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37
6-14-03

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June 13, 2003

Delivered by Hand

Mayor Kerry J. Donley
Members of Alexandria City Council
City Hall, Room 2300
301 King Street
Alexandria, Virginia 22314

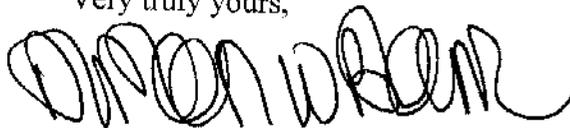
**In Re: BAR Case 2002-0049
209 South Lee Street
Appeal Decision of the Board of Architectural Review**

Dear Mayor Donley and Members of City Council:

I am writing on behalf of our client Amy Bayer the owner of the above referenced property to withdraw her Petition for Appeal of the decision of the Board of Architectural Review.

Should you have any questions concerning this matter please do not hesitate to call.

Very truly yours,



Duncan W. Blair

cc: Amy Bayer
Matt Poe
Pcter Smith
James C. Brincefield, Esq.



EXHIBIT NO. 1

37
6-14-03

Docket Item #
BAR CASE #2002-0049

City Council
June 14, 2003

ISSUE: Public Hearing on and consideration on remand from the circuit court of an appeal of a decision of the Board of Architectural Review, Old and Historic Alexandria District, on May 1, 2002, denying a request for a permit to demolish portions of a dwelling located at 209 South Lee Street, zoned RM Residential.

APPLICANT: Amy Bayer

APPELLANT: Moore & Poc Architects

LOCATION: 209 South Lee Street

ZONE: RM/Residential

Background:

On June 15, 2002, City Council heard an appeal from the BAR's denial of a permit to demolish and encapsulate 625 square feet of the north side wall of the 19th century home at 209 South Lee Street. The purpose of the application was to permit an addition on the north side of the building. Council voted to overturn the BAR's decision, and grant the permit to demolish/encapsulate, by a vote of 3-2-0. Twenty five residents of the Old and Historic Alexandria District appealed Council's decision to the circuit court.

On April 25, 2003, the Circuit Court, Judge Haddock, vacated the Council decision, and remanded the case back to Council for additional proceedings. The Court was concerned that, in light of the variety of testimony presented and issues discussed during the hearing, the transcript record of the hearing did not adequately demonstrate that Council understood and based its decision on the factors set forth in the Zoning Ordinance. These factors constrain Council's discretion in deciding whether to grant or deny a permit to demolish or encapsulate.

The applicant wishes to proceed with the application and the case is now back before Council. The factual situation remains unchanged from the June 2002 appeal.

Summary of BAR Decision:

On May 1, 2002, the Board had before it two applications concerning 209 South Lee Street. The first was for the consideration of the capsulation and demolition of portions of the north wall of the house in order to construct an addition. The second application was for the design of the addition itself. The Board denied the application for capsulation and demolition using the criteria set forth at §10-105(B) of the Zoning Ordinance (by a 4-2 vote). Having denied the first application, and the demolition being necessary to construct the addition, the Board did not consider the actual merits of the design of the addition.¹

The Board denied the application for a permit to demolish and capsulate because it believed that (1) the extent of the loss of historic fabric was unacceptable and (2) that the character of the freestanding house would be inappropriately altered if the addition were allowed to be constructed.

¹On March 6, 2002, the Board had considered, as a conceptual matter, the design of an addition on the north side of the house, extending from the rear ell. The Board reviews some applications at a conceptual stage to judge whether a proposed design is appropriate to the historic district. The Board deferred the case for further study, but made comments regarding the fact that the design was generally appropriate with respect to mass and scale. However, the Board also indicated that it was concerned about the loss of open space in the north side yard and about the amount of demolition that would be required to construct an addition. Staff too noted that the capsulation and demolition that would be required for the construction of the addition was very problematic.

Legal Standard for Demolition/Encapsulation

Under the legal authority of the zoning ordinance, section 10-103 (B) allows the Board to deny a permit to demolish a portion of a structure if, after considering the following factors, the Board determines that the demolition is detrimental to the public interest of the City. The applicable criteria are found at section 10-105(B) and ask the Board to ask the following questions about the proposal:

- (1) Is the building or structure of such architectural or historical interest that its moving, removing, capsulating or razing would be to the detriment of the public interest?
- (2) Is the building or structure of such interest that it could be made into a historic house?
- (3) Is the building or structure of such old and unusual or uncommon design, texture and material that it could not be reproduced or be reproduced only with great difficulty?
- (4) Would retention of the building or structure help preserve the memorial character of the George Washington Memorial Parkway?
- (5) Would retention of the building or structure help preserve and protect an historic place or area of historic interest in the city?
- (6) Would retention of the building or structure 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?

The proposed project entails substantial removal of historic fabric, for door openings into the new addition, but more importantly, entails nearly complete capsulation, or covering, of the rear section of the highly visible north wall of the historic home at 209 South Lee Street. One of the most basic tenets of historic preservation is that existing historic buildings should be preserved. Therefore, a majority of the Board agreed with the Staff analysis and found that the proposed demolition/capsulation met four out of six criteria set forth in the Zoning Ordinance, specifically, ##1,3,5 and 6.

On appeal, Council is bound by the same legal standard as the Board in considering demolition/encapsulation cases. In order to approve a demolition/encapsulation case, Council must identify any and all of the criteria from the above list that apply, consider the extent to which each identified criterion applies, and then determine that, on balance, the retention of the building, structure, or fabric is not reasonably necessary to advance or maintain the public purposes and benefits of the historic district.

History and Analysis:

209 South Lee Street is a three story freestanding brick townhouse dating from ca. 1815. It was later restyled with Victorian decoration ca. 1884. (Ethelyn Cox, *Historic Alexandria Street by Street*, p.78). It appears that the entire length of the house was all built at the same time because there does not appear to be a brick seam joint on the north side of the house that would indicate a later addition. In addition, the brick coursing on the north side is entirely consistent east to west.

In the dense urban setting of the Old and Historic District, 209 South Lee Street is highly unusual as freestanding historic house that can be easily viewed on the sides as well as the front. It retains its original grounds, with generous gardens on both the north and south sides making the house prominent and visible. The view of the north side, where the addition is proposed, is particularly open. The house is sited so that there is generous open space on both the north and south sides. Thus, unlike most houses, the rear ell, not just the main block, has been on public view throughout its existence.

The house has few peers within the Old and Historic Alexandria District. In style and setting it can be compared to such other important properties as:

- **Lloyd House at 220 North Washington Street** – also a freestanding brick house dating from 1798 with open yards on the west and south sides;
- **619 South Lee Street (the Justice Black house)**, also a brick freestanding house dating from 1800 with open yards on the west and south sides;
- **607 Oronoco Street (Kington residence, former Robert E. Lee Boyhood home museum)**, a brick duplex (with 609) dating from 1795 with open yards on the east and north sides;
- **609 Oronoco**, part of the duplex with 607 built in 1795 with open yards on the west and north sides;
- **601 Duke Street**, a freestanding brick house dating from 1783 with a large open yard on the west side;
- **607 Cameron Street (the Lord Fairfax House)**, a semi-detached brick house dating from 1799 with large open yards on the east and north sides; and,
- **429 North Washington Street (the Lee Fendall House)**, a freestanding frame house dating from 1785 with a large open yard on the south side

In the historic district these houses that include large open yards are important for several reasons. First, the houses demonstrate the pattern of urban development that took place in the late 18th and early 19th centuries where a structure was built as a freestanding house on a platted lot with the expectation that other houses would be built immediately adjoining to create a uniform street wall. In the instances of the houses cited this future development did not occur and houses with large and generous yards became the exception to an uninterrupted street wall of house facades. Second, and very importantly, today these houses with large open spaces provide a visual respite and a sense of green open space in the densest part of the historic district.

At its Web site, the National Trust for Historic Preservation has a page titled "What Does "Historic" Mean, Anyway?" It states, in part, "Some older buildings are important simply because they're good to look at. As one author put it, they are "a gift to the street" whose style, textures, materials and charm (and maybe even eccentricity) enrich and enliven their surroundings. These buildings are worth saving because our communities would be less interesting, less attractive, without them." Even though the request in this case involves only a portion of the house, if the demolition/encapsulation request in this case is approved, the freestanding house at 209 South Lee Street will no longer be preserved in its original form, and the house, as an example of history, will be lost.

The north wall of 209 South Lee Street appears to date to the early 19th century and as such is older than most building fabric in the historic district, which despite public perception, has a preponderance of buildings dating to the mid- to late 19th and early 20th centuries. Thus, at its most basic, the proposed capsulation and demolition will entail loss of rare early fabric, constructed nearly 200 years ago using the methods and materials of that period. The loss of this section of the building is elevated in significance by its highly visible nature and its place in the unique ensemble of house and grounds that is 209 South Lee Street. The retention of the north wall and open north garden would undoubtedly preserve a special place in the historic district.

The demolition proposal changed between the conceptual review by the Board in March 2002 and the May 2002 Board action to deny the demolition. The applicant's drawings had originally implied that a large area of the north wall (approximately 625 square feet) was to be removed and covered with an addition. When the application for demolition was considered in May, however, the amount of wall area being removed was reduced (to approximately 200 square feet). The amount of wall being covered with the proposed addition – the amount being encapsulated – however, remained the same. The amount of capsulation and thus the removal of historic fabric from public purview is the same in both applications and includes the entire two story section at the rear ell of approximately 625 square feet.

Although the applicant made much of the distinction between the amount of area being demolished and encapsulated before the B.A.R., arguing that the amount of fabric being demolished had been reduced, the extent of actual demolition versus capsulation has no distinction in the Zoning Ordinance. The criteria set forth in the Zoning Ordinance for capsulation and demolition are the same. Under B.A.R. jurisdiction encapsulation is tantamount to actual demolition because once an exterior wall is encapsulated by an addition it becomes an interior wall which is no longer an exterior architectural feature perceived by the public as part of the historic district and subject to review and approval by any public body. Thus, when an historic wall is encapsulated it becomes an interior wall and can be actually demolished by a current or subsequent owner of the building.

Staff had recommended that if the Board approved the demolition that an easement on the capsulated portion of the wall be offered to the Alexandria Restoration and Historic Preservation Commission.

The Board discussed protecting the portion of the wall that was proposed to be encapsulated through an easement that would prevent future demolition. However, the Chairman of the Alexandria Restoration and Historic Preservation Commission stated that such an easement would be extremely difficult to enforce because it would require regular inspections of the interior of the house because the encapsulated portion of the wall would have no exterior exposure. He said that the Commission had decided against accepting an easement on the portion of the wall proposed to be encapsulated.

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

B.A.R. Staff was opposed to the encapsulation and demolition of a two story section of the historic north elevation of the house and recommended denial of the application. (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 to be considered to determine whether or not to grant a permit to capsule or demolish in whole or in part set out in §10-105(B) of the 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, May 1, 2002
- Attachment 2: Zoning Ordinance, §10-105(B); Criteria to be considered to determine whether or not to grant a permit to capsule or demolish in whole or in part.
- Attachment 3: Photographs and drawing of 209 South Lee Street illustrating the portion of the building to be encapsulated and demolished
- STAFF: Eileen Fogarty, Director, Department of Planning and Zoning; Peter H. Smith, Principal Staff, Boards of Architectural Review.

REPORT ATTACHMENTS

BAR STAFF REPORT, MAY 1, 2002

Docket Item #8
BAR Case #2002-0049

BAR Meeting
May 1, 2002

ISSUE: Permit to Demolish and Capsulate

APPLICANT: Amy Bayer

LOCATION: 209 South Lee Street

ZONE: RM residential

BOARD ACTION, MAY 1, 2002: On a motion by Dr. Fitzgerald, seconded by Mr. Smeallie, the Board voted to approve the Staff recommendation which was denial of the Permit to Demolish and Capsulate. The roll call vote on the motion was 4-2 (Chairman Hulfish and Mr. Wheeler were opposed).

REASON: The Board believed that the demolition and capsulation represented an unacceptable loss of historic fabric and that an addition would change the character of the freestanding house.

SPEAKERS: Amy Bayer, homeowner, spoke in support
Matt Poe, project architect, spoke in support
Lawrence O'Connor, 207 South Lee Street, spoke in opposition
Mark Feldheim, representing the Old Town Civic Association, spoke in opposition
Charles Trozzo, Chairman, Alexandria Restoration and Historic Preservation Commission, spoke in opposition
Charles Abiard, representing the Historic Alexandria Foundation, spoke in opposition
Poul Hertel, spoke in opposition
Ashley O'Connor, 207 South Lee Street, spoke in opposition

Penny Jones, spoke in opposition
Robert Weinhagen, 211 Cameron Street, spoke in opposition
Richard Klingenmaier, 505 Cameron Street, spoke in opposition

BOARD ACTION, APRIL 17, 2002: Deferred for lack of public notice.

BOARD ACTION, MARCH 6, 2002: The Chairman called the question based upon the Staff recommendation which was: deferral for restudy of the associated proposed demolition and the details of the design. The vote on the question was 7-0.

REASON: The Board believed that the design was generally appropriate with respect to mass and scale, but was concerned about the loss of open space in the north side yard and about the amount of demolition that would be required along the north wall of the house. The Board also believed that there should be further refinements to the design of the addition.

SPEAKERS: Matt Poe, project architect, spoke in support
Amy Bayer, homeowner, spoke in support
Charles Ablard, representing the Historic Alexandria Foundation, spoke in opposition
Ashley O'Connor, 207 South Lee Street, spoke in opposition
Deborah Smulyan, 212 South Lee Street, spoke in support
Stephanie Mansfield, 217 South Lee Street, spoke in support
Martina Hofman, 218 South Lee Street, spoke in support

STAFF RECOMMENDATION:

Staff recommends denial of the Permit to Demolish and Capsulate.

In the alternative, if the Board determines to approve the Permit to Demolish and Capsulate, Staff recommends the following conditions:

1. Photographic documentation of the north wall to the standards of the Historic American Buildings Survey with negatives and prints to be deposited at the Alexandria City Archives and Special Collections, Alexandria Library; and,
2. The owner to offer to the Historical Restoration and Preservation Commission an easement on the north wall and that the building permit not be approved until the Commission either accepts or declines the easement.

NOTE: This docket item requires a roll call vote.

DISCUSSION:

Because there have been no changes to the application, Staff here repeats the Staff report from April 17, 2002.

Applicant's Description of the Undertaking:

"To construct a two story, 1300 s.f. masonry addition on the north side of 20 South Lee Street."

Issue:

The applicant is requesting approval of a Permit to Demolish and Capsulate portions of the north wall of the two story rear section of the house at 209 South Lee Street.

History and Analysis:

209 South Lee Street is a three story freestanding brick townhouse dates from ca. 1815 and was later restyled with Victorian decoration ca. 1884. It appears to Staff that the entire length of the house was all built at the same time because there does not appear to be a brick seam joint on the north side of the house that would indicate a later addition. In addition, the brick coursing on the north side is entirely consistent east to west.

In considering a Permit to Demolish, the Board must consider the following criteria set forth in the Zoning Ordinance, Sec. 10-105(B):

- (1) Is the building or structure of such architectural or historical interest that its moving, removing, capsulating or razing would be to the detriment of the public interest?
- (2) Is the building or structure of such interest that it could be made into a historic house?
- (3) Is the building or structure of such old and unusual or uncommon design, texture and material that it could not be reproduced or be reproduced only with great difficulty?
- (4) Would retention of the building or structure help preserve the memorial character of

the George Washington Memorial Parkway?

(5) Would retention of the building or structure help preserve and protect an historic place or area of historic interest in the city?

(6) Would retention of the building or structure 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?

Staff finds problematic the associated demolition and capsulation that would be necessary to allow construction of the proposed addition. The necessary demolition would involve removal of a section of the north wall 20' in height and over 33' length. Thus, an intact section of an early 19th century brick wall will be removed and/or encapsulated as a result. A central tenet of historic preservation is that as much original historic building fabric should be retained as possible. In the opinion of Staff criteria #'s 1, 3, 5 & 6 are met in this instance and, therefore, Staff does not support the demolition necessary to go forward with the addition.

The applicant has limited that amount of actual demolition to the minimum necessary to provide access on each of the two level from the existing house to the new addition. Nevertheless, once capsulated the north wall will be an interior wall that could potentially be demolished without further review.

If the Board believes that, on balance, the north wall could be well documented prior to demolition and that removal of the wall would not lessen understanding of early 19th masonry construction methods, the Board could approve the wall. If the Board approves the demolition and capsulation of the north wall, Staff recommends that the following condition: The owner to offer to the Historical Restoration and Preservation Commission an easement on the north wall and that the building permit not be approved until the Commission either accepts or declines the easement.

CITY DEPARTMENT COMMENTS

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

Code Enforcement:

C-1 Prior to the issuance of an construction permit, demolition permit or land disturbance permit, a rodent abatement plan shall be submitted to Code Enforcement that will outline the steps that will be taken to prevent the spread of rodents from the construction site to the surrounding community and sewers.

Historic Alexandria:

Regrettable proposed loss of significant open space.

Alexandria Archaeology:

- F-1 Historical documents indicate that a house was present on this lot by 1817. The property therefore has the potential to yield archaeological resources which could provide insight into residential life in 19th-century Alexandria.
- R-1 Call Alexandria Archaeology immediately (703-838-4399) if any buried structural remains (wall foundations, wells, privies, cisterns, etc.) or concentrations of artifacts are discovered during development. Work must cease in the area of the discovery until a City archaeologist comes to the site and records the finds.
- R-2 The above statement must appear in the General Notes of the site plan so that on-site contractors are aware of the requirement.

ATTACHMENT 2

Zoning Ordinance, §10-105(B): Criteria to be considered to determine whether or not to grant a permit to capsule or demolish in whole or in part.

- (1) Is the building or structure of such architectural or historical interest that its moving, removing, capsulating or razing would be to the detriment of the public interest?
- (2) Is the building or structure of such interest that it could be made into a historic house?
- (3) Is the building or structure of such old and unusual or uncommon design, texture and material that it could not be reproduced or be reproduced only with great difficulty?
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ATTACHMENT 3

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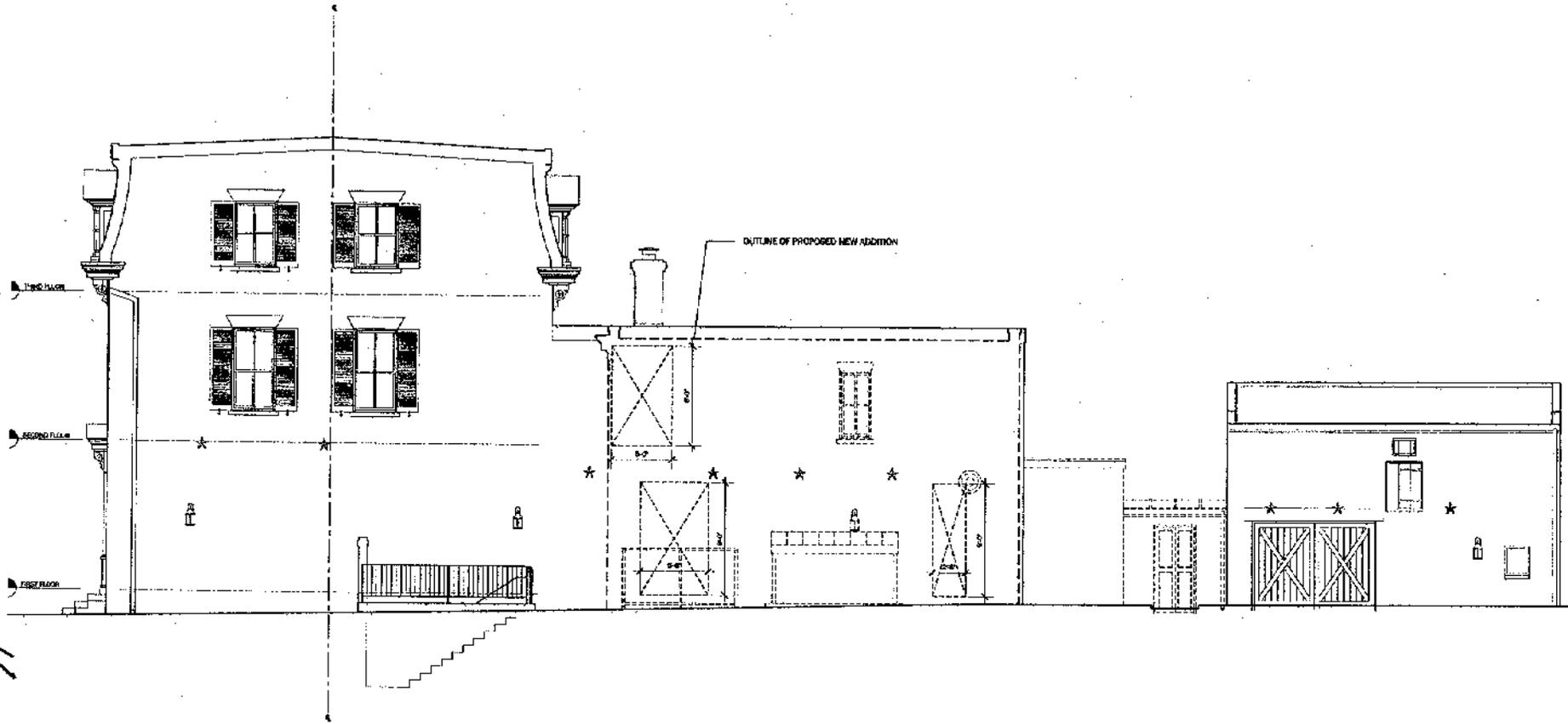




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Issued: 11.15.02
BAR 4



16

LEGEND	
	WALL TO BE RETAINED
	WALL TO BE DEMOLISHED

1 EXISTING NORTH ELEVATION - DEMO

BAYER
RESIDENCE
PLANNING AND DESIGN

206 EAST LEE STREET
ALEXANDRIA, VA 22314

BAR-4
2002 November 15, 2002 11:58 AM
MOORE-POE ARCHITECTS

LAND, CLARK, CARROLL, MENDELSON & BLAIR, P.C.

Attorneys & Counsellors at Law

524 KING STREET
ALEXANDRIA, VA 22314

*Sent to CC, Com,
Planning
PF 6/14/03*

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May 5, 2003

Ignacio B. Pessoa, Esquire
City Attorney
City of Alexandria
301 King Street, City Hall
Alexandria, Virginia 22314

In Re: Amy Bayer BAR Case 2002-0049 209 S. Lee Street, Alexandria, Virginia

Dear Ignacio:

As you are aware the Alexandria Circuit Court vacated the City Council action taken on June 15, 2002, and has remanded the matter back to the City Council for further consideration. On behalf of our client, Amy Bayer the owner of the property, we request this item be redocketed for reconsideration by the Alexandria City Council at its June 14, 2003 Public Hearing.

I would appreciate your confirming that the reconsideration of this case has been placed on the June 14, 2003 docket.

Very truly yours,



Duncan W. Blair

cc: Amy Bayer
Matt Poe
Beverly Jett



37
6-14-03



Roger Waud
<waudr@comcast.net>

06/11/03 08:15 PM

To: <beverly.jett@ci.alexandria.va.us>
cc: NOTICe <"Susan Britta <Susan.Brita"@mail.house.gov>, sallyanngreer <sallyanngreer@msn.com>, Roger Waud <rward@vt.edu>, Nancy Goudreau <nagoudreau@yahoo.com>, Ernest&Montserrat Lehmann <ernie265@hotmail.com>, Ann Kaupp <Kaupp.ann@nrmnh.si.edu>

Subject: 209 S. Lee

Beverly,
Please see that the City Council members get this message.
Thanks,
Roger Waud

To the City Council:
I would like to express my strong concern that the decision by the BAR regarding 209 S. Lee street be upheld by the City Council. Old Town Alexandria's historic architectural character as particularly exemplified by the home at 209 S. Lee is irreplaceable. If you do not uphold the BAR's decision we will have taken another step down the slippery slope that is gradually eroding an American treasure.

Sincerely,
Roger Waud
Treasurer
NOTICe
North Old Town Independent
Citizens' Association

LEONARD CALVERT III

37
6-14-03

June 9, 2003

Mayor Kerry Donnelly and
The Alexandria City Council

Re: Building permit application of
Ms. Amy Bayer of 209 South Lee Street

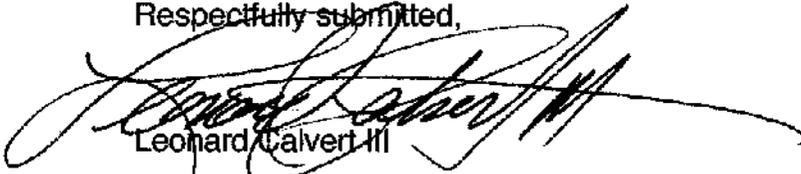
Dear Mayor and Council Members:

Where is the civility and perspective in this issue, much less fairness? When a small but vociferous group of neighbors ask "Why does a divorcee with two children need more space? Have you (Amy Bayer) considered moving to Mc Lean if you need more living space for your family?" I don't think this is about historic preservation.

Why can't Amy Bayer be permitted to do what other nearby neighbors and friends have been allowed to do? Harry and Maria Hopper at 204 Duke and Mark and Lisa Warner at Lee and Wilkes also had sympathetic and tastefully designed additions approved by the BAR and subsequently built onto their historic homes. Why is this homeowner being victimized by having her rights as a homeowner denied?

Hopefully the Council will see its way clear to judiciously mediate a dispute that has degenerated into petty, shameless and vicious personal attacks and help re- direct the energy of those vehement objectors. There are far more important issues of historic preservation for all of us Old Town home owners to concentrate on. Not the least of which is under grounding the disgraceful ghetto like overhead utility lines which mare the nation's premiere historic area.

Respectfully submitted,



Leonard Calvert III

cc: Ms Amy Bayer



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6-14-03

June 11, 2003

To City Council

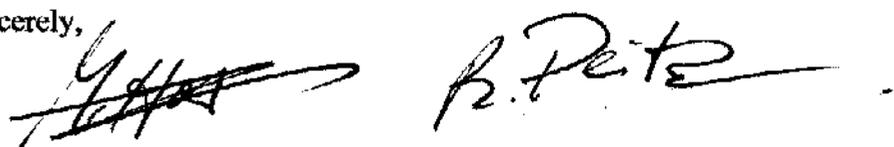
Re: 209 South Lee Street, Alexandria, VA 22314

We are the residents and owners of 218 South Lee Street, the property directly across the street from 209 South Lee Street. We are writing to reiterate our support for the addition to 209 South Lee Street proposed by its owner, Amy Bayer. It seems to us, that her plans do not detract from the historic character of her residence in a substantial way. It does not appear that the demolition and/or encapsulation that she proposes would be "to the detriment of the public interest."

Ms. Bayer has already revised her initial plans to reduce the demolition and encapsulation of "historic fabric." If the City Counsel approves her proposal in principle, she has expressed the willingness to work with the BAR to gain approval of the design and scale of the addition, further reducing the risk that her changes will adversely affect the historic character of Old Town.

We hope that you will support Ms. Bayer's project.

Sincerely,



Robert L. Deitz and Martina F. S. Hofmann

218 South Lee Street
Alexandria, VA 22314

David R. DeCamp
2901 Dartmouth Road
Alexandria, Virginia 22314

37
6-14-03

June 3, 2003

The Hon. Kerry Donley and Members of the City Council
City of Alexandria
Suite 2300, City Hall
301 King Street
Alexandria, VA 22314

Re: 209 South Lee Street

Dear Mr. Mayor and members of the City Council:

I am writing in support of Amy Bayer's right to construct an addition on her home at 209 South Lee Street.

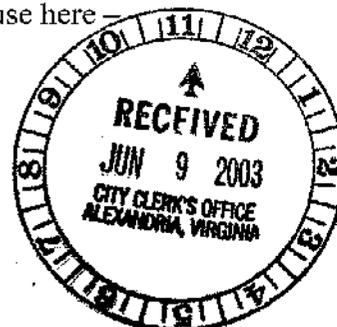
A simple way to look at this complex case is as follows:

A. Individual Rights - Ms. Bayer's property includes an adjacent buildable lot. She proposes to build on that lot. She has spent her time and money in pursuit of this "Individual Right."

B. Common Good - Ms. Bayer's neighbors, the O'Connors, have opposed Ms. Bayer's addition, and interestingly they have assembled allies and couched their opposition as a defense of the "Common Good."

The O'Connor's opposition is disingenuous. The O'Connors are trying to limit Ms. Bayer's individual right – not so much to protect the Common Good – but instead to enhance their personal/private good. The O'Connors want to preserve the private open space next door to their property: space that is not in the public realm. Perhaps the biggest single piece of evidence that illustrates the disingenuous nature of the O'Connor's "Common Good" argument is the modern addition constructed in the private open space at the rear of their own property. Are the O'Connors making plans to demolish their addition and to return this private open space to porous, garden condition for the Common Good?

Balancing Individual Rights and the Common Good are often the essence of what you are entrusted to judge. This surely must be a very hard thing to do. So – I will pause here – and thank you for your service to our city.



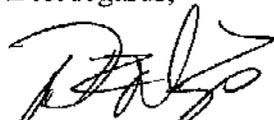
As a citizen who believes in the wisdom of the New Urbanism, here are my views of the Individual Rights vs. Common Good balance as they relate to the 209 South Lee Street case:

To promote the Common Good in Alexandria you must continue to focus on Open Space. However, you must differentiate between public open space and private open space. More emphasis on the Common Good (as opposed to Individual Rights) deserves to be placed on public open space. Old Town Alexandria is such a wonderful place to walk around because the streetscape (a crucial element of the public open space) is so attractive and interesting. Buildings are generally built to the street edge with windows, porches and doors sited right beside sidewalks with street trees that border a parallel parking lane that buffers pedestrians from two modest travel lanes. This streetscape (public open space) is even more important and defining of the character of Old Town than the various public parks (which are also crucial by the way).

The Common Good has an interest and a role in private open space, but that role is less emphasized than it would be in dealing with public open space. Private open space is crucial in an urban environment, and the primary interest to be served is that of the property owner who seeks to create a refuge or a garden that is separate from the public realm. Nonetheless, there should be appropriate limits on design and form in order to preserve the character of the neighborhood. I find strident impervious hard surface limitation arguments unconvincing in the context of an urban setting because we will go crazy trying to turn the cityscape into the countryside. In fact, we all do better as residents of the Chesapeake watershed by concentrating our development at in-fill locations rather than sprawling out into the pockets of Alexandria that are not as dense as Old Town.

So the question: Is it in the interest of the Common Good to deny Ms Bayer's Individual Right to construct her addition? I do not think the Common Good – when looked at in the appropriate context of public open space vs. private open space – is advanced in denying her thoughtful application developed and refined under the guidance of Staff. The all-important streetscape is preserved. The design and form of the addition are in keeping with the neighborhood. The O'Connors can adapt their private open space to Ms. Bayer's private open space in the same way countless neighbors have adapted to one another all over our city.

Best regards,



David R. DeCamp

37
6-14-03



"David S. Olinger"
<dsolinger@erols.com>

06/12/03 08:43 PM

To: <beverly.jett@ci.alexandria.va.us>
cc:
Subject: 209 S. Lee St.

Dear Ms. Jett;

I'd appreciate your passing this e-mail along to the members of the council.

To the Council:

The Board of Architectural Review and its staff have give thoughtful consideration to the subject proposal and have rejected it. The proposal is yet another assault on the fabric and the character of the historic district. Now that you have the opportunity to so do, I urge you to uphold the decision of the BAR.

Sincerely,

David S. Olinger
100 Prince Street
Alexandria, VA 22314

Sent to CC, CM, P & Z

PF 6/14/03

37
6-14-03

----- Forwarded by Sandy Murphy/Alex on 05/27/03 01:40 PM -----



<brownley99@yahoo.com>

To: <sandy.murphy@ci.alexandria.va.us>

m>

CC:

05/27/03 02:17 PM
Please respond to
brownley99

Subject: City of Alexandria Website Contact Us - EMail for Sandy Murphy
(sandy.murphy@ci.alexandria.va.us)

Time: [Tue May 27, 2003 14:17:15] IP Address: [156.80.71.145]

Response requested:

First Name: Stephanie

Last Name: Brown

Street Address: 1708 W. Abingdon Dr. #101

City: Alexandria

State: VA

Zip: 22314

Email Address: brownley99@yahoo.com

Comments: Dear Mayor Donley:

We understand that the City Council will be addressing the demolition of historic property at 209 S. Lee Street at the end of this legislative session. We are writing to you because we are concerned that the Council is acting too soon and without the necessary training, information, and guidance.

As residents of Alexandria, we deeply appreciate the character of the city, and hope that even though historic preservation issues are complex, the Council will take the time necessary to fully examine the consequences and impacts of its decisions -- especially since the Board of Architectural Review has already denied a demolition permit for this exact plan. We know that other leaders, such as Judge Haddock, have also expressed concern that the Council does not at this time possess the training to make demolition decisions about historic property.

Please defer the consideration of the demolition of 209 S. Lee Street until after the City's codes have been updated, training on the BAR appeal process has been given, and historic preservation issues for the City have been further explored.

Preserving the authenticity of our historic structures is very important to us.

Thank you for your leadership.

Sincerely,

Stephanie and Matt Brown
1708 W. Abingdon Dr. #101
Alexandria, VA 22314

cc: Council

Lawrence J. O'Connor
207 South Lee Street
Alexandria, VA 22314

Received by CC, Eileen, CA
Sent to CH, Michelle,
P. Smith
37
6/14/03 PH

May 25, 2003

Mayor Kerry Donley
City of Alexandria Virginia
301 King Street, Suite 2300
Alexandria, VA 22314

Subj: Reconsideration of the Appeal from the BAR Decision for 209 S. Lee Street

On May 2, 2003, the Alexandria Circuit Court found that the Alexandria City Council violated the Alexandria historic preservation ordinances when it reversed a Board of Architectural Review (BAR) decision concerning the demolition of historic property at 209 S. Lee Street. This is a notable finding for many reasons, but most importantly in his decision, Judge Haddock has given the City a chance to do the right thing in re-examining this issue.

We request that this issue be deferred to allow for City Council to address several key issues:

1. Council members requested, and Judge Haddock agreed, that City Council needs additional **training** on the BAR appeal process. Training on historic preservation issues and the charter of the BAR and its guidelines should be given to Council members to apply during future appeals.
2. During the appeal to Circuit Court, Judge Haddock commented multiple times that the City's code inadequately addressed all options for **BAR appeals**. The City Council should update the guidelines involving the BAR appeal process to remove from the political process as much as possible, and focus on the core issues of historic preservation.
3. In addition, we request that the Council take the **appropriate time** to reconsider the appeal. This is a very important issue to everyone who lives and visits the historic district. Please take the appropriate amount of time to train Council on BAR appeals, update the city code, and reconsider this appeal. We are concerned that the docket will be too full in the final days of this legislative session to fully address the issue.

Training

During the June 15, 2002 public hearing on this issue, City Council made it very clear through their own words that they did not understand their role in hearing appeals from the BAR. Judge Haddock recognized this in his decision, and we hope that Council will take advantage of the opportunity and apply this training in all future appeals. The historic preservation portion of the ordinance has as a principal purpose, "protecting the unique resource that is the historic district." This necessarily involves saving the historic fabric, architecture, embodied workmanship, settings, and integrity of the structures and open spaces throughout the whole of the district. To the extent that proposals in any part of the District violate these principles and, thereby, destroy the authenticity of the experience visitors and residents can have here, we will eventually be left with a "Disney Alexandria" of imitations transparently pretending to be historic. Residents of the Old and Historic Alexandria District, as stewards of our historic legacy, must work towards the preservation goals; we all lose when these objectives are lost in the quest for personal gain.

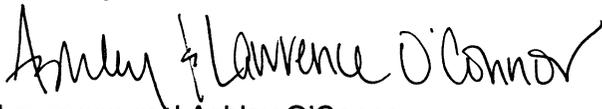
BAR Appeals

The Board of Architectural Review exists for a reason, and has been established to oversee exactly the kind of real estate issue currently under consideration. While it is the right of the citizens of Alexandria to appeal decision to the elected City Council, undermining the decisions of the BAR only makes it harder for each group to accomplish what they have been chartered to do. The actions of the City Council, in the current BAR appeal, have been viewed as arbitrary, an abuse of discretion and contrary to law. This process should be reviewed and updated to reflect the objectives of the BAR charter. The demolition associated with the proposed addition was deemed extremely negative to the neighborhood by the BAR, and was supported in this decision by the Historic Alexandria Foundation, the Old Town Civic Association, and the Alexandria Historical Restoration and Preservation Commission. The demolition permit denied by the BAR addressed only the plan before them. Many design options continue to exist, and should be explored in the proper venue, before the BAR. The demolition associated with the current design was deemed by the BAR to be extremely negative to the historic character of the neighborhood, and was denied for that reason.

Council Consideration

As this Council session winds down, the issues that are before you with this case are not ones that can be addressed easily. The BAR is charged under Section 10-105 (B) of the Zoning Ordinance with determining whether or not to permit any proposed capsulation or demolition (in whole or part) of any "building or structure within the Old and Historic Alexandria District." The ordinance itself lists 7 criteria that the Board (and City Council) must consider in making its determination -- the applicability of any single one of them being sufficient reason to deny a permit. We strongly recommend that Council take the appropriate amount of time to train City Council, update the City's code while working with concerned citizens, civic associations, and historic groups. Living in an historic district is a privilege, and as owners we believe we have a civic duty to encourage preservation of this irreplaceable national treasure and to educate the public as to the importance of its stewardship for generations yet to come.

Sincerely,



Lawrence and Ashley O'Connor
207 S. Lee St.
Alexandria, VA 22314

Cc: City Council Members
Eileen Fogarty, Director of AP&Z
Ignacio Pessoa, City Attorney



Sent to CC, CM

37
6/14/03 PH

H. STEWART DUNN, JR.
418 SOUTH LEE STREET
ALEXANDRIA, VIRGINIA 22314

#14

May 13, 2003

Mayor Kerry J. Donley
City of Alexandria, Virginia
301 King Street, Suite 2300
Alexandria, VA 22314

Re: Reconsideration of the Appeal from
the BAR Decision for 209 S. Lee Street

Dear Mayor Donley:

The recent decision of the Circuit Court for the City of Alexandria in O'Connor v. City Council of Alexandria, Virginia, Case No. CL020497, presents the Council with both the opportunity and the responsibility to reexamine this specific case and, probably more importantly, to reevaluate the procedures that it will follow on appeals from the BAR. The Court's decision that the Council action was "arbitrary, an abuse of discretion and contrary to law" is undeniable evidence, and even a directive, that the BAR appeals process needs to be carefully reexamined. A copy of this opinion is enclosed. This reexamination should include an opportunity for input from concerned citizens, civic associations, historic groups and others who have an interest in these matters.

Therefore, I am strongly recommending to you and the other members of the Council that, rather than simply scheduling a rehearing of this on June 14th, you take the following steps:

- (1) You refer the specific case at 209 S. Lee back to the BAR with instructions that it reconsider the matter. Both sides have argued, probably with correctness on each side, that the BAR did not properly focus on the all of the most relevant issues under the ordinance, and
- (2) You request the City Attorney to prepare a memorandum recommending procedures for BAR appeals and reviews. If, as I understand, Mr. Pessoa is already preparing such a memorandum, this memorandum should be sent to concerned citizens and groups and be the subject of a hearing before both the BAR or the City Council.

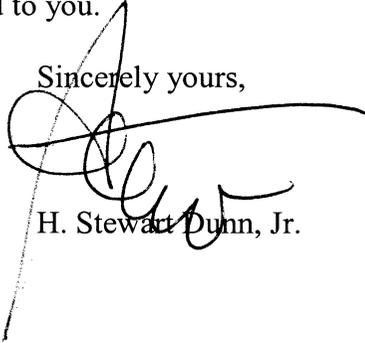
This issue of appeals from the BAR has been a friction point in the community for some years. The Circuit Court decision in this case gives the Council the opportunity to reexamine this from an entirely fresh perspective.



Mayor Kerry J. Donley
May 13, 2003
Page 2

In closing, I want to thank you and all the members of the present Council for your most distinguished service to the city. We are indebted to you.

Sincerely yours,

A handwritten signature in black ink, appearing to read 'H. Stewart Dunn, Jr.', with a long horizontal flourish extending to the right.

H. Stewart Dunn, Jr.

HSD/jmn

cc: City Council Members
Eileen Fogarty, Director AP&Z
Ignacio Pessoa, City Attorney

VIRGINIA:

IN THE CIRCUIT COURT FOR THE CITY OF ALEXANDRIA

O'Connor, et al.

v.

CASE NO.: CL020497

City Council of Alexandria Virginia

ORDER

THIS CAUSE CAME ON FOR TRIAL upon the stipulated record before the Court, the Briefs of Petitioner and Respondent and argument of counsel, whereupon,

IT APPEARING TO THE COURT that, in reversing the decision of the Board of Architectural Review ("BAR") to deny the subject Application for Demolition and Encapsulation, the City Council failed to consider the mandatory decision criteria set forth in §10-105(B) of the City of Alexandria Zoning Ordinance; and

IT FURTHER APPEARING TO THE COURT that, as a result of the aforesaid failure of council to consider the mandatory decision criteria set forth in §10-105(B) of the City of Alexandria Zoning Ordinance, the decision of council was arbitrary, an abuse of discretion and contrary to law;

It is therefore,

ADJUDGED, ORDERED and DECREED that the aforesaid decision of Council is hereby vacated pursuant to §107(B) of the Zoning Ordinance and the matter is remanded to Council for reconsideration in light of the criteria set forth in §10-105(B) of the Zoning Ordinance.

AND THIS CAUSE IS CONTINUED.

ENTERED this _____ day of _____, 2003.

Donald M. Haddock
Circuit Court Judge

WE ASK FOR THIS:

James C. Brincefield, Jr., Esq.
Brincefield Hartnett, P.C.
526 King Street, Suite 423
Alexandria, VA 22314

SEEN AND _____:

Ignacio B. Pessoa, Esq.
Office of the City Attorney
301 King Street, Suite 1300
Alexandria, VA 22314

F:\Data\Clients\O'ConnorLawrence\Order2.doc

rec'd 6/16/03
37
6-14-03

*125 Duke Street
Alexandria, Virginia 22314*

June 11, 2003

Alexandria City Council
301 King Street
Alexandria, Virginia 22314

Dear Council Members:

The plight of Ms. Amy Bayer in seeking permission to make a change to the rear of her house at 209 South Lee Street is a regrettable example of preservation "gone mad" and an enormous waste of the City Council's time and energy. We are neighbors of Ms. Bayer, support her request, and strongly urge the Council to re-affirm its earlier decision and return the issue to the Board of Architectural Review which hopefully this time will approve the application.

The Council was correct in ruling—after an astounding three hours of public comment and discussion—to overturn the BAR's arbitrary rejection of the application. It should promptly reaffirm this action and devote its valuable time and energy to dealing with real and grave issues that impair our city's life and real estate values—increasing traffic on the main arteries, overbuilding, inadequate schools, etc.

We have lived in Old Town nine years and are strong supporters of the preservation movement as members of the Old Town Civic Association and the Alexandria Association. The guidelines should not, however, be applied arbitrarily and so broadly as to defy common sense and Ms. Bayer's basic property rights. We live down the street from 209 South Lee Street and think her plans are reasonable and in no way derogate from the historic character of the street or the charm of the neighborhood.

We strongly back Ms. Bayer's request that the Council promptly reaffirm its decision in her favor.

Sincerely yours,


Dennis and Marie Kux

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SPEAKER'S FORM

**PLEASE COMPLETE THIS FORM AND GIVE IT TO THE CITY CLERK
BEFORE YOU SPEAK ON A DOCKET ITEM.**

DOCKET ITEM NO. 37

PLEASE ANNOUNCE THE INFORMATION SPECIFIED BELOW PRIOR TO SPEAKING.

1. NAME: Beau Brincefield
2. ADDRESS: 526 Keny Ste 423
TELEPHONE NO. 703-436-2880 E-MAIL ADDRESS: beau@brincefield.com
3. WHOM DO YOU REPRESENT, IF OTHER THAN YOURSELF? Me + Mrs
Lawrence O'Connor
4. WHAT IS YOUR POSITION ON THE ITEM?
FOR: _____ AGAINST: _____ OTHER:
5. NATURE OF YOUR INTEREST IN ITEM (PROPERTY OWNER, ATTORNEY, LOBBYIST, CIVIC INTEREST, ETC.):

6. ARE YOU RECEIVING COMPENSATION FOR THIS APPEARANCE BEFORE COUNCIL? YES NO _____

This form shall be kept as a part of the Permanent Record in those instances where financial interest or compensation is indicated by the speaker.

A maximum of 5 minutes will be allowed for your presentation. If you have a prepared statement, please leave a copy with the City Clerk.

Additional time, not to exceed 15 minutes, may be obtained with the consent of the majority of the Council present, provided that notice requesting additional time with reasons stated is filed with the City Clerk in writing before 5:00 p.m. of the day preceding the meeting.

The public normally may speak on docket items only at Public Hearing Meetings, and not at Regular Meetings. Public Hearing Meetings are usually held on the Saturday following the second Tuesday in each month; Regular Meetings are regularly held on the Second and Fourth Tuesdays in each month. The rule with respect to when a person may speak to a docket item can be waived by a majority vote of Council members present, but such a waiver is not normal practice. When a speaker is recognized, the rules of procedures for speakers at public hearing meetings shall apply.

In addition, the public may speak on matters which are not on the docket during the Public Discussion Period at Public Hearing Meetings. The Mayor may grant permission to a person, who is unable to participate in public discussion at a Public Hearing Meeting for medical, religious, family emergency or other similarly substantial reasons, to speak at a regular meeting. When such permission is granted, the rules of procedures for public discussion at public hearing meetings shall apply.

Guidelines for the Public Discussion Period

- All speaker request forms for the public discussion period must be submitted by the time the item is called by the City Clerk.
- No speaker will be allowed more than 5 minutes, and that time may be reduced by the Mayor or presiding member.
- If more than 6 speakers are signed up or if more speakers are signed up than would be allotted for in 30 minutes, the Mayor will organize speaker requests by subject or position, and allocate appropriate times, trying to ensure that speakers on unrelated subjects will also be allowed to speak during the 30-minute public discussion period.
- If speakers seeking to address Council on the same subject cannot agree on a particular order or method that they would like the speakers to be called, the speakers shall be called in the chronological order of their request forms' submission.
- Any speakers not called during the public discussion period will have the option to speak at the conclusion of the meeting, after all docketed items have been heard.