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In the Matter of:

Historic Alexandria Foundation

v.

City of Alexandria et al.

Judge's Ruling

October 23, 2019

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V I R G I N I A:

IN THE CIRCUIT COURT FOR THE CITY OF ALEXANDRIA

- - - - - x

HISTORIC ALEXANDRIA

FOUNDATION, et al.,

Plaintiffs,

-vs-

Case No.: CL19002249

CITY OF ALEXANDRIA, et al.,

Defendants.

- - - - - x

Alexandria, Virginia

Wednesday, October 23, 2019

The above-entitled matter came on to
be heard before the HONORABLE LISA B. KEMLER, Judge
in and for the Circuit Court of Alexandria County,
commencing at 2:08 p.m., when were present on behalf
of the respective parties:

1 A P P E A R A N C E S :

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3 For the Plaintiffs:

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1	C O N T E N T S	
2		PAGE
3	Judge's Ruling.....	5
4		
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22JUDGE'S RULING

(Transcript excerpt.)

THE COURT: Okay. All right. I'm going to make one ruling now, and then I'll hear what replies that you want to make. I am going to, I guess, sustain the demurrer with respect to both the City of Alexandria and the BAR as parties. I think that they're improper parties, and so I'll sustain the demurrer as to that. You don't need to argue that any further.

(Further argument was heard by the Court.)

THE COURT: Well, that may be where we disagree.

Well, I appreciate the arguments of counsel to illuminate some of the arguments that were made in the memoranda that were filed. And the Court is going to sustain the demurrer first with respect to the standing. This case requires that, under subsection B of the appeal, section 10-107 subsection B, that the petitioner or petitioners in this case be

1 aggrieved, and this Court finds that the term
2 "aggrieved" requires that they suffer a harm that is
3 particularized to them and different than that which
4 would be suffered by the public at large. And in
5 this case, based on the allegations in the complaint
6 as set forth in paragraphs three, four, and five,
7 accepting that they have met the first prong of what
8 it is to be aggrieved, that is, their proximity to
9 the Black home, and I would find that 1500 feet, 550
10 feet would put them within a proximate location to
11 the property, that they have failed to allege harm
12 that would fit within the meaning of aggrieved as
13 that term has long been understood to mean and was
14 more recently discussed in the Friends' decision and
15 in the Virginia Beach Beautification Commission
16 cases.

17 But I would also find even if the
18 petitioners had standing, that the complaint fails to
19 state a claim upon which relief can be granted. The
20 Alexandria zoning ordinance 10-105A and then A1
21 provides the specific factors upon which the City
22 counsel or the BAR and then affirmed by the City

1 counsel shall use to determine whether or not a
2 certificate of appropriateness should be permitted.
3 And the Court finds that the argument, with respect
4 to both the Landmark Act, I know that's the short
5 form, and the Open Space Land Act, are not criteria
6 that the City was required to consider in reaching
7 this decision.

8 And, clearly, based on the volume of
9 information that was before city counsel when it made
10 its decision that it can't be seriously argued that
11 this matter was not fairly debatable. And so for
12 those reasons, the Court will sustain the demurrer.
13 You all can prepare an order.

14 (Further argument was heard by the Court.)

15 THE COURT: So I'm going to sustain the
16 demurrer without leave to amend, and why don't you
17 prepare an order that reflects the Court's ruling --
18 you have the court reporter -- and then you can note
19 all your objections and you can submit it to
20 chambers. You don't have to come back and have a
21 hearing, unless by some chance it's not agreed to.

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1	(Whereupon, the courtroom proceedings
2	concluded at 3:27 p.m.)
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COMMONWEALTH OF VIRGINIA AT LARGE, to wit:

I, Jessica Lyn Magyari, Notary Public in and for the Commonwealth of Virginia at Large, and whose commission expires July 31, 2023, do certify that the aforementioned appeared before me, was sworn to tell the truth, and was thereupon examined by counsel; and that the foregoing is a true, correct, and full transcript of the testimony adduced.

I further certify that I am neither related to nor associated with any counsel or party to this proceeding, nor otherwise interest in the event thereof.



JESSICA LYN MAGYARI
Notary Public
Commonwealth of Virginia at Large
Notary No. 7361695