EXHIBIT NO. 1

24
9-20-05

City of Alexandria, Virginia

MEMORANDUM

DATE: SEPTEMBER 13, 2005

TO: THE HONORABLE MAYOR AND MEMBERS OF CITY COUNCIL

THROUGH: JAMES K. HARTMANN, CITY MANAGER

FROM: EILEEN FOGARTY, DIRECTOR, PLANNING AND ZONING

SUBJECT: VAC#2005-0002, VACATION OF RIGHT-OF-WAY

On June 21, 2005, City Council deferred this item until the Board of Architectural Review acted on the demolition request for the same property (BAR#2005-0080). The application for demolition before the Board of Architectural Review has been withdrawn. The vacation request is scheduled for hearing by City Council on September 20. Staff maintains its recommendation for approval as discussed in the attached staff report.

Docket Item #17
VACATION #2005-0002

Planning Commission Meeting
June 7, 2005

ISSUE: Consideration of a request for vacation of public right-of-way.

APPLICANT: Stevens Switch, LLC
by Duncan Blair

LOCATION: 211 Franklin Street/632 South Fairfax Street

ZONE: CL/Commercial low

CITY COUNCIL ACTION, JUNE 21, 2005: City Council deferred this item until the Board of Architectural Review acts on the demolition request.

PLANNING COMMISSION ACTION, JUNE 7, 2005: On a motion by Mr. Robinson, seconded by Mr. Komoroske, the Planning Commission voted to recommend approval of the request, subject to compliance with all applicable codes, ordinances and staff recommendations. The motion carried on a vote of 7 to 0.

Reason: The Planning Commission agreed with the staff analysis, including the recommended condition that the applicant not be allowed to build on the property vacated, and not be allowed to utilize any density or other development rights associated with the vacated land area.

Speakers:

Julie Crenshaw, 816 Queen Street, requested that the case be deferred because of a pending Board of Architectural Review case on the adjacent property.

Duncan Blair, attorney, spoke in support of the application and stated that the applicant agreed to the development restrictions as recommended by staff. He stated that the vacated area is intended to be used as a side yard.

STAFF RECOMMENDATION: Staff recommends **approval** subject to compliance with all applicable codes and ordinances and the permit conditions found in Section III of this report.

CITY OF ALEXANDRIA VIRGINIA

VAC #2005-0002 **06/07/05**

N

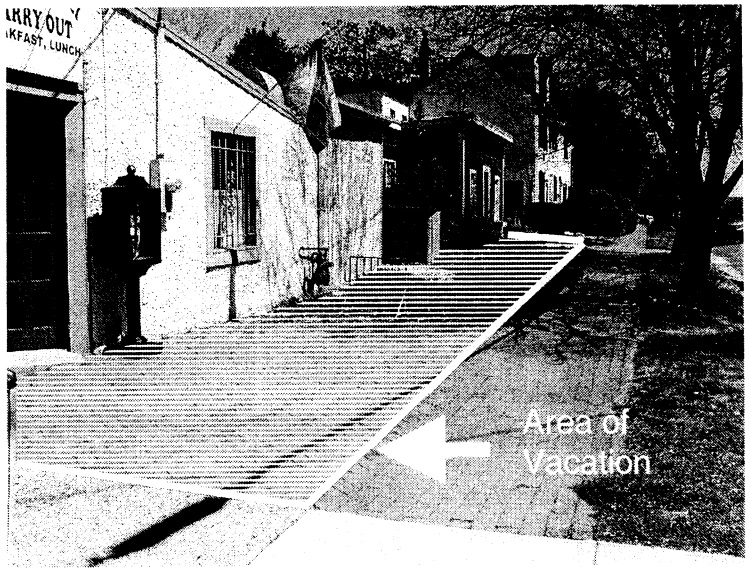
I. DISCUSSION

REQUEST

The applicant, Stevens Switch, LLC, by Duncan Blair, requests the vacation of an area of right-of-way at the northwest corner of Franklin and South Fairfax Streets.

SITE DESCRIPTION

The subject property is a portion of right of way with 10 feet of frontage on South Fairfax Street, 82 feet of frontage on Franklin Street, and a total area of 819 square feet. The applicant is the owner of the adjacent property at 211 Franklin Street/632 South Fairfax Street, which is one lot of record with approximately 38 feet of frontage on South Fairfax Street, 82 feet of depth, and a total lot area of 4,793 square feet. The property is occupied by a deli and dry cleaners. The applicant also owns the property immediately to the north at 630 South Fairfax, which is occupied by a single family dwelling. The surrounding area is occupied by single family and townhouse residences.



PROJECT DESCRIPTION

The applicant requests a vacation of 819 square feet of Franklin Street to consolidate it with the existing property at 211 Franklin/632 South Fairfax Streets (see attached plat). If the vacation request is approved, the applicant's total lot area will be approximately 5,612 square feet, adding 10 feet of frontage on South Fairfax Street.

The applicant uses and maintains the subject property, which is currently occupied by brick pavers and grass. The applicant has submitted an application to the Board of Architectural Review to demolish the existing building on the adjacent property at 211 Franklin/632 South Fairfax Street. According to the applicant, there are no immediate plans to build on the adjacent property. The applicant has agreed not to use the vacated land area to derive any increased development rights for the adjacent property.

BACKGROUND

From a right-of-way perspective, City Council adopted a policy in 1979 stating that the City would entertain requests to vacate the public right-of-way along Franklin Street by the adjacent property

owners (Ordinance #2425). Since that time, the City Council has approved a number of requests for vacations along Franklin Street (see attached map). Some recent approvals include: 302 square feet at 109 Franklin Street (VAC#2001-0004), 50 square feet at 108 Franklin Street (VAC #2000-0002), 599 square feet at 111 Franklin Street (VAC#99-0008), 1,108 square feet at the southeast corner of South Royal and Franklin Streets (VAC#2003-0006), and 1,062 square feet at the southeast corner of South Lee and Franklin Streets (VAC#2004-0001). In 1989, Ordinance No. 3426 (VAC#1989-0014) approved the vacation of 1,101.7 square feet of the same right of way (only 28 feet longer along Franklin Street). The applicant requesting the vacation failed to act upon the approved vacation, and it was determined by the City Attorney that the rights conferred by the adoption of the ordinance and the action and effect of the ordinance had terminated. In that case, no specific development limitations were attached to the vacation so that the property owner had permission to build structures in accordance with the applicable zoning regulations.

ZONING / MASTER PLAN

The subject property is zoned CL/Commercial low zone, and is located in the Old Town Small Area Plan.

II. STAFF ANALYSIS

Staff supports the applicant's request for a vacation of the public right-of-way located adjacent to 632 South Fairfax/211 Franklin Street, and notes that the proposed vacation request is similar to other vacations that the City Council has previously granted along Franklin Street. The proposed vacation will leave sufficient public right-of-way as required by the 1979 ordinance.

Staff is concerned about the loss of public land, especially green areas, and about creating additional development opportunities through the sale of public land to private owners. Two years ago, when a similar case seeking to vacate right-of-way at South Royal Street was before the City, Council discussed its policy in terms of open space and with regard to the valuation of the land to be vacated. As a result of its discussion of vacation policy, Council acted in two ways. First, it approved the South Royal Street vacation application, but required that the approval include the condition recommended by staff that precluded future development potential from the vacated public land. Second, on February 10, 2004, Council adopted a new valuation policy for vacated city land, essentially distinguishing between those cases where development rights accrue to the purchaser of city land and those where they do not. In addition, Council asked that staff advise about new vacation cases early in the process, and directed that the proceeds from right-of-way vacations be allocated to the City's Open Space Fund.

In this case, Planning staff provided Council with a copy of the vacation case when it was filed, and when the revision was filed. In addition, the applicant is agreeable to a condition that specifically prevents the creation of any additional development rights as a result of this vacation. Finally, the Office of Real Estate Assessments has calculated the value of the land pursuant to Council's adopted policy, given the limitation on future development.

Therefore, consistent with Council's action on the last two Franklin Street vacation cases, and consistent with its policy discussions last year, staff recommends approval.

III. RECOMMENDED PERMIT CONDITIONS

Staff recommends **approval** subject to compliance with all applicable codes and ordinances and the following conditions:

1. The vacated area is to be consolidated into the adjoining property, and the plat of consolidation filed with the Departments of Planning and Zoning and Transportation and Environmental Services. (T&ES) (P&Z)

2. Easements must be reserved for all existing public and private utilities within the area to be vacated. (T&ES)

3. The property owners may not construct any buildings, or improvements, including driveways and parking spaces, on the vacated area other than approved perimeter fencing and may not use the vacated land area to derive any increased development rights for the lands adjacent to the vacated area, including increased floor area, subdivision rights or additional dwelling units. This restriction shall appear as part of the deed of vacation and shall also appear as a note on the consolidation plat, both of which shall be approved by the Director of Planning and Zoning prior to recordation. (P&Z)

STAFF: Eileen P. Fogarty, Director, Department of Planning and Zoning;
Richard Josephson, Deputy Director;
Valerie Peterson, Urban Planner.

CITY DEPARTMENT COMMENTS

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

Transportation & Environmental Services:

F-1 Staff supports the proposed vacation request.

R-1 Applicant to pay fair market value for the vacated area as determined by the Office of Real Estate Assessment.

R-2 Vacated Right-of-Way is to be consolidated with the adjoining property.

R-3 The applicant shall grant easements for all public and private utilities where necessary.

Code Enforcement:

F-1 No comments.

Recreation, Parks & Cultural Activities (Arborist):

F-1 If there is a condition restricting development on the proposed land, and consistent with Council policy, we support the vacation application.

Real Estate Assessments:

F-1 This memorandum is consistent with the Policy adopted by both the Planning Commission and City Council in February 2004. Based upon my review of current assessment data and subject to the limiting conditions stated in this memorandum, it is my opinion that the right-of-way to be vacated had a value to the adjacent property owner as of the date of the application for vacation (March 31, 2005), of:

Sixteen Thousand Seven Hundred Dollars ($16,700)

Per your request, we have reviewed the proposed right-of-way to be vacated adjacent to the property at 632 South Fairfax Street. The area proposed for vacation is 10 feet wide and runs the length of Tax Map 080.02-07-42 for a distance of 81.92 linear feet, and consists of 819 square feet. The adjacent lot (Lot 42) comprises a total land area of 3,195 square feet. Therefore, the total proposed site would contain a total of 4,014 square feet (3,195 SF + 819 SF = 4,014 SF) after the vacation.

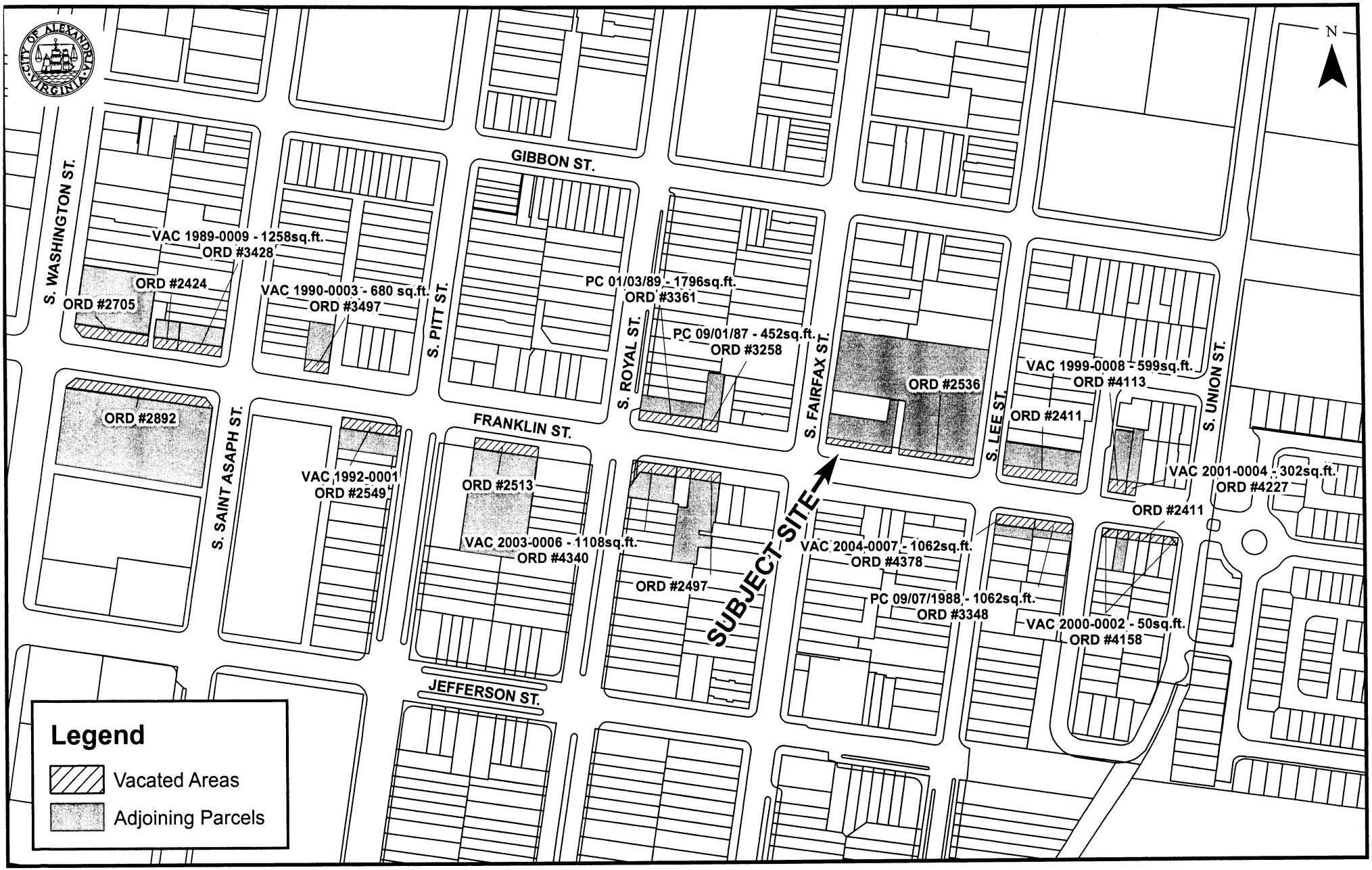
I have estimated the value of the right-of-way to be vacated using the latest real estate assessments (2005) for the nearby properties of similar size and zone, and considering the restrictions which will preclude any increase in the development potential of the site above what is currently allowed for with 3,195 square feet of land area. The January 1, 2005 land assessment of Lot 42 was $325,900 or $102.00 per square foot ($325,900/3,195 SF = $102.00 per square foot). This is consistent with the per-square-foot assessment of lots of similar size and zone in the immediate area. Therefore, the fee simple value of the proposed vacated parcel if unencumbered would be $83,538. (819 SF X $102.00 = $83,538).

Accordingly, with the vacated area to remain as open space we have discounted the indicated value based on surrounding assessments by the 80 percent (80%). The remaining value at 20% of the indicated value above is $16,700 ($83,538 X .20 = $16,700 rd).

It should be clearly understood that an appraisal has not been made of the subject properties or of the properties abutting the right-of-way. Further, my opinion of value considers the zoning and permitted land uses in place as of the date of valuation that may affect "highest and best use" determinations. Finally, the discounted value above is contingent upon the assumption that any development rights inherent in the vacated parcel are limited as proscribed in the deed that transfers the vacated parcel from the City to the property owner.

Police:

F-1 The Police Department has no objections to the vacation.


CITY OF ALEXANDRIA VIRGINIA
N
GIBBON ST.
S. WASHINGTON ST.
VAC 1989-0009 - 1258sq.ft.
ORD #3428
ORD #2424
ORD #2705
VAC 1990-0003 - 680 sq.ft.
ORD #3497
S. PITT ST.
PC 01/03/89 - 1796sq.ft.
ORD #3361
S. ROYAL ST.
PC 09/01/87 - 452sq.ft.
ORD #3258
S. FAIRFAX ST.
ORD #2536
VAC 1999-0008 - 599sq.ft.
ORD #4113
S. LEE ST.
ORD #2411
S. UNION ST.
ORD #2892
S. SAINT ASAPH ST.
FRANKLIN ST.
VAC 1992-0001
ORD #2549
ORD #2513
VAC 2003-0006 - 1108sq.ft.
ORD #4340
ORD #2497
SUBJECT SITE
VAC 2001-0004 - 302sq.ft.
ORD #4227
ORD #2411
VAC 2004-0007 - 1062sq.ft.
ORD #4378
PC 09/07/1988 - 1062sq.ft.
ORD #3348
VAC 2000-0002 - 50sq.ft.
ORD #4158
JEFFERSON ST.
Legend
Vacated Areas
Adjoining Parcels

APPLICATION for VACATION

VAC # 2005-0002

PROPERTY LOCATION: **632 South Fairfax Street, Alexandria, Virginia**

TAX MAP REFERENCE: **80.02 07 42** ZONE: **CL-Commercial Low**

APPLICANT Name: **STEVENS SWITCH, LLC**
a Virginia limited liability company

Address: **630 South Fairfax Street, Alexandria, Virginia 22314**

PROPERTY OWNER
Name: **Paul Schott and Joyce P. Stevens**
Address: **630 South Fairfax Street**
Alexandria, Virginia 22314

VACATION DESCRIPTION: **Stevens Switch, LLC., a Virginia limited liability company, the owner of the property at 632 South Fairfax Street, Alexandria, Virginia ('the "Property") is requesting the vacation of 1,392.6 square feet of Franklin Street public right-of-way adjacent to the Property. The vacation is consistent with the adopted City Council policy, Ordinance #2425, on vacating portions of the Franklin Street public right-of-way on either side of the centerline reducing the width of the right-of-way from one hundred (100') feet to sixty-six (66') feet. The requested vacation is also consistent with recent City Council actions: 700 South Lee Street (VAC #2004-0001); 109 Franklin Street (VAC #2001-0004); 108 South Union Street (VAC #2000-0002); 111 Franklin Street (VAC #99-0008) and Royal and South Fairfax Streets (VAC #2003-0006).**

In 1989 (VAC 1989-0014), the prior owners obtained City Council approval of the adoption of Ordinance No. 3426 vacating a portion of the Franklin Street right-of-way adjacent to the Property and 211 Franklin Street. The applicant requesting t he vacation failed to comply with the terms and conditions of the ordinance within a "reasonable" period of time and it was determined by the City Attorney that the rights conferred by the adoption of the ordinance and the action and effect of the ordinance had terminated by the doctrine of laches

THE UNDERSIGNED hereby applies for a Vacation Ordinance in accordance with the provisions of Chapter 10 of the Code of the State of Virginia.

THE UNDERSIGNED, having obtained permission from the property owner, hereby grants permission to the City of Alexandria to post placard notice on the property for which this application is requested, pursuant to Article XI, Section 11-301 (B) of the 1992 Zoning Ordinance of the City of Alexandria, Virginia.

THE UNDERSIGNED also attests that all of the information herein provided and specifically including all surveys, drawings, etc., required of the applicant are true, correct and accurate to the best of their knowledge and belief.

Land, Clark, Carroll, Mendelson & Blair, P.C.
Duncan W. Blair, Esquire
Print Name of Applicant or Agent

Signature

524 King Street
Mailing/Street Address

(703) 836-1000 **(703) 549-3335**
Telephone # *Fax #*

Email: dblair@landclark.com

Alexandria, Virginia 22314
City and State *Zip Code*

March 29, **2005**
Date

========== ***DO NOT WRITE BELOW THIS LINE - OFFICE USE ONLY*** ==========

Application Received: _____ Date & Fee Paid: _____ $_____

ACTION - PLANNING COMMISSION: recommend approval 7-0

ACTION - CITY COUNCIL: 6/21/05- ~~CC deferred this item until the BAR acts on~~ the demolition request. 6-0

zoning\StevensPaul-Vacation 0105

VAC2005-0002

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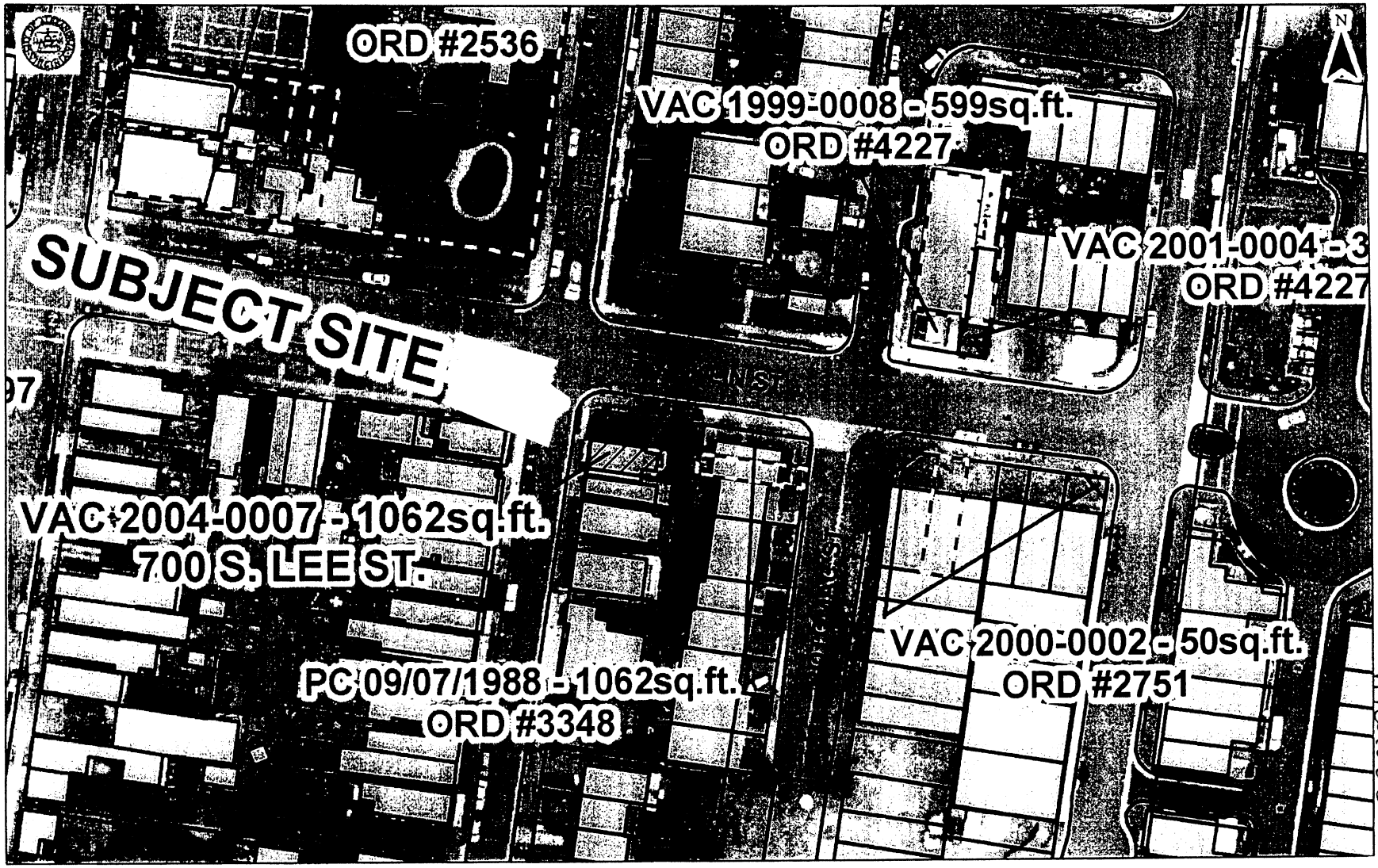
VAC2005-0002

AREAL OF SUBJECT SITE AND GRANTED VACATIONS IN THE IMMEDIATE AREA



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VAC2005-0002

ALEXANDRIA SURVEYS INTERNATIONAL, LLC
6343 SOUTH KINGS HIGHWAY • ALEXANDRIA, VIRGINIA 22306
(703) 660-6615 • FAX (703) 768-7764

May 16, 2005

DESCRIPTION OF
A PORTION OF
FRANKLIN STREET
CITY OF ALEXANDRIA, VIRGINIA

Beginning at the intersection of the northerly right-of-way line of Franklin Street and the easterly right-of-way line of South Fairfax Street; thence running with the northerly right-of-way line of Franklin Street S81°09'00"E 81.92 feet to a point; thence running through the Franklin Street right-of-way the following three courses and distances: S09°30'00"W 10.00 feet, thence N81°09'00"W 81.92 feet, thence N09°30'00"E 10.00 feet to the place of beginning, containing 819 square feet, land.

RECEIVED
MAY 17 2005
PLANNING & ZONING

14

City of Alexandria, Virginia

MEMORANDUM

DATE: May 25, 2005

TO: EILEEN P. FOGARTY, DIRECTOR
PLANNING AND ZONING

FROM: CINDY SMITH-PAGE, DIRECTOR
REAL ESTATE ASSESSMENTS

SUBJECT: VACATION OF RIGHT-OF-WAY WITH NO DEVELOPMENT RIGHTS
APPLICATION FOR VACATION #2005-0002

This memorandum is consistent with the Policy adopted by both the Planning Commission and City Council in February 2004. Based upon my review of current assessment data and subject to the limiting conditions stated in this memorandum, it is my opinion that the right-of-way to be vacated had a value to the adjacent property owner as of the date of the application for vacation (March 31, 2005), of:

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DeptFiles\REA\20005AV\TFrancis\Street Vacztion\632 South Franklin Vacation.wpd.

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Land, Clark, Carroll, Mendelson & Blair, P.C.
Duncan W. Blair, Esquire
Print Name of Applicant or Agent

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524 King Street
Mailing/Street Address

(703) 836-1000 **(703) 549-3335**
Telephone # *Fax #*

Email: dblair@landclark.com

Alexandria, Virginia 22314
City and State *Zip Code*

March 29, **2005**
Date

========== ***DO NOT WRITE BELOW THIS LINE - OFFICE USE ONLY*** ==========

Application Received: _____ Date & Fee Paid: _____ $_____

ACTION - PLANNING COMMISSION: recommend approval 7-0 **6/7/05**

ACTION - CITY COUNCIL: 6/21/05- ~~CC deferred this item until the BAR acts on~~ the demolition request. 6-0

9/20/05 - CC denied PC recommendation 7-0

zoning\StevensPaul-Vacation 0105

SPEAKER'S FORM

DOCKET ITEM NO. 24

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

PLEASE ANNOUNCE THE INFORMATION SPECIFIED BELOW PRIOR TO SPEAKING.

1. **NAME:** Duncan W. Blair, Esquire

2. **ADDRESS:** 524 King Street, Alexandria, Virginia 22314

   TELEPHONE NO. 703 836-1000 **E-MAIL:** dblair@landclark.com

3. **WHOM DO YOU REPRESENT, IF OTHER THAN YOURSELF?**
   Stevens Switch, LLC

4. **WHAT IS YOUR POSITION ON THE ITEM?**
   For

5. **NATURE OF YOUR INTEREST IN ITEM (PROPERTY OWNER, ATTORNEY, LOBBYIST, CIVIC INTEREST, ETC.):**
   Attorney

6. **ARE YOU RECEIVING COMPENSATION FOR THIS APPEARANCE BEFORE COUNCIL?**
   Yes

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

A maximum of three minutes will be allowed for your presentation, except that one officer or other designated member speaking on behalf of each *bona fide* neighborhood civic association or unit owners' association desiring to be heard on a docket item shall be allowed five minutes. In order to obtain five minutes, you must identify yourself as a designated speaker, and identify the neighborhood civic association or unit owners' association you represent, at the start of your presentation. If you have a prepared statement, please leave a copy with the Clerk.

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

The public normally may speak on docket items only at public hearing meetings, and not at regular legislative meetings. Public hearing meetings are usually held on the Saturday following the second Tuesday in each month; regular legislative meetings on the second and fourth Tuesdays in each month. The rule with respect to when a person may speak to a docket item at a legislative meeting can be waived by a majority vote of council members present but such a waiver is not normal practice. When a speaker is recognized, the rules of procedures for speakers at public hearing meetings shall apply. If an item is docketed *for public hearing* at a regular legislative meeting, the public may speak to that item, and the rules of procedures for speakers at public hearing meetings shall apply.

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

Guidelines for the Public Discussion Period

(a) All speaker request forms for the public discussion period must be submitted by the time the item is called by the city clerk.

(b) No speaker will be allowed more than three minutes; except that one officer or other designated member speaking on behalf of each *bona fide* neighborhood civic association or unit owners' association desiring to be heard during the public discussion period shall be allowed five minutes. In order to obtain five minutes, you must identify yourself as a designated speaker, and identify the neighborhood civic association or unit owners' association you represent, at the start of your presentation.

(c) If more speakers are signed up than would be allotted for in 30 minutes, the mayor will organize speaker