

**OBJECTIONS AND OPPOSITION TO APPEAL OF EUGENE HURWITZ FROM HPC**  
**DECISION DENYING CERTIFICATE OF APPROPRIATENESS FOR 935**  
**SPRINGDALE ROAD**

**Submitted on behalf of the 929 Springdale Family Trust by:**

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## **SUPPLEMENTAL EXPLANATION IN OPPOSITION TO HURWITZ APPEAL**

**Introduction.** On October 5, 2020, the HPC considered the application of Eugene Hurwitz, property owner at 935 Springdale Road, for a large two-story addition adjacent to 929 Springdale Road. This opposition is filed on behalf of the owner of 929 Springdale, the 929 Springdale Family trust, which opposed approval of the COA. Staff recommended denial of the COA application finding that the proposed construction was atypical of that found within the area of influence and the District in general. Staff also noted that the proposed addition would dominate the historic structure and be visible at an angle along the entirety of the adjoining property line. The HPC agreed with staff that the proposed construction would have a substantial adverse effect and voted unanimously to deny the application. Hurwitz appeals this decision stating that the decision is in error because the HPC did not “act” within 45 days of the filing of the application filing date as required by Section 13.5-8 (7). Due to this alleged failure to “act”, Mr. Hurwitz argues that his COA application stands automatically approved per the mandate of that same ordinance provision. Mr. Hurwitz is wrong.

**Legal Argument.** Hurwitz’s appeal should be denied. It improperly conflates the meaning and import of the words “act”, “decision” and “notice”. Further it ignores well settled rules of construction to arrive at the insupportable conclusion that although the HPC voted unanimously to deny his COA application on the 38<sup>th</sup> day after he filed his application, it “failed to act” within 45 days.

**Conflation.** The salient section of the Historic Preservation Ordinance (“HPO”) upon which Hurwitz relies, provides in 13.5-8 (7) entitled “Certificate of Appropriateness Approval” , “*The preservation commission may approve the application as proposed, approve it with modifications or deny the application for a certificate of appropriateness (and shall do one of*

*these things) within forty-five (45) days after the filing thereof by the applicant. Evidence of approval shall be by certificate of appropriateness issued by the preservation commission. Failure of the preservation commission to act within the said forty-five (45) days shall constitute approval....*” The following subsection entitled “*Final action*” (Section 13.5-8 (8)) requires the HPC to memorialize the vote taken by the Commission in writing via a written decision and to notify the applicant of the decision. Hurwitz equates the action required within 45 days in Subsection 7 with the issuance of a written decision in Subsection 8. Hurwitz fails to recognize that the “act” the HPC must take within the 45 days is to properly vote on the application—i.e. as spelled out in Subsection 7—vote to approve, approve with modifications or deny the application. Subsection 8 makes no mention of the 45-day time constraint. That section requires the issuance of a written decision. That written decision is not the “act” itself but merely a written memorialization/evidence of the “act” previously taken by the HPC. Had the Board of Commissioners in adopting the HPO intended that a written decision needed to be issued within 45 days they would have so stated and would have done so in subsection 8.. Instead they keyed the 45-day time frame to that of approving, denying or approving with modification by the HPC, which occurs when the HPC votes in a public meeting on the application. The record in this case makes it clear that the HPC acted within the prescribed 45-day time frame such that Hurwitz is not entitled to approval of his application for their “failure to act”. The HPC voted unanimously to deny his application on the 38<sup>th</sup> day, well within the time frame allowed. This is consistent with the handling of two other applications before the HPC on October 5<sup>th</sup>, where the HPC automatically approved them because the 45 days had lapsed prior to those applications coming before it for a vote. *See COA applications for 1005 Springdale and 1474 Oxford.*

**Rules of construction.** Standard rules of construction in Georgia make it clear that the Ordinance required a **vote** within 45 days. The vote was the “act” required, not the issuance of a written decision or notice to the applicant within that time frame. Under these rules, ordinances must be construed with reference to the whole system of which it is a part. *Allison v. Domain*, 158 Ga. App. 542 (1981). In the construction of a statute or ordinance, all laws in pari materia should be considered in order to ascertain the intention of the *General Assembly*. *Undercofler v. L.C. Robinson & Sons*, 111 Ga. App. 411, 221 Ga. 391 (1965), *overruled on other grounds*. The DeKalb County Code of Ordinances contains numerous provisions concerning the actions of deliberative bodies. Review of these provisions along with the context of the HPO provisions make it clear that in all instances where the provision addresses the “act” or “actions” of deliberative bodies, “actions” or “acts” mean the vote taken by such bodies, not the memorialization of the votes taken. *See, e.g. Section 12 of the Organizational Act, Sections 27-7.3.7, -7.3.8, -7.4.8, -7.4.9* wherein the “action of the Planning Commission” and “action of the Board of Commissioners” all refer to the **votes** taken on applications, not to the written memorialization of those votes or decisions. Because it is undisputed that the HPC voted on the Hurwitz application prior to expiration of the 45-day time frame, he is not entitled to the issuance of a Certificate of Appropriateness under the terms of Section 13.5-7(7).

**Conclusion.** There is absolutely no factual or legal basis for reversal of the HPC decision and the owner of 929 Springdale respectfully requests that the Board sustain the HPC decision.