

EXHIBIT NO. 1

26
6-21-05

Docket Item #
BAR CASE #2004-0197

City Council
June 21, 2004

ISSUE: Appeal of a decision of the Board of Architectural Review, Old and Historic Alexandria District denying a Certificate of Appropriateness for after-the-fact construction of a fence, pergola and shed

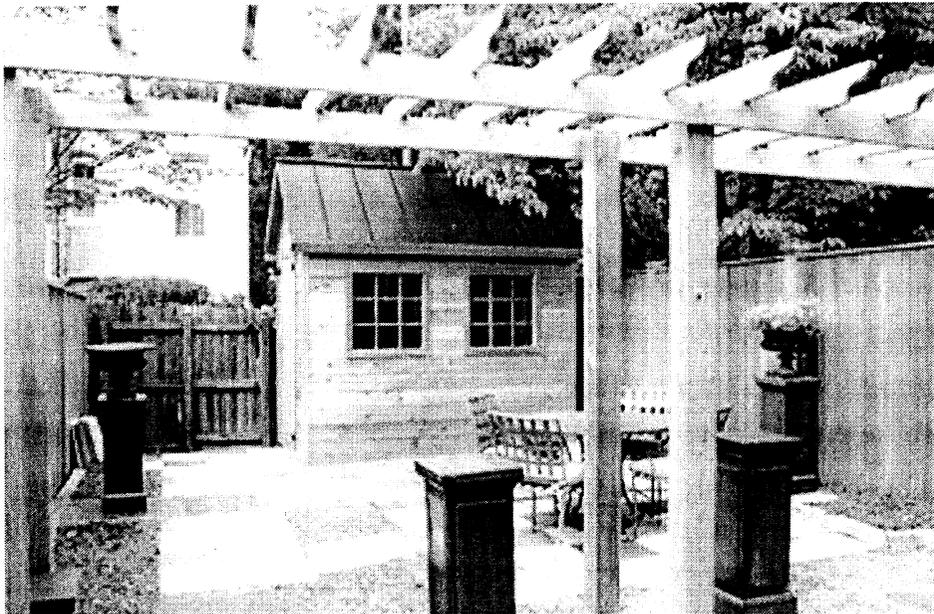
**APPLICANT &
APPELLANT:** Gary Smith

LOCATION: 321 Queen Street

ZONE: RM/Residential

I. EXECUTIVE SUMMARY

- The applicant at 321 Queen Street requested after-the-fact approval for the construction of a fence, pergola and shed in the rear yard of the residential rowhouse.
- The Old and Historic Alexandria District Board of Architectural Review heard the application for the Certificate of Appropriateness on a number of occasions and made a decision to deny after-the-fact approval on April 20, 2005 of the pergola and shed and require changes to the fence.
- The applicant appealed the Board of Architectural Review denial of the pergola and shed and the changes to the fence.
- The B.A.R. agreed with the neighbors that the structures that had been built in the rear yard were too large and should, at least, be below the height of the wood fence.
- Staff recommends that Council support the decision of the B.A.R. and deny the pergola and shed as inappropriate and approve the fence with the condition that it be reduced in height as specified by the B.A.R.



Shed, pergola and fence in rear yard of 321 Queen Street

II. BACKGROUND

Sometime in the middle of 2004, the owners of 321 Queen Street constructed a new wood fence, a new pergola and a wood shed in their rear yard. There were no permits or a Certificate of Appropriateness approved for these structures. The matter was brought to the attention of the BAR Staff who contacted the applicant regarding the unapproved structures. They subsequently applied for after-the-fact approval of the fence, pergola and shed.

Over the course of the last twenty-one months the Board held a series of public hearings regarding whether approval of an after-the-fact Certificate of Appropriateness for construction of a fence, pergola and shed was appropriate. Finally, on April 20, 2005 the Board took a final action and denied approval of the pergola and shed and approved the fence with the condition that its size be reduced. The Board took this action because they agreed with the neighbors in the surrounding properties that the structures that had been constructed in the rear yard of 321 Queen Street were too large and were inappropriate. The Board had deferred taking final action with the hope that a compromise could be reached whereby the rear yard structures would be voluntarily reduced in size. However, when that did not occur that Board believed that they had little recourse but to deny after-the-fact approval of the structures because they were inappropriate.

The Zoning Ordinance provides standards that are to be used to determine if approval of a Certificate of Appropriateness is warranted. In this appeal, the most important standard concerns architectural mass and scale. Section 10-105(A)(2)(a) of the Zoning Ordinance sets forth that standard. It provides that 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;

III. ANALYSIS

Although the design of the structures are appropriate for the historic district, the B.A.R. felt that all of the structures were too high for that location.

IV. APPELLANT'S POSITION

The applicants believe that the shed, pergola and fence as installed are appropriate and should be approved.

V. RECOMMENDATION

Staff recommends that Council support the decision of the B.A.R. and deny the pergola and shed as inappropriate and approve the fence with the condition that it be reduced in height as specified by the B.A.R.

Attachment:

Attachment 1: B.A.R. Staff Report, April 20, 2005

STAFF:

Eileen Fogarty, Director, Department of Planning and Zoning; Hal Phipps, Division Chief, Zoning and Land Use Services; Peter H. Smith, Principal Staff, Boards of Architectural Review.

ATTACHMENT 1

Docket Item #7
BAR CASE #2004-0197

BAR Meeting
April 20, 2005

ISSUE: After-the-fact review of shed, trellis and fencing
APPLICANT: Gary Smith
LOCATION: 321 Queen Street
ZONE: RM/Residential

BOARD ACTION, APRIL 20, 2005: On a motion by Mr. Smeallie, seconded by Ms. Neihardt the Board denied the application for the pergola and the storage shed and approved the fence with the condition that it be lowered in three 6" steps. The vote on the motion was 5-1 (Dr. Fitzgerald was opposed).

REASON: The Board agreed with the neighbors that the storage shed and pergola were inappropriate and should be removed. The Board also agreed that the fence was acceptable as long as its height was reduced.

SPEAKERS: Gary Smith, homeowner, spoke in support
Michael Myback, 325 Queen Street, spoke in opposition
Francois Duret, 317 Queen Street, spoke in opposition
Dennis Jamison, 311 North Royal Street, spoke in opposition
Mary Lois Conley, 319 Queen Street, spoke in opposition
Michael Hobbs, President, Old Town Civic Association, spoke in opposition
Kevin Johnson, 309 North Royal Street, spoke in opposition
Ann Horowitz, 313 North Royal Street, spoke in opposition

BOARD ACTION, NOVEMBER 17, 2004: On a motion by Ms. Neihardt, seconded by Mr. Keleher the Board deferred the application for restudy. The vote on the motion was 7-0.

REASON: The Board agreed with the neighbors that all elements of the application - the trellis, the shed and the fencing – were too tall and needed to be reduced in size. The Board believed that the project should be rethought and accommodations with the neighbors reached regarding the various elements of the project.

SPEAKERS: John Cole, project architect, spoke in support
Mary Jean Smith, homeowner, spoke in support
Gebe Johnson, 309 North Royal Street, spoke in opposition
Becky Squires, 313 Queen Street, spoke in opposition
Francois Duret, 317 Queen Street, spoke in opposition
Keith Hudkins, 302 N. Royal Street, spoke in opposition
Michael Hobbs, President, Old Town Civic Association, spoke in opposition
Daniel Horowitz, 313 N. Royal Street, spoke in opposition
Dennis Jamison, 311 North Royal Street, spoke in opposition
Mary Lois Conley, 319 Queen Street, spoke in opposition

BOARD ACTION, SEPTEMBER 23, 2004: On a motion by Ms. Neihardt, seconded by Mr. Smeallie the Board deferred the application for restudy for a redesign of the trellis, shed and fencing that were not as tall as the existing.
The vote on the motion was 5-0.

REASON: The Board agreed with the neighbors that all elements of the application - the trellis, the shed and the fencing – were too tall and needed to be reduced in size. The Board believed that the project should be rethought and accommodations with the neighbors reached regarding the various elements of the project.

SPEAKERS: Mary Jean Smith, homeowner, spoke in support
Gary Smith, homeowner, spoke in support
Michael Myback, 325 Queen Street, spoke in opposition
Gebe Johnson, 309 North Royal Street, spoke in opposition
Kevin Johnson, 309 North Royal Street, spoke in opposition
Becky Squires, 313 Queen Street, spoke in opposition
Dennis Jamison, 311 North Royal Street, spoke in opposition
Lawrence O'Connor, 207 South Lee Street, spoke in opposition
Michael Hobbs, President, Old Town Civic Association, spoke in opposition

UPDATE: Based upon the attached letter from the applicant, it is now the request to the Board that action be taken on the application as originally submitted and not on the possible revisions which were proposed at the November public hearing. Based upon this request, Staff continues to recommend approval and here repeats the Staff report from the first hearing regarding this application in September 2004. Staff also notes that the fence and shed have been painted within the last 10 days. Several citizens have complained concerning this action. However, Staff has taken no action on these complaints for two reasons. First, as a general rule the Board does not regulate paint color and second, the *Design Guidelines* recommend that fences and outbuildings be painted.

STAFF RECOMMENDATION:

Staff recommends approval of the application as submitted.

I. Issue:

The applicant is requesting approval of a Certificate of Appropriateness for after-the-fact construction of a wood shed, trellis and fencing at the rear of the residential property at 321 Queen Street.

Shed

The wood shed that has been constructed is one story in height and measures 10.25' x 6.25' with an overall height of 10.25' and has a standing seam metal roof. The shed has multi-light wood windows and a board on board wood door. The shed siding will be stained a gray color.

Trellis

The wood trellis is 18' long and 3' wide with the tails of the rafters overhanging the structure by 12". The trellis is constructed of 2x6 cedar rafters on 6x6 wood columns. The trellis will be stained a gray color.

Fencing

The new wood board on board fencing replaced deteriorated stockade fencing. The fence is constructed of 8' sections of 1x6 cedar boards between 6x6 wood posts. The fence varies in height between 5.5' and 6'. The fence is proposed to be stained with an opaque white stain.

II. History

321 Queen Street is one of four attached two story, three bay townhouses (along with 325, 323 and 319) built in 1818 by Presley Barker and James McGuire (Ethelyn Cox, *Alexandria Street by Street*, p. 142).

III. Analysis

Proposed alterations comply with Zoning Ordinance requirements.

Staff has not located any records of previous Board actions with respect to this property.

Staff believes that the shed, trellis and fencing are appropriate and meet the recommendations of the *Design Guidelines*. Having said that, Staff is well aware of the concerns of the surrounding neighbors. Staff readily acknowledges the fact that the construction of the shed and fencing substantially alters the visual space within the interior of the blockface. Staff also acknowledges the fact that the fencing that has been installed appears to the neighbors as higher than 6' because the grade of the rear yard at 321 Queen Street has been raised approximately one foot thus, creating a 7' high fence as viewed from the adjacent yards. The primary charge to the Board is the protection of the exteriors of properties in the historic district that are visible from the public right-of-way. In fact, if exterior work is undertaken on a property and it is not visible from a public right-of-way, the Board has no jurisdiction over the property and the work can be undertaken without further review. While the shed and fencing are visible from North Royal Street, the view from the public right-of-way is relatively minimal. Therefore, in the opinion of Staff, the public perception of the blockface will remain largely unchanged. For these reasons, Staff believes that the work that has been undertaken is appropriate and recommends approval.

IV. Staff Recommendation

Staff recommends approval of the application as submitted.

CITY DEPARTMENT COMMENTS

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

Code Enforcement:

F-1 A construction permit is required for the Pergola. Construction shall comply with the current addition of the USBC.

Historic Alexandria:

No comment.



RECORD OF APPEAL
FROM A DECISION OF THE BOARD OF ARCHITECTURAL REVIEW

Date Appeal Filed With City Clerk: May 3, 2005

B.A.R. Case # 2004-0197

Address of Project: 321 QUEEN STREET

Appellant is: (Check One)

B.A.R. Applicant

Other Party. State Relationship _____

Address of Appellant: 321 QUEEN ST.
ALEXANDRIA, VA 22314

Telephone Number: 703 535 8883

State Basis of Appeal: SEE ATTACHED SHEETS

Attach additional sheets, if necessary.

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 \$150.00 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.

[Signature]
Signature of the Appellant

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 # _____ regarding the property at _____ (street address).

Name	Signature	Owner of Real Property At:
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This is an appeal of the decision of the Board of Architectural Review (BAR) CASE **BAR2004-0197**, wherein the BAR in a 5-1 decision denied the application for a certificate of appropriateness.

Background:

The background is summarized in the documents provided by the BAR staff and in the earlier submission by applicant in preparation for BAR meetings. Highlights of these include:

- The BAR and Zoning staffs have consistently recommended applicant's proposals "be approved as submitted." Dr. Oscar Fitzgerald also recommended approval;
- The Office of Historic Alexandria has had no comment on any of the proposals made by applicant;
- In addition to the original plan, applicant proposed two other solutions which would reduce the visible mass of the structures by a considerable amount. Of applicant's three proposals presented to neighbors and two presented to the BAR, none were found acceptable by the neighbors and thus were denied by the BAR.

[Notes: 1. Since City staff supported the original design, and the neighbors were not willing to compromise, applicant resubmitted their first proposal. 2. Not all adjacent neighbors are complainants.]

- Currently, 40 similar structures "visible from a public way" exist in applicant's surrounding neighborhood illustrating a two-tiered BAR approval standard – 1. If neighbors complain, there's no approval; 2. If no complainants come forward, homeowners may build improvements based on staff recommendations.

Basis of Appeal:

The City staff has consistently recommended applicant's proposals "be approved as submitted." The BAR routinely acted in opposition to staff recommendations. It is extremely confusing to applicant to have followed the City's design guidelines and been supported by the City staff only to find that the BAR does not agree. There are apparently "unpublished" guidelines which the BAR arbitrarily follows and are nowhere set out in the guidelines distributed by the City. When making an application to the BAR, how does a property owner know what is expected?

Applicant met with neighbors on several occasions as a group and other times individually to attempt to work out a compromise. Even though applicant met with neighbors prior to our first hearing, we did not reach an agreement. Following the first hearing, applicant hired an architect who presented the neighbors with two designs modifying the project. Both designs significantly reduced the mass of the structures visible by the neighbors and from the public way. However, these attempts failed to meet the neighbors' standards. This failure appeared to be the most significant factor in the

BAR's denial of a certificate of appropriateness, since several Board members applauded the design

Relying on comments and letters from the public while disallowing rebuttals. The BAR application process requires the applicant to provide 12 copies of their submission 30 days in advance of the hearing, to notify the adjacent neighbors of the hearing, and to have the property posted. There are no requirements on complainants – not even a requirement to notify the applicant when a document has been filed with the BAR or its staff. Throughout the hearing process leading up to this appeal, neighbors and others were allowed to come to the Board with last minute submissions which were never viewed by the applicant. During the Board hearings, spokespersons were given free reign to say whatever they wished – including personal attacks – while applicant was denied opportunities to rebut these statements and the late submission materials. This biased the proceeding against the applicant.

Conclusion:

Applicant followed the City's published design guidelines; the City staff plus one BAR member recommended a certificate of appropriateness. Following BAR recommendations, applicant hired an architect and presented two different designs to neighbors, who declined to accept either of them. Dozens of similar structures exist in the neighborhood and were approved by the BAR. Applicant consistently acted in good faith and requests the City Council to consider this appeal and to issue a certificate of appropriateness for the garden shed and pergola.

26
6-21-05



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06/10/2005 06:35 PM

Please respond to
<ngodici@comcast.net>

To <alexvamayor@aol.com>, <delpepper@aol.com>,
<council@joycewoodson.net>, <councilmangaines@aol.com>,
<council@krupicka.com>, <macdonaldcouncil@msn.com>,

cc

bcc

City of Alexandria Website Contact Us - EMail for Mayor,
Vice-Mayor and Council Members (alexvamayor@aol.com,
delpepper@aol.com, council@joycewoodson.net,
Subject councilmangaines@aol.com, council@krupicka.com,
macdonaldcouncil@msn.com, paulcsmedberg@aol.com,
rose.boyd@alexandriava.gov, jackie.henderson@alexandriava.gov,
tom.raycroft@alexandriava.gov)

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tom.raycroft@alexandriava.gov)**

Time: [Fri Jun 10, 2005 18:35:34] IP Address: [216.181.83.2]

Response requested: []

First Name: Nick
Last Name: Godici
Street Address: 126 N Columbus St
City: Alexandria
State: Va
Zip: 22314
Phone: 703 739-9248
Email Address: ngodici@comcast.net

I am writing in support of Mr. and Mrs. Gary Smith, 321 Queen St. Their request for approval of a new fence and shed will be before you on June 21st. I believe the DRB has unfairly denied their request and that the city council should approve the structures. While I fully agree that approval for new structures should be approved by the city to safeguard the appearance of "old town", I believe that the approval should be based on reasonable objective standards and not solely on the preferences of neighbors. I have seen the improvements made by the Smith's and have seen the guidelines published by the city. The Smith's new fence and shed could be used as a

Comments:

model for compliance with the guidelines. City staff has been in full agreement with this (until recently when politics has entered the picture and staff may not now approve). Simply put, neighbors have opposed the new structures and will not negotiate or sensibly discuss the alternatives offered by the Smiths. The debate is fueled now by some kind of personal crusade against the Smiths and not by logic or published standards. If Alexandria residents are subject to the preferences of their neighbors and the neighbors are allowed to override the city's own published DRB guidelines then we have a problem. It will be a misjustice if the Smiths are required to tear down the structure because of their unreasonable neighbor's demand.