

CITY OF WINCHESTER, VIRGINIA

PROPOSED CITY COUNCIL AGENDA ITEM

CITY COUNCIL MEETING OF: 10/28/14 (work session)
11/11/14 (regular mtg)

CUT OFF DATE: 11/5/14

RESOLUTION ___ ORDINANCE ___ PUBLIC HEARING X

ITEM TITLE:

Appeal of BAR Decision regarding window replacement for Hanke at 500 N. Braddock St (BAR-14-543)

STAFF RECOMMENDATION:

Modify decision as contained in attached resolution.

PUBLIC NOTICE AND HEARING:

Public hearing for 11/11/14 Council mtg

ADVISORY BOARD RECOMMENDATION:

This is an appeal of a decision by BAR to deny request to replace windows

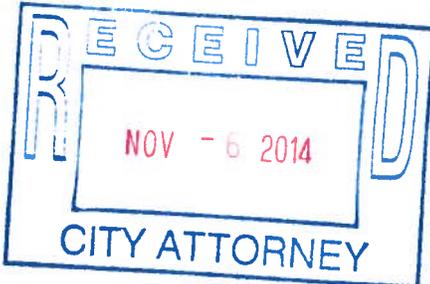
FUNDING DATA: N/A

INSURANCE: N/A

The initiating Department Director will place below, in sequence of transmittal, the names of each department that must initial their review in order for this item to be placed on the City Council agenda.

<u>DEPARTMENT</u>	<u>INITIALS FOR APPROVAL</u>	<u>INITIALS FOR DISAPPROVAL</u>	<u>DATE</u>
1. Zoning & Inspections	AMG		11/6/14
2. City Attorney	[Signature]		11/6/2014
3. City Manager	[Signature]		6 NOV 2014
4. Clerk of Council			

Initiating Department Director's Signature: [Signature] 11/6/14
(Planning Dept)



APPROVED AS TO FORM:

[Signature] 11/6/2014
CITY ATTORNEY

CITY COUNCIL ACTION MEMO

To: Honorable Mayor and Members of City Council
From: Timothy Youmans, Planning Director
Date: November 5, 2014
Re: Appeal of BAR Decision (BAR-14-543) to City Council

THE ISSUE:

An appeal of a BAR decision pertaining to window replacement at 500 N. Braddock Street. City Council must hold a public hearing within 60 days of the date of appeal filed on October 16, 2014.

RELATIONSHIP TO STRATEGIC PLAN:

Vision 2028- Winchester is a beautiful Historic City.

Principle #1: Beautiful and Historic City- Preservation and restoration of historic buildings and sites.

Principle #5: Great Neighborhoods with a Range of Housing Choices- Well maintained homes meeting City standards and codes.

BACKGROUND:

See attached letters from Jay and Harriet Hanke- one dated August 29, 2014 which was addressed to the BAR with the application for a Certificate of Appropriateness, and one dated October 16, 2014 which was addressed to the City Manager as part of the request to appeal the decision of the BAR. The only inaccuracy in the letters noted by staff is the last statement in the last full paragraph of the Aug 29th letter which reads; "*Since our purchase, the City of Winchester has made the decision to include this house in the historic district...*" The subject property has, in fact, been within both the local Historic Winchester (HW) District as well as the Winchester National District since the districts were first established back in the late 1970's, more than 20 years earlier than the applicant's purchase of the property in 1998.

During a scheduled city inspection at a nearby home in the neighborhood in August 2014, replacement of wooden windows (including aluminum storm windows) with new vinyl windows were observed. At that point, seven of the eleven windows were already replaced or in the process of being replaced.

The Board of Architectural Review heard the matter at its September 18, 2014 meeting. Minutes of the meeting are attached. At the BAR meeting, the request was denied on a 6-0 vote with the Board noting that the vinyl windows are inappropriate replacement windows in the historic district. The September 19th action letter from staff noted the options to either appeal the decision within 30 days or seek a rezoning to remove the property from the local HW District since the 1890 house it is at the edge of the district.

Chapter 3, page 5 of the Winchester Historic District Design Guidelines, discusses windows as part of Residential Rehabilitation. Portions of the guidelines read: "1. Retain existing windows if possible." "2. Repair existing windows..." "4. Replace existing windows only when they are missing or beyond repair." "5. Do not use materials or finishes that radically change the sash, depth of reveal, muntin configuration, the reflective quality of color of the glazing, or the appearance of the frame." "6. Use true divided lights to replace similar examples and do not false muntins in the replacement." (See attached page 5)

The Board did not distinguish between the 7 windows that were already replaced without approval and the 4 windows that have not yet been replaced, but much of the discussion was focused on the precedent that would be set if the Board allowed this property owner to secure approval because so much of the work had been done without approval. The concern was that it would encourage other historic district property owners to undertake alterations without approval and then ask for forgiveness.

On October 16, 2014, an appeal of the BAR decision and required fee were submitted to the Clerk of Council, in accordance with Section 14-9-1 of the Winchester Zoning Ordinance. The Clerk has sixty (60) days to schedule a public hearing with City Council from the date of the appeal. The Zoning Ordinance states that during this review of the appeal, "[t]he same standards shall be applied by Council as are established for the Board of Architectural Review. The Council may affirm, reverse or modify the decision of the Board, in whole or in part."

One aspect of this request that is noteworthy is that there were already aluminum storm windows in place (presumably prior to 1976) on each of the windows on this circa 1890 dwelling. In addition to removing the inappropriate aluminum storm windows, the applicant is requesting approval for the removal of the period wooden windows behind the non-period aluminum storm windows. The BAR has jurisdiction over alterations on the exterior of a structure. Section 14-2-1 of the Zoning Ordinances defines 'Exterior Architectural Appearance' to include "*architectural character; general arrangement of the exterior of a structure; general composition, including the kind, color, and texture of building material; and **type and character of all windows, doors, light fixtures, signs, and appurtenant elements, subject to public view from a public street, public way, or other public places.***"

Since much of the period wooden windows are/were not on the exterior of the structure, due to the presence of the aluminum storm windows, there is some latitude for City Council to find that they are not entirely subject to public view. The fact that the windows are in a dwelling on a corner lot with direct views close to the public sidewalks would argue that the interior wooden windows are an element that should be preserved. A possible middle ground ruling by Council would be to allow for the already-replaced vinyl clad windows to be approved (perhaps with a wider wooden muntin matching size and composition of the original vertical dividers) and then require that the applicant either: a. preserve some or all of the four windows that have not been replaced; or, b. secure BAR approval of a more suitable wooden replacement window. Leaving one period window intact would allow future stewards of the historic resource (who may or may not want to utilize state and/or federal tax credits for rehabilitation) to match replacement windows to the original windows in the future.

The appeal was presented by staff and discussed at the October 28th Council work session.

BUDGET IMPACT:

None

OPTIONS:

1. Uphold the decision of the Board of Architectural Review to deny the request, in full based upon a finding that the Board properly applied the standards for window replacement;
2. Modify the decision of the Board of Architectural Review as outlined in the attached Resolution; or,
3. Reverse the decision of the Board of Architectural Review, in full based upon a finding that the BAR erred in applying the standards established for the BAR.

RECOMMENDATIONS:

Staff recommends that Council consider Option #2 which acknowledges that a finding of outright reversal of the Board's decision to deny the request cannot easily be arrived at based upon the same standards that the Board was required to follow. It does, however, acknowledge that granting a modified Certificate of Appropriateness to allow for removal of the non-period aluminum storm windows is consistent with some of the design guidelines.

RESOLUTION

WHEREAS the Board of Architectural Review (BAR) previously considered an application for a Certificate of Appropriateness (BAR-14-543) involving the replacement of eleven (11) windows in residential the property located at 500 N. Braddock Street, which property is located in the Winchester Historic District and subject to Historic District Guidelines; and

WHEREAS it was discovered that seven (7) of the eleven (11) windows had already been replaced by the applicant with noncompliant vinyl windows prior to the BAR considering the Certificate of Appropriateness; and

WHEREAS, the BAR issued a unanimous determination on September 18, 2014 ruling that the application for a Certificate of Appropriateness was denied, effectively meaning that the noncompliant windows would either need to be removed or that the applicant could return to the BAR with a proposal meeting the historic district guideline requirements; and

WHEREAS, the owner timely appealed the decision of the BAR to Common Council in accordance with Section 14-9-1.1 of the Winchester Zoning Ordinance; and

WHEREAS, Common Council has received a presentation and written documentation and had oral presentation and discussion from the owner and City Staff; and

WHEREAS, it is the belief of Common Council that the BAR has properly applied the historic guideline requirements as it is charged to do under the currently existing provisions of the Code by denial of the Certificate of Appropriateness; and

WHEREAS, Council further believes that there are mitigating factors as recited *infra.*, that may warrant modification of the BAR decision in order to encourage the elimination of non-period materials, improve the condition and preserve the longevity of existing historic properties, and avoid the undue hardships that strict enforcement may otherwise cause; and

WHEREAS, Common Council has learned that in the process of installing the vinyl replacement windows, the owner has mitigated a pre-existing noncompliance upon the property (removed non-period aluminum storm windows); improved the overall appearance of the structure causing it to appear more closely aligned with the applicable historic period; and increased the longevity, marketability, and energy efficiency of the structure; and

WHEREAS, it is the belief of Common Council that these mitigating factors warrant a modification of the decision of the BAR in this matter.

NOW THEREFORE BE IT RESOLVED that Common Council does hereby MODIFY the decision of the BAR concerning this matter and does authorize the issuance of a Certificate of Appropriateness for the subject property upon the following conditions:

1. The owner may leave the seven (7) previously installed vinyl replacement windows so long as they are modified to match the pre-existing period windows by installing muntins that match in width the muntins for the period windows, and
2. The owner does not re-install the non-period aluminum storm windows, and
3. The owner may install two additional vinyl replacement windows meeting the criteria defined in paragraph (1) above, and
4. The owner must leave two windows meeting all period historic district specifications in tact.