions of the Old North End Neighborhood. In addition to the adoption of the overlay, at that time staff presented to City Council the “North End Historic Preservation Overlay Zone Interim Control Design Standards”. The design standards are intended to guide the decisions of the Board. However, these design standards were not codified under the ordinance creating the Historic Preservation Overlay zone. According to the discussion at the adoption hearings, these standards were “interim” and a separate process would need to occur at a later date to accept the standards by resolution.
- On June 17, 2020, the owner filed the application for Report of Acceptability from the Board and six (6) non-use variances applications. (See “Project Statement for the Report of Acceptability 1”)
- On July 6, 2020, the Board heard and approved the application for the Report of Acceptability to allow the construction of new single-family residence on the property located at 15 West Del Norte Street.
- On July 15, 2020, Michael Anderson on behalf of the Old North End Neighborhood (ONEN) filed an appeal for the Reports of Acceptability to allow the construction of a new single-family home (See “Appeal Statement 1” and “Appeal Statement 2”).
- On July 21, 2020, the owner filed an amendment to the previously approved Report of Acceptability. (See “Project Statement for the Report of Acceptability 2”)
- On July 22, 2020, the (ONEN) Board of Directors requested a postponement of the appeal.
- On August 3, 2020, the Board heard and approved the application for the amendment to the previously approved Report of Acceptability, which modified the following aspects of the scope of work:
  - The building height changed from 30 feet to 25 feet in height.
  - The windows proposed in the bedroom changed from double hung windows to casement.
  - Two windows were added to the basement for egress.
  - The kitchen windows changed from a five window to a three window configuration.
  - The doors on the east elevation changed from French doors with diamond panes to a colonial styled pane. (See “Project Statement for the Report of Acceptability 2”)

According to City Code Section 7.5.1605(K), *Appeals of Decisions*, appeals of Board decisions are heard by City Council and must indicate what code sections are not being met. The appeal states that the decisions of the Board were incorrect and should be reversed because: (See “Appeal Statement 1” and “Appeal Statement 2”).

- The project was not eligible to be heard by the Board and the Report of Acceptability was heard prior to the decision of the nonuse variances,
- The Board did not apply the North End Historic Preservation Overlay Zone Design Standards,
- The Board lacks the required number of board members to decide on the project,
- The poster and postcard information was misleading,
- The Board did not consider the mass and scale of the project.

An expanded discussion of the reasons for the appeal of the Board’s decisions can be found in the appeal statement which is attached.

**-The project was not eligible to be heard by the Board and the Report of Acceptability was heard prior to the decision of the nonuse variance.**

The Planning & Community Development Department’s uses administrative documents, such as the General Application Form and Application Checklist, to assist or guide an applicant in the preparation of a complete development application. These guiding application documents are updated from time to time to better align with the review expectations of City Planning staff and the Board as it relates to rendering a decision for a Report of Acceptability, per City Code Section 7.5.1605(C) *Board Approval Of Proposed Work*. In the case of an application for a Report of Acceptability, City Code does not dictate submittal requirements for this application type, nor does it give guidance on the alignment of approvals.

In accordance with City Code Section 7.5.802(F), *Application and Process*, the non-use variance applications are reviewed administratively unless the nonuse variance is submitted with another application that is required to be decided upon by the City’s Planning Commission. Being that City Code does not dictate the hearing process, Staff is of the opinion that the non-use variances should not be approved prior to scheduling an item for Historic Preservation hearing because the Board can make modifications to the architecture of the home which could trigger modifications to the non-use variances and thus a resubmittal of the non-use variance requests.

**-The Board did not apply the North End Historic Preservation Overlay Zone Design Standards.**

As stated earlier in this report, City Council did not adopt a resolution formalizing the “North End Historic Preservation Overlay Zone Interim Control Design Standards” as regulatory standards to be used by the Board within the Historic Preservation Overlay zone. According to the discussion at the adoption hearings for the overlay zone in 2000, these standards were “interim” and a separate adoption process should have occurred to accept the standards by resolution. Therefore, the design standards are not codified and only serve as a guide for the Board to make decisions. Staff has thoroughly researched the files from the hearings and has found no indication that a subsequent hearing on formal adoption of the Design Standards was held.

**-The Board lacks the required number of board members to decide on the Report of Acceptability.**

In accordance with City Code Section 7.5.1601 (C) *Historic Preservation Board*, the Board shall consist of seven (7) members. It has been very difficult for City staff to fill vacancies of the Board, let

alone to find individuals with the expertise or qualifications to objectively review development proposals of this nature. In accordance with City Code Section 7.5.1601(G) "No official business of the Board shall be conducted unless a quorum of not less than four (4) members is present. The concurring vote of at least a simple majority of the quorum is necessary to constitute an official act of the Board." The July and August public hearings of the City's Historic Preservation Board had the necessary number of board members present to conduct the hearing and render decisions on the items scheduled for the meeting agenda. The July Historic Preservation Board meeting had four (4) board members present. The August Historic Preservation Board meeting had five (5) board members present.

**-The poster and postcard information was misleading.**

In accordance with City Code Section 7.5.902 *Public Notice*, City Planning staff correctly notice the July and August public hearings of the City's Historic Preservation Board. As part of the public notification, 15 West Del Norte was identified for construction of a new single-family residence. Staff asked the property owner to place a public notice poster on the property and staff mailed out 13 postcards. The public notification process consisted of providing notice to adjacent property owners within one-hundred fifty (150) feet of the site, which included the mailing of postcards on three occasions; prior to the Historic Preservation Board and prior to City Council. The site was also posted during the occasions noted above. City Planning staff was notified on numerous occasions about the public notice poster being down and visible from the public right-of-way. City Planning staff contacted the applicant shortly and requested that for the poster to be reposted.

**-The Board did not consider the mass and scale of the project.**

As stated earlier in this report, the Board's responsibilities are to review and take action on Reports of Acceptability for work consisting of the rehabilitation, alteration or demolition of historic buildings, or construction of new buildings and other structures including signs in the Historic Preservation Overlay zone. The Board does not have regulatory purview over the dimensional standards established within any base zone district; thus, the Board did not consider the mass and scale of the proposed residence.

In accordance with City Code Section 7.5.1605 (C) Board Approval of Proposed Work, the Board determined that the new single-family residence as initially proposed and modified meets the review criteria of City Code Section 7.5.1605 (C)(1) through (C)(4) and staff will expand on the Board's decisions:

*City Code Section 7.5.1605(C)(1) - The effect of the proposed work upon the general historical and/or architectural character of the historic preservation overlay zone.*

The property owner's attention to style, texture and material of the proposed new single-family home is not changing the character of the historic preservation overlay zone.

*City Code Section 7.5.1605(C)(2) - The architectural style, arrangement, texture and materials of existing and proposed structures, and their relation to the structures in the historic preservation overlay zone.*

The materials that the property owners have selected will be consistent with the neighborhood.

*City Code Section 7.5.1605(C)(3) - The effects of the proposed work in creating, changing or destroying the exterior architectural features of the structure upon which such work is to be done.*

The project preserves the unique character of neighborhood.

*City Code Section 7.5.1605(C)(4) - The effect of the proposed work upon the protection, enhancement, perpetuation and use of the historic preservation overlay zone.*

According to the NRHP listing for the North End Historic District (See “National Register of Historic Places Inventory Nomination Form”), there are approximately 47 homes that are of the “Tudor” architecture style in the Old North End neighborhood. The new single-family home, with its Tudor style design and detailing, will blend in perfectly with the neighborhood.

**Previous Council Action:**

N/A

**Financial Implications:**

N/A

**City Council Appointed Board/Commission/Committee Recommendation:**

At the Historic Preservation Board meetings held on July 6, 2020 and August 3, 2020, the applications for Report of Acceptability were discussed extensively for the construction of the single-family residence at 15 West Del Norte Street.

The Board’s vote for each request was as follows:

- On July 6, 2020, the Report of Acceptability application for the new single-family residence was approved with a vote of 4-0-3 (one board member was excused, the Board currently has two vacancies).
- On August 3, 2020, the Report of Acceptability application for amendments to the initially accepted Report of Acceptability was approved with a vote of 5-0-2 (the Board currently has two vacancies).

Please reference the July 6, 2020 Historic Preservation Board minutes from the hearing for a detailed record. (See “July 6, 2020 Historic Preservation Board Minutes”)

Please reference the August 3, 2020 the Historic Preservation Board minutes from the hearing for a detailed record. (See “August 3, 2020 Historic Preservation Board Minutes”)

**Stakeholder Process:**

The public notification process consisted of providing notice to adjacent property owners within One-hundred fifty (150) feet of the site, which included the mailing of postcards. The site was also posted during the notification periods. Written and verbal comments were in favor and in opposition to the proposal. (See Residents Comments) Those comments in opposition to the project include parking, the design of the house, compatibility with the residential neighborhood, and the size of the home.

At the City Historic Preservation Board meeting held on July 6, 2020, public comment discussion, the following concerns were expressed:

- The size of the single-family house.

- The height of the home.
- This project is not maintaining the visual integrity of the Old North End neighborhood.
- The project does not meet the Old North End Design Standards, specifically the façade cladding and lack of front porch.

At the City Historic Preservation Board meeting held on August 3, 2020, public comment discussion, the following concerns were expressed by the public:

- The public was concerned about the size of the single-family home.
- This project is not maintaining the visual integrity of the Old North End neighborhood.
- The project does not meet the Old North End Design Standards.
- The cladded façade with stucco being proposed does not meet the Old North End Design Standards and will change the character of the neighborhood.
- The home will be converted to a short term rental.
- Drainage concerns.

**Alternatives:**

1. Uphold the action of the City Historic Preservation Board;
2. Modify the decision of the City Historic Preservation Board;
3. Reverse the action of the City Historic Preservation Board; or
4. Refer the matter back to the City Historic Preservation Board for further consideration

**Proposed Motion:**

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Deny the appeal and uphold the Historic Preservation Board's approval of the Report of Acceptability for the development of a new-single family residence, based on the findings that the appeal does not meet the appeal criteria set forth in City Code Section 7.5.906.B and the project meets the review criteria in City Code Section 7.5.1605 (C)

Approve the appeal and overturn the Historic Preservation Board's approval the Report of Acceptability for the development of a new-single family residence, based on the findings that the appeal meets the review criteria set forth in City Code Section 7.5.906.B and the project does not meet the review criteria in City Code Section 7.5.1605 (C)

**Summary of Ordinance Language**

N/A