

*City of Alexandria, Virginia*

11  
11-15-08

**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 # 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.

(Insert sketch here)

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.

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  
June 24, 2008



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 facades along South Alfred and Prince Street.

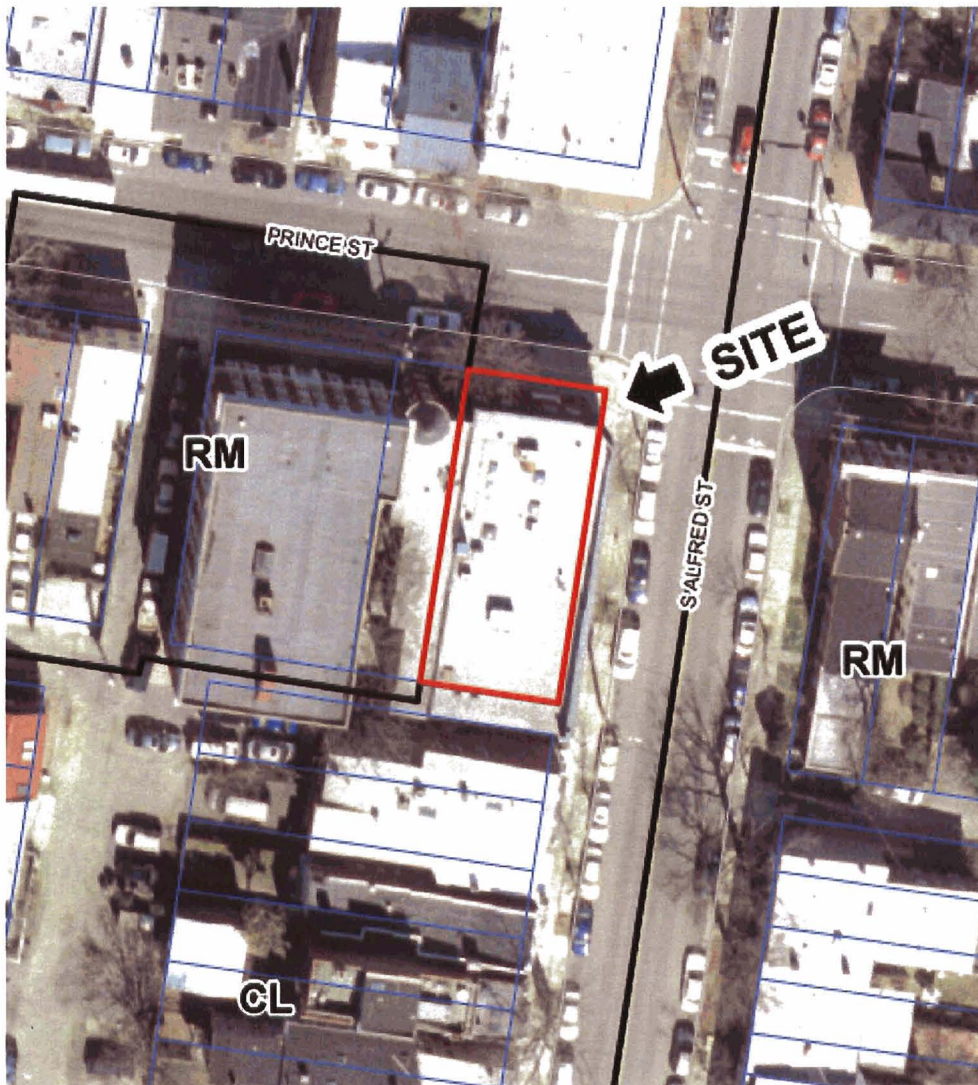


Figure 1: Aerial view of 900 Prince Street.

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 19<sup>th</sup> 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

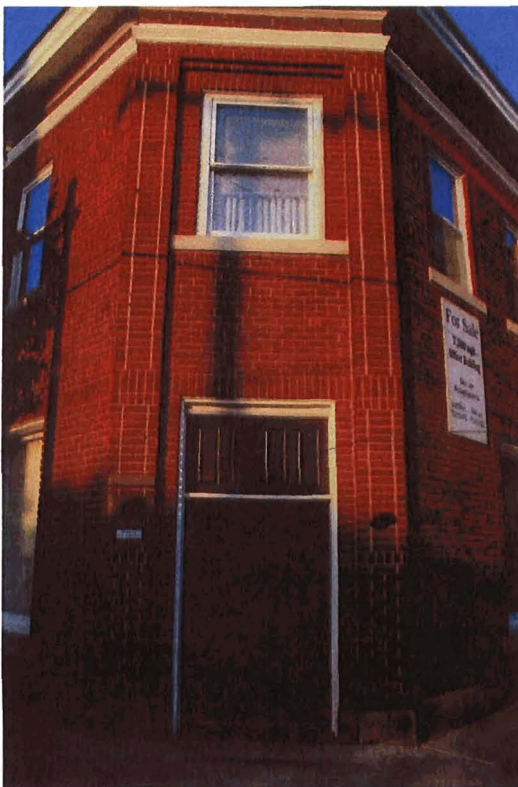


feature having historic and/or architectural significance requiring a certificate of appropriateness.”

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