

City Of Charlottesville, Virginia City Council Agenda

Agenda Date:	February 21, 2023
Action Required:	Yes
Presenters:	Jeff Werner, Preservation & Design Planner, NDS
Staff Contacts:	Jeff Werner, Preservation & Design Planner, NDS James Freas. Director NDS
Title:	507 Ridge Street - Appeal BAR Denial of a Certificate Of Appropriateness for Demotion of Cottage/Shed (BAR 22-11-03)

Background:

- On December 20, 2022 the City’s Board of Architectural Review denied a certificate of appropriateness (CoA) to allow demolition of a single-story, wood-framed cottage/shed constructed c1895 located at 507 Ridge Street pursuant to the details set forth within City application BAR 22-11-03. [Attachment 7.] Link to December 20, 2022 staff report, submittal, and historical survey:
[BAR meeting packet – Dec 20 2022](#)
- The property owner/applicant, who resides at 507 Ridge Street, on January 4, 2023 appealed the BAR’s decision to City Council, pursuant to City Code §34-285(b) (“any aggrieved person may note an appeal of the BAR decision to the city council”). [Attachment 1.]
- State enabling legislation authorizes the City to establish historic districts within its zoning ordinance, and to designate specific buildings or structures within the zoning ordinance as having important historic, architectural, archaeological or cultural interest. Va. Code §15.2-2306(A)(1). Within the City’s zoning ordinance, 507 Ridge Street is located within the Ridge Street Architectural Design Control (ADC) District (ref. City Code §34-272(3) and both the house and the cottage/shed are identified as *contributing structures*. (The latter designation identifies structures deemed to contribute to the character of an ADC District. Per City Code §34-277, the demolition of a contributing structure requires BAR approval of a CoA.)
- State law also authorizes the City to include within its ordinance a requirement that no historic landmark, building or structure within any district shall be razed, demolished or moved until the razing, demolition or moving thereof is approved by the review board, or, on appeal, by the governing body after consultation with the review board. Va. Code §15.2-2306(A)(2). This has been implemented in the City’s zoning ordinance generally under City

Code Chapter 34 – Zoning, Article II - Overlay Districts, Division 2 - Historical Preservation and Architectural Design Control Overlay Districts and specifically under City Code §34-278.

- State law also requires the City, by enacting the above, include within its ordinance the right of the owner of a historic landmark, building or structure to appeal to the circuit court for such locality from any final decision of the governing body. Va. Code §15.2-2306(A)(3). This has been implemented in the City’s zoning ordinance by City Code §§ 34-285 and 34-286.
- **The City Council’s role in this appeal is to make the final decision on the certificate of appropriateness (i.e., approval or denial).** According to City Code §34-286(b): “City Council shall consult with the BAR and consider the written appeal, the criteria [standards for review] set forth within City Code Sec. 34-278, as applicable, and any other information, factors, or opinions it deems relevant to the application.” Council should make a final decision on the application, and should not refer the matter back to the BAR.

Sample motion to approve: “Upon consideration of all of the information and factors referenced in City Code §34-278 and 34-286, I move to approve a certificate of appropriateness for Application No. BAR 22-11-03.”

Sample motion to deny: “Upon consideration of all of the information and factors referenced in City Code §34-278 and 34-286, I move to deny a certificate of appropriateness for Application No. BAR 21-11-03.”

- If the owner of 507 Ridge Street is aggrieved by City Council’s final decision, the owner may appeal the decision to the Charlottesville Circuit Court. The City’s ordinance does not allow appeals to Circuit Court by anyone *other than* the landowner. See City Code §34-286(c). [See discussion below under *Alternatives*.]

The order of presentation for Council’s review of an appeal from a BAR decision is: (1) City Preservation Planner presentation of the staff report, (2) Appellants’ presentation, and (3) BAR chair presentation.

Staff Recommendation:

Based on the application materials, the information and standards set forth within City Code §34-278 and §34-286, and for the reasons set forth within the Staff Report, staff’s recommendation is that City Council should render a final decision to deny a CoA to demolish the cottage/shed at 507 Ridge Street [BAR #21-11-03].

Discussion:

The City’s historical survey identified the building as a servant’s cottage and staff believes it dates to the c1895 construction of the house. Staff found no conclusive evidence it was or was

not used by servants or occupied as a servant's residence; however, during the two meetings, the BAR noted those possibilities and reflected on the building's uniqueness. For example:

From November 15, 2022:

- Gastinger: "I do think that this is a remarkable structure. I think it is pretty unique. From what we have seen, reviewed, and the history that has been given, it tells a pretty interesting story about the house, neighborhood, and the development of the city."
- Gastinger: "It does have a chimney in the structure, which is not usual for an exterior structure. It seems pretty clear that somebody was spending significant time here. We don't have much evidence to the contrary."
- Gastinger: "This is unusual in its age, association with the house at this age."
- Timmerman: "This is me coming at it from the perspective of understanding the pressures you feel but also wishing there was a way to view this thing for what it is which is a little piece of a much bigger history lesson. Somewhere in the staff report, there are some lines about 'every little bit that you chip away, you lose something.'"

From December 20, 2022:

- Lewis: "People lived in [buildings smaller than this]."
- Birle: "Even though it is a humble building, it is listed on the National Register. It is a contributing resource. It is our purview to protect buildings like this."
- Whitney: "It does seem with the windows and the chimney that it was more than a shed at one time. It does seem like a unique piece we would lose it if it is approved to be demolished. It is unique in that we don't see a lot of historic fabric of the city."

From Chapter I of the ADC District Design Guidelines

Ridge Street ADC District: Located on one of the city's principal thoroughfares, this residential street is lined with architecturally significant structures. Many of these residences belonged to Charlottesville's wealthy merchant families and date to the last quarter of the nineteenth century. Smaller residences on this street were the homes of the African-American domestic community. In the early twentieth-century, due to the advent of the automobile, many merchants moved to the suburbs. Their homes were acquired by the African-American community for use as rental properties. Home ownership and infill are current trends.

Subarea b. Ridge Street between Cherry/Elliott and Dice: major entry corridor, moderate to large scale residences with some converted to business and multi-family residential, predominantly 2 to 2 1/2 stories with some small, mid-twentieth century, 1 story infill, newer commercial infill minimal setbacks, porches, mixture of styles, brick, stucco, metal roofs



The requested CoA was presented to and discussed by the BAR as follows:

- **November 15, 2022:** BAR reviewed the requested CoA for demolition of the cottage/shed (BAR # 22-11-03) and voted to defer action to the December 20, 2022 BAR meeting.

Mr. Whitney moved to defer the request. Mr. Schwarz, second. Motion passed 6 – 0.
[Note: Being deferred by the BAR, the matter will be reviewed at the December 20, 2022 meeting.]

Link to the BAR meeting video. (Discussion begins at approx. 01:30:00)
<https://boxcast.tv/channel/vabajtzezyv3iclkx1a?b=zws6izrpegx6m7ox2o8i>

Link to November 15, 2022 staff report and submittal:
[BAR meeting packet – Nov 15 2022](#)

- **December 20, 2022:** BAR denied the requested CoA (BAR # 22-11-03).

Mr. Zehmer moved: Having considered the standards set forth within the City Code, including the ADC District Design Guidelines, I move to find that the proposed demolition at 507 Ridge Street does not satisfy the BAR's criteria and guidelines for demolitions and that for the following reasons the BAR denies the application as submitted because the proposal is incompatible with the historic, cultural or architectural character of the district in which the property is located that is the subject of the application.

Mr. Whitney second. Motion passed 4– 2. CoA was denied.

Link to the BAR meeting video. (Discussion begins at approx. 00:04:30)

<https://boxcast.tv/channel/vabajtzezuuy3iclkx1a?b=lmmnlcna1fcybl7u4xsr>

Link to December 20, 2022 staff report and submittal:

[BAR meeting packet – Dec 20 2022](#)

Alignment with City Council’s Vision and Strategic Plan:

Upholding the BAR’s decision aligns with Council’s vision for *Charlottesville Arts and Culture*: Charlottesville cherishes and builds programming around the evolving research and interpretation of our historic heritage and resources; and for *A Green City*: Charlottesville citizens live in a community with a vibrant urban forest, tree-lined streets, and lush green neighborhoods. It contributes to Goal 2 of the Strategic Plan, to be a safe, equitable, thriving and beautiful community, and objective 2.5, to provide natural and historic resources stewardship.

Community Engagement:

City Code Sec. 34-284 requires public notice prior to the BAR’s review of a CoA request. For the BAR meetings on November 15, 2022 and December 20, 2022 the abutting landowners were notified by letter and the meeting was publicly posted, as required by Charlottesville City Code.

Except for the property owners, there were no public comments during the November 15, 2022 BAR December 20, 2022. [See minutes in Attachments 3 and 6.]

On December 20, 2022, BAR received comments from the owner of 406 Oak Street, who opposed the demolition, [See Attachment 5.]

Note: Minutes for November 15, 2022 and December 20, 2022 meetings have not been approved by BAR. The draft minutes reflect only the BAR’s discussion and comments prior to action taken.

Budgetary Impact:

None.

Alternatives:

1. If City Council agrees with the appellant, then Council should vote to overturn the BAR decision. The owner could then proceed to obtain a demolition permit to demolish the building.
2. If City Council agrees with the BAR decision to deny demolition, then Council should vote to uphold the decision. The applicant would then have the option to make further appeal to the Circuit Court.

In addition to the right of further appeal, following a denial by City Council, the owner may

make a bona fide offer to sell the property to a person willing to preserve and restore it per state code and local ordinance, Sec. 34-286 (d). The sale price must be reasonably related to the fair market value of the building, which amount must be confirmed by City Council before the property is offered for sale. If no bona fide offers are received within three (3) months, the owner may renew his demolition request to City Council, and is entitled to demolish if all conditions have been met. [Note: See section 34-286(e)(1). The required time period is based on the value of the structure. Assessed at \$2,700, per the J. Davis email of Nov. 9, 2202, it can be assumed the market value would be under \$25,000 and therefore the time period would be three months.]

Sec. 34-286. - City council appeals.

- a) An applicant shall set forth, in writing, the grounds for an appeal, including the procedure(s) or standard(s) alleged to have been violated or misapplied by the BAR, and/or any additional information, factors or opinions he or she deems relevant to the application. The applicant, or his agent, and any aggrieved person, shall be given an opportunity to be heard on the appeal.
- b) In any appeal the city council shall consult with the BAR and consider the written appeal, the criteria set forth within section 34-276 or 34-278, as applicable, and any other information, factors, or opinions it deems relevant to the application.
- c) A final decision of the city council may be appealed by the owner of the subject property to the Circuit Court for the City of Charlottesville, by filing with the court a petition at law, setting forth the alleged illegality of the action taken. such petition must be filed with the circuit court within thirty (30) days after council's final decision. The filing of the petition shall stay the council's decision pending the outcome of the appeal; except that the filing of the petition shall not stay a decision of city council denying permission to demolish a building or structure. Any appeal which may be taken to the circuit court from a decision of the city council to deny a permit for the demolition of a building or structure shall not affect the right of the property owner to make the bona fide offer to sell referred to in subparagraphs (d) and (e), below.
- d) In addition to the right of appeal set forth above, the owner of a building or structure, the demolition of which has been the subject of an application appealed to the city council, shall, as a matter of right, be entitled to demolish such building or structure if all of the following conditions have been met:
 - (1) The owner has appealed to city council for permission to demolish the building or structure, and city council has denied such permission;
 - (2) The owner has, for the applicable sale period set forth herein below, and at a price reasonably related to the fair market value of the subject property, made a bona fide offer to sell the building or structure, and the land pertaining thereto, to a person or legal entity that gives reasonable assurance that the building or structure will be preserved and restored; and
 - (3) No bona fide contract, binding upon all parties thereto, shall have been executed for the sale of such landmark, building or structure, and the land pertaining thereto, prior to the expiration of the applicable sale period.
 - (4) If all of the foregoing conditions are not met within the applicable sale period, then the city council's decision denying a permit shall stand, unless and until that decision is overturned by the circuit court. However, following expiration of the applicable

sale period, a property owner may renew his request to the city council to approve the demolition of the historic landmark, building or structure.

- e) The time in which a property owner may take advantage of the rights afforded by subparagraph (d), above (the applicable "sale period") shall be as follows:
(1) ***Three (3) months, when the offering price is less than [\$25,000.00].***
[...]

4. If the structure is intentionally razed without the necessary approval.

From the December 20, 2022 BAR staff report (page 2): **Per Sec. 34-277** (*Certificates of appropriateness; demolitions and removals*), the BAR must approve the razing or moving of a contributing structure, except *upon the determination of the building code official that the building or structure is in such a dangerous, hazardous or unsafe condition that it could reasonably be expected to cause death or serious injury*. Having no such determination by the City, that exception does not apply. Additionally, failure to obtain the necessary approval for demolitions, the owner is subject to a civil penalty *not to exceed twice the fair market value of the building or structure, as determined by the city real estate tax assessment at the time of the demolition, razing or moving*. (Sec. 34-86(b). See *Appendix* of this staff report.) The City's current assessment for this structure is \$2,700. (Reference J. Davis email of Nov. 9, 2202.) As such, the fine could not exceed \$5,400.

Attachments:

1. January 4, 2023 Lauter appeal of BAR's December 20, 2022 action re: BAR 21-11-03.
2. Staff response to appeal.
3. BAR meeting draft minutes, November 15, 2022 (excerpts re: 507 Ridge Street)
4. BAR action memo, November 15, 2022
5. A. Roades comments submitted prior to the December 20, 2022 BAR meeting.
6. BAR meeting draft minutes, December 20, 2022 (excerpts re: 507 Ridge Street)
7. BAR action memo, December 20, 2022

Links to the City of Charlottesville's ADC District Design Guidelines

- [Chapter 1 Introduction \(Part 1\)](#)
- [Chapter 1 Introduction \(Part 2\)](#)
- [Chapter 2 Site Design and Elements](#)
- [Chapter 3 New Construction and Additions](#)
- [Chapter 4 Rehabilitation](#)
- [Chapter 5 Signs, Awnings, Vending, and Cafes](#)
- [VII: Public Improvements](#)
- [Chapter 7 Moving and Demolition](#)
- [Index](#)