

INTRODUCED: June 28, 2021

A RESOLUTION No. 2021-R042

To modify two decisions of the Commission of Architectural Review, which approved with conditions two certificates of appropriateness for the permanent removal of certain monuments on Monument Avenue and in Libby Hill Park, by removing from each of such certificates the condition that the City retain all pieces of each removed monument for a period of two years in a manner that they are available to the community for reuse.

Patron – Mayor Stoney

Approved as to form and legality
by the City Attorney

PUBLIC HEARING: JUL 26 2021 AT 6 P.M.

WHEREAS, on May 25, 2021, the Commission of Architectural approved with conditions two applications of the City of Richmond identified as Certificate of Appropriateness Application No. COA-091354-2021 for the permanent removal of certain monuments on Monument Avenue directed to be removed by Ordinance No. 2020-154, adopted August 3, 2020, and Certificate of Appropriateness Application No. COA-091355-2021 for the permanent removal of a monument in Libby Hill Park directed to be removed by Ordinance No. 2020-154, adopted August 3, 2020; and

AYES: 9 NOES: 0 ABSTAIN: _____

ADOPTED: JUL 26 2021 REJECTED: _____ STRICKEN: _____

WHEREAS, on June 7, 2021, pursuant to section 30-930.8 of the Code of the City of Richmond (2020), as amended, the City filed an appeal with the City Clerk concerning the Commission of Architectural Review's attachment to each of these two certificates of appropriateness a condition that the City retain all pieces of each removed monument for a period of two years in a manner that they are available to the community for reuse; and

WHEREAS, pursuant to section 30-930.8 of the Code of the City of Richmond (2020), as amended, the Council may reverse or modify a decision appealed, in whole or in part, by resolution when it is satisfied that the decision of the Commission of Architectural Review is in error, or, by taking no action, the Council may affirm such decision of the Commission; and

WHEREAS, the Council believes that the aforementioned condition purports to illegally restrict the Council's sole authority under section 15.2-1812 of the Code of Virginia (1950), as amended to finally dispose of the removed monuments at a time of its choosing; and

WHEREAS, due to this illegality, the Council is satisfied that the Commission's decision is in error under Chapter 30, Article IX, Division 4 of the Code of the City of Richmond (2020), as amended;

NOW, THEREFORE,

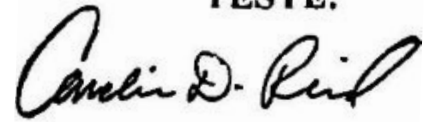
BE IT RESOLVED BY THE COUNCIL OF THE CITY OF RICHMOND:

That, the Council hereby modifies the decisions of the Commission of Architectural Review to approve certificates of appropriateness for the permanent removal of certain monuments on Monument Avenue in the Monument Avenue Old and Historic District as described in Certificate of Appropriateness Application No. COA-091354-2021 and the permanent removal of a monument in Libby Hill Park in the St. John's Church Old and Historic District as described in Certificate of Appropriateness Application No. COA-091355-2021 by removing from each of such

certificates the condition that the City retain all pieces of each removed monument for a period of two years in a manner that they are available to the community for reuse.

A TRUE COPY:

TESTE:

A handwritten signature in black ink, appearing to read "Caroline D. Reed". The signature is written in a cursive style with a large initial 'C'.

City Clerk



CITY OF RICHMOND

INTRACITY CORRESPONDENCE

O&R REQUEST

DATE: June 23, 2021

EDITION 1

TO: The Honorable Members of City Council

THROUGH: The Honorable Levar M. Stoney, Mayor

THROUGH: J. E. Lincoln Saunders, Acting Chief Administrative Officer

THROUGH: Reginald E. Gordon, Deputy Chief Administrative Officer-HS

FROM: Christopher E. Frelke, Director of Parks and Recreation & Community Facilities

RE: Petition for Appeal of Decision of Commission of Architectural Review
Concerning Certificates of Appropriateness for Application Nos. COA-091354-2021 and COA-091355-2021

ORD. OR RES. No. _____

PURPOSE: To modify two decisions of the Commission of Architectural Review, which approved with conditions two certificates of appropriateness for the permanent removal of certain monuments on Monument Avenue and in Libby Hill Park, by removing from each of such certificates the condition that the City retain all pieces of each removed monument for a period of two years in a manner that they are available to the community for reuse.

REASON: Pursuant to section 30-930.8 of the City Code, a Council resolution is needed to reverse or modify a decision of the Commission of Architectural Review that is in error.

RECOMMENDATION: The City Administration recommends adoption of this resolution.

BACKGROUND: At the Commission of Architectural Review meeting on May 25, 2021, CAR issued two certificates of appropriateness, among other business. The first, for Application No. COA-091354-2021, concerned the removal of the City-owned monuments on Monument Avenue except for the Arthur Ashe monument in the Monument Avenue Old and Historic District. The second, for Application No. COA-091355-2021, concerned the removal of the Soldiers and Sailors monument in the St. John's Church Old and Historic District. The Commission of Architectural Review attached to each of these certificates of appropriateness a condition, among others to which the applicant does not object, requiring that the applicant retain all pieces of each removed monument for a period of "two years in a manner that they are available to the community for reuse."

Letters providing written notice of the Commission's decision dated June 4, 2021, which the City of Richmond received on June 7, 2021, copies of which the City of Richmond enclosed with the petition, did not provide the reasoning behind the Commission's decision to impose the two-year condition, and the Commission has yet to approve any minutes of its May 25, 2021, meeting that might shed light on that reasoning. Accordingly, the applicant's understanding of the substance of the Commission's decision is based solely upon the observations of the applicant's staff who attended that meeting and the aforementioned letters dated June 4, 2021, themselves. As the applicant understands it, the Commission attached to these two certificates of appropriateness a condition requiring that the applicant, the City of Richmond, retain all pieces of each removed monument for a period of "two years in a manner that they are available to the community for reuse," although it is not clear when the period of two years is to commence or exactly how or under what conditions they would become "available to the community for reuse."

Section 15.2-1812 of the Code of Virginia, as of July 1, 2020, authorized the City of Richmond to remove monuments or memorials on the City's public property after complying with a procedure set forth in that statute. The General Assembly of Virginia granted the City this authority "[n]otwithstanding any other provision of law, general or special," and further provided that the City Council "shall have sole authority to determine the final disposition of the monument or memorial."

By Ordinance No. 2020-154, adopted August 3, 2020, the City Council authorized the Chief Administrative Officer to cause the removal of the monuments identified in Application Nos. COA-091354-2021 and COA-091355-2021 "[u]pon compliance with this ordinance and all other applicable law." The ordinance authorized the Chief Administrative Officer to temporarily store the removed monuments and provided that "the Council, by the adoption of a resolution, may accept such offer or offers submitted to the City during or after the time period" prescribed by the ordinance in accordance with section 15.2-1812 of the Code of Virginia "or otherwise direct the final disposition of the Monuments after" the required time period has expired.

After the City met the ordinance's prerequisites, it began the process of evaluating offers for the final disposition of the monuments and pursuing the applicable land use approvals from the Commission and other bodies. The Commission's staff reports for Application Nos. COA-091354-2021 and COA-091355-2021 recommended that certificates of appropriateness be issued on the conditions that (i) "the gentlest means possible be used to remove the objects," (ii) "the objects be removed in a single piece if possible, or be disassembled at the original joints," and (iii) "all removed pieces be stored in a secure environment before final disposition." The applicant already intends to comply with these recommendations, as well as an additional condition imposed by the Commission that, to the extent possible, the applicant retain "the circular curbing and roundabout" at the site of each removed monument. The Commission's staff reports did not recommend requiring the applicant to retain the pieces of each removed monument for a period of "two years in a manner that they are available to the community for reuse."

Neither section 15.2-1812 of the Code of Virginia nor Ordinance No. 2020-154 permits the City Council's "sole authority to determine the final disposition" of the monuments that are the subject

of Application Nos. COA-091354-2021 and COA-091355-2021 to be restricted through a condition such as the condition the Commission has imposed requiring the applicant to retain the pieces of each removed monument for a period of “two years in a manner that they are available to the community for reuse.” Therefore, the Commission’s decision to impose that condition is in error and illegal because it is contrary to the provisions of section 15.2-1812 of the Code of Virginia and Ordinance No. 2020-154.

FISCAL IMPACT / COST: N/A

FISCAL IMPLICATIONS: N/A

BUDGET AMENDMENT NECESSARY: No

REVENUE TO CITY: N/A

DESIRED EFFECTIVE DATE: Upon adoption

REQUESTED INTRODUCTION DATE: June 28, 2021

CITY COUNCIL PUBLIC HEARING DATE: July 26, 2021

REQUESTED AGENDA: Regular

RECOMMENDED COUNCIL COMMITTEE: Land Use, Housing and Transportation on July 20, 2021

CONSIDERATION BY OTHER GOVERNMENTAL ENTITIES: None

AFFECTED AGENCIES: Parks & Rec.

RELATIONSHIP TO EXISTING ORD. OR RES.: Ord. No. 2020-154, adopted Aug. 3, 2020

REQUIRED CHANGES TO WORK PROGRAM(S): None

ATTACHMENTS: Petition Letter

STAFF: Christopher Frelke, Director of Parks, Recreation and Community Facilities - 646-1128
Heywood Harrison, Parks, Recreation & Community Facilities-646-5703



CITY OF RICHMOND

DEPARTMENT OF PARKS, RECREATION
& COMMUNITY FACILITIES

June 8, 2021

Candice D. Reid
City Clerk
900 East Broad Street, Suite 200
Richmond, Virginia 23219

**Re: Petition for Appeal of Decision of Commission of Architectural Review Concerning
Certificates of Appropriateness for Application Nos. COA-091354-2021 and COA-
091355-2021**

Ms. Reid:

This letter is the applicant's petition pursuant to section 30-930.8(a) of the Code of the City of Richmond appealing the Commission's attachment of a condition to two certificates of appropriateness issued on May 25, 2021, of which I received written notice on June 7, 2021, and petitioning the City Council to modify each of these two certificates of appropriateness to remove the condition that the applicant, the City of Richmond, retain all pieces of each removed monument for a period of "two years in a manner that they are available to the community for reuse." The applicant is a "person aggrieved by a decision of the Commission" within the meaning of section 30-930.8(a) of the Code of the City of Richmond because the Commission purports through its condition to illegally restrict the City Council's sole authority to finally dispose of the removed monuments at a time of its choosing. Enclosed with this petition please find a document confirming the applicant's payment via journal voucher of the \$500.00 fee required by section 30-930.8(a) of the Code of the City of Richmond for an appeal of this nature.

At its meeting on May 25, 2021, the Commission of Architectural Review issued two certificates of appropriateness, among other business. The first, for Application No. COA-091354-2021, concerned the removal of the City-owned monuments on Monument Avenue except for the Arthur Ashe monument in the Monument Avenue Old and Historic District. The second, for Application No. COA-091355-2021, concerned the removal of the Soldiers and Sailors monument in the St. John's Church Old and Historic District. The Commission attached to each of these certificates of appropriateness a condition, among others to which the applicant does not object, requiring that the applicant retain all pieces of each removed monument for a period of "two years in a manner that they are available to the community for reuse."

It is difficult to ascertain exactly what the Commission believes its legal basis for this condition might be. Letters providing written notice of the Commission's decision dated June 4, 2021, which I received on June 7, 2021, copies of which I have enclosed with this petition, do not provide the reasoning behind the Commission's decision to impose the two-year condition, and the Commission has yet to approve any minutes of its May 25, 2021, meeting that might shed light on that reasoning. Accordingly, the applicant's understanding of the substance of the Commission's decision is based solely upon the observations of the applicant's staff who attended that meeting and the aforementioned letters dated June 4, 2021, themselves. As the applicant understands it, the Commission attached to these two certificates of appropriateness a condition requiring that the applicant, the City of Richmond, retain all pieces of each removed monument for a period of "two years in a manner that they are available to the community for reuse," although it is not clear when the period of two years is to commence or exactly how or under what conditions they would become "available to the community for reuse."

Section 15.2-1812 of the Code of Virginia, as of July 1, 2020, authorized the City of Richmond to remove monuments or memorials on the City's public property after complying with a procedure set forth in that statute. The General Assembly of Virginia granted the City this authority "[n]otwithstanding any other provision of law, general or special," and further provided that the City Council "shall have sole authority to determine the final disposition of the monument or memorial."

By Ordinance No. 2020-154, adopted August 3, 2020, the City Council authorized the Chief Administrative Officer to cause the removal of the monuments identified in Application Nos. COA-091354-2021 and COA-091355-2021 "[u]pon compliance with this ordinance and all other applicable law." The ordinance authorized the Chief Administrative Officer to temporarily store the removed monuments and provided that "the Council, by the adoption of a resolution, may accept such offer or offers submitted to the City during or after the time period" prescribed by the ordinance in accordance with section 15.2-1812 of the Code of Virginia "or otherwise direct the final disposition of the Monuments after" the required time period has expired.

After the City met the ordinance's prerequisites, it began the process of evaluating offers for the final disposition of the monuments and pursuing the applicable land use approvals from the Commission and other bodies. The Commission's staff reports for Application Nos. COA-091354-2021 and COA-091355-2021 recommended that certificates of appropriateness be issued on the conditions that (i) "the gentlest means possible be used to remove the objects," (ii) "the objects be removed in a single piece if possible, or be disassembled at the original joints," and (iii) "all removed pieces be stored in a secure environment before final disposition." The applicant already intends to comply with these recommendations, as well as an additional condition imposed by the Commission that, to the extent possible, the applicant retain "the circular curbing and roundabout" at the site of each removed monument. The Commission's staff reports did not recommend requiring the applicant to retain the pieces of each removed monument for a period of "two years in a manner that they are available to the community for reuse."

Neither section 15.2-1812 of the Code of Virginia nor Ordinance No. 2020-154 permits the City Council's "sole authority to determine the final disposition" of the monuments that are the subject of Application Nos. COA-091354-2021 and COA-091355-2021 to be restricted through a

condition such as the condition the Commission has imposed requiring the applicant to retain the pieces of each removed monument for a period of “two years in a manner that they are available to the community for reuse.” Therefore, the Commission’s decision to impose that condition is in error and illegal because it is contrary to the provisions of section 15.2-1812 of the Code of Virginia and Ordinance No. 2020-154.

The applicant submits this petition to give effect to the City Council’s exercise of its power under section 15.2-1812 of the Code of Virginia by adopting Ordinance No. 2020-154. Accordingly, the applicant asks that the City Council modify the Commission’s decision issuing these two certificates of appropriateness by removing the condition attached to them requiring that the applicant, the City of Richmond, retain all pieces of each removed monument for a period of “two years in a manner that they are available to the community for reuse.”

Sincerely,



Christopher E. Frelke
Director of Parks, Recreation and Community Facilities
City of Richmond



CITY OF RICHMOND
COMMISSION OF
ARCHITECTURAL REVIEW

June 4, 2021

Christopher Frelke
1209 Admiral Street
Richmond, VA 23220

RE: MONUMENT AVE - VARIOUS
Application No. COA-091354-2021

Dear Applicant:

At the May 25, 2021 meeting of the Commission of Architectural Review, the review of your application for a Certificate of Appropriateness resulted in the following action: **Approved with conditions**. Specifically, the Commission approved the application for the reasons cited in the staff report provided the following conditions are met:

- the gentlest means possible be used to remove the objects;
- the objects be removed in a single piece if possible, or be disassembled at the original joints;
- all removed pieces be stored in a secure environment before final disposition;
- that if at all possible the circular curbing and roundabout be retained;
- and that the objects be retained for two years in a manner that they are available to the community for reuse.

You, or any aggrieved party, have the right to appeal a decision of the Commission of Architectural Review to City Council as specified in Section 30.930 of the Richmond City Code. A petition stating reasons for the appeal must be filed with the City Clerk within 15 days of this meeting.

If you have any questions, please contact me at (804) 646-7550 or by e-mail at Carey.Jones@richmondgov.com.

Sincerely,

Carey L. Jones, Secretary
Commission of Architectural Review