

EXHIBIT NO. 1

15  
1-25-03

Docket Item #  
BAR CASE #2002-0305

City Council  
January 25, 2003

**ISSUE:** Appeal of a decision of the Board of Architectural Review, Old and Historic Alexandria District approving a Certificate of Appropriateness for a metal fence

**APPLICANT:** City of Alexandria, Department of Recreation, Parks and Cultural Activities

**APPELLANT:** Old Town Civic Association on behalf of petitioners

**LOCATION:** 421 South Union Street

**ZONE:** WPR/Waterfront Recreation

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This appeal asks whether the B.A.R. should have approved a new metal fence in Windmill Hill Park at 421 South Union Street.

Background:

At its public hearing on December 18, 2002, the Board was asked to approve a Certificate of Appropriateness for the design of a new metal fence to surround the dog exercise area to be relocated in the north section of Windmill Hill Park. The purpose of the fence is to provide a visual barrier between dogs and pedestrian users of the park. The proposed fence is made of metal rails and pickets and is 42" in height with plantings in front of the fence to soften its appearance. The fencing will be installed along the street edge of the west side of the 400 block of South Union Street and will parallel the relocated foot path on its north side leading to the Wilkes Street tunnel. The fence will not be continuous and there are a number of breaks in the fencing. This will allow easy access to the dog area. The dog exercise area is intended for dogs that are under voice command. No fencing is proposed on the north side of the dog exercise area.

A fence for the dog exercise area was part of the overall plan approved by City Council for the park. On June 6, 2002, City Council was provided with a memorandum and a final concept plan for Windmill Hill Park detailing the park improvements and changes that Council approved at its May 28 legislative meeting. The memorandum stated that relocation of the dog exercise area would begin after the volleyball season concluded in the fall 2002, with site work to be completed by early spring 2003. Operating funds earmarked for dog park maintenance and capital funds within the Park Renovation Account were identified as the source of funding for this construction work. The final concept plan that Council approved included an ornamental fence.

In approving the fence, a majority of the Board believed that the fence was appropriate to the historic district, would have a low visual impact in the park and was easily reversible. The Board also believed that the plantings around the fence would soften its impact. The vote on the motion to approve the fence was 6-1. Dr. Fitzgerald was opposed because he believed that the breaks in the fencing resulted in a compromised barrier, so the purpose of the fence was questionable.

Petitioners believe that any fence in Windmill Hill Park is historically inappropriate. However, in the past there have been numerous manmade structures within the boundaries of the area that is the present park. In large measure, these structures, including fencing, have been removed to create the passive recreational space of today. Thus, fencing in the area does have historic antecedents. Petitioners also believe that the fence design is "too modern." The design of the proposed fence is a simple, undecorated ornamental metal picket fence. The fence design, in any number of materials, has multiple historical precedents. Examples of historic fence styles are shown in Attachment 4.

The Board's approval of the application was appealed to Council by the Old Town Civic Association on behalf of petitioners. The appeal was filed in a timely manner.

B.A.R. Staff Position Before the Board:

B.A.R. Staff supported the new metal fence because they believed that the design was appropriate and that it met the recommendations for fences in the Board's *Design Guidelines*.. (See B.A.R. Staff report, Attachment 1)

City Council Action Alternatives:

Council may uphold or overturn the decision of the B.A.R., using the criteria for approval of a Certificate of Appropriateness in §10-105(A)(2) Zoning Ordinance (Attachment 2). City Council may also remand the project to the Board with instructions to consider alternatives.

Attachments:

- Attachment 1: B.A.R. Staff Report, December 18,2002
- Attachment 2: §10-105(A)(2): Criteria to be considered for a Certificate of Appropriateness
- Attachment 3: Location map and design of fencing proposed for 421 South Union Street
- Attachment 4: Examples of historic metal picket fences

STAFF: Eileen Fogarty, Director, Department of Planning and Zoning; Peter H. Smith, Principal Staff, Boards of Architectural Review.

REPORT ATTACHMENTS

BAR STAFF REPORT, December 18, 2002

BAR CASE #2002-0305

BAR Meeting  
December 18, 2002

**ISSUE:** New fencing

**APPLICANT:** City of Alexandria, Department of Recreation, Parks and Cultural Affairs

**LOCATION:** 421 South Union Street

**ZONE:** WPR/Waterfront Recreation

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**BOARD ACTION, DECEMBER 18, 2002:** This docket item was removed from the Proposed Consent Calendar by Ms. Merck. On a motion by Ms. Neihardt, seconded by Mr. Keleher the board approved the application as submitted. The vote on the motion was 6-1 (Dr. Fitzgerald was opposed).

**REASON:** The Board believed the design of the fence was appropriate for the park and would provide a barrier between dogs and pedestrian users of the park. The Board also noted that the fence was easily reversible.

**SPEAKERS:** Sandra Whitmore, Director, Department of Recreation, Parks and Cultural Affairs, spoke in support  
Aimee Vosper, Staff Landscape Architect, Department of Recreation, Parks and Cultural Affairs, spoke in support  
Jon Wilbor, 310 South Lee Street, spoke in opposition  
Carolyn Merck, President, Old Town Civic Association, spoke in opposition  
Cathleen Curtin, 412 Wilkes Street, spoke in opposition  
Terry Halahan, Pommander Walk, spoke in opposition

STAFF RECOMMENDATION:

Staff recommends approval of the application as submitted.

DISCUSSION:

Applicant's Description of the Undertaking:

"To install 42" high ornamental fencing in Windmill Hill Park."

Issue:

The applicant is requesting approval of a Certificate of Appropriateness for new metal ornamental fencing to be installed around the relocated dog exercise area in Windmill Hill Park adjacent to South Union Street. The proposed fence is 42" high and will be installed in the north section of the park nearest South Union Street. Specifically, the fence will be installed along the west side of South Union Street in front of three sections of plantings and on the north side of the relocated trail coming out of the Wilkes Street tunnel.

History and Analysis:

Windmill Hill Park is the largest area of outdoor recreation space in the historic district. It has been the subject of considerable planning effort on the part of the Department of Recreation Parks and Cultural Affairs and City Council during the course of the last two years. The Board will review the various structural elements of the plan as they are proposed for implementation. The fence proposed to be installed in this instance will partially enclose a re-located dog exercise area and will separate passive park uses.

As the Board knows, the Windmill Hill Park plan has generated controversy in the last year. The plan has been approved by City Council and is, itself, not before the Board. What is before the Board are the architectural elements, such as the proposed fence, that will be used to implement the various phases of the plan.

Proposed fence complies with zoning ordinance requirements.

Staff has no objection to the new fencing which meets the recommendations for fencing in the *Design Guidelines*.

CITY DEPARTMENT COMMENTS

Legend: C - code requirement R - recommendation S - suggestion F - finding

Code Enforcement:

No comments.

Office of Historic Alexandria:

No comment.

**10-105 Matters to be considered in approving certificates and permits.**

**(A) Certificate of appropriateness**

(2) **Standards.** Subject to the provisions of section 10-105(A)(1) above, the Old and Historic Alexandria district board of architectural review or the city council on appeal shall consider the following features and factors in passing upon the appropriateness of the proposed construction, reconstruction, alteration or restoration of buildings or structures:

(a) Overall architectural design, form, style and structure including, but not limited to, the height, mass and scale of buildings and structures;

(b) Architectural details including, but not limited to, original materials and methods of construction, the pattern, design and style of fenestration, ornamentation, lighting, signage and like decorative or functional fixtures of buildings or structures; the degree to which the distinguishing original qualities or character of a building, structure or site (including historic materials) are retained;

(c) Design and arrangement of buildings and structures on the site; and the impact upon the historic setting, streetscape or environs;

(d) Texture, material and color, and the extent to which any new architectural features are historically appropriate to the existing structure and adjacent existing structures;

(e) The relation of the features in sections 10-105(A)(2)(a) through (d) to similar features of the preexisting building or structure, if any, and to buildings and structures in the immediate surroundings;

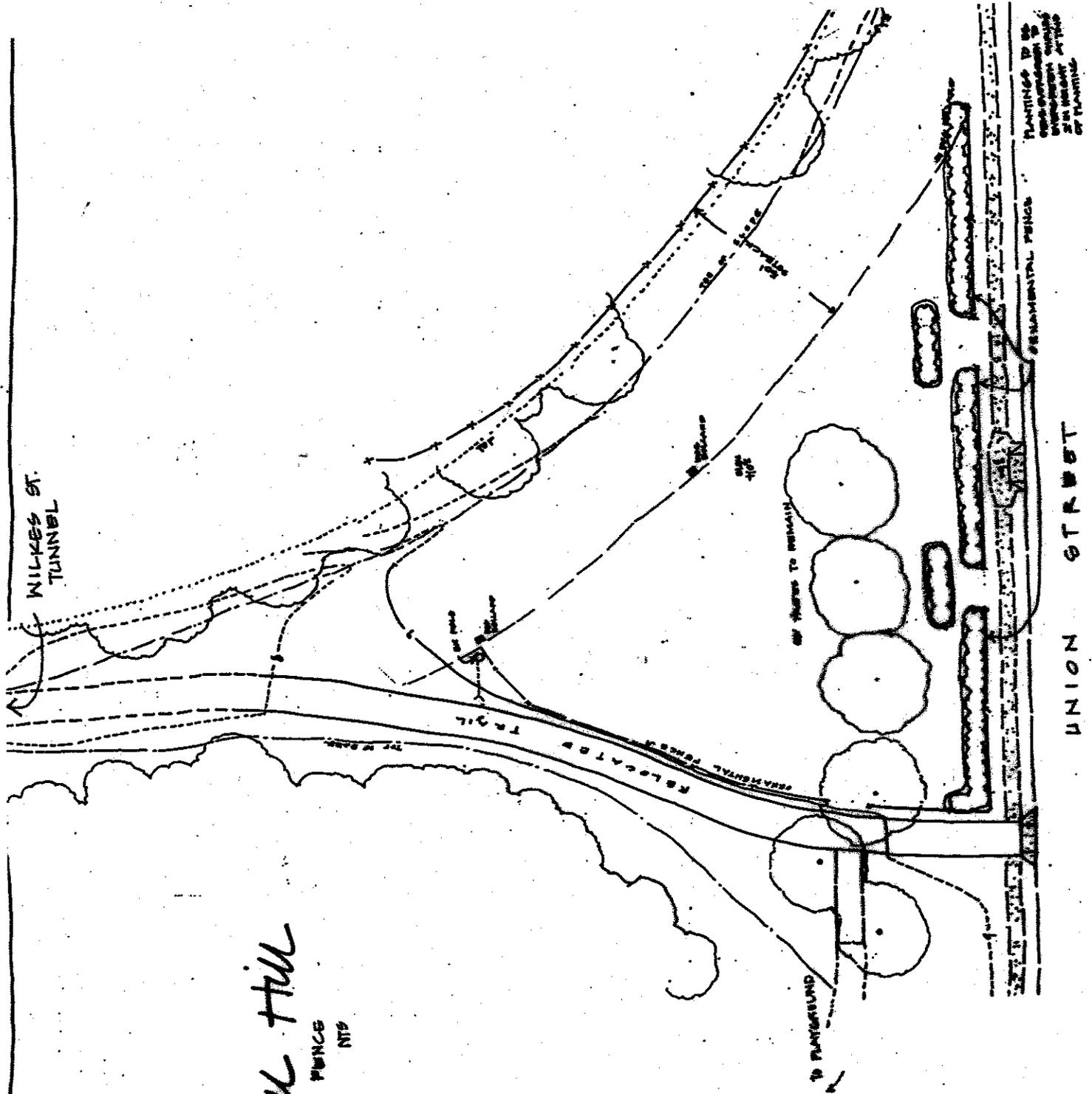
(f) The extent to which the building or structure would be harmonious with or incongruous to the old and historic aspect of the George Washington Memorial Parkway;

(g) The extent to which the building or structure will preserve or protect historic places and areas of historic interest in the city;

(h) The extent to which the building or structure will preserve the memorial character of the George Washington Memorial Parkway;

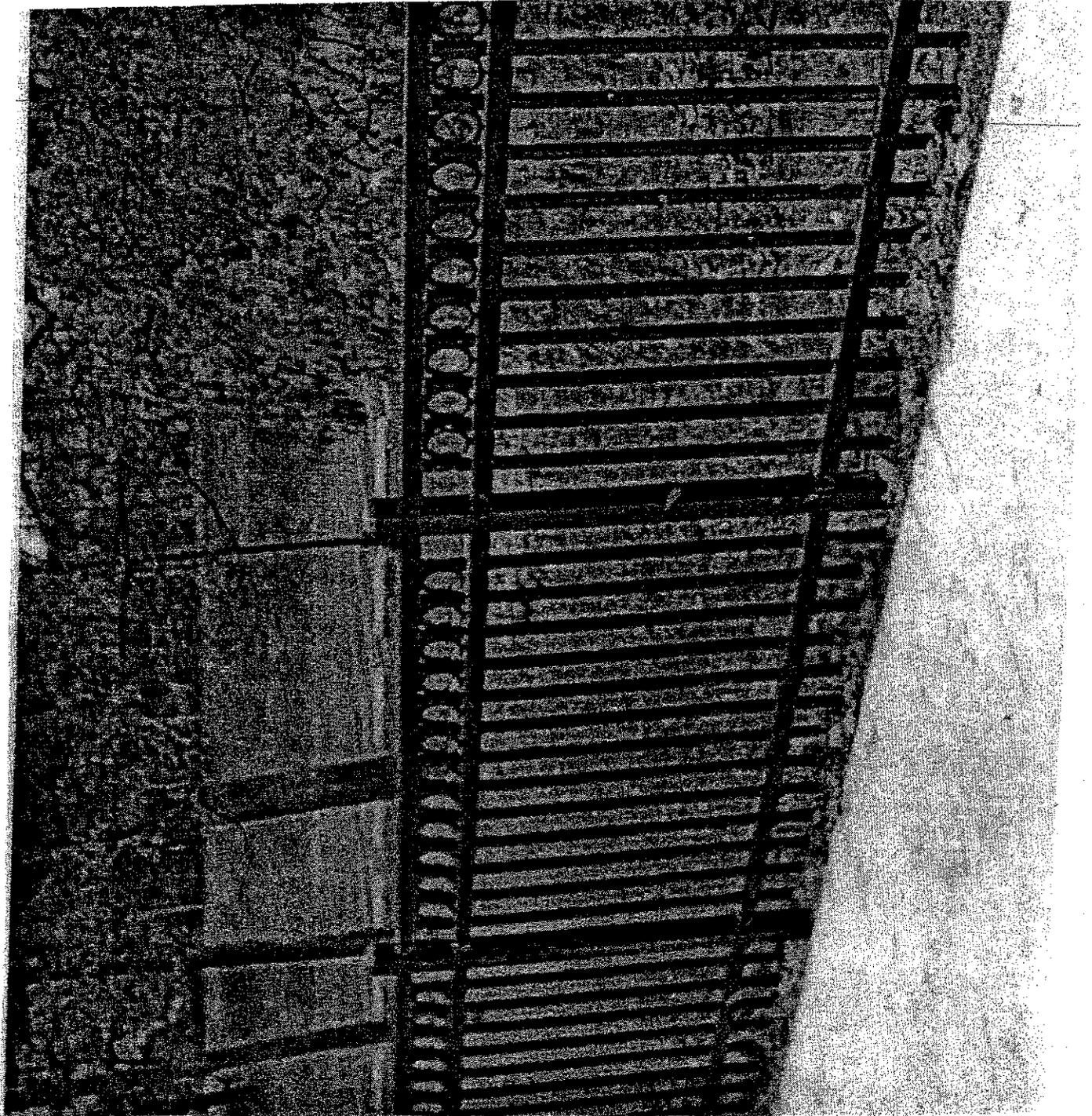
(i) The extent to which the building or structure will promote the general welfare of the city and all citizens by the preservation and protection of historic interest in the city and the memorial character of the George Washington Memorial Parkway; and

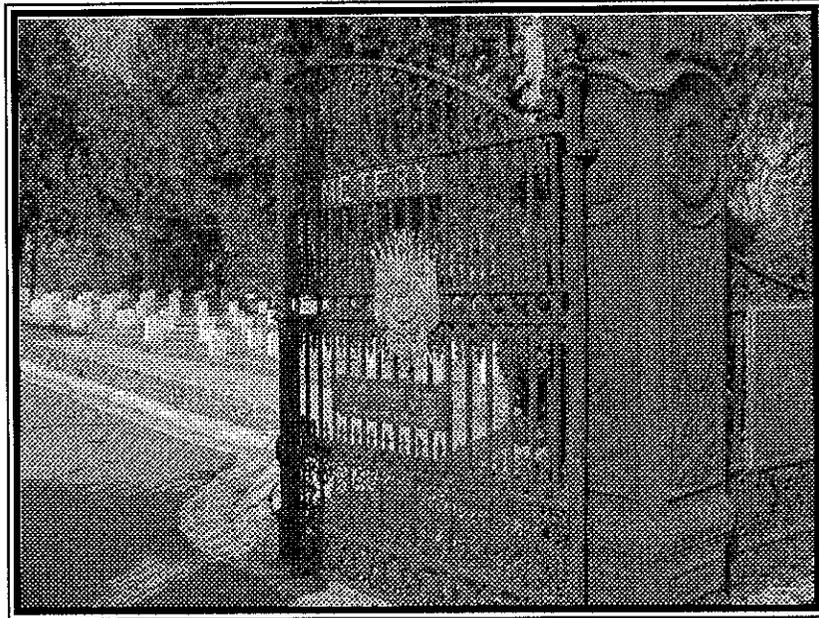
(j) The extent to which such preservation and protection will promote the general welfare by maintaining and increasing real estate values, generating business, creating new positions, attracting tourists, students, writers, historians, artists and artisans, attracting new residents, encouraging study and interest in American history, stimulating interest and study in architecture and design, educating citizens in American culture and heritage and making the city a more attractive and desirable place in which to live.



*Wendmill Hill*  
ORNAMENTAL FENCE  
11-16-02 NTS

PROPOSED WINDMILL HILL PARK FENCE DESIGN





**Figure 1** Historic 19<sup>th</sup> century metal picket gates at Alexandria National Cemetery similar to the design proposed for Windmill Hill Park



**Figure 2** 19<sup>th</sup> century metal picket fencing at Episcopal Cemetery

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1-25-03

Sent to CC, ME, CM, CA, Fogarty,  
Ross, P. Smith, S. Whitmore



RECORD OF APPEAL

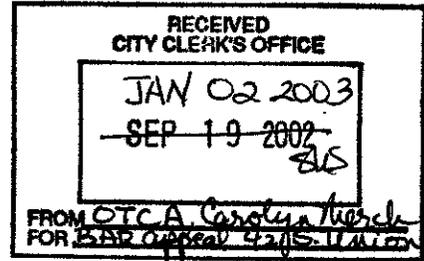
FROM A DECISION OF THE BOARD OF ARCHITECTURAL REVIEW

Date Appeal Filed With City Clerk: 1/2/03

B.A.R. Case # 2002-0305

Address of Project: 421 SOUTH UNION ST.

Appellant is: (Check One)

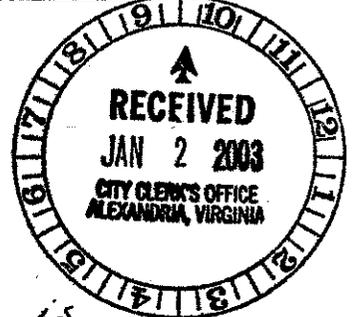


B.A.R. Applicant

Other Party. State Relationship OPPONENT OF APPLICATION

Address of Appellant: Old Town Civic Assoc.  
P.O. Box 21333, ALEXANDRIA, VA 22314

Telephone Number: 703-549-5506



State Basis of Appeal: 1. THE PROPOSED FENCE DESIGN IS  
TOO MODERN FOR THE HISTORIC SITE  
2. THE BAR ERRONEOUSLY DISMISSED AS A NON-  
ISSUE WHETHER OR NOT IT WAS HISTORICALLY  
APPROPRIATE FOR A FENCE OF ANY KIND TO BE  
INSTALLED ACROSS THE OLD RAILROAD RIGHT-OF-WAY  
Attach additional sheets, if necessary. IN WINDMILL HILL PARK.

A Board of Architectural Review decision may be appealed to City Council either by the B.A.R. applicant or by 25 or more owners of real estate within the effected district who oppose the decision of the Board of Architectural Review. Sample petition on rear.

All appeals must be filed with the City Clerk on or before 14 days after the decision of the B.A.R.

All appeals require a ~~\$50~~ <sup>\$150</sup> filing fee.

If an appeal is filed, the decision of the Board of Architectural Review is stayed pending the City Council decision on the matter. The decision of City Council is final subject to the provisions of Sections 10-107, 10-207 or 10-309 of the Zoning Ordinance.

Carolyn P. Merck  
Signature of the Appellant

(filed by Jon Wilber)

We, the undersigned owners of real estate within the Old and Historic Alexandria District/ Parker- Gray District [strike out as appropriate] appeal the decision of the Board of Architectural Review to the Alexandria City Council in B.A.R. Case # 2002-0305 regarding the property at 421 South Union St- (street address).

	Name	Signature	Owner of Real Property At:
1.	SARITH SCHOTTA	<i>[Signature]</i>	104 Prince St
2.	Charles Schotta	<i>[Signature]</i>	102 Prince St
3.	Minam W. Olinger	<i>[Signature]</i>	100 Prince ST.
4.	Marjorie Finkelberg	Marjorie Finkelberg	108 N. West St
5.	Karl W. Finkelberg	<i>[Signature]</i>	108 N. West St.
6.	Peggy Wilber	<i>[Signature]</i>	315 So. Lee St.
7.	W. Wilber	<i>[Signature]</i>	310 S. Lee St
8.	MARY Nell Seed	Mary Nell Seed	309 S. Lee St.
9.	Jeremy Schwarz	<i>[Signature]</i>	317 S. Lee St.
10.	Jennifer Schwarz	<i>[Signature]</i>	317 S. Lee Street.
11.	JOAN PRYCE	Joan M. Pryce	322 S. Lee ST
12.	BILL PRYCE	William T. Pryce	322 S. West ST
13.	Danny Smith	Danny Smith	401 S. Lee St.
14.	Mary Hearn	Mary Hearn	403 S. Lee St.
15.	R. Ray	<i>[Signature]</i>	400 Prince St
16.	R. ADAMS	<i>[Signature]</i>	137 1/2 FAIRFAX
17.	Charles DAVIS	Charles Davis	220 So Fairfax St
18.	Anthony J. DiStefano	Anthony J. DiStefano	602 S. Pitt St. 22314
19.	JOHN WASILEWSEI	<i>[Signature]</i>	810 S. Lee ST. 22314
20.	Bessy Kong	Bessy Kong	810 S. Lee ST. 22314
21.	John HYNAN	John Hynan	405 So. FAIRFAX ST
22.	Tom ELLIOTT	Tom Elliott	422 So. FAIRFAX ST. 22314
23.	Page Elliott	Page Elliott	422 So. Fairfax St 22314
24.	RUSSELL MURRAY	Russell Murray	210 Wilkes St.
25.	Billy MURRAY	Billy Q. Murray	210 Wilkes St

We, the undersigned owners of real estate within the Old and Historic Alexandria District/ Parker- Gray District [strike out as appropriate] appeal the decision of the Board of Architectural Review to the Alexandria City Council in B.A.R. Case # 2002-0305 regarding the property at 421 South Union St - (street address).

	Name	Signature	Owner of Real Property At:
1.	Nuccettia Abawi		9 Keith's Lane
2.	Sandra Stuart		602 Ford Landy Wy
3.	D. Michael Murray		602 Ford Landy Wy
4.	Mark & Kathy Mullany		10 Keith's Lane
5.		Joseph R. Oliva	11 Keith's Lane
6.	Judith Oliva		11 Keith's Lane
7.	Jill E Brantley		7 Keith's Lane
8.	Larry L. Merck		324 N. Royal St.
9.	John W. Merck		324 N. Royal St
10.	James A. Dorsch		11 Quay St
11.	Charles A. Lushman		122 Quay St
12.	WILLIAM A RICHARDS		614 S. Lee St
13.	LAURA RICCO		314 S. LEE ST.
14.	DAVID ROEBRENBEK		313 S. Lee St
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We, the undersigned owners of real estate within the Old and Historic Alexandria District/ Parker- Gray District [strike out as appropriate] appeal the decision of the Board of Architectural Review to the Alexandria City Council in B.A.R. Case # 2002-0305 regarding the property at 421 S. UNION ST. (street address).

	Name	Signature	Owner of Real Property At:
1.	PETER KILCULLEN		464 S. UNION ST
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12/18/02 DC

1. Consideration of the minutes of the public hearing of December 4, 2002.

BOARD ACTION: **Approved as submitted, 7-0.**

2. Consideration of a Consent Calendar of items to be approved without discussion. A list of these items will be read at the beginning of the meeting.

BOARD ACTION: **Approved docket item #'s 3 & 4 on the Consent calendar, 7-0.**

### **CONSENT CALENDAR**

#### **3. CASE BAR 2002-0301**

Request for approval of a fence at 711 North Columbus Street, zoned RB Residential.

APPLICANT: St. Joseph Church

BOARD ACTION: **Approved on the Consent Calendar.**

#### **4. CASE BAR 2002-0302**

Request for approval of window & door alterations at 221 South Lee Street, zoned RM Residential.

APPLICANT: Paul Davey

BOARD ACTION: **Approved on the Consent Calendar.**

5. Moved to the discussion agenda.

6. Moved to the discussion agenda.

7. Moved to the discussion agenda.

### **END CONSENT CALENDAR**

### **DISCUSSION ITEMS**

#### **5. ~~CASE BAR 2002-0305~~**

Request for approval of a fence at 421 South Union Street, zoned WPR Waterfront.

APPLICANT: City of Alexandria/RP&CA

BOARD ACTION: **Approved as submitted, 6-1.**

#### **6. CASE BAR 2002-0306**

Request for approval of a handicap ramp at 1101 North Washington Street, zoned CD Commercial.

APPLICANT: Old Colony Associates, LLC

BOARD ACTION: **Approved as submitted, 5-2.**

EXHIBIT NO. 3

15  
1-25-03

105 Pommander Walk  
Alexandria, Virginia 22314

Rebecca Ellis  
Direct Dial: (703) 394-2214  
Direct Fax: (703) 918-2255  
E-mail: rellis@wcsr.com

January 21, 2003

Mayor Kerry J. Donley  
Alexandria City Council  
City Hall Building  
301 King Street, Suite 2300  
Alexandria, VA 22314



Re: Council Docket Item No. 15; Appeal By Old Town Civic Association of BAR Case #2002-0305

Dear Mayor Donley:

Please vote to uphold the decision of the Board of Architectural Review ("BAR") in the above-noted matter, involving the installation of a "broken" fence around the proposed dog exercise area in Windmill Hill Park. The Old Town Civic Association, ("OTCA") on behalf of a group of petitioners that includes only a token few current dog exercise area users, is appealing the proposed fence for this area in a last-ditch attempt to stall implementation of the new park plan. While there are many citizens, myself included, who do not believe that relocation of the dog exercise area from its former position was the best choice for the park, the choice has been made, and a failure to install a meaningful barrier at the new location will endanger both dog exercise area users and their pets, and others who come to the park to enjoy features such as the tot lot.

OTCA's contention that the proposed fence is too modern for the area is laughable, given that a chain link fence currently graces the surrounding space, including the tot lot. Moreover, as the staff submission shows, the proposed ornamental fencing is both tasteful and in keeping with Old Town's atmosphere. Dog owners who use the current dog exercise area have worked with City staff to come up with the proposed design. The fencing is "broken" at the suggestion of City staff, in order to ensure that this space does not become, like the Duke Street dog exercise area has, a tempting destination for pet owners whose animals are not appropriately trained. Shrubs interspersed with fencing will provide

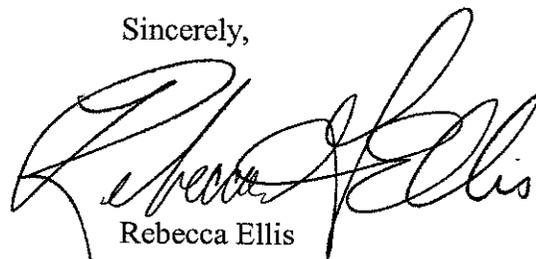
a meaningful barrier for trained animals, while keeping the area less attractive to those irresponsible pet owners who simply seek an enclosed area to let their animals run wild.

A completely open treatment in this area would be inappropriate for several reasons. First, unlike the Founder's Park space at the other end of Old Town, the Windmill Hill Park space sees a very high number of children, due to the tot lot and open space/soccer field located there. These children are loaded by their parents in and out of cars that park directly next to the proposed dog exercise area space. A barrier to Union Street makes good safety sense, as young children might wander in no time at all into a completely open dog exercise area space. Some petitioners have suggested removing the current north entrance to the tot lot as a solution to this problem. Their idea is that no fence is needed if the tot lot does not open directly onto the dog exercise area. The current north entrance to the tot lot should be closed for safety reasons; that is an excellent idea. But that is not enough. The practical reality is that children will wander (as will dogs) when parents/owners are inattentive. A fence along the both the tot lot side and the Union Street side of the dog exercise area will help prevent unwanted contact between the two groups, especially in the very busy warmer months.

Second, a fence makes good sense for the safety of the pets of owners who will be using this area. The traffic at this end of Union Street is heavier and faster than that faced by dogs and owners at the Founders Park dog exercise area. Drivers arriving in and leaving Old Town funnel through the south stretch of Union Street and turn on Gibbon Street, for easy access to and from the Beltway. There are no cross streets for several blocks along the Windmill Hill Park stretch of Union Street, prompting cars to accelerate to a speed typically faster than that seen along the north stretch of Union Street, where cross streets exist. Although the City wisely intends to introduce traffic calming measures along south Union Street at some point as part of the park redesign, unless and until those measures are implemented, a fence should be used to lessen the risk of harm.

The "broken" fence is the best barrier alternative that current dog exercise area users and City staff could imagine for this space. Use of an earthen berm was considered, but it would have reduced both visibility from the street (again, a safety concern) and the space available for use by dog exercise area patrons. Use of a full fence was inappropriate due to concerns about overuse and misuse by irresponsible pet owners. The current design protects park patrons, preserves more park space and promotes visibility. Please do not allow the "pseudo-aesthetic" complaints of OTCA, which go far deeper than the "historical character" of an individual fence, to render the redesigned dog exercise area space unsafe for both dog owners and other park users. Please vote to uphold this design element.

Sincerely,



Rebecca Ellis

Carolyn Merck

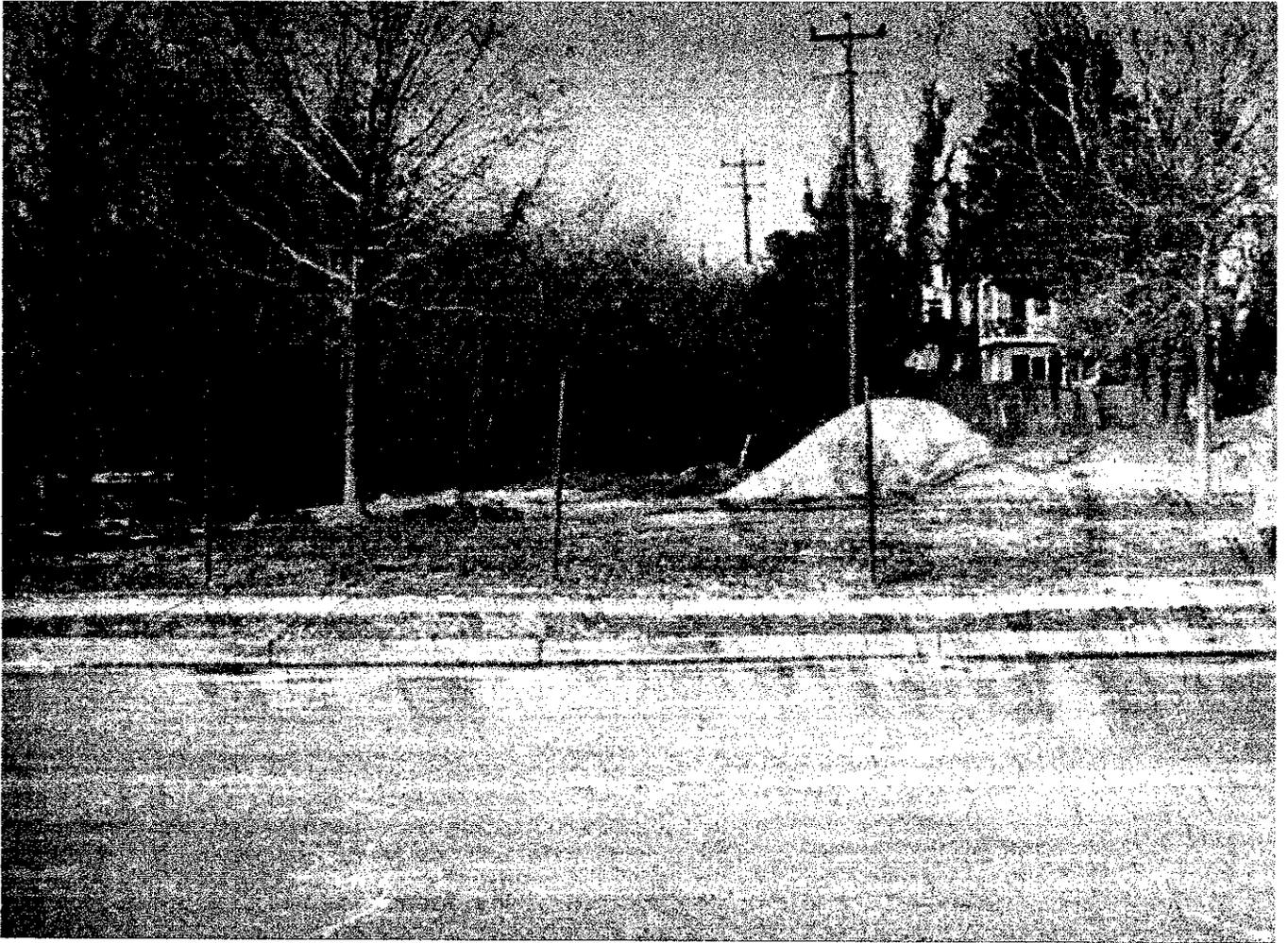
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EXHIBIT NO. 4

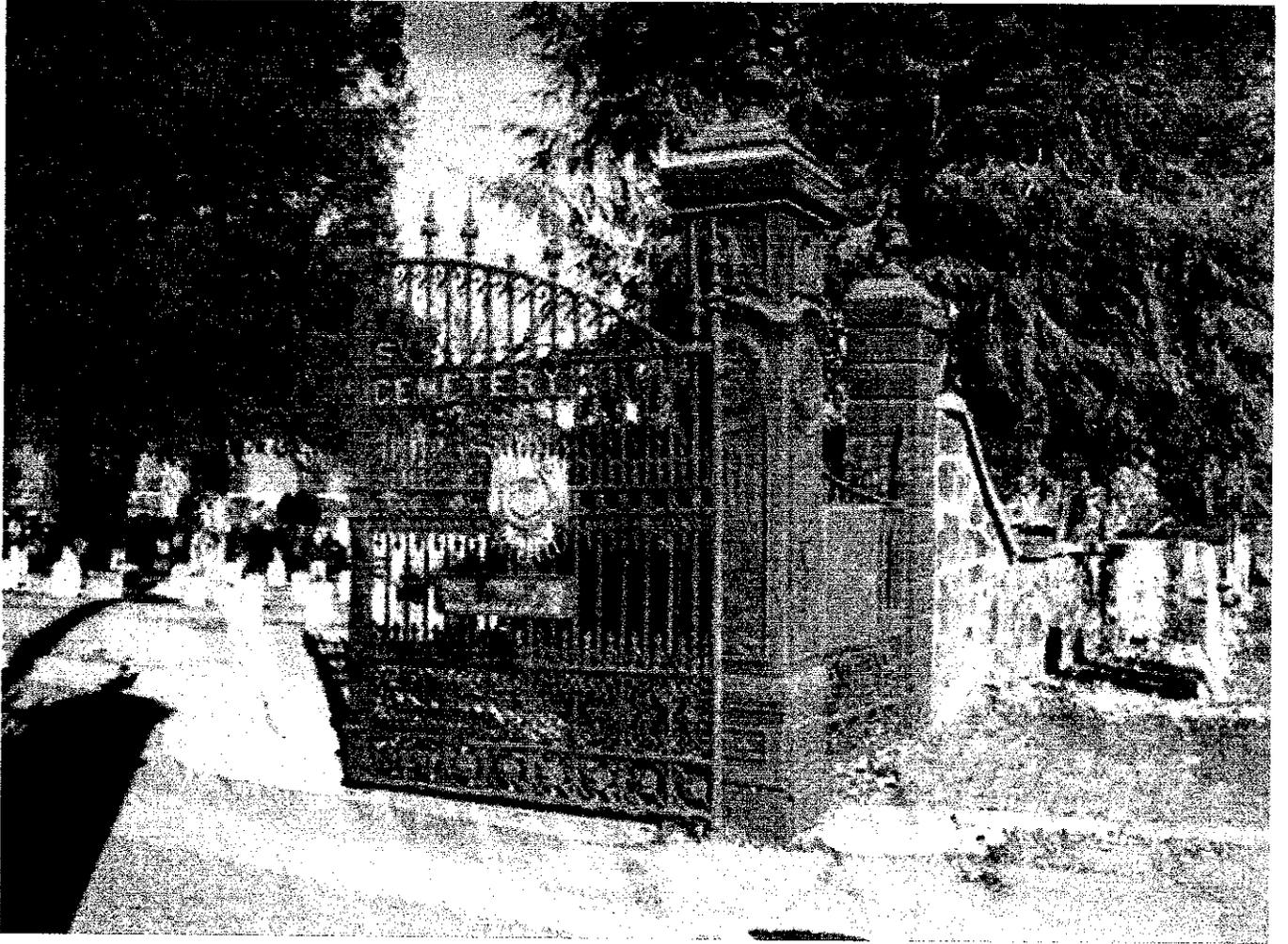
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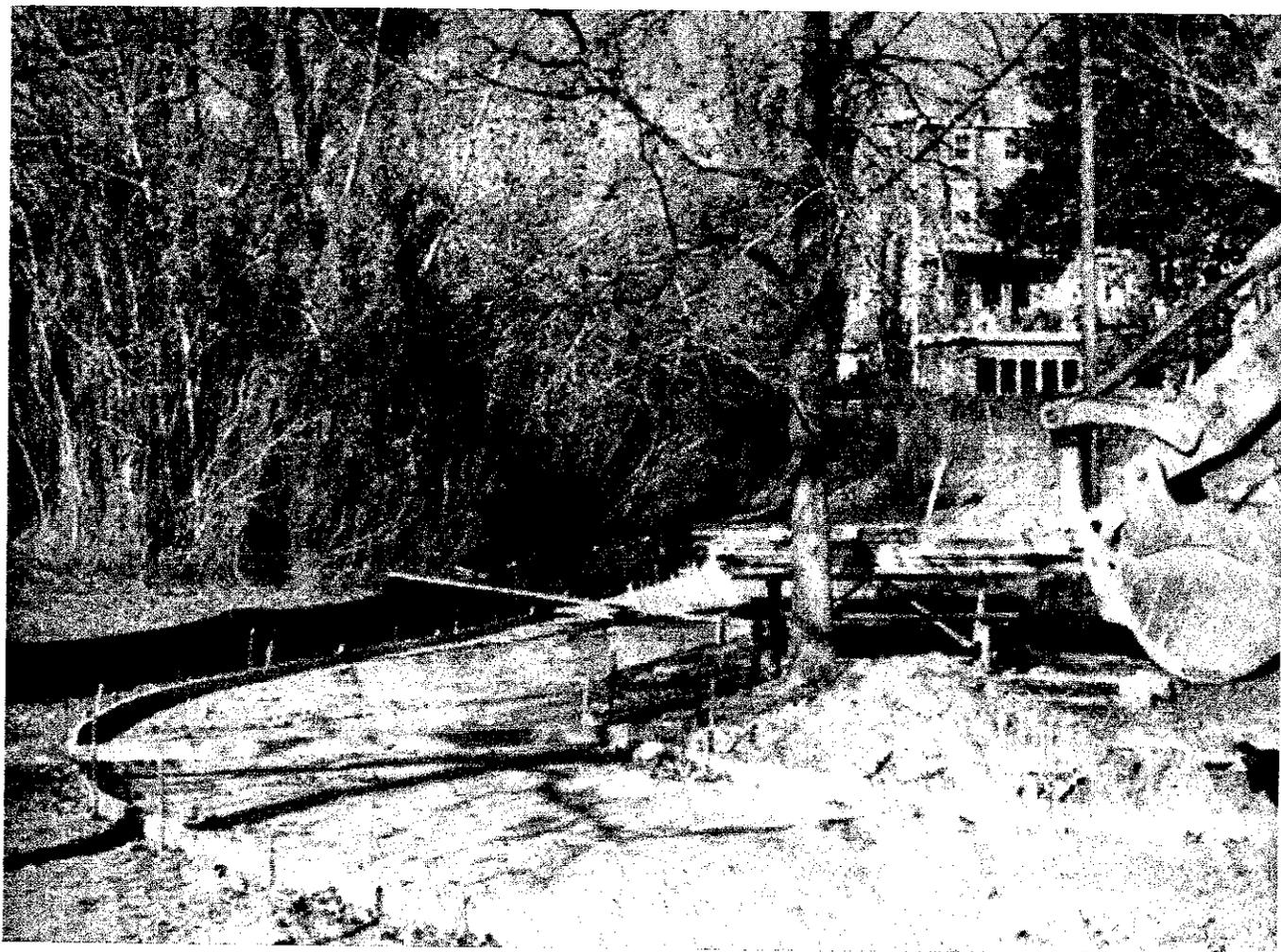


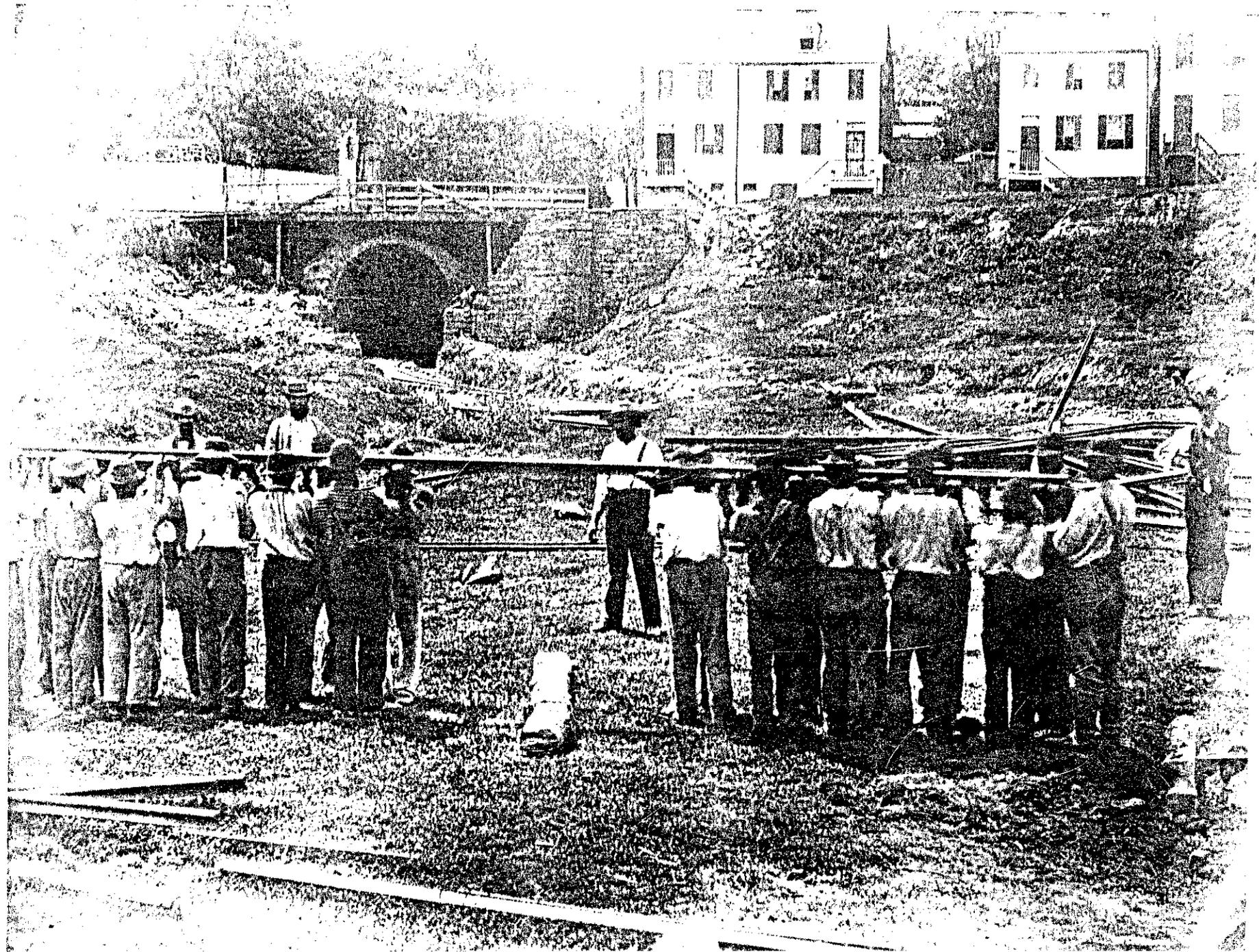


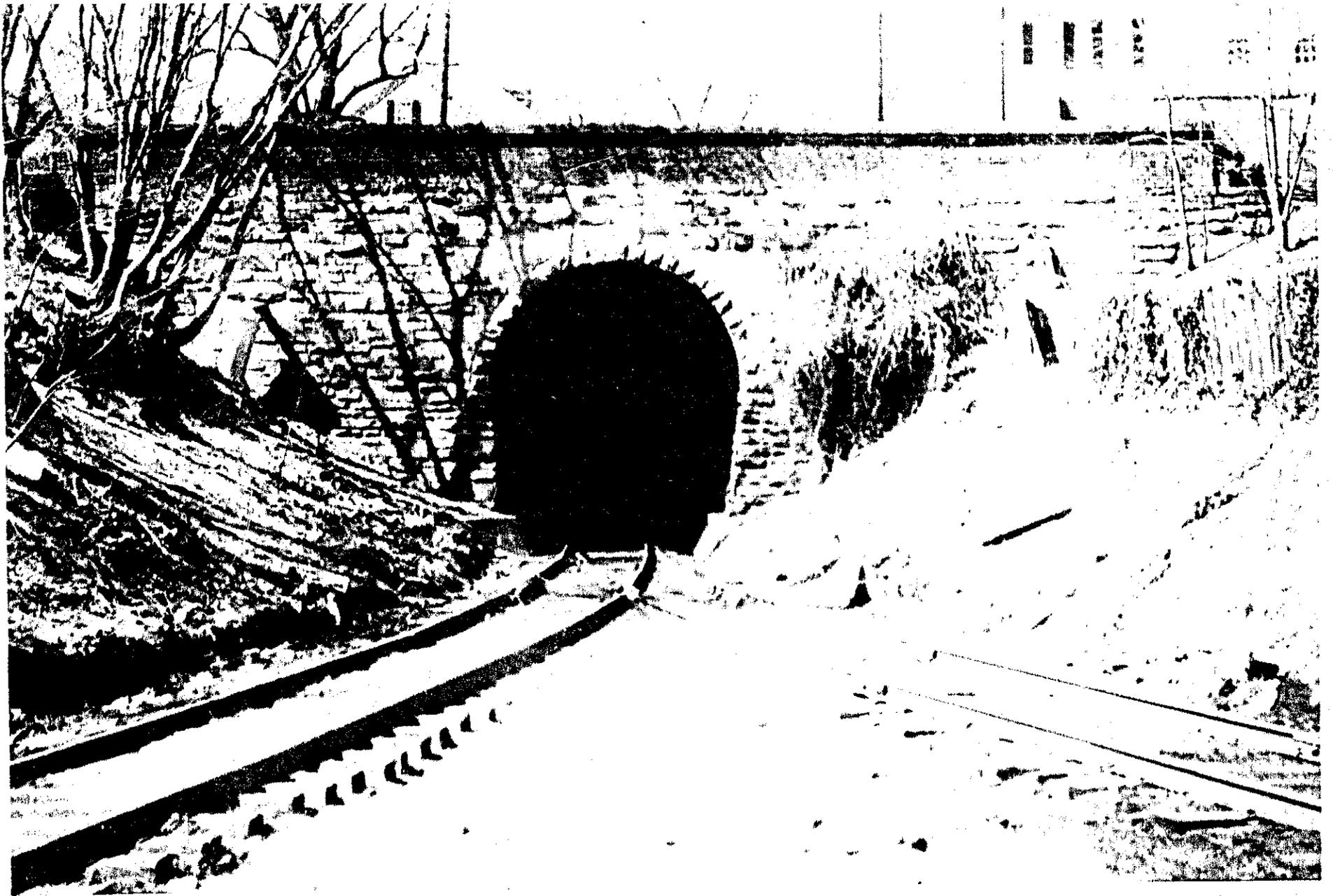


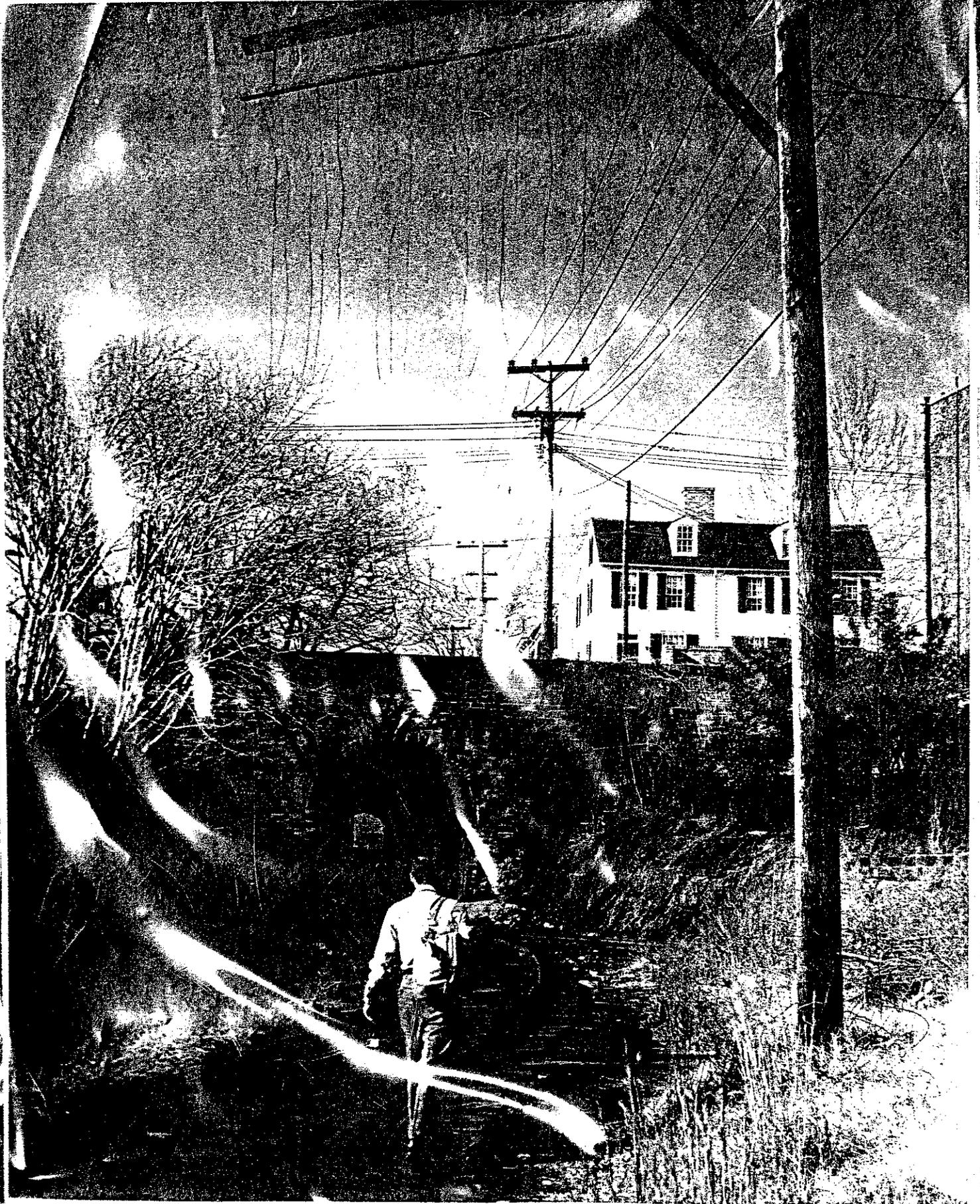














City of Alexandria, Virginia

301 King Street, Suite 2300  
Alexandria, Virginia 22314

15  
1-25-03



Kerry J. Donley  
Mayor

William C. Cleveland  
Vice Mayor

Beverly I. Jett, CMC  
City Clerk and  
Clerk of Council  
beverly.jett@ci.alexandria.va.us

January 8, 2003

(703) 838-4550  
Fax: (703) 838-6433

Members of Council  
Claire M. Eberwein  
William D. Euille  
Redella S. Pepper  
David G. Speck  
Joyce Woodson

\* Sarita Schotta

104 Prince Street  
Alexandria, VA 22314

RE: BOARD OF ARCHITECTURAL REVIEW APPEAL, CASE BAR 2002-0305 –  
FENCE AT 421 SOUTH UNION STREET

Dear Ms. Schotta:

The above appeal will be scheduled for public hearing before City Council at its Public Hearing Meeting to be held on Saturday, January 25, 2003, at 9:30 a.m. in Room 2400, Council Chamber, City Hall, 301 King Street, Alexandria, Virginia.

You may call my office on Friday, January 17, to see where it is placed on the docket.

If you have any questions or if I can be of any further assistance, please feel free to contact me.

Sincerely,

Beverly I. Jett, CMC  
City Clerk and Clerk of Council

cc: \* Carolyn Merck, President, OTCA, P.O. Box 21333, Alexandria, VA 22314  
\* Jon Wilbor, 310 South Lee Street, Alexandria, VA 22314  
Eileen Fogarty, Director, Planning and Zoning  
Sandra Whitmore, Director, Recreation, Parks and Cultural Activities  
Peter Smith, Board of Architectural Review Staff  
Ignacio Pessoa, City Attorney

to docket  
mailed  
1/14/03