

City of Alexandria, Virginia

# Legal Procedures and Processes Worksession

Board of Architectural Review

June 16, 2021



# What will we discuss?



## ✓ General Rules

- FOIA Meeting and Document Rules
- Conflicts of Interest
- Rules for all Boards and Commissions
- Roberts Rules & By Laws

## ✓ Why we are here and what are we authorized to do?

- Historic Preservation and Enabling Legislation

## ✓ Rules Specific to the Alexandria Historic Districts

- Application Processes, timing of hearing cases, standards used in decision making, appeals and much more!

# Why we are here and what are we authorized to do?



- Code Sections that govern the Board of Architectural Review:
  - Freedom of Information Act
  - Virginia Conflicts of Interest Act
  - City Code Title 2 (General Government), Chapter 4 (Committees, Boards and Commissions), Article A (General Provisions)
  - Robert's Rules of Order and By-Laws
  - Zoning Ordinance Article X

# Overall Rules

## FOIA



- The Virginia Freedom of Information Act (or FOIA) has two main components:
  - Access to public records
  - Access to meetings of public bodies
- In Code of Virginia § 2.2-3700-2.2-3714.

# Overall Rules

## FOIA



- What are public records?
  - “[A]ll writings and recordings . . . regardless of physical form or characteristics, prepared or owned by, or in the possession of a public body or its officers, employees or agents in the transaction of public business.”

# Overall Rules

## FOIA



- What is a public body?
  - “[A]ny legislative body, authority, board, bureau, commission, district or agency . . . of any political subdivision of the Commonwealth, including cities, . . . municipal councils, . . . and planning commissions; . . . and other organizations, corporations or agencies in the Commonwealth supported wholly or principally by public funds.”
  - “It shall include . . . any committee, subcommittee, or other entity however designated, of the public body created to perform delegated functions of the public body or to advise the public body.”
  - “It shall not exclude any such committee, subcommittee or entity because it has private sector or citizen members.”
  - The City’s Board of Architectural Review (BAR) is a public body under FOIA.

# Overall Rules

## FOIA



- What are the City's obligations generally under FOIA?
  - Records
    - Retain public records for the required retention period
    - And provide public records for inspection to citizens
  - Meetings
    - Provide citizen access to meetings of public bodies

# Overall Rules

## FOIA



- What are the obligations of BAR members related to public records?
  - You must retain all records related to the business of the Board, any record that is not maintained or provided to you by staff.
  - All records need to be retained for the period stated in the Library of Virginia, Retention Schedules for localities
    - [http://www.lva.virginia.gov/agencies/records/sched\\_local/index.htm](http://www.lva.virginia.gov/agencies/records/sched_local/index.htm)



# Overall Rules

## FOIA



- What is a meeting of a public body?
  - The BAR is a public body
  - A meeting is defined as “. . . when sitting physically, or through electronic communication means pursuant to § [2.2-3708.2](#), as a body or entity, or as an informal assemblage of (i) as many as three members or (ii) a quorum, if less than three, of the constituent membership, wherever held, with or without minutes being taken, whether or not votes are cast, of any public body.”
- What is not a public meeting?
  - The gathering or attendance of two or more members of a public body
    - At any place or function where no part of the purpose of such gathering or attendance is the discussion or transaction of any public business, and such gathering or attendance was not called or prearranged with any purpose of discussing or transacting any business of the public body, or
    - At a public forum the purpose of which is to inform the electorate and not to transact public business or to hold discussions relating to the transaction of public business, even though the performance of the members individually or collectively in the conduct of public business may be a topic of discussion or debate at such public meeting

# Overall Rules

## FOIA



- What are the obligations of BAR members related to public meetings?
  - Any gathering of 3 or more members of the BAR is a meeting, if the members are discussing BAR business
  - In person meeting requirements
    - Notice 3 working days prior to the meeting
    - Meeting must be open to the public
    - Minutes of the meeting must be prepared
    - Information provided to the members must be public

# Overall Rules

## FOIA



- What are the obligations of BAR members related to public meetings?
  - Social events
    - Three or more members may attend social events and converse with one another, so long as:
      - No part of the event involves the discussion of public business and
      - The gathering was not planned for that purpose

# Overall Rules

## FOIA



- What are the obligations of BAR members related to public meetings?
  - Electronic communication
    - In order to constitute a meeting under FOIA, an exchange of emails would have to involve a sufficient number of members ("three or more, or a quorum if less than three") and would have to occur within a time period short enough to be considered a simultaneous assemblage of the public body.
      - Virginia Supreme Court decisions in Beck v. Shelton and Hill v. Fairfax County School Board

# Overall Rules

## FOIA



- Electronic communication
  - The holdings are applicable to other forms of electronic communications, including messaging, chats, etc.
  - Options for communicating
    - Do NOT reply all to emails
    - Do NOT respond to or email more than one other Board member at a time
    - Save the discussion for next Board meeting

# Overall Rules

## FOIA



- **Generally, FOIA requires the physical assembly of the members and remote participation is prohibited.**
- This means no meetings by conference telephone calls, video-conferencing, or other electronic communications.
- FOIA allows public bodies that wish to permit one or more of their members to participate in meetings remotely
  - When a member(s) has a personal matter, disability, or medical condition
  - When a quorum is physically assembled in one location
  - The public body has adopted an electronic participation policy that complies with FOIA
- FOIA also allows virtual meetings during a state of emergency

# Overall Rules

## Conflicts of Interest



- Conflicts of interest laws applicable to the BAR
  - State and Local Government Conflict of Interests Act (Act), Code of Virginia § 2.2-3100 - 2.2-3131.
  - Zoning Ordinances §§ 10-401(D) and 11-350 - 11-356

# Overall Rules

## Conflicts of Interest



- What are the obligations of BAR members with regard to conflicts of interest?
  - “Each member of the . . . [BAR] shall be under a continuous duty to remain conscious of and sensitive to any possible conflict of interest which may arise by virtue of his membership on the board. A member, promptly upon his determining he has a conflict of interest relative to any matter brought, shall disqualify himself from participating, in any manner, publicly or privately, in the presentation, discussion or deliberation of and the voting on any such matter.” ZO Section 10-401(D).
  - The Act and Zoning Ordinance are not codes of ethics but merely sets minimum standards of conduct with respect to the financial interests of BAR members.
  - They do not protect against all appearances of improper influence.
  - Instead, they place the burden on the individual Board member to evaluate whether the facts presented create an appearance of impropriety that is unacceptable or that could affect the confidence of the public in the ability of the Board member to be impartial.



# Overall Rules

## Conflicts of Interest



- What conduct is prohibited under the Act?
  - No BAR member may accept money or any other thing of value or take other advantages based upon his position as a member of the BAR.
  - Members cannot have a “personal interest” in a “contract” or “transaction.”
    - A “personal interest” is a financial benefit or liability accruing to a BAR member or to a member of his immediate family.
    - A “contract” is any agreement to which the City is a party.
    - A “transaction” is any matter considered by the Board.

# Overall Rules

## Conflicts of Interest



- What conduct is prohibited under the Zoning Ordinance?
  - Any BAR member who has or has had a business or financial relationship shall be ineligible to vote or participate in any way in consideration of an application.
    - A “business or financial relationship” means a relationship that a BAR member or any member of his immediate household has, or has had within the 12-month period prior to a hearing on an application, with the applicant in the case, or with a party with an ownership interest in the applicant, or the property that is the subject of the application.
    - There are a variety of relationship types, both direct and indirect.
    - Since the question of whether a conflict of interest exists is fact specific, it is advisable to contact the City Attorney’s Office related to a particular situation.

# Overall Rules City

## Rules for Boards and Commissions



General rules apply unless otherwise specified in the enabling legislation of the Board

### Membership:

- Appointed by City Council
- 10 year term limits
- Must attend or have an excused absence for 75% of meetings
- May be removed from the Board by the City Council for neglect of duty or violations of the law

### Meetings:

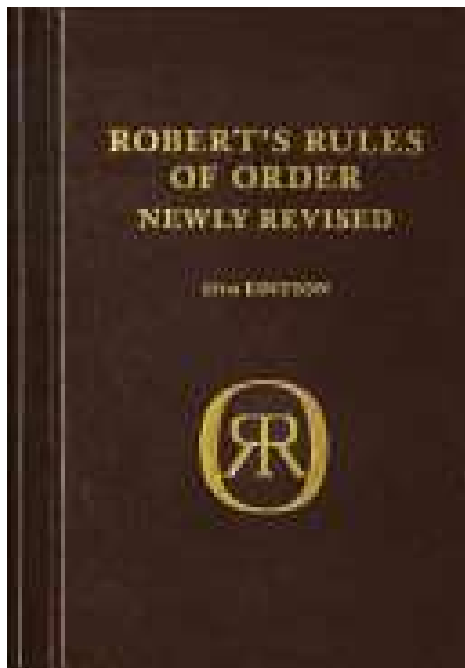
- At least one regular meeting each year
- Annual report to the City Council listing the Board's principal activities and any recommendations to improve the functions and duties of the Board
- Minutes of each meeting must be prepared and kept

### Procedure:

- Quorum
- Vote requires a majority of those present, unless otherwise specified
- Must establish procedures for the conduct of business (by-laws)
- Robert's Rules of Order applies unless otherwise specified by the law

# Overall Rules

## Robert's Rules of Order



- Basic Requirements:
  - Chair presides
  - Members need to be recognized to speak
  - Quorum is majority of member of the board
  - Vote requires a majority of those present unless otherwise specified
  - Tie vote means the motion does not pass

# Overall Rules

## Robert's Rules of Order



- **Motions and Amendments**
  - All motions require a second
  - Motions can be amended with an amendment to the motion or a substitute motion
  - Amendments need to have a second and be voted on separately
  - Main motion, as amended is then on the table for consideration

# Overall Rules

## Robert's Rules of Order



- Amending an approved decision
  - Motion to reconsider
    - Made at the same meeting
    - Only a member who voted for the motion may make a motion to reconsider
  - Motion to Rescind
    - Can be made at any time after a decision is made
    - Requires a 2/3 majority of those present unless there was prior notice of the reconsideration
    - Cannot be done if decision has been relied on to do something that cannot be undone.

# Historic Preservation

## Public Purpose



- Historic Preservation has been established as a Public Purpose

*Penn Central Transportation Company v. City of New York*, 438 U.S. 104, 129 (1978):

“... this Court has recognized, in a number of settings, that States and cities may enact land-use restrictions or controls to enhance the quality of life by preserving the character and desirable aesthetic features of a city”

*Dolan v. City of Tigard*, 512 US 374 (1984) and *Nolan v. California Coastal Commission*, 483 US 825 (1987): There must be an “essential nexus” and “rough proportionality” between the governmental interest being protected and the regulation and/or permit condition.

- Historic district regulations should be:
  - Related to and within the scope of the historic preservation
  - Comprehensive
  - Allow for a reasonable return on investment
  - Applied a manner that is not arbitrary or capricious

# Historic Preservation

## Dillon Rule



- **Dillon Rule:** The City is only authorized to do what the State has authorized the City to do either through the City Charter or the Virginia Code

“The Dillon Rule of strict construction controls our determination of the powers of local governing bodies. This rule provides that municipal corporations have only those powers that are expressly granted, those necessarily or fairly implied from expressly granted powers, and those that are essential and indispensable.” *City Council of Alexandria v. The Lindsey Trust*, 258 Va. 424, 427, 520 S.E.2d 181, 182 (1999), citing *Ticonderoga Farms v. County of Loudoun*, 242 Va. 170, 173-74, 409 S.E.2d 446, 448 (1991); *City of Richmond v. Confrere Club of Richmond*, 239 Va. 77, 79, 387 S.E.2d 471, 473 (1990).



# Historic Preservation City Charter



## City Authorization comes from its Charter:

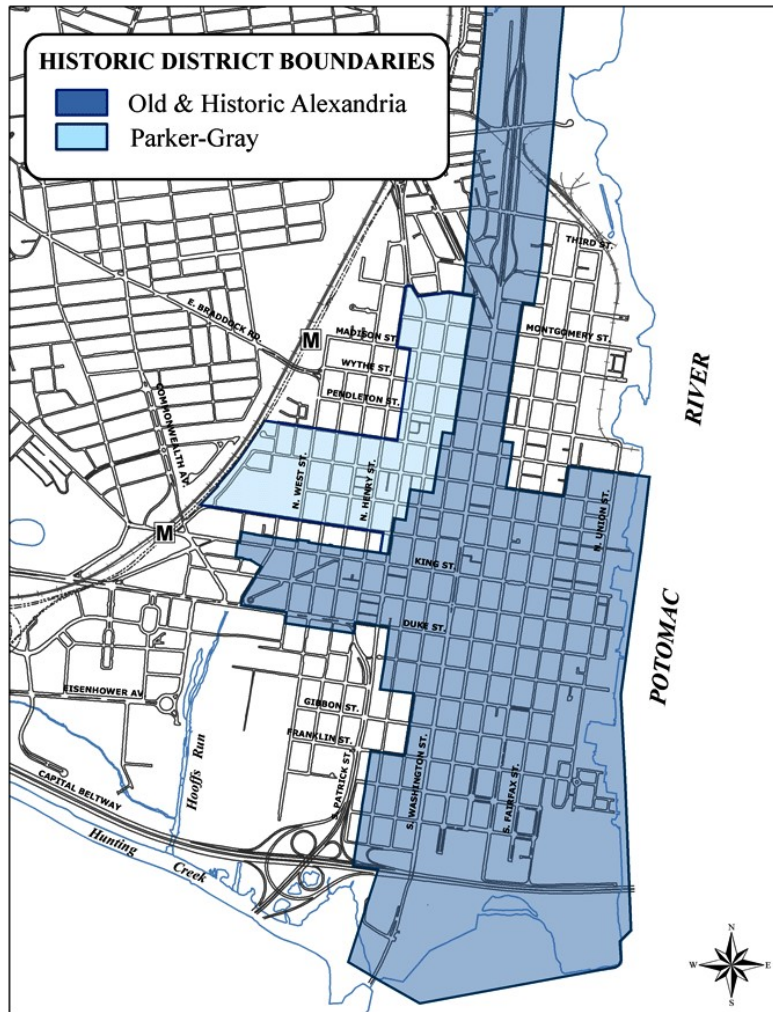
Alexandria City Charter Section 9.09:

“...(i) It may, **in order to promote the general welfare** through the preservation and protection of historic places and any other buildings or structures within the city having an important historic, architectural or cultural interest and other areas of historic interest in the city and through the preservation of the memorial character of the George Washington Memorial Highway, **provide for old and historic districts or designated preservation districts** in which no building or structure shall be erected, reconstructed, altered, restored, moved, removed, capsulated or razed until approved by a board of architectural review and in which, notwithstanding any contrary provision of general law, no building or structure shall be allowed to deteriorate so that the building or structure or any exterior architectural feature thereof shall be lost or threatened with loss...”

Alexandria City Charter Section 9.09:

“...(j) It may create **boards of architectural review which shall have the power to pass upon the appropriateness of exterior architectural features, including signs, of buildings and structures** to be erected, reconstructed, altered or restored in any old and historic districts or in designated preservation districts established in the city **and prohibit the moving, removing, capsulation, demolition or razing of any building in such a district without a permit** if any such building is of such historic, architectural or cultural interest that its removal would be to the detriment of the public interest...”

# Historic Districts Established



10-102 District established.

There is hereby created in the city a district to be known as the "**Old and Historic Alexandria District**," the boundaries of which shall be those shown on the zoning maps adopted herewith.

10-202 District established.

There is hereby created in the city a district to be known as the "**Parker-Gray District**," the boundaries of which shall be those shown on the zoning maps adopted herewith.

10-401 Board of architectural review.

(A) *Board of architectural review established.* There is hereby established the board of architectural review to be composed of seven members.

# Historic Districts

## Overview



- Historic District Regulations are found in Article X of the Zoning Ordinance
  - Old and Historic Alexandria District - § 10-100
  - Parker-Gray District - § 10-200
  - 100 year old buildings - § 10-300
  - BAR - § 10-400
- Provisions address:
  - Purpose of the board
  - Composition of the board
  - Application processing
  - Scope and standards of review
  - Appeals

# Historic Districts

## OHAD Purpose



### § 10-101 Purpose:

The City of Alexandria seeks, through the establishment of the **Old and Historic Alexandria District**, to protect community health and safety, to promote the education, prosperity and general welfare of the public through the identification, preservation, and enhancement of buildings, structures, landscapes, settings, neighborhoods, places and features with special historical, cultural, artistic, and architectural significance. To achieve these general purposes, the City of Alexandria seeks to pursue the following specific purposes:

- (A) To enrich the quality of life for city residents by protecting the unique resource that is the historic district, including familiar landmarks and other treasured elements of the area;
- (B) To protect historical and cultural resources thus promoting tourism and enhancing business and industry as well as the quality of life of the residents of the city;
- (C) To maintain and improve property values by providing incentives for the upkeep, rehabilitation and restoration of older structures in a safe and healthful manner; and by encouraging desirable uses and forms of economic development that will lead to the continuance, conservation and improvement of the city's historic resources in their setting;
- (D) To educate residents and visitors about the city's cultural and historic heritage;
- (E) To promote local historic preservation efforts through the identification and protection of historic resources throughout the city;
- (F) To encourage the nomination of historic properties to the National Register of Historic Places and the Virginia Landmarks Register.
- (G) To assure that new structures, additions, landscaping, and related elements be in harmony with their historical and architectural setting and environs; and
- (H) To safeguard the city's portion of the George Washington Memorial Parkway and other significant routes of tourist access to the city's historic resources by assuring that development in and along those transportation arteries be in keeping with their historical, cultural and traditional setting.

# Historic Districts

## Parker-Gray Purpose



### § 10-201 Purpose:

The City of Alexandria seeks, through the establishment of the **Parker-Gray District**, to protect community health and safety and to promote the education, prosperity and general welfare of the public through the identification, preservation, and enhancement of buildings, structures, settings, features and ways of life which characterize this nineteenth and early twentieth century residential neighborhood. To achieve these general purposes the City of Alexandria seeks to pursue the following specific purposes:

- (A) To enrich the quality of life for city residents by protecting the architectural character and scale of the district;
- (B) To maintain and improve property values by providing incentives for the upkeep and rehabilitation of older structures in a safe and healthful manner; by protecting against deterioration, destruction of, or encroachment upon such areas, structures and premises; and by encouraging desirable uses which will lead to their conservation and improvement;
- (C) To educate residents and visitors about the Parker-Gray District's cultural and historic heritage;
- (D) To promote local historic preservation efforts through the identification and protection of historic resources within the District;
- (E) To encourage the nomination of historic properties to the National Register of Historic Places and the Virginia Landmarks Register;
- (F) To assure that new structures, additions, landscaping, and related elements be in harmony with their historical and architectural setting and environs; and
- (G) To safeguard the district's approaches and significant routes of tourist access by assuring that development in and along those transportation arteries be in keeping with the district's historical, cultural, and traditional setting.

# Historic Districts

## BAR Composition



- Composition (§ 10-401(C))
  - Seven Members
  - Residents of the City
  - Reside in City for 1 year prior to appointment
  - 1 property owner each from district
  - 2 architect members
  - Members shall have a demonstrated knowledge, professional experience, or education in history, architecture, architectural history, historic preservation, planning, real estate, or building construction
  - Three year terms



# Historic Districts

## Application Processing



- Application processing
  - Hearing within 40 days after a complete application is received
  - Decide case by the next regularly scheduled meeting after the public hearing
    - Cannot exceed 60 days unless extension is agreed to by the applicant
  - Failure to decide within required time constitutes an automatic approval
    - Deferring is not deciding
  - Notice of public hearings
    - Not more than 30 days nor less than 10 days before the hearing
  - Rehearing an application
    - For permits to demolish, the same application cannot be considered for 1 year after it has been denied
    - For certificates of appropriateness, the same application cannot be considered for 1 year after it has been denied, except under such terms and conditions as shall be established by the board, within the scope of sections [10-105](#) and [10-205](#), for rehearing the application at the time of its denial of same
  - Reasons for denial should be stated on the record

# Historic Districts

## Scope, Standards, & Design Guidelines



- Scope of the Board's review
  - Certificate of Appropriateness: exterior architectural features, including signs (see Article IX), which are subject to public view from a public street, way or place. (§§ 10-103(A) & 10-105(A)(1)/ §§ 10-203(A) & 10-205(A)(1))
  - Permit to Demolish: building or structure...moved, removed, capsulated or demolished in whole or in part...except for demolitions of portions of buildings resulting in the removal of less than 25 square feet total of exterior wall, roof or surface which shall be deemed an alteration and subject to § 10-103(A). (§ 10-103(B)/ § 10-203(B))
- Standards to be considered
  - Standards for Certificates of Appropriateness (§ 10-105(A)(2)-(4)/ § 10-205(A)(2))
  - Standards for Permits to Demolish (§ 10-105(B)/ § 10-205(B))
- Design guidelines (§ 10-401(B))
  - “Develop, adopt and publish criteria and guidelines, within the standards developed by city council under sections 10-105 and 10-205, to be considered in granting or denying certificates of appropriateness and permits to move, remove, capsulate or demolish in whole or in part, provided that such criteria and guidelines shall be consistent with the provisions of this Article X and with such standards, rules, regulations, and procedures as city council may establish pursuant to section 9.09(j) of the city charter.”



# City Rules for Historic Districts

## Standards for Certificates of Appropriateness

### OHAD & 100 Year Old Buildings



- OHAD (§ 10-105(A)(2))
  - Subject to the provisions of section 10-105(A)(1) above, the board of architectural review or the city council on appeal shall consider the following features and factors in passing upon the appropriateness of the proposed construction, reconstruction, alteration or restoration of buildings or structures:
  - (a) Overall architectural design, form, style and structure, including, but not limited to, the height, mass and scale of buildings or structures;
  - (b) Architectural details including, but not limited to, original materials and methods of construction, the pattern, design and style of fenestration, ornamentation, lighting, signage and like decorative or functional fixtures of buildings or structures; the degree to which the distinguishing original qualities or character of a building, structure or site (including historic materials) are retained;
  - (c) Design and arrangement of buildings and structures on the site; and the impact upon the historic setting, streetscape or environs;
  - (d) Texture, material and color, and the extent to which any new architectural features are historically appropriate to the existing structure and adjacent existing structures;
  - (e) The relation of the features in sections 10-105 (A)(2)(a) through (d) to similar features of the preexisting building or structure, if any, and to buildings and structures in the immediate surroundings;
  - (f) The extent to which the building or structure would be harmonious with or incongruous to the old and historic aspect of the George Washington Memorial Parkway;
  - (g) The extent to which the building or structure will preserve or protect historic places and areas of historic interest in the city;
  - (h) The extent to which the building or structure will preserve the memorial character of the George Washington Memorial Parkway;
  - (i) The extent to which the building or structure will promote the general welfare of the city and all citizens by the preservation and protection of historic interest in the city and the memorial character of the George Washington Memorial Parkway; and
  - (j) The extent to which such preservation and protection will promote the general welfare by maintaining and increasing real estate values, generating business, creating new positions, attracting tourists, students, writers, historians, artists and artisans, attracting new residents, encouraging study and interest in American history, stimulating interest and study in architecture and design, educating citizens in American culture and heritage and making the city a more attractive and desirable place in which to live.
- Additional standards
  - Washington Street (§ [10-105\(A\)\(3\)](#))
  - Potomac River Vicinity (§ [10-105\(A\)\(4\)](#))
- 100 year old buildings are also subject to the above standards (§ [10-304\(C\)](#))

# City Rules for Historic Districts

## Standards for Certificates of Appropriateness

### Parker-Gray



- Parker-Gray (§ 10-205(A)(2))
  - The board of architectural review, or the city council on appeal, shall consider the following in passing upon the appropriateness of proposals within the Parker-Gray District:
    - (a) For new buildings and additions to existing buildings:
      - (1) Height of the roofline along the street or public way;
      - (2) Scale and mass of the building on the site;
      - (3) Placement of the building on the site;
      - (4) Material, texture and color;
      - (5) Architectural style where there is a predominant style on the block face;
      - (6) Architectural details, including signs, subject to public view from the public street or public way;
      - (7) Architectural classification based on age of building or structure; and
      - (8) Hierarchy of building elevation based on the location of the new construction on the front (street facing), side (non-street facing) or rear elevation.
    - (b) For modifications to existing buildings:
      - (1) The degree to which the distinguishing original qualities or character of a building, structure, or site including historic materials are retained;
      - (2) The historic appropriateness of any new features;
      - (3) The compatibility of proposed alterations with other buildings on the block face or block face across the street, giving consideration to building size, shape, roofline, color, materials, texture, nature of openings, and architectural details;
      - (4) Architectural classification based on age of building or structure; and
      - (5) Hierarchy of building elevation based on the location of the alteration on the front (street facing), side (non-street facing) or rear elevation.
    - (c) The extent to which the buildings or structures in sections 10-205(A)(2)(a) and (b) above will promote the general welfare of the city and all citizens by the preservation and protection of the neighborhood.

# City Rules for Historic Districts

## Standards for Permits to Demolish OHAD



- OHAD (§ 10-105(B))
  - The board of architectural review or the city council on appeal shall consider any or all of the following criteria in determining whether or not to grant a permit to move, remove, capsule or demolish in whole or in part a building or structure within the Old and Historic Alexandria District.
  - (1) Is the building or structure of such architectural or historical interest that its moving, removing, capsulating or razing would be to the detriment of the public interest?
  - (2) Is the building or structure of such interest that it could be made into an historic shrine?
  - (3) Is the building or structure of such old and unusual or uncommon design, texture and material that it could not be reproduced or be reproduced only with great difficulty?
  - (4) Would retention of the building or structure help preserve the memorial character of the George Washington Memorial Parkway?
  - (5) Would retention of the building or structure help preserve and protect an historic place or area of historic interest in the city?
  - (6) Would retention of the building or structure promote the general welfare by maintaining and increasing real estate values, generating business, creating new positions, attracting tourists, students, writers, historians, artists and artisans, attracting new residents, encouraging study and interest in American history, stimulating interest and study in architecture and design, educating citizens in American culture and heritage and making the city a more attractive and desirable place in which to live?
  - (7) In the instance of a building or structure owned by the city or the redevelopment and housing authority, such building or structure having been acquired pursuant to a duly approved urban renewal (redevelopment) plan, would retention of the building or structure promote the general welfare in view of needs of the city for an urban renewal (redevelopment) project?

# City Rules for Historic Districts

## Standards for Permits to Demolish Parker-Gray



- Parker-Gray (§ 10-205(B))
  - The board of architectural review or the city council on appeal shall consider any or all of the following criteria in determining whether or not to grant a permit to move, remove, capsule or demolish in whole or in part a building or structure within the Parker-Gray District.
  - (1) Is the building or structure of such architectural or historic interest that its removal would be to the detriment of the public interest?
  - (2) Is the building or structure of such interest that it could be made into an historic shrine?
  - (3) Is the building or structure of such old and unusual or uncommon design, texture and material that it could not be reproduced or be reproduced only with great difficulty?
  - (4) Would retention of the building or structure help preserve and protect an historic place or area of historic interest in the city?
  - (5) Would retention of the building or structure promote the general welfare by maintaining and increasing real estate values, generating business, creating new positions, attracting tourists, students, writers, historians, artists and artisans, attracting new residents, encouraging study and interest in American history, stimulating interest and study in architecture and design, educating citizens in American culture and heritage and making the city a more attractive and desirable place to live?
  - (6) Would retention of the building or structure help maintain the scale and character of the neighborhood?

# City Rules for Historic Districts

## Voting



- Voting (§ 10-401(F))
- Decisions of the board shall be determined by a majority vote.
- A quorum of four members present is required before the board may take any official action.
- The board shall meet within 40 days after a complete application for a certificate of appropriateness or permit requiring action by the board has been received by the director.
- The board shall vote and announce its decision on any matter properly before it no later than at its next regularly scheduled meeting, not to exceed 60 days, after the conclusion of the public hearing on the matter unless the time is extended by mutual agreement between the board and the applicant; the failure of the board to vote and announce its decision within the required time, or within such longer period of time extended by mutual agreement between the board and the applicant, shall constitute approval of the application. Notwithstanding the provisions stated above, an application for a certificate of appropriateness or antecedent permit for a project which requires a site plan under section 11-400 of this ordinance shall be heard and determined by the board within a reasonable time.
- No application for a certificate of appropriateness which has been denied shall be heard again within one year of the date of the denial of the application, except under such terms and conditions as shall be established by the board, within the scope of sections 10-105 and 10-205, for rehearing the application at the time of its denial of same.
- In case of a disapproval of the moving, removing, capsulating or demolition in whole or in part of a building or structure in the Old and Historic Alexandria District, the Parker-Gray District, or on the 100 year old buildings list, the board of architectural review shall state its reasons therefor in writing in some detail. No application for a permit required by section 10-103(B), 10-203(B) or 10-305 which has been denied shall be heard again within one year from the date of the denial of the application.

# Historic Districts Easements



- Easements
  - Some properties may also be subject to historic preservation easements, through a grant made by a property owner to a third party which may restrict the use of the property.
  - The easement is a private agreement between the signatory parties and as such the BAR does not have the authority to interpret, enforce or waive the provisions of the easement.
  - Compliance with the easement restrictions is the responsibility of the easement holder and not the BAR.
  - If the BAR feels a matter related to an easement must be resolved before they move forward for efficiency purposes it may suggest that to the applicant.

# Historic Districts

## Wireless Facilities



- **Wireless Facilities**
  - Due to federal and state law changes, the ZO was amended to set out application processes for different types of wireless facilities (ZO §§ 7-1206—1212)
    - The City’s authority to regulate is constrained and the limit of the BAR’s authority is to review wireless facilities under the criteria in Article X of the ZO. BAR would only review the first 4 types of wireless facilities.
  - **Types**
    - **Small cell facilities on existing structures**
      - Administrative approval process
      - Permissible grounds for disapproval limited to
        - Material interference with communications facility
        - Public safety
        - Other critical public service needs
        - Aesthetic impact if on public property, except for attachments to utility poles and other privately-owned structures where applicant has agreement for attachment
        - Absence of all required approvals if on public property, except for attachments to utility poles and other privately-owned structures where applicant has agreement for attachment
        - Conflict with historic district regulations (ZO § 7-1207(E)(6))
    - **Standard facilities on existing structures**
      - Administrative approval process
      - Grounds for disapproval cannot
        - Unreasonably discriminate among providers of equivalent services
        - Prohibit the provision of wireless services
        - Be based on applicant’s business decision with respect to its designed service, customer demand for service, or quality of its service to and from a particular site
        - Be based on applicant’s specific need for the project, including its desire to provide additional wireless coverage or capacity
        - Be based on the wireless technology selected by applicant for use at the project (ZO § 7-1208(E))



# Historic Districts

## Wireless Facilities



- Types continued
  - Small cell facilities on new structures
    - Administrative approval process
    - Grounds for disapproval cannot
      - Unreasonably discriminate among providers of equivalent services
      - Prohibit the provision of wireless services
      - Be based on applicant's business decision with respect to its designed service, customer demand for service, or quality of its service to and from a particular site
      - Be based on applicant's specific need for the project, including its desire to provide additional wireless coverage or capacity
      - Be based on the wireless technology selected by applicant for use at the project
      - Be based on conflict with an applicable height requirement (ZO § 7-1209(E))
  - Standard facilities on new structures
    - Administrative or sup approval process
    - Grounds for disapproval cannot
      - Unreasonably discriminate among providers of equivalent services
      - Prohibit the provision of wireless services
      - Be based on applicant's business decision with respect to its designed service, customer demand for service, or quality of its service to and from a particular site
      - Be based on applicant's specific need for the project, including its desire to provide additional wireless coverage or capacity
      - Be based on the wireless technology selected by applicant for use at the project (ZO § 7-1209(C)(2), (D)(2))
  - Modification, replacement, or installation of additional wireless facilities on existing structure
    - Administrative approval process
      - Staff review only, no consideration by other City bodies (ZO § 7-1211)



# Historic Districts

## Concept Review Policy



- Concept Review Policy
  - The purpose is to provide feedback to the applicant, staff, Planning Commission and the City Council before the Preliminary Site Plan or DSUP is approved
  - Concept comments relate to the overall appropriateness of a project's height, mass, scale and general architectural character, based on the criteria and standards in Zoning Ordinance and Design Guidelines
  - It is not an approval by the BAR, the applicant must still apply for permits to demolish and/or certificates of appropriateness
  - Advisory to the applicant, staff, the Planning Commission and the City Council, and is not intended to create vested or appealable rights

# Historic Districts

## Appeals of BAR Decision



- Appeals (§ 10-107 and § 10-207)
  - If BAR denies an application
    - Applicant has 14 days to appeal the denial to the City Council
    - City Council Public Hearing is scheduled no more than 75 days after the appeal is noted
  - If BAR approves an application
    - 25 owners of property in the district may file an appeal within 14 days
    - City Council Public Hearing is scheduled not less than 30 days after the appeal is noted
  - An appeal stays the decision
  - City Council reviews the decision using the same standards that the BAR is required to use
  - City Council may affirm, modify or reverse the BAR decision

# Historic Districts

## Appeals of Council Decision



- Appeals of City Council's Decision
  - Appeals go to the Circuit Court for the City of Alexandria
  - Must be appealed within 30 days of the City Council decision
  - The decision of the BAR continues to be stayed while the Circuit Court reviews the decision
  - The Court may affirm, reverse or modify the decision of the City Council
  - To reverse or modify a decision the Court must find that the decision is contrary to law or that the decision is arbitrary and constitutes an abuse of discretion

# Historic Districts

## Demolition of Historic Buildings



- Additional or concurrent right to demolish a historic building (§ 10-108 & § 10-208)
  - An owner has a right to demolish a building in the historic district despite the denial of a permit to demolish if:
    - The applicant appeals the denial
    - Owner markets the building for a set period of time at a price reasonably related to its fair market value
    - Any purchaser must give a reasonable assurance that it is willing to preserve and restore the building



# Questions?

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