

Address: 506 S. Lahoma

Applicant: David Boeck

Owner: Blue Lahoma, LLC

Re: COA Appeal to Norman City Council

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## APPEAL

COMES NOW Applicant, David Boeck, on behalf of the property owner of 506 S. Lahoma Avenue, and submits this appeal to the City of Norman City Council pursuant to Section 429.3.10 of the City of Norman Zoning Ordinance and Section 1.33 of the Historic Preservation Handbook of Norman, Oklahoma (2009) (the “Preservation Handbook”). The Applicant seeks approval of Option Two as presented at the November 2, 2015 Historic Commission meeting and as depicted on **EXHIBIT “A”**. In support, Applicant alleges and states the following:

### I. PROCEDURAL BACKGROUND AND HISTORY

The residence at the subject of this appeal is located at 506 S. Lahoma Avenue and sits within the Chautauqua Historic District. Sitting at two stories, 506 S. Lahoma blends the architectural styles of Bungalow and Craftsman to form a charming 3,064 square foot home.<sup>1</sup> Its owner, Blue Lahoma, LLC, hired architect and University of Oklahoma architecture professor David Boeck to submit a Certificate of Appropriateness (“COA”) request to the Historic District Commission (the “Commission”) on September 14<sup>th</sup>, 2015. In this first request, Applicant asked for, among other things, a 968 square foot, four-car garage. Citing the size and scale of the garage structure, the City of Norman Staff (the “Staff”) recommended denying the COA request as it related to the garage. Facing ardent opposition from members of the neighborhood, Applicant decided to modify the size of the garage and return to the Historic District Commission’s next meeting on October 5, 2015.

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<sup>1</sup> Cleveland County Assessor, Account R0043420 (Assessment Year 2015)  
<http://www.clevelandcountyassessor.us/Data.aspx?Account=R0043420>.

At the request of the Commission and Staff, Applicant decreased the size of the proposed garage to 638 square feet at the Commission's October 5<sup>th</sup> meeting. In addition to this reduction, Applicant provided two alternative backyard locations for the garage. Although both garage locations were discussed in the October 5<sup>th</sup> meeting, it was decided that Applicant would continue this hearing to allow for further reduction in the size of the garage and to allow Applicant to verify what effect the garage would have on the existing trees in the backyard. Applicant would prepare for a third meeting.

At Applicant's third Commission meeting held on November 2, 2015, Applicant presented the Commission with a reduced, 572 square foot garage with two location options. The first option—the preferred option of Applicant and Owner—located the garage on the south property line, fully hidden from the view of the street by the residence at 506 S. Lahoma. *See* **EXHIBIT "B"**. In addition to this benefit, the first option utilized the existing parking pad and pavement, which substantially decreased the total expense of the project.

The second option, which was ultimately voted on and favored by the Commission, placed the garage near the north boundary line of the property with the garage facing the street ("Option Two"). *See* **EXHIBIT "A"**. Option Two, while sitting in the historically accurate location, required the Owner to tear out and replace the existing parking pad and pavement, a component of the project that would add \$8,000 to \$10,000 in additional expense. Because Option Two required the Owner to back out of the driveway, Applicant designed a small turnaround area that would allow Owner to turn a vehicle around before driving out of the driveway.<sup>2</sup> *See* **EXHIBIT "A"**. At the November 2<sup>nd</sup> meeting, extensive discussion by the neighbors was allowed by the Commission, including significant discussion of the property's tenants, alternative uses for the improvements, and testimony of how the neighborhood's residential character might change if the COA was approved. This extensive discussion, as stated by a Commissioner, was not a proper consideration or within the purview of the Commission, yet the neighbors were largely allowed to discuss

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<sup>2</sup> Although this turnaround represented a small portion of the new paving that would be installed, the neighbors of 605 S. Lahoma were fervently against this improvement because it might allow the occupants of the residence to park additional cars in the backyard. This consideration is improper and not within the purview of the Commission. Recently, the Commission has approved a similar turnaround in an Applicant's backyard.

these improper considerations. After hearing this discussion, the Commission then voted on the proposed garage, failing to approve the project with a 4 to 4 vote.

## II. STANDARD OF REVIEW

The Norman City Council reviews Applicant's COA request *de novo*, with full consideration given to the facts established by the Applicant, the Commission and Staff. To succeed, Applicant does not have to show strict compliance with the Preservation Guidelines: rather, Applicant must show such work to be performed "is appropriate and consistent with the spirit and intent of [the Norman Zoning Ordinance] and the Preservation Guidelines. Further, changes to the rear elevations of historic homes demand "a lower standard to allow for flexibility for additions or other modern day appurtenances." And finally, consideration of ancillary opinions or other pretext not included within the enabling statute of the Norman Historic Commission constitutes an arbitrary and capricious basis for forming a Commission decision.

## III. ARGUMENT AND AUTHORITIES

The Commission decision to deny Applicant's COA request was improper for numerous reasons, namely: (A) the Commission decision violates the direct precedent of Commission, (B) the Commission used an overly harsh standard and subjected the Applicant to unprecedented scrutiny when considering Applicant's COA request, and (C) the Commission's decision was based on arbitrary and capricious justifications. Applicant now respectfully asks the Norman City Council to approve Applicant's COA request upon appeal.

### **A. The Commission's decision to deny Applicant's COA request directly violates recent precedent.**

The Commission has approved four garages since its inception that bear directly upon Applicant's proposed garage. The chart below illustrates a comparison of the size and scale of the garages approved by the Commission. The Commission's primary reason for denying the Applicant's COA request was the size and scale of the proposed 572 square foot garage. The applicable Preservation Guideline states,

#### **2.3 Guidelines for Garages & Accessory Structures**

**.5 Make New Construction Compatible.** If a new garage is the approved alternative, it shall be compatible in form, scale, size, materials, features, and finish with the principle structure. New accessory structures shall maintain the traditional height and proportion of accessory buildings in the district.

Preservation Guideline 2.3.5 consists of two components. The first requires that the garage or accessory building conform in all aspects to the *principle structure*. To date, no neighbors or commissioners have objected to any aspect of the proposed garage other than the garage's physical size and scale. But as seen below, the Applicant's garage actually stands in better proportion with regard to actual size and scale compared to the other garages that were approved by the Commission. The second component of the Preservation Guideline 2.3.5 further requires that the accessory or garage conform to the traditional height and proportion of the accessory buildings in that *district*. But similarly, the three garages in the Applicant's district, 432 Chautauqua, 428 Chautauqua, and 530 Chautauqua, all are similar in size and shape to Applicant's proposed garage. If the predominant reason for denying Applicant's COA request rested on the basis of size and proportionality, that basis would represent a direct violation of Commission precedent.

<sup>3</sup> Address	Garage	Principle Structure (House)	Proportion of Garage to House
321 Castro	600 sq. ft. two stories	1,632 sq. ft. one story	36.7%
530 Chautauqua	544 sq. ft. one story	1,718 sq. ft. one story	31.7%
432 Chautauqua <sup>4</sup>	624 sq. ft. two stories	2,500 sq. ft.* two story	25.0%
428 Chautauqua <sup>5</sup>	624 sq. ft. two stories	2,960 sq. ft. two story	21.1%
<b>Applicant/506 Lahoma</b>	572 sq. ft. one story	3,028 sq. ft. two story	<b>18.9%</b>

<sup>3</sup> All square footage for housing and garages taken from Staff reports or the Cleveland County Assessor.

<sup>4</sup> The house at 432 Chautauqua remains unconstructed: the numbers and percentages are estimates and conservatively calculated according to lot size and the average dwelling size in the area.

<sup>5</sup> The house at 428 Chautauqua currently sits at 1500 sq. ft. but is approved to expand to 2960 sq. ft.

**B. The Commission applied an overly harsh standard when considering Applicant's COA request.**

As stated above, when an applicant applies for a COA, the applicant must meet the spirit and intent of the Preservation Guidelines. Furthermore, if the applicant wishes to alter the back elevation of a historic home, applicant's standard is relaxed. The purpose of this lesser standard was an attempt by the drafters to strike a balance between allowing homeowners to enjoy "modern day appurtenances" and other luxuries with the desire to preserve the historical frontage of a residence. The intent was that if a homeowner wanted a luxury not fitting to the historical era, the homeowner could place the luxury in the applicant's back yard.

In keeping with this guideline, Applicant originally placed the proposed garage in a location that would be substantially hidden from the view of the street. Staff, likewise, agreed, and recommended approval the Applicant's placement and size of the proposed garage at the second Commission meeting in October 2015 (with the size of the garage at 638 sq. ft.).

From the beginning of Applicant's process, however, the Commission appeared to hold Applicant to a higher standard. The Commission's behavior indicates that it felt substantial pressure from the neighborhood. And in response to this, the Owner—in exhaustive attempts to appease the Commission and neighbors—offered many concessions, including: three sizes of garage; two locations for the placement of the garage; met with the Commission and Staff numerous times, continued the second meeting to clarify the effect on the existing trees around the home; altered the pavement in a fashion that would increase the expense of the garage from \$8,000 to \$10,000; and employed the Applicant, a licensed architect, to draw numerous elevations and illustrations of the garage with its multiple versions, a significant cost in its own right. No other applicant has been subjected to this rigorous scrutiny. This behavior represents a violation of the Preservation Standards and enabling ordinances. Therefore, the Commission's decision should be reversed.

**C. The Commission based its decision on an arbitrary and capricious basis.**

All city ordinances and municipal rulings—including acts of the Historic District Commission which represent an overlay to the City of Norman Zoning Ordinance—must generally conform and not be inconsistent with the public policy of the state, as found in its constitution and statutes. *Nucholls v. Bd. of Adjustment of City of Tulsa*, 560 P.2d 556, fn 7 (Okla. 1977); *Oklahoma City v. Barclay*, 359 P.2d 237 (Okla.

1961). When a municipal body misuses its power, that improper use renders the decision invalid and void.

*Nucholls*, 560 P.2d 560.

So here too. The purpose of the Commission and of the Preservation Handbook is to “provide clear guidance” and offer guidelines to “evaluate proposed changes to historic structures.” The Commission is not designed as a device used to marginalize property owners, nor is it meant to prevent individuals from living in the neighborhood. If the Historic District Commission is driven by improper considerations or misuses its power, the Commission’s decision is invalid and void. Applicant has shown that the stated justifications are baseless and empty. No legitimate object to size and scale may be made. Either the Commission acted against its own precedent, or improperly considered the pleas of the neighbors involving the use and tenancy of the proposed garage and house. As evidence of the latter, the Commission allowed neighbor after neighbor to inject this issue into the Commission meetings. The minutes of the November 2, 2015 meeting are littered with such instances.

- “I think it’s a facility for a party barn.” (Page 10, Paragraph 2 of Verbatim Minutes of November 2, 2015 for Item 7 of the Commission (the “Minutes”).)
- “I would like to mention the source of the inhabitants from the Sigma Alpha . . .” Page 11, Paragraph 3 of Minutes.
- “We believe the proposal greatly endangers the single family residential character of the neighborhood.” (Page 14, Paragraph 2 of Minutes.)
- “This historic and single family use of the property will be altered dramatically.” (Page 14, Paragraph 2 of Minutes.)
- “If one feels the need to avoid . . . increased occupancy that violates city ordinances, there are many other available and more suitable choices in Norman.” (Page 15, Paragraph 1 of Minutes.)

This represents a small, albeit robust, sample of the deliberations by the neighbors of 506 S. Lahoma. Now, Applicant requests a fair and unbiased decision from the Norman City Council.

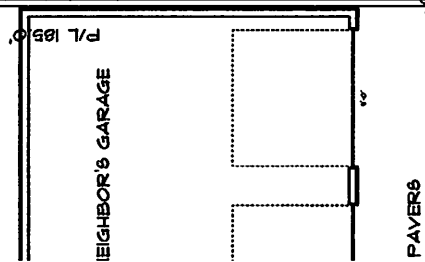
#### IV. CONCLUSION

In view of the Commission's about-face on precedent, in view of the Commission's imposition of a higher standard and stricter scrutiny on Applicant, and in view of a sample of the Minutes from the third Commission meeting in which improper justifications were repeatedly heard, the Commission's behavior can only be described as an abuse of power. The Commission's behavior cannot be masked by the Preservation Guidelines or through the Commission's own precedent. Therefore, we respectfully ask the Norman City Council to approve Option Two as presented (**EXHIBIT "A"**) and reverse the Commission's vote on November 2, 2015 concerning 506 S. Lahoma.

**EXHIBIT "A"**

[attached Option Two]





**EXHIBIT "B"**

[attached Option One]

**\*preferred option by Owner, but disfavored by the Commission**

