

MINUTES
The Spartanburg Board of Architectural Design and Historic Review
Thursday, April 9, 2020 ~ 5:30 PM
“Virtual Zoom Meeting”

Board Members Attendance: Sarah Love, Ray Trail, Brad Steinecke, Melissa Walker, Meg Reid, Josh Lonon, Rhiannon Leebrick, and Thomas Koenig.

Absent Board Members: Kathleen Crowley was absent.

City Staff: Natalia Rosario, Planner III; Rachel Grothe, Planner II; and Julie Roland, Administrative Assistant. City Attorney Bob Coler; Martin Livingston, Neighborhood Services Director; and Buddy Bush, Building Official also attended this meeting.

Mrs. Love, the Chair, called the HARB meeting to order at 5:30 P.M., and stated the hearing procedures. She recognized the seven Board Members present constituted a quorum, and she proceeded with the guidelines for the procedure of the meeting.

Mr. Trail moved approval of the Agenda for tonight’s meeting; and he was seconded by Ms. Walker. The motion was approved by a vote of 7 to 0.

No Meeting Minutes Ready for approval.

New Business:

Certificate of Appropriateness for Major Works –246 Hydrick Street in Hampton Heights – Owner/Applicant seeking approval on a chimney removal from a previously storm damaged chimney which was subsequently removed without the benefit of a Certificate of Appropriateness on a property in the R-8/SFD zone district located at 246 Hydrick Street. Yuk Cheng, Owner.

Ms. Grothe, Planner II was sworn; and she submitted into evidence the meeting packets the Board Members previously received by email and tonight’s presentation as Exhibit A. She introduced the request and showed a slide of the location map, slide of the property and rooftop area. Ms. Grothe said the site currently contained one single family dwelling; and after a recent storm; a damaged chimney was removed by the owner without the benefit of a Certificate of Appropriateness. Current slides of the property and roof area were shown; and Ms. Grothe said prior to the chimney removal, the house had three chimneys, which she pointed out the two still remaining chimneys that were located on the right side of the house, and where the chimney had been removed that was located on the front left of the house. She pointed out to the Board Members the chimneys had some unique brick work; and she said there was a vertical band of bricks around the top of the chimneys, also visible on the slide. Ms. Grothe said that added to the historic character of the house. She said the chimney that was removed looked like the two chimneys on the right side of the house. She showed an older photo of the house that included the chimney that had been removed; that showed the same sort of brick work as the other two. Ms. Grothe said the petitioner was also present.

[Editor’s Note: The meeting packets the Board Members received via email prior to the meeting contained the following criteria for reviewing a Certificate of Appropriateness:

1. *The character and appropriateness of the design* – The reconstructed chimney will return the house to its original design and will help to bring back an important character defining feature.
2. *The scale of the buildings* – The chimney will be constructed to its original dimensions which will create a sense of harmony of design.
3. *The texture and materials* – The chimney will be constructed with like bricks and mortar and will match what was removed to the greatest extent possible.
4. *The relationship of such elements to similar features of structures in the immediate surroundings* – The reconstruction of the lost chimney will restore a vital character defining feature and bring the house back into compatibility with the overall streetscape of Hydrick Street.

5. *If the property is in a Historic District, the extent to which the alteration or construction would be harmonious with the Historic District – The reconstruction of the chimney will allow the house to blend harmoniously with the Hampton Heights neighborhood by restoring an important historic and defining feature.]*

Staff Summary and Recommendation

Staff is in support of the reconstruction of the removed chimney provided that it match what was removed in materials, design, texture, color, location and brickwork. Staff recommends the Board approve the reconstruction as stated above based on the findings referenced above and the Conditions of Approval that are listed below:

1. *If one or more of the following conditions is not met with respect to all its terms, then this approval may be revoked.*
2. *All plans for future construction which are not covered by this review shall be submitted to the City Planning Department for review and approval.*
3. *Major modifications to plans or exceptions to completion may be granted only by the City authority which approved the project.*
4. *This permit shall be exercised within six months of the date of final approval or it shall become null and void. Extensions may be granted with permission of the Board.*
5. *The reconstructed chimney shall include like materials including brick and mortar. The chimney shall be located in its original location. The brick work shall match what was removed and what currently exists on the two remaining chimneys. (Vertical band over horizontal stack.)*
6. *The work shall be performed by an experienced mason with experience in a variety of brick laying.*

Board Questions for Staff:

Mr. Lonon asked if the Board decided to require reconstruction of the chimney, how would that work from a City standpoint, such as how would it be enforced, and was there a certain timeline given; and what did the approval process look like.

Ms. Grothe explained as part of the Board's meeting packets, she included the conditions of approval. She further explained condition #5 said it shall be reconstructed. She said Staff had discussed this with City Attorney Bob Coler who was present; and he had said if it was not taken care of there was the potential for the levy of fines against the owner. She asked the City Attorney if he would like to speak to Mr. Lonon's questions.

City Attorney Bob Coler explained to Mr. Lonon and all of the Board Members he thought the first answer to your question is step one, the applicant, the property owner had proceeded without the appropriate certificate of appropriateness. So he was technically in violation of the City code now. And he could be cited for that. And his punishment would be up to our City Judge whether she wants to fine him, whether she wants to waive the fine. So, that's the status of his current position. If his application was approved tonight, then he would have to proceed with constructing as the Board directs him to do so. And again, the way I've generally seen it done is that we ticket him, bring him before the court, the court tells them to get in compliance with the code immediately. She may give him some time to do that. But, theoretically he could be ticketed for continuing violations. So I guess it generally depends on what the Board does tonight. What your approval of his request is tonight. And whether or not he goes along with or follows that approval.

Ms. Leebrick asked just to clarify; the request before us is a request to repair the chimney.

Mrs. Love said actually not to repair, it's to replace. It was damaged by a tree during the tornado that we had. And so it took down part of the chimney. And then the owner proceeded to go ahead and just remove the chimney entirely. So the application that is before the Board tonight is for reconstruction of the chimney.

Mr. Lonon asked that the applicant, as far as staff knew, the applicant was in agreement with ... and I'm sure we can talk about it more once Mr. Cheng has his time to speak. But, just to understand the position here; the applicant had applied to reconstruct the chimney. And so he's in agreement. All that's before us is whether or not we will allow the reconstruction of the chimney.

Mrs. Love said initially this should have come before the Board, and it did not. And so we're just trying to follow protocol the best that we can now, sort of after the fact, that he has removed the chimney. So we're asking for the Board to let him know that.

Ms. Grothe explained we're asking for the Board to let him know that the chimney does need to be reconstructed and reconstructed in such a way as to how it was before and then to match the other two.

Mr. Lonon said he wanted to make sure that they were completely clear on this because at some point someone's going to have to bring a motion and vote on the motion, and he wondered if the application was, and what we're voting on is the applicant's request to reconstruct the chimney, that's fine. If what we're being asked to do was order him to reconstruct the chimney; he was not sure they could do that.

The City Attorney explained that he was not sure; and he felt Mr. Lonon was right and that his analysis was spot on. Because he proceeded without a certificate, the normal process was, he should get a ticket now. It will go before the court and the court is going to look to the City and say, "All right City, what do you want done?" We would say, "Judge, we want him to apply to the Board, get the appropriate approval of the Board for something that they can tolerate and live with." And so I think this application here is in anticipation of what would happen in the situation where he's brought before the court for violating the code in the first place. But yes, I agree with you. I think all that's before you tonight as I understand it would be, he's consented to or acquiesced in this application. So he's asking the Board to approve what he's put before you tonight. I'm sorry. If and when he went before a Judge, we'll say, "Judge, he went without a certificate, fine him, do whatever you want to do." And the Judge will say to us, "Well, what's next?" And we'll say, "Well, we now have Board approval for something else. We want him to proceed with that." If he doesn't do that; the Judge certainly had the authority to continue to punish or reprimand and hold him accountable for starting this whole process without any certificate of appropriateness.

Mr. Lonon said the way he read the application was; his application said under description of proposed work, chimney repair. In parentheses, right now, entire portion of chimney that sticks out of roof has been torn off and has been covered up. He is not using this chimney any longer. That doesn't read to me as a request to reconstruct the chimney. That reads to me as a request to no longer have the chimney. This is where I'm kind of confused and I guess Mr. Cheng can explain to us what he's actually asking the Board to do.

Mr. Lonon felt if he's asking to reconstruct, the Board could approve the certificate of appropriateness. If he's asking not to reconstruct, he did not know how they would deal with that considering that he's already in violation.

Ms. Grothe said when he submitted the application, he did not want to reconstruct and I'm sure he can speak a bit more about this. She explained in her conversation with him, she told him he was going to have to reconstruct the chimney; and the Board was not going to approve this and allow him to have the chimney down. At that point the applicant said that he would go ahead and reconstruct the chimney.

City Attorney Coler said regarding the legal authority, the Board had the authority to approve his application with the conditions they saw fit. So I would think if you deem it appropriate, if the Board wants to, they say, "Your application to reconstruct the chimney is approved and it should look like this. It should be sticking out of the roof, extending X number of feet high like it was, have certain characteristics like it did." So I think the venue or the jurisdiction or the authority of the Board is to approve it with the conditions that they think is appropriate.

Ms. Reid asked Ms. Grothe was there not a six month window regarding work to be done.

Ms. Grothe said as far as she knew it was the standard from the code, and she put that on all applications that have come before this Board. If you would like to change or add to any of the conditions, the Board can certainly do that. And obviously talk to the applicant about it to make sure he can get on board with that and that works with his timeframe.

The City Attorney said he did not want to muddy the waters anymore; but to remember that time limit was a time in which the applicant must act or his certificate expired. Because this one's backwards, I think the City and the Board have the absolute authority to say, "You need to do it. You need to do it within a certain period of time. It's not, we're giving you a permit that lasts for six months, and then it expires. It's you've come before us

demolishing without a permit. We need it to be right within a certain period of time." The City, the Board, and I'm certain the court would all have the authority to direct a timeline that they think is appropriate.

Mrs. Love noted for the record that Board Member Koenig had now joined the meeting.

Mrs. Love asked if there were any other questions from the Board Members. There being no more questions, she informed Mr. Cheng, that this was his opportunity to address the Board. She asked him to please state his name and address for the record.

Mr. Cheng, Owner/Applicant of the property at 246 Hydrick was sworn; and he said it was his rental property.

Mrs. Love asked him to explain to the Board Members what he wanted to do regarding the request.

Mr. Cheng said if the Board wanted him to rebuild it, he would need to hire somebody to rebuild the same as the one they had. The reason why he took it out was because the brick was really, really loose. When they had repaired the roof, even if a hand touched it, it was falling down. He referenced on the slide regarding the other two chimneys still standing and said one of them was really loose too; and he may have to repair it in the future, as well as the other chimney still standing; all due to a tree that had previously fallen. He explained to the Board Members when the moving guy had repaired something on the house; he had asked him if he wanted him to remove the chimney for him. Because we had not used that chimney in a long time; and it was inoperable any more he thought he could just take it out. He had previously had it sealed up from the inside and had not used it for some time. If the City really wanted him to rebuild, he would have someone rebuild it; and felt that was the only option he had.

Mrs. Love said that was correct. She explained that any other repairs that he made, he should do like that you should check with Rachel or Natalia in the permit department, and obtain a Certificate of Appropriateness before he did any of that work just to avoid problems like this in the future.

Mr. Cheng said he would.

Mrs. Love asked did any of the Board Members have any questions for Mr. Cheng; and it seemed like he was stating that he was going to rebuild the chimney that had been removed.

Board Member Questions for Applicant:

Mr. Lonon asked Mr. Cheng for zoning purposes, if he had said this was a rental property.

Mr. Cheng said it was a rental.

Mr. Lonon asked how many people were occupying the property right now.

Mr. Cheng said three or four.

Mr. Lonon asked Mr. Cheng if those were his employees that worked at his restaurant.

Mr. Cheng said that was correct.

Mr. Lonon asked Mr. Cheng; that they're not people who were related, they're employees who come and work at your restaurant and I guess it's a benefit of working at your restaurant, you allow them to live there or did he rent space to them.

Mr. Cheng said they paid rent.

Mrs. Love asked were there any more Board Questions related to the work being done on the property.

There not being anymore questions at this time; Mrs. Love opened the public hearing portion of the meeting; and she asked was there anybody with us who would like to share their thoughts on this property.

Ms. Rosario, Senior Planner said if anyone in attendance would like to speak regarding their thought on this work, there should be at the bottom of your screen, a little hand icon. Basically it allowed you to raise your hand and she would make them audible.

Ms. Grothe said Buddy Bush, the City Building Official would like to say something.

Mrs. Love asked Mr. Bush to go ahead and speak.

Buddy Bush, City Building Official said to be clear if the COA was approved, that the applicant would need whomever he hired to reconstruct the top portion, to get a building permit to do the work. He asked that he would be reconstructing it from the roofline only; and it was not able to be used on the inside. You've got the chimney complete underneath it, through the attic all the way down. Is that correct; and it was not usable anymore from the inside.

Mr. Cheng said that was correct.

Mr. Bush said he would have his inspector verify that it would be closed off, so there wouldn't be any possibility of anybody using it again.

Mr. Cheng said he understood that.

Mr. Bush asked Mr. Cheng if he was going to go ahead and have the work on the other chimneys he had mentioned done at the same time.

Mr. Cheng said on two of them; that one of them was in good shape. Only one of them is not in good shape.

Mr. Bush asked regarding the chimney, the cosmetics of it, it's going to be identical in essence to the other two chimneys.

Mr. Cheng said they were going to build it the same as the one.

Mr. Bush said he would need a mason, somebody that does masonry work to get that permit. Somebody that was licensed in that trade, that had the specialty for at the very least to do that in a business license.

Ms. Reid asked Mr. Bush did he say they were going to be doing an inspection of the inside of the property.

Mr. Bush explained they would need to verify that the chimney was nonfunctional beneath it. He explained he wanted it sealed off.

Mrs. Love said not seeing any more comments; she asked Mr. Cheng if there was anything he wished to add.

Mr. Cheng did not wish to add anything.

Mrs. Love said if there were no objections, she would close the public comment at this time and moving to Board deliberation?

There were no objections from the Board Members.

Board Deliberation:

Mrs. Love asked the Board Members if anyone had any more questions or if anyone wished to make a motion.

Mr. Lonon asked if they needed another application for the repairs of the other chimney as well.

Ms. Grothe said she did not think there was anything else before the Board tonight; and if it was just something regarding maintenance, then that did not require a Certificate of Appropriateness. If it's going to maybe be some repair, then I think at the least it required a minor and so we would just want to know what it was that they were going to be doing and then we would want to ensure that it was going to match what was originally there.

Mr. Lonon said it sounded like there had already been conversations about these other chimneys so perhaps Mr. Bush could weigh in; and he asked Mr. Bush if he thought the work that needed to be done on the other chimneys required another certificate?

Mr. Bush said in his opinion, regarding repair work to the other chimneys; if they could do it that way or when the COA was issued, could that be done as an addendum that he could repair the other items, the other chimneys as needed, rather than have to do an entirely separate COA.

Mrs. Love said applicants did sometimes amend their application at some of their meetings previously; so this could be amended to include the reconstruction in matching color, size and pattern of the existing chimneys and then also to repair the chimneys that were there.

Ms. Grothe felt the Board could approve that. And it sounded like the applicant was on Board with doing that as well.

Mr. Lonon asked was it up to the Board Members to outline exactly how the chimney needs to be rebuilt or does the City then determine whether or not it's been rebuilt substantially the way it looked before? How does that work.

Ms. Grothe felt it would be up to City staff to double check and verify that. We do have the picture for its previous location and I'm sure you can see where it is under that section of the roof. So I'm sure it'll be really easy to tell. So that's something that probably I and then Buddy and or one of his inspectors would take a look at.

The City Attorney informed Mr. Lonon, he thought they could do it one of two ways: generally, there's a picture or a drawing presented to you as to what he's going to do and then you approve that and then the final product has to match that picture. But that's not the case here. So I think you can delegate that to staff to verify... If the Board's decision is that it ought to look substantially similar to what it did look like before the demolition, the Board can delegate that to staff. The Board can require the finished product to come back before the Board for final approval or the Board can delegate it to a subcommittee of the Board to members who could work with the staff and the applicant to verify that it's going to look like it before it's built or it does look like it after. The City Attorney suggested, someone to verify before he spends the money to have a mason do it, that it's going to satisfy either staff, a subcommittee of the Board. Those are probably the most efficient ways to do it.

Ms. Walker said if you looked at the Staff Report, regarding Staff Recommendation, the conditions of approval; that item five said, "The reconstructed chimneys shall include like materials, including brick and..." And because the reconstructed chimney shall include light materials including brick and mortar, shall be located in its original location, the brick work shall match what was removed and what currently exists on the two remaining chimneys vertical band over horizontal stack. Ms. Walker felt the conditions that staff had outlined, if they approved those that would cover replacing it with something that looked like it before.

Mr. Steinecke felt given that there's a photograph that showed the chimney as it originally looked, it would be fairly easy to verify that the new work would match that.

The City Attorney said in fairness to the applicant, he would say if the Board wants to delegate the authority to staff, he could show them the brick before the masonry gets up there and starts laying brick and just to make sure you don't waste money on something that's not going to be approved.

Mrs. Love asked if there were any other questions/comments:

City Building Official Buddy Bush said his department would be okay with taking a look at the bricks before they start doing any of that; and they would be comfortable working with the applicant to make sure it matched what was there previously and the two other chimneys that were there right now. And also if y'all don't want to do a subcommittee or anything like that, I imagine you can ask for this to be put on a future agenda and ask for an update. And as soon as I know that the work has been completed or if I have an update to provide, I can do that and can provide some pictures and let y'all know how it's going if that would make the Board comfortable as well.

Mr. Lonon said he was absolutely fine with leaving that up to the staff; and he knew staff would oversee it and do a good job. He was just curious as to how that was going to work, who was going to decide whether it was built in compliance or whatever standards.

Mr. Koenig asked did they have to actually vote on turning over that to staff or how does that work?

The City Attorney said he would make that a condition of the approval. It'd be a condition of the certificate of appropriateness that staff had the authority given by the Board to make sure it's in compliance with the Board's desired product or outcome.

Ms. Walker thought there probably needed to be a slight amendment to the conditions because currently it said that the owner applicant was seeking approval on chimney removal, and what he was actually seeking was approval on replacing the chimney. She said she was reading that off the conditions of approval document.

Mr. Lonon said yes, replacing and rebuilding.

The City Attorney thought that would be appropriate and he would encourage the Board Members to ask the applicant if he concurred with that amendment.

Mrs. Love asked Mr. Cheng, if that suited him.

Mr. Cheng said it did.

Mr. Koenig asked did they need to make a motion that we put this in the amendment or how did that work.

Mrs. Love said they could go ahead and make a motion for what you're going to approve.

Mr. Lonon said he was prepared to make a motion if there's no other discussion.

Ms. Grothe said she had one other thing she wanted to add which was if the Board wanted to go ahead and figure out a timeline that worked for both you and the applicant, now would be a good time to talk about that. And if so they could go ahead and add that to the conditions of approval.

Mrs. Love said six months seemed to be what she had seen on the applications that had come through when she signed them. So she would be comfortable sticking with the six months. Anybody else have a thoughts on that.

Mr. Trail agreed with six months.

Ms. Walker and **Ms. Reid** agreed.

Ms. Grothe said she just wanted it to be clear that what this said for condition number four, regarding this permit shall be exercised within six months of the date from the final approval or it shall become null and void, which means it would need to come before the Board again. So there is no specific timeframe that has been written into the conditions about when it needs to be reconstructed.

Mrs. Love asked so it's six months to apply for the permit, not six months to complete the work.

Ms. Grothe said that was correct.

Mr. Lonon asked why it would take six months to apply for a permit.

City Attorney Coler said he thought it was six months to start work from the approval.

Ms. Reid said it was to exercise the permitted work.

City Attorney Coler said yes it was six months to start.

Mrs. Love asked was there a motion.

Mr. Lonon moved to approve the applicant's request to replace and rebuild the chimney that was removed and to make necessary repairs to the chimney, the chimneys that still exist based on the discretion and supervision of the City staff such that at least the replacement work will be substantially similar to the original chimney. And then as conditions, that this needed to be done and completed within six months of the approval.

Mrs. Love said right now we have before us a motion to rebuild, to replace a removed chimney so that it matched in color, size and pattern under the supervision of City staff to be completed within six months and also to allow repairs to match existing on the chimneys that are still standing. The motion was seconded by Mr. Trail. The motion was unanimously approved by a vote of 8 to 0.

Update on 201 Caulder Avenue – Rachel Grothe.

Ms. Grothe said she sent an email to Stewart Smith and he indicated that the buyer and seller had requested an extension to the contract that would take out a closing three to five months from now. So both the seller and the buyer had been working together to move the project along, but the complexity of the financing with the different tax credits, environmental reporting and the design required additional time. Anyway, so they're just saying that there's no new information to report right now other than them extending the closing for them to do more research to figure out how they're going to make it work.

Update on Approved Certificate of Appropriateness for Minor Works since the February 13, 2020 Meeting – Rachel Grothe.

Ms. Grothe went over the Certificate of Appropriateness for Minor Works that had been approved by Staff since the February 13, 2020, Meeting.

Mr. Lonon asked before they moved on could he ask a question for staff related to the minor works minor works and just repairs in general. So there were several houses in Hampton Heights; and he knew that needed repairs due to tornado damage and there did not seem to be much, if any, activity. Could the staff sort of fill us in on how that's going and are those homeowners working towards getting repair done. He assumed the staff was working with those homeowners; and said he was curious as to what the progress is.

Ms. Rosario explained she had met with a couple of property owners who had yet to apply. For the most part, they've been waiting for their home insurance to come through before they applied and they're getting contractors. She had not heard from everyone who had damage on their houses. She knew that earlier last month, the Code Enforcement Department sent out letters to some homes that were damaged and those were very poorly received by the residents, not necessarily in Hampton Heights, just Citywide. She said Staff was trying to be lenient with people to give them more time. She said if any of the Board Members noticed specific properties that they noticed with no movement and there was damage, to please send her that information and she would touch base with those property owners and get them started.

Mr. Lonon said thank you.

Mrs. Love said she guessed too that the current COVID-19 crisis had stopped a lot of things dead in their tracks as people were no longer working and a lot of contractors were limiting what work they did to necessary work only.

Ms. Rosario said that may be the case; and she explained our office was closed to the public, but were still receiving all kinds of permits and plans. So if anyone heard or saw someone with damage to let them know that we're still running our inspection crews. Code enforcement guys were still out in the field. She said we're just doing what we can mobile slash Rachel's in the office making sure things don't blow up.

Mr. Lonon said he understood all of that, and that everything was a mess. No doubt. I think from our little world and relating to our duties, I think there's a concern that some of these houses that are not being repaired are actually deteriorating, and not even really being preserved, much less repaired and I think that's something that someone needs to keep an eye on before we end up in a situation where it's even a worse situation that is right now. The demolition for instance.

Mrs. Love said she hoped not; and to please spread the word that all of that work needed to stop by the City office before it got carried out.

STAFF ANNOUNCEMENTS:

Mrs. Roland said Natalia had sent out requests for approvable online training and Jennifer Vissage with the ACOG had send on-line training opportunities she included in their meeting packets for new Board members as well as Continued Ed training. She said you could complete it on your own time; and if anyone wished to take advantage of that, please send her an email, and she would get anyone who wished to sign up for this all registered. She said Jennifer at ACOG would either ask them if they wanted to be mailed the paperwork or emailed a link for the power point; and she hoped they would take advantage of that.

There being no other business, the meeting adjourned at 6:17 P.M.



Sarah Love, Chair

Minutes by Julie Roland, Administrative Assistant