



Minutes
Architectural Review Board
August 12, 2019
Council Chambers, City Hall
Fredericksburg, Virginia

Members Present

Jonathan Gerlach, Chair
Carthon Davis, III, Vice Chair
Kerri S. Barile
Karen Irvin
Susan Pates
James Whitman

Members Absent

Sabina Weitzman

Staff

Kate Schwartz
Allison Martin

Mr. Gerlach called the Architectural Review Board meeting to order at 7:00 p.m.

OPENING REMARKS

Mr. Gerlach determined that a quorum was present, and asked if public notice requirements had been met. Ms. Schwartz confirmed that all requirements had been met.

APPROVAL OF AGENDA

Mr. Davis motioned to approve the agenda as written. Ms. Irvin seconded. The motion carried 6-0.

APPROVAL OF MINUTES

Mr. Gerlach asked if there were any changes or additions to the minutes of the regular meeting dated June 10, 2019. Dr. Barile motioned to approve the minutes as written. Mr. Whitman seconded. Motion carried 6-0.

Mr. Gerlach asked if there were any changes or additions to the minutes of the regular meeting dated July 8, 2019. Mr. Davis motioned to approve the minutes as written. Dr. Barile seconded. Motion carried 6-0.

DISCLOSURE OF EX PARTE COMMUNICATIONS

Mr. Gerlach asked if any Board member had engaged in any *ex parte* communication on any item before the Board. No Board members had any *ex parte* communication to report.

DISCLOSURE OF CONFLICTS OF INTEREST

Mr. Gerlach asked if any Board member had a conflict of interest for any item before the Board. Dr. Barile noted that she had a conflict with COA 2019-42, 401-405 William Street, as she had provided archaeological services for the property owner and project. She said she would not participate in the discussion or vote.

Mr. Gerlach noted that he no longer has a conflict of interest with COA 2019-38, 401 Princess Anne Street. He once provided legal representation for the owner, but that service has concluded and he can participate fairly. There were no further conflicts of interest reported.

CONSENT AGENDA

- i. **COA 2019-39** – 223 Princess Anne Street - Fence
- ii. **COA 2019-41** – 900 Caroline Street – Signs
- iii. **COA 2019-43** – 1300 Charles Street – Chimney Cap

Mr. Gerlach asked the members of the Board if there were any items on the Consent Agenda that they wished to have removed. Hearing none, Mr. Gerlach asked if there were any members of the public who wished to speak to any item on the Consent Agenda. There were none.

Dr. Barile made a motion to approve the consent agenda as presented. Mr. Whitman seconded. The motion carried 6-0.

PUBLIC HEARING

- i. **COA 2019-38** – 401 Princess Anne Street – John Janney requests to make alterations to the former Janney-Marshall Co. Warehouse including removing the metal awnings and reopening previously bricked-in windows and doors.

Representative for the applicant, Ms. Melissa Colombo of 418 Bunker Hill Street, was present and spoke. Ms. Colombo responded to Dr. Barile stating the materials used to keep the elements out would be plywood until the windows are replaced.

There were no public comments.

Mr. Davis motioned to approve the application as submitted. Ms. Irvin seconded. Motion carried 6-0.

- ii. **COA 2019-40** – 211 Caroline Street – Frank C. Hill and Camille Rouget request to remove the existing rear addition and construct a new two-story addition at the rear of this single-family residence.

The project architect, Mr. Charles Aquino of 417 North Arthur Ashe Boulevard in Richmond, was present and spoke. Mr. Aquino added the attempt was to isolate the original house through the design, including reopening one window on the rear elevation. He further identified the placement of all fencing for the property.

There were no public comments.

Dr. Barile thanked the applicant for the completeness of the application, stating the architectural details were very helpful. There was some discussion clarifying details of the plans, including clarification of new versus old elements, the location of basement egress, and the details of the metal roof. Mr. Gerlach stated the importance of notifying Ms. Schwartz of any archaeological finds once the renovations begin.

Ms. Irvin motioned to approve the application as submitted. Ms. Pates seconded. Motion carried 6-0.

- iii. **COA 2019-42** – 401-405 William Street – The City of Fredericksburg proposes to relocate the Slave Auction Block at the corner of William and Charles Streets to the Fredericksburg Area Museum.

Mr. Dave King, Public Works Director, read a memorandum into the record outlining the proposed relocation plan based on City Council's June 11, 2019 decision.

The following comments were presented:

Mr. Ed Sandtner, 132 Caroline Street, spoke requesting the Board do the job they were elected to do and uphold historic preservation standards and vote to leave the auction block where it is, relics of our past are best left in their original form.

Ms. Barbara Anderson, 1811 Washington Avenue, spoke requesting the Board to vote to keep the slave block in place. As a local history teacher she loves giving students tours of the City, always bringing them to this corner. They can actually physically touch a piece of history, people want to see tangible history and experience it.

Mr. Mark Kramer, 2 Cobham Court in Stafford, suggested to not call it the Slave Auction Block stating the name creates a bias. There is more to the block's story than slavery.

Mr. Leonard Craig, 811 Bourne Street in Stafford, shared with the Board a picture depicting a similar block as a street sign and asked why it is called a slave block. He stated his belief that it was not a slave block, it is just a piece of sandstone in front of a building that he requests be removed.

Mr. Robert Lamb, Spotsylvania County, stated that once a historic marker is removed it is rendered useless, opposing moving it away from public context into a museum that charges an entrance fee. Mr. Lamb disagrees with the title, stating it should be identified as a property auction block. The details of history can be selectively mentioned while others are easily omitted.

Mr. Forrest Dickinson, 300 Caroline Street, stated that if you take a bit of history and put it aside, out of sight, out of mind you diminish what the whole town of Fredericksburg stands for. It's our history, we should not be afraid of our heritage.

Mr. James McGhee, 526 Caroline Street, expressing that he does not believe the block should be moved. It should be preserved and allow the public to interact with this piece of history instead of a plaque in the sidewalk.

Mr. Lee Lewis, originally from Fredericksburg, stated the block does not make him feel proud and recommends continuing on with Council recommendation.

Ms. Donna Craig, 811 Bourne Street in Stafford, requested removal of the auction block.

Ms. Judy Love, 2216 Caroline Street, requested the auction block be moved. The block stands for something hurtful, it matters to the heart. Ms. Love stated hearts mean more than a historic block.

Ms. Danae Peckler, 1410 Prince Edward Street, would like to take a moment and say this decision is a knee jerk reaction. One of largest problems was a lack of a plan and not enough information was gathered.

Mr. David James, 213 Princess Anne Street, stated he is the President of the Board of Historic Fredericksburg Foundation and requested the Board make a decision based on their responsibility to this board and do what is right. The historic items of Fredericksburg should be maintained and left in place, the context of location is important.

Mr. Leonard Craig, 811 Bourne Street in Stafford, believes the block was used to direct traffic, not for auctioning slaves.

Mr. Forrest Dickinson revisited the podium to say that the block needed to remain to avoid repeating the mistakes of history.

Mr. Robert Lamb requested the Board follow the criteria of the ARB, and its decisions should not be based on emotion.

Mr. Gerlach called for a two minute recess at 8:28 p.m.

The meeting reconvened at 8:30 p.m.

Mr. Gerlach read into the record a written statement, requesting the clerk to include it in the minutes (attached). Mr. Gerlach reopened the public hearing for response to the statement.

Mr. Ed Sandtner, 132 Caroline Street, was under the impression the Board was able to voice their opinions. Now knowing they cannot he wonders why it was on the agenda, and said he would have appreciated a more fair approach.

There was no further comment.

Mr. Gerlach stated this item will come before the ARB at a later date as a public hearing to review the interpretive materials that the City will be proposing for the corner of Charles and William Streets. He asked the Board to consider the recommendations in the staff report.

Ms. Irvin motioned for the ARB to nominate a member to be a liaison to the Memorials Advisory Commission. Mr. Davis seconded. The motion carried 4-1-1, with Ms Pates against and Dr. Barile abstaining.

Board members discussed the other recommendations:

1. The City engages in consultation with the Virginia Department of Historic Resources on the relocation process.
3. Interpretation both at the original site and at the FAM should maintain the association between the block and the larger Planter's Hotel site at 401-405 William Street.

4. A second public hearing will be required for review of the detailed design of permanent interpretive materials at the corner of Charles and William Streets.

Board members discussed whether or not it was appropriate or necessary to vote on these recommendations. Ms. Schwartz stated that the City Council was seeking the opinion of the ARB on these matters. Mr. Davis said he did not believe these items needed to be recommended by the ARB and should occur anyway. Ms. Pates and Mr. Whitman stated that they did not support the relocation and would not support any motion. The Board took no further action and the public hearing was closed.

Mr. Gerlach called for a five-minute recess. The meeting reconvened at 8:53 p.m.

GENERAL PUBLIC COMMENT

None.

OTHER BUSINESS

- A. Transmittal of Planning Commission Agenda for August 14, 2019.
Ms. Schwartz noted the applications for the Janney-Marshall Warehouse Rehabilitation Project, including a rezoning out at the Railroad Station Overlay District, and a Special Use Permit and Special Exception Permit related to the density of the project.
- B. Comments on National Register Nomination of Sligo, 1100 Dixon Street.
Ms. Schwartz noted that Board members can send any comments to her by email. The property owners were present and noted that they would be happy to invite the Board to view the house.

STAFF UPDATE

- A. Update on Mary Washington Caretaker's Lodge
City Council has moved forward to endorse a process for sale or lease of the property with measures for its protection in place. Additionally, the property will need to be rezoned and the lot subdivided.
- B. Archaeology Ordinance Briefing
Ms. Schwartz provided an update on the project, noting that public hearings would be scheduled with the Planning Commission and City Council in October and November.
- C. Historic District Handbook
The City has been awarded a grant of \$15,000 from DHR for a project to update the historic district design guidelines. The project will be completed over the next year.

COMMITTEE REPORT

None.

CHAIRMAN'S REPORT

None.

ADJOURNMENT

The meeting adjourned at 9:08 p.m.



Jonathan Gerlach, ARB Chair

Chair's Written Statement re Moving the Slave Auction Block, August 12, 2019

We want to thank everyone who spoke here tonight. Our bylaws allow us to have a second public comment session tonight in special circumstances. Because the statement I am reading now contains new issues about this application that the public may not be aware of, when I'm finished reading it we will invite the public to comment again, if they wish to say anything else.

I ask the clerk to enter this written statement into the official records of this application.

Whether or not to move the artifact is a contentious issue. Reasonable people often disagree, and there's nothing wrong with that. Someone once said that the best results come from working out differences (actually, I think it might have been my wife who said that!). There are a lot of strong opinions about what should be done with this artifact, and how best to tell the story of the African American experience in our city. The ARB is in the middle of that discussion now, *for the very first time*. Unfortunately the ARB was not consulted before City Council voted to move the artifact.

Before I joined this board, it had been a rough few years for the ARB. Everyone on the ARB, along with Staff (thank you, Kate), has worked hard to restore public trust in the ARB. We've been turning the ship around, and the only way we know to do that is to be true to what the ARB's job actually is. Our job is to faithfully follow guidelines in the law to maintain, as best we can, the character of the Historic District. We can only do that by acting within the confines of the law.

The public deserves an ARB that faithfully does its job, and leaves political decisions to your elected officials (City Council). We are not elected officials – *we are not a political body* – and as long as I'm chair, we will never be. That is a very important tenet of the ARB, and we do everything possible to keep the ARB from being political.

While this may be disappointing to a lot of people in this room, the reality is that there is no role for the ARB in the decision about whether or not to move the artifact AFTER City Council has already decided that it WILL be moved. I emphasize the words *will be moved*. There were two ways the ARB could have ruled on moving this artifact: (1) the City could have gone through the application process with the ARB before the City Council vote; or (2) City Council could have voted to move the artifact contingent on ARB's approval. In either case: *seeking ARB approval first*.

But that's not what happened. The decision to move the artifact has already been made, and it was made by a higher authority than the ARB. *The issue is moot now*.

VA law makes it very clear that once City Council has made a final decision, it is beyond our reach. We can't affirm, reverse, or modify their decision to move the artifact.¹ That is only something the Circuit Court can do, but we cannot. We don't have that power. The law says we can't do it. And so, we are NOT going to do it.²

A decision by the ARB can be appealed to City Council, and they can affirm, reverse or modify it, but it doesn't work the other way around. The ARB has no expressed or implied powers to reconsider City Council's final decision.³ There's no wiggle room in that. And so, we can't decide the issue of moving the artifact. *The issue is moot.* The decision to move the artifact has already been made by a higher authority, and *it carries the force of law.*

The public needs to know that the ARB takes its job very seriously, and that the ARB will not stray into areas over which it has no authority.⁴

Again, thanks to everyone who spoke tonight. Many of you will disagree about what happens to this artifact, but we trust you will understand that the ARB simply doesn't have the power to do what the City is asking us to do. The issue is moot.

¹ "The governing body shall provide by ordinance for appeals to the circuit court for such locality from any final decision of the governing body pursuant to subdivisions 1 and 2 of this subsection and shall specify therein the parties entitled to appeal the decisions, which parties shall have the right to appeal to the circuit court for review by filing a petition at law, setting forth the alleged illegality of the action of the governing body, provided the petition is filed within thirty days after the final decision is rendered by the governing body." VA Code § 15.2-2306.

² "The Dillon Rule applies to a locality and its governing body. Because BZAs and ARBs are creatures of statute, they are subject to a rule that is stricter than the Dillon Rule. These bodies possess only those powers expressly conferred; they do not have the power to exercise powers that must be implied from expressly granted powers, or those that are perceived as essential and indispensable." *Albemarle County Land Use Law Handbook*, Sec. 5-600.

³ "The ARB is a creature of statute (Va Code § 15.2-2306) and it possesses only those powers expressly conferred by statute. [citing the VA Supreme Court 20014 decision in *Norton v. City of Danville*, 602 S.E.2d 126, 268 Va. 402]. An ARB has no implied powers." *Albemarle County Land Use Law Handbook*, Sec. 1-420.

⁴ Under principles of supremacy, the ARB cannot act in a way that would be inconsistent with VA law. "Any ordinance, resolution, bylaw, rule, regulation, or order of any governing body or any corporation, board, or number of persons shall not be inconsistent with the Constitution and laws of the United States or of the Commonwealth." VA Code § 1-248.