



MEMORANDUM

To: The Honorable Mayor and City Commission
From: Carrie Richter, Deputy City Attorney
Laura Terway, Community Development Director
Christina Robertson-Gardiner, AICP, Senior Planner
Re: Appeal 16-01: New Home in the Canemah National Register District.
(Planning file HR 16-06)
Date: October 23, 2016

STAFF RECOMMENDATION:

Staff recommends the City Commission should reject and not consider the redesigned proposal (as it constitutes new evidence), deny the Appeal (AP 16-01) and uphold the Historic Review Board's decision to conditionally approve the applicant's request to construct a residence in the Canemah National Register District.

Staff does not recommend the City Commission allow the applicant's request to remand the application back to the Historic Review Board to further review the appellant's request to modify Condition of Approval # 9 to allow a reduced breezeway connecting the house to the garage onsite. The site owner/appellant was unable to attend the September 27, 2016 Historic Review Board meeting due to a family emergency and was not able to alert staff and request a continuance. They have indicated that based on the HRB deliberation and findings to deny the proposed breezeway, they would have requested a continuance to allow the HRB to consider the modification that they have raised for the first time on appeal.

Additionally, Staff is wary of creating a precedent that allows applicants to appeal an adverse decision and then seek a remand to allow for further redesign. The City has no precedent for allowing another opportunity for HRB review through a remand proceeding. The alternative would be for the appellant to file an application for a modification that carries a filing fee of \$500. Although no law demands providing the appellants with a remand, the Commission may decide that the facts dictate doing so in this case.

If the City Commission chooses to deny the appeal and uphold the Historic Review Board's conditional approval of this application, the applicant can still pursue to remedy the situation by seeking to modify the approval through a separate land use process within two years of the final decision.

NOTICE OF APPEAL HEARING:

As stated in OCMC 17.50.190(E)

Notice of the Appeal Hearing. The planning division shall issue notice of the appeal hearing to all parties who participated either orally or in writing before the close of the public record in accordance with Section 17.50.090B. Notice of the appeal hearing shall contain the following information:

- 1. The file number and date of the decision being appealed;*
- 2. The time, date and location of the public hearing;*
- 3. The name of the applicant, owner and appellant (if different);*
- 4. The street address or other easily understood location of the subject property;*
- 5. A description of the permit requested and the applicant's development proposal;*
- 6. A brief summary of the decision being appealed and the grounds for appeal listed in the notice of appeal;*
- 7. A statement that the appeal hearing is confined to the issues raised in the notice of appeal;*
- 8. A general explanation of the requirements for participation and the city's hearing procedures.*

This appeal hearing has been noticed in accordance with this requirement.

STANDING TO APPEAL:

As stated in OCMC 17.50.190.D(2),

For Type III and IV decisions, only those persons or recognized neighborhood associations who have participated either orally or in writing have standing to appeal the decision of the planning commission or historic review board, as applicable. Grounds for appeal are limited to those issues raised either orally or in writing before the close of the public record. No new evidence shall be allowed

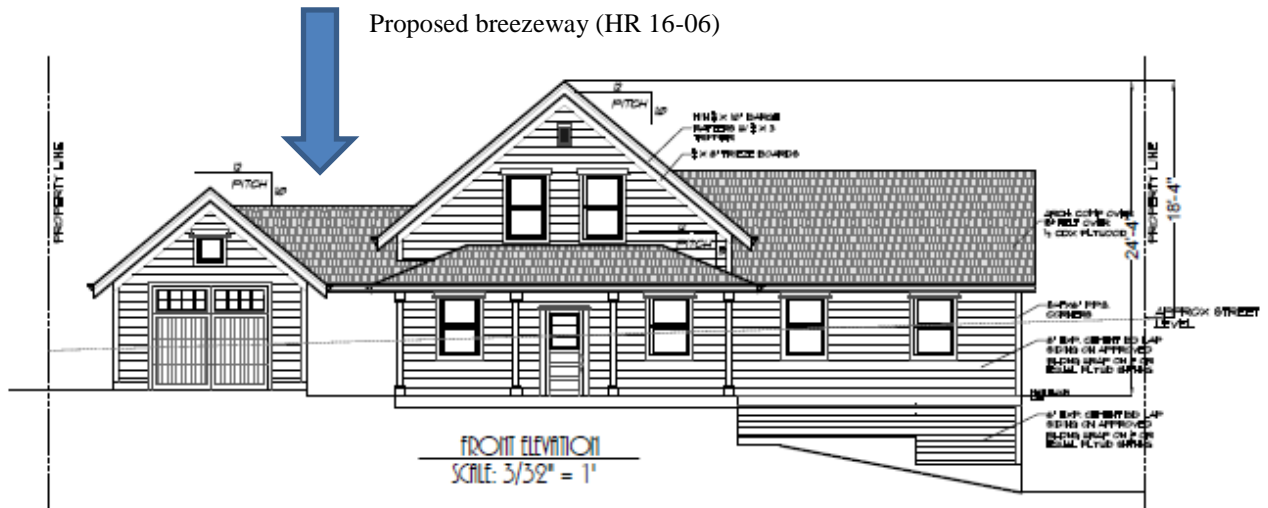
The appellant is the site owner and applicant and through their written application has standing to appeal the decision of the Historic Review Board.

BASIC FACTS:**Previous 2013 Land Use Application**

An application for a nearly identically designed residence was submitted by the previous owner and approved by the Historic Review Board in 2013 (HR 13-02). It was appealed (AP 13-01) by a neighbor and the City Commission denied the appeal and upheld the Historic Review Board approval but included a condition to remove the proposed breezeway.

The Current Proposal

The current owner/applicant/appellant submitted the original, identical proposal to the one that the Historic Review Board approved in 2013, including the breezeway between the garage and house, which the 2013 Commission conditionally disallowed.



Breezeways and covered walkways

The following direction is given in the 2006 Design Guidelines for New Construction:

Breezeways and covered walkways provide sheltered links between buildings and accessory structures. They can provide access to or separation from different building uses, as a means for reducing large building massing and to promote use of accessory buildings.

Mixed use commercial: breezeways may provide a means of connecting grouped smaller buildings. Canemah, South of 3rd: Use of breezeways or covered walkways by HRB approval.

Historic Review Board Decision (approximately 41 minutes into video)

Staff indicated the Board has three options for approaching the breezeway in their deliberation: can the applicant retain the breezeway as proposed, as conditioned by the Board, or require it to be removed. The applicant / property owner did not respond to these options in writing, nor did they submit any oral testimony at the hearing.

The Board found that the breezeway connecting the house to the garage did not have a compelling design purpose. While convenience and shelter is identified as an allowed purpose, they also found that, as drawn, it visually tied the two structures too closely together and gave the impression of a much larger massing than if separated. The Board found that the breezeway should be removed from the proposal.

Board member Stone found that the breezeway improperly engages the roof on the side of the house and was quite large. Chair Metson recommended that the applicant should come back if they wanted to further pursue the breezeway. Board member Baysinger moved to approve the application with the addition of Condition of Approval #9- *Prior to receiving permits, the applicant*

shall remove the breezeway between the house and garage from the plans. It was seconded by Board member Stone. The vote was 3-0 in favor of the motion.

After the decision was rendered, the applicant / owner informed staff that a family emergency kept them from attending the hearing, seeking a continuance or presenting the redesigned breezeway proposal. At that point, staff identified two options: appeal the HRB decision and ask the City Commission to remand the decision back to the HRB for further proceedings or file a new application to modify the decision. The filing fee for an appeal is \$50.00 per Chapter 2.28.070- Appeals, whereas the fee for a modification is \$500. This appeal followed.

If the City Commission grants the remand, the city will incur the additional cost for noticing the remanded hearing for consideration of the modified proposal, which could occur via a special meeting in December or at the January 24, 2017 HRB meeting, if the applicant chooses to waive the 120-day land use deadline (December 28, 2016). The remand would allow the HRB to accept new information into the record pertaining to Condition of Approval #9.

ISSUES RAISED BY THE APPELLANTS

The applicants / owners appealed this decision asking the City Commission to consider a re-designed breezeway. Since no new evidence may be considered before the City Commission, appellants have requested that the matter be remanded to the HRB for consideration of the modified proposal.

CONCLUSION AND RECOMMENDATION

Staff recommends that the City Commission deny AP 16-01 and approve HR 16-06 as adopted by the Historic Review Board with Condition 9- requiring removal of the breezeway, or if the City Commission determines the appellant's circumstances have merit, that they allow the application to be remanded back to the Historic Review Board for the limited purpose of considering redesign of the proposed breezeway.

EXHIBITS

1. AP 16-01 Appellants Submittal
2. HR 16-06 Notice of Decision
3. HR 16-06 Staff Report
4. [OCMC 17.40 Historic Overlay District](#)
5. [Design Guidelines for New Construction](#)

The following meeting agendas, videos, staff report and exhibits for this project are available for viewing at <http://oregon-city.legistar.com/Calendar.aspx> and are part of the record.

6. September 27, 2016 Historic Review Board File HR 16-06