

C15-2016-0082

**Heldenfels, Leane**

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**From:** newcastle homes [mailto: [REDACTED]]  
**Sent:** Monday, August 08, 2016 11:23 AM  
**To:** Heldenfels, Leane  
**Subject:** Re: August 8 Board of Adjustment agenda, back up

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ok, thanks! next month would be fine--our architect had to go to canada for a family issue and he has been in the lead on this so....thanks!

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512.796.5707 m

On Mon, Aug 8, 2016 at 11:20 AM, Heldenfels, Leane <[Leane.Heldenfels@austintexas.gov](mailto:Leane.Heldenfels@austintexas.gov)> wrote:

I have received your email below and will request additional postponement. Will call to confirm date to postpone to.

Thanks,  
Leane

**From:** newcastle homes [mailto: [REDACTED]]  
**Sent:** Monday, August 08, 2016 11:10 AM  
**To:** Heldenfels, Leane  
**Subject:** Re: August 8 Board of Adjustment agenda, back up

hey leane,

hope you are well. we would like to postpone and NOT be on the agenda tonight, please.  
please confirm. thanks.

l e x

C15-2016-0082

Heldenfels, Leane

**From:** Michael Madison [REDACTED]  
**Sent:** Sunday, August 07, 2016 5:54 PM  
**To:** Cavan Merski  
**Cc:** Heldenfels, Leane; amenity applewhite; [REDACTED]  
**Subject:** Re: 7/12 Letter to BOA

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Thanks for the additional note.

As stated originally, I'm not contesting the vote nor was it my intention. As you've noted, I was not incorrect based on the originally provided numbers for majority vs plurality. Nothing submitted in advance of the previous meeting gave backup to the sentence "over 40 households established the majority opinion".

Stated simply, as an owner within 500 feet I have an official interest in what is decided for the property. In this specific instance my interests are not represented by the NPCT and I've chosen to exercise my ability to say as much. The NPCT has spoken twice now, most recently with a majority vote to oppose any variance. I have no dispute in this but vehemently disagree.

Thanks,  
Michael

On Sun, Aug 7, 2016 at 4:01 PM, Cavan Merski [REDACTED] wrote:  
Michael -

My apologies but I believe I misinterpreted your plurality vs. majority claim on the second vote. Concerning the result emailed on 7/11 that read:

- 2. a) Support the variance request - 11 (unverified)
- b) Oppose the variance request - 15 (verified)
- c) Abstain from commenting on the variance request - 8 (unverified)

Since this was a vote cast to abstain, it is not an abstention but a vote. You are correct that the vote count to 'oppose' above represents a plurality not a majority. Upon verifying more votes however a majority was established to 'oppose.'

If you have any further questions or issues please ask the exec team for clarification or bring it up at a meeting before emailing city staff.

Thanks,  
Cavan

On Sun, Aug 7, 2016 at 3:12 PM, Cavan Merski [REDACTED] wrote:  
Leane - Please add this email to the late backup in response to Mr. Madison's email to you on 7/12 concerning the procedures of the last NPCT vote.

Best,

Cavan

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On Mon, Jul 11, 2016 at 11:33 AM, Heldenfels, Leane <Leane.Heldenfels@austintexas.gov> wrote:

Thanks Cavan – I've also gotten some neighbor responses opposed for the packet. If you can get me your letter by noon I can include it in the late back up.

Do have someone show up at the beginning of the hearing at 5:30 since you're anticipating Newcastle to opposed postponement –

Leane

**From:** Cavan Merski [REDACTED]  
**Sent:** Monday, July 11, 2016 11:20 AM  
**To:** Heldenfels, Leane  
**Subject:** 2100 E. 14th St. Variance

Hey Leane -

The NPCT had an email conversation and a vote over the weekend. The team voted to ask for postponement of this case to the 8/8 BOA hearing to discuss with Newcastle more and if the case is heard tonight the team has voted to oppose the granting of the variance.

I will draft a letter with this information now and send it before noon for inclusion in the case packet.

Thanks,

Cavan

Chestnut NPCT Chairman

814-397-9649

## Heldenfels, Leane

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**From:** Cavan Merski <cavan.merski@gmail.com>  
**Sent:** Sunday, August 07, 2016 4:01 PM  
**To:** Michael Madison  
**Cc:** Heldenfels, Leane; amenity applewhite; davidcarroll@huoarchitects.com  
**Subject:** Re: 7/12 Letter to BOA

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Michael -

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Thanks,  
Cavan

On Sun, Aug 7, 2016 at 3:12 PM, Cavan Merski <cavan.merski@gmail.com> wrote:  
Leane - Please add this email to the late backup in response to Mr. Madison's email to you on 7/12 concerning the procedures of the last NPCT vote.

Michael -

I'm going through the packet for 2100 E. 14th St. and noticed your letter to Leane on 7/12 about the NPCT vote from 7/11 (screenshot attached). If you had a question about the vote why wouldn't you just ask me to clarify? I'm puzzled why you would tell Leane the details of the vote were "quite murky" without asking anyone on the executive team for a clarification. This leads me to believe your true intention was to cast doubt on the CNPCT voting process to the BOA.

The vote and its tabulation are in fact correct to our bylaws. We did in fact receive votes from over 40 households (more than that actually). Remember, households within 500 ft. of the case are allowed to vote as well as regular NPCT members who have attended at least one meeting in the last year. I verified that a majority of that vote was to 1) postpone and 2) oppose. I did not go through every vote because the voting link was sent out to NextDoor and we received 68 total votes. Verifying every vote would be quite time consuming considering the vote ended at midnight the day before the actual hearing.

As to your plurality point - our bylaws don't specifically state whether or not a majority should count or not count abstentions when establishing a majority. I did not count them in the establishment of the vote on the second question to postpone the original case. Thus, not counting abstentions, there was a majority for both

opinions. One common reference for such questions is Robert's Rules of Order. Remember, our bylaws don't bind us to Robert's Rules but it is the most widely used reference I know of for administering votes. Robert's rules states:

**Question 6:**

**Do abstention votes count?**

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**Answer:**

The phrase “abstention votes” is an oxymoron, an abstention being a refusal to vote. To abstain means to refrain from voting, and, as a consequence, there can be no such thing as an “abstention vote.”

In the usual situation, where either a majority vote or a two-thirds vote is required, abstentions have absolutely no effect on the outcome of the vote since what is required is either a majority or two thirds of the votes cast. On the other hand, if the vote required is a majority or two thirds of the members *present*, or a majority or two thirds of the entire membership, an abstention will have the same effect as a “no” vote. Even in such a case, however, an abstention is not a vote and is not counted as a vote. [RONR (11th ed.), p. 400, ll. 7-12; p. 401, ll. 8-11; p. 403, ll. 13-24; see also p. 66 of RONRIB.]

source: <http://www.robertsrules.com/faq.html>

If you have any questions about voting or bylaws in the future please contact the executive team directly, we're always happy to help clarify.

Thanks,  
Cavan

Hi Leane,

I live at 2103 E 14th St. Currently I have a home being built directly next to me (2101 E 14th) and across the street (2100 E 14th), so I'm sure you can understand my desire for the work to get completed.

I wrote a letter in support of the BOA granting a variance for 2100 E 14th. It was unfortunate to hear there's a delay of at least another month. In the email provided by the CNPCT regarding the vote, I noticed some details were left off and others made the water quite murky.

While a majority allegedly did vote to ask for a postponement, a majority did not oppose the variance. Only a plurality voted to oppose while the others got split in to two - supporting and abstaining. In addition, Mr. Merski noted that over 40 households in the neighborhood established the majority opinion. I'm struggling with that math because 18 does not equal 21.

It's not my desire to question the integrity of results that were sent mostly because I would imagine it's too late to change what happened last night. However, it needs to be clarified that there are math discrepancies as well as a majority voting to support/abstain from commenting on the variance request. The reason for the verified vs unverified below (and attached) is because we had a few people in the neighborhood thinking that everyone could vote and so the link was posted on Nextdoor.com without the clarification.

1. a) Ask the Board of Adjustments to postpone this case to their 8/8 meeting so the CNPCT can discuss and vote on this case at a regularly scheduled NPCT meeting - 18 (verified)

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## Heldenfels, Leane

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**From:** Cavan Merski [REDACTED]  
**Sent:** Sunday, August 07, 2016 3:12 PM  
**To:** Michael Madison  
**Cc:** Heldenfels, Leane; amenity applewhite; davidcarroll@huoarchitects.com  
**Subject:** 7/12 Letter to BOA  
**Attachments:** Screen shot 2016-08-07 at 3.01.16 PM.png

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Leane - Please add this email to the late backup in response to Mr. Madison's email to you on 7/12 concerning the procedures of the last NPCT vote.

Michael -

I'm going through the packet for 2100 E. 14th St. and noticed your letter to Leane on 7/12 about the NPCT vote from 7/11 (screenshot attached). If you had a question about the vote why wouldn't you just ask me to clarify? I'm puzzled why you would tell Leane the details of the vote were "quite murky" without asking anyone on the executive team for a clarification. This leads me to believe your true intention was to cast doubt on the CNPCT voting process to the BOA.

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### ***Question 6:***

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#### ***Answer:***

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source: <http://www.robertsrules.com/faq.html>

If you have any questions about voting or bylaws in the future please contact the executive team directly, we're always happy to help clarify.

Thanks,  
Cavan

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**Heldenfels, Leane**

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**From:** Cavan Merski [redacted]  
**Sent:** Sunday, August 07, 2016 2:21 PM  
**To:** Heldenfels, Leane  
**Cc:** amenity applewhite; [redacted]  
**Subject:** Re: 2100 E. 14th St. Variance  
**Attachments:** 2100\_14th\_ChestnutNPCT\_Letter\_of\_Opposition.pdf

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Hey Leane -

The Chestnut NPCT has met with the Newcastle team several times since the last BOA hearing. Ultimately we decided not to support the variance before the BOA. I have attached our letter of opposition for the late backup. Myself or another member of our exec team (CC'd) will be at the BOA meeting tomorrow. Thanks for all of your help!

Best,  
Cavan

On Mon, Jul 11, 2016 at 12:04 PM, Cavan Merski <[cavan.merski@gmail.com](mailto:cavan.merski@gmail.com)> wrote:  
Thanks!

I'll be at the meeting at 5:30 as well. See you then.

Cavan

On Mon, Jul 11, 2016 at 12:03 PM, Heldenfels, Leane <[Leane.Heldenfels@austintexas.gov](mailto:Leane.Heldenfels@austintexas.gov)> wrote:

Got it and will include in the late back up – if I learn that applicant is not opposed to the request to postpone I'll advise.

Leane

**From:** Cavan Merski [mailto:[cavan.merski@gmail.com](mailto:cavan.merski@gmail.com)]  
**Sent:** Monday, July 11, 2016 12:01 PM  
**To:** Heldenfels, Leane  
**Subject:** Re: 2100 E. 14th St. Variance

Thanks Leane -

Please find our letter asking for postponement / opposition attached as well as our previously letter of support stating the conditions of our support.

August 7, 2016

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Board of Adjustment –

The Chestnut Neighborhood Plan and Contact Team discussed the latest variance request at 2100 E. 14<sup>th</sup> St. at length and the team has voted not to support the current variance before the BOA.

The Chestnut NPCT has met with the developer and architect of the project several times since the last BOA hearing. Although they apologized for the mistakes they made when breaking the originally agreed upon plan for development of the home, no terms of agreement were able to be reached that the Chestnut NPCT found sufficient. The team ultimately voted at our 8/1 meeting after 90 minutes of discussion not to support any future variances for this site. The prevailing sentiment of the NPCT was that the course of action taken by Newcastle Homes irreparably harmed the good faith nature of the original agreement to keep certain parts of the original structure. The NPCT does not want to set a precedent for supporting such behavior and feels that supporting a variance for a larger than normal ADU under such conditions would set such a precedent.

The Chestnut NPCT was a major participant in the negotiations that established the original agreement for the preservation of the home on this property. The CNPCT also supported the original variance granted for this property in September 2014. An excerpt from our original letter of support reads:

*"Since there are not many homes left that embody the original nature of the neighborhood the way this home does, we have a number of conditions that we would like to place on the support of this variance.*

*We would like to see the following:*

- Preservation of both street facades, in terms of materials, details and scale.*
- Details and materials carried through to the new construction, including any additions. Especially the teardrop siding that is so indicative of our neighborhood.*
- The existing structure to remain one story. This helps to support the streetscape and human scale of the structure as well as reduces the amount of structural renovation or addition that may be needed to support an additional story.*
- We will not support any future variances for the site in terms of site development, i.e. an increase to the FAR or Impervious Cover.*
- Preservation of the persimmon trees in the front of the house.*
- We would like the front facade of the rear structure to face Alamo so as to create a feeling on the site of two separate structures since the rear house could potentially be as large as the front house."*

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Both street facades are gone and no details or materials have been saved for new construction. The Chestnut NPCT received no communication or forewarning before the two street facades were taken down despite this being an explicitly stated condition of our support (and via historic zoning a crucial condition of the previous variance and building permit). We feel that granting this variance exonerates them from breaking their previous agreement with the Chestnut NPCT and with the BOA and we urge you not to grant it.

Thank You,  
Cavan Merski  
Chestnut NPCT Chairman  
814-397-9649