

July 12, 2016

Dear Members of the Richmond Planning Commission,

At the Planning Commission meeting on June 20, 2016 the owner of 1650 Overbrook Road and his consultant egregiously misrepresented that the Va. Dept. of Historic Resources (DHR) had no objections to the provisions in amended Ordinance 2016-171 that windows would be added to the historically significant south elevation of the building in five years after they had received the state and federal tax credits.

But contrary to the statements of the applicant, according to a June 24, 2016 article in the Richmond Times Dispatch, **DHR Director Julie Langan found very disturbing the applicant's gaming of the tax credits: "Planning at the outset of a project to make inappropriate alterations as soon as the five-year look-back period expires is very disturbing and is an affront to the thousands who have used the tax credit program for its intended purpose, with long-term preservation in mind,"** she said. [http://www.richmond.com/news/local/city-of-richmond/article\\_41e2d6cd-a0e2-51d1-8844-3989d4ac1842.html](http://www.richmond.com/news/local/city-of-richmond/article_41e2d6cd-a0e2-51d1-8844-3989d4ac1842.html)

I understand that for this reason Ordinance 2016-171 is now scheduled to be re-considered by the Planning Commission on July 18. **It would be very improper to now exempt the proposed dwelling units in the 1650 Overbrook Road windowless warehouse from the requirements of the Planning Commission's Windowless Dwelling Unit Resolution just so that the owner can receive the historic tax credits. The applicant should not be rewarded for the egregious misrepresentation of the position of the Va Department of Historic Resources by now exempting the applicant of the requirements of the Windowless Dwelling Unit Resolution.**

The Planning Commission's June 4, 2012 Windowless Dwelling Unit Resolution specifically addresses the conditions now found in the 1650 Overbrook Road Special Use Permit application. This is a huge warehouse with few windows and the majority of the units would be windowless as defined by the Windowless Dwelling Unit Resolution: **A windowless unit is defined as "a unit that does not contain a window[s] that penetrates an exterior wall of a building."**

The Windowless Dwelling Unit Resolution correctly notes that, "Windowless dwelling units should be avoided as a general premise," and, "Section 15.2-2283 of the Code of Virginia provides that zoning ordinances shall be designed to give reasonable consideration to the provision of adequate light and air."

**According to the plans submitted with Ordinance 2016-171, the majority of the proposed 117 dwelling units do not contain a window that penetrates an exterior wall.** Since a second story loft is proposed in the largely windowless one-story warehouse, the proposed skylights will offer little light to much of the ground-floor apartment space.

Furthermore, the transom windows onto the proposed atrium spaces within the warehouse cannot be considered windows "penetrating the exterior wall of the building," as required by the Planning Commission's Windowless Dwelling Unit Resolution, since the atrium itself must be preserved as an "interior space," according to the National Park Service (NPS) rehabilitation guidelines.

According to the NPS guidelines, **"The inserted atrium should appear as and be perceived as a new interior space."** [https://www.nps.gov/tps/tax-incentives/incentives/avoiding\\_22.htm](https://www.nps.gov/tps/tax-incentives/incentives/avoiding_22.htm)

Also, according to the NPS guidelines, **"It is important to remember that an atrium should be ... covered so that it remains an interior space," and, "An atrium should be enclosed and the opening should be covered with a skylight or roof canopy to preserve it as an interior space."** [https://www.nps.gov/tps/tax-incentives/incentives/avoiding\\_21.htm](https://www.nps.gov/tps/tax-incentives/incentives/avoiding_21.htm)

It would be unacceptable duplicity if the applicant describes the atrium to the city as an exterior space, for the purpose of complying with the Windowless Dwelling Unit Resolution, while describing the atrium to DHR as an interior space, for the purpose of meeting the NPS Standards of Rehabilitation in order to be eligible for the historic tax credits. **Windows onto the atrium do not "penetrate the exterior wall of a building," as defined by the Windowless Dwelling Unit Resolution because the atrium is an interior space.**

Plans for the entire building are required by the Planning Department's Special Use Permit (SUP) Procedures Manual, but significant questions remain because the developer has now omitted plans for 40% of the building. There are no plans shown for the the 44,512 sq. ft. two-story addition, "Section B" in the amended SUP Ordinance 2016-171. While the original SUP Ordinance 2014-121-201 included detailed plans for around 50 new windows for dwelling units in this Section B, all plans for the largely-windowless two-story addition have been omitted from the amended ordinance. Has the developer now omitted all elevations for the two-story addition because plans for windows in that building would torpedo his tax credits, or does the owner plan more windowless dwelling units? Or does the owner not want to disclose plans for commercial use of the addition that would indicate that commercial use, in keeping with the city's Master plan and existing M-1 zoning, is feasible for the entire building? **The Planning Commission needs to see the plans for the two-story addition to know whether or not the omission of plans for the two-story addition is part of the applicant's ongoing effort to game the historic tax credits.**

It would be irresponsible for the city Planning Department and the Planning Commission to break all the rules so that the applicant can be eligible for historic tax credits. The Planning Commission's Windowless Dwelling Unit Resolution must be consistently followed in order that the dwelling units have adequate light and air. As DHR Director Julie Langan stated in a June 28, 2016 RichmondBizSense article: **“If you have a building that historically doesn’t have windows or has very few windows, then maybe apartments isn’t the best use,” she said. “And if you really want that building to be apartments, then maybe you rehab it without using the tax credits.”**  
<http://richmondbizsense.com/2016/06/28/warehouse-conversion-plan-deferred-after-state-calls-tax-credit-scenario-disturbing/>

As I mentioned in my presentation at the June 20, 2016 Planning Commission meeting: of the four very similar adjacent tobacco warehouses, three are currently in use for successful commercial functions, including the SPCA, Markel Veterinary Hospital, Central Virginia Food Bank, Meals on Wheels, and E. A. Holsten – Virginia's largest independent wholesale appliance distributor. By maintaining the original function of the building, in keeping with current M-1 zoning and the city's Master Plan, the owner could receive historic tax credits without adding windows and damaging the integrity of the historically registered building. But if the owner insists upon using the building for a function for which it was not designed, the city should not wave requirements for adequate light and air in dwelling units, just so that the owner can receive historic tax credits.

Thank you for closely looking at this amended Ordinance 2016-171.

Sincerely,

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**Following Attachments:**

- **DHR RESPONSE to Recent News Regarding 1650 Overbrook Road, Richmond**
- **COMMON BAY FLOOR PLAN for 1650 Overbrook Road showing the majority of units are windowless**
- **NATIONAL PARKS SERVICE Guidelines require that an atrium be an interior space**
- **PROPOSED TRANSOM WINDOWS ONTO ATRIUM, do not penetrate an exterior wall as required by the Planning Commission's Windowless Dwelling Unit Resolution**

## **DHR Response to Recent News Regarding 1650 Overbrook Road, Richmond (SOURCE: DHR)**

In response to recent news articles regarding a proposed tax credit rehabilitation project for a property at 1650 Overbrook Road in Richmond, the Department of Historic Resources (DHR) would like to clarify its position and correct the public record regarding our role in the project in connection with a proposed Special Use Permit now under consideration with the City of Richmond for the project.

DHR's official position regarding the rehabilitation of 1650 Overbrook Road was misinterpreted at a June 20th meeting of the City's Planning Commission, according to Julie Langan, DHR Director.

**"Neither DHR nor the National Park Service, both of which reviewed this project for eligibility for historic tax credits, were involved in, or party to, any discussions or negotiated agreement between the property owner and the City regarding work that would be accomplished following conclusion of the five-year recapture period included in the federal historic tax credit regulations."**

Moreover, the application submitted to DHR by the developer includes no information regarding possible future alterations that could be required by the City, once the federal recapture period expires.

DHR and NPS's conditional approval of the project is the product of extensive discussions and revisions spanning several years and is independent of the local Special Use Permit process and conditions. Through protracted discussions, DHR, NPS, and the developer reached an agreement regarding the scope of work presented. Again, nothing in those discussions or agreement disclosed the possibility that the City would require that windows be added.

It was only last week that DHR and NPS became aware of the inclusion of specific text in the proposed Richmond Special Use Permit that provides for the possibility that the City would require the developer to add new window openings in the windowless south elevation of the historic warehouse. Such an alteration would not meet the Secretary of the Interior's Standards, the guidelines by which tax credit projects are evaluated.

"This has been a particularly challenging project," Langan explains. "A critical first step for any tax credit project is to determine a compatible use for the building being rehabilitated. It has been and remains DHR's position that this building does not easily lend itself to use as apartments and that by pursuing this use, the path to certification was long and difficult."

The proposed timing for the future window work, which could be required at the discretion of the City's Director of Planning and Development Review, would intentionally fall outside of the five-year review and recapture period for federal historic tax credits.

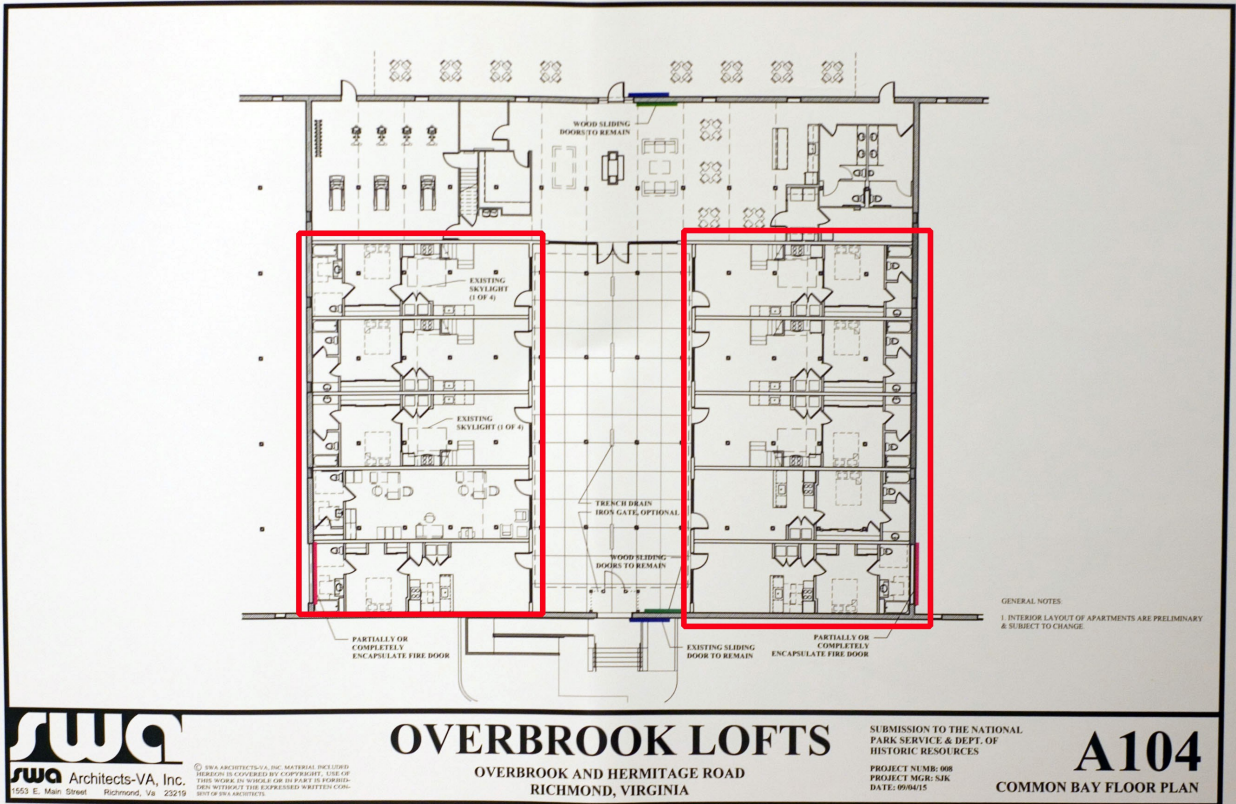
That troubles Langan. "Although regulations limit the review of future work to a five year timeframe following completion, they did not anticipate a situation where a developer, prior to the commencement of a project, would be required to agree in advance to make alterations that would not meet the Standards," she explains. "The intent of the five year federal recapture period was to ensure a minimum term of commitment on the part of the property owner. It was not meant to be tacit approval for inappropriate work as soon as the five year clock runs out."

**"The state and federal historic tax credits aim to incentivize the preservation and appropriate treatment of historic buildings and trigger revitalization of our historic communities. Planning at the outset of a project to make inappropriate alterations as soon as the five year look-back period expires is very disturbing and is an affront to the thousands who have used the tax credit program for its intended purpose, with long-term preservation in mind,"** Langan adds.

DHR and the developer are now discussing the implications of the City's requirement. If this requirement remains in the SUP, DHR will require that the applicant provide an amended application that addresses the possibility of future alterations that would not meet the Standards.

"Because DHR is now aware that there may be a material change in the project's scope of work as presented, we are prepared to request an amended application so that the project's eligibility for certification can be fully considered," stated Langan.

THE MAJORITY OF PROPOSED DWELLING UNITS ARE WINDOWLESS DWELLING UNITS, HIGHLIGHTED IN COMMON BAY FLOOR PLAN, 1650 OVERBROOK (SOURCE: VA DEPT OF HISTORIC RESOURCES)



# NATIONAL PARKS SERVICE STANDARDS FOR REHABILITATION REQUIRE THAT AN ATRIUM BE AN INTERIOR SPACE. (SOURCE: NATIONAL PARKS SERVICE)



## Incentives

A GUIDE TO THE FEDERAL HISTORIC PRESERVATION TAX INCENTIVES PROGRAM FOR INCOME-PRODUCING PROPERTIES

[Program Essentials](#) [Application Basics](#) [The Review Process](#) [Meeting the Standards for Rehabilitation](#) [Avoiding Incompatible Work](#)

Historic Building Interior:  
New Interior Features - Atriums

TOPICS IN THIS SECTION:  Go

### New Interior Features - Atriums

In buildings with very large footprints, creating an atrium is often proposed as a way to get light into the interior of the historic building. This is especially true in buildings undergoing conversion to housing. Because this treatment represents a major alteration of an interior space, when considering adding an atrium in a historic building, it is important to remember that an atrium should be:

- minimally damaging to historic materials.
- set back from the primary facade.
- small in size.
- covered so that it remains an interior space.
- clearly evident as a new feature carved out of the existing building.
- finished in a manner compatible with the historic character of the building.

In order to design a new atrium for a historic building that will preserve the building's historic character and will meet the Standards for Rehabilitation, the following should be considered:

#### Protection of historic interior materials, features, and spaces

The insertion of an atrium is generally more feasible in warehouses, industrial or manufacturing buildings with simple interior spaces, or in buildings whose interiors have been substantially altered in the past.

An atrium should be placed at least one bay back from the entrance or building façade, or in a secondary space in order to avoid alterations to significant interior spaces.

An atrium should be enclosed and the opening should be covered with a skylight or roof canopy to preserve it as an interior space.

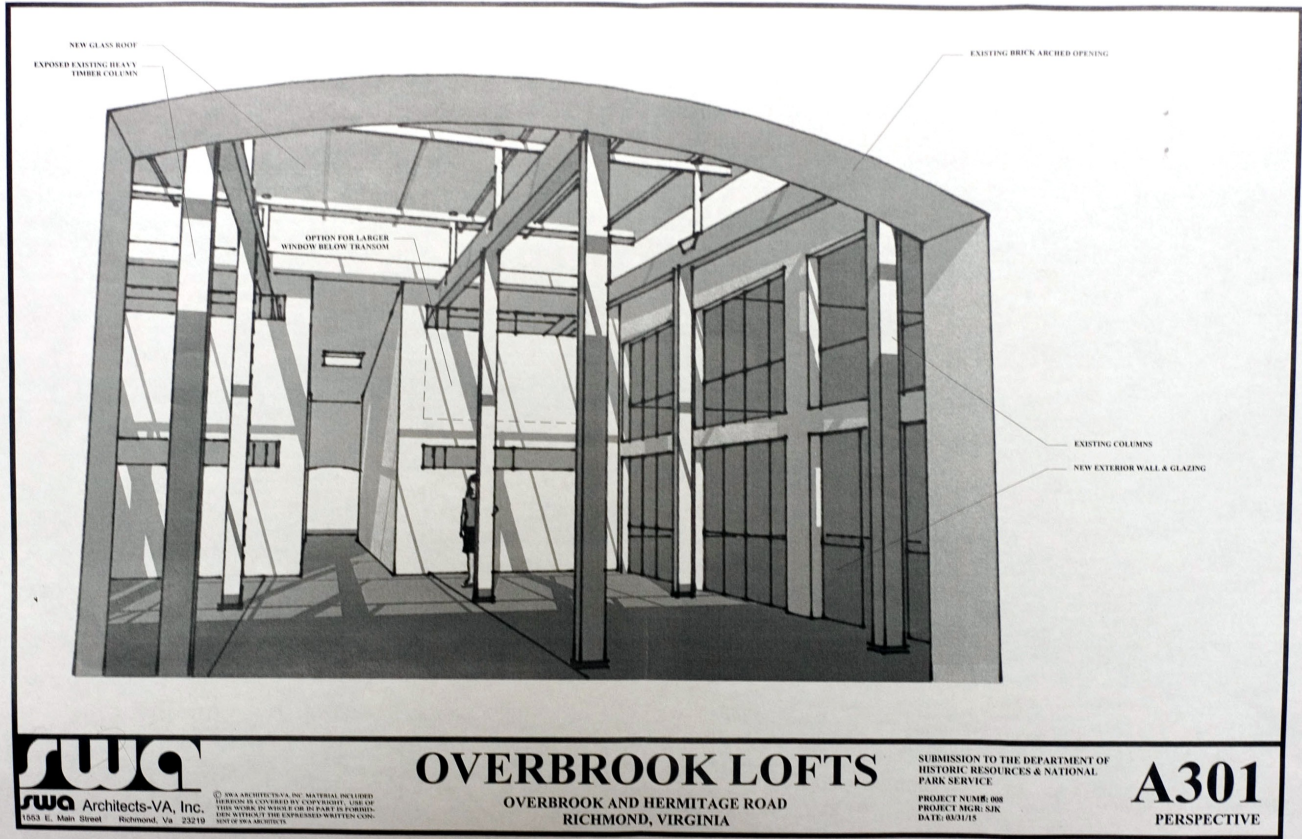


#### This new atrium meets the Standards for Rehabilitation

An important requirement of the new atrium (right) in this historic warehouse building design was to provide fresh air, in addition to light, into the building. This was accomplished by raising the atrium covering just slightly so that it is not visible above the existing roof. Photos: NPS files



**PROPOSED TRANSOM WINDOWS ONTO ATRIUM, AS SHOWN IN PLANS PRESENTED TO DHR FOR HISTORIC TAX CREDITS, DO NOT PENETRATE AN EXTERIOR WALL AS REQUIRED BY THE PLANNING COMMISSION'S WINDOWLESS DWELLING UNIT RESOLUTION. THE NPS STANDARDS OF REHABILITATION REQUIRE THAT ANTRIUM SPACES BE INTERIOR SPACES. (SOURCE: DHR)**



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SUBMISSION TO THE DEPARTMENT OF  
 HISTORIC RESOURCES & NATIONAL  
 PARK SERVICE  
 PROJECT NUMBER: 008  
 PROJECT NUMBER: SIK  
 DATE: 03/31/15

**A301**  
 PERSPECTIVE