

Docket Item # 2
BAR CASE # 2006-0281

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

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.

(Insert sketch here)

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:

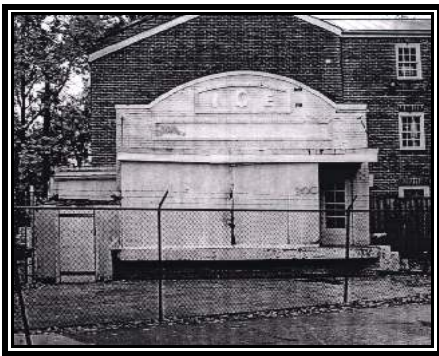


Figure 1 - Before demolition



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

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.