

**TOWN OF BOONE
SPECIAL HISTORIC PRESERVATION COMMISSION
MEETING MINUTES
MAY 16, 2023, 11:00 a.m.
WebEx Video Conferencing**

Historic Preservation Commission Members in Attendance:

Chair Eric Plaag, Chuck Watkins, and James Sharp

Student Member: Riley Ziegler

Town Staff in Attendance: Jane Shook-Director of Planning & Inspections, Jessica Mitchell-Long-Range/Special Projects Planner, Christy Turner-Senior Planner, Brandon Wise-Environmental Planner, and Marlene Crosby-Board Secretary

Others in Attendance: Chelsea Garrett- Attorney, Bill Dixon-Appalachian Architecture, Leigh Blevins-Appalachian Architecture, Aram Kevorkian-Applicant, Megan Kevorkian, Eric Kevorkian-Property Owner, William Brown, Seth K., and Allison Meade-Town Attorney

Call to Order

Chair Eric Plaag called the HPC Quasi-Judicial meeting, held via WebEx, on May 16, 2023, to order at 11:01 a.m. He noted that this meeting was continued from May 9, 2023.

Chair Plaag introduced himself as the Chair of the Historic Preservation Commission, Member Chuck Watkins, Member James Sharp, and Student Member Riley Ziegler.

Chair Plaag introduced the Staff members as Ms. Jane Shook, Director of Planning & Inspections, Ms. Jessica Mitchell, Long-Range/Special Projects Planner, Ms. Christy Turner, Senior Planner, Mr. Brandon Wise, Environmental Planner, Ms. Marlene Crosby, Board Secretary, and Ms. Allison Meade, Town Attorney.

Chair Plaag told the HPC that he had two issues to discuss at the end of this meeting that might impact the June advisory and quasi-judicial meetings.

CASE Z06553-032323 SOUTHEND BREWING CO. – ADDITION AND PATIO IMPROVEMENTS – COA

Aram Kevorkian, on behalf of Edakco, LLC (Southend Brewing Co.), has filed an application for a Certificate of Appropriateness for Major Work for 747 W. King St. for an addition and patio improvements on the secondary elevation at the rear of the property. This property is located within the Downtown Boone Local Historic District. (Watauga County PINs 2900-79-8447-000, 2900-79-7377-000, 2900-79-8421-000, 2900-79-7368-000). The COA request includes patio improvements which consists of work to the existing deck and stairs, adding a second-level deck and corresponding emergency exits, installing pavers for a patio area, modifying an existing retaining wall, and screening for existing containers on site. The COA request also includes the addition of a storage container as a bar for the principal restaurant use.

This development based on town staff's interpretation would involve work on the secondary elevation of the property, according to the definitions included in the Town of Boone Unified Development Ordinance (UDO), Appendix D, Downtown Boone Local Historic District Design Standards and Handbook.

Chair Plaag swore in Ms. Shook, Ms. Mitchell, Ms. Turner, and Mr. Wise in case they were to give testimony for this case.

Chair Plaag asked the Historic Preservation Commission members if any commissioner had a fixed opinion about the case that is not susceptible to change; if any commissioner had a conflict of interest regarding this case, including any financial interest in the outcome of the case or a close familial relationship with any person affected by the outcome of the case. There were no answers in the affirmative.

Chair Plaag asked if any commissioner had engaged in any undisclosed ex-parte communication regarding the application. There were no answers in the affirmative.

Chair Plaag confirmed that Mr. Chelsea Garrett, Attorney, was representing the applicant in this case. Chair Plaag asked Ms. Garrett if she had any objection to the information in the meeting packet; she had no objection to the information.

Chair Plaag asked Ms. Garrett if she would like to make an opening statement. She had a brief opening statement, and she had some points of clarification that she needed to consult with staff on.

Ms. Garrett pointed out that it was not the intention of the applicant to remove the wood seating area around the tree area that was installed by the prior owner, Mr. Henley. She believed the wood seating was not historic and not a part of the current request from the applicant. She clarified with Ms. Christy Turner, Senior Planner, that this topic has no bearing on this application. Ms. Turner responded that Mr. Brandon Wise, Environmental Planner, had looked at the tree. Mr. Wise stated that he reviewed and approved the removal of the tree with the understanding that it was not a historic tree. Ms. Garrett confirmed that Ms. Turner had stated that there was no historical concern with the removal of the tree.

Ms. Garrett asked Ms. Turner about some minor restorative grading that would be needed in the courtyard area. She felt the proposed grading was not the type of grading that would need to meet any of the requirements of Appendix D. Ms. Turner asked Mr. Wise to clarify what he understood about the proposed grading. Mr. Wise said the proposed grading plan that he reviewed showed minor grading to remove some gravel and level the area in the courtyard. He further clarified that the zoning approval for the proposed minor grading would be dependent on the HPC's approval of the Certificate of Appropriateness (COA) for the Addition and Patio Improvement. Ms. Garrett noted that there had been no change to the proposed plan that was been submitted to and reviewed by staff for the minor grading.

Chair Plaag asked Ms. Garrett if she was referring to Appendix D. Section 14.6 for the proposed grading. Ms. Garrett replied yes, Section 14.6 is what the proposed grading plan was based on. Chair Plaag read aloud the said section for the benefits of the HPC.

New Construction of Commercial Buildings within the District

Section 14.6 New construction should respect the existing topography and vegetation on the site. Large-scale grading to level or otherwise dramatically alters the natural slope of a lot is destructive to the historic landscape and is not appropriate. Whenever possible, existing trees and historic landscape features should be incorporated into the design for a new property. If large trees must be removed, they should be replaced with trees similar in type and species. During construction, any mature tree that will not be removed should be protected with appropriate fencing around the tree's canopy area that will eliminate construction parking, material storage, and concrete washout that could harm the mature tree.

Chair Plaag confirmed with Ms. Garrett that what she had indicated was that the proposed grading, in her opinion, would not meet the definition of large-scale grading that would dramatically alter the natural slope of the site. Ms. Garrett agreed with Chair Plaag that the proposed grading would not meet the definition of large-scale grading in the courtyard.

Chair Plaag referred to the meeting packet and read some provisions for saving one mature tree and incorporating it into the new design. Mr. Kevorkian explained that it was their intention to save the tree to help provide vegetative screening because he thought it was a historic tree.

Ms. Garrett began the opening statement by announcing that the applicants, Mr. and Mrs. Kevorkian, and the master brewer for Southend Brewing Company, Mr. William Brown, were present at the meeting. She noted that the prior owner had restored some of the building, but the current application is limited to changes to the rear patio and courtyard proposal. She explained that the applicant is proposing to grade and resurface the ground in the courtyard and restore and repair the deck, which supports the stairs that are currently not to code. She noted the proposal includes making the roof of the deck serve as the floor for a second-level deck, and turning the right offset from center window at the rear of the building into a fire exit. She pointed out that the proposed changes are necessary to bring the building up to the current code so it can be used. She said the proposal does not include increasing the capacity. She noted a statement she had from Mr. Stacey Miller, Chief Building Inspector, that said a rear fire exit would be required. She anticipated that most of the discussion would be around adding the second level over the existing deck and the fire exit because these two things would be affixed to the historical structure and would maintain the fenestration of the rear of the building. She added that they wanted to add a temporary metal shipping container to the courtyard, which is not an addition that affects the historic structure. She said the applicant is proposing that the HPC consider what they prefer to see used as a material on the exterior of the shipping container. She pointed out that the rear of the building is the tertiary elevation, it is visible from Howard Street, and that she is aware that there are certain standards related to this type of elevation. In closing, she noted that the owners were eager to get started on this proposed project and have it completed in order to take advantage of the summer season.

Chair Plaag asked the staff if they wanted to make an opening statement with regard to this application. Ms. Turner said the staff did not have an opening statement for this application.

Chair Plaag asked Ms. Garrett if she would like to provide any witness testimony. Ms. Garrett responded that she would like to call on Mr. Bill Dixon from Appalachian Architecture, and Mr. Aram Kevorkian, the applicant, as witnesses. Chair Plaag swore in Mr. Dixon and Mr. Kevorkian.

Ms. Garrett asked Mr. Dixon to walk through the proposed design in the conceptual drawings in the current meeting packet and identify which proposed changes would be new and what would be restoring the existing building.

Mr. Dixon stated that since the original packet was submitted, the staff had completed a zoning review prior to this meeting for several minor changes. He outlined some of the proposed changes as working with the waste management company to get the dumpster location moved so they can access the trash dumpster, working with soil and water on the impervious pavers, final wall designs and locations, screening for the grease trap, and designation of the parking areas. He described the appearance of the rear of the building as a gravel wasteland. He said the proposed renovations would make it a more habitable and pedestrian-friendly area for outdoor use as a restaurant. He said the associated metal shipping container bar would be added as a part of the restaurant operations. He explained that the seating is conceptual because the fire department and building inspectors were requiring a true path of exiting which will be outlined with a paving pattern. He said the historic Locust tree is adjacent to the west of the property, which is currently under construction. He said the property owner beside the Southend Brewing property would make the necessary repairs to the existing retaining wall that is failing behind the trash dumpsters.

Mr. Dixon explained that included in this request is a proposed second-floor deck and egress exit stairs, removing the metal awning, and enlarging an existing window to be an exit door, which would make it easier to use the second-floor level for larger gatherings.

Ms. Garrett pointed out that Mr. Stacey Miller, Chief Building Inspector, had measured the space. She asked Ms. Turner if she knew that the applicant was not proposing to add onto the building to increase the occupancy. She confirmed with Mr. Dixon that the upstairs is now used for office space. Mr. Dixon explained that occupancy is limited because there is only one exit onto King Street, they are only allowed less than 50 people on the second-floor level. He added that the installation of a new door and an exit out of the rear of the building would allow the occupancy to increase.

Ms. Garrett talked about the use of the current office space on the second level of the building. She said if the second-level space was broken up, and walls removed, it would allow the use to be changed so that there would be room for groups and other patrons in that space. Mr. Dixon agreed with Ms. Garrett. Ms. Garrett asked Mr. Dixon if it was Mr. Miller that had indicated that in order to use that second-level space for that purpose, another door exit would be required; Mr. Dixon replied yes.

Ms. Garrett asked Mr. Dixon would the current deck, other than repairing it, would stay in its current location at the historical structure. Mr. Dixon said it is attached at the main floor level and bolted into the wooden structure into the brick. Ms. Garrett asked Mr. Dixon if he was adding to where that was bolted in; Mr. Dixon replied no. Ms. Garrett asked, as far as the roof of the existing deck, would it be removed and replaced with new flooring for the second-floor deck, and Mr. Dixon responded that was correct. Ms. Garrett asked where would the second-floor deck be attached, and Mr. Dixon responded that it would be attached at the rear of the building at the second-floor level. Ms. Garrett asked if it would be attached at the same place that the roof would be attached. Mr. Dixon replied basically yes, that it would be attached at the same place. Ms. Garrett asked what type of alteration or disruption, if any, would there be to the physical structure of the building. Mr. Dixon said there might be some minor alteration because of some additional lag bolts at the rear of the new deck, but there would not be a whole lot of disruption from it. Ms. Garrett asked Mr. Dixon about the location of the lag bolts and if they would be in a different location than the existing bolts that are attached to the building. Mr. Dixon answered that the bolts would probably not be located in a different location. Ms. Garrett asked Mr. Dixon if the existing deck needed some structural repair, and he responded that he thought structural repair was needed.

Ms. Garrett asked Mr. Dixon if there had been any discussion with staff regarding the paving material. Mr. Dixon replied that Mr. Kevorkian could better answer this question because he had spoken with Ms. Turner and Mr. Wise about the paving material.

Ms. Garrett asked Mr. Dixon to describe the existing stairs. Mr. Dixon described the stairs as a combination of wood, cement, and gravel going off the existing deck in the rear of the building. He said those stairs would be replaced with quality material and handrails that meet the building code.

Ms. Garrett asked Mr. Dixon to describe the proposed knee wall. Mr. Dixon said it almost mimics the existing wall that was made out of pressure-treated wood and railroad ties that are in disrepair. He explained that the repairing of the knee wall located on the east side would better define the property lines in the patio area.

Chair Plaag opened the floor for the HPC to ask questions of Mr. Dixon.

Discussion ensued on engineering studies for the second-floor deck. In general, Member Watkins talked about the collapse of decks. He asked if any engineering studies had been completed to determine the potential weight loads for the second-floor deck. He mentioned this because of the lag bolts being attached to an old historic building. Ms. Garrett responded and noted that the engineering studies for the proposed deck should not be a topic of discussion for the HPC because it would be a building inspection issue and not a historic issue. Mr. Kevorkian stated that he had spoken to an engineering firm, and the design for the second-floor deck would be completed to the engineer's specifications.

Chair Plaag asked Mr. Dixon about the proposed method for using the lag bolts, along with where and how they would be connected to the building and the potential impact on the masonry. Mr. Dixon said an engineer should answer that question, but the lag bolts would be where the aluminum metal roof was located. He said the lag bolts could be about one-half inch in size, basically in the location where the bolts are now. Chair Plaag asked Mr. Dixon if the lag bolts would go through the actual brick or in the mortar between the brick. Mr. Dixon reiterated that an engineer should answer that question, but he thought the lag bolts would go beyond the brick and tie into the wooden structure of the building and not rely on the brick veneer to support it.

Chair Plaag said oftentimes in cities with historic districts, you see earthquake rods or other types of bolts passing through masonry walls that rely on a plate system on the exterior side and presumably a plate system on the interior of the building to attach the nut and bolt. Chair Plaag asked Mr. Dixon if he anticipated that there would be bolts attached to a plate over the masonry and on the interior of the building, and if there would be a receiving plate for the nut attaching the bolt to the plate. Mr. Dixon responded that they probably would not penetrate the pressure-treated fire retardant wood and not require a plate system as described by Chair Plaag. Mr. Dixon said there might just be a washer versus a plate. Chair Plaag said the reason he mentioned the plate system is because it has a way of not marring the masonry as badly, and they align so they pass through the mortar rather than through the masonry itself. Mr. Kevorkian interjected that there is an existing ledger board bolted with lag bolts to the building to support the roof. He explained that it was their intention to rely on these preexisting locations along with going by the engineer's specifications.

Ms. Allison Meade, Town Attorney, stated that it was appropriate for the HPC to give direction for the engineer to design a connection pattern that avoids penetrating the brick and it penetrates the mortar, even if it requires a bit more work on the part of the constructors. She further stated that it would be difficult to imagine that an engineer could not work with these types of limitations. Mr. Dixon said every attempt would be made to go through the mortar and not the brick because it makes it easier to drill and make those connections, even though it is sometimes difficult to drill into the exact location.

Ms. Garrett stated that where and how the bolts attached to the building would be the crux of the discussion because it affects the actual structure. She explained that the engineer has not completed the plans because the proposed plan had not been approved yet. She said this makes it difficult to know what the engineer would propose. She requested to the extent possible, if the HPC could give direction on the things the applicant needs to do to get approval on topics, like drilling into the mortar.

Member Watkins voiced his concern for the HPC being asked to hypothetically approve this proposed application. He explained that he felt this way because the HPC does not know what kind of changes an engineer might propose to make the plan workable. He said some of that proposal might have an effect on the appearance of the building and might need to be discussed by the HPC. Ms. Garrett pointed out that the applicant was not asking the HPC to give a carte blanche approval but wanted the HPC to establish the materials that they might approve. She continued, for example, using the same bolts in the same areas and not increasing the bolts more than a certain number and these things could be incorporated into the engineer's plan. She said then once the applicant receives the engineer's plan and it is submitted to staff, it can be approved. She noted that in the past the HPC had given instructions with the understanding that if something did not work out and needed a change, the applicant could come back to the HPC to further discuss the situation. Mr. Kevorkian added that in his conversations with the engineer, they wanted to know the materials that the HPC had approved to add to the proposed plan prior to submitting it for approval. He pointed out that he thought it was unfair for him to be required to submit the approved materials before the HPC approved them.

Member Watkins spoke from a personal perspective, he said it's not so much about the appropriate materials but about what would be required to anchor the second-level deck and what would that do to

the appearance of the building. He said what possible changes would need to be made to make the addition of the deck sound from an engineer's standpoint. He added that he did not see where it was the HPC's responsibility to pre-limit what the HPC's approval or lack of approval would involve.

Ms. Garrett said the applicant was requesting approval of what has been presented to the HPC, and if the manner in which the second-level deck is attached was the question, she said it is possible to table the discussion of the deck attachment issue and discuss the other items proposed for this case. She said the HPC could consider the appearance of the deck without being concerned about how it was attached.

Chair Plaag pointed out that at least two HPC members have shown concern about the issue of how the second-level deck is going to be attached to the existing tertiary façade of this building. He felt that this was an area where the HPC would place some conditions and perhaps want to see at some later date more detail on the appearance of it.

Mr. Kevorkian pointed out that the current proposal shows lag bolts with the ledger board, which is standard practice. He said these types of bolts were used on the existing deck and tied into the building. He told the HPC that at this time, he did not anticipate varying from the existing structure supports in the building, but he was open to the HPC's guidance on them. He hoped that the proposed plan would be approved with the ledger board and lag bolts as presented. He noted that they are not proposing to increase the capacity of the existing deck.

Ms. Meade asked for clarification on the ledger board, if they were proposing an already installed ledger board or installing another one. Mr. Kevorkian explained that the lower deck would be similar in utilization to the second-level deck that relies on a board attached with lag bolts to the building, the current roof has a board with lag bolts going into the building. He anticipated using the same basic methods that are employed on the lower deck to support the second-level deck based on the engineer's approval. He also anticipated it to be minimally invasive by relying on the location of the board that currently supports the roof. He said if the HPC wanted to offer alternative guidance, he was open to hearing it.

Ms. Garrett confirmed with Mr. Kevorkian that, at this time, he was proposing to use the existing board that is supporting the roof. Mr. Kevorkian said the specific board may need to be altered based on the engineer's report. He said if the engineer said the board might need to be larger, he would respect that from a life safety perspective. Mr. Dixon said the existing board will probably need to be replaced at the same location. He guessed that there would be lag bolts about every 16 inches horizontally, spaced about eight inches vertically and connected into the mortar joints.

Chair Plaag pointed out that in the meeting packet and in Mr. Dixon's testimony, he had described a second-level window being enlarged. He asked Mr. Dixon to provide more detail about the enlarging of the window. Mr. Dixon said the row-lock sill would be removed from this existing window and the brick below it. He said the window would be enlarged vertically but not horizontally to make an emergency exit. He said from the photographs, it appears the window already meets the width requirements.

Chair Plaag asked the applicant to think about the possibility of what is being proposed for the enlarging of the window and if they thought it violated Appendix D, Sections 1.8 and 6.1, and how Section 6.4 might interact with Sections 1.8 and 6.1. He encouraged the applicant to tailor their argument for what is being proposed to the standards because the HPC would consider if the standards apply or do not apply to that proposal for enlarging the window. Mr. Dixon thought enlarging the window was based on life safety issues and providing proper exiting from the building. Chair Plaag replied that the enlarging of the window is not a required change to the building, it is only a life safety issue because the applicant wishes to change, not only the interior of the second level, but also the way the second level is used. He said under code, it necessitates a different type of window opening. He added that in this case, if a proposed change necessitates a change to the exterior of the building as Mr. Dixon described, it is within the purview of the HPC to consider whether that change, even if it is coming from an interior use change. He reiterated that

this is the reason he asked if Appendix D, Sections 1.8 and 6.1 might be a violation, and if the language in Section 6.4 might change that discussion. Ms. Garrett explained that they would respond to the HPC later today on said topic.

Ms. Garrett asked Chair Plaag to swear in Ms. Megan Kevorkian so she could speak on this application. Chair Plaag swore in Ms. Kevorkian.

Ms. Kevorkian referred to Appendix D, Sections 11.1, 11.2, and 11.3 that talk specifically about the implementation, or addition of exterior fire escapes on historic properties. She said that, as the applicant, they did consider these sections of the Unified Development Ordinance (UDO), when making their proposal. She said in the proposed plan, they placed the fire escape at the main exiting window on the tertiary elevation which was explicitly requested in Section 11.2, and on the inconspicuous side as much as possible. She explained that for several reasons, it was not possible to place the fire escape on any other elevation. She described the reasons including, the secondary elevation facing the new Winkler Hotel property does not have any existing windows, historically on that side of the building. She further described another reason is the other secondary elevation was facing the Fire Department that has some existing windows in place that will be clearly visible from King Street, which would drastically change the secondary elevation façade. She also believed that there was a ghost sign on that side of the building, and they did not want to alter that side of the building. She said this left the tertiary elevation, which she believed had some advantages.

Ms. Kevorkian referred to the existing tertiary façade photos in the meeting packet. She pointed out that not much of the building was visible from Howard Street through the small alley partly because of the slanted metal roof on the deck it is rather obscured. She said from that vantage point of Howard Street, there would be very little change other than maybe the bottom section that is going to be extended to create the window into a door. She thought enlarging the window for the fire escape would be the least invasive option to be able to have an adequate fire escape. She referenced Appendix D, Section 11.1, which showed a photo of existing fire escapes in Downtown Boone. She said one of the photos references the Dark Ridge Pottery building that is next to the Horton Hotel building. She said there was a photo in this section that states that is an appropriate implementation of an external fire escape to the building. She noted that particular fire escape takes up a massive part of the building, proportionally of the building itself. She said in the proposal with the second-level deck, they are not only allowing more visibility of the building on the first-level deck, but they are also going to minimize the obscuring of the building on the first and second-level floors by not having a wrought iron metal fire escape. She explained the proposal is to use the staircase that is on the side and is fairly hidden and would still allow large visibility of the building. She said they wanted to showcase their building and make it more visible. She thought their proposal included the best way for both life and safety as well as convenience for their patrons. Chair Plaag agreed that the sections that Ms. Kevorkian referenced were relevant to this application.

Chair Plaag referred to meeting packet page 59 and a historic image from possibly the 1990s of the rear of the building. He said what appears in that image is some sort of caged fire escape with a circular material around the ladder that descends from the window to the ground. He asked Mr. Dixon if that circular portion of the fire escape had been removed, and Mr. Dixon responded that it had. Chair Plaag added that the historic photographs showed the fire escape being extended all the way to the ground. Mr. Dixon explained that the current fire escape only goes down to the first-level deck, and there are stairs that exit the deck.

Chair Plaag explained that his line of questioning was to find out if the historic fire escape survives intact as it probably was originally on this building in the 1990s. He said if part of this fire escape has been removed then the integrity of that architectural element has been compromised. Ms. Garrett confirmed that in the current photo of the rear of the building, there is no circular material around the fire escape.

Mr. Kevorkian pointed out that in the 1990s image, the fire escape ladder actually goes over a pre-existing window. He said they could not narrow it down to the year, but given the materials, installation techniques, and reviewing all of the photos that they had presented, there was no indication that the fire escape ladder was original to the building.

Chair Plaag talked about the original set of proposals for this project and that the updated proposal was presented in blue ink. He said it appeared to him that the original proposal showed the patio covering was a “stained pattern concrete” but that was changed. Mr. Kevorkian confirmed that they are not proposing to use a “stained pattern concrete” for the patio covering. He explained that there is an overlap between the HPC and the environmental planner and the design of the patio area has to consider permeability to save the tree. He added that the proposed design changes are based on the specific request of the Planning Department.

Chair Plaag pointed out that at the rear of the building there are two or three parcels that are to the west of the Town alley, and a tiny parcel near the top of the alley that are owned by the applicant. He said the Town alley goes into an L-shaped turn that continues to the east behind the other King Street buildings. He asked Ms. Turner, if the Fire Department had commented on the turning radius of their vehicles to access that alley way. He noted that currently the Fire Department has the ability to access the alley way by going over onto the applicant’s property. He showed concern for if the HPC approved this project and the project is completed, whether it would impact the ability of the Fire Department to make the turn to access the alley way. Ms. Turner said that the Fire Department reviewed the turning radius for their vehicles and they had no issue with the proposal of the project. She added that the applicant had combined their property located at the rear of the building to the front parcel but it had not been updated yet at the Watauga County tax office.

Chair Plaag confirmed that the proposed outbuilding that is being built around a shipping container was going to sit on the ground and would not be anchored into the ground. Ms. Garrett replied that the shipping container would not be fixed to the ground in any way so it can easily be moved.

Chair Plaag asked the HPC if they had additional questions for Mr. Dixon’s testimony.

Member Watkins noted that in the meeting packet there were conceptual proposed clad options and a plat that showed a different kind of rendering of the shipping container. He asked if there was a proposed final design for it or was it a hypothetical design. Ms. Garrett explained that the applicant consulted with staff extensively regarding the shipping container. She felt that because the process was new for everyone there was not much direction given because no one wanted to commit to what the HPC might require. She explained that unlike the deck discussion, it is alright to delay the discussion on the shipping container because the applicant wants to know from the HPC what they want the shipping container to look like. She said the applicant wanted to propose a building material that would be acceptable in the historic district. She said the applicant would be willing to consider using a wood material option on it along with painting it and using a trellis and vines to screen the side of it that faces Howard Street.

Member Watkins pointed out that the shipping container may be a movable unit but it is 20 feet long and it is going to look like a building. Again, he voiced his personal opinion that he felt like the HPC was being asked to approve a hypothetical design. He said the HPC does not know the type of roof it might have or if it has windows or not. Ms. Garrett explained that it would not have a pitched roof. Ms. Garrett asked the HPC to give into account that the staff has not given a lot of input on it because it is such a new process for them. She said there would be new things that come up that have not been considered before and understandably staff would want the HPC to review them instead of staff making a decision. She said respectfully, it is not reasonable to expect the applicant to have everything completed knowing that the HPC would potentially have an opinion on it. She stated that it is a shipping container that could easily be

approved by telling the applicant the material they wanted it covered in. She voiced her frustration that the HPC felt like they could not weigh in on the building material.

Chair Plaag explained that Member Watkins was trying to say that there is a perception that has evolved that the way to go through this process with the HPC is to attend the hearing, and the applicant would ask the HPC to tell them what they want to see. He explained that the way the process is supposed to work is that an applicant tries to create a design that complies with the standards, and the appearance, in the opinion of the applicant, while maintaining some degree of flexibility. He said then, if the HPC expresses concern that some portion of the proposal violates a standard, the applicant can pivot to another solution for that particular issue. He said this should not be a process where the HPC is telling the applicant how to design their buildings.

Ms. Garrett pointed out that there was already a specific shipping container structure proposed design before the HPC. She said the applicant was told by staff that the said proposal would not meet the code and was told to put wood on it. She added that there was no instruction in Appendix D on what to put on the shipping container or on a temporary accessory building. She asked the HPC to tell the applicant if they wanted something changed on the proposed building material.

Mr. Kevorkian explained the process that led up to this. He explained, after reviewing the code very carefully, he submitted a proposed plan with renderings for a shipping container bar that included vegetative screening and made sure the shipping container was not attached to the ground. He said one day before the deadline for this hearing, the staff told him that they thought he needed to clad the shipping container in wood. He said he was open to cladding the container, and he revised the plans to include the wood option; however, he did not have time to have the architect update the renderings. He agreed with Ms. Garrett that he did submit a proposed plan for the container based on the specific guidance received prior to this hearing. Chair Plaag clarified with Mr. Kevorkian that he referred to Number Five under the proposed improvements provided in the meeting packet. Mr. Kevorkian confirmed that the amended proposal was shown in blue ink.

Chair Plaag confirmed for the HPC that the renderings on meeting packet page 29 showed the original container itself with no wood cladding, and on meeting packet page 30, the revised renderings showed the proposed conceptual wood cladding options. Mr. Kevorkian agreed with Chair Plaag's description. Ms. Garrett noted that the roof would not be pitched, but it would be covered with metal that would not be visible.

Member Watkins noted that he was familiar with shipping containers, and he was not sure that the HPC would approve the dropping of a shipping container in the historic district. He voiced his concern for the HPC to approve something where there was no design presented to them for their review.

Ms. Turner stated that the staff did meet with the applicant several times before the staff report was created. She noted that the staff did speak to the applicant a couple of days before the meeting packet was supposed to be posted, and the staff encouraged the applicant to withdraw their submission and wait until the next hearing so they could get more information on the metal shipping container. She said she spoke again with Ms. Garrett and Mr. Kevorkian on the phone about the metal cladding. Ms. Garrett seemed to think that the HPC would allow the metal cladding on the shipping container because the HPC allowed it on the diSanti, Watson, Capua, and Garrett Law Office building to be able to put the stucco on the building.

Ms. Garrett clarified that it was her understanding that the HPC was concerned with the appearance of historic structures and materials that are visible and not what material is under a historic structure. She added that the shipping container was a temporary container, and what is under the wood is not within the HPC's purview. She thought what was relevant was if the HPC liked the materials on it and the

appearance of it and would they be willing to approve a temporary structure building not fixed to the ground

Ms. Meade stated that she was concerned about the references made to the shipping container as a temporary building. She pointed out that the shipping container would be reviewed under the building and zoning codes because it would have plumbing and lighting. She said the shipping container would be no different than if it was stick built, as she understood it. On the other hand, it might be relevant to the HPC if the structure appeared to be temporary in nature. She said it doesn't matter that the building started as a shipping container, it just happens to be the bones of this particular building. She said maybe it can be made to appear in a way that the HPC thinks it is congruent. She said the fact that it is not fixed to the ground does not change the review under the codes nor the analysis of the HPC in this case.

Chair Plaag responded to Ms. Meade's comment about the bones of this particular building. He said the HPC is concerned with regard to historic buildings, existing historic buildings, and whether changes to the underlying bones as part of a renovation to a building are appropriate or not. He said the HPC is generally focused on exteriors, but if part of creating a new exterior is destroying the workmanship or the material of a historic building, then the HPC would be concerned and want to comment on it.

Chair Plaag explained that the reason the HPC was less concerned about the bones of the diSanti, Watson, Capua, and Garrett Law Office building and what laid under the exterior material was because it was determined that nothing historic of that façade survived because of the various changes that occurred over time. He said a new storefront was allowed because the original storefront was no longer available.

Chair Plaag explained that in the case of the shipping container, we are talking about new construction, no matter whether it is temporary or permanent, it is a form of construction. He said, unfortunately, the standards are written without a "carve out" that specifically addresses buildings that are temporary, for example, trailers or double-wide trailers. He added that, in some ways, the shipping container proposal is like dropping a trailer in the middle of the historic district. He appreciated Member Watkins's comments on whether or not a shipping container is appropriate in the historic district. He noticed that the original proposal presented a screen mounted possibly along the alleyway, just to the south of where the shipping container would be located. He said the original plans referred to a wood lot that was not in the revised proposal or in the proposed improvements under Number Five dated April 25, 2023.

Ms. Garrett pointed out that the applicant was told to use wood cladding, and they did. She said for the screening this is where the applicant needed guidance on whether to add vines or not add vines. Chair Plaag responded that it was not clear to him if the screening meant an independent screen, something connected to the dumpster wall, or the way you would screen an air conditioning unit on a rooftop. He further added if the applicant meant they were proposing to put something on the back of the shipping container to make it look less like a shipping container. Ms. Garrett noted that she understood Chair Plaag's point regarding the proposed screening.

Chair Plaag said that Member Watkins and other HPC members had a concern about whether it is appropriate to put a shipping container in the historic district. He added that if we think of it as a building that has plumbing and electrical in it, it is regulated under the building code. He said it is probably considered a building, even if it's temporary, and then the construction standards would apply for what is appropriate for new construction. Mr. Dixon referenced the Design Standards for Historic Streetscapes, Landscapes and Monuments, and Other Resources in the District. He pointed out that these are provisions in the code that allow for new accessory structures.

Appendix D., Design Standards for Historic Streetscapes, Landscapes, Monuments, and Other Resources in the District, Streetscapes Section 1.17. New accessory structures should be complementary to the scale, form, materials, and details of surrounding historic buildings but built in such a way that they do not convey a false sense of historic association. New

structures should be located at the rear of historic properties so that they do not intrude upon the historic streetscape.

Ms. Meade suggested that Chair Plaag ask staff how they analyzed this as an accessory building versus a primary building. Chair Plaag asked Ms. Turner to comment on this topic from a zoning perspective. He asked Ms. Turner if the staff was treating the shipping container as an accessory structure or as a building. Ms. Turner said that the staff considered the shipping container as a new Principal structure. She said it would not be considered an accessory structure because of the use of the building being different from what the restaurant was going to be as a separate structure outside for ordering food and drink. Ms. Garrett asked Ms. Turner if she had ever told the applicant about the principal use because the applicant was not aware of it being referred to the accessory building structure. Ms. Turner said it was an accessory use because it is an outdoor bar of the existing building. Ms. Garrett said this was the first time that she and the applicant had heard the term principal use. She noted that she did not know how it could be a principal use.

Ms. Jane Shook, Director of Planning and Inspections, stated that she felt that the conversation needed to be split between the use and the structure. She said the staff was considering the use being part of the restaurant use. She explained that the activity generated was not being looked at as an accessory use but as another principal structure in the Downtown. She further explained that it doesn't matter if it is an accessory use or principal use, as it has no bearing in the Downtown because the setbacks do not change like in other zoning districts that would have an impact on the setbacks.

Chair Plaag said it would have an impact on which section of Appendix D the HPC was looking at when considering the standards. Ms. Shook said as the staff was reviewing the use, they looked at it like an addition and not necessarily under new construction. She said when the staff went through the standards, it was interpreted that new construction standards were being compared to the construction of other buildings on other adjacent lots. She continued that comparing the new construction standards to those under the additions standards were different. Further, she added that the additions standards were comparing the construction on the same lot to the main building, or in this case a restaurant. She said the staff used the additions standards in the staff report. Chair Plaag asked the staff if it was Appendix D, Section 13 of the Commercial Standards; Ms. Turner replied that was correct.

Ms. Garrett stated that Ms. Turner had always been very helpful, but Mr. Kevorkian was telling her that this was the first time he was hearing of the principal use, prior to now, it was never mentioned. Ms. Turner said, as Ms. Shook stated, it has no bearing on the setback for the Downtown Historic District because there are no setbacks. Ms. Garrett asked Ms. Turner if that meant that it had no bearing in this hearing because that was what she was concerned about, and the use was the context of all of the discussions. Mr. Dixon commented that he did not see how it could be considered anything but an accessory structure to the primary building. Ms. Garrett asked to review the section that the staff was basing the use on to determine it as a principal structure. She did not understand how this proposal was different than where somebody parks their car and goes into their home. She said this is a bar where someone can walk out and sit on the patio and visit the restaurant. Ms. Shook explained that a shipping container bar was not customarily associated with restaurant use. Ms. Garrett asked Ms. Shook if an outdoor bar type of structure would be considered an accessory use. Ms. Shook asked Ms. Garrett if she was talking about the use or the structure. Ms. Garrett asked Ms. Shook to point out the code that the staff was referring to. Ms. Shook clarified with Chair Plaag that we are still distinguishing between the use and the structure. She said we are not disagreeing that the use within the structure is the restaurant use. She said we are agreeing that the structure itself is not necessarily an accessory use because the structure is not necessarily associated with that particular building. She agreed with Ms. Meade that more clarification on the temporary use would be helpful. She said does temporary mean just because they can move it or that they are going to move it occasionally.

Chair Plaag pointed out that he, and maybe other members of the HPC, feel that based on the new understanding of how this building is being treated by staff, in regards to what type of structure it is primary versus secondary, trying to find out which set of standards applies to this discussion. He does not think it is fair to the applicant or to the Town to try to figure it out on the fly. He said that distinction was not spelled out in the meeting packet that was presented to the HPC by staff. He said because this significant distinction would affect how the HPC evaluates this topic, it would be appropriate and fair to the applicant and to the Town to take a pause on it and allow the applicant to respond to this information to see if they believe that it does nor doesn't meet certain standards that would apply. He felt that it was imperative that the Town make it clear which set of standards they believe everyone should be considering. He added that he was looking at a different set of standards for this property based on what was described for this particular proposed shipping container/building. He reiterated that he did not feel comfortable making a quick decision on the fly without having had a chance to review the standards and how they would apply to Appendix D, Section 13, Additions to Existing Buildings in the District, or Section 14, New Construction of Commercial Buildings within the district. Ms. Garrett reiterated that the applicant would be willing to table the request regarding the shipping container and move on to the rest of the proposal and revisit the shipping container at the next hearing if that was acceptable by the HPC.

Ms. Shook pointed out that when the staff report was created for this case, the staff included Appendix D, Section 13, Additions to Existing Buildings, [Design Standards p. 96-98]. She told Chair Plaag he would have to ask Ms. Turner why she added Appendix D, Section 14.6 on new construction in the staff report. She pointed out that in the last review letter sent to the applicants by staff that Appendix D, Section 13 was included in those letters. Chair Plaag asked Ms. Shook if the review letter was in the meeting packet; Ms. Shook said typically they are not part of the packet. Ms. Garrett stated that she and the applicant would read the review letter. Ms. Shook said that in the future, at the beginning of the review of an application, the staff needs to discuss the applicable standards. Ms. Garrett said that the applicant could revisit this topic with the staff and come back before the HPC.

Chair Plaag told Ms. Shook that he understood that Section 13 standards were included, and he assumed that it was in reference to the addition of the second level of the deck. He said it was not clear to him that staff was reviewing the shipping container as an addition to an existing building.

Ms. Meade explained that in her view, the structure at issue is a new accessory building. She added that staff and, ultimately the HPC, needed to confirm this and figure out the appropriate standards to apply to it. She said certain standards might not be directly on point, but they might be the closest that the HPC has to apply.

Chair Plaag stated that, at best, we are looking at a continuation of this hearing to give everyone a chance to ponder how the standards might apply rather than risking making a decision on the fly that may not be correct or a fair decision for everybody involved.

Chair Plaag asked Ms. Garrett if she had additional topics to address about what was proposed today or did she want to hold those topics until they were reconvened. Ms. Garrett responded that she did not have more information to present on, materials, or witnesses for the rest of the hearing.

Ms. Garrett clarified that the applicant would like to request for the HPC to consider the approval of the fire escape and the appearance of the second-level deck at this time, until the engineers could provide the applicant with how they are suggesting to attach the deck to the building. She said that information could be presented at the next hearing when the shipping container was discussed. She added that the proposal for the second-level deck would be a ledger board and lag bolts. She said the applicant would like for the HPC to make a decision on the second-level deck and give clear direction with a recommended attachment mechanism that the applicant can give to his engineer. She said the applicant also would like to request that the HPC approve the fire escape, stairs, and patio area with some sort of knee wall around

it. She understood that if the HPC allows the ledger board with the lag bolts and the engineer says that will not work, the applicant would come back before the HPC to discuss a modification.

Member Watkins clarified that his personal concern was not questioning the use of the shipping container as a substructure or as the basis for building something else. His concern was that the HPC had no rendering to review the final appearance of it.

Chair Plaag told Ms. Garrett that he appreciated it and he understood the reasoning for her request for approval. He explained that the HPC typically reviews the entire application and they do not review them in parts, he said they might negotiate or revise some things through the COA process of considering a COA. He added that he didn't think that the HPC could give approval at this hearing based on the question about the shipping container and because it is such a substantial part of what was proposed for this case. He stated that he would feel uncomfortable giving a piecemeal approval because that is not what was submitted, and the HPC was voting on the entire application, and they are not voting on pieces of the application.

Chair Plaag explained that after the testimony phase of this hearing, he was willing to entertain a discussion among the HPC on the things that Ms. Garrett enumerated, so the applicant can get a sense of what concerns the HPC might have about what is proposed for those other areas.

Chair Plaag asked Ms. Garrett what her thoughts were about his willingness to entertain a discussion among the HPC members on their proposed items. Ms. Garrett responded that it was imperative for the applicant to be able to start work, and he did not want to wait. She said respectfully, she did not understand why the HPC could not consider the entire plan except the shipping container because it was completely separate and did not affect anything else. She said if the applicant cannot get approval, the applicant would withdraw the request for the shipping container entirely and reapply for it later, when there was some clarity on what code applies to it. She said the applicant did not want to hold up the work because of the shipping container aspect of the request. Chair Plaag asked Ms. Meade if she saw an issue with Ms. Garrett withdrawing the claim for the shipping container for now. Ms. Meade had no issue with putting aside the shipping container issue and proceeding with the rest of the proposal.

Ms. Shook advocated for the applicant, noting that the only reason that she would do that is that she believed that there was a miscommunication that the staff needed to clear up, and the staff would love to have the opportunity to do so. She also mentioned that if there was a way that it could be done without having the applicant reapply, she thought that would be beneficial. Ms. Meade noted that the HPC could continue the hearing as to the other issues and then issue a limited COA just on this particular point. She stated that she did not see an issue with handling it this way.

Chair Plaag asked Ms. Garrett if there was other testimony or evidence that she wanted to present at this time. Ms. Garrett said she did not have other testimony or evidence to present, but she was ready to give a closing statement. Chair Plaag told Ms. Garrett to go ahead with her closing statement.

In closing, Ms. Garrett asked the HPC if they were comfortable with the proposed ledger board and lag bolts, specifically in the mortar. She said that if the engineer cannot support those materials, the applicant would let the staff know and ask to modify the proposed plan. She said the applicant would ask the HPC to consider approving the deck with whatever attachment they were comfortable with or approve the deck and concept and ask the applicant to show what the attachment would be. She said that the applicant does not want a denial over whatever the attachment would be.

Ms. Garrett talked about the removal of the brick below the window to allow for the installation of a fire escape exit that will be a permanent change to the structure. She thought, based on the fact that this proposed change was bringing the building and the fire escape up to code. She said there needs to be a fire escape, regardless of whether Southend Brewery uses it for a greater number of people or not.

Ms. Garrett said that the applicant made it clear that they are willing to clad the second-level deck or any portion thereof with wood or anything that the board prefers that would make it more compatible with the historic district.

Ms. Garrett said bringing the stairs up to code is a safety issue, and the applicant is flexible on the building materials used on the stairs.

Ms. Garrett said the applicant believes that the proposed changes would be a vast improvement over the existing rear elevation and the use was the same as the existing use.

Ms. Garrett thought the proposed changes would work well into the Comprehensive Plan in terms of pedestrian traffic, using the historic buildings in a manner that allows the public to enjoy them. She said that the applicant would ask that the HPC take their application as an effort to get guidance and do what they think would be the best possible use for the rear of this building. She said that the applicant hoped that the HPC would consider this proposal appropriate for the historic district.

Chair Plaag asked the staff if they had other evidence that wanted to present on this case. Ms. Turner replied that the staff did not have other evidence to present for this application.

Chair Plaag asked Ms. Turner if the staff wanted to make a closing statement. Ms. Meade questioned the contention made by the applicant that a new entry door on the second level was required for safety reasons. That was not consistent with her understanding, which is that the entry door is not compelled for safety reasons but rather to increase the allowable capacity of the second floor. She noted that, to be clear, if there was a second-level deck, an entry door would be required. Ms. Garrett clarified that the information was based on a comment that Mr. Kevorkian had made, and she may have misunderstood him. She asked Mr. Kevorkian to clarify what he knew about the capacity. He explained that based on a letter presented by Mr. Miller, to utilize the second-level floor for its current use at its maximum, a second form of egress would be required. Ms. Garrett explained that without changing the current use, the existing fire exit upstairs was not counted by the Fire Marshal because it is not usable. She pointed out the Fire Marshal said whether the Southend Brewery used the upstairs or not, a fire exit was required.

Chair Plaag noted that he was not comfortable with an applicant testifying to a letter that they received from the staff without that staff person attending the hearing to say what was actually in the letter. He also noted that the letter was not in the meeting packet. He asked the staff that in the future, to add the letter or information that is in support of a case into the meeting packet if the information was concerning pertinent issues like this one. Ms. Shook explained that Mr. Miller was available at the prior hearing for this case when it was originally scheduled. She said, unfortunately, he was not available for this hearing, and he wrote the letter in anticipation of not being able to attend this hearing. She said the staff does have a copy of the letter. She pointed out that it is not the staff's practice to modify staff reports or board packets after publication which is the reason it was not in the meeting packet. She thought this might be information that a licensed architect could confirm, and she suggested that perhaps Mr. Dixon could speak to the information.

Ms. Meade stated that she was hearing the applicant say that it was required, as a matter of law, in order to continue using this space, and there has to be a new entryway, and this this was not accurate. Rather, if a new second-level deck is added, then the new door entryway would be required.

Ms. Garrett told Ms. Meade that she wanted to clarify that when she was making her closing statement, she may have misunderstood what Mr. Kevorkian had stated regarding the continued use of the upstairs space. She said in the context of Mr. Kevorkian's statement about the old fire escape, it was not relevant, except that Mr. Kevorkian had commented that the Fire Marshal was not counting the old fire escape that was there. She asked Mr. Kevorkian to explain the fire department requirements to continue with this use, which was the Ransom Restaurant and Bar and upstairs office and apartments.

Mr. Kevorkian explained that to continue to use the building with restricted capacity, the current fire escape was not considered, they could technically continue the same use under this punitive situation. He said he perceived this information as enforcement that he must limit the capacity, if they change the use, then a second form of egress would be required to remove the restrictive measures.

Ms. Garrett said she did not think that Appendix D addresses the use, it does address fire escapes, when they are attached, and about preference for tertiary elevations. She added that the building use has been restricted, and there is no change to the structure of the building except bringing the building structure up to the current code. She thought telling a property owner that he cannot use his building for its capacity is restricting the use of the building. She said the applicant was not asking for increased capacity, but that is by law what they are allowed to use it for. She clarified that the capacity is allowed for the restaurant but you have to have a fire escape to make it permissible. Ms. Meade pointed out that the applicant does not have the right to expand a restaurant use into an area that has not been a restaurant use in the past. Ms. Garrett said she was referring to occupancy. Ms. Meade responded either way, the applicant does not have the right to change the use or occupancy, and the applicant will have to comply with the HPC.

Chair Plaag told Ms. Garrett that he agreed with Ms. Meade's point regarding the use or occupancy. He stated that to reach that expanded occupancy number, the applicant was proposing to take down interior walls and modify the interior space to the second floor, which is not in the purview of the HPC. He explained that what the applicant was proposing had to be permitted by the Town in order to even get the increased occupancy in the first place. He further explained that we are not talking about an occupancy use on the second-floor level that is already permitted by right. Mr. Kevorkian pointed out that he was not proposing alterations to the use of the second floor, and they are not recommending that it be changed to restaurant use because this area is currently office space. He added that this same area is restricted as office space.

Ms. Garrett asked Mr. Dixon to read into the record the letter dated May 8, 2023 (permanently on file) from Mr. Miller that stated the details of his site visit to measure and determine the occupancy limit of the Wine to Water upstairs space located at 747 W. King Street. The result of Mr. Miller's site visit indicated that the space measured in its current configuration would accommodate 61 people. The letter further stated that since this space only had one approved means of egress, the occupancy was limited to 49 people per the current building code, and if a second approved means of egress were established, full occupancy could be used. Ms. Garrett noted that the information in the letter was slightly different from what she had previously stated and that any internal renovations to the upstairs were irrelevant. She thought Mr. Miller had stated in his letter that the upstairs space in its current configuration does accommodate 61 people, but it does not have fire access for that many people. She stated that the applicant was not asking for an increased occupancy limit over 61 people.

Chair Plaag stated that Mr. Miller's letter does not say in order to solve this problem, the applicant should install a second-level floor of decking to be used as a second gathering area for people using the restaurant and build a new fire escape to serve it. He thought Mr. Miller was stating in his letter that the current fire escape can only safely, under the NC Building Code, facilitate 49 people being able to escape the second floor of the building. Ms. Garrett pointed out that the existing fire escape is not a fire escape, according to the building inspector. She said there is no fire escape right now for the second floor on the back of the building. She stated currently, the 49 people allowed in the upstairs area have to exit through the primary entrance. Chair Plaag said that Mr. Miller's letter stated that if the applicant wanted to add a new fire escape that would more adequately serve the upstairs in its current configuration, they might be able to expand it. Mr. Kevorkian stated that because they wanted to use the building for business, he felt like they needed a fire escape.

Ms. Garrett noted that since Mr. Miller was not available, she suggested that she withdraw the way she phrased her previous statement in her closing statement regarding the old fire escape that was at the rear

of the building. She said that based on the way that Mr. Miller expressed the need for a fire exit, the applicant's plan proposes to maintain the existing fenestration to the degree that wouldn't be adding an opening but expanding an existing opening vertically. She said the existing tertiary elevation has a roof over the deck, they would propose to remove that roof and make a top deck, which is allowed by the historic standards and is in conformity with the district. She referenced Appendix D, Section 11, for the proposal of the fire escape. She noted that for the applicant to be able to use the building for its capacities is important. She asked that the HPC consider balancing the historic goals with allowing the property owners to use their building with their minimal proposed changes.

Chair Plaag asked if there was any other interested party to speak or present evidence supporting the application; if there was any non-party witness to speak or present evidence supporting the application; if there was any interested party to speak or present evidence in opposition to the application; and if there was any non-party witness to speak or present evidence in opposition to the application. There were no answers in the affirmative.

Chair Plaag closed the testimony phase of the hearing for this case. He noted that the witnesses heard from previously might be recalled for additional testimony during the HPC's discussion.

Chair Plaag opened the floor for the HPC to discuss the evidence at hand regarding this proposal.

Chair Plaag confirmed that the applicant had withdrawn, for the time being, the shipping container aspect of the proposal for this particular project. He thought the questions that the HPC needed to address to consider, in keeping with the standards for the district, were regarding the proposed addition of a second-floor rear exterior deck, the proposed method of connection of the second-floor rear exterior deck using the ledger board and lag bolts passing through the mortar, the proposed courtyard changes including the layout, the new walls at various edges of the courtyard area, the new stair system, as well as pavers on the courtyard itself, and the modification of the existing second-level window into a fire door exit with a vertical change, not a horizontal width change, to facilitate a new fire escape that would go out on the second-level deck.

Chair Plaag opened the floor for questions or discussion by the HPC. He asked the HPC to speak to the relevant standards and whether they believe or do not believe that the items proposed comply with the standards of the district.

Member Sharp asked the HPC if they had concerns about the proposed specific installation method of the ledger board and lag bolts. Member Watkins noted that Ms. Garrett asked the HPC to determine if the HPC was comfortable with the use of a ledger board and lag bolts. He stated that he was not an engineer and he was not comfortable with that solution. He might be comfortable with this solution if he could see an engineer's report. Ms. Garrett interjected that the safety of the structure would be determined by another body. She agreed that the proposed work needed to be safe, but the HPC does not consider safety as part of their purview. She said the HPC cannot make their determination based on the safety of the proposed work. He explained that an engineer would be able to tell the HPC the required modifications for the building. He said the requirements from the engineer might affect the HPC's opinion because it would reflect potential changes to other parts of the building to make the deck structurally sound and safe.

Ms. Meade expressed her thoughts that an engineer could create a design that involves drilling through brick and another design that involves not drilling through brick. She said it is within the purview of the HPC to say that if the engineer comes up with a solution that only involves drilling through mortar, not defacing the brick and attaching ledger boards, and it is proper under the Unified Development Ordinance (UDO) per the staff, that the HPC conditionally agrees to that type of an attachment. She said the HPC could say that they want the bolts attached only through penetrations through the mortar as the

preferable method, whereas penetrating through brick is not. She said this is a way for the HPC to give some direction to the engineer who can solve this issue.

Chair Plaag told Member Watkins that he appreciated him expressing his concern, but he agreed with Ms. Meade that the way for the HPC to address this concern is to make a conditional approval that says, assuming it meets all of the code requirements of the Town and passes the engineer's review for safety purposes, the HPC is approving the use of ledger board and lag bolts that pass only through the mortar joints of the tertiary elevation of the building as an acceptable method for attaching the proposed second-level story of the deck to the building. He explained that this way, the applicant is still required to meet the engineering test through the permit process and other UDO requirements. He added that if the attachment method in the conditional approval is not acceptable, the HPC could verbalize to the applicant that they would be required to come back to the HPC for reconsideration of the second-story deck and its connection method to the building.

Member Watkins reiterated his concern was the HPC had not been presented with evidence about load calculations. He added that the HPC does not know what has to be done to the rest of the building in order to make that possible. He further stated that he did not see how the HPC could make a judgment as to the applicability of that solution to the problem until they can be presented with the load calculations from the engineer.

Chair Plaag pointed out that the HPC cannot consider safety concerns because it is not in their purview. He said the HPC could consider the impact of proposed additions to a building. He said the applicant had requested to use a ledger board and lag bolts passing through the mortar joints. He noted that this was a specific revised proposal the applicant made as part of the means for anchoring the second-level deck to the building. He said he was comfortable with that from a historic standpoint, unless the engineer says there is no way the proposed deck can be put there that will support 60 people using that method of installation. He explained that by making a conditional approval the applicant would be required to come back to the HPC and explain that the engineer could not use the proposed method of installation and present a revised proposal. He further explained that the HPC had to consider the request from the applicant based on the merits and the evidence that is available to them.

Member Watkins responded to Chair Plaag's comments and stated that he agreed with Chair Plaag regarding the purview of the HPC. He asked Chair Plaag if he thought the proposed resolution would bring the applicant back if the engineering studies proved to be incompatible with the proposed solution. Chair Plaag replied yes because the HPC was approving a specific method of attachment. He added that it would be a conditional approval based on that being the method that is used. He pointed out that when the Town inspectors go onsite, they review the plans prior to the site visit, and they would know if the applicant had adopted another method in the plans, and the Town inspectors would notify the applicant that they would need to go back to the HPC for further discussion. Chair Plaag said he had confidence that if there was an issue with the connection method, it would ultimately come back to the HPC for reconsideration.

Ms. Meade reminded Chair Plaag that the HPC proceeded in the same way with conditional approval when they reviewed another COA application for the front of this building. She said the conditional approval was based on what was found underneath the plywood that was taken off the building. She said also for that same case, the HPC provided for contingent approval, and it turned out to be the best-case scenario, and the applicant was able to proceed without coming back to the HPC for further review and discussion.

Chair Plaag noted for the record that he was not entirely satisfied with the solution that was achieved on the front of the building next door because he took the photos while it was still open and the frieze panel was indeed there, which is what they expected. He said on the outer surfaces of the pilasters was a veneer that was mounted over the original pilasters. He explained that there was one layer of brick that was

pushed out from the original pilasters and they have tried to seam in that frieze panel so that it aligned with the outer layer instead of aligning with the original layer. He wondered if this was the type of thing that might force the applicant to come back to the HPC for further review and discussion. He did not know if staff or anyone other than someone with a trained eye would have picked up on it. Ms. Garrett asked for clarification because it might affect the HPC's consideration of this application. She asked if the concern was that the applicant did something that they were not supposed to do because the applicant thought they did what they were asked to do. Chair Plaag did not say that somebody did something wrong. He explained that as part of the renovations that were done in likely the 70s or late 60s on that building, they put on a new veneer to facilitate bringing the profile of the building out to meet the Crab Orchard stone on the building next door and to allow for that new panel and to make it look right. She reassured the HPC that the applicant fully knew that their work needed to be inspected.

Chair Plaag emphasized that in this particular case, and in the other building case, the applicants impressed him with their desire to try to do something that respects the history of the two buildings, while also allowing them to adaptively reuse the building in a way that is beneficial to their business. He said he appreciated it. He noted that his disappointment about how things turned out in the front of the building next door is not a reflection on them.

Chair Plaag asked the HPC if there were other comments on the congruent or in congruency of the proposed second-level deck and its connection method as proposed by the applicant.

Discussion on the fire escape. Chair Plaag said the applicant was proposing at the rear of the building to take the second window from the right on the second floor and vertically expand that opening to make it a door without widening the window. He said that he would require any approval for the fire escape to be conditional on it not being widened and changing the width of that opening of the original window.

Chair Plaag referred to Appendix D, Sections 1.8 and 6.1 and 6.4.

Standards for Commercial Properties Within the District, Commercial Properties with the District, Storefronts, Upper Facades, Side Elevations, and Rear Elevations, [Design Standards p. 61-67]

Section 1.8 Facade details of side (secondary) and rear (tertiary) elevations should always be retained and preserved if possible. When repairing these features, retain and preserve in place original elements as much as possible. If repair is not possible, replace damaged elements with materials that match the originals in composition, design, texture, color, and other visual qualities. If there is evidence of a rear public entrance that is no longer extant, use historical research and other evidence to reconstruct or provide an equivalent rear entrance whenever possible.

Standards for Commercial Properties Within the District, Commercial Properties with the District, Windows, Doors, and Awnings, [Design Standards p. 75-84]

Section 6.1 The pattern, arrangement, location, size, and shape of windows and doors contribute significantly to a building's historic character, and their consistency within the district helps unify the buildings in context to one another. For this reason, it is always preferable to repair damaged windows and doors rather than replacing them. Furthermore, it is imperative that the fenestration pattern of the door and window openings on the building and of the doors and windows themselves (muntin width, number of lights per sash, etc.) be maintained when repairs to or replacement of elements is underway. It is never appropriate to introduce new features, such as vents, bays, windows, or door openings, in exterior walls if they diminish the historic character of the wall or damage historic materials.

Section 6.4 Unless restoring the appearance of a building to its original, historic context, the pattern, arrangements, and dimensions of doors and windows on principal elevations should be

retained. On tertiary elevations not visible from the street, new door or window openings should be proportionate to existing ones and include matching design elements.

Section 6.8 Shutters should be attached to the window casing, not the siding or masonry, unless the original historic context of the property featured shutters attached to the siding or masonry.

Chair Plaag pointed out that the applicant referred to Appendix D, Section 11.1. and Section 11.2 for fire escapes and their locations.

Standards for Commercial Properties Within the District, Commercial Properties with the District, Accessibility, Health, and Safety Considerations, [Design Standards p. 93-95]

Section 11.1 New exterior fire escapes are not permitted on historic properties unless more adequate exit facilities cannot be provided. If they must be installed, fire escapes generally should be located at the rear (tertiary elevation) of the building and never along an elevation visible from an adjacent street.

Section 11.2 Introducing items such as wheelchair ramps, fire exits, and fire stairs without damaging the character of a historic structure requires careful planning. Owners should introduce fire exits, stairs, landings, and ramps on the rear (tertiary elevation) or inconspicuous side (secondary elevation) locations. If access ramps must be installed in a manner that makes them visible from the public right-of-way, they should be constructed in a manner that makes them as simple and compact as possible and limits their projection from the building.

Section 11.3 Construct fire exits, stairs, landings, and ramps in such a manner that they do not damage or significantly obscure historical materials and features. Such additions should be designed to be complementary to the architectural style, materials, scale, and function of the historic property.

Chair Plaag read aloud Section 11.1 and noted that the section creates some confusion because of the text that reads “never along an elevation visible from an adjacent street.” He pointed out that about every building along King Street, with the exception of the stretch from roughly this building down the alley, where Ben and Jerry’s are located, most of the other buildings along King Street are generally visible from the tertiary elevation, so the rear elevation is visible from an adjacent street.

Chair Plaag said the applicant’s counsel pointed out that the applicant had three options. He said option one is their current proposal, option two is to go out on the west side of their building from the second floor, which will create an opening that does not exist in the second level of that building, and option three is to go out on the east side onto the roof of the building next door that the applicant owns. He noted that the last option could potentially be explored, but it would also create an opening that does not exist in the East elevation of the building. He said this leaves the option that they have proposed.

Chair Plaag explained that, generally speaking, there was more forgiveness of alterations that are made to tertiary elevations, when the impact on the historic material is minimized as best as it can be. He said the applicant is proposing to remove some bricks in order to turn a window into a door, and they are changing the function of that window to a door. He said he would argue that the other possible ways of solving this problem of creating a fire escape from the second level are more intrusive to the building and more destructive to the historic integrity of the building than what is proposed.

Chair Plaag mentioned the cage around the fire escape as a historic element and the fact that it had been removed sometime in the past, he felt that destroyed the integrity of that historic element. He thought the removal of the ladder, as proposed in order to put in the door, does not destroy anything that has any remaining integrity to it; therefore, he did not have any problem with the removal of the ladder from that tertiary elevation. He said a reasonable person could disagree with him on whether it was necessary to

create the fire escape door in the first place. He thought that would be a fair argument to make because the only reason why it is necessary to create that door opening currently, even by code, is because the building owner wants to essentially accomplish two things. He explained it is because they want to put on a second-level deck, and there was mention of the possibility in the future of the second-level space being reworked to allow for a greater occupancy. He thought this was why the applicant was also asking for that second-level floor door fire exit.

Chair Plaag said with all of these things in mind, the HPC had to balance these various standards against one another and balance those standards against all other aspects of the standards and the integrity of this building, essentially allowing for adaptive reuse of this building in a way that is sympathetic to its historicity and its importance to the district.

Chair Plaag said with regard to balance, allowing the conversion of this window to a door is about the least intrusive way that the applicant can create a fire escape that provides for expanded life safety for any use of that second level. He said it also facilitates the proposed addition of the second-level deck.

Chair Plaag felt in the particular case, there was some flexibility within the standards to allow for this limited modification of the brick exterior of the second level on that tertiary elevation.

Chair Plaag asked the other HPC members to give their feedback on the point of extending the window to a door. Student Member Ziegler agreed with the statement that it is the least intrusive option and would hold up the best long term. She noted that it was previously mentioned that one option was for the fire escape to lead to the roof of the other building that the applicant owns, and that could be problematic should the buildings change hands in the future and are owned by different people. She agreed with Chair Plaag's statement that it is not a favorite idea, but it is definitely the least intrusive to the integrity of the building. Member Sharp also agreed with Chair Plaag's statement that it would be the best and least intrusive option. He referred to Appendix D, Section 1.3, regarding complying with code requirements, and he thought making minimal impact seemed to be the solution. He referred to Appendix D, Section 6.4, and thought retaining the proportion of the existing window space preserved it, even though they are extending the aperture in a vertical way. Member Watkins agreed with Chair Plaag's statement that it would be the best and least intrusive option. He said that being sensible about adaptive reuse is helpful. He also agreed with Chair Plaag that this was a prerequisite to making the case for increased occupancy on the second level. Chair Plaag added that the elevation of the building already has some loss of integrity because at least two of the window openings have been bricked in. He thought the building owner before the current owner did a great job of unbricking windows that are on the west side of this building on the first level of the building which was before the historic district was created.

Chair Plaag talked about the bricked-in windows and thought the current owner might want to explore the possibility of reopening those window openings. He explained that this is not a requirement of this application, it is just a thought for the current property owner to ponder.

Chair Plaag said that the HPC had already discussed the fire escape and the connection of the second-level deck. He said the topics that remain for the HPC to consider are the various changes to the courtyard, the rebuilding of the stairs leading from the deck down into the courtyard, creating the courtyard surface with the pavers set in sand or gravel, installation of new walls to delineate the boundaries of the courtyard for ABC control purposes, regrading of the courtyard area to level out some areas that have eroded over time, and preservation of the existing tree. He noted that the applicant had testified that they wanted to preserve the existing tree. He asked the HPC if they had any concerns or discussion, regarding the proposed changes listed above. There was no other discussion on these proposed changes.

Chair Plaag asked for a motion either for or against the proposal. He suggested that if a motion was being made for approval that the person say that the motion excludes consideration of the appurtenant structure at the rear of the courtyard, which was the proposed shipping container that is not part of the

motion. He said the motion is also conditional upon the connection method described, which is ledger board and lag bolts passing through mortar joints for connection of the second-level balcony. Ms. Meade added that the motion for approval should say that the proposal is congruent with the historic district standards.

Motion and Vote:

Student Member Ziegler made a motion, seconded by Member Sharp, to conditionally approve the connection method described as ledger board and lag bolts passing through the mortar joints for connection of the second-level balcony, and if the connection method cannot be used that the applicant will return to the Historic Preservation Commission. And to approve the following because they are congruous with the historic district: addition to the courtyard, the rebuilding of the stairs leading from the deck down into the courtyard, creating the courtyard surface with the pavers set in sand or gravel, and installation of new walls to delineate the boundaries of the courtyard for ABC control purposes, regrading of the courtyard area to level out some areas that have eroded over time, and preservation of the existing tree. This motion excludes the appurtenant structure described as a shipping container at the rear of the courtyard. And the proposal is congruous with the historic district.

Vote:

Aye – (Plaag, Sharp, Ziegler)

Nay – (Watkins)

The motion passed.

Member Watkins explained that he voted no for the proposed application because of his initial concerns about the HPC not having an engineering study of the proposed change to review.

Chair Plaag told Ms. Garrett that in this conditional approval, if the connection method cannot be completed the applicant will be required to come back to the HPC for consideration. He also told Ms. Garrett that he would like to continue this hearing.

Discussion ensued on choosing a date to continue the hearing. Chair Plaag said he would normally like to continue this hearing to the next scheduled quasi-judicial hearing date of the HPC on June 13th, but he is not able to attend that hearing date. After some further discussion all agreed on June 5th at 3 p.m. for the next hearing date.

Chair Plaag said if there was no objection, he would continue the hearing of this case until Monday, June 5, 2023, at 3 p.m., via WebEx. There was no objection from the HPC or staff to continuing the hearing to the said date.

Ms. Garrett had no objection, but she wanted to confirm that the staff was authorized to issue a Certificate of Appropriateness (COA) based on the approval of this application in this hearing. Chair Plaag reiterated that the approval was for a conditional COA.

Ms. Shook asked Chair Plaag to clarify for the applicant and staff what should be expected at the next meeting. Chair Plaag said he would appreciate some clarification on what the Town's position is on the shipping container appurtenant structure and what portion of the standards the staff believes it falls under, the applicant should be prepared to make an argument for the portion of the standards they believe it falls under, and would like for the HPC members to carefully review the Section 13, Addition to Buildings, Section 14, New Construction of Buildings, and Section 1.17, Streetscapes.

Ms. Shook asked Chair Plaag if the HPC was comfortable with a revised staff report, and Chair Plaag responded yes. She noted that the staff had about two weeks to make the changes to the staff report. Chair Plaag and Ms. Shook agreed that June 1st was a reasonable timeframe to complete the staff report. There were no objections to the June 1st timeframe.

Chair Plaag said that since the next quasi-judicial meeting will be on June 5, he proposed that the HPC continue with their Advisory meeting on June 6th as scheduled. There was no objection to having these back-to-back meetings.

Chair Plaag explained that he had contacted the State Historic Preservation Office (SHPO) for additional clarification on the thin-set brick material discussed at the Watauga County Parking Deck hearing. He said he copied staff on the email. He said he would like to discuss it at the next advisory meeting for possible direction to staff on some actions that they could take to help the HPC better evaluate material for the district. Mr. Dixon asked to receive a copy of the email that Chair Plaag had sent to the staff. Chair Plaag asked Ms. Mitchell to forward that email to Mr. Dixon. Ms. Mitchell said that she could include that email in the Advisory meeting packet so all HPC members are aware of it. Ms. Meade pointed out that the Town Council would need to be involved with any potential UDO revisions.

ADJOURNMENT

Chair Plaag adjourned the meeting at 2:08 p.m.

Eric Plaag, Chair

Marlene Crosby, Board Secretary