MINUTES OF THE PLANNING BOARD
May 11, 2021

MEMBERS PRESENT:	Chairperson Paul Ritz, Vice Chairperson Larson, Board Member Grundhoefer, Board Member Powell
MEMBERS ABSENT:	Board Member Murphy, Board Member Sampson, Board Member Wiggins
STAFF PRESENT:	Assistant Planning Director Cannon, Historic Preservation Planner Harding, Assistant City Attorney Lindsay, Network Engineer Johnston, Help Desk Technician Russo
STAFF VIRTUAL:	Planning Director Morris
OTHERS PRESENT:	Ed & Barbara Gaile, Kelly Moore & Margaret Hostetter, Tim Prime

AGENDA:

- Quorum/Call to Order
- Approval of Meeting Minutes from April 13, 2021.
  New Business:
- **Aesthetic Review 401 E. Chase Street**
- **Tree Ordinance Amendments**
- **Hostetter LTU 1715 E. Gonzales Street**
- Open Forum
- Discussion
- Adjournment

Call to Order / Quorum Present

Chairperson Ritz called the meeting to order at 2:05 pm with a quorum present and explained the procedures of the partially virtual Board meeting.

Approval of Meeting Minutes

1. Board Member Larson made a motion to approve the April 13, 2021 minutes, seconded by Board Member Grundhoefer, and it carried unanimously.

New Business

(To accommodate a late arrival of the applicant, the Board addressed the Tree Ordinance item.)

2. Aesthetic Review 401 E. Chase Street

Chairperson Ritz stated this item had come as an abbreviated review for a new roof; he approved it for a terracotta color and a metal panel form. What was installed was not the terracotta color, and he sent it to the full Board for review. Staff advised there were no comments received, but it was determined that metal roofing was allowed in this zoning district. Historic Preservation Planner Harding advised this property was not adjacent to a historic district, so special consideration to compatibility or as a buffer was not required. Other colored metal panels (as opposed to a plain galvalume) did exist in this zoning district and were found in green (Fin & Fork), red (Franco's Italian), and even orange and white (Whataburger).

Mr. Prime presented to the Board and stated they had filed with the Board to change from a terracotta roof to a metal roof, but when they switched manufacturers, the owners elected to change the color, and when they resubmitted for the manufacturer change, the color was not included which may have been an oversight; the terracotta color was changed to bronze. They did install the Gulf Coast ribbed panel, which was originally approved, but it was an oversight in getting from the terracotta to the bronze color selection.

Chairperson Ritz did not have an issue with the installed bronze color. Board Member Grundhoefer stated this was Spanish style architecture and should have clay tiles. He indicated the metal panels would not have been approved by the ARB, and it was across the street from that district; this should not be required to adhere to ARB standards, but the building had a character and now it did not. It was now a dark bronze metal roof on a building with Spanish character. Mr. Prime stated the 5V crimp metal roof had been installed in the historic district. Chairperson Ritz stated because the panel itself was not prohibited, he appreciated the color at the time (terracotta), and Whataburger was not the best example since it was a new build. He explained he did not want to perform any additional abbreviated reviews for this address.

Board Member Larson stated if the terracotta was approved, and the metal was approved, they performed the installation knowing the color was wrong; why did they not call first. Chairperson Ritz was sorry it had gone this way, and it made him hesitant to conduct abbreviated reviews; the allowance for an abbreviated review is somewhat narrow, and now he would probably refer more projects to the full Board just to stay above board. Board Member Larson had a problem with the applicant changing the color and not telling Chairperson Ritz. Mr. Prime stated it was not done on purpose; they switched manufacturers and the color was not designated. Chairperson Ritz had asked for full clarification on the panel since it was not definitive in the application. When the lead sheet of the application came a second time, it still indicated the terracotta color in the description box. Until it returned in this agenda packet, he had not seen it since the approval of the terracotta. When discovered, it was determined Inspections had placed a stop work order on the project. Mr. Prime stated when they switched manufacturers, he assumed the color was also switched; there was one step in the process where the color was not changed. Chairperson Ritz stated a lot of the applications submitted were poorly completed. Mr. Prime stated the panels were cut to order, and when the screws were removed, the holes were bigger, and the panels were trashed. Board Member Larson explained now the City would be stuck with a roof it did not like for 50 years, and it had no recourse except for the process it was going through in this meeting.

Historic Preservation Planner Harding pointed out in the ARB districts, 5V crimp standing seam or corrugated metal was permitted. Between the historic district and this district was GRD-1 which was Aragon, and the roofing was not as strict. This particular district was GRD with no profile standards regarding metal roofing, hence the Whataburger roof.

Board Member Larson had hoped the contractor would have noted the color was not the one approved before installation; it only happened when it was caught by Inspections. Chairperson Ritz explained because the initial application was not very well put together, he requested the applicant confirm what he believed to be true – the exact panel profile and the color; they confirmed the panel profile and terracotta color in the second submission.

It was indicated if denied, the applicant could appeal to Council (for ARB it was within 15 days), or they could remove the existing panel and replace it with what was originally approved. If approved, they could close out the permit and proceed with the project.

Board Member Larson made a motion to deny, seconded by Board Member Grundhoefer. Board Member Grundhoefer stated it gave him real heartburn that we would not get something with more character on that building in such a prominent area, but if it had been brought to this Board under aesthetic review, and they stated they would put on a metal roof and this was allowed, and for whatever reason this is the color we want approved, the Board would probably have approved it. Therefore, he was voting against the motion.

The vote was 2 to 2 with Board Members Ritz and Powell supporting the denial and Board Members Larson and Grundhoefer dissenting. Where motions were usually positive, it was determined that Board Member Larson could make the negative motion to deny. **Chairperson Ritz then opened the floor for another motion. Board Member Larson then made a motion to approve the request, and it failed for lack of a second.**

Assistant Attorney Lindsay stated the Board would need to take action on the application within 31 days.

Board Member Powell asked if the roof color could be changed without reinstalling the roof, and Mr. Prime advised it could be painted, however, the manufacturer would not warranty the product since the color is baked on and spray paint would chalk and chip in three to five years. Chairperson Ritz explained the Board's decision was only a recommendation, and the applicant (property owner) could appeal to Council. Staff confirmed the Board would not make a recommendation to Council since the reviews stop with the Planning Board, but the property owner could go through the appeal process on the Board's decision. Assistant City Attorney Lindsay advised the appeal would have to occur within 15 days. She also stated if the Board did not act within 31 days from the date of submission, such plans were deemed to be approved. The Board needed to be clear on what it was actually telling this applicant, so the applicant knew it has appeal rights.

Board Member Powell made a motion to deny; it died for lack of a second. Assistant City Attorney Lindsay stated since the Board had a 2 to 2 decision which would mean the request was denied, she did not know if that were really clear in our ordinance, but it was in the ordinance that if the Board failed to act on an application within 31 days of submission, it was deemed approved; there could be an argument that the Board did not really act since it was a tie.

Chairperson Ritz restated that because there was a tie and there was confusion, if the Board did nothing, it was approved. In this case, it could be construed in the applicant's favor to continue forward. **Board Member Powell left the meeting, therefore, there was no quorum, and the Board could no longer transact official business, however, it**

did have a vote which was concluded in a particular fashion that would stay as described. The Board voted and it was a 2 to 2 tie. It would now be up to the applicant to appeal this decision before Council since these types of applications stop with the Board, and it becomes an appeal process.

Assistant City Attorney Lindsay advised the appeal rights state: any person or any property interests substantially affected by the decision of the Board may within 15 days thereafter apply to the City Council for review of the Board's decision. A written notice shall be filed with the City Clerk requesting the Council to review said decision. **Essentially the burden is to provide the written notice to the City Clerk within 15 days requesting Council to review. When that review will happen will be determined by the Clerk's schedule for meetings.**

It was clarified the applicant was not required to get a meeting within 31 days, but the property owner should get advice on the particular Code provision, and that person could contact the Assistant City Attorney for that specific Code provision if they needed it. **Regarding the 31 days, Assistant City Attorney Lindsay explained if the applicant applied for this review and there was no response within 31 days, you could consider it approved and not be concerned with the appeal to Council. If acted upon here, if that action is interpreted as nonconclusive, perhaps the property owners could argue they consider it approved. She suggested the lawyer for the property owner take the more conservative approach and file with the Council, but she could not speak for the lawyer or property owner.**

The Board then discussed the panel materials.

3. Tree Ordinance Amendments - Section 12-6-6 (8) Land Development Code

At the City Council meeting held on February 25, 2021, Councilperson Brahier sponsored an amendment to the LDC for Section 12-6-6 (8) which would include protection of the dripline of heritage trees. These proposed amendments encompass the circumstance where there is a lot split for single family and duplex use; stating that the "land" shall be evaluated to determine whether a lot spilt will have a negative effect on any sensitive protected natural resource, including but not limited to heritage trees.

Chairperson Ritz advised the proposed amendment gave a definitive placement, and he had no issue with placing the text in the Tree Ordinance. Board Member Grundhoefer referred to the language that the arborist assigned by the City would review the situation to determine if the tree would be affected by a lot split; development would not be stopped if the owner wanted to split the lot and wanted to mitigate the tree and/or dripline; Chairperson Ritz explained that was still in place. Board Member Grundhoefer stated the language did not make it any tougher or weaker. Assistant City Attorney Lindsay advised there was also another provision in the Code which allowed the Building Official to direct that another site plan be reviewed if a heritage tree would be sacrificed as a result of the split. The development plan would not be approved if another reasonable plan was available to protect the tree. Chairperson Ritz indicated the language might give a better prospective of what was involved – not just the trunk or visible roots but included the dripline and the canopy.

Board Member Larson made a motion for approval, seconded by Board Member Powell, and it carried unanimously.

4. Hostetter LTU 1715 E. Gonzales Street

Margaret Hostetter has requested a License to Use for three existing rock/gravel parking

spaces located in the City right-of-way at 1715 E. Gonzales Street. The parking spaces are currently serving an RV garage and apartment building. A Notice of Violation was received from the Inspections Department because the parking spaces were installed without permits, and currently there is no LTU from the City. Ms. Hostetter went before the Magistrate Judge for a Code Enforcement hearing at which time her claim to continue using the existing parking area was denied. The request had been routed through various City departments and utility providers, and comments were provided to the Board.

Chairperson Ritz explained he was around four blocks from this location and was familiar with the area; the claim before the Code Enforcement authority had been denied. He pointed out several years ago, the City had an ordinance which was written to prevent jumping curbs to park in the right-of-way, and these three parking spaces are within the City right-of-way. He asked why there were so many parking spaces for a home in East Hill, and he discovered they were for two Airbnbs which advised knowing the rules and laws of the jurisdiction involved. For parking, the information stated to ensure you relay parking rules to your building and your guests (talking to the host); he noted that at least Airbnb had realized the rule of law needed to be followed. Since this was not proper, the applicant was requesting an LTU.

Ms. Hostetter addressed the Board and stated she did not reside on the premises, but the two residences were on one lot and shared the parking, and this was the case with the RV garage with the attached apartment since 2012; both properties were rented as short-term rentals. She pointed out the zoning and use was residential. She explained the parking could be accessed without jumping the curb but accessing the parking on the driveway at the curb cut for the original house. She had elected to pursue the LTU. She believed the complaint from the neighbor was in retaliation for lights shining into his house. Chairperson Ritz advised the Board was determining whether the parking was a violation and not whether it bothered the neighbors. Ms. Hostetter explained jumping the curb was the real issue. It was determined the recommendation of the Planning Board would be on the June 17, 2021 Council agenda.

Board Member Grundhoefer pointed out the Board would not vote on whether or not residents jumped a curb but was looking at the whole issue of parking. Ms. Hostetter indicated the parking arrangement allowed for five cars to be parked in a shared parking driveway without having to juggle one car for another to move. Board Member Grundhoefer offered that the parking was set up like a commercial development and did not meet parking requirements for driveways and parking spaces; although one might be able to maneuver vehicles in and out, it did not comply in that sense. The single driveway did not align with the RV garage, and they had missed an opportunity to have a wider conforming driveway in East Hill. He explained an LTU would allow them to do what they were doing now with angle parking and bumpers in the right-of-way which he objected to. Chairperson Ritz indicated historically this Board had viewed this the same way. Board Member Grundhoefer stated it could be a double driveway with a complying curb cut which would allow parking for six vehicles which would be the nature of a residential driveway; he explained we do not have parking lots in residential front yards. He would rather the applicant return with a plan for a residential driveway. Ms. Hostetter advised she would be happy to remove the bumpers, but they helped drivers align their vehicles. Chairperson Ritz explained no LTUs had been granted by the Board for residential uses, but they did exist for commercial and residential; the Board had only granted commercial LTUs.

Mr. Gaile advised he lives next door to the property and had chosen to live in East Hill for its charm and history. He also advised he had not made a complaint, but when the

Engineering Department came to inspect his pavers, they had observed the neighbor's driveway and stated it was not right. He stated the look of the property in question had the appearance of a commercial enterprise with parking stations; it is commercially oriented and not in harmony with residential standards. He pointed out car headlights point directly to his porch, living room and extend into the property to the left.
Mr. Moore, husband of Ms. Hostetter, stated this was a residential activity. He pointed out the neighbors park in the swell, and they should also be required to have an LTU to park in the swell. He advised according to the State, any zoning district can have vacation rentals.
Chairperson Ritz advised that 24' was the maximum driveway width allowed which was a double car driveway. Board Member Grundhoefer suggested the applicant apply for a permit for a double car driveway for the property and not apply for an LTU.
Ms. Cannington stated she had lived in that neighborhood and was there when the garage apartment was constructed and assumed the City had not meant for the structure to become a multiuse residential rental operation with the number of vehicles in the front parking lot. She was also experiencing car lights shining into her residence. If there was an option for slanted parking not coming into that parking lot, it would be great. If an LTU was granted, it would be great if people using the park could also use that parking lot. It was a daily frustration to witness how the short-term lease tenants tried to figure out how to park in that lot. As long as lights were not shining into her residence and there was a safe concern for everyone to enjoy the park as well, she did not have a problem.
Board Member Grundhoefer made a motion to deny the LTU, seconded by Board Member Powell, and it carried unanimously.
(The Board returned to the first item 401 E. Chase St.)

Open Forum – None

Discussion – None

Adjournment – With no further business, Chairperson Ritz thanked the Board for its patience and adjourned the meeting at 3:58 pm.

Respectfully Submitted,

Cynthia Cannon, AICP
Assistant Planning Director
Secretary to the Board