

We are former Raleigh Historic Development Commission chairs and Certificate of Appropriateness Committee Chairs concerned about the process that has led to the overturning of the Certificate of Appropriateness for 516 Euclid St.

To be clear: we are not here to speak in favor of or against the proposed house. We are here to speak in favor of the process that has made Raleigh's preservation program in general, and our Guidelines and COA process specifically, national models for how to do historic preservation.

We ask that City Council appeal the Board of Adjustment ruling on 516 Euclid Street to Superior Court because:

- 1) The Board Of Adjustment is acting outside of its legislative authority.
- 2) The rationale for its decision contradicts over 20 years of precedent in terms of Board of Adjustment rulings on Certificate of Appropriateness cases and it throws into question the process used with great success in Certificate of Appropriateness hearings for the last 20 years.
- 3) The Board of Adjustment members' discussion of the case suggests that the burden on the Certificate of Appropriateness applicant is to prove that the proposed work is congruous with the Guidelines (which is to say the case must be denied unless there is a reason to approve), which is a higher standard of proof than dictated by State enabling legislation, which says a case must be approved unless there is a reason to deny.

We understand that members of City Council are hesitant to vote to defend a private citizen in a zoning case. With the expressed rationale behind Board Of Adjustment's (BOA) 3 to 2 ruling to overturn the Certificate Of Appropriateness (COA) to allow the construction of the house at 316 Euclid St, this case ceased to be about the construction of this specific house and became about the Board of Adjustment's statutory authority and the criteria for evaluating proposed construction against City Council's adopted Guidelines for Raleigh Historic Districts (the Guidelines).

The Raleigh Historic Development Commission (RHDC) hears dozens of COA cases each year with an approval rate of over 98%. It has had a few cases which were denials of a COAs appealed to the BOA. In the few cases appealed to the BOA since 1993, the BOA has upheld the COA by affirming the process used and declining to substitute its judgment for RHDC's as per State law. In the intervening 21 years, since the adoption of the Guidelines, not one COA approval has been overturned or remanded by the BOA...until now.

During presentation of this case the appellant's attorney made the argument that the applicant failed to prove that the proposed structure met the guidelines. The City's attorney, arguing for RHDC, showed that COA Committee of the RHDC had findings of fact that supported its conclusion of law that the proposed design was not incongruous with the Guidelines. The City's attorney also contended that the appellant did not have standing.

The chair of the BOA stated that as a quasi-judicial body, it could not decide on the question of standing. That question should be decided by Superior Court, in effect committing the City to bring this case to Superior Court.

The appeal to the BOA is required by State law 160A-400.9 (e) (iii) to be in the nature of certiorari, which is to say a review of the procedure. BOA's discussion makes it clear that the prevailing BOA members did not follow the law.

During discussion prior to the BOA vote, the members of the BOA discussed whether the structure met the Guidelines, questioned how anybody could review a case given the Guidelines, questioned if it was appropriate for RHDC to approve the COA for this design and stated that they didn't like the design.

The two dissenting members of board of adjustment, both lawyers, laid out their rationale showing that RHDC had indeed followed procedure and had found facts to support its ruling. The three prevailing members reiterated their questions regarding the RHDC's judgment and the suitability of the guidelines and chose to substitute their judgment for that of RHDC, without the required findings of fact relative to the Guidelines.

Clearly a conflict exists between two City commissions: RHDC and BOA.

Should the City Council decide not to appeal this case it would, in effect, rule against the RHDC and throw the entire COA process into question. With the standards for evidence uncertain, chaos would ensue for the COA committee and for Planning Staff and members of the Design Review Advisory Committee (DRAC) who are tasked with advising applicants on how to adjust their proposal to meet the guidelines.

It is particularly unclear as to what that new standard would be given the conflict between the standard that the BOA appeared to be using and State law.

By not appealing this decision litigation against the City is certain, not only from the applicants on this case, but from applicants on future cases who will clearly be harmed. It is also possible that there will be litigation from the State because of the conflict with State law. Not appealing this decision would for this case lead to a second COA, which would certainly be appealed to the BOA, and lead us back to our current position.

Should the City Council decide to appeal this case it would be expediting a resolution getting a decision on standing and placing the review on process where the State law says it must go next: Superior Court. It would also affirm City Council's support for the COA process, reducing doubt for current and future COA applicants.

We urge City Council to vote to direct the City Attorney to appeal the BOA decision to Superior Court.

Sincerely,

Curtis Kasefang, 2006-2009

Terry Harper, 2001-2004

Barbara Akinwole, 1994-1995

Barbara Wishey, 1982-1984

Bob Anderson, 2005-2006

Janet Wellman, 1999-2000

Parker Call, 1991-1992

Murray S. Downs 1977-1982

Jane Thurman, 2004-2005

David Mauer, 1995-1999

Steve Schuster, 1988-1991

Banks Talley, 1969-1972

Former Chairmen, Raleigh Historic Development Commission