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Docket Item #
BAR CASE # 2006-0281 and
2006-0282

City Council
June 16, 2007

ISSUE: Appeal of a decision of the Old and Historic Alexandria Board of Architectural Review, approving an after-the-fact Permit to Demolish and a Certificate of Appropriateness for alterations

**APPLICANT &
APPELLANT:** Boyd Walker

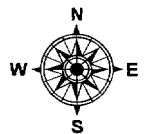
LOCATION: 200 Commerce Street

ZONE: CL



BAR CASE #2006-0281/2

6/16/07



I. EXECUTIVE SUMMARY

Issue:

- The applicant is appealing the Board's May 2, 2007 decision of approval of an after-the-fact Permit to Demolish and a Certificate of Appropriateness for alterations, which includes a penalty in the form of a \$25,000 fine. The decision of the Old & Historic Alexandria District Board of Architectural Review was appealed on May 16, 2007 by the applicant and owner of the property at 200 Commerce Street, Mr. Boyd Walker, in accordance with Section 10-107 of the Zoning Ordinance. The applicant is seeking a reduction by Council of the \$25,000 fine.
- The fine was levied for unauthorized demolition of historic fabric without a Permit to Demolish issued by the Board of Architectural Review. The applicant had removed without Board approval a front, structurally-integrated canopy over a loading dock of the Ice House building at 200 Commerce Street.
- The decision before the Council is whether the fine levied by the Board of Architectural Review as a component of their approval was an appropriate penalty under the City's Zoning Ordinance for the demolition that occurred. The Council must also decide if the approval of a Certificate of Appropriateness for alterations that includes reconstruction of the canopy was appropriate under the Zoning Ordinance and the Design Guidelines.
- The Old and Historic Alexandria Board of Architectural Review approved the after-the-fact Permit to Demolish and a Certificate of Appropriateness for alterations on May 2, 2007, with a vote of 4-2. The Board's approval included the following conditions:
 1. That the applicant replace the demolished canopy within six months of approval, to match the original canopy in respect to size and proportions, structure, and materials, and if not completed within six months that an additional \$1,500 per day fine will be assessed;
 2. That the applicant provide further clarification on the permit drawings as to how draining of the canopy will occur;
 3. That any remaining features such as the support chains and rings/bolts be retained;
 4. That the new skylights have integral shades to be used at nighttime to reduce seepage of light visible from the exterior;
 5. That the flashing around the skylights match the color of the roofing materials;
 6. That the material of the skylights should be non-reflective but may be tinted bronze or gray depending upon the color of the roofing material;
 7. That the applicant must obtain a building permit from Code Enforcement; and,
 8. That a fine of \$25,000 be assessed to the applicant for the unauthorized demolition of the canopy, that the fine be paid within 30 days of approval

June 16, 2007

of the Permit to Demolish, and if not paid within thirty days that the applicant be assessed an additional \$1,500 per day fine.

Recommendation: That the Council support the decision of the BAR, approving the after-the-fact Permit to Demolish and the Certificate of Appropriateness for alterations with the conditions, including an assessment of a \$25,000 fine for unauthorized demolition.



Figure 1: Aerial of 200 Commerce Street

II. BACKGROUND

Staff became aware of the unauthorized demolition of the front canopy of the Ice House on November 8, 2006 and Code issued a stop work order on November 9, 2006. Staff met with the applicant on site and requested to inspect any remaining fabric from the demolished canopy. Only a few pieces of material were pulled from the dumpster and shown to staff, none of which could be reused in a replacement canopy. The dumpster was then removed from the site, without further consultation with Planning and Zoning/BAR staff.

In staff's opinion, the Ice House met criteria #'s 4 and 6 under section 10-205(B) of the Zoning Ordinance in respect to consideration of a Permit to Demolish and Capsulate:

- (4) Would retention of the building or structure help preserve and protect an historic place or area of historic interest in the city? and,
- (6) Would retention of the building or structure help maintain the scale and character of the neighborhood?

The Ice House is representative of a small scale industrial building from the first half of the 20th-century. The canopy was an original character-defining feature of the building and its loss has diminished the integrity of the building. To mitigate this unauthorized action, the front façade of the Ice House needs to be carefully restored to its original appearance, using drawings from

June 16, 2007

1931, showing integrated gutter and canopy design. The applicant also desired to seek approval for further alterations to the building to improve its appearance, including historically appropriate replacement windows and doors.

Staff worked with the applicant to determine how to proceed with the case and to obtain the necessary materials to appear before the Board for the December 20, 2006 Board meeting.

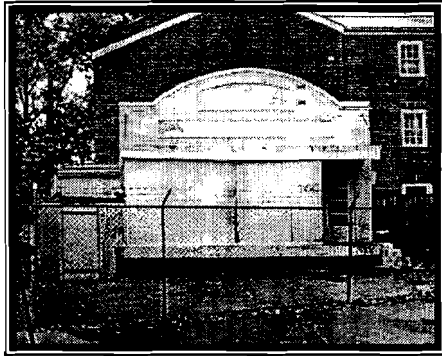


Figure 2 - Ice House before demolition of the canopy



Figure 3 - Ice House after demolition of the canopy

The following is the timeline for the 200 Commerce Street case BAR2006-0281 and 0282:

- 11/9/06
 - Complaint Received that demolition was occurring at 200 Commerce St.
 - BAR staff visited site and confirmed demolition without approval.
 - Code Enforcement issued Stop Work Order.
- 11/10/06
 - BAR staff met the property owner on site.
- 11/20/06
 - Application filed.
- 12/20/06
 - Deferred from BAR hearing due to lack of public notice.
- 1/3/07
 - Deferred from BAR hearing due to lack of public notice.
- 1/4/07
 - Staff mailed notice prior to 1/6/07 deadline to ensure that item would be heard at the 1/17/07.
- 1/17/07
 - BAR held public hearing and after discussion deferred application for restudy.
- 2/21/07
 - BAR held public hearing and deferred after discussion for restudy.
- 3/21/07
 - BAR held public hearing and deferred after discussion for restudy.
- 5/2/07
 - BAR held public hearing and issued decision of approvals with fine.

Development of Recommendation for Fine:

City staff generally works with property owners to eliminate the violation in the most appropriate and expeditious means possible. City staff will typically withhold further penalties if a property owner is diligently pursuing resolution of the issue. In the case of 200 Commerce, the applicant made application for after-the-fact approval of the demolition by the November 20, 2006 deadline to be heard at the December 20, 2006 BAR hearing. However, additional delays as reflected in the above timeline after the original filling prevented the violation from being resolved expeditiously.

In the report prepared for the Board's public hearing, staff recommended that a fine for the unauthorized demolition be levied on the owner in the amount of \$10,000. The recommendation

June 16, 2007

for a \$10,000 fine was conceived in an attempt to balance the desire to have the canopy reconstructed, to the extent possible as reflected on the original construction plans, and to recognize the severity of the unauthorized demolition and as deterrence to anyone who may consider unauthorized demolition in the future. Estimates secured by staff indicate that the cost of reconstruction of the canopy will be approximately \$14,000, resulting in the total cost to the applicant of approximately \$24,000 including the recommended fine. The recommended \$10,000 fine includes \$1,500 for the original fine, \$1,500 dollars for each of the three times that proper notice was not sent, thereby delaying the hearing and resolution of the infraction, \$500 for staff to secure a review and cost estimate from a historic preservation architect and a restoration firm, cost for staff to send notice in January to ensure that the case could go to hearing, as well as additional hours of staff time that had to be devoted to this case above the amount of time that would be expended on this case if it were not after-the-fact, with undue delays and with staff sending notice. The City Attorney has stated that the fine must be commensurate with the gravity of the offense, taking into account in particular the extent and historic value of the unlawfully demolished building or structure. The City Attorney has been consulted in the determination, and fully concurred with staff's approach to establishing the amount of the recommended fine.

However, during the public hearing of the Old and Historic Alexandria Board of Architectural Review on May 2, 2007, several Board members expressed concern that the recommended fine of \$10,000 did not adequately reflect a punitive measure for the unauthorized demolition of the canopy and the procedural delays by the applicant, and that a higher fine was warranted and appropriate to serve in this case and to serve as a deterrent to others from proceeding with work without the proper permits and approvals from the Board. The motion that passed at the hearing with a 4-2 vote included a fine of \$25,000 for the unauthorized demolition of the canopy of the Ice House.

III. DISCUSSION AND ANALYSIS

Fine:

In respect to the recommended fine amount by staff to the Board, a fine of \$10,000 was recommended to be assessed for the unauthorized demolition of the canopy over the loading dock of the former ice house at 200 Commerce Street. Per Zoning Ordinance Section 11-207 (B)(4), violation of section 10-103(B) involving unauthorized demolition of any building or structure is a class one civil violation and subject to a \$1,500 penalty for each individual offense. Section 11-204 authorizes City officials to notify property owners and their agents or controllers of the property of violations of the ordinance. City officials may also order discontinuance of illegal work. Section 11-204 provides that if the violation is not corrected within ten days of the notice that City officials may "cause appropriate action or proceedings to be instituted and prosecuted to prevent such unlawful act and to restrain, correct, or abate such violation or to prevent any unlawful act, conduct or use of such property."

Zoning Ordinance Guidance for Penalties for Class One Violations:

Section 11-207(C)(6) for penalties for class one violations states the following: "Each day during which any class one civil violation exists shall constitute a separate individual offense. A class one civil violation shall be deemed to exist until such time as the director certifies to the board of architectural review that the unlawfully demolished building or structure has been reconstructed to the pre-existing footprint, envelope, configuration and appearance, using original materials and techniques of construction to the extent possible; provided, however,

June 16, 2007

that, after a public hearing for which notice has been given pursuant to section 11-300, the board of architectural review may determine that a class one civil violation shall cease to exist at such time as the person responsible therefore shall have paid to the city a sum equivalent to the cost of reconstruction required under this section 11-207(C)(6), such sum to be used exclusively for the purpose of promoting historic preservation within the city as determined by the director. The civil penalty for a class one violation 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 such improvements are located, and shall be determined by the assessed value of the property at the time of the violation.”

The zoning ordinance states that each day that a class one violation exists is a separate offense for which a separate \$1,500 fine can be assessed. In this case, 175 days had passed since the original offense and the public hearing on May 2, 2007, which could at \$1,500 per day equate to a total possible fine of \$262,500. At this level, the fine would approach the assessed value of the property which the City assessed at \$285,915 as of January 2007. As noted in the ordinance however, the violation may also cease to exist if a fine “equivalent to the cost of reconstruction” is paid.

Penalties for Recent Unauthorized Demolition in the Historic Districts:

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 reconstructing that portion of the building that was demolished without permission using historically correct building materials and techniques, and further allowing that the applicant could build the second floor of the structure in the manner that he deemed most expeditious.

Alterations Approved by the Board of Architectural Review:

The Certificate of Appropriateness that was approved by the Board included approval of the following alterations: replacing the front canopy that was demolished without approval from the Board; re-roof of the building and installation of new skylights; and installation of new doors and windows in existing building openings that are currently boarded.

Canopy:

The applicant responded to Board and staff comments incorporating elements that were reflected in the original design of the canopy shown in construction drawings from 1931. The proposed new canopy will project 5' from the face of the building. The existing iron bolt chains will be used to anchor the canopy to the building. The chains will be attached to the new canopy with bolt through saddle plate with 4x4 x 1/4" steel fin welded to the saddle, with a 1" diameter hole at fin for chain support attachment. The new canopy will have a flat seam metal roof on 3/4 plywood sheathing and will slope towards the front to drain into an integral gutter. The applicant has

June 16, 2007

reincorporated a copper gutter behind the 1'2" cornice at the fascia consisting of wood blocking, a pre-fabricated metal fascia to match the profile of the original profile in the 1931 drawings, and a 1" diameter half round bead at the bottom. A downspout will be installed on the front façade to capture water draining from the canopy's gutter. 2x12 rafters will be used for the new canopy, placed in the existing rafter pocket openings in the front of the building. Double 2x12 rafters will be located at the chain supports. The exterior of the canopy will be ½" painted plywood, with a 2x2 pressed metal soffit on the underside of the canopy.

Windows and Doors:

The applicant is requesting to install new doors in the existing door openings. The door on the east side of the loading dock will be a custom solid wood door with cast iron hinges, modeled on the door found on the Ice House located on South Lee Street. The other door to the west on the loading dock will be a wood door with glass inserts. A small glass and wood window will be installed in the existing "window pass through" on the front façade.

Fixed wood windows are requested to be installed in the existing openings on the east side addition of the building. Wood awning windows are proposed for the existing openings on the west elevation.

Roof and Skylights:

The applicant is also requesting a replacement roof and four new skylights. The new roof of the Ice House will have a ¼" slope to the rear. The parapet obscures views of the roof from the public rights-of-way. The four new Velux skylights will have flat-profiles and will measure 24"x48", and will have self flashing. The new roofing will be EPDM rubber membrane on new roof framing. A new 5" copper gutter and downspout will be located on the south side of the roof.

Board's Decision:

While the Board certainly recognized that it was desirable and appropriate to have the lost canopy reconstructed, they also felt that the unauthorized demolition of the canopy as well as the delays by the applicant in appearing before the Board in a public hearing warranted a higher fine than had been recommended by staff. With that discussion, the Board approved the after-the-fact Permit to Demolish and the Certificate of Appropriateness for alterations with a 4-2 vote, in support of staff recommended conditions with an amendment to increase the fine to \$25,000 assessed to the applicant.

IV. RECOMMENDATION

Staff recommends that Council support the decision of the BAR, approving the after-the-fact Permit to Demolish and the Certificate of Appropriateness for alterations with the conditions, including the assessment of a \$25,000 fine for unauthorized demolition.

Attachment 1: BAR Staff Reports May 2, 2007

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

BAR Meeting
May 2, 2007

ISSUE: After-the-fact approval of Demolition and Permit to Demolish
APPLICANT: Boyd Walker
LOCATION: 200 Commerce Street
ZONE: CL/Commercial

BOARD ACTION, MAY 2, 2007: The Board combined the discussion of docket item #'s 2 & 3. On a motion by Dr. Fitzgerald, seconded by Mr. Keleher, the Board approved the application with the following conditions:

1. That the applicant replace the demolished canopy within six months of approval, to match the original canopy in respect to size and proportions, structure, and materials, and if not completed within six months that an additional \$1,500 per day fine will be assessed;
2. That the applicant provide further clarification on the permit drawings as to how draining of the canopy will occur;
3. That any remaining features such as the support chains and rings/bolts be retained;
4. That the new skylights have integral shades to be used at nighttime to reduce seepage of light visible from the exterior;
5. That the flashing around the skylights match the color of the roofing materials;
6. That the material of the skylights should be non-reflective but may be tinted bronze or gray depending upon the color of the roofing material;
7. That the applicant must obtain a building permit from Code Enforcement; and,
8. That a fine of \$25,000 be assessed to the applicant for the unauthorized demolition of the canopy, that the fine be paid within 30 days of approval of the Permit to Demolish, and if not paid within thirty days that the applicant be assessed an additional \$1,500 per day fine.

The roll call vote on the motion was 4-2 (Mr. Smeallie and Mr. Hulfish were opposed).

REASON: The Board agreed with the staff analysis in regards to the reconstruction of the canopy but disagreed in regards to the fine. The Board believed that a \$25,000 fine was more appropriate than the \$10,000 fine proposed by staff.

SPEAKERS: Boyd Walker, applicant, spoke in support.

STAFF RECOMMENDATION, MAY 2, 2007: Staff recommends approval of the after-the-fact Permit to Demolish with the following conditions:

1. That the applicant replace the demolished canopy within six months, to match the original canopy in respect to size and proportions, structure, and materials, and if not completed within six months that an additional \$1,500 per day fine will be assessed;
2. That any remaining features such as the support chains and rings/bolts be retained;
3. That the applicant must obtain a building permit from Code Enforcement; and,
4. That a fine of \$10,000 be assessed to the applicant for the unauthorized demolition of the canopy, that the fine be paid within thirty days of approval of the Permit to Demolish, and if not paid within thirty days that the applicant be assessed an additional \$1,500 per day fine.

BOARD ACTION, MARCH 21, 2007: The Board combined the discussion of docket item #'s 8 & 9. On a motion by Dr. Fitzgerald, seconded by Ms. Neihardt, the Board deferred the applications for restudy. The vote on the motion was 6-0.

REASON: The Board believed that additional information and clarification was needed on the drawings especially regarding water drainage. Further, the Board believed that information was needed regarding penalties if the reconstruction were not carried out.

SPEAKERS: Boyd Walker, applicant, spoke in support
Joseph Lavigne, project architect, spoke in support

STAFF RECOMMENDATION, MARCH 21, 2007: Staff recommends approval of the after-the-fact Permit to Demolish with the following conditions:

1. That the applicant replace the demolished canopy within six months, to match the original canopy in respect to size and proportions, structure, and materials,
2. That any remaining features such as the support chains and rings/bolts be retained,
3. That the applicant must obtain a building permit from Code Enforcement, and
4. That a fine of \$10,000 be assessed on the applicant for the unauthorized demolition of the canopy.

BOARD ACTION, FEBRUARY 21, 2007: The Board combined the discussion of docket item #'s 5 & 6. On a motion by Dr. Fitzgerald, seconded by Ms. Neihardt, the Board deferred the applications for restudy. The vote on the motion was 4-0.

REASON: The Board believed that additional information and clarification was needed on the drawings including specifications of materials in order to make an informed decision regarding the proposed rebuilding and alterations. Further, the Board believed that additional time was needed to understand the staff's recommendations regarding the appropriate amount of fines for the unauthorized demolition.

SPEAKER: Boyd Walker, applicant, spoke in support

STAFF RECOMMENDATION, FEBRUARY 21, 2007: Staff recommends approval of the after-the-fact Permit to Demolish and the Permit to Demolish with the following conditions:

1. That the applicant replace the demolished canopy within six months, to match the original canopy in respect to size and proportions, structure, and materials,
2. That any remaining features such as the support chains and rings/bolts be retained, and
3. That the applicant must obtain a building permit from Code Enforcement.

BOARD ACTION, JANUARY 17, 2007: On a motion by Mr. Wheeler, seconded by Mr. Smeallie, the Board deferred the application for restudy. The vote on the motion was 7-0.

REASON: The Board believed that the drawings needed to be revised to include more information such as the original 1931 drawings. The Board also felt that the \$1,500 fine proposed by staff was too low for this after-the-fact case.

SPEAKERS: Boyd Walker, applicant, spoke in support

STAFF RECOMMENDATION, JANUARY 17, 2007: Staff recommends approval of the after-the-fact Permit to Demolish and the Permit to Demolish with the following conditions:

1. That the applicant replace the demolished canopy to match the original canopy in respect to size and proportions, structure, and materials,
2. That any remaining features such as the support chains and rings/bolts be retained, and
3. That the applicant must obtain a building permit from Code Enforcement.

BOARD ACTION, JANUARY 3, 2007: Deferred prior to the public hearing due to lack of public notice.

STAFF RECOMMENDATION, JANUARY 3, 2007: Staff recommends approval of the after-the-fact Permit to Demolish and the Permit to Demolish with the following conditions:

1. That the applicant replace the demolished canopy to match the original canopy in respect to size and proportions, structure, and materials,
2. That any remaining features such as the support chains and rings/bolts be retained, and
3. That the applicant must obtain a building permit from Code Enforcement.

BOARD ACTION, DECEMBER 20, 2006: Deferred prior to the public hearing due to lack of public notice.

STAFF RECOMMENDATION, DECEMBER 20, 2006: Staff recommends approval of the after-the-fact Permit to Demolish with the following conditions:

1. That the applicant replace the demolished canopy to match the original canopy in respect to size and proportions, structure, and materials,
2. That any remaining features such as the support chains and rings/bolts be retained, and
3. That the applicant must obtain a building permit from Code Enforcement.

NOTE: This docket item requires a roll call vote

UPDATE: At the March 21, 2007 meeting, the Board voted to defer the item for restudy noting that additional information and clarification was needed on the drawings, particularly in regard to water drainage from the canopy. Further, the Board believed that information was needed regarding penalties if the reconstruction were not carried out. In response to the Board's comments, the applicant has revised the drawings to incorporate an integral gutter into the proposed reconstructed canopy. Staff has also included additional recommendations for fines including a deadline that the assessed fine be paid within thirty days of approval of the after-the-fact Permit to Demolish, or an additional \$1,500 per day fine will be assessed for the violation, and to clarify that \$1,500 per day fine will also be assessed if the applicant fails to complete reconstruction of the canopy within the approved time for completion.

I. ISSUE:

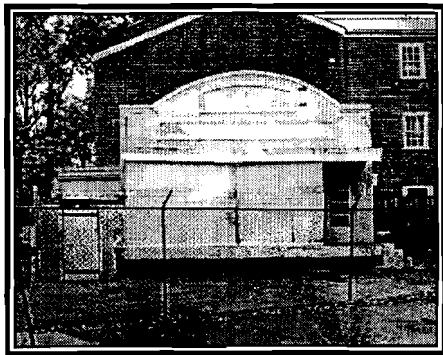


Figure 1 - Before demolition

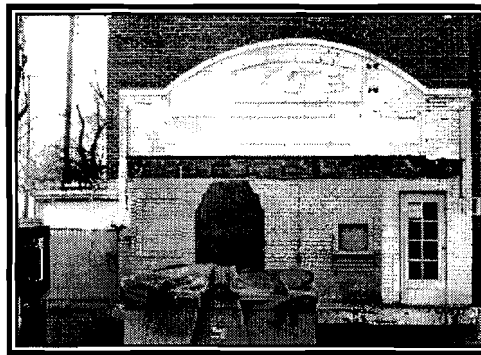


Figure 2 - After Demolition

The applicant is requesting after-the-fact approval of a Permit to Demolish portions of the Ice House building at 200 Commerce Street. Prior to making application, the applicant removed a framed enclosure on the front loading dock of the Ice House and removed the projecting canopy over the front loading dock.

The applicant is also requesting a Permit to Demolish to remove the existing roofing, including the support beams and roof material, and replace the existing roof with new framing, new EPDM material and four new skylights. The roof of the Ice House is relatively flat, with a slope to the rear. The roof parapet obscures views of the roof from the public right-of-ways. Staff inspected the condition of the existing roof and supports its replacement.

The Ice House building is an excellent representative of a small scale industrial building from the first half of the 20th-century.

The applicant did not contact BAR Staff or Code Enforcement regarding the decision to remove the enclosure on the front loading dock and the canopy. Therefore, staff was unable to make any professional determination of the historic integrity of these features of the building.

Staff became aware of the unapproved demolition on November 8, 2006 and Code issued a stop work order on November 9, 2006. Staff met with the applicant on site and requested to inspect any remaining fabric from the demolished canopy. Only a few pieces of material were pulled from the dumpster and shown to staff, none of which could be reused in a replacement canopy. The dumpster was then removed from the site, without consultation with Planning and Zoning/BAR staff.

Staff worked with the applicant to determine how to proceed with the case and to obtain the necessary materials to appear before the Board for the December 20, 2006 Board meeting.

II. HISTORY:

The one story brick building at 200 Commerce Street was constructed as a retail ice station for the Mutual Ice Company around 1931. According to the City Real Estate Records, the building was originally 344 square feet, on a 1377 square feet lot.

Staff could not locate any record of prior BAR reviews for this property.

III. ANALYSIS:

In considering a Permit to Demolish/Capsulate, the Board must consider the following criteria set forth in the Zoning Ordinance, Sec. 10-205(B):

- (1) Is the building or structure of such architectural or historical interest that its moving, removing, capsulating or razing would be to the detriment of the public interest?
- (2) Is the building or structure of such interest that it could be made into a historic house?
- (3) Is the building or structure of such old and unusual or uncommon design, texture and material that it could not be reproduced or be reproduced only with great difficulty?
- (4) Would retention of the building or structure help preserve and protect an historic place or area of historic interest in the city?
- (5) Would retention of the building or structure promote the general welfare by maintaining and increasing real estate values, generating business, creating new positions, attracting tourists, students, writers, historians, artists and artisans, attracting new residents, encouraging study and interest in American history, stimulating interest and study in architecture and design, educating citizens in American culture and heritage, and making the city a more attractive and desirable place in which to live?
- (6) Would retention of the building or structure help maintain the scale and character of the neighborhood?

Staff believes that the Ice House itself meets criteria #'s 4 and 6. As stated previously, the Ice House is representative of a small scale industrial building from the first half of the 20th-century. In the opinion of staff, the canopy was an original character-defining feature of the building and its loss has diminished the integrity of the building. It is unclear from available records when the front loading dock was partially enclosed with the framed enclosure.

Staff is left with no option but to recommend approval of the after-the-fact demolition. Staff does believe the demolition can be somewhat mitigated by the proposed conditions for the Permit to Demolish and Certificate of Appropriateness which should ensure that the front facade

May 2, 2007

is carefully restored to its original appearance. Staff has shared with the applicant drawings of the Ice House from 1931 that show the original gutter and canopy design.

In respect to the additional request for a Permit to Demolish the existing roof and replacement, staff recommends approval.

Fine

Staff recommends a fine of \$10,000 be assessed for the unauthorized demolition of the canopy over the loading dock of the former ice house at 200 Commerce Street. Per Zoning Ordinance Section 11-207 (B)(4), violation of section 10-103(B) involving unauthorized demolition of any building or structure is a class one civil violation and subject to a \$1,500 penalty for each individual offense. Section 11-204 authorizes City officials to notify property owners and their agents or controllers of the property of violations of the ordinance. City officials may also order discontinuance of illegal work. Section 11-204 provides that if the violation is not corrected within ten days of the notice that City officials may “cause appropriate action or proceedings to be instituted and prosecuted to prevent such unlawful act and to restrain, correct, or abate such violation or to prevent any unlawful act, conduct or use of such property.”

Zoning Ordinance Guidance for Penalties for Class One Violations

Section 11-207(C)(6) for penalties for class one violations states the following:

“Each day during which any class one civil violation exists shall constitute a separate individual offense. A class one civil violation shall be deemed to exist until such time as the director certifies to the board of architectural review that the unlawfully demolished building or structure has been reconstructed to the pre-existing footprint, envelope, configuration and appearance, using original materials and techniques of construction to the extent possible; provided, however, that, after a public hearing for which notice has been given pursuant to section 11-300, the board of architectural review may determine that a class one civil violation shall cease to exist at such time as the person responsible therefore shall have paid to the city a sum equivalent to the cost of reconstruction required under this section 11-207(C)(6), such sum to be used exclusively for the purpose of promoting historic preservation within the city as determined by the director. The civil penalty for a class one violation 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 such improvements are located, and shall be determined by the assessed value of the property at the time of the violation.”

The zoning ordinance states that each day that a class one violation exists is a separate offense for which a separate \$1,500 fine can be assessed. In this case, 175 days have passed since the original offense, which could, at \$1,500 per day, equate to a fine of \$262,500. At this level, the fine would approach the assessed value of the property, which the City assessed at \$285,915 as of January 2007. As noted in the ordinance however, the violation may also cease to exist if a fine “equivalent to the cost of reconstruction” is paid. In this case, it is desirable to have the lost canopy reconstructed, in addition to a fine assessed.

City staff generally works with property owners to eliminate the violation in the most appropriate and expeditious means possible. City staff will typically withhold further penalties if a property owner is diligently pursuing resolution of the issue. In the case of 200 Commerce, the applicant

made application for after-the-fact approval of the demolition by the November 20, 2006 deadline to be heard at the December 20, 2006 BAR hearing. However, additional delays after the original filing prevented that violation from being resolved expeditiously.

The following is the timeline for the 200 Commerce Street case BAR2006-0281:

- 11/9/06 - Complaint Received that demolition was occurring at 200 Commerce St.
- BAR staff visited site and confirmed demolition without approval.
- Code Enforcement issued Stop Work Order.
- 11/10/06 BAR staff met the property owner on site.
- 11/20/06 Application filed.
- 12/20/06 Deferred from BAR hearing due to lack of public notice.
- 1/3/07 Deferred from BAR hearing due to lack of public notice.
- 1/4/07 Staff mailed notice prior to 1/6/07 deadline to ensure that item would be heard at the 1/17/07 hearing.
- 1/17/07 BAR deferred application for restudy.
- 2/21/07 BAR deferred after discussion for restudy.
- 3/21/07 BAR deferred after discussion for restudy.
- 5/2/07 Public hearing.

The recommendation for a \$10,000 fine was conceived in an attempt to balance the desire to have the canopy reconstructed, to the extent possible, as reflected on the original construction plans, and to recognize the severity of unauthorized demolition and as deterrence to anyone who may consider unauthorized demolition in the future. Estimates secured by staff indicate that the cost of reconstruction of the canopy will be approximately \$14,000, resulting in the total cost to the applicant of approximately \$24,000 including the recommended fine. The \$10,000 fine recommended includes \$1,500 for the original fine, \$1,500 dollars for each of the three times that proper notice was not sent, thereby delaying the hearing and resolution of the infraction, \$500 for staff to secure a review and cost estimate from a historic preservation architect and a restoration firm, cost for staff to send notice in January to ensure that the case could go to hearing, as well as additional hours of staff time that had to be devoted to this case above the amount of time that would be expended on this case if it were not after-the-fact, with undue delays and with staff sending notice. As previously stated by the City Attorney, the fine must be commensurate with the gravity of the offense, taking into account in particular the extent and historic value of the unlawfully demolished building or structure. The City Attorney has been consulted in the determination, and fully concurs with staff's approach to establishing the amount of this fine.

Penalties for Recent Unauthorized Demolition in the Historic Districts

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.

Recommended Fine for Unauthorized Demolition:

Therefore, Staff recommends that a fine of \$10,000 be assessed for the unauthorized demolition of the canopy over the loading dock at the Ice House, that the applicant pay the fine within 30 days of approval of the after-the-fact Permit to Demolish, and that failure to pay the fine within 30 days will result in additional fines of \$1,500 per day per section 11-207 (C) of the zoning ordinance.

IV. STAFF RECOMMENDATION: Staff recommends approval of the after-the-fact Permit to Demolish with the following conditions:

1. That the applicant replace the demolished canopy within six months, to match the original canopy in respect to size and proportions, structure, and materials, and if not completed within six months that an additional \$1,500 per day fine will be assessed;
2. That any remaining features such as the support chains and rings/bolts be retained;
3. That the applicant must obtain a building permit from Code Enforcement; and,
4. That a fine of \$10,000 be assessed to the applicant for the unauthorized demolition of the canopy, that the fine be paid within thirty days of approval of the Permit to Demolish, and if not paid within thirty days that the applicant be assessed an additional \$1,500 per day fine.

CITY DEPARTMENT COMMENTS

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

Code Enforcement:

C-1 New construction must comply with the current edition of the Uniform Statewide Building Code (USBC).

C-2 Alterations to the existing structure must comply with the current edition of the Uniform Statewide Building Code (USBC).

C-3 Construction permits are required for this project.

Historic Alexandria:

No comments received.

BAR Meeting
May 2, 2007

ISSUE: Alterations
APPLICANT: Boyd Walker
LOCATION: 200 Commerce Street
ZONE: CL/Commercial

BOARD ACTION, MAY 2, 2007: The Board combined the discussion of docket item #'s 2 & 3. On a motion by Dr. Fitzgerald, seconded by Mr. Keleher, the Board approved the application with the following conditions:

1. That the applicant replace the demolished canopy within six months of approval, to match the original canopy in respect to size and proportions, structure, and materials, and if not completed within six months that an additional \$1,500 per day fine will be assessed;
2. That the applicant provide further clarification on the permit drawings as to how draining of the canopy will occur;
3. That any remaining features such as the support chains and rings/bolts be retained;
4. That the new skylights have integral shades to be used at nighttime to reduce seepage of light visible from the exterior;
5. That the flashing around the skylights match the color of the roofing materials;
6. That the material of the skylights should be non-reflective but may be tinted bronze or gray depending upon the color of the roofing material;
7. That the applicant must obtain a building permit from Code Enforcement; and,
8. That a fine of \$25,000 be assessed to the applicant for the unauthorized demolition of the canopy, that the fine be paid within 30 days of approval of the Permit to Demolish, and if not paid within thirty days that the applicant be assessed an additional \$1,500 per day fine.

The roll call vote on the motion was 4-2 (Mr. Smeallie and Mr. Hulfish were opposed).

REASON: The Board agreed with the staff analysis in regards to the reconstruction of the canopy but disagreed in regards to the fine. The Board believed that a \$25,000 fine was more appropriate than the \$10,000 fine proposed by staff.

SPEAKERS: Boyd Walker, applicant, spoke in support.

STAFF RECOMMENDATION, MAY 2, 2007: Staff recommends approval of the replacement canopy, new windows and doors, replacement roof and new skylights, with the following conditions:

1. That construction of the replacement canopy be completed within 6 months of approval and, if not that subsequent fines of \$1500 per day will be assessed;
2. That the applicant provide further clarification on the permit drawings as to how draining of the canopy will occur;
3. That the new skylights have integral shades to be used at nighttime to reduce seepage of light visible from the exterior;
4. That the flashing around the skylights match the color of the roofing material;
5. That the material of the skylight should be non-reflective but may be tinted bronze or gray depending upon the color of the roofing material; and
6. That the applicant must obtain a building permit from Code Enforcement.

BOARD ACTION, MARCH 21, 2007: The Board combined the discussion of docket item #'s 8 & 9. On a motion by Dr. Fitzgerald, seconded by Ms. Neihardt, the Board deferred the applications for restudy. The vote on the motion was 6-0.

REASON: The Board believed that additional information and clarification was needed on the drawings especially regarding water drainage. Further, the Board believed that information was needed regarding penalties if the reconstruction were not carried out.

SPEAKERS: Boyd Walker, applicant, spoke in support
Joseph Lavigne, project architect, spoke in support

STAFF RECOMMENDATION, MARCH 21, 2007: Staff recommends approval of the replacement canopy, new windows and doors, replacement roof and new skylights, with the following conditions:

1. That construction of the replacement canopy be completed within 6 months;
2. That the roof of the replacement canopy be flat seam metal, rather than standing seam metal as proposed;
3. That the new skylights have integral shades to be used at nighttime to reduce seepage of light visible from the exterior;
4. That the flashing around the skylights match the color of the roofing material;
5. That the material of the skylight should be non-reflective but may be tinted bronze or gray depending upon the color of the roofing material; and
6. That the applicant must obtain a building permit from Code Enforcement.

BOARD ACTION, FEBRUARY 21, 2007: The Board combined the discussion of docket item #'s 5 & 6. On a motion by Dr. Fitzgerald, seconded by Ms. Neihardt, the Board deferred the applications for restudy. The vote on the motion was 4-0.

REASON: The Board believed that additional information and clarification was needed on the drawings including specifications of materials in order to make an informed decision regarding the proposed rebuilding and alterations. Further, the Board believed that additional time was needed to understand the staff's recommendations regarding the appropriate amount of fines for the unauthorized demolition.

SPEAKER: Boyd Walker, applicant, spoke in support

STAFF RECOMMENDATION, FEBRUARY 21, 2007: Staff recommends approval of the replacement canopy, new windows and doors, replacement roof and new skylights, and deferral of the signage, with the following conditions:

1. That construction of the replacement canopy be completed within 6 months;
2. That the new skylights have integral shades to be used at nighttime to reduce seepage of light visible from the exterior;
3. That the flashing around the skylights match the color of the roofing material;
4. That the material of the skylight should be non-reflective but may be tinted bronze or gray depending upon the color of the roofing material; and
5. That the applicant must obtain a building permit from Code Enforcement.

BOARD ACTION, JANUARY 17, 2007: Deferred because the demolition was not approved.

STAFF RECOMMENDATION, JANUARY 17, 2007: Staff recommends approval of the application with the following conditions:

1. That the replacement canopy match the original canopy in respect to size and proportions, structure, and materials, and the applicant submit revised drawings reflecting such for staff approval;
2. That construction of the replacement canopy be completed within 6 months;
3. That the new skylights have integral shades to be used at nighttime to reduce seepage of light visible from the exterior;
4. That the flashing around the skylights match the color of the roofing material; and
5. That the material of the skylight should be non-reflective but may be tinted bronze or gray depending upon the color of the roofing material.

BOARD ACTION, JANUARY 3, 2007: Deferred prior to the public hearing due to lack of public notice.

STAFF RECOMMENDATION, JANUARY 3, 2007: Staff recommends approval of the application with the following conditions:

1. That construction of the replacement canopy be completed within 6 months;

2. That the new skylights have integral shades to be used at nighttime to reduce seepage of light visible from the exterior;
3. That the flashing around the skylights match the color of the roofing material; and
4. That the material of the skylight should be non-reflective but may be tinted bronze or gray depending upon the color of the roofing material.

BOARD ACTION, DECEMBER 20, 2006: Deferred prior to the public hearing due to lack of public notice.

STAFF RECOMMENDATION, DECEMBER 20, 2006: Staff recommends deferral for the applicant to revise the submittal.

NOTE: Docket Item #3 must be approved before this docket item may be considered.

Update: The Board deferred the item for restudy. The Board believed that additional information and clarification was needed on the drawings especially regarding water drainage from the canopy. The applicant has revised the drawings to reflect the comments of the Board and staff. A copper gutter has been incorporated into the new canopy and the roofing will be flat seam metal.

I. ISSUE:

The applicant is requesting approval of a Certificate of Appropriateness for alterations to the Ice House located at 200 Commerce Street.

The alteration consists of replacing a front canopy that was demolished without approval from the Board. The applicant is also requesting additional alterations including new doors, skylights, roofing, and new windows,

Canopy:

The applicant has responded to the Board and staff's comments to incorporate elements that were reflected in the original design of the canopy shown in construction drawings from 1931. As revised, the new canopy will project 5' from the face of the building. The existing iron bolt chains will be used to anchor the canopy to the building. The chains will be attached to the new canopy with bolt through saddle plate with 4x4 x 1/4" steel fin welded to the saddle, with a 1" diameter hole at fin for chain support attachment. The new canopy will have a flat seam metal roof on 3/4 plywood sheathing and will be sloped towards the front to drain. The applicant has reincorporated a copper gutter behind the 1'2" cornice at the fascia consisting of wood blocking, a pre-fabricated metal fascia to match the profile of the original profile in the 1931 drawings, and a 1" diameter half round bead at the bottom. A downspout will be installed on the front façade to capture water draining from the canopy's gutter. 2x12 rafters will be used for the new canopy, placed in the existing rafter pocket openings in the front of the building. Double 2x12 rafters will be located at the chain supports. The exterior of the canopy will be 1/2" painted plywood, with a 2x2 pressed metal soffit.

Windows and Doors:

The applicant is requesting new doors to be installed in the existing door openings. The door on the east side of the loading dock will be a custom solid wood door with cast iron hinges, modeled on the door found on the Ice House located on South Lee Street. The other door to the west on the loading dock will be a wood door with glass inserts. A small glass and wood window will be installed in the existing "window pass through" on the front façade.

Fixed wood windows are requested to be installed in the existing openings on the east side addition of the building. Wood awning windows are proposed for the existing openings on the west elevation.

Roof and Skylights:

The applicant is also requesting a replacement roof and four new skylights. The new roof of the Ice House will have a 1/4" slope to the rear. The parapet obscures views of the roof from the public rights-of-way. The four new Velux skylights will have flat-profiles and will measure 24"x48",

and will have self flashing. The new roofing will be EPDM on new roof framing. A new 5" copper gutter and downspout will be located on the south side of the roof.

II. HISTORY:

The one story brick building at 200 Commerce Street was constructed as a retail ice station for the Mutual Ice Company around 1931. According to the City Real Estate Records, the building was originally 344 square feet, on a 1377 square feet lot.

Staff could not locate any record of prior BAR reviews for this property.

III. ANALYSIS:

The requested after-the-fact alterations/demolition complies with zoning ordinance requirements conditional upon BAR approval.

The canopy of the Ice House is a character-defining feature of this industrial use building. While it is unfortunate that the existing canopy was demolished prior to staff having the opportunity to examine its condition, staff believes that this feature should be replaced to closely match the original canopy as shown on building permit drawings from 1931. The applicant has revised the drawings for the replacement canopy to reflect the comments of the Board and staff and incorporated detailing from the 1931 building permit drawings. Staff supports the revised design for the replacement canopy. Staff recommends that construction of the new canopy be completed within 6 months of approval. However, it remains unclear how the gutter in the new canopy will function with the downspout on the front façade, and where water will drain. The applicant needs to clarify this issue.

Staff supports the request for the new doors and windows in the existing openings. This will add tremendously to the appearance of the building and assist in restoring the integrity of the building's design.

Staff supports the replacement roof and the new skylights, with the following conditions:

1. That the new skylights have integral shades to be used at nighttime to reduce seepage of light visible from the exterior;
2. That the flashing around the skylights match the color of the roofing material; and
3. That the material of the skylights should be non-reflective but may be tinted bronze or gray depending upon the color of the roofing material.

IV. STAFF RECOMMENDATION:

Staff recommends approval of the replacement canopy, new windows and doors, replacement roof and new skylights, with the following conditions:

1. That construction of the replacement canopy be completed within 6 months of approval and if not, subsequent fines of \$1500 per day will be assessed;
2. That the applicant provide further clarification as to how draining of the canopy will occur on the permit drawings;
3. That the new skylights have integral shades to be used at nighttime to reduce seepage of light visible from the exterior;

4. That the flashing around the skylights match the color of the roofing material;
5. That the material of the skylight should be non-reflective but may be tinted bronze or gray depending upon the color of the roofing material; and
6. That the applicant must obtain a building permit from Code Enforcement.

CITY DEPARTMENT COMMENTS

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

Code Enforcement:

Updated comments are in **BOLD**.

- C-1 New construction must comply with the current edition of the Uniform Statewide Building Code (USBC).
- C-2 Alterations to the existing structure must comply with the current edition of the Uniform Statewide Building Code (USBC).
- C-3 **Additions and alterations to the existing structure and/or installation and/or altering of equipment therein requires a building permit (USBC 108.1). Five sets of plans, bearing the signature and seal of a design professional registered in the Commonwealth of Virginia, must accompany the written application (USBC 109.1).**
- C-4 **Wall letters / signs must comply with USBC [H103-H111] Please indicate the method to be used for anchoring the letters to the wall.**
- C-5 Construction permits are required for this project.
- C-6 **The following code requirements apply where food preparation results in the development of grease laden vapors:**
 - (a) **All cooking surfaces, kitchen exhaust systems, grease removal devices and hoods are required to be protected with an approved automatic fire suppression system.**
 - (b) **A grease interceptor is required where there is drainage from fixtures and equipment with grease-laden waste located in food preparation areas of restaurants. Food waste grinders can not discharge to the building drainage system through a grease interceptor.**
- C-7 **A rodent control plan shall be submitted to this office for review and approval prior to occupancy. This plan shall consist of the following:**
 - (a) **Measures to be taken to control the placement of litter on site and the trash storage and pickup schedule.**
 - (b) **How food stuffs will be stored on site.**
 - (c) **Rodent baiting plan.**
- C-8 **Required exits, parking, and accessibility for persons with disabilities must be provided to the building.**
- C-9 **The proposed use is a change in use group classification; a new Certificate of Occupancy is required (USBC 116.1).**

- C-10** Prior to the application for new Certificate of Occupancy, the applicant shall submit a building permit for a change of use. Drawings prepared by a licensed architect or professional engineer shall accompany the permit application. These plans shall show provide existing conditions, construction type data, and a plot plan. In addition, these plans shall show proposed conditions and provide data by the design professional which details how the proposed use will comply with the current edition of the Virginia Uniform Statewide Building Code for the new use in the area of structural strength, means of egress, passive and active fire protection, heating and ventilating systems, handicapped accessibility and plumbing facilities.
- C-11** Fixed awnings must be designed and constructed to withstand wind or other lateral loads and live loads required by the USBC. Structural members must be protected to prevent deterioration (USBC 3105.3).
- C-12** A fire prevention code permit is required for the proposed operation. An egress plan showing fixture location, aisles and exit doors shall be submitted for review with the permit application.

Historic Alexandria:

Revised request meets staff recommendation of 1/17/07.

17818

6-16-07

Dear Mayor and Members of City Council,

I have appealed the ruling of the BAR with hopes that this city council will reduce the fine to \$1500, or the penalty for a single class one violation, as there was only one action for which I am at fault. I also ask that if the fine the fine is determined to be more than that amount, it only be enforced if I am not able to complete the restoration of the canopy in 6 months, as requested by the Board of Architectural Review.

The Board of Architectural Review and I are in agreement on all the architectural details, and I am not appealing the certificate of appropriateness, just the appropriateness of a \$25,000 dollar fine. My appeal is for the following reasons:

1. The amount of the fine is exorbitant. This is the largest fine ever assessed by the BAR. In the past there have been numerous instances of "After-the-fact" cases, and there has never been such a large fine, even when the demolition was intentional, and the property owner was attempting to permanently remove historic material. I worked hard with both staff and chair of the BAR, and I thought that both agreed to recommend a fine of \$10,000. I was very surprised when they both recommended the higher fine.

2. The Unfairness of the fine is made clear by the staff report. The report states "\$10,000 did not adequately reflect a punitive measure for the unauthorized demolition of the canopy and that a higher fine was warranted and appropriate to serve in this case and to serve as a deterrent to others from proceeding with work without proper permits and approvals from the board." In other words, my particular crime does not fit the punishment, but the BAR chose to use it to deter others, instead of working with city council to set a standard policy for fines for "after-the fact" approvals.

3. An excessive fine could prevent me from restoring the building. Adding \$25,000 to the cost of renovating the building, which I recently had appraised at \$200,000 (short of the 285,915 city assessment). The building is only 355 square feet so this adds over 70 dollars a foot to renovate the building. I have been working with staff on this project for four years, and have now scaled back my plans to focus solely on renovation of the existing building, as opposed to building an addition that would expand the building to over 1000 square feet and put a breakfast restaurant in this location. It will now be much more difficult to do this project, because of this fine. A restored building without a use does not make an economic contribution.

4. This fine will further discourage businesses from locating in Alexandria. Alexandria already has a reputation as a difficult jurisdiction in which to open a business, especially a restaurant, and the news of such a fine will only enhance this reputation.

5. This fine is in retribution for my appeal and is clearly designed to discourage people from appealing or disagreeing with the BAR. This appeal is not meant to discourage "after-the-fact" approvals but is meant to discourage the right of citizens to appeal. As this council knows I led an appeal of the demolition of buildings on the 1500 block

of King Street, and this case was brought up very inappropriately at the first BAR meeting on this project. Disagreement with a prior case should have no bearing on the present case, and every case carries with it the right of appeal to the city council, and the circuit court. The remarks made at this first meeting demonstrate the inappropriate bias that has over overshadowed this case from the beginning.

There are also a number of incentives to removing the fine and letting the restoration proceed unhampered:

1. The existing canopy was rotten and termite damaged. When three staff members visited the property and inspected the material in the canopy, it was clear that the material was not reusable, and would have to be replaced.

2. The restoration will restore the original appearance of the canopy. The appearance of the new canopy, which may actually cost up to \$30,000, will be built to match the original 1931 drawings, thereby bringing back an original feature that was lost.

3. The BAR approval includes the restoration of the entire Icehouse building. The entire building can be renovated to its original appearance. Working with staff, every other detail of the building has been approved and will match the original.

4. The building will restore a bit of Commercial History to Alexandria. The building has been transferred to my wife and I under the ownership of Mutual Ice Company, the original name of the company that owned the building, and we hope to restore the sign on the building, and have a way to tell the history of the company on the site.

5. The building will bring vibrancy and life to this forgotten corner near King St. Commerce street is suspected by some to be Rolling Road, where hogsheads were rolled to the waterfront, and as it's name implies was designed to support business. The Ice company closed over thirty years ago, and it has been used only for storage since.

Thank you for your time in hearing this matter, and I appreciate your supporting the reduction of this fine.

Boyd Walker



<jjohansen@pointsoflight.org>

06/15/2007 03:36 PM

Please respond to
<jjohansen@pointsoflight.org>

To <alexvamayor@aol.com>, <timothylovain@aol.com>,
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<delpepper@aol.com>, <paulcsmedberg@aol.com>,

cc

bcc

Subject COA Contact Us: Boyd Walker

17-18
6-16-07

Time: [Fri Jun 15, 2007 15:36:31] IP Address: [64.241.17.67]

Response requested: []

First Name: John
Last Name: Johansen
Street Address: 221 S. Pitt Street
City: Alexandria
State: va
Zip: 22314
Phone: 703-836-5651
Email Address: jjohansen@pointsoflight.org
Subject: Boyd Walker

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However, a \$25,000 fine is, in my opinion, an indefensible decision. While the rules for levying fines may permit a substantial fine, there is no precedent for this. No one I've talked with can recall a past case that resulted in such a significant fine. On the one occasion where staff recommended a \$25,000 fine, the BAR reduced it to less than a third of that.

Comments: Of course, the removal of any amount of material without permission is wrong. However, the amount of material Boyd removed was not alot. In fact, I doubt he knows this, but there is a provision in the city's standards for historic rehabilitation that allows 25 sq. ft. of material to be removed without the BAR's permission. Were he to invoke that provision, he might not owe anything.

A fine is appropriate but it should be much less

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