

DRAFT OF MINUTES PROPOSED FOR ADOPTION BY THE GREENVILLE BOARD OF
ADJUSTMENT

September 25, 2008

The Greenville Board of Adjustment met on the above date at 7:00 PM in the City Council Chamber of City Hall.

Dr. Mulatu Wubneh*, Chairman	
Ann Bellis X	Charles Ewen*
Wanda Harrington *	John Hutchens *
Scott Shook*	Charles Ward*
Renee Safford-White*	Allen Thomas*
Linda Rich X	Louis Treole*

The members present are denoted by an “*” and those absent are denoted by an “X”.

VOTING MEMBERS: Wubneh, Harrington, Hutchens, Shook, Ward, Safford-White, Thomas

OTHERS PRESENT: Mr. Mike Dail, Planner
Mr. Wayne Harrison, Planner
Mrs. Sarah Radcliff, Secretary
Mr. Chris Kelly, Engineering Assistant
Mr. Tom Wisemiller, Planner
Mr. Bill Little, City Attorney

MINUTES

Motion was made by Mr. Shook, seconded by Mr. Ward to accept the August 28, 2008 minutes as presented. Motion carried unanimously.

PUBLIC HEARING ON A REQUEST FOR A SPECIAL USE PERMIT BY EAST CAROLINA
ENHANCEMENT TRAINING CENTER, LLC

The applicant, East Carolina Enhancement Training Center, LLC, desires a special use permit to operate an other activity; personal service not otherwise listed (Day Treatment Facility) pursuant to Section 9-4-78(f)(15)a. of the Greenville City Code. The proposed use is located at 1311 W. Arlington Boulevard, Suite 102. The property is further identified as being Tax Parcel Number 14287.

Chairman Wubneh asked all who wished to speak for or against the case to come forward and be sworn in.

Mike Dail, planner, delineated the area on the map. He stated the subject property is located along Arlington Boulevard near the intersection of South Memorial Drive. The property is currently zoned CH, Heavy Commercial. The property to the north, south and east is also zoned CH, Heavy Commercial. The property to the west is zoned OR, Office Residential. Mr. Dail stated the property was located along a major thoroughfare being West Arlington Boulevard near its intersection with another major thoroughfare

being South Memorial Drive.

Surrounding Development:

North: Trust Atlantic Bank, McDonalds
South: Vacant (Approved Special Use Permit for MAACO)
East: Kangaroo Gas Station
West: Vacant, Hite & Associates

Description of Property:

The property contains one commercial building with 6 units and has approximately 180 feet of frontage along Arlington Boulevard with a total lot area of 0.98 acres. The applicants unit contains approximately 1,500 square feet of floor area.

Comprehensive Plan:

The property is located within Vision Area "F" as designated by the Comprehensive Plan. The proposed use is in general compliance with the Future Land Use Plan which recommends commercial development for the subject property.

Notice:

Notice was mailed to the adjoining property owners on September 11, 2008. Notice of the public hearing was published in the Daily Reflector on September 15, 2008 and September 22, 2008.

Staff Recommend Conditions:

The facility must comply with all requirements, licensing, rules, health certifications, background checks and other requirements imposed or directed by the NC Division of Health, Human Services; the Commission or Council on MR/Developmental Disabilities; and Community Alternative Programs for DD/MR adults and/or juveniles.

At no time will clients of the training center be permitted to wait or be outside without being accompanied by a staff member of the training center to supervise and ensure proper behavior of the clients including but not limited to aggressive actions, littering, fighting, yelling, loitering or other unacceptable behavior.

Other Comments:

The proposed project must meet all related NC State fire and building codes prior to occupancy.

Staff Recommendation:

Planning staff is of the opinion that the request can meet all the development standards required for issuance of a special use permit upon proper findings by the Board.

Sabrina Betts and Walter Sadler spoke in favor of the request on behalf of the applicant. Ms. Betts stated their facility would work with children and adolescents who are emotionally disturbed. She stated their hours of operation would be from 8:30a.m. to 3:30p.m. and their expected capacity will not exceed 12 children.

Mr. Ward asked how many people would be at the center during the operational hours.

Ms. Betts said they expected to have between four and six staff members plus the 12 children.

Mr. Ward asked how severely handicapped the children would be.

Ms. Betts said the children would have emotional disturbances and would not be physically impaired in any way. She stated the children at the facility were either temporarily or permanently suspended from school.

Chairman Wubneh asked if the children were referred to them by the school.

Ms. Betts said they could be referred by the school, any human services organization, or their parents.

Chairman Wubneh asked if they provided transportation for the students.

Ms. Betts stated they would not provide transportation at this time.

Mr. Ward asked the size of the facility.

Ms. Betts said she believed it was 1500 square feet.

Chairman Wubneh asked the position of the city.

Mr. Dail stated the city had no objections to the request.

Chairman Wubneh read the criteria for granting/denying a special use permit. Chairman Wubneh asked for a motion to approve the findings of fact including the conditions recommended by staff. Motion was made by Mr. Thomas, seconded by Mr. Ward. Motion carried unanimously.

Chairman Wubneh then asked for a motion to approve the petition with the two conditions. Motion was made by Ms. Safford-White, seconded by Ms. Harrington. Motion carried unanimously.

Based on the facts found by the Board and the evidence presented, the Board orders that this permit be

granted and subject to full compliance with all of the specific requirements stated in the Zoning Ordinance of the City of Greenville for the proposed use.

PUBLIC HEARING ON A REQUEST FOR A SPECIAL USE PERMIT BY TOMMY TAYLOR AND THOMAS BANKS

The applicants, Tommy Taylor and Thomas Banks, desire a special use permit to locate a mobile home on a lot within the RA20 zoning district pursuant to Section 9-4-78(f)(2)g. of the Greenville City Code. The proposed use is located at 4320 County Home Road. The property is further identified as being Tax Parcel Number 04986.

Chairman Wubneh asked all who wished to speak for or against the case to come forward and be sworn in.

Mike Dail, planner, delineated the area on the map. Mr. Dail stated the property is located along the southern border of the city, along County Home Road. The property is currently zoned RA20, Residential Agricultural. He stated the property to the north and south is also zoned RA20. The property to the east is zoned O, Office and to the west is zoned R9S, Residential Single-Family. Mr. Dail stated the property was located along a major thoroughfare, being County Home Road.

Surrounding Development:

North: Single Family Residences
South: Single Family Residences
East: Vacant
West: Single Family Residences

Description of Property:

The property contains one single family home and one mobile home (existing nonconforming use) and has approximately 300 feet of frontage along County Home Road with a total lot area of 1.72 acres. The applicants wish to subdivide the subject property to create two lots one of which will contain the new mobile home and the other the existing single family home.

Comprehensive Plan:

The property is located within Vision Area "D" as designated by the Comprehensive Plan. The proposed use is in general compliance with the Future Land Use Plan which recommends medium density residential development for the subject property.

Notice:

Notice was mailed to the adjoining property owners on September 11, 2008. Notice of the public hearing was published in the Daily Reflector on September 15, 2008 and September 22, 2008.

Staff Comments:

Sec. 9-4-94. Schedule of development standards by zoning district.*

(a) *RA-20 district.*

- (1) Lot area (net).
 - a. Single-family, without public water: 20,000 square feet
 - b. Single-family, with public water: 10,000 square feet**
 - e. Mobile home: in accordance with (a) or (b) above
- (2) Lot width (at the MBL).
 - a. Single-family: 70 feet
 - c. Mobile home: 70 feet**
- (3) Public street setback (MBL).
 - a. Single-family: 30 feet
 - c. Mobile home: 30 feet**
- (4) Side setback.
 - a. Single-family: 10 feet
 - c. Mobile home: 12 feet**
- (5) Rear setback.
 - a. Single-family: 20 feet
 - c. Mobile home: 20 feet**
- (6) Height (above grade).
 - a. Single-family: 35 feet
 - c. Mobile home: 35 feet**

Sec. 9-4-103. Special standards for certain specific uses.

(n) *Mobile home*

1. No mobile home established (new setup) or relocated within the City of Greenville planning and zoning jurisdiction shall be occupied until said mobile home has been inspected and approved for compliance with the Minimum Housing Code set forth under Title 9, Chapter 1, Article F of the City Code when the building inspector makes a finding of noncompliance with the Minimum Housing Code.
2. Mobile homes shall, upon installation, have either (i) a permanent, continuous masonry foundation or (ii) a continuous and opaque skirt consisting of vinyl, fiberglass or other similar solid non-metal material. The skirt for a mobile home shall be attached to weather resistant material when required for support.

Staff Recommend Conditions:

Existing mobile home must be removed prior to installation of new mobile home.

The subject property must be subdivided into two development lots that meet the City of Greenville's dimensional standards for the RA20 zoning district prior to installation of the mobile home.

Other Comments:

The proposed project must meet all related NC State fire and building codes prior to occupancy.

Staff Recommendation:

Planning staff is of the opinion that the request can meet all the development standards required for issuance of a special use permit upon proper findings by the Board.

Mr. Treole asked if this was a subdivision, shouldn't the request go to the Planning and Zoning Commission.

Mr. Dail stated that the applicant did not want to subdivide the property if they could not get a special use permit to place the mobile home there.

Mr. Treole asked if this was an expansion of a nonconforming use.

Mr. Dail stated it would actually be alleviating a nonconforming use. He said that the mobile home that is currently on the property was put there in 1992. The property came into the city's jurisdiction in 1993. Subdividing the lot and removing the existing mobile home would do away with the nonconforming use.

Janice Spellman spoke in favor of the request on behalf of the applicant.

No one spoke in opposition to the request.

Chairman Wubneh asked the position of the staff.

Mr. Dail stated staff had no objections to the request.

Chairman Wubneh read the criteria for granting/denying a special use permit. He asked for a motion to approve the findings of fact including the conditions recommended by the staff. Motion was made by Mr. Ward, seconded by Mr. Shook. Motion carried unanimously.

Chairman Wubneh then asked for a motion to approve the petition with the staff recommended conditions. Motion was made by Mr. Hutchens, seconded by Ms. Safford-White. Motion carried unanimously.

Based on the facts found by the Board and the evidence presented, the Board orders that this permit be granted and subject to full compliance with all of the specific requirements stated in the Zoning Ordinance

of the City of Greenville for the proposed use.

PUBLIC HEARING ON A REQUEST FOR AN ADMINISTRATIVE APPEAL BY MICHAEL GOGOEL

The applicant, Michael Gogoel, desires to appeal a decision made by the Historic Preservation Commission on August 27, 2008 concerning the addition of windows and sashes at the property located at 400 S. Summit Street. The property is further identified as being Tax Parcel Number 17970.

The following minutes were done verbatim.

Dr. Wubneh: I now open the public hearing on this. All those wishing to speak for against this case, please come forward and get sworn (secretary swears in participants). Mr. Little, will you please give us some guidance with respect to how we have to handle this request, or this appeal?

Mr. Little: Thank you, Dr. Wubneh. Good evening board. Because this is a different procedure, or a different hearing than you're accustomed to, sitting as a Board of Adjustment, what I want to do is provide some initial or preliminary instructions and then at the close of the hearing, I'll provide some closing instructions concerning your vote. At this point, one of the activities that the Board of Adjustment does is it sits as an appeal board. In this case, appeal of decisions from the Historic Preservation Commission. In that capacity you will sit, again, as a quasi-judicial body, but you are an appellate quasi-judicial body. You will only consider that testimony that is relevant material competent and substantial. We've talked about this before; you have information in your packets about those definitions and what it means to satisfy those requirements. As a reminder, hearsay evidence is not admissible, unless it falls within one of the, I think, 26 exceptions. You know, every time we make a rule, we have to have an exception, and there are about 26 of them to the hearsay rule. If information is brought in that you believe is hearsay and you seek clarification, and then all you would do is just ask me, "Is this hearsay and is there an exception that would permit us to consider this?" Throughout the hearing, the appellant, in this case, Mr. Gogoel has the burden of persuasion and proof. Mr. Gogoel's burden on appeal is to establish that the decision of the Historic Preservation Commission was not based on relevant material competent and substantial evidence. He is appealing the decision of the Historical Preservation Commission, in which the Commission approved Mr. Gogoel's application for a Certificate of Appropriateness to correct previously unauthorized work. Specifically, or in other words, the appellant is asking the Board of Adjustment to reverse the approved Certificate of Appropriateness, approved by the Historic Preservation Commission. The order of the hearing, staff will present the background of the case; including those facts that have been previously decided, that is, at hearings before are established no longer in dispute. That helps expedite some of the matters and brings you up to speed on where we are. The staff's presentation can include its position. You may ask questions of the staff concerning the presentation or may ask me for an interpretation of the law based on that presentation. Once that presentation is completed, Mr. Gogoel will then conduct his case. He may call any witnesses, including himself. They will present testimony to you. At the end of the testimony, just like you would see in a court, the staff representative can ask cross examination questions. There is not a requirement. The board can also ask questions of the witness. If there is anything that the witness stated that you want a clarification on, that you are not sure, or there was a question about whether or not it was an admissible statement, we can take it from there. But, you do have that right to also ask questions. When

Mr. Gogoel finished his case, the staff can present its case, or can stand on the presentation that it made in the beginning. If it does present its case, presents additional witnesses, then Mr. Gogoel can ask questions of the staff concerning that presentation, or ask questions of any witness presented. At the conclusion of the staff's case, if there is one, then Mr. Gogoel has the opportunity to present rebuttal evidence. This is not new stuff, this is not stuff to rehash the same things that were said, but to seek clarification or to further address matters that were brought up during the staff's case, if one is conducted. When those items are finished, both parties, at the direction of the chair, may present a concluding statement, kind of like what you see in the courtroom when the lawyer's make a closing argument. The parties can make a statement in closing, restatement, stating why you should either reverse, or why you should affirm, or why you shouldn't accept the other side's case, or they could say nothing at all. There is no requirement that a concluding statement be made. When that gets done, we will then go into a session and I will provide you with some additional instructions concerning your deliberation and the voting procedure. At this point, do you have any questions of me?

Dr. Wubneh: I'm sure we will have more as we proceed.

Mr. Little: That's fine.

Dr. Wubneh: Because there are a number of steps involved.

Mr. Little: Okay, Dr. Wubneh. Thank you.

Mr. Wisemiller: Thank you chair and members of the board. My name is Tom Wisemiller. I'm a planner with the Community Development Department but I also am the staff liaison to the Historic Preservation Commission and I was asked this evening to present the facts of the case, largely in part because I am most familiar with them having worked with the Historic Preservation Commission. I am going to go ahead and present those now. In the presentation I may paraphrase some of those, but they are included in the sort of full legal findings of fact in the packet, and if at the end of that, if you have any questions about any of those facts or some of the images that were provided as sort of an illustration, please, we can go back and take a look at those. As an introduction, I think this was mentioned a little bit, but the following slides and facts that I will present, represent the undisputed Findings of Fact from the COA 08-09 for 400 South Summit Street. All of these facts were either established as findings in the course of the hearing process and were not appealed at a previous point by the applicant, and the time limit expired to appeal those previous findings of facts; or, in other cases, they are mutually agreed upon by both parties. To go through those Findings of Fact, the Historic Preservation Commission made the following findings fact for that property. The house and grounds are located within the College View Historic District, and that was established by Ordinance §94-22 of the City Council of the City of Greenville. It's a craftsman bungalow style dwelling that had previously four-over-one wood sash windows. The first known occupant was Lydia T. Fleming. Here's a map of the property. The purple shaded area is the local historic district and the property, sort of on the western edge of the property, 400 South Summit Street. The property is highlighted in blue there. And then, across the street from the applicant's property, there is a street sign that signifies that the property is located within the College View Historic District. There is an emblem signifying that it's in the district on the street sign. In the fall of 2007, the original 4-over-1 sash windows were replaced with vinyl replacement windows. This picture here shows the new windows. At the time, the owner,

Michael Gogoel, had neither sought nor obtained a Certificate of Appropriateness (COA) to replace the windows. Those replacement windows, again, actually, I'm sorry this photo was the previous, before the windows were replaced and this one is the vinyl windows that were installed without authorization. They're vinyl Ellison windows and doors, 1500 series. Again, the owner replaced wood windows with vinyl, but encapsulated the brick molding with PVC coated aluminum. Staff personnel with the City of Greenville advised the owner that a COA is required to perform exterior changes to local historic properties. On June 21, 2007, the owner did submit a COA to ratify that change that he had already done with the vinyl windows. On November 27, 2007, the Historic Preservation Commission heard that application. The applicant stated that when he purchased the property the windows were in poor condition and beyond repair, and that wood rot existed and many of the windows had been painted shut. After the staff liaison was made aware of the work, he conducted a site inspection and observed that, at that point, much of the work had been completed. This may be slightly out of chronological order, but much of the work had been completed, but several of the original windows were still on the property and the condition of the few remaining windows, at least as a sample that were on the property, looked to be in good shape and looked like they could have been repaired and reused. There is an example there of the windows and the condition that they were in. Chapter 2 of the Design Guidelines, which the Historic Preservation Commission uses to evaluate the appropriateness of proposals in the district, provides that original windows and doors should be retained including all the elements. Windows shall be preserved and/or repaired where possible. But, if replacement is necessary, the replacements should match the originals in, among other things, panel division, which those were not, and materials. They were vinyl instead of wood. Stock items should not be used that do not duplicate the originals and vinyl windows are not an appropriate replacement option. At the November 27, 2007 hearing, the HPC denied the application but did afford the applicant a year to propose a historically appropriate alternative. No appeal at that time was made by the applicant, but then when the time was getting near, the applicant did propose an alternative. First, suggesting replacing the vinyl windows with 3-over-1 wood replacement windows. That would have been true divided light. The HPC requested a further clarification on that. The applicant, at that time, had complained about the cost of replacement; however it was determined at the earlier hearing that the applicant had brought himself into the problem by not first seeking compliance and assistance through city staff. At the July 22 hearing, the Commission continued the applicant's 3-over-1 wood window replacement to give him to look at a 4-over-1, which was the original panel division of the wood window, the original historic wood windows. At the August 26, 2008 meeting of the Historic Preservation Commission, the applicant requested approval for 4-over-1 replacement windows. He gave the HPC two options, one from vendor Kolbe and another from M&W. I won't go through this in great detail, but they were both wood replacement windows, traditional, true divided light, historically appropriate windows. In one case he was proposing to replace both the windows and the underlying wood frames that he had previously encapsulated with the vinyl. And then, in option 2, just to replace the sashes and not go in and replace the original frames. The first one, he did get a price quote for that, and this is sort of on the record what his price quotes were. In both cases the HPC, I should say the HPC approved the proposal and then gave the applicant the option of doing either Option A or Option B. The applicant now appeals the decision of the Historic Preservation Commission approving his revised COA Application that gave him the opportunity to do either of those two options. Again, that was at the August 26, 2008 meeting. Key questions for consideration, did the owner appeal the original denial of the COA application? How might the owner have known that the property is in the historic district? And, is the owner now appealing the HPC's approval of his amended COA? Staff's conclusion is that the owner did not appeal the original

denial. The street sign outside of the house indicates that the property is in the historic district. And, the owner amended his COA and submitted to the HPC proposing that the inappropriate windows be replaced with compliant windows: the HPC approved that request and actually gave him both options to pursue and now the applicant is appealing that approval. If you have any questions or you want to go back to any slides....

Mr. Ward: Why is the applicant appealing that approval?

Mr. Wisemiller: Well, I don't know if I can speculate on that, you probably should ask him that.

Mr. Shook: I've got a question, when did all that become a historical, I mean, when did the historic district take place?

Mr. Wisemiller: I knew this, I'm going to have to guesstimate on that, but I believe it was approximately 1991. Does that seem about right, Bill?

Mr. Little: City council approved the Historic District, the College View Historic District, by ordinance; I believe it was 1987 when the ordinance was passed. When the ordinance was signed, it was then taken to the courthouse and recorded in the Register of Deeds office with book and page number and is part of the Register of Deeds public records that would be available for search and location upon a title search whenever the purchaser seeks to obtain property. So it is a matter of public record in the Register of Deeds office and is recorded as a public record.

Mr. Shook: Now is that specific to an area or location? If you're a property owner and say, the city wants to change my neighborhood to a historic district, is that something that the existing land, existing home owner, I know that this is not germane to this case, but I just want to understand the rules and history of this a little bit, is that something that the current property owner would have to accept, or can the city just come in and blanket, and say hey, now it's a historic district and now you have to abide by all these rules and regulations.

Mr. Little: As you will see on your screen, in purple, when the historic, College View Historic District was established, there was a public hearing on this. It had been submitted after a study and application. Generally its first designation as a national register historic property, then once it has that designation, it then goes to council to seek, as a zoning, in this case as a zoning overlay district. It's not like a specific designated property. The Humber House, a prime example, is a local designated property. The College View District is a zoning overlay so it applies to the whole district that you see in purple and is a part of the zoning requirements. That hearing was held in 87, I believe it was, when the City Council adopted that ordinance. So, it was not one where they just came in and said, poof, there had to be a public hearing on that which was then established at that point, and then attaches as a zoning, much like when we talk about zoning, previous case, an RA-20 zone. When it has a local historic district zoning overlay, that becomes a zoning requirement, just like RA-20 is a zoning requirement.

Mr. Thomas: This is just a general question about historical districts. Often, it's a good purpose obviously, and I don't want to debate the plusses and minuses of the historic district, but it also does place a burden

sometimes on land owners and it also can create a situation where certain places are left in disrepair, instead of replacing it because it is so expensive to replace to certain standards, so is there any response? Maybe you're not the person to make this response, but on the burden it places on these people, you know in trying to replace something that is cost effective? I think, really the issue is, not being aware of the situation. Although, as you said, it's in public record in the courthouse. That little symbol, logo, does it say historic district on that logo? I really couldn't see that, or is it just a logo?

Mr. Wisemiller: It says College View Historic District

Mr. Thomas: Okay.

Mr. Ewen: And, is the property a contributing property to the district?

Mr. Wisemiller: Yes.

Mr. Ewen: Okay.

Mr. Treole: Mr. Gogoel, at the hearing before the HPC, had it been determined that this buyer or applicant was in the business or was this house purchased by him for his private use?

Mr. Wisemiller: It is my understanding that he purchased it for his son; he can clarify this, but that his son resides there.

Mr. Treole: I mean, at the hearing, was there testimony to the effect that, or did anyone ask him, is he an investor, a flipper, or was he going to use it for his own personal purposes, at your hearing?

Mr. Wisemiller: Yeah, I'm not sure if, that may be something that a property owner in the district would be interested in, and how they evaluate what's going on next door or across the street or whatever, I'm not sure that the Historic Preservation Commission would want to judge one case verses another, depending upon the tenure of the property.

Mr. Treole: Being that he didn't ask for Certificate of Appropriateness when he came before the board for the ratification of what he'd already done, did anyone ask him whether or not this purchase was for his own personal use or whether he was an investor going to flip it out to someone else?

Mr. Wisemiller: If I recall, and again, he'll have to clarify this, but I think he volunteered what his situation was, why he bought the property, and what he was thinking throughout that whole, when he accounted the problem. And (pointing to Mr. Thomas) to sort of respond to your question, I think I agree that there are differences of opinion about that. Some people say that it can add extra costs, but if you asked the State Historic Preservation Office, they would say, if you come to us, we would be happy to show you cost effective ways to repair historic features and we can get you pretty close to the same, if not the same, energy efficiency. I wouldn't necessarily advocate on behalf of one position or another, but there are differences of opinion on that. Some people believe that if, based on the quality of the craftsmanship and some other factors that it can be a really cost effective investment. Other people would say that yes, you do

encounter extra costs sometimes as you are having to do renovations and think about energy efficiency and so forth.

Mr. Shook: That's a governmental entity, verses a property owner though, right?

Mr. Wisemiller: Excuse me?

Mr. Shook: That's a governmental entity verses a property owner, the opinion. If you go you're going to have to go to the governmental entity and they are going to tell you that, hey, we can show you these ways, and dictate to the property owner what is now in their rights.

Mr. Wisemiller: Yes, there are some rights involved, but I also think there is...

Mr. Shook: Or lack of...

Mr. Wisemiller: There is a difference of opinion of sort of the values of different types of investments and the potential of historic properties to be a good return on investment.

Dr. Wubneh: Mr. Wisemiller, I have one question. On item 5 in your finding of facts, it says that he neither sought nor obtained a Certificate of Appropriateness to perform the alteration. He may know that he is in a historic district, but how would he know that he would have to get that certificate before he makes any changes?

Mr. Wisemiller: One area where we have been trying to improve communication, we've implemented a number of areas, but one that's been quite effective on capturing a lot of these types of requests, is somebody needs a building permit, and when they request the building permit they are sent directly up to talk to me or whoever is working with the Historic Preservation Commission. In this case, he didn't need a building permit, so this is sort of where we are working and thinking of ways where we can reach out to people that are doing projects that don't require building permits. At the end of the day, the owner, its sort of buyer beware, the owner is responsible to be aware of the regulations. I think its more, we are working hard to be a resource for people, but if it's a question of legal liability, then it falls on...

Dr. Wubneh: But, if it doesn't need a permit, then I can assume I don't need anything and go ahead and make the alteration. I mean, if it needed a permit, then I would be flagged and say if you want to make alterations you have to comply with XYZ. But, if it does not need a permit, then I am going to assume and say that, oh, okay, I can go ahead and do what I want to do. I know I'm in the historic district, but if I don't need any permits or somebody doesn't flag me, then I can do any alterations. Is that fair to assume, or is there a system by which the Historic Commission or your group somehow makes sure that these people are aware of this change before?

Mr. Wisemiller: We send brochures to the property owners and we also, as we mentioned with the permits, we capture people there and rely on a little bit of word of mouth. We have occasional public meetings where we're inviting people from the district and using neighborhood groups to also communicate with people in the district, among some other communication methods. I think there's probably some obvious

examples where, even if you didn't need a building permit, and you knew were in a local historic district, you probably should give somebody a call. Like, say hypothetically, if you wanted to paint your house pink in a craftsman style neighborhood, and its not Miami, then you don't need a building permit, but you might think about calling the staff.

Dr. Wubneh: Okay. You also say on item number 7 that the city's staff advised him that the Certificate of Appropriateness was required. How was he advised? Was he given a letter, a note, that said you have to meet this before you make the alterations?

Mr. Wisemiller: Well, staff was informed that there was alteration already in progress, and so I made a site visit and spoke to the contractor that was on site at the time in person. But then, the owner, not being on the site and actually living out of state, we wrote a letter to him that he received, say three or four days later. But the first contact was with the contractor on site.

Dr. Wubneh: So there is a letter that was sent anyway to him.

Mr. Wisemiller: Yes.

Mr. Shook: To your knowledge, did he ever receive any building permit for any improvement that he did on the property?

Mr. Wisemiller: That you'd have to ask him. I'm not aware of it. I do think that he did this work fairly shortly or recently after he purchased this property, but I don't know if he had to apply for other permits.

Ms. Harrington: At what point in time, if someone was going to invest or purchase one of the properties located in the historic district, how would they know that it was historic, I mean, in the historic district? Who would make them aware of that?

Mr. Wisemiller: Well, another thing that I did mention before is that we've sent our brochures and tried to reach out to realtors in Greenville and surrounding areas. I think that is sort of their first point of contact. We've explored the idea of seeing if you could have this put on your deeds and so forth, but there are some obstacles to that. I think that with the realtor and it would be nice if, in the future, we could have that appear on your MLS systems and so forth, but that's probably your first opportunity to know. But then I think with the street signs and neighborhood knowledge, word of mouth, is probably your next chance to hear about that. Certainly if you move into the house and you are going to live there, and you are introducing yourself to your neighbors, your odds are probably a little bit better to hear about that, than if your buying the property and don't have a chance to visit it.

Mr. Thomas: But that's kind of after the fact at that point, to some degree. You know, someone's moved in a neighborhood. It would be good to see the city to work towards some kind of formalized approach.

Mr. Little: As clarification here, once you have a recorded zoning overlay district, that's a requirement that's placed on your property. It's a public notice. Okay, again as I explained, the interpretation is no different than an RA-20 zoning. Once you have that zoning requirement, then it becomes incumbent upon

you as the owner of that property to determine what then can you do and what you cannot do within that zoning overlay district. That's your obligation. What happened was that that was not done, so then he was noncompliant with the zoning overlay district. That then required city staff intervention. Those issues have been decided. Those issues were never appealed, so those have become conclusive facts at this point, and not really a re-discussion issue. It is a public record that it is a zoning overlay district, and as a zoning overlay district he was, it was incumbent of him to comply. There was no compliance. There was then an action. He submitted an action. It was denied. He then came back with a revision to become compliant with the zoning overlay district. A good example would be when we have property where somebody wants to put a special use permit, they go ahead and they open the business, where they would have had to have a special use permit. Staff would then contact them and tell them, you cannot operate until you have a special use permit. If they elect to operate, then they are sited and the city takes action to stop the operation, until they then become compliant with that zoning requirement. In this case, notification occurred, the work was already occurred, so then they tried to, there was attempts to resolve that so it would then become a compliant property with the zoning. That's a final decision. So now what you have to decide then is based upon that information, those decided facts, that's what the appeal is on. His appeal is the decision on that revised and amended. It's not on whether or not he should have appealed beforehand, whether or not he says, I don't know; those were all decided facts that were never appealed and are not reopened. Those are conclusive facts and not for reopening. The time to appeal that was thirty days after the initial denial. Once that is not appealed, it then becomes a conclusive fact.

Mr. Thomas: Was he given instructions on the thirty day situation?

Mr. Little: When they get notification letter that you are denied it says you may appeal. Now, the board had also said, we give you an opportunity to submit a revision. He could have elected not to submit a revision and gone the next route. He did decide to submit a revision. If the board had disapproved that, he then had another option to make another decision. The board then approved his decision, or his request.

Mr. Treole: So, is this appeal inappropriate?

Mr. Little: No, he could appeal. You have to determine whether or not the board, the Historic Preservation Commission, made an appropriate decision based upon the facts, material evidence, the competent admissible evidence. Was there decision to make his request based upon those facts? If it was, then it becomes a decision that you would affirm. If it was not then it was a decision that you would reverse.

Mr. Treole: But he submitted a revised...

Mr. Little: That may be a question you want to ask the applicant at that point.

Mr. Treole: No, what I'm saying is that he submitted a revised plan, which was approved by the HPC, and instead of, so really there was a solution there, and instead of going through with the revised plan which was approved, the applicant decided to appeal to this board.

Mr. Little: That is the apparent fact. You may want to inquire on that.

Dr. Wubneh: Let me understand you correctly. Let me state this to see if I understand it correctly. What you are essentially saying is that all the circumstances, whether he knew it was in the historic district, whether he could appeal, and all that matter had been resolved.

Mr. Little: That is correct. Those items are established facts.

Dr. Wubneh: So there is no need for this board to go back into those matters.

Mr. Little: That is correct.

Dr. Wubneh: Rather, what this board is weighing is whether or not the option he was given, the 2 alternatives, 1 and 2, are appropriate or not. Is that correct?

Mr. Hutchens: If I could interject. As you've surmised, we're not doing, we're not retrying, we're not doing a rehearing of the case. We're looking for new evidence or proof of a procedural error on the part of the Historic Preservation board, and that's all we're looking for – new evidence or procedural error. Is that correct Mr. Little?

Mr. Little: Yes.

Mr. Ewen: Would vinyl inserts making the, I know they do that on modern windows to give the appearance of smaller panes, is that not a viable option?

Mr. Wisemiller: There are different ways of doing that. The one's that are closer to the actual historic divided lights are more likely to be approved. There are divisions on both sides and in the middle. You might still have a double pane. That's actually what he ended up going with was a traditional true divided light. It's not exactly like the one pane divided lights you would have had in the past, but they're about as close as you can get with a double paned efficiency window.

Dr. Wubneh: Any other questions from the board?

Mr. Treole: It seems like the matter was resolved and evidently the applicant didn't like the resolution and decided to appeal to this board.

Ms. Safford-White: We need to continue with the process and let him speak before we make a judgment on that.

Dr. Wubneh: Yes, but I think I understand what Mr. Little is pointing out. The fact that we don't need to go back into the background of this and all this matter has been resolved before. He had thirty days to appeal on that and apparently he did not take advantage of that. Any other questions relevant to what we are looking at?

Okay, thank you, we may come back to you, but would the applicant please come forward and tell us. Now you know what is going on in the mind of the board and hopefully you will clarify some of the things that

we would like to get clarified.

Mr. Gogoel: Okay, I'll try to. First of all, there were some facts presented that I think maybe were a little bit different than the public record. I never received a notification that I had to appeal the decision within 30 days; in fact, I never got a copy of the decision at all until I asked for it a few weeks ago, of the original decision by the board not to allow me to keep the windows. So I went to the hearing. I never got anything in writing from the city notifying me that it wasn't approved or that I had the right to appeal or what the appeal processes were. I told Tom that previously as well. I didn't know what the rules were and I still don't know what the rules are. I'm not an attorney and what I wanted to do was present the facts here for two purposes. First of all, I feel I was wronged by the process that the City of Greenville goes through in this historic district and I want that to be a matter of public record in case I'm still compelled to do something that I don't think is fair or cost effective. I would like the matter resolved so that other citizens don't have the same process forced upon them that I think is totally unfair. If you read what my exhibit was, I bought the house, and (to Mr. Treole) I'll answer your question, my son goes to school here and he'll be here for four years, maybe more. He may go to graduate school, so I wanted a place for him to live that I thought was safe and that I could control and I bought the house for that reason. My son is living there now. Also, I wanted to improve it so that when he leaves I will try to sell it. That's what I want to do and I will continue to try to sell after he leaves if I can. I wanted it to be somewhere that would be safe for him, somewhere that would retain its value or something that could possibly improve in value in the time period that he was here, so I wanted to make some improvements to it. I did get a building permit from the city, that's the main problem that I have. When I bought the house, I think the city attorney stated that there's information on the deed or on the title search, but there was no mention in the deed, the title, anywhere, that the property is in a historic district. Nor was it mentioned by the seller, by the selling real estate agent, by my real estate agent, no one told me it was in a historic district. I don't know when those signs were put there. I can't prove or disprove that they were there when I bought the house, that's something that would have to be looked at. I did not see any sign anywhere and in fact, I asked the real estate agents, both of them, on point, you know, because I had looked at other properties that they told me were in the historic district and I said is this in the historic district and they told me no. So, I had no reason to believe that the property was in the historic district at all. I then went to the city because I wanted to make a bunch of renovations to the house. It was in really bad shape. A lot of the windows were broken, and actually not all of the windows were the original wood windows. There were aluminum windows in there and vinyl windows already when I bought the house, so all the windows were not wood windows. This was all stated in the original testimony that I gave to the Historic Preservation Committee. A lot of the windows were broken beyond repair. They couldn't be locked. You couldn't keep the windows from opening; a lot of the windows were nailed shut because that was the only way to keep them closed and make it secure so somebody couldn't get in. So anyway, the furnace and the air conditioning were also very old, so I went to the city and told them what I wanted to do and asked if I needed a permit. They said, yes, you need a permit for the heating and air conditioning, so I got one and had the work done. I said, do I need a permit for the windows and they said no you don't need a permit for the windows. So I didn't get one because I was told point blank, I didn't get one. That's also a matter of public record when I first made the first testimony. The Historic Preservation Committee members, or whoever else was here, admitted that maybe the person didn't know it was in a historic district so they didn't tell you. So if you were to call the city or the county or whoever you get the permits from, they told me I didn't need a permit and they didn't tell me it was in a historic district. I had nothing in writing from anyone. I live in Virginia, I don't live here...

Mr. Little: Okay, just a minute. Just to interrupt, Mr. Gogoel has testified by what somebody, an unknown person, has identified or supposedly said to him. That is hearsay. If you want to consider it, you may consider it. You can give it whatever weight and relevancy that you want. But it is an unknown identified person. Now, going back to the matter, whatever was disclosed or not disclosed by the sellers or the realtors is not an issue before this board since the ordinance is recorded in the Register of Deeds office and has the appropriate book and page number referencing the Register of Deeds. Whether or not it was found it was found in a title search is not up to the decision of the staff or the city. That's up to whoever does the title search. The fact that it is in the Register of Deeds office and is recorded, that is the public record; that is where the public notice is available. If somebody did not disclose it to him, whether it be a seller or realtor, that is not a matter before the board.

Mr. Gogoel: Can I make a statement? It is not on my deed.

Mr. Hutchens: If I could repeat my comments, it is not the purpose of this board to rehear what has already been presented; but to hear any new evidence or identification of a procedural error. So, if we could get on to that, please.

Mr. Gogoel: The County or the City presented a lot of evidence that was not relevant to that, if that's your case, so why am I not allowed to do that?

Mr. Hutchens: Because you are the applicant. What is your purpose here? It is to present new evidence or to identify procedural error.

Mr. Gogoel: My purpose here, as I stated before...

Mr. Hutchens: That's the only thing relevant to the board.

Mr. Gogoel: My purpose is that I would like to have the city find a remedy to the situation so that somebody else doesn't come into the situation that I have come into. That's one of my purposes. The other purpose is I would like to keep the vinyl windows there. I had no idea that is what this appeal was about. I talked to Tom and I talked to the City Attorney telling them that I would like to appeal the decision, and no one told me that I was only appealing, the fact that I was appealing the approval. I didn't understand that at all. The first that I heard of that was when I came in here today. So, I'm a little confused myself as to what's going on here. I thought I was appealing the fact that I had to replace the vinyl windows.

Mr. Treole: Mr. President, can I ask a question?

Dr. Wubneh: Yes, sir.

Mr. Treole: When you submitted your second proposition, or first proposition, didn't that resolve the problem with the HPC?

Mr. Gogoel: No. I submitted that because they gave me a year and in case, in my mind, when I came to the

meeting here and you disapproved it, I wanted to have something already approved for them so I could replace the windows if I had to in time. Otherwise, I have to...

Mr. Treole: When you were negotiating with the HPC, you guys came to a resolution, didn't you?

Mr. Gogoel: No. I always told Tom that I wanted to keep the windows there and that I wanted to appeal it.

Mr. Treole: Well, you submitted a plan that you evidently liked. You submitted the plan.

Mr. Gogoel: No, I liked the plan that they like liked. I just submitted a plan that they liked, but I never liked it. You know, I submitted a plan that they want me to do and I never liked it. I never wanted to do it. I only did it because I was compelled to do it by them.

Mr. Treole: You didn't submit a plan to them, a revised plan?

Mr. Gogoel: Yes, I did, but only because I was told that I had to.

Mr. Treole: Yes, and you liked it, didn't you?

Mr. Gogoel: No, I never liked it. I always wanted to keep the original vinyl windows.

Mr. Treole: You've got me confused. You submitted a plan, you didn't create that plan? To change the windows, when you were negotiating with the HPC, didn't you submit a plan?

Mr. Gogoel: Originally?

Mr. Treole: Not originally. When you appeared there knowing that you had evidently put in the wrong windows, vinyl windows, and they gave you time to submit a new plan to change the windows...

Mr. Gogoel: Right.

Mr. Treole: You submitted that plan, did you not?

Mr. Gogoel: Yes, not knowing that I couldn't appeal the original decision.

Mr. Treole: Forget about the appeal, though. You submitted a new plan, didn't you?

Mr. Gogoel: Yes.

Mr. Treole: Okay. You evidently approved that plan in your mind, that this is what you wanted to do to satisfy the HPC, right?

Mr. Gogoel: No. I never wanted to put the windows in there. I only did it because I was compelled to.

Mr. Treole: I know that, but you submitted another plan, did you not?

Mr. Gogoel: Yes, I did submit another plan.

Mr. Treole: Yes, and evidently that was your plan and you evidently liked it.

Mr. Gogoel: No, I don't know why you would say that I liked that, I don't.

Mr. Treole: Then why would you submit a plan that you didn't approve of?

Mr. Gogoel: Because I was forced to by the HPC.

Mr. Treole: You were forced to?

Dr. Wubneh: Obviously, the applicant is saying that although he submitted Option 1 and Option 2, but he's still testifying and saying that he doesn't like both options, and that's why he's appealing now. Is that correct?

Mr. Gogoel: Yes.

Mr. Shook: What happens if you didn't submit your new plan to the Historical Preservation Commission in August? They gave you a year, what happened after a year?

Mr. Gogoel: I was told that I would start to be fined if I don't...

Mr. Thomas: Submit a solution.

Mr. Gogoel: Yea.

Mr. Shook: Submit a solution or do...

Mr. Gogoel: Right. Well, first I have to submit a solution before I can do anything. And, it has to be approved by them. So, I had to, before the end of that time period, or they would start fining me, or basically take the house away from me, because the fines are very steep I was told. So I had no choice but to submit a plan.

Dr. Wubneh: Any other questions?

Mr. Hutchens: Mr. Gogoel, do you have any new evidence to present to the board?

Mr. Gogoel: Concerning?

Mr. Hutchens: Whatever it is you're objecting to.

Mr. Gogoel: I think, - does the board have access to all the evidence that was introduced at the first hearing?

Mr. Thomas: I think the way it's been explained to us is that's not material to this discussion. Is that what we're being told?

(Several board members talking at once)

Mr. Hutchens: It has to do with new evidence that could not have been present at the original hearing.

Mr. Gogoel: I think if you have all the original evidence, I think you have everything that I wanted to talk about.

Mr. Ewen: There was one bit of evidence or omission of evidence, I don't know how it's resolved, but you said that you were not sent information or a letter from the city saying that you had to appeal within...

Mr. Gogoel: Right.

Mr. Ewen: How do we determine, does the city have a copy of the letter that was sent?

Mr. Wisemiller: Yes, we do have a copy of both letters. The first letter with the denial originally. We sent the notification letter that states the HPC's order in regard to the case. That was sent to the address listed on the county's database, parcel database system to the residence, which is, I don't know how they determine that, but that's the address we use whenever we send those letters. Secondly, when the second proposal was approved we sent a letter to the address listed in the county database system. At that point in time I was in email correspondence with Mr. Gogoel, so after I sent that letter, I sent him the same letter as an email attachment and he did subsequently appeal the case within the allotted, I want to say five business days.

Mr. Gogoel: Well, the website says thirty days. Something else says five days.

Mr. Wisemiller: There's different layers. There's certain types of cases, like a parking ticket, you have thirty days to appeal that, but some of the commission decisions you only have five days to appeal.

Mr. Gogoel: Even though the application says thirty. It's a little bit confusing. The original letter you sent was not sent by certified mail or by registered mail, signature required. I just didn't get it.

Mr. Thomas: Was that sent to the residence here or to the owner's address?

Mr. Wisemiller: Again, it was sent to the address that was listed in the county's parcel database system, which was 400 South Summit Street.

Mr. Thomas: Here in Greenville?

Mr. Wisemiller: In Greenville, yes.

Mr. Gogoel: So anyway, I thought that I was appealing the fact that I had to replace the vinyl windows here tonight.

Mr. Wisemiller: Let me clarify another question that came up. We explain to applicants when they're denied the request, the general appeal process and what they need to do and so forth. But, as a planner, I wouldn't feel it was my role to talk about strategy and when you would appeal, versus not appeal or if you don't appeal now, you might miss your opportunity or something to that effect. For future reference we can probably get some more information that will help people, but basically we were taking a neutral information approach as opposed to explain all the legal angles.

Mr. Hutchens: If it makes anything any clearer, and perhaps it doesn't, you are applying before this board for the ability to rehear before the Historic Preservation Committee. In order for us to give you that permission or give you that route, we have to hear new evidence or procedural error. In other words, the rehearing will actually take place before the Historic Commission, but we would have to agree that there was new evidence or a procedural error in order for you to make that rehearing.

Mr. Ewen: John, you know, we just heard about him maybe not getting the letter, wouldn't that be procedural error?

Mr. Hutchens: It would have to be substantial procedural error that would significantly affect the case.

Mr. Wisemiller: I meant to follow up previously on that. As far as the procedural error, it wasn't my impression that the appeal, or the arguments or the complaints in the appeal, was that there was a procedural error, so we didn't prepare that argument based upon what the applicant presented in the appeal. Otherwise, if there had been a statement that he didn't get proper public notice then we would have had copies of letters and all of that correspondence, but that wasn't disputed.

Dr. Wubneh: So in other words, what you are saying is that it was not disputed earlier and that's why you did not prepare it.

Mr. Wisemiller: That's why I did not prepare that material.

Mr. Gogoel: I have to say that I did tell you I never got the letter and I asked you to email me a copy.

Mr. Little: When a person appeals, they state their basis for the appeal. Those are the matters before the board. If an appellant attempts to bring in matters that were not addressed in the appeal, those may not be considered, because the time has expired for those appeals. As the court of appeals would say, those are abandoned. Again, on the issue where notices are sent, the parcels based on the county tax records. County tax records are the official address. In this case, it was sent to 400 South Summit Street, which is the address that was listed, where his son resides, and for purposes also, the son presented the case, Mr. Gogoel's position, on the first revision and on the second revision. Mr. Gogoel did not attend either one of those hearings. So, the son was the agent at the time and that was where the notices were sent. Now, whether or not the agent provided that to the owner, that's an issue between the agent and the owner, not

for this board.

Mr. Gogoel: If I could say one more thing. Again, I'm not an attorney. My whole issue here is that I feel that the county treated me unfairly, whether this procedure or that procedure, I don't know any of those rules. To me, it's a moral obligation of the government to treat its taxpayers fairly, and I feel I have been not treated fairly. I feel like this rule and that rule and you can't do this and you can't do that, even though that might have been wrong; sorry, you can't talk about that. To me, that's not the way government should work. That's just my opinion.

Dr. Wubneh: Mr. Little, the issue statements says specifically the applicant is asking the board to reverse the approved the COA submitted by the appellant. So which one is the approved? Are you talking about the two options?

Mr. Little: The two options, the one that was approved in August, the second revision that he submitted which had the two options with the 4-over-1 divided light windows. He submitted those options. The Historic Preservation Commission approved and said you may choose either option as presented and that was what the final decision of the HPC was made, on that revised COA. They approved that, so then he appealed that approval.

Dr. Wubneh: Basically the implied assumption is that when he came up with those two options he had already agreed as far as facts, circumstances and conditions that led to that, that were there before. So it's not a matter of going back and looking at those, but a matter of discussing whether these two options are appropriate or not appropriate.

Mr. Little: It may not be an issue of agreement or non-agreement, but the facts that were listed are not disputed facts because those were established based upon the initial hearing, the revised hearing, and then the second revised hearing. The decisions made in the first two hearings were not appealed.

Dr. Wubneh: Just a minute. Mr. Gogoel, you are just hearing that the facts that you are raising, such as the fact that you did not receive the letter, why were those matters not appealed before? Why did you go with an alternative when you knew all these things were not there?

Mr. Gogoel: Because I thought I had to get something approved before I could appeal it. That's just what I thought. I had no knowledge otherwise. That's the way I thought it worked. I thought I had to get something approved by the board before I could appeal.

Dr. Wubneh: But you could have still put it on the record saying that, I did not get this, I did not know that, reluctantly I am giving you this alternative; why didn't you put it in that way so that it would be...I mean, it's making it very difficult for this board and I'm trying to get clarification

Mr. Gogoel: I did tell Tom that I...

Dr. Wubneh: Just a minute, I'm just trying to get clarification from you. Why didn't you pose it in that manner, saying that I don't like what I'm giving you because you did not treat me fair, because, this, this,

this and this happened. Why didn't you pose it in that manner?

Mr. Gogoel: I did. I told Tom several times that I wanted to appeal the decision. I didn't do it in the board meeting, but I talked to him and told him I wanted to appeal it and I asked him what I needed to do. That went on for several months. That was before I even submitted the first alternative, I told him I wanted to appeal and what do I need to do. It was my understanding, neither one of us are lawyers so we don't really understand, but it was my understanding that I had to submit some kind of thing to the board before I could appeal it.

Mr. Treole: Excuse me. The next to the last paragraph, I quote, "If you are dissatisfied with the decision of the Historic Preservation Commission, an appeal may be filed with the Greenville Board of Adjustment within five working days of the decision of the Historic Preservation Commission as stated", et cetera, et cetera.

Mr. Gogoel: Yea, I never got that letter.

Mr. Treole: You never got this?

Mr. Gogoel: I never got it.

Ms. Harrington: But you're agent got it. Isn't that what we said?

Mr. Gogoel: He says he didn't get it.

Mr. Treole: This is attached to the one with the option 1 and option 2. You never received that?

Mr. Gogoel: Yea, I received it and I appealed it. That's what I appealed. I did appeal it in five days. I got that letter by email from Tom. That's the one I did appeal.

Dr. Wubneh: That's the one he's appealing now.

Mr. Gogoel: The original letter, I never got.

Dr. Wubneh: But not the one the Historic Commission...

Ms. Safford-White: He's saying the one prior to that he did not get. This one he got and that's why he's here.

Mr. Ward: So you, at this point, had spent about \$10,000 on the windows...

Mr. Gogoel: Right.

Mr. Ward: ...and if you do what the Historical Society wants you to do, you will spend \$27,000?

Mr. Gogoel: Minimum twenty, but what I'll have to do then, you know, one of the reasons I wanted to use the vinyl windows is because they encapsulated the frames with the vinyl covered aluminum to cover up the lead paint. Again, I had several painters come out and look at it and they told me that it's a 1920's house and you're going to have to remediate the lead and the best thing to do for that is to cover it up and not touch it. Painting over it would just crack and peel within a year, so the best option is just to replace the sashes and leave the frames like they are without touching the paint. What I'm going to have to do now, if I have to replace the sashes is take that – If I understand correctly, Tom maybe you can clarify for me because I still don't understand that – but do I have to take that aluminum or that vinyl face, the aluminum, off and then scrape and repaint those windows as well? I didn't fully understand that.

Mr. Wisemiller: That wasn't part of the proposal. As far as removing the vinyl, yes, the vinyl and aluminum, but the scraping wasn't part of the proposal.

Mr. Gogoel: So I can just leave it to rot basically, if I wanted to.

Mr. Wisemiller: As of now there is no ordinance addressing that approach.

Mr. Gogoel: That's what most people in the historic district do, unfortunately. They don't take care of the house because, and one of the questions was its so expensive. They just leave it and the houses around me are falling apart. The other evidence is that there are a lot of them; the two neighbor's houses have vinyl windows in them, which I find strange because I'm going to put vinyl windows in. That's another reason I didn't think there was anything wrong with it. I went and looked around and I think I'm being picked on here. I don't know if I'm the only one, but I walked through that historic district and there are numerous houses with vinyl windows, vinyl siding, which isn't allowed either. But, anyway, it would be an additional expense for me if I have to take that off of there, so I would imagine that it's going to be more than \$7,000 to remediate the lead and scrape them all and repaint it. So I think the only option, the least expensive option, is \$27,000 to replace everything. Then I still have to paint the outside of the windows again, which is another several thousand bucks. The problem I have is that I'll never recover that money for that house. You know, I'll have the nicest windows in Greenville, but I'll never get the money out of them.

Dr. Wubneh: Alright, any other questions? I think we have gone back and forth as far as rebuttal is concerned. Is there any particular thing that you would like to say?

Mr. Wisemiller: No, we'll rest on the facts presented so far.

Dr. Wubneh: Does the board have any questions before we rest the case and ask Mr. Gogoel to make a final comment?

Mr. Ward: What is your residence, your community?

Mr. Gogoel: I live in Clifton, Virginia.

Mr. Ward: And where is that?

Mr. Gogoel: It's about ten miles northwest of Manassas, if you know where that is. It's about forty miles from Washington, D.C., right in Bull Run. I live close to Bull Run.

Mr. Ward: Alright, one other timeline thing. You bought the house in August of '07'.

Mr. Gogoel: Yea, July or August. I don't remember exactly. I'd have to look it up, but it was close to that, yea.

Mr. Ward: You began your renovations after talking to the City Council, I mean not the City Council, the inspectors and...

Mr. Gogoel: Immediately. The week I bought it I started the renovations.

Mr. Ward: Okay, you began those renovations, got somebody to tell you what was the most efficient way to make those changes, looked at your neighbors, saw aluminum siding and windows and decided that was the way to go?

Mr. Gogoel: Well, it was most cost effective, too. The considerations for scraping the paint, and with the lead-based paint, they thought...

Mr. Ward: And you began that in the fall of '07?

Mr. Gogoel: Still in the summer.

Mr. Ward: In the summer?

Mr. Gogoel: Yea, I started it that month.

Mr. Ward: Okay, well did you son come to school in the fall of '07?

Mr. Gogoel: Yea.

Mr. Ward: Okay, so he's been in the house a year?

Mr. Gogoel: Yes.

Mr. Ward: Alright, when did the Historic Preservation Society get in the mix?

Mr. Gogoel: Well, the notification I got that there was a problem was when the contractor called me after Tom went there that day and he said, "Hey, the Historic Preservation guy was here but I don't think there's a problem because normally they tell you to stop doing the work if there's a problem and he didn't tell me stop. He told me I could go ahead and put the rest of the windows in" which he did.

Mr. Ward: And that was in August of '07?

Mr. Gogoel: Yes, but he said you should call this guy. So then I called tom on the phone and he said you need a permit for this. And I told him they told me I didn't need a permit; well he told me you need a, well not a permit, whatever you call it – a certificate. So then I came down here and met with them and the work was all done. It only took them a week or two to do that. I mean, they were still working on the heating and air conditioning. They ripped all the ducts out and everything and put all new heating and air conditioning and all new ducts, so that took them until after school started. They weren't finished until after that, September. They had to put gas in. The city put gas in. There was no gas service there. So, the city new all about it, I just wasn't notified that I needed...

Mr. Ward: When did you meet with the Historical Society first?

Mr. Gogoel: That had to be, I didn't bring all of my notes with me. Do you have it Tom?

Mr. Wisemiller: The first COA was November 27, 2007.

Mr. Ward: So from August to November.

Mr. Gogoel: So what I did was fill out an application to say that I wanted to put the vinyl windows in, with Tom's suggestion. I did a lot of other work, too. I painted and did all sorts of stuff, and that stuff was okay.

Mr. Ward: So between November and now we've seen the 4-over-1...

Mr. Gogoel: Yea, I went to several different contractors trying to find something that was cost effective. The first quotes I got were \$50,000 to replace them. The one's that were approved are not exactly the same. They don't have the single pane, these are double paned windows with the wood on the inside and wood on the outside, so it's not really divided. There are two panes of glass so its energy efficient, but there's a wood like molding on the front and one on the back. One on the inside and one on the outside, so it looks like its on piece. There's no way to make a double paned window with it divided, with those things in there the way it originally was.

Mr. Ward: Okay, when did you come up to, I guess I need to scroll down on this, come up with the approval from the, in July? Is that when they heard you?

Mr. Gogoel: July or August.

Mr. Wisemiller: In July was when he originally proposed 3-over-1 and then in August the 4-over-1.

Mr. Ward: So you've been dealing with this 4-over-1 for a year?

Mr. Gogoel: Yes.

Mr. Ward: With the heating and air and the son in place and school starting, now you have to deal with \$27,000?

Mr. Gogoel: Yea, on top of his tuition and two other ones.

Mr. Wisemiller: The interior of the building is not subject to the guidelines.

Mr. Gogoel: But I did get a permit for that.

Ms. Harrington: Tom, can I ask a question? Maybe we just have a typo. Anyway, under the findings of fact, item 4 says in the fall of '07 the original 4-over-1 windows were replaced with vinyl replacement. Then in item 8 it says on June 21st '07 the COA was submitted.

Mr. Wisemiller: I'll have to check that date. The case was continued, I believe, and sometimes with the advertisement process there's a little bit of a lag.

Ms. Harrington: But he didn't submit that until after the vinyl windows were already in, right?

Mr. Gogoel: I didn't buy the house until after June 21st so that has to be a typo.

Ms. Harrington: Right.

Ms. Safford-White: He bought it in June; this could not have taken place in the fall. Those timelines just don't add up and we've heard it several times. Does that make sense what we're trying to point out to you?

Mr. Wisemiller: Yes, that could be a typo.

Ms. Safford-White: And you're saying something happened in the fall, which couldn't have happened in the fall, because he didn't submit anything until June.

Ms. Harrington: I think June is the problem.

Mr. Wisemiller: Yea, I think June is the problem. It's November 27, 2007, HPC heard the request.

Ms. Safford-White: That's when they heard it.

Mr. Wisemiller: I think it took a couple of months to play out.

Dr. Wubneh: That's item number 9.

Mr. Wisemiller: August. Most likely submitted in August and sometimes it takes a couple of months and I think there was a continuation and it was resolved November 27th. It also could have been September.

Dr. Wubneh: Okay, let's continue our discussion. Does the board feel that there is new material evidence or a procedural error that needs to be discussed? I think that is, given the directives that we have gotten from the attorney, Mr. Little, that's the area we want to focus on. We can talk about the other...

Mr. Little: Is the board going to hear anymore testimony or are you through with the testimony and ready to close?

Dr. Wubneh: Not yet, we are discussing, what I was saying to the board was...

Mr. Little: What I'm saying is that the discussion among yourselves, at that point, you're not going to take anymore testimonies and that portion of the matter is closed. What I'd do then is give you the closing instructions before you start your discussion.

Dr. Wubneh: No, I was trying to inform the board to make their questions specific along this direction, on whether there was new evidence, because we can keep on about this historic district and facts and so on and so forth; but I would like for their questions to be focusing on these two areas. Whether there were any procedural errors and the second being that there is new material evidence that presented. So, if you have any questions, I think what will help the board is if you direct those questions along the same line, those to Mr. Gogoel, as well as to Mr. Wisemiller. Then I'm going to have to close the public hearing.

Mr. Gogoel: May I make one more statement, too? It says, on number 16 here, it says it was determined the applicant brought himself into the problem. That's a matter of opinion. I don't think there was any kind of decision by anybody that I brought the matter on myself.

Mr. Wisemiller: That was what the HPC stated.

Mr. Gogoel: I never got any statement to that effect.

Mr. Wisemiller: It's in the findings of fact of that hearing.

Mr. Gogoel: I did seek assistance through the City of Greenville when I asked for a permit, so I don't agree with that statement.

Mr. Wisemiller: The applicant was represented at that hearing and that was a finding of fact at that hearing.

Dr. Wubneh: Okay, any other questions that the board has before I close this hearing?

Mr. Treole: Mr. President, I don't know if I'm fully satisfied as to why Options 1 and 2 were not a resolution of the problem, why there was appeal after those two options were submitted.

Dr. Wubneh: You can direct that question to the applicant, but my understanding is, at least the way he put it, is that he thought he would have to do that before, even though he didn't agree to it. And that's why I posed the same question saying why didn't you pose it in such a way that says I don't like what you are asking me to do, but here are two options I am giving you. He didn't put it that way. I understand what you are saying, but maybe we need to direct that question to him.

Mr. Hutchens: What happened before the Historic Preservation Commission is that they found him in

violation and then gave him the opportunity to come up with a plan to resolve the situation. That's basically, in brief, that's it.

Mr. Thomas: Within certain specifications, within certain limits.

Mr. Treole: Yea and there was two of them and you could of chosen either one.

Mr. Gogoel: Yea, but you're missing the point.

Mr. Treole: You didn't want to choose any of them.

Mr. Gogoel: Right. I thought I had to produce those before I could appeal.

Mr. Treole: Well did you submit a counterproposal to the board?

Mr. Thomas: I think he felt like this was going to be his venue to address that.

Mr. Gogoel: Yea, I thought I was going to be appealing the fact that I wanted to keep the vinyl windows tonight.

Mr. Hutchens: Mr. Chairman I think (inaudible).

Dr. Wubneh: Okay. If that is the case, do I publicly close the hearing and we move on to discussion?

Mr. Little: Before you get into the discussion, I will go ahead and do the closing instructions with you. You have received all of the evidence before you. You have to make your decision when you go to the discussion portion as to what was relevant and what was admissible, what was credible, what was substantial, what was material. We talked before, and anytime you issue a special use permit, a variance hearing or an appeal hearing, opinions like I think and I feel are not evidence, that's an opinion, and it's not admissible as material relevance, substantial or competent evidence. When the matter of instructions are completed, the chair will call for a motion to either affirm the decision of the Historic Preservation Commission, to reverse the decision of the Historic Preservation Commission, or to modify the decision of the Historic Preservation Commission. A second would then be required with any of those three motions. At that point, when the motion is made and seconded, whichever one of the three motions that is made, then discussion will be held on that motion. The board will then discuss what facts support that motion, what facts do not support the motion, and at the end of your discussion, the chair will then call for a vote on the motion. To reverse or to modify the decision of the Historic Preservation Commission, it takes a 4/5ths majority. A motion to affirm the decision of the Historic Preservation Commission takes a simple majority vote. Those are rules set by law. If a motion to either amend, that is modify, the decision or reverse the decision fails to receive the 4/5ths majority, then the chair will announce on the record that the appeal is denied and the order or decision is affirmed. Or if a motion to affirm the decision receives the required simple majority, the appeal to reverse has been denied and the decision of the Historic Preservation Commission is affirmed. Are there any questions?

Mr. Treole: Counsel, does this board have the authority to send it back to the HPC?

Mr. Little: The only way that you could send it back is to, that is a motion to modify the decision, but it would have to take a 4/5ths majority. And remember, the only issue that you're deciding is whether or not the decision of the Historic Preservation Commission to approve the revised Certificate of Appropriateness was answered or made using competent material substantial evidence, based upon what was presented at that hearing. Any other questions?

Dr. Wubneh: Is that clear to the board?

Mr. Ewen: Could we not decide that there was an error in the procedures? Wasn't that one of the options?

Mr. Little: That is a decision to reverse. If there was an error in procedure, you would have to then decide there was an error in the procedures, you'd have to decide what procedure it was and there would have to be a 4/5ths majority to reverse based upon that. You would have to state what material competent substantial relevant evidence there was to establish. The fact that there is a conflict, one sides says in this case I believe the question is whether or not he received, you have in your packet, which is part of the evidence before you, the letter dated August 27, which is the one he appeals, sent to the address of 400 South Summit. Testimony was that all prior communication was sent to that address. You have the testimony from the applicant, the appellant rather, himself noting that is where his son resides. It was also noted that his son represented him as his agent in the other two hearings. So then you have to decide whether or not the agent did anything...

Mr. Gogoel: The other three hearings.

Mr. Little: All three of them then.

Mr. Gogoel: No, no. He wasn't at the first one.

Mr. Little: Okay.

Mr. Thomas: Define to me, you keep talking about agent. What kind of legal responsibility is there?

Mr. Little: In this case the agent of the appellant, the one who represents that person, stands in stead and in place of that person. It's as if that person was there.

Mr. Thomas: At that particular point in time. Not before and not after, but at that time.

Mr. Little: At that moment in time, when that person appeared before the commission, that person was as if the applicant, or in this case the appellant, himself was standing before the board.

Mr. Gogoel: Just to clarify, my son was not present at the first, I was present.

Mr. Little: Right, he was present at the first but the last two in there and then the tax records. If you have

any other information before you tonight concerning the addresses used, which are based upon the tax records, then you have to decide was it procedural, if there was a tax record issue.

Dr. Wubneh: Mr. Little, can I ask one question? Is it a standard procedure for the city to send a letter just regular letter as opposed to a registered letter?

Mr. Little: It depends on the ordinance that's involved. Some of the ordinances require a notification by certified. Some simply regular mail.

Dr. Wubneh: And this particular case?

Mr. Little: Regular mail was all that was required.

Dr. Wubneh: That's what it requires.

Mr. Little: That is correct. And to go one step further, under what's called the mailbox rule, if it's addressed to the address that is provided by the tax records and it does not return, then delivery is presumed by law.

Mr. Thomas: You were saying that all that's required is regular mail, but it could have been certified, though all that was required was regular mail? I'm just trying to be clear.

Mr. Little: That is correct.

Dr. Wubneh: Alright, any other matters? I now close this public hearing and call for board discussion. Are we ready to discuss this matter?

Mr. Gogoel: May I sit down?

Dr. Wubneh: Yes, you go ahead. I'm sorry, thank you. When I close the public hearing, I'm assuming that you can go ahead and sit down and the board will discuss the matter. This is a matter for board discussions. Please make your discussions specific to the evidence that is presented, whether or not the evidence is relevant, admissible and pertinent. Number 2, whether there has been any violation with regard to procedural matters, I believe those are the areas we are looking at.

Mr. Treole: I think the matter should be sent back to the HPC. I think there should be some negotiations between the applicant here and the HPC, because there appears to be some resolution. There could be some resolution with respect to option 1 and option 2.

Mr. Hutchens: The only way that we can send it back to the HPC is if there was new evidence or if there was substantial error on the part of the HPC. I haven't heard any new evidence or any substantial error.

Dr. Wubneh: Mr. Treole, can you pursue that discussion? What is the material evidence that you are identifying or saying, the reason why we have to send it back?

Mr. Treole: No, I'm not saying you have to send it back. It would seem to me appropriate to send it back because of the two options that were given to him. He could have picked either option.

Dr. Wubneh: But he doesn't like those options. That's what he's saying and that's why he's appealing.

Mr. Treole: I know, but if it was sent back for further negotiation and discussion, maybe they would come to a resolution.

Mr. Hutchens: But we have to do that on the basis of evidence, we can't just because we feel that way.

Ms. Safford-White: You've got to have some type of evidence to send it back and what are you saying is the evidence? It's not just what you're feeling, it has to be...

Mr. Treole: No, no. What happened, the way I read in the documents, is that there were two resolutions given and instead of there being a decision as to which resolution or both resolutions were not appropriate, the applicant filed an appeal. That's why I asked the first question, whether or not the appeal was appropriate at this time, since there seemed to have been two option resolutions that could have been pursued. I didn't read anything in the documents that the applicant rejected both of those resolutions. If so, point it out to me, I'd like to see it. He didn't reject any of those resolutions. He now says that, when I asked him whether he approved any of them, he said no, he didn't like either option. There's nothing in the record to show he didn't like either option. He's telling us this now. But there's nothing in the record which he told the HPC, no, no, I don't like those two options; I'm proposing a third one or a counteroffer so to speak.

Mr. Hutchens: He's the one who made the offers in the first place. He made the proposals, not the HPC.

Mr. Treole: That's what I thought, but he told us no.

Mr. Hutchens: No, he said he made the proposals.

Ms. Safford-White: He did say he made the proposals.

Dr. Wubneh: He made the proposal, he just didn't like them.

Mr. Thomas: Based off the options that he was limited to.

Dr. Wubneh: He didn't deny that he made the proposal. He said that he made the proposal, but I think if you are asking for sending it back, we need to tell the board to look this particular aspect because here is some problem. We can't just say please resolve it and send it back. We have to give them circumstance or the fact or evidence that we are considering for our sending it back, and that's what I'm trying to get.

Mr. Ewen: The only reason for sending it back would be if we felt the procedures of mailing out the letters and whether he got it and understood the appeals procedures. Which he is saying he never got those letters

and he thought he was appealing having to replace the windows at all, when in fact, that's not what this appeal was about. So we either say there was a procedural problem although Mr. Little is saying by law that the letter not coming back means that it was delivered.

Ms. Harrington: My goodness though, I would hope that something would be put in place so that if somebody was sending me a letter and I was going to have to spend twenty or thirty thousand dollars, daggone if I wouldn't want to make sure somebody got it.

Mr. Shook: Mr. Chairman, I think no matter what happens at this board tonight, nothing precludes him from being able to go back in front with a new proposal to the Historic; you know, I mean just because we deny this request doesn't mean he can't apply for another Certificate of Appropriateness, or whatever they call it. I don't know if that's an option or not, but we specifically, as you are getting to, we have to cross a legal hurdle to do anything as this juncture. And just think, you know, if we think and feel like I do, we're in a box here as to what can and cannot do, and specifically what we can and cannot approve. But, no matter what happens here, it doesn't stop him from paying the fee again and going back in front of the Historic Preservation Council and going after another – you know that's between them. What I take from what has gone on here is he bought the house, tried to get a permit, we've established all this. He improved the windows. They came and said that's bad. He lost the first time. He did not know that he could appeal. That time period elapsed, they said we'll give you one year to come up with something and after the end of that one year they start fining you on a daily basis, so he had to come up with something to stop the fines from happening. He's appealing that now, which is really the appeal of the first order to begin with. And, unfortunately, no matter how I feel about it, and how wrong I think that it is that this situation has come to this point, I don't know that we have a legal leg to stand on to try to go back and really appeal the first decision. That's what it really comes down to and, unfortunately how it is, to try to find a way to help him out, but I just don't know that there's anything we can do.

Mr. Hutchens: Let's not forget that he was given a year to come up with an appropriate decision and a year is a mighty long time to come up with the wrong decision.

Mr. Shook: Yea, but any decision at that point in time, when you have then thousand dollars in windows and the alternatives are another twenty to twenty-seven or fifty thousand dollars, that's a tough pill to swallow if you have a year or if you have five years.

Ms. Safford-White: Mr. Chairman, I wanted to add to what he's saying. It appears that there are a lot of things that might have gone astray here. A prime example is what Wanda and I had talked about when you look at the finding of facts that was submitted to us, even this timeline doesn't work out; but that still is not a leg for us to stand on. No matter how much we may not like, or empathize with what he's going through, we heard no new testimony, and that's what it boils down to.

Ms. Harrington: Was the fact presented previously that there were other houses in the historic area surrounding that had the vinyl windows?

Mr. Hutchens: The question would be is that relevant?

Dr. Wubneh: He himself pointed that out because I heard him and I have that written down but that is no longer relevant. Our hands are tied when he said we can't go back to facts. That's the problem that the board has as far as I see. Because we can't get into the facts, we can't get into the circumstances that put him in the condition that he is in. We couldn't put the responsibility on someone. We're being told, here is the case and make a decision.

Mr. Thomas: Let me ask you this. Can the HPOC use any findings by this board to support any further discussion with him on the options that may be at hand?

Dr. Wubneh: I don't know. I can't guess on that. If this board approves, I mean the HPC would say, we have made our decision, he gave us two options, we gave you a whole year, you gave us two options, and you appealed and lost.

Mr. Thomas: So, what are we saying, that's the end of the matter or can he go back and appeal and have this discussion again?

Ms. Safford-White: That's between him and them. That has nothing to do with us.

Mr. Thomas: That's just us talking though. That was a question.

Ms. Safford-White: As far as I'm concerned we shouldn't even be discussing that. What we need to do is make a decision on what the facts are.

Mr. Shook: We can affirm, modify or reverse.

Ms. Safford-White: And I think we should move on and do that.

Mr. Hutchens: I would like to make a motion then, if you would please, to affirm the decision...

Dr. Wubneh: Are you ready, before we, I just want to make sure everybody has had the option to air our concerns. And I realize that it's a very difficult decision, but are we ready to vote or to make a motion? Is there any other matter that we need to talk about? There's already a motion by Mr. Hutchens.

Mr. Hutchens: I would like to make a motion to affirm the decision of the HPC.

Dr. Wubneh: Okay, Mr. Little, so basically this would be just a matter for decision, second to his motion and all those in favor and/or against. That's it. Correct?

Mr. Little: It's just a simple majority vote on the affirmation.

Dr. Wubneh: Are we ready to vote? There's a motion by Mr...

Mr. Little: Who made the second?

Dr. Wubneh: No, I'm reading. There's a motion by Mr. Hutchens. Is there a second to the motion?

Ms. Safford-White: Second.

Dr. Wubneh: Second by Ms. Safford-White. Members of the board, if you vote yes, you are affirming the decision of the HPC. All those in favor of approving the decision, please indicate by saying I.

Mr. Shook, Mr. Hutchens, Ms. Safford-White, Ms. Harrington and Mr. Ward all say I.

Dr. Wubneh: Anyone opposed?

Mr. Thomas: No.

Dr. Wubneh: How many are opposed, please raise your hand.

There is one opposition, and I believe that constitutes a simple majority.

Mr. Little: How many?

Dr. Wubneh: Out of seven, we have six who say affirm.

Mr. Little: All you needed was a simple majority for affirmation.

Dr. Wubneh: We have six. Based on the votes, the appeal is denied and the order and decision is affirmed. I'm sorry, that's the decision of the board.

Mr. Gogoel: Just so I'm clear now, what are my options to do now?

Dr. Wubneh: I believe that was my next question.

Mr. Little: Just on the record, you now know, so we don't have to send it to your son. You have thirty days from the date that the letter that comes to you from the city to appeal this as a matter of a writ of certiorari to the superior court of Pitt County. That's your next route. It goes through the judicial system after that.

Mr. Gogoel: Am I going to get into the same situation as here?

Mr. Little: Your decision is based on the record that was created at the Board of Adjustment.

Dr. Wubneh: Mr. Little, is it possible to send the letter registered this time, registered mail as opposed to just regular mail, given the circumstance that happened? I mean, it's an extra – whatever. Given the weight of the circumstance.

Mr. Little: If you would like. He's been told orally at this point. If he turns around and refuses to pick up the letter at this point, nobody picks it up; we're already at that point. The ordinance only requires

notification by regular mail, and I would be remiss, or be somewhat hesitant to say we establish a different requirement for this applicant verses any other applicant.

Dr. Wubneh: Okay. So he knows now that he has thirty days to appeal.

Mr. Gogoel: To who, now?

Mr. Little: It goes to the superior court of Pitt County. It's a writ of certiorari.

Mr. Gogoel: A what?

Mr. Little: A writ of certiorari. It's completely as an appeal. There is no new testimony. The only argument you have is arguments based upon the record that's established from the Board of Adjustment.

Mr. Gogoel: Can I appeal the fact that I want to keep the vinyl windows in? I mean I don't want to get into the same situation that I got in today.

Mr. Little: What you need to do if you are going to take it to the superior court or if you want to weigh your options as to what you want to do, I would recommend that you talk with an attorney.

Dr. Wubneh: Members of the board, I believe our matter is clear now. Do I have a motion to adjourn? (Several people are talking at once) I think I hear a second. I think this board is adjourned.

The meeting adjourned at 9:15p.m.

Respectfully Submitted

Michael R. Dail, II
Planner