

928 St Ann

ADDRESS: 928 St. Ann  
 OWNER: Aura, LLC  
 SQUARE: 87  
 USE: Residential  
 DENSITY-  
 ALLOWED: 2 units  
 EXISTING: 6 units  
 PROPOSED: 1 unit

APPLICANT: Gunner Guidry (Architect)  
 William Goliwas (Contractor)  
 LOT SIZE: 2675.5 sq. ft.  
 OPEN SPACE-  
 REQUIRED: 802.7 sq. ft.  
 EXISTING: Unknown  
 PROPOSED: Unknown

**ARCHITECTURAL / HISTORICAL DESCRIPTION:**

Main building and attached service ell – **Green**, or of local architectural and/or historic importance.

Narrow, 3-bay, 3-story brick townhouse and attached service ell, constructed in 1842 in the Greek Revival style by L. Cordier, builder, for Gabriel Montemart. Its main entrance has an entablature and pilasters, and there once was at its river side a carriageway that led back to the courtyard and the stable.

**Vieux Carré Commission Meeting of**

**10/21/2020**

**DESCRIPTION OF APPLICATION:**  
**Permit #18-28545-VCGEN**

10/21/2020

**Lead Staff: Erin Vogt**

Review of Staff and Committee recommendation to revoke approval of CMU property line wall under Section XII of the VCC bylaws, per materials stamped VCC approved 09/05/2020.

**STAFF ANALYSIS & RECOMMENDATION:**

10/21/2020

The 11'-0" tall stuccoed CMU wall was approved and permitted by the VCC and the Department of Safety and Permits in September 2019 as part of a proposal to renovate the entire property. Work has been progressing on the site, but the Burgundy-side CMU wall has not yet been constructed. After permits were issued, staff was made aware that the wall, if built as approved, would only be inches away from the neighboring wood-frame 20th century yellow-rated shotgun cottage at 922 St. Ann, which appears to be less than a foot from the remaining foundation of the previously existing fence. The drawing set provided by the architect did not show the adjacent building in relation to the wall, and staff was unaware of this conflict prior to permit issuance. Additionally, the wall was raised as a potential life safety concern by the neighbor since multiple windows on this side of the building would be blocked entirely.

Section XII of the Bylaws of the Vieux Carré Commission of the City of New Orleans states that:

*“Any Commission member or the Director may place a matter which has previously been voted on by the Commission on the agenda of a duly called meeting of the Commission for reconsideration if:*

- a) Circumstances and conditions have substantially changed since its original consideration, or*
- b) Inaccurate data was contained in the report on the matter, or*
- c) Additional information has been presented since its original consideration.*

*The Commission shall, by motion determine whether or not the matter is eligible for reconsideration in accordance with the above. If the Commission determines, by an affirmative vote, the reconsideration is warranted, the Commission may then reconsider its prior action.*

Staff presented the wall to the Committee on 10/13/2020; the Committee moved to forward the wall to the Commission for Section XII review. Staff recommends the Commission **reconsider** prior approval of the wall under Section XII (B) and Section XII (C).

VCC staff reached out to the project architect and the Department of Safety and Permits regarding the safety concerns raised by the wall and received the following response from former director Zachary Smith:

*Overall, there is nothing specific...related to building/zoning code that would clearly tell us we can't approve it. We definitely don't like it nor do we support it, based on this:*

*SECTION 101 - GENERAL*

*101.3 Intent. The purpose of this code is to establish the minimum requirements to provide a reasonable level safety to protect the public health and general welfare through structural*

*strength, means of egress facilities, stability, sanitation, adequate light and ventilation, energy conservation, and safety to life and property from fire and other hazards attributed to the built environment and to provide reasonable level of safety to fire fighters and emergency responders during emergency operations.*

*We have permitted wooden fences in the past without much to-do as they are more easily breakable. If a concrete wall limits the passage of a firefighter more than already limited to less than 2', I would say that my official position would say no based on the presence of the intent. We would reasonably argue that this wall would prevent firefighters from responding to a fire. The Quarter, especially from St Peter to Canal is in a heightened risk of fire spread and you might be aware that all fire calls in the FQ are 2-alarm by practice as it is reasonably expected that travel times may be further delayed due to hard-to-navigate streets.*

*With this said, my official recommendation would be to DENY.*

In support of installing the wall as approved in 2019, the applicant has submitted the following documentation:

- The 1842 building contract calls for “an 11-foot enclosing wall around the courtyard.” The brick wall was replaced with a CMU wall in the mid- to late-twentieth century.
- The original brick wall was replaced with a CMU wall, which collapsed in 2008. The neighboring property received a VCC permit in 2009 to build a 16'-0 long seven board fence at the rear of the property [Staff note: the fence was built substantially taller and does not meet building code or VCC Design Guidelines and will be cited as a violation.]
- Surveys of both properties show approximately 6” between 922 St. Ann and the property line wall.
- The original wall was built before the current building at 922 St. Ann (dated to early 20<sup>th</sup> century). [Staff notes that the 1896 Sanborn maps suggest that the original 922 St. Ann building was in the same location, at the property line, and predated the CMU wall that collapsed in 2008.] The wall foundation is still intact and is being used by the neighbor for their property line fence.
- The applicant stated “the wall had historically made it difficult for the neighbor to use the three windows in question for egress. None of the three windows are secondary means of egress for the house. The First and Second windows are in the same room as the house's front three street facing windows and the house also has left side entry doors and windows. The third window affected is a bathroom window and does not meet the required size to be considered an egress window.”

VCC staff is primarily concerned that the installation of the CMU wall will have a devastating effect on the Burgundy elevation of 922 St. Ann, since access for routine maintenance and repairs will be impossible. The VCC is tasked with safekeeping the architectural fabric of the Quarter and must consider the impact the wall will have on the preservation of the neighboring building, as routine maintenance is the first and best method of preserving historic structures. An 11'-0” tall CMU wall will prevent access and repairs for decades, which could lead to significant loss. Staff has suggested installation of a seven-board fence as an alternative, since the fence boards could be easily removed to allow for maintenance of windows or weatherboards as needed.

Considering the substantial risk to the neighboring building if the wall is built, staff recommends the Commission **revoke** prior VCC approval and **deny** construction of the Burgundy-side CMU wall.

**VIEUX CARRÉ COMMISSION ACTION:**

10/21/2020

**Architecture Committee Meeting of****10/13/2020****DESCRIPTION OF APPLICATION:**  
**Permit #18-28545-VCGEN**

10/13/2020

**Lead Staff: Erin Vogt**

Proposal to install double gate between driveway and rear courtyard and review of proposed alterations to paving plan, per application & materials received 08/28/18 & 10/06/2020, respectively.

[CMU property line wall presented to Committee for Section XII consideration, per VCC and Safety and Permits concerns raised after approval and permit.]

**STAFF ANALYSIS & RECOMMENDATION:**

10/13/2020

Several alterations to the approved drawings have been submitted as a change order for review by the Committee. The proposed changes are as follows:

**Additional gate:**

The applicant is proposing to install a double wooden paneled gate between the new Dauphine-side property line wall and the main building, separating the rear courtyard from the Dauphine-side yard, which is being used as a driveway. The gates have two decorative wooden panels and are 7'-2" tall, with 8'-0" tall brick pilasters on each side. Foundation drawings and millwork details have not been provided, and it is unclear from the submitted materials if the pilasters will stand independent from the main building or will be attached.

The VCC Design Guidelines discourage subdivision of exterior courtyard spaces, particularly separation of areas that were historically continuous. Staff is concerned that adding a wooden double gate to the rear corner of the building may alter the character of the exterior space around the building. More importantly, adding a new wall at a right angle to the rear of the building will likely cause damage to the historic masonry structure, would be difficult to remove, and may not be possible depending on the depth and location of the existing corbelled brick foundation. While staff is sympathetic to the desire for privacy and separation from the courtyard, the overall visual impact on the space is likely to be significant. Staff seeks guidance from the Committee regarding potential alternatives and suggestions to meet the applicant's needs.

Staff notes that, if a wooden double gate is found conceptually approvable in this location, the design should be simplified prior to submittal of final millwork details. The proposed design, while nicely proportioned, is overly decorative to be considered appropriate for a building of this age and style.

**Paving plan:**

The permitted materials called for "3" thick minimum, separated rectangular flagstone. Grass between, reuse existing flagstone if possible." The applicant is now proposing to install uniform 18x24" flagstone, separated 2-1/2" for grass growth and permeability. Staff is unsure if the spacing will be continued in the courtyard at the rear, or if this pattern will be maintained throughout. Staff has no objection to this change conceptually, but requests clarification from the applicant on the thickness of the flagstone. The flagstone in the driveway/parking area should be 3" thick to handle vehicular loads, while the flagstone at the rear could be thinner if needed.

**Property line wall:**

Staff is returning the Dauphine-side property line wall (permitted by the VCC and Department of Safety and Permits in September 2019) to the Committee for additional consideration following submittal of additional information and onsite inspection. The drawings provided by the architect did not show the adjacent wood-frame 20th century yellow-rated shotgun cottage at 922 St. Ann, which appears to be less than a foot from the property line. The 11'-0" tall CMU wall will make the Burgundy side of the building completely inaccessible for routine maintenance and was raised as a potential life safety concern since multiple windows on this side of the building would be blocked entirely. VCC staff reached out to the architect and the Department of Safety and Permits on the status of the wall and received the following response from former director Zachary Smith:

*Overall, there is nothing specific...related to building/zoning code that would clearly tell us we can't approve it. We definitely don't like it nor do we support it, based on this:*

**SECTION 101 - GENERAL**

*101.3 Intent. The purpose of this code is to establish the minimum requirements to provide a reasonable level safety to protect the public health and general welfare through structural strength, means of egress facilities, stability, sanitation, adequate light and ventilation, energy conservation, and safety to life and property from fire and other hazards attributed to the built*

*environment and to provide reasonable level of safety to fire fighters and emergency responders during emergency operations.*

*We have permitted wooden fences in the past without much to-do as they are more easily breakable. If a concrete wall limits the passage of a firefighter more than already limited to less than 2', I would say that my official position would say no based on the presence of the intent. We would reasonably argue that this wall would prevent firefighters from responding to a fire. The Quarter, especially from St Peter to Canal is in a heightened risk of fire spread and you might be aware that all fire calls in the FQ are 2-alarm by practice as it is reasonably expected that travel times may be further delayed due to hard-to-navigate streets.*

*With this said, my official recommendation would be to DENY.*

VCC Staff has concerns that the long-term maintenance and preservation of the neighboring building may be compromised, and notes that Section XII of the Bylaws of the Vieux Carré Commission of the City of New Orleans states that:

*“Any Commission member or the Director may place a matter which has previously been voted on by the Commission on the agenda of a duly called meeting of the Commission for reconsideration if:*

- d) Circumstances and conditions have substantially changed since its original consideration, or*
- e) Inaccurate data was contained in the report on the matter, or*
- f) Additional information has been presented since its original consideration.*

*The Commission shall, by motion determine whether or not the matter is eligible for reconsideration in accordance with the above. If the Commission determines, by an affirmative vote, the reconsideration is warranted, the Commission may then reconsider its prior action.*

In support of installing the wall as previously approved, the applicant has submitted the following documentation:

- The 1842 building contract calls for “an 11-foot enclosing wall around the courtyard.”
- The original brick wall was replaced with a CMU wall, which collapsed in 2008. The neighboring property received a VCC permit in 2009 to build a 16'-0 long seven board fence at the rear of the property [Staff note: the fence was built substantially taller and does not meet building code or VCC Design Guidelines and will be cited as a violation.]
- Surveys of both properties show approximately 6” between 922 St. Ann and the property line wall.
- The original wall was built before the current building at 922 St. Ann (dated to early 20<sup>th</sup> century). [Staff notes that the 1896 Sanborn maps suggest that the original 922 St. Ann building was in the same location, at the property line.] The wall foundation is still intact and is being used by the neighbor for their property line fence.
- The applicant stated “the wall had historically made it difficult for the neighbor to use the three windows in question for egress. None of the three windows are secondary means of egress for the house. The First and Second windows are in the same room as the house's front three street facing windows and the house also has left side entry doors and windows. The third window affected is a bathroom window and does not meet the required size to be considered an egress window.”

In addition to fire safety issues raised by Safety and Permits, VCC staff is primarily concerned that the installation of the CMU wall will have a devastating effect on the Burgundy elevation of 922 St. Ann since access for routine maintenance and repairs will be impossible. The VCC is tasked with safekeeping the architectural fabric of the Quarter and must consider the impact this work will have on the preservation of the neighboring building. An 11'-0” tall CMU wall will prevent access and repairs for decades, which could lead to significant loss. Staff has suggested a seven-board fence, since the fence boards could be easily removed to allow for maintenance of windows or weatherboards as needed. Staff notes that wooden fences may not exceed 8'-0”, as building code requires that any fence exceeding 8'-0 tall within 3'-0” of a property line must be wind and fire rated (the existing wood fence at the rear of 922 St. Ann will be cited for this reason, as well as deviating from the 2009 VCC permit).

Considering the substantial preservation and fire safety concerns raised by the CMU wall were not apparent in the original drawing set approved by the VCC and S&P, staff recommends that the Committee forward the wall to the Commission for reconsideration under Section XII.

**ARCHITECTURAL COMMITTEE ACTION:**

10/13/2020

Ms. Vogt presented the staff report with Mr. Goliwas present on behalf of the application. Mr. Fifield asked the Director if it was appropriate for the Committee to discuss the wall or if it should be forwarded to the Commission without comment; Mr. Block responded that it was appropriate.

Regarding the gates, Mr. Goliwas stated that they would provide privacy and security for the rear courtyard and similar gates are not uncommon elsewhere in the District. Ms. Vogt stated that, if a gate in this location is found approvable in concept, additional drawings would be required for review prior to final approval.

Regarding the property line wall, Mr. Goliwas stated that they wanted to rebuild the CMU wall in the same location and height that existed prior to 2008, adding that the previous CMU wall was installed in approximately the 1990s. He disagreed that the wall would impede emergency access, adding that it might provide protection from fire spread. Ms. DiMaggio asked if he had any response to staff concerns regarding maintenance being impossible; Mr. Goliwas responded that the original wall predated the shotgun. Mr. Bergeron stated that he was interested in hearing from the neighboring property owner what their maintenance plan would be, since it appears difficult. With no further discussion necessary, the Committee moved on to the next item on the agenda.

### **No Public Comment**

#### **Discussion and motion:**

Mr. Bergeron moved to:

- **Conceptually approve** the proposed paving alterations, with the proviso that they must be 3” minimum thickness at the driveway;
- **Conceptually approve** a gate in the proposed location, with the provisos that it must be independently supported and may not touch the building, and must be of simple design;
- Forward the Burgundy-side CMU wall to the full Commission to discuss reconsideration under Section XII of the Bylaws of the Vieux Carré Commission.

Ms. DiMaggio seconded the motions, which passed unanimously.

1005-09 St Philip

ADDRESS: 1005-09 St. Philip Street  
 OWNER: Balentine Carbondale Holdings LLC  
 ZONING: VCR-1  
 USE: Residential

APPLICANT: John C. Williams  
 SQUARE: 105  
 LOT SIZE: 2792.4 sq. ft. (approx.)

**DENSITY**

Allowed: 3 units (approx.)  
 Existing: 1 Unit  
 Proposed: No Change

**OPEN SPACE**

Required: 837.7 sq. ft. (approx.)  
 Existing: Unknown  
 Proposed: No Change

**ARCHITECTURAL / HISTORICAL DESCRIPTION OF PROPERTY**

This address actually consists of two historic lots of record, upon which separate buildings stand. At 1005, there is a circa 1895 2-bay shotgun cottage. At 1009-11, however, a c. 1830 frame Creole cottage was demolished in the 1940's. The historic service building at the rear property line was rebuilt, probably using the original materials. The small shed at the front property line has no significance.

Rating: 1005 St. Philip -- Green - of local architectural and/or historical importance.  
1007-09 St. Philip -- Rear “kitchen”-- orange - unrated 20th century construction;  
shed at front property line -- brown of no architectural significance.

**Vieux Carré Commission Meeting of** **10/21/2020**

**DESCRIPTION OF APPLICATION:** 10/21/2020  
**Permit #18-01001-VCGEN** **Lead Staff: Erin Vogt**

Appeal of Architectural Committee approval to renovate courtyard, per application & materials received 01/28/18 & 09/01/2020, respectively. **[Written notice of appeal received 10/09/2020.]**

**STAFF ANALYSIS & RECOMMENDATION:** 10/21/2020

On 08/19/2020, the Commission reviewed an appeal of the first fountain design and deferred the application for 30 days to provide the appellant time to file an appeal with the Board of Zoning Adjustments regarding the location of the fountain in relation to side yards and required setbacks. The appeal was heard by the BZA on 10/12/2020 and the Zoning Department’s interpretation was upheld; no 3’-0” setback is required for water features in the French Quarter.

At the 08/19/2020 hearing, the Commission encouraged the applicant and appellant to work together to find a solution both parties would be satisfied with. The applicant revised the proposal and received conceptual approval from the Committee on 09/10/2020. The revisions were reviewed by the Commission on 09/16/2020, but no motion was made since the appellant had not provided staff with written notice of appeal. The appellant is now appealing the most recent design.

The grapefruit tree is no longer being proposed but is noted in the same location as “new fruit tree with noninvasive root system.” Staff requested that the dimensions of this space be provided on the drawings and that the applicant propose specific species of tree so staff can verify that it will not cause disruption to the foundations of the existing walls and fence before granting approval in this location.

The fountain design has been modified with the goal of pulling the water sources away from the existing brick fence to avoid moisture wicking. The fountainhead is shown mounted to a steel support plate, offset 6” from the brick wall and anchored below. Instead of applying waterproofing directly to the existing brick fence, a CMU knee wall (shown with a brick cap and PVC pond vapor barrier) will be added between the fence and the basin. The brick basin is slightly larger in each direction (increasing in depth from 3’-9” to 5’-1”) and is now proposed as 1’-5” tall to comply with CZO requirements.

Staff did not consider any of the proposed changes detrimental to the appearance of the fountain and considered it to fit within the tout ensemble of the French Quarter. The added layer of CMU, increased waterproofing measures (this design also calls for “steel support and mesh, shop drawings to be submitted to the VCC”), and pulling the fountainhead away from the wall should all serve to protect the brick fence from moisture and wicking, addressing preservation concerns. Staff requested additional development of the steel fountainhead support to ensure that it is appropriately detailed, as well as submittal of manufacturer’s specifications for all pumps and equipment.

Overall, staff found the proposed alterations to the design to be in keeping with the Design Guidelines and VCC purview and recommended conceptual approval with final details and materials to be submitted for

final review prior to permit issuance. The Committee moved to conceptually approve the applicant's revisions, with a proviso that final approval or denial of the proposal to install a fruit tree will be handled at staff level once adequate information is submitted for review.

Staff recommends that the Commission uphold the decision of the Architectural Committee and **deny** the appeal.

[NOTE: Materials and photos submitted by the appellant on 10/20/2020 were added to the PowerPoint presentation but were not received in time for review and analysis by staff prior to preparation of the report.]

**VIEUX CARRÉ COMMISSION ACTION:**

10/21/2020

**Vieux Carré Commission Meeting of****09/16/2020****DESCRIPTION OF APPLICATION:**  
**Permit #18-01001-VCGEN**

09/16/2020

**Lead Staff: Erin Vogt**

Update on current status of proposal to renovate courtyard and install fountain, following 30-day Commission deferral on 08/19/2020.

**STAFF ANALYSIS & RECOMMENDATION:**

09/16/2020

**[NOTE: The Commission is being updated on the status of the fountain design at 1005-09 St. Philip. VCC review is based on architectural merit and Design Guidelines appropriateness only. Zoning compliance will not be discussed as it is outside the VCC's purview. Any discussion regarding the location of the fountain should be directed to the Board of Zoning Adjustments.]**

On 08/19/2020, the Commission reviewed an appeal of the Committee's approval and deferred the application for 30 days to provide the appellant time to file an appeal with the Board of Zoning Adjustments and to give the applicant and property owners an opportunity to pursue compromises in the design to address the neighbors' concerns. The applicant revised the proposal as follows:

The grapefruit tree is no longer being proposed but is noted in the same location as "new fruit tree with noninvasive root system." Staff requested that the dimensions of this space be provided on the drawings and that the applicant propose specific species of tree so staff can verify that it will not cause disruption to the foundations of the existing walls and fence before granting approval in this location.

The fountain design has been modified with the goal of pulling the water sources away from the existing brick fence to avoid moisture wicking. The fountainhead is shown mounted to a steel support plate, offset 6" from the brick wall and anchored below. Instead of applying waterproofing directly to the existing brick fence, a CMU knee wall (shown with a brick cap and PVC pond vapor barrier) will be added between the fence and the basin. The brick basin is slightly larger in each direction (increasing in depth from 3'-9" to 5'-1") and is now proposed as 1'-9" tall so it can be used as a garden seat. The added height also reduces the potential splash from the sugar kettle as the water flows into the basin, which should further protect the brick fence.

Staff did not consider any of the proposed changes detrimental to the appearance of the fountain and considered it to fit within the *tout ensemble* of the French Quarter. The added layer of CMU, increased waterproofing measures (this design also calls for "steel support and mesh, shop drawings to be submitted to the VCC"), and pulling the fountainhead away from the wall should all serve to protect the brick fence from moisture and wicking, addressing preservation concerns. Staff requested additional development of the steel fountainhead support to ensure that it is appropriately detailed, as well as submittal of manufacturer's specifications for all pumps and equipment.

Overall, staff found the proposed alterations to the design to be in keeping with the Design Guidelines and VCC purview and recommended conceptual approval with final details and materials to be submitted to staff for final review prior to permit issuance. The Committee moved to conceptually approve the applicant's revisions, with a proviso that final approval or denial of the proposal to install a fruit tree will be handled at staff level once adequate information is submitted for review.

Staff has not been updated on the status of the neighbors' appeal to the Board of Zoning Adjustments.

Staff notes that the above information is being presented to the Commission following the 8/19/2020 motion to defer for 30 days, and no motion is required at this time.

**VIEUX CARRÉ COMMISSION ACTION:**

09/16/2020

Ms. Vogt read the staff report with Ms. Szalwinski present on behalf of the appeal and Mr. Williams, Ms. Bardwell and Ms. Balentine present on behalf of the property. Ms. Szalwinski noted that the fountain seat was taller than what was allowed by the CZO. She stated that she appealed the previous proposal with the Board of Zoning Adjustments and that it would be rescheduled due to the hurricane, but she was not sure of the date yet. She objected to the fountain still being attached to the fence and stated that she found any fruit tree to be inappropriate in this location.

Ms. Gasperecz thanked Ms. Szalwinski and asked the architect if he had any comments. Mr. Williams stated that the Committee found the design appropriate and conceptually approved the proposal. He added that they had documentation from Zoning stating that the previous design was approvable and that at this point they simply wanted to move forward. Ms. Gasperecz asked the Commission if they had any

other questions or comments. Mr. Villarreal stated that he was unsure what design had been approved or was being appealed. Mr. Block stated that the Committee conceptually approved the updated design and Ms. Szalwinski was appealing the previous proposal with the BZA. He went on to clarify that this proposal submitted by the architect in an effort to address the concerns of both parties, per the Commission's request at the last meeting. With no more questions or comments, Ms. Gasperecz moved to the next agenda item.

**Public Comment:**

**Terrence Jacobs**

While better than the outdoor shower proposed in 2018 I am concerned that water intrusion not only from the fountain itself leaking but also from CMU trapping/transmitting moisture between it and the common fence. Setting the fountain off and DISCONNECTED from the historic brick fence will mitigate moisture issues and preserve the older fence and allow necessary maintenance to it and the adjacent buildings. I reiterate that this fence runs into and becomes a part of my green-rated building next door. Also CZO 21.6.GG.2 states: water features are limited to a maximum depth of 18" so this will require a variance and should not be approved until obtained.

Any fruit tree has invasive roots which in a location of less than four feet will quickly outgrow and infringe upon and damage both the proposed fountain and adjacent buildings on both lots.

Rather than force an overly large, grand and overwhelming design for a two bay Victorian and 20 foot wide kitchen building perhaps a pedestal fountain away from the wall and different plantings are a better solution. While fruit trees are lovely planting one next to two balconies brings rats which will affect all surrounding properties. It is unclear whether they will also move the trellises off the wall more but as shown in the plans the jasmine will trap moisture against the existing historic brick fence as well as make their garden maintenance my job.

The VCC required privacy screen is still absent from plans will further contain and shade this space.

While the VCC staff has noted that the distance is under the BZA purview I have noted on numerous occasions that Mr. Williams uses this venue to gain traction with the BZA, BBSA, city council etc. and well as to test the limits of the design guidelines and CZO. Please do not approve until BZA hears the issues.

In this case simply rethinking the type of fountain and plantings to locate away from historic structures and make the scale more appropriate for the space is a much simpler and streamlined solution.

Terrence Jacobs, USN ret

**Nikki Szalwinski, FQC:**

This design is in conflict with article 21.6.GG.2: Water features are limited to a maximum depth of eighteen (18) inches. The VCC should not grant approval when a variance is needed for any proposal. Additionally a BZA appeal is in process on the zoning interpretation which has implications far beyond water features.

We remain concerned about courtyard design which only further conceals and endangers the remaining historic elements at this address as well as the adjacent historic building and fence. It is hard to see how adding CMU will mitigate moisture intrusion since a fountain which will eventually leak is still located immediately next to historic structures and masonry is still attached to brick where water can wick more than 20 feet. We also question adding a non-historic material attached to a 70 year old fence rather than simply moving the fountain so that the fence is able to be maintained and rain water and ground water have space to evaporate. We are very concerned about planting any fruit trees so close to two buildings and the fence since it will need extensive root structure to thrive according to local experts. We ask that the applicant consider locating any fruit tree and the trellises with jasmine away farther from the fence and buildings to allow room for growth and evaporation, or consider different plantings that can easily be removed if there are any issues. We note Mr. Fifield's comment today regarding learning from past failures on other proposals. Homeowners throughout not just the district but also the city have experience water intrusion and other issues due to leaking and/poorly maintained fountains. These concerns were addressed within the CZO with setbacks. While the distance may be an issue for the BZA this design is one for the VCC. From past failures we know water intrusion from fountains is an issue. We know tree root structures cause foundation problems. Owners, architects and developers should not be allowed to propose elements we all know cause problems when it suits their desires at one address while opposing the same elements elsewhere where it doesn't. Why allow planting this tree here while allowing the removal of a much older magnolia on Governor Nicholls because the roots were "damaging the building"? There are other solutions that can be beautiful and in keeping with the property.

FQ citizens

**Discussion and Motion:**

Ms. Gasperez noted that the updated design was being presented to the Commission at their request from the August meeting and no motion was required. Mr. Villarreal asked Ms. Quigley to provide more information regarding the 18” height limit. Ms. Quigley stated that any deviations from the CZO must be appealed to BZA. Ms. Vogt stated that she was unsure if the updated design, including the proposed height, had been reviewed by Zoning, but that staff would ask the applicant to revise the proposal to meet the CZO. Mr. Block stated that the VCC will not approve work in deviation from the CZO. Ms. Vogt stated that the appellant had not notified staff of a request to appeal this design and no motion was required at this time. Ms. Gasperez moved on to the next item on the agenda.

**Architecture Committee Meeting of**

**09/10/2020**

**DESCRIPTION OF APPLICATION:**  
**Permit #18-01001-VCGEN**

09/10/2020

**Lead Staff: Erin Vogt**

Review of proposed revisions to courtyard water fountain, per application & materials received 01/28/18 & 09/01/2020, respectively.

**STAFF ANALYSIS & RECOMMENDATION:**

09/10/2020

**[NOTE: The Committee is reviewing the revised proposal for architectural merit and Design Guidelines appropriateness only. Zoning compliance will not be discussed as it is outside the VCC’s purview. Any discussion regarding the location of the fountain should be directed to the Board of Zoning Adjustments.]**

On 08/19/2020, the Commission reviewed an appeal of the Committee’s approval and deferred the application for 30 days to provide the appellant time to file an appeal with the Board of Zoning Adjustments and to give the applicant and property owners an opportunity to pursue compromises in the design to address the neighbors’ concerns. The applicant has revised the proposal as follows:

The grapefruit tree is no longer being proposed but is noted in the same location as “new fruit tree with noninvasive root system.” Staff requests that the dimensions of this space be provided on the drawings and that the applicant propose specific species of tree so staff can verify that it will not cause disruption to the foundations of the existing walls and fence before granting approval in this location.

The fountain design has been modified with the goal of pulling the water sources away from the existing brick fence to avoid moisture wicking. The fountainhead is shown mounted to a steel support plate, offset 6” from the brick wall and anchored below. Instead of applying waterproofing directly to the existing brick fence, a CMU knee wall (shown with a brick cap and PVC pond vapor barrier) will be added between the fence and the basin. The brick basin is slightly larger in each direction (increasing in depth from 3’-9” to 5’-1”) and is now proposed as 1’-9” tall so it can be used as a garden seat. The added height also reduces the potential splash from the sugar kettle as the water flows into the basin, which should further protect the brick fence.

Staff does not consider any of the proposed changes detrimental to the appearance of the fountain and considers it to fit within the *tout ensemble* of the French Quarter. The added layer of CMU, increased waterproofing measures (this design also calls for “steel support and mesh, shop drawings to be submitted to the VCC”), and pulling the fountainhead away from the wall should all serve to protect the brick fence from moisture and wicking, addressing preservation concerns. Staff requests additional development of the steel fountainhead support to ensure that it is appropriately detailed, as well as submittal of manufacturer’s specifications for all pumps and equipment. Overall, staff finds the proposed alterations to the design to be in keeping with the Design Guidelines and VCC purview and recommends **conceptual approval** with final details and materials to be submitted to staff for final review prior to permit issuance.

**ARCHITECTURAL COMMITTEE ACTION:**

09/10/2020

Ms. Vogt read the staff report with Ms. Bardwell and Ms. Ballentine present on behalf of the application. Ms. Bardwell stated that her team would be happy to work with staff on any necessary revisions or additional submittals. Mr. Fifield asked the Committee if they had any comments. Neither Ms. DiMaggio nor Mr. Bergeron had any comments. Satisfied, Mr. Fifield moved to the next agenda item.

**Public Comment:**

**Nikki Szalwinski**

We remain concerned about this courtyard design which only further conceals and endangers the

remaining historic elements at this address as well as the adjacent historic building and fence. It is hard to see how adding CMU will mitigate moisture intrusion since a fountain which will eventually leak is still located very close to historic structures and masonry is still attached to brick where water can wick more than 20 feet. We also question adding a non-historic material attached to a 70 year old fence rather than simply moving the fountain so that the fence is able to be maintained and rain water and ground water have space to evaporate. We are very concerned about planting any fruit trees so close to two buildings and the fence since it will need extensive root structure to thrive according to local experts. We ask that the applicant consider locating any fruit tree and the trellises with jasmine away farther from the fence and buildings to allow room for growth and evaporation, or consider different plantings that can easily be removed if there are any issues. We note Mr. Fifield's comment today regarding learning from past failures on other proposals. Homeowners throughout not just the district but also the city have experience water intrusion and other issues due to leaking and/poorly maintained fountains. These concerns were addressed within the CZO with setbacks. While the distance may be an issue for the BZA this design is one for the VCC. From past failures we know water intrusion from fountains is an issue. We know tree root structures cause foundation problems. Owners, architects and developers should not be allowed to propose elements we all know cause problems when it suits their desires at one address while opposing the same elements elsewhere where it doesn't. Why allow planting this tree here while allowing the removal of a much older magnolia on Governor Nicholls because the roots were "damaging the building"? There are other solutions that can be beautiful and in keeping with the property.

FQ Citizens

**Terrence Jacobs [received after discussion and motion:]**

While this is a better than the outdoor shower proposed in the original plans I remain concerned about water intrusion not only from the fountain itself leaking but from the CMU trapping moisture between it and the common brick fence. Any fountain should be set off the historic brick fence not only to mitigate moisture issues but also to preserve the older fence and allow necessary maintenance. Further any fruit tree is going to have an invasive root system quickly outgrow the very small footprint. Part of the approval of the large balcony was a privacy screen which has still not been offered. This privacy screen is going to further shade the proposed tree location. Rather than try to force a design that's overly large and grand and overwhelming for a the two bay Victorian and 20 foot wide kitchen building perhaps a pedestal fountain away from the wall and different plantings are a better solution. While fruit trees are lovely planting one next to two balconies brings rats which will affect all of the surrounding properties. It is unclear whether they will also move the trellises off the wall some but in the location in the plans the jasmine will trap moisture against the existing brick fence as well as make their garden maintenance my job.

While the VCC staff has noted that the distance is under the BZA purview I have noted on numerous occasions that Mr. Williams uses this venue to gain traction with the BZA, BBSA, city council etc. and well as to test the limits of the design guidelines and CZO. In this case simply rethinking the type of fountain and plantings to locate away from historic structures and make the scale more appropriate for the space is a much simpler and streamlined solution.

Terrence Jacobs, USN ret

**Discussion and Motion:**

Ms. DiMaggio asked Mr. Block for clarification on VCC jurisdiction over species of plants. Mr. Block stated that the VCC can review whether they pose any risk to building preservation and address those concerns. Ms. DiMaggio stated that she was concerned that the root system may be more expansive than the tree canopy would indicate if it is cut back. Ms. Vogt stated that she recommended a proviso that the specific fruit tree must be approved at staff level and could be denied in this location if they could not find a species that was suitable and did not risk the built conditions. Mr. Block recommended that this be included in any motion to allow for VCC oversight.

Ms. Szalwinski noted that the VCC staff should have received an additional email during the public comment period [Mr. Jacobs', included above]. Mr. Block stated that no other emails had been received at vcc@nola.gov, and any additional emails regarding the property would be included in the public record.

Ms. Bardwell stated that she was willing to provide staff with additional information regarding any proposed fruit trees for review prior to approval.

Ms. DiMaggio moved for **conceptual approval** of the fountain revisions with provisos for additional review as noted by staff, including the proposed fruit tree. Mr. Bergeron seconded the motion, which passed unanimously.

**DESCRIPTION OF APPLICATION:**  
**Permit #18-01001-VCGEN**

08/19/2020

**Lead Staff: Erin Vogt**

Appeal of Architectural Committee approval to renovate courtyard, per application & materials received 01/28/18 & 05/13/2020, respectively. **[Written notice of appeal received 06/17/2020.]**

**STAFF ANALYSIS & RECOMMENDATION:**

08/19/2020

On 05/20/2020, the Committee approved a proposal to modify the courtyard pavers and to install two small arbors and a fountain along the N. Rampart-side wall. The neighboring property owner at 1011 St. Philip is appealing the Committee's decision, which found the proposed work to be appropriate and within VCC Design Guidelines.

The proposed work is as follows:

- Two arbors, measuring 7'-10" tall, will be installed along the N. Rampart side wall in the courtyard. Since the arbors will be below 8'-0" in height there are no issues with building code compliance. The arbors are shown tied down at grade with Simpson clips and are set back 11" away from the masonry wall to prevent vegetation from attaching and climbing the brick. This work is easily reversible, does not damage or alter historic materials, and fits the *tout ensemble*, the arbors were found to meet VCC Design Guidelines.
- The rear arbor will frame a fountain comprised of a salvaged sugar kettle, wall-mounted fountainhead and the pump will be embedded in the brick base below the kettle. The Committee asked the applicant to increase the height of the waterproofing against the brick wall to avoid any potential issues with deterioration due to moisture from splashing. The applicant agreed to extend the waterproofing; the Committee was satisfied and approved the fountain with final details to be reviewed and approved at staff level prior to permit. The materials, size, location, proportion and style are typical and commonplace in the Quarter and approvable within the VCC Design Guidelines.
- The existing flagstone pavers will be brought down to grade at the walkway between the side gallery and the St. Philip-side gate, eliminating the small step down. New pavers will be installed to extended behind the utility shed, adjacent to the HVAC cabinet. Sand-set flagstone steppingstones will be installed between the parking area and the rear kitchen building, around the existing sweet olive tree and proposed fountain. The new flagstone will match the existing pavers, and no drainage alterations will be necessary since most of the new work is permeable. Staff found the proposed alterations minimal and appropriate within the VCC Design Guidelines.

During the Committee meetings, several concerns were raised by the appellant regarding the approvability of the proposed landscaping work. Most of these concerns were related to the distance between the fountain and property line rather than being directly related to the VCC's scope of concern. Since the VCC will not approve work that deviates from the CZO, the Committee deferred the first proposal to allow the applicant to consult with Zoning, and return with confirmation that they would not be required to set the fountain at least 3'-0" from the property line, and that the paving plan allowed for enough permeable open space. Zoning Administrator Nicholas Kindel reviewed the preliminary drawings and found them to be approvable within the CZO (with some slight revisions to the pavers, increasing the permeable square footage). VCC staff returned to the Committee with Mr. Kindel's assessment, and the Committee approved the work (with provisos for minor revisions), with the understanding that the codes and regulations for all other governing agencies must be met or permits will not be issued.

Staff does not find a basis for overturning the Committee's decision on the basis of compatibility with the Design Guidelines and recommends **denial** of the appeal.

In response to the appeal, Mr. Kindel provided the following statement:

*With regards to the VCC appeal for 1005-1009 St Phillip Streets, the Zoning Division of Safety and Permits found the proposed water feature to be compliant with the CZO. In Section 21.6 and Section 21.7 of the CZO, there are a number of setback requirements to the property line for accessory structures. In general, these restrictions apply to accessory structures in a required yard area. In the French Quarter, there are not required yards, so these setback requirements for accessory structures would not apply. Section 21.6.GG.4 states that a water features shall be located a minimum of 3 feet from the property; however, this setback does not apply because the proposed water feature is not located in a required yard setback. Therefore, the proposed water feature is compliant with zoning.*

*If the appellant does not believe that this is the correct interpretation of the zoning ordinance,*

*then an appeal should be made to the Board of Zoning Adjustments which has jurisdiction over zoning interpretation appeals.*

**VIEUX CARRÉ COMMISSION ACTION:**

08/19/2020

Ms. Vogt read the staff report with Ms. Szalwinski present as the appellant and Mr. Williams, Ms. Bardwell and Mr. and Ms. Balentine present representing the application for work at 1005-09 St Philip.

**[At approximately 1:37 Mr. Villareal and Ms. Lawrence joined the meeting.]**

Mr. Williams stated that they agreed with the staff and zoning report, and that they would appreciate the Commission upholding the decision of the Architecture Committee and denying the appeal. Mr. Fifield asked if there was an applicant/appellant present; Ms. Szalwinski responded that she was. She stated that she disagreed with Mr. Kindel's interpretation of the CZO and that the 3'-0" setback should apply. She voiced concern that moisture would wick through the existing brick fence, which extends to the rear of her property and into her dependency. She was also concerned that the fountain pump may leak underground. She stated that she had no issue with a fountain or plants as long as the 3'-0" setback is observed, and the plants should not encroach on her property or cause any foundation damage due to root spread. Ms. Gasperecz called the two-minute time limit and asked the Commissioners if they had any questions. They did not, so Ms. Gasperecz moved on to the next agenda item.

**Public Comment:****Lynn Kirby**

Dear VCC Council Members,

Please consider asking the owners of the property at 1005-09 to move their proposed fountain three feet from the property lines. Water features attached to shared walls often cause significant damage to the adjacent property because of water intrusion over the course of the years. There are so many beautiful free standing water features that can be designed into a courtyard that taking the risk of damaging a neighbor's property is not worth the risk. A water feature is a decorative item and is not a "necessary" part of new construction.

Additionally fruit trees drop a significant amount of fruit. In an open area where the trees are cultivated the guidelines suggest a fifteen feet circumference to allow the trees to grow to their best fruit bearing ability. Placing a tree too close to the property line is not good for the tree and is asking the neighbor to maintain part of the tree. Thank you for your consideration in this matter.

**Mary Bonney, Owner of Arlo's**

Today I am appealing the landscape plan at 1005-1009 St Philip for the following reasons: the fountain basin is attached to the rear brick fence-wall which runs into our rear building so we are concerned about moisture intrusion causing structural issues, attracting rodents, insects and termites. The grapefruit tree location is inches from both our and their rear buildings and will cause structural damage to both if it is planted so close. the jasmine trellis is so close to the rear fence that we will be force to maintenance the vines. We only ask that they move the fountain 3 feet off the property line as stated in the CZO and plant the tree away from all buildings to give it room to grow.

**Jamie Miller**

Hello,

I am emailing to voice my opposition to the proposed landscape plan at 1005-1009 St Philip. I am a resident of the street and the block. I oppose the proposed location of the fountain and vegetation. I feel that, per the CZO, the proposed location is not appropriate and should instead be three feet off of the property line. Particularly, the proposed location can potentially cause moisture problems and structural damage to adjacent properties. The VCC should take appropriate action to protect the integrity of the Quarter by preventing potential damage to the neighboring property. I support the beautification of individual properties and the Quarter but such actions should not jeopardize other properties.

Thank you

**Karen Glaser Stein**

I am writing to object to the landscape plan at 1005-1009 St. Philip St. As per the existing plan, the fountain is not 3 feet from the property line. In my opinion, complying with the codes in place will enhance the design and not create future issues. Leaks can not only impact the owners, but neighbors as well. Fountains are a wonderful addition to any court yard, but they must be done correctly.

Additionally, foliage should be placed to stay within the owners domain. If vines and trees are planted without fore thought of growth potential, then structures adjacent to the trees and plants could be adversely impacted.

Thank you.

**Lani Ramos**

To whom it may concern,

I oppose the courtyard proposal at 1005-1009 St Philip. The fountain using the fence for one of its sides will inevitably lead to moisture intrusion when, not if, the liner degrades or is eaten through by FQ rats. this will lead to termites and rot. The plans would be fine if they just move the fountain and plantings away from the property line and plant the citrus tree where it has space to grow without hitting the building and foundation.

As a side note I ask that the owners instruct their contractors to not park on sidewalks and sit in their excessively large work trucks with the engines running as it has been extremely disturbing for the neighbors for two years now. The exhaust coming from these trucks go into our homes and patios. One more additional request. Like trucks with exhaust, I would like consideration on banning all handheld blowers. It's absolutely ridiculous for small to medium sized courtyard owners to hire gardeners with massive gasoline blowers to blow leave blowing in gasoline fumes into neighbors courtyards. It's gotten out of control.

Thank you for your time.

**Terrence Patrick Jacobs****1005-09 St Philip**

I oppose the location of the proposed fountain which uses the common fence-wall between our properties as the rear of its retention basin and uses submersible pump. Inevitably moisture problems will result in my building wall and theirs not just from splash back but also because the rubber liners quickly degrade in our climate. This fence-wall directly connects to the masonry of the rear portion of my home. We are all aware of the problems of moisture wicking and the damage it causes to French Quarter bricks. This leads to structural damage, deterioration of interior finishes, insect and rodent problems and attracts termite nests that can affect structure in the entire block. These concerns are undoubtedly part of the reason for the three foot set back requirement in the CZO. In addition to building damage, I am also concerned about the increase in noise and humidity as well as mosquito and rodent issues, especially on a unoccupied commercial property. We are already dealing with an extended insect

and

rodent infestation as a result of this project which for seventeen years has never been a problem.

The wording in the CZO is quite clear and specific. Whenever there is a carve out for a historic district is clearly noted in the pertinent section of the CZO. The majority of these amendments make the zoning in the historic areas more restrictive. Reviewing the email chain of VCC staff in public records, two things become quite clear. The first is that the staff found the very plain language regarding water features once it was pointed out to them. The second is that rather than following the CZO, the staff set about trying to find a way to work around it. Erin, whose husband is an attorney, seems to be the origination of the idea of using a "qualified yard." It is also clear that the staff forwarded this work-around to Mr. Kindel rather than simply waiting for his interpretation of the CZO language. This interpretation is creative but, dubious at best and dangerous at worst. The concept of a qualified yard does not appear in relation to water features in the CZO and following this line of reasoning would strip the Quarter of most of the protections afforded by the zoning regulations.

**Calla Bardwell, John Williams Architects**

We have and continue to be happy to work with the VCC to design and construct in accordance with the Design Guidelines and historically commonplace precedents. The arbors, which appear to be a concern of the appellants, are in fact proposed at 2'-0" off the property line. This can be seen in the drawing on page A7.0 & A7.2. We have diligently researched waterproofing options and best practices for the fountain and the longevity of the Balentine's brick wall. The location was verified with the Zoning Administrator, with confirmation on May 13<sup>th</sup> the water feature is not subject to the 3' setback. The plans were then publicly reviewed at the VCC AC meeting on May 20<sup>th</sup> and approved. A BZA variance has been approved, as of December 10<sup>th</sup> 2018 for this property (please see attached). This landscaping element has been considered and reviewed for quite some time now and we have done our best to be cognizant of standards.

**Nikki Szalwinski, French Quarter Citizens**

While the Balentines claim they own the fence in total it is not on their legal title. They are claiming several additional inches as theirs along with a fence that has been acknowledged as common for 70 years by both adjacent owners until now in order to do their extensive changes. They have no proof that their predecessors built this brick fence-wall. The only building permit on file prior to 1999, other than for standard maintenance, is for the charming shed started without permit circa 1968 and illegally demolished in June 2018. The common fence dates to circa 1953 when our home underwent a massive renovation returning it to a single family home. The Balentine's property was apartments from at least 1940 until 1999 and was one of a few inexpensive apartment buildings owned by John Paine who acquired it for \$2000 in 1943. Our rear building dates to at least 1853 and the only change has been enclosing what was a stairwell along this brick fence. (The brick appears to be older than portions of our front house.)

While the Balentines have continually accused us of not working with them they have rebuffed every

compromise we have offered during their property update. We have been subject to deafening +100db equipment noise, heavy metal early in morning, building debris, wet mortar which has bonded to balcony, sidewalk, lamps and building, roofing nails we have stepped on in our courtyard and for the last four months a camera that not only was pointed squarely on our bedroom which also has a listening feature. After four months of increasingly less subtle hints, comments and signs we had to involve the city to get it re-aimed but that does not solve the loss of any expectation of privacy in our own yard since the sound issue remains.

All we are asking is that the landscape feature be shifted off the property line. The previous neighbors' Persian lime offered wonderful privacy screening and we rarely heard anything from next door the enjoyed their side of the fence and we enjoyed ours. Betty Norris was sat on this very commission never objected to our lamps or anything else and in fact lauded us for improving her courtyard experience through our plantings, lighting and A/C changes. All we want is our building to not suffer damage when it can be avoided.

### **Chad Pellerin, French Quarter Citizens**

Dear Commissioners:

My understanding of one feature of today's appeal is whether or not a neighbor may erect a water feature adjacent to a property line. I believe the ordinances establish that water features shall not be erected on one's property line, and I support such a tradition and the law.

Many years ago, I lived at 909 St. Philip and was intimately familiar with both homes involved with the dispute of whether a pond can be erected on the property line. I had been a guest in each home on many occasions and very familiar with the layout of the houses.

Today, I live at 819 Orleans Avenue after having inherited this family home of many years from the Thibaut family, and have had great relations with neighbors adjacent to the left and right sides of this home. There's a common wall between 819 and 823 and 813 Orleans, and any discussion with our neighbors through the years was warm and accommodating.

I would like to report that about 20 years or so ago, a neighbor apparently placed a pond right next to a brick wall to our adjacent properties and at the rear right corner of 819, without revealing this to my aunt, Mrs. Thibaut. For years we were unaware of its presence, and subsequently, when Mr. Smith bought the home, he apparently bought the home, with the pond there. Sometime around this decade the pond leaked and caused a termite intrusion into the right rear of 819 and caused the destruction of the sill running along the side of the house. VCC records will reveal the repairs to the sill and the cost of other pier repairs, the copies of which I was unable to locate in our family documents.

I would like to add that we have never done any work at 819 through the family history of this home, without VCC approval. Because my relations with the Smith family were always cordial, I paid for the repairs to sill. Mr. Smith has always been a decent and responsive neighbor, and repaired his pond so as not to leak within the next decade to attract termites. However, I would not like to see another French Quarter owner go through the cost of potential repairs from a leaking pond next to a wall so close to a property line, or cause friction between neighbors. All ponds leak, no matter what the type of construction, though it may take decades to appear. The rule set by the zoning law is sound and for good relations between neighbors, it should be upheld.

### **Discussion and Motion**

Ms. DiMaggio stated that the opposite side of the proposed fountain location is exterior space, not the interior of a building, and that she would not expect the moisture issues raised as a concern. Mr. Fifield asked staff for clarification regarding the VCC's jurisdiction over species and types of plants to be planted; Mr. Block answered that he did not believe the VCC can control that but that any potential damage was certainly a preservation concern worthy of discussion by the VCC. Ms. Laurence stated that she owned a grapefruit tree and that they could grow to be large and intrusive.

Mr. Villarreal asked for comment from Ms. Szalwinski. She pointed out that a public comment had been submitted by Ms. Chad Pellerin of French Quarter Citizens that had not been read into the record. Ms. Vogt located the email and read it into the record at that time. Mr. Villarreal asked if the fountain could be installed more than 3'-0" from the property line for the sake of compromise and asked for comment from the City Attorney. Ms. Quigley stated that it was the responsibility of Safety and Permits and Zoning to interpret the CZO and that any issues with the interpretation should be appealed to the BZA. Mr. Fifield stated that there has been ongoing acrimony between the property owners and the Commission should not be fielding an appeal that is based on an interpretation from the Zoning Department; if no solution can be reached, the appellant should pursue an appeal with the BZA. He added that it is the architect's responsibility to ensure that the fountain is properly detailed to avoid water issues and the owner's responsibility to keep the fountain maintained. He noted that the appropriate City departments have made

their determinations and he was disappointed that they have been dragged into a conflict between the property owners. Ms. Lawrence stated that the 3'-0" setback was not up to the Commission, and asked for the record that the property owners be responsible and respectful. Mr. Villarreal also encouraged the owners to work together and come to an agreement. Ms. Balentine stated that they were willing to remove or relocate the proposed grapefruit tree and design the fountain so it would not cause issues with the wall. Mr. Williams stated that the design was found approvable by all regulatory agencies and that the public comments implied that they were requesting a waiver or proposing something that is not allowed, which is not the case. Mr. Villarreal asked why the 3'-0" setback did not apply to the French Quarter; Ms. Vogt responded that that would be a question for the Zoning Department, and Mr. Block added that the VCC relies on Zoning to interpret the CZO. Ms. Quigley added that the application of the 3'-0" setback rule is outside the VCC's purview and the proposal was found approvable by Zoning and VCC.

Ms. Lawrence asked what aspects of the appeal were under the VCC's jurisdiction; Mr. Block answered that the appellant was appealing the Committee's motion to approve the design and the Commission could uphold or overturn the decision. Ms. Quigley stated that the primary aspect of the appeal seemed to be a Zoning concern and it would be inappropriate for the Commission to overturn the motion purely based on the positioning of the fountain. Mr. Block asked Ms. Quigley if the Commission could deny the fountain if they found it inappropriate; she answered that the Commission's decision would need to be based on whether the water feature fits the *tout ensemble*, not its positioning. She added that the application can return to the Commission if the BZA overturns Mr. Kindel's interpretation of the CZO.

Mr. Fifield stated that the Commission could consider deferring the appeal for 30 days to allow the appellant to appeal to BZA and give the applicant an opportunity to consider other options. Mr. Villarreal stated that he would like to see that, and that review by the Commission seemed premature. Ms. Gasperecz responded that the VCC needs to stay within its purview and the 3'-0" setback is the BZA's jurisdiction.

Mr. Fifield moved to **defer** the appeal for 30 days to allow the appellant to apply to the BZA if they so choose, or return to the Commission for action at that time. Mr. Villarreal seconded the motion, which passed unanimously.