

OFFICE OF

DEC 31 2025

CITY COUNCIL



Steven W. Blaine

Of Counsel

P (434) 220-6831 | F (434) 220-5687

steven.blaine@woodsrogers.com

Woods Rogers Vandeventer Black PLC

120 Garrett Street, Suite 304

Charlottesville, Virginia 22902

December 31, 2025

Via Email and Hand Delivered:

The Honorable Mayor Wade and Charlottesville City Councilors
City of Charlottesville
c/o Clerk of Council
605 East Main Street, 2nd Floor
Charlottesville, Virginia 22902
clerk@charlottesville.gov

Re: Appeal of Denial of Certificate of Appropriateness; BAR #HST25-0084; 202, 204, 208 and 214 7th Street SW, and 613 Delevan Street; Tax Map Parcels 29-71, 29-73, 29-74, 29-75, and 29-76.

Honorable Mayor Wade and City Councilors:

Applicant, Mitchell-Mathews Architects, with the support of the project developer LCD Acquisitions, LLC, hereby appeals the action taken by the Charlottesville Board of Architectural Review (BAR) on December 16, 2025 to deny a certificate of appropriateness for rehabilitating two brick dwellings (204 and 208 7th Street SW, the "IPPs") that are part of a seven story, multi-unit apartment building (the overall "Project").

Grounds for Appeal.

City Council must overturn the BAR's action for the following reasons: (i) the BAR action citing its Design Guidelines in denying the certificate of appropriateness ("COA") failed to identify any facts supporting its decision; (ii) the BAR exceeded its jurisdiction by subjecting the entire Project to design review; (iii) the BAR, using its application of the Design Guidelines sought to overturn the City's Zoning Ordinance that governs the height and density of the Project, and (iv) the BAR actions were arbitrary and capricious in that they stated on the record that the Project's treatment of the IPPs was commendable, but they denied the COA on the grounds that they disagreed with the Property's underlying zoning.

- 1. The BAR's formal action, while citing its Design Guidelines, failed to make actual findings or relate those Guidelines to any particular facts or specific project elements. This leaves the Applicant and Council to have to conjecture as to the reasons for the BAR's decision and therefore is arbitrary and capricious on its face.**

The official action letter dated December 18, 2025 states that the BAR's decision made reference to the following criteria from Section 5.2.7.D of the City's Development Code Ordinance ("Development Code"):

i. Whether the material, texture, color, height, scale, mass and placement of the proposed addition, modification or construction are visually and architecturally compatible with the site and applicable District [District being the IPPs];

iv. The effect of the proposed change on the adjacent buildings or structures;

vi. Whether the proposed method of construction renovation or restoration could have an adverse impact on the structure or site or adjacent buildings or structures.

The official action letter merely identifies the criteria -- without stating any actual findings. The BAR made no declaration on which of the material, texture, color, height and placement of the proposal was objectionable. As for criteria iv., no adjacent building or structure is even identified in the resolution. Also, regarding vi, the BAR did not specify what aspect of the proposed methods of construction could have an adverse impact on the unidentified building or structure. The vagueness of the BAR's official action requires speculation and conjecture by the Council in this appeal, and fails to satisfy the requirements of Section 5.2.7.C.2.a, which requires the BAR to approve the COA unless it finds that the Project does not meet specific standards set forth in the Development Code, and that the Project is incompatible with the historic, cultural or architectural character of the IPPs. Merely referring to the criteria in its denial of the COA does not satisfy the legal requirement.

The failure to make factual findings in this case is *prima facie* arbitrary and capricious. *Zylka v. City of Crystal 167 N.W.2d 45 (1969)*. The BAR's vague reference to the criteria, without findings of fact, whether obfuscating or not, makes it unclear as to how the BAR was applying the criteria. For example, were changes within the IPPs, over which the BAR has jurisdiction, objectionable? Or, did elements of the larger Project (outside the IPPs, and not part of its jurisdiction) negatively impact the IPPs? The COA must be issued if the required findings have not been made. Section 5.2.7.C.2.a.

2. The BAR exceeded its jurisdiction by subjecting the entire Project to design review.

The Project encompasses five separate tax parcels totaling approximately 1.76 acres. Only two of the parcels, 204 7th Street and 208 7th Street, SW are designated as Individually Protected Properties under Section 2.9.3 of the Development Code. 204 7th Street is approximately 0.09 of an acre. On this parcel exists a severely structurally compromised brick dwelling of 1,593 square feet. 208 7th Street is approximately 0.21 of an acre and has a structurally compromised brick dwelling of 974 square feet. The two parcels combined are less than 17% of the overall Project site area and .06% (less than one percent) in terms of improved square footage. The two brick

December 31, 2025

Page 3

dwellings are to be retained, rehabilitated and incorporated in the overall Project, in furtherance of the BAR's Design Guidelines. The remaining 83% of the Project site area is outside the IPPs. Enclosed are two renderings of the proposed improvements to the IPPS.

The BAR's jurisdiction is limited to the IPPs. BAR issues a Certificate of Appropriateness for a Project such as this through a Major Historic Review. Section 5.2.7, Development Code. The Development Code expressly states that the review applies to improvements, etc. "within the ADC and for the IPP." Section 5.2.7.A1, Development Code. No other provisions of the Development Code provide support for the BAR expanding its authority or jurisdiction to include parcels outside of the IPPs.

The Development Code contains a process for determining which properties may be regulated as an IPP. Section 2.9.3, Development Code. The Council has exclusive authority to add properties to the IPP list by adopting an ordinance. Section 2.9.3.C. The properties at 202 and 214 7th Street SW, and 613 Delevan Street have not been designated IPPs by Council or other legal means. Therefore, the BAR may not include within its Major Historic Review those parcels outside the IPPs.

The record reveals that the BAR discussion and public comment were overwhelmingly fixed on the overall Project's height and massing and a perceived impact of such height and massing on the surrounding neighborhood. The record also confirms that the surrounding neighborhood is **not** within an Architectural Design Control (ADC) District. Therefore, the BAR exceeded its authority when it based its denial of the COA on the Project's impact on the surrounding neighborhood, rather than on any impacts *on* the IPPs. To the extent that the BAR's determination (which is unclear and ambiguous, as stated above) extended to elements of the Project outside the IPPs, such as its overall massing and height, it acted beyond its jurisdiction, and therefore unreasonably and without authority.

3. The BAR's application of the Design Guidelines was an effort to undermine the City's Zoning Ordinance that governs the height and density of the Project.

The zoning designation for the Project is RX-5 which allows up to five stories in height (base) and up to seven stories in height with the affordable housing bonus height option. The zoning was adopted by Council unanimously within the Development Code, on December 19, 2023. The record will reflect that the BAR was fully aware of the permitted zoning parameters, yet at the conclusion of the public hearings, at the urging by members of the public (including a current City Council member) the BAR disregarded the zoning. One BAR member made clear in the discussion her opposition to the zoning designation at this location. The BAR's denial of the COA on the grounds that it disagreed with the Property's legally applicable zoning district regulations was beyond its legal authority, and another arbitrary and capricious act.

4. The BAR actions were arbitrary and capricious in that they were purely political, and in so doing delegated their decision-making to the demands of non-elected members of the public.

The BAR members repeatedly expressed their objections to the Property's zoning designation, and the size of the building that is permitted in the applicable zoning district. Rather than appropriately applying the Design Guidelines to the treatment of the IPPs, it instead opted to base its denial of the COA in response to public comments that addressed issues well beyond its authority and jurisdiction.

Conclusion

The BAR's failure to make required legal findings for its decision presents a prima facie case that it acted arbitrarily and capriciously. Thus, in this appeal the BAR has a burden to demonstrate that it acted reasonably. For the reasons stated above, the record does not sustain that the BAR acted reasonably in its denial of the COA, or that it made the findings of fact required by the applicable provisions of the Development Code.

The record will also establish the following which are not in dispute:

- The BAR records reflect that the Project had evolved and improved through multiple rounds of productive discussions, based on the Applicant's collaboration with the BAR. This collaboration was positive and constructive until the BAR opted to disregard the Project's legal zoning regulations in an apparent effort to undermine the validly adopted Development Code, instead of applying legal standards and criteria.
- The Project substantially advances the City's Comprehensive Plan goals for more housing in all zoning districts by proposing approximately 180 housing units on land zoned RX-5.
- The Project substantially advances the City's affordable housing goals contained in the Comprehensive Plan by providing significant funds to the City's affordable housing fund as required by the Development Code. The required payment is currently estimated to be approximately \$4,550,000.
- The Project retains, repairs, and honors two historic structures at significant expense to the applicant, rather than proposing to destroy the historic structures.
- The Project does not displace any home owners.
- The Project is not in an Architectural Design Control district.
- The Project complies with the Comprehensive Plan.

December 31, 2025

Page 5

- The Project complies with the Zoning Ordinance.
- The Project complies with the City's Affordable Housing Manual.
- The Project exceeds the Development Code building transition requirements.
- The Project places all parking in an on-site garage, out of public view.
- The Project is located at the **edge** of Fifeville adjacent to railroad tracks, and the Applicant has demonstrated that its visibility from the surrounding neighborhood is nominal.
- The Project will generate approximately 30 times more in tax revenue than the current use generates.

Relief Sought

For the reasons stated herein, the applicants respectfully requests that Council overturn the BAR's denial of the Certificate of Appropriateness, and direct that the Certificate of Appropriateness be issued for the Project.

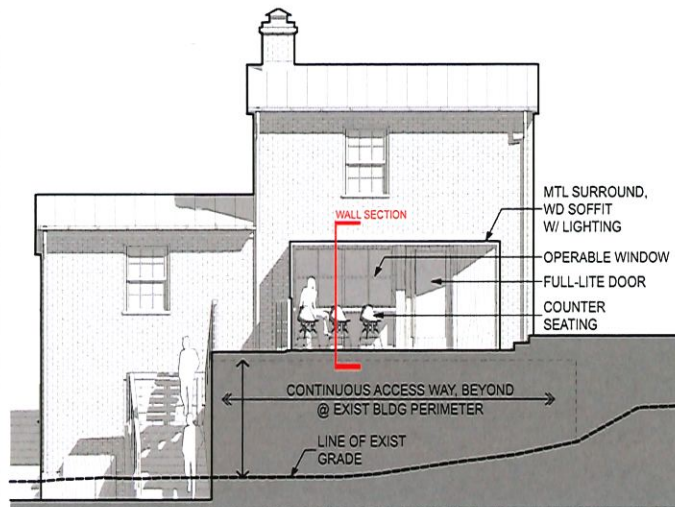
Respectfully,

Steven W. Blaine

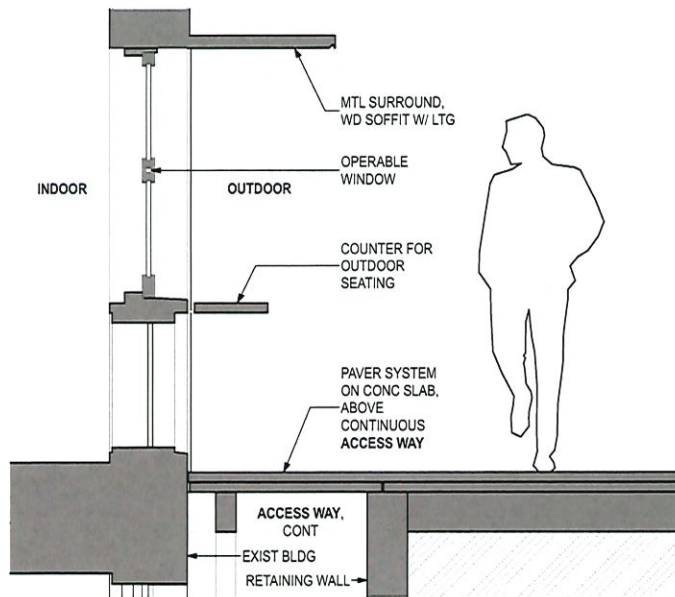
Steven W. Blaine

Counsel to the Applicant and Developer

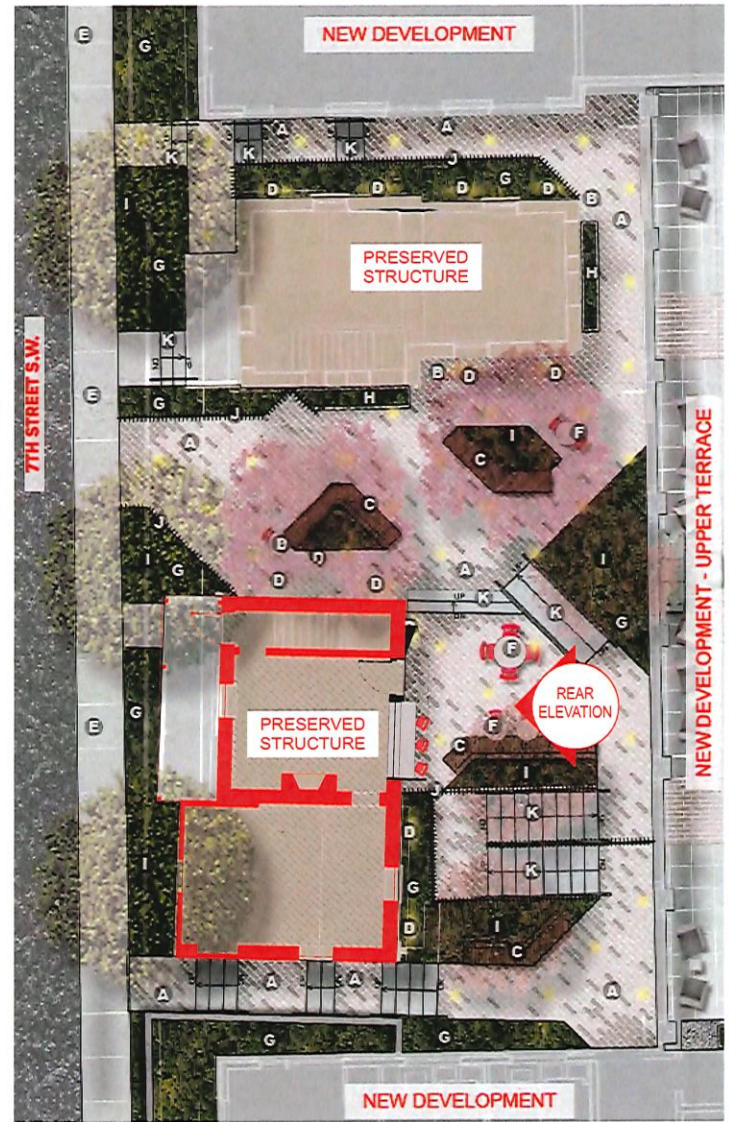
cc: Mr. Jeff Werner
Valerie W. Long, Co-Counsel to the Applicant and Developer
Mr. John Matthews



PROPOSED REAR ELEVATION W/ NEW OPENING



WALL SECTION



COURTYARD KEY PLAN



PRECEDENT IMAGE

NEW OPENING @ REAR OF 208 7TH ST SW

THE MARK
CHARLOTTESVILLE
Charlottesville, VA
Tuesday, November 18, 2025

MITCHELL / MATTHEWS
ARCHITECTS & PLANNERS
Tel : 434-979-7550 © 2025

55
SK-308



THE MARK
CHARLOTTESVILLE
Charlottesville, VA
Tuesday, November 18, 2025

VIEW OF COURTYARD

MITCHELL / MATTHEWS
ARCHITECTS & PLANNERS
Tel: 434-979-7550

63

© 2025 SK-219