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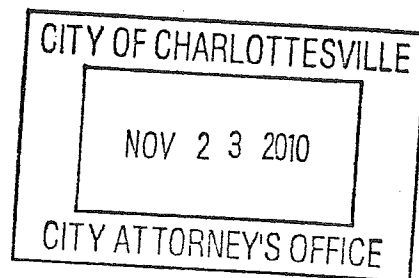
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November 16, 2010

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Hon. Paul C. Garrett, Clerk
CIRCUIT COURT FOR THE CITY OF CHARLOTTESVILLE
315 E. High Street
Charlottesville, Virginia 22902

RE: *City of Charlottesville v. Joe H. Gieck Trust*
Case No. CL10-000360-00

Dear Mr. Garrett:

I enclose a Demurrer for filing on behalf of defendant, Joe H. Gieck Trust.

I enclose an additional copy of the Demurrer, which copy I request be file-stamped and returned to my attention in the enclosed self-addressed, stamped envelope.

Thank you in advance for your attention to this matter. If you have any questions, please call me.

With regards, I am

Very truly yours,

A handwritten signature in black ink, appearing to read "Randall T. Perdue".

Randall T. Perdue

RTP:pd

Enclosures

cc (w/enc.): Joe H. Gieck, Trustee, Joe H. Gieck Trust
William S. Rice
✓ Richard M. Harris, Esquire

VIRGINIA: IN THE CIRCUIT COURT FOR THE CITY OF CHARLOTTESVILLE
CITY OF CHARLOTTESVILLE,

Plaintiff,

v.

Case No. CL10-000360-00

JOE H. GIECK TRUST,

Defendant.

DEMURRER

Joe H. Gieck Trust ("Gieck"), by counsel, demurs to the Complaint filed by the City of Charlottesville (the "City"), on the basis that the Complaint fails to state a cause of action upon which the specific relief sought in the Complaint is recoverable under the controlling zoning regulations and under extant Virginia law. In support of its demurrer, Gieck states as follows:

Standard of Review

"The purpose of a demurrer is to determine whether a [Complaint] states a cause of action upon which the requested relief may be granted." Abi-Najm v. Concord Condominium, LLC, ___ Va. ___, ___. 699 S.E.2d 483, ___, 2010 Va. LEXIS 229, **6-7 (Sept. 16, 2010) (quoting Augusta Mutual Ins. Co. v. Mason, 274 Va. 199, 204, 645 S.E.2d 290, 293 (2007)). "A demurrer admits the truth of all properly pleaded material facts, and all reasonable factual inferences fairly and justly drawn from the facts alleged must be considered in aid of the pleading. See Vogen Funding, L.P. v. Wener, 78 Va. Cir. 448, 450 (Roanoke City, Aug. 10, 2009).

Issue of
Not
Appropriate
to Demur

“However, a demurrer does not admit the correctness of the pleader’s conclusions.” See id. (citing Bell v. Saunders, 278 Va. 49, 53, 677 S.E.2d 39 (2009)).

The City’s Allegations

Gieck is the owner of a building designated as 219-221 West Main Street, Charlottesville, Virginia, 22901, located in the City of Charlottesville. (Complaint ¶[4] [referred to hereinafter as the “Gieck Building”]. The Gieck Building is located within the so-called “Downtown Architectural Design Control District” (“ADC “), and is subject to the restrictions applicable to Historical Preservation and Architectural Design Control Overlay Districts of the Charlottesville City Code, §§34-271 through -348 (2010). (Id. ¶¶7, 8).

The Gieck Building is a “building” as that term is defined under §34-1200 of the Charlottesville City Code. (“Building means any structure having a roof supported by columns or walls.”). Pursuant to §34-272 of the Charlottesville City Code, all buildings within the ADC are deemed to be “contributing structures.” (Id. ¶9). A “contributing structure” means “a building or structure that, by location, design, setting, materials, workmanship, feeling or association adds to the district’s sense of time and place and historical development.” (§34-1200, Charlottesville City Code; see also id. ¶9). By contrast, a “structure” is defined as “anything constructed or erected, the use of which requires permanent location on the ground, or attachment to something having a permanent location on the ground. This includes, among other things, dwellings, buildings, etc. . . .” (§34-1200).

Section 34-277 provides in relevant part that “[n]o contributing structure located within a major design control district, and no protected property, shall be moved, removed, encapsulated or demolished (in whole or in part) unless and until an application for a certificate of appropriateness has been approved by the BAR [Board of Architectural Review], or the city council” (Id. ¶10). Under §34-277(d), “[f]ailure to obtain the permit required by [§34-277] shall subject the property owner to the civil penalty described within Article I, section 34-86(c) (i.e., twice the fair market value of the building or structure.)” Pursuant to §34-86(c), “[a]ny person who demolishes, razes or moves any building or structure which is subject to the regulations set forth within section 34-277 without approval of the BAR or city council, shall be subject to a civil penalty equal to twice the fair market value of *the* building or structure, as determined by the city real estate tax assessment at the time of the demolition, razing, or moving.” (emphasis added). (Id. ¶11).¹

The Gieck Building was constructed in 1921. The portion of the Gieck Building designated as 219 West Main Street was occupied at one time by the “Victory Shoe Store.” (Id. ¶12). In 1947, the owners of the Victory Shoe Store installed a “façade” comprised of black tile, and display windows with rounded corners flanking a deeply recessed entrance. (Id.). For the

¹ The City also cites §50.6 of the Charter of the City of Charlottesville as authority for the imposition of a civil penalty. It is noteworthy that the specific language of §50-6(A) tracks the specific language of §15.2-744, Code of Virginia, providing that the civil penalty “*shall not exceed* twice the fair market value of the building or structure” (emphasis added). However, the language of §34-86(c) provides that the civil penalty shall be “*equal to* twice the fair market value of the building or structure” (emphasis added).

purposes of this demurrer, the façade is a “structure” and a “contributing structure” as those terms are defined under §34-1200, Charlottesville City Code. The façade is not a “building” as defined under §34-1200.

The City alleges that on or about October 31, 2009, Gieck caused the demolition of the façade without obtaining the certificate of appropriateness as required under §34-277. (Id. ¶14). The Gieck Building was not demolished and remains standing. Ultimately, the Board of Architectural Review approved Gieck’s proposal for construction of a new storefront design to replace the façade on the Gieck Building. (Id. ¶23).

The City initiated this action to recover “twice the fair market value of the structure.” (Id. ¶26). The City alleges that the value of the Gieck Building at the time of the demolition of the façade was \$608,300.00. (Id. ¶27). The City does not allege the fair market value of the façade only.

Argument

I. A fair application of §34-86(c) does not permit the City to recover the quantum of damages sought in this action – twice the value of the Gieck Building – when the Gieck Building itself was not demolished.

A fundamental flaw in the City’s Complaint is the imprecise use of terms that have specific meanings under the Charlottesville City Code. A “building” is defined under §34-1200 as “any structure having a roof supported by columns or walls.” A “structure” is defined as “anything constructed or erected, the use of which requires permanent location on the ground or

attachment to something having a permanent location on the ground. This includes, among other things, dwellings, buildings, etc. . . .” Id. The Gieck Building constitutes a “building” and a “structure” under the definitions. However, the façade, at best, is a “structure” only; it is not a “building.”

Section 34-86(c) provides in relevant part that “[a]ny person who demolishes, razes or moves any building or structure which is subject to the regulations set forth within section 34-277 without approval of the BAR or city council, shall be subject to a civil penalty equal to twice the fair market value of *the* building or structure, as determined by the city real estate tax assessment at the time of the demolition, razing or moving.” §34-86, Charlottesville City Code (emphasis added). The use of the definite article “the” preceding the noun “building” or “structure” refers specifically to “the” particular building or “the” particular structure, whichever the case may be, that was actually demolished, razed, or moved. See, e.g., Grafmuller v. Commonwealth, 57 Va. App. 58, 698 S.E.2d 276 (2010) (noting that the “word ‘the’ is used grammatically in the statute as a definite article – a word that, when used before a noun, specifies or particularizes the meaning of the noun that follows).

In its Complaint, the City seeks to recover twice the value of the Gieck Building when the Gieck Building itself was not demolished. A fair interpretation and application of §34-86(c) produces the result that the City is permitted to recover twice the fair market of a building *when the building itself is demolished, razed, or moved*. However, where, as here, when a “structure” constituting something less than the whole building is demolished, then the potential

civil penalty recoverable by the City is limited to twice the fair market value of the particular “structure.”

In this case, the City alleges that the façade (a “structure”) was demolished without prior approval of the BAR or city council. Therefore, a proper interpretation of §34-86(c) compels the conclusion that the City is limited to recovering damages up to twice the fair market value of the demolished façade. However, the City did not allege the fair market value of the façade and instead seeks to recover twice the fair market value of the Gieck Building, which remains standing. The City fails to state a cause of action upon which the requested relief – twice the fair market value of the Gieck Building – can be recovered under the facts as alleged by the City in its Complaint.

- II. If §34-86(c) permits the City to recover twice the fair market value of the Gieck Building when the Gieck Building itself was not demolished, razed, or moved, and only the façade was removed, then the civil penalty as applied in this case is excessive, punitive, and disproportionate to any actual damage incurred by the City, all in violation of the United States Constitution, Amendments V, VIII & XIV, and the Virginia Constitution, Art. I, §§9 & 11.**

The Due Process Clause of the Fourteenth Amendment to the United States Constitution “imposes substantive limits ‘beyond which penalties may not go.’” TXO Production Corp. v. Alliance Resources Corp., 509 U.S. 443, 453-54 (1993) (quoting Seaboard Air Line R.

Co. v. Seegers, 207 U.S. 73, 78 (1907).² In Southwestern Telegraph & Telephone Co. v. Danaher, 238 U.S. 482, 491 (1915), the Supreme Court held that application of an Arkansas state statute assessing civil penalties against a telephone company “was so plainly arbitrary and oppressive as to be nothing short of a taking of its property without due process of law.”

Furthermore, “[t]he Excessive Fines Clause of the Eighth Amendment prohibits the government from imposing excessive fines as punishment.” Korangy v. United States FDA, 498 S.3d 272, 277 (4th Cir. 2007).³ “While Eighth Amendment claims often arise in the criminal context, civil sanctions may fall within the scope of the amendment.” Id. (citing Austin v. United States, 509 U.S. 602, 610 (1993); Thomas v. Commissioner, 62 F.3d 97, 99 (4th Cir. 1995)). “[I]f a civil sanction ‘can only be explained as serving in part to punish,’ then the fine is subject to the Eighth Amendment.” Id. (citing Austin, 509 U.S. at 610). If a civil penalty is punitive in nature and therefore subject to the Eighth Amendment, it will be found constitutionally excessive if it is grossly disproportional to the gravity of [the] offense.” Id.; see also Wemhoff v. City of Baltimore, 591 F. Supp. 2d 804, 808 (D. Md. 2008) (“If a civil fine is subject to the Excessive

² The Fifth Amendment to the Constitution of the United States provides in relevant part that no person shall be “deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.” The Fifth Amendment is made applicable to the states by the Fourteenth Amendment. The Virginia counterpart – Art. 1, §11 – includes identical language.

³ The Eighth Amendment to the Federal Constitution provides that “[e]xcessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted,” and is likewise made applicable to the states by the Fourteenth Amendment. Article I, §9 of the Virginia Constitution includes identical language as the Federal Constitution.

Fines Clause, courts must examine the proportionality between the fine and the gravity of the associated offense in order to determine whether it is constitutionally excessive.”).

Under the circumstances of this case, if the court finds that §34-86(c) of the Charlottesville City Code permits the imposition of a civil penalty equal to ~~twice the fair market~~ value of a building when the building itself was not demolished and only a component of the building, or a “structure,” was demolished, then the civil penalty authorized by §34-86(c) is punitive in nature and bears no rational relation to the underlying wrong sought to be redressed. Here, a civil penalty equal to twice the fair market value of the Gieck Building would be grossly disproportionate to the value of the façade. Therefore, if the civil penalty as requested by the City is imposed, then the civil penalty would violate the Fifth, Eighth, and Fourteenth Amendments to the United States Constitution, and Article I, Sections 9 and 11 of the Virginia Constitution.

WHEREFORE, Joe H. Gieck Trust respectfully requests that this Court sustain its demurrer on the principal basis that a proper application of §34-86(c) of the Charlottesville City Code does not permit the City of Charlottesville to recover a civil penalty for twice the fair market value of a building when the building itself was not demolished, razed or moved, and only a component of the building was removed. In the alternative, Joe H. Gieck Trust requests that if §34-86(c) allows the City of Charlottesville to recover a civil penalty for twice the fair market value of a building when the building itself was not demolished, then the civil penalty authorized under §34-86(c) and as applied under the circumstances of this case is excessive, arbitrary and grossly disproportionate as a matter of law pursuant to the Constitution of the United States,


Amendments V, VIII & XIV, and the Virginia Constitution, Article I, Sections 9 and 11. Joe H. Gieck Trust requests that the Complaint filed by the City of Charlottesville be dismissed with prejudice, and that the Court grant any further relief deemed necessary and proper under the circumstances of this case, including attorney's fees and costs incurred by Joe H. Gieck Trust in this action.

Respectfully submitted,

JOE H. GIECK TRUST

By Counsel,

TIMBERLAKE, SMITH, THOMAS & MOSES, P.C.
25 North Central Avenue
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Telephone: (540) 885-1517
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By: 

Randall T. Perdue, VSB No. 40324

Certificate

I certify that a true copy of the foregoing document was delivered by first-class mail,
postage prepaid, on November 16, 2010, to:

Richard M. Harris, Deputy City Attorney
CITY OF CHARLOTTESVILLE
Post Office Box 911
Charlottesville, Virginia 22902



Randall T. Perdue

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**VIRGINIA: IN THE CIRCUIT COURT FOR THE CITY OF
CHARLOTTESVILLE**

CITY OF CHARLOTTESVILLE,

Plaintiff,

v.

Civil Action No. CL10-360

JOE H. GIECK TRUST

Defendant.

**MEMORANDUM IN OPPOSITION
TO DEFENDANT'S DEMURRER**

COMES NOW the City of Charlottesville ("City"), by counsel, and for its response to the Demurrer made by Defendant Joe H. Gieck Trust ("Gieck"), states as follows:

PRELIMINARY STATEMENT

This action seeks monetary damages from the defendant Joe H. Gieck Trust for demolition of the iconic storefront of a historic building located at 219-221 West Main Street. The facts, as set forth in the City's Complaint, establish that Gieck demolished the façade of the building without first applying for or obtaining a Certificate of Appropriateness as required by the Charlottesville City Code. Consistent with the penalties set forth in the Charlottesville City Code, the City seeks recovery of twice the fair market value of the building as a result of its partial demolition.

Conceding as he must, for purposes of his demurrer, that he wrongfully demolished the façade of 219-221 West Main Street, Gieck nevertheless argues that the City's Complaint against him should be dismissed because (1) the façade of the building is a "structure" and the City seeks recovery based on the fair market value of the building

itself; and (2) if the Charlottesville City Code should be interpreted to allow the City to recover the fair market value of the building when only part of it, in this case the façade, was destroyed, then the penalty sought by the City is grossly disproportionate to the value of the façade and would violate the Fifth, Eighth and Fourteenth Amendments to the United States Constitution and Article I, Sections 9 and 11 of the Virginia Constitution. (Demurrer at 6) Both of the issues raised by Geick's demurrer – namely whether the façade of 219-221 West Main Street is a separate structure or a part of the building itself (which by its very definition it is), and whether the penalty sought by the City for destruction of the façade of 219-221 West Main Street is reasonable (which it is, since Geick demolished the very part of the building that gave it its historical significance) – are factual in nature and inappropriate on demurrer. As such, Geick's demurrer must be overruled.

STATEMENT OF FACTS

The City refers to and hereby incorporates by reference the section entitled "Nature of the Action" in the filed Complaint.

STANDARD OF REVIEW

A demurrer tests the legal sufficiency of a complaint. In order to withstand a demurrer, a complaint need only set forth factual allegations sufficient to state a cause of action. Almy v. Grisham, 273 Va. 68, 76, 639 S.E.2d 182, 186 (2007). When considering a demurrer, a trial court must accept as true all facts contained in the pleadings, as well any facts that may be reasonably and fairly implied and inferred from those allegations. Conway v. Mount Leb. Missionary Baptist Church, 80 Va. Cir. 148, 150 (Va. Cir. Ct. 2010) (internal citations omitted). "A trial court is not permitted on

demurrer to evaluate and decide the merits of the allegations set forth in a [Complaint], but only may determine whether the factual allegations of the [Complaint] are sufficient to state a cause of action." Id. "[A] demurrer presents an issue of law, not an issue of fact." Almy at 186. Indeed, as the Virginia Supreme Court held in Almy, it is error for a trial court to consider the factual merit of allegations when ruling on a defendant's demurrer. Id.

ARGUMENT

1. The City has established a cause of action upon which relief can be granted.

In order to state a cause of action for violation of section 34-277(a) of the Charlottesville City Code, the City need only establish that the Defendant demolished, in whole or in part, a contributing structure without first having applied for or obtained a Certificate of Appropriateness from the Board of Architectural Review ("BAR"). Upon such a showing, the City is entitled to recovery of twice the fair market value of the building or structure demolished. The City's Complaint plainly sets forth a violation of Charlottesville City Code section 34-277(a). [Paragraphs and abbreviations have been edited for clarity herein] It alleges:

1. The Charlottesville City Code designates eight (8) local Historic Districts throughout the City, created pursuant to authority conferred upon the City pursuant to Virginia Code §15.2-2306.

2. The Downtown Architectural Design Control District ("ADC") is a Historic District and is a "major architectural design control district", meaning that City Council has determined that the area is of unique architectural and/or historic value.

3. Every building within the geographical boundaries of the ADC is deemed to be a “contributing structure”, defined in Charlottesville City Code §34-1200 as a building or structure that, by location, design, setting, materials, workmanship, feeling or association adds to the district's sense of time and place and historical development. Charlottesville City Code §34-272(1).

4. The Geick Building is a contributing structure in the ADC, and is thus subject to the requirements of the above-noted code sections pertaining to demolition (in whole or in part).

5. On or about Saturday, October 31, 2009, Geick caused the demolition of the storefront façade of the historic building located at 219-221 West Main Street, Charlottesville, Virginia 22902, consisting of the black glass bulkhead, the curved clear glass display windows with metal trim, the display window floor and rear walls.

6. Geick failed to apply for and obtain an approved certificate of appropriateness (“COA”) from the BAR as required by Charlottesville City Code §34-277 prior to the demolition.

7. Geick’s conduct, amounts to a violation of section 34-277(a) of the Charlottesville City Code and entitles the City to twice the fair market value of the historic building located at 219-221 West Main Street.

2. Geick’s demurrer raises only issues of fact, improper on demurrer.

Rather than challenge the sufficiency of the claims asserted by the City, as is proper on a demurrer, Geick asserts instead that the City’s claim should be dismissed because: (1) the storefront that was demolished is a separate structure and the City seeks

recovery of twice the fair market value of the building, as the Code provides for, rather than the value of the structure; and (2) the penalty sought by the City is excessively disproportionate to Geick's violation. Both of the arguments raised by Geick present issues of fact not appropriate on demurrer and must be rejected. As noted below, in order to determine whether the façade of the building at 219-221 West Main Street is a separate structure – as Geick alleges – or merely part and parcel of the very building itself, the Court will need to consider what exactly Geick wrongfully demolished, the dictionary definition of the term façade and the nature of structures that typically qualify as structures. In order to determine whether the penalty imposed by the Charlottesville City Code is reasonable, or as Geick contends – excessively disproportionate, the Court will likewise need to consider what exactly Geick demolished, its historic significance in Charlottesville vis-à-vis the remainder of the building at 219-221 West Main Street. Both of the issues raised by Geick are intensely factual and inappropriate on demurrer. Almy at 186. As such, the City respectfully requests that Geick's demurrer be overruled and this case be allowed to proceed through discovery and trial –where facts necessary to answer both issues raised by Geick can be developed and tried to a jury.

Should this Honorable Court choose to consider Geick's factual arguments advanced in the context of this demurrer, the City submits that the arguments submitted are misleading and, in fact, wrong.

(A) Geick Demolished Part of the Building Located at 219-221 West Main Street, Not a Separate Structure

Rather than challenge the truth of the allegations set forth in the City's Complaint, on his demurrer, Geick attempts to convince the Court that the façade which existed on the front of the Geick Building was an independent structure, separate and distinct from the Geick Building itself, and that since the City seeks recovery in an amount twice the fair market value of the building rather than the structure, it has failed to state a claim upon which relief can be granted. Contrary to Geick's assertions, the façade of the building located at 219-221 West Main Street was neither an independent building nor a structure, but an integral part of the Geick Building. The Charlottesville City Code defines a structure as

"anything constructed or erected, the use of which requires permanent location on the ground, or attachment to something having a permanent location on the ground. This includes, among other things, dwellings, buildings, etc. For the purpose of determination of setback, signs shall be excluded as structures." (Charlottesville City Code §34-1200.)

A structure is a building or dwelling, or an outbuilding, like a shed, a barn, a detached garage, or a sign. In contrast, however, the Virginia Supreme Court, relying on Webster's Third New International Dictionary, has recognized that a "façade" is:

"The front of a building . . . a face (as a flank or rear facing on a street or court) of a building that is given emphasis by special architectural treatment. . . a false, superficial, or artificial appearance or effect. . ."

Planning Commission Of The City Of Falls Church, Virginia, et al. v. Irving Berman, Betty Berman and The Red Barn System, Inc, 211 Va. 774; 180 S.E.2d 670; 1971 Va. LEXIS 264 (1971)" In this case, when Geick demolished the curved glass storefront at 219-221 West Main Street, he plainly demolished the front of the building or "façade" as that term has been recognized by the Virginia Supreme Court, not a separate structure.

Indeed, although Geick bases much of his demurrer on the assertion that the façade is a separate structure and not part and parcel of the building itself, he presented no evidence or reasons why the façade of the building at 219-221 West Main Street should be regarded as anything other than the front of the building that it is a part of.¹ Without any reason given for why the façade should be considered an independent structure, there is no basis upon which this Honorable Court may find Defendant's factual argument valid. Pursuant to Charlottesville's Historic Preservation Ordinance, the actions taken by Geick are a partial demolition subject to the penalty provisions of Charlottesville City Code §34-86(c).

(B) The question of whether the penalty provided for in the City Code is excessive and disproportional is, at best, an issue of fact to be determined at trial. It is not properly the subject of a demurrer.

Geick next argues that the penalty provided for in the City Charter and the City Code for partial demolition of a contributing structure would be excessive and disproportional if it is applied to the offense committed. Specifically, Defendant argues that the penalty provided for in the City Code, if imposed by this Honorable Court, would be "grossly disproportionate to the value of the façade." What is missing from Geick's argument is the fact that the value of the façade has not been calculated by either the Complainant or the Defendant.

Geick bears the burden of proving that the City's ordinance is "clearly unreasonable, arbitrary, or capricious." Turner v. Board of Supervisors, 263 Va. 283, 559

¹ Were this Court to accept Geick's assertion that the façade of 219-221 West Main Street is a structure separate and distinct from the building itself, it would undermine the very reason that a Certificate of Appropriateness is required for partial demolitions. By this interpretation, any portion of a contributing structure that could be removed could be considered a separate structure, thus avoiding the enforcement provisions of Charlottesville's Historic Preservation Code, which are in place specifically to address this situation.

S.E.2d 683 (2002) (citing Board of Supervisors v. Carper, *200 Va. 653, 107 S.E.2d 390 (1959)*). “Local governing bodies in Virginia enjoy only those powers expressly conferred upon them by the state legislature. A city council's action[s] are presumed valid absent a showing that the action is unreasonable or arbitrary.” Norton v. City of Danville 61 Va. Cir. 253; 2003 Va. Cir. LEXIS 150 (2003). However, when evidence is presented to make the reasonableness of the ordinance fairly debatable, the ordinance will be sustained. Bell v. City of Charlottesville, *224 Va. 490, 297 S.E.2d 810 (1982)*. Reasonableness is fairly debatable “when the evidence offered in support of the opposing views would lead objective and reasonable persons to reach different conclusions.” *Id. at 495, 297 S.E.2d at 813*.

As grounds for his assertion that the penalty sought to be imposed in this case is excessive and unreasonable, Geick strings together a laundry list of cases and quotations addressing excessive fines imposed by local governments, private firms and federal agencies. Geick, however, makes no attempt to explain how the penalty authorized by the Legislature for the City of Charlottesville, enacted by the Charlottesville City Council, and now sought by the City from this Honorable Court “is punitive in nature and bears no rational relation to the underlying wrong sought to be redressed” (Demurrer at 8). Further, Geick provides no analysis whatsoever to support the argument that “a civil penalty equal to twice the fair market value of the Geick Building would be grossly disproportionate to the value of the façade.” *Id.*

The historical significance of the illegally demolished façade of 219-221 West Main Street is documented in Complainant’s Exhibit “D”. It was the character-defining feature of the building, and the last of its kind on Charlottesville’s Historic Downtown

Mall, giving the Geick Building its unique appearance and stature. The uniqueness of a feature such as the demolished façade is specifically noted in the City Code as a factor that would have been considered in determining whether demolition was appropriate.²

The value that this façade encompassed vis-à-vis the Geick Building is a quintessential issue of fact to be determined through analysis of factual data. As such, Defendant's argument is speculative at best and in no way serves to support Defendant's request that a demurrer be granted.³

² **Sec. 34-278. Standards for considering demolitions.**

The following factors shall be considered in determining whether or not to permit the moving, removing, encapsulation or demolition, in whole or in part, of a contributing structure or protected property:

(a) The historic, architectural or cultural significance, if any, of the specific structure or property, including, without limitation:

- (1) The age of the structure or property;
- (2) *Whether it has been designated a National Historic Landmark, listed on the National Register of Historic Places, or listed on the Virginia Landmarks Register;*
- (3) Whether, and to what extent, the building or structure is associated with an historic person, architect or master craftsman, or with an historic event;
- (4) *Whether the building or structure, or any of its features, represent an infrequent or the first or last remaining example within the city of a particular architectural style or feature;*
- (5) *Whether the building or structure is of such old or distinctive design, texture or material that it could not be reproduced, or could be reproduced only with great difficulty; and*
- (6) *The degree to which distinguishing characteristics, qualities, features or materials remain;*
(Emphasis added)

³ Without explicitly stating nor analyzing the issue in any way, Geick also draws the Court's attention to a number of cases that suggest that the imposition of the penalty provided for in Charlottesville City Code § 34-86(c) would constitute an excessive and grossly disproportionate penalty that would amount to an improper taking and violate select U.S. and Virginia Constitution sections. This argument is also improper in the context of this demurrer. Again, Geick's assertion that the penalty sought by the City in this action would be excessive and grossly disproportionate to the gravity of the offense presupposes that the value of the offense has been quantified – another issue of fact inappropriate at this stage. Indeed, one of the cases that Defendant relies on, *Wemhoff v. City of Baltimore*, 591 F. Supp. 2d 804, 808 (D. Md. 2008), acknowledges this point and notes that “[i]f a civil fine is subject to the Excessive Fines Clause, courts must first examine the proportionality between the fine and the gravity of the associated offense in order to determine whether it is constitutionally excessive”³ Virginia's Attorney General has echoed this conclusion and held that: “[r]esolution of any inquiry regarding whether the denial of the permit application by the architectural review board constitutes a “taking” under either the Fifth Amendment to the United States Constitution or the Just Compensation Clause of the Virginia Constitution depends on the particular facts and circumstances of the matter.” 2001 Va. AG LEXIS (2001). Just as the Virginia Attorney General declined to render an opinion on whether the board's denial of the permit application for demolition of a historic church constituted a taking where “no such facts” were provided upon which to base such a conclusion,” so too here should the Court decline to grant Geick's demurrer since Geick offered no facts upon which to base its conclusion. *Id.*

WHEREFORE, the City respectfully requests that this Honorable Court deny the Defendant's demurrer and request for attorney's fees and costs incurred in this action, and such other and further relief as this Court may deem just and proper.

CITY OF CHARLOTTESVILLE
By Counsel



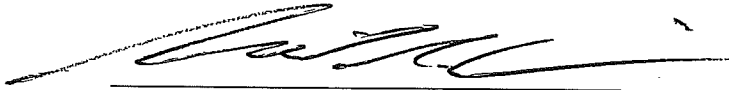
Richard M. Harris, Deputy City Attorney (VSB# 74517)
City of Charlottesville
P.O. Box 911
Charlottesville, Virginia 22902
Tel: (434) 970-3131
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CERTIFICATE OF SERVICE

I hereby certify that on this 16th day of March, 2011 a true and correct copy of the foregoing Complaint was emailed to rperdue@tstm.com and mailed by first class mail, postage prepaid, to:

Randall T. Perdue
Timberlake, Smith, Thomas & Moses, P.C.
25 North Central Avenue
P.O. Box 108
Staunton, Virginia 24402-0108

Counsel for Defendant



Richard M. Harris
Counsel for the City of Charlottesville

VIRGINIA: IN THE CIRCUIT COURT FOR THE CITY OF CHARLOTTESVILLE

CITY OF CHARLOTTESVILLE,

Plaintiff,

v.

Case No. CL10-000360-00

JOE H. GIECK TRUST,

Defendant.

***JOE H. GIECK TRUST'S MEMORANDUM IN REPLY
TO CITY OF CHARLOTTESVILLE'S MEMORANDUM IN OPPOSITION
AND MOTION FOR LEAVE TO AMEND DEMURRER***

Joe H. Gieck Trust ("Gieck"), by counsel, files its memorandum in reply to the Memorandum in Opposition to Defendant's Demurrer filed by the City of Charlottesville (the "City"), and also moves to amend its demurrer on the additional basis that the subject façade is neither a "building" nor a "structure" and is not subject to the provisions of either §34-86(c) or §34-277 of the Charlottesville City Code. Rather, the façade at issue in this case is a "streetwall" as that term of art is defined under the Charlottesville City Code, and the definition for "streetwall" does not include either a "building" or a "structure." Conversely, the respective definitions for "building" and "structure" do not include "streetwall."

Argument

The principles relevant to the construction of a zoning ordinance, whether by a court of by a board of zoning appeals, are well-established. See, e.g., Higgs v. Kirkbridge, 258 Va. 567,

573, 522 S.E.2d 861, 864 (1999). “[W]hile statutes and ordinances delegating zoning authority may be broadly construed to prevent zoning officials from becoming unnecessarily hamstringing in their efforts to enforce zoning ordinances, administrative zoning actions must be grounded within the statutory framework provided.” See *id.* (quoting *Foster v. Geller*, 248 Va. 563, 569, 449 S.E.2d 802, 806 (1994)). “Although it has been stated in some cases that a zoning law should receive a liberal construction, or a liberal construction in favor of the municipality, it has more generally been held or stated that zoning laws and ordinances should be strictly construed or strictly construed in favor of the property owner, the same as other laws in derogation of common-law rights as to the use of private property, or which describe penalties for the violation thereof.” *Neon v. Board of Zoning Appeals*, 20 Va. Cir. 523, 523 (Henrico Co., Aug. 3, 1976) (quoting 82 AM. JUR. 2d: Zoning). Terms defined in statutes and ordinances are “terms of art” which must be given the meanings assigned to them under the relevant context.

A significant issue apparent from the City’s Memorandum in Opposition is the proper classification of the façade at issue in this case. On the one hand, the City argues that “the façade of the building located at 219-221 West Main Street was neither an independent building nor a structure”¹ (See Memorandum in Opposition at 6). The City then continues by asserting that a “façade,” as defined by Webster’s Third New International Dictionary, is “[t]he

¹ It is difficult to understand the City’s legal theory for recovery if the City argues that the façade at issue in this case is neither “an independent building” nor a “structure.” Section 34-86(c) does not include the terms “in whole in part” when referring to the building or structure that is demolished, razed, or moved.

front of a building . . . a face (as a flank or rear facing on a street or court) of a building that is given emphasis by special architectural treatment . . . a false, superficial, or artificial appearance of effect. . . .” (See id., citing Planning Commission of the City of Falls Church, Virginia, et al. v. Irving Berman, et al., 211 Va. 774, 180 S.E.2d 670 (1971)).

The Charlottesville City Code expressly confirms the City’s position that the façade at issue here is neither a “building” nor a “structure.” Section 34-1200 defines the term “streetwall” as “the facade of a building fronting along a street.” (See §34-1200, a copy of which in relevant part is attached as Exhibit “A”). The importance of the definition of the term “streetwall” is important in this case for several reasons. First, the definition resolves the question of the proper classification of the subject façade. Secondly, the definition of the term “streetwall” is not defined as either a “building” or a “structure” as those terms are defined under §34-1200. Secondly, the respective definitions for “building” and “structure” do not include a “streetwall.” Therefore, following the logic suggested by the City, the subject façade – a “streetwall” – is neither a “building” nor a “structure” and is not subject to the requirement of a certificate of appropriateness before removal under §34-277(a)²; and therefore is not subject to the civil penalty sought by the City in this case under §34-86(c).

To the extent that the arguments asserted by Gieck in this Memorandum are outside the scope of the arguments made in the initial Demurrer, Gieck moves this Court for leave to amend its Demurrer. See Rule 1.8 of the Rules of the Supreme Court of Virginia (“Leave to

² The façade, or streetwall, in this case is also not a “contributing structure” as that term is defined under §34-1200 and used under §34-277(a).

amend shall be liberally granted in furtherance of the ends of justice.”); see also Ford Motor Co. v. Benitez, 273 Va. 242, 252, 639 S.E.2d 203, 208 (2009).


WHEREFORE, Joe H. Gieck Trust respectfully requests that this Court grant leave to amend its demurrer to assert that the subject façade is a “streetwall,” as defined under §34-1200 of the Charlottesville City Code and is not subject to neither the requirements under §34-277 nor the civil penalty under §34-86(c) of the Charlottesville City Code. The Joe H. Gieck Trust moves this Court to sustain its demurrer to the Complaint without leave to amend. As alternative bases, the Joe H. Gieck Trust incorporates the bases supporting its original demurrer, and requests that the Court sustain its demurrer and grant any further relief deemed necessary and proper under the circumstances of this case, including attorney’s fees and costs incurred by Joe H. Gieck Trust in this action.

Respectfully submitted,

JOE H. GIECK TRUST

By Counsel,

TIMBERLAKE, SMITH, THOMAS & MOSES, P.C.
25 North Central Avenue
Post Office Box 108
Staunton, Virginia 24402-0108
Telephone: (540) 885-1517
Facsimile: (540) 885-4537

By: 

Randall T. Perdue, VSB No. 40324

Certificate

I certify that a true copy of the foregoing document was delivered by electronic mail,
and by hand, on March 18, 2011, to:

Email: HARRISM@charlottesville.org
Richard M. Harris, Deputy City Attorney
CITY OF CHARLOTTESVILLE
Post Office Box 911
Charlottesville, Virginia 22902



Randall T. Perdue

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Sec. 34-1200. Definitions.

1. The following words, terms and phrases, when used in this chapter, will have the meanings ascribed to them in this article, except where the context clearly indicates a different meaning:

Abutting means having a common border with another, or being separated from such other only by a right-of-way, alley or easement.

Access means and refers to the right of pedestrians and vehicles to cross between a public right-of-way and private property.

Accessory apartment means an independent dwelling unit, the presence and use of which is clearly subordinate to a single-family detached dwelling and in which no more than two (2) persons reside. When contained within the structure of a single family dwelling, such apartment constitutes an "interior accessory apartment."

Accessory building, structure or use means a building, structure or use located upon the same lot as the principal use, building, or structure, the use of which is incidental to the use of the principal structure. Garages, carports and storage sheds are common residential accessory buildings and structures.

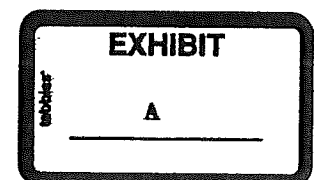
Addition (to an existing building) means any walled and roofed expansion to the perimeter of a building in which the addition is connected by a common load-bearing wall other than a firewall. Any walled and roofed addition that is connected by a firewall or is separated by independent perimeter load-bearing walls is new construction.

Adult assisted living means A residential facility in which aged, infirm or disabled adults reside, and for which the licensing authority is the Virginia Department of Social Services, or for which no state license is required. The term shall not include the home or residence of an individual who cares only for persons related to him by blood or marriage. The term shall also not include any facility licensed by the State Board of Health or the state Department of Mental Health, Mental Retardation and Substance Abuse Services, or any other facility excluded from the definition of "assisted living facility," set forth within Code of Virginia § 63.2-100.

Adult day care means a facility that provides care and protection to four (4) or more aged, infirm or disabled adults who reside elsewhere, during only a part of the day (a period of less than twenty-four (24) hours). The term shall not include any facility, or portion thereof, that is licensed by the State Board of Health, the State Department of Mental Health, Mental Retardation and Substance Abuse Services; or the home or residence of an individual who cares only for persons related to him by blood or marriage.

Alley means a thoroughfare, whether dedicated to public use or privately owned, that provides access for persons and vehicles to the rear and/or side lot lines of properties from abutting public streets or private roads.

Alteration means any change in the floor area, use, adaptability or external appearance of an existing structure.



or more guest rooms designed or intended to be used, let or hired out for occupancy, for monetary compensation, where the rental or leases are for definite periods of time. Meals may or may not be provided, but there is one (1) common kitchen facility. No meals are provided to outside guests. Also commonly known as a rooming house.

Boarding, fraternity and sorority house means a building, or portion thereof, which contains three (3) or more guest rooms, designed or intended to be used as a place of room/board for members of a fraternity or sorority officially recognized by a college or university. Meals may or may not be provided, but there is one (1) common kitchen facility.

Body shop, automobile means a facility, other than a parking garage, designed or used for the repair, replacement and/or restoration of the body and/or chassis parts of motor vehicles, including collision repairs, in which mechanical repairs are performed only as is incidental and necessary to such body work.

Brewery and bottling facilities means a business/industrial facility where beverages are brewed and bottled for local, regional or national distribution.

Buffer means a strip of land, which may or may not have trees and shrubs planted for screening purposes, designed to set apart and protect one (1) space or activity from an adjacent space or activity.

Building means any structure having a roof supported by columns or walls.

Building height means the vertical distance measured from the level of the grade of the building footprint to the level of the highest point of the structure's roof surface. This distance is calculated by measuring separately the average height of each building wall, then averaging them together. The height is measured to the level of a flat roof, to the deck line of a mansard roof, and to the average height level between the eaves and ridge for gable, hip, or gambrel roofs.

GRAPHIC LINK:[Click here](#)

Building permit refers to the approval required under the Uniform Statewide Building Code for or in connection with the construction, reconstruction, alteration, repair or conversion of certain buildings and structures. This permit is obtained from the city's building code official.

Building, principal means a building in which is conducted the principal use of the lot on which it is located. Where a lot contains residential uses, the principal building on the lot shall mean the largest building that contains any dwelling unit.

Building setback line means a line establishing the minimum required distance between the wall of a building and the nearest adjacent lot line.

By right means a use permitted or allowed in the district involved which complies with the provisions of these zoning regulations and other applicable ordinances and regulations.

Caliper means a measure of tree size, determined by measuring the diameter of the tree at a point: six (6) inches above the root ball, at the time of planting, or twelve (12) inches above the ground, for established trees.

is subject to the provisions of state and local laws.

Consumer service business means a business primarily engaged in the provision of a service in the nature of a personal or household convenience, such as: acupuncturist; beauty salons and barbershops, bicycle sales and service; television and appliance repair and rental; book stores; dressmakers and tailors; dry-cleaning outlets; florists; massage therapists; optical centers; pawnshops; photocopy centers; photography studios; stationery stores/printshops; express mail and mailbox services; salons and day-spas; shoe repair; jewelers; travel agencies, etc. This definition does not include any business offering a service to the public, where such business is separately listed by name within the use matrix for any zoning district.

Contractor or tradesman's shop (HAZMAT) means contracting or trade operations involving millwork with industrial lathe, heavy equipment, automated tools, or dipping or refinishing of furniture, or similar processes in which any hazardous materials or industrial tools or machinery are utilized or generated.

Contractor or tradesman's shop, general means building or service industry contractors, including: carpentry, electrical, masonry, metalworking, cabinetmaking, flooring installation, duct work, plumbing, heating, air conditioning, electrical, framing or similar light work.

Contributing structure, as used within Article II, Division 2 (Historical Preservation and Architectural Design Control Overlay Districts) and Division 5 (Historic Conservation Overlay Districts), and when referring to a building or structure located within a major design control district identified within section 34-272 thereof, means a building or structure that, by location, design, setting, materials, workmanship, feeling or association adds to the district's sense of time and place and historical development.

Convent means an association or community of recluses devoted to a religious life under a superior; a body of monks, friars, or nuns, constituting one (1) residential community. Includes also "monastery."

Crematory means a furnace for cremating human remains, or a building, or portion thereof, containing such a furnace. Also commonly known as a crematorium. Where permitted as a stand-alone facility, the term shall also be construed to include a facility for the cremation of pet remains.

Criminal justice facility means a residential facility operated by the department of criminal justice services (DCJS), or a contractor of DCJS, or by a local criminal justice agency. The term includes juvenile detention facilities, adult jails and correctional facilities, halfway houses, and similar residential accommodations for delinquent juveniles or adult offenders.

Datacenter also commonly referred to as a hosting site, hosting center or application service provider (ASP), this is a specialized computer service business that houses electronic web sites and provides data-serving and other services for compensation. This type of facility may contain a network operations center (NOC), a restricted access area containing automated systems that constantly monitor server activity, Web traffic, and network performance for irregularities.

Daycare facility means a facility where, during the absence of a parent or guardian, a person or

background structure of, the sign.

Sign, window means all signs permanently or temporarily affixed to the interior or exterior of a window or door.

Single room occupancy (SRO) facility means a residential building or buildings which contain multiple single room dwelling units. Each unit is for occupancy by no more than two (2) individuals and must meet the building code's minimum floor area standards and have a maximum square footage of four hundred fifty (450) square feet. The unit must contain food preparation and sanitary facilities. The facility must provide counseling and training for social, behavioral, and job seeking/training skills for residents.

Skateboard park means a building, structure, or open area containing or developed with slopes, hills, passageways, and other challenges where people using skateboards may practice the sport for a fee; rental or sale of skateboards and related equipment may be included.

Stadium/arena: See "arena/stadium."

Steep slope refers to the portion of a lot that has a grade in excess of twenty-five (25) percent.

Story means That portion of a building, other than the basement, included between the surface of any floor and the surface of the floor next above it; and, if there is no floor above it, the space between the floor and the ceiling next above it.

Street means a public or private thoroughfare which affords principal means of access to abutting property.

Streetwall means the facade of a building fronting along a street.

Structure means anything constructed or erected, the use of which requires permanent location on the ground, or attachment to something having a permanent location on the ground. This includes, among other things, dwellings, buildings, etc. For the purpose of determination of setback, signs shall be excluded as structures.

Subdivision means the division or redivision of land into lots, tracts, parcels, sites, or divisions for the purpose of sale, lease, or transfer of ownership.

Substantial damage means for purposes of Article II, section 34-240, et seq. damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition would equal or exceed fifty (50) percent of the fair market value of the structure. The fair market value of the building refers to (i) the appraised value of the initial repair or improvement, or (ii) in the cause of damage, the assessed value of the building prior to the damage occurring.

Substantial improvement means for purposes of Article II, section 34-240, et seq. means any repair, reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds fifty (50) percent of the market value of the structure before the "start of construction" of the improvement. This term includes structures which have incurred "substantial damage," regardless of the actual repair work performed. The term does not, however, include

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March 18, 2011

By Hand

Hon. Paul C. Garrett, Clerk
CIRCUIT COURT FOR THE CITY OF CHARLOTTESVILLE
315 E. High Street
Charlottesville, Virginia 22902

RE: *City of Charlottesville v. Joe H. Gieck Trust*
Case No. CL10-000360-00

Dear Mr. Garrett:

I enclose Joe H. Gieck Trust's Memorandum in Reply to the City of Charlottesville's Memorandum in Opposition and Motion to Amend Demurrer.

Thank you in advance for your attention to this matter. If you have any questions, please call me.

With regards, I am

Very truly yours,



Randall T. Perdue

RTP:pd
Enclosures
cc (w/enc.): Joe H. Gieck, Trustee, Joe H. Gieck Trust (by hand)
William S. Rice (by hand)
Richard M. Harris, Esquire (by electronic mail: HARRISRM@charlottesville.org;
hard copy by hand)

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March 18, 2011

Via Facsimile: 434-970-3038

Pat Young, Secretary
HON. EDWARD L. HOGSHIRE, JUDGE
CIRCUIT COURT FOR THE CITY OF CHARLOTTESVILLE
315 E. High Street
Charlottesville, Virginia 22902

RE: *City of Charlottesville v. Joe H. Gieck Trust*
Case No. CL10-000360-00

Dear Ms. Young:

I attach the Joe H. Gieck Trust's Memorandum in Reply to the City of Charlottesville's Memorandum in Opposition for Judge Swett's consideration for the hearing scheduled today at 11:30 a.m.

I apologize for providing this to Judge Swett on the morning of the hearing, however, I did not receive the City's Memorandum in Opposition until yesterday.

Thank you for your assistance with this matter. If you have any questions or concerns, please call me.

With regards, I am

Very truly yours,



Randall T. Perdue

RTP:pd

Attachment

cc (w/attach): Richard M. Harris, Esquire

(by electronic mail: HARRISRM@charlottesville.org; hard copy by hand)

**VIRGINIA: IN THE CIRCUIT COURT FOR THE CITY OF CHARLOTTESVILLE
CITY OF CHARLOTTESVILLE,**

Plaintiff,

v.

Civil Action No. CL10-360

JOE H. GIECK TRUST

Serve: Joe H. Gieck, Trustee
Joe H. Gieck Trust
2124 Wentworth Farm Road
Charlottesville, Virginia 22902-7586

Defendant.

COMPLAINT

COMES NOW City of Charlottesville (“City”), by counsel, and for its Complaint against the Joe H. Gieck Trust (“Gieck”), states as follows:

Nature of the Action

1. This is an action brought by the City of Charlottesville seeking monetary damages from the defendant Joe H. Gieck Trust for demolishing the storefront façade of a historic building located at 219-221 West Main Street, Charlottesville, Virginia 22902 without first applying for or receiving approval from the City of Charlottesville Board of Architectural Review, as required under Charlottesville City Code §34-277.

2. This building was originally constructed in 1921, and housed the Victory Shoe Store for over seventy (70) years on Main Street, continuing on after the creation of the Charlottesville Downtown Mall. The building’s façade prominently featured curved glass display windows, a unique historical feature that is not duplicated anywhere else on the

Downtown Mall, and cannot be replicated. The defendant deliberately demolished this historic storefront, a significant community asset, ignoring the obligation to seek review and authorization to do so. Pursuant to Charlottesville City Code §34-86(c), failure to obtain the required approval for demolition, in whole or in part, of such a historic structure subjects the property owner to a civil penalty equal to twice the fair market value of the building or structure, in an action to be brought in this Honorable Court. The City of Charlottesville seeks the imposition of this civil penalty against the Defendant in accordance with the ordinance.

Parties

3. The City of Charlottesville (“City”) is a municipal corporation organized and existing under the laws of the Commonwealth of Virginia.

4. Joe H. Gieck Trust (“Gieck”) is the owner of real property located at 219-221 West Main Street, Charlottesville, Virginia, 22902, City of Charlottesville Tax Map 33, Parcel 272 (the “Subject Structure”).

Jurisdiction and Venue

5. This Court has jurisdiction over this matter pursuant to Virginia Code §17.1-513, Charlottesville City Code §34-86(c) and Charlottesville City Charter §50.6.

6. This Court is the proper venue for this action pursuant to Charlottesville City Code §34-86(c)(2) and Charlottesville City Charter §50.6.

Charlottesville’s Historic Preservation Ordinance

7. The Charlottesville City Code designates eight (8) local Historic Districts throughout the City, created pursuant to authority conferred upon the City pursuant to Virginia Code §15.2-2306, the purposes of which are, *inter alia*, to preserve and protect historic

buildings, structures and properties which serve as important visible reminders of the historic, cultural and architectural or archaeological heritage of the city. In order to accomplish these goals, the historic district designation imposes a number of restrictions and review processes vis-à-vis proposed construction, reconstruction, alteration, restoration, demolition and/or removal of buildings.

8. The Downtown Architectural Design Control District (“ADC”) is a Historic District and is a “major architectural design control district”, meaning that City Council has determined that the area is of unique architectural and/or historic value.

9. Every building within the geographical boundaries of the ADC is deemed to be a “contributing structure”, defined in Charlottesville City Code §34-1200 as a building or structure that, by location, design, setting, materials, workmanship, feeling or association adds to the district's sense of time and place and historical development. Charlottesville City Code §34-272(1).

10. Pursuant to the Charlottesville City Code §34-277(a), “[n]o contributing structure located within a major design control district, and no protected property, shall be moved, removed, encapsulated or demolished (in whole or in part) unless and until an application for a certificate of appropriateness (“COA”) has been approved by the BAR [City Board of Architectural Review], or the city council on appeal...” A COA is a permit issued to administer the provisions of the city's historic architectural design control district regulations.

11. Any person who demolishes, razes or moves any building or structure which is subject to the regulations set forth within Charlottesville City Code §34-277 without approval of the BAR or city council on appeal, is subject to a civil penalty equal to twice the fair market value of the building or structure, as determined by the city real estate tax assessment at the time

of the demolition, razing or moving. Charlottesville City Charter §50.6; Charlottesville City Code §34-86(c). , Copies of the relevant ordinance and charter provision are annexed hereto collectively as Exhibit “A” for ease of reference.

Significance of the Historic Building

12. The building located at 219-221 West Main Street, Charlottesville, Virginia 22902, is a 2-story, 5-bay Victorian style commercial duplex building built in 1921. 219 West Main Street (commonly known as the Victory Shoe Store), is the width of the eastern two bays of the building. The property’s Landmark Survey, written in 1979, states that the Victory Shoe Store “occupied the eastern half since 1922”. The historic survey describes the now demolished storefront - “The walls are faced with black tile, and display windows with rounded corners flank a deeply recessed entrance” - but incorrectly states that the storefront was “probably original.” The Victory Shoe Store opened for business in 1921, and the former owners installed a new façade on the building around 1947, which existed until the subject demolition. The Victory Show Store operated in that location from 1921 until 1996. Since then, a number of retail stores occupied the space.

13. The Subject Structure is a contributing structure in the *Charlottesville and Albemarle County Courthouse District* in the *National Register of Historic Places* and in the *Virginia Landmarks Register*. There are no other curved glass storefronts on the Downtown Mall, the major historic and commercial area of Charlottesville where the structure is situated. A number of historical photographs of the building façade, dating from 1947 through its demolition, are attached hereto collectively as Exhibit “B”.

Defendant's Violation of Charlottesville's Historic Preservation Ordinance

14. On or about Saturday, October 31, 2009, Gieck caused the demolition of the storefront façade of the historic building located at 219-221 West Main Street, Charlottesville, Virginia 22902, consisting of the black glass bulkhead, the curved clear glass display windows with metal trim, the display window floor and rear walls.

15. When City staff came to work on the following Monday morning, November 2, 2009, the demolition was discovered and a "Stop Work Order" was issued for the exterior work.

16. The Subject Structure is a contributing structure in the ADC, and is thus subject to the requirements of the above-noted code sections pertaining to demolition (in whole or in part).

17. Gieck failed to apply for and obtain an approved certificate of appropriateness ("COA") from the BAR as required by Charlottesville City Code §34-277 prior to the demolition.

18. Subsequent to the issuance of the "Stop Work Order," City personnel instructed Gieck to apply for a COA to establish whether the demolition would have been allowed by the BAR. Copies of the Stop Work Order, letter and Notice of Violation/Order of Correction are attached hereto collectively as Exhibit "C".

19. Thereafter, Gieck filed an application with the BAR on or about November 24, 2009. In the application, Gieck alleged that he was unaware that application to the BAR was necessary prior to the façade demolition.

20. On December 15, 2009, the BAR unanimously denied Gieck's November 24, 2009 application. (Copies of the application, the City staff report, and the minutes of the December 15, 2009 BAR meeting are annexed hereto collectively as Exhibit "D").

21. During the course of the BAR meeting, one Board member noted that Gieck's defense of ignorance of the applicable code requirement was "odd", because less than one year prior the BAR had approved a COA for the same applicant for the demolition of a structure on the same property.

22. Since the demolished façade could not be replaced or duplicated, Gieck thereafter submitted an application for reconstruction of a new storefront for the building.

23. After deferral and redesign, the BAR granted a COA to Gieck on February 16, 2010, finding that the proposed new storefront design satisfied the City Guidelines for Rehabilitation.

24. Notwithstanding the eventual approval of a significantly redesigned storefront of the historic structure located at 219-221 West Main Street, the Defendant's demolition of the original façade was a deliberate violation of Charlottesville City Code §34-277(a).

25. The original façade has not, and in fact, cannot be restored.


26. The City and its citizens have permanently lost this historic resource, and are left with only one avenue of recourse, which is to seek the penalty against the Defendant as authorized by Charlottesville City Code §34-86(c) in an amount equal to twice the fair market value of the structure.

27. According to the City Assessor's assessment of the Subject Structure at the time of the demolition, it was valued at six hundred eight thousand three hundred dollars (\$608,300.00). A copy of the assessment is attached hereto as Exhibit "E".

WHEREFORE, the City respectfully requests that this Honorable Court impose a civil penalty against the Defendant in the amount of one million (\$1,016,600.00), representing twice

the fair market value of the Subject Structure, as determined by the city real estate tax assessment at the time of the demolition, and for such other and further relief as this Court may deem just and proper.

CITY OF CHARLOTTESVILLE
By Counsel

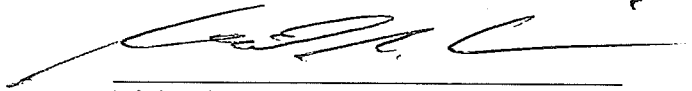


Richard M. Harris, Deputy City Attorney (VSB# 74517)
City of Charlottesville
P.O. Box 911
Charlottesville, Virginia 22902
Tel: (434) 970-3131
Fax: (434) 970-3022

CERTIFICATE OF SERVICE

I hereby certify that on this 26th day of October, 2010 a true and correct copy of the foregoing Complaint was mailed by first class mail, postage prepaid, to:

Joe H. Gieck Trustee
Joe H. Gieck, Trust
2124 Wentworth Farm Road
Charlottesville, Virginia 22902-7586
Defendant



Richard M. Harris
Counsel for the City of Charlottesville

Sec. 50.6. Authority of City Council to impose civil penalties for wrongful demolition of historic buildings.

A. Notwithstanding the provisions of any state law which authorize civil penalties for the violation of a local zoning ordinance, City Council may adopt an ordinance which establishes a civil penalty for the demolition, razing or moving of a building or structure without approval by the board of architectural review or City Council, when such building or structure is subject to the City's historic preservation zoning ordinance. The penalty established by the ordinance shall be imposed on the party deemed by the court to be responsible for the violation and shall not exceed twice the fair market value of the building or structure, as determined by the city real estate tax assessment at the time of the demolition.

B. An action seeking the imposition of such a penalty shall be instituted by petition filed by the city in circuit court, which shall be tried in the same manner as any action at law. It shall be the burden of the city to show the liability of the violator by a preponderance of the evidence. An admission of liability or finding of liability shall not be a criminal conviction for any purpose. The filing of any action pursuant to this section shall preclude a criminal prosecution for the same offense, except where the demolition, razing or moving has resulted in personal injury.

C. The defendant may, within twenty-one days after the filing of the petition, file an answer and without admitting liability, agree to restore the building or structure, as it existed prior to demolition. If the restoration is completed within the time agreed upon by the parties, or as established by the court, the petition shall be dismissed from the court's docket.

D. Nothing in this section shall preclude action by the zoning administrator under Virginia Code, section 15.1-491(d) or by the governing body under Virginia Code, section 15.1-499, either by separate action or as a part of the petition seeking a civil

penalty.

(Acts 1990, S.B. No. 17, § 1)

Charlottesville City Code

Sec. 34-86. Schedule of civil penalties.

- (a) Any violation of the following provisions of this chapter shall be subject to a civil penalty of fifty dollars (\$50.00) for the first violation, and a civil penalty of two hundred fifty dollars (\$250.00) for each subsequent violation arising from the same set of operative facts:
 - (1) The placement, allowance of, erection or maintenance of a material impediment to visibility so as to restrict sight distance in violation of section 34-1121.
 - (2) Violation of Article IX, Division 2, Sections 34-970, et seq., regulating parking.
- (b) Any violation of the following provisions of this chapter shall be subject to a civil penalty of one hundred dollars (\$100.00) for the first violation, and a civil penalty of two hundred fifty dollars (\$250.00) for each subsequent violation arising from the same set of operative facts:
 - (1) Each use of a lot, including the use of any structure thereon, not authorized either as a matter of right or by special use permit, provisional use permit, or temporary use permit by the zoning regulations applicable to the district in which the lot is located.
 - (2) Any violation of sections 34-1170 through 34-1193, establishing supplementary regulations for certain uses authorized in the several zoning districts through VI, pertaining to dimensional requirements.
 - (4) Any violation of any approved proffers, planned unit development plans, special use permits, provisional use permits, temporary use permits, variances, site plans, certificates of appropriateness or any condition related thereto.
 - (5) Any violation of the regulations set forth within sections 34-1100 through 34-1126 (buildings and structures).
 - (6) Any violation of sections 34-1140 through 34-1151, regulating nonconforming uses, lots and structures.
 - (7) Violation of sections 34-1020 through 34-1054, regulating permanent and temporary signs, except as otherwise provided in this division.
 - (8) Any violation of Article II, Divisions 1--4, sections 34-240, et seq., regarding requirements for overlay districts.
 - (9) Any violation of Article VIII, Divisions 1--6, sections 34-850, et seq., regarding improvements required for developments.
 - (10) Any violation of Article IX, Division 5, sections 34-1070, et seq., regarding requirements for telecommunications facilities.
- (c) Any person who demolishes, razes or moves any building or structure which is subject to the regulations set forth within section 34-277 without approval of the BAR or city council, shall be subject to a civil penalty equal to twice the fair market value of the building or structure, as determined by the city real estate tax assessment at the time of the demolition, razing or moving.
 - (1) For purposes of this section, the term "person" shall include any individual, firm, partnership, association, corporation, company or organization of any kind,

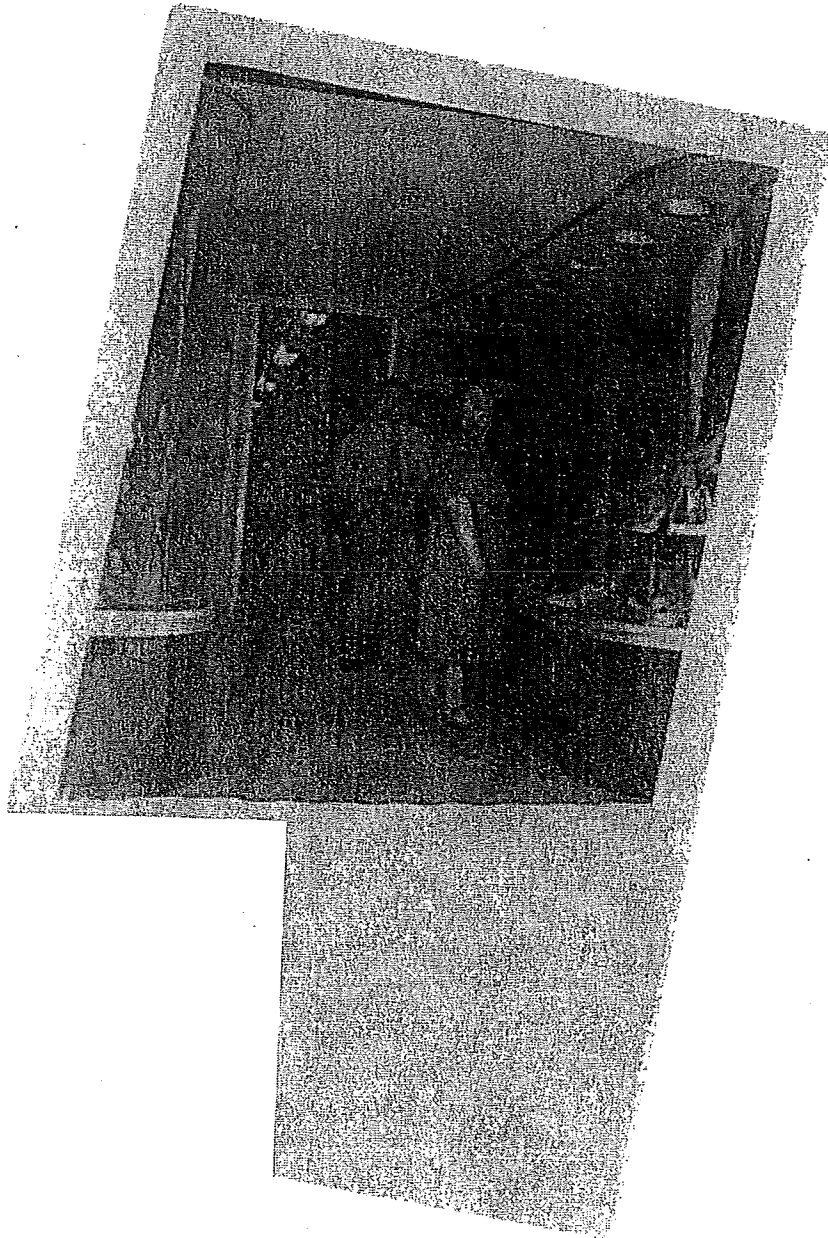
which is deemed by the Charlottesville Circuit Court to be responsible for the demolition, razing or moving.

(2) An action seeking the imposition of the penalty shall be instituted by petition filed by the city in the Circuit Court of the City of Charlottesville, which shall be tried in the same manner as any action at law. It shall be the burden of the city to show the liability of the violator by a preponderance of the evidence. An admission of liability or finding of liability shall not be a criminal conviction for any purpose.

(3) The defendant may, within twenty-one (21) days after the filing of the petition, file an answer and, without admitting liability, agree to restore the building or structure as it existed prior to demolition. If the restoration is completed within the time agreed upon by the parties or as established by the court, the petition shall be dismissed from the court's docket.

(4) The filing of the action pursuant to this section shall preclude a criminal prosecution for the same offense, except where the demolition, razing or moving has resulted in personal injury.

(9-15-03(3))



after 1947
Curved glass storefront

33-272



C. 1970

PHOTOGRAPH BY [unreadable]



some time Between 1980-1996



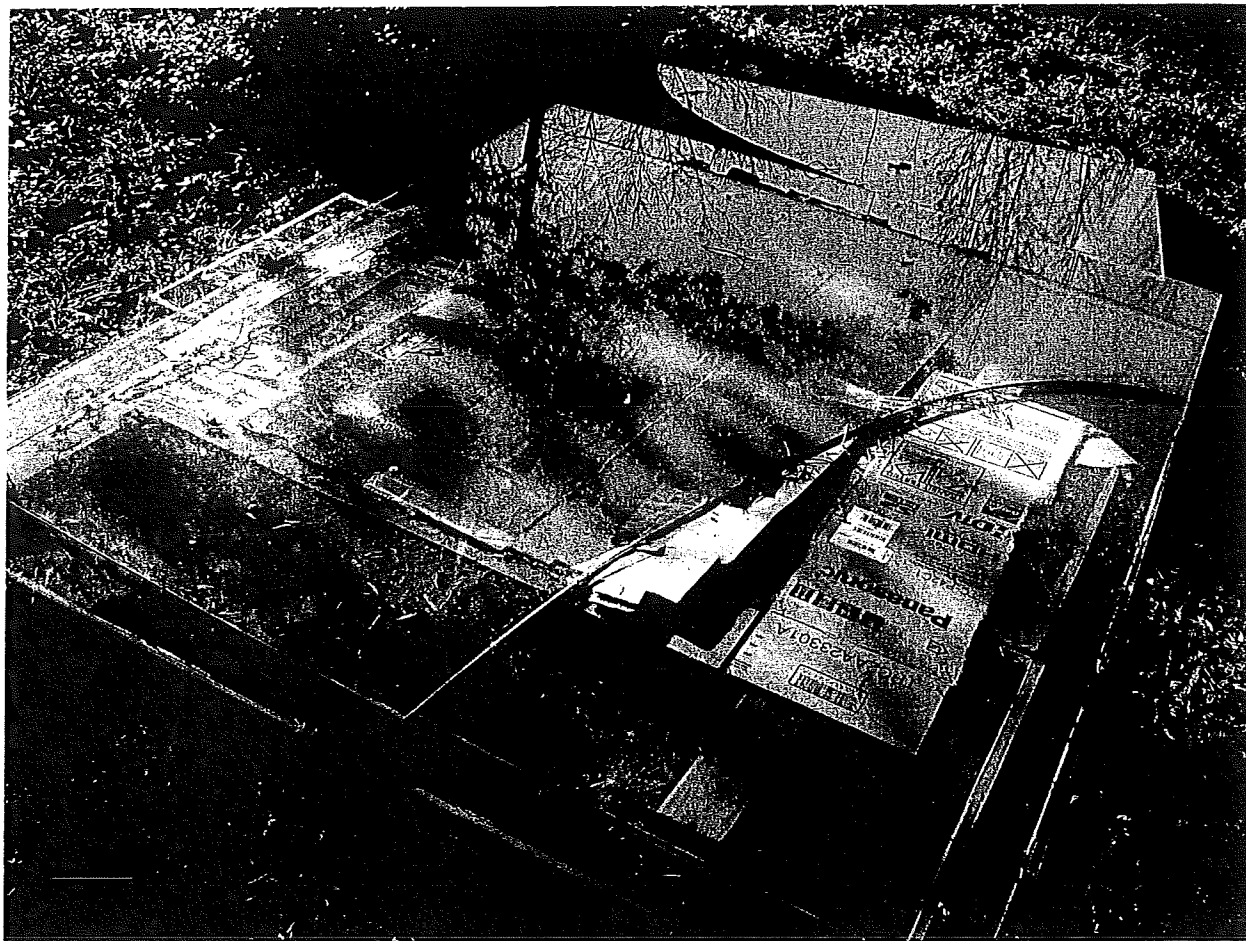
2009

219

smartroom

CAUTION - EVIDENCE - CAUTION







WE VE MOV

NEW SPACI
down the road
to the north of
the site. There
is a new...

MOV EDI... WE VE



City of Charlottesville
 Neighborhood Development Services
 Phone: 434-970-3182 Fax 434-970-3359

STOP WORK ORDER

ORDEN DE PARADE TRABAJO

Per current Virginia Uniform Statewide Building Code Per current Charlottesville Zoning Ordinance

Address: 21 - 221 WEST MAIN STREET (TRD 33027200)

Date: 2 NOVEMBER 2009 Time: 11:00 AM

Permit Number: NA

Location: EXTERIOR/ENTRYWAY/FACADE BETWEEN MUDHOUSE & SALON

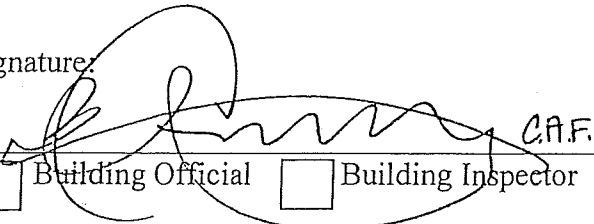
Type of Inspection: ZONING/BOARD OF ARCHITECTURAL REVIEW

Business Name: NA

Comments: NO WORK WHICH WILL INCLUDE ANY CHANGES TO THE EXTERIOR OF A BUILDING LOCATED IN AN ARCHITECTURAL DESIGN CONTROL DISTRICT MAY COMMENCE WITHOUT PRIOR APPROVAL FROM THE BOARD OF ARCHITECTURAL REVIEW. ADDITIONALLY, NO WORK IS TO TAKE PLACE WITHOUT FIRST SECURING PROPER PERMITS.

Conditions under which such work stated above may resume: ONCE PERMISSION HAS BEEN GRANTED BY THE BOARD OF ARCHITECTURAL REVIEW, PROPER PERMITS HAVE BEEN SECURED AND ANY CURRENT OR PENDING VIOLATIONS HAVE BEEN CORRECTED.

Signature:

 C.A.F.

Building Official Building Inspector Zoning Administrator Zoning Inspector

November 4, 2009

Joe H. Gieck, Trustee for the Joe H. Gieck Declaration of Trust
2124 Wentworth Farm
Charlottesville, VA 22902

Inspection Made at: 219 – 221 West Main Street (Tax Map Parcel 330272000)

Dear Sir or Madam:

During an inspection of the above-referenced property, which took place on November 2, 2009, the City Zoning Inspector found one or more violations of the Charlottesville Zoning Ordinance, Section 34-277, which regulates for demolition and removals in major design control districts.

The violations are outlined in the attached Notice of Violation and Order of Correction. You advised of the following:

1. The attached Notice of Violation and Order of Correction constitute the determination of the City's Zoning Administrator that one or more violations exist at your property. You have the right to appeal this determination to the Board of Zoning Appeals within thirty (30) days of the date of this letter. If an appeal is not made within this time period, then this determination becomes final.
2. Under Section 34-86(b)(8) of the Charlottesville Zoning Ordinance, this violation subjects you to a civil penalty in the amount of \$100.00 for the first offense and \$250.00 for each subsequent offense. **If you are unwilling or unable to work with the City to correct the identified violations, the City may initiate legal proceedings, which may result in penalties up to twice the full market value of the building or structure.**
3. **Your prompt attention to this notice is necessary. You are directed to contact me at (434) 970-3995 to discuss this matter within forty-eight (48) hours of receipt of this letter.**

Sincerely,

Read Brodhead
Zoning Administrator
City of Charlottesville

Brodhead@Charlottesville.org
434.970.3995

Attachments: Notice of Violation and Order of Correction

NOTICE OF VIOLATION
ORDER OF CORRECTION

TO: Joe H. Gieck, Trustee for the Joe H. Gieck Declaration Trust
DATE: November 4, 2009
INSPECTOR: Read Brodhead, Zoning Administrator

ADDRESS OF VIOLATION: 219 – 221 West Main Street (Tax Map Parcel 330272000)

1. **VIOLATION** of Charlottesville City Code Section 34-277: “no contributing structure located within a major design control district, and no protected property, shall be moved, removed, encapsulated or demolished (in whole or in part) unless and until an application for a Certificate of Appropriateness has been approved by the Board of Architectural Review (BAR).

2. **ORDER:** To correct this violation you must make application to the BAR no later than Tuesday November 24, 2009 at 4:00 pm for their December 15, 2009 meeting for a Certificate of Appropriateness. Further, you must comply with all conditions set forth by the BAR. The application should address both the demolition that has already occurred, and any proposed new construction to restore the façade of the building. **You are directed to contact me at 434.970.3732 to discuss this matter within forty-eight (48) hours of receipt of this letter.**

CERTIFICATE OF AUTHENTICITY

I, Read Brodhead, do hereby certify as follows:

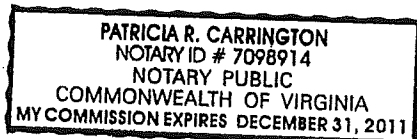
1. I am employed by the City of Charlottesville Department of Neighborhood Development Services ("NDS") as its Zoning Administrator. As such, I am the custodian of records related to Zoning Code violations issued by the City.
2. The three (3) page document attached to this Certificate is a true and accurate copy of a Stop Work Order, letter and Notice of Violation/Order of Correction issued to the owner of the property located at 219 West Main Street, Charlottesville, Virginia and maintained by me in the performance of my official duties.

SIGNED: *Read Brodhead*

Notarization

The foregoing certification of authenticity was sworn to and subscribed before me on this 25th day of OCTOBER 2010.

Notary Public: *Patricia R. Carrington* My Commission Expires: DECEMBER 31, 2011





Board of Architectural Review (BAR) Certificate of Appropriateness

Please Return To: City of Charlottesville
Department of Neighborhood Development Services
P.O. Box 911, City Hall
Charlottesville, Virginia 22902
Telephone (434) 970-3130 Fax (434) 970-3359

RECEIVED

NOV 24 2009

NEIGHBORHOOD DEVELOPMENT SERVICES

Please submit ten (10) copies of application form and all attachments.

For a new construction project, please include \$350 application fee. For all other projects requiring BAR approval, please include \$100 application fee. For both types of projects, the applicant must pay \$1.00 per required mail notice to property owners. The applicant will receive an invoice for these notices, and project approval is not final until the invoice has been paid. For projects that require only administrative approval, please include \$100 administrative fee. Make checks payable to the City of Charlottesville.

The BAR meets the third Tuesday of the month.

Deadline for submittals is Tuesday 3 weeks prior to next BAR meeting by 4 p.m.

Project Name/Description Removal of show windows & knee walls Parcel Number 330272000 RPC: 16180

Address/Location 219 W. Main Street

Owner Name Joe H. Gieck Trust Applicant Name Same

Applicant Information

Address: 2124 Wentworth Farm Road
Charlottesville, Va., 22902-7586

Email: wfarm@earthlink.net

Phone: (W) _____ (H) 434-293-3273

FAX: _____

Property Owner Information (if not applicant)

Address: _____

Email: _____

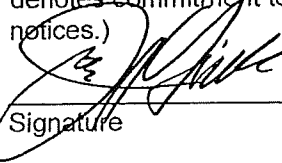
Phone: (W) _____ (H) _____

FAX: _____

Do you intend to apply for Federal or State Tax Credits for this project? No

Signature of Applicant

I hereby attest that the information I have provided is, to the best of my knowledge, correct. (Signature also denotes commitment to pay invoice for required mail notices.)


Signature

10/29/09
Date

Property Owner Permission (if not applicant)

I have read this application and hereby give my consent to its submission.

Signature Date

Description of Proposed Work (attach separate narrative if necessary): Remove Show Window glass (front right window cracked in upper right hand corner) and knee walls (both knee walls damaged by mall construction) knee walls covered in molded plastic, no longer available. Both Dotson & Ch'ville Glass stated that existing windows needed to be replaced with tempered safety glass but current curved glass no longer available. Owner not aware that a permit needed to be submitted and approved by the BAR before proceeded. Owner owns six (6) other buildings where the glass windows have all been replaced between 1992 and 2003 with only a permit purchased by either Virginia Glass, Glass & Plastics & Jefferson Glass. After a robbery of the Mens & Boys Shop where a chair from The Nook had been thrown thru the show window, we realized that storefront was not up to code and thus over a 4-5 year period we replaced all show windows.

For Office Use Only

Received by: BSW

Fee paid: 100.00 Cash/ck. # 4916

Date Received: 11-24-09

Approved/Disapproved by: _____

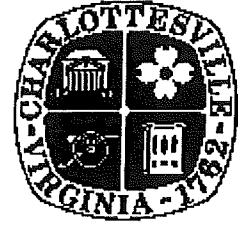
Date: _____

Conditions of approval: _____

POA-0163

Further removal of the stone slab (original entrance to the upstairs apartment) needs to be accomplished as well as the concrete entrance which was expanded sometime after 1950. This will allow the owner to restore the front to its original look from the early 1920's through the late 40's as shown in Holsinger Photos. The curved glass along with the plastic facade was installed sometime after 1950. Previous owner(s) Central City Land Trust namely Van Yahres and Elwood evidently removed the plastic facade sometime after 1975 their

**CITY OF CHARLOTTESVILLE
BOARD OF ARCHITECTURAL REVIEW
STAFF REPORT
December 15, 2009**



Certificate of Appropriateness Application
BAR 09-12-05
219 W. Main Street
Tax Map 33 Parcel 272
Joe H. Gieck, Trust, Owner
Demolition of storefront

Background

This property known as the Carter-Bennett Building (Victory Shoe Store) is a Victorian style commercial building built in 1921, replacing earlier structures. The Victory Shoe Store occupied the eastern half of the building from 1922 until 1996. The demolished storefront of black glass with curved clear glass showcase windows dated to 1947. There was probably just one storefront prior to that. The historic survey and a 1980 photo are attached.

The demolition of the storefront occurred on a Saturday morning without a required certificate of appropriateness from the BAR, and without a required building permit, and was discovered on the following Monday morning. The building had been vacant, following the departure of Elsie Garden, a clothing store, to the Terraces.

The applicant had obtained a separate building permit for interior work to renovate the property for a restaurant use. Staff immediately placed a stop work on the exterior work, but was unable to stop the work on the interior, considered a separate permit under the building code.

The applicant was told he needed to apply for BAR approval for the demolition after the fact, in order to establish whether the demolition would have been permitted. If the application is denied, the City intends to pursue the maximum penalty for a demolished, protected building.

Following a determination regarding the appropriateness of the demolition, the applicant must obtain BAR approval for a design to reconstruct the front of the building.

November 18, 2008 – The BAR approved (7-1-1) for the same applicant the demolition of a cinderblock shed in a rear alley.

Application

The applicant is seeking approval, after the fact, for a partial demolition of the black glass and clear curved glass storefront. In addition, the applicant is requesting further demolition of the concrete floor slabs, and the aluminum door.

The applicant has submitted additional photos:

- (1) From the Hook article, a photo that probably dates to the late 1980's. The black glass has been removed from the surround; it remains on the base
- (2) A photo probably taken soon after the store was built in 1921. The store is the last on the left side of the photo. The storefront does not appear to have black glass on the base or surround; it is unclear whether the clear glass is curved or angled.

- (3) Several current photos showing the demolition.

Criteria and Guidelines

Review Criteria Generally

Sec. 34-284(b) of the City Code states that,

In considering a particular application the BAR shall approve the application unless it finds:

- (1) That the proposal does not meet specific standards set forth within this division or applicable provisions of the Design Guidelines established by the board pursuant to Sec.34-288(6); and*
- (2) The proposal is incompatible with the historic, cultural or architectural character of the district in which the property is located or the protected property that is the subject of the application.*

Standard of Review

Sec. 34-277. Certificates of appropriateness; demolitions and removals.

(a) No contributing structure located within a major design control district, and no protected property, shall be moved, removed, encapsulated or demolished (in whole or in part) unless and until an application for a certificate of appropriateness has been approved by the BAR, or the city council on appeal, except that:

- (1) The moving, removing, encapsulating or demolition, in whole or in part, of any contributing structure or protected property shall be allowed pursuant to an order of the city's building code official, without the permission of the BAR or city council on appeal, upon the determination of the building code official that the building or structure is in such a dangerous, hazardous or unsafe condition that it could reasonably be expected to cause death or serious injury before review under the provisions of this article. Upon such a determination, the building code official shall deliver a copy of his order to the director of neighborhood development services and to the chairman of the BAR; and*
- (2) Where the moving, removing, encapsulation or demolition of any contributing structure or protected property will disturb or affect fewer than twenty-five (25) square feet, total, of exterior wall, roof or other exterior surfaces, such activity shall be deemed an alteration subject to the review process set forth within Sec. 34-275, above.*

Therefore, due to the size of the area removed, this request requires BAR approval as a partial demolition.

Pertinent Standards for Considering Demolitions include:

According to City Code Sec. 34-278 the following factors shall be considered in determining whether or not to permit the moving, removing, encapsulation or demolition, in whole or in part, of a contributing structure or protected property:

(a) The historic, architectural or cultural significance, if any, of the specific structure or property, including, without limitation:

(1) The age of the structure or property; 1921

(2) Whether it has been designated a National Historic Landmark, listed on the National Register of Historic Places, or listed on the Virginia Landmarks Register; The property is a contributing structure in the Charlottesville and Albemarle County Courthouse District, a historic district listed in 1982 on the National Register of Historic Places and the Virginia Landmarks Register.

(3) Whether, and to what extent, the building or structure is associated with an historic person, architect or master craftsman, or with an historic event; None known.

(4) Whether the building or structure, or any of its features, represent an infrequent or the

*first or last remaining example within the city of a particular architectural style or feature; **There are no other historic curved glass storefronts on the Downtown Mall.***

*5) Whether the building or structure is of such old or distinctive design, texture or material that it could not be reproduced, or could be reproduced only with great difficulty; and **The curved glass would be difficult to reproduce, if it is available at all.***

*6) The degree to which distinguishing characteristics, qualities, features or materials remain; **The second floor of the building remains intact. The 1947 storefront has been demolished, including the black glass storefront base, clear curved glass show windows and aluminum trim.***

*(b) Whether, and to what extent, a contributing structure is linked, historically or aesthetically, to other buildings or structures within an existing major design control district, or is one of a group of properties within such a district whose concentration or continuity possesses greater significance than many of its component buildings and structures. **Located in the Downtown ADC District, the building is linked to the other historic commercial structures on West and East Main Street that contribute to the Downtown Mall's character. The Downtown Mall is the economic and social hub of the City and surrounding counties, and the second most visited place in Charlottesville after Monticello.***

*(c) The overall condition and structural integrity of the building or structure, as indicated by studies prepared by a qualified professional engineer and provided by the applicant or other information provided to the board; **A structural study has not been prepared. The storefront was intact before it was demolished.***

*(d) Whether, and to what extent, the applicant proposes means, methods or plans for moving, removing or demolishing the structure or property that preserves portions, features or materials that are significant to the property's historic, architectural or cultural value; **Not applicable and***

(e) Any applicable provisions of the city's Design Guidelines:

- 1. The criteria established by the City Code (above).*
- 2. The public necessity of the proposed demolition. **There is no public necessity.***
- 3. The public purpose or interest in land or buildings to be protected. **The public purpose is to save tangible evidence and reminders of the people of Charlottesville, their stories, and their buildings. It is important to protect a broad spectrum of historic resources so that the sense of community continuity and belonging will be meaningful to all of the City's residents. The Downtown Mall is one of the most accessible and visible public locations in the City.***
- 4. The existing character of the setting of the structure or area and its surroundings. **The Downtown Mall represents a variety of historic commercial architectural styles dating from the mid-19th century to the present. It has been designated locally as a historic ADC district that requires BAR review since 1985.***
- 5. Whether or not a relocation of the structure would be a practical and preferable alternative to demolition. **Not applicable.***
- 6. Whether or not the proposed demolition would affect adversely or positively other historic buildings or the character of the historic district. **The partial demolition adversely affects the character of the historic district.***
- 7. Whether or not there has been a professional economic and structural feasibility study for rehabilitating or reusing the structure and whether or not its findings support the proposed demolition. **A structural study has not been prepared.***

Discussion and Recommendations

There was no valid reason to remove the character-defining historic storefront of the building without approval. Staff recommends denial of the request.

Suggested Motion:

Having considered the standards set forth within the City Code, including City Design Guidelines for Demolition, I move to find that the partial demotion does not satisfy the BAR's criteria and is not compatible with this property and other properties in this district, and that the BAR denies the application as submitted. The applicant must submit an application to the BAR to rebuild the demolished portion.

LANDMARK



SURVEY

Bibb/Spring 1979

IDENTIFICATION

Street Address: 219-221 W. Main Street
Map and Parcel: 33-272
Census Track & Block:
Present Owner: Allen G. Bennett
Address: 911 Elliott Avenue
Present Use: Shoe Store(2)9 and Taxi Office (221
Original Owner: A. G. Carter
Original Use: Shoe Store(2)9 & Clothing Store(221

BASE DATA

Historic Name: Carter-Bennett Building
(Victory Shoe Store)
Date/Period: 1921
Style: Victorian
Height to Cornice:
Height in Stories: 2
Present Zoning: B-4
Land Area (sq.ft.): 34.2' x 158' (5403.6 sq. ft.)
Assessed Value (land + imp.):

ARCHITECTURAL DESCRIPTION

This is a 2-storey, 5-bay duplex store building. Construction is of pressed brick laid in stretcher bond on the facade, and ordinary brick laid in 6-course American bond on the other sides. The facade is painted yellow with white trim. The western store is the width of three bays; it has a modern storefront with a flush central entrance and walls faced with imitation stone siding below the display windows. The eastern store is the width of two bays, and its storefront is probably original. The walls are faced with black tile, and display windows with rounded corners flank a deeply recessed entrance. A wooden cornice with dentil moulding and cornice stops extends across the entire facade above the storefronts. The windows at the second level are double-sash, 1-over-1 light, with rusticated stone sills and lintels. Single board-&-batten shutters are mounted on the wall beside the windows. Above the second-storey level, there is a rusticated stone sill with slightly projecting round arch in the shape of a thermal window in each bay, suggesting a thirdstorey. A projecting cornice with paneled frieze, dentil moulding, modillions, and cornice stops crowns the parapet, behind which a shed roof covered with standing-seam tin slopes to the rear. The rear of the building is divided into three stories with lower ceilings. Windows are segmental-arched, double-sash, 6-over-6 light, with stone sills.

HISTORICAL DESCRIPTION

This block was marshy and remained undeveloped until the last half of the nineteenth century. A. G. Carter bought this lot from Alfred Carpenter's heirs in 1920 (City DB 37-317), tore down two small buildings on the site, and erected this duplex store building the next year. He sold it in 1926 to A. G. Bennett (DB 52-272), whose family still owns it (City WB 5-100, DB 265-110). The Victory Shoe Store has occupied the eastern half (219 W. Main) since 1922, while the western half (221 W. Main) has housed a variety of businesses.

GRAPHICS

CONDITIONS

Good

SOURCES

City Records
Sanborn Maps - 1920
Charlottesville City Directories



VIRGINIA
HISTORIC LANDMARKS COMMISSION
SURVEY FORM

File no. 164-72(A)
Negative no(s). 37(558)

Historic name _____
 County/Town/City CHARLOTTESVILLE
 Street address or route number 219-221 W. MAIN
 Common name VICTORY SHOES, YELLOW CAB
 USGS Quad CHARLOTTESVILLE WEST EAST
 Original owner _____
 Original use _____
 Present owner _____
 Present owner address _____
 Present use _____
 Acreage _____

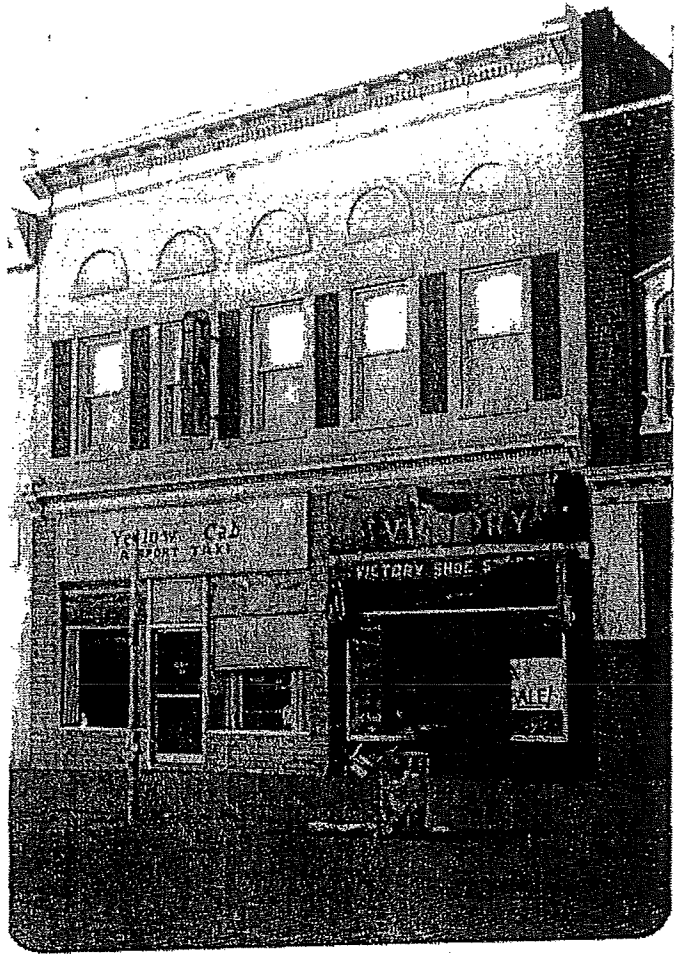
Date or period _____
 Architect/builder/craftsmen _____
 Source of name _____
 Source of date _____
 Stories _____
 Foundation and wall const'n _____
 Roof type _____

State condition of structure and environs GOOD
 State potential threats to structure _____
 Note any archaeological interest _____

Should be investigated for possible register potential? yes ___ no

Architectural description (Note significant features of plan, structural system and interior and exterior decoration, taking care to point out aspects not visible or clear from photographs. Explain nature and period of all alterations and additions. List any outbuildings and their approximate ages, cemeteries, etc.)
 PRESSED BRICK (RUNNING BOND). 2 STORY. LOW PITCHED ROOF. 5 BAYS.
 ITALIANATE COMMERCIAL. CA. 1910. 1ST STORY ORIGINAL DENTILED METAL CORNICE.
 2ND STORY 1/1 SASH, DOUBLE HUNG. STONE SILLS, STONE LINTELS. APPLIED SHUTTERS.
 SEMICIRCULAR BRICK ARCH PANELS OVER WINDOWS.
 DENTILED & BRACKETED METAL CORNICE.
 219 W. MAIN (VICTORY SHOE). CA. 1935 GLASS & BARED GLASS OVER BRICK. RECESSED CENTRAL ENTRANCE.
 221 W MAIN (YELLOW CAB). CA 1950 STONE VENEER OVER BRICK, GLASS STOREFRONT. CENTRAL ENTRANCE.

Inspected? _____
 Historical significance (Chain of title; individuals, families, events, etc., associated with the property.) _____



MARCH 1980

**City of Charlottesville
Board of Architectural Review
December 15, 2009
Minutes**

Present:

Fred Wolf, Chair
Syd Knight, Vice Chair
Brian Hogg (arrived at 5:46 p.m.)
William Adams
Michael Osteen
James Wall
Eryn Brennan (left at 7 p.m.)
H. Fairfax Ayres

Not Present:

Rebecca Schoenthal

Also Present:

Mary Joy Scala

Mr. Wolf convened the meeting at 5:04 p.m. He introduced Mr. Ayres, who was taking Ms. Gardner's vacant position on the Board. Mr. Wolf also noted this would be Mr. Wall's last meeting.

A. Matters from the public not on the agenda

There were no matters from the public.

B. Consent Agenda

1. Minutes -- May 19, 2009
2. Special Use Permit Review -- BAR recommendation
632 Preston Place
Tax Map 5 Parcel 124
3. Certificate of Appropriateness Application
BAR 09-12-04
100 E. Main Street & 103 E. Water Street
Tax Map 28 Parcels 20 and 20.1
Management Services Corp, Applicant/100 East Main Ltd Partnership,
Owner
Replace existing exterior light fixtures

Mr. Osteen asked that item 2 be pulled from the consent agenda. Mr. Adams asked to pull the minutes.

Mr. Knight moved they approve what was left of the consent agenda. Mr. Adams seconded the motion. The motion carried unanimously.

Ms. Scala gave the staff report for 632 Preston Place. When a property that is the subject of an application for Special Use Permit is in a design control district, the Board is required to make a recommendation as to whether the proposed use will have an adverse impact on the district and for recommendations as to reasonable conditions that would mitigate any such impacts. This Special Use Permit is for a boarding house. The property, a former sorority house, is a contributing structure in the Venable ADC district.

Mr. David Cariel was present on behalf of the applicant and had nothing to add.

QUESTIONS FROM THE PUBLIC:

There were no questions from the public.

QUESTIONS FROM THE BOARD:

Mr. Osteen wanted to know if the parking for the sorority house had been based on the number of occupants or on the number of bedrooms. Ms. Scala did not know. Mr. Osteen expressed concern about the parking situation. Since the front and side yards were gravel, Mr. Osteen voiced concern that 16 cars could park in the yard. He asked that there be provisions for bicycle parking and more front yard landscaping be considered.

COMMENTS FROM THE BOARD:

Mr. Wolf stated he would support adding some language asking City Council consider a revised site plan, looking at a reduction of parking area as that would be more consistent with what would be allowed currently.

Mr. Wolf moved that they recommend to City Council approval for a Special Use Permit with the condition that City Council request of the applicant a site plan amendment to the property or a new site plan that limits the amount of parking and the location of parking to something that is more consistent with what is allowable by the current zoning ordinance in terms of its relationship to the front and side yards, and hopefully achieve some type of reconstruction of the more typical front yard scenario with the residence. Mr. Osteen offered a friendly amendment that the motion include bicycle parking required by current zoning for

this use. Mr. Wolf accepted the friendly amendment. Mr. Knight seconded the amended motion. The motion carried unanimously.

C. Projects in Non-Compliance (status report)

Ms. Scala gave the staff report. The Monsoon addition has replaced the sashes with new one-over-one wood replacement sashes. At 503 West Main Street, the applicant is to submit a plan to reconstruct the chimneys and walls by 29 December. Ms. Scala stated there was a new property in non-compliance. 108 Second Street SW had been deferred and never came back; the applicant installed a gate which had not been approved.

D. Previously Considered Items

- 1. Certificate of Appropriateness Application (Discussed at October Meeting)
BAR 09-10-03
1700 University Avenue
Tax Map 9 Parcel 141
Joan Albiston, Applicant/St. Paul's Memorial Church, Owner
Memorial Meditation Garden -- Revisions**

Ms. Scala gave the staff report. At the October meeting a meditation garden was approved with the condition that a revised pavement edge detail be submitted for staff approval. The Board also made a friendly suggestion to use a hard surface material in lieu of crushed stone on the surface of the sloped walkway. The applicant submitted a metal edged detail.

Mr. Jim Richardson, Rector of St. Paul's Memorial Church, stated they did want to get this right. He stated the meditation garden was meant to be a gift to the community.

Mr. Bill Burgin stated this was a cultural institution, not a business.

Ms. Joan Albiston noted she had submitted a letter and wanted to be sure the Board members had received it. She explained the steel edging and crushed stone were chosen so the ellipse would not be set apart from the rest of the landscape.

QUESTIONS FROM THE PUBLIC:

There were no questions from the public.

QUESTIONS FROM THE BOARD:

Mr. Wolf wanted to know if the smaller portion had been changed to hardscape. Ms. Albiston stated it had due to the slope.

COMMENTS FROM THE BOARD:

Mr. Wolf thought the steel edging would make a nice simple edge. He thought the landing piece at the top of the slope was a nice compromise. He stated he was comfortable with the proposal.

Mr. Knight stated the reduction in the width of the walk was acceptable. The crushed stone met the Guidelines. He had felt the last time that steel edging was inappropriate and he still had concerns about the steel edge. He thought there was a very fine line that had been crossed so that there was no way to tie this in to the historic context. He thought the steel was in appropriate there.

Mr. Osteen stated he was comfortable with the steel edge issue. He thought there would be enough erosion causing migration of the stone that it would create a trip hazard. He suggested another riser be added.

Mr. Wall agreed the landing was a nice compromise. He liked the metal edging because it lent a more modern feel.

Mr. Adams thought the project met the Guidelines.

Mr. Osteen, having considered the standards set forth within the City Code including City Design Guidelines for Site Design, moved to find that the proposed meditation garden revisions satisfy the BAR's criteria and are compatible with this property and other properties in this district, and that the BAR approves the application with the addition proposed by the applicant of a hard surface landing pad at the top of the stairs directly off of University Avenue. Mr. Adams seconded the motion. Mr. Wolf wanted to know if there should be a friendly amendment to suggest a friendly recommendation that if there was a possibility of raising the stairs one additional riser to mitigate the slope. Mr. Osteen stated he was comfortable with the applicant having heard it. The motion passed, 6-1; Mr. Knight voted against.

- 2. Preliminary Discussion #2 (Discussed at November meeting)
BAR 09-11-02
1106-1112 West Main Street**

**Tax Map 10 Parcel 64 and 65
William Atwood -- Atwood Architects, Applicant/John Bartelt, Owner
New Construction on Studio Art site**

Mr. Hogg joined the meeting at 5:46 p.m. and recused himself from this item.

Ms. Scala gave the staff report. The applicant has requested a second preliminary discussion. There are now two proposed building entrances with canopies.

Mr. Bill Atwood stated the canopies had not been designed yet. The client has decided to put commercial uses on the right side of front on Main Street.

COMMENTS FROM THE BOARD:

Mr. Wall thought the appurtenance and some of the other details lend this hotel the character of other short stay hotels which are grand and glamorous.

Ms. Brennan appreciated the changes that had been made. She expressed concern about the mass and scale of the building. She thought nine stories would overpower the traditional scale in the area. She suggested reducing the monumentality of the building by reducing the base by a story which would extend the body. She expressed concern about the stucco material.

Mr. Osteen appreciated the challenges of the building and thought the applicant had done a good job responding to the inherent challenges in the Code as it applies to this site.

Mr. Adams expressed concern about the mass on the site. He thought the shadow cast by the building with the winter sun angle would impact the area. He could not support that much mass.

Mr. Ayres expressed concern about the size.

Mr. Knight was not as concerned about a nine story building provided it was well articulated and designed well. He stated the general design direction was not yet resolved.

Mr. Wolf thought the building was attractive. He stated he would have to be convinced that the extra two stories were worthwhile. He thought it was a whole different building without the extra two stories.

E. New Items

- 1. Certificate of Appropriateness Application
BAR 09-12-05
219 W. Main Street
Tax Map 33 Parcel 272
Joe H. Gieck, Trust, Owner
Demolition of storefront**

Ms. Scala gave the staff report. Demolition of the storefront occurred on 31 October without a required Certificate of Appropriateness from the BAR, without a required building permit, and was discovered the following Monday morning. The building had been vacant. The Victorian style commercial building was built in 1921. Ms. Scala referred the Board to historic photos and an historic survey. The applicant was told he needed to apply for BAR approval for demolition after the fact in order to establish whether the demolition would have been permitted. If the application is denied, the City intends to pursue the maximum penalty for a demolished protected building. The applicant is seeking approval after the fact for a partial demolition of the black glass and clear curved glass storefront; he also requests further demolition of the concrete floor slabs and the aluminum door. Staff has considered all the standards for demolition. This property is a contributing structure in a National Register and Virginia Register District. There are no other historic curved glass storefronts on the Downtown Mall. The second floor of the building was not disturbed. A structural study has not been prepared. The storefront was intact before it was demolished. There was no public necessity to remove the storefront. The partial demolition adversely affects the district. In Staff's opinion there was no valid reason to remove the character defining historic storefront of the building without approval. Staff recommends denial of the request.

Mr. Joe Gieck stated the glass was broken and was unsafe. Two different glass companies told him the glass could not be replaced. He stated they wanted to take it back to the original. He stated that when he had gone for permits to work on other storefronts, he was told he did not need them. When he went for a demolition permit, he was told one was not needed for storefronts; all he had to do was set the knee wall and have the glass company apply for the permit to put in plate glass. He stated the pipes were in danger of freezing.

Mr. Kurt Glockner, of Glockner Engineering, stated quite a bit of the old building was there.

QUESTIONS FROM THE PUBLIC:

There were no questions from the public.

QUESTIONS FROM THE BOARD:

Mr. Knight wanted to know if, before doing the demolition, the applicant had been aware this building was in an historic district. Mr. Gieck stated he was and reiterated that the City had told him previously it did not matter. Mr. Knight wanted to know who had told him. Mr. Gieck stated his property manager, Bill Rice, had gone to the City before work was done on other properties. Mr. Knight wanted to know who had said it in relation to this project. Mr. Gieck stated he had assumed it was going to be the same as the other buildings.

Mr. Wolf wanted to know when the other buildings had been done. Mr. Gieck stated it had been in late '80s, early '90s.

Mr. Knight wanted to know if the applicant had reviewed the standards the Board reviewed. Mr. Gieck reiterated that he had been told he didn't need a permit.

Mr. Wolf wanted to know how long the applicant had owned this building. Mr. Gieck thought it was about ten years.

Mr. Wolf wanted to know if the glass had been saved. Mr. Gieck stated it had not been and the glass company had said they could not replace that glass.

COMMENTS FROM THE PUBLIC:

Mr. William S. Rice stated that before anything was done he had gone to City Hall and was told by one of the three ladies that they did not give demolition permits for storefronts, only for buildings. He stated the plastic was all chewed up and representatives from Dodson and Charlottesville Glass and Mirror said they didn't make this anymore and anything that went back would have to be tempered glass and insulated.

Ms. Scala stated she took offense at the statement that the three ladies that issue building permits would have said something incorrectly; she stated they would not have.

COMMENTS FROM THE BOARD:

Mr. Wolf stated this was very simple. He would never have approved this. He found the suggestion that the property owner was unaware of the regulations controlling property in the Downtown District to be odd.

Mr. Hogg stated he would have said no if asked if it were appropriate to remove this storefront. The storefront, whether original or not, had accrued some significance in its own right over time. He thought the removal was inappropriate and detracted from the character of the Mall. He stated it was possible to acquire curved glass.

Ms. Brennan stated she would not have supported this application and cannot support it now. She did not think it met any of the Guidelines. She stated this was an egregious mistake and error.

Mr. Ayres expressed surprise the applicant did not know what was required for the Downtown Mall. He stated he would not support the application for demolition.

Mr. Osteen stated he would not have supported this demolition.

Mr. Knight, having considered the standards set forth within the City Code including City Design Guidelines for Demolition, moved to find that the partial demolition does not satisfy the BAR's criteria and is not compatible with this property and other properties in this district, and that the BAR denies the application as submitted; the applicant must submit an application to the BAR to rebuild the demolished portion. Ms. Brennan seconded the motion. The motion carried unanimously.

Ms. Brennan left the meeting at 7 p.m.

- 2. Certificate of Appropriateness Application
BAR 09-12-06
219 W. Main Street
Tax Map 33 Parcel 272
Joe H. Gieck, Trust, Owner
Reconstruct storefront**

Ms. Scala gave the staff report. The applicant proposes to replace the front window glass with tempered insulated glass and a new glass entrance door. They plan to build a new knee wall to set the new glass on. They plan to renovate the entrance by adding new hardwood flooring to match the partial hardwood floor that remains in place on one side. Trim will be baked on white aluminum surrounding the windows and door. Staff recommends the demolished storefront design should be replicated as accurately as possible. The applicant should submit a scale drawing noting appropriate materials that show how this will be accomplished. Ms. Scala stated she had been contacted recently by the person who was supposed to dispose of the curved glass; he thought it had value and had kept it. This person said he would make the glass available to the applicant if

the BAR wants that. She stated building code does not require glass to be tempered if it is a minimum of 18 inches off the ground; also, exceptions can be made for historic buildings.

Mr. Kurt Glockner stated the owner wanted to take the storefront back to the original '20s era storefront rather than the 1947 storefront.

Mr. Wolf stated the baseline was what was in place when the district was formed.

Mr. Hogg stated that if the applicant wanted to take it back to the '20s, he really should do it correctly. Mr. Hogg stated the proposal didn't even go back to the original but was just another aluminum storefront on the Downtown Mall. He stated he saw no option in the proposal.

QUESTIONS FROM THE PUBLIC:

There were no questions from the public.

QUESTIONS FROM THE BOARD:

There were no questions from the Board.

COMMENTS FROM THE BOARD:

Mr. Knight stated the point that had been made was a very good one: What has been proposed seems as much to be a fishing expedition as a serious design. He suggested the applicant request a deferral with an eye to researching what really was there.

Mr. Hogg stated the easy answer for the applicant to do was put back what had been removed; if that was not what the applicant wanted to do, he needed to do more research and come back with a proposal that better recreates the design he said he was trying to recapture.

Mr. Gieck stated he would defer and asked if the front could be closed to protect it from weather. Mr. Wolf thought there could be a temporary wall enclosure to give some protection.

Mr. Knight moved to accept the applicant's request for deferral. Mr. Wall seconded the motion. The motion carried unanimously.

CERTIFICATE OF AUTHENTICITY

I, Mary Joy Scala, do hereby certify as follows:

1. I am employed by the City of Charlottesville Department of Neighborhood Development Services ("NDS") as the Preservation and Design Planner. As such, I serve the City of Charlottesville Board of Architectural Review as its Secretary, and I am the custodian of the records of the Board.
2. The twenty-two (22) page document attached to this Certificate is a true and accurate copy of a BAR application, a City staff report, and the minutes of the December 15, 2009 BAR meeting related to the property located at 219 West Main Street, Charlottesville, Virginia and maintained by me in the performance of my official duties.

SIGNED:

Mary Joy Scala

Notarization

The foregoing certification of authenticity was sworn to and subscribed before me on this 25 day of OCTOBER 2010.

Notary Public: Patricia R. Carrington My Commission Expires: DECEMBER 31, 2011

My Commission Expires: _____

PATRICIA R. CARRINGTON
NOTARY ID # 7098914
NOTARY PUBLIC
COMMONWEALTH OF VIRGINIA
MY COMMISSION EXPIRES DECEMBER 31, 2011

CITY OF CHARLOTTEVILLE PROPERTY RECORD CARD

PARCEL ID

33027 20 00

OWNERSHIP & MAILING ADDRESS
 GIECK, JOE H, TRUST

PROPERTY LOCATION
 219-221 WEST MAIN STREET

CARD # 01 OF 01

2124 WENTWORTH FARM
 CHARLOTTEVILLE VA 22902

LEGAL DESCRIPTION

SUBDIVISION LOT
 SECTION
 BLOCK
 LOT
 FARM NAME

ASSESSMENT HISTORY

YEAR	LAND	USE	IMPROVEMENT	TOTAL
2009	340,200	340,200	608,300	948,500

NBHD	DESIRE	CT Sq & Central Business Dist
33	3	Average
	1	Improving
STATECODE	4.0	Comm. & Ind.
USECODE	353	Retail Store
ZONING	DH	Downtown Historic
PROP. TYPE	4	Commercial
TOPO	1	Level
ACCESS	5	Paved/Sidewalk
UTILITIES	1	Sewer/Water

SALES HISTORY

PREV. OWNER	TYPE	SALES DATE	BOOK	PAGE	VALIDITY	SALE PRICE
GILLIAM, F	F	11/02/2001	826	936	5	900,000
		01/30/1981	417	624	0	98,000
		01/30/1981				

APPROACH TO VALUE

COST	INCOME	MARKET	OVERRIDE	O/R REASON	LAND	CURRENT USE	TRENDING	IMPROVEMENTS	TOTALS
\$162,100	\$162,100	\$162,100	\$0		\$474,800	\$0	\$312,700	\$735,400	\$897,500
					\$162,100	\$0	\$0	\$0	\$162,100
					\$0	\$0	\$0	\$0	\$0

BUILDING PERMITS

DATE	NUMBER	VALUE DESCRIPTION OF WORK
01/25/2002	000094	20000 8 Replace Roof
11/26/2008	0800004	1500 7 Demolition

LAND INFORMATION

TYPE DESCRIPTION	ACRE	SOFT	UNITS	BASERATE	OVER DEPTH	ADJ RATE	TOPO	SHAPE	LOC.	WT	OTHER	VALUE
S2 Secondary Site	0.1240	5404	5404,000	Y	0	30,00						162,120

TOTAL ACRE 0.1240

PROPERTY PHOTO

PROPERTY SKETCH

TOTAL LAND VALUE

162,100

SOFT STY/HT START LVL
 0.00 0

SECTION#	TOTAL FLOOR AREA	YR BLT	OCC	% CLASS	RANK	EFF AGE	CONDITION	DEPRECIATION	PHYSICAL	M&S	STOPS	AREA	HEATJAC	LEVEL	SHAPE/PER.	DEPTH	DEPT#	Cost as of 07/1998
SECTION#1	6152	1920	353 Retail Store	100 %	3.0	16	CONDITION 3 Average	DEPRECIATION = M & S	0.0	12.000	100	0	0.0					Cost as of 07/1998
# OF STORIES	2.00	YR RMD.	612	100 %	882	0.0	PHYSICAL	0.0	0.0	12.000	100	0.0						Base Cost
PERIM/SHAPE	248	FRANCHISE	SPRINKLERS	%	ELEVATOR TYPE	0.0	FUNCTIONAL	0.0	0.0	12.000	100	0.0						Exterior Walls
STY HT	12	FRANCHISE	SPRINKLERS	%	ELEVATOR TYPE	0.0	EXTERNAL	0.0	0.0	12.000	100	0.0						Heating & Cooling
BASEMENT		FRANCHISE	SPRINKLERS	%	ELEVATOR TYPE	0.0	EXTERNAL	0.0	0.0	12.000	100	0.0						Basic Structure Cost
FIREPROOF		FRANCHISE	SPRINKLERS	%	ELEVATOR TYPE	0.0	EXTERNAL	0.0	0.0	12.000	100	0.0						

SECTION#2	TOTAL FLOOR AREA	YR BLT	OCC	% CLASS	RANK	EFF AGE	CONDITION	DEPRECIATION	PHYSICAL	M&S	STOPS	AREA	HEATJAC	LEVEL	SHAPE/PER.	DEPTH	DEPT#	Less Depreciation
SECTION#2	1920	1920	HEATING & COOLING	%	EXTERIOR WALLS	3.0	CONDITION	DEPRECIATION	PHYSICAL	12.000	100	0						Physical & Functional
# OF STORIES	1.00	YR RMD.	HEATING & COOLING	%	EXTERIOR WALLS	3.0	CONDITION	DEPRECIATION	PHYSICAL	12.000	100	0						Depreciated Cost
PERIM/SHAPE	1920	FRANCHISE	SPRINKLERS	%	ELEVATOR TYPE	3.0	CONDITION	DEPRECIATION	PHYSICAL	12.000	100	0						
STY HT	12	FRANCHISE	SPRINKLERS	%	ELEVATOR TYPE	3.0	CONDITION	DEPRECIATION	PHYSICAL	12.000	100	0						

SECTION#3	TOTAL FLOOR AREA	YR BLT	OCC	% CLASS	RANK	EFF AGE	CONDITION	DEPRECIATION	PHYSICAL	M&S	STOPS	AREA	HEATJAC	LEVEL	SHAPE/PER.	DEPTH	DEPT#	Less Depreciation
SECTION#3	1920	1920	HEATING & COOLING	%	EXTERIOR WALLS	3.0	CONDITION	DEPRECIATION	PHYSICAL	12.000	100	0						Physical & Functional
# OF STORIES	1.00	YR RMD.	HEATING & COOLING	%	EXTERIOR WALLS	3.0	CONDITION	DEPRECIATION	PHYSICAL	12.000	100	0						Depreciated Cost
PERIM/SHAPE	1920	FRANCHISE	SPRINKLERS	%	ELEVATOR TYPE	3.0	CONDITION	DEPRECIATION	PHYSICAL	12.000	100	0						
STY HT	12	FRANCHISE	SPRINKLERS	%	ELEVATOR TYPE	3.0	CONDITION	DEPRECIATION	PHYSICAL	12.000	100	0						

SECTION#4	TOTAL FLOOR AREA	YR BLT	OCC	% CLASS	RANK	EFF AGE	CONDITION	DEPRECIATION	PHYSICAL	M&S	STOPS	AREA	HEATJAC	LEVEL	SHAPE/PER.	DEPTH	DEPT#	Less Depreciation
SECTION#4	1920	1920	HEATING & COOLING	%	EXTERIOR WALLS	3.0	CONDITION	DEPRECIATION	PHYSICAL	12.000	100	0						Physical & Functional
# OF STORIES	1.00	YR RMD.	HEATING & COOLING	%	EXTERIOR WALLS	3.0	CONDITION	DEPRECIATION	PHYSICAL	12.000	100	0						Depreciated Cost
PERIM/SHAPE	1920	FRANCHISE	SPRINKLERS	%	ELEVATOR TYPE	3.0	CONDITION	DEPRECIATION	PHYSICAL	12.000	100	0						
STY HT	12	FRANCHISE	SPRINKLERS	%	ELEVATOR TYPE	3.0	CONDITION	DEPRECIATION	PHYSICAL	12.000	100	0						

FEATURES	DESCRIPTION	AREA	RANK	DEPR	0	0	0	0	0	0	0	0	0	0	0	0	0	0
FEATURES	DESCRIPTION	AREA	RANK	DEPR	0	0	0	0	0	0	0	0	0	0	0	0	0	0
PERIM/SHAPE	FRANCHISE	SPRINKLERS	%	ELEVATOR TYPE	0	0	0	0	0	0	0	0	0	0	0	0	0	0
STY HT	FRANCHISE	SPRINKLERS	%	ELEVATOR TYPE	0	0	0	0	0	0	0	0	0	0	0	0	0	0

ADDITIONS	ID	TYPE	AREA	BLT	EFF	AGE	PRICING	RATE	RCN	NOTES
ADDITIONS	ID	TYPE	AREA	BLT	EFF	AGE	PRICING	RATE	RCN	NOTES
PERIM/SHAPE	FRANCHISE	SPRINKLERS	%	ELEVATOR TYPE	0	0	0	0	0	0
STY HT	FRANCHISE	SPRINKLERS	%	ELEVATOR TYPE	0	0	0	0	0	0

FEATURES	DESCRIPTION	AREA	RANK	DEPR	0	0	0	0	0	0	0	0	0	0	0	0	0	0
FEATURES	DESCRIPTION	AREA	RANK	DEPR	0	0	0	0	0	0	0	0	0	0	0	0	0	0
PERIM/SHAPE	FRANCHISE	SPRINKLERS	%	ELEVATOR TYPE	0	0	0	0	0	0	0	0	0	0	0	0	0	0
STY HT	FRANCHISE	SPRINKLERS	%	ELEVATOR TYPE	0	0	0	0	0	0	0	0	0	0	0	0	0	0

ADDITIONS	ID	TYPE	AREA	BLT	EFF	AGE	PRICING	RATE	RCN	NOTES
ADDITIONS	ID	TYPE	AREA	BLT	EFF	AGE	PRICING	RATE	RCN	NOTES
PERIM/SHAPE	FRANCHISE	SPRINKLERS	%	ELEVATOR TYPE	0	0	0	0	0	0
STY HT	FRANCHISE	SPRINKLERS	%	ELEVATOR TYPE	0	0	0	0	0	0

ADDITIONS	ID	TYPE	AREA	BLT	EFF	AGE	PRICING	RATE	RCN	NOTES
ADDITIONS	ID	TYPE	AREA	BLT	EFF	AGE	PRICING	RATE	RCN	NOTES
PERIM/SHAPE	FRANCHISE	SPRINKLERS	%	ELEVATOR TYPE	0	0	0	0	0	0
STY HT	FRANCHISE	SPRINKLERS	%	ELEVATOR TYPE	0	0	0	0	0	0

ADDITIONS	ID	TYPE	AREA	BLT	EFF	AGE	PRICING	RATE	RCN	NOTES
ADDITIONS	ID	TYPE	AREA	BLT	EFF	AGE	PRICING	RATE	RCN	NOTES
PERIM/SHAPE	FRANCHISE	SPRINKLERS	%	ELEVATOR TYPE	0	0	0	0	0	0
STY HT	FRANCHISE	SPRINKLERS	%	ELEVATOR TYPE	0	0	0	0	0	0

ADDITIONS	ID	TYPE	AREA	BLT	EFF	AGE	PRICING	RATE	RCN	NOTES
ADDITIONS	ID	TYPE	AREA	BLT	EFF	AGE	PRICING	RATE	RCN	NOTES
PERIM/SHAPE	FRANCHISE	SPRINKLERS	%	ELEVATOR TYPE	0	0	0	0	0	0
STY HT	FRANCHISE	SPRINKLERS	%	ELEVATOR TYPE	0	0	0	0	0	0