



***LEESBURG BOARD OF ARCHITECTURAL REVIEW
WORK SESSION MINUTES***

Monday, 07 February 2011
Town Hall, 25 West Market Street
Lower Level Conference Room 3

MEMBERS PRESENT: Dieter Meyer, Chair; Jim Sisley, Vice-Chair; Richard Koochagian, Parliamentarian; Paul Reimers; Edward Kiley

MEMBERS ABSENT: Teresa Minchew; Tracy Coffing; Mary Harper, Planning Commission Representative; Marty Martinez, Town Council Representative

STAFF: Annie McDonald, Preservation Planner; Wendy Walker, Clerk of the BAR

Call to Order and Roll Call

Mr. Meyer called the meeting to order at 7:13pm, noted attendance and determined that a quorum was present.

Discussion Agenda

Town Plan Review – Heritage Resources

2005 Town Plan Heritage Resources Element: review & edit consolidated recommendations provided by staff

Ms. McDonald provided a revised action plan to better tie the list of actions to the element and revised objectives, adding at least one specific action item with timeframe for almost every objective. Mr. Sisley noted that the Goal section was in a larger font, to which Ms. McDonald stated that it was previously bolded, but would be changed to be the same size. Mr. Koochagian asked if Town Council receives the BAR recommendations to which Ms. McDonald responded that Town Council ultimately approves, but there are multiple levels of review and it may return to the BAR in six months.

Mr. Sisley asked about coordination with the County when approved projects in the H-1 or H-2 are altered at the County, which was the problem with the Leesburg Central project. Ms. McDonald said the closest could get to that right now is with Objective 5C, which has an action item attached to that specific sub-objective. There are coordination issues with the County, and the Town cannot require that the County requires something in particular. The County is simply going to review projects to make sure it is compliant with applicable building regulations and the Town Zoning Permit (which documents that the applicant complied with all the Town regulations), and would not review two sets of documents. Mr. Sisley said in other matters, the County before processing an application would make an Applicant return to the Town to get a Town stamp on business licenses and other things. Regarding Leesburg Central, Ms. McDonald noted the County received a set of drawings that the BAR had not reviewed, but there is no process at the County requesting the BAR-stamped set of plans.

Mr. Sisley queried if the Town can ask the County to request BAR-stamped plans to which Mr. Meyer suggested asking that revisions to elevations and floor plans require the Zoning Permit be re-stamped by the Town. Mr. Reimers said a set of building plans can be an inch thick and the County would not want to coordinate changes to the sets of plans. Ms. McDonald said it becomes an issue at the end with occupancy, but do not want to wait until then. Mr. Meyer said a requirement to go through Zoning should not be with minor interior changes. Mr. Reimers added about not waiting till the very end regarding out of compliance with something, because settlements can be time-sensitive and cannot be done without an

occupancy permit. Ms. McDonald said a lot of the onus is on the builder/ developer to do things in a timely manner and go through all the necessary processes, but if someone intentionally skirts the regulations, then it is their problem.

Ms. McDonald clarified if there was an inspector inspecting for architecture, then the roof pitch of Leesburg Central would have been identified as incorrect, which is why there is an action item attached to Objective 5C (in lieu of having the County require some documentation of compliance with the BAR process for revisions) the BAR recommends as part of the Town Plan to develop a process for mid-construction compliance with approved plans. Mr. Meyer said Fairfax County has inspection for critical structures, anything that is a new construction-type building (i.e., virtually anything that is a structural element, major building element, even efface installation). Then the builder is required to hire an outside consultant to inspect that the project is done in compliance; the onus on the owner, rather than the county having to inspect a lot themselves. Mr. Reimers noted a builder calls for progress inspections with Loudoun County Building Inspectors so maybe could write that when halfway through a project, Town staff comes to inspect. Ms. McDonald added that the Town's Public Works Inspectors do inspect for grading and drainage, then would report if there were any site issues and may look at the building too so there is an existing process for this in Town.

Ms. McDonald continued that this issue was brought to Town Council in 2008 and Council was okay with the inspection process the way it was, but now it has been documented in the annual report some specific projects that make it issue, and prove it can be costly if waiting until the last minute. Mr. Koochagian said there were many projects coming in after the fact so it should be tallied up with how much was spent on remediation of a problem. Mr. Meyer suggested any project requiring an architect stamp that the owner needs to engage the architect to certify the building is built in compliance with the drawings. Ms. McDonald said most projects are smaller and do not require an architect stamp, but could have an equal number of issues to which Mr. Reimers confirmed that single-family houses in the County do not require architect stamps, only commercial projects or multi-family. Mr. Meyer agreed with not being overly onerous on the individual homeowner, but the potential damage to the community is far greater on a Leesburg Central, and an architect's certification of compliance with the drawings can more easily fit into that type of project budget.

Mr. Sisley and Mr. Reimers thought the document and details were good as staff had presented. Objective 3: Regarding protecting approaches to the historic district through comprehensive zoning and design policy, staff added about evaluating the appropriateness of adjusting the current H-2 Overlay boundaries. Mr. Sisley suggested recommending looking at a more comprehensive Zoning Ordinance for the H-2 District to which Mr. Koochagian suggested adding the potential for other overlays such as Form-Based Code. Mr. Sisley suggested omitting "adjusting" and adding "ordinance" for "evaluate the appropriateness of the H-2 Overlay boundaries and ordinance." Mr. Meyer said that was another argument for a larger Form-Based Code District, as the Steering Committee recommended.

Objective 4: The intent was to make sure all documents were consistent and reviewing for by right, though there was already a process for that inside the existing Overlay Districts so that could be addressed in the action program. Ms. McDonald added that there is no process for protecting tagged items outside the districts, even if surveyed, so the recommendation was to address by right and special exception loopholes (i.e., change regulations to ask for architectural surveys).

Objective 5: There was the suggestion to develop an educational outreach program focused on the Town's heritage resources and design review process. Mr. Sisley queried if the Town does enforcement to which Ms. McDonald noted that letters are sent and followed up on, but there was a resource problem and there was already a program established, though no specific enforcement of the H-1 or H-2. Mr. Sisley suggested adding the word "effective" to which Mr. Meyer proposed adding an action item to find out if there is a political will for enforcement. Mr. Meyer continued that effective was something that hits in the pocketbook, is not easy to get out of, or is a penalty similar to what HOAs do. Mr. Reimers suggested an additional assessment on the tax assessment to which Mr. Meyer noted it would become a lien on the

property if not paid. Mr. Koochagian added that if there were financial penalties, then there may be political will to staff a position. Mr. Sisley wanted to hear what the Town Attorney had to say about it, understanding there were restrictions and constraints on resources, etcetera, but if the Town is really sincere about protecting historic resources. Ms. McDonald said the action item tied to the objective was to develop an inspection program for BAR-approved projects, to ensure compliance with approved plans.

Heritage Resources Policy Map: Ms. McDonald noted the caption should be revised and the Board agreed staff's verbiage was acceptable, which included taking out "resources that should be surveyed" and all the comments from the previous discussion.

Update re Appeal of the Dodona Manor Fence approval (TLHP-2006-0109): Ms. McDonald noted the appeal was scheduled for the March 8 Town Council hearing. The Town Attorney developed procedures for how the meeting will be run, as there had been issues with how Council heard the Fire Station appeal so Council adopted these new procedures that were more like a court hearing, which means the BAR represents itself and needs to appoint a representative (current Chairman, Chair at the time of the original approval, or neutral Parliamentarian). Mr. Sisley asked who decided that and if it was a legal proceeding to which Ms. McDonald confirmed it was a legal proceeding and a Town Attorney decision. Mr. Sisley said the BAR was entitled to legal representation, if the BAR was in defense of its position, to which Ms. McDonald said the BAR could request outside counsel. Mr. Sisley said employees of the Town would not be brought in front of any jurisdiction without legal representation so Board members appointed by elected officials should also have legal representation. Ms. McDonald responded that there was a built-in problem with Virginia's appeal process, and a built-in problem with the way Leesburg handles its appeals process. Mr. Sisley suggested it would be in the Board members' best interest, if an appeal were to take place, for the BAR to have access to counsel to which Mr. Kiley noted the BAR did not have access to Town counsel. Ms. McDonald noted that under the previous Town Attorney, Barbara Beach, the BAR had asked why it was not represented by counsel when an appeal arises. Ms. Beach decided she would be legal guidance to the BAR in its meetings so it would not make arbitrary decisions, and then the assistant became the guidance so it would be a conflict of interest with the Town Attorney representing Council. Ms. McDonald offered to address with the Town Manager to which Mr. Sisley suggested having outside counsel that had worked as Town counsel in the past (e.g., Liz Whiting). Mr. Kiley said it was crazy to have legal guidance until there is an appeal, and then the BAR is on its own, but there is no money to hire outside counsel. Mr. Meyer questioned if the BAR should even appear, if not provided with legal counsel. Mr. Sisley asked if there was any liability to the BAR. Ms. McDonald said if a decision from Town Council is appealed to circuit court, then the Town Attorney defends the Town Council decision at circuit court so it seemed that the BAR should have counsel. Mr. Meyer stated it was within the same governmental entity to which Mr. Kiley confirmed it was a conflict with two entities (with Town Council the impartial arbiter of the appeal) and the Town Attorney could only defend one entity. Mr. Meyer said it can work with the BAR as advisory only. Ms. McDonald clarified the difference between a quasi-legislative design review board (recommendations) and a quasi-judicial (implementing those procedures, making an impartial and final decision). Mr. Sisley asked who represents the Planning Commission on an appeal to which Ms. McDonald offered to find out. Ms. McDonald continued that Council cannot overturn just anything the BAR approves, because an aggrieved person has to demonstrate that a BAR decision (at least under the old regulations) was arbitrary and capricious or contrary to the law. Mr. Kiley agreed the BAR decisions have a force of law until they are appealed and overturned so the conflict is that it is appealed first to Town Council, but not if to circuit court or general district court. Mr. Sisley asked if there was a department that is given representation in front of Council on an appeal in any other circumstance, because if there is, then the BAR is entitled to the same treatment. Ms. McDonald offered to follow up. Mr. Meyer reiterated the legal issue previously raised that since the case should not have been in front of the BAR in the first place, then whatever was decided was null and void. Ms. McDonald said the response had been that this was now the situation. Mr. Sisley noted there was another Town body that receives legal representation – Town Council – so if Council receives legal guidance, no one should be given an unfair disadvantage. Mr. Kiley stated the BAR has been given decision-making power until a decision is appealed, and then the BAR is advisory because Town Council can reverse any decision made. Ms. McDonald said the new appeals rules make the BAR more advisory and less judicial. Mr. Meyer indicated

having recused on the case so he could only read the minutes, even though the conflict no longer exists. Mr. Sisley noted that Ms. Minchew was on the Board still and was the Chair at that time. At the Council stage, Mr. Kiley thought the BAR was being asked to provide a witness, telling what the BAR did and why, not an advocate which was why counsel was not needed. Mr. Sisley said it was a very different line of questioning than what most witnesses would experience. The Board agreed Ms. Minchew was the best person, as someone that was involved in the decision and the highest officer at the time.

Follow-up to Town Council meeting with Boards and Commissions: Mr. Meyer suggested having the BAR as a resource to the community instead of just a reactive body, which would help public relations quite a bit with outreach and informational videos. Mr. Sisley noted the 2010 workshop and presenter had been a good opportunity. Mr. Kiley suggested outreach to each of the HOAs which had a BAR equivalent. Mr. Meyer proposed inviting the HOA covenants committees to a BAR meeting to talk to as a resource. Noting May was Preservation Month, Ms. McDonald suggested as part of an outreach effort, to compose a program about what is design review in Leesburg, what it means, and how to get through the review process. Mr. Sisley suggested deciding on five topics instead, while the Comcast studio was available to boards, to program for five 30-minute video snippets on local cable channels and the website (e.g., this is the BAR, this is what the BAR does, how the BAR interacts with the public and what is asked of people, how to easily get through the process). So it is never dated, it should be a narrative, displaying practical presentations of images of what is right and wrong ways, plus a little guidance to talk to a contractor about the difference in cost of having to redo it, if it is wrong. Also, to have tips, when do and do not need to come to the BAR, preservation and how to make a historic building more weather tight, do not paint brick, window replacement and ruining a historic structure. The design guidelines, even chapter by chapter, could be a video. Ms. McDonald noted Balch Library had a 30-minute video on Leesburg history, and the Board discussed possible schools (NOVA, Monroe, and Patrick Henry) with film programs for low to no-cost production via interns. The Board also talked about increasing enforcement, as well as what goes into the annual report about how cases are now handled, efficiency, etc.

Adoption of CY 2010 Annual Report: Ms. McDonald noted that the report contained the same basic structure as last year, though caseload was down significantly; and, only 5 of the 39 projects took more than one meeting. This was due to a more savvy Board, more solid decision-making process, consent agenda, findings of fact, general meeting organization, and better guidelines. There is a guideline for almost every condition, at least in the Old and Historic District, to make an argument for every aspect of a decision, which also resulted in shorter meetings. Ms. McDonald offered to also add the average length of meetings and review time per case. Mr. Kiley gave Ms. McDonald credit for a lot of streamlining the process to which Mr. Meyer agreed that the experience of everyone has helped to do things more quickly, not pontificating as much, etc. Ms. McDonald continued that referrals were not added this year, but the five cases that took more than one meeting were described, and only one was not a violation of some sort.

Mr. Koochagian suggested adding statistics of cases that were brought to the BAR as violation so Council can see that there are violations, and even more than the ones that took more than one meeting (e.g., the illegal addition at 224 West Market Street). Ms. McDonald added that the advocacy section included JARB work and the Shoes Cup & Cork Club sign, and the training section emphasized the workshop and associated financials. The cover photo was Exeter which existed in the 1980s and was where Wal-Mart now is, to which Mr. Sisley suggested titling it. Mr. Meyer commented about absences being more, admonishing not to fall into the past situation of less attendance and potentially no quorum. The report goes to Council late February or in March, but may be delayed because of the focus on Form-Based Code. Also, the report would be consolidated into a comprehensive department report, which would include the Planning Commission and Environmental Advisory Commission annual reports. Mr. Sisley expressed concern that Council would not even see the BAR report.

Follow-up on CY 2011 Meeting Schedule: Ms. McDonald noted conflicts with Town Council meetings. Mr. Meyer suggested not having the November meeting so close to the Thanksgiving holiday and the Board agreed to not move meetings because of Council conflict.

JARB 2011 and discussion of award worthy projects: Ms. McDonald indicated needing a BAR representative for this year's JARB to which Mr. Meyer volunteered to participate. Ms. McDonald noted the Loudoun Preservation Society was partnering again, adding that last year's event was well attended, though no local elected officials came.

General Discussion (additional): Ms. McDonald referred to Preservation Virginia's online survey of Virginia Architectural Review Boards that would be forwarded to Board members, noting that Leesburg's BAR had few weaknesses. Just the appointment process was a weakness, and though this was the strongest Board ever, it could change because there are not solid requirements in the ordinance, and Council does not consider the Zoning Ordinance when making appointments. Also, terms are not staggered well because of the one-to-one appointment process, and it was fortunate that there had not been greater than 50 percent turnover at any time, but it could happen. Recommendations had been made to Town Council, but Council did not see a problem with it and rejected it in the past. Mr. Reimers added that enforcement is a weakness to which Mr. Kiley noted it was a budget issue. Ms. McDonald said it was not going to be a pleasant budget cycle and there were possible reductions in force, but the Town was still waiting to hear about assessments.

Adjournment: The meeting adjourned at 8:56pm.

NEXT REGULAR BUSINESS MEETING:
Wednesday, February 23, 2011 at 7pm
Town Hall Lower Level Conference Room 1
25 West Market Street
Leesburg, VA

Dieter Meyer, Chair

Annie McDonald, Preservation Planner