

Development Special Use Permit #2024-10004
107 and 125 North West Street
North West Street Townhomes

Docket Item # 9
Hearing Date: June 24, 2024

I. INTRODUCTION

Fundamental to the functioning of this Planning Commission (the “Commission”), and in turn the City Council (the “Council”), is the work and recommendations of the Development and Planning Staff (the “Staff”). Staff recommendations serve important purposes and enable the Commission and Council to dispatch their duties efficiently and equitably. However, this Commission must act with independence and review Staff recommendations without undue deference, thereby serving as a necessary safeguard in circumstances where the Staff has erred, or its recommendation is flawed. The Staff recommendation (the “Recommendation”) with respect to this DSUP application demands particularly close examination for the four interconnected reasons discussed further herein.

The undersigned appreciates the hard work and commitment the Staff exhibits when executing its function. Nevertheless, it appears that this case was not handled with due and appropriate consideration. Should the Commission compound this error by accepting the current Recommendation, that decision would be equally tenuous, subject to collateral attack and judicial review, and contrary to public interest. The incomplete record, unexplained reasoning, and questionable process underlying the Staff Recommendation all favor a vote by this Commission to **DENY** the DSUP application.¹ Basic principles of accountability and transparency demand no less.

II. ARGUMENT

A. The Proposed Layout for the Development Is Not in the Public Interest

i. The Staff’s Position Regarding the Proposed Alley Layout Is Unexplained

As the Recommendation notes, at p. 4, “[t]he existing curb cut along Cameron Street will be closed and a new curb cut will be created along N. West Street.” Although the Staff assesses, in conclusory fashion, that “a new curb cut on N. West Street will allow for safer vehicular and bike traffic on Cameron,” *id.* at p. 8, this assumption is undeveloped and unsupported.

First, there is another curb cut for alley access three lots east on Cameron, so it does not follow that eliminating one will have a meaningful impact for bike and pedestrian traffic on that street. Second, an additional curb cut on N. West Street creates more problems than it solves. Indeed, the Staff does not explain:

¹ Or, at a minimum, denial with instructions to the Staff to further develop the Recommendation for reconsideration at a later time.

- How limiting ingress and egress for the development to a single street (N. West) is preferable to the existing layout (N. West & Cameron);
- How a “right-in” and “right-out” formulation will prevent illegal cross-traffic attempts of “left-in” turning by southbound traffic from N. West St. into the development;
- How a “right-in” and “right-out” formulation will prevent illegal cross-traffic attempts of “left-out” turning from the development to travel southbound on N. West Street;
- How locating a point of access on N. West St. in a school zone and in close proximity to a pedestrian crossing is preferable or justified;
- Why eliminating an existing cut-out on Cameron is safer, easier, or more cost-efficient;
- The effect on traffic attempting to exit the development “right-out” on N. West Street that may be constrained during high traffic periods when there are vehicles stopped at a red light at the intersection of Cameron and N. West traveling northbound on N. West;
- How a “U” shape alley is more navigable for fire and emergency vehicles, even with the minimum mandatory 22’ width; and
- The unnecessarily difficult routing for emergency vehicles (presumably from Fire Station 205/Engine Co. 5) who could not simply travel westbound on Cameron and turn left into the development.
 - In other words, emergency vehicles traveling westbound on Cameron would have to turn on N. West and then into one of the areas of ingress/egress. That would require navigating additional traffic, a tight turn on N. West, and then either an immediate turn, or possibly needing to travel closer towards King St. before turning in and then navigating the “U” shape alley; or an approach from King Street turning right onto N. West and then into the development. (*Fig. A*).

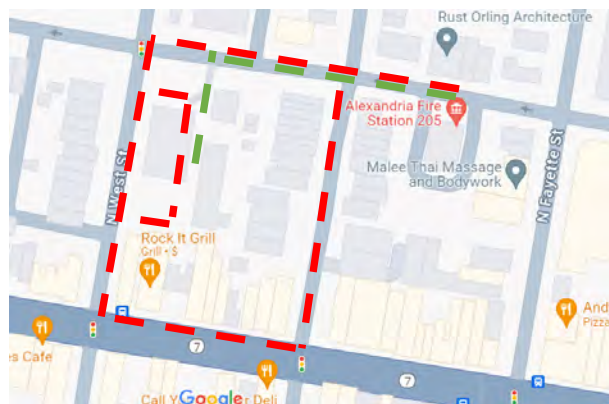


Fig. A.

Because the Staff has not articulated its reasoning, how it arrived at its position regarding the curb cuts, or whether its assumptions are valid, this alone warrants further consideration.

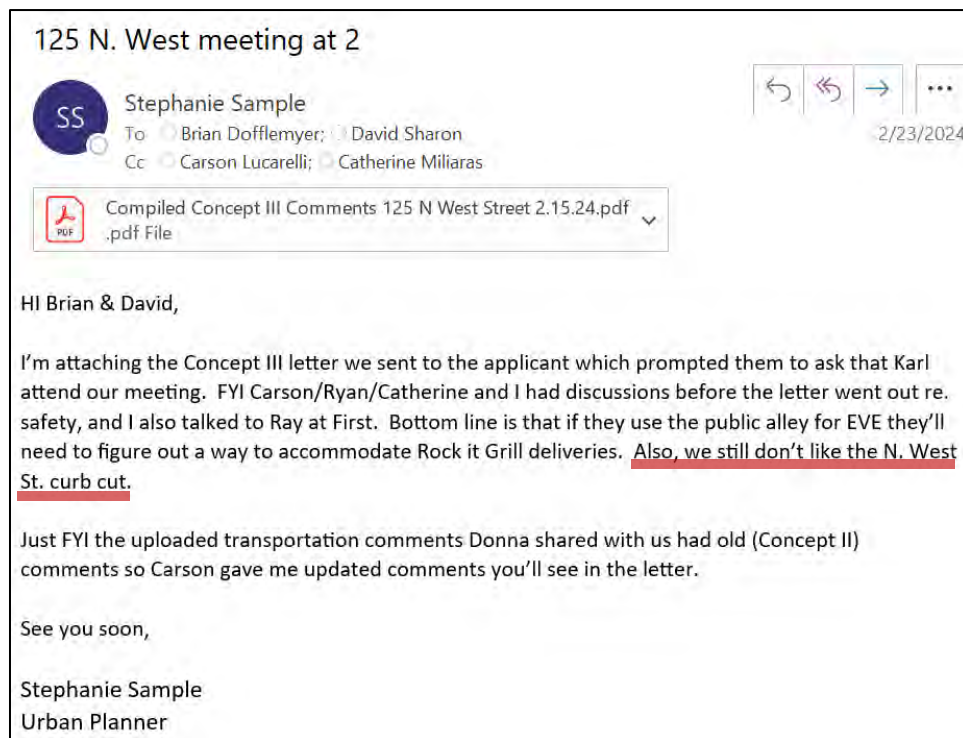
Equally concerning is that the Staff—as recently as February—held a position fundamentally contrary to the current Recommendation. This sudden divergence is not explained by the Staff, and the change in position has not been articulated to the Commission or the public transparently.

- Continuing issue is site access/layout related to proposed new N. West St. curb cut
 - o Applicant and staff both agree two access points necessary
 - o Applicant wants the second curb cut to be on N. West
 - o Staff does not support the N. West curb cut for several reasons:
 - West St. is a Priority Walking Street in the Braddock plan (which also calls for minimizing curb cuts on active sidewalks/higher levels of traffic.
 - Fire truck access is slightly easier with the proposed alley layout we proposed below.
 - Using Cameron St. alley instead of a new West St. curb cut will allow for project design that can limit the visibility into the rear elevations (by installing a fence/wall and or garage in location where N. West curb cut proposed).
 - Consolidated open space could be then provided at the corner (either private or with PAE)

Site Plan Details:

- Existing Lots:**
 - LOT 1: 1,566 SF, PROP. 3-STORY TOWNHOUSE
 - LOT 2: 1,566 SF, PROP. 3-STORY TOWNHOUSE
 - LOT 3: 2,077 SF, PROP. 3-STORY SEMI-DETACHED DWELLING
- New Lots (4-13):**
 - LOT 4: 1,566 SF, PROP. 3-STORY TOWNHOUSE
 - LOT 5: 1,566 SF, PROP. 3-STORY TOWNHOUSE
 - LOT 6: 1,566 SF, PROP. 3-STORY TOWNHOUSE
 - LOT 7: 1,566 SF, PROP. 3-STORY TOWNHOUSE
 - LOT 8: 1,566 SF, PROP. 3-STORY TOWNHOUSE
 - LOT 9: 1,566 SF, PROP. 3-STORY TOWNHOUSE
 - LOT 10: 1,566 SF, PROP. 3-STORY SEMI-DETACHED DWELLING
 - LOT 11: 1,566 SF, PROP. 3-STORY SEMI-DETACHED DWELLING
 - LOT 12: 1,566 SF, PROP. 3-STORY SEMI-DETACHED DWELLING
 - LOT 13: 2,077 SF, PROP. 3-STORY SEMI-DETACHED DWELLING
- Easements and Setbacks:**
 - PROP. 20' EMERGENCY VEHICLE EASEMENT
 - PROP. 10' PRIVATE WALKWAY, EGRESS AND UTILITY EASEMENT
 - PROP. 5' LANDSCAPE STRIP
 - PROP. 1' PUBLIC ACCESS EASEMENT
 - PROP. 5' DECK (TYP.)
- Other Features:**
 - OUTLET A, OUTLET B
 - PUBLIC ALLEY
 - STREET

Staff concerns were reaffirmed on February 23, 2024:²



And it followed prior *City Compiled Concept III Comments* (2/15/24) which noted that “Staff will support utilizing the existing Cameron Street curb cut” for several reasons:

2. Staff recognizes the need for two points of access but does not support the proposed curb cut on N. West Street. Staff will support utilizing the existing Cameron Street curb cut. There are several reasons for this:
 - The Braddock Metro Neighborhood Plan identifies West Street as priority walking street, these are “...pedestrian routes deserving special attention to pedestrian accessibility. These streets also present important public faces both to local residents and to others passing through the area to and from the Metro and other destinations. Accordingly, land use selection and quality of architecture and urban design are subject to high standards in these guidelines to ensure quality and distinction of character.” The Plan also calls for minimizing curb cuts on active sidewalks and higher levels of vehicular traffic.
 - Fire truck access through the site would be easier with the retention of the Cameron Street curb cut.
 - Removal of the proposed West Street curb cut allows for flexibility in site design that would meet our goal of limiting visibility into the backs of the townhouses and a continuous building frontage along West Street. See one potential site layout below.

² Underline emphasis added throughout.

In the interim, Staff identified this as a “fundamental issue” to which the Applicant was not “being as responsive as we’d like.”

From: Catherine Miliaras <Catherine.Miliaras@alexandriava.gov>
Sent: Monday, February 19, 2024 2:57 PM
To: Katherine Carraway <katherine.carraway@alexandriava.gov>; Karl Moritz <Karl.Moritz@alexandriava.gov>
Cc: PZ - Sr. Staff <PZ - Sr. Staff@alexandriava.gov>; William Conkey <william.conkey@alexandriava.gov>; Ann Horowitz <ann.horowitz@alexandriava.gov>; Stephanie Sample <Stephanie.Sample@alexandriava.gov>
Subject: RE: 125 West Street -- townhouses? or a school?

Karl,

We just issued comments on a Concept 3 scheme (Duncan is the attorney). There have been fundamental issues related to fire access and additional curb cuts that we are working through with them but they are not being as responsive as we’d like. The proposal includes demolishing the existing Fleet building and Winstanley’s office to construct 14 townhouses.

We have not heard anything about a school.

Catherine K. Miliaras, AICP
City of Alexandria

Contemporaneously, the Staff received transportation input that “logistically [] Cameron St. will be easier for fire trucks”:

RE: 125 N. West Street

 Stephanie Sample
To: Carson Lucarelli; Ryan Knight; Catherine Miliaras
2/8/2024

Here is my summary:

Ryan says they can’t do just one in-out from the alley; they need a second access point
Ryan says they could do the proposed new West Street curb cut OR
Ryan says they could do the existing Cameron Street curb cut
Ryan says logistically the Cameron St. will be easier for fire trucks
Ryan says a new West St. curb cut could only be right in-right out
Ryan says the existing Cameron Street curb cut could only be left in-left out

That right Ryan???

Stephanie Sample
Urban Planner

Indeed, at that time Staff asked Transportation and Environmental Services (“T&ES”) whether “the curb cut on West would be difficult but possible, and the curb cut on Cameron would probably be less difficult?” And the response provided “Yes. It would be less turns.”

From: Stephanie Sample <Stephanie.Sample@alexandriava.gov>
Sent: Thursday, February 8, 2024 04:41 PM
To: Ryan Knight <Ryan.Knight@alexandriava.gov>; Carson Lucarelli <Carson.Lucarelli@alexandriava.gov>; Catherine Miliaras <Catherine.Miliaras@alexandriava.gov>
Subject: RE: 125 N. West Street

Awesome! Thanks. One question – are you saying the layout that they show with the curb cut on West would be difficult but possible, and the curb cut on Cameron would probably be less difficult?

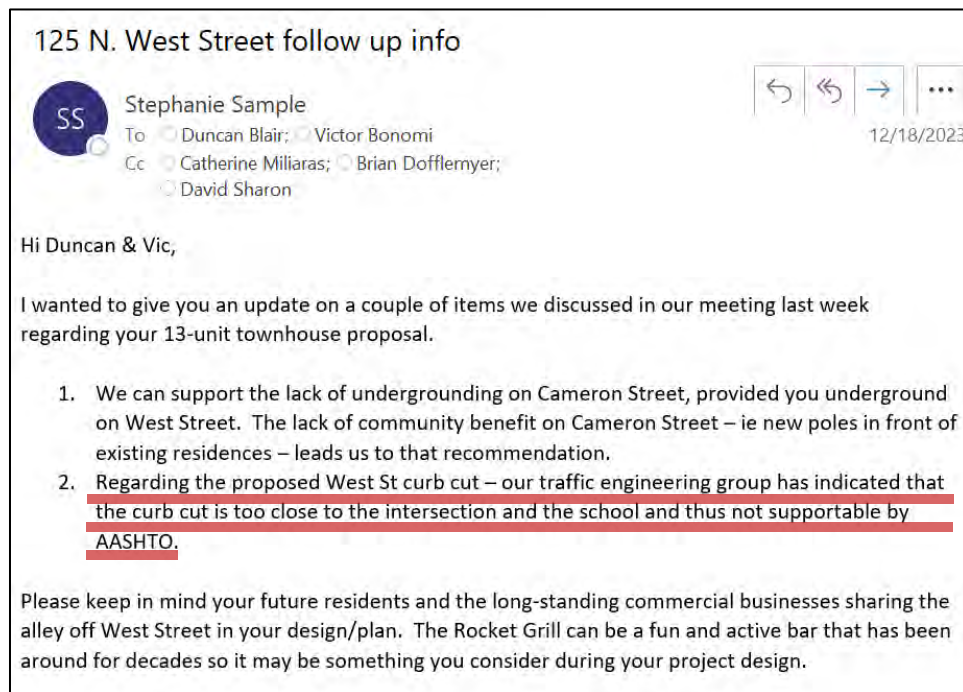
Stephanie Sample
Urban Planner

From: Ryan Knight <Ryan.Knight@alexandriava.gov>
Sent: Thursday, February 8, 2024 4:46 PM
To: Stephanie Sample <Stephanie.Sample@alexandriava.gov>; Carson Lucarelli <Carson.Lucarelli@alexandriava.gov>; Catherine Miliaras <Catherine.Miliaras@alexandriava.gov>
Subject: Re: 125 N. West Street

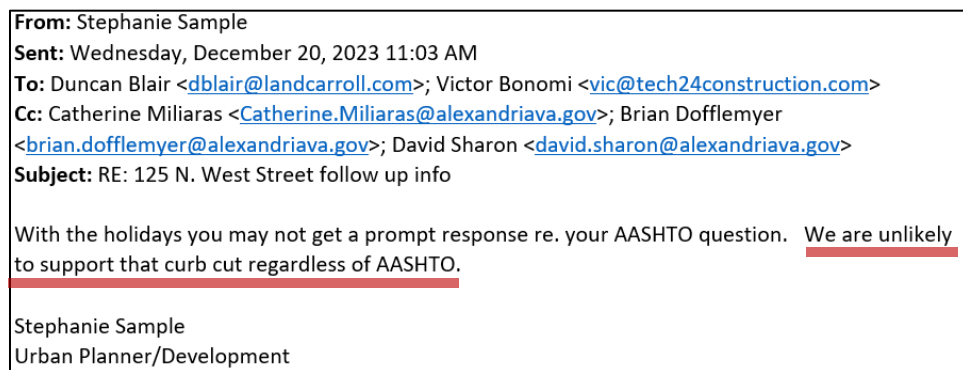
Yes. It would be less turns.

Ryan Knight, P.E.
Division Chief, Transportation Engineering

The Staff position in February was consistent with months of Staff thinking, such as December 18, 2023: “our traffic engineering group has indicated that the curb cut is too close to the intersection and the school and thus not supportable by AASHTO.”



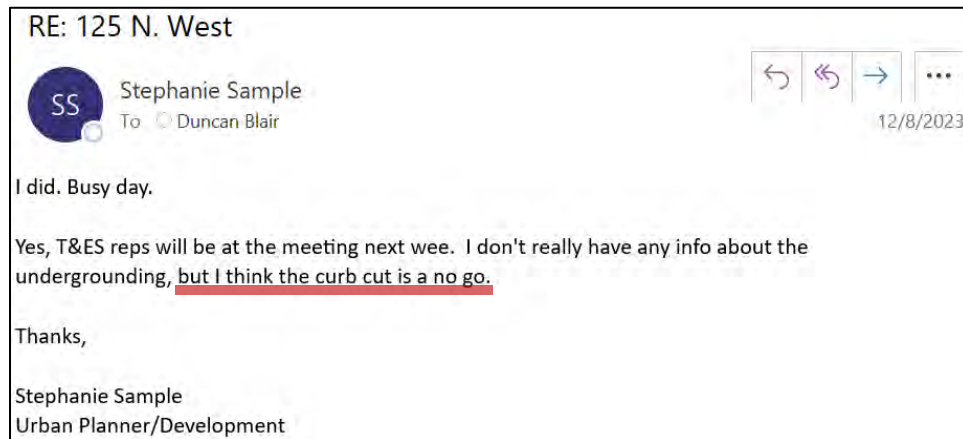
And two days later: “[w]e are unlikely to support that curb cut regardless of AASHTO.”



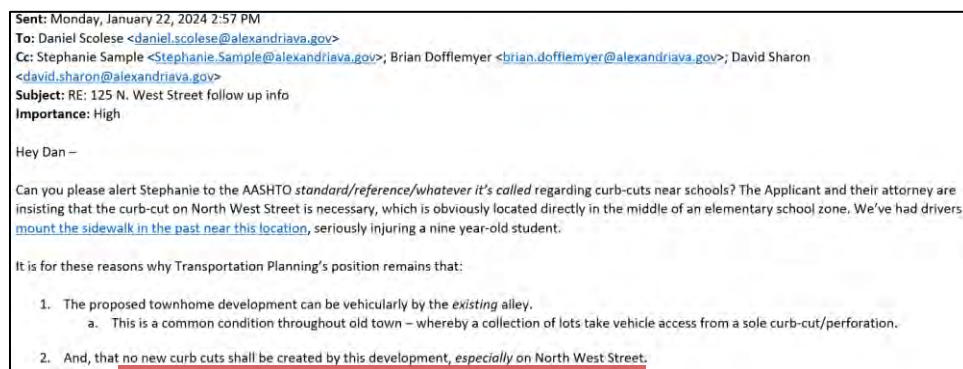
Information in a file maintained by the Urban Planner titled “Ongoing 125 N West Notes” (12/12/23) likewise provides that “we don’t support” a curb cut on N. West St.:

12.12.23	Met with applicant team and T&ES about 4 issues: 1. design of West/Cameron intersection (tiny issue) 2. curb cut on West (they want/need – we don't support) 3. undergrounding on Cameron (they can't do too expensive – we may be ok with this) 4. water dilemma (we defer to VAWC) They are not happy with us. Felt that we agreed to some stuff with the first scheme that we're not supporting now. BUT different plan – second plan is DSUP, first DSP.]
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This position was previously relayed to counsel for the Applicant on December 8, 2023, in yet another occurrence: “I think the curb cut is a no go.”



Consistently, as it did on January 22, 2024, T&ES noted that the proposed curb cut is “obviously located directly in the middle of an elementary school zone. We’ve had drivers mount the sidewalk in the past near this location, seriously injuring a nine year-old student” and therefore emphasizing “Transportation Planning’s position remains that . . . no new curb cuts shall be created by this development, *especially* on North West Street.”



The safety issue was subsequently reaffirmed and described by T&ES as “No bueno...”

From: Carson Lucarelli <Carson.Lucarelli@alexandriava.gov>
Sent: Thursday, February 1, 2024 10:25 AM
To: Michael Swidrak <Michael.Swidrak@alexandriava.gov>; William Conkey <william.conkey@alexandriava.gov>; Catherine Miliaras <Catherine.Miliaras@alexandriava.gov>; Stephanie Sample <Stephanie.Sample@alexandriava.gov>; Daniel P Welles <daniel.welles@alexandriava.gov>
Subject: Examples of Developments in Old Town with Terminating (not a through) Alley Access
Importance: High





Hi East End Folks + Bill –

Thinking of examples of blocks in old town that have alley access which does not carry thru the block; i.e., a terminating alley. This is re: 125 West Street DSUP. We want that Project to take sole access from an existing alley – instead of creating a *new* curb cut on N. West Street, which is in a school zone and one block from a near fatal collision involving an 8yr old student and a driver. No bueno...

Therefore, the current Staff finding, at p.7, that “the proposed new development [is] consistent with several identified [Braddock Metro Neighborhood Plan] goals, including . . . provid[ing] walkable neighborhoods that are secure and feel safe” is undermined by the Staff’s prior position. Notably, the Recommendation is silent on this point and the Staff has not informed the Committee how its concerns (*e.g.*, minimizing curb cuts on a Priority Walking Street, easier fire truck access, a project design that limits visibility into rear elevations, and consolidated open space) were assuaged, or, instead, why those concerns were seemingly abandoned.³

By late February, the Staff’s position had suddenly changed, with the intervening development apparently being a meeting with the Applicant and counsel on Friday, February 23, 2024.

CDSP2023-00011/125 N. West Street

 Stephanie Sample
To:  Duncan Blair;  Victor Bonomi
Cc:  Catherine Miliaras

2/26/2024

Hi Duncan and Vic,


Following our meeting on Friday afternoon Karl and I touched base and we’re good with you going to Completeness as the next step, keeping the N. West St. curb cut but with a right-in, right-out configuration.




Thanks,





Stephanie Sample
Urban Planner

³ It is not clear whether the Committee has even been made aware of these Staff concerns.

Re: CDSP2023-00011/125 N. West Street



Victor Bonomi <Vic@tech24cons>
 To  Stephanie Sample
 Cc  Duncan Blair;  Catherine Miliaras

2/26/2024

You don't often get email from vic@tech24construction.com. [Learn why this is important](#)

This sounds like great news. I promise this will be nothing short of a stunning development. I really look forward to working with you guys though this process

Thanks for the call Friday and listening to us. This is going to be a fun project

Vic

From: Victor Bonomi <Vic@tech24construction.com>
Sent: Wednesday, February 21, 2024 1:35 PM
To: Stephanie Sample <Stephanie.Sample@alexandriava.gov>
Cc: Duncan Blair <dblair@landcarroll.com>
Subject: Re: Meeting to discuss 125 N. West St?


Hi,



Friday would be fine. I would like to request that we have Karl attend. Can that be arranged? I want to make sure we all get a chance to discuss before the project either moves forward in a direction or takes a huge U-turn.





Please let me know as I am available all day Friday

Thanks
 vic

RE: Meeting to discuss 125 N. West St?



Stephanie Sample
 To  Victor Bonomi
 Cc  Duncan Blair

2/21/2024

Hello,

Would 2pm on Friday work? Karl has a full calendar but can squeeze in 15 minutes to come to the meeting.

Thanks,

Stephanie Sample
 Urban Planner

It is not known what occurred in late February that precipitated such a sudden change in the Staff's thinking. While Staff recommendations to this Committee necessarily should not be a "blow-by-blow" of the deliberative process, they should require some basis for the conclusions presented and the process by which the Staff arrived at that conclusion. This is especially important where the Staff's position changes so dramatically and suddenly. Such reasoning is not present in the

current Recommendation and there is no basis to understand how “fundamental issues” related to emergency access, traffic, and safety purportedly had been resolved prior to the Recommendation being issued.

B. The Proposed 45-foot Height is Unsupported and Incongruous to the Surrounding Area

i. The Height Variance and Set-Back Recommendations Are Flawed

A critical aspect of the proposed project is buried in a perfunctory footnote of the Recommendation—namely, that the units are intended to be forty-five feet (or 3 ½ stories).

Height ¹ --- Up to 45 FT	45	45	45	45	45	45	45	45	45	45	45	45	45
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¹ Height increase from 35' to 45' permitted per Section 4-506.

² Yard modifications requested for side lots 1, 3, 4 and 9 and rear lots 10-13.

³ Open space modifications requested for lots 1-9.

⁴ Crown coverage calculated by site, not individual lot, per the City's Landscape Guidelines.

In a similar, but equally unelucidated vein, the Applicant asserts:

2. Narrative description. The applicant shall describe below the nature of the request **in detail** so that the Planning Commission and City Council can understand the nature of the operation and the use, including such items as the nature of the activity, the number and type of patrons, the number of employees, the hours, how parking is to be provided for employees and patrons, and whether the use will generate any noise. If not appropriate to the request, delete pages 6-9. (Attach additional sheets if necessary.)

The Applicant is requesting a Development Special Use Permit with Modification and associated special uses permits to redevelop the property with Nine (9) townhomes and Two (2) Two Unit dwellings. The existing site commercial office improvements constructed in 1984 and the industrial warehouse building constructed in the 1950's will be demolished.

The proposed redevelopment of the property will replace an obsolete office building with surface parking and an interior industrial property with a new residential community compatible with the adjoining neighborhoods.

The Applicant design of the Project is utilizing the provisions of Section 4-506 (C) of the AZO to allow the maximum permitted height to be 45 feet and the provisions of Section 7-1600 (F) of the AZO for townhouse units with shared private alleys.

p. 52 of Staff Report public materials packet

Section 4-506 of the AZO requires far more consideration than either the Staff or the Applicant gives. Indeed, section 4-506—as the Staff and Applicant well know—provides that:

(C) *Height.* The maximum permitted height of a building is 50 feet, except that the maximum permitted height of a single-family, two-family or townhouse dwelling is 35 feet, provided however that such maximum height may be increased to an amount not to exceed 45 feet if the ridge line of the roof is parallel to the street and the slope of the roof is compatible with neighboring buildings.

Thus, in limited circumstances, an increase from 35-feet to 45-feet may be permissible, but only when “the ridge line of the roof is parallel to the street and the slope of the roof is compatible with neighboring buildings.”

The Recommendation elucidates ***no*** findings, recommendations, considerations, or analysis regarding Section 4-506 beyond the passing footnote. There is no assessment or finding regarding roof slope “compatib[ility]” with neighboring buildings and no finding that the criteria of Section 4-506 are satisfied.⁴ Treating the *exception* under Section 4-506 as automatic, as the Recommendation does, would serve to render the height rule superfluous and be contrary to the intent of the AZO.

Relatedly, the Staff has already recommended set-back variances from a mandated 16’ to 13.5’ for lots 10-13, but the Staff completely fail to address the necessary rear yard setback ratio of 1:2. Thus, the proposal is for towering 45’ tall single-family homes, with minimal open space,⁵ pursuant to variances that were apparently endorsed by the Staff without the support of specific findings.

ii. The Proposed Heights are Not Compatible with the Surrounding Neighborhood

The Recommendation, at p. 5, observes that, according to the Zoning Ordinance, the “location of the zone in and near the Old and Historic Alexandria District requires that such uses **be compatible with nearby residential housing and with that area generally.**” (emphasis added). However, the Recommendation makes no effort to show that this requirement is satisfied and, indeed, recommends numerous SUPs and modifications that would place the proposed units far from the heartland style of the surrounding neighborhood.

Considering solely the height issue, the proposed development is in an area where residential units are often two stories, or occasionally 2 ½. While the King St. corridor has some taller buildings, they are of a wholly different class (*i.e.*, mixed business/residential, business, or multi-unit). Taller buildings are generally offices or hotels.⁶ For *residences* in this area, the proposed development would tower over the surrounding area and be out of place.

For example, across the street on N. West the homes were built or are stylistically compatible with late 19th century and early 20th century town homes of two stories.

⁴ Also, the four back buildings are not necessarily “parallel” to any street, given that they face only a private alley.

⁵ The proposed buildings are, in actuality, taller than 45’ by virtue of the proposed mechanical addition to the roof line (item “M” - SYNTHETIC WOOD MECH. SCREEN). This is presumably a “rooftop appurtenance” as contemplated by Section 6-403 which provides that “[c]himneys, towers, tanks, machinery, equipment, stairs, elevators, roof decks and guards, solar energy systems, penthouses or other mechanical appurtenances to a main building may be erected as a part of the main building to their required heights, regardless of any other height provisions or restrictions. . . .” Thus, while the mechanical screens may be *technically* permissible, it should not be discounted that the proposed elevations are increased by multiple feet.

In any case, Staff recognizes that Section 11-500 of the Zoning Ordinance allows for SUPs when three criteria are satisfied: (1) Will not adversely affect the health or safety of persons residing or working in the neighborhood of the proposed use; (2) Will not be detrimental to the public welfare or injurious to property or improvements in the neighborhood; and (3) Will substantially conform to the master plan of the city. These criteria are addressed in passing, but not substantively examined or explained by the Staff.

⁶ *E.g.*, 1300 King Street (street level businesses and condos above), 1420 King Street (the Washington Engineering Center), 1600 King Street (Lorien Hotel and Spa), 1555 and 1605 King Street (office units), 1615 King Street (Hyatt Centric hotel), 1616 King Street (Hampton Inn hotel), 1101 King Street (office units).



100 block of N. West Street (west side) directly across from the site

And in the 200 block of N. West Street (near Jefferson Houston Elementary), similar elevation profiles from or comparable to the 1870-1920s are found.



200 block of N. West Street (east side) directly up from the site

On Cameron St. to the west are low-slung mid-war (1943) row houses.



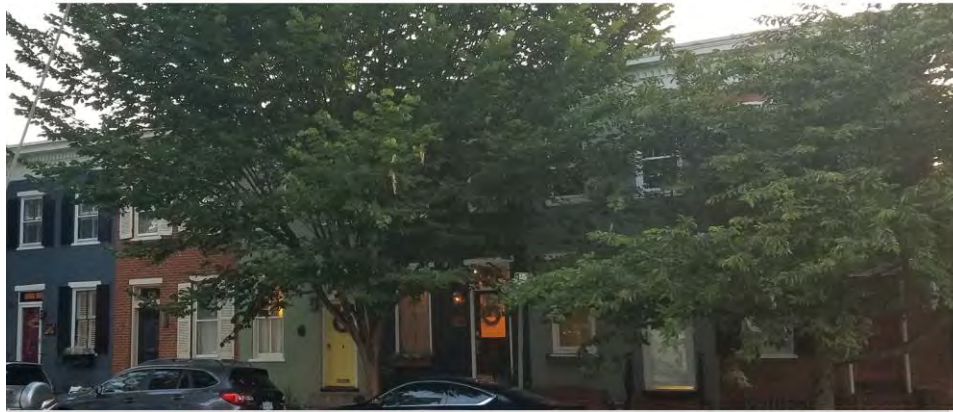
1400 block of Cameron Street (south side) directly across from Jefferson

The areas westward on Fayette and Harvard are largely 1910s and mid-century row houses, often in a craftsman style.



Harvard Street (east side) directly across from the Old Town Pool

Abutting the proposed development on the 100 block of N. Payne are largely plaqued 19th century town houses or comparable.



100 block of N. Payne (west side) directly behind the site



100 block of N. Payne Street (east side)

And the 200 block of N. Payne is comparable.



200 block of N. Payne Street facing north

And the three properties immediately adjacent to the proposed development on Cameron (c. 1900) are two stories plus elevation and dormers.



1300 block of Cameron Street (south side) directly adjacent to the site

Here, the style of the proposed units for this development are, if anything, similar to townhouses found in northeast Alexandria, Potomac Green/Potomac Yard, and the south quadrants.⁷ The

⁷ The Staff implicitly recognizes this, stretching (at p. 9) for examples of residential properties without direct street frontage and specifically including the Venue in North Old Town and the project at 820 Gibbon Street.

incongruity of these units, in this location, among this surrounding neighborhood cannot be overstated.⁸

C. *The Staff Has Failed to Fully Account for Community Views*

With respect to the Community, the Recommendation, at p. 15, §V, is a terse seven lines. It merely summarizes certain steps taken, without any explanation of the **result**. For instance, the Staff notes “the applicant reached out to nearby neighbors,” “an open house . . . was also held . . . and was well attended” and certain “civic associations were notified and attended.”

First, we are aware that the outreach process was flawed, with some neighbors not receiving one or more postcards or other notifications. And the Staff appears to have relied heavily on self-serving summaries from the Applicant regarding the community feedback.

⁸ On this point, too, the Recommendation is conclusory with no explanation of what the point of reference is for the neighborhood (the Recommendation, at p. 3, does observe that the project “is immediately adjacent to both locally-regulated districts, the Old and Historic Alexandria District to the south and the Parker-Gray District to the north.”). Further, placing these units in this location would begin to create a precedent that, over time, erodes the existing character of the neighborhood. Future development could easily point to these units as a “comparable” starting point, creating a slippery slope of built up, towering development inconsistent with the Master Plan and height zones, and permission to build out of character residences proximate to King Street (e.g., Recommendation at p. 8: “the four semi-detached units fronting the private alley are less traditional”).

The height of the buildings may also constitute a property rights violation/nuisance, specifically the existing views of the iconic George Washington Masonic Memorial. There is little question that the Masonic Memorial is an iconic part of Alexandria. The City itself describes the building as unique in multiple places, and its character is so fundamental to the fabric of the City that it was incorporated into the new design for the ACPS logo. Its landmark status is widely recognized, and it is included on the National Register of Historic Places. Street names, such as “Masonic View,” affirm its special character. And views of the Memorial have economic value, as evidenced by real estate listing and short-term rental marketing materials.

Whether removal of an iconic view is actionable in law is an open question in Virginia. In November 2023, a Norfolk Circuit Court ruled that a landowner does not create a private nuisance by erecting a fence that blocks their adjoining neighbor’s view according to English common law. But in reaching this decision, the court observed an absence of controlling Virginia law or appellate authority and had to look at pre-Mayflower English legal precedent. *See Patterson v. Gardner*, Case No. CL22-10435 (Nov. 21, 2023) (Under Va. Code § 1-200, English common law continues in full force absent a statute or appellate authority). The *Patterson* court did recognize that diminution in value of property is a consideration for nuisance.

Moreover, in that case the issue was a generic scenic waterfront view that was blocked by a neighbor’s fence, not a preexisting unique and iconic view such as the Masonic Memorial, blocked by a new structure that will be incompatibly tall for its type. While the general rule is that the loss of a view is not actionable under nuisance, even the *Patterson* court relied on precedent that reflects the established principle under tort law that “discomfort and annoyance” that are “significant and of a kind that would be suffered by a normal person in the community” may be actionable. *See generally* Restatement (Second) of Torts §§ 821D and 821F (1977); *Foley v. Harris*, 286 S.E.2d 186 (Va. 1982). Thus the issue of unique, rather than generic views, is ripe for consideration in Virginia, particularly given the height increase.

At a minimum, this issue shows how the criteria of Section 11-500 have not been satisfied, such as the criteria that it not be “detrimental to the public welfare or injurious to property or improvements in the neighborhood.” The Recommendation simply concludes, without analysis, at p. 10, that the “SUP request will not create any adverse effects to any adjacent properties,” which is patently inaccurate.

Separate from that process issue, and more fundamental, is that the Staff leaves open the crucial element “[n]eighbors ***had questions and concerns*** regarding the proposed density of the project, changes to the scale of the neighborhood, parking and access, construction logistics and project schedule.” *Id.* (emphasis added). But, that is where the Recommendation ends.

Beyond this brief description, the Staff provides nothing more—thereby raising many more questions. Were the concerns valid? How many members of the Community shared similar concerns? Were there specific, actionable concerns? How were they addressed? Did the Applicant or the Staff make any changes as a result? Crucially, was input from the Community considered *at all*, or merely dismissed?

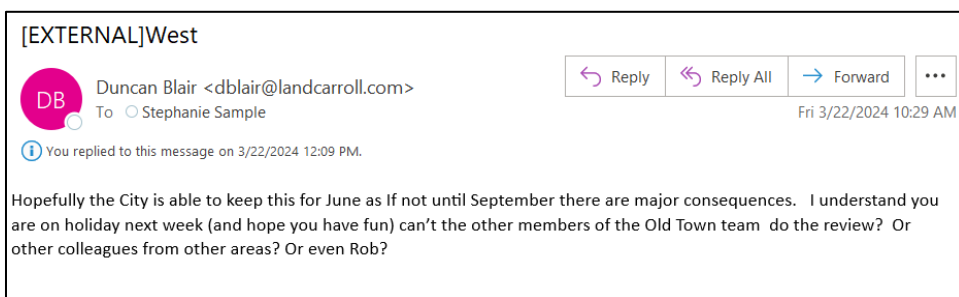
For Community input to consist of anything resembling a consultative basis, a degree of back-and-forth is indispensable. All the Recommendation provides, at present, is notice to this Committee that neighbors are concerned. Consultation should mean careful consideration, and there is nothing in the Recommendation to give this Committee, or the community, comfort that important stakeholder views were accounted for.

If the Committee is prepared to reduce community involvement to such a mere “check the box” exercise, then it should dispense with the fiction entirely and recognize community involvement as illusory.

D. A Concerted Cadence of Pressure by the Applicant Begs Questions About the Process

Given the numerous shortcomings in the Recommendation, the process by which the Staff reached their conclusion warrants consideration. In particular, was it unnecessarily rushed? Documents suggest that the Applicant and Applicant’s counsel placed significant pressure on the Staff to speed the Recommendation. While generalized time pressure is to be expected—and it would be naïve to believe that developers do not want to move as quickly as possible—the documents in this case demonstrate routine pressure on the Staff (some key items are included below).

For instance, on March 22, 2024, counsel insisted on submission for the June meeting, absent which there would be “major consequences.”



And on April 1, 2024, entreaties for “[a]nything that can help us turn this around faster. . .”:

From: Victor Bonomi <Vic@tech24construction.com>
Sent: Monday, April 1, 2024 2:23 PM
To: Duncan Blair <dblair@landcarroll.com>
Cc: Stephanie Sample <Stephanie.Sample@alexandriava.gov>; Ed Buttarazzi <ed@tech24construction.com>
Subject: Re: 125 West Street, Alexandria, Va

Hi,

Happy Easter everyone. Hope that everyone got to enjoy some of this Holiday




Anything that can help us turn this around faster is greatly appreciated.





Thankful for everyone's hard work and aligned interest on this project

Thanks
vic

In other instances, the choice language includes “I will beat TES heads and other departments” and an observation by the Staff that such pressure “is just what [Applicant’s counsel] does.”

RE: [EXTERNAL]West

 Robert Kerns
To:  Stephanie Sample
Cc:  Catherine Miliaras

 Reply  Reply All  Forward 

Fri 3/22/2024 2:30 PM

This is just what he does. Thanks for the “heads up”

From: Stephanie Sample <Stephanie.Sample@alexandriava.gov>
Sent: Friday, March 22, 2024 12:43 PM
To: Robert Kerns <robert.kerns@alexandriava.gov>
Cc: Catherine Miliaras <Catherine.Miliaras@alexandriava.gov>
Subject: FW: [EXTERNAL]West

Hi Rob,



Just a head up.





This email from Duncan was in response to an email I sent earlier this week giving him a heads up that it was going to be tight for them to make the late June/Early July hearing schedule. They aren't scheduled to get their Completeness comments until April 9th and Verification is due April 11th. See my response is below. Not sure why he's confused and thinking that my vacation next week is the problem.

Thanks,

Stephanie Sample
Urban Planner

Re: [EXTERNAL]West

 Duncan Blair <dblair@landcarroll.com>
To:  Stephanie Sample

 Reply  Reply All  Forward 



Fri 3/22/2024 1:31 PM





Thanks. I will beat TES heads and other departments to remind them this is complete review and it is about making sure all information is there. Not an opportunity to come up with new and creative thoughts. D

Sent from my iPhone

Yet, it appears that tardiness by the Applicant was an issue:

125 N. West St.

 Stephanie Sample
To  Duncan Blair

 Reply  Reply All  Forward 

Mon 3/18/2024 10:38 AM

Hi there,

It looks like 125 N. West St. wasn't submitted on Friday. I think that was probably the latest to make the last June PC/early July CC meeting. Mind sharing what your plan is?

Thanks,

Stephanie Sample
Urban Planner

From: Nancy Williams <Nancy.Williams@alexandriava.gov>
Sent: Monday, March 25, 2024 12:03 PM
To: Robert Kerns <robert.kerns@alexandriava.gov>
Cc: Stephanie Sample <Stephanie.Sample@alexandriava.gov>; Shekyta Taylor <shekyta.taylor@alexandriava.gov>
Subject: Rob - Request for mtg w/Mr. Bonomi (Tech Construction) - Case # DSUP 2024-10004

3.25.2024

Good morning, Rob,

Mr. Victor Bonomi, President/CEO, of Tech Construction came in about DSUP 2024 – 10004 (a Townhouse project).




He would like to talk to you about communication indicating that because he did not submit until 3/18, P&Z's comments will be sent by 4/9 and then he will have 2 days to (4/11) to respond to be scheduled for the June 27 docket.





He thought he had until 3/28 to get his documents in for the 6/4 hearing in accordance with the [Filing Schedule](#).

Forwarding the information he left this morning. **I have scheduled time in the conference room for you to meet with him at 9:30 a.m. tomorrow – Tuesday, March 26.**

PS – My Adobe is not working so although I scanned in copies of emails that he left, they will not open so I will just give them to you in hard copy.

FYI re. hearing deadlines

 Stephanie Sample
To  Duncan Blair
Cc  Catherine Miliaras

 Reply  Reply All  Forward 

Wed 3/20/2024 11:13 AM

Hi there,





To make the second June 27 PC hearing (and the July 2 CC hearing) the Verification of Completeness deadline is 4/11/24 at 3pm. Given the submission date of your Completeness Plans on 3/18, you aren't scheduled to get your comments from us until 4/9. That only gives you 2 days to update the plans.

I'll try to get the comments to you a bit earlier but just FYI that T&ES has a bunch of people out on leave so it may be tight.


Thanks,

Stephanie Sample
Urban Planner

Re: [EXTERNAL]125 107 West Street

 Duncan Blair <dblair@landcarroll.com>
 To:  Stephanie Sample
 Cc:  Ed Buttarazzi;  Victor Bonomi

Wed 4/3/2024 11:18 AM

 We removed extra line breaks from this message.

Thank you for getting back to me and keeping this moving. I look forward to sorting through the comments esp the ones from Nathan Orr. Hopefully, there are not a lot of “non completeness” observations and things that are more in the realm of conditions. Onward. D Sent from my iPhone

> On Apr 3, 2024, at 11:11 AM, Stephanie Sample <Stephanie.Sample@alexandriava.gov> wrote:
 >
 > The plans have been deemed incomplete and I hope to get your comments within the next day, giving you more time to work on your next submission.
 >
 > Stephanie Sample
 > Urban Planner

Re: [EXTERNAL]125 N. West

 Duncan Blair <dblair@landcarroll.com>
 To:  Stephanie Sample

Thu 3/7/2024 10:03 AM

I believe next.
 Sent from my iPhone

On Mar 7, 2024, at 9:57 AM, Stephanie Sample <Stephanie.Sample@alexandriava.gov> wrote:

I'll get that updated. Also, when I talked to Steve last week, he said that he thought you'd be submitting last Friday. Are you aiming for this Friday?

Stephanie Sample
 Urban Planner

From: Stephanie Sample <Stephanie.Sample@alexandriava.gov>
Sent: Friday, March 22, 2024 12:09 PM
To: Duncan Blair <dblair@landcarroll.com>
Subject: Re: [EXTERNAL]West

It's actually on your team, not us, to keep you on June/July. Dates are posted well in advance and when I talked to Steve weeks ago it seemed imminent that you were submitting. Not sure why it took until this Monday to submit.

My part of the review is quick, it's just getting and compiling other department comments that I have to manage. You are not due for comments until April 9th but I will aim for earlier if possible.

Stephanie

Although such pressure may be par for the course, a plain reading of correspondence like this raises important questions about the validity and carefulness of the Recommendation's deliberation—especially in light of other process issues, including notification and whether the community's questions and concerns were properly considered.⁹

⁹ While a minor point, but perhaps relevant as a microcosm of the overall process, Applicant describes one of the current office buildings as “obsolete.” Yet the Recommendation whitewashes this to “underutilized.”

IV. CONCLUSION

The Committee, when presented with development projects, necessarily must carefully balance competing principles. On the one hand, an established priority of the City Council is to increase housing. Equally important, is adherence to the Master Plan and Zoning Ordinance, thereby ensuring that development in Alexandria maintains the character and history that make the City vibrant and unique while ensuring safety and reducing, as much as possible, negative impact on residents.

The Recommendation is rife with special use and modification requests yet lacks support or even analysis for why they should be granted. If zoning and use rules are to be given any effect, then this Committee should deny the application. Anything less risks allowing the exceptions to swallow the rule whole, without due regard to the baseline standards designed and implemented to benefit the entire City.

Respectfully submitted,


Kendall Wangsgard

2. The SUP request will not create any adverse effects to any adjacent properties, as the project includes the demolition of the underutilized office building with surface parking at 125 N. West Street and the replacement of a former warehouse and now office building (107 N. West) which fills 100% of the lot and provides no pervious surface.

This is not by chance. Rather, the Staff made this change due to discomfort with how the *Applicant itself* described the facts, given that the current office buildings are, in fact, utilized for business purposes:

Based on the three criteria City Council considers in their approval of SUPs, staff supports the approval of this SUP:

1. The fee-simple alley dwelling units will not affect the health and safety of the neighborhood. The alley units will be served by the private alley and there will be a greater setback from the residential properties to the east;
2. The SUP request will not create any adverse effects to any adjacent properties, as the project includes the demolition of the underutilized office building with surface parking at 125 N. West Street and the replacement of a former warehouse and now office building (107 N. West) which fills 100% of the lot and provides no pervious surface will be replaced with a new development; and
3. The proposed use is consistent with the Braddock Plans which encourage residential uses and the site layout is compatible with other mixed-used blocks in this area of Old Town.



Catherine Miliaras

I'm a little uncomfortable calling them obsolete since both are still currently used. Maybe just stay silent on it

May 23, 2024, 12:16 PM



Stephanie Sample

How about this change?

May 23, 2024, 1:35 PM

Reply