

CITY COUNCIL COMMUNICATION



MEETING DATE: December 19, 2023

ITEM NUMBER: 12.{{item.number}}

SECOND READING:

{{customfields.ResoOrdNumber}}

TYPE OF ITEM: General Business

PRESENTED BY:

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SUBJECT/AGENDA TITLE:

Appeal of Denial of Certificate of Appropriateness and Certificate of Hardship by Historic Preservation Commission Regarding Proposed Window Replacement at 545 Collyer Street

EXECUTIVE SUMMARY:

On July 6, 2023, the Historic Preservation Commission held a public hearing regarding a request for a certificate of appropriateness for proposed replacement of the original windows at 545 Collyer Street (Attachment 3), a historic landmark. The Commission denied this request by a 4-2 vote, making a finding that the review criteria had not been met because the windows were not beyond repair. The property owner-applicant filed an appeal of this decision, which was heard by the Longmont City Council on September 5, 2023. The City Council unanimously voted to remand the request back to the Historic Preservation Commission with instructions that they consider hardship in their decision. The Historic Preservation Commission considered the remanded request on November 2, 2023. The applicant did not submit any additional information for the second public hearing before the Historic Preservation Commission. Without additional information to consider, the Commission again denied the certificate of appropriateness by a vote of 5-2. The Commission then considered a certificate of hardship. The applicant did not submit additional information that could be considered in this decision, and the Commission denied this request by a vote of 5-2, finding that the criteria had not been met, and cited the availability of far less expensive options than the requested total window replacement that could achieve the efficiency goals without permanently altering the landmark structure (Attachment 6).

By Longmont Municipal Code ("Code"), the City Council will act as the appeal body for this case and will hold a hearing on the appeal. During the hearing, staff will present the appeal report to the Council and then the Council will give the appellant an opportunity to present argument. The Council may augment the record by considering additional evidence, but only evidence that is relevant to the issues raised in the notice of appeal. If additional evidence is allowed, staff and the appellant must be given the opportunity to rebut such evidence.

By Code, the appellant shall have the burden of demonstrating that the Historic Preservation

Commission was plainly in error based on one or more of the permissible grounds for appeal:

- i. The decision is not supported by any competent evidence in the record;
- ii. The decision is plainly inconsistent with the review criteria, as shown by clear and convincing evidence; or
- iii. The decision maker exceeded its authority or jurisdiction as contained in the Municipal Code or Charter.

The Council shall give deference to the Historic Preservation Commission's record and decisions, and apply the applicable review criteria for the subject development applications (the Certificate of Appropriateness and Certificate of Hardship requests) to either uphold, modify, or reverse the Historic Preservation Commission's decisions specifying the reasons for the decisions. A decision by Council on the appeal must include written findings of fact specifying the reason(s) for the decisions. Alternatively, the Council may also remand the matter to the Historic Preservation Commission with directions for further consideration on the matter.

Meeting Process: To assist the City Council in holding the hearing, the steps listed below are an outline for conducting the hearing. This process is described in greater detail in Attachment 2.

1. Staff presents appeal report
2. Applicant/Appellant's Presentation (limited to 15 minutes, unless Council approves more or less time)
3. At Council's discretion, augment to the record by considering additional evidence, limited to evidence related to the issues raised in the notice of appeal
4. If additional evidence allowed, rebuttal of said evidence by staff or applicant/appellant
5. Council discussion and questions of any party
6. Council Findings and consideration of motion.

COUNCIL OPTIONS:

Conduct an appeal hearing and, as specified in Sections 2.56.220 and 15.02.040.K of the Code, and uphold, modify, or reverse the decision of the Historic Preservation Commission. These options include:

1. Uphold the decisions of the Historic Preservation Commission, finding that Commission's decisions were not plainly in error in denying the Certificate of Appropriateness and Certificate of Hardship requests.

2. Modify the decisions of the Historic Preservation Commission, finding that the certificate of appropriateness and certificate of hardship requests would meet the review criteria under conditions to be specified.
3. Reverse the decisions of the Historic Preservation Commission, finding that the Commission's decisions were plainly in error and that the Certificate of Appropriateness or Certificate of Hardship requests comply with the review criteria, and order issuance of said Certificate(s).
4. The City Council may also remand the appeal to the Historic Preservation Commission with directions for the Commission's further consideration of the matter.

RECOMMENDED OPTIONS:

The City Council decision shall be based on the record of the Historic Preservation Commission hearing, the information presented at the appeal hearing and the review criteria for the Certificates of Appropriateness and the Certificate of Hardship.

FISCAL IMPACT & FUND SOURCE FOR RECOMMENDED ACTION:

There is no fiscal impact as a result of this appeal hearing.

BACKGROUND AND ISSUE ANALYSIS:Historical Information

545 Collyer Street is a locally designated historic landmark. As such, any exterior alterations beyond general maintenance and repair require approval by the Historic Preservation Commission through the Certificate of Appropriateness process as noted in Section 2.56.110 of the Code. A Cultural Resource Survey was completed in 2002 that provides a full description of this property, its history and architectural elements is included as part of Attachment 5. The subject property contains a two-story home in the American Foursquare style that was originally built as a single story home in 1886. A second story addition was built in approximately 1901. This survey notes that there have been minimal exterior alterations to the building since 1901. 545 Collyer Street was designated as a local landmark in 1985. Elisabeth "Lizzy" Wolff, the applicant, purchased this property in 2021.

Request for Certificate of Appropriateness

The homeowner, Lizzy Wolff, requested a Certificate of Appropriateness for replacement of all windows in the home. The request is included as part of Attachment 3. The existing windows are original to the home. Applicant proposed replacement of glass and sashes in all 15 windows with Marvin Windows from the "Ultimate Wood" line. This particular product line consists of pine sashes and are double hung. The exterior and interior trim would remain.

Applicant stated that all but two windows have misaligned glass, which allows air into the house and presents a safety hazard. There are no exterior storm windows, though the

applicant indicated at the November 2, 2023, remand hearing that she had recently installed interior storm windows. The applicant submitted pictures of the windows proposed for replacement for staff evaluation as part of the application package. Staff is of the opinion that the windows are not deteriorated beyond repair and suggested that the applicant consider repair of the existing windows as well as installation of storm windows and provided the link to the Contractor List maintained by History Colorado when she submitted the application for certificate of appropriateness.

Certified Local Government

It is important to note that the City of Longmont is a “Certified Local Government” (CLG) by the State Historic Preservation Office (SHPO). This designation is an important historic preservation tool that enables the City of Longmont to receive technical support from the SHPO, and also makes the City and its historic property owners eligible for financial incentives such as state and federal tax credits for certain improvements to historic structures. Per the agreement between the SHPO and CLG, CLGs must review requests for alterations such as this one to ensure consistency with the Secretary of Interior’s Standards for the Treatment of Historic Properties. These standards are clear that deteriorated historic features should be repaired rather than replaced unless they are deteriorated to the point where repair is not possible. If these standards are not followed, the City could risk its CLG status, which would negatively impact the ability of owners of other historic properties to obtain tax credits for eligible improvements.

Additionally, CLGs are required to have a mix of qualified professionals and lay members on their historic preservation commissions, with at least 40 percent of members being professionals in the fields of history, architecture, landscape architecture, architectural history, prehistoric or historic archaeology, planning, American studies, American civilization, cultural geography, cultural anthropology, or related disciplines such as building trades, real estate, or law. The City of Longmont’s Historic Preservation Commission meets this requirement, with members with expertise in architecture, archaeology, historic preservation and construction and law.

Criteria for Certificate of Appropriateness

Pursuant to Code section 2.56.130.A, all of the following review criteria must be satisfied for a certificate of appropriateness for exterior alteration of a designated landmark to be granted:

1. The proposed work meets all applicable design guidelines approved by council;
2. The proposed work preserves, enhances, or restores and does not damage or destroy the exterior architectural features of the designated property;

3. The proposed work does not adversely affect the special character or special historical, architectural, or aesthetic interest or value of the landmark and its site or the district; and
4. The architectural style, arrangement, texture and materials used on existing and proposed structures are compatible with the character of the existing landmark and its site of the historic district.

Staff report to HPC

Staff recommended denying the Certificate of Appropriateness finding that the proposed window replacement did not meet criterions 1, 2 and 3, as discussed below. With regard to the Certificate of Hardship, staff found that the criteria for economic hardship had not been met given that there were a number of lower cost options that had not yet been pursued. Staff was not able to make a determination on the other types of hardship described below because additional information requested from the applicant had not been provided.

REVIEW CRITERIA FOR A CERTIFICATE OF APPROPRIATENESS (Longmont Municipal Code Section 2.56.130)

1. The proposed work meets all applicable design guidelines approved by council;

"Design guidelines" means a document adopted by council regulating alterations to a designated landmark or properties within a designated historic district. This property is not within a designated historic district that has adopted design guidelines. In the absence of design guidelines, the Commission should use the Secretary of Interior Standards for Historic Preservation and Rehabilitation for evaluating exterior alterations to historic properties. These standards clearly state that historic features of a property shall be repaired rather than replaced unless they are deteriorated to a level where repair is not feasible. The applicant submitted photos of the windows proposed for replacement as part of the original application package. Staff remains of the opinion that the windows are not deteriorated to the point of requiring replacement and should be repaired.

This criteria has not been met.

2. The proposed work preserves, enhances, or restores and does not damage or destroy the exterior architectural features of the designated property;

Replacement of original wood windows with modern replacements is discouraged for historic properties given the importance of windows for the integrity of architectural features. Photos of the existing windows provided by the applicant depict windows that are not beyond repair and appear salvageable. Staff recognizes the challenges that historic property owners in Longmont have had in recent years finding qualified contractors for this type of restoration

work, and further recognizes that many homeowners do not have the ability to do the work themselves. Additionally, there is concern that long lead times for contractors could cause the windows to deteriorate to the point where other historic materials of the house could also be impacted. The other concern is energy efficiency, especially as it relates to temperature regulation in the winter. The applicant has stated that temperatures in the home reached a low of 42 degrees at one point this winter and generally did not get warmer than the upper 50s. The applicant did not provide the requested energy audit of the home, so staff is unable to confirm the applicant's assertion that the windows are a key cause of the temperature regulation and efficiency concerns. There are windows that appear to need reglazing, which would help reduce drafts and is a relatively simple process. Additionally, storm windows as well as certain window treatments would further reduce drafts and substantially improve efficiency without removing key historic features of the designated property.

Staff recommends that the applicant keep the original windows in place, repair them, and have storm windows made to increase efficiency. The applicant should also consider additional measures such as installation of insulating window treatments such as cellular shades. Staff acknowledges that there are substantial lead times for this work to be done by a professional contractor, but the lead times provided by the contractor are not unusual for this kind of work.

3. The proposed work does not adversely affect the special character or special historical, architectural, or aesthetic interest or value of the landmark and its site or the district; and

The proposed replacement windows would match the one-over-one style of the existing wood windows. Additionally, the proposed replacement windows are solid wood, rather than composite material, aluminum or vinyl, which is consistent with the original material. Nonetheless, original windows are an important feature of historic homes and should be preserved whenever possible. Staff is of the opinion that this criterion has not been satisfied.

REVIEW CRITERIA FOR A CERTIFICATE OF HARDSHIP (Longmont Municipal Code Section 2.56.160)

A. The commission may issue a certificate of hardship to an owner of a designated landmark or property within a designated district based on evidence that an economic or other hardship prohibits the owner from complying with one or more provisions of this Code. The applicant shall have the burden of proof that a hardship exists under the following criteria:

1. *For economic hardship.* Compliance with the regulations of this chapter will result in a substantial economic burden on the applicant.

The applicant has stated that high energy bills are one of the factors driving the requested window replacement. Staff recognizes that the applicant's energy costs are relatively high, however, there are lower cost options that would improve the efficiency of the existing historic windows. The documentation submitted by the applicant indicates that replacement of the existing historic windows would cost in excess of \$43,000. According to the U.S. Department of Energy, storm windows can have similar cost saving benefits as new double-paned windows, but at approximately one-third (1/3) the cost (<https://www.energy.gov/energysaver/storm-windows>). The U.S. Department of Energy also states that energy efficient window coverings, such as cellular shades and drapes, can also reduce heat loss and produce energy savings (<https://www.energy.gov/energysaver/energy-efficient-window-coverings>). The U.S. Department of Energy notes that tightly installed cellular shades can reduce heat loss through windows by 40% or more, which equates to about 10% heating energy savings.

Additionally, Historic Preservation Commissioners expressed concern at the July 6, 2023, public hearing that the windows may not be the only thing contributing to high energy bills. Staff has not been able to evaluate whether the existing windows are the primary cause of inefficiencies since the applicant did not submit the requested energy audit for review. Additionally, there are tax credits that could be of assistance with the cost of rehabilitation efforts since 545 Collyer Street is a designated landmark.

Staff is not of the opinion that this criteria has been met.

2. For other hardship.

a. The property cannot be reasonably maintained in a manner consistent with the pertinent architectural standards and guidelines; or

As noted in the July 6, 2023, staff report, as well as comments from members of the Commission documented in the minutes from that meeting included as Attachment 2, window replacement is not the only option for addressing energy efficiency concerns, and other options exist that would meet the Secretary of Interior's Standards for Historic Preservation and Rehabilitation. Options that the applicant should first pursue include installation of storm windows and reglazing the existing windows. The applicant should also pursue insulating exterior walls, which she indicated had not been done at the July 6, 2023, Commission meeting. As noted above, there are numerous options for increasing energy efficiency in homes with single-paned windows that are readily available, less expensive, and would not require replacement of the existing historic windows.

The applicant did not provide new information for staff to determine whether the criteria has been met.

b. No reasonable means of saving the property from deterioration, demolition or collapse other than the applicant's proposal exists.

As established at the July 6 HPC hearing, the existing historic windows are not deteriorated to a point where replacement is the only option, and photo documentation of the windows show that they are in relatively good condition. There are less drastic and costly measures than total replacement that may be undertaken to preserve the existing windows while also increasing energy efficiency. A concern cited by the applicant at the July meeting are the lead times for contractors who specialize in restoration of historic windows. Staff acknowledges that the cited lead times are not ideal, however, they are not unreasonably long.

The applicant did not provide new information for staff to determine whether the criteria has been met.

Historic Preservation Commission Decision

On November 2, 2023, the Historic Preservation Commission held a public hearing on remand from City Council regarding the Request for a Certificate of Appropriateness for replacement of all of the windows at 545 Collyer Street. The Commission denied the Certificate of Appropriateness again in a 5-2 vote, with Commissioners Barnert and Fenster dissenting. The Commission affirmed staff's recommendation of denial and found that the requested window replacement did not meet all of the required review criteria, as established in Section 2.56.130 of the Longmont Municipal Code. Specifically, the Commission affirmed staff's finding that the request did not meet the following criteria:

1. The proposed work meets all applicable design guidelines approved by council;
2. The proposed work preserves, enhances, or restores and does not damage or destroy the exterior architectural features of the designated property;
3. The proposed work does not adversely affect the special character or special historical, architectural, or aesthetic interest or value of the landmark and its site or the district;

Following the hearing on the Certificate of Appropriateness, the Commission then considered a request for Certificate of Hardship. The Commission denied the Certificate of Hardship in a 5-2 vote, finding that the following criteria had not been met:

1. For economic hardship. Compliance with the regulations of this chapter will result in a substantial economic burden on the applicant.
2. For other hardship.
 - a. The property cannot be reasonably maintained in a manner consistent with the pertinent architectural standards and guidelines; or

- b. No reasonable means of saving the property from deterioration, demolition or collapse other than the applicant's proposal exists.

The approved minutes from the November 2, 2023, meeting are included as Attachment 6.

Applicant's Appeal

The City received a formal appeal to this decision on November 9, 2023, from Elisabeth "Lizzy" Wolff, the owner of 545 Collyer Street. This request is included as Attachment 8.

The applicant alleges that the Commission's decision is not supported by competent evidence in the record. The permissible grounds for appeal are found in Code Section 15.02.040.K.9.b.

Appeal Process

Appeals from a Historic Preservation Commission decision denying a Certificate of Appropriateness are governed by Code Section 2.56.220. In general, Council will consider the appeal using the process outlined in Section 15.02.040.K.9, substituting Historic Preservation Commission for the references to the Planning and Zoning Commission.

On appeal, the applicant has the burden of demonstrating that the Historic Preservation Commission's decision from July 6, 2023, was plainly in error, based on one or more of the following permissibly grounds for appeal:

- The decision is not supported by any competent evidence in the record;
- The decision is plainly inconsistent with the review criteria, as shown by clear and convincing evidence; or
- The Commission exceeded its authority or jurisdiction as contained in the Municipal Code or Charter.

Code Section 15.02.040.K.9.b; 15.02.040.K.11.d (emphasis added).

The Council should base its decision on the record of the proceedings before the Historic Preservation Commission and may only consider additional evidence, at its discretion, if it limited to evidence relevant to the issues raised in the notice of appeal. Code Section 15.02.040.K.11. Grounds for appeal raised for the first time at the appeal hearing, and not raised in the notice of appeal, shall not be considered by Council in deciding the appeal. Code Section 15.02.040.K.11.e.

Staff prepares this appeal report which includes all appeal letters and minutes of the applicable Historic Preservation Commission meeting, including the administrative record at that hearing. Code Section 15.02.040.K.10. The Council opens the appeal hearing by receiving the appeal report from staff and then gives the appellant/applicant an opportunity to present

argument to the Council. Code Section 15.02.040.K.11.b. The Council, at their discretion, may augment the record with additional evidence limited to evidence relevant to the issues raised in the notice of appeal (including testimony from the public), provided city staff and the appellant/applicant are given an opportunity to respond to the evidence. Code Section 15.02.040.K.11.c. Upon completion of the testimony, the Council shall decide to uphold, modify or reverse the decision of the Historic Preservation Commission based upon the record and argument presented at the hearing, and any additional evidence allowed at the hearing, as they pertain to the grounds for permissible appeal and the review criteria for Certificates of Appropriateness and Hardship. Code Section 15.02.040.K.11.e. Council decision must include a written finding of fact and be in form of an ordinance or resolution. Code Section 2.56.220.D.3; 15.02.040.K.11.e.

Council Options

Under Code Section 15.02.040.K.11.e, Council may uphold, modify or reverse the decisions of the Historic Preservation Commission. These options include:

1. Uphold the decisions of the Historic Preservation Commission, finding that Commission's decisions were not plainly in error in denying the Certificate of Appropriateness and Certificate of Hardship requests.
2. Modify the decisions of the Historic Preservation Commission, finding that the certificate of appropriateness and/or certificate of hardship requests would meet the review criteria under conditions to be specified.
3. Reverse the decisions of the Historic Preservation Commission, finding that the Commission's decisions were plainly erroneous and that the Certificate of Appropriateness or Certificate of Hardship requests comply with the review criteria, and order issuance of said Certificate.
4. The City Council may also remand the appeal to the Historic Preservation Commission with directions for the Commission's further consideration of the matter.

ATTACHMENTS:

1. Resolution
 - A. Resolution Upholding the Commission's Decision
2. Appeal Hearing Procedure
3. Historic Preservation Commission communication of July 6, 2023 with attachments
4. City Council Communication for September 5, 2023, Appeal Hearing, with attachments
5. Minutes of the September 5, 2023, Appeal Hearing
6. Historic Preservation Commission communication of November 2, 2023, with attachments
7. Minutes of the November 2, 2023, Historic Preservation Commission Hearing

CITY COUNCIL COMMUNICATION



8. November 9, 2023, Certificate of Appropriateness Denial Letter
9. Appeal Letter dated November 9, 2023