



**Minutes**  
**Board of Zoning Appeals**  
April 18, 2016  
Council Chambers, City Hall  
Fredericksburg, Virginia

**MEMBERS PRESENT**

Helen P. Ross, Chair  
Jay Jarrell III, Vice-Chair  
Matthew Muggeridge

**MEMBERS ABSENT**

Brian Raska  
Beatrice Paolucci  
Richard Conway, Alternate

**STAFF**

Mike Craig, Zoning  
Administrator  
Kathleen Dooley, City  
Attorney  
Phaun Moore, Secretary

---

Ms. Ross called the meeting to order at 4:00 p.m.

**OPENING REMARKS**

Ms. Ross determined that a quorum was present and public notice requirements had been met.

**DISCLOSURE OF EX PARTE COMMUNICATIONS**

Ms. Ross asked if any Board member had engaged in *ex parte* communications on any item before the Board. No one indicated they had participated in any *ex parte* communications.

**DISCLOSURE OF CONFLICTS OF INTEREST**

Ms. Ross asked if any Board member had any conflicts of interest on any item before the Board. No one indicated that they had any conflicts of interest.

**APPROVAL OF AGENDA**

There were no additions or changes to the agenda.

Mr. Muggeridge made a motion to accept the agenda as presented. Mr. Jarrell seconded. The motion carried unanimously.

**APPLICATIONS**

1. **APP 2016-0; Hamilton Palmer** – The BZA will consider whether to hold a public hearing and review an Appeal request by Mr. Hamilton Palmer.

Ms. Dooley and Mr. Craig reviewed the City's position regarding Mr. Palmer's request and answered Board member questions.

Mr. Palmer discussed his request for an Appeal and answered Board member questions.

The Board discussed Mr. Palmer's request for an Appeal.

Mr. Jarrell said that the BZA did not have jurisdiction to hear the case because Mr. Craig's letter of December 15, 2015 did not constitute an order, requirement, decision or determination of the Zoning Administrator which could be appealed to the BZA and made a motion to adopt the Record of Decision. Mr. Muggeridge expressed concern regarding the use of the word Appeal in the Record of Decision. Ms. Dooley amended the Record of Decision.

Mr. Jarrell made a motion to adopt the amended Record of Decision (Attached). Mr. Muggeridge seconded. The motion carried unanimously.

### **REVIEW OF MINUTES**

Mr. Jarrell made a motion to approve the meeting minutes from February 22, 2016 as presented. Mr. Muggeridge seconded. Motion carried unanimously.

### **STAFF / BOARD COMMENTS**

Mr. Craig informed the Board that there would be a meeting on May 16, 2016.

### **ADJOURNMENT**

Mr. Muggeridge made a motion to adjourn. Mr. Jarrell seconded.

Meeting adjourned at 5:06 p.m.



---

Helen P. Ross, Chair

CITY OF FREDERICKSBURG BOARD OF ZONING APPEALS

HAMILTON PALMER

RECORD OF DECISION

The City of Fredericksburg Board of Zoning Appeals considered the above-referenced matter at its meeting on April 18, 2016. After consideration of the record of the matter, the Board makes the following findings of fact and conclusion of law:

FINDINGS OF FACT

- A. On November 24, 2015, Hamilton Palmer sent a letter to Zoning Administrator Michael Craig, asking for a "zoning interpretation of the City Code and how it applies to the review of projects in the Fredericksburg Historic District (HFD)." The letter enclosed a \$25 application fee. The letter is attached as Exhibit A.
- B. Mr. Craig responded to Mr. Palmer by letter dated December 31, 2015, declining to issue the requested interpretation, and refunding the \$25 application fee. (Exhibit B).
- C. Hamilton Palmer submitted this request on March 2, 2016. (Exhibit C).

CONCLUSION OF LAW

The letter of December 31, 2015 does not constitute an order, requirement, decision or determination of the zoning administrator which can be appealed to the BZA. The BZA has no jurisdiction to hear this matter.

FREDERICKSBURG BOARD OF ZONING APPEALS

May 16, 2016  
Date

Helen P. Ross, Chair  
Helen P. Ross, Chair

# EXHIBIT A

HGP, Inc.  
Purina Tower, Suite 100  
401 Charles Street  
Fredericksburg, VA 22401  
540-371-5171 373-4150 (fax)  
email: hpalmer@hgp.biz

November 24, 2015

Mr. Michael Craig,  
Zoning Administrator  
City of Fredericksburg  
7xx Princess Anne Street  
Fredericksburg, Virginia 22401

via: hand deliver

re: your interpretation

Dear Mr. Craig,

I would like a zoning interpretation of the City Code and how it applies to the review of projects in the Fredericksburg Historic District (HFD).

The Commonwealth of Virginia granted the City of Fredericksburg authority to adopt zoning laws within their corporate limits. The City Council adopted a Code of Ordinances to include creating and empowering an ARB in Chapter 10-52 and the UDO in Chapter 72. The City also adopted an ordinance to address infrastructure improvements in Chapter 66 of the City Code.

The ARB Powers and Duties enumerated in 10-52 include performance of duties outlined in the Virginia Uniform Statewide Building Code as amended; to implement and administer Chapter 78 (now Chapter 72, UDO); and, to provide advisory review.

Article II, Building Code, Chapter 18-32 provides for building permits within the HFD to include *"No permit required under this article shall be issued for any building or structure subject to view from any public street, right-of-way, or place within the Old and Historic Fredericksburg zoning district (HFD) until the Zoning Administrator has certified to the Building Official that such exterior alteration either does not require the issuance of a certificate of appropriateness pursuant to Chapter 78 (now Chapter 72, UDO)... or that such certificate has been issued by the Architectural Review Board or, on appeal, by the City Council"*

## EXHIBIT A

Chapter 66 of the City Code addresses Infrastructure Improvements, establishes a CPURC Committee to review infrastructure improvements within the HFD and provides for exceptions to CPURC review, one of which the decision is granted the City Manager.

Chapter 72 is the UDO and includes development, subdivision and zoning ordinances and outlines the duties of the Zoning Administrator. The Applicability and Jurisdiction of the UDO are outlined in 72-13 and applies to the use and development of all land within the city unless expressly exempted by a specific section or subsection of this chapter. Conflicts with other City Codes are outlined in 72-15.1 and provide that the more restrictive provision shall govern.

The Administration of the UDO is outlined in 72-20 to include the ARB and decisions within the Development Review Structure and the Zoning Administrator to include authorization to enforce the zoning provisions of the UDO and includes specific authorities but excludes none. One such specific authority is to make decisions within the development review structure in Table 72-21.7 of the UDO.

Table 71-21.7 summarizes the roles of the advisory and decision-making bodies that participate in the process of review and approval of applications required or authorized by this chapter. The Zoning Administrator is authorized, using the criteria within the UDO, to review and recommend a project be reviewed by the ARB and for the ARB to hold a public hearing and to decide or not to issue a Certificate of Appropriateness.

Chapter 72-23.1 provides for ARB review and issuances of certificates of appropriateness for new construction, alterations of existing structures, demolitions/removal/relocation of structures or a sign in the HFD.

Chapter 72-34 provides for Overlay Zoning Districts and establishes the Old and Historic Fredericksburg District (HFD). Certificates of appropriateness are required in accordance with the procedures and requirements in 72-23.1 for new construction; for additions and expansions to an existing principal structure; changes to outside of a building visible from row; fences; signs. The overlay standards provide for conflicts with other standards within this section or other city regulation, the more restrictive standard shall apply.

I would like for your official interpretation of “a written description of a UDO requirement, aspect of the Official Zoning Map, condition of approval, or proffer that is prepared by the Zoning Administrator” as outlined in the Procedures Manual to include:

1. Chapter 66, Infrastructure Improvements on City Property in the Historic District, provides for exceptions to review by the CPURC within that section and Chapter 72 does not provide those exceptions yet provides for a public hearing and review by the ARB for a Certificate of Appropriateness for all lands within the HFD. If there is a conflict for projects within the HFD to be reviewed or not, which Chapter applies and why?

## EXHIBIT A

2. Is the standard for review of a project in the HFD by the ARB more restrictive than an exception to not review that project?
3. Who has the authority to exempt a project within the HFD from review?
4. Who has authority to make decisions outlined in the UDO excepting 72-2 and 72-5?

Enclosed is a fee in the amount of \$25.00 for your review and interpretation of the above questions. Thank you very much for your help in this matter.

Sincerely,

Hamilton Palmer

# EXHIBIT B

Mike Craig  
Zoning Administrator



City of Fredericksburg  
P.O. Box 7447  
Fredericksburg, VA 22404-7447  
Telephone: 540-372-1179  
Fax: 540-372-6412  
[mjcraig@fredericksburgva.gov](mailto:mjcraig@fredericksburgva.gov)

120-15L

December 31, 2015

HGP, Inc.  
Hamilton Palmer  
Purina Tower  
Suite 100  
401 Charles Street  
Fredericksburg, Va 22401

**Re: Request for interpretation**

Dear Mr. Palmer,

I am unable to perform the work you requested in your letter dated November 24, 2015. The questions you have submitted were answered by the Fredericksburg Circuit Court on August 6, 2015. I understand you have appealed this decision to the Virginia Supreme Court. Ultimately, the Court's decision – either the letter opinion or any future Virginia Supreme Court opinion – will be binding precedent.

We are working on refunding your \$25 submitted as check 694. We will send you the refund as soon as it is available.

If you need further assistance please feel free to contact me at [mjcraig@fredericksburgva.gov](mailto:mjcraig@fredericksburgva.gov).

Respectfully,

Mike Craig  
Zoning Administrator



City of Fredericksburg  
Planning Services Division  
Community Planning &  
Zoning Department  
P.O. Box 7447  
Fredericksburg, VA 22404-7447

RECEIVED  
VA 236  
05 JAN 16  
PM 2 L



U.S. POSTAGE  
\$1.000.43<sup>5</sup>

HGP, Inc.  
Hamilton Palmer  
Purina Tower  
Suite 100  
401 Charles Street  
Fredericksburg, VA 22401

## EXHIBIT B

# Commonwealth of Virginia

## FIFTEENTH JUDICIAL CIRCUIT

### JUDGES

Harry T. Talliferro, III  
Gordon F. Willis  
Joseph J. Ellis  
J. Overton Harris  
Charles S. Sharp  
Sarah L. Deneke  
Michael E. Levy  
Patricia Kelly  
Herbert M. Hewitt  
Victoria A. B. Willis



Herbert M. Hewitt  
9483 Kings Highway, Suite 6  
King George, Virginia 22485  
(540) 775-1072  
FAX (540) 775-0818

### RETIRED JUDGES

Joseph E. Sprull, Jr., Retired  
William H. Ledbetter, Jr., Retired  
H. Harrison Braxton, Jr., Retired  
Ann Hunter Simpson, Retired  
John R. Alderman, Retired  
Horace A. Revercomb, III, Retired  
J. Martin Bass, Retired  
David H. Beck, Retired

August 6, 2015

Hamilton G. Palmer, *pro se*  
401 Charles Street  
Fredericksburg, Virginia 22401

Kathleen Dooley  
Fredericksburg City Attorney  
Post Office Box 7447  
Fredericksburg, Virginia 22404-7447

Re: Palmer V. City of Fredericksburg  
CL15-442 City of Fredericksburg Circuit Court

### Letter Opinion

This matter came on upon the Petition for a Writ of Mandamus and Respondent's Demurrer thereto.

The Court having considered the oral arguments of Petitioner and Counsel for the City in open Court, as well as Counsel for the City's written argument contained in the Demurrer finds as follows:

A Demurrer interposes the question whether or not the Petitioner is entitled to the relief sought even if each and every fact contained in his Petition is accepted as true.

A Writ of Mandamus compels execution of purely ministerial duties. It will not lie where the public official is vested with the exercise of discretion or judgment. Richmond-Greyhound Lines V. Davis, 200 Va. 147 (1958).

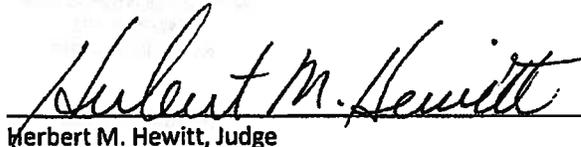
In this case, the operative City Code Section does not require all infrastructure improvement projects in the historic district to be reviewed by the City and Public Utility Review Committee, "CPURC." The City Code Section provides exceptions thereto. If there were no exceptions then mandamus would lie. An official must exercise judgment or discretion to determine whether any one or more of the exceptions apply.

## EXHIBIT B

Hamilton G. Palmer, *pro se*  
Kathleen Dooley, Fredericksburg City Attorney  
August 6, 2015  
Page 2

For the foregoing reason the Demurrer is sustained and the Writ denied.

Counsel for the City of Fredericksburg will please prepare, circulate and present an Order in accord with this ruling.

A handwritten signature in cursive script, reading "Herbert M. Hewitt", is written over a solid horizontal line.

Herbert M. Hewitt, Judge

# EXHIBIT C

HGP, Inc.  
Purina Tower, Suite 100  
401 Charles Street  
Fredericksburg, VA 22401  
540-371-5171 373-4150 (fax)  
email: hpalmer@hgp.biz

March 2, 2016

To: Board of Zoning Appeals  
City of Fredericksburg, Virginia

re: Administrative Decision

via: hand Delivery

Dear Board Members,

I appeal the Administrative Decision by the Zoning Administrator that was mailed me sometime on or after January 5th, 2016. I requested a determination in a letter to the Zoning Administrator on November 24th, 2015. The determination was not made and my request followed with 'unable to perform the work you requested' together with 'the questions you have submitted were answered by the Fredericksburg Circuit Court on August 6, 2015.'

The determination in the Administrative Decision to not perform the work requested is not factual and I appeal same. I asked 4 questions, most which were not addressed by the Court's decision. Attached is a check in the amount of \$300.00 for the Appeal together with the Court Opinion, my request for interpretation, and the Zoning Administrator's response to my request.

I request the Board of Zoning Appeals have the full 5 members present to hear my appeal due to the strict requirements of having a majority of the Board (regardless if they are in attendance or not) to approve the appeal.

Sincerely,



Hamilton G. Palmer

attachments