

## Kaliah L Lewis

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**From:** John Thorpe Richards <jtr@bogoradrichards.com>  
**Sent:** Monday, December 14, 2020 9:45 AM  
**To:** Kaliah L Lewis  
**Cc:** Sam Shelby; Mary Christesen; Tony LaColla; zachcotter@gmail.com; Rothrock, Gail  
**Subject:** [EXTERNAL]BZA #2020-00023 113 South St. Asaph Street (Request for Variance)  
**Attachments:** 2020\_12\_14\_HAF\_BZA #2020-00023.pdf

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

Dear Ms. Lewis,

Attached please find a copy of the Comments of Historic Alexandria Foundation on the referenced case which is on the docket for hearing this evening. Please distribute our letter to the members of the Board. Thank you.

JOHN THORPE RICHARDS, JR.

MEMBER OF THE BOARD  
HISTORIC ALEXANDRIA FOUNDATION  
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December 14, 2020

Board of Zoning Appeals  
City of Alexandria  
301 King St., Room 2400  
Alexandria, VA 22314

**By email**  
c/o Kaliah Lewis  
[kaliah.lewis@alexandriava.gov](mailto:kaliah.lewis@alexandriava.gov)

**Re: BZA #2020-00023**  
**113 South St. Asaph Street (Request for Variance)**

Dear Chair Altenburg and Members of the Board:

As you know, HAF was formed “to preserve, protect and restore structures and sites of historic or architectural interest in and associated with the City of Alexandria, Virginia, to preserve antiquities, and generally to foster and promote interest in Alexandria’s historic heritage.” In furtherance of this mission, we are vitally concerned with the proper administration of the Zoning Ordinance in the Old and Historic District, and the preservation of the historic fabric of our unique and historic City.

HAF takes particular interest in the property at 113 S. St. Asaph Street because in 1966 we awarded the house plaque number 107-E-113 as part of our Early Building Survey Program. This was one of the earliest plaques awarded; the program began in 1965 to identify important early historic resources during the era of urban renewal. The plaque program is one of HAF’s major programs for promoting historic preservation as it carries out its charitable mission.

In order to fully protect the Historic District and uphold the stated goals of both the Historic District Ordinance and the CD zone, we believe it is important for the Board to adhere to the high standards that are required before an applicant is relieved of the

Board of Zoning Appeals  
City of Alexandria  
BZA #2020-00023  
Page 2

minimal limitations contained in the generous allotments of the CD/Commercial Downtown zone. Simply put, the limitations on the use of 113 S. St. Asaph do not pose the type of hardship that justify a variance.

In submitting our comments, HAF is fully conscious that the Zoning Ordinance was amended by the City Council on May 13, 2017 to conform with the 2015 amendments to Va. Code § 15.2-2201 (2017) and Va. Code § 15.2-2309 (2017). But while these amendments were designed, in part, to somewhat reduce the showing necessary to obtain a variance, an applicant still faces a very high burden to justify a variance. This was confirmed by the testimony of the City's Zoning Staff and Legal Counsel during the public hearing on May 13, 2017. Statement of Alex Dambach, Division Chief: ("[I]t's not substantially easier, it's just a moderate adjustment in the way the language is written."); Statement of Joanna Anderson: ("***But Alex is right that it is further loosening it but it is still a very high standard to get a variance as it should be.***")(emphasis added).

Under the new ordinance, the applicant must still show (1) that "the strict application of the ordinance would unreasonably restrict the utilization of the property," (2) that the "need for a variance would not be shared generally by other properties," and (3) that the "variance is not contrary to the purpose of the ordinance." Zoning Ordinance § 2-201.1. We suggest that the application fails to make a showing under any of these three requirements.

In addition, Section 11-1103 of the revised ordinance requires, among other things, that the applicant prove that:

(B) The strict application of the terms of the ordinance would unreasonably restrict the utilization of the property or that the granting of the variance would alleviate a hardship due to a physical condition relating to the property or improvements thereon at the time of the effective date of the ordinance;

(C) The property interest for which the variance is being requested was acquired in good faith and any hardship was not created by the applicant for the variance;

\* \* \*

Board of Zoning Appeals  
City of Alexandria  
BZA #2020-00023  
Page 3

(E) The condition or situation of the property concerned is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to the ordinance;...

We agree with the recommendation of your Staff that the application in this case cannot make the required showing under Sections 11-1103(B) & (E) of the Ordinance. There is no “hardship” being experienced by the owners of this property. The owner has the full enjoyment of the property he bought subject to the restrictions of the Zoning Ordinance. While all zoning restrictions place limitations on the use and development of real estate, complying with those restrictions that have been put in place for the common good is not the type of “hardship” contemplated by either the Virginia Code or the City Ordinance. Being subject to these restrictions “is a condition shared by every other property holder in the same zone.” *Martin v. City of Alexandria*, 286 Va. 61, 74, 743 S.E.2d 139, 146 (2013).

Although not essential for your determination that a variance is unwarranted in this case, we do not believe that the record before you supports a finding that the applicant satisfies Section 11-1103(C). While the Staff report analyzes the requirements of Section 11-1103(C) as follows:

*The applicant acquired the subject property interest in good faith and was unaware at the time of purchase that the Zoning Ordinance would restrict their ability to convert the building to a multifamily dwelling. The applicant did not create the lot or construct the existing building so he did not create the hardship imposed by the narrowness of the lot or location of the existing building.*

Staff Report at 8, the application provides the following answers to the basic questions raised by the provision of the Ordinance:

A. Did the condition exist when the property was purchased?

**Yes**

B. Did the applicant purchase the property without knowing of this restriction or hardship?

**No.**

Moreover, properly construed, the ordinance does not provide for a variance because a new owner did not create the condition — it provides for a variance only if none of the prior owners created the condition. As the successor in title to prior landowners, the Applicant should be charged with responsibility for his predecessors land use decisions

Board of Zoning Appeals  
City of Alexandria  
BZA #2020-00023  
Page 4

and actions. Otherwise, every sale of property would be grounds for a variance. See 3 Rathkopf's The Law of Zoning and Planning § 58:21 (4th ed.)("If the conditions affecting the property have been caused or created by the property owner *or his predecessor in title*, the essential basis of a variance ... is lacking." "Variances generally will not be granted when courts determine that the hardship was created by an affirmative act by the owner *or his predecessor*.")(emphasis added); see also *Alleghany Enterprises, Inc. v. Bd. of Zoning Appeals of City of Covington*, 217 Va. 64, 69, 225 S.E.2d 383, 386 (1976)("self-inflicted hardship ... whether deliberately or ignorantly incurred, affords no basis for the granting of a variance). While we recognize that purchasing a property knowing that the intended use would require a variance is not itself a bar to the requested relief, see *Spence v. Board of Zoning Appeals for City of Virginia Beach*, 255 Va. 116, 496 S.E.2d 61 (1998), it is far from clear — based on the record before the Board — that the restrictions the owner seeks to avoid are not the result of the voluntary land use decisions and actions of the prior owners of the property.

\* \* \*

For all of these reasons, HAF respectfully supports the Staff recommendation that the application for a variance be denied and opposes the grant of the requested variance.

Thank you for your consideration of our statement.

Sincerely,



John Thorpe Richards, Jr.  
Board and Advocacy Committee Member  
Historic Alexandria Foundation

cc. Sam Shelby, Urban Planner,  
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ZACHARY B. COTTER

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January 10, 2021

Board of Zoning Appeals  
City of Alexandria  
301 King St., Room 2400  
Alexandria, VA 22314

Re: BZA #2020-00023

Dear Chair Altenburg and Members of the Board:

The intent of this letter is to make you aware of several matters concerning BZA #2020-00023 that have changed since the 13 December, 2020 to include the identification of an alternative by right option. As you now have the complete floor plans of 113 S Saint Asaph St that I previously provided to the city, you can observe the building consists of four rentable spaces: two are used as residential dwellings and two commercial for uses. I am working to convert it back to an all residentially used building which is in alignment with the historical design and layout of the building when constructed as a residential building. The restoration to an all-residential building also enables certain historic rooms to be returned to a uses that reflect their original purpose. There will be no change to the outside of building.

As you recall from the Staff Report, the property was determined as not eligible for a permitted by right residential reversion pursuant to section 12-101(B) of the ordinance because it was believed the proposed number of residential units (four) exceeds the number that previously exist on the property. Section 12-101(B) (3) limits a permitted by right 12-101 (B) conversion to cases where the purposed number of units is equal to or less than the number of dwelling in the history of a building.

However, since the deferral of the case, I was able to uncover documentation that the building has had as many as nine rental dwellings which clearly satisfies the criteria of sections 12-1010 (B) (1), (2) and (4) of the Ordinance. This new information was provided to city staff on 30 December, 2020; however, despite efforts to follow-up with staff, I have not received acknowledgement of the permitted by right residential reversion which would negate the need for the proposed variances.

Additionally, it was brought the staff's attention that in 1986 the BZA granted similar variance based in the fact that historic size of the lot created a hardship if the strict application of the then current zoning requirements were applied the historic building and lot. At that point, the variance created the lot as a legal lot of land. The current variances are similar to the relief granted in 1986 but under a different zoning classification. An argument can be made that the existing structure should be classified as a noncomplying structure based on the prior variance regardless of the proposed conversion.

The intent of this effort is to enable creative reuse of a historic property in a manner that respects and preserves what makes it unique while creating additional housing in the historic Old Town area. This is in alignment with the city's Master Housing Plan which seeks to "facilitate a variety of housing options for households of all incomes." and expand the housing stock and also the Old Town Small Area Plan which recognizes that "recent residential development.... has been limited to the infill of townhouses since there is little residential land available for development."

The intent of 12-101(B) was to establish a clear path in the ordinance to facilitate for a property of this type to smoothly transition without one. For the city to achieving its goals with respect to housing, it has to provide flexibility. The Staff Report acknowledges this where it notes that “staff is exploring amendments to the zoning ordinance that would create paths forward for conversions of buildings to small scale multifamily buildings without the need for a variance.” In this case, one already exists. Having established the evidence that qualifies for reversion under 12-101(B), I would appreciate the city’s support.

Sincerely

Zach Cotter

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January 11, 2021

Board of Zoning Appeals  
City of Alexandria  
301 King St., Room 2400  
Alexandria, VA 22314

Re: BZA #2020-00023

Dear Chair Altenburg and Members of the Board:

I regret the late nature of this second letter concerning BZA #2020-00023; however, I was informed today of the Staff's decision to reject the property's eligibility for residential revision and would like to address in writing the justification for your reference.

The intent of 12-101(B) was to establish a clear path in the ordinance to facilitate for a property of this type to smoothly transition without one. Please see the justification below. I apologize for the inconvenience and would appreciate the city's support.

Sincerely

Zach Cotter

404-281-2412



## Section 12-100 (B)

A building on a lot that does not meet the current zoning requirements for residential use **SATISFIED**, that was originally constructed or principally used prior to June 24, 1992 as a residence **SATISFIED**, may be reverted from commercial use to a residential use and shall be a noncomplying structure provided that:

- (1) The proposed residential use is permitted in the zone; **SATISFIED**
- (2) The proposed residential use contains a number of dwelling units equal to or less than previously existed on the property; **SATISFIED**.

The City's position is "the building was used as a rooming house. While this is a residential use, it technically only constitutes one dwelling unit since not every room would have met the dwelling unit definition."

The use of 113 S. St. Asaph as described in the 1911 published rental advertisement predates the adoption of the first Zoning Ordinance in 1923. As such, the use of any definitions of the use other than as residential rooms such as dwelling units, guest rooms, rooming house or boarding house is based on the adoption of ordinance subsequent to the use of the property as a residential building with up to "nine rooms and bath" as advertised in the Alexandria Gazette. The City has taken the position that the property at 113 S. St. Asaph Street does not qualify for a section 12-100 (B) reversion because: (1) the building was use as a rooming house or boarding house; and (2) an as defined today the "rooms" described in the 1911 advertisements "dwelling units" (Currently defined in section 2-141 of the Ordinance as" A group of rooms designed or intended for occupancy by a single-family. This definition is to be used to determine if a building is a single, two family or multifamily dwelling. Note that section 2-136 of the Ordinance defines a dwelling as a building or portion thereof, which is designed or exclusively used for residential uses.) There is no doubt that 113 S. St. Asaph was constructed as a dwelling and had, as evidenced by the 1911 advertisements as many as nine residential spaces for occupancy.

The Legislative History of Section 12-101 (B) ( TA# 2019-00001) states the: "The purpose of this text amendment is to allow commercial structures to convert back to their original or previous residential use when a property meets specific criteria. In the long run this text amendment will provide more flexibility for property owners to convert back and forth between residential and commercial use. And further states: "This is often because the lot

was developed with a structure prior the existence of the Zoning Ordinance and Map in 1931 or because through rezoning over the years, most commonly the 1992 updates to the Zoning Ordinance and Map, the residential use requirements for the property have changed since it was last used as a residence. Because these properties became complying commercial structures, under the current regulations, they cannot revert back to a previous noncomplying status without requesting some form of relief.” 113 S. St. Asaph Street fits this description. The strict and technical definition of dwelling unit in 12-101(B)(3) should not be used and applied to historically used residential building predating Zoning in the City to thwart the expressed intent of the 2019 Text Amendment to provide flexibility to revert a residential building back to a completely residential structure.

- (3) Since the most recent conversion to a commercial use, there has been no expansion to the structure and no changes to the lot of record that increase the degree of noncompliance for a residential use; and **SATISFIED.**
- (4) Since the building was last a residential use, the number of parking spaces has not been reduced notwithstanding the requirements to provide parking in section 8-200. **SATISFIED.**