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**To:** Board of Appeals/ Tulsa City Clerk

**From:** Joel and Cassia Carr (the "Carrs")

**Address in question:** 308 W. King St. Tulsa, OK 74105 ("Property")

**Re: *Appeal of denial of installed aluminum windows at the Property***

Explanation:

The denial of installed aluminum windows at the Property should be overturned because the original historic window material is unknown, there is no physical or pictorial evidence of the original windows, and the windows installed at the Property are consistent with the architectural style of the home.

The Carrs purchased the Property from their parents in 2022. Their grandfather owned the Property since the 1990s. The house was covered in several layers of vinyl from different decades and appears to have been added onto several times. There was no remnant of 1917 when the home was supposedly built. Piers underneath the house and various foundational evidence suggests that the home was moved to its current location in the 1950s or 60s.

The Carrs were unaware of the necessary historic permit but contacted the Historic Preservation Commission ("Commission") when neighbors informed them of the requirement. By this time, however, all of the vinyl and metal windows had been replaced with aluminum single hung.

The window guidelines for Brady Heights require that when replacing windows owners must, "match the historic window material" and "use pictorial and physical evidence" for guidance (Section A.4.5.1 and A.4.2). The only available pictures of the Property are from 2012 and 2016 – both of which show a mix of vinyl and aluminum windows.

In the absence of pictorial evidence of the original windows, an owner must "match the architectural style of the house" (A.4.3). This is a subjective requirement which is open to interpretation from different designers – but does not require the windows to be wood. This home was a mess and mix of several styles. Joel Carr is a general contractor and has attempted to bring congruency to this home. He chose a mix of ranch and craftsman elements. The Commission agreed with this choice. Aluminum windows match the ranch/craftsman style of the home. At the Commission's suggestion, windowsills have been added to create detail and depth.

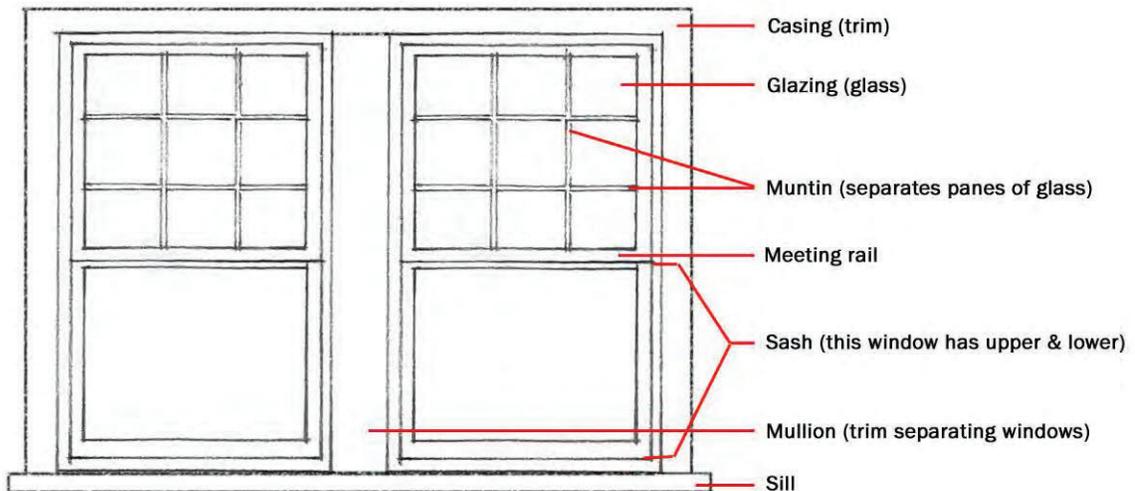
The Carrs have been cooperative and responsive during this process and the Commission has been patient. Over sixteen (16) items came before the Commission for review on this Property over a span of three meetings, and the Carrs have complied with all requests except this. Replacing the installed windows would cost the Carrs over \$15,000 and months of delay to the renovation. The guidelines as written do not support this costly requirement.

Thank you,

## **SECTION A – GUIDELINES FOR REHABILITATION OF EXISTING STRUCTURES**

### **A.4 Windows and Window Trim**

- A.4.1 Retain and preserve original historic windows, including glazing, trim, muntins, and character-defining details.
- A.4.2 Do not remove, cover, or move existing window openings.
- A.4.3 To return the home to its original historic appearance, remove non-historic windows and trim. When selecting replacements, use physical or pictorial evidence. If no evidence exists, select windows which are consistent with the architectural style of your home.
- A.4.4 To gain thermal efficiency, storm windows which maintain the appearance and allow maximum visibility of the original historic windows may be installed. Unfinished and clear-finished metals are not allowed. (Storm windows can be staff approved.)
- A.4.5 If replacement of deteriorated windows is necessary, match the original historic windows in sash design, size, shape, muntin pattern, location, glazing area, and tint. Insulated glass (double-pane) windows may be used. Exterior muntins are required on simulated-divided-light windows.
  - .1 Brady Heights – Match the original historic window material.
  - .2 Elmwood – Match the original historic window material
- A.4.6 If replacement of deteriorated trim is necessary, match the appearance, size, shape, pattern, texture, and detailing of the original historic trim.
- A.4.7 When adding new window openings, maintain the proportions of the façade. Match the size, design, and pattern of the existing windows. Align the headers of new windows with the existing windows.
- A.4.8 Exterior security bars and grilles are discouraged.

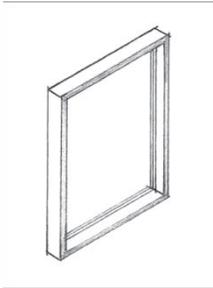


A.4.1 Parts of the window. With nine panes of glass in the upper sash and one pane in the lower sash, these windows are referred to as “nine over one”.

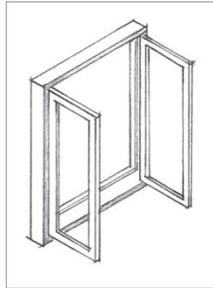
## SECTION A – GUIDELINES FOR REHABILITATION OF EXISTING STRUCTURES

### A.4 Windows and Window Trim

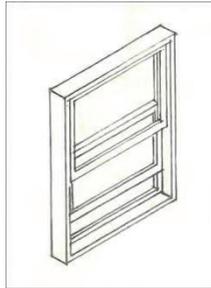
#### Types of Window Designs



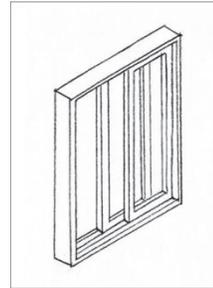
Fixed



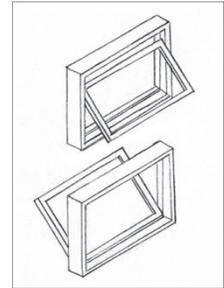
Casement



Double Hung



Sliding



Awning & Hopper



A.4.5 Inappropriate resizing (left window)



A.4.5 Exterior muntins (left)—“simulated divided lights” or SDLs—create a profile that more closely resembles historic windows than grids between the panes of glass (right). True divided light windows are available, and their installation is encouraged.

#### Be Green: Restore Your Original Windows!

Restoration of your original windows not only costs less than replacing them, but it's also much more environmentally friendly.

If you're concerned about sustainability, don't throw your old-growth wood windows in the landfill before you explore restoration. Restoring your original windows not only maintains the architectural integrity and the curb appeal of your historic home, it's also **the best choice for the environment.**

Did you know that properly repaired historic windows have an R-value\* that's nearly indistinguishable from high-end replacement windows? Repair your original windows, install proper weatherstripping, add a good storm window system, and watch your utility bills go down!

Contact Tulsa Preservation Commission Staff for information on how to make your historic windows look and function as good as new. We offer inexpensive, hands-on Wooden Window Repair Workshops for DIY homeowners and contractors about once a year, and we can also refer you to other sources to help you treat your windows right!

\*R-value is the measure of resistance to heat gain/loss



Existing pictures from 2012, 2017, and 2022 show a mix of windows styles and types. All windows in pictures appear to be aluminum.



2017 Picture



2012 Picture





Reasons to reconsider new window currently installed:

A) Thanks to the committee suggestion, I Have researched and looked into era appropriate window trim for a house in the heights. Please see the picture of the adjusted trim. All the windows and doors will be trimmed similarly. This changed the look of the window to tend much more traditional.

B) There are newer renovations and multiple houses in the Heights neighborhood that have aluminum windows. Please see the following pages with examples of these houses. One in particular appears to be the exact same window only in white not black.

C). The house appears to be moved to this lot and appears to not be built in 1917 as the county records state. We assume this because of several findings: - All the lumber is nominal lumber and generally that was not used before WW2. - The sheathing (see pics) is nominal not traditional. - The pitch of the roof does not match design criteria for a house built in 1917. A guess would be the house was located on that lot sometime mid century judging by the construction methods.

D). Windows that were in the house when we purchased it did not match. The house had every type of window on it...mainly vinyl and aluminum.

E). There was a concern about the shadow line of this window(please see pics). Measuring a neighbors house with original trim and wood windows. They have 3" from the face of the bottom window to the outside trim. With my current installed trim, the distance from the bottom window seal to the exterior trim is 2.5".

F) There is uncertainty on what windows were originally on the house. We could assume it would either be aluminum or wood windows. We believe the aluminum window selected will add to the design and neighborhood appearance and not deter from the historical value of the neighborhood.





House on Cheyenne with Metal Aluminum windows



House on Cheyenne with Metal Aluminum windows



House on Cheyenne with Metal Aluminum windows no muntins.

New House on Cheyenne with Metal Aluminum black windows



House on Cheyenne with Metal Aluminum windows



House at 657 N Cheyenne  
with Metal Aluminum  
windows

**IN THE DISTRICT COURT IN AND FOR TULSA COUNTY  
STATE OF OKLAHOMA**

**DISTRICT COURT  
FILED**

JAN 24 2022

DON NEWBERRY, Court Clerk  
STATE OF OKLA. TULSA COUNTY

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|---|---|
| DIANA W. CAPEHART, as Trustee of the )<br>Robert J. and Diana W. Capehart Family Trust )<br>dated July 28, 2009, )<br>)<br>Plaintiff, )<br>)<br>v. )<br>)<br>TULSA CITY BOARD OF ADJUSTMENT, )<br>)<br>Defendant. ) | Case No. CV-2019-1345<br><br>Civil Docket B |
|---|---|

**ORDER REVERSING THE BOARD OF ADJUSTMENT DECISION**

Plaintiff Diana W. Capehart, as Trustee of the Robert J. and Diana W. Capehart Family Trust dated July 28, 2009, owns a house in a Tulsa Historic Preservation District. The Plaintiff replaced the original clay tile roof with an asphalt shingle roof without first securing a required permit from the Tulsa Preservation Commission ("TPC"). However, after the new roof was installed, the Plaintiff then applied to the TPC for permit. TPC denied the application. The Plaintiff then appealed to the Tulsa Board of Adjustment ("Board"), which affirmed the TPC's decision. The Plaintiff now seeks relief from this Court following a November 2021, non-jury trial. *11 O.S. § 44-110.*

The Court recognizes that members of TPC (as well as the Board) play an important role as the guardian of historic preservation, but, based on this record, the Court reverses TPC and the Board's decision. Below are findings of fact and conclusions of law.

OFFICE OF THE  
ATTORNEY GENERAL

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## **FINDINGS OF FACT<sup>1</sup>**

1. Dr. Capehart, an 84-year-old retired surgeon, served as the Chairman of the Department of Family Practice for the University of Oklahoma Tulsa Medical College. He retired in 1988 from his medical career after losing his thumb in a chainsaw accident. [Transcript 41:18; 43:5-6, 9-13, 19-20; 45:8-10; 46:17-24]. Ms. Capehart is a 71-year-old retired nurse. [Transcript 87:10; 88:12-13, 15-16; 89:1-16; 90:7-11].

2. The property at issue in this case is a 10,000-square foot house at 1110 E. 18<sup>th</sup> Street in Tulsa County ("House"), which is the site of the historic McGraw Mansion/Capehart House. [Joint Ex. 1, BOA\_0003, 0007]. Built around 1916, the house is in the Maple Ridge Neighborhood. [Transcript 53:7-11, 17].

3. Dr. Capehart has lived in the House since 1974 when he bought it from Joe McGraw. Ms. Capehart moved into the House in 1984 following her marriage to Dr. Capehart. [Transcript 49:15-20; 50:1-5, 9-12, 20-22; 90:23-25]. Only two families have lived in the home – four generations of the McGraw family and three generations of the Capehart family. [Transcript 50:13-19].

4. Since 1974, the Capeharts have been loyal stewards of the House, preserving the interior and exterior in near original and historic form. They have preserved all of the original wood paneling and restored all of the plaster

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<sup>1</sup> The credibility of witnesses and the effect of and weight given to their testimony, as well as the resolution of conflicting or inconsistent testimony, are questions of fact to be determined by the trier. *Sides v. John Cordes, Inc.*, 1999 OK 36, ¶ 16, 981 P.2d 301, 307.

walls and ceilings in the home and renovated the kitchen. In addition, they have also had all asbestos removed and replaced the plumbing with copper pipes. *[Transcript 53:22-25; 54:8-12; 55:5-14]*.

5. The House has seven roof areas, comprised of six flat roofs and a pitched roof. The pitched roof covers approximately 40% of the House. *[Transcript 56:15; 57:3-16; 135:17-19; Joint Ex. 8 at p. 002]*.

6. In 2019, the House had significant interior water damage from multiple roof leaks. *[Transcript 58:18-59:1]*. The Capeharts anticipated that all of the seven roof areas would need repair or replacement, would resulting in a significant cost. *[Transcript 98:3-15]*. Due to limited resources, the Capeharts had budget concerns regarding anticipated work on the various roofs. *[Transcript 95:10-22]*.

7. Dr. Capehart selected Mr. Chiconas as the contractor. *[Transcript 60:2-25]*. The contractor, Mr. Chiconas, advised that porte-cochere flat roof was significantly damaged and that the clay tile roof had extensive failures. Both needed to be replaced. *[Transcript 62:10-12, 19; 64:7-17; 96:10-11]*.<sup>2</sup>

8. In summer of 2019, Mr. Chiconas informed the Capehearts of their options regarding replacement of the pitched roof: (1) Clay tile; (2) Composite tile made from asphalt, or (3) Composition asphalt shingles. *[Transcript 64:19-25; 65:11-18]*. The estimated cost for the first two options was more than \$100,000 each. The estimated cost of using composite asphalt shingles as a

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<sup>2</sup> In spring of 2019, Mr. Chiconas replaced the porte-cochere flat roof which cost over \$30,000. *[Transcript 96:15-25]*. In 2020, the Capeharts replaced the remaining five flat roofs, which cost over \$55,000. *[Transcript 98:21-25]*.

replacement was \$35,000. [Transcript 65:4-14; 97:6-11]. After examining other houses in the neighborhood, the Capehearts selected the composite asphalt shingles, in part, for financial reasons. [Transcript 65:18-25; 66:1-5].<sup>34</sup>

9. Records show that more than 79% of the homes in the Maple Ridge Addition have shingle roofs. [Transcript 68:22-23; Joint Ex. 4.11].

10. The Maple Ridge neighborhood was constructed during the Eclectic Period (1880-1940) -- a period where architects and builders were interested in reviving architectural styles from the past. [Transcript 130:9-16]. As a result, the Maple Ridge neighborhood is eclectic, boasting a wide range of architectural styles. It is common that individual houses have features of more than one architectural style. [Transcript 130:17-25, 131:1-20].

11. The House is predominately the style of Colonial Revival architecture, albeit eclectic. [Transcript 143:11-12].<sup>5</sup> Colonial Revival architecture used diverse types of roof coverings, including asphalt shingles, slate tile, clay tile, and wood shake. [Transcript 146:9-15]. An asphalt shingle roof is consistent with the architectural style of Colonial Revival. [Transcript 146:16-19]. Other exterior elements of the Capehart House that suggest

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<sup>3</sup>The Capehearts surveyed the various roofs in the neighborhood to see if the composite asphalt shingle on their house would blend in well with the other houses. [Transcript 66:14-17, 22-23]. The house directly east of the Capehart House, known as the McGuire Home, had its original tile roof replaced with composition shingle in 2012. The house to the north, known as the Tandy Home, also had composition shingles. [Transcript 67:3-22; 68:2-10]. They chose what they believed was an appropriate color for their home -- a red-tinted composition shingle that was similar in color to the orange clay tile roof. [Transcript 69:14-20; Joint Ex. 6 at p. 4; Joint Ex. 8 at pp. 003-004].

<sup>4</sup> The record shows that the replacement of the pitched roof was primarily based on the Capehearts' need to prevent further interior and structural damage caused by water leaks from the original roof and a concern about finances.

<sup>5</sup> The experts did not agree on the predominant architectural style of the house. Both agreed that the house was "eclectic" but Dr. Roy Porter, the Defendant's expert, testified the house was more Mission style. Dr. Porter also testified that the house has "elements" of Colonial or Classical Revival. *Id.* at 210:9-13. TPC Commissioner Tom Neal, a former architectural historian, suggested the house was Dutch Colonial and that is why clay tile had to be preserved. The Court, however, found the Plaintiff's expert more credible than that the Defendant's expert.

Colonial Revival architecture include the home's bilateral symmetry, a gabled roof, brick façade, limestone quoins, closed eaves with soffits, Palladian dormer, entablature, frieze, cornices, and modillions. Interior elements of the Capehart House consistent with Colonial Revival architecture include extensive wood paneling and classical detailing around many of the doorways, and doors with full entablatures, pediments, and urns. *[Transcript 136:3, 6, 16-17, 22; 140:2-8; 143:13-25; 145:16-25-146:1-4; Joint Ex. 8 at p. 005]*. In addition, the Maple Ridge neighborhood

12. The change of the roof covering from clay tile to asphalt shingle has not impacted the status of the House as a contributing resource to the Maple Ridge Historic District on the National Register. *[Transcript 164:22-165:8; SHPO Opinion, Joint Ex. 1 at BOA\_0054]*.

13. In 1993, nineteen years after Dr. Capehart bought the house, the City of Tulsa adopted the Historic Preservation Zoning Overlay District of North Maple Ridge ("HP District"). *[Joint Ex. 8 at pp. 007, 013]*. The HP District included the House, subjecting the property to the applicable regulations of *Sections 20.020 and 70.070 of the Tulsa Zoning Code*. *[Joint Ex. 3 at p. 0057]*.<sup>6</sup> One regulation requires a homeowner to get a permit from the Tulsa

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<sup>6</sup>In 1983, the Maple Ridge neighborhood was nominated for the National Register of Historic Places, which is the official list of the Nation's historic places worthy of preservation and provides formal recognition of a property's historical, architectural, or archeological significance. *[Transcript 129:12-18; Joint Ex. 8 at p. 006]*. The placement of a property on the National Register is honorary and does not impose any regulations or provide any other type of protection for a property. *[Transcript 212:20-25]*.

Preservation Commission (“TPC”) for certain exterior work to a home within the HP District. [Code Section 70.070-A, Joint Ex. 3 at p. 276].<sup>7</sup>

14. The Capeharts did not obtain a permit from the TPC before replacing the pitched roof. [Code Section 70.070-B, Joint Ex. 3 at p. 276]. They testified they neither knew that the House was in an HP District nor that they needed a permit from TPC. [Transcript 70:4-7; 100:4-22].<sup>8</sup> The Capehearts -- once they were told -- (albeit after the roof was installed) - applied to the TPC for a permit. [Transcript 100:23-101:14].

15. On July 11, 2019, the TPC rejected the Capeharts’ HP permit application. During the TPC’s deliberation, Commissioner Reeds made a motion to approve the permit “given the State Historic Preservation Officer’s stance on the alteration” i.e., that the alteration did not affect the Capehart House’s status as a contributing resource to the historic district. The motion to approve failed for lack of a second. [TPC Minutes, Joint Ex. 3 at BOA\_0029].

16. Following the failed motion to approve, Commissioner McKee made a motion to deny the application. The motion to deny also failed for lack of a majority, with three commissioners abstaining from the vote. [TPC Minutes, Joint Ex. 3 at BOA\_0029].

17. After two failed motions, the TPC considered the fact that if it took no action on the request, the permit would be deemed approved under the

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<sup>7</sup> The following work is exempt from the HP permit process: “(1) Ordinary maintenance and repair including the removal, installation, or replacement of guttering; **the removal or replacement of roof covering with like material.** [Code Section 70.070-B, Joint Ex. 3 at p. 276].

<sup>8</sup> Dr. Porter testified that, beginning in 2015, he mailed postcards to all residences and owners of property in the Historical Preservation District. Such postcards, the Defendant argues, serves as sufficient notice to the owners of the requirements for the historic preservation permits.

Code. Commissioner Townsend, one of the three members who had previously abstained from voting, then made another motion to deny the permit. That motion was approved, with two of the three previously abstaining commissioners now “unabstaining” and casting their vote in support of the motion to deny the HP permit. *[TPC Minutes, Joint Ex. 3 at BOA\_0030]*. There was no mention or discussion of the “architectural style” of the House in the minutes of the TPC decision or in the report given to the BOA. *Ex. 3 at BOA\_0030, 0034.*

18. The Capeharts appealed the denial of the HP permit by the TPC to the City of Tulsa Board of Adjustment (“BOA”) in Case No. BOA-22714. *[Joint Ex. 3 at BOA\_0007]*. On October 22, 2019, the BOA affirmed the decision of the TPC, denying the HP permit requested by the Capeharts. *[Joint Ex. 3 at BOA\_0076]*.

19. Section A.5.6 of the Guidelines expressly allows a change of material of a roof covering and provides that “When proposing to change the materials of your roof covering, replacement materials that maintain the character of the structure and the size, shape, pattern, texture, and directional orientation of the original historic roof covering will be considered on a case-by-case basis.” Dr. Roy Porter, the City’s expert witness and the staff member for the TPC, in his analysis of Section A.5.6. of the Guidelines, admitted that “it’s

an implication that the replacement [of a roof covering] would match.”

[*Transcript 296:1-16*].<sup>9</sup>

20. Dr. Porter, a TPC staff member for six years, testified that he has seen some 20 applications for HP permits to change the material of roof coverings. Most applications were approved by the TPC. [*Transcript 264:19-265:1*].

21. The plain language of the Guidelines does not say that a property owner cannot alter the appearance of a historic structure. [*Transcript 276:23-277:2*]. In addition, the Guidelines do not include definitions, glossary or appendix of terms and it appears some terminology is routinely mixed. [*Transcript 267:8-17; 271:4-12*]. The Guidelines also do not inform homeowners on how to determine/classify the architectural style/period of their home. [*Transcript 267:18-24*].

### **CONCLUSIONS OF LAW**

1. Appeals from decisions of the Tulsa Board of Adjustment are tried *de novo* in the district court. 11 O.S. § 44-110(D). The district court may reverse or affirm, wholly or partly, or modify the decision brought up for review. 11 O.S. § 44-110(F). The Court, “has **all the powers** of the administrative official from whom the appeal is taken.” Code Section 70.140-G (*emphasis added*) “The decision being appealed may be **reversed or wholly or partly modified** only if the Board [now this

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<sup>9</sup> Dr. Porter testimony illustrated the subjectivity and ambiguity of how the guidelines are interpreted by TPC. He testified that Guideline A -5.6 “directs us to maintain the character and then to consider these criteria *which would compel us* towards a match.”

Court] finds that the ... administrative official erred.” *Code Section 70.140-H (emphasis added)*. The Oklahoma Supreme Court “has generally characterized proceedings in district court in appeals from Boards of Adjustment zoning matters as **being equitable in nature...**” *Triangle Fraternity v. City of Norman ex rel. Norman Bd. of Adjustment*, 2002 OK 80 at ¶11, 63 P.3d 1, 5.

2. “There must be a complete examination of all issues, both of fact and law. The cause stands as if it has never been resolved before. [The] the burden of proof does not shift but rests on the same party as in the lower tribunal. [The Plaintiff] had the burden to prove whether the elements necessary for a variance had been met. *Vinson v. Medley*, 1987 OK 41, 737 P.2d 932, 938.
3. Early Oklahoma zoning jurisprudence recognized a presumption of correctness to the decision of a Board of Adjustment. However, the Oklahoma Supreme Court has clarified that such presumption of correctness attaches to the Board of Adjustment’s decision **only if** that decision is affirmed by this Court in its *de novo* review. “The presumption in favor of the correctness of the determination arrived at by a board of adjustment on an application for a variance from a zoning ordinance, **when such determination has been affirmed by the district court on appeal**, should be given great weight and the discretion of the board of adjustment, so affirmed by the district court, should not be interfered with unless arbitrary and clearly erroneous.” *Bailey v. Uhls*, 1972 OK

147, 503 P.2d 877, 880 (emphasis added). See also, *Banks v. City of Bethany*, 1975 OK 128, 541, P.2d 178; *Bankoff*, 875 P.2d at 1143 (“We agree there is a presumption of correctness that attaches to the Board’s decision which, *if affirmed*, will be accorded ‘great weight’ and not disturbed on appeal to this Court unless it is ‘clearly arbitrary or erroneous.’ However, as stated in *Vinson v. Medley*, where the Board’s decision was *reversed*, the presumption that originally attached to its validity is to be considered as having been overcome by the adverse ruling of the trial court.”) (*Emphasis in original*).

4. “Zoning ordinances, being in *derogation of the common-law right to use private property* so as to realize its highest utility, *should not be extended by implication* to cases not clearly within their scope and purpose.” *City of Tulsa v. Mizel*, 1953 OK 353, 265 P.2d 496, 498 (quoting *Modern Builders v. Building Inspector of City of Tulsa*, 197 Okl. 80, 168 P.2d 883) (*emphasis added*). Moreover, zoning ordinances “will be strictly construed and any ambiguity or uncertainty decided in favor of property owners.” *Id.* (citing *Kubby v. Hammond*, 68 Ariz. 17, 198 P.2d 134) (*emphasis added*).
5. In this case, the plain language of the Guidelines does not **require** the homeowner match the original roof covering when replacing the roof, except in the Elmwood District, which is not applicable in this case.
6. Instead, pursuant to **Section 70.070-F of the Code**, TPC “must use the adopted design guidelines to evaluate the proposed work and must, **to**

**the greatest extent possible**, strive to affect a **fair balance** between

the purposes and intent of HP district regulations and **the desires and**

**need of the property owner**. As part of that analysis, the following

factors must be considered: (1) The **degree** to which the proposed work is consistent with the applicable design guidelines; (2) The **degree** to which the proposed work would destroy or alter all or part of the historic resource; (3) The **degree** to which the proposed work would serve to isolate the historic resource from its surroundings, or introduce visual elements that are out of character with the historic resource and its setting, or that would adversely affect the physical integrity of the resource; (4) The **degree** to which the proposed work is compatible with the **significant** characteristics of the historic resource; and (5) The purposes and intent of the HP district regulations<sup>10</sup> and this zoning code.

7. In applying these the first factor, TPC has established Unified Design Guidelines for Residential Structures (the "Guidelines") to assist in conducting the balancing test set out in the Code. Degree is not defined in the Code or Guidelines. The word is defined as "the amount, level or extent to which something happens or is present." Below are the Guidelines:

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<sup>10</sup> Pursuant to Section 20.020-A of the Code, the purposes of the HP districts are to: (1) Promote the educational, cultural, economic and general welfare of the public through the conservation, preservation, protection and regulation of historic resources within the City of Tulsa; (2) Safeguard the cultural, social, political and architectural heritage of the city by conserving, preserving and regulating historic preservation districts; (3) Conserve, preserve and enhance the environmental quality and economic value of historic preservation districts; (4) Strengthen the city's economic base by promotion of conservation and reuse of the city's historic resources; and (5) Promote the development of the community in accordance with the comprehensive plan and historic preservation plan.

8. Section A.1 of the Guidelines are general requirements for all exterior work in an HP district and include the following:

*A.1.1. Retain and preserve the existing historic architectural elements of your home.*

*A.1.2. If replacement of historic architectural elements is necessary, match the size, shape, pattern, texture, and directional orientation of the original historic elements.*

*A.1.3. Ensure that work is consistent with the architectural style and period details of your home.*

*A.1.4. Return the structure to its original historic appearance using physical or pictorial evidence, rather than conjectural designs.*

9. Section A.5 of the Guidelines are recommendations for roofs:

*A.5.1. Retain and preserve the original historic roof form (hipped, gabled, etc.) and pitch.*

*A.5.2. Do not remove character-defining architectural features of your roof, including, but not limited to, dormers, chimneys, cupolas, eaves, soffits, fascia boards, and decorative details, such as eave brackets, exposed rafter tails, or corbels.*

*A.5.3. If replacement of deteriorated architectural roof features is necessary, use materials that maintain the character of the structure and the size, shape, pattern, texture, dimensions, and directional orientation of the original historic roof features.*

*.1 Elmwood – Match the original historic roof material.*

*A.5.4. To return the home to its original historic appearance, use physical or pictorial evidence. If no evidence exists, select architectural roof features which are consistent with the architectural style of your home.*

*A.5.5. Replacement of existing roof covering—wood shingles, asphalt shingles, clay tile, etc.—with the same material does not require HP Permit review (for example, replacing an asphalt-shingled roof with asphalt shingles). Architectural shingles are encouraged.*

*A.5.6. When proposing to change the materials of your roof covering, replacement materials that maintain the character of the structure*

*and the size, shape, pattern, texture, and directional orientation of the original historic roof covering will be considered on a case-by-case basis.*

*A.5.7. When replacing your roof covering, replace an entire roof section if it is visible from the street.*

12. TPC and, in turn, the Board are required to generate an adequate record that allows a reviewing court to examine whether they properly followed *Section 70.070-F of the Code*. Failure to do so is problematic.
13. The replacement of the clay tile covering on the pitched roof with asphalt shingle (“roof replacement”) is consistent, to a significant degree, with the applicable Guidelines. First, the Capehearts have retained/preserved the House’s existing historic architectural element as listed in the photograph. *Section A.1.1. of the Guidelines*. Second, replacement of the clay tile roof was necessary. No evidence in the record refutes that. The asphalt shingles are generally the same scale, same natural pattern, and same directional orientation. *Section A.1.2. of the Guidelines*. Third, a key factor in this analysis is that the replacement roof consists of materials consistent with the predominately Colonial Revival style and /or the Eclectic style of the Capehart House. *Section A.1.3. of the Guidelines*. Fourth, the historic gabled form and pitch of the roof was retained. *Section A.5.1. of the Guidelines*. Fifth, the Capehearts did not remove dormers, chimneys, eaves, soffits, fascia boards, decorative details or any other similar character defining architectural features of the pitched roof. *Section A.5.2. of the Guidelines*. Sixth, as

noted earlier, Section A.5.3 does not require a “match” of the original historic roof features. The materials used, while not the original clay tile, maintained the character of the structure of the predominantly Colonial Revival or eclectic style. Lastly, the Capehearts replaced the entire pitched roof section visible from the street. *Section A.5.7. of the Guidelines*

13. The Court also finds the following: (1) The replacement roof altered the appearance of the House but did not, to a significant degree, alter the historic resource. In addition, the replacement roof preserved the House from further interior and structural damage caused by water intrusion – an important variable in this review. Section 70.070-F.2.; (2) The replacement roof did not isolate the Capehart House from its surrounding. The change in the roof did not introduce any visual elements out of character with the House or out of character within the Maple Ridge neighborhood. Part of this finding stems from the “eclectic” styles of the neighborhood, including houses that that mix and match architectural styles. As noted, nearly 80 percent of the houses in the HP District, including many near-by, have shingle roofs. Section 70.070-F.3; (3) The Court finds that the replacement roof is compatible with the other *significant characteristics* of the House. Section 70.070-F.4; (4) Roofs are a prominent feature of a house, but the Court finds that it does not impact, to any significant degree, the purposes and intent of the HP district regulations and of the Tulsa Zoning Code. Changing the roof on

the Capeheart House does not significantly alter the comprehensive plan.  
Section 70.070-F.5.

15. The Capehearts failed to apply for the permit prior to replacing the roof, which obviously troubled TPC members. However, TPC opined that, if the Capehearts had applied beforehand, TPC would have found a way to help the Capehearts retain and/or replace the original clay tile roof. Dr. Porter echoed the same opinion.<sup>11</sup> Yet, no evidence exists in the record that anyone at TPC conducted any examination of the original roof, or of how the roof contributed to the leaks. TPC members are well-educated and have general specialized knowledge but such opinions are speculative, absent evidence they inspected or investigated the issues with the roof.
16. TPC was required, to the greatest extent possible, to strive to achieve a fair balance between the purposes and intent of the HP regulations and the Capehearts' needs and desires. The record strongly suggests that TPC's decision was driven by two factors: (1) The Capehearts did not request a permit before replacing the roof; (2) The Capehearts' failed to match the clay tile in the original roof.<sup>12</sup> At trial, the Defendant's expert repeatedly referred to the failure to match the original roof when

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<sup>11</sup> No mention was made by the members of the Capehearts' limited financial resources or how that should factor into their decision.

<sup>12</sup>The record also suggests that the TPC decision was motivated, in large part, about what homeowners with roofs of clay tile will do in the future. One TPC Commissioner described the issue as an "existential threat to both historic preservation districts and to the Commission itself." BOA0021. That same Commissioner also commented that "if every tile roof in the neighborhood were replaced with shingles, the change would be significant." BOA30. The decision in this case has no bearing on what might happen in the future as any decision must take place on a case-by-case basis.

questioned.<sup>13</sup> As noted, neither the Code nor the Guidelines require a homeowner to “match” the original roof.<sup>14</sup> Meanwhile, the record does not show that TPC gave any consideration to the “architectural style” of the House in determine whether a roof other than clay tile would be appropriate. At trial, the experts placed great weight on the architectural style of the House. In addition, the record also does not show that TPC or, in turn, the Board gave any *meaningful* consideration to the Capehearts’ needs/desires.

15. In sum, allowing the Capehearts to retain their asphalt shingle roof means one less house in the HP District has a clay tile roof and does, to an extent, alter the appearance of their house. That fact was of great concern to TPC, although nearly 80 percent of the houses in the district have a roof made of shingles. Yet, this Court finds that the Capehearts presented sufficient evidence that TPC erred in denying the permit. The evidence *on the record* does not show that TPC strived, **to the greatest extent possible**, to affect a *fair balance* between the purposes and intent of the HP district regulations and the needs and desires of the Capehearts. TPC also improperly extended the Guidelines beyond their plain language and scope by implication. The bottom-line is that

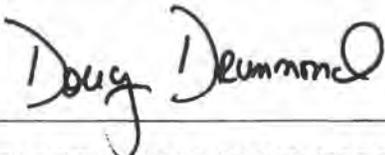
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<sup>13</sup> When asked what roof covering is appropriate for the Capeheart House, Dr. Porter testified “the tile. I mean it was the original material. It’s a material associated with the Mission style as well.” Transcript, p. 210; Dr. Porter also testified that, “if replacement becomes necessary, you always replace to match...So a roof clad in tile would be replaced with a roof clad in tile.” Id. At 226. He also linked his conclusions to his opinion that the House had aspects of Mission Style architecture. In his presentation to the TPC, Dr. Porter wrote: “A roof covered with shingles does not match a roof covered with tiles.”

<sup>14</sup>If TPC desires not to have any clay tile roofs replaced with any other type of roofing, it has the option of amending its guidelines. This is what it did with Elmwood.

approving the permit [*even though it changes the original roof covering*] does not *significantly* impact or hinder the purposes or intent of the HP regulations, especially when fairly balanced against the homeowners' needs and as of an equitable nature. The decision by the Board, in turn, also is in error.

16. Therefore, the Court respectfully **REVERSES** the Board's decision. The Court **GRANTS** the HP permit requested by the Capehearts for using the asphalt shingles to replace the clay tile pitched roof of the House.

 1/24/22  

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**JUDGE DOUG DRUMMOND**