

**Norman Historic District Commission Meeting
Verbatim Minutes of August 5, 2013, for Item 16:
Request for Certificate of Appropriateness for 322 Alameda**

HDC Commission Members: Rangar Cline Anna Eddings David John Russell Kaplan Lay Macari Chesley Potts Anais Starr – Co-Chair Scott Williams Neil Robinson – Chair was absent	City of Norman Staff: Susan Atkinson - Historic Preservation Officer Jolana McCart – Admin Tech IV Applicants: Jeff Murphy and Li Yang
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Note: The applicant is returning to the Commission to allow the Commission to include a specific finding regarding the timeframe in which the applicant must comply with the COA as approved.

Co-Chair Anais Starr is chairing the meeting in the absence of Chair Neil Robinson due to a family concern.

Co-Chair Starr: Let's move on to the next agenda item which is the continuation of the Certificate of Appropriateness (COA) for 322 Alameda.

S Atkinson: This one is coming back to the Commission because of a couple of things that has happened. Jeff and Li are with us this evening as well. So when the Commission reviewed this case in July, the request was for an after-the-fact window replacement. And the Commission's obligation in these after-the-fact cases is to treat the work as if it has not already been done, which we all recognize as being awkward but that is what we have to do. In other words, is this a COA that you could have approved if the work had not already been done. The decision was made by the Commission to approve a COA for wood windows and there was some discussion about a timetable. Staff had recommended something but the Commission had declined to vote on the timetable. The applicants left the meeting, considered all their options, and exercised their option to appeal the Commission's decision but what the letter of appeal said was that they were appealing the timetable that was discussed, which was discussed as 3 years. However, the Commission did not vote on that. So when the letter of appeal was reviewed by the City Attorney's staff, they said there really wasn't a basis for appeal here. If they were appealing a decision made by the Commission, that would be fine and could move forward. But what they were appealing is something that the Commission did not vote on. So it's coming back to you this evening not to revisit the case, but simply to discuss the issue of the timetable for a replacement schedule. The Commission does have the legal authority to set conditions when you grant a COA. The Attorney's Office has been very clear about that. So in this particular case, we could do a timetable for a replacement schedule. So the action that is before the Commission this evening is to reconsider a timetable attached to the COA that you granted on July 1st for window replacement. Again, you do have the authority to do that and I just wanted to toss out as a point of discussion for you – the City certainly, as we have in in previous cases, has the authority to say that this is out of compliance with the Historic District Ordinance and it has to be addressed immediately. 45 days. 60 days. 90 days. Under the circumstances, we discussed it and we also felt that we had the leniency to recommend a longer time period for compliance. So

staff recommends 3 years with 5 windows to be replaced each year. So I'm going to throw that out to you for discussion and Madam Chair you may take over. Let me also point out that because the applicants are here, they certainly may have something they want to add to this. So I will let you handle that.

Chair Starr: So I think that Susan has made it pretty clear what we are actually are going to be acting on tonight. It's just the timetable for the decision that you have already made. Let's try to keep our comments restricted to that. With that, I guess we can start with the applicants. Do you have anything you wanted to add?

Mr. Murphy: I am asking for 6 years and having the windows replaced all at once at the end of that period.

(The applicant cannot be heard at times on either of the two taping devices used at the meeting, thus verbatim comments are impossible to transcribe. The recording secretary will provide a summary of his comments taken from her notes when these moments occur.)

Summary: Mr. Murphy was concerned about the possible issue of supplier changes should the requirement of staggered replacement be enforced and the windows not matching at the end of the project. He asked if the Commission had seen the letter he had written to the City Council for his appeal. He stated that he had not been aware that the house was in a historic district and that replacing the windows would be a major financial burden.

S Atkinson: Excuse me but since we are not at the point of appeal yet, let's....

J Murphy: It just furthers my argument is why I am asking.

S Atkinson: Because this is not a discussion about the appeal, and I'm sorry to be so legalistic about this, you certainly can describe to the Commission your reasons for that being the option that you are going pursue, but again, we are not at that point yet.

J Murphy: Here again, Li and I purchased the home in 2010 and started working. Maybe 2009. We lived in an apartment at OCCC and lived there for 2 years. We didn't know the area at all. When she finished at OCCC we wanted to be closer to The University of Oklahoma because she wants to pursue a PhD. We considered renting but with things as they were decided to buy a house for approximately one hundred thousand dollars. I was not familiar with the area at all. I got a Norman-based realtor. The seller was also a realtor who represented himself. And he did not disclose the zoning. Susan has a copy of that. It was just disclosed as residential. Nothing was ever brought up about a historic district throughout the entire process. My realtor even recommended adding vinyl siding. Obviously the window work was done unbeknownst to the zoning and then I received a letter about the violation of the ordinance. Basically with my current financial situation I am spending roughly \$10,000 a year on my wife's education and I spend \$9,000 a year on mortgage and escrow, \$7,000 on groceries and \$1200 on electric, \$600 for gas, \$840 for auto insurance. This doesn't take into account other costs: fuel, clothing, doctor, dentist, car maintenance. I am on a furlough now. I make less money than I did last year. Last year I made \$38,500 and this year I make less. Li has another 5 years of school. I am going to try and get some back from the realtor. Once this settles down I was going to try and do something about an attorney first. I would have to pursue the realtor/seller. I am just asking for more time so that I

am not overburdened financially. I want to do the windows and I want to do them right and I want them to be in compliance. And that's all that I am asking for is more time so that I don't have to struggle so much financially because I don't think that you all want to have me struggling financially and trying to make payments on a home, finance an education and so on.

R Cline: But my concern is that if Li is going to be done in 5 years but you have a 6 year timeframe in which to get the windows done, Li will be done in five years which at this point... I guess my concern is that it is such a long time span in which you could decide to leave, sell the house, at which the house has a new owner.

S Williams: That is my concern also.

J Murphy: But I have to disclose all of that information.

R Cline: You do, but...

L Macari: The COA stays with the house and it will be part of the....

Chair Starr: Let me go ahead and close the comments from the applicant and get to the Commission discussion. Again let's keep our comments to the timeframe. We can't make any decision about anything else regarding the case.

R Cline: So are we voting for this? Just yes or no? Or are we entertaining a counter proposal from the applicant?

S Atkinson: I think I see what you are asking.

R Cline: Can we entertain a proposal for 6 years or are we voting yes or no on this?

S Atkinson: I think that the Commission has the latitude, legally, to decide what the timeframe will be that is attached to the decision. Yes, you do have that latitude. Be it 3 years. 6 years. Whatever. If the applicant does not like the decision, the applicants have the right to appeal to City Council. At that point that enters into the political realm of the discussion as opposed to the Commission's expertise. I do want to remind you that while I am absolutely certain that every Commissioner in this room is very sensitive to the economic situation, the Commission also has an obligation to all of the property owners in two Historic Districts. All of them have to abide by the same rules and again, I recognize that what I am about to say may sound kind of harsh, there is not a provision for economic hardships specifically in our ordinance. Does that mean that it doesn't exist? No it does not mean that. I'm just saying our ordinance and our guidelines do not have a provision for economic hardships. You need to know these things as you enter into your discussion. I simply threw out a staff recommendation that you may reject or modify. That is entirely up to you.

J McCart: Susan, what about the concern about getting windows?

S Atkinson: The windows in question in this house are one over one wood windows, which are a pretty simple thing. It's not a cheap thing but it's a pretty simple thing. They are commonly available from wood window manufactures like....I talked to a couple just to verify if what I am

saying is truthful. Again without the presence of muntins, that creates window panes, one-over one-wood windows are pretty simple deals. So the concern that they might cease manufacturing them or they wouldn't match over a long period of time I think is an unfounded concern. Especially given that most wood windows are going to be painted anyway so it's really the paint surface that will best determine whether they match the rest of the house or not.

S Williams: May I address that?

Chair Starr: Yes I would like to hear from all the Commissioners.

S Williams: I'm not sure that I would say that it is unfounded. An unfounded concern. I do agree with you that it is a much simpler composition of getting those windows since they are one over one. But still stranger things have happened. I support what you are saying but would not say that it is not totally unfounded.

Chair Starr: However we have had people own house for decades and have had windows done at different times and you just need to deal with those circumstances when they replace a window ten years ago and come back and replace one 10 years later. It may not be exactly the same, but you deal with what you can get.

S Williams: What if, just a thought here, with the staff recommendation, what if it were one façade per year?

S Atkinson: It's just another way to slice and dice it. It's up to you guys.

Chair Starr: That would probably work out to 5 a year.

C Potts: May I ask why staff is recommending 5 windows a year?

S Atkinson: There 15 windows total and I just divided it by there.

C Potts: But why do that rather than have all replaced in 3?

S Atkinson: To demonstrate progress to the neighborhood. Obviously every property owner in the vicinity and any another neighborhood are watching to see how this is handled. In the interest of treating all comers the same. I think there are a variety of ways – I don't think there is a "the" answer in terms of a replacement schedule. Just as a way to start the discussion for the Commission I simply took the 3-year period and divided the cost, if you will, for the work in thirds.

C Potts: I guess my thought is are we then adding to that cost? If you have a contractor coming back three different times or how many times it is, is it more costly? Typically it is, right? So to say that you have got to do this you are adding to the cost of that project.

Chair Starr: Of course the other option is that we could ask them to do it in 60 days. Which would be more typical coming into compliance with the ordinance when you violate it so 3 years is pretty lenient in my opinion.

C Potts: I agree. That's what I was suggesting

Chair Starr: It would be more expensive but perhaps taking it in smaller bites instead of having to do it all at once.

S Williams: I agree also with Susan's comments that we have an obligation to the rest of the residents in the two neighborhoods especially since we have a lawsuit going on with replacement windows. I think that we need to be very consistent on this so that it doesn't look like we are picking and choosing.

Chair Starr: Consistency is pretty important.

S Atkinson: I do want to remind the Commission at this point that the Historic District Ordinance requires the Commission to evaluate each case on a case-by-case basis. Understanding that each project has its own set of circumstances. We have talked about that in many different ways as you have reviewed different projects throughout the years. I think that the same is true in making decisions about replacement schedule in this case.

S Williams: Yes I agree with that but I just don't want us to look like we are being preferential maybe in light of the situation in context of the past.

Chair Starr: I would like to hear from the other Commissioners and what their thoughts are.

R Kaplan: I struggle with the timeline. I do think that doing any project piecemeal will be more expensive. Maybe more palatable to your budget at the time but in the long run having a contractor multiple times is going to cost more money. Period. But I think that there is an obligation to the neighborhood in showing some progress. I can't think of any other item that you could be out of compliance with for a year, let alone three. But I also struggle with making that kind of requirement. It's tough.

A Eddings: I'm having a little bit of a hard time on an opinion because this is not spelled out in our guidelines as to a timeframe for compliance. We don't really have any basis in our guidelines for this decision. Is it just the consensus of our group? Are we making our own law here?

S Atkinson: But this is a quasi-judicial body. It is the nature of what you do. That is what we ask you to do as Commissioners.

J Murphy: But I ask you to consider the facts. I actually got no disclosure that I was in a historic zoning. Absolutely none.

Chair Starr: Again, we really are just deciding on a timeframe tonight.

J Murphy: But you just said that you have some amount of reasonableness here. There's nothing set in stone that says that I have to change them in two months or 3 years. It's a reasonable judgment on your part. And I am begging you for some leniency here since I got absolutely no disclosure. None.

Chair Starr: Again, we just need to stick to a timeframe.

C Potts: Can I ask....obligation to the neighborhood to show progress. I guess I do not see that. If we are judicial and we say that all anyone would have to say is that they have 3 years to do it. Or whatever. And because someone doesn't see progress being made does not mean it's not being made. There is a deadline. And they will meet it or not and go forward from there. I don't see the need to....again I'm from the outside and I understand neighborhoods but I don't know that this body needs to concern themselves with that.

Chair Starr: Well....

C Potts: If it is legally in place, they can call the City or whomever and they have until this day to complete that.

Chair Starr: I would agree with the 3s year that staff is recommending. What we are basically saying is that you need to do something within a year. So you are correct.

C Potts: I'm not asking about that. Whatever that timeframe is. You made a comment about the neighborhood and showing progress. Your idea was to do 5 to show the neighborhood progress. Is there really a need to do that or say you have so much time, however you finance it, two at a time or all 15 at once?

S Williams: If we grant a longer time period, do we run a risk of this being grandfathered in?

S Atkinson: Could you say that again?

S Williams: For instance, what if we did approve a 6-year timeframe then after 5 years, according to statute such and such, it is now ok so they are grandfathered in?

S Atkinson: There is certainly nothing like that that I am aware of but will research that. I don't have factual information for saying that but will look into it.

R Kaplan: But the condition of the home at the time the Historic Guidelines were enacted is what dictates a pre-existing condition.

S Atkinson: That's right. And that was not the pre-existing condition at 322 Alameda. And the owners have never asserted anything different. There is ample photographic documentation.

R Cline: Susan could you clarify this? For someone who is typically in violation, is it 60 days?

S Atkinson: Fortunately this has not come up very often to my incredible relief. When it has come up on the past we have worked actively to pursue compliance and in some cases it has taken 60 days and sometimes taken 90 days. The window case that is going to District Court is the first time I have actually had to take this on. As we know this one has gone on for a while.

R Kaplan: But usually it is to begin right away.

S Atkinson: To begin corrective action as soon as possible.

R Kaplan: Have we had a total window double replacement under our watch?

S Atkinson: I have not had to deal with that in my 8 years with the City. I don't...Maybe that happened one other time that I am aware of.

R Kaplan: 816 Miller. Wasn't that part of the sad story that I got from the seller when I bought that?

S Atkinson: We worked through that one and the seller that you bought the house from ended up putting in a window type that was consistent with the Guidelines as they were at that time.

R Kaplan: They had not been replaced as part of the process?

S Atkinson: No.

Chair Starr: So I would like to hear from some of the other Commissioners.

D John: I would like to see progress sooner than later. I think that it sets a bad example for the rest of the neighborhood as far as what we meant even though we say we want them changed at a certain date, people looking in from the outside are still going to say that they didn't do anything with that so maybe I can change my windows without any consequences.

C Potts: Do you have a recommended....

D John: I would say within a year. If that's not possible, I don't know.

Chair Starr: If we look at the staff recommendation for the 3 years at 5 windows each year are we basically essentially saying to do something with it within a year. I don't see it as hand holding. I think that it shows that we need you to be doing some corrective action to the house soon, not waiting for 3 years. A lot of things can happen in 3 years. I would have similar concerns to not having any corrective action for that long. It's not a good stance.

C Potts: So would you say to go ahead and get it all done in a year?

Chair Starr: Well, given the staff recommendation I think 3 years with some action every year is a good....

S Atkinson: Again, the Commission can decide whatever you want. You can break the recommendation apart. You don't have to take both. I just put it out there as a way to get discussion started because that seemed a reasonable approach.

L Macari: I recommend that within the first year the front façade gets done and then the rest of the house, it doesn't have to be done every year, can be done in a 3 or 4 or whatever year period that everyone decides on. I think that the front façade in a shorter amount of time would be setting a good precedent that we follow the rules and

S Atkinson: Does it make any difference to you, just asking, that the front façade is less visible than the west façade? The west façade is the one that includes a couple of single light.

R Kaplan: Do you mean west or east?

S Atkinson: West is actually what I meant. Because that is where there are 2 or 3 fixed pane windows.

L Macari: No. I think that the place to start would be the front where there is the least amount of windows.

C Potts: I think that it is a good idea since we are concerned about the front façade of home primarily.

S Atkinson: That is true but we do have jurisdiction over the every façade. So...

S Williams: Well would you like to make a motion? Put a motion together?

Chair Starr: Is there any discussion about what people think about that?

S Williams: That would kind of get us back to my original thought. With five windows and five windows by looking at it as a façade since we are looking at a façade. It could be 4 windows on this façade and one on the next. Why not look at it on a façade basis since we actually do look at the front façade first. *(Unable to make out continued thought).*

Chair Starr: Any thoughts? The front façade has how many windows?

S Atkinson: 2

R Kaplan: I'll make a motion and see if it goes anywhere. I move that we require the applicant to do the front façade in the first year and complete the project in 6. Open for discussion.

S Williams: Would you set any incremental timelines?

R Kaplan: No. I do think that it will incur additional cost if they keep bringing them out. If you do the front, it addresses the immediacy. It shows some action. But give them the maximum leniency of their request of 6 years to finish their expenditure in a second swoop.

S Williams: I second that motion.

R Kline: I like that idea of the front but I think the ones on the side where you have kind of the big picture windows are the most obvious violation. That might be something to consider.

S Atkinson: This is the west elevation.

R Kaplan: Can I revise my motion to be a different façade?

Chair Starr: Let me express my concern. I really am concerned about 6 years. We need to think very closely and carefully about that.

R Kaplan: Did we get a second or did it stop?

Chair Starr: We did get a second.

J McCart: You can amend.

Chair Starr: You can amend if you so desire. Let's hear from the other Commissioners. Let me hear what you think about time wise and façade wise. What are your thoughts on those?

A Eddings: I would agree that the west façade doesn't look the best as it is. I would agree that the west façade should be priority if we are going to set a façade-by-façade schedule. I am sympathetic with the difficulty of a 6-year timeline. I could see shortening that.

L Macari: How many windows are there to change out on the west side?

S Atkinson: On the west? There are 5. But the back 2 are one-over-ones.

R Kaplan: But there are 2 on the back side that weren't touched.

S Atkinson: That is correct. So 3.

Chair Starr: So you guys want to consider façade-by-façade or leave it open? West side first? Front second?

R Kaplan: The reason I question when you said west is because the east is very visible since it is along the alley. Do we have an image of that?

S Atkinson: I don't.

R Kaplan: How many windows do we have on that side?

Chair Starr: 6 I believe.

R Kaplan: They are all operable?

S Atkinson: 2 of them are smaller picture windows. There is a grouping of 4 on the alley side. *(unable to hear the rest of the comment).*

R Kaplan: They were not original?

S Atkinson: They were not original.

R Cline: *Unable to hear comments.*

Chair Starr: She said you could slice and dice it in all sorts of ways. If you wanted to you could make it the first year 4 or different amount each year and whatever whatever whatever. That vast majority the third year.

R Cline: *Unable to hear comments.*

Chair Starr: Any other thoughts?

Unable to hear on the tape this part of the discussion.

The discussion resulted with R Kaplan rescinding his original motion.

D John moved to have the west façade windows of the house replaced within the first year, and the rest of the project completed within 3 years. **C Potts** seconded the motion. **J McCart** took the roll call vote with the motion passing with a unanimous vote.