

LAW OFFICES

RUBEN & ARONSON, LLP

4800 Montgomery Lane • Suite 150
Bethesda, MD 20814
(301) 951-9696 • Facsimile (301) 951-9636

34
6-24-08

May 30, 2008

DELIVERED BY HAND

Hon. William D. Euille
Mayor of the City of Alexandria
City Hall
Alexandria, Virginia 22314

James Hartmann
City Manager
City Hall
Alexandria, Virginia 22314

Re: 900 Prince Street – BAR CASE # 2007-0240

Dear Mayor Euille and Mr. Hartmann:

This firm represents PMA Properties, 900 LLC ("PMA") the owner of 900 Prince Street in Alexandria, Virginia (the "Property") and the holder of a Certificate of Appropriateness that the Old Town Civic Association, Inc., a Virginia nonstock corporation, (the "OTCA") has attempted to appeal to the City Council. We sent you a letter on May 16, 2008, indicating that the appeal by OTCA was improperly filed and the actions of the City of Alexandria, Old and Historic District Board of Architectural Review (the "BAR") relating to the Property failed to conform to applicable law or procedure. We requested that the appeal of the decision of the BAR, case BAR 2007-0240 be determined to have been improperly filed and stricken from the City Council's schedule and the decision of the BAR deemed final. At the very least, if the appeal is not immediately dismissed, then this matter should be deferred from the City Council docket until further procedural and judicial review is completed.

As of this date, PMA has not received any response to the May 16, 2008 letter from your offices, the City Council or the BAR. As our letter indicated that the appeal was invalid, we hereby request a response regarding the legality of the appeal by OTCA, before any premature and potentially prejudicial public hearings on the matter, so that PMA may consider all available legal options, including, but not limited to requesting judicial review of the BAR appeals process. Any public hearing that is held before full and final determination of the procedural issues regarding the decision of the BAR and the appeal thereof would be unfairly prejudicial against PMA's rights and

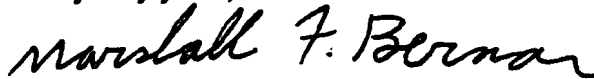
Mayor William D. Euille
May 30, 2008
Page 2

property.

Further, PMA has not received any notice of a public hearing before the City Council regarding an appeal of the decision of the BAR in this matter, as required in Section 11-302(A) of the Alexandria Zoning Ordinance, 1992, as amended (the "Ordinance"). Pursuant to Section 10-107(A)(2) of the Ordinance, no hearing may be held without providing notice to the applicant pursuant to Section 11-302(A). We understand that the next public hearing of the City Council is scheduled for June 14, 2008 and that the appeal to the decision of the BAR may be discussed at this meeting, though PMA has not been formally provided notice of this meeting. Mr. Robert Kaufman, owner of PMA, is unavailable on June 14, 2008, due to a prior commitment that cannot be rescheduled. Therefore, PMA respectfully requests that any public discussion of this matter occur at a later meeting of the City Council for which Mr. Kaufman has received proper notice so that Mr. Kaufman may attend to defend his rights as the owner of the Property.

This letter is sent in furtherance of PMA's rights, all of which are expressly reserved. Please contact our firm to discuss the actions taken by the BAR, the City Council and the City of Alexandria in this matter.

Very truly yours,



Marshall F. Berman, Esq.
(Va. Bar No. 6984)

cc: Jackie M. Henderson, City Clerk & Clerk of Council
Faroll Hamer, Director, Department of Planning and Zoning
Lee Webb, Supervisor, Urban Planner, Department of Planning and Zoning
Steve Milone, Division Chief, Department of Planning and Zoning
Ignacio B. Pessoa, City Attorney, City of Alexandria
Robert Kaufman

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Hon. William D. Euille
Mayor of the City of Alexandria
City Hall
Alexandria, Virginia 22314

James Hartmann
City Manager
City Hall
Alexandria, Virginia 22314

Re: 900 Prince Street – BAR CASE # 2007-0240

Dear Mayor Euille and Mr. Hartmann:

This firm represents PMA Properties, 900 LLC (“PMA”) the owner of 900 Prince Street in Alexandria, Virginia (the “Property”) and the holder of a Certificate of Appropriateness that the Old Town Civic Association, Inc., a Virginia nonstock corporation, (the “OTCA”) has attempted to appeal to the City Council.

This letter shall notify you as Mayor, the members of the Alexandria City Council, and the City’s administration that the actions of the City of Alexandria, Old and Historic District Board of Architectural Review (the “BAR”) relating to the Property have in our view failed to conform to applicable law or procedure. As more fully set forth below we hereby request that the appeal of the decision of the BAR, case BAR 2007-0240 be determined to have failed to have been properly filed and stricken from the City Council’s schedule and the decision of the BAR deemed final. If the appeal is not immediately dismissed, then this matter should be deferred from the City Council docket until further procedural and judicial review is completed.

The Property was the subject of a BAR hearing on March 5, 2008 to consider PMA’s request for approval of a Certificate of Appropriateness for painting the previously unpainted masonry building on the Property. The BAR, after months of study, review, restudies, and consideration, voted 3-3, on a motion on the application, that motion failed, and no further motions were made or seconded. The BAR took no action on the application and pursuant to Section 10-104 (F)(1) of the

Mayor William D. Euille
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Alexandria Zoning Ordinance, 1992, as amended (the "Ordinance"), the Certificate of Appropriateness was approved. On April 2, 2008, the OTCA filed a Record of Appeal from a decision of the Board of Architectural Review appealing the BAR decision in this case granting the Certificate of Appropriateness. A Copy of the Appeal is attached as Exhibit A and incorporated by this reference.

The OTCA has no standing to file an appeal to a BAR decision. Pursuant to Section 10-107 (A) of the Ordinance, a BAR decision can be appealed to the City Council by: 1) the applicant or 2) **citizens** through a petition signed by at least 25 property owners in the District. The OTCA is neither the applicant nor a property owning citizen of the City of Alexandria. As such, the Record of Appeal is not properly filed by an appropriate party and the City Council is without authority to consider the improperly filed appeal. Any further action taken by the City of Alexandria or the City Council as a result of this appeal is without foundation in law and the appeal should be dismissed with prejudice by the City Council. If the appeal is not dismissed then it must be removed from the City Council docket until a court of competent jurisdiction can rule as to the standing of OTCA to appeal a BAR decision.

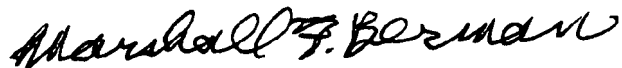
A stated basis of the OTCA appeal is that: "The applicant needs to restore the building to its original state and pay a reasonable fine." It is clear from the report of the staff of the BAR and the conclusions of the BAR hearing that abatement of the paint at the Property is impossible. Due to the perforations and indentations in the brick at 900 Prince Street, firms retained by the City of Alexandria and PMA determined that the paint on the Property cannot be adequately removed. Therefore, considering the conclusions of the studies, the BAR and City's own staff that abatement could not satisfactorily be accomplished, the City Council on appeal cannot in good faith require PMA to abate the Property. Further, the City of Alexandria's Historic Preservation Staff of the Department of Planning and Zoning had recommended to the BAR that an appropriate punitive fine for the violation of the Ordinance in this case would be \$100,000.00. It is PMA's belief that a similar recommendation will be made to the City Council. The City of Alexandria is limited by its Charter and Code in its ability to levy civil penalties for the violation of city ordinances. Section 2.06 (c) of the Charter of the City of Alexandria, Virginia (Codified through Ord. No. 4520 enacted Feb. 23, 2008 (Supplement No. 85)) states that, "Unless otherwise authorized by this charter, no civil penalty provided pursuant to subsection (a) shall exceed the sum of \$5,000." Subsection (a) states that the City Council may provide suitable civil penalties for the violation of any city ordinances. The only increased authorization in the Charter relates to civil penalties for demolition of property, which no one contends is the case here. Therefore, the City is limited by this statute to impose a civil penalty no greater than \$5,000. Any attempt to impose a civil penalty greater than \$5,000 exceeds the scope of the City Charter, the City Code, and therefore is void. As no doubt you are both aware, Virginia is a Dillon's Rule State and the State Courts consistently uphold the rule that a municipal corporation, as a political subdivision of the state, possesses only those powers legislatively granted to it and they will invalidate municipal ordinances and render void municipal actions that exceed the scope of powers so granted through enabling legislation. (See Augusta

Mayor William D. Euille
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County Board of Supervisors v. Countryside Investment Company, 258 Va. 497, 502-503 (1999); Fairfax County Board of Supervisors v. Horne, 206 Va. 113 at 117). The BAR and the staff of the BAR, in threatening PMA with a fine of \$100,000, 20 times higher than lawful, obviously exceeded its authority. PMA intends to challenge in court any Alexandria municipal authority, including but not limited to the City Council and the BAR, that imposes or threatens to impose a civil penalty greater than \$5,000 in this case.

The BAR carefully considered and studied the situation at the Property, received numerous letters supporting PMA's application and the painting of the building, heard the testimony of several citizens of Alexandria and finally voted and made a final determination to take no action. This decision was appealed by a party with no standing to appeal. The threatened fines and penalties (such as restoring the masonry to its original state) are unlawful and physically impossible. PMA respectfully submits that the appeal of the decision of the BAR is invalid, the decision of the BAR is final and no further action by the City Council is warranted. PMA hereby requests that the City Council dismiss the appeal to the decision of the BAR, or at the very least remove this issue from the docket of the next City Council meeting until this issue is fully and finally decided. Be advised that absent a prompt favorable resolution of the proceedings against the Property, PMA has no choice but to vigorously pursue all actions available at law and in equity. This letter is sent in furtherance of PMA's rights, all of which are expressly reserved. Please contact our firm to discuss the actions taken by the BAR, the City Council and the City of Alexandria in this matter.

Very truly yours,



Marshall F. Berman, Esq.
(Va. Bar No. 6984)

cc: Jackie M. Henderson, City Clerk & Clerk of Council
Faroll Hamer, Director, Department of Planning and Zoning
Lee Webb, Supervisor, Urban Planner, Department of Planning and Zoning
Steve Milone, Division Chief, Department of Planning and Zoning
Ignacio B. Pessoa, City Attorney, City of Alexandria
Robert Kaufman

EXHIBIT A
RECORD OF APPEAL 900 PRINCE STREET
BAR CASE # 2007-0240

RECEIVED
APR 02 2008

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

Date Appeal Filed With City Clerk: 4/2/08
B.A.R. Case # 2007-0240
Address of Project: 900 Prince St., Alexandria VA
Appellant is: (Check One)

☐ B.A.R. Applicant

☒ Other Party. State Relationship Old Town Civic Association, Inc

Address of Appellant: PO Box 1213, Alexandria VA 22313

Telephone Number: 703-836-6402

State Basis of 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.

Attach additional sheets, if necessary.

* A Board of Architectural Review decision may be appealed to City Council either by the B.A.R. applicant or by 25 or more owners of real estate within the affected district who oppose the decision of the Board of Architectural Review. Sample petition on rear.

* All appeals must be filed with the City Clerk on or before 14 days after the decision of the B.A.R. *

* All appeals require a \$150.00 filing fee. *

If an appeal is filed, the decision of the Board of Architectural Review is stayed pending the City Council decision on the matter. The decision of City Council is final subject to the provisions of Sections 10-107, 10-207 or 10-309 of the Zoning Ordinance.

James H. Hest
Signature of the Appellant
President, Old Town Civic Association

We, the undersigned owners of real estate within the Old and Historic Alexandria District/Parker-Gray District [strike out as appropriate] appeal the decision of the Board of Architectural Review to the Alexandria City Council in B.A.R. Case # 2007-0240 regarding the property at 900 Prince St., Alexandria VA 22314 (street address).

	Name	Signature	Owner of Real Property At:
✓ 1.	John Johansen	[Signature]	221 S. Park St.
✓ 2.	John HYNAN	[Signature]	405 So. Fairfax St.
✓ 3.	Jessie BRYAN	[Signature]	420 Prince St.
TR → 4.	Townsend A. Van Fleet	[Signature]	26 Wolfe St
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We, the undersigned owners of real estate within the Old and Historic Alexandria District/ Parker- Gray District (circle out as appropriate) appeal the decision of the Board of Architectural Review to the Alexandria City Council in B.A.R. Case # 2007-0240 regarding the property at 900 Prince St., Alexandria VA 22314 (street address).

	Name	Signature	Owner of Real Property At:
1.	Michael B. Adams	<i>Michael B. Adams</i>	712 S. Union St., Alexandria
2.	Megan E. Adams	<i>Megan E. Adams</i>	712 S. Union St. Alexandria
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We, the undersigned owners of real estate within the Old and Historic Alexandria District/Barth-Craig Districts (strike out as appropriate) appeal the decision of the Board of Architectural Review to the Alexandria City Council in B.A.R. Case # 2007-0240 regarding the property at 900 Prince St., Alexandria VA 22314 (insert address).

	Name	Signature	Owner of Real Property At:
✓ 1.	Douglas Thurman	<i>[Signature]</i>	804 Duke Street
2.	Fred Wilson	<i>[Signature]</i>	619 S. Duke St
3.	Dannalee Wilson	<i>[Signature]</i>	419 S. Washington St
4.	Pgt Troy	<i>[Signature]</i>	310 Wolfe St.
5.	Bernadette Troy	<i>[Signature]</i>	310 Wolfe St
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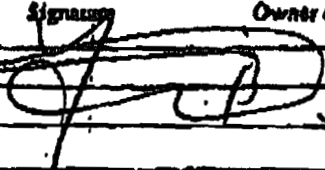
WILSON
FAMILY, LLC

WILSON
FAMILY, LLC

We, the undersigned owners of real estate within the Old and Historic Alexandria District/Parker Gray District [strike out as appropriate] appeal the decision of the Board of Architectural Review to the Alexandria City Council in B.A.R. Case # 2007-0240 regarding the property at 900 Prince St., Alexandria VA 22314 (street address).

	Name	Signature	Owner of Real Property At:
1.	MICHAEL ZARISKA	<i>[Signature]</i>	314 PRINCE ST.
2.	LISA ZARISKA	<i>[Signature]</i>	ALEXANDRIA, VA 22314
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We, the undersigned owners of real estate within the Old and Historic Alexandria District/ Parker- Gray District (strike out as appropriate) appeal the decision of the Board of Architectural Review to the Alexandria City Council in B.A.R. Case # 2007-0240 regarding the property at 908 Prince St., Alexandria VA 22314 (street address).

	Name	Signature	Owner of Real Property At:
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3.	France Abbrenatti		305 South Washington St.
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We, the undersigned owners of real estate within the Old and Historic Alexandria District/ Parker Gray District [strike one as appropriate] appeal the decision of the Board of Architectural Review to the Alexandria City Council in B.A.R. Case # 2007-0240 regarding the property at 900 Prince St., Alexandria VA 22314 (street address).

- | No. | Name | Signature | Owner of Real Property At |
|-----|---------------|-------------|---------------------------|
| 1. | Leslie Bell | [Signature] | 500 Wolfe St. |
| 2. | Eira Baum | [Signature] | 203 S. Fairfax St |
| 3. | Annina Krutz | [Signature] | 115 N. Lee St. #213 |
| 4. | LINDA LOMBARD | [Signature] | 505 Duke |
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500 Wolfe St
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We, the undersigned owners of real estate within the Old and Historic Alexandria District/ Parker-Gray District (strike out as appropriate) appeal the decision of the Board of Architectural Review to the Alexandria City Council in B.A.R. Case # 2007-0240 regarding the property at 900 Prince St., Alexandria VA 22314 (street address).

	Name	Signature	Owner of Real Property At
✓ 1.	Coral Smith	Coral Smith	1213 Madison Ct
✓ 2.	Michael Wadde	Michael Wadde	929 Cameron St
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	Name	Signature	Owner of Real Property At:
1.			
✓ 2.	Paul Heitel	[Signature]	1217 Michigan Court
✓ 3.	Fannie Graham	[Signature]	1217 Michigan Court
✓ 4.	Jeff Walsh	[Signature]	1219 Michigan Court
✓ 5.	Korby Cooper	[Signature]	1215 Michigan Court
✓ 6.	Don Eick	[Signature]	1106 West Boyer St.
✓ 7.	Korby Cooper	[Signature]	1106 West Boyer St.
✓ 8.	Ivy Whitlatch	[Signature]	700 Chestnut St.
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	Name	Signature	Owner of Real Property At:
1.	Paul C. Rasmussen	[Signature]	200 Prince Street
2.	Colin L. Tenzel	[Signature]	207 Duke Street
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