

DOCKET ITEM

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EXHIBIT No. 2

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6-23-87

TASK FORCE FOR OPEN SPACE EASEMENTS

Report To City Council

I. Introduction

At the request of Vice-Mayor Ticer, on November 25, 1986 Council approved the creation of an ad hoc Task Force for Open Space Easements. Council directed the Task Force to study the possibility of developing an easement program with specific emphasis on open spaces in the Old and Historic District. The Task Force was asked to research methods for receiving easements from private property owners, possible incentives available to potential easement donors, and to make recommendations for appropriate action. A list of Task Force members is included as Exhibit 1.

The Task Force met as a group on five occasions, interviewed knowledgeable persons with experience in the area, and received reports from members of the group.

The Task Force believes that, to a significant extent, the City draws its character from its open spaces, both in the Historic District and in other neighborhoods. Because privately owned open space is represented mainly by gardens and yards*/ the preservation of open space in general must focus on those gardens and yards. Given the virtually unrestricted latitude private property owners have in determining the use and development of their property, within the broad bounds of

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the City's zoning and building codes, and probably impossible to establish a formal district. It is necessary to provide a program for civic-minded property owners. The creation of open space easements is necessary to provide a program for civic-minded property owners.

Given the focus of the Task Force on the open space represented in the Historic District, the Task Force looked at the Historic District as a potentially eligible property owner. It identifies those properties that are worthwhile. It identifies those properties that illustrate some of those

In addition, the Task Force has looked at private open space preservation in such matters. The Task Force has had success with easement programs in other cities.

Thus the Task Force believes that it is possible and workable to establish a program in the Historic District private open space. The Task Force recommends that the City establish a program to encourage such a policy is attached to the City's zoning and building codes.

In addition, while the Task Force has looked at easements in the Historic District, it has also looked at a program of the sort described in the report for facades, exteriors and

the City's zoning and building ordinances, it is at least impractical and probably impossible in most instances involving single-family homes to establish a formal disincentive to diminish open space. Thus it is necessary to provide a mechanism within the limits of existing law for civic-minded property owners to foster the protection and preservation of open space currently owned by them.

Given the focus of the study on the Historic District, and on the open space represented by private gardens and yards, the Task Force looked at the Historic District to determine whether there were enough potentially eligible properties to make a comprehensive City program worthwhile. It identified over 100 such properties. Exhibit 2 illustrates some of those properties.

In addition, the Task Force discussed the general question of private open space preservation with persons who have experience in such matters. The Task Force found that other jurisdictions have had success with easement programs in similar or analogous situations.

Thus the Task Force has determined that it is desirable, worthwhile and workable to establish a City program to preserve in the Historic District private open space represented by gardens and yards. Accordingly, the Task Force recommends that Council announce a policy to that end and establish a program to implement the policy. A draft resolution for such a policy is attached as Exhibit 3.

In addition, while this report deals primarily with open space easements in the Historic District, the Task Force believes that a program of the sort described here could easily accommodate easements for facades, exteriors and interiors of appropriate structures in the

Historic District, and privately owned in the City. Any program established in the City should be broad enough to include the

II. Easement Described

In general, an easement is a right amounting to less than full ownership of the property owner. While the law recognizes many kinds of easements, the program suggests negative easements, that is, a restriction on the owner's right to alter or develop the property in enumerated ways. An easement of that kind would not impair the ownership and use of the property. Owners would be bound by its terms. The property owner would enter into a contract with the recipient of the easement, in the form of a recorded instrument, that would restrict the right to alter or develop the portion of the property covered by the contract. However, the easement would not restrict the owner's (and subsequent owners') control over the property for all purposes other than those specified in the easement document. A sample of a recorded easement document is attached as Exhibit 4.

III. Benefits of the Program

A. To the City

Alexandria's private open space is a valuable resource. The image and character of

Historic District, and privately owned open space in other parts of the City. Any program established in response to these recommendations should be broad enough to include those kinds of easements as well.

II. Easement Described

In general, an easement is a right or interest in real property amounting to less than full ownership, conveyed to another person by the property owner. While the law recognizes a number of different kinds of easements, the program suggested here would deal only with negative easements, that is, a restriction created by the property owner on his right to alter or develop the property in specifically enumerated ways. An easement of that sort would establish a permanent impairment on the ownership and use rights in the property and subsequent owners would be bound by its terms. Thus in a typical case, a current property owner would enter into a contractual arrangement with the recipient of the easement, in the form of a deed recorded in the City land records, that would restrict the owner's otherwise unfettered right to alter or develop the portion of the property described in the contract. However, the easement would not impair the property owner's (and subsequent owners') continuing right to use and enjoy the property for all purposes other than those specifically recited in the easement document. A sample of a recent easement of this sort is attached as Exhibit 4.

III. Benefits of the Program

A. To the City

Alexandria's private open space represents a shared community resource. The image and character of the City truly lie in the eye

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of the beholder. Open space preservation will perpetuate our attractive streets, landscapes, gardens, trees and plantings for the general benefit of the community. The Task Force believes that this will become an increasingly important factor over the years as economic pressures for near-in density increase.

B. To the Property Owner

1. Civic Pride. Most of the potential benefits of the private contribution of an easement are financial. But, as the discussion below highlights, some of those financial benefits may be uncertain. The Task Force feels that, whether or not dollar benefits are available, a number of City property owners are proud of the character of our City, and would be willing to contribute to the continuation of that character. Accordingly, one of the Task Force recommendations is that donors of easements be suitably recognized, if they choose to accept that recognition.

2. Income Tax Deduction. If the program is properly structured the easement donor may be entitled to a charitable contribution deduction for income tax purposes in the year in which the donation occurs, measured by the value of the property interested contributed. That value is the difference between the fair market value of the property immediately before the gift and the fair market value of the property immediately after it is burdened by the easement. The deduction will be available only to taxpayers who are entitled to itemize deductions on their returns.

3. Real Property Tax. Real property tax is assessed on the basis of the fair market value of the property. To the extent that

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4. Estate Ta

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C. Other Factors

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rket value of the property. To the extent that

the existence of an easement diminishes that fair market value, real
property tax is thereby decreased.

4. Estate Tax. For federal estate and state inheritance
tax purposes, property is included in a decedent's gross estate at
its fair market value. A reduction in fair market value by reason
of the easement has the potential for a reduction in estate tax.

C. Other Factors

The tax benefits described above are not necessarily automatic.
As a result, if the program is established care must be taken not to
hold out any assurance of the certainty of benefits. Because fair
market value, on which the benefits are based, is a question of fact
in each case as to which the taxpayer has the burden of proof, the
tax authorities may not agree with the value claimed by the donor,
particularly because properties burdened by an easement are generally
more difficult to value than unrestricted properties.

The Task Force discussed local real property tax assessment procedures
with personnel from the Alexandria Assessor's office and the state
Assessment Office. While they generally agreed in principle that an
open space easement could diminish taxable value in an appropriate case,
nonetheless the City Assessor has no discretion to promulgate an across-
the-board formula that would readily apply to all easements.

The donor may be required to incur the expense of an appraisal of
the property, deed registration costs, and perhaps engage the services
of professional advisors to draft the documents and provide tax advice.
In addition, if the property is mortgaged, the lender must acquiesce
in the grant of the easement.

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In the face of those potential disincentives, one of the aims of the program should be to provide as much information and support as possible to prospective donors to smooth the transaction for them.

IV. Easement Recipients

In order to qualify for tax benefits, the easement must be perpetual. As a practical matter, that requirement means that the recipient of the easement must be a state or a political subdivision thereof, on a publicly supported charitable or educational organization. In addition, it is necessary to monitor continued compliance with the terms of the easement. And, since the program would operate under Council policy and with the sponsorship of the City, it is both desirable and necessary to have City staff involvement in the program.

The Task Force recommends that the Alexandria Historical Restoration and Preservation Commission (the "Commission") be the grantee of easements under the program. The Commission was established by the state legislature in 1962 and, in effect, is empowered to accept easements of the sort envisaged under the program recommended here.

The Task Force understands that the Commission has indicated a willingness to undertake participation in the project, possibly in connection with the Historic Alexandria Foundation. However, the Commission anticipates that a reasonable and ongoing amount of City staff participation would be provided.

In respect to a limited number of properties in the Historic District, open space easements may be of sufficient significance to permit the donation of an easement to the Virginia Historic Landmarks Commission or to the National Trust for Historic Preservation. Too, there may

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be instances in which it would be of benefit to the City to purchase
easements.

V. General Structure of the Program

A. Information, Assistance and Publicity

The Task Force suggests that the Office of Historic Alexandria
could act as the coordinator of the program and provide publicity for
it, and information to interested persons in the form of a brochure
that outlines the mechanics and anticipated benefits of the program.
A staff person familiar with easement requirements and procedures should
be available to work with prospective donors.

B. Mechanics

In general, an easement donor would have photographs and an appraisal
made of the property to which the easement relates, and would prepare
and record a contract of easement in a form acceptable to the public
donee. Normally, the donor would bear the cost, but to the extent
the program and its procedures become generally standardized, it is
believed that those costs would not be overwhelming. In addition, the
administrator of the program would be in a position to recommend
appraisers, attorneys and others who are familiar with the procedures
involved. It might be possible, for example, to enlist the voluntary
services of members of the Alexandria Bar Association in appropriate
circumstances.

The Task Force believes it is desirable to maintain continued
compliance with the terms of easements on an annual or semiannual basis.

In general, compliance and enforcement would be the responsibility of the easement donee.

C. Cost To the City

The cost of the program to the City would include the printing costs of descriptive material and City staff time spent in dealing with interested persons and potential donors. Those costs, like the program itself, would be ongoing. The Task Force is not able to estimate those costs with accuracy.

D. Tax Aspects

Because the economic benefits of the program to the donor hinge on federal, state and local tax rules, the Task Force believes that, to the extent possible, it is desirable to provide as much certainty as possible on the tax aspects of the program, within the bounds of existing law and practice. Thus, after the form and format of the program are established but before it becomes operational, a ruling should be requested from the National Office of the Internal Revenue Service to the effect that the value of contributed easements will qualify as a deduction to the donor for federal tax purposes. In addition, the City administrator of the program should work with the City Assessor to attempt to establish standards for real property tax assessment purposes. While the Task Force recognizes that, as a matter of law, the Assessor cannot be bound by a single formula, nonetheless it should be possible to set up informal guidelines that will be applied as appropriate on a case-by-case basis.

VI. Floor Area Ratio

An allied aspect of the program is the impact on the current floor area ratio. There will be a direct impact on the amount of open space. If Council guidelines suggested in the report are adopted throughout the City, it will be for Council to review the requirements to ensure that they are consistent with the City's goals. A report to the Council in 1975 is a report to the Council on the present floor area ratio.

VII. Recommendations

- The Task Force recommends the following:
1. Council should be invited to report.
 2. Council should be invited to report.
 3. The Alexandria Assessor should be invited to report.
 4. The Office of the Assessor should be utilized to administer the program.
 5. Council should be invited to report.
- currently administered by the Assessor. It is suggested that the Assessor act to foster, City planning.

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VI. Floor Area Ratio Revisions

An allied aspect of the open space preservation question is the current floor area ratio provisions of the City Code. They have a direct impact on the ability of property owners to develop existing open space. If Council adopts a policy favoring open space along the lines suggested in this report, both in the Historic District and throughout the City, the Task Force believes it would be appropriate for Council to review the current floor area ratio and open space reserve requirements to ensure that, both formally and as administered, they are consistent with and operate in furtherance of that policy. Exhibit 5 is a report to the Task Force that suggests certain revisions to the present floor area ratio standards.

VII. Recommendations

The Task Force makes the following recommendations:

1. Council should adopt a formal policy favoring open space easements.
2. Council should establish a program to implement that policy.
3. The Alexandria Historical Restoration and Preservation Commission should be invited to participate in that program as suggested in this report.
4. The Office of Historic Alexandria and City staff should be utilized to administer and coordinate the program.
5. Council should review the floor area ratio provisions, as currently administered, to ensure that they are consistent with, and act to foster, City policy on open space.

Respectfully submitted,

Task Force for Open Space Easements
Patricia S. Ticer, Chairman

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- Exhibits:
1. Task Force Members
 2. Map of Certain Open Space Properties
 3. Draft Council Resolution
 4. Sample Easement
 5. Report to Task Force on Floor Area Ratio

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5. Report to Task Force on Floor Area Ratio

TASK FORCE FOR OPEN SPACE EASEMENTS
MEMBERS

Vice Mayor Patricia S. Ticer, Chairperson
Councilman Carlyle C. Ring, Jr.
Mr. William Anderson, Alexandria Historical Society, Inc.
Dr. Morgan Delaney, Historic Alexandria Foundation
Mrs. Andrea Dimond, Old Town Civic Association
Mrs. Effie Dunstan, The Alexandria Association
Ms. Ellen Klein
Alexandria Archaeological Commission (Alternate)
Mrs. Sara Masterson
Historic Alexandria Resources Commission
Mrs. Vivienne Mitchell
Alexandria Archaeological Commission
Mr. Robert L. Montague, III
Alexandria Historical Restoration & Preservation Commission
Mr. Michael Mulrone, IRS Tax Expert
Mrs. Karol Rodriguez
Historic Alexandria Resources Commission

Staff to the Commission

Mrs. Jean Taylor Federico, Director
Office of Historic Alexandria
Mr. John Henderson, Assistant City Attorney
City Attorney's Office
Mrs. Jennifer Hollings, City Arborist
Recreation, Parks & Cultural Activities
Janet Gwaltney, Intern
Office of Historic Alexandria
Jere Gibber, Administrative Assistant
Office of Historic Alexandria

The Sub-Committee charged with identifying properties within the Old and Historic Alexandria District, upon which it might be desirable to place an easement, felt that there are several categories of properties which should be considered. These are:

1. Private homes with large gardens, which are visible from from a public right-of-way.
2. Church cemeteries within the District.
3. Open space surrounding public buildings (e.g. Lloyd house or Ramsay House).
4. Public parks.
5. Private parks (e.g. the grounds of the Masonic Memorial--although this particular example is outside of the Old and Historic District boundaries).

A list of private homes with large gardens is attached. It is by no means all inclusive. Some properties are regarded as more critical than others, either because of their location, which places greater economic pressures upon the land, or because of the historic or architectural importance of the building itself. In the latter case, the preservation of the setting of the building should be a priority. We have not included on our list so-called Flounder Houses, which are relatively unique to Alexandria. They are characteristically built back from the front property line. Theoretically, an owner could build a structure in front of the flounder, obscuring it from view. It would be desirable to prevent such in-fill development from taking place. An easement placed upon the front "garden" of these properties might be the best way to assure their survival.

112 South Patrick
 114 South Patrick
 206 South Patrick
 211 North Patrick
 South Alfred (Alfred Street Baptist Church)
 517 South Washington (Rector Real Estate)
 South Washington (Alexandria Academy grounds)
 118 North Washington (Christ Church cemetery)
 216 North Washington
 220 North Washington (Lloyd House gardens)
 329 North Washington (Gregory-DeLaney house)
 407 North Washington (Charles Lee house)
 428 North Washington (Edmund Jennings Lee house)
 429 North Washington (Lee-Fendall-Lewis house)
 515 North Washington (Mount Vernon Cotton Mill)
 322 South Saint Asaph (Pullman)
 317 South Saint Asaph
 314 South Saint Asaph
 311 South Saint Asaph
 307 South Saint Asaph
 304 South Saint Asaph
 212 South Saint Asaph
 211 South Saint Asaph
 208 South Saint Asaph
 202 South Saint Asaph
 223 North Saint Asaph

(1)

112 South Patrick
114 South Patrick
206 South Patrick
211 North Patrick
 South Alfred (Alfred Street Baptist Church)
517 South Washington (Rector Real Estate)
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118 North Washington (Christ Church cemetery)
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429 North Washington (Lee-Fendall-Lewis house)
515 North Washington (Mount Vernon Cotton Mill)
322 South Saint Asaph (Pullman)
317 South Saint Asaph
314 South Saint Asaph
311 South Saint Asaph
307 South Saint Asaph
304 South Saint Asaph
212 South Saint Asaph
211 South Saint Asaph
208 South Saint Asaph
202 South Saint Asaph
223 North Saint Asaph

(2)

520 South Pitt
415 South Pitt
213 South Pitt
217 North Royal
623 South Fairfax
518 South Fairfax
510 South Fairfax
501 South Fairfax
417 South Fairfax
412 South Fairfax
321 South Fairfax
224 South Fairfax
222 South Fairfax
217 South Fairfax
212 South Fairfax (Dr. William Brown house)
209 South Fairfax
207 South Fairfax
203 South Fairfax
100 block South Fairfax (Burke and Herbert parking lot)
300 block South Fairfax (Presbyterian Meeting House cemetery)
209-211 North Fairfax, rear on Thompson Alley (Loggia house, d
 by Benjamin Latrobe)
505 South Lee
420 South Lee
418 South Lee
419 South Lee

(1)

ired Street Baptist Church)
(Rector Real Estate)
(Alexandria Academy grounds)
(Christ Church cemetery)

(Lloyd House gardens)
(Gregory-DeLaney house)
(Charles Lee house)
(Edmund Jennings Lee house)
(Lee-Fendall-Lewis house)
(Mount Vernon Cotton Mill)
(Pullman)

(2)

520 South Pitt
415 South Pitt
213 South Pitt
217 North Royal
623 South Fairfax
518 South Fairfax
510 South Fairfax
501 South Fairfax
417 South Fairfax
412 South Fairfax
321 South Fairfax
224 South Fairfax
222 South Fairfax
217 South Fairfax
212 South Fairfax (Dr. William Brown house)
209 South Fairfax
207 South Fairfax
203 South Fairfax
100 block South Fairfax (Burke and Herbert parking lot)
300 block South Fairfax (Presbyterian Meeting House cemetery)
209-211 Noth Fairfax, rear on Thompson Alley (Loggia house, designed
by Benjamin Latrobe)
505 South Lee
420 South Lee
418 South Lee
419 South Lee

328 South Lee
322 South Lee
310 South Lee
304 South Lee
224 South Lee
220 South Lee
218 South Lee
209 South Lee
207 South Lee
113 South Lee
106 South Lee
609 Oronoco (Bryant house)
607 Oronoco (Lee Boyhood Home)
606 Oronoco
600 Oronoco
601 Princess
307 Queen
308 Queen
312 Queen
211 Cameron
503 Cameron
607 Cameron (Lord Fairfax house)
611 Cameron (Light Horse Harry Lee house)
913 Cameron
221 King (Ramsey house)
1317 King

ing lot)
ouse cemetery)
oggia house, designed

(4)

111 Duke
200 Duke
202 Duke
206 Duke
210 Duke (Dr. James Craik house)
314 Duke
404 Duke
408 Duke (Kate Waller Barrett house)
406 Duke
504-506 Duke
516 Duke
708-710 Duke (Saint John's Academy)
801 Duke
1707 Duke (Hooff Realty offices)
414 Duke
407 Prince
413 Prince
502 Prince
712 Prince (Swann-Daingerfield)
713 Prince
803 Prince
804 Prince
805 Prince
916 Prince
1020 Prince
415 Wolfe

510 Wolfe (Vowell-Smi
708 Wolfe
210 Wilkes
221 Gibbon
414 Franklin (Spring
400 Block Franklin (h
215 Jefferson
222 Jefferson
2 Swift Alley

(5)

510 Wolfe (Vowell-Smith-McConnell house)

708 Wolfe

210 Wilkes

221 Gibbon

414 Franklin (Spring Gardens Tavern)

400 Block Franklin (house moved from South Pitt Street)

215 Jefferson

222 Jefferson

2 Swift Alley

(5)

h-McConnell house)

ardens Tavern)

use moved from South Pitt Street)

(6)

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Properties in Alexandria with an Easement

207 Prince Street

711 Prince Street

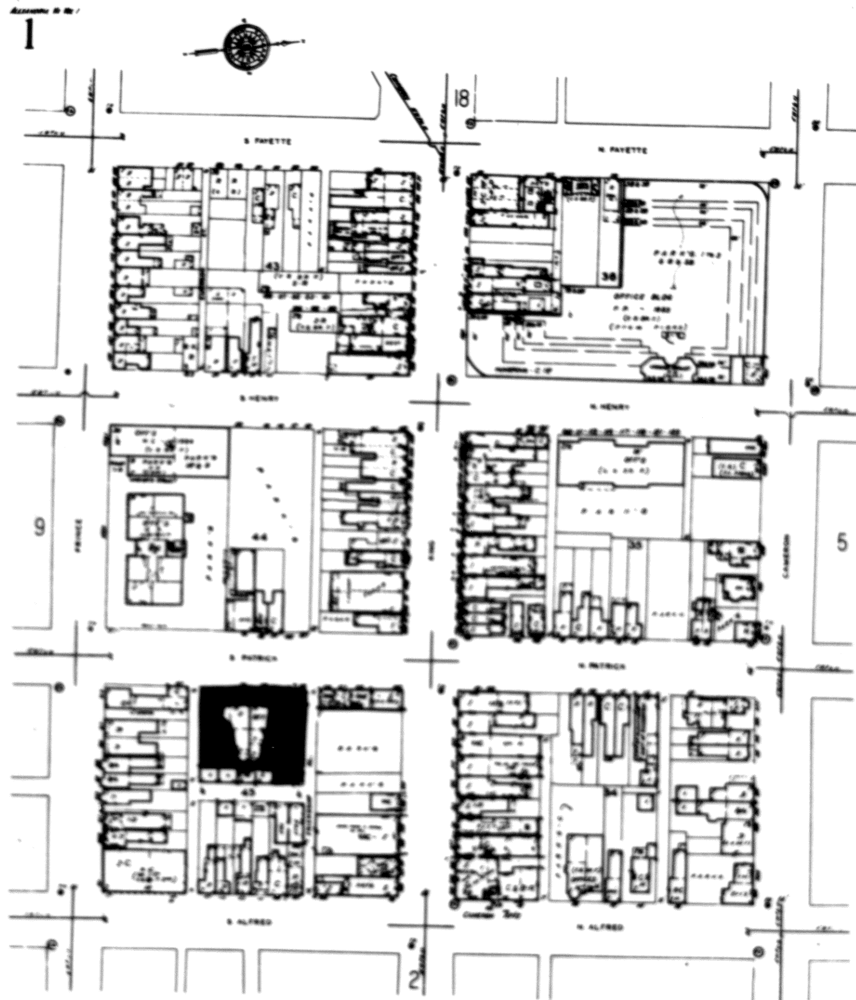
811 Prince Street

601 Duke Street

301 S. St. Asaph Street

619 S. Lee Street

229 S. Pitt Street

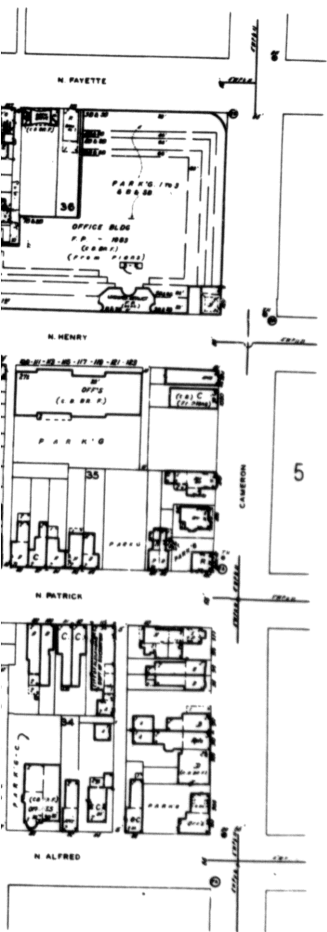


Properties identified by Task Force for potential easements.

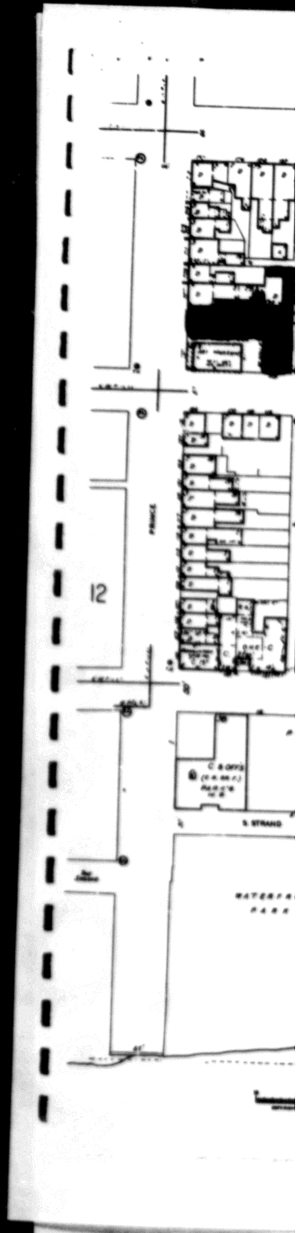
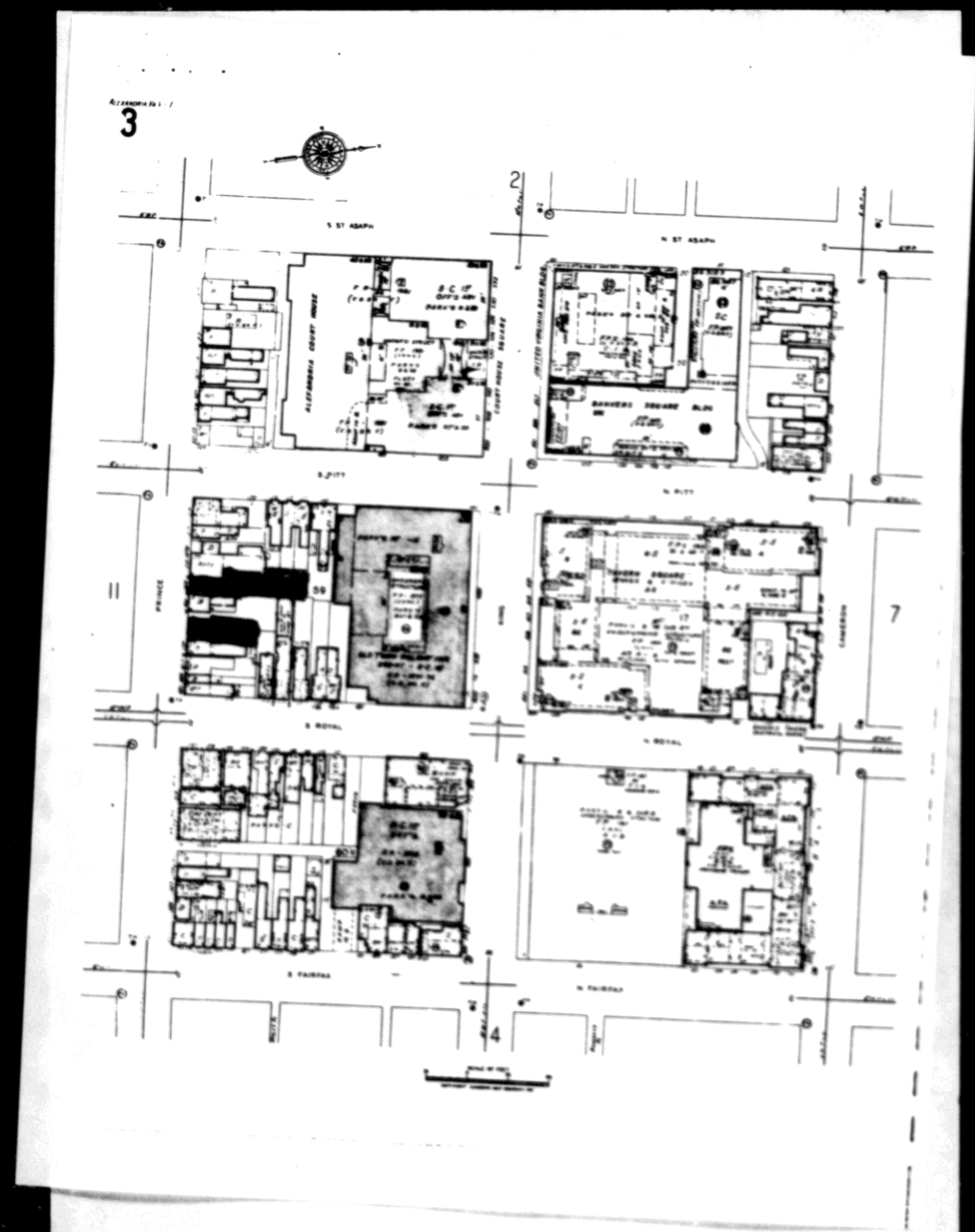
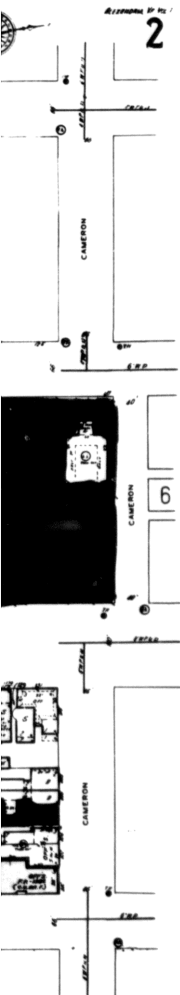


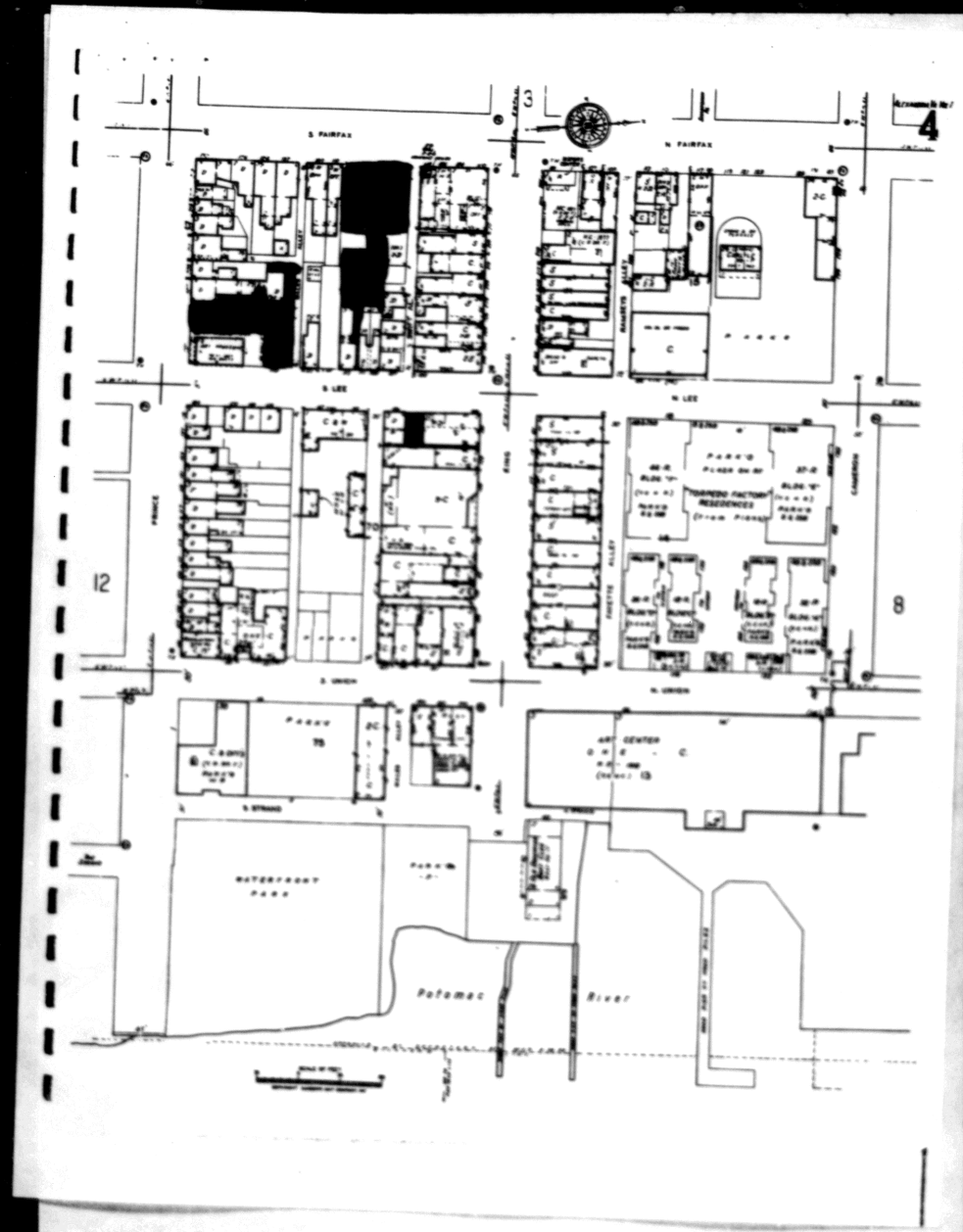
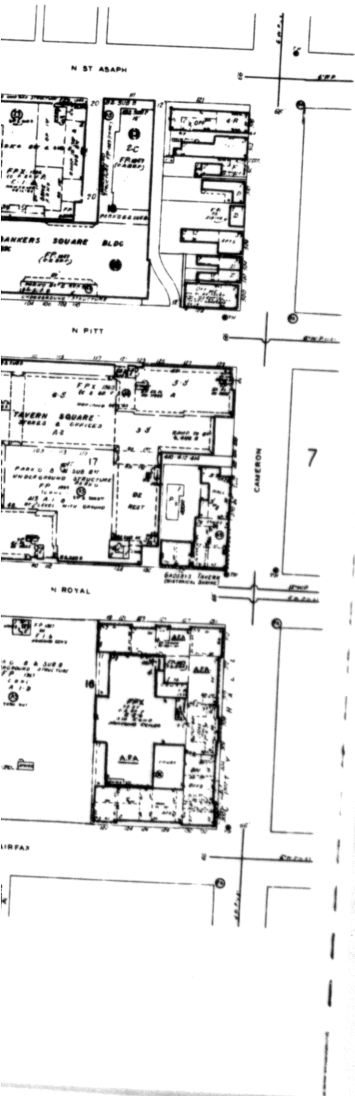
Properties with easements.





Properties with easements.



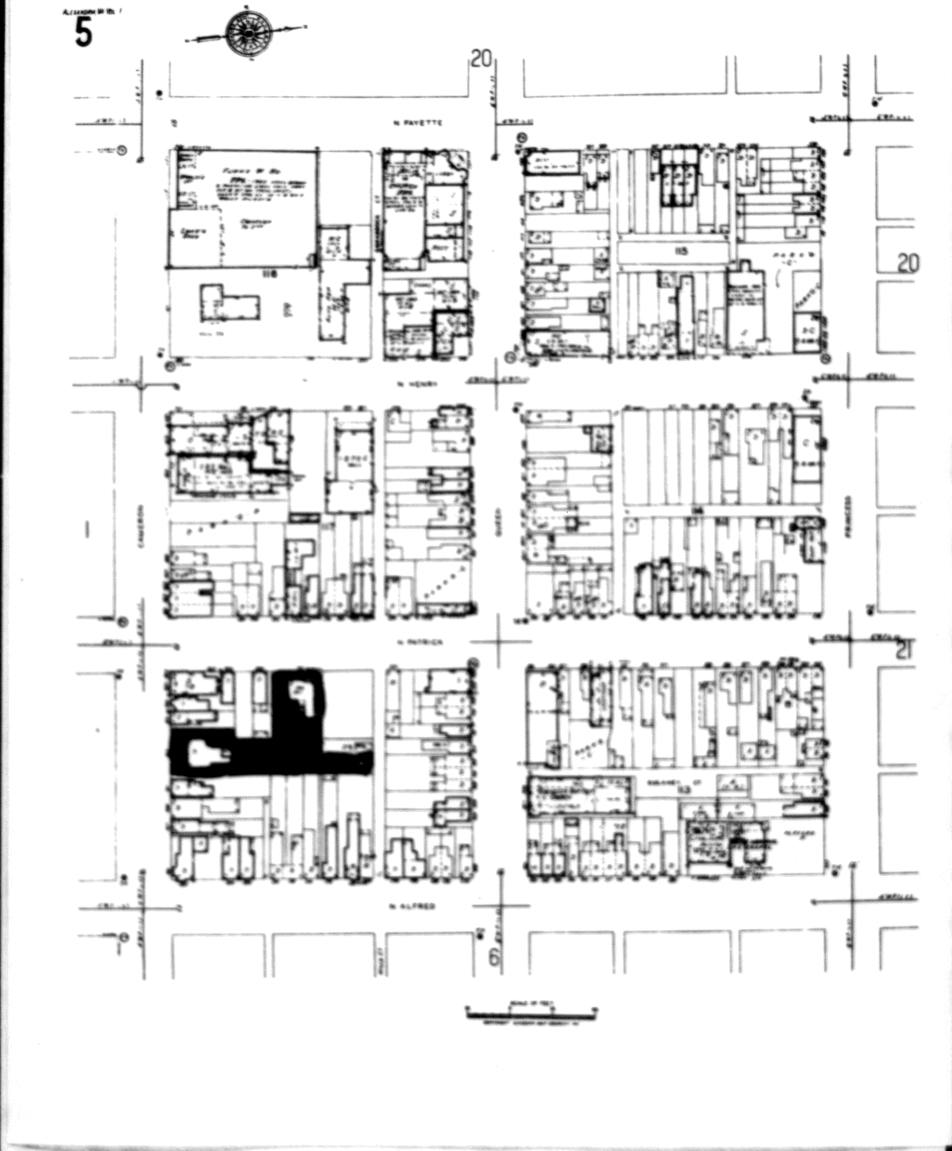
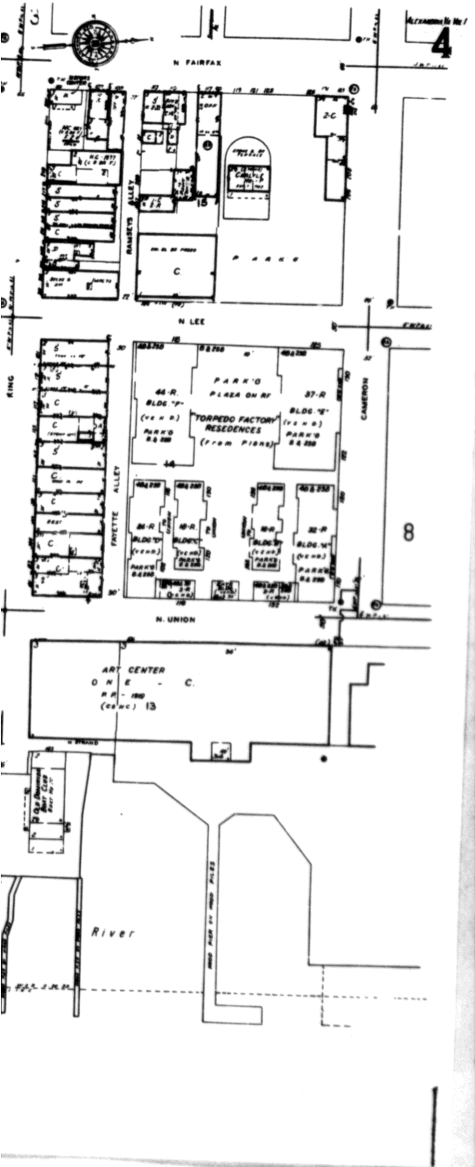


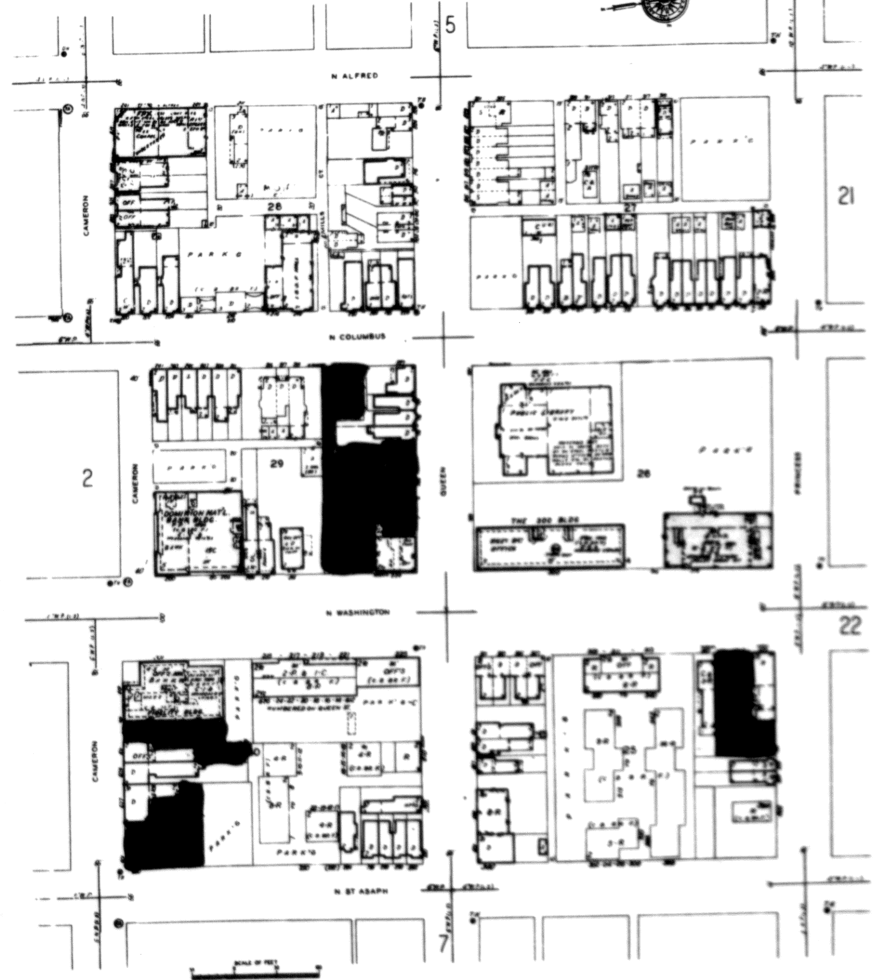
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12

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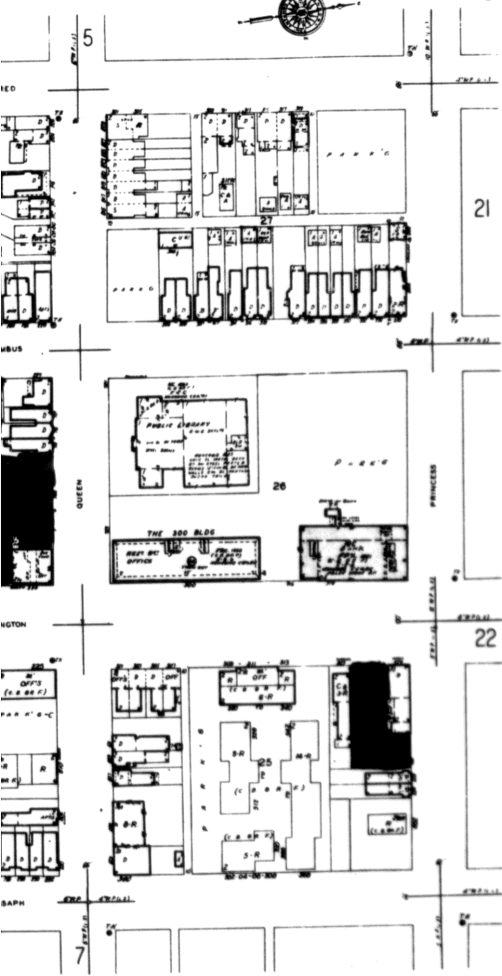
5





ATTACHED TO NO. 6

6



ATTACHED TO NO. 7

7



