

CITY OF CHARLOTTESVILLE, VIRGINIA
CITY COUNCIL AGENDA



Agenda Date:	May 15, 2023
Action Required:	Motion to Approve a Certificate of Appropriateness, or Motion to Deny a Certificate of Appropriateness
Presenter:	Jeffrey Werner, Historic Preservation and Design Planner
Staff Contacts:	Jeffrey Werner, Historic Preservation and Design Planner
Title:	Appeal of BAR (Board of Architectural Review) denial of Certificate of Appropriateness for Demolition of an Individually Protected Property at 104 Stadium Road. BAR # 22-02-03.

Background

Certificate of Appropriateness Application - Demolition

BAR # 23-02-03

104 Stadium Road, TMP 160002000

Individually Protected Property

Owner: Woodrow Too, LLC

Applicant: Subtext Acquisitions, LLC

Project: Demolition of structure

- On January 27, 2023, an application was submitted for an ADC District/IPP Certificate of Appropriateness [design review] for the demolition of the house and gardens at 104 Stadium Road.
- On February 22, 2023, the City's Board of Architectural Review denied a CoA for demolition of the house and gardens at 104 Stadium Road, pursuant to the details set forth within City application BAR 22-02-03.
- The CoA applicant (Subtext Acquisitions, LLC) on March 9, 2023 appealed to City Council the BAR's decision, 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). Per City Code §34-273(b), 104 Stadium Road is designated an *Individually Protected Property*.
- 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 by City Code Chapter 34 – Zoning, Article II - Overlay Districts, Division 2 - Historical Preservation and Architectural Design Control Overlay Districts.

- 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 is implemented in the City's zoning ordinance by §34-285 and §34-286.

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

Discussion

CoA request for the proposed demolition of the MacLeod house at 104 Stadium Road, which was constructed in 1927. In 2011, following the public process required for a Zoning Text Amendment and a Zoning Map Amendment and applying the criteria under City Code §34-273, City Council designated this property an *Individually Protected Property*. In that action, Council deemed the property to be *of special historic, cultural, or architectural value* to the City. The IPP's description and historical context are presented in the February 22, 2023 BAR staff report (Attachment 3).

City Council's role in this appeal is to make the final decision on the certificate of appropriateness (i.e., to approve the demolition or to deny the demolition.)

Per City Code §34-286(b), in reviewing an appeal of a BAR decision, Council shall consult with the BAR and consider the written appeal, the criteria [*standards for review*] set forth within section 34-276 or 34-278, as applicable, and any other information, factors, or opinions it deems relevant to the application. [Staff note: §34-278, applicable here, proscribes the *standards for considering demolitions*. §34-276 proscribes the *standards for review of construction and alterations*.]

In evaluating this appeal—this request for a CoA to allow demolition--Council should, as the BAR did, consider the criteria for demolitions (noted below) and the related provisions from the ADC District Design Guidelines (Attachment 7). In that deliberation, Council should also refer to the February 22, 2023 BAR staff report (Attachment 3), specifically pages 3 through 8, staff's review of the criteria and recommendations to the BAR.

In its discussion on February 22, 2023, the BAR clearly expressed the challenge of this application: a) only City Council can remove the IPP designation; b) approving demolition would eliminate the resource that established this IPP, a defacto elimination of the IPP; and c) the BAR approving the demolition would be assuming legislative authority reserved only for City Council.

Additionally, the appellant notes, correctly, that this property is not listed on the National Register of Historic Places. Based on their consultant's recommendation, they do not believe it is even eligible for federal designation. However, per City Code §34-273, a landmark, building, or structure may be designated an IPP *if deemed by city council to be of special historic, cultural, or architectural value*. That is, the Code does not refer to eligibility for or listing on the state or national registers has a pre-requisite for designation by City Council of locally significant historic properties and districts. In fact, **of the 77 IPPs in the City, 31—including 104 Stadium Road--are not listed on the Virginia Landmarks Register or the National Register of Historic Places.**

From the City Code: Historical Preservation and Architectural Design Control Overlay Districts

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

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

1. The historic, architectural or cultural significance, if any, of the specific structure or property, including, without limitation:

1. The age of the structure or property;
 2. Whether it has been designated a National Historic Landmark, listed on the National Register of Historic Places, or listed on the Virginia Landmarks Register;
 3. Whether, and to what extent, the building or structure is associated with an historic person, architect or master craftsman, or with an historic event;
 4. Whether the building or structure, or any of its features, represent an infrequent or the first or last remaining example within the city of a particular architectural style or feature;
 5. Whether the building or structure is of such old or distinctive design, texture or material that it could not be reproduced, or could be reproduced only with great difficulty; and
 6. The degree to which distinguishing characteristics, qualities, features or materials remain;
2. Whether, and to what extent, a contributing structure is linked, historically or aesthetically, to other buildings or structures within an existing major design control district, or is one (1) of a group of properties within such a district whose concentration or continuity possesses greater significance than many of its component buildings and structures.
 3. The overall condition and structural integrity of the building or structure, as indicated by studies prepared by a qualified professional engineer and provided by the applicant or other information provided to the board;
 4. Whether, and to what extent, the applicant proposes means, methods or plans for moving, removing or demolishing the structure or property that preserves portions, features or materials that are significant to the property's historic, architectural or cultural value; and
 5. (e) Any applicable provisions of the city's design guidelines (see [section 34-288\(6\)](#)).

BAR Action

February 22, 2023. BAR reviewed CoA request to demolish the structure and landscape was presented (BAR #22-02-03). A motion to deny the CoA passed 6-0. (Motion to deny CoA by Mr. Whitney. Second by Mr. Zehmer.)

Having considered the standards set forth within the City Code, including the BAR's design guidelines and the standards for considering demolitions, I move to find that the proposed demolition of the house and gardens at 104 Stadium Road does not satisfy the BAR's criteria and guidelines and is not compatible with this property and other properties, and for the following reasons the BAR denies the application as submitted:

[Paraphrased by staff. For the specific discussion re: the motion to deny, refer to the meeting video, link below, beginning at approx. 01:14:00.]

- The house is almost 100 years and, while not being the only stone house in Charlottesville, it is a fairly rare example of this house type in Charlottesville. It is from the time [associated with the growth of the University]
- [The house] creates character of space where it exists.
- It is a unique remnant of a historic landscape.
- The [house/property] is in good condition there's no reason for demolition [as related to] its condition
- [Reference to] Review Criteria for Demolition, #3: The public purpose or interest in land or buildings to be protected.* The last record that we have that would speak to [this criteria] is the designation of the property itself by City Council in 2011; it was clearly a desire for this building and the adjacent property to be protected, and the wording in that resolution is also that the adjacent parcel not be developed
- IPP & BAR have never voted to [approve demolition of] an IPP
- [The property's] historic landscape contributes to the context of JPA, could influence the buffer of JPA and built lots.
- [Reference] Design Guidelines #6 & #7: alternatives to demolition, rehabilitation and reuse of structure is possible.*

* Reference ADC District Design Guidelines, Chapter VII – Demolitions and Moving. Link: [Chapter 7 Demolition and Moving](#)

BAR Recommendations to Council:

- Building be documented thoroughly through photographs and measured drawings according to the Historic American Building standards, information should be retained by City of Charlottesville's Department of Neighborhood Development Services and Virginia Department of Historic Resources;
- CoA for demolition be contingent on BAR approval of building's replacement if it remains an IPP or approval of the building by the Planning Commission if it's an Entrance Corridor project [or a mechanism Council deems appropriate] to ensure that the building is not unnecessarily demolished if the project does not move forward.

Link to February 22, 2023 BAR meeting video (discussion re: 104 Stadium Road begins at approx. 00:10:00): [BAR mtg video Feb 22 2023](#)

[[Note: BAR discussion re: the motion for denial begins at 01:14:20 of the meeting video.](#)]

(For a more detailed summary, see Attachment 2: Staff response to appeal.)

[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](#)

Alignment with City Council's Vision and Strategic Plan

Upholding the BAR's decision contributes to Goal 3 - A Beautiful and Sustainable Natural and Built Environment, specifically objective 3.5: *Protect historic and cultural resources.*

Community Engagement

City Code Sec. 34-284 requires public notice prior to the BAR's formal review of a CoA request. For the February 22, 2023 BAR meeting, the abutting landowners were notified by letter and the meeting was publicly posted.

Except for the applicant and individuals with the project team, there were no public comments offered during the February 22, 2023 meeting. [See minutes in Attachment 5.] Note: Minutes for the February 22, 2023 meeting have not been approved by the BAR. The draft minutes reflect only the BAR's discussion and comments prior to action taken.

Budgetary Impact

None.

Recommendation

Based on the application materials, the information and standards set forth within City Code §34-278 [*standards for considering demolitions*] and for the reasons set forth within this memo, the applicant's appeal (Attachment 1),

the staff response to that appeal (Attachment 2), and the February 22, 2023, BAR staff report (Attachment 3), staff's recommendation is that Council uphold the BAR's denial, and not refer the matter back to the BAR. (See Resolution 1 in Attachment 6.)

Should Council decide to approve the requested demolition, the BAR included in its motion recommendations for Council to consider as conditions for that approval. (See Resolution 2 in Attachment 6.)

If the owner of 104 Stadium Road 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. (Ref. City Code §34-286(c).)

Alternatives

1. If City Council agrees with the BAR, Council should vote to deny the demolition CoA (uphold the BAR decision). The applicant would then have the option to make further appeal to the Circuit Court.

2. If City Council agrees with the appellant, then Council should vote to approve the demolition CoA (overturn the BAR decision).

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 *twelve (12) months*, the owner may renew his demolition request to City Council, and is entitled to demolish if all conditions have been met. [Refer to §34-286(e)(1). The required time period is based on the value of the structure.]

Council may also consider suggesting the City Planning Commission consider initiating the Zoning Text Amendment and Zoning Map Amendment necessary, per City Code § 34-274, to evaluate removing the IPP designation for 104 Stadium Road.

Attachments

1. Attachment 1 - 104 Stadium Road appeal letter - BAR # 23-02-03 - 20230309
2. Attachment 2 - 104 Stadium Rd BAR appeal - staff response (5-5-2023)
3. Attachment 3 - 104 Stadium Road BAR Staff Report Feb 2023
4. Attachment 4 - 104 Stadium Road - BAR submittal Feb 2023
5. Attachment 5 - 104 Stadium Road - Draft BAR Mtg Minutes Feb 22 2023
6. Attachment 6 - 104 Stadium Road CoA Appeal - Draft resolutions (rev 5-5)
7. Attachment 7 - City Code ADC District Ordinance
8. Attachment 8 - ADC District Design Guidelines Chp 7 - Moving and Demolition