



Memorandum of Planning Commissioner Kirk Smith regarding appeal of September 5, 2023 Decision

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Planning Commission Member Kirk Smith's Memorandum Regarding

Paul and Andria Coggiola Appeal of September 5, 2023 Decision

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The Planning Commission on September 5, 2023, voted 3 to 2 to allow the applicants to use fiberglass windows with one commissioner voting to permit vinyl windows, as petitioners Paul and Andrea Coggiola requested. And I voted to deny the applicants' request to change the windows altogether. As a review of the video recording of those proceedings confirm, this appeal raises the same issues presented to the Planning Commission on each of three occasions and my response to those issues and the reasons for my vote are explained below.

1. It is a basic maxim of contested proceedings that the moving party has the burden of persuasion, and the applicants did not come close to meeting it. [The Secretary of the Interior's Standards for the Treatment of Historic Properties With Guidelines For Preserving](#), [often called The Interior Secretary's Guidelines] have several steps for property owners to follow and the first is to determine whether what is present now can be repaired and maintained. If any portion of the property, such as the windows, cannot be repaired or maintained because of things such as extensive wood dry rot, then homeowner can move to a further stage, what replacement materials can be used and whether the replacement looks like the original. But the applicants did not do that, although they were given three different hearings at which this could have been shown.

Instead, the applicants' position expressed several times that they did not want to maintain the present windows, they viewed vinyl windows as virtually maintenance free. But no evidence was ever presented to show that the present windows could not be used. Furthermore, there was no showing that innovative answers to increased isolation, widely described as less expensive and easy to install than vinyl windows, were considered. Having failed to meet their burden of proof, despite three opportunities, their application must be denied, I asserted.

2. Applicants' argument that this building was only 29 years old when the city adopted [Ordinance 1280](#) is of no moment since the standard of consideration is whether it is historic as of now, not 1981. And this house, as petitioners note, is part of what was called the 1941 Cedar Vista Subdivision and is of a Ranch home style that was popular in the 1950's. It matters not that any homeowner does not like the esthetics of this style or deem it attractive, those are not part of the Ordinance or the Guidelines. It matters not that these homes do not look anything like the Blair Combella, or the Judge Thomas homes on Cedar Ravine or like any other home from that mid-1800's>

Homes in an historic district that are 70 or more years are historic, including the 1950's Ranch style. The argument that other homes of that style in the area have had vinyl windows, if true, actually supports keeping the original windows in this Cedar Ravine home since it would necessarily be more historic with more original features. Again, petitioners did not come close to their burden of persuasion.

3. Petitioners raised the unverified assertion that “50% of the houses” in that area have vinal windows. But regardless of whether the figure is 5% or 55%, whatever it might be, there is nothing in the record to explain why any home in that historic district has vinal windows. If the city ordinance was violated in any of those cases it would be like the large number of people who violate posted speed limits and coast past stop signs, ignoring those laws does not mean when should get rid of them. And nothing presented by the Petitioners supports getting rid of the city’s ordinance regarding historic districts.
4. The problem with applicants arguing that the August 28th Council/Commission joint meeting offered the conclusion that reasonable and appropriate standards should apply is that this meeting was for many like a Rorschach test, people could see what they want to see but nobody could reasonably conclude that the present structure could be replaced with a personal subjective case by case evaluation in place of the standards mandated by Ordinance 1280. That the rules should be applied in an amorphous reasonable and appropriate way does not mean to ignore the present standards. The petitioners did not meet them, and their application should be denied, and the Commission’s decision of September 5, 2023, should be reversed and vacated.

WHEREFORE, based on reasons including those described above, my position remains that commission’s decision should be vacated and the petitioners’ application for vinal windows should be denied.

Submitted by,

/s/

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