



PROCEEDINGS OF AN
ADVANCED
PRESERVATION
WORKSHOP

ON ZONING, INFILL DESIGN AND MATERIALS

FEBRUARY 5, 2008

FREDERICKSBURG, VIRGINIA





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INTRODUCTION

Historic preservation is an effort to protect buildings and neighborhoods that we value as shared and tangible links to our past, as attractive features of our community, and—in the instance of historic districts—as the functioning framework of the community itself. Federal and State agencies provide standardized historic preservation criteria to identify and recognize resources as well as technical guidance and a hierarchy of procedures for maintaining their historic integrity. The basic policy is to keep intact those existing resources deemed worthy of being preserved.

At the local level, though, historic preservation is accomplished through local zoning regulations that must be consistent with State enabling legislation and with Statewide Building Codes. At this level, outside the realm of historic registers and tax credits, a historic zoning overlay involves a host of inherent conflicts. When any ARB meets, it is exercising a government's regulatory power within a context of private property rights, freedom of expression, economic development goals, and a community's history and values. Each of these factors is present in every case that an ARB hears and each relates directly to the core beliefs of every person who participates in the review process.

Local zoning is also about the use of buildings and the development of new ones. The justification for local historic preservation zoning is typically

to encourage revitalization. Interestingly, revitalization is where we find that standard preservation criteria has its limitations. While there is considerable material and guidance for preserving historic buildings, the success and growth of historic areas has led to renewed interest for investing in such places. Infill development, however, poses a whole new set of challenges for preserving historic communities in general. There are no Secretary of the Interior Standards for new construction. If a historic district is a celebration of a community's past, how does it confidently accommodate new construction that will one day become historic in its own right?

On February 5th, 2008, the Fredericksburg ARB hosted an advanced preservation workshop, to discuss these issues that are becoming very timely for many localities. More than 100 persons attended, primarily review board members and their staff from 17 different jurisdictions throughout the Commonwealth of Virginia. Also in attendance were other professionals from both the public and private sectors.

This workshop was made possible through a grant from the Certified Local Government program of the Virginia Department of Historic Resources. We thank them for their support.

Erik F. Nelson

Fredericksburg ARB Staff



ZONING: SURVIVING THE LEGAL MAZE

Erik Nelson opened the proceedings in the City Hall Council Chambers. He introduced Mayor Thomas Tomzak who welcomed the participants and introduced the City Council members present as well as the City Staff. Mr. Nelson turned the morning session over to Barry Waldman, of the Fredericksburg ARB.

MODERATOR: Barry Waldman

Good morning. My name is Barry Waldman and I have been a member of the Fredericksburg ARB since 2001. We are going to start our day by discussing the legal maze that is zoning. We have with us today some of the leading people in the Commonwealth of Virginia to discuss zoning law as it relates to historic preservation.

PARTICIPANTS

Walter Erwin is the City Attorney for the City of Lynchburg. He is a graduate of the Virginia Polytechnic Institute and State University with a Bachelor's Degree in Political Science and a minor in English. He is also a graduate of the T.C. Williams School of Law at the University of Richmond and was admitted to the Virginia State Bar in 1976. Mr. Erwin was engaged in the private practice of law as an associate and partner from 1976 to 1980 in the City of Winchester.

He joined the Lynchburg City Attorney's Office in 1980 as an Assistant City Attorney, became the Deputy City Attorney in 1987, and became the City Attorney in 1991. Mr. Erwin has served as the Director, Officer, and President of the Virginia Local Government Attorney's Association, as President of the Virginia Council of School Attorneys, as Chairman of Virginia's Court Appointed Advisory Committee, as Director of the Lynchburg Bar Association, and as a member of the Legal Assistant Curriculum Advisory Commission for the Central Virginia Community College. In 2007, Mr. Erwin received the Local Government Attorney's Award, the Edward J. Finnigan Award, for distinguished service as someone who has made a significant contribution to local government law and to the local government attorneys of the Commonwealth of Virginia. In 1993, Mr. Erwin developed the legal aspects block of the instructions for the property maintenance code module of the Virginia Building Code Academy and has been its principal instructor since that time. He truly is the leading expert on Building Code issues, at least on the legal end of things, and I ask that he join us up front.

Henry Cleaves Day is a graduate of the University of Tennessee and the George Mason University School of Law. He has been in private practice for twenty-five years. He has been Chairman of the Architectural Review Board for the Town of The Plains for a period of fourteen years. He has been the Town Attorney for the Town of Warrenton for ten years and in fact has represented both the Town of Little Washington in historic district ordinance litigation and has represented the City of Fredericksburg in a zoning matter. I would like to introduce Mr. Day and ask him to join us as well.

Cheryl Shepherd is an architectural historian based in Warrenton, Virginia and is the principal of Millennium Preservation Services, which conducts architectural and landscape surveys, largely for National Register nominations of public properties, including historic districts. She also prepares rehabilitation tax credit applications, develops historic district ordinances and design guidelines, and advises local governments on these issues. Recently, Ms. Shepherd assisted the Town of Washington to update its historic district inventory, wrote a new design guideline, and worked with Mr. Day on revision of the historic district ordinance. I would like to welcome Ms. Shepherd.

State Enabling Legislation for Historic Preservation

The very fountainhead of the legal aspects of historic preservation in Virginia are the statutory provisions set out in the Virginia Code that permits us to actually regulate our historic districts or historic buildings. It is not an extensive law. It is Section 15.2-2306 and it essentially constitutes about a page and half. This section is where all the authority for a municipality comes

from for regulating these types of issues. I will go through it, so you can get a sense of exactly how brief it really is.

The statutory provision in the first paragraph basically explains that a municipality can create a historic district or designate specific historic buildings. An adopted ordinance can regulate construction, alterations, reconstruction, or restoration of buildings structures, and can even include regulation of signs. The ordinance can limit demolition, moving, or razing of structures. It requires that there be an appeals procedure. The decisions, as set out in the ordinance, can be made directly by the local governing body, meaning the county board of supervisors or the town or city council. Alternatively, those bodies can designate a board to make decisions.

If a board is established, there must be a procedure that allows appeals to the governing body. The ordinance must also establish a means for a decision of the governing body to be appealable to the Circuit Court or highest level of trial court. One of the things that most of us forget is that the State statute gives an owner the right to go through a process that could allow them to demolish a building without approval. The ordinance sets out that an owner seeking to demolish a building may place that building up for sale. Depending on the value of the building, they have a specified period of time running from four to twelve months. In most instances it will be for twelve months. If after the appropriate period of time there is no purchaser, they may demolish the building without further review.

The statute goes on to say that the local governing body has the authority to purchase historic properties by any legal means, including condemnation. The statutory provisions limit when a governing body can use condemnation, so that option exists where the historic character

of the building or property is about to be destroyed. The statute then goes on to authorize that local board to do a variety of things with the property, including maintain the property, restore it, and even charge admission.

That is a fair review of the state statute.

It is pretty limited. I wanted you all to understand that this power we have to regulate comes from a fairly short statutory provision in the Virginia Code.

To expand on that, we are going to start our session with a discussion about how the Building Code may impact historic district ordinances.

HISTORIC PRESERVATION AND THE UNIFORM STATEWIDE BUILDING CODE

Walter C. Erwin

Good morning. It is a pleasure to be here. Before we get into the substance, there are two things. One, what I am going to share with you today are some of my opinions on some of these issues. When you are dealing with law it is often unclear. Other people may have different opinions on these same issues and you should just keep in mind that their opinions are just as valid as mine. Second, I may tell you some things you may not want to hear, and that is okay. My role this morning is not to try to change your opinion on these issues. I just hope that after this morning's presentation you will have a better understanding of the Uniform Statewide Building Code and how it can tie-in to historic preservation.

The Uniform Statewide Building Code—History and Structure

What is the Uniform Statewide Building Code? Well, it is the state adopted and mandated Building Code for the Commonwealth of Virginia. What is its purpose? Its stated purpose is to protect the public health, safety and welfare of the citizens of the Commonwealth, by establishing a uniform set of regulations for the construction, alteration, and maintenance of buildings statewide.

How did we get a Uniform Statewide Building Code? Well, prior to 1973, there was no such thing as a statewide Building Code. Any locality that wanted to have a Building Code adopted one. In 1973, the General Assembly said that instead of having all these multiple Building Codes, there needs to be one uniform building code for the state. The General Assembly authorized the Virginia Department of Housing and Community Development to adopt a statewide new construction code. The state did that in September of 1973 and we have had a Uniform Statewide Building Code ever since.

Where does it come from? Well, the state of Virginia does not actually write the Building Code. What it does is adopt a model building code that is actually written by a national organization. Virginia is currently following the International Building Code that is written by a group called the International Code Council, Inc., located in Washington D.C. Every three years this organization comes out with a new version of the International Building Code. One thing to keep in mind is that Virginia is always a little behind the times in enforcing that code. Virginia never adopts that model code in its entirety. When it comes out, Virginia goes through it, revises it, and deletes or amends some of the sections. That process usually takes

a couple of years and after Virginia is ready, it adopts it as the current version of the Building Code of Virginia.

Virginia is currently enforcing the 2003, edition of the International Building Code. Even though the International Code Council came out with the 2006 version of the building code, we are still enforcing the 2003 edition. Right now the state of Virginia is in the process of revising and adopting the 2006 version of the International Building Code. So even though the 2009 version will be coming out next year, it will be a couple of years before we get around to implementing it in Virginia.

What does the Building Code consist of?

The Uniform Statewide Building Code has three parts, each of which is designed to be a separate code and to stand alone. The first one is the Virginia Construction Code, which I will refer to as the New Construction Code. This code sets the standard that regulates the construction, alteration, and change in use of structures. The New Construction Code has been around since 1973. Part two is the Virginia Rehabilitation Code and that is pretty new. It was first adopted in Virginia in 2005 and it sets alternate standards for the rehabilitation and renovation of older structures. Part three is the Property Maintenance Code. Once a building has been constructed, repaired, or renovated or whatever, and a Certificate of Occupancy has been issued, the New Construction Code goes away and it is the Property Maintenance Code that sets the standards to which a building has to be maintained.

One of the things you need to keep in mind, when dealing with code enforcement, is that the Uniform Statewide Building Code supersedes all local codes and local governing bodies are

forbidden from adopting any ordinances that would be in conflict with the provisions of the Uniform Statewide Building Code. So, what the state adopts is what the locality must enforce. A locality cannot change what the State has adopted. That is what you have to enforce. A little quirk about Building Code enforcement is that when the New Construction Code was adopted back in 1973, it was mandatory. All local governments were required to enforce it. In 1986, when the State got around to adopting the Property Maintenance Code, local governments objected, saying that they did not want the code because the State would not provide funds to help with the costs associated with enforcing it. So the State compromised. In order to get the State Maintenance Code passed, it made its enforcement optional. If you live in a locality that wants a Property Maintenance Code, the State version is the one you have to enforce, but if your locality does not want to enforce the Property Maintenance Code it is not required to do so. There are still a number of localities in Virginia today that have not adopted the Property Maintenance Code. Every locality is enforcing the New Construction Code, but not every locality is enforcing the Property Maintenance Code.

Areas of Conflict between Building Code Officials and Architectural Review Boards

Now, how does the Building Code and historic preservation tie-in together? I can identify a couple of areas where Building Code issues and historic preservation create friction between local historic boards and Building Code Officials. The first complaint I hear from owners of historic structures is that when they try to renovate, Building Code Officials make it difficult or too expensive for them to fix-up their historic buildings. The first thing I say to the owner is

keep in mind that it is not the Building Code Official who is imposing that burden on you. The State adopted the standards and the local Building Code Official does not have the authority to change them. Now, hopefully this will become less of an issue with the adoption of the Rehabilitation Code, which specifically contains alternate standards that can be used for the renovation of older buildings. The Rehabilitation Code should make it easier and less expensive to renovate historic structures. Also, the New Construction Code contains a section that says the provisions of the New Construction Code, when it comes to rehabilitating historic structures, are not mandatory. The Building Code Official can allow modifications of the New Construction Code as long as, in his judgment, the modifications will not compromise the public health and safety. Even under the New Construction Code, Building Code Officials have the authority to make modifications and should work with property owners to revitalize our older structures.

The second issue that comes up is that Building Code Officials do not do enough to require property owners to maintain historic structures. They let them fall into disrepair. In this area, you are dealing with the Property Maintenance Code. You need to remember that the Property Maintenance Code is optional. Some localities have not chosen to enforce it. You may be in a locality where your Building Code Officials do not have that tool to use to help preserve historic structures. Also the Property Maintenance Code does not set a universal standard to which properties have to be maintained. What it actually says is that buildings have to be maintained in accordance with the standards of the Building Code, if any, that was in effect at the time the building was constructed. Those are the standards you have to

meet. The Property Maintenance Code goes on to specifically say (and this is where Virginia has modified the model code) that, as a general rule, the Property Maintenance Code does not require property owners to upgrade or retrofit their buildings by installing materials or equipment that were not originally required when the buildings were constructed. So the Property Maintenance Code does not set a universal standard that the Building Code Official can use to go out and tell everybody that they have to fix-up their buildings to a specific standard. As a general rule, the Property Maintenance Code says property owners do not have to comply with the newer construction codes until they alter, repair, or convert their buildings to another use. Now there is a pretty big loophole in the Property Maintenance Code. The Code provides that if the Building Code Official finds that a condition exists that constitutes a threat to health or safety, the Building Code Official can order the property owner to make those minimum changes that are necessary to fix the unsafe condition.

A related issue that comes up from time to time is that people will say that our historic buildings are such an asset to our communities that there ought to be a higher standard of maintenance for historic structures. But the reality is that there is no higher standard for historic structures. The Building Code treats all buildings the same. Whether they were built one year ago or one hundred years ago, it's the same maintenance standard and local governments do not have the authority to create higher standards. The goal of the Building Code, as specifically spelled out, is to require property owners to maintain their buildings in a good condition, but sometimes the reality of life is that it is just not going to happen. Why isn't it going to happen? Well for a couple of reasons.

Sometimes historic structures are owned by individuals who live in other states. Virginia does not have jurisdiction over those individuals. The jurisdiction of Virginia's courts and agencies ends at the boundaries of Virginia. If somebody lives in another state, they can be cited for Building Code violations, but if they do not come back to Virginia you cannot do anything to them. You cannot extradite someone from another state to prosecute them for Building Code violations. Other times, historic structures are owned by companies that have gone out of business. The owner simply no longer exists, so you cannot make them fix the structure. Sometimes the owner of the historic property dies without a will and the property passes to multiple heirs. Sometimes you cannot find the heirs or they live in other states, so you cannot make them fix the structure. Sometimes the historic property is owned by individuals with limited financial resources—for example the elderly, disabled or people on fixed incomes. Even though the Property Maintenance Code says you have to maintain your building, there is not much that can be done to require someone to make necessary repairs if they do not have the resources to do so. Finally, there is a weakness in the Building Code itself. Violations of the Uniform Statewide Building Code are misdemeanors and the maximum fine for a misdemeanor offense is \$2,500. Sometimes, the threat of a \$2,500 fine is not enough to force an owner to spend substantially more money in repairs. I have actually had people tell me that they would take their chances in court and pay a fine rather than spend the amount of money that is needed to make the necessary repairs. So even though the goal is to require the property owners to maintain their property, the reality of life is that sometimes you will not be able to make that happen.

The third issue that could create friction between Building Code Officials and historic preservationists is demolition. The constant complaint is that Building Code Officials demolish historic structures without the approval of the local historic review board. Contrary to popular opinion, I do not think Building Code Officials are a bunch of fiends who go around destroying historic structures with glee. I think, to the contrary, that most communities are like Fredericksburg, where our historic structures are part of the history and character of our community and we want to preserve them. That is our goal because if you tear a building down you end up with a vacant lot, which also poses problems. Vacant lots often become illegal dump sites or places where inappropriate activities occur. Every time you tear down a historic structure you lose some of the character of your community, but while historic preservation is very important, public safety trumps historic preservation. If the Building Code Official determines that a building is unsafe and poses a threat to public safety then the Building Code says that the Building Code Official can demolish that building and does not need approval from the local historic review board. Last year Delegate William J. Howell received an opinion from the Attorney General's office dated June 7, 2007, that specifically states that the authority of the Building Official under the Building Code to demolish unsafe structures supersedes and overrides the authority of an architectural review board. That is not a new position. I went to my first historic preservation seminar in 1983, in Richmond, and that was one of the issues that was discussed. I have an opinion from the Attorney General's office dated December 27, 1983 where the Attorney General gave the same opinion. There is a caveat though; sometimes your course of action

depends on the source of the funding you may be using to demolish those structures. Federal or state money will sometimes come with strings that say that if you are going to demolish a historic structure you do have to go through a historic review process. That is why I recommend to our building officials that they should have two pots of money: An account with purely local funds that do not come from the Federal or state governments, so you have access to them when you need to demolish a historic structure, and then a separate account where you have your CDBG funds or state funds that can be used to demolish structures that are not in the historic districts.

Can an Architectural Review Board Regulate the Use of Materials?

The last issue I want to discuss is the use of materials. The issue comes up as follows: If the Building Code says that somebody can use certain types of material to repair or renovate their structure, does the local historic review board have the authority to tell the property owner they cannot use them and that they have to use material more historically accurate. You need to remember that Virginia is a Dillon Rule State. The Dillon Rule is a rule that was developed to limit the powers of local governments, public bodies, and public officials. It was developed by Judge Forrest Dillon, an Iowa Supreme Court judge in the 1800s. The Virginia Supreme Court liked the Dillon Rule and adopted it in 1873 and we have been subject to it ever since. Virginia is one of only seven states that still follows the Dillon Rule.

What the Dillon Rule says is that local governments and other public bodies have only those powers that are expressly given to them by the General Assembly and those implied powers

necessary to carry out their express powers. So when you want to do something you have got to look in the State Code and find a section in the code that gives you that authority. The Dillon Rule goes on to say that if there is any question as to whether or not the local government, public body, or public official have a specific power then they do not have it. All doubts are to be resolved against the public entity. That is what we operate under in Virginia. Local governments have been trying for years to get the Dillon Rule repealed, but those efforts have been unsuccessful. The business community supports the Dillon Rule because they believe that if it is repealed local governments will run amuck and pass all kinds of laws they will have to deal with.

How does the Dillon Rule tie-in to building materials? Well, back in 1996, Delegate William S. Moore, from Portsmouth, asked the Attorney General for an opinion in a situation where a property owner wanted to replace his roof and the local historic review board said he had to use slate. The Attorney General gave an opinion that under the State Code the local historic review board only had the authority to approve the design of a structure in a historic district to make sure it is architecturally compatible with the historic district. Section 15.2-2306 of the State Code does not specifically give a historic review board the authority to approve the types of building materials or the manner of construction. Those things are regulated by the Building Code. The Attorney General advised that since the State Code did not say anything at all about a historic review board being authorized to approve building materials that it was his opinion that if a citizen wanted to use materials that were allowed under the Building Code, the historic review board could not tell the citizen he was not permitted to use those materials in

the renovation of his property. I do not know of any historic review board that is following that opinion, but it exists.

The General Assembly may have fixed this problem back in 2001, when it amended one of the provisions in the Building Code. Language was added to Section 36-98 of the State Code that says the provisions of the Building Code shall not supersede conditions imposed by historic districts created pursuant to Section 15.2-2306. So, there is an argument that the materials issue has been fixed, but I wanted to remind historic preservation review boards that they need to be reasonable in what they are doing. Some of the other speakers will tell you that if you do not take a reasonable approach one of two things could happen. One, you could end up in court. If a court thinks your local historic review board is acting unreasonably, they may buy in to the Attorney General's opinion and you could get a court decision saying you cannot approve the use of building materials. The other thing the local governments are very well aware of is that what the General Assembly gives, the General Assembly can take away. So historic review boards could end up with amendments to the State Code that impose restrictions they do not want.

This is an area where you need to have a good relationship with your Building Code Officials. When a citizen wants to do work on a historic structure, our Building Code Official refers them to the secretary of the historic preservation commission and informs the citizen that they will have to comply with the commission's standards and get a Certificate of Appropriateness. The Building Code Official has refused to approve work even though it meets the standard of the Building Code if the work did not meet the standards of the historic preservation commission.

Code Officials and Architectural Review Boards Should be Allies not Adversaries

In conclusion, I just want to say that historic preservation review boards and Building Code Officials should not be adversaries. You are natural allies to each other. You have lots in common. You both have the common goal to preserve structures. Second, both have to operate under the restrictions and limits imposed by the Commonwealth of Virginia. You both may not always agree with them. I know Building Code Officials feel the State does not give them enough flexibility or power and historic review boards often feel the same way. So I would conclude by saying: Do not let the fact that there will be differences about what should happen with an individual piece of property interfere with establishing a good relationship with your Building Code Officials. You can and should work together for the preservation of historic structures. Thank you.

Mr. Waldman: Mr. Erwin pointed out that the Dillon Rule has existed in Virginia since 1873. I will give you a bit of insight into how Virginia law develops. Virginia law moves a little slower than other states and when we talk about new and old law some judges will tell you that old law is what existed under the British Empire and everything else is new law. So when we talk about the Dillon Rule being from 1873, though it seems like a really old rule, it is not considered an old law under Virginia legal theory.

Our next presenter is Hank Day. Mr. Day is going to talk about some of those judicial decisions in the context of historic preservation and go through some of the issues that arose there. He will also have some additional information to help us work our way into talking about ordinances themselves, which is Ms. Shepherd's presentation.

DEVELOPING A FRAMEWORK FOR ARB DECISIONS

Henry C. Day

For fourteen years I have sat in many of your seats and have had to make judgment calls. There were a lot of judgment calls and there still are a lot of judgment calls. What I want to focus on today is that the world is changing for all of you. Up until a few years ago it was a blank slate. We had a lot of Attorney General opinions on certain subjects, but we had virtually no case law that gave us any guidance on the role of the ARB. About three years ago, up popped two cases in Virginia, one in Little Washington and one in Danville. They both went through the court system. One ended at the Circuit Court level and one ended at the State Supreme Court level. It is my view that those cases have really made a change in how we approach what we do in historic preservation, operating under state code.

What we know for a fact now is that what is going on in the decision making process is a legislative act. That may not be important to you but it is very important to me because it sets the framework within which I can give advice as to how you can operate. It takes us into a world where there is an evidentiary battle. When we go

to court on these cases, the judges are looking for the evidence that comes from record and you all are building the record. What we are dealing with is evidence of whether or not the decision made by the ARB, and ultimately by the governing body, is itself supported by reasonable evidence. There is a presumption that what happens is correct and in the Circuit Court the judge is going to say, if there is evidence supporting the decision we are going to assume the decision is correct. It will then be incumbent on the person challenging the decision to present evidence of unreasonableness. If they do present evidence of unreasonableness then the question becomes before the court: Is the issue fairly debatable? Is the evidence presented by the person opposing the decision sufficient to challenge the reasonableness of the evidence by the government? If it is, the government gets one more crack at showing reasonableness. If they cannot present evidence showing reasonableness, then the government loses. That is what happened in the Danville case.

In this presentation I want to focus on the evidence you use and how you structure your decision making process. Out of these two cases, I handled the one in Little Washington and someone else handled the one in Danville. We decided through a mechanism, the insurance carrier was representing both, that the Danville case would go up because the facts were better. Out of this process the Virginia Municipal League put together a project to try to address some of the issues that arose in these cases. There was a team put together that included Cheryl Shepherd, Kathleen Dooley (now Fredericksburg's City Attorney), Ray Ocel (now Fredericksburg's Planning Director, and formerly Warrenton's Planning Director), and members of the Department of Historic Resources. What we tried to do was develop a model ordinance so

that some of the jurisdictions in Virginia that had done historic district ordinances over the past thirty years would have the materials to try to develop a more modern historic district ordinance and one that responded to what we had encountered. What we discovered is that basically the courts are looking for a framework within which you make your decisions. Because it is a legislative act does not mean you can decide anything.

One of my pet peeves, both as a lawyer and as a chairman of an ARB, is when an ARB member in public says: "I don't like that. You don't want to say: "Well, I don't care. That is not your job as an ARB member." Your job is to determine architectural compatibility. Architectural compatibility came up in the context of a new structure in regards to the Little Washington case. It came up with regards to the alteration of an existing structure in the Danville case. What does architectural compatibility mean? Architecturally compatible with what? That is your job.

What we learned out of these cases was that you need to have a modern historic district ordinance that sets the framework through which you organize the decision making process. If you have a historic district, you need to review that historic district periodically to keep up to date on the changes in that district. You need an inventory of historic assets. What are the structures that are contributing, what are the structures that are not contributing? Through all that process you need to finally come down with guidelines, which I am sure many of you have or some element of direction on these things. The guidelines to me are the critical thing, when you receive an application to modify an existing structure or to build a new structure. We as lawyers can defend your decisions if we can tie your decisions to those guidelines. Again, there has to be a framework within

which you work, of information.

What we know for a fact in Virginia, from the case law, is that you cannot decide to impose architectural standards just anywhere, whether an area is in a historic district or not. That was attempted in Williamsburg in the seventies. Even though a predecessor to their ARB statute existed, Charles City County did not follow it. They just decided that on a route into Williamsburg there were to be architectural restrictions. The State Supreme Court noted that the area would have qualified for a historic district under the State statute at the time. An Attorney General's opinion in 2001 or 2002 for a similar instance in Suffolk, came back: No, you cannot do that. You cannot just arbitrarily impose architectural guidelines, whether you are in a historic district or out.

Walter talked a little about materials and we may differ slightly on this issue. I do not think there is a blanket restriction for you to get into materials and I would like to encourage you all, if materials are an issue in your jurisdiction, to ask questions when we get to the discussion period. Materials are a component part, in my professional opinion, of how an architectural compatibility decision ought to be made. Architectural materials do affect appearance and architectural compatibility. If you want to put a corrugated tin building attachment to a historic building there is a real issue there. Pick anyplace, Mount Vernon for instance. If you want to build something out of old tires there is an issue there no matter how you design it. That was one of the major issues in the Little Washington case. What happened in Little Washington is one side of this equation. There was a new house being proposed that the ARB put on their agenda for an initial discussion. Basically the applicant cut a picture out of Southern Living magazine that showed a Low Country cottage,

with origins consistent with Louisiana. Without any detail, on an informal basis, the ARB gave their approval. Six months later he presented design plans that had a roof with synthetic slate, plastic columns on the porch, no wood on the decking, and hardi-plank siding. The ARB turned down the design. What they did not do, they did not find any facts. They just decided yes or no. My best advice is to make sure you tie your decisions to facts. In law, we worry about those things when we go to court, about defending how you made a decision.

The problem in Little Washington was that they had a section of their ordinance that had some good guidelines, but they were a page or less, and were not tied to the actual historic assets, architectural features, architectural schemes, or location of assets. The historic district of Little Washington was designated in 1973 or 1975, by the state. The town council did not have to do anything because it was put on the Virginia Register and then the National Register. There was no inventory. There was no detail on any of the houses in town other than pictures Calder Loth had taken as a young associate in 1973 or 1974. Fortunately, through Cheryl Shepherd's work and some by Kathleen Dooley and myself, they now have a pretty extensive Historic District Ordinance and a set of guidelines that are site specific, tied to individual historic assets and when they make a decision today, they are able to focus on the data (information).

Now let me focus on the Danville case. In Danville there is a wonderful main street with some old mansions, including the last capital of the Confederacy, the Sutherland Mansion. There are Italianate architectural designs. In early 2000, there was a doctor who owned one of them and his house was broken into several times. The police chief suggested that the doctor replace his solid wood door with a glass front

door, so the police could see inside. He changed the door without going through the ARB. The Planning Director identified the problem and notified the owner. He came in and asked for permission to have the door and was told no, the wooden door would have to be put back. The doctor came back a second time with historical evidence and said he did not believe his house had a wooden door when it was built. He said he did not know how long the door had been there, but he had evidence that in the forties a door just like his had been built by a mill in Lynchburg. Again, he was turned down. We get to court and the owner comes forward and presents evidence that there are other glass doors on this building. He believes they are original and nobody can say differently. He has the evidence of the old door being made in the forties, but we cannot identify what was done at the turn of the century when it was originally built. The City Planning Director/Zoning Administrator came in and said he did not care what the owner says because the door was on the house when he got there. Well it turned out the Planning Director did not get there until 1992 and Justice Agee noted that fact. Remember what I said originally, there must be some evidence that comes forward to support the decision. There was none. If Danville had had historic information about that particular structure prior to 1992, and Danville is a pretty historic city, they could have gone back and done some historic work or brought in an architectural historian who could identify that that door was probably not glass but wood and that was the style of that house, they could have brought the decision back to being fairly debatable and won it, but they did not. The long and short of it is information or data that you all must have when you make a decision, particularly a controversial decision. You get that from either your inventory and/or

your guidelines. Your guidelines are there to try to guide you through what is the appropriate style of an addition to a building, change to an existing building, or new construction. New construction is really architecturally compatible with what, well it is compatible with the contributing structures in the vicinity.

The lesson that came out of this process with the Virginia Municipal League was that we all have got to refocus on being more precise in our decision making process so that we can defend them in court. If we can get to the point where we can make a decision, and back it up with data, then we can defend these types of decisions. If you do not, the court is going to lean toward the property owner if he can come up with any evidence that what he is doing is consistent with some type of architectural style.

Mr. Waldman: Speaking of those ordinances, Ms. Shepherd was helpful in developing a model ordinance—the ordinance that was adopted by the Town of Little Washington. Ms. Cheryl Shepherd.

DEVELOPING ARCHITECTURAL REVIEW GUIDELINES

Cheryl Shepherd

It is a pleasure to be here. I am going to talk about the design guidelines that I drafted for the Town of Washington. As you know design guidelines support the historic district ordinance.

I was on the Warrenton ARB for over nineteen years and most of that time I was Chairman, not because I wanted to be, but because no one wanted the job. We are finding it harder today to get people to sit on ARBs because it is a very controversial job. We need to be reasonable and we need to know that when we are trying to preserve those historic resources we must base our decisions on facts and evidence. The ordinance is a policy and that should be very clear in the guidelines. Through your ordinance, you are trying to determine the architectural compatibility of the applications that come before you. An addition must be architecturally compatible to the building that it is going on. New construction must also be architectural compatible to the streetscape. The guidelines that go with the ordinance are not mandatory directions, but rather recommendations to avoid doing particular things that might be harmful. Mr. Erwin said that there is some disagreement among us about materials, with Mr. Day and I believing strongly that materials do matter. They mattered when those buildings were first constructed because of what was available. The appearance of those materials is also important since they reflect the workmanship that was used on the buildings when they were constructed. These things can be stated in the guidelines, depending upon the policy,

direction, and consistency of opinions that a review board establishes.

Materials do affect historic character. When the historic rehabilitation tax credit applications are reviewed by the State and Federal agencies they are going to be looking at the types of materials that will go into the construction. An important factor will be their appearance. Many times I have called up the Department of Historic Resource and asked whether hardi-plank was something they would approve. Well, it depends. Each application is considered on its own merit, considering where the structure stands and how it will affect the streetscape. Going further, I will also call the National Park Service and ask what they think of hardi-plank. That is something they have approved, but it depended on where that house stood. As an example, two shot-gun houses in Charleston had a tight alleyway between them. Hardi-plank is a cement based material with a uniform grain. Wood does not have that uniformity, so the appearance of hardi-plank is not quite the same as wood. Hardi-plank is therefore not appropriate on a facade, but it was appropriate down that alleyway, where you could barely see it. That application was approved for hardi-plank.

The guidelines can also assist in the interpretation of the ordinance. They help the staff review applications, they help the ARB, and they help architects, builders and the applicants to understand what the ARB is looking for. Guidelines also assist the governing body. They too need clear objectives and detailed guidance upon which to base their decisions related to historic preservation.

The guidelines vary from community to community. I strongly feel they should always contain a historic significance statement for the locality because that will show what the community values. You must also have that historic

resource inventory. The Town of Washington's inventory was nonexistent until the 1990's. A young college student did an inventory, which was helpful, but he did not designate contributing or non-contributing buildings. He did it on some, but there was no consistency. Back in the 1970's, the dinosaur days of doing historic district surveys, it was not a requirement to designate contributing and non-contributing buildings so we are now in the process of updating those old nominations. Back then, the Town Council also decided that their town was of such value that they put the preservation ordinance boundary around the entire town. It can be a challenge to later expand such a boundary and they needed to do another survey to expand the size of the local district.

The survey was updated and the buildings designated, but the past history of the preservation process in the Town of Washington was still put into the guidelines, as a reference. If this type of information is not in your comprehensive plan, it is good to have it in the guidelines. It is useful to know what the town or municipality has done in the past, when the first inventory was done, when the historic district was established, when that ordinance was passed, and whether the council passed a resolution. It is important to have all that history for easy reference.

Beyond that background information and the significance statement, let's consider architectural style. We are looking at historic character. What kind of door would have been on that house in the Danville case? It could have been a single lite door half glazed on the top and wood on the bottom with raised panels. It could also have been a Victorian door because the Italianate is a Victorian style. So in the Danville suit, it could have been two lites above, raised panel below. The gentleman who was trying to get light into the house could have remained

within the Italianate style, as shown in the guidelines, by having a single or double lite door.

The style section becomes even more useful when we can back it up with photographs showing features of the buildings. The Secretary of Interior Standards should also be in there because those are what we base our decisions on and those are what applicants use for the rehabilitation tax credit program. As much as 25 to 45 percent of the rehabilitation cost can thus come back to the applicant in State and Federal tax credits, provided they follow the Secretary of the Interior's Standards. Your guidelines are based on those standards and there can be a sizeable cost incentive for an applicant to follow them.

When you get to the guidelines themselves, remember that everything is based on the state enabling legislation and that we are trying to get to a determination of architectural compatibility. That language is clear in the code, clear in the model ordinance we have written, and it is certainly clear in the Town of Washington. You want the design guidelines to compliment the historic district inventory and you want that inventory to be up to date. When you do the inventory, people like me, architectural historians, go out and take photographs throughout the district. That documentation is a reference point for the ARB to use. Bring that evidence to the table. For that door in Danville, we might have found a picture that showed a door with a single lite above raised panels. You can also ask the applicant to do the research. It is his burden if he wants you to approve his application.

The guidelines also provide the ARB with the appropriate language that you need to use. We do not want you to say that you do not like something. People tend to cop an attitude when someone says they do not like something. We do not want to be arrogant. We want to follow documentation. We want to do our job in way that is

professional and we maintain that professionalism when we use documents and back up our discussion. Use them for discussion and frame your motions around them. Hopefully that careful procedure will prevent court challenges.

Regarding the guidelines for doors and windows, refer to the architectural style section. That material provides the basis for knowing what was there. You can look at the photographs of what is existing. There is also nothing wrong with going to the building to look at it. You want to retain, protect, and preserve the design of original doors. If the door on the building is not original, then the replacement of it is not really an issue. If the door is already changed, hopefully the original is still in the house. Your guidelines should recommend that if you replace a door, you should retain the removed door on site. That way, you or the next owner can put back the historic feature that was removed.

You should try to be reasonable, but doors and windows are important character defining issues. We use them for dating a building. They are part of the style, so they are something that guidelines should try to protect.

In the Town of Washington, we had a proposal for a brand new house. The board said they liked the design, but what they did not consider was whether this type of house would ever be seen in the Piedmont. It was French influenced, with French doors in a pattern across the front, a roof flared in a French eclectic way, and dormers done with French influence. Then, of course, there was the rhythm and pattern of the front facade. Rhythm and pattern are things you use to determine architectural compatibility. When I was on the ARB, I had trouble knowing what rhythm and pattern, massing, and form really meant. It is something you really have to study. You want to look at the buildings on your streetscape and look at the pattern of openings on the front elevations.

The French details were not something you would see in the Town of Washington.

This applicant also wanted to push our ARB to the limit, to see if he could get approval for a 100 percent synthetic house. He went for a synthetic, rubberized slate instead of rock slate. The problem with these synthetics is that they are mass manufactured. Uniformity is what you see. That hand workmanship is not to be seen in the mass produced material. The guidelines that were written for the Town of Washington say to avoid these synthetics. Actually the guidelines say do not use them (although the guidelines are still in the review phase).

There is something about the Americans with Disabilities Act (ADA) that needs attention. I read in the Washington Post where a family was forced to move into their basement. They are both elderly and handicapped (he is 90 she is 87). They wanted to put an ADA ramp on the front porch, but the preservation commission repeatedly said no. The preservation committee said that the porches of similar height and depth in the block create a notable pattern and rhythm on this particular street. The committee would not allow them to alter the porch or remove it, so this elderly couple is living in the basement and must go out of their house through the back alley. I think a review board needs to be reasonable. In the Town of Washington, a brand new commercial building has been constructed for a jewelry store. The owner put a front porch under a shed roof and put the handicap access ramp under the porch, but inside the balustrade and made them mesh together. This is a new building and it is easier to be clever, but the design is still brilliant. As an architectural historian who does architectural evaluations, I like to see that change in workmanship so that I know what is added. I think there is probably a way to accommodate the

elderly couple. I would love to look at that porch and see if something similar could be done. You need to accomplish what needs to be done for ADA accessibility, to restore the human dignity that has been lost by these people.

Getting back to materials, again they do matter? On a Spanish Mission style house, with a terra cotta roof, you are not going to replace that roof with a rubberized slate. That is a materials issue. Would an all glass building be built in a nineteenth century setting? I don't think so. It is something that has to be considered and appearance is something that the tax credit department also looks at. Use your guidelines, use your ordinance, use the inventory, gather pictorial evidence, keep files, keep records, qualify all your decisions, and when you deviate from the guidelines make sure you qualify all that. Follow the evidence and you will do a great job.

QUESTION: So much review is done, whether tax credit or local ARB, on a case by case basis. How important is consistency if a case is challenged.

Mr. Day: What I will say is that the subject matter is subject to a lot of interpretations. Remember the standard is architectural compatibility. To some degree, there is judgment involved in that. The outcome is not guaranteed, but neither is the application the mirror image of a previous application. If there is inconsistency, in that one applicant seeks to use a particular design of a structure or a particular material and is denied outright, and another applicant gets approval for the same thing, then we as lawyers have a problem with that. The lawyer representing that applicant will have a case. The key is to distinguish why you said yes here and said no there. No application is exactly the same, unless the same applicant shows up

the next month trying to do the same thing again, and most ordinances prohibit that. I think you have to understand that the subject matter varies. One of the issues we had to deal with in Little Washington was a material that had been approved before and was suspect another time around. You need to have a good reason that it is suspect this next time around. What are the particulars?

QUESTION: We as members of review boards tell the applicant that we review things on a case by case basis, and yet there are very different outcomes over time. When a review board changes its members over time, you will get a different slant and biases despite the attempts at fairness. You will have very different biases from one review board to the next, so decisions will vary over time. What kind of grounds does that give the applicant to contest?

Mr. Day: We as professionals are trying to tell you to cut that out.

Mr. Waldman: I might suggest that the municipalities engage in good recordkeeping, maintain records of each individual property, if that is possible. Records are a good way for a city, county, or town staff to identify what has happened with a building in the past. Having some consistency in the staff or some recordation of what is going on may allow that staff, as they review an application or prepare applications for member review or supplemental applications, to really provide that additional information. There is a role potentially for the municipality in that vein as well, to ensure there is information there for the board to make a consistent decision.

Mr. Erwin: If you have good guidelines and good standards hopefully your new board will use those as a basis for making its decisions. This is a tough thing that all local governments have to go through because your members of your city council change and certainly they have different perspective and the people they appoint to your local preservation board may have a different perspective, so the only thing you can do is have consistent guidelines and ordinances and try to remind the members that these are the factors to be followed in making a decision. If you have those good guidelines, it becomes easier to show new members what they are supposed to follow when making decisions.

QUESTION: You were talking about reversing legal decisions. Last week in Arlington the preservationists lost. We had a project that involved demolition of what we consider a historic shopping center. It is a contributing building in a National Register district, but we do not have a local historic district. The planning commission, transportation commission, and review board all recommended against approving the new project and not tearing down the building, but the county board approved it. Do we have legal recourse to reverse the decision?

Mr. Day: Did I hear you say that the property is not in a historic district?

QUESTION: It is in a National Register district. We have a historic master plan for the county, which sets up a historic resources inventory as a tool to save buildings, but it had not been completed. This building had been surveyed and was found to be essential, but since the entire inventory was not complete it was considered a draft and we were told it did not apply.

Mr. Day: We read the current court cases to say that you have to establish a historic district—that you have to identify the historic assets. You have to do a series of things to act under the State Code. What I think you are telling me is that the jurisdiction had not established a local historic district incorporating that particular historic asset. I would say that I do not think the ARB has jurisdiction. Whether you can challenge that decision as citizens is a different thing beyond the scope of this session, but I do not think you have met the standards that the State Supreme Court seems to indicate as necessary, in order to act as an ARB.

FOLLOW UP: A citizen did come forward and ask that the shopping center be designated as a local historic district, but the county has a policy to not do so without the owner's consent and this owner would not consent.

Mr. Day: Keep in mind that historic districts can be established in a variety of manners under the Virginia Code. The critical part is this: The governing body of the jurisdiction has to establish that historic district and identify its assets, to use any of these powers. It can be designated, as Washington was, by Virginia or the federal government, but that in and of itself is not satisfactory for the Circuit Court judge to say you have met the standards of Section 15–2.2306. There needs to be some action by the local governing body to qualify you to act under 15–2.2306.

QUESTION: Is it legally required that the locality adopt the guidelines, or is it possible for the ordinance to give the ARB the power to establish their own guidelines.

Mr. Waldman: For guidelines to be applicable during the architectural review process, they need to be adopted by the governing body.

QUESTION: How can we ensure consistency in our decisions when economic considerations come into play? We had a case where a house was in poor condition and the owner asked for permission to install vinyl siding, claiming he could not afford anything else. If we allow vinyl siding in one instance, do we undermine our ability to deny vinyl siding elsewhere. How can we determine economic ability to adhere to a historic district ordinance?

Mr. Erwin: Similar situations have to be treated approximately the same. A decision on one case may make it difficult to deny the request of someone else, but that does not mean you cannot do it. Sometimes people do not challenge your decisions, but somebody may say you approved it here so why won't you approve it for my building and you may be in a tough spot to come up with a logical argument to distinguish why it is ok in one building and not another. Sometimes you just have to come in and say we screwed up. The State Supreme Court will do that from time to time. If you have an outgoing board you can say that those guys did not know what they were doing. Sometimes you can come in and say we just made a mistake, we're correcting it and we will not make this kind of mistake in the future.

Mr. Waldman: As a follow-up, if the municipality decides to include a provision in their guidelines or local ordinance that allows them to consider economic viability for the property owner, is that something advisable or enforceable?

Mr. Day: I agree with Walter and I want to drive home a point: Framework! If you leave here with anything, think about putting a decision within a framework. I do not know how you get into the economic side of the argument. You will have applicants come before you who say, I cannot afford that or that is too expensive. I think it is extremely difficult for you to get into that. What you need to do is come back and say, there is a proposal here for vinyl siding. The gravamen of what you do is the appearance of the material, the architectural compatibility. You cannot deny vinyl siding as an abstract because vinyl siding has multiple grades, multiple manufacturers. I have seen vinyl siding that was obviously vinyl siding at a mile away. I have seen vinyl siding that was top quality, expensive, and was not obviously vinyl siding. What is the current material that the vinyl will go over? How does it fit in with the character of the structure? Does it represent something that is totally new and different? Again, put it in that framework; let's go back and look at the structure, is there any analysis? Is it a contributing structure? What is the commentary on the structure? If it is not contributing and not located close to a contributing structure, your standards are probably going to be lower. The economic side of it is just a trap. I do not think you can get into that because that is not what the Supreme Court thinks or what the General Assembly thinks—that you are supposed to be deciding what is cheap and what works and what does not. I would approach it from the standpoint of what I just said. What is the architectural compatibility of the proposal with whatever you have to play it off of? I would make the applicant bring me something to look at, so you can look and say yes that is architecturally compatible, or it is not.

Mr. Erwin: On the economic factor I would say I have never seen a historic district ordinance that has that type of economic consideration in there. It is very difficult. If you want to do that there is language in Virginia Uniform Statewide Building Code that addresses that. It says that when Building Code Officials order someone to fix up their property the Code Official has to consider the cost as a factor and work with the owner to try to minimize the cost. The Building Code does not tell the Building Code Official exactly how to do this, but it does tell the Code Official that cost has to be considered. If you want to put this type of provision in your ordinance you could take some of the language out of the Building Code and put it into the local ordinance. That is an area where I have never seen this type of language. It is an area with very little guidance as to what role economics should play in making decisions about whether or not something is architecturally compatible. On the other hand, you want to be reasonable in dealing with somebody who owns a piece of property and does not have the resources to do what you want them to do. That would be one of those cases where if you are challenged, bad facts can make bad law, and a court can say it is unconscionable that somebody is being told they cannot fix up their house, to make it habitable, because they do not have the financial resources to do what you want them to do.

Mr. Day: I want to discourage people from being categorical when it comes to materials. I think that gets dangerously close to the problems associated with the Building Code that Walter talked about. When in fact what you are supposed to do is determine architectural compatibility of any particular proposal. Can you get down to the level where you say there is going to be no hardi-plank? I find that hard to swallow

as just an absolute ability, because the problem with building materials is that today you have something on the market that tomorrow may be different or better. What you are supposed to be dealing with in determining architectural compatibility is basically a visual test. That is why I say that if you have these issues pop-up, make the applicant bring samples for you to look at. Look at the quality, look at the eye appeal, because I think that is what architectural compatibility boils down to.

Ms. Shepard: Calder Loth, from the Department of Historic Resources, said that he did not believe economics should come into ARB decisions, and neither do I because it will be hard for you to categorize. It is not a measure of architectural compatibility. I think it is better for the boards and ordinance and guidelines to stick to the architectural issues. You can be reasonable, but do not use the economic side of it to try to find a way to accommodate. Do it within your ordinance and guidelines, without sticking the economics in there.

Ms. Camille Bowman (VDHR): I wanted to add to the conversation that affordability can be addressed in a district. You can delineate a district with its own design guidelines, with affordability as the thought process in that district. Your whole city does not have to follow the same design guidelines. You can have a district with a set of design guidelines that is appropriate to that district. Affordability can be a factor in a delineated district.

QUESTION: What I have heard here is a discussion of issues that relate to structures, buildings, and private property. I am wondering about how the principal of architectural compatibility and the authority of the review board applies in public spaces such as structures, streets, sidewalks, parks, etc.

Mr. Erwin: That is an issue that varies from locality to locality. Some localities in Virginia have taken the position that public projects are not covered by the historic ordinances. I think from the issue you raised, that the definition of a structure is simple. A structure is something that is built or constructed. You can certainly argue that a street or sidewalk is something that is built or constructed and falls within that broad definition, but in Virginia there is two types of law, statutory and common law. Statutory law is the law adopted by the Virginia General Assembly and is contained in the State Code. Common law is the law developed from the English courts. When an issue came up that the legislative body had not dealt with, the court would determine what the law was and that is referred to as a common law. If you look in the State Code in the first volume, you will find a statement that reads Virginia is a common law state. The common law still applies in Virginia, except to the extent it is overridden by the General Assembly. The English rule is that the king who makes the rules can break the rules and cannot be penalized. There are Attorney General's opinions that say in dealing with public projects local governments are not required to follow their local zoning ordinances. The historic district is part of your local zoning ordinance. That is where the authority to adopt historic districts come from. So if you live in a locality that wants to take the position that the locality is not subject to the local historic review

board or the zoning ordinance then your locality can do that. Lynchburg has done that. About three years ago the City Manager asked for an official opinion, citing some of the cases and authority and once he received the opinion took the position that public uses are permitted in all the City's zoning districts as a matter of right. We do not have to go through the planning commission or the zoning process. We just go ahead with the public project. We have also taken the position that public projects do not need the permission of the local historic commission in order to go forward. The City Manager has told City staff that they should present their projects to the historic commission for their suggestions and if possible follow their suggestions. Other cities and towns have taken a different approach. They have provisions in their zoning ordinance that say the locality will comply with the zoning ordinance and the historic district guidelines. The answer to that question is that it depends on the community in which you live and the choice your community wants to make.

QUESTION: Materials do not just have an appearance, they have function. I am a LEED certified architect. I look at how things function. Could you bring sustainability into the argument of the description of a material if you want it to be historically compatible? How materials function can be just as important as what they look like. Would that give additional leverage for compatibility.

Ms. Shepherd: I think you can. Endurance can be an issue, but appearance, finish, texture—words like that are important in explaining what the historic character was originally. We know that the historic materials of one hundred years ago are more durable than the woods of today. There are recycled materials that are available,

so when it comes to wood, that can be a suggestion from the ARB. Windows that are manufactured of wood are not always durable. I have had contractors tell me that windows they put in five years ago are deteriorating. We need to hunt for durable material. Sustainable materials is an issue, but historic character, appearance, texture, and finish are overriding issues and if you look at the Secretary of the Interior's Standards those are the words they use.

Mr. Day: Architectural compatibility is a very broad statement. I think it is clear that your question addresses one element of it. We addressed the visual appearance of it. What is compatible in one context may be different if we are talking about an addition to an existing structure as opposed to new construction adjacent to that structure or in area where there is only one contributing structure. All those go into determining architectural compatibility. If you look at it in these frameworks, without simply cutting something off and saying you cannot have vinyl siding, or you cannot have hardi-plank, and you make people present the data necessary to make an intelligent decision, then people like Walter and I can defend you. That is the key, but architectural compatibility is a very broad statement.

Mr. Erwin: I think it can be legitimately considered because the goal of historic preservation is to preserve historic structures. We have heard presentations that talk about using vinyl siding. If you have an existing building and you cover all the hard wood with vinyl siding, there are detrimental impacts. The building can retain moisture. The vinyl can do things that actually cause destruction to the historic material and structure. I certainly think that is one factor that when you make a decision you can consider

whether the materials the applicant is proposing to use are durable and will they actually harm the structure itself. The ultimate goal is the preservation of the structure and if you can show there are good reasons to avoid or use a particular material then I think that is a factor that can be used in making your decision.

Mr. Waldman: If the professionals or members of the ARB wanted to review the model ordinance where could they get a copy?

Mr. Day: Mr. Nelson plans to publish a transcript of these proceedings. I will make sure he gets a copy of the model ordinance (see Appendix A).

Mr. Waldman: Could you place in context where an Attorney General opinion comes from and the binding nature of it to an ARB or local municipality.

Mr. Erwin: The Attorney General is the top legal advisor for the Commonwealth of Virginia, so certainly his opinions have some weight. For State officials and agencies, the Attorney General's opinions are binding and they are obligated to follow them. Anyone else is not obligated to follow them. In those instances they are advisory opinions. The Courts have said the Attorney General's opinions are entitled to great weight on an issue. They have also said the General Assembly is assumed to agree with the Attorney General's opinion. If the General Assembly does not agree, they will amend the law. As local government officials and as members of historic review boards, you are not obligated to follow the Attorney General's opinions. When the Attorney General has issued an opinion that the local government attorneys like, they will argue to the judge that this is an

opinion from the top law enforcement official in the state and it carries great weight, but when the Attorney General issues an opinion the local government attorney does not like, they will argue to the judge that he is just another attorney. You all are not obligated to accept those opinions.

QUESTION: Does the Uniform Statewide Building Code delineate the age of the building or is that left to the local jurisdiction.

Mr. Erwin: The question is: Does the Building Code differentiate between the ages of buildings. The only place I am aware of in the Building Code that differentiates in the age of buildings is the rehabilitation code. It specifically states that the purpose of that code is to make it easier to renovate older structures. It does not give a definition of what constitutes an older structure, but that is the only place in the Building Code where they make a reference to older structures, where they talk about the age of the structure. The Property Maintenance Code and the New Construction Code do not. To follow up on the second part: Is it up to the locality to define old? No, there are several places in the State Code and the Building Code where it specifically says that local governments do not have the authority to adopt local ordinances that are inconsistent or contrary to the Building Code. If the Building Code does not differentiate the age of structures, it will be very difficult for a locality to put in different standards for older buildings. That would be contrary to the provisions of the Building Code.

Mr. Waldman thanked the panelists and ended the morning session.





INFILL DESIGN: MINDING THE GAP

Erik Nelson opened the afternoon sessions, which were held in a recent addition to the Fredericksburg United Methodist Church. He turned the session over to Owen Lindauer, current chairman of the Fredericksburg ARB.

MODERATOR: Owen Lindauer

Good afternoon. My name is Owen Lindauer. We are going to continue our day by looking at the challenges of infill development.

PARTICIPANTS

Mary Harding (Mimi) Sadler is a Richmond-based historical architect and principal with Sadler & Whitehead Architects, PLC, a small business she formed with husband Camden Whitehead in 1997. She serves historic property owners, architects, and engineers as a historic preservation consultant. Ms. Sadler received her undergraduate degree in Art History from Williams College and her Masters Degree in Architecture from the University of Virginia in 1981. She serves on Richmond's Commission of Architectural Review and chairs the Capital Square Preservation Council.

Jack Abgott has been a historic preservation contractor and consultant for 25 years. He is currently the Vice President for Operations for the firm of Nickles Contracting, Inc., which specializes in public restoration projects. He is a former member of the Fredericksburg Architectural Review Board and holds a degree in Architecture from Syracuse University, as well as a Masters of Architectural History and a Graduate Certificate in Historic Preservation from the University of Virginia.

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INFILL DESIGN IN HISTORIC DISTRICTS

Mary Harding Sadler

I am going to present to you my thoughts about infill in historic districts. I have a few biases and I will announce them right up front. I love modern architecture. I even like it in the context of historic districts. Our historic districts and neighborhoods are a result of constant infill over time. The issue we face is one of guiding infill so that the places that best define us are preserved and so the unique character of a neighborhood is not eroded by demolition or



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813 Sophia Street, Fredericksburg

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"INTEGRITY CAN BE A TENUOUS ASSET."

inappropriate new construction. Each infill project represents a critical moment that requires guidance, not suffocation or design by committee. Guidance comes in the form of the local review board's handbook that has been tested and refined over time; a handbook that is a living document that can be revised.

Infill projects are an opportunity for reinvention, an opportunity for reasserting the character of a city or neighborhood, and an opportunity for mending anomalies in the urban fabric. We all know that integrity is a tenuous asset and that statement in the Fredericksburg Handbook I think really resonates. We cannot regulate good taste. The beautiful houses on the left evolved over a couple hundred years without the guidance of an architectural review board and continue to evolve, in an organic fashion, with the help of the architectural review board. We cannot regulate good taste, but we are happy

when it happens. We also should not regulate building style. People who live and work in the historic district rely on the Secretary of the Interior's Standards for Rehabilitation for basic guidance and Standards 9 and 10 are the two that best guide new construction. Standard 9 tells us that new construction should not result in the loss of historic fabric. Standard 9 tells us that new construction should be differentiated from historic, although that is the Standard that most Virginians are loath to follow. Standard 9 also tells us that new construction should be compatible with historic materials, features, size, scale, proportion, and massing. This is the essence of what we have to do when we are looking at infill in the historic district. Standard 10 basically can be boiled down to: If you build in the historic district or you add to a historic building, you should be able to take it away and still retain the essence of the historic building or neighborhood.



2nd and Clay, Jackson Ward, Richmond.



Caroline and Wolfe Streets, Fredericksburg

“WHAT IS GOOD OR BAD IS NOT ALWAYS OBVIOUS.”

The graceful early evolution of 209 Caroline (previous page, top right) came without the influence of the ARB, just like the later evolution of Fatty Js also came without guidance. Again you have what most of us would describe as good taste and bad taste. We will be glad when Fatty Js is replaced with something that is more compatible with Fredericksburg’s historic riverfront.

It is not always obvious what is good or bad. The building at top is a 1963 Virginia Mutual



2nd and Clay, Jackson Ward, Richmond.

“A CHAPTER IN THE HISTORY OF CIVIL RIGHTS”



A view of the Big Ugly, Fredericksburg

“A MOMENT OF RECKONING FOR HISTORIC ZONING”

Benefit Life Insurance Company building constructed during the Civil Rights era in Jackson Ward, Richmond’s historic district with National Historic Landmark status. It was designed for an African-American entrepreneur, who wanted to assert that the business and building were something contemporary, something of their time, in the heart of Jackson Ward, a neighborhood in Richmond that has been traditionally Black. The building beneath, which I only know as the Big Ugly, was designed in the 1970s and was an urban renewal project. The Big Ugly helped to show the people of Freder-



200 Block of Wolfe Street, Fredericksburg



609 Sophia Street, Fredericksburg



Caroline and Wolfe Streets, Fredericksburg



1315 Caroline Street, Fredericksburg

“INFILL TELLS A HISTORY OF THE CITY’S GROWTH.”

“OUR APPROACH TO INFILL WITHIN HISTORIC DISTRICTS IS EVOLVING.”

“GUIDELINES PROMOTE IMPROVED SCALE, MASSING, MATERIALS, AND SITING”

icksburg that they needed a zoning ordinance that addressed appropriate height in the historic district because this building blocked views of Fredericksburg’s historic skyline. It is not that Fredericksburg’s skyline should not evolve with the town, but there is the critical issue of quality and care and compatibility. This building, the Big Ugly, represents a lack of architectural literacy. You might say that the building in Richmond also represents a lack of literacy or something that you would not care for, but its historic significance overrides the importance of architectural compatibility in the historic district.

Our approach to infill in historic districts has evolved considerably over the last fifty or sixty years. From the mid to late twentieth cen-

tury, sensitivity in historic context was often limited to attaching colonial features and installing dormers. Today the infill project at Wolfe and Caroline shows another approach to architectural infill. This building was the catalyst for the local ARB to develop guidelines for new construction, guidelines that did not exist when the building on the lower left was constructed. The Secretary of the Interior’s Standards were simply not adequate to address the review of this project. When the Historic District Handbook was published, it included



The Belting Building, Richmond



Friedman Furniture, Memphis



VCU Brand Center, Richmond.



Monument Avenue, Richmond

“CONTEMPORARY INFILL WITHIN HISTORIC DISTRICTS CAN BE CONTEXTUAL.”

guidelines for new construction. To me the project at Caroline and Wolfe represents the results of too many cooks in the kitchen, but it is still an attempt to provide appropriate massing, setback, roofing, and raw materials that are consistent with other buildings in the district. It is a means of addressing the street corner and is another step in the evolution of the ARB dealing with new construction in the historic district.

Again, the approach to infill within historic districts is constantly evolving. The mid-twentieth century lodge at 609 Sophia Street appears to me to be a lifeless, non-contextual building. Even though it is masonry, the materials similar to other buildings in the historic district, the vestiges of historic materials at the corner

“THE SUCCESS OF CONTEMPORARY INFILL DEPENDS ON ITS COMPATIBILITY.”

entrance are not integrated into the site and the building does not at all reflect its magnificent site on the river front. The new residential building on right represents increased sensitivity to the character of the historic building using new materials like Hardie Panel siding, pre-finished and pre-formed concrete.

I revealed my bias to you. I believe contemporary infill in the historic district can be contextual even when it is controversial. At the upper left you see the building as it existed before rehabilitation. This was the carriage house that served the Jefferson Hotel in Richmond, Virginia. It had a one-story 1970s addition. That addition was torn out and recently it has been replaced with a new addition to serve as



140 Caroline Street, Fredericksburg



Shockoe Bottom, 19th Street, Richmond

“THE SUCCESS OF LARGE SCALE INFILL DEPENDS ON MODULATING THE MASS.”

the VCU grad center. Many of us have worked with Audrey Pepper ... well she and I had a disagreement on whether the addition proposed and now constructed by the VCU Grad Center is compatible with the old carriage house or not. I would say that it is, because it fulfills the central requirements of compatibility—being set back from the facade and leaving the historic building intact.

The Friedman’s Furniture building in Memphis reflects, on the other hand, a historic building with an incompatible contemporary addition. It has no contextual charisma, none of the divisions in the glass block addition, no dialog between the addition and the original historic building. There is no compatibility



Fredericksburg United Methodist Church

“OUR APPROACH TO INFILL WITHIN HISTORIC DISTRICTS IS EVOLVING.”



Shiloh Baptist Church, Old Site, Fredericksburg

“GUIDELINES PROMOTE IMPROVED SCALE, MASSING, MATERIALS, AND SITING”

here. In comparison, the elegant townhouse recently constructed on Monument Avenue, in Richmond, follows all the cues and requirements of compatibility. We see that in the materials and the alignment of masonry string courses, while building a contemporary structure.

The success of large scale infill depends on modulating mass. It does not depend on how large the building is. Rather, it depends on how well the mass is handled. Often the best han-



Railway Station, Fredericksburg



Historic Fredericksburg Foundation headquarters



Parking deck at Wolfe and Sophia Streets, Fredericksburg



Central Rappahannock Regional Library Annex, Fredericksburg

“PUBLIC PROJECTS DEMONSTRATE COMMITMENT TO THE STANDARDS.”

“REVERSIBILITY, COMPATIBILITY, AND SIMPLICITY.”

ding is done by using a hyphen or a small connector between the new addition and the historic building. As you see in the house at 140 Caroline Street, and also in this very large multi-family structure in Shockoe Bottom, in Richmond, both have a very successfully modulated mass in a building that uses historic and new materials to relate compatibly to its historic context.

Whether the addition is large or small, the shape and proportioning of the openings is critical. You just walked in through the door to the church project shown on the right. Although we are now in a huge addition to the historic United Methodist Church of Fredericksburg, the expansion was built to conceal and modulate the

massiveness of this huge space so that it is not felt on the street front and is completely hidden within the interior of the block. I would argue that this smaller addition at Shiloh Baptist Church (Old Site), on Sophia Street, is equally successful, although a much more contemporary interpretation of materials, largely because of the way the architect handled the shape and proportions of the openings on the addition. It is playful, but also compatible—clearly contemporary, but subservient to the historic building.

While preparing for this presentation, we came to look at infill buildings in Fredericksburg. I was really impressed with the infill of the elevator tower at the downtown station. Unfortunately, it is covered in Dryvit because



United Methodist Church, Fredericksburg

precast concrete was a little too expensive for the owner. The elevator tower at the train station is a very successful echo of that main block of the building and the glass infill panels are also quite handsomely handled although clearly contemporary. The parking deck at Wolfe and Sophia is also a great example of compatible infill of a very large scale that is helped quite a bit by the modulation of the massing and by the use of various roof forms and punched windows.

Here are two small scale infill projects that, I think, are both quite elegant and advance the public good. One is a rear addition to the HFFI Headquarters that is a very understated, simple, and quite compatible addition at the rear of the historic structure. Again it is quite contemporary just like the small addition to the Rappahannock Regional Library. Both are quite successful small scale additions to prominent landmarks in downtown Fredericksburg.

The treatment of site and how site and landscape issues are handled when you have an infill project or significant addition also has enormous impact. The columbarium we passed on our way over here was so beautifully handled. The design creates a compatible enclosure along



140 Caroline Street, Fredericksburg



Fan District, Richmond

“TREATMENT OF SITE HAS ENORMOUS IMPACT”

the side of this historic church, a place for people to meditate or hold memorial services.

On the upper right, the owner of 140 Caroline Street invested in extending a historic stone wall. The craftsmanship of the masonry work on this wall extension would delight any tourist or neighbor walking by. In the project on the lower right, this crude wall built by the property owner diminishes the neighborhood pattern of development rather than reinforcing it as any good infill project should do.

Finally, I want to talk about the issue of hyphens and bridges. Infill projects are, in fact, the bridge between the past, present, and future. The hyphens that are often used to connect the old and the new are the critical and often amusing device used to connect new construction to



25th and Franklin, Richmond



Pump Station, Fredericksburg

historic construction. On the left you see a residential rental project in which several apartments were constructed higher than the adjacent historic building. You see a hyphen as a successful punctuation between old and new. We were really thrilled to walk past the little building called the pump station, in Fredericksburg, which you can see is not a typical infill project on the riverfront, but the bridge literally bridges between the riverbank and Sophia Street. The Gallup headquarters in Washington D.C. connects the historic Masonic Lodge to a totally new office building, with this angled glass



Gallup HQ, Washington D.C.



Fan District, Richmond

“THE BRIDGE BETWEEN OLD AND NEW IS CRITICAL.”

and steel connector, and then down below you see an architectural bridge between a historic building facade and a new parking deck.

I am here to make the argument that modern infill can be a bridge between the past and present, as long as the infill project’s design does not result in unnecessary loss of historic materials and as long as the new design incorporates materials, scale, and setbacks and openings that are compatible with the adjacent and nearby historic buildings.

EVALUATING INFILL DESIGN

Jack Abgott

I did not bring any pictures today because if you give me visuals I will talk for hours. I want to talk about why it is so difficult for ARBs to evaluate new infill design. Mary and I design a lot of interesting infill projects and I am sure that for every example she presented there was someone in this room who thought it was not appropriate. That happens with every ARB and with new design everywhere. Basically there are three different areas that make review difficult. First, it is difficult to understand design language. Second, standards are often too vague. Third, there is resistance to change.

The first difficulty is just basic visualization. I was trained as an architect and architectural historian and have spent hours looking at buildings. I am a visual person. Not everybody who sits on an ARB is visually oriented, though, and may not be trained or be used to looking at drawings and translating them into a three dimensional object on a streetscape. Technically, CAD designs and renderings help a lot, but you do not always get that type of information. It is much easier, when you are sitting on the ARB, when someone comes in and says this is what my project is going to look like. Still, there is a tendency for some people to pull back because they do not have a full visualization of what the building will look like. This lack of experience puts the owner at a disadvantage. As far as remedies, I really do not know. Perhaps training for the ARB and seeking more information from applicants.

The second difficulty is with the standards. I see more at issue than Standards 9 and 10. There are no Secretary Standards for new

design in a historic district. Despite all the different guidelines that everyone has, they are all basically derivative. The issues we were talking about this morning were the same issues we were dealing with thirty years ago. Yes, guidelines have been refined and are easier to use, but they are all basically the same. The Secretary of the Interior's Standards tell us not to create a false sense of history. Every building should be a physical record of its era. Properties change over time (which should be amended to say neighborhoods, districts, and streetscapes also change over time). And new stuff should be differentiated yet compatible.

Well, what exactly is compatible? All morning I have heard the word compatible and the Secretary's Standards refer to massing, size, scale, and architectural details. There are guidelines for things like height, proportion, setback, facades, fenestration, relationship to materials, textures, shape and we talk about all these things and we end up with all these great words. Semantically we end up with rhythms, relationships, compatibility, and continuity. It sounds like human potential. They are deliberately vague. Just like the human potential movement, we can use those to justify just about anything.

You can build just about anything and apply something from those Standards. The question for the ARB is that you have to decide what about the context is most important and what is not. Sometimes a setback is very important, or scale, or size and you have to weigh those in the context of the exact site that it will be built on. There is a duality. You want it to be compatible, but does compatible mean homogenous? Does it mean we all have to build a Monument Avenue Italianate rowhouse? No. It can be a modern building. We do not want to imitate and create a false sense of history.

The third area that makes it difficult is what I call the tendency to not like change. I have never seen a new building go into any architectural area, historic district or city center, that has not been controversial. I think the ARB needs to accept change, step outside their personal opinions, and review projects as best they can. The problem that I find is that they need guidelines. When it comes to new buildings, ARBs need to accept the limits of their power. Avoid demanding specific designs. You are not the designer. At some point the designer of the building and client need to accept responsibility for its design. You do not want buildings to ruin your city, but every historic district or main street has pieces of once shocking infill that we now call historic buildings. Cities are living growing things and they need to stay living and growing and changing or they become stagnant and will not remain livable. No infill will please everyone.

QUESTION: What should the relationship be between a designer and the ARB.

Mr. Abgott: When I was on the ARB here in Fredericksburg, I was a firm believer that the earlier you started discussions the better. That way all parties (the designer, the client, and the ARB) tend to come out of the process without developing an adversarial relationship. Most of the ARB controversy that I witnessed was when one of the parties felt they had been blindsided. That is when the most animosity and emotions come up so the earlier the parties start discussions the better. The designer should ask for a work session with the ARB so they can get a feeling for the project and the designer can get an idea of what the ARB's expectations are.

Ms. Sadler: On a large scale project that was threatening to become contentious, because the application had been denied, we established a sub-committee including neighborhood and ARB representatives to deal with that applicant and the project architect. On a small scale project, the Secretary of the ARB recommended that the architect come in and observe one session before presenting her project. She watched how we reacted to other projects before she presented her infill project for a new house in the historic district. She had the best presentation ever because she had listened to what our interest and concerns were. She was prepared with the range of materials, and design information that she needed because she came in early and knew what to expect.

QUESTION: I did not like the choice of materials for the small infill project you showed.

Ms. Sadler: Like Jack said, for every project I showed there would be some people who did not like it, so I am going to explain how the process worked. The architect representing the applicant sits on the commission of architectural review. His team came and presented the project to us as well as members of the neighborhood. He built a consensus, like what Jack was talking about, by having numerous conversations with the community to talk about materials, height, and shape of the new building. They (the architects) also came to the commission of architectural review more than two times, again, building that consensus. I am not going to talk about why you might like or dislike a material, but there is a process that allows consensus to be built and for the neighborhood to come to a meeting and say okay the applicant met with us several times and he brought the height down and he changed this material here and so on. I

would like to say that I agree with you (I personally don't care for the specific material selection), but the architect did build consensus through meetings with the community and with the commission, which allowed the project to get approved.

Mr. Abgott: To me, in that instance, my decision would have been based on how the materials were differentiated. That designer and client made a choice of material and, to me, the ARB does not conduct a review by saying: "I do not like that material." Unless they have something documentable going back to their own standards for objecting to that material, that is the kind of thing that an ARB has to let go of in the design review process.

QUESTION: Is there a way to make design standards more specific?

Mr. Abgott: I believe that different design criteria will predominate depending on the specific site under review. This building we are in is set back from the street and falls under a whole bunch of different criteria. The building on the corner of Charlotte and Caroline Street is not a building I would design myself, but it met the criteria and it makes this corner. I was actually on the ARB during the review of that design and the fact that it was a corner site was incredibly important to me during our review. Scale in the middle of the block is a little less important than it is on a corner, from the pedestrian perspective. Think of Wall Street. It does not really matter if you are walking around a 20-story building or a 40-story building. You cannot tell the difference from the pedestrian aspect. So some things became more important because it was on a corner. Setback in the middle of the block has got to be number one. If you do not

use the same setback in the middle of the block it has to be very deliberate because it will stand out. As far as specificity of standards, I do not think you can make them anymore specific. I think they are deliberately adaptable.

QUESTION: Where is the line beyond which new design is no longer compatible with historic buildings?

Mr. Abgott: There is no line; the line could be anywhere. I want new buildings to look like new buildings and I do not want to be the only one to recognize them because I am a trained architect and architectural historian. It should not be a specialized knowledge to be able to determine a new building. You can use traditional materials and differentiate the building in other ways. If you build a Federal townhouse and sheath it in stainless steel, then you have something totally different. I guess what people want most is to maintain some kind of context. It is not changing all those elements, but changing any one of them that can lead to compatibility.

Ms. Sadler: I thought I was alluding to the questions I had during this morning's lawyer panel. Each group of commissioners is going to have their own personalities and hopefully those commissioners can develop a team attitude. There can be disagreement within the commission and consensus can still be developed. There is no line drawn except by the nature of the consensus that has to be built among the review board or commission members. Our commission right now would accept a very contemporary infill project as well as a traditional one. As long as it met the criteria outlined by the Secretary of the Interior's Standards and met our guidelines. I think the critical thing is that the review board has the ability to create a con-

sensus and allow for disagreement on the team at the same time.

QUESTION: I think your example (VCU's Brand Center) contains too many features that are not compatible with the historic setting.

Ms. Sadler: Richmond, like Fredericksburg, has a great deal of variety in its streetscape. Walking down Caroline Street I was just astounded at the variety of both commercial and residential material. Where that infill project is, on the edge, well actually at the seam of a residential and a commercial area, there is a real mix of brick, metal, glass, stone, concrete, modern, and revival elements. The infill project actually hooked up to a very utilitarian warehouse building. You have an area where there is a visible mix of styles, materials and building types. I do not see that as disturbing. Because there is a huge variety of material in the immediate vicinity, it does not denigrate or cause any problems in my mind.

QUESTION: How does public comment fit in to the creative process?

Ms. Sadler: Our commission is reviewing a gigantic project going on at the edge of the St. John's Church Historic District. It is one of the oldest districts in Richmond. This project, although it is on less than one acre, is going to result in the construction of 33 units that are connected. As modeled, it looks like a very suburban apartment complex versus an urban complex of detached townhouse. The public in that neighborhood have come out in force to protest this project. The project happens to be the one where the developer, before we made our decision, stated that she was getting a good lawyer. The public input was very significant and led us to form a sub-committee, which

included members of the ARB and the neighborhood, which had varying opinions. We tried to form a balanced committee that could consider the merits of this application. We specifically said our design review would go according to the guidelines. The public's point of view, I think, is critical to get a sense of the neighborhood's greatest concerns. After all, they are the ones who live in the vicinity.

Mr. Abgott: Yes, I agree with Mimi one hundred percent. That kind of public input is critical because they are the ones who live in the neighborhood. The only caveat I have to that is that there is often a lot of public comment that something should not be approved, such as a certain material. A lot of people get upset about things that are not something that the ARB reviews. So you have to make sure you are not swayed by input from the public for something that is not within the ARB's purview.





MATERIALS: BEYOND BRICKS AND CLAPBOARD

MODERATOR: **Kenny Johnson**

When the ARB is reviewing a new project versus an existing one there is always going to be a consideration of new products. If it is new construction, you are going to allow more new materials to come in and let the building be a representation of its time and place.

PARTICIPANTS

Jay Holloway is a graduate of the University of Mary Washington, with a degree in Historic Preservation. He is also a Fredericksburg contractor with his own company, Habalis Construction, which specializes in historic properties.

Camden Whitehead is a Richmond architect who has been on the Faculty of the School of the Arts at Virginia Commonwealth University since 1986. He teaches in the Department of Interior Design. He received his BA from Averett College and his Masters of Architecture from Virginia Tech. Mr. Whitehead's practice as an architect is characterized by work that is sensitive to the site, develops a strong conceptual link between site and program, and demonstrates a thoughtful, responsible use of materials. He partners with his wife in Sadler & Whitehead

Architects PLC, an architectural firm performing small scale design work and historic consultation to private developers and public agencies. Mr. Whitehead has served on the City of Richmond's Public Arts Commission, VCU's Architecture Review Committee, and as Chair of the City's Urban Design Committee.

MODERN PRODUCTS IN HISTORIC DISTRICTS

Jay Holloway

I did not know what the situation was going to be today when I came in. It seems like there is a high level of knowledge here about the modern products people are using like AZEK and hardi-plank. A couple of years ago, that did not seem to be the case. I had a few cases before the ARB and felt there was some inconsistency about how they were addressing some of the new materials that we were proposing to use.

I believe that a lot of these modern products have a place in the historic district, although not necessarily on a historic home. It is important to note that there is a big difference between historic properties. A big beautiful brick building

that has historical value or is a great example of architecture, I consider that to be a historic building. A regular old building, even if it is 150 years old that never was a standout I do not consider historic. You have historic property, old property, additions to historic and old properties, and new construction in the historic district. Some of these modern materials I would never in my wildest dreams propose for use on a historic structure and maybe not even an old structure, but I might propose them for an addition to a historic structure. If someone said they wanted to pull the Dutch clapboards off their house I would say, you will never get that through the ARB, good luck. I am a big fan of building additions on historic structures. I love modern architecture and am not afraid to see it attached to a historic structure, as long as it is done appropriately.

40 | You have to use context when you are evaluating the introduction of modern materials to a historic structure. I try to evaluate several criteria when I am looking to build an addition. I asked an architect about evaluating material. Her advice was that it was all about the integrity of the material. Just because something like hardi-plank is a cement board product (and is a fake, wood substitute) it has integrity because if you install it properly it will last a hundred years while something like vinyl siding will not last very long at all. You can paint hardi-plank and maintain it and it will last. Some products, no matter how well they are maintained, will rot and fall apart. I think the integrity of a product matters and while I am not saying to put hardi-plank on a historic structure I think it can be used next door to a historic structure, on new construction, in a historic neighborhood. I would recommend using hardi-plank before using wood unless the client is thinking really high end wood like redwood, cedar, mahogany. Cypress siding, even when

installed properly does not last. In just four years when you go back to do maintenance, you find the wood falling apart. This is what led me to think more about the materials I used.

As a contractor I meet with my client usually before the ARB review. Sometimes they have an architect and have gone to the ARB, but I always look at the economic feasibility of the project. I do have concerns where you have the historic district's very wealthy citizens, with houses worth well in excess of a million dollars. In other parts of the district, you have struggling communities that include retirees on fixed incomes and young couples who want to live downtown. I don't think it is right if they buy a house in the historic district and later find the ARB will not let them make the changes they want. I just do not think it is right to tell someone they have to put a \$50,000 slate roof on their house whether they want to or not and if you cannot afford it, get out. I am a builder and I wanted to live downtown but I chose to live somewhere else.

Another criterion I take into consideration when I am evaluating material, and this goes to integrity, is environmental impact. It is a bad deal if you use cheap material and fifteen years later you are ripping it off and throwing it in the landfill. That is why a product like AZEK is worth considering. Although PVC is not a good environmental product (it is a plastic, it's heavy, and it is oil based), but once you put it on its never going anywhere. The domestic hardwoods have gotten so bad in America that we now use a lot of tropical woods like mahogany, which are not sustainably harvested. Yellow pine, if it is pressure treated, cannot be painted. If it is not pressure treated, it will rot. We are seeing certain products that are just not holding up. Wood is going downhill because craftsmanship is going downhill. That is how I evaluate products—I try to keep an open mind and try to do what is appropriate for the situation.

I will start this off with roofing. I do not have a preferred list of roofing products, but there is a range of new products out there. In Fredericksburg, you have Buckingham slate, metal, cedar shake and cedar shingle roofing. Those are the best examples of roofing downtown.

Architectural asphalt shingles are appropriate in some cases, like on an addition that cannot be seen. In some cases rubber is appropriate, on a flat roof that cannot be seen. One caveat is that when people put the pre-painted standing seam material on, it is important that they specify a matte finish. It is also important to make sure your hips and ridges do not get capped. There are certain things that the builder has no control over. They can monitor a roofers craftsmanship to a certain level, but for the most part the work is out of the hands of your builder.

Modern architecture has its place because when you are building in a historic district who is to say that modern architecture will not someday be a contributing structure. It could even be a contributing structure right off the bat because of architectural significance. A new house or an addition, if built from old materials, is a fake.

I mentioned AZEK. AZEK can be milled, it can be sawed, and you can put a bead on it. I don't use it as much I use mahogany or red cedar, when we work on historic structures, but we have covered dormers, which get very little maintenance, with AZEK. You can mill and fabricate the pieces just like they were wood, paint it and it will hold the paint for twenty years. I am a fan of AZEK.

A new product that can be milled, sawn, or routed should be considered. Once you paint a product that can be milled, sawn, or routed unless you take a knife and cut it open you cannot tell the difference between it and wood. I think that there is an argument that some new products can be as good as wood. I love wood as much as any other carpenter, and if I had my druthers

we would use sawn wood for everything, but you cannot find good quality sawn wood.

Not all new products are good. There is product that is really bad that is called liquid siding. It is a spray-on product that goes on similar to paint. The literature says you never have to paint again. The problem is that it seals up everything and the house cannot breath and eventually rots from the inside.

Another controversial item is replacement windows. A lot of preservationists are hardcore opposed to replacement windows. In a lot of cases I do not share their sentiments. We restore a lot of historic windows, and it is very expensive because it is intensive high end labor that is very time consuming. In certain cases I think a replacement sash is acceptable even in a historic building. Not every building is going to be museum quality restoration. I come here as contractor expressing the homeowner's point of view rather than the preservationist point of view, although I consider myself a preservationist. I think that replacement windows, and I know that a lot of ARBs require true divided lites which is where each pane is a separate pane. The problem with that is that you have to have about an inch and a half wide muntin to support the separate panes.

Shutters. We do a lot of shutters. I think vinyl shutters are never appropriate for the historic district. They have just come out with an AZEK shutter and again I want to argue that because AZEK will not fade for fifteen to twenty years and wood will fade in five, if someone wants to put up PVC shutters I will not argue with them. I believe there has to be room for the customer.

I have used fiberglass columns. Whenever we make ARB presentations we use fiberglass as a matter of practice, unless I am reusing a wood column. Fiberglass columns are strong, readily available, inexpensive, and when they are

painted you literally cannot tell the difference. If I were to use a wood column it would have to be special ordered, they have to be finger jointed unless you get a column that costs about \$1,000 a column. You can take a simple course on how to build columns for \$5,000 to \$8,000.

Historic preservation needs to include new materials because that is often what is reasonably available.

CONSIDERING MATERIALS

Camden Whitehead

I think a lot of you know more than I do about building materials and codes, so I am going to speak more reflectively about materials and a structure for ways of considering them. Before I get started I jotted down some notes, some of which have more or less to do with what I am talking about. Walter Erwin this morning talked about the slowness of changes to the Building Code and that often it takes two to three years for change to occur, well that is fast for me. Designing and building is slow and thankfully deliberate. Every time that we try to speed up, we usually do so at the expense of the environment.

A set of guidelines is, in a way, a set of values. These two images are from a book called *Material World* that was done five or ten years ago by National Geographic. National Geographic hired photographers all over the world who asked families to bring everything they own out in front of their homes and created a portrait of each family with their possessions. This is a picture of a family in Texas and this is a family in India. The family in India had a three hundred



square foot house and the family in Texas had an eighteen hundred square foot house, modest by Texas standards I am sure. I often glance through the book because I think ultimately that our possessions are a record of our values. So I think you have to keep that in mind as we focus on building materials.

Many of the buildings that we consider timeless are able to engage their materials in a constant dialogue with the world of ideas by providing simultaneous varied readings of their presence. We read them as materials and we simultaneously read their participation in a greater world of ideas. Ideas are what make architecture different from just rudimentary shelter.

Materials are the cue. When you look at a building, you are not simply looking at it and saying oh that's wood, that's brick. It would be

IDEAS → CONCEPTS → MANIFESTATIONS

Intangible	Tangible
Immaterial	Material
General	Specific
Timeless	Momentary

nice if it were that easy. We are looking at the interaction of materials and form and space and light and craftsmanship and many other factors. When these factors interact in a fruitful way, we have architecture. Dutch Architect Herman Hertzberger referred to this as “bivalence;” multiple readings from a single experience.

Ideas are intangible; they are not material. Ideas are general and the good ideas are timeless. As opposed to the intangible world of ideas, the world we live in is tangible. It is material—very specific. When I have a piece of wood, it might be old growth timber. It might be a piece of knotty pine. The choice of old growth versus knotty pine is very specific. The presence of old growth lumber in a building carries different meaning than the presence of knotty pine. I think it is important to keep the specificity of materials in mind. Their specificity is momentary. They mark a moment.

This is the Exeter Library that Louis Kahn designed for Exeter Academy in New Hampshire. Here the materials are wood, brick, and concrete. Louis Kahn bought the brick from a brick company in Exeter that had gone out of business. The company had supplied the brick for the rest of the campus. He obviously uses it in a very different form than the rest of Exeter’s Georgian campus. He bought a million bricks for this building. What Kahn ultimately did was look at material and say what form does it want to be.

If you notice in this image, a wonderful thing happens in this building. The openings are wider as the building goes up. At the top the openings are much wider, so that by the time we get to the top more light comes in. So this is a remarkable structure that talks to light, but in the language of bricks. A very different form than the campus it is part of, but quite wonderful in terms of saying: Here is the same brick, but used in the late twentieth century. It is quite different, but somehow wonderfully compatible, even though formally it is not what you expect to see.

You can see, as a scale giver, that the masonry openings extend for two floors. The lower infill is wood. That is where the study carrels are. Study carrels ring the library. Each student at Exeter receives a study carrel made out of wood. That is the student’s house on campus; that is his individual space. He [Kahn] talked a lot about the general light that comes in above the carrels and the very specific light that illuminates the carrels below. He made shutters for the individual study carrels so the student could choose to look out the window or not; could choose to allow the light or not. If you look at the inside of the building, there is an atrium space that goes up the seven floors of the building. It is concrete. What he did was make the area of the bookcases out of concrete, a modern material, to take the tremendous load generated by books



*Exeter Library, Exeter, New Hampshire
Louis I. Kahn, Architect*



*Exeter Library, Exeter, New Hampshire
Louis I. Kahn, Architect*



*Exeter Library, Exeter, New Hampshire
Louis I. Kahn, Architect*



*The Lawn at the University of Virginia, Charlottesville,
Virginia. Thomas Jefferson, Architect.*

stacked on top of each other. So he made this concrete building for the bookshelves and then, conceptually, he put brick veneer on them. But the brick veneer was seventeen feet wide and that was the reading space. So instead of just saying, okay I have this brick on the outside and have to make it work with what is going on around it, I have to think of what is generally thought of as a four inch thickness and make it seventeen feet wide so you can have individual study tables and group study tables occupy the brick building that wraps around the concrete building. Again, in that sense, he took the notion of a veneer cladding for a building and

made it into something wonderful. The genius is that in between the brick building and concrete building there is space for mechanical systems. All through that space, which is seven stories high and unobstructed, are HVAC and plumbing and mechanical systems. Kahn said: These things need a place in the building so I need to make a space for them, instead of saying: I am going to design this building and at the end figure out a space for all this stuff. It is a wonderful notion to let materials inspire a form that has a conversation with the program and the site.



Hereford College, University of Virginia, Charlottesville Virginia. Todd Williams/Billie Tsien, Architects.

Most of you here probably know The Lawn at the University of Virginia. What Thomas Jefferson did was use relatively simple materials; brick, metal, and wood. The question is how this simple palette should be combined with the given site to express the role of education in a democratic society? The result is what is now a world heritage site, one of a small number of sacred places, and a model for campuses around the globe.

The image on the upper left are of what was originally called The New College and is now named Hereford College also at the University of VA. These images are of the site plan, and a view looking up the hill. When you go to UVA there are many buildings that seek to reproduce the forms and details of The Lawn. They are synthetic substitutes for it. Hereford College is one of the first projects that actually has a conversation with The Lawn rather than sitting in abeyance to it. It has a vastly different site on a hillside two miles from the lawn. It has a colonnade, but the colonnade is compressed as is appropriate on this hilly site and where programmatically the colonnade accomplishes a different purpose. It has an engagement with

the site. Those dormitory buildings, those five segments that you see in the image act as retaining walls as the complex steps down the hill. It has a focal point and an anchor at the bottom. The anchor is the dining hall, the center of social activity for this residential college; different obviously from The Lawn or in Exeter where the library was the focal point. A library was not in the program, so Todd Williams and Billie Tsien had to look and say: What is the part of the program that is going to be the anchor for this place. At the top of the hill is the director's house. With a reduced language of materials, appropriate to its day, Hereford College does not simply reenact a conversation about education in a democratic society. It engages and extends the conversation that Jefferson started two hundred plus years ago.

It is hard to see in this center image, but there are little white "tails" just under the coping at the top of the left hand wing on that center image. When I first went to visit the site I looked at that and said: What is that? When you go closer, what you see are little pieces of rope that are the wicks for the weep holes. They direct moisture out of the wall. Rather than



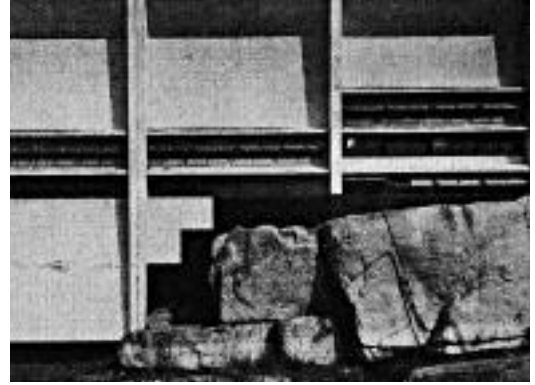
Mario Botta, Lugano, CH



Frank Lloyd Wright, Chicago, Illinois

cutting the wicks off flush against the wall, as is normally done, Williams and Tsien decided to leave them out about an inch and a half and every weep has a piece of rope that grows out of the material and the means of construction, directing water out of the wall. They actually work a lot better because they are extended out. Weep holes were not used in the solid masonry construction of Jefferson's day, but are critical in the insulated, cavity wall construction of today. Rather than introducing ornament that replicated Jefferson's masonry, Williams and Tsien more appropriately generated ornament that was of the materials and construction methods of the day.

So we read these places essentially by their materials. That is how we first experience them.



Alvar Aalto, Sunila, Finland

We touch them, we visually see them, but then we also hopefully find in them something more. A material, its origin, its manufacture and its site have the opportunity to contribute to a sense of place and lend meaning to a project. Materials are specific. The specificity of materials to a project is probably more important than whether they are synthetic or manmade.

The specificity ultimately provides clarity and clarity enables a less confused link between a material and its associated ideas. Historically the specificity of materials has been the most obvious connection of a building to its place or locality.

On the left is a bank building done by Mario Botta in Lugano, Switzerland. On the upper right is just a detail of a factory building that Alvar Aalto did in Finland, and on the lower left is a Frank Lloyd Wright building in Chicago. Wright's and Botta's projects are brick, Aalto's project is concrete. Botta took advantage of the fact that Lugano is in the Italian speaking province of Switzerland. Northern Italy makes a lot of brick, Switzerland quarries granite.

Botta took advantage of that in-betweeness and utilized the brick from Northern Italy and the craftsmen from Switzerland and was able to build this highly detailed structure. Each of those windows has this wonderful detail where



Humble Shared Arch, Fredericksburg

when it rains water falls in the cavity; it runs down these corbelled stair steps into a trough and then it is guided out away from the face of the building by a small scupper. Botta addresses a fundamental need of a building, preventing moisture from running down the face of the building and eroding the mortar out of the brick. In doing so he generates all the ornament of the building with just that simple need, and in the choice of the material saying: I have the craftsmen that can do this and I have the material available within thirty minutes so why not pull those things together and pull this off. Materials again are the cue to understand the expression of a more universal idea.

In Aalto's industrial project, he chose to use concrete, a plastic material. In this factory building he made a joint between a natural stone outcropping and the rest of the concrete structure. Aalto used site cast concrete (very specific to the place) to connect the industrial pre-cast concrete building system, to the natural



Arch—not or curved beam, Charlottesville

stone outcropping, producing a rational, seamless connection between the natural site and the man-made structure.

You all are probably more familiar with Wright's work and what we have come to call the Prairie Style. Throughout his career, Wright sought to express "Organic Architecture." More than simply making the building look like the site, Wright sought to make the building part of the site. The plains of the Midwest generate a horizontal experience. In the Robie House, Wright chose Roman brick because of their horizontal orientation. But he went further. The horizontal joints in the masonry are raked, producing strong horizontal shadow lines at each course. The vertical joints are flush using mortar that matches the brick color and effectively eliminating the vertical joints. The result is a planar masonry wall with a horizontal orientation that reads as part of the land rather than dominating the land.



Exuberant Brick, Fredericksburg



Frustrated Stone, Fredericksburg

How many of you know where the bricks in older Fredericksburg buildings were made? I would suspect many of you do. How many of you know where Hardie-Planks or vinyl siding is manufactured? You know where the slate for Fredericksburg's roofs was quarried? What about the asphalt shingles? This understanding of where building products come from is one of the most immediate steps to understanding how buildings are made and what they mean; how to care for them and wanting to care for them. This selective specificity of materials has been the most obvious connection of a building to its place or locality.

If materials are the cues for connecting us to both the sensual and the rational content embedded in a project, then their authenticity is important. Certain materials have inherent characteristics that in the hands of a skillful designer or craftsman will intrigue us or surprise us. Jerome Brunner, a psychologist, who studied

creativity, said the hallmark of creative enterprise is what he called the effective surprise. On the one hand, you think of that as the punch line of a joke, but that does not work, because a one-liner cannot be complex or timeless. So I think we have to start thinking about this notion of creative enterprise and the effect of surprise has to be something that you can return to again and again. What are the things about the places you go to that surprise you every time you go?

Bricks, formed into a structural arch, are a continuing joy to experience, performing their task gracefully because their task fits their capability in an unexpected way. The weight of the brick in juxtaposition to the lightness of an arch sets up a healthy dialogue between the part and the whole; between gravity and lightness.

We came upon a metal fence crafted in a way that each picket communicates both the strength and malleability of steel or iron. The details and marks reveal aspects of its manufac-



Noble fence of ideas

ture. Its edges and the small cast pineapple at the top of each picket speak to the fence's dual role of both welcome and security.

Then farther along the fencerow is a newer section of fence. At first glance the same but in a slightly different form; still black, like the iron that we just touched. Pickets rounded over at the top to form the next. We move closer and we touch this newcomer. The movement between the parts creates a rattle not a ring. The pickets are clearly hollow and of a softer, thin walled metal, larger in section and less graceful in its form though much lighter by weight. Then we notice at the top where the metal curves there is a convex shape that indicates that the material did not resist the machine that formed it. Its working is uniform, the tube offered little resistance when it was bent. It has the same detail in its curve as my aluminum beach chair. The



Fence of imitation and expediency

original fence engaged with a simultaneous sense of both welcome and security. The newer fence disappointed with imitation and expediency; an artificial experience.

The challenge for the designer and the maker is to create a similar sense of engagement with lighter more malleable materials. The new fence might not be about welcome and security but about other ideas that are embedded in the new material and the need to mark an edge.

The necessity for a "style" with its incumbent formal characteristics adds another design constraint. Personally, I see style as part of the larger context of the historical site. Previous styles were responses to a complex set of issues of their day. The forms that we seek to invent in each new project should be a similar response today. Many of the issues (gravity, rain, cold and heat, the available materials and craftsmen and

SENSUAL / RATIONALE

EFFECTIVE SURPRISE

- One liners don't work
 - Cliches
 - Rearrangements
 - Deformations
- effectively surprises over time
- the outcome of complex urban forces acting on a place
- sensual cues to an intellectual engagement
- a part of something larger
- Connection to place

A SET OF CRITERIA

- Context
- Form
- Space
- Light
- Means of Construction
- Economy of Means
- Structure
- Materials
- Program
- Meaning

50

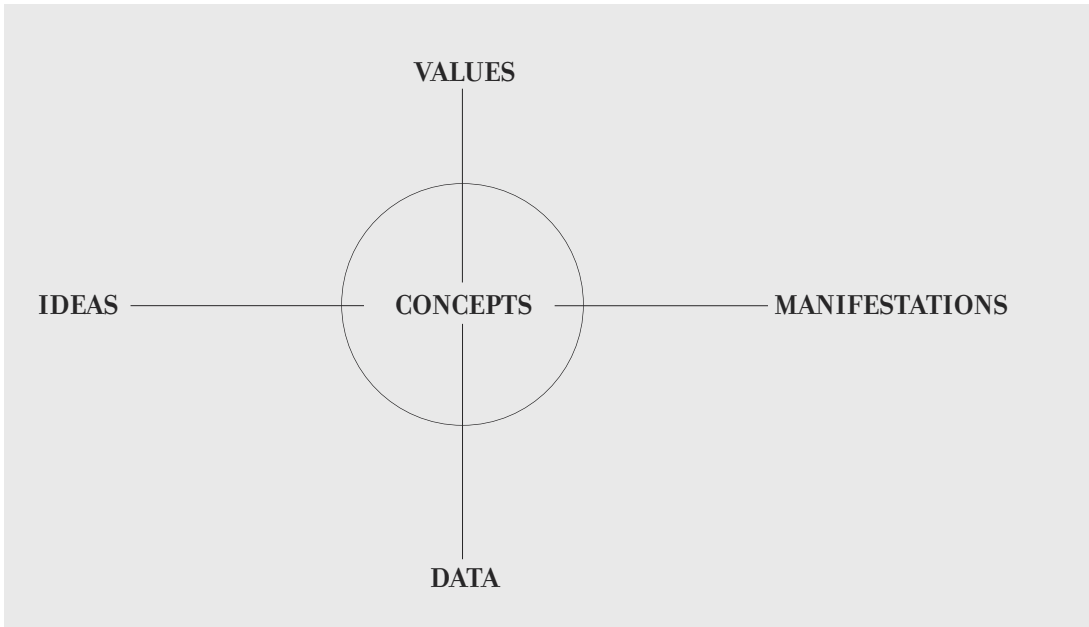
the physical context) have not changed substantially so on a good day a rational contemporary design response will express our progress and not our decay.

I would like to leave you with two diagrams. One, we experience buildings in two ways, a sensual experience and a rational experience. As I said before, what we are looking for in a sensual response is "effective surprise," and again one-liners do not work. Clichés, whether in a building form or in the use of an expected material, simply do not work in architecture. Sometimes in newer buildings you will see, either in a façade or in plan, angles that relate to neither the program nor the site. These are design actions imposed on the project and end up being, essentially geometric gyrations or one-liners.

So how do you effectively surprise us over time, and how do you realize the effect that complex forces have on a place? What are those forces? The list shown provides a rational check for a sensual response to our experiences of the

environment. I am often in places that emotionally move me. I think, "Oh this is nice" and it is purely sensual. As an architect I need to understand that sensual experience and seek rational criteria that allow me to make my experience useful to me. What I try to do is say: "Okay, how does this experience move me?" I think if we look at materials in terms of a rational list of issues that shape the environment that we can begin to ask the tough questions about materials and their impact on our experience. Those are the questions ARBs often avoid, because they are the tough questions.

The issue of economy was raised earlier. If economy is truly not an issue in an ARB decision, then their answer is simple, you use old growth wood, you use brick, you use glass, you use metal. But the fact that we talk about and that we allow other materials to be used is recognition that economy is an important factor. Then we have to say, how do we answer that tough question? How does the ARB address a very real situation? That is critical. You can work your



way down that entire list. If you said okay how should materials deal with context? How should they deal with form? How should they deal with space? Then I think you start getting at a much more complex set of solutions. Ultimately the question is: Are the materials serving an appropriate role in manifesting ideas?

Going back to my original diagram, I would like to add another axis with two new poles. As designers and architects and builders, we deal with manifesting ideas. How do we deal with it? With information, with facts, with materials and with values. I am not sure who mentioned it earlier but values are important and as an ARB the values are really what you are trying to assess. What are the values of this community and how then do we put them into a form that both allows change and protects the environment?

Thank you very much for the opportunity. I wish you well in your efforts.

Mr. Nelson thanked the presenters and the participants and closed the proceedings.





VIRGINIA MODEL HISTORIC DISTRICT ORDINANCE, VIRGINIA MUNICIPAL LEAGUE INSURANCE PROGRAM

NOVEMBER 15, 2005

1.1 STATEMENT OF INTENT

The intent of this section is to implement the Comprehensive Plan goal of protecting our natural, scenic and historic resources and provide a means to recognize and protect the historic, architectural, cultural, and artistic heritage of the community, and to promote and protect the health, safety, recreational, educational, economical and general welfare of the community through the identification, preservation and enhancement of buildings, structures, sites, districts, objects, neighborhoods, landscapes, places and areas which have special historical, cultural, artistic, architectural or archaeological significance as provided by Section 15.2-2306 of the Code of Virginia, as amended, hereinafter the "Virginia Code".

It is hereby recognized that the deterioration, destruction or alteration of said buildings, structures, sites, districts, objects, landscapes, places and areas may cause the permanent loss of unique resources which are of great value to current and future generations of our community, the Commonwealth of Virginia, and the nation, and that the special controls and incentives are warranted to ensure that such losses are avoided.

The purposes for establishing a historic district zoning are:

1. To protect the historic significance and integrity of the properties within the historic district(s) which are or may be recognized for having association with historic events that have made a significant contribution to the broad patterns of our history; or have association with significant persons; or possess distinctive characteristics of a type, period, or method of construction or that represent the work of a master, or that possess high artistic values, or that represent a significant and distinguishable entity whose components may lack individual distinction; or have the potential to yield information important to prehistory or history.
2. To preserve and improve the quality of life and sense of place for residents by protecting familiar and treasured tangible, visual elements in the area.
3. To promote tourism and other economic benefits by protecting historical, architectural, archaeological and cultural resources, including historic landscapes attractive to visitors and thereby supporting local business and industry.

4. To stabilize and improve property values by providing incentives for the upkeep and rehabilitation of significant older buildings and structures and encourage appropriate land use planning and development that will enhance both the economic viability and historic character of the district.
5. To educate residents, students and tourists about the local cultural and historic heritage as embodied in the historic district(s) through the preservation of our architectural and archaeological past that demonstrates the social and artistic development pattern of our predecessors.
6. To promote local historic preservation efforts and to encourage the identification and nomination by their owners of eligible individual historic properties to the National Register of Historic Places and the Virginia Landmarks Register.
7. The promotion of harmony of style, geographical context, form, color, proportion, scale, height, width, spacing, setback, orientation, rhythm, traditional quality, appearance, texture, finish and material between buildings of historic design and those of more modern design.
8. To develop the historic areas, not in a vacuum, but as a vital area in which each succeeding generation may build with the quality and sensitivity of past generations.
9. Encourage sound stewardship and foster a sense of pride in heritage resources.

1.2 DEFINITIONS RELATED TO HISTORIC ZONING

Aggrieved Person—A person with an immediate, pecuniary and substantial interest in an action taken by the Zoning Administrator or the ARB under this Ordinance, as opposed to a remote or indirect interest.

Alteration—Any change, modification or addition to the form, materials, workmanship, design, appearance, texture or details of all or a part of the exterior of any building, structure, site or object other than normal repair, maintenance, and landscaping.

Architectural Significance—Importance of a property based on physical aspects of its design, materials, form, style or workmanship and recognized by National Register Criterion No. 3.

Area of Significance—The aspect of historic development in which a property made contributions for which it meets the National Register Criteria, such as architecture, agriculture, commerce, community planning and development, politics/government, religion, etc.

Association—Link of an historic property with an historic event, activity or person, and the quality of integrity through which an historic property is linked to a particular past time and place.

Building—A resource created principally to shelter any form of human activity, including, but not limited to, a house, barn, meat house, bank, store, church, town hall, courthouse, jail, library, garage, or hotel.

Building Official—The person designated by the locality to administer and enforce the Virginia Statewide Building Code.

Certificate of Appropriateness (COA)—The approval statement signed by the Chairman of the Architectural Review Board or designated

staff member which certifies the appropriateness of a particular request for the construction, alteration, reconstruction, repair, rehabilitation, restoration, demolition, or relocation of all or part of any building, structure, site or object within a historic district, subject to the issuance of all other regional permits needed for the matter sought to be accomplished.

Contributing Building—A building, which has historic significance by reason of type, period, design, style, workmanship, form, materials, architectural details, or historic association to a significant event or person or has or may yield information important to prehistory or history.

Contributing Properties—Those parcels of land containing a contributing building, structure, site or object adding to its historic significance and so designated on the inventory map and inventory of contributing properties and non-contributing properties which are adopted as a part of this Ordinance. The designated contributing properties, which may or may not be individually listed in the Virginia Landmarks Register or National Register of Historic Places, are those properties which by reason of type, period, design, style, workmanship, form, materials, architectural details, or have historic association to a significant event or person, or have or may yield information important to prehistory or history and relation to surrounding properties contribute favorably to the general character of the part of the Historic District in which they are located.

Contributing Resource—A building, site, structure, district or object adding to the historic associations, historic architectural qualities or archaeological values for which a property is significant because it was present during the period of significance, relates to the documented significance of the property and possesses historic integrity or is capable of

yielding important information about the period; or it independently meets the National Register Criteria.

Corridor District—A geographical area contiguous to arterial streets or highways on a significant route of tourist access to the locality or to designated historic landmarks buildings, structures or districts therein or in a contiguous locality determined by the Governing Body to be an historic district.

Cultural Landscape—A geographic area, including both cultural and natural features, associated with an event, person, activity, or design style that is significant in the history of the locality, state or the nation. Historic sites, landscapes designed by a landscape architect, master gardener, architect or horticulturalist and vernacular landscapes developed by human use and activities are types of cultural landscapes.

Design—A quality of integrity applying to the elements that create the physical form, plan, space, structure and style of a property.

District— One of the five resource types, being a concentration, linkage or continuity of sites, buildings, structures or objects united historically or aesthetically by plan or physical development.

Eligibility— The ability of a property to meet the National Register Criteria.

Feeling—A quality of integrity through which a historic property evokes the aesthetic or historic sense of past time and place.

Historic Area—An area containing one or more buildings or places in which historic events occurred or having special public value because of notable architectural, archaeological or other features relating to the cultural or artistic heritage of the community, of such significance as to warrant conservation and preservation.

Historic Context— An organizing construct for interpreting history that groups information

about historic properties which share a common theme, common geographical location and common time period. The development of historic contexts is a foundation for decisions about the planning, identification, evaluation, registration and treatment of historic properties, based upon comparative significance.

Historic District – Any geographical area delineated by the governing body from time to time and consisting of public or private property, containing a significant concentration, linkage or continuity of contributing properties containing contributing building(s), structure(s), site(s) or object(s), united historically or aesthetically by plan or physical development and having a common historical, architectural, archaeological or cultural heritage being of such interest and significance as to warrant conservation and preservation.

Historic Landmark – A building, structure, district, site or object determined to have historical, architectural or archaeological statewide or national significance listed on the Virginia Landmarks Register.

Historic Property – Any prehistoric or historic building, district, site, structure or object.

Historic Significance – Importance for which a property has been evaluated and found to meet the National Register Criteria.

Integrity – The authenticity of a property's historic identity, evidenced by the survival of physical characteristics that existed during the property's historic or prehistoric period.

Level of Significance – The geographical level—local, state or national—at which a historic property has been evaluated and found to be significant.

Local Significance – The importance of a property to the history of its community, this locality, general vicinity or area.

Location – A quality of integrity retained by a historic property existing in the same place as it did during the period of significance.

Materials – A quality of integrity applying to the physical elements that were combined or deposited in a particular pattern or configuration to form a historic property.

National Historic Landmark (NHL) – An historic property evaluated and found to have significance at the national level and designated as such by the Secretary of the Interior.

National Register Criteria – The established criteria for evaluating the eligibility of properties for inclusion in the National Register of Historic Places (which is the same criteria used for inclusion in the Virginia Landmarks Register). Specifically, the quality of significance in American history, architecture, archaeology, engineering and culture is present in districts, sites, buildings, structures and objects that possess integrity of location, design, setting, materials, workmanship, feeling and association, and:

1. That are associated with events that have made a significant contribution to the broad patterns of our history; or
2. That are associated with the lives of persons significant in our past; or
3. That embody the distinctive characteristics of a type, period, or method of construction or that represent the work of a master, or that possess high artistic values, or that represent a significant and distinguishable entity whose components may lack individual distinction; or
4. That have yielded, or may be likely to yield, information important in prehistory or history.

National Register of Historic Places – The official federal list of districts, sites, buildings, structures and objects significant in American

history, architecture, archaeology, engineering or culture.

National Significance – The importance of a property to the history of the United States as a nation.

Non-Contributing Building – A building that does not add to the historic architectural qualities, historic associations or archaeological values for which a property is significant because it was not present during the period of significance or does not relate to the documented significance of the district; or due to alterations, disturbances, additions or other changes, it no longer possesses historic integrity or is capable of yielding important information about the period; or it does not independently meet the National Register Criteria.

Non-Contributing Property – A property that does not add to the historic architectural qualities, historic associations or archaeological values for which a resource is significant because it was not present during the period of significance or does not relate to the documented significance of the district; or due to alterations, disturbances, additions or other changes, it no longer possesses historic integrity or is capable of yielding important information about the period; or it does not independently meet the National Register Criteria.

Non-Contributing Resource – A building, site, structure, district or object that does not add to the historic architectural qualities, historic associations or archaeological values for which a resource is significant because it was not present during the period of significance or does not relate to the documented significance of the district; or due to alterations, disturbances, additions or other changes, it no longer possesses historic integrity or is capable of yielding important information about the period; or it

does not independently meet the National Register Criteria.

Normal Repair and Routine Maintenance –

For the purpose of maintaining the existing condition of the building, structure, site or object, normal repair and routine maintenance involves the repair of existing materials and features with equivalent material through stabilization, consolidation and conservation of historic materials, features and workmanship when the physical condition of these character-defining features has deteriorated. Routine maintenance includes repainting the same or different color, but does not include the initial painting of masonry surfaces on any contributing resource.

Object – The resource term used to distinguish from buildings and structures those constructions, which are primarily artistic in nature, or are relatively small in scale and simply constructed. Although it may be, by nature or design, movable, an object is associated with a specific setting or environment, i.e., sculpture, statuary, monuments, boundary markers, fountains.

Period of Significance – The span of time in which a property attained the significance for which it meets the National Register Criteria.

Preservation – The process of determining what to keep from the present for the future and applying measures to sustain the existing form, integrity, type, style, design, details, workmanship and materials of an historic property.

Work, including preliminary measures to protect and stabilize the property, generally focuses upon the ongoing maintenance and repair of historic materials and features rather than extensive replacement and new construction.

Rehabilitation – The act or process of making possible a compatible use for a property through repair, alterations, and additions while preserv-

ing those portions or features, which convey its historical, cultural, or architectural values.

Resource – Any building, structure, site, district or object that is part of or constitutes a historic property.

Restoration – The act or process of accurately recovering the form, features, character, materials and details of a property and its setting as it appeared at a particular period of time by means of the removal of later work or by the replacement of missing earlier work.

Setting – A quality of integrity applying to the physical environment of an historic property.

Site – One of the five resource types, being the location of a significant event, a prehistoric or historic occupation or activity, or a building or structure, whether standing, ruined or vanished, where the location itself possesses historic, cultural, or archaeological value regardless of the value of any existing or non-existing structure.

Site Improvements – Structural changes to the grounds of a property including the installation or alteration of walls, fences, or structures, paving, regrading, and the installation or removal of major plantings.

State Significance – The importance of a property to the history of the Commonwealth of Virginia.

Structure – One of the five resource types distinguished from a building, being a functional construction made usually for purposes other than creating shelter, including, but not limited to, a gazebo, windmill, communication tower, bridge, canal, roadway, power plant, fence, and silo.

Virginia Landmarks Register (VLR) – The official state of Virginia list of districts, sites, buildings and structures of historical, architectural or archaeological statewide or national significance.

Workmanship – A quality of integrity applying to the physical evidence of the crafts of a particular culture, people or artisan.

1.3 CREATION OF AN ARCHITECTURAL REVIEW BOARD

1.3.1 Creation of the ARB and Membership

For the general purposes of this article and specifically to preserve and protect historic places and areas in the historic district through the control of demolition and relocation of such places and through the regulation of architectural design and uses of buildings, structures, sites and objects in such areas, there is hereby created a board to be known as the “Architectural Review Board” (the “ARB”) to be composed of five (5) voting members. The members of the Architectural Review Board shall be appointed by the governing body.

1.3.2 Terms

Members of the ARB shall be appointed for terms of four (4) years and shall serve at the pleasure of the governing body. Initial appointments shall be for two (2) members for four (4) years and three (3) members for two (2) years, so that terms of office shall be staggered. Members shall serve until their successors are appointed.

1.3.3 Removal of Members

Any member of the ARB may be removed from office by the governing body for neglect of duty, malfeasance, the continued absence from the regular or called meetings of the ARB or ongoing disregard for the positive mission of the Historic District and the ARB, as determined by the governing body.

1.3.4 Compensation

Members of the ARB shall receive such compensation as may be authorized by the governing body, from time to time.

1.3.5 Interests and Qualifications of Members

Members of the Architectural Review Board shall have demonstrated a positive interest in preserving the architectural integrity of the buildings, structures, sites and objects within the designated historic district(s). One (1) member may be selected among the membership of the planning commission. To the extent practicable, at least one (1) member shall be a licensed architect, or have experience in the field of architecture, and one (1) shall be an architectural historian or have substantial background in local, state, or national history or in historic preservation, architecture, archaeology or cultural preservation or in landscape architecture, or shall be a licensed contractor or be employed in the building materials industry.

1.3.6 Training Sessions

Members shall make every effort to attend training sessions periodically sponsored or approved by the Virginia Department of Historic Resources, the Association for the Preservation of Virginia Antiquities, Preservation Virginia, or other organizations, including those arranged by the staff of the Planning Department, that are involved with historic preservation issues, design and review standards or other work of the ARB.

1.3.7 Selection of the Board's Officers

The ARB shall elect from its own membership a chairman and vice-chairman who shall serve

annual terms and may succeed themselves. The local zoning administrator shall serve as administrative staff to the ARB and maintain all records, minutes and files relating to the ARB meetings.

1.3.8 Powers and Duties of the Review Board

1. The ARB shall administer the provisions of this Ordinance in accordance with duties as set forth in each section.
2. The ARB shall develop and recommend to the governing body, as well as periodically review appropriate design guidelines that are consistent with guidelines established herein and the Secretary of the Interior's Standards and Guidelines for Rehabilitation for each such district and which have been approved by the governing body;
3. The ARB may, from time to time, recommend areas for designation as Historic Districts, and additions or deletions to districts;
4. The ARB shall review and approve or deny all applications for Certificates of Appropriateness in any Historic District. Decisions of the board are binding upon applicants, unless and until said decisions are overturned on appeal;
5. Act in an advisory role to other officials and departments of the locality regarding protection of local historic resources;
6. Periodically conduct, or cause to be conducted, a survey of historic resources in the community according to guidelines established by the State Historic Preservation Office;
7. Disseminate information within the locality on historic preservation issues and concerns;
8. Coordinate local preservation efforts with those of local historic and preservation

organizations, the Virginia Department of Historic Resources, and other parties, both public and private;

- 9. Receive and act on public comment;
- 10. Advise owners of historic properties on issues of preservation, as requested;
- 11. Make recommendations to the governing body regarding authorization of plaques to commemorate historic resources;
- 12. Seek out funds to forward the purposes of this ordinance, and to make recommendations to the governing body regarding the use of the funds;
- 13. Investigate and support incentives programs including heritage tourism events and activities;
- 14. Investigate and support heritage education activities.

1.3.9 Power to Adopt Rules of Procedure

The ARB shall be authorized to adopt rules of procedure for the transaction of its business and implementation of the purposes of this Ordinance. The rules of procedure shall not conflict with the provisions of this Ordinance.

1.3.10 Authority to Employ Staff and Consultants

The ARB may employ or contract for such secretaries, clerks, legal counsel, consultants and other technical and clerical services as the ARB may deem necessary for the transaction of its business. The ARB shall have the authority to request the opinion, advice or other aid of any officer, employee, board, bureau or commission of the locality.

1.3.11 Annual Report by Board

The ARB shall submit an annual report of its activities to the governing body.

1.4 CREATION OF HISTORIC DISTRICTS

1.4.1 Inventory of Historic Resources

In accordance with the Virginia Department of Historic Resource’s criteria and guidelines, the ARB shall conduct, or cause to be conducted, a survey of buildings, structures, objects and sites for the purpose of identifying those resources which have historical, architectural, archaeological or cultural significance, and for the purpose of compiling appropriate descriptions and documentation. Upon completion or updating of the inventory, the ARB shall use the survey results to recommend to the governing body the designation of Historic Districts or revisions to existing Historic Districts. In accomplishing the survey and study, the ARB shall place particular emphasis upon evaluating and incorporating the findings of historic, architectural, and archaeological surveys and studies already completed. The resulting new or updated inventory shall be adopted by the ARB and recommended to the governing body for adoption as a part of this ordinance.

1.4.2 Inventory Map of Historic Resources

Based upon the inventory, or any amendment thereto, the ARB shall prepare and recommend for adoption by the governing body, as a part of this Ordinance, an inventory map, hereinafter called the “Inventory Map”. When adopted by the governing body, following the recommendation of the ARB and the Planning Commission, the Inventory Map, and any amendments thereto, shall be a part of this Ordinance and shall be filed with this Ordinance and with the Zoning Map.

1.4.3 Designation of Contributing and Non-Contributing Properties

Buildings, structures, objects or sites designated as properties which contribute to the historic character of the district shall be shown as contributing properties for the purpose of this Ordinance. Contributing properties that are further distinguished with individual listing on the Virginia Landmarks Register and National Register of Historic Places will also be noted. Buildings, structures, sites or objects that do not contribute to the historic district shall be shown as noncontributing properties.

1.4.4 Establishment of, and Amendments to, Historic District Boundaries

The ARB shall propose to the governing body one or more historic districts based upon the inventory and the Inventory Map, or any amendments thereto. Historic Districts so proposed or later modified shall be established as amendments to the Zoning Ordinance. Upon receipt of a proposal, the governing body shall initiate an amendment in compliance with the provisions of the Zoning Ordinance.

1.4.5 Preparation of Report on Proposed Designation

The ARB shall prepare and submit a report to the governing body evaluating the proposal to establish or amend a Historic District. Such report shall identify the Historic District boundaries as well as the historic, architectural, archaeological, or cultural significance of buildings, structures, objects or sites to be protected, and describe present trends, conditions and desirable public objectives for preservation. In addition, such report shall include the following specific information:

1. An analysis of existing structures by period of construction, architectural style, type, form, materials, design, integrity, condition and matters relating to site conditions, such as building location, location of yards and other open spaces, access to interior of lots, and off-street parking provided.
2. A description of individual buildings, structures, sites and objects that add historic significance to a property and premises of substantial public interest, with maps, photographs and other data indicating the public importance of their preservation and the particular features to be preserved. These shall be identified as contributing properties and noted as such in the report.
3. An analysis of the extent and historic significance of identified archaeological sites including general location maps, photographs and other data indicating the public importance of a particular site.
4. The boundaries of the proposed Historic District, or expansion area, and the location of the district core and all contributing properties, including those individually listed on the state and national registers, and non-contributing properties shall be shown on a proposed Map.
5. Recommendations concerning detailed regulations to be applied within the district, to supplement or modify general regulations set forth in this Ordinance and any Guidelines adopted pursuant thereto.

1.4.6 Criteria for Establishing Historic Districts

Criteria for evaluating the merits of a given building, structure, site or object shall be based on architectural features as well as historic associative factors. Certain buildings, structures, objects or areas, although not associated with a

historic personage or event, may be valuable examples of the community's physical and cultural heritage. Buildings, structures, objects and sites of local significance shall be evaluated as well as those of State and National significance, and any structures individually listed upon the National Register of Historic Places or the Virginia Landmarks Register shall be designated upon the community's register as contributing VLR and NRHP properties. In addition, such evaluation shall be based on the following specific matters:

1. The evaluation shall respect the qualities of each architectural and landscape style or type and its geographical context and shall judge a resource's merit on how well it exemplifies the distinguishing characteristics of said style or type. Consideration will be given to:
 - A. Significance of architectural design, period, form, method of construction, character-defining details or representation of a significant distinguishable entity whose components may lack individual distinction.
 - B. Scale, size and/or interrelationships of resources and/or environmental features.
 - C. Significant patterns of development.
 - D. Quality of workmanship.
 - E. Amount of surviving original fabric.
 - F. Original location and/or use.
 - G. Remaining outbuildings or dependencies.
 - H. Surrounding environment, including gardens, landscaping, and walks.
 - I. Aesthetic or artistic quality.
 - J. Original integrity of the resource and its details.
2. It is related to a park, street configuration, open space, hill, body of water, or landscaped grounds of significance in the areas of urban planning or landscape architecture.

3. It is contiguous with a neighborhood, district, building, structure, object or site that meets one or more of the forgoing criteria, and changes to it could impact the neighborhood, district, building, structure, object or site that meet the foregoing criteria.
4. It fosters civic pride in the community's past and enhances the community's attractiveness to visitors.
5. Historical and/or Cultural Significance. Buildings, structures, objects, districts or sites relating to one or more of the following National Register Criteria will be considered historically or culturally valuable:
 - A. Association with historic personage.
 - B. Association with historic event.
 - C. Work of leading architect or master craftsman. (Associative value of Criterion C—architectural significance).
 - D. Site of cultural significance that has or may be likely to yield information important in prehistory or history.

In addition, sole or infrequent surviving building types and structures not historic in themselves but adding to the character of a Historic District need to be considered as potentially deserving preservation.

1.4.7 Boundaries of Historic Districts

1. The boundaries of an historic district shall, in general, be drawn to include areas containing historic landmarks as established by the Virginia Board of Historic Resources, and any other concentration, linkage or continuity of buildings, structures or places in which historic events occurred or having special public value because of notable architectural or other features relating to the cultural or artistic heritage of the community of such significance and integrity as to warrant conservation and preservation. The

district may include either individual buildings or places of such character and a reasonable distance beyond to incorporate the contributing setting, or it may include areas or groupings of resources which have significance relative to their patterns of development or social and economic or architectural interrelationships even though some in the defined area might not possess significant merit when considered alone.

2. Historic District boundaries may also be drawn to include any area of unique architectural value located within designated conservation, rehabilitation or redevelopment districts and land contiguous to arterial streets or highways, as designated under Title 33.1 of the Code of Virginia, 1950, as amended, found by the governing body to be significant routes of tourist access to the locality or to designated historic districts, landmarks, buildings or structures.
3. The boundaries of an historic district shall conform to the boundaries of individual lots of record to the extent possible. Where a street is proposed as an historic district boundary, the edge right-of-way adjoining the district shall be deemed the district boundary.

1.4.8 Existing Zoning Not Affected

The regulation of a Historic District shall be in addition to the regulations of the underlying zoning, and shall be applied so as to overlay and be superimposed on such other zoning districts as permitted by the provisions of this Zoning Ordinance and shown on the official zoning map. Any property lying within a Historic District shall also lie within one or more of such other zoning districts, which shall be known as underlying districts. The regulations of this Historic District Ordinance shall be in addition to the regulations of the underlying zoning district.

1.4.9 Zoning Map Amendment

All historic districts and amendments thereto, shall be designated on the zoning map and approved in compliance with the requirements of the zoning ordinance for zoning map amendments.

1.5 CERTIFICATE OF APPROPRIATENESS

1.5.1 Power to Approve Alterations and New Construction

After the designation of an historic district, no exterior portion of any existing historic landmark, building, structure or object (including, but not limited to, walls, fences, light fixtures, statuary, monuments, steps and pavement, or other appurtenant features) nor any new building, structure, or object, or any type of outdoor advertising sign shall be erected, altered, restored, moved or demolished within such district until after an application for a certificate of appropriateness as to exterior features has been submitted to and approved by the ARB or, on appeal of a decision of the ARB, by the governing body.

1.5.2 Exemptions

Notwithstanding the foregoing, any work under Normal Repair and Routine Maintenance to stabilize, consolidate and conserve historic materials, features and workmanship by strengthening fragile fabric through consolidation, patching, limited splicing in kind or otherwise reinforcing using recognized preservation methods to prevent further deterioration or to partially replace too-decayed parts with in-kind materials in order to correct any deterioration, decay or damage, or to restore as

nearly as practicable to its condition prior to any decay, deterioration or damage shall be exempt from the requirements of a Certificate of Appropriateness.

1.5.3 Limitations on Board Power

to Review

The ARB shall not consider interior arrangements.

1.5.4 Pre-application Conference

Prior to the submission of an application for a certificate of appropriateness, an owner may hold a conference with the chairman of the ARB, the Director of Planning, designated staff, or the Zoning Administrator to discuss and review any proposal for a change in a protected property. The principal objective of this conference shall be to simplify and expedite the formal review process.

1.5.5 Pre-application Review

Any person may request the ARB to review conceptual design proposals for exterior work before submitting a formal application for a certificate of appropriateness. The ARB shall review and discuss the proposal with the applicant and make any necessary recommendations. Such conceptual review shall be advisory only, and shall not be binding on the ARB upon review of a formal application.

1.5.6 Information Required

In consideration of a complete application, the ARB may require any or all of the following information and any other materials as may be deemed necessary for its review:

1. Statement of proposed use and user.
2. Statement of estimated construction time.
3. Photographs and maps showing the existing condition, design, details and location of any existing buildings, structures, objects or

sites and relating proposed use to the surrounding property and/or the corridor on which it is located.

4. Site plan drawings, showing the location of the existing and proposed building and site improvements, including:
 - A. Existing property boundaries, building placement and site configuration, location of parking, pedestrian access, signage, exterior lighting, fencing, buildings, structures and other appurtenant elements.
 - B. Existing topography and proposed grading.
 - C. Relationship to adjacent land uses and any buildings or structures thereupon.
5. Scaled architectural drawings showing plan view and elevations of new planned construction or alterations, including drawings of original building.
6. Proposed building materials including their composition, texture, finish, quality and appearance, including product brochures and specifications.
7. Existing landscape preservation plan, if applicable, and the proposed landscaping and buffer plan.
8. Designs for exterior signage, lighting and graphics, to include description of materials, colors, placement and means of physical support, lettering style and message to be placed on signs.
9. Comprehensive design and material details of doors and windows, ornamentation, including any product specifications.
10. A written statement concerning construction methods to be employed.
11. Samples to show the nature, texture, finish, appearance and color of materials proposed.
12. In the case of a demolition request where structural integrity is at issue, the applicant

shall also provide a structural evaluation prepared by a qualified structural engineer and cost estimates for rehabilitation. The ARB may waive the requirement for a structural evaluation and cost estimates (i) in the case of an emergency, or (ii) if it determines that the structure proposed for demolition is not historically significant.

1.5.7 Other Approvals Required

No application for a Certificate of Appropriateness shall be complete until the Zoning Administrator can determine that the use of the property, building, or structure is permitted under the current zoning for such property.

1.5.8 Certain Minor Actions Exempted from Review

Certain minor actions, which are deemed not to permanently affect the character of the Historic District are exempted from review for architectural compatibility. Such actions shall include the following and any similar actions, which, in the opinion of the Zoning Administrator, will have no more effect on the character of the district than those listed:

1. Repainting resulting in the same or like color. (Original painting of masonry surfaces is not exempted from review.)
2. Addition or deletion of storm windows and storm doors. Addition or deletion of window air conditioners. Character-defining features, alteration, addition or deletion of windows and doors or alteration to their frames, shall be reviewed by the ARB. The replacement of broken window panes is exempted from review.
3. Addition or deletion of television or radio antennas, skylights, solar collectors, or satellite dishes, in locations not visible from a public street.

4. Planting of grass, trees and shrubs, but not including landscape treatment which substantially alters the contour of a landmark site.
5. Permitted new construction of outside storage, which will not substantially change the architectural character in any office, business or industrial district, which is not visible from a public street.

Notwithstanding the above, the Zoning Administrator shall have the authority to order that work be stopped and that an appropriate application be filed for review in any case where the action may produce arresting effects, violent contrasts of materials or colors and intense or lurid colors or patterns, or incongruous details inconsistent with the character of the present buildings and structures or with the prevailing character of the surroundings and the historic district.

1.5.9 Consideration of Application for Certificate of Appropriateness

1. The ARB shall be guided in its decisions by the standards and guidelines established in this article and in the Historic District Design Guidelines. The ARB shall have authority to request modification of proposed actions in order to comply with said standards and guidelines.
2. The ARB shall not approve or disapprove an application except with respect to the standards and guidelines in this article or the Historic District Design Guidelines. The ARB shall give reasons for its decisions, shall act promptly on applications before it and shall coordinate its procedures with those of other agencies and individuals charged with the administration of this Ordinance.
3. Meetings of the ARB shall be open to the public.

4. Where the exterior appearance of any building or structure is involved, no building permit shall be issued for erection, alterations or improvement, and no certificate of occupancy shall be issued by the Building Official, unless a Certificate of Appropriateness has first been issued.
5. No exterior alterations which do not require a building permit but which can change the exterior appearance and character-defining features of the building or structure, such as alteration or replacement of doors, window sash, porch railings, roof areas, porch flooring, installation, removal or replacement of trim detail, cornices, shutters, gutters and down spouts; sign face changes; and the like shall be constructed or installed unless a certificate of appropriateness has first been obtained.
6. No driveway permit shall be issued by the department of public works unless a certificate of appropriateness has first been obtained.
7. No site features or appurtenances, such as walls, fences, arbors, paved parking areas, patios, decks, garages, tool sheds, other accessory structures, and the like, shall be constructed or installed unless a certificate of appropriateness has first been obtained.
8. During construction or installation, the certificates of appropriateness shall be posted on the property in a location that is visible from the public right-of-way, and a complete set of the approved plans shall be retained on the premises and shall be made available to the city inspectors.

1.5.10 Criteria for ARB

The ARB shall consider, among other things, the following in determining the appropriateness of any erection, exterior alteration or restoration:

1. The compatibility with the design, development standards and criteria as included in this ordinance and the adopted Historic District Guidelines, entitled "Historic District Guidelines for the ____ of ____ (200_), with additions and amendments as may be adopted from time to time.
2. The appropriateness of the type, form, style, general overall design, geometry, size, scale, massing, height, width, spacing, rhythm and proportions, structural arrangement, decorative and design details, materials, texture, finish, quality, appearance and color of the proposed building, structure or appurtenant element in relation to such factors as the architectural compatibility with similar features of buildings or structures within the area of any Historic District.
3. The historical or architectural value and significance of the building, structure or appurtenant element and its relationship to the historic or architectural value of the area in which it is proposed to be located.
4. The extent to which the building, structure or appurtenant element will be harmonious with or architecturally incompatible with the historic buildings within any Historic District.
5. The compatibility of planned improvements and alterations with the architectural and historic quality, character, size, scale, massing, spacing, proportions, rhythm, decorative and design details, materials, texture, finish and appearance of the historic buildings, structures and objects in

- any Historic District and to the components on the subject building or structure.
6. The effect of the building, structure or appurtenant element on the Comprehensive Plan's goals for tourism, economic development and residential land uses in and around the historic areas.
 7. The compatibility of the proposed building, structure or appurtenant element with the Comprehensive Plan's goals for historic preservation and architectural design review.
 8. The impact of the proposed alteration, new construction or restoration upon the historic setting, streetscape or area.
 9. The probable effect of proposed construction on historic sites and other cultural landscapes.
 10. Any other factors, including aesthetic design factors, which the ARB deems to be pertinent.
 11. *Signage*—The type, form design, overall dimensions, scale in relation to the building or site, materials, texture, finish, design of the message, lettering dimensions and style, colors, method of physical support or erection, any exterior illumination, orientation and setting shall be considered.
 12. *Awnings and Canopies*—The type, form, design, overall dimensions, height, scale in relation to the building or site, materials, texture finish, colors, and the dimensions, style and colors of any lettering, the shape and design of the opening to be covered, the method of physical support and attachment to the building, any exterior illumination, orientation and setting shall be considered.
 13. *Fencing*—The location, setting, orientation, type, form, design, overall dimensions, scale, materials, texture, finish, color, impact on adjacent property owners and any additional screening shall be considered.
 14. *Mechanical Equipment (HVAC Systems, Exhaust Fans, Satellites, Skylights)* —The location, setting, visibility, screening, method of installation into the building, orientation, type, form overall dimensions, scale, design, materials, texture, finish and appearance shall be considered.
 15. The ARB shall also be guided by the purposes for which historic landmarks and historic districts with contributing and non-contributing properties are designated and by the particular standards and considerations contained in The Secretary of the Interior's Standards for Rehabilitation and guidelines for applying the Standards.

1.5.11 Design Guidelines

The ARB shall develop design guidelines and criteria that are substantially consistent with The Secretary of the Interior's Standards for Rehabilitation to guide the ARB in its determinations of the appropriateness of applications. These guidelines shall be approved as amendments to the Zoning Ordinance by the governing body upon the recommendation of the Planning Commission and the ARB. Approval of the Guidelines, and any amendments thereto, shall be subject to the notice and hearing requirement of Section 15.2-2204 of the Virginia Code at the Planning Commission and the governing body.

1.5.12 Public Hearings on Applications for Certificate of Appropriateness

The ARB shall hold a public hearing on all applications for a Certificate of Appropriateness and on the approval or amendment to, any historic district, and on any guidelines or amendments thereto in compliance with the notice and hearing requirements of Section of the Virginia Code.

1.5.13 Form of Decision and Required Findings

Evidence of the approval required under the terms of the Historic District shall be a Certificate of Appropriateness issued by the ARB and the Zoning Administrator as the case may require, stating that the demolition, moving or changes in the exterior architectural appearance of the proposed construction, reconstruction, alteration or restoration is approved by the ARB, or the Zoning Administrator as the case may require. A Certificate of Appropriateness shall be in addition to any other permits required. Any action of applicants following issuance of a permit requiring certificate of appropriateness shall be in accord with the application and materials approved.

1.5.14 Reasons for Action

The ARB shall state clearly its reasons for approval, denial, modification, or deferral of an application in the records of the ARB proceedings.

1.5.15 Failure of Board to Review Plans in Timely Fashion

The ARB shall render a decision upon any request or application for a Certificate of Appropriateness within sixty (60) days after such application is deemed complete by the Zoning Administrator; failure of the ARB to render such a decision within said sixty (60) day period, unless such period be extended with the concurrence of the applicant, shall be deemed a denial of the application.

1.5.16 Authority to Inspect

When a Certificate of Appropriateness has been issued, the Zoning Administrator shall, from time to time, inspect the alteration or construction approved by such Certificate and shall give

prompt notice to the applicant of any work not in accordance with such Certificate or in violation of the Zoning Ordinance. The Zoning Administrator may revoke the Certificate or the building permit if violations are not corrected by the applicant in a timely manner.

1.5.17 Certificate of Appropriateness Void if Construction Not Commenced or Halted

A Certificate shall become null and void if no significant improvement or alteration is made in accordance with the approved application within twelve (12) months from the date of approval. On written request from an applicant, the ARB may grant a single extension for a period of up to one year, if, based upon submissions from the applicant, the ARB finds that conditions on the site and in the area of the proposed project are essentially the same as when approval originally was granted.

1.5.18 Certificate of Compliance

Prior to the issuance of a final occupancy permit by the Building Official, the applicant shall obtain a Certificate of Compliance from the ARB indicating the compliance of the final building or structure with the terms and conditions of his or her Certificate of Appropriateness. The ARB shall be the issuing agency for all Certificates of Compliance, whether the ARB issued the original Certificate of Appropriateness or whether the governing body issued it upon appeal.

1.6 MAINTENANCE OF HISTORIC PROPERTIES

1.6.1 Ordinary Maintenance Exclusion

Normal maintenance and repair—Nothing in this section shall be construed to prevent the

normal repair and maintenance of any exterior architectural feature now or hereafter located in the Historic District. Repair and maintenance should strive to retain existing materials and features while employing as little new material as possible. Such repair begins with the least degree of intervention possible by strengthening fragile materials through consolidation, patching, limited splicing in kind or otherwise reinforcing using recognized preservation methods. All work should be physically and visually compatible, identifiable upon close inspection and documented for future research. If repair by stabilization, consolidation and conservation proves inadequate, the next level of intervention involves the limited replacement in kind of extensively deteriorated or missing parts of features when there are surviving prototypes, i.e., brackets, dentils, slate shingles. The replacement material needs to match the old both physically and visually, i.e., wood for wood, slate for slate.

1.6.2 Minimum Maintenance

Requirement (Demolition by Neglect)

1. No contributing building or structure within any Historic District shall be allowed to deteriorate due to neglect to the extent that decay, deterioration or defects may, in the opinion of the ARB, result in the irreparable deterioration of any exterior appurtenance or architectural feature, loss of integrity or produce a detrimental effect upon the character of the District as a whole or upon the life and character of the structure itself. Upon such determination, the ARB shall request a report of the Building Official who shall, within thirty (30) days report to the ARB on the following matters:
 - A. Deterioration of exterior walls or other vertical supports;

- B. Deterioration of roofs or other horizontal members;
 - C. Deterioration of chimneys;
 - D. Deterioration or crumbling of exterior stucco or mortar;
 - E. Ineffective, long-neglected peeling paint representing a lack of a protective coating on exterior wooden wall surfaces and wooden elements causing prolonged water penetration, rotting and other forms of decay.
 - F. The lack of maintenance of the surrounding environment causing deterioration to the building or structure through poorly maintained landscaping or plant overgrowth including overhanging trees, limbs or roots allowed to beat against or grow into the resource; or invasive vines such as climbing ivy with tendrils that attach to and cause loss of mortar and structural soundness in masonry walls, wood siding and details.
 - G. Deterioration of any feature so as to create, or permit the creation of any hazardous or unsafe condition.
 - H. Determination by the Building Official or other state authorized safety expert that a structure is unsafe or not in compliance with any safety provisions of the Statewide Building Code.
2. The ARB shall hold a public hearing on the report prior to making a determination about any violation of this Section. The Zoning Administrator shall notify the owner of the subject property of the hearing and provide the owner with a copy of the report. The owner shall have thirty (30) days from the decision to appeal to the governing body a determination by the ARB of a violation of this Section. (See 15.2-2283 and Virginia Statewide Building Code).

3. The owner shall have sixty (60) days from the date of the ARB’s determination to present to the ARB a plan to remedy the neglect and six (6) months from the ARB’s approval of the Plan and issuance of a Certificate of Appropriateness to complete the necessary remedial work. If appropriate action is not taken by the owner, the Zoning Administrator shall initiate appropriate legal action for a violation of the Zoning .6 Ordinance.

1.3 Public Safety Exclusion

Nothing in this Article shall prevent the razing or demolition of any building or structure without consideration of the ARB which is in such an unsafe condition that it would endanger life or property, and protection from such condition is provided for in the Statewide Building Code and/or other applicable ordinances. However, such razing or demolition shall not be commenced without written approval of the Building Official verifying the conditions necessitating such action.

1.7 DEMOLITION APPLICATIONS

1.7.1 Razing or Demolition

No historic landmark, or contributing building or structure which is established under this Ordinance, shall be partly or fully demolished until a Certificate of Appropriateness is issued by the ARB, with right of direct appeal from an adverse decision to the governing body, as hereinafter provided. An appeal for final decision by the governing body shall be automatic and mandatory in the case of approval of the demolition of a building or structure so designated as a landmark. The Zoning Administrator may approve the demolition of a building or

structure within the Historic District(s), which has not been designated either as a landmark or contributing structure on said inventory map.

1.7.2 Matters to be Considered in Determining Whether or Not to Grant a Certificate of Appropriateness for Razing or Demolition

The ARB shall consider the following criteria in determining whether or not to grant a certificate of appropriateness for razing or demolition:

1. Whether or not the historic landmark, contributing building or structure is of such architectural or historic significance that its removal would be to the detriment of the public interest, to education, cultural heritage, the architectural history of the locality and would cause a loss of a visual tangible demonstration of local history and the social and artistic pattern of community development and planning.
2. Whether or not the contributing building or structure is of such interest or historic significance that it would qualify as a National, State, or local historic landmark through individual listing on the Virginia Landmarks Register or National Register of Historic Places.
3. Whether or not the historic landmark, contributing building or structure embodies the distinctive characteristics of a type, period, style, method of construction, represents the work of a master, possesses high artistic values or represents a significant or distinguishable entity whose components may lack individual distinction or whether the resource is associated with events that have made a significant contribution to the broad pattern of history or is associated with significant persons.
4. Whether or not retention of the historic landmark, contributing building or struc-

ture would help to preserve and protect an historic or architecturally significant place, the quality of life and pride of place or area of historic interest in the locality and promotes the purposes and intent of historic district zoning, including tourism.

5. Whether or not the historic landmark, contributing building or structure has retained integrity or authenticity of its historic identity of design, materials, workmanship, setting, location, association and feeling and whether its unusual design, quality and workmanship of traditional materials and details of character-defining features could be easily reproduced.
6. Whether the proposed razing or demolition will affect the archaeological potential to yield information important to prehistory or history at this site.

1.7.3 Offer for Sale

However, the owner of a historic landmark, contributing building or structure, as a matter of right shall be entitled to raze or demolish provided that:

1. He has applied to the ARB for such right.
2. The owner has for the period of time set forth in the time schedule hereinafter contained at a price reasonably related to its fair market value as determined by independent appraisal, as hereinafter set forth, made a bona fide offer to sell such landmark, building or structure, and the land pertaining thereto, to such person, firm, corporation, government, or agency, or political subdivision or agency thereof, which gives reasonable assurance that it is willing to preserve and restore the landmark, building or structure and the land pertaining thereto. The procedure for establishing the fair market value, unless the owner and the ARB

agree upon the said value, shall be that the owner and ARB shall each retain one independent, qualified appraiser, and should the two appraisers not agree upon the said fair market value, those appraisers shall choose a third qualified appraiser. A median value shall be established by the three appraisers, which shall be final and binding upon the owner and the ARB.

3. No contract for the sale of any such historic landmark, or contributing building or structure and the land pertaining thereto, shall be binding or enforceable prior to the expiration of the applicable time period as set forth in the time schedule hereinafter contained. Any appeal which may be taken to the governing body from the decision of the ARB, and from the governing body to the Circuit Court, shall not affect the right of the owner to make bona fide offer to sell. Offers to sell as provided in this section shall be made within one (1) year of the date of application to the ARB.
4. Notice. Before making a bona fide offer to sell, an owner shall first file a written statement with the Chairman of the ARB. Such statement shall identify the property, state the offering price, the date the offer of sale is to begin, and name of the real estate agent, if any. No time period set forth in the time schedule hereinafter set forth shall begin to run until such statement has been filed.

The time schedule for offers to sell shall be as follows:

1. Three (3) months when the offering price is less than twenty-five thousand dollars (\$25,000);
2. Four (4) months when the offering price is twenty-five thousand dollars (\$25,000) or more but less than forty thousand dollars (\$40,000);

3. Five (5) months when the offering price is forty thousand dollars (\$40,000) or more but less than fifty-five thousand dollars (\$55,000);
4. Six (6) months when the offering price is fifty-five thousand dollars (\$55,000) or more but less than seventy-five thousand dollars (\$75,000);
5. Seven (7) months when the offering price is seventy-five thousand dollars (\$75,000) or more but less than ninety thousand dollars (\$90,000);
6. Twelve (12) months when the offering price is ninety thousand dollars (\$90,000) or more.
7. Or such other schedule as may be established from time to time in Section 15.2-2306 of the Virginia Code.

1.7.4 Moving or Relocation

No building or structure officially designated as an historic landmark or contributing building or structure within the district on the inventory map which accompanies this Ordinance shall be moved or relocated unless the same is approved by the ARB and a Certificate of Appropriateness issued with right of direct appeal of an adverse decision to the governing body as herein provided. An appeal for final decision by the governing body shall be automatic and mandatory in the case of approval of the moving or relocation of a building or structure so designated as an historic landmark. The Zoning Administrator may approve the moving or relocation of the building or structure within the historic district, which has not been designated either as an historic landmark, contributing building or structure on said inventory map.

1.7.5 Matters to be Considered in Determining the Appropriateness of Moving or Relocating a Historic Landmark, Contributing Building or Structure within a Historic District:

1. Whether or not the proposed relocation would have a detrimental effect on the structural soundness of the historic landmark, contributing building or structure or any other resource in the district with its relocation.
2. Whether or not the proposed relocation would have a detrimental effect on the historical and architectural aspects of other historic landmarks, contributing buildings or structures at the present site or in the district(s).
3. Whether the proposed relocation would provide new surroundings that would be harmonious with or incompatible with the historical and architectural aspects of the historic landmark, contributing building, or structure.
4. Whether or not the proposed relocation is the only means of saving the building or structure from demolition or demolition by neglect.
5. Whether the proposed relocation will take into consideration any related outbuildings and the impact or effect upon these resources.
6. Whether the present site will remain vacant for a long period of time and how this will affect the historic streetscape and Historic District(s).
7. Whether the proposed relocation will affect the archaeological potential to yield information important to prehistory or history on the current site and proposed site.

1.8 APPEAL PROVISION

1.8.1 From ARB to Local Governing Body

1. The applicant or any aggrieved person may appeal a final decision of the ARB to the governing body by filing a written notice of appeal within thirty (30) days of the date of the ARB decision.
2. The governing body may affirm, reverse, or modify, in whole or in part, the decision of the ARB. In so doing, the governing body shall give due consideration to the recommendations of the ARB along with other evidence as it deems necessary for the proper review of the application.
3. Hearing before the governing body—Upon appeal, the final decision of the ARB shall be stayed pending the decision of the governing body; provided, however, that the applicant is prohibited from taking any action for which approval is sought during the pendency of such appeal. The governing body shall conduct a full and impartial public hearing on the matter using the same adopted standards, criteria and design guidelines, in compliance with Section 15.2-2204 of the Virginia Code, before rendering any decision.

1.8.2 From Local Governing Body to Circuit Court

1. *Appeal to Circuit Court*—Any person may appeal any decision of the governing body to affirm, modify or reverse a decision of the ARB to the Circuit Court for review by filing a petition at law. The petition shall set forth the alleged illegality of the action of the governing body and the grounds thereof. The petition shall be filed within thirty (30) days

after the decision of the governing body. The filing of the petition shall stay the decision of the governing body, except that a decision denying a request for demolition in a Historic District shall not be stayed. A copy of the petition shall be delivered to the locality's attorney, who shall file with the Circuit Court a certified or sworn copy of the record and documents considered by the governing body.

2. *Review by Circuit Court*—The Circuit Court shall review the record, documents and other materials filed by the governing body. The Circuit Court may reverse or modify the decision of the governing body, in whole or in part, if it finds upon review that the decision of the governing body is contrary to law or that its decision is arbitrary and constitutes an abuse of discretion, or the Court may affirm the decision of the governing body.

1.9 ENFORCEMENT OF PROVISION

1.9.1 Injunctions and Revocations of Permits

Wherever any person has engaged in or is about to engage in any act or practice which constitutes or will constitute a violation of this Ordinance, the Zoning Administrator, upon resolution of the ARB of such violations, may make application to the circuit court for an order enjoining such act or practice, or requiring such person to refrain from such prospective violation, or to remedy such violations by restoring the affected property to its previous condition or remedying neglect. Upon proof by the ARB that such person has engaged in or is about to engage in any such act or practice, a temporary or permanent injunction, restraining order or other appropriate order shall be granted.

1.9.2 Authority to Revoke Permits

The Zoning Administrator shall have authority to order that work be stopped and that all permits for the work being performed be revoked upon a resolution of the ARB of any violations of this Ordinance.

1.10 Criminal Penalty

1. Any person who violates any provision of this Ordinance shall be guilty of a misdemeanor and shall be punished by a fine of not more than one thousand dollars (\$1,000.00) and not less than one hundred dollars (\$100.00).
2. For the purpose of this Ordinance, each day during which there exists any violation of any provision herein shall constitute a separate violation of such provision.

1.11 Severability

Severability—If any provision of this Ordinance or the application thereof to any person or circumstances is held invalid, the remainder of this Ordinance and the application of such provisions to other persons or circumstances shall not be affected thereby.

VML\HDZ\Model Ordinance developed by Henry C. Day—Attorney, Cheryl H. Shepherd—Arch-Historian, Ann Andrus of VDHR, Kathleen Dooley—Fredericksburg City Attorney, Timothy Ellsworth—VML, Joseph Phillips—Williamsburg City Attorney, Oliver A. Pollard, Katharine Imhoff, Wendy L. Price—J.D. and the Department of Historic Preservation, Mary Washington University.