

CITY STAFF’S RESPONSE TO THE APPELLANT’S DECEMBER 31, 2025 LETTER [ATTACHMENT 2] APPEALING TO CITY COUNCIL THE BOARD OF ARCHITECTURAL REVIEW’S (“BAR”) DECEMBER 16, 2025, DENIAL OF A CERTIFICATE OF APPROPRIATENESS (“COA”) FOR REHABILITATION OF TWO (2) BRICK DWELLINGS (204 AND 208 7TH STREET, SW); BOTH DESIGNATED INDIVIDUALLY PROTECTED PROPERTIES (“IPPS”) AND CONSTRUCTION OF A SEVEN (7)-STORY, MULTI-UNIT APARTMENT BUILDING ON PARCELS 202, 204, 208 AND 214 7TH STREET, SW, AND 613 DELEVAN STREET (COA APPLICATION # HST25-0084)

The “Staff Response” for each item below represents the collective positions of BAR and the City’s Preservation and Design Planner.

Submittal and staff report from BAR’s December 16, 2025, meeting about this CoA request accessed via the link in Attachment 1. can be found at the following:

Referenced City Code Sections are included in the Appendix to this Response [Attachment 5].

EXECUTIVE SUMMARY OF STAFF’S RESPONSE

This appeal is from Steven W. Blaine, Esq., of Woods Rogers Vandevanter Black, PLC, on behalf of the Applicant for CoA Request # HST25-0084. Per City Code Chapter 34, Div. 5.2.7.E.1.d., in reviewing an appeal “City Council will consult with the BAR and consider the written appeal, the criteria set forth within this Section, as applicable, and any other information, factors, or opinions it deems relevant to the application.”

For the reasons stated below, the Staff’s position is that the concerns expressed by the Appellant do not provide a basis for City Council to approve a CoA the Project, per the review criteria set forth within Chapter 34 (Zoning) Div. 5.2.7. A.1.a. A summary of the appellant concerns, extracts from BAR discussion, and staff responses are provided below. The Appellant’s letter is included for reference (Attachment 2).

Staff Response to Appellant’s Contentions

Appellant item 1: *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 BAR’s decision and therefore is arbitrary and capricious on its face.*

City Staff Response: BAR did, in its discussion, express specific concerns, which led to denial of the requested CoA. Six (6) BAR Members expressed concern that the height, scale, and/or massing were not appropriate. From the meeting Minutes (*see link in Attachment 1, re: December 16, 2025 BAR meeting.*):

- Ms. Tabony: “One thing that is under our purview is materiality, scale, and massing of a building. I believe that *this is out of character. It is not appropriate. This is not an appropriate architectural response to these IPPs*” (emphasis added).
- Mr. Zehmer: “I tend to agree that *the scale and massing is not compatible* with the IPPs.” “It seems to me hearing my colleagues speak that *the biggest issue is the size and scale of the building*. You have done a lot positive to break down the massing. I like the brick lower level. I like the materiality of the brick because it complements the two IPPs. It is within their scale. Overall, I think it is *the height that is the biggest issue*.” “I don’t think I can support this development as appropriate to this site. *It is too large. The scale is too big*. The massing of it takes up a whole city block” (emphasis added).
- Mr. Birle: “In general, it is *not compatible, massing, size, and scale-wise*. Reducing just one story is not enough to satisfy that paragraph in our design guidelines” (emphasis added). Reference to ADC District Design Guidelines, Chapter 3, Section A, page 5.)
- Mr. Timmerman: “I am struggling in determining how this project is appropriate given *its massing and is out of scale* with one of the more historic neighborhoods in the city” (emphasis added).
- Ms. Lewis: “This would be *a scale disruption for the neighborhood*.” “This *does not belong in the neighborhood because of its scale, massing, and its impact* on the neighborhood” (emphasis added).
- Mr. Schwarz (via comments provided; not being present, he did not vote): “I *do not believe the reduction in massing will materially affect how big this building feels*, but I do believe large trees will. [...] We should not allow developers to tell us that they cannot put in the trees we want because there isn’t enough room” (emphasis added).

Appellant item 2a: *BAR exceeded its jurisdiction by subjecting the entire Project to design review.*

City Staff Response: When first presented to the BAR on June 17, 2025, and during subsequent presentation on August 19, 2025, October 21, 2025, and on December 16, 2025, Staff communicated that the entire project is subject to design review by BAR. The Applicant did not dispute that the entirety of this project is subject to BAR’s purview, including all four (4) exterior elevations of the new building. In fact, each time the project was presented to BAR, the Applicant’s submittal included the four (4) elevations. The Applicant never suggested the north, east, and south elevations of the new building be omitted from the review, nor refute BAR when it commented on those elevations.

When evaluating a project associated with an ADC District or an IPP, the Criteria for Review and Decision (City Code Chapter 34, Div. 5.2.7.A.1.a.) refers to exterior architectural features

of the project. This has long been interpreted to require that the BAR consider all exterior elevations of a project to evaluate potential impacts.

Appellant item 2b: *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.*

City Staff Response: The project site lies within the *Fifeville and Tonsler Neighborhoods Historic District*, which is listed on the Virginia Landmarks Register (VLR) and the National Register of Historic Places (NRHP). dhr.virginia.gov/historic-registers/104-0213/. This VLR/NRHP-listed Historic District is not a City-designated ADC District or HC District. While BAR expressed concerns related to the surrounding neighborhood and structures, which it is permitted to express, BAR does not have purview to evaluate the project in the context of how it impacts said District. During discussions the BAR acknowledged that limitation on its purview.

Per City Code Chapter 34, Div. 5.2.7., BAR is required to determine whether a project is compatible “with the historic, cultural or architectural character of [the] *IPP that is the subject of the application*” (emphasis added). In its discussions on December 16, 2025, and during the three (3) prior meetings, BAR clearly and especially demonstrated concern that the new building’s height (seven (7) stories), massing, and scale were not appropriate for the two (2) IPPs. The two (2) IPPs are two (2)-story. The review criteria clearly recommend the proposed building is incompatible, and the CoA should be denied. Any BAR discussions referencing the adjacent neighborhood and/or acknowledging concerns expressed by neighboring residents do not negate or weaken BAR’s specific, and stated, concerns related to project’s impact on the IPPs at 204 and 208 7th Street, SW.

Appellant item 3: *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.*

Staff Response: In its discussions, BAR expressed that the new building’s height, massing, and scale as permitted by the City’s Development Code conflict with the recommendations of the ADC District Design Guidelines. However, despite BAR’s comments regarding what is permitted by zoning and what is recommended by the Design Guidelines, the instructions contained in City Code Chapter 34, Div. 5.2.7.C.2.a. are clear: BAR will approve a CoA, unless it finds the proposal does not meet the criteria for review or the Design Guidelines; and the project is incompatible with the historic, cultural, or architectural character of the IPP that is the subject of the Application.

BAR followed that instruction and determined the proposed new building will be “incompatible with the historic, cultural or architectural character” of the IPPs at 204 and 208 7th Street, SW.

Appellant item 4: *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.*

Staff Response: BAR conducts its meeting per bylaws that permit an opportunity for public comment. During its meetings on October 21, 2025, and December 16, 2025, thirty-four (34) individuals offered questions and comments (thirty (30) who spoke at a meeting and four (4) who emailed City Staff). Of these, twenty-three (23) were residents of Fifeville; the majority expressing concern related to impact of the new building on their neighborhood.

BAR Members are not elected officials. They are appointed by City Council, per City Code Chapter 34, Div. 5.1.5. Said appointed Members serve their terms voluntarily, without compensation.

During the December 16, 2025, meeting, subsequent to a Motion to Deny by an appointed BAR Member to deny the requested CoA, which was seconded by an appointed BAR Member, BAR Member's present voted to approve that Motion. No member of the public and no non-appointed BAR Member participated in the Motion, the Second, and/or BAR's ultimate vote to deny the requested CoA.

Furthermore, in that Motion, BAR stated that it had "considered the standards set forth within the City Code, including the ADC District Design Guidelines" and subsequently determined "the proposed development at the 200 block of 7th Street, SW, [did] not satisfy BAR's criteria and guidelines for being compatible with the two (2) IPPs."

Finally, as required by the Code of Virginia and the City Code, BAR's formal actions, including the denial of the CoA requested for this project, are appealable to City Council. In evaluating an appeal, City Council must either approve, approve with conditions, or deny the requested CoA. The matter before City Council is not a judgement of BAR's actions, but a determination if the proposed development is compatible "with the historic, cultural or architectural character" of the IPPs at 204 and 208 7th Street, SW.