BOARD OF ADJUSTMENT MINUTES

JULY 27, 2022

The Board of Adjustment of the City of Norman, Cleveland County, Oklahoma, met in Regular Session in City Council Chambers of the Norman Municipal Complex, 201 West Gray Street, at 4:30 p.m., on Wednesday, July 27, 2022. Notice and agenda of said meeting were posted in the Municipal Building at the above address and at https://www.normanok.gov/your-government/public-information/agendas-and-minutes in excess of 24 hours prior to the beginning of the meeting.

Item No. 1, being:
CALL TO ORDER
Chairman Curtis McCarty called the meeting to order at 4:34 p.m.

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Item No. 2, being:
ROLL CALL

MEMBERS PRESENT	Brad Worster James Howard Curtis McCarty
MEMBERS ABSENT	Patrick Schrank

A quorum was present.

STAFF PRESENT	Logan Hubble, Planner I Anais Starr, Planner II Roné Tromble, Admin. Tech. IV Heather Poole, Asst. City Attorney Rick Knighton, Asst. City Attorney

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Item No. 3, being:
APPROVAL OF MINUTES OF THE JUNE 22, 2022 REGULAR MEETING
Brad Worster moved to approve the minutes of the June 22, 2022 Regular Meeting as presented. James Howard seconded the motion. There being no further discussion, a vote was taken with the following result:

YEAS	Brad Worster, James Howard, Curtis McCarty
NAYS	None
ABSENT	Patrick Shrank

The motion to approve the June 22, 2022 Board of Adjustment Regular Meeting Minutes as presented passed by a vote of 3-0.

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Brad Worster moved to amend the agenda to take up Item 5, BOA-2223-1, before Item 4, BOA-2122-7. James Howard seconded the motion. There being no further discussion, a vote was taken with the following result:

YEAS	Brad Worster, James Howard, Curtis McCarty
NAYS	None
ABSENT	Patrick Shrank

The motion to amend the agenda passed by a vote of 3-0.

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Item No. 5, being:
BOA-2223-1 – BILL PYEATT REQUESTS A VARIANCE TO 22:421.1(3)(C) OF APPROXIMATELY 6'7" TO THE 20' REAR YARD SETBACK FOR AN ADDITION TO THE EXISTING HOUSE AT THE NORTHWEST CORNER OF THE LOT FOR PROPERTY LOCATED AT 1918 PIN OAK CIRCLE.

ITEMS SUBMITTED FOR THE RECORD:
1. Staff Report
2. Location Map
3. Application with Attachments

PRESENTATION BY STAFF:
1. Logan Hubble reviewed the staff report, a copy of which is filed with the minutes.

PRESENTATION BY THE APPLICANT:
1. Mark Krittenbrink, 428 W. Eufaula, representing the applicants – The owners, Bill and Sharon Pyeatt, can't be here today. They bought this house 15-20 years ago and they've done a lot of work to the inside – it looks awesome. Sharon is having mobility issues; she has had both hips replaced and both knees, so it's harder for her to get around. We're redoing the kitchen, opening it up, which is all internal. We're redoing the bathroom. If you look at the existing plans, you can see how tight it is. It's 6' and it's just really hard for them to get around. As you look at it, you can see that we can keep a lot of the plumbing and reuse a lot if we just push out to the back. On the south side, that's a little less than 3'; on the north side that's about 6'. What we found out after we submitted to the City that the house is already built over the rear yard setback. That's what I provided those documents for you today. On the fuzzy drawing, that's the setback line on what they have existing. Then you can see how that impacted with the new document; we added about 3' or so on the south side and then just ran it around the back of the house. Because it's skewed, it was really hard to grasp that we were doing what we are doing, so I apologize for not being a little more astute. If you look at the existing bathroom plan and how we're reusing existing plumbing, I don't know how we could have done it differently, and I don't know how we could have added onto the bathroom without totally vacating the existing bathroom. It's a large lot, kind of trapezoid shape; it's 0.34 acres. Our total building coverage is 21%, which is 19% less than the 40% allowed, and the impervious surface is 48%, which is 17% less than the 65%

allowed. Bill talked to his neighbors on both sides, and you should have all those letters or emails. He talked to all of the adjacent neighbors and none of them have any issues with it. The woman behind him has some drainage issues, but it's not from Bill. The Pyeatt's property flows toward the street. That's what we're asking for: just a modest application to just allow them to expand their bathroom in a way that is feasible practically as well as financially for them.

Mr. Howard – You mentioned feasibility being one of the reasons for the request. I'm seeing that you're locating the wall further to the west by roughly 3' – 3'6" it looks like we're extending it out. What I'm seeing here is that you're keeping the shower in the existing location, but then all of the other plumbing will be moving into a new location, but connecting, I guess, to an existing sanitary sewer. Is that the reason everything was kept in the same alignment?

Mr. Krittenbrink – We're utilizing the existing shower and toilet area here to do a walk-in curb approach shower. We've flipped the vanity so they can get a toilet on that wall, and they also wanted to add a master closet. We could adjust the master closet down, and it wouldn't be a big deal; they'd lose a window. But that could slide back down to the east. Just trying to make the bathroom accessible for Sharon was the reason behind it.

Mr. Howard – I also noticed on the site plan that there's an addition that's being added to the south on that same bedroom. I know it's not directly germane to the topic right now, but I'm just curious as to what that addition is.

Mr. Krittenbrink – It's just to expand the master bedroom to make it a little bit larger. It falls within the allowed building area.

Mr. Howard – Are you relocating the vanity on the other side?

Mr. Krittenbrink – We're putting the vanity along the outside of the existing wall. We'll be relocating some plumbing. We're taking the plumbing from the vanity and bringing it over and then bringing in new plumbing for the tub and toilet.

AUDIENCE PARTICIPATION:
None

DISCUSSION AND ACTION BY THE BOARD OF ADJUSTMENT:
Brad Worster moved to approve the variance to the rear yard setback for BOA-2223-1 as presented. James Howard seconded the motion.

There being no further discussion, a vote was taken with the following result:

YEAS	Brad Worster, Curtis McCarty
NAYS	James Howard
ABSENT	Patrick Shrank

The motion, to approve variance BOA-2223-1 as presented, failed by a vote of 2-1.

Mr. Krittenbrink – If I can ask, Mr. Howard, your reasoning for rejecting?

Mr. Howard – It doesn't follow the guidelines provided by the ordinance for a variance. Cost is not, by itself, a reason to make a decision like this when there's other opportunities that could be evaluated. If there was a specific site requirement or a site issue that caused the cost issue, then I could see that and I could be supportive of that. So, for example, if there was a dramatic change in elevation that made it more problematic from a cost perspective to make that change, then I would see that possibility. I'm just using the guidelines that are provided by the ordinance.

Mr. Krittenbrink – Just in terms of the practicality of creating a master bath, we're already over. If I even extend that line and just go over it, I would still be over.

Mr. Howard – Understood. But existing conditions don't necessarily permit or extend the ability to continue and expand it beyond that limit that's already been established.

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Item No. 4, being:
BOA-2122-7 – KEVIN EASLEY HAS FILED AN APPEAL OF THE DECISION OF THE HISTORIC DISTRICT COMMISSION ON THE GROUNDS THAT THE HISTORIC DISTRICT COMMISSION FAILED TO APPLY THE PROPER STANDARDS FOR PROPERTY LOCATED AT 549 S. LAHOMA AVENUE.

ITEMS SUBMITTED FOR THE RECORD:
1. Staff Memo with Attachment – Historic District Minutes of 10/4/21
2. Petitioner's Documents
3. Respondent's Documents

PRESENTATION BY APPELLANT:
1. Fred Buxton, 1307 S. Boulder, Tulsa – This is a resumption of a hearing from December 1, 2021, when we continued this matter. Since that time the Supreme Court ruled in our other pending case in June of this year. I had a hip replaced and then got an infection in it, so I thank you all for your indulgence to let me get a continuance until now.

Our argument kind of boils down to the following. It's become pretty simple at this point. We installed two windows on the back of the house in 2011 that did not meet the guidelines. We can argue all day over what the original windows were, but now there's two of them – aluminum windows in the back of the house. One of them extends out into the yard. They did not meet the Historic District Guidelines. We've since changed all the other windows. When you look at the Historic District Guidelines, this is the house that's in the pictures, and it is a beautiful home. We now have one-over-one windows all around the house. We replaced the window that was most offensive to everybody. We replaced it earlier this year, or late last year – I'm not sure. But it's now one-over-one again. The issue comes down to these two windows on the north side of the house.

Mr. Knighton wants to argue that I'm judicially estopped from arguing these matters because I've already lost it once. And my response to him is the guidelines have already been loosened up before the new guidelines were entered in January 22. The new guidelines do allow aluminum windows at the rear of the home. So then we get into the semantics of what's the rear of this home? I have certainly said in the past that the north side – the house faces Lahoma. It's front door is on Lahoma. There is no doubt – I'm sure everyone here knows the house. The back side is the old church. But the main street is Boyd. Everybody is going up and down Boyd. They're not going up and down Lahoma. The two windows are on the north side and Boyd is on the south side. To my client and everybody else, the north side is the rear. But, technically – I'll say it again right now – it's not the rear. The front door faces Lahoma. There's a back door on the north side and there's a back door on the east side. But you can't see these windows without literally climbing a fence. There's some evidence from a trial back in 2014 with Anais Starr's predecessor testified, I believe, at that hearing that you can see it in the wintertime. I put a picture in the record. You can't see it without climbing a fence. It's behind a fence. This house is unique. It sits at a corner where you can make an argument either side is the front or the rear. And I'd just like to apply the new standards – the new guidelines that came out earlier this year that allow aluminum windows on the rear facing where it can't be seen from the right-of-way. I'd like those standards to be

applied to these windows and find the north side is – I guess what I'd ask you to do is find both sides the rear, as weird as that sounds, because this is just a unique home and it can't be seen from the right-of-way. Anybody have any questions? Thank you.

PRESENTATION BY RESPONDENT:

1. Rick Knighton, Assistant City Attorney for the City of Norman – First, I want to do just a housekeeping measure. We submitted information to you in the form of a response to the applicant's submission. I have printed copies for you and I actually did have the clerk correct the record because the initial document that we sent some of the propositions weren't numbered correctly. So we do have a new submission. The only thing that it changes is the number of those propositions; it does not change anything substantively.

Our presentation starts with some background information. This house is located at 549 South Lahoma. There you see a picture of it. Mr. Easley purchased this home, I believe, in 2011 and subsequently had a number of windows replaced without first getting a certificate of appropriateness from the Historic District Commission. Those two windows are what the parties identified in the litigation as windows number 4 and 5; they are on the north elevation. Number 4 used to be two double-hung side-by-side wood windows and number 1 was a double-hung single one-over-one window. Both those were replaced with aluminum windows with vinyl cladding. Again, these are pictures of window number 4. Again, there you see an atrium window that used to be the two side-by-side double one-over-one windows and then window number 5 is also on the north elevation. It's also changed to a one-over-one aluminum window with vinyl cladding.

The City staff's position with regard to this particular matter – we submitted to you actually four propositions. The first three are sort of related to each other, and they have something to do with the fact that this Board exercises quasi-judicial power when granting a variance, and when you exercise quasi-judicial authority that means you can rely on judicial doctrines with regard to making your decisions. The first doctrine that the staff believes is appropriate is called the doctrine of claim preclusion. What claim preclusion does, it operates to bar re-litigation of issues by the party or their privies which were or could have been litigated in an action that resulted in a final judgment on the merits. What we've been waiting for with regard to this particular case is a final judgment on the merits of the civil litigation that was commenced in 2012. In that case essentially when Mr. Easley requested a post-replacement certificate of appropriateness that was denied by the Historic District Commission, it was appealed to City Council, they denied it. It was subsequently – we litigated it and it went up to the Supreme Court, came back down. The Court of Civil Appeals directed us to come before the Board of Adjustment, which we did, and we'll talk a little bit about how that played out in a second.

The second doctrine I think that's relevant to this is called the doctrine of judicial estoppel. Essentially what the doctrine of judicial estoppel does – it prohibits a party from knowingly assuming a particular position when dealing with matters of fact – it prohibits that person from assuming an inconsistent position to the detriment of the adverse party. It applies to inconsistent positions assumed in the course of the same judicial proceeding or in subsequent proceedings where the parties and the questions are identical. So those are the two standards I think that this body can apply with regard to this particular

case, and I'll give you an idea of how the City believes that those apply.

Again, our procedural history of this case: November 2011 – that was the Historic District Commission denying Mr. Easley's post-replacement request for a certificate of appropriateness, and it included windows number 4 and 5. At that time Mr. Easley was asking to allow them to remain as is – to remain as replaced, which were aluminum windows with vinyl cladding, and then, of course, you saw the atrium window for window number 4. On January 10 that was appealed to the City Council, and the City Council denied Mr. Easley's request for a certificate of appropriateness. That resulted in litigation that eventually resulted in a November 2, 2018 decision of the Oklahoma Court of Civil Appeals directing the parties to submit this issue to the Board of Adjustment. It was submitted to the Board of Adjustment on December 4, 2019. At that time the Board of Adjustment denied Mr. Easley's request for a variance that would have allowed windows number 4 and 5 to remain as is, and that's Exhibits number 7 and 8 with regard to the information that we submitted for your consideration.

On January 3 Mr. Easley appealed the December 4 decision of the Board of Adjustment. The problem was, by statute, the Legislature gave municipalities the ability to determine the deadline for appealing decisions of the Board of Adjustment, and that deadline established by the City's ordinance is 10 days and, of course, January 3, 2020 is significantly more than 10 days from December 4, so the City filed a motion to dismiss Mr. Easley's appeal. That motion was granted; on November 5, 2021 the Court of Civil Appeals affirmed the District Court's ruling affirming that dismissal. On June 13, the Oklahoma Supreme Court denied Mr. Easley's petition for cert, and on July 7, 2022 the Oklahoma Supreme Court ordered the Supreme Court Clerk to issue the mandate, which is the point in time when the Supreme Court is saying this case is over; we've done everything that we need to do substantively. If there are any other issues, the District Court can address those, but in this case there have been no other filings or no other requests for the District Court to issue any relief with regard to this particular case.

So what does that mean? That means that this Board's December 4, 2019 decision is final. Decisions become final when the time for you to appeal expires and you don't appeal. Again, as I stated earlier, there was an attempt at appeal but it was more than 10 days after December 4, 2019, and ultimately the Court said you were not timely in your appeal, so this Board's December 4, 2019 decision denying the request for a variance to allow those windows to remain as is is final. Again, with regard to the doctrine of claim preclusion, it bars litigation of windows number 4 and 5 remaining as is. We've been down that road before. We've been here. The Board has made its determination – made its decision. It wasn't appealed timely. The Supreme Court has now finalized that ruling and the Board decision is final and it bars litigation, not only with regard to what was litigated, but also what could have been litigated. My understanding from the applicant's submission is they're now arguing that the north elevation – previously they said it was a side elevation; now they're saying it's a rear elevation. Well, that issue could have been litigated before the Board on December 4, 2019, and if the Board didn't find as the applicant desired they could have appealed it. Again, that argument is barred by the doctrine of claim preclusion because that issue could have been litigated in December 2019.

That also sort of dovetails into the issue of judicial estoppel. That doctrine bars this applicant from arguing that the north elevation is a rear elevation because in the

litigation, going all the way back to December of 2011, the applicant argued that that was a side elevation and the City agreed with him; it is a side elevation. When we were here on December 4, former Commissioner asked Mr. Easley that question, or raised that issue and said his understanding was the Historic District Commission considers Lahoma to be a front elevation, Boyd to be a front elevation, the north side elevation to be a side elevation, and then the east elevation to be a rear elevation. That's the way the Historic District Commission reviews these matters, and that has been the parties' position consistent throughout this litigation, and now at the 11th hour we're changing it – wait a minute – time out – hold on – now this is a rear elevation. Because the guidelines have changed somewhat to allow aluminum clad – or aluminum windows on rear elevations, and now that that rule has changed, the applicant's argument has now changed to, wait a minute, this wasn't a side elevation – it was a rear elevation. Again, they knowingly took the position throughout this litigation regarding these windows that the north elevation was a side elevation, and they're bound by that under the doctrine of judicial estoppel.

The other issue that did not really get talked about a little bit today, but when we were here before, the argument was, time out, we've got new evidence to present. There are occasions when new evidence can be a legitimate reason for a court to reconsider a matter, but the evidence that I'm aware of that's been presented is not new. If you recall last time there were some questions about – the new evidence was that windows 4 and 5 were not historic. I've looked through our preservation guidelines; I can't find a definition of historic. What I really think the argument is that was being made is they're not original. If you recall, from those minutes – and I have those minutes attached to our response – there was some discussion about wouldn't the person who replaced the windows be able to tell you what they were when he replaced them? And the answer was yeah, that's probably true, but that person is deceased and no longer available to tell us what the windows were when he replaced them. But what we do know is, number 1, both Mr. Easley and the prior owner, Mr. Sutter, both testified at trial that those two windows were wood before they were replaced. And then we have an affidavit from the individual that did replace those windows – his name is Don Winkle, he's actually the applicant's father-in-law. He submitted an affidavit on February 21, 2014 and it's attached to the material and I just have it highlighted here on the screen, because he tells us that he's a contractor. Mr. Easley engaged him to replace the windows. He found considerable wood rot. And then in number 3 he says "At my recommendation, Mr. Easley ordered custom windows to fit the exact dimensions of the original windows." Now, don't know whether Mr. Winkle was talking about original when the house was built, but he does use the term original. That information from Mr. Winkle, obviously, we can't bring him in to question him about what he meant, but at least what we have shows that the person that replaced the windows has characterized them as being the original windows that were there when he replaced them. What goes with that also is, back to this issue of claim preclusion – Mr. Winkle was listed as a witness in the trial that we had in 2016. If the applicant wanted to pursue this issue, he could have pursued it then. He could have had Mr. Winkle come and testify at that hearing as to what those windows were when he replaced them. Again, that goes back to the issue of claim preclusion; it's not only what you litigated, it's what you could have litigated and if the applicant intended to pursue that argument, it could have pursued that

argument during the trial in this case and we would have a definitive determination with regard to the issue. But what we do know is the prior owner and Mr. Easley both testified that the windows were wood.

Mr. Easley, in his information, talked about his expert. I'm not sure who that person is. My understanding is with the application that was submitted there was a letter from an individual that was selling the windows that ultimately got installed. He talked about – when I look at the application, the application talks about four windows on the northeast bedroom and one window in the bathroom and those were replaced by administrative bypass because they were like-for-like; they were wood windows and were replaced with wood windows. Then the letter that was submitted in support of this application, that individual said after reviewing the wood windows I found the following: North facing windows are not original to the home. All windows are too small and have had numerous fillers added to the sides and bottoms to make the windows fit into the existing frames. What this individual appears to be talking about are the two windows that are what you see on the northwest bedroom. There are two windows here on the front and there are two windows here on the side. Those are the windows that were replaced under item number 2. Those are not the windows that are at issue in this litigation again. Those windows are 4 and 5; those are on the north elevation further toward the rear. The expert in this case could not have been referring to those windows, or at least he doesn't appear to be referring to those windows, because we know that those windows are metal, and he's talking about wood windows on the northwest bedroom, and we believe it's those four windows that you see right there on the northwest corner of that residence. Then there was also some discussion about Ms. Starr agreeing with the expert about these windows not being original. We did submit an affidavit from Ms. Starr, which is sworn testimony, and she denies agreeing with Easley's expert that 4 and 5 were not original. They were talking about the windows that we just looked at on the northwest corner of the house. But, again, the thing this illustrates what the problem is if you buy the applicant's argument. Those windows apparently were not original, but yet they were replaced like-with-like by administrative bypass because – in the context of a historic district in terms of windows the possibility exists that they have been replaced before, and the guidelines allow you to replace like-with-like. And if you buy their argument, when you take it to its logical conclusion, you would only get one opportunity to replace like-with-like, because the second time you replace them you could come in and argue I get to do whatever it is I want because these aren't original. The issue doesn't have to do with original; it has to do with like-with-like. Our historic guidelines note the fact that the houses in this area were built in approximately the 1920s and in the 1920s these windows, as a general rule, were wood. The windows that we're talking about – 4 and 5 – it's undisputed, were wood windows when they were replaced by Mr. Easley and there is no provision that allows those windows on that elevation to be replaced with aluminum windows with vinyl cladding.

And then finally I think – this case has been pending for eleven years. It started in 2011. This case has been to trial in District Court. It's been up to the Court of Civil Appeals once. It came back down. It went up a second time, and now it has been back down again. What's telling a little bit is this comment from the applicant – "I will simply say, though, my wife feels so strongly about that bay window that we'll probably go to the Supreme Court over it, because she ..." So in 2011 Mr. Easley advised Council

that for that bay window we'll go to the Supreme Court. We've been to the Supreme Court twice, once in 2019 and again in 2022. And on each occasion the court has declined to consider rulings that say Mr. Easley is not entitled to a certificate of appropriateness with regard to windows number 4 and 5. Now, I guess we can go up to the Supreme Court another time, if that's what Mr. Easley chooses. However, the results will be the same. Generally, committees like the Board of Adjustment have policies that say they don't allow applicants to submit the same application over and over and over, hoping that at some point in time the decision will change. There has to become a point in time where this becomes final, and we understand what's required and what needs to be done going forward. And we've reached that point in this case. Again, courts are not disposed to allow litigants to have more than two bites at the apple – at the proverbial apple. Mr. Easley has had more than his two bites. He's here looking for a third bite regarding issues that this Board decided on December 4, 2019 that are now final. Those two windows are not – he's not entitled to a certificate of appropriateness for those two windows. Simply put, the time has long since passed for litigation regarding the windows at issue and the hemlock is the Board's to administer.

The Board can end this by denying this request for a variance, because the issue has already been decided. And, again, earlier we talked a little bit about variances. What is a variance for? A variance is if your property is unique, and for some reason a strict interpretation or application of our zoning rules somehow causes you hardship. This house is not unique. It's a house on a corner lot in a historic district. There are many houses on corner lots in historic districts.

One of the things I wanted to point out a little bit was because we talked a little bit about the issue of whether you can see those windows from the street. Not in the Power Point, but if you will look at, in the information that we submitted, Exhibit No. 9. Exhibit No. 9 is a photograph taken of 549 South Lahoma. The applicant usually takes photographs in the summer because the bushes have vegetation. This was taken in the winter and you can see those windows from the right-of-way. There was an argument that, well, nobody can see these. Yes, you can. You can see them from the right-of-way on Lahoma. And the other important, I think, factor on that issue is we did submit the trial testimony of our former Historic Preservation Officer Susan Atkinson, and she was asked that question at trial. Why don't we consider vegetation and fencing with regard to these issues? And what she talked about was Historic District Commission is about the structure, not necessarily the amenities, because fences and vegetation come and go. We may say today, well, the way Mr. Easley has this set up you really can't see it, but the next person comes along and decides to take down the fence or cut down the bushes. My son just bought a house over in Hall Park and one of the things that we've been doing with him is cutting down all the bushes around the house because they're kind of in the way and make it difficult to mow. So you're not guaranteed that the next owner is going to maintain the house, at least the amenities around the house – the fence and the vegetation – in a manner that makes those windows not visible from the street. Again, that goes back to the issue of, yes, the Historic District Preservation Guidelines did change and talk about amenities on rear elevation that aren't visible from the street. But, again, this is not a rear elevation. The City's position, essentially, is it's time for this case to be over. It's time for us to move forward with taking action to ensure that those windows are returned to the historic condition that they were in before Mr. Easley

decided to change them. If you have any questions, I would be happy to answer them.

2. Mr. McCarty – I do have one question. I have not seen the new guidelines. What is the exact wording that says aluminum? Is it aluminum-clad? Or is it aluminum windows? Because these windows are vinyl; they're not aluminum.

Mr. Knighton – This is going to be the City's Exhibit No. 2. This is actually Mr. Easley's submission, and on the second page of that, that is actually the page from the Historic Preservation Guidelines that were adopted in January of 2022. What he has highlighted there is – we're talking about .10. "Wood is allowable for in-kind replacement of windows." So if it's wood, it's in-kind; you can replace it. "Aluminum-clad and metal windows can be considered for the replacement of metal casement windows that are deteriorated on a case-by-case basis. Fiberglass and aluminum-clad windows can be considered on non-contributing resources and on rear elevations not visible from the front right-of-way." And that's the language that the applicant is relying on – the change. Before it just talked about rear elevations being evaluated to a bit of a lesser standard to allow for some modern amenities. The language change there talked about allowing fiberglass and aluminum-clad windows on rear elevations not visible.

Mr. McCarty – So, Mr. Knighton, my question is – and I haven't gone up and personally looked at the windows, but from the pictures I see they're vinyl windows. They're not aluminum-clad.

Ms. Starr – Right. And I was going to add that it further says vinyl-clad windows are prohibited on both contributing and non-contributing.

Mr. McCarty – So it's a moot point in my eyes to even have it, because the windows that are installed don't even meet the new guidelines.

Mr. Knighton – My understanding ...

Ms. Starr – Correct.

Mr. Knighton – Okay. She's been out there; I haven't so I'm going to rely on Ms. Starr.

Mr. McCarty – Well, I have seen them. I'm familiar with the house and I've driven by it before. So, in my eyes, just asking the question, because I looked for this term in there and I couldn't find it. I'm glad you pointed it out. It doesn't even meet the new guidelines. And the second part of this is just my comments to you. When we build homes, the back yard is always opposite the front door. A corner lot, if the door is facing the corner then the opposite of that would be side yard or the back yard in that turn. I've never seen a house that's ever been determined that the front and back yard are left or right of each other and not front and back.

Mr. Knighton – There are provisions in the Preservation Guidelines that talk about house on corner lots have two fronts, which are the fronts that face both the arterials or the street.

Mr. McCarty – There is no door facing Boyd.

Mr. Knighton – Correct.

3. Mr. Worster – Maybe just a follow-up and specific clarification. We're saying that the windows that are installed there don't meet the current code that was adopted in January?

Ms. Starr – That is correct. Vinyl cladding and vinyl windows have never been

allowed, and the new guidelines don't allow for them, either. The change was that they did allow for metal, a little more information on the metal and on the aluminum-clad windows, but it still prohibits vinyl-clad and vinyl windows.

Mr. Worster – Thank you. I thought that's what we.

4. Mr. Buxton – First of all, I want to apologize if it's my mistake as an old lawyer that I may not know the difference between aluminum and vinyl-clad windows. And I may not. Because these are made out of aluminum, but I guess they're vinyl-clad. That's what I hear you guys saying. What Mr. Knighton leaves out of his argument is the law is pretty clear that – I agree with everything he said about judicial estoppel and claim preclusion – everything he said. But the law is also clear that if the law changes, judicial estoppel and claim preclusion do not apply. And it's my argument that the change in the guidelines that happened earlier this year give me the opportunity to come back in here. But also understand what you're saying, if these aren't aluminum windows, that doesn't matter anyway.

Mr. McCarty – I'm in construction. I'm not a pro, but I would say that I'm pretty knowledgeable.

Mr. Buxton – I'm sure you are.

Mr. McCarty – I've never seen a vinyl-cladded wood window or a vinyl-cladded aluminum window. I don't think they're made. Vinyl windows have aluminum in them for structural purposes that's not visible.

Mr. Buxton – That's what I was thinking.

Mr. McCarty – But there is no such thing that I've ever seen of a vinyl-cladded window. They make a fiberglass-cladded wood window. And they make aluminum-cladded wood windows. But I don't believe there is such a thing as a vinyl-cladded window that I've ever seen in the history of my 30 years.

Mr. Buxton – Okay. And I appreciate that. So thank you.

Mr. McCarty – I just wanted to clarify, because the pictures and what I have seen from just looking at it, they look like they're vinyl windows to me, and I wanted to clarify that they actually had been – somebody had looked at them. My question, perhaps of Mr. Knighton, and I don't even believe that the current windows meet the new guidelines. That's what I wanted to clarify.

Mr. Buxton – And I certainly understand that. I do want to say one thing. Ms. Starr has been wonderful to work with to this matter. I didn't mean to ever imply – the windows I think Ms. Starr agreed with my expert in that front bedroom may not have been original. She inspected them inside the house with me. Those are the only windows I was referring to when I said that about Ms. Starr, was the corner windows. And they have now been replaced and we've moved on down the road. Thank you.

DISCUSSION AND ACTION BY THE BOARD OF ADJUSTMENT:
James Howard moved to approve BOA-2122-7 as presented. Brad Worster seconded the motion.

There being no further discussion, a vote was taken with the following result:

Item No. 6, being:

MISCELLANEOUS COMMENTS OF THE BOARD OF ADJUSTMENT AND STAFF

Ms. Tromble announced that the Flood Hazard District section of the Zoning Ordinance (22:429.1(5)(e)) requires that at least two members of the Board of Adjustment successfully complete the basic floodplain training. At this time Mr. McCarty is the only member who has done so.

Mr. Howard thought he had been through the class a long time ago. He asked to have class information provided to him.

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Item No. 7, being:

ADJOURNMENT

There being no further business and no objection, the meeting adjourned at 5:22 p.m.

PASSED and ADOPTED this 24th day of August, 2022.

Board of Adjustment