

1 **NEW BERN BOARD OF ADJUSTMENT**
2 **MINUTES**

3
4 **April 28, 2014**
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6 The New Bern Board of Adjustment held its regularly scheduled meeting on Monday, April 28,
7 2014 at 6:30 pm in the City Hall Courtroom, 2nd floor, 300 Pollock Street.
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9 **Members Present:** Mr. Peter Adolph – Acting Chair
10 Mr. Barry Evans
11 Mr. Kenneth Brown
12 Mr. Benjamin Beasley
13 Mr. David Herndon
14 Ms. Lois Jamison
15 Mr. Jeffrey Midgette
16 Mr. John Murrell
17 Mr. Willie Newkirk, Sr.
18 Mr. PJ Walker
19

20 **Members Excused:** Ms. Sarah Afflerbach – Chair
21 Ms. Renee Murphy
22 Ms. Beth Walker
23

24 **Members Absent:** None
25

26
27 **Staff Present:** Mr. Greg McCoy, Land & Community Development Administrator
28 Mr. Kevin Robinson, City Planner, HPC Administrator
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31 Members of the Board unanimously voted Mr. Peter Adolph as Acting Chair.
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33 Acting Chair Peter Adolph called the meeting to order.
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35 Roll call was taken and a quorum declared.
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37 **New Business:**
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39 **A. Consideration of an appeal from the decision of the Historic Preservation**
40 **Commission to grant a Certificate of Appropriateness for 802 Pollock Street.**
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42 **Board Comments:**
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44 Acting Chair Adolph stated this is a Quasi-Judicial hearing and as such anyone that would like to

45 speak would have to be sworn in. Several individuals were sworn in by Acting Chair Adolph.

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47 **Staff Comments:**

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49 Mr. McCoy presented the item to the Board. He stated that according to Section 15-427 no
50 exterior alteration, construction, or demolition can occur in the local historic districts unless a
51 Certificate of Appropriateness (COA) application has been submitted and approved by the
52 Historic Preservation Commission (HPC). The Appellant Paul Tyler, alleges that the HPC erred
53 in its decision to grant a COA to construct a garage/workshop because the material and
54 substantial evidence that the HPC received to support the decision was inaccurate and
55 misleading.

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57 Mr. McCoy reminded the Board that this is not a re-hearing. No new evidence may be taken. The
58 Board may not base its decision on evidence that is not part of the record. The appealing party
59 can only argue errors of law or mistakes of fact made during the HPC decision. If the Board of
60 Adjustment believes the HPC made an error, the Board may apply its own judgment to correct
61 what it believes was a mistake of law. At the end of the meeting the Board will need to make a
62 motion to affirm or reverse the decision of the HPC. He informed the Board that copies of the
63 documentation that was submitted to the HPC, such as the required notifications, and a brief
64 summary written by Mr. Kevin Robinson, HPC Administrator are included in their packets. The
65 property was posted in the required time as well. Mr. McCoy invited any questions, none were
66 asked.

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68 At Acting Chair Adolph's request Mr. Robinson took the floor to review the application for
69 COA. He stated that of the 5 items required for review, the appellant is only opposing 1 of them;
70 "Competent material and substantial evidence to support the decision". The appellant cited 3
71 major objections related to this:

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- 73 1. The Building description should be a 1 7/8 story building with a room addition and a
74 second floor apartment with plumbing. Mr. Robinson stated that 1 1/2 story is the
75 commonly used term by the commission to describe structures such as this, both the plans
76 and presentation were clear in the proposal layout, design and use of the building.
- 77 2. The survey was not stamped with a seal. Mr. Robinson stated that stamped, sealed
78 surveys are not absolutely necessary, but the survey submitted was in fact stamped with a
79 seal by Mr. Roy R. Smith, Jr. dated December 2013
- 80 3. That HPC based their decision on minor discrepancies in the roof pitch and height to
81 three separate portions of the adjacent building shown on the 3D renderings. Mr.
82 Robinson stated that the 3D renderings were provided as an aid in determining the
83 context of the form and placement of the structure, but were not the only information
84 provided to the HPC. The Commission was given full plans for the structure including a
85 plot plan showing the before and after with alterations as well as elevations, a survey and
86 multiple photos of adjacent structures. During the second application process the
87 Commissioners were able to review the site for themselves.

87

88 Mr. Robinson informed the Board of the credentials of the HPC Commissioners, their knowledge
89 and expertise, and described the process of review.

90 **Staff Recommendations:**

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92 Mr. Robinson advised that it is the opinion of staff that HPC was not lacking in any information
93 needed to make the decision and recommends the Board uphold the Commission’s decision to
94 approve the COA and deny this appeal.
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96 **Appellant Comments:**

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98 Mr. Tyler, Appellant presented his appeal to the Board. He showed the drawings on the overhead
99 projector, pointing out what he believes are inaccuracies and mistakes in the submitted drawings.
100 He further stated that the drawings are not to scale and roof lines were not accurate. Mr. Tyler
101 stated that he believes the proposed garage will be too close to the boundary line and as a result
102 will not meet OSHA requirements for maintenance and upkeep. He stated that his overall
103 objection is the size of the proposed garage. He stated that they did not take into consideration
104 what’s around the property and the drawings are not in harmony with the area as required by the
105 guidelines. In addition, he stated that the garage/workshop might be used as an apartment.
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107 **Public Comments:**

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109 *Ms. Sarah Afflerbach* stated that the issues that Mr. Tyler brought before the Board were issues
110 for the HPC. She addressed the concerns that Mr. Tyler raised, showing the Board that the HPC
111 did have accurate and detailed drawings submitted to them. She also stated that the project was
112 within the allowed distance from the boundary line in accordance with the Land Use Ordinance.
113 She further stated that the maximum lot coverage for the Historic District is 60 percent and this
114 lot is only 40 percent.
115

116 *Mr. Dave Stout, 802 Pollock Street* stated that the garage will not be used as a rental apartment;
117 the upstairs room is for occasional guests to stay in. He further stated that he submitted a
118 notarized letter to city staff noting that the garage/workshop will not be used for rental purposes.
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120 **Staff Comments:**

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122 Mr. Robinson advised the board that most, if not all, of the issues brought before them were
123 heard at the HPC hearing as well and properly addressed by the appropriate authorities. The City
124 of New Bern Land and Community Development Administrator and Inspections Department
125 reviewed the files prior to the hearing. Mr. Robinson further stated that during the HPC meeting
126 the Chief Building Inspector addressed OSHA questions and concerns.
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128 **Board Comments:**

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130 Mr. Midgette asked what is the difference between a 1 7/8 story versus a 1 ½ story building. Mr.
131 Robinson explained that 1 ½ story is the term commonly used.
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133 **Motion: Mr. P.J. Walker made a motion to affirm the Historic Preservation**
134 **Commission decision to grant a Certificate of Appropriateness for 802 Pollock Street. Ms.**

135 **Lois Jamison seconded. Motion passed by unanimous vote.**

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138 Acting Chair Adolph informed the appellant that he does have the right, within 30 days to appeal
139 the Boards decision to Craven County Superior Court.

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141 With no further discussion, meeting adjourned.

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Peter Adolph, Acting Chair

Greg McCoy, Board Clerk