


City of Alexandria, Virginia

MEMORANDUM

THIS ITEM WAS DEFERRED FROM THE TUESDAY, MAY 26, 2009, CITY COUNCIL LEGISLATIVE MEETING.

DATE: JUNE 2, 2009

TO: THE HONORABLE MAYOR AND MEMBERS OF CITY COUNCIL

FROM: JAMES K. HARTMANN, CITY MANAGER 

SUBJECT: STATUS REPORT AND DISCUSSION OF PAINTING PREVIOUSLY UNPAINTED BRICK AT 900 PRINCE STREET AND CONSIDERATION OF THE OLD AND HISTORIC BOARD OF ARCHITECTURAL REVIEW APPEAL HEARD BY CITY COUNCIL ON NOVEMBER 15, 2008

ISSUE: Status report regarding paint removal testing of the building at 900 Prince Street and continued consideration of an appeal from the Board of Architectural Review, Old and Historic Alexandria District, resulting in after-the-fact approval of painting previously unpainted brick.

RECOMMENDATION: That City Council:

- (1) Request that the City Attorney file an injunction action to compel the removal of paint on the building at 900 Prince Street; or, in the alternative
- (2) If the property owner voluntarily agrees, accept a fine of \$28,000 in lieu of the corrective action a court case would achieve, and grant a Certificate of Appropriateness, allowing the painted historic building to remain.

BACKGROUND: This item was originally docketed for Council’s May 26 meeting, but was deferred at the request of the property owner’s attorney. The City Council last considered this case on November 15, 2008, and found that “the unlawful painting of this building has resulted in the loss or diminution of historic fabric, and is incompatible with the historic district.” Council further acted to:

- 1. vacate the decision of the BAR approving the painting of unpainted brick; and
- 2. remand this matter to the Director of Planning and Zoning and the City Attorney, “with direction to secure the test removal of the paint under staff supervision as

described in the staff report, and report thereon to the Council, with a recommendation for further action consistent with this decision, within six months.”

After the Council decision, staff from Planning and Zoning and the City Attorney’s Office met with the attorneys for the applicant to discuss an appropriate course of action, and specifically to schedule a paint removal test as directed in the Council’s action. Staff also secured a second estimate for removal of the paint from John Milner Associates, a contractor with expertise in removing paint from historic masonry, and forwarded the estimate to the applicant’s attorney for consideration. The property owner supplied documentation regarding the cost of the work to paint the building, showing a cost of \$6050 to paint the previously unpainted brick of the building. Staff requested that the parties schedule a paint removal test, although it could not occur during the winter months, which would take place on two, small, three foot by three foot sections of wall, as suggested by the masonry restoration contractor. In response, the landowner’s representatives refused to agree to a paint removal test, stating that the test would not be effective, that the applicant was not willing to pay for the test (estimated at \$1,500), and that the test would cause damage to the building. The City countered that the City would pay for the test itself and would accept liability for any damage to the area of the test caused by the test. The applicant’s attorney, by letter on April 17, 2009, refused to allow the paint removal test even under those conditions.

DISCUSSION: The City and the property owner are at a clear stalemate in this matter. Council has considered an appropriate method of proceeding with the painted brick building at 900 Prince Street on several separate occasions. The property owner has for the last year refused to restore the brick to its original condition and refused to allow additional testing, even at the City’s expense and risk, to determine whether its own claim – that the paint could not be successfully removed – was valid. The property owner has expressly stated, under questioning from the Mayor on November 15, 2008, that:

- It will not remove the paint from the building;
- There is no purpose to be served in a paint removal test; and
- It is not willing to perform any paint removal tests by City recommended firms.

Staff’s efforts and the applicant’s refusal to allow a test after Council’s last discussion of this case – and Council’s own formal request to have a paint removal test performed – just confirm those statements.

Although the BAR acted, in a split decision, to allow the paint to remain, Council vacated that decision on November 15, 2008, and it no longer exists. The property owner has apologized for the illegal action; however, he refuses to either correct his error or assist the City in understanding more fully the various options with regard to the potential success of ordering the paint removed. Council therefore is faced with the task of determining the best course of action given the fact that the property owner, by his own admission, has violated the laws of the City with regard to painting unpainted brick on a historic building.

Cost to remove the paint

Staff has now obtained two different estimates regarding the cost to remove paint from the building. The disparity between the two estimates is based on two companies' different approaches to the job. Vaughan Restoration Masonry is a local company, known for premium service, and has explained that it does not expect the work to cost \$108,500, but its estimate is designed to protect the company should the worst case eventuality occur. The second company, John Milner Associates, is a large firm using an out of area subcontractor which has not worked in Alexandria before, and its quote of \$56,000 is, according to the company, a realistic figure.

Appropriate penalties for unlawful construction or alteration of historic fabric, including painting unpainted brick

The construction or alteration of buildings or structures in the historic district without prior approval of a Certificate of Appropriateness by the BAR is a violation of the zoning ordinance for which fines representing civil penalties may be assessed under section 11-207(B)(2). The penalty is \$100 for the first violation, \$150 for the second, and \$500 for the third and subsequent violations. Section 11-207(C)(3). Each day constitutes a separate offense. Section 11-207(C)(7). Under the City Charter, Section 2.06(c), the maximum fine for the past violation is \$5000.

Separate and apart from its authority to issue fines, under Section 11-204 of the zoning ordinance, and sections 2.06(e) and 9.22 of the City charter, the City has the clear authority to order the action necessary to correct any violation of the zoning ordinance, including the painting of unpainted brick in the historic district. The City may also cause appropriate action or proceedings to be instituted and prosecuted to abate the violation if the property owner refuses to do so. Further, where the City has the authority to abate a violation, it necessarily also has the lesser included authority to issue a permit or certificate under conditions reasonably necessary to redress the ongoing, future continuing violation, including penalties which are not limited by the civil penalty authority to punish past transgressions. Such authority is essentially analogous to the power under section 11-207(C)(6) applicable to illegal demolition. That rule allows the City to assess a corrective penalty in lieu of restoration of illegal demolition of historic fabric equal to the cost of reconstruction, with the money to be used for the purpose of promoting historic preservation.

In this case, if the painted brick condition is allowed to remain, based on the two estimates to remove paint, the corrective penalty could be set anywhere from \$56,000 to \$108,500. While Council understandably may be uncomfortable imposing such a large fine, unless the fine in such cases is very large, some property owners will lack incentive to seek approval of demolition actions or to correct mistakes after they occur.

At Council's request staff has researched its own practice with regard to penalties for after the fact approval of both illegal alterations and demolition in the historic district and presented that discussion in a separate memorandum to Council on May 26 (Attachment IV). The memo also includes suggestions for amending the zoning ordinance to set out a clear set of rules for consistent fines in the future. Council directed staff to proceed with the options presented in that separate memo, and as a result, staff will confer with the two BARs and the public and then will prepare for Council consideration in the fall the appropriate zoning text changes as to historic district remedies.

STAFF RECOMMENDATION: Given the property owner's refusal to restore his historic building and correct his illegal action, Council has no choice but to compel the removal of the paint by legal action or to assess a corrective penalty. With regard to a court action, the applicant will have the burden of showing that the paint cannot be successfully removed, and the City will present its arguments about the deficiency of the types of tests conducted by the applicant and the property owner's refusal to allow alternative testing by City selected contractors.

Council has heard the property owner's attorney clearly state his challenge to the City's zoning authority to impose a fine in excess of \$5,000 for allowing illegal demolition to continue uncorrected. However, there can be no serious dispute that the City has the authority to compel, by injunction, the removal of the unlawfully applied paint. Therefore, staff recommends that, if Council is inclined to impose a fee in lieu of the requirement that the building be restored, that it do so *only if the applicant voluntarily agrees to pay the fine*. While staff is confident with regard to the City's authority in this case, staff sees no need to undertake the litigation strategy the property owner would prefer. The injunction case to compel the removal of the paint presents a simple, straightforward enforcement action by the City to vindicate the historic district regulations.

If Council decides to impose a penalty using the above structure, and the applicant agrees, then staff recommends that the base amount used for calculating the fine be equivalent to the lower of the two paint removal estimates, or \$56,000. Taking this base amount of \$56,000, staff recommends that Council consider the alternatives contained in the separate memorandum on fines, including the ability to lower the base amount for cases in which the unlawful construction or demolition was a result of negligence, which here would amount to the failure to take steps that a reasonable developer and property owner would take in the historic district. In anticipation of the zoning scheme suggested by staff in the accompanying memo, the penalty in restitution in this case could be lowered by as much as 50% to \$28,000. If a fine is imposed and agreed to, then Council should also approve a Certificate of Appropriateness to allow the painted building to remain.

Although this 50% option has not been adopted as a zoning change yet, there is no bar to Council using the rationale behind it to fashion an appropriate remedy in this case, given that the zoning ordinance is now silent on the appropriate amount of restitution.

ATTACHMENTS:

Attachment I: Correspondence between November 2008 and May 2009

Attachment II: Memorandum to City Council dated November 11, 2008

Attachment III. May 22, 2009, letter from Louis M. Aronson, Esquire

Attachment IV. Docket item #24, May 26, 2009

STAFF:

James Banks, City Attorney

Christopher Spera, Deputy City Attorney

Faroll Hamer, Director, Department of Planning and Zoning

Stephen Milone, Division Chief, Zoning and Land Use Services

Lee Webb, Historic Preservation Manager, Department of Planning and Zoning

LAW OFFICES

RUBEN & ARONSON, LLP

4800 Montgomery Lane • Suite 150
Bethesda, MD 20814
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Louis M. Aronson
Admitted in MD, NY, PA and DC
(301) 986-4202

April 17, 2009

Delivered via Electronic Transmission and
First Class U.S. Mail Postage Prepaid

Farroll Hamer
Director
Department of Planning and Zoning
301 King Street
City Hall, Room 2100
P.O. Box 178
Alexandria, Virginia 22313

Re: 900 Prince Street – BAR CASE # 2007-0240 (the “BAR Case”)

Dear Ms. Hamer:

This letter acknowledges receipt of your letter dated April 8, 2009 (the “April 8 Request”) in which you request a response by April 15 regarding the commencement of testing at the referenced property and responds thereto.

900 Prince Street, LLC cannot consent to your request to test as set forth in your April 8 Request for numerous reasons. Primarily, the April 8 Request is indefinite. The Department of Planning and Zoning (the “Department”) still has failed to provide any information as to which contractor the Department is referencing, the level of experience of that contractor, the nature of the testing, the amounts of insurance, the length of testing, the potential negative impact on the building and interruption to the business operations of the tenants of 900 Prince Street. Further, this “ham handed” request two days in advance of the Easter Holiday weekend seems designed solely to serve as a belated “block checking” exercise by the Department to comply with the direction given by City Council at its November 15, 2008 hearing. To date, the Department has failed to provide any timely guidance or credible information regarding how it would like to proceed in this matter and to present the most recent “proposal” at this juncture solely to avoid the wrath of City Council is inexcusable.

A brief history bears highlighting the disregard that the Department has shown to the Council's direction:

- On December 19, 2008 this office received, for the first time, a letter from the Department dated December 3, 2008 seeking a meeting on the matters raised at the hearing;
- On February 2, 2009 the parties met. In advance of the meeting the Department agreed to provide multiple testing options as well as assurances as to the safety and welfare of the Property. No proposals were presented at this meeting;
- On February 9, 2009, as promised during the February meeting, our firm provided the Department with the requested information concerning the cost of painting of the property;
- On February 20, 2009 the Department provided our office with its only proposal for testing from John Milner Associate, Inc. ("JMA"); and
- On March 3, 2009 900 Prince Street, LLC rejected that proposal for numerous reasons including the lack of any guarantee from JMA that it would not damage the Property. Further, JMA acknowledged that it is more likely than not to damage the Property.

While my client, who is out of the country until April 25, remains willing and able to amicably resolve this matter it is obvious from the Department's inability to obtain multiple qualified specialists that the test removal process is no longer a practicable solution. As we stated on March 3, it is now time to seek an alternate resolution. Accordingly, if you would be interested in discussing alternative methodologies of resolution please feel free to contact the undersigned. Of course, until full and final resolution of these matters all rights are reserved.

Sincerely,

Louis M. Aronson

CC: 900 Prince Street, LLC
Christopher Spera, Acting City Attorney
Jill Schaub, Esquire, Assistant City Attorney
Mark Jinks, Deputy City Manager
Stephen Milone, Division Chief, Zoning and Land Use Services
Lee Webb, Historic Preservation Section Manager



DEPARTMENT OF PLANNING AND ZONING

301 King Street, Room 2100

P.O. Box 178

Alexandria, VA 22313

Phone (703) 838-4666

Fax (703) 838-6393

www.alexandriava.gov

April 8, 2009

SENT VIA E-MAIL AND FACSIMILE

Mr. Louis M. Aronson, Esq.
Ruben & Aronson, LLP
4800 Montgomery Lane, Suite 150
Bethesda, Maryland 20814
Facsimile (301) 951-9636

Re: 900 Prince Street, BAR Case No. 2007-0240

Dear Mr. Aronson:

I am writing to you in response to your letter dated March 3, 2009, regarding the above-mentioned case and the most recent estimate for a paint removal test. You indicated in the letter that the paint removal test would be expensive and expressed concern that the paint removal test might cause building damage. Additionally, you stated that "we can only assume that the current economic climate and the City's budget issues would preclude the City of Alexandria from agreeing to both pay for the testing and indemnify our client for any damage to the Property. If this assumption is incorrect, please advise." As you are aware, historic preservation and enforcement of the associated regulations and guidelines that preserve the City's historic districts are of great concern to the City. As such, I am writing to advise you that the City will pay for the paint removal and be responsible for any damage caused by the testing procedure to the exterior surface of the property in the area tested.

As you are aware, the City Council was very clear at the November 15, 2008 hearing that an additional paint removal test in coordination with City staff must be completed. The City Council action included the following direction: "that Council ... remand this matter to the Director of Planning and Zoning and City Attorney, with direction to secure the test removal of the paint under staff supervision as described in the staff report, and report thereon to the Council, with a recommendation for further action consistent with this decision, within six months."

Mr. Louis M. Aronson, Esq.
April 8, 2009
Page 2 of 2

Please respond by April 15, 2009 in order for the contractor to complete the testing within this month and to return the case to the City Council to report the results of the paint removal testing in May.

In addition, as you agreed at the February meeting with Rich Josephson, please supply us with information regarding the cost of painting the building.

If you have any questions and to coordinate scheduling the paint removal testing, contact Steve Milone or Lee Webb at 703-838-4666 as soon as possible.

Very truly yours,



Faroll Hamer, Director
Department of Planning and Zoning

cc: Robert Kaufman, PMA Properties 900 LLC
Mark Jinks, Deputy City Manager
Christopher Spera, Acting City Attorney
Jill Schaub, Senior Assistant City Attorney
Stephen Milone, Division Chief, Zoning and Land Use Services
Lee Webb, Historic Preservation Section Manager

LAW OFFICES

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March 3, 2009

DELIVERED BY EMAIL

Mr. Rich Josephson
Deputy Director
City of Alexandria Department of Planning and Zoning
301 King Street, Room 2100
Alexandria, VA 22314

Re: 900 Prince Street (the "Property") BAR CASE # 2007-0240 (the "Case")

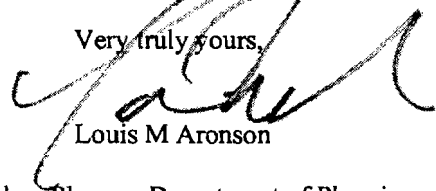
Dear Mr. Josephson:

We are in receipt of your email dated as of February 20, 2009 and the attached proposal for paint removal testing and services from John Milner Associates, Inc. ("JMA"). We have discussed the JMA proposal with our client. The JMA proposal is not acceptable for numerous reasons. The JMA proposal: i) involves multiple stages of testing, which may or may not remove the paint; ii) says, "If in-situ (sic) cleaning does not appear to remove the paint coating, mechanical removal will be tested."; and iii) regardless of effectiveness is likely to damage the Property.

The cost of the JMA testing is extremely high. Since you did not offer in the letter, we can only assume that the current economic climate and the City's budget issues would preclude the City of Alexandria from agreeing to both pay for the testing and indemnify our client for any damage to the Property. If this assumption is incorrect please advise. As we stated at our meeting on February 2, 2009, we will not agree to pay for further testing. Given the time spent and effort expended by our client and the singular results of the City's research, we have concluded that paint removal is not feasible or even possible.

At this point we believe that the only productive way to proceed, is to begin discussions on alternative resolutions to this matter. And, to this end we welcome any suggestions you may have. This letter is sent in furtherance of PMA's rights, all of which are expressly reserved.

Very truly yours,



Louis M Aronson

cc: Lee Webb, Supervisor, Urban Planner, Department of Planning and Zoning
Steve Milone, Division Chief, Department of Planning and Zoning
Jill Applebaum Shaub, Esq. Senior Assistant City Attorney
PMA Properties 900, LLC



Richard Josephson/Alex
02/20/2009 08:52 PM

To Jonathan Cohen <jcohen@Randalaw.com>
cc "'jill.schaub@alexandria.gov'" <jill.schaub@alexandria.gov>,
Lou Aronson <laronson@Randalaw.com>,
"'Lee.Webb@alexandriava.gov'"
bcc
Subject Re: 900 Prince Street

Jonathan, Lou and Rob,

I am attaching a copy of a proposal we received from John Milner Associates regarding paint testing and paint removal. We were hoping to have received other proposals that we could have passed along to you all at once. So far this is the only proposal we have received.

There are two cost estimates in the proposal, one for removing paint from the building and the other for a paint strip test. Obviously, the test strip would have to be done before any decision on whether to remove paint from the building. The cost of the test seems reasonable.

We are still seeking other estimates and will forward these to you when we receive them. Please let me know if you find this acceptable and if you would be willing to proceed with the test, or if you have any questions.

Best Regards,



Rich 900 Prince Street Proposal Letter 2-20.pdf

Rich Josephson
Deputy Director
Department of Planning and Zoning
City of Alexandria
301 King Street
Alexandria, VA 22314

Phone: 703-838-4666, x 302



JOHN MILNER ASSOCIATES, INC.

Restoration & Rehabilitation ■ Preservation Planning ■ Archeological & Historical Research ■ Cultural Landscapes ■ Materials Conservation

February 20, 2009

PRINCIPALS

Allan H. Steenhusen
Daniel G. Roberts, RPA
Charles D. Check, Ph.D.
John K. Mott, FAIA
Thomas L. Struthers
Kathryn L. Bowers, SPHR
Charles S. Raith, AIA
Joel I. Klein, Ph.D., RPA
Wade P. Catts, RPA

SENIOR ASSOCIATES

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Peter C. Benton, AIA
Robert G. Kingsley, Ph.D.
Richard Meyer
Alfonso A. Narvaez
Donna J. Seifert, Ph.D., RPA
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B.J. Titus
Rebecca Yamin, Ph.D., RPA
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Tod L. Benedict
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Juliette J. Gerhardt
Patrick J. Heaton, RPA
Douglas C. McVarish
Christopher Quirk, AIA
Michael E. Roberts, RPA
Sarah Jane Ruch

Stephen Milone, AICP
Division Chief, Zoning and Land Use Services
Alexandria Planning and Zoning
Alexandria City Hall,
301 King Street,
Alexandria, VA 22314

**Re: Proposal for Professional Services –
Paint Strip Testing for the City of Alexandria Virginia**

Dear Mr. Milone,

Thank you so much allowing John Milner Associates, Inc. (JMA) to give you a proposal for paint removal tests at 900 Prince Street, Alexandria, VA. JMA is pleased to submit this Proposal for Professional Services.

SCOPE OF WORK

In-situ cleaning tests will include application of multiple paint removal tests including paint removal products ranging from solvents to strippers. All testing will be performed based on the gentlest method and greenest product possible, aggressive cleaning will not be performed or recommended.

If in-situ cleaning does not appear to remove the paint coating, mechanical removal will be tested. We will arrange to have a proprietary system based on micro-abrasives and low pressure water delivered through a variety of nozzles including “standard and micro” producing a rotating vortex process, such as the Rotec System. This micro-abrasives media may include glass powder to be tried at varying sizes between 212-38 microns.

MEETINGS

JMA will be available for conference calls and can meet the owner or and City officials while performing testing. Meetings or presentations as requested by Owner or City of Alexandria will be an additional fee.

5250 Cherokee Avenue, Suite 300, Alexandria, VA 22312-2052 ■ 703-354-9737 / fax 703-642-1837

West Chester, PA Philadelphia, PA Alexandria, VA Charlottesville, VA Croton-on-Hudson, NY Louisville, KY Littleton, MA

www.JohnMilnerAssociates.com



JOHN MILNER ASSOCIATES, INC.

ANTICIPATED PAINT REMOVAL COSTS

We have fingered rough budgetary numbers based on the square feet of the building to have a restoration contractor either chemically remove paint or to perform mechanical removal using a micro-abrasive system. A rough budget to remove the paint with paint stripper is \$56,000. To remove paint using a mechanical method would be around the same costs perhaps a little cheaper, if the test panel showed the method to be efficient. These numbers are from a contractor that has worked in DC area.

These costs would include access and protection but it does not include any repointing or other repairs. JMA located some images of the building being painted, it was noticed that the cornice below the parapet may be in poor shape. It may be necessary to include money for stripping and repainting this element. We would also have to consider how the stripping methodology affected window and door openings. They may also need to be an allowance for new sealant in these locations.

Proper test panels would firm up these costs and questions. JMA can perform Construction Administration for this removal on an hourly basis. These costs are not included in the above figures.

COMPENSATION

JMA proposes to perform the Scope of Services described above on an hourly basis plus the cost of reimbursable expenses. We estimate the total to be approximately One Thousand Twenty-Six Dollars (\$1026) including the cost of reimbursable expenses. If chemical cleaning does not work and the Client would like to try mechanical testing, a micro-abrasive test will cost an additional \$1000. Additional Services will be provided at JMA's most current prevailing hourly rates and only as agreed to in advance by written authorization from you.

If this proposal is acceptable please contact us and we will issue a final document for you to sign including our general terms and conditions. Should you have questions, or require additional clarification on the scope of services that we have proposed, please do not hesitate to call me at (703) 354-9737. We look forward to working with you on this project.

Lane Burritt
John Milner Associates, Inc.

LAW OFFICES

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(301) 951-9696 • Facsimile (301) 951-9636

Louis M. Aronson
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February 9, 2009

DELIVERED BY EMAIL

Mr. Rich Josephson
City of Alexandria
Department of Planning and Zoning
301 King Street, Room 2100
Alexandria, VA 22314

Re: 900 Prince Street (the "Property") BAR CASE # 2007-0240 (the "Case")

Dear Mr. Josephson:

Thank you for your time last week. Per your request enclosed please find the executed contracts for painting the Property from Middledorf Property Services, Inc. There are a couple of different Proposals which include various services, including the exterior painting. As you can see from the cover facsimile provided herewith the total for exterior brick painting was \$6,050.00. Be advised this information is being provided as an accommodation and a point of reference only and not as a concession on any issue or admission of any legal matter pertaining to the Case. And, we would highlight for you the disparity between this number and that presented at the November 2008 City Council Public Hearing which we said was a "pure conjecture" at that time.

We look forward to hearing back from your office regarding the balance of the issues discussed. Please contact us with any questions regarding the enclosed Proposals or if we can be of any assistance. As we requested in earlier communications, we respectfully request that any further communications regarding this matter be directed to this office. This letter is sent in furtherance of PMA's rights, all of which are expressly reserved.

Very truly yours,


Louis M. Aronson

Enclosure

cc: Lee Webb, Supervisor, Urban Planner, Department of Planning and Zoning
Steve Milone, Division Chief, Department of Planning and Zoning
Jill Applebaum Shaub, Esq. Senior Assistant City Attorney
PMA Properties 900, LLC

COPIE

900 Prince Street
Exterior Painting
Analysis

	Brick Portion
Quotation Aug 2, 2007	\$ 3,950.00
Corrected Oct 11, 2007	\$ 2,100.00
The initial quote was for the front only	
The revised quote did the two sides and parapet	
Total Exterior Brick	\$ 6,050.00

To Lou Aronson

Low - 301-951-9636



MIDDLEDORF PROPERTY SERVICES, INC.
 15300 Spencerville Court, Suite 102
 Burtonsville, MD 20866
 Tel. (301) 384-3175 Fax (301) 384-8227

MPTC # 12290
 VA Class A # 270111771

1046.1/17.5370.00
1058 2/20 1000.00

PROPOSAL
 August 2, 2007

SUBMITTED TO	
Property Management Company: PMA Properties 815 King Street, St. 203 Alexandria, VA 22314 Attn: Rob Kaufman/Eileen Phone: 703-548-1810 Fax: 703- 683-0295	Property Owner: 900 Prince Street 203/205 Alfred Street Alexandria, VA 22314
JOB DESCRIPTION	
Exterior Painting	
SCOPE OF WORK	
<ul style="list-style-type: none"> Scrape and sand loose and peeling paint (bid does not include stripping all existing paint and therefore the surfaces will not be smooth like painting new wood.) Re-caulk as necessary. Spot prime bare surfaces. Re-paint with one coat of exterior latex gloss paint (white). Lightly sand and re-varnish the exterior of 6 doors and 1 door overhead panel. A separate bid price is given to apply 2 coats of masonry paint to the brick on the Alfred Street front brick facade and the Prince Street front brick facade. The Alfred Street alley brick or any rear brick is not included. Please note that the brick is previously unpainted. 	
AREAS INCLUDED	
<ul style="list-style-type: none"> Previously painted white wood fascia and eaves over 2nd level windows Previously painted white metal molding over 2nd level windows Previously painted white window trim Previously painted white door trim. Previously painted white window lintels Previously varnished doors (6 total) and 1 panel on the exterior side (sand and re-varnish) Previously painted white wood entranceway surfaces 	
AREAS EXCLUDED	
<ul style="list-style-type: none"> New vinyl windows (see note) 	
ADDRESSES INCLUDED	
<ul style="list-style-type: none"> Street side of 203/205 Alfred Street (no alley or rear) Street side of 900 Prince Street (no rear and no 902 Prince Street) 	

900 Prince Street

PMA Properties

8/2/07

NOTES

- New vinyl window surfaces will not be painted. We will paint any previously painted lintels (wood or metal) on the top of vinyl windows and any previously painted wood windows trim and framing.
- The white metal molding trim between the soffit / fascia and the windows is peeling down to bare metal. Although we will extensively prep the molding, we can not warranty against re-peeling because the remaining original coating may continue to peel (it is not bonding).

WARRANTY

Middledorf Property Services, Inc. offers a warranty on all workmanship for a period of two (2) years from the date of job completion.

Warranty coverage applies to all repairs and touch ups related only to the work included in our contract specifications. It does not include any damage or loss resulting from normal wear and tear, acts of nature, accident or abuse.

PAYMENT SCHEDULE

A deposit totaling 10% of contract sum will be due upon execution of the contract. Middledorf Property Services, Inc. will also provide periodic invoices which correspond to the progress of the job. Please make checks out to Middledorf Property Services, Inc.

Payment is due within thirty (30) days from the date of the invoice. In the event that invoices remain unpaid for a period of more than thirty (30) days, the Owner will be responsible to pay finance charges on the outstanding balance at a rate of 1.0% computed monthly from the date of the invoice.

CHANGE ORDERS

If there are any additions, deletions, or other changes of this contract, they shall be made by written and signed change orders.

FIELD REPORTS

To monitor the progress of the job, Middledorf Property Services, Inc. shall complete a regular Field Report. This will enable both parties to this contract to ensure that the work is being completed in a timely and proper manner.

TYPE AND COLOR OF PAINT

The type and color of the paint will be chosen by 900 Prince Street and must be given to Middledorf Property Services, Inc. on a written Change Order or Work Order to become part of the contract. This must be done before the job begins. Any changes in the selection, type, or color of paint after the job has begun can only be made by signed authorization on a Change Order.

BID PRICE

We hereby propose to furnish labor and materials -- complete in accordance with the above specifications for the sum of:

Bid Price	\$ 2,860.00
Brick Bid Price	\$ 3,950.00

* This proposal may be withdrawn by us if not accepted within 60 days.

8/2/07

PMA Properties

900 Prince Street

ACCEPTANCE OF PROPOSAL

The above prices, specifications, and conditions are hereby accepted and agreed upon by both parties:

PROPERTY/OWNER:
900 Prince Street

Authorized
Signature: _____

Print Name: _____

Print Title: _____

Date: _____

CONTRACTOR:

Middlebury Property Services, Inc.

Authorized

Signature: 

Print Name: Craig Middlebury

Print Title: Vice President

Date: 8/2/07



MIDDLEDORF PROPERTY SERVICES, INC.
15300 Spencerville Court, Suite 102
Burtonsville, MD 20866
Tel. (301) 384-3175 Fax (301) 384-8227

MSDC # 122902
VA Class A # 270512277

PROPOSAL

October 11, 2007

SUBMITTED TO	
Property Management Company: PMA Properties, 900, LLC. 815 King Street, St. 203 Alexandria, VA 22314 Attn: Rob Kaufman/Eileen Phone: 703-548-1810 Fax: 703-683-0295	Property/Owner: 900 Prince Street 203/205 Alfred Street Alexandria, VA 22314
JOB DESCRIPTION	
Exterior Painting	
SCOPE OF WORK	
<ul style="list-style-type: none">• Power wash brick using water supplied by PMA Properties on site.• Scrape and sand loose and peeling paint (bid does not include stripping all existing paint and therefore the surfaces will not be smooth like painting new wood.)• Re-caulk as necessary.• Spot prime bare surfaces.• Re-paint with one coat of exterior latex gloss paint (white, except brick two coats exterior flat paint).• Sand 1 door on exterior or to remove existing stain, varnish, restain and revarnish.• 5 new doors to be stained and receive 2 coats of varnish on both sides.• Note that brick mortar is recessed from the face of the brick and will require extensive labor in order to get paint to cover because the recess makes the mortar hard to reach. We can not warranty coverage of paint on brick mortar (it may not bond).	
AREAS INCLUDED	
<ul style="list-style-type: none">• Brick and mortar• Previously painted white wood fascia and eaves over 2nd level windows• Previously painted white metal molding over 2nd level windows• Previously painted white window trim• Previously painted white door trim• Previously painted white window lintels• Previously varnished 1 door on the exterior side (remove existing varnish and stain).• Previously painted white wood entranceway surfaces• 5 new doors (stain and varnish both sides)	
AREAS EXCLUDED	
<ul style="list-style-type: none">• New vinyl windows (see note)	

8950
6850.-

2100
3950

6050

900 Prince Street

PMA Properties

10/11/07

ADDRESSES INCLUDED
<ul style="list-style-type: none">• Street side of 203/205 Alfred Street (no alley or rear)• Street side of 900 Prince Street (no rear and no 902 Prince Street)
NOTES
<ul style="list-style-type: none">• New vinyl window surfaces will not be painted. We will paint any previously painted lintels (wood or metal) on the top of vinyl windows and any previously painted wood windows trim and framing.• The white metal molding trim between the soffit / fascia and the windows is peeling down to bare metal. Although we will extensively prep the molding, we can not warranty against re-peeling because the remaining original coating may continue to peel (it is not bonding).
WARRANTY
<p>Middledorf Property Services, Inc. offers a warranty on all workmanship for a period of two (2) years from the date of job completion. Brick mortar and metal molding trim have no warranty.</p> <p>Warranty coverage applies to all repairs and touch ups related only to the work included in our contract specifications. It does not include any damage or loss resulting from normal wear and tear, acts of nature, accident or abuse.</p>
PAYMENT SCHEDULE
<p>A deposit totaling 10% of contract sum will be due upon execution of the contract. Middledorf Property Services, Inc. will also provide periodic invoices which correspond to the progress of the job. Please make checks out to Middledorf Property Services, Inc.</p> <p>Payment is due within thirty (30) days from the date of the invoice. In the event that invoices remain unpaid for a period of more than thirty (30) days, the Owner will be responsible to pay finance charges on the outstanding balance at a rate of 1.0% computed monthly from the date of the invoice.</p>
CHANGE ORDERS
<p>If there are any additions, deletions, or other changes of this contract, they shall be made by written and signed change orders.</p>
FIELD REPORTS
<p>To monitor the progress of the job, Middledorf Property Services, Inc. shall complete a regular Field Report. This will enable both parties to this contract to ensure that the work is being completed in a timely and proper manner.</p>
TYPE AND COLOR OF PAINT
<p>The type and color of the paint will be chosen by 900 Prince Street and must be given to Middledorf Property Services, Inc. on a written Change Order or Work Order to become part of the contract. This must be done before the job begins. Any changes in the selection, type, or color of paint after the job has begun can only be made by signed authorization on a Change Order.</p>

900 Prince Street

PMA Properties

10/11/07

Bid Price

We hereby propose to furnish labor and materials - complete in accordance with the above specifications for the sum of:

Bid Price **\$ 8,950.00**

This proposal may be withdrawn by us if not accepted within 60 days.

ACCEPTANCE OF PROPOSAL

The above prices, specifications, and conditions are hereby accepted and agreed upon by both parties: **PMA PROPERTIES, 900, LLC**

CONTRACTOR:
Middledorf Property Services, Inc.

PROPERTY/OWNER:
900 Prince Street

Authorized Signature: _____

Authorized Signature: [Signature]

Print Name: Craig Middledorf

Print Name: Kaufman

Print Title: Vice President

Print Title: _____

Date: _____

Date: 10.15.07

COLOR

**BRICK - BENJAMIN MOORE
IMMERSION C2-446W FLAT**

**TRIM BENJAMIN MOORE
LINEN WHITE 33370 HIGH GLOSS**

**WINDOW SASH TO MATCH WIN⁹L
WHITE HIGH GLOSS**

**HIGHLIGHT OPTION
FAVA C2-443P
ELEMENT C2-424W
HEMP C2-394W**



Richard Josephson/Alex
12/19/2008 09:20 PM

To: Lou Aronson <laronson@Randalaw.com>
cc: Marshall Berman <mberman@Randalaw.com>, Jonathan Cohen <jcohen@Randalaw.com>, 'Robert Kaufman' <rob@PMAProperties.com>,
bcc:
Subject: 900 Prince Street

Dear Mr. Aronson,

I am following up on a letter (attached) that was sent to Rob Kaufman and copied to you and others regarding the action that was taken by the City Council at their meeting on November 15, 2008. I recently spoke with Mr. Kaufman to see if he was available to meet regarding this matter and he asked that I speak with you. Please let me know if you are available to meet to discuss this. You can respond to this email or call me at the number below.

I look forward to hearing from you.

Sincerely,

Rich Josephson



Rich Josephson 900 Prince Street Letter Dec 2008.doc
Deputy Director
Department of Planning and Zoning
City of Alexandria
301 King Street
Alexandria, VA 22314

Phone: 703-838-4666, x 302



DEPARTMENT OF PLANNING AND ZONING

301 King Street, Room 2100

P.O. Box 178

Alexandria, VA 22313

Phone (703) 838-4666

Fax (703) 838-6393

www.alexandriava.gov

December 4, 2008

SENT VIA USPS AND E-MAIL

Mr. Robert Kaufman
PMA Properties 900 LLC
815 King Street #203
Alexandria, VA 22314

Re: 900 Prince Street, BAR Case No. 2007-0240

Dear Mr. Kaufman:

I am writing to invite you to a meeting to discuss steps going forward in response to City Council's decision at the public hearing on November 15, 2008 regarding the painting of your building at 900 Prince Street.

The City Council took the following action at the hearing: "City Council moved that Council find that the unlawful painting of this building has resulted in the loss or diminution of historic fabric, and is incompatible with the historic district; and further moved that 1. City Council vacate the decision of the BAR; and 2. remand this matter to the Director of Planning and Zoning and City Attorney, with direction to secure the test removal of the paint under staff supervision as described in the staff report, and report thereon to the Council, with a recommendation for further action consistent with this decision, within six months."

Please contact Rich Josephson or Lee Webb in Planning and Zoning at (703) 838-4666 to schedule a meeting to discuss completion of the paint removal test in order for the case to return to City Council as soon as possible, and before the six month deadline.

Mr. Robert Kaufman
December 3, 2008
Page 2 of 2

Thank you in advance for your cooperation in complying with this request.

Very truly yours,

Faroll Hamer, Director
Department of Planning and Zoning

cc: Marshall F. Berman, Esq, Ruben & Aronson, LLP
Louis M. Aronson, Esq, Ruben & Aronson, LLP
Ignacio Pessoa, City Attorney
Richard Josephson, Deputy Director, Department of Planning and Zoning
Stephen Milone, Division Chief, Zoning and Land Use Services
Lee Webb, Historic Preservation Section Manager



5250 Cherokee Avenue, Suite 300, Alexandria, Virginia 22312
(703) 354-9737 • FAX (703) 642-1837

DATE: November 15, 2008
TO: Stephen Milone, AICP
FROM: Lane Burritt
SUBJ: ***Brick Paint Removal from Historic Brick***

Mr. Milone,

Paint removal from historic bricks can be difficult but since it sounds like the paint on this building has been recently applied and there only a few paint layers, certainly it is possible.

Establishing the process requires setting up paint removal tests to determine the product, procedure, and dwell time. Unfortunately paint removal varies tremendously on different surfaces, especially variable ones. Often in difficult paint removal projects a combination of chemical and mechanical removal is necessary.

I begin testing procedures by first determining if chemical removal is possible. I try the most gentle and neutral products first and then move towards more aggressive chemicals. When products in small test panels seem appropriate, I try longer dwell times in larger test panels to see if that will accomplish paint removal. Many paint removal tests require long dwell times of 24-48 hours depending on the product. If I find myself in a situation where the product seems effective but there is still some residual paint, I might first try a longer dwell time or second application. If this does not work, I may try to use mechanical removal to supplement a chemical produce. Steam removal or a micro-abrasive system such as JOS or ROTEC has come in very handy in some of my past paint removal jobs. Often this two-pronged approach helps to remove paint effectively and timely. All of these processes must be done with a low pressure psi.

It goes without saying that the paint removal process should not harm the historic brick and proper protection for the site and public must be used. It is also important to evaluate the condition of the mortar under the substrate and determine if repointing needs to be competed to protect the surface.

Feel free to contact me should you have any additional questions.

Thank you,

Lane Burritt

11
11-15-08

City of Alexandria, Virginia

MEMORANDUM

DATE: NOVEMBER 11, 2008
TO: THE HONORABLE MAYOR AND MEMBERS OF CITY COUNCIL
FROM: JAMES K. HARTMANN, CITY MANAGER *J*
SUBJECT: APPEAL OF A DECISION OF THE BOARD OF ARCHITECTURAL REVIEW, OLD AND HISTORIC ALEXANDRIA DISTRICT, RESULTING IN AFTER-THE-FACT APPROVAL OF CERTIFICATE OF APPROPRIATENESS FOR PAINTING PREVIOUSLY UNPAINTED BRICK

ISSUE: Consideration of an Appeal of a decision of the Board of Architectural Review, Old and Historic Alexandria District, resulting in after-the-fact approval of Certificate of Appropriateness for painting previously unpainted brick.

RECOMMENDATION: That City Council:

- (1) Reverse the approval of the Board of Architectural Review and direct the City Attorney to take legal action to compel the property owner to remove the paint.

OR

- (2) Alternatively, if the Council determines not to have the paint removed, that the Council:
(a) uphold the approval of an after-the-fact Certificate of Appropriateness for painting previously unpainted masonry, (b) assess a fine of \$100,000, and (c) allow the existing paint color to remain.

BACKGROUND: On June 24, 2008, City Council heard the appeal by the Old Town Civic Association of after-the-fact approval of Certificate of Appropriateness for painting previously unpainted brick on the commercial building at 900 Prince Street. The applicant's request for after-the-fact approval of painting the unpainted masonry was approved as a result of inaction by a tie vote of the Board. A BAR tie vote on March 5 with no further action by the Board at its March 19 meeting effectively resulted on March 19, 2008, in approval of the requested application for an after-the-fact Certificate of Appropriateness for painting previously unpainted brick. At the appeal hearing on June 24, the Council made a motion to defer action, with a directive for the staff and applicant to: 1) come to closure on the removal question; 2) provide a discussion of the most appropriate paint color, assuming the paint could not be removed; and 3) agree on the appropriate penalty, a penalty that would not be excessive but would serve as a deterrent.

DISCUSSION: Since the June 24 City Council hearing, City staff and attorneys from the law firm of Ruben & Aronson, LLP, working for the property owner, have exchanged a series of letters and e-mails concerning the topics listed above.

Testing: Mr. Kaufmann explained during the hearing that at least 6 tests had already been performed on the building, and they were inconclusive. At best, some of the tests indicated that up to 80% of the paint could be removed with no problem, but the test could not establish how much of the last 20% could be removed. The staff indicated that there is a better and more accurate test that is also more expensive (approximately \$1,500) that would better predict how much paint could be removed, and would further reveal what the appearance of the building would be if the paint were removed. City staff worked with a restoration contractor and attempted to work with the property owner to conduct a conclusive paint removal test on the building. Through the attorneys, the property owner has refused to allow the paint removal test on two, small, three foot by three foot sections of wall, as suggested by the masonry restoration contractor. City staff recommends that the Council direct the City Attorney to compel the property owner to remove the paint.

Fine: In addition to resolving conclusively what the resultant appearance would be if the paint were to be removed, the Council directed staff to work with the property owner and recommend an appropriate fine. Regarding a fine, if the Council does not direct removal of the paint, Planning and Zoning staff maintains its previous recommendation of a fine of \$100,000, which is less than, but approximates, the cost to remove the paint to restore the wall to its unpainted condition. Staff believes that it is appropriate to recommend something that approximates the cost of paint removal, as recommending less than the paint removal amount would allow the property owner to financially gain by not complying with the zoning ordinance and by refusing to undertake a removal test that would demonstrate the appearance that would result from removal of the paint. There is no criteria or formula in assessing a fine of this nature so Council retains the ability to establish whatever amount it deems necessary.

Color: City Council asked that staff return with a recommendation on the paint color used on the building. If the brick remains painted, staff believes that the color selected by the property owner can remain. The issue that is being considered in this appeal and that is regulated in the historic preservation section of the zoning ordinance is whether painting the unpainted brick should be allowed. While the Board has approved design guidelines for paint colors and does approve color palettes for new development in the local historic districts, the Board does not generally regulate paint color selections on existing buildings. The property owner has offered to paint the building a different color or colors in response to staff assertions and the zoning ordinance regulation 10-109 that “painting of a masonry building which was unpainted masonry shall be considered to be removal of an exterior feature having historic and/or architectural significance.” In the case of the building at 900 Prince Street, and as discussed in the BAR case report and memorandum to Council, the subject building was built in 1915 as the Mount Vernon Dairy. As a simple commercial or light industrial building, 900 Prince Street was not originally painted and is not of a design vocabulary, such as Victoria structure, that would have historically been painted in any elaborate colors. Given the building in question, staff finds that if the building remains painted no color changes will alleviate or remediate the loss of the “exterior feature” of the unpainted brick. In the Board of Architectural Review’s deliberations on

March 5, 2008, there was discussion of color but no definitive conclusion or recommendation that the color be changed. If the building remains painted, staff recommends no change in color, but that if the color is changed, that the building should remain uniformly one simple relatively light color.

Following the June 24, 2008, hearing, Planning and Zoning staff contacted local counsel, Mr. Duncan Blair, for the property owner Rob Kaufman and PMA Properties 900 LLC, to attempt to arrange test paint removal to answer more clearly Council's directive that staff work with the applicant to resolve the issue regarding whether the paint can be removed effectively. Mr. Blair advised Planning and Zoning staff that local counsel was not involved and that the City Attorney's Office should continue conversation with the firm of Ruben & Aronson, LLP, with whom the City Attorney had been discussing the case and possible remedies including fines prior to the June 24 hearing date. From June 27 to October 27, there have been a series of letters and electronic mails exchanged between the attorneys for the property owner, and the City Attorney and Planning Director. This correspondence has not resulted in a positive resolution of this matter. The property owner has refused to participate in a test to demonstrate conclusively whether the paint can or cannot be removed. Staff believes that there should first be a firm and conclusive answer to the removal question. Negotiations regarding a fine or discussion of paint color should then occur, since this issue is predicated on the answer to the paint removal question. The following is a list and brief summary of the correspondence on the case:

- (1) June 27, 2008 letter sent from property owner's attorney Marshall Berman to City Attorney requesting written offer of settlement (copy of original letter sent only to property owner, Rob Kaufman);
- (2) August 1, 2008 letter from Marshall Berman to Mayor and City Manager stating they have called CAO twice unsuccessfully and "tried to pursue every avenue to resolve the matter," and stated that the property owner is unavailable for the month of August. (The letter shows copy sent to City staff including City Attorney and City Planning staff, however, staff did not receive the letter and was unaware of its arrival until the Mayor's office provided a copy to the City Attorney's Office and Planning office on Aug 8.)
- (3) September 12, 2008 notification letter sent to property owner, appellant, and neighboring property owners notifying them that the item was scheduled for return to City Council for hearing on Sept 23;
- (4) September 16, 2008 letter from property owner's attorney, Mr. Berman to City Attorney protesting scheduling of hearing;
- (5) September 17, 2008 response letter sent from City Attorney to Mr. Aronson stating that the docket item will be scheduled for October 18, 2008, hearing, and requesting that the owner contact City staff to arrange and conduct the paint removal test necessary to formulate staff's recommendation to City Council for their decision.
- (6) September 18, 2008 response letter from property owner's attorney to the City Attorney asserting that the applicant believes that the paint cannot be removed, and advised staff

that Mr. Kaufman would be unavailable for a hearing for October 18, so requested that the item be scheduled for November 15, 2008.

- (7) October 24, 2008 letter from Planning Director to Mr. Aronson, attorney for the property owner, reminding the applicant of the direction from City Council that the paint removal question needed to be answered, and advising that City staff had coordinated with the paint removal contractor and that the owner needed to contract for the paint removal test to be conducted during the week of October 27 in order to have necessary feedback to return to City Council on November 15.
- (8) October 27, 2008 letter from Mr. Berman stating that "Your demand is denied" for a paint removal test and that the appellant intends to present the case to City Council on November 15.

Within the written letters, both the City Attorney's Office and the property owner's law firm reference unsuccessful attempts to reach one other by telephone.

Since the June 24 City Council hearing, Planning staff has worked with Mark Vaughan of Vaughan Restoration Masonry, Inc. to ensure that they could perform the test to remove the paint when directed and with the property owner's consent. Vaughan Restoration has been ready since the summer to schedule and conduct the paint removal test, however, the property owner has not agreed to allow the test.

Given the property owner's refusal to allow the paint removal test and demand from the property owner's attorney to return to hearing, staff is recommending that the City Council reverse the after-the-fact approval of a Certificate of Appropriateness from the Board of Architectural Review and direct the City Attorney to take legal action to compel the property owner to remove the paint. Alternatively, if the Council determines not to have the paint removed, that the Council uphold the approval of an after-the-fact Certificate of Appropriateness for painting previously unpainted masonry, assess a fine of \$100,000, or as Council deems appropriate, and allow the existing paint color to remain.

ATTACHMENTS:

- Attachment I: Executive Summary for Appeal for After-the-Fact approval of Painting Unpainted Masonry at 900 Prince Street, BAR Case #2007-0240
- Attachment II: BAR Case #2007-0240 Staff Report

STAFF:

Ignacio Pessoa, City Attorney
Faroll Hamer, Director, Department of Planning and Zoning
Richard Josephson, Deputy Director, Department of Planning and Zoning
Stephen Milone, Division Chief, Zoning and Land Use Services

Docket Item #
BAR CASE # 2007-0240

City Council
June 24, 2008

ISSUE: Appeal of a decision of the Board of Architectural Review, Old and Historic Alexandria, approving an after-the-fact Certificate of Appropriateness to painting previously unpainted brick

APPLICANT: PMA Properties 900 LLC

APPELLANT: Old Town Civic Association, Inc, Townsend A. Van Fleet, President, on behalf of petitioners

LOCATION: 900 Prince Street

ZONE: CL/Commercial Low

CITY COUNCIL ACTION, JUNE 24, 2008: City Council deferred the decision of the Board of Architectural Review, and the applicant/owner and staff should work over the summer and bring back a recommendation on the correct penalty in September, and one of the things staff and the applicant should talk about is to come to closure on the issue of the removal question, and also the issue of the paint color be discussed.



BAR CASE #2007-0240

06/24/2008



I. EXECUTIVE SUMMARY

Issue:

- The decision of the Old & Historic Alexandria District Board of Architectural Review was appealed on April 2, 2008 by a group of at least 25 citizens, in accordance with Section 10-309 of the zoning ordinance.
- The appellants are appealing a Certificate of Appropriateness for after-the-fact approval to paint a previously unpainted brick structure at 900 Prince Street. The appellants believe that the applicant should restore the building to its previously unpainted state and pay a reasonable fine.
- The decision before the Council is whether the proposed alteration to paint this previously unpainted brick structure is appropriate for this historic commercial building in the Old and Historic Alexandria District.
- At the March 5, 2008 BAR hearing, a motion by Dr. Fitzgerald, seconded by Mr. Neale to approve the application with the condition that the building be painted a color to be approved by staff failed on a tie vote of 3-3. Three members of the Board believed that the building was a candidate for painting but that the color should be changed, while three other members of the Board believed that the paint should be removed and that a fine should be levied. Zoning Ordinance Section 10-104(F)(1) requires that “the Board shall vote and announce its decision on any matter properly before it no later than at its next regularly scheduled meeting...the failure of the board to vote within the required time...shall constitute approval of the application.” The BAR tie vote on March 5th with no further action by the Board at its March 19th meeting effectively resulted on March 19, 2008 in approval of the requested application for after-the-fact Certificate of Appropriateness for painting previously unpainted brick.

Recommendation: Staff recommends that Council support the intent of the zoning ordinance and the design guidelines and require the applicant to contract with a qualified masonry expert to remove the paint to the extent possible, and that if after attempting to remove the paint removal is not feasible, that the applicant pay a fine of \$100,000 which approaches the cost of removal of the paint.

II. BACKGROUND

The applicant submitted an application on September 17, 2007 for BAR Case #2007-0203 for alterations including new exterior light fixtures and a glass transom above the main entrance, but not including painting of the building. While the applicant was in the process of BAR review and consideration for Certificate of Appropriateness for the alterations proposed in Case #2007-0203, it came to the attention of staff that the

applicant painted the previously unpainted brick façades along South Alfred and Prince Street.

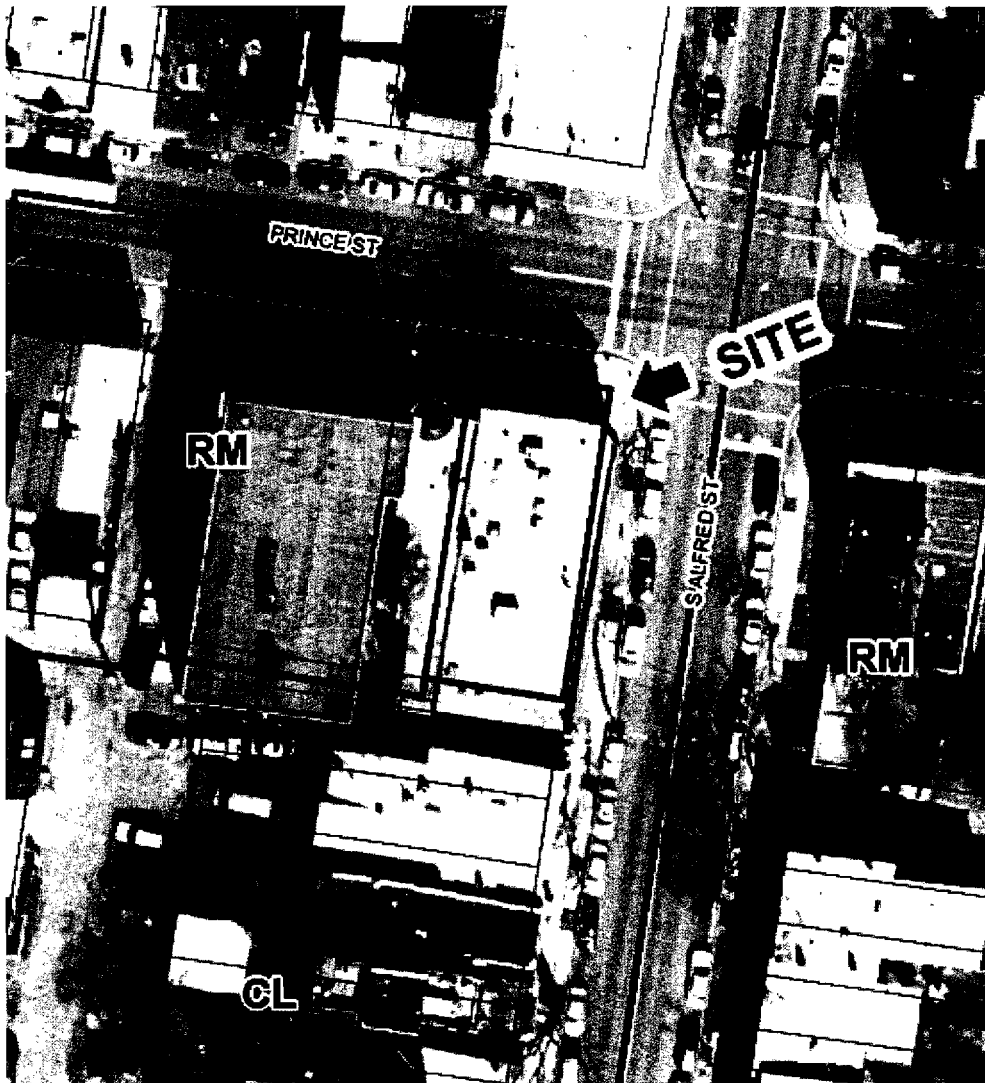


Figure 1: Aerial view of 900 Prince Street.

Staff issued a Stop Work Order on October 22, 2007 to stop the painting of the brick façades, along with a notice of violation. A second notice of violation was issued on October 23rd when painting continued despite posting of the Stop Work Order on the building façades, and painting was stopped.

900 Prince Street is a two story, flat roofed commercial building that was originally constructed in 1915 as the Mount Vernon Dairy and was subsequently modified on a number of occasions and by 1958 was an automobile sales and service building. In the period 1975-1980 the Board approved a number of alterations to the building including additions.

The applicant requested approval of an after-the-fact Certificate of Appropriateness for painting the previously unpainted masonry building at 900 Prince Street. The building has been painted a greenish color.

The Board was split in its decision with three members stating that they would support approval of painting of the building and three members opposing the motion to approve the painting of the unpainted masonry building. Per zoning ordinance section 10-104(F), the BAR tie vote on March 5 effectively resulted on March 19, 2008 in approval of the application request for after-the-fact Certificate of Appropriateness for painting unpainted masonry. Zoning Ordinance Section 10-104(F)(1) requires that “the Board shall vote and announce its decision on any matter properly before it no later than at its next regularly scheduled meeting...the failure of the board to vote within the required time...shall constitute approval of the application.” Failure of the Board to announce a decision on March 19th resulted in approval of the application.

On April 2, 2008, the approval of the Old & Historic Alexandria District Board of Architectural Review was appealed by a group of at least 25 citizens, in accordance with Section 10-309 of the zoning ordinance. The appellants state in their appeal: “The applicant requested an “after the fact approval” to paint a previously unpainted brick structure. The BAR did not require the applicant to restore the masonry to its original state nor did they fine him for his unauthorized painting of the building. The applicant needs to restore the building to its original state and pay a reasonable fine.”

III. DISCUSSION AND ANALYSIS

The purview of the Board and the Council on appeal for the Certificate of Appropriateness is the following.

Zoning Ordinance Section 10-105(A)(1) states that “The Old and Historic Alexandria District board of architectural review or the city council on appeal shall limit its review of the proposed construction, reconstruction, alteration, or restoration of a building or structure to the building’s or structure’s exterior architectural features specified in section 10-105(A)(2)(a) through (2)(d) below which are subject to view from a public street, way, place, pathway, easement or waterway...”

Section 10-105(A)(2) describes the Standards used in rendering a decision. Of these Standards, (b), (d), and (g) are the most relevant to the alterations requested by the applicant to paint unpainted masonry:

- (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 building or structures; the degree to which the distinguishing original qualities or character of a building, structure or site (including historic materials) are retained.”

- (d) “Texture, materials, color, and the extent to which any new architectural features are historically appropriate to the existing structure and adjacent existing structure.”
- (g) “The extent to which the building or structure will preserve or protect historic places and areas of historic interest in the city.”



Figure 2: Photograph of 900 Prince Street prior to painting.



Figure 3: Photograph of 900 Prince Street after initial painting.

Section 10-109(B)(4) requires that “the painting of a masonry building which was unpainted prior to such painting shall be considered to be the removal of an exterior

feature having historic and/or architectural significance requiring a certificate of appropriateness.”

Additionally, the *Design Guidelines* for the Historic District, Chapter 2 Building Alterations, Paint Colors, page 1, state that “the boards discourage the painting of previously unpainted masonry surfaces.”

In reviewing the proposed alterations to paint the previously unpainted brick, the Board and the Council on appeal are to use these standards set forth in the zoning ordinance regarding a Certificate of Appropriateness, as well as the *Design Guidelines* to determine if approval of the Certificate of Appropriateness is warranted.

For this building in particular, the brick used for the Prince Street and South Alfred Street facades is a textured brick that had its own distinguishing character and that created a distinct character for this building. The original brick provided more color variation and visual interest than a smooth finish common brick. The brick patterning and resulting mortar joints were thoughtfully designed and constructed to create the appearance of pillars on either side of the main corner entrance, and created horizontal banding wrapping the building and capping the windows and doors and in combination with vertical banding on either side of all windows and doors created window and door surrounds. The unique and distinctive brick texture, color variation and patterning are almost entirely lost by painting this formerly unpainted brick facade.

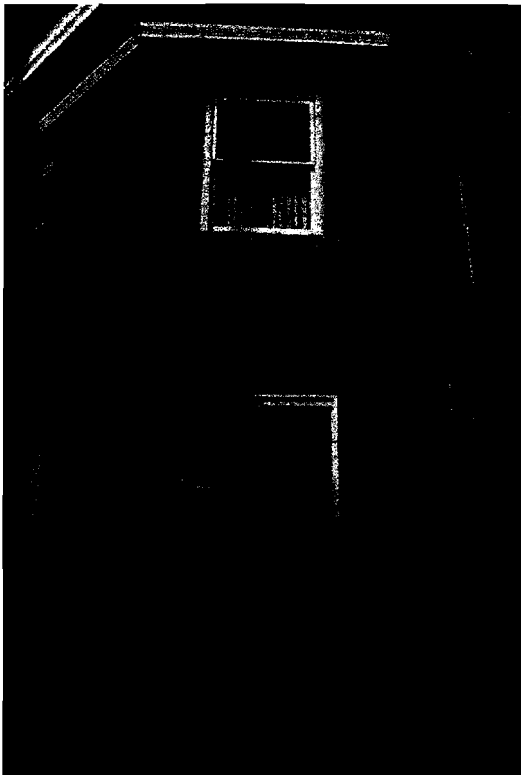


Figure 4: View of front entrance prior to painting showing distinctive brick patterning.

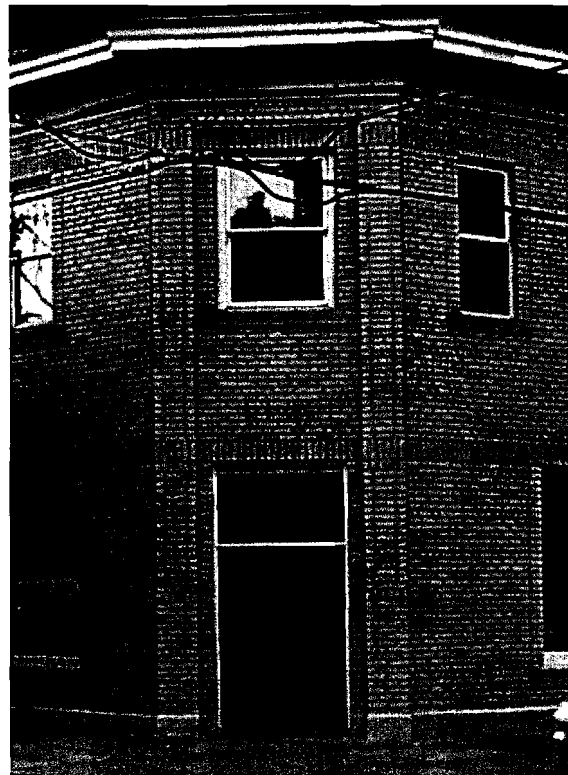


Figure 5: View of front entrance after painting showing loss of detail.

In addition to the loss of distinct character that has occurred due to the painting of the brick, painting of brick creates otherwise unnecessary maintenance requirements and results in a façade that will often appear to be in some stage of deterioration and requires unnecessary use of resources. One of the best qualities of solid brick masonry is that it requires little to no maintenance. Brick of the fine quality and density that was used at 900 Prince Street will maintain its appearance and function in perpetuity. A brick masonry wall such as the one at 900 Prince will usually require that portions of the mortar be repaired by repointing once every 50 to 100 years, but is otherwise maintenance free. Paint on masonry brick walls begins to deteriorate from the time it is applied and often needs to be cleaned and repainted entirely every 5 to 10 years. Often the paint that is applied at the base of the wall deteriorates at a faster rate than the remainder of the wall due to the increased moisture conditions at the base of the building. Property owners often address this problem by painting only the base of the building, often resulting in a mismatch of paint colors between the new paint at the base and the paint on the remainder of the building. Particularly in this time of greater environmental awareness, the City should not support painting of the unpainted brick façade which creates a situation that converts a brick wall that is relatively maintenance free into one that will appear to be in some form of deterioration over much of its life and will require relatively frequent unnecessary use of resources to maintain.

Paint Removal Assessments and Estimates

At the first public hearing before the BAR on December 6, 2007, the Board deferred the case and advised the applicant to contact qualified contractors to determine the efficacy of removing the paint, to estimate the cost to remove, and to include staff in the process. The applicant did not include staff in the evaluation process but did provide two letters from cleaning professionals who advised that the high pressure wash that they would use to attempt to remove the paint would cause damage to the brick and mortar. High pressure wash is often damaging to brickwork and should not be used for wholesale paint removal. Therefore Staff contracted a qualified masonry expert to conduct an evaluation. The estimate that Staff secured from Vaughan Restoration Masonry, Inc. indicated that the majority of the paint could be removed from the building surface, but because of the striated surface of the brick, that removal of “100 percent of paint from the building is likely not possible.” The proposed paint stripping would involve two applications of chemical stripper to get to a point where “a significant amount of paint” would be removed. The estimate for this work to achieve the stated level of paint removal is \$108,500 not including any associated masonry repair costs or temporary utility line protection.

Recent Requests to the BAR to Paint Unpainted Masonry

In the past few years, the Board has reviewed several after-the-fact requests for painting previously unpainted masonry. Most recently, the Board reviewed a case for 727 South Pitt Street where one of the original Yates Garden brick houses that was intended to remain unpainted had been painted without approval of the Board (BAR Case #2005-00130, 9/7/2005) and ordered that the paint be removed. To date the paint has not

occurred. The City has been in discussions with the property owner who has stated that she intends to comply and remove the paint. The City had not pursued legal action because of the property owner's statements of intent to comply. However, the City has prepared documents and will soon file suit against the homeowner to compel removal of the paint. The Board has also reviewed similar cases at 715 Princess Street where all but one side of the building had been previously painted. The Board approved the after-the-fact painting of the remaining wall (BAR Case #2005-0100, 5/18/05). In several other cases, the Board has denied the painting and ordered that the paint be removed. Examples of this include 305 Duke Street. (BAR Case #2002-0140, 6/19/02), 428 South Washington Street (BAR Case # 2001-00312, 1/16/02), and 629 South Fairfax Street (BAR Case #98-0093, 6/17/98).

Recent Fines For Unauthorized Work in the Historic Districts

The most recent case within the historic districts to receive a fine was for demolition of a canopy over a loading dock for the former ice house at 200 Commerce Street. In that case BAR Case #2006-0281, Staff recommended most importantly that the canopy be reconstructed to match the original canopy to the extent possible as reflected on the original building permit plans. Staff additionally recommended a \$10,000 fine which was increased by the BAR to \$25,000 at its hearing on May 2, 2007 and subsequently decreased by City Council on appeal to \$6,500 on June 16, 2007.

On October 26, 2005, the Parker-Gray Board approved case BAR2005-0238 for 1018 Queen Street for after-the-fact Permit to Demolish for the removal of the rear and side walls of the entire main block and rear ell. The unapproved demolition constituted a class one violation of section 10-203(B) of the zoning ordinance which carried a civil penalty of \$1,500 (section 11-207(C)(1)). A penalty of \$7,500 was assessed for the case to be used exclusively for the purpose of promoting historic preservation within the city. The board also required that the front facade be carefully restored.

On March 20, 2002, the Old and Historic Board approved case BAR2005-0238 for 522 Queen Street for after-the-fact Permit to Demolish for the demolition of a rear portion of the building with a penalty of \$7,743 representing the cost of reconstruction that portion of the building that was demolished without permission using historically correct building materials and techniques and that the applicant could build the second floor of the structure in the manner that he deemed most expeditious.

Each of the three most recent cases that incurred fines involved demolition and required reconstruction of portions of the structures in addition to the fines that were levied.

Conclusion

Staff does not support the painting of the building and continues to advocate removal of the paint. However, staff realizes the difficulty that is presented in removing the paint from this building. Therefore, if the Council determines to approve the after-the-fact Certificate of Appropriateness for painting this previously unpainted brick building, staff

recommends that a monetary fine that is approximately equal to the cost of paint removal be levied against the applicant, as a condition of the certificate, in order to vindicate the requirements of the ordinance as they pertain to this case, and to deter similar unauthorized work and after-the-fact applications by others.

IV. RECOMMENDATION

Staff recommends that Council support the intent of the zoning ordinance and the design guidelines and require the applicant to contract with a qualified masonry expert to remove the paint to the extent possible, and that if after attempting to remove the paint removal is not feasible, that the applicant pay a fine of \$100,000 which approaches the cost of removal of the paint.

Attachment: BAR Staff Report and Supporting Materials, March 5, 2008

STAFF: Faroll Hamer, Director, Department of Planning and Zoning
Richard Josephson, Deputy Director, Planning and Zoning
Stephen Milone, Division Chief, Zoning and Land Use Services
Lee Webb, Preservation Manager, Boards of Architectural Review

Docket Item # 4
BAR CASE # 2007-0240

BAR Meeting
March 5, 2008

ISSUE: After-the-fact approval of previously unpainted masonry
APPLICANT: PMA Properties, 900 LLC
LOCATION: 900 Prince Street
ZONE: CL/Commercial

BOARD ACTION, MARCH 5, 2008: A motion by Dr. Fitzgerald, seconded Mr. Neale to approve the application with the condition that the building be painted a color to be approved by staff failed on a tie vote of 3-3 (Chairman Hulfish, Mr. Keleher and Ms. Neihardt were opposed).

REASON: The Board did not agree with the staff recommendations. Several members believed that the paint should be removed and that a fine should be levied. Other members believed that the building was a candidate for painting but that the color should be changed.

SPEAKERS: Robert Kaufman, applicant, spoke in support
Townsend Van Fleet, President, Old Town Civic Association, spoke in opposition
Poul Hertel, 1321 Michigan Court, spoke in opposition

STAFF RECOMMENDATION: Staff recommends denial of the application with the additional direction to the applicant to remove the paint that has been applied to the building within 90 days.

In the alternative, if the Board determines to approve the application staff recommends the following conditions:

1. That the applicant be fined \$100,000 for painting the unpainted masonry building without a Certificate of Appropriateness, to be paid to the City within 90 days of this decision;
2. The western section on the second level be painted to match the rest of the building;
3. The brick parapet remain unpainted and that the paint on the southern end of the parapet that is painted be removed;
4. All other exterior masonry surfaces of the building to remain unpainted.

BOARD ACTION, FEBRUARY 6, 2008: On a motion by Mr. Smeallie, seconded by Dr. Fitzgerald the Board deferred the application for restudy. The vote on the motion was 7-0.

REASON: The Board believed that the applicant should continue to explore all remaining options for removing the paint and suggested that a new contractor be hired to attempt to remove a section and that the City and Mr. Kauffman work together to monitor the outcome.

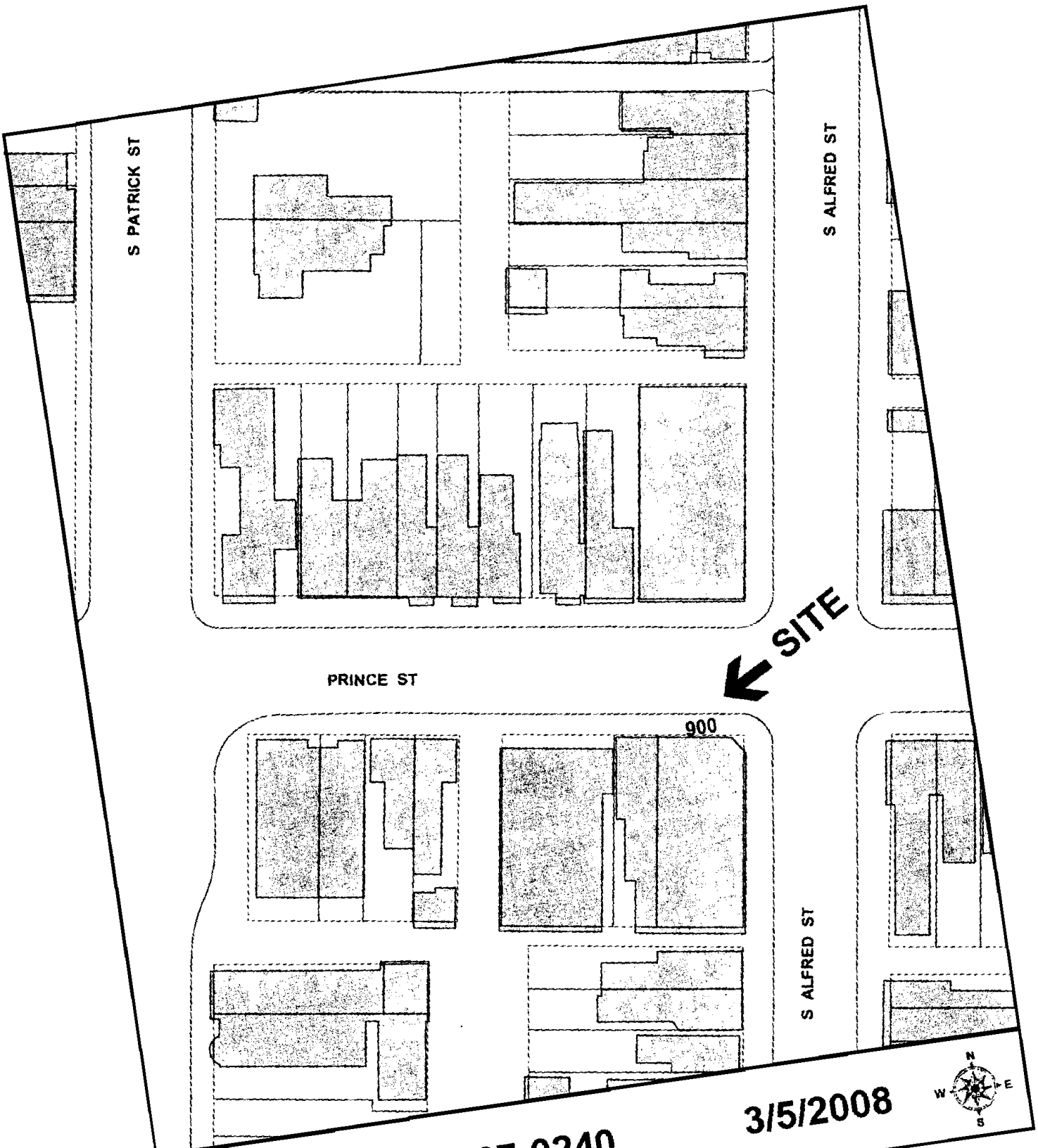
SPEAKERS: Robert Kaufman, applicant, spoke in support
Townsend Van Fleet, President, Old Town Civic Association, spoke in opposition

BOARD ACTION, DECEMBER 6, 2007: On a motion by Dr. Fitzgerald, seconded by Mr. Keleher the Board deferred the application for restudy. The vote on the motion was 6-1 (Mr. Keleher was opposed).

REASON: The Board believed that the applicant should explore removing the paint and suggested that a contractor be hired to attempt to remove a section and that the City monitor the outcome.

SPEAKERS: Robert Kaufman, applicant, spoke in support
Jeff Stone, 1420 Roberts Lane, spoke in support
Thomas Silis, 113 South Alfred Street, spoke in support
John Hynan, representing the Historic Alexandria Foundation, spoke in opposition
Mark Stevenson, 917 Prince Street, spoke in support
Poul Hertel, 1217 Michigan Court, spoke in opposition

STAFF RECOMMENDATION: Staff recommends denial of the application with the additional direction to the applicant to remove the paint that has been applied to the building within 90 days.



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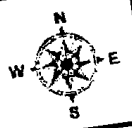
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900



BAR CASE #2007-0240

3/5/2008

Update: Since the last public hearing on this application in February, staff has been able to obtain a cost estimate for removal of the paint from the building. That estimate from Vaughan Restoration Masonry, Inc. indicated that while the majority of the paint could be removed from the building surface, because of the striated surface of the brick that removal of “100 percent of paint from the building is likely not possible.” The proposed paint stripping would involve two applications of chemical stripper to get to a point where “a significant amount of paint” would be removed. The estimate for this work to achieve the stated level of paint removal is \$108,500 not including any associated masonry repair costs or temporary utility line protection.

I. ISSUE:

The applicant is requesting approval of an after-the-fact Certificate of Appropriateness for painting the previously unpainted masonry building at 900 Prince Street. The building has largely been painted a greenish color. This application is before the Board as a result of a Stop Work Order issued by the Department for the unapproved work. The order was issued before the entire building was painted.

II. HISTORY:

900 Prince Street is a two story, flat roofed commercial building that was originally constructed in 1915 as the Mt. Vernon Dairy and was subsequently modified on a number of occasions and by 1958 was an automobile sales and service building. In the period 1975-1980 the Board approved a number of alterations to the building including additions.

III. ANALYSIS:

The proposed alterations, other than the painting of the unpainted masonry, comply with the Zoning Ordinance requirements.

As staff has previously discussed, tests regarding the removal of the paint were carried out by firms retained by the applicant as well as by a City crew. The results of these paint removal tests were poor. All of these efforts involved similar paint removal approaches which included applying a solvent to the building surface for a relatively short period of time and then mechanically washing the surface. No tests have yet been performed with slow acting chemical paint removers. The Vaughan Restoration Masonry estimate regarding removal included a possible sample panel to determine effectiveness. However, the cost of that test was \$1,500 and staff has not advocated its conduct to date.

The *Design Guidelines* are explicit on the issue of painting unpainted masonry. They state that “as a general rule, brick and masonry buildings should not be painted” and that “the Boards strongly discourage the painting of a previously unpainted masonry surface.” Underlying this principle is the belief that red brick buildings are one of the chief distinguishing characteristics of the historic district. Section 10-109(B)(4) of the Zoning Ordinance expressly provides “The painting of a masonry building which was previously unpainted prior to such painting shall be considered to be the removal of an exterior feature having historic and/or architectural significance requiring a certificate of appropriateness.”

In the past few years, the Board has reviewed several after-the-fact requests for painting previously unpainted masonry. Most recently, the Board reviewed a case for 727 South Pitt

Street where one of the original Yates Garden brick houses that was intended to remain unpainted had been painted without approval of the Board (BAR Case #2005-00130, 9/7/2005) and ordered that the paint be removed. The Board has also reviewed similar cases at 715 Princess Street where all but one side of the building had been previously painted. The Board approved the after-the-fact painting of the remaining wall (BAR Case #2005-0100, 5/18/05). In several other cases, the Board has denied the painting and ordered that the paint be removed. Examples of this include 305 Duke Street. (BAR Case #2002-0140, 6/19/02), 428 South Washington Street (BAR Case # 2001-00312, 1/16/02), and 629 South Fairfax Street (BAR Case #98-0093, 6/17/98). In the case of 727 South Pitt Street, the Board denied the approval of the painting and ordered the paint to be removed with 90 days. To date this has not occurred and the City has prepared documents and will file suit against the homeowner to compel removal of the paint.

Generally, in cases where Staff supports the painting of masonry, there have either been substantial alterations to the building or the brick is mismatched or of poor quality. This is not the case with this building. For this structure in particular, the brick used for the Prince and S. Alfred Street facades is a textured brick characteristic of buildings constructed in the first half of the twentieth century and provides more color variation and visual interest than a common smooth finish brick. The brick patterning and resulting mortar joints were thoughtfully designed and constructed. The brick texture, color variation and patterning are almost entirely lost by painting this formerly unpainted brick facade.

Staff does not support the painting of the building and continues to advocate its removal. However, staff realizes the difficulty that is presented in removing the paint from this building. Therefore, if the Board determines to approve the after-the-fact Certificate of Appropriateness for painting this previously unpainted brick building, staff recommends that a monetary fine that is approximately equal to the cost of paint removal be levied against the applicant, as a condition of the certificate, in order to vindicate the requirements of the ordinance as to this applicant, and deter similar after-the-face applications by others.

IV. STAFF RECOMMENDATION:

Staff recommends denial of the application with the additional direction to the applicant to remove the paint that has been applied to the building within 90 days.

In the alternative, if the Board determines to approve the application staff recommends the following conditions:

1. That the applicant be fined \$100,000 for painting the unpainted masonry building without a Certificate of Appropriateness, to be paid to the City within 90 days of this decision;
2. The western section on the second level be painted to match the rest of the building;
3. The brick parapet remain unpainted and that the paint on the southern end of the parapet that is painted be removed;
4. All other exterior masonry surfaces of the building to remain unpainted.

CITY DEPARTMENT COMMENTS

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

Code Enforcement:

No comment.

Historic Alexandria:

No comments received.

LAW OFFICES

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Louis M. Aronson
Admitted in MD, NY and DC
(301) 986-4202

May 22, 2009

DELIVERED BY EMAIL

Stephen Milone, AICP
Division Chief, Zoning and Land Use Services
Alexandria Planning and Zoning
City Hall
Alexandria, Virginia 22314

James Hartmann
City Manager
City Hall
Alexandria, Virginia 22314

Re: 900 Prince Street – BAR CASE # 2007-0240 (the “BAR Case”)

Dear Messrs: Milone and Hartmann:

As you are aware this firm represents PMA Properties, 900 LLC (“PMA”) the owner of 900 Prince Street in Alexandria, Virginia (the “Property”) and a party to the Old and Historic Board of Architectural Review Appeal heard by the City Council on November 15, 2008. By this letter we hereby respectfully request on behalf of PMA that this matter be removed from the City Council Docket for Tuesday May 25, 2009 and rescheduled for the June City Council meeting due to the simple fact that Mr. Kaufman is currently out of the country and not scheduled to return until the first week of June.

This past Tuesday, May 19, 2009 our office exchanged voicemails with Mr. Steven Milone, Division Chief, Zoning and Land Use Services, Alexandria Planning and Zoning concerning the above referenced matter. At approximately 4:30 pm that same day we received an email from Mr. Milone informing us that the BAR Case would be discussed, one week later, at the next City Council meeting on Tuesday May 26, 2009. This series of communications was the first between our client and City Staff since the delivery by our office of that certain correspondence dated April 17, 2009. Neither our office nor Mr. Robert Kaufman was aware that Staff was preparing to present to Council at next week’s meeting. And, short of the redacted discussion of the Staff’s recommended recourse in the email of the 19th there was no opportunity to review the Staff Memorandum.

The Staff Memorandum regarding the BAR Case was posted on May 21st by the City. Our

Messrs Milone and Hartmann
May 22, 2009
Page 2

preliminary review of the Staff Memorandum indicates that it contains numerous mischaracterizations and in no way fairly or accurately depicts either the facts or the course of events since the BAR Case was last heard by City Council. In light of the tone and content of this Memorandum we believe that due process demands that Mr. Kaufman's attendance at the City Council meeting where the BAR Case is discussed would be in everyone's best interest. And, further that both Mr. Kaufman and together with counsel should be afforded the opportunity to attend and discuss those matters currently at issue to the extent debate is heard.

This letter is sent in furtherance of PMA's rights, all of which are expressly reserved.

Very truly yours,


Louis M. Aronson, Esq.


cc: Hon. William D. Euille
Members of the Alexandria City Council
Jackie M. Henderson, City Clerk & Clerk of Council
Faroli Hamer, Director, Department of Planning and Zoning
Lee Webb, Supervisor, Urban Planner, Department of Planning and Zoning
Steve Milone, Division Chief, Department of Planning and Zoning
Robert Kaufman

City of Alexandria, Virginia

MEMORANDUM

DATE: MAY 20, 2009

TO: THE HONORABLE MAYOR AND MEMBERS OF CITY COUNCIL

FROM: JAMES K. HARTMANN, CITY MANAGER 

SUBJECT: FINES FOR ILLEGAL ALTERATION AND DEMOLITION OF HISTORIC STRUCTURES

ISSUE: Consideration of possible zoning changes to clarify the issue of authorized fines for after-the-fact approval of illegal alteration or demolition of historic buildings or structures.

RECOMMENDATION: That City Council review this memorandum and direct staff to: (1) confer with the two Boards of Architectural Review (BARs) and with the public and appropriate groups in the historic districts regarding potential changes to the zoning ordinance; and (2) prepare a text amendment for formal consideration by the Planning Commission and City Council.

BACKGROUND: The City of Alexandria prides itself on its historic districts and has an elaborate system of laws and practices in place to celebrate its history, to educate its citizens and others about its great treasure and to regulate any exterior changes to the buildings and structures that make up its historic districts. Within the historic districts, for example, a property owner is not permitted to tear down a historic building, nor to construct a new building or to alter an existing one. More specifically, within the Old and Historic Alexandria District, the Parker Gray District, or with regard to a listed 100 Year Old Property, the removal of a building or structure or a portion of one or the alteration of a building or structure, or a portion of one, requires approval by the appropriate Board of Architectural Review. Included within this requirement, the covering up or hiding of material (encapsulation) is considered a form of demolition. The painting of unpainted brick is considered an alteration. The BARs routinely review minor demolition cases and approve permits for them, especially when new construction is proposed. The BARs also routinely approve Certificates of Appropriateness for new construction or for alterations of existing buildings.

Occasionally, the BAR will be asked to review an "after-the-fact" demolition or alteration case, i.e., one where demolition or alteration has occurred but without prior BAR approval. These are difficult cases, primarily because of the loss of history, and the failure to respect the established requirements for work in the historic district. Nevertheless, the zoning ordinance makes clear that such cases are violations of the ordinance and spells out a process for handling them.

PENALTIES FOR ILLEGAL DEMOLITION OR ALTERATION CASES

Illegal Demolition Cases

Section 10-103(B)¹ requires a BAR approved permit in order to move, remove, capulate or demolish in whole or in part. An exception exists for the removal of less than 25 square feet of non-visible exterior wall, roof or surface material. A violation of this provision is specifically addressed in a separate category of the zoning penalties as a class one civil violation (Section 11-207(B)(4)) for which the penalty is \$1,500 (Section 11-207(C)(1)), the most serious civil penalty listed. Each day that any class one violation exists constitutes a separate individual offense. And the violation continues to exist until

the director certifies to the BAR that the unlawfully demolished building or structure has been reconstructed to the preexisting footprint, envelope, configuration and appearance, using original materials and techniques of construction to the extent possible. Section 11-207(C)(6).

In order to stop a violation, a property owner who does not wish to or cannot correct an illegal demolition of property, must apply for “after-the-fact” approval from the BAR to allow the demolition to continue. The BAR then must decide whether the removal of historic material meets the standards for demolition (Section 10-105(B)).

As an alternative, the BAR may determine that the violation ceases to exist when the person responsible for the violation pays to the City

a sum equivalent to the cost of reconstruction ..., such sum to be used exclusively for the purpose of promoting historic preservation within the city as determined by the director. The [fine] shall in no case exceed the market value of the property, which shall include the value of any improvements together with the value of the land upon which any improvements are located, and shall be determined by the assessed value of the property at the time of the violation. Section 11-207(C)(6).

Furthermore, under the express terms of section 11-207(C)(6) and City Charter section 9.09(j), the City’s maximum civil penalty in such cases is the assessed value of land and buildings. Other than the above language, there is no guidance in the zoning ordinance or the *Design Guidelines* to assist the City when it wishes to impose a fine but is concerned that the actual cost to correct the violation is, while less than the value of the property, very high.

Illegal New Construction or Alteration Cases

Any new construction or any alteration of a building or structure in the historic district requires a Certificate of Appropriateness from the BAR (Section 10-103 (A)). Any such work that occurs without prior approval of a Certificate of Appropriateness by the BAR is a violation of the zoning ordinance for which fines representing civil penalties may be assessed under section 11-

¹ Citations refer to the BAR-OHAD rules but similar rules apply in Parker Gray and with regard to listed 100 Year Old Buildings.

207(B)(2). The penalty is \$100 for the first violation, \$150 for the second, and \$500 for the third and subsequent violations. Section 11-207(C)(3). Each day constitutes a separate offense. Section 11-207(C)(7). Under the City Charter, Section 2.06(c), the maximum fine for the past violation is \$5,000.

Separate and apart from its authority to issue fines, under Section 11-204 of the zoning ordinance, and sections 2.06(e) and 9.22 of the City charter, the City has the clear authority to order the action necessary to correct any violation of the zoning ordinance, including the painting of unpainted brick in the historic district. The City may also cause appropriate action or proceedings to be instituted and prosecuted to abate the violation if the property owner refuses to do so.

In order to stop the violation, a property owner who wishes to retain the new construction or altered state of the building must apply to the BAR to approve the new construction or alteration, which will be an “after-the-fact” approval. The BAR must then decide if the new condition meets the criteria for a Certificate of Appropriateness under Section 10-105(A).

Further, because the City has the authority to abate the violation, it necessarily also has the lesser included authority to issue a permit or certificate allowing the illegal condition to continue, but to require conditions including financial restitution reasonably necessary to redress the ongoing, future continuing violation, including penalties which are not limited by the civil penalty authority to punish past transgressions. Such authority imposed as an alternative to compelling the abatement of the violation is essentially analogous to the power under section 11-207(C)(6) applicable to illegal demolition, allowing a payment in lieu of restoration of illegal demolition of historic fabric equal to the cost of reconstruction, with the money to be used for the purpose of promoting historic preservation.

Examples of Prior Cases Where A High Fine Has Been Imposed

During the last 20 years that the above process has been in the zoning ordinance, there have only been four cases in which the City imposed the “cost to correct” or other high penalties with an after-the-fact approval.

In 2002, the owner of 522 Queen Street demolished a wall of a historic building after the BAR had denied a permit allowing its destruction. In that case, the cost to reconstruct the wall with historic materials was determined by an outside expert to be \$20,285. The Old and Historic Alexandria BAR approved a permit allowing the after-the-fact condition to remain and lowering the fine to \$7,743 based on agreed to alternative construction methods.

In 2005, the applicant demolished two walls of a historic building at 1018 Queen Street in violation of a Parker-Gray BAR permit requiring those walls to remain. The fine imposed was \$7,500, consistent with an appropriate multiple of the \$1,500 a day civil fine representing the time between the City’s notice of the unlawful demolition and the owner’s response to the City.

In the case of the Ice House at 200 Commerce Street, in 2007, staff originally recommended a fine of \$10,000, under its standard civil penalty authority (\$1,500 a day), plus \$14,000 for the cost to reconstruct the removed front canopy. The Board approved a permit allowing the after

the fact demolition and imposed a fine of \$25,000, which Council reduced, on appeal, to \$6,500 provided the canopy was reconstructed within six months.

Council is currently considering appropriate action in the case of 900 Prince Street where an unpainted brick building was painted without BAR approval. The cost of correcting the illegal alteration based on contractor estimates in that case is high, between \$56,000 and \$108,500, and has prompted this look at potential alternative approaches to similar cases.

How Other Jurisdictions Handle Similar Cases

Staff contacted several different jurisdictions with historic districts and found that none has either a similar experience with illegal demolition or construction or as sophisticated a legal process for addressing it. Not all jurisdictions require a separate permit for demolition cases, so procedures are combined. In addition, state laws elsewhere allow different approaches. For example, the City of New Orleans uses an administrative hearing officer system to decide all disputed code and zoning violation cases, including illegal demolition and construction cases. In Charleston, and some towns in Maine, there is an automatic double fee requirement for applications for after the fact approval of any construction or demolition. In Savannah, staff is authorized to proceed directly to court for illegal demolition, with an elaborate process in place for a wholesale demolition (whole building) case. Staff concludes that the demographics of Old Town, and the high land values of Northern Virginia, have led to different circumstances with unique pressures with regard to illegal construction or demolition of historic structures in Alexandria than has been experienced elsewhere.

POTENTIAL ZONING ORDINANCE CHANGES

While the existing zoning ordinance approach is workable, it is not finely calibrated, and does not include many options for the BAR or Council. The ultimate resolution of a case that permits demolition after the fact does not allow consideration of factors other than the full cost of correcting the illegal demolition. The cost of correcting, as in the 900 Prince Street case, can be very high. In some situations, restoring the status quo ante provides limited historic benefits. While staff supports a remedy with a strong deterrent effect, it suggests that the City should consider potential alternative zoning language. If Council agrees, staff will prepare new ordinance language, discuss the matter with the BAR, and meet with interested citizens and groups, all prior to coming back to the Commission and Council with a text amendment. Staff has not drafted new language yet, but has thought about the issue and proposes the following series of ideas as provisions that could be included in a new section of the zoning ordinance for historic districts:

- Address after the fact cases generally, including both illegal construction and illegal demolition.
- Include a general requirement for both illegal construction and demolition that results in substantial injury to and loss of historic resources that the building must be restored and reconstructed with materials that are either original or close to original.

- Require each applicant for an after-the fact approval to admit wrongdoing and pay the civil penalty established for the illegal act (\$1,500 for illegal demolition and \$100 for illegal new construction) at the time he files for the after-the-fact approval.
- Double the fee for after the fact applications, excepting sign cases.
- Provide the BARs and Council on appeal with criteria and standards for consideration for after the fact cases, and specifically for allowing the illegal construction or demolition to remain.
- Criteria for illegal new construction cases could include:
 - Whether the new construction or alteration is or can reasonably be brought into substantial compliance;
 - Whether the cost of reconstruction to the applicant would be disproportionate to the public benefit gained by restoration;
 - Whether the applicant will derive an unjust benefit or windfall if correcting the illegal construction or demolition is not required.
- Criteria for illegal demolition cases could include:
 - Whether the demolition substantially meets the criteria for a BAR demolition permit;
 - Whether the cost of reconstruction to the applicant would be disproportionate to the public benefit gained by restoration;
 - Whether the applicant will derive an unjust benefit or windfall if correcting the illegal construction or demolition is not required.
- The penalty for illegal construction or demolition, e.g., the cost to correct the violation, could include a provision allowing the sum paid in restitution to be less than the full cost if circumstances warrant. For example, there could be a schedule proportionate to the level of culpability of the violator:
 - For simple inadvertence or ignorance, the restitution could be 25% of the cost to correct; provided that someone in the business of developing, purchasing, renting or managing real estate should not be considered innocent or ignorant;
 - For negligence, the restitution could be 50%.
 - For wanton or gross negligence, the restitution could be 75%.
 - For a knowing, willful act, the restitution could be 100%.
- For the unlawful demolition of an entire building or structure, without an after the fact permit, the civil penalty could be equal to the assessed value of the property, including improvements.

STAFF RECOMMENDATION:

Staff recommends that Council direct staff to continue studying the issue, to convene a process of discussions with the BAR and interested individuals and groups, and to return with proposed zoning ordinance changes in the future. In the meantime in regard to 900 Prince Street, staff is

recommending that Council consider the alternatives outlined in this memorandum in establishing an appropriate fine in that case.

STAFF:

James Banks, City Attorney

Christopher Spera, Deputy City Attorney

Faroll Hamer, Director, Department of Planning and Zoning

Stephen Milone, Division Chief, Zoning and Land Use Services

Lee Webb, Historic Preservation Manager, Department of Planning and Zoning

41

6-9-09



"Poul Hertel"
<poulh@erols.com>
06/09/2009 07:40 AM

To "Alicia Hughes" <aliciarhughes@gmail.com>, "Frank Fannon"
<frank.fannon@gmail.com>, "Frank Fannon IV "
<Frank.Fannon@SunTrust.com>, "Justin Wilson"
cc <Jackie.Henderson@alexandriava.gov>,
<Stephen.Milone@alexandriava.gov>

bcc

Subject 900 Prince Street

Dear Mayor Euille and Members of the City Council

Please find attached the OTCA commentary on 900 Prince Street case.

RE: Item # 41. Deferral from May 26, 2009, Consideration of Status Report Regarding Paint Removal Testing on the Building at 900 Prince Street and Continued Consideration of a Decision of the Board of Architectural Review, Old and Historic Alexandria District, Resulting in After-the-fact Approval of a Certificate of Appropriateness for Painting Previously Unpainted Brick, Heard Before City Council on November 15, 2008. (#26, 5/26/09)



Poul Final 900 Prince letter.pdf

**Old Town Civic Association, Inc.
P.O. Box 1213
Alexandria, Virginia 22313**

RE: Item # 41. Deferral from May 26, 2009, Consideration of Status Report Regarding Paint Removal Testing on the Building at 900 Prince Street and Continued Consideration of a Decision of the Board of Architectural Review, Old and Historic Alexandria District, Resulting in After-the-fact Approval of a Certificate of Appropriateness for Painting Previously Unpainted Brick, Heard Before City Council on November 15, 2008. (#26, 5/26/09)

Dear Mayor Euille and Members of the City Council

This case involves a clear violation of the policy and practice that have long governed the painting of brick buildings in the Old and Historic Alexandria District. (The property owner admits the violation.) Even more important, it involves the obdurate refusal of the violator either to repair the damage and restore the building to its historic condition, or even to cooperate in the City's effort to determine whether that damage can be mitigated in any way.

OTCA feels that it is imperative that the owner be required to restore the building back to its original condition—unless the City is able to determine independently and verifiably that the effort to do so would exacerbate, rather than alleviate, the damage that has already been done. The City should use whatever means necessary to make that determination (including legal process, if necessary, if the owner is not willing to cooperate voluntarily).

As to the refusal to cooperate in the restoration or mitigation of the damage, it is essential that the City levy a penalty sufficient to be a deterrent to such disregard for the law. In the face of such intransigence, failure to strictly enforce the City's proper determination would encourage others to ignore the preservation rules; would jeopardize other historic buildings and neighborhoods; and would be grossly unfair to other residents and property owners who have incurred significant costs in abiding by the law, or in restoring original conditions where possible, in similar cases.

Historic

The argument that “this building is not historic” and that it is therefore all right to have painted over the brick is a legally dangerous one to accept. Any change could then be excused without prior approval simply by dismissing it as being “non-historic” after the fact.

For that matter, however, we do not concede that the building is not "historic." Under the Secretary of Interior guidelines, a building over 50 years is generally deemed to be "historic," i.e., a contributing structure in the historic district. It is true that the "period of significance" of our National Register District is far more limited in time than 1958 (and in fact should be expanded); thus the general rule would not apply as a matter of federal preservation practice.

However, we do not have any similar "period of significance" limitation in our local preservation ordinance, and routinely protect buildings of similar age as 900 Prince (the Power Company Building at Washington and Prince, the Majestic Cafe sign, The Ice House, to name a few). Thus, we can, and to be consistent with general federal and our own City preservation practice should, deem anything over 50 years, including this building, to be "historic."

Furthermore, figures 4 and 5 in the Staff Report along with the accompanying commentary on page 35, clearly demonstrate that this is no mere discoloration. Rather, the change results in the wholesale removal of the very characteristic that made the building incomparable.

“For this building in particular, the brick used for the Prince Street and South Alfred Street facades is a textured brick that had its own distinguishing character and that created a distinct character for this building. The original brick provided more color variation and visual interest than a smooth finish common brick. The brick patterning and resulting mortar joints were thoughtfully designed and constructed to create the appearance of pillars on either side of the main corner entrance, and created horizontal banding wrapping the building and capping the windows and doors and in combination with vertical banding on either side of all windows and doors created window and door surrounds. The unique and distinctive brick texture, color variation and patterning are almost entirely lost by painting this formerly unpainted brick facade.”

Conclusion

Historic preservation, as suggested by the nomenclature, necessitates careful diligence and observance to historic rationale, lest the historic be lost forever. Today's trendy styles may beckon, but the historic, when it is gone, it is gone forever.

That is why the City should not allow incongruous and illegal alterations to take place without any consequence to the property owner. It is unnecessary to belabor the need to uphold the law, nor to belabor the precedent that would be set if the City were to acquiesce in this violation.

If it turns out that the paint cannot be removed, then the City should seek significant compensation for the destruction of the historic on top of, for lack of a better term, "we caught you fee" per fine structure below.

1. The penalty structure should reflect a "we caught you fee" that is sufficiently high enough to discourage future violators.
2. Furthermore, the transgression needs to be mitigated by requiring that the property owner restore the historic framework.
3. If the damage cannot be fixed, then the historic is gone forever, and a significant compensation commensurate with the historic damage should be further assessed.

Sincerely
Poul Hertel
President OTCA

41
6-9-09



Jonathan Cohen
<jcohen@Randalaw.com>

06/08/2009 10:05 AM

To "wmeuille@wdeuille.com" <wmeuille@wdeuille.com>,
"alexvamayor@aol.com" <alexvamayor@aol.com>,
"delpepper@aol.com" <delpepper@aol.com>,

cc

bcc

Subject 900 Prince Street

Attached please find a letter from our client, Rob Kaufman, regarding the 900 Prince Street case. Please contact us with any questions or responses regarding the attached letter.

Best Regards,

Jonathan

Jonathan S. Cohen
Ruben & Aronson, LLP
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Ruben & Aronson, LLP



Itzmlone6-8-09.PDF 727 S Pitt St Photos.PDF

PMA Properties, 900 LLC

815 King Street
Alexandria, VA 22314

June 8, 2009

DELIVERED BY EMAIL

Stephen Milone, AICP
Division Chief, Zoning and Land Use Services
Alexandria Planning and Zoning
City Hall
Alexandria, Virginia 22314

James Hartmann
City Manager
City Hall
Alexandria, Virginia 22314

Re: 900 Prince Street

Dear Messrs. Milone and Hartmann:

My company owns 900 Prince Street (the "Property"). As you will recall, when City Council vacated the BAR decision in our case in November, 2008 both Staff and my company were directed to coordinate testing of the paint removal at the Property to determine feasibility and cost. Unfortunately, since that date our respective offices have been unable to achieve any sort of resolution let alone consistent dialogue.

Since November my office has been provided with a singular testing option by Staff, which was not received until February, 2009. The referenced proposal was submitted by John Milner Associate, Inc. ("JMA"). JMA in this proposal admitted that the proposal was extremely expensive and that their processes were more likely than not to damage the Property. For this and many other reasons I did not agree to JMA doing the testing.

In the Staff Report, dated November 11, 2008, 727 South Pitt Street was referenced as an illustrative precedent. Notwithstanding a two year dispute I have recently learned that the owner did, in fact, remove the paint. In the interest of a potential resolution of the BAR Case I recently took pictures of 727 South Pitt Street, which I have attached to this letter. The brick at 727 S. Pitt and the Property are different types of brick. These pictures show, that paint removal, even on smooth brick, is a difficult process which often results in residual paint and from my perspective accomplished a less than acceptable result but was approved by City Staff. Notwithstanding the fact that the "ghosting" of the paint on S. Pitt would be a less than favorable result at Prince Street we note with some comfort that it was done with what appears to be very little or no damage to the brick at S. Pitt. Since preservation is as critical as presentation I would

Messrs Milone and Hartmann
June 8, 2009
Page 2

submit it would be worthwhile to ask for a testing and paint removal proposal from this company to determine whether it is able to implement a better process capable of an improved result.

Obviously without having spoken with the company that did the removal and not knowing the cost of the testing, the cost of the removal or the likelihood of success it would be improper to commit to any particular solution or process. Further the brick at 727 South Pitt and the Property are different which complicates any potential removal. This company may, however, have unique experience in the 900 Prince Street type brick which could prove beneficial to any potential resolution of our dispute.

I am not sure what company she used or how much she paid to have the paint removed. I am also not sure if the processes used to remove the paint from her property would work on the coarse and porous brick at the Property. But, I think it would be worth contacting this contractor and engaging them to inspect the Property and get a removal and testing estimate before we move forward with any final resolution of this matter in front of the City Council. I see no reason I can't accomplish this before the September Council Meeting.

I therefore, respectfully request, that the City Staff provide me with information regarding the paint removal contractor who removed the paint at 727 South Pitt Street. I further request that the City Council remove the pending report on the Bar Case from their docket on June 9, 2009, and reschedule it for a later City Council meeting once Staff and I have had the opportunity to interview this contractor.

Given the rapidly approaching hearing date your anticipated prompt attention to and cooperation in this request is appreciated. And, please note that this letter is sent in furtherance of my rights, all of which are expressly reserved.

Sincerely,



Rob Kaufman

cc: Hon. William D. Euille
Members of the Alexandria City Council
Jackie M. Henderson, City Clerk & Clerk of Council
Faroll Hamer, Director, Department of Planning and Zoning
Lee Webb, Supervisor, Urban Planner, Department of Planning and Zoning









