

**BEFORE THE BOARD OF ZONING APPEALS FOR THE CITY OF
ALEXANDRIA**

**STATEMENT OF GROUNDS FOR APPEAL OF A ZONING
ADMINISTRATOR'S DETERMINATION**

James and Christine Garner

D) Introduction and Statement of Facts

James and Christine Garner own a lot at 122 Prince Street in the City, further identified as Tax Map Parcel 075.01-11-03 (the "Lot"). The Lot is zoned to the City's RM District, permitting a single-family dwelling.

The Garner's Lot extends into an unnamed eight-foot wide alley¹ that separates it from the property at 118 Prince Street, identified as Tax Map Parcel 075.01-11-06, and the Garners have provided information to the City depicting the surveyed boundaries of that Lot. The alley is brick paved, and there is a brick wall on the eastern and a small portion of the northern sides of the property. There is a small metal building on the site.

The Garners wish to build a home on the Lot. Indeed, they have been trying to do so for the past seven years.

The Garners purchased the Lot on November 4, 2002. Even before they did so, however, they learned that Alexandria attorney James Turner had requested a determination from the City as to whether 122 Prince Street was a "buildable lot." On October 4, 2002, the City's Peter Leiberg responded, confirming that the Lot was indeed buildable. He said that "[a]dditional zoning requirements are as follows: two side yard

¹ The City's Zoning Ordinance at § 2-107 defines "alley" as a "public or private right-of-way primarily designed to afford access to the side or rear of properties whose principal frontage is on a street." No one disputes that this is a private alley.

setbacks of a minimum of 5.00 feet” and that “Staff will require the portion of the lot which extends into the alley adjacent to 118 Prince Street to remain open for pedestrian access.” In that letter the City recognized that the side yard setback was to be measured from the side yard lot line and that the Lot extended into the alley, and it confirmed that that portion of the alley could be used for the requisite calculation if it was “open for pedestrian access.”² The Garners obtained a copy of this letter before they closed on the Lot because of the importance of this question. See Exhibit 1, a copy of which is attached hereto and incorporated herein by reference.

In late 2003, the Garners applied for a variance with respect to the rear yard, and for a curb cut. In the December 11, 2003 Staff Report for that variance, the staff states that “[t]he proposed three-story single-family detached dwelling is located on the front property line facing Prince Street, 5.00 feet from the east side property line. . . . As shown on the submitted plat, the proposed house will not encroach into the 10.00 feet wide alley to the east. . . . The proposed house will comply with the . . . side yard setbacks and open space requirements for a new single-family detached dwelling in the RM zone.” As a part of that Staff Report, the City included a depiction of the Lot, showing that the proposed single-family home would be built to the edge of the alley, thereby reflecting the calculation of the five-foot side yard setback from the Garners’ lot

² This is consistent with the earliest deed in the chain of title for the property, dated March 9, 1853, conveying the Lot “. . . to the middle of an alley eight feet wide (to be kept open).” See Exhibit 2, which is attached hereto and incorporated herein by reference. This deed is difficult to read, but the language referencing the alley and its use can be found on the second page.

line – the centerline of the alley. See Exhibit 3, which is attached hereto and incorporated herein by reference.

On January 6, 2004, however, Mr. Curtiss Martin, the neighbor owning the lot across the alley at 118 Prince Street, wrote Mr. Leiberg asserting that documents in the Garners' chain of title to their Lot did not support their contention that they own to the centerline of the alley. Mr. Martin is has never taken any action to establish his claim that the Garners do not own what their surveys depict, though the surveyed line is clearly shown on the plat found in Exhibit 3. A copy of Mr. Martin's letter is attached hereto and incorporated herein by reference as Exhibit 4.

This is, however, where things began to go wrong. Shortly after this letter was received, the City's Barbara Ross wrote to the Garners advising them that the survey/alley dispute needed to be resolved before the BZA considered their application.³ A copy of her letter is attached hereto and incorporated herein by reference as Exhibit 5.

³ The Garners contend that this private law issue as to their title is irrelevant to the calculation of their side yard setback, once they have produced information that shows that their side yard lot line is the centerline of the alley. Moreover, the City has had experience with cases in which private parties have sought unsuccessfully to involve the City in such private property disputes. This past year the City's Board of Architectural Review was asked to refuse to make a decision on an application filed by Catherine Cotell, BAR Case Nos. 2009-0126 and 2009-0127, because other parties claimed to own a strip of land as to which Ms. Cotell asserted rights. In that situation, which unlike the current case was in active litigation over ownership rights, the staff deemed the application acceptable for review, and the BAR proceeded to hear and decide the matter.

Here, however, the City asserts that it is the Garners' obligation to resolve ownership rights before it will act, and not the obligation of the person who has contended otherwise. Even then, as the Determination Letter makes plain, the City says that the Garners cannot use the alley for calculation of side yard setback even if they own it.

In the letter, Ms. Ross admits that staff allowed the Garners “to consider the alley portion of the land as part of the required setback for the house. . . based on [the Garners] representation, both verbally, and then by survey, that the alley portion of the land was part of the building lot. . . .” She then states, however, that after receipt of the neighbor’s letter and after consultation with then City Attorney Ignacio Pessoa, “because the neighbor provided title information which raised questions about your ownership of the alley. . . as it now stands, we cannot consider half of the alley as part of your lot for zoning purposes.” The staff suggested that the Garners go to the expense of a suit to quiet title. The Garners did not file such a suit, nor are they required to file such a suit and absorb that expense just because a neighboring property owner challenged their ownership.

On April 12, 2005, while reserving their rights relative to their claim of ownership to the centerline and the attendant right to measure the side yard setback from that lot line, and in an attempt to move the project forward, the Garners filed a new variance application requesting a variance from the rear and side yard requirements. The discussion portion of the July 14, 2005, Staff Report for that application indicated that the City Attorney (not the Zoning Administrator) was of the view that the “zoning rules do not allow a side yard alley to be counted in the applicable side yard setback (in this instance 5.0 feet)”, and recommended denial of the application since staff found no hardship supporting the side yard variance. See Exhibit 6, which is attached hereto and incorporated herein by reference. The City Attorney’s position was referenced by staff and used both to require and recommend denial of a variance. This was despite the fact

that no Zoning Ordinance provision supporting that contention was cited and no appealable determination regarding the matter was ever rendered by the Zoning Administrator.

Given the adverse recommendation in the Staff Report, the Garners decided not to go forward to the BZA hearing and thus remained in limbo, uncertain how to proceed, until the summer of 2009. Then, in order to try to advance their plans yet again, the Garners sent the City staff a draft zoning opinion request to try to clarify, once and for all, the City's position with respect to the calculation of the side yard and the bases for its position. After receiving a draft reply, the Garners and their counsel asked for a meeting with Jim Banks, the new City Attorney, to discuss the history and status of the case.

After that meeting, on December 23, 2009, and with Mr. Banks' foreknowledge, the Garners sought a formal zoning opinion from the City's Director of Planning and Zoning. This request, which is attached hereto and incorporated herein by reference as Exhibit 7, was made to obtain a written determination as to the Garner's rights to calculate the side yard set back from their side lot line, which they continue to maintain is the centerline of the alley.

On January 28, 2010, Ms. Hamer replied with a formal ruling (the "Determination Letter") that finally sets out the grounds for the City's refusal to permit the use of the centerline of the alley as the side yard lot line for calculation of or inclusion in the required setback. Ms. Hamer issued a revised Determination Letter on February 19, 2010, that is identical to that issued on January 28th except for the addition of a notice at the end advising the Garners that they "may have the right to appeal this decision within

thirty days in accordance with § 15.2311 of the Code of Virginia. The decision will be final and unappealable if not appealed within thirty days.” It is this second, revised, Determination Letter that is attached hereto and incorporated herein by reference as Exhibit 8. This appeal challenges the Determination Letter.

II) None of the grounds set forth in the Determination Letter are correct readings of the applicable provisions of the Zoning Ordinance.

A) The alley is “open,” unoccupied,” or “unobstructed” as required by the Zoning Ordinance.

1) The relevant words upon which the City relies are not defined in the ordinance and so it is necessary to turn to standard dictionary references for their common meanings.

As a first ground upon which to conclude that the side yard setback may not be calculated from the centerline of the alley, the City claims that existence of a legal dispute as to ownership impermissibly “occupies” that side yard for the purposes of the Ordinance.

Section 3-1106(A) of the Ordinance sets out the bulk and open space regulations for the applicable RM District. Section 3-1106 (A)(2)(a) requires that

[e]ach single and two-family dwelling shall provide two side yards of a minimum size of five feet. Each interior end lot in a group of townhouses shall provide one side yard of a minimum size of five feet.

Emphasis supplied.

Section 2-207 of the Ordinance further defines “Yard, side” as

[a]n open, unoccupied space on the same lot with the building, between the building and the side lot line and extending from the front yard to the rear yard and being the minimum horizontal distance between the side lot line and

the main building or any or any projection thereof not permitted in section 7-202(A).

Emphasis supplied. Further, according to the Determination Letter, § 7-201 of the Ordinance requires this side yard, calculated from the side lot line to the main building, to be “unobstructed,” except as may be otherwise permitted by § 7-202 (discussed further below).

The Garners contend that the plain meaning of the Ordinance is that they must provide a five foot “open, unoccupied space on the same lot with the [proposed] building,” as measured from the centerline of the alley, which is their “side lot line.”

The City responds – apparently on the assumption the Garners do own to the centerline – that their half of the alley is not in fact open, unoccupied, or obstructed, but rather that it is occupied and obstructed by a legal claim that has never been formally asserted to or decided by any forum capable of determining it.

The words “open,” “unoccupied,” and “unobstructed” are not defined in the Zoning Ordinance, and do not have particularized legal meanings. In such cases it is customary to refer to their common meanings.⁴ Doing so tells us, not surprisingly, that “open” bears many such meanings. It is most relevantly defined for the purposes of this appeal as “so arranged or governed as to permit ingress, egress, or passage: as having not enclosing or confining barrier: free from fences, boundaries, or other restrictive margins. Webster’s Third New International Dictionary (1993), p.1579. “Unoccupied” is defined

⁴ Chappell v. Perkins, 266 Va. 413, 587 S.E.2d 584 (2003) (rules of statutory construction assume that words in a statute are read according to their common meaning; however, if a term has a known legal definition, that definition will apply unless it is apparent that the legislature intended otherwise).

as “not occupied by inhabitants.” Id., p. 2505. “Unobstructed” is defined as the opposite of “obstructed,” which means “to build against, block up: to stop up or close up: place an obstacle⁵ in or fill with obstacles or impediments to passing”. Id., p. 1559.

Despite the City’s assertion, the definitions of “open”, “unoccupied”, and “unobstructed” do not include, in any relevant meaning, a potential legal claim that has not been established. Because they will not construct anything in the alley, the Garners will in fact have an open, unoccupied, and unobstructed five foot side yard setback from the centerline of the alley, without adversely affecting that alley.⁶ The Garners plot plan and building plans will ensure that the existing alley remain as accessible and useable for pedestrian purposes as it is today and that construction will not reduce its size or use. The property across the alley at 118 Prince Street will retain the same access it possesses today (as, indeed, will all who use the alley).

It is also worth noting that in essentially every case in which the City’s Zoning Ordinance uses any of these important terms, it is in association with a physical thing, and not some legal claim that has not even been established. This can be directly contrasted with the City’s requirement for and definition of “open and useable space.” By § 2-108 of the Ordinance, such “open and useable space” requires that such space not

⁵ “Obstacle” itself is defined as “something that stands in the way or opposes: something that hinders progress: a physical or moral impediment or obstruction”. Webster’s Third New International Dictionary (1993), p. 1558.

⁶ An early depiction of the Garners’ proposed home did contemplate a chimney in the setback, but they agree that this cannot be included on actual building plans submitted for purposes of zoning permits and construction. Moreover, they concur with the conclusion in the Determination Letter that a requirement in their chain of title that the alley remain open precludes that chimney. This is addressed further in the text.

be used “in whole or in part as roads, alleys, emergency vehicle easement areas, driveways, maneuvering aisles or off-street parking or loading berths.” (Emphasis supplied). Section 11-410(E) further provides that access for fire, police and emergency vehicles “shall be unobstructed at all times.” Thus, in this defined instance, the legal right that has been granted for emergency vehicle access is called out as a prohibited intrusion on such open and useable space. The fact that the Council elected to so specify in that instance, but not with respect to side yards, strongly suggests that it never contemplated the argument that the City now makes.

The Garners are aware of no precedent in land use law whereby a legal claim asserted by a third party has been found to constitute an occupation or obstruction of a right-of-way, and there is nothing in the common use of these terms that supports a contrary conclusion.

B) The City’s own Determination Letter is at odds with its assertion that “permitted obstructions” in the side yard would be incompatible with the use of the alley.

The City also contends, however, that even if the Garners own to the centerline of the alley, it cannot permit the use of the side lot line in that alley for calculation of the side yard setback because of what might go in that yard.

As noted in the Determination Letter, § 7-201 authorizes certain “permitted obstructions” in any yard area. According to the City, there are things that may “occupy” a side yard and therefore that the use of the alley for side yard setback calculations cannot be permitted. They contend that the presence of any those permitted obstructions would, if present, be inconsistent with the use of the alley as an unobstructed access. Such

permitted obstructions are authorized “so as not to obstruct light and ventilation and when otherwise permitted by law[.]” The specific permitted obstructions are “fencing, open terraces up to two feet above grade, air conditioning equipment, clotheslines, bay windows, children's play equipment, small stairs, and other features typically associated with residential living.” Thus, the City contends that if it were to agree with the Garners, then as a matter of right they could use a portion of the alley for, for example, a bay window or a terrace that would simply be inconsistent with the use of the alley.

However, in the same Determination Letter the City relies (for a different contention) on a deed in the Garner’s chain of title that requires the alley “be kept open.” The Garners acknowledge that this restriction is part of their title, and that the restriction means there can be no “otherwise permitted” obstructions, even if they were to desire them. Since § 7-201 authorizes permitted obstructions only in accordance with the Ordinance, and when “otherwise permitted by law,” then City itself acknowledges that those obstructions would not otherwise be permitted by law. The City’s concern that the Garners might intrude on the alley is thus effectively conceded to be without any basis.⁷

C) The City cannot stretch the purpose of § 7-1003 into a general right to police every yard area in the City when it believes that “circumstances warrant” it.

The City acknowledges that § 7-1003 of the Ordinance is inapplicable to this case. Determination Letter, p. 3. That Section provides that “[w]hensoever any public or private alley occurs in any zone, one-half of the width of such alley shall be considered in the

⁷ Given the language in their chain of title, the Garners could not, and would not, object to a condition being appended to any permit issued that no otherwise permitted obstructions will be included in the portion of the alley comprising the side yard setback.

determination of the rear yard setback ratio requirement of any lot abutting on such alley.”

Having disclaimed that this Section applies here, however, the City claims that § 7-1003

does demonstrate that the City is able to express itself when it finds that circumstances warrant allowing property to be considered for purposes of measuring yard dimensions. The City has not stated that alleys may be considered for purposes of measuring side yards.

Determination Letter, p. 3, (emphasis supplied).⁸

This is a remarkable claim. The City Zoning Ordinance says that one measures a side yard on “the same lot” as the “minimum horizontal distance between the side lot line and the main building[.]” § 7-201. The City, however, claims that because § 7-1003 addresses the unrelated use of alleys in connection with rear yard setback ratio requirements, it evidences the proposition that the City has such an interest in alleys that § 7-201 may be read as the staff wishes, to say that side yards are calculated as the “minimum horizontal distance between the side lot line and the main building so long as no part of that distance is in an alley, when the staff finds that “circumstances warrant” precluding the use of that alley[.]”

⁸ Section 7-1003 allows the property owner to add the width of 1/2 a rear alley into the equation to determine “the rear yard setback ratio requirement of any lot abutting on such an alley.” It is found under Article VII, Supplemental Zone Regulations, and is permission – not a restriction – with respect to calculation of rear yard setbacks: the City permits a landowner to use alley area that it does not own to calculate that setback. The provision permits, among other things, a taller building to be located closer to the rear lot line than would otherwise be permitted under Section 3-1106. However, this is where the owner’s lot abuts the alley, not where the alley is within the lot.

That is not what the Ordinance says, and nothing in Virginia law authorizes a reading of an ordinance that it cannot support. The fact remains that the Ordinance says how to calculate side yards, and is completely silent with respect to that calculation where a property owner's lot extends into an alley. The staff may prefer a different result, but that is not the same as having the legal authority to command it.

Even more significantly, in 2000 the Council amended §§ 1-400(B)(3)(d) and (e) of the Zoning Ordinance relating to the interpretation of zone regulations, to provide in relevant part that any single- or two-family lot created after March 1st of that year "shall not contain area used, in whole or in part, for . . . alleys or driveways providing access to three or more dwelling units." Subsection (e) exempts from this requirement lots existing on March 1, 2000. This amendment was proposed, according to the Staff Report, to preclude the inclusion of public and private streets, alleys, and driveways inside lots being thereafter created subject to cross-easements amongst the landowners assuring mutual access to and use of those streets. It slightly increased open space and marginally reduced density on development to which it applied. See Exhibit 9, attached hereto and incorporated herein by reference.

This amendment is significant here because – contrary to the position stated in the Determination Letter that § 7-1003 reflects the Council's willingness to let the staff express itself concerning the use of alleys in lots – the Council took affirmative steps to restrict the use of alleys as part of any one- or two-family lot, only on those lots created after March 1, 2000. There is no dispute that the Garners' Lot was created in the nineteenth century, and that this amendment does not apply to it. Thus, the manifest

implication is that the Council has affirmatively recognized such alleys can be part of residential lots such as the Garners', as they claim.

III) The Garners do not need to establish legally their ownership of one-half of the alley in order to obtain a ruling from this Board, or to obtain a building permit.

The Determination Letter also suggests that the Garners must first prove their ownership of the alley to the centerline through expensive court proceedings against third parties. According to the City, if the Garners "can show that they have the exclusive right to use the portion of the alley they are claiming, not subject to the use, access, occupation, or control of others, and that the alley land is part of the adjacent lot for building purposes" then they can have their building permit. Emphasis supplied. As noted, this position derives solely from the assertions of an interest in the alley mentioned above, and the City has never claimed that it has made, or that it could make, a determination as to that question. The City's definition of "lot" at § 2-166 provides in pertinent part that a lot is a "unit of land . . . usable as a building site, having frontage on a public street and in compliance with the requirements of the zone in which it is situated and recorded." In fact, the Garners have already provided the City with the information necessary to demonstrate that they do own to the centerline of the alley. See the plat incorporated in Exhibit 3.

Even in the face of competing claims of ownership, however, the zoning question presented to the City must be answered, so that the landowner may know what result it would face if it were to pursue such an action. This is all the more so because under the

Determination Letter the City would not permit the use of alley to calculate the side yard setback anyway.

Moreover, the City suggests that it is the landowner who must file suit to confirm its title to land when someone has brought it into question. However, this places the burden in the wrong place, without any legal basis for the imposition of that burden. If there is need to resort to the courts when a zoning question is decided in favor of the landowner, then it should be the obligation of one who contests title – in the face of evidence provided to the City that supports title – to put up or shut up. Were it otherwise, then virtually any land use application could be halted, derailed, or defeated by nothing more than assertion of a title or other legal defect. Where a landowner has made a good faith and facially satisfactory demonstration of ownership, as in this case, then the burden must be on one who would dispute that ownership to bring a proper claim before the courts. In any event, such claims are private law matters that do not involve or invite the interpretation or application of the Zoning Ordinance.

IV) Conclusion.

The questions presented to the BZA are whether the Garners need to prove their ownership to the centerline of the alley, and whether they are entitled to calculate the side yard setback for their proposed home from their side yard lot line – the centerline of the adjacent alley as they claim – or may the City refuse to permit that calculation regardless of ownership?

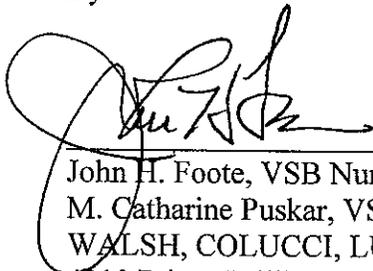
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The City has advanced arguments that the alley cannot be so used that do not bear up under scrutiny. The Garners request that the BZA overrule the conclusions in the Determination Letter, and find that they may calculate their side yard as they assert.

RESPECTFULLY SUBMITTED,

JAMES AND CHRISTINE GARNER

By:



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M. Catharine Puskar, VSB Number 39701
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4310 Prince William Parkway, Suite 300
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City of Alexandria, Virginia



DEPARTMENT OF PLANNING AND ZONING

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Post-it® Fax Note	7671	Date	10/10/02	# of pages	2
To	Christina Nielsen	From	Peter/ed		
Co./Dept.		Co.			
Phone #		Phone #	703 838-4688		
Fax #	703 684-3664	Fax #			

October 4, 2002

James D. Turner, Esq.
 Thomas, Ballenger, Vogelmann and Turner, P.C.
 124 South Royal Street
 Alexandria, Virginia 22314

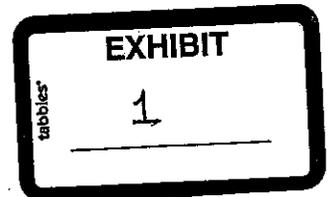
Dear Mr. Turner:

I am responding to your letter that requests a determination that 122 Prince Street is a buildable lot to construct a new single-family dwelling. The subject property, assessed separately, is under common ownership with two adjacent properties addressed as 126 Prince Street and 130 Prince Street. The three properties are identified on real estate assessment map #75.01, Block 11, Lots 1, 2, and 3 respectively.

The subject property (assessment lot 3) is one lot of record zoned RM, residential with 40.00 feet of frontage facing Prince Street, a depth of 44.33 feet and lot area of 1,773 square feet. An existing curb cut on Prince Street provides access to a parking area on the subject property. A deteriorated metal building is located approximately 25.00 feet from the front property line facing Prince Street.

BAR approval is required to demolish the existing metal building and construct a new single-family dwelling on the property. Staff of the Board of Architectural Review (BAR) have indicated that the metal building is not historically significant and its demolition would likely be approved by the BAR. Please speak with Peter Smith, Principal Staff of the BAR, concerning relevant architectural and design issues as well as submission requirements.

Pursuant to the RM zone, a new house must be located at the front property line or the prevailing setback based on the existing building block face on the south side of Prince between South Lee Street and South Union Street. Additional zoning requirements are as follows: two side yard setbacks of a minimum of 5.00 feet; a rear yard setback of 16.00 feet or one half the building height whichever is greater; ground level open space in the amount of 621 square feet (35 percent of the lot); two off-street parking spaces, and; the maximum floor area permitted for a new house is 2,660 square feet (1.50 FAR). Staff will require the portion of the lot which extends into the alley adjacent



James Turner, Esq.
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to 118 Prince Street to remain open for pedestrian access. Finally, a plot plan prepared by a licensed surveyor must be submitted to the Department of Transportation and Environmental Services (T&ES) for review by the applicable City departments. Geoff Byrd with T&ES (703-838-4318) can advise your surveyor of the submission requirements. The plot plan can be submitted concurrently with an application to the BAR.

Should you have any additional questions please do not hesitate to call me or Peter Smith at 703-838-4688.

Sincerely,



Peter Leiberg
Principal Planner

cc: Eileen Fogarty, Director
Barbara Ross, Deputy Director
Peter Smith, Principal Staff BAR
Geoff Byrd, T&ES Site Plan Coordinator

payment, and the property to be liable to a resale by the said trustee in default of making either of the payments of the principal money or of the interest upon the said deferred payment, upon ten days' notice by advertisement in any newspaper published in the City of Alexandria. The said trustee is hereby authorized to effect insurance upon the buildings standing upon the said piece of grounds to an amount not exceeding Two hundred dollars, whenever required to do so, by any party to whom the debt aforesaid may be payable and to charge the premises & expenses of such insurance, as of the expenses of this trust with the interest thereon.

Witness the following signature & seal

Witness
J. M. White

Ann x Kelly 

Clerks Office, Alexandria County Court July 22 1857.

This Deed was acknowledged before me in my said office by Ann Kelly and was admitted records.

Teste

N. H. Berry Clerk

T-3-632

Mary Huns
D. & Reed
Mantlin

This Deed made the 9th day of March, in the year eighteen hundred and fifty three, between Edward M. May & Alice his wife, of the City of Alexandria, in Virginia & William A. Parkerson and Matilda E. his wife of Chesterfield County in Virginia (the said Edward, Anne & Matilda being children and heirs at law of Jonathan S. May late of Alexandria aforesaid deceased) William Price & Sarah his wife of said Alexandria County

EXHIBIT

2

tabbles

6.9.3

George Langert, Maria his wife of the City of Baltimore in Maryland

T-3-633

George Sanger, Maria his wife of the City of Baltimore in Maryland. Francis & Emily his wife of the City of Cincinnati in Ohio (the said Sarah, Maria & Emily being the children & heirs at law of Francis May deceased, and the brother of the said Jonathan C. May) Sarah Marsolite, Nancy Frankland, Lucinda Stoff, John Bishop & Amanda his wife & Richard Wright & Emily his wife of Washington City, in the District of Columbia and Edward C. Howell & Elizabeth his wife of Baltimore aforesaid (the said Sarah, Nancy, Lucinda, Amanda, Emily & Edward C. being the children and heirs at law of Ann Howell, deceased, who was a sister of the said Jonathan C. May) of the first part, and Mark M. Mankin, of the said City of Alexandria of the second part, Witnesses, that the said parties of the first part, in consideration of one hundred & twenty dollars do grant to the party of the second part all their right, title and interest to and in a piece of ground in the said City of Alexandria bounded as follows: Beginning on the south side of Prince Street 45 feet east of Water Street & running east with Prince Street 40 feet to the middle of an alley 8 feet wide (to be kept open) then south parallel to Water Street forty five feet, then west parallel to Prince Street 40 feet, then by a straight line to the Beginning, with all the rights & appurtenances, subject however to a rent-charge of seventy two dollars per annum, and all arrears thereof.

Witness the following signatures and seals

Sarah M. Marsolite



Edward M. May



Nancy F. Frankland



Alice ^{Ann} _{Mankin} May



Lucinda L. Stough



Annis May



John Bishop



William A. Perkinson



Amanda Bishop



Margda B. Perkinson



Richard Wright



William Price



Emily Wright



Sarah Jane Price



E. C. Howell



George Sanger



Elizabeth Howell



Ann Maria Sanger



Docket Item #6
BZA CASE #2003-00064

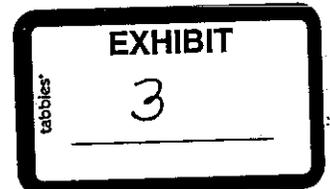
Board of Zoning Appeals
December 11, 2003

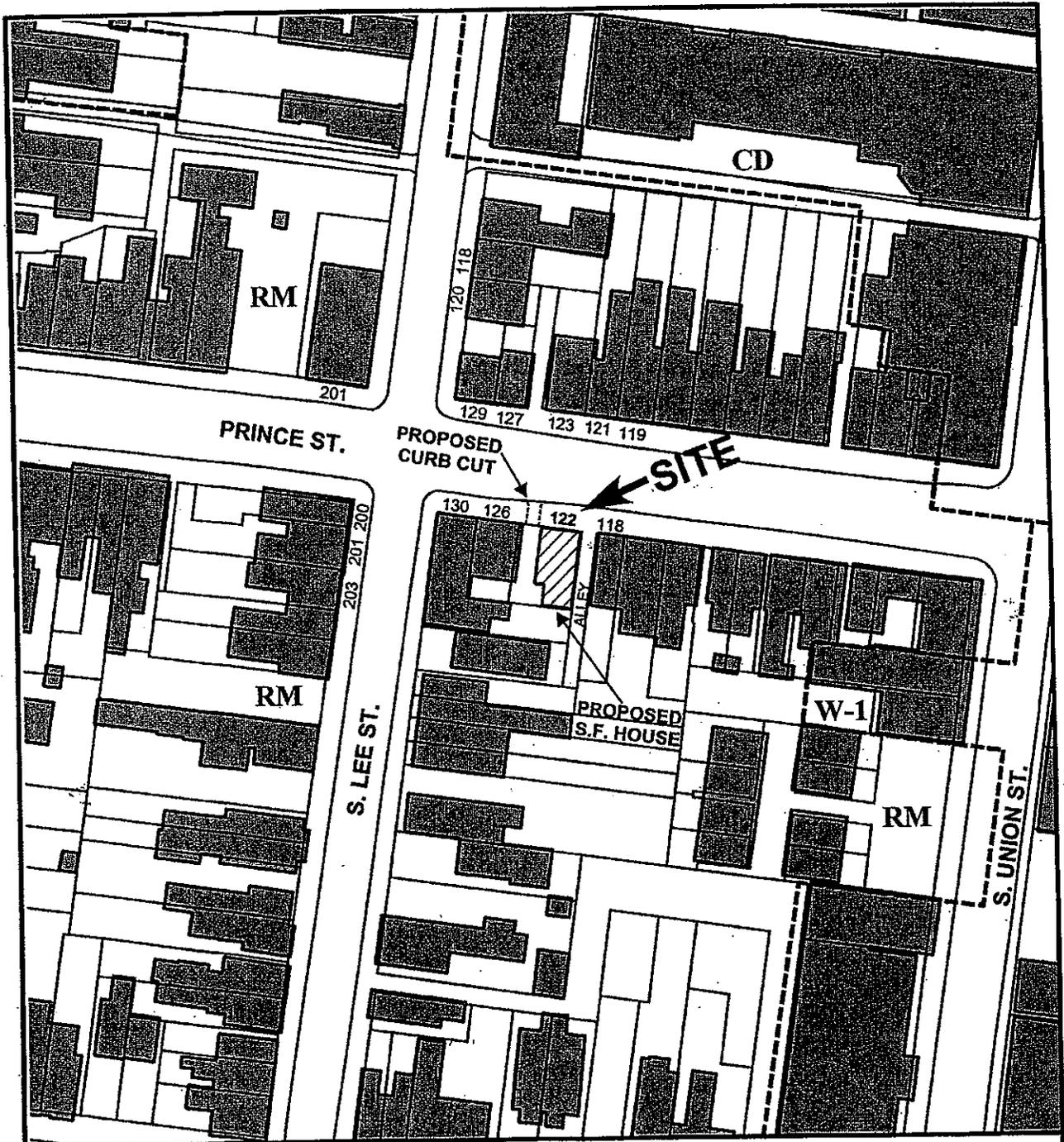
ADDRESS: 122 PRINCE STREET
ZONE: RM, RESIDENTIAL
APPLICANT: JAMES AND CHRISTINE GARNER, OWNERS

ISSUE: Variance to construct a new single-family dwelling located in the required rear yard and the relocation of an existing curb cut.

CODE SECTION	SUBJECT	CODE REQMT	APPLICANT PROPOSES	REQUESTED VARIANCE
3-1106(A)(3)(a)	Rear Yard	16.00 ft*	0.00 ft	16.00 ft
8-200(C)(5)(a)	Curb Cut	Alley or Interior Court	Street Access	Street Access

* Based upon a building height of 23.00 feet to the mid-point of the gable roof.





BZA #2003-0064 12/11/03



STAFF CONCLUSION:

This property does not meet the criteria for a variance.

DISCUSSION:

1. The applicants proposes to (1) demolish an existing metal garage structure, (2) build a three-story single-family dwelling with a rear two-story addition located in the required rear yard and (3) relocate an existing curb cut at 122 Prince Street.
2. The subject property, a lot of record as of February 10, 1953, is one lot with 40.00 feet of frontage facing Prince Street, a depth of 44.33 feet and a lot area totaling 1,773 square feet. An private alley 10.00 feet wide abuts the property along the east property line. As indicated on the submitted plat, the applicants' property includes half of the alley width. An existing curb cut is located near the east side property line provides access to the metal garage structure which at one time provided off-street parking for the property at 123 Prince Street.
3. The proposed three-story single-family detached dwelling is located on the front property line facing Prince Street, 5.00 feet from the east side property line, 12.00 feet from the west side property line and on the rear property line. As seen from Prince Street, the house is a little over 29.00 feet in height to the eave line of the roof which is parallel to Princes Street; approximately 23.00 feet to the mid-point of the gable roof as seen from the rear property line; the overall building height is 38.50 feet to the roof ridge. As shown on the submitted plat, the proposed house will not encroach into the 10.00 feet wide alley to the east. As indicated on the submitted plat, the house will be located on the rear property line. A variance of 16.00 feet to build up to the rear property line is required.
4. The proposed house will comply with the floor area, side yard setbacks and open space requirements for a new detached single-family dwelling in the RM zone. The house will not comply with the rear yard setback requirement and access to off-street parking from the existing alley or court as required by the zoning regulations. In order to allow for a new curb cut access from Prince Street the applicants must seek variance approval.
5. A new residential dwelling is required to provide two off-street parking spaces. Since the applicants cannot provide required parking from an alley or court they are exempt from providing required parking. However, the applicants plan to provide two non-required parking spaces. Access to the spaces will be from a new curb cut facing Prince Street. In the RM zone where two off-street parking spaces are provided, one surface parking space may be counted towards the open space requirement.

6. On June 24, 1992, the current zoning ordinance was adopted which prohibits new curb cuts in the RM zone, specifically affecting properties in the two Historic Districts. The purpose of the prohibition was to preserve the historic streetscape and enhance pedestrian experience.
7. This property is located in the Old and Historic Alexandria District. Board of Architectural Review approval is required for demolition of the existing building on the site and for the design of the new house. The applicant has filed an application for demolition and a Certificate of Appropriateness for the new house. No action will be taken on the applications until after the Board of Zoning Appeals has taken action on the requested variances.
8. BAR staff objects to the relocation of the curb cut. Placing the curb cut on the west side of the property is immediately adjacent to 126 Prince Street, one of oldest buildings in the historic district dating from the late 18th century. At least portions of the house survived the January 1827 fire. The siding on the east elevation of 126 Prince Street is unpainted and the Board of Architectural Review has required that it remain so. Locating a car immediately to the west of this elevation will visually screen the siding and alter the historic perception of the building.
9. There have been no variances previously approved for the subject property.
10. Since 1990, there have been no similar variance applications heard by the Board in the immediate neighborhood.
11. Master Plan/Zoning: The subject property was zoned RM, residential and has been so zoned since adoption of the Third Revised Zoning Map in 1951. In 1992 the property is identified in the adopted Old Town Small Area Plan for residential land use.

REQUESTED VARIANCES:

Section 3-1106(A)(3)(a), Rear Yard:

The RM zone requires a detached residential dwelling to provide a minimum rear yard setback of 16.00 feet or two feet of building height for each foot of setback. The proposed dwelling is located on the rear property line. Based on a building height of 23.00 feet to the mid-point of the gable roof facing the rear property line a rear setback of 16.00 feet is required. The applicants request a variance of 16.00 feet.

Section 8-200(C)(5)(a), Curb Cut Access:

The zoning ordinance requires access to surface required or non-required parking for property located in the Old and Historic District to be from an alley or interior court. An interior court is one that serves more than one dwelling. The applicants are requesting a variance to permit a new curb cut access from Prince Street to non-required surface parking spaces.

STAFF ANALYSIS UNDER CRITERIA OF SECTION 11-1103:

1. Does strict application of the zoning ordinance result in undue hardship to the property owner amounting to a confiscation of the property, or prevent reasonable use of the property?
-

There is no hardship. The lot is level and there is no condition of the lot which restricts the reasonable use or development of a new single-family dwelling. No trees will be affected by the placement of a new house on the lot. The subject property is larger than the minimum lot size required for an RM zoned lot and the lot width nearly twice the size for a single-family lot.

There is also no finding of hardship with regard to relocation or placement of a new curb cut to the serve the property. The applicants could use the existing curb cut to serve the new house. The need for a variance to simply accommodate a larger house does not rise to the level of a hardship. A different development configuration such as a smaller house that respects the rear yard requirement as well as reuse of the existing driveway can be achieved.

The issue in this case is whether having a residential property in Old Town without on site parking creates a legal hardship. Staff does not believe that it does, given that there is an existing curb cut to be used and the fact that much of Old Town is characterized by lots without off-street parking and similar building placement condition. Strict application of the zoning ordinance will not prevent reasonable use of the property. Because the access to required off-street parking must be from an alley or court, the applicants are exempt from providing the required parking space. The applicants' needs can be meet by using the existing curb cut to serve their required parking needs or to provide no parking.

2. Is the hardship identified above unique to the subject property, or is it shared by other properties in the neighborhood or the same zone?
-

There is no hardship. The lot is a large buildable lot that can be developed without the need of a variance. The lot's characteristics are similar to other lots within this section of Prince Street. Many of the homes in Old Town lack on site parking. The applicants are fortunate in that the property has an existing curb cut that could be used which the applicants desire to forgo. Nor is the property different from most of the lots on the block. The property is not unique. The property, in fact, shares the primary characteristics of the majority of lots which the curb cut prohibition is intended to preserve.

3. Was the hardship caused by the applicant and, if so, how was it created? Or did the condition exist when the property was purchased and, if so, did the applicant acquire the property without knowing of the hardship; how was the hardship first created?
-

There is no hardship in this case.

The applicants were aware, when they purchased the property, that there was an existing curb cut that could be used to serve the required off-street parking. There are in fact exempt from providing required parking. The 100 block of Prince Street is one where the predominant historic pattern is no curb cuts. New curb cuts will affect the historic character of the block and not preserve the historic streetscape and disrupt the pedestrian experience. The need for non required off-street parking does not constitute a hardship.

4. Will the variance, if granted, be harmful in any way to any adjacent property or harm the value of adjacent and nearby properties? Will it change the character of the neighborhood?
-

Granting the variance will be detrimental to the adjacent property to the east. Although the new house will be located 5.00 feet from the east side property line to comply with the side yard requirement to provide some relief from the building mass facing the side property line and to allow for possible windows rather than a three or four-story blank wall facing the neighbor, the new house will extend the entire lot length (from the front lot line to the rear lot line). The neighbor will now view 44.33 feet of building wall. Staff believes that for design purposes the house could be reduced in length to provide building relief to the neighboring properties. To provide an open ground level area at least 16.00 feet (the minimum rear yard setback requirement) would reduce the new house length from 44.33 feet to 28.33 feet which is not unreasonable for an RM zoned lot.

The granting of the requested variance will be detrimental to the neighborhood which is served by few curb cuts. The subject property will no longer maintain and compliment the existing development pattern and land use on Prince Street where street parking is the norm. In addition, staff is concerned generally about this case creating a precedent for other requests for curb cuts in Old Town, although this case could be distinguished from some others in that there is an existing curb cut near where one is being requested.

5. Have alternate plans been considered so that a variance would not be needed?
-

None that would meet the applicants' needs. Staff believes the applicants should explore alternative design solutions to eliminate the need to building on the required rear yard and the to lower the height of the building. As it is now proposed, the applicants are requesting extensive relief to place a large building extending from the front property line to the rear property line with little rear open space or building mass relief to the most immediately impacted neighbor to the east.

6. Is any other official remedy available to relieve the hardship?
-

No other remedy exists except a variance.

STAFF: Barbara Ross, Deputy Director, and Peter Leiberg, Principal Planner, Department of Planning and Zoning

DEPARTMENTAL COMMENTS

Transportation and Environmental Services:

- C-1 All utilities serving this site shall be placed underground. (Sec. 5-3-3)
- C-2 Pay sanitary sewer tap fee prior to issuance of a building permit.(Ord. #4287)
- C-3 Any work within the right-of-way requires a separate permit from T&ES.(Sec. 5-3-61)
- C-5 Per City Ordinance No. 3176, requests for new driveway aprons, unless approved at public hearing as part of a related item, must be accompanied by an adjacent **Property Owners Acknowledgment** form.
- R-1 The existing granite flow line (gutter) shall be protected and maintained during construction activity.
- R-2 Design for construction of the relocated driveway apron, brick sidewalk and curbing shall be to the satisfaction of the Director of T&ES and shall be approved prior to issuance of a building permit.
- R-3 Applicant shall be responsible for repairs to the adjacent city right-of-way if damaged during construction activity.
- R-4 City Code Section 8-1-22 requires that roof, surface and sub-surface drains be connected to the public storm sewer system. Where storm sewer is not available applicant must provide a design to mitigate impact of stormwater drainage onto adjacent properties and to the satisfaction of the Director of Transportation & Environmental Services.

Code Enforcement:

- C-1 All exterior walls within 3 feet from an interior property line shall have a fire resistance rating of 1 hour, from both sides, with no openings permitted within the wall. As alternative, a 2 hour fire wall may be provided. This condition is also applicable to porches with roofs and skylights within setback distance.

BZA CASE 2003-0064

- C-2 Prior to the issuance of a demolition permit or land disturbance permit, a rodent abatement plan shall be submitted to Code Enforcement that will outline the steps that will be taken to prevent the spread of rodents from the construction site to the surrounding community and sewers.
- C-3 Roof drainage systems must be installed so as neither to impact upon, nor cause erosion/damage to adjacent property.
- C-4 A soils report must be submitted with the building permit application.
- C-5 New construction must comply with the current edition of the Uniform Statewide Building Code (USBC).
- C-6 Alterations to the existing structure must comply with the current edition of the Uniform Statewide Building Code (USBC).
- C-7 Construction permits are required for this project. Plans shall accompany the permit application that fully detail the construction as well as layouts and schematics of the mechanical, electrical, and plumbing systems.
- C-8 Permission from adjacent property owners is required if access to the adjacent properties is required to complete the proposed construction. Otherwise, a plan shall be submitted to demonstrate the construction techniques utilized to keep construction solely on the referenced property.
- C-9 A wall location plat prepared by a land surveyor is required to be submitted to this office prior to requesting any framing inspection.

Recreation (Arborist):

- F-1 No specimen trees are affected by this plan.

Historic Alexandria (Archaeology):

- F-1 Tax records indicate that a house was present on this lot by 1810. The structure was destroyed in the Great Fire of 1827 and was never rebuilt. The property therefore has the potential to yield archaeological resources which could provide insight into domestic activities in Alexandria during the early 19th century and possibly during the late 18th century.

- R-1 Contact Alexandria Archaeology (703-838-4399) two weeks prior to any ground disturbing activity (such as coring, grading, filling, vegetation removal, undergrounding utilities, pile driving, landscaping and other excavations as defined in Section 2-151 of The Zoning Ordinance) on this property. City archaeologists will provide on-site inspections to record significant finds.

- R-2 Call Alexandria Archaeology immediately (703-838-4399) if any buried structural remains (wall foundations, wells, privies, cisterns, etc.) or concentrations of artifacts are discovered during development. Work must cease in the area of the discovery until a City archaeologist comes to the site and records the finds.

- R-3 The above statements in R-1 and R-2 must appear in the General Notes of the site plan so that on-site contractors are aware of the requirement.

Other Requirements Brought to the Applicant's Attention:

- C-1 A wall check survey plat shall be submitted to Planning and Zoning when the building footprint is in place, pursuant to Alexandria City Code section 8-1-12.

CITY SEAL

BOARD OF ZONING APPEALS
CITY OF ALEXANDRIA, VIRGINIA

BZA CASE # 2003-00064

APPLICATION FOR VARIANCE

Section(s) of zoning ordinance from which request for variance is made: 3-1106(A)(3)
(REAR YARD SETBACK: [REDACTED] FOR A 10'-0" VARIANCE;
AND TO MOVE EXISTING CURB CUT. 8-200(C)(5)(a)

PART A

1. Applicant: Owner Contract Purchaser
Name JAMES & CHRISTINE GARNER
Address 25 W GLENDALE AVE.; ALEXANDRIA, VA 22301
Daytime Phone 703.549.4855

2. Property Location 122 PRINCE ST.

3. Assessment Map 75.01 Block 11 Lot 03 Zone RM

4. Legal Property Owner:
Name JAMES & CHRISTINE GARNER
Address 25 W GLENDALE AVE.; ALEX. VA 22301

5. Describe request briefly: APPLICANT IS REQUESTING A VARIANCE FROM THE REQUIRED REAR YARD SETBACK OF 16'-0". AN EXISTING ONE STORY STRUCTURE EXISTS WHICH ABUTS THE PROPERTY LINE. THE APPLICANT IS REQUESTING TO LOCATE A TWO STORY STRUCTURE AT THIS LOCATION, ALLOWING FOR THE RETENTION OF SIGNIFICANT OPEN SPACE AND THE RETENTION OF VISTAS AS EXPRESSED BY THE NEIGHBORS. THIS CONFIGURATION IS SUPPORTED BY ADJACENT NEIGHBORS. THE APPLICANT IS ALSO REQUESTING A RELOCATION OF THE EXISTING CURB CUT WHICH WILL ALSO FACILITATE THE RETENTION OF OPEN SPACE AND MAINTAIN EXISTING VIEWS OUT BY NEIGHBORS AND IN TO THE PROPERTY OF THE HISTORIC PROPERTY NEXT DOOR.

6. If property owner or applicant is being represented by an authorized agent such as an attorney, realtor or other person for which there is some form of compensation, does this agent or the business in which they are employed have a business license to operate in the City of Alexandria, Virginia?

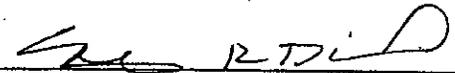
Yes - Provide proof of current City business license.

No - Said agent shall be required to obtain a business license prior to filing an application.

THE UNDERSIGNED HEREBY ATTESTS that all of the information herein provided including the site plan, building elevations, prospective drawings of the projects, etc., are true, correct and accurate. The undersigned further understands that, should such information be found incorrect, any action taken by the Board based on such information may be invalidated. The undersigned also hereby grants the City of Alexandria permission to post placard notice as required by Article XI, Division A, Section 11-301(B) of the 1992 Alexandria City Zoning Ordinance, on the property which is the subject of this application. The applicant, if other than the property owner, also attests that he/she has obtained permission from the property owner to make this application.

APPLICANT OR AUTHORIZED AGENT:

STEPHANIE DIMOND
print name


signature

703.856.8457
telephone

10.27.03
date

Pursuant to Section 13-3-2 of the City Code, the use of a document containing false information may constitute a Class 1 misdemeanor and may result in a punishment of a year in jail or \$2,500 or both. It may also constitute grounds to revoke the permit applied for with such information.

PART B (SECTION 11-1102)

NOTE: The Board of Zoning Appeals may grant a variance only if the applicant can demonstrate a legal hardship. A legal hardship refers to the shape and topographical conditions, or to some other unique characteristic of the property; for example, if a rear yard has a sharp drop-off or hilly terrain where an addition could otherwise be located legally, or if the property has three front yards.

A legal hardship is NOT, for example, having a large family in a two-bedroom house, or that you need a first-floor bedroom and bath. (These are good personal reasons for a variance, but do not constitute a legal hardship having to do with specific conditions of the land.)

APPLICANT MUST EXPLAIN THE FOLLOWING:
(please print clearly and use additional paper where necessary):

1. Does strict application of the zoning ordinance to the subject property result in a hardship to the property owner as follows (answer A or B):

- A. Will enforcement of the zoning ordinance amount to a confiscation of the property?
Explain.

YES. BECAUSE OF THE UNIQUE SHAPE OF THE LOT, THE REQUIRED SIDE + REAR YARD SETBACKS AND OPEN SPACE REQUIREMENTS REDUCE THE SIZE OF BUILDABLE AREA TO SIGNIFICANTLY LESS THAN THE ALLOWABLE FLOOR TO AREA REQUIREMENTS. THIS COMBINED WITH THE PARKING REQUIREMENTS FOR NEW HOMES IN THE R.M. ZONE WOULD ALLOW FOR ONLY AN EXTREMELY SMALL STRUCTURE, RESULTING THE "TAKING" OF THE PROPERTY.

- B. Will enforcement of the zoning ordinance prevent reasonable use of the property?
Explain.

YES. THERE ARE FEW ALLOWABLE USES FOR A LOT OF THIS SIZE & CONFIGURATION IN THE R.M. ZONE. BY ADHERING TO ALL OF THE REQUIRED SETBACKS + OTHER ZONING REQUIREMENTS THE OWNERS ARE NOT ALLOWED REASONABLE USE OF THE PROPERTY AS DEMONSTRATED BY THE LOW SQUARE FOOTAGE DESPITE THE ALLOWABLE F.A.R.

2. Is this hardship unique to the subject property?

A. Is the hardship shared by other properties in the neighborhood? Explain. No
ALMOST ALL OTHER PROPERTIES ON THIS STREET HAVE FAR
DEEPER AND NARROWER LOTS. THIS ALLOWS FAR GREATER
EASE FOR MEETING THE REAR YARD SETBACK REQUIREMENTS
AND ONLY ONE IF ANY SIDE YARD REQUIREMENT. SECONDLY, THIS
IS THE ONLY NEW STRUCTURE TO BE BUILT ON THIS BLOCK
IN MANY YEARS, AND CONSEQUENTLY THE ONLY ONE TO BE REQUIRED
TO MEET CURRENT ZONING STANDARDS.

B. Does the situation or condition of the property (on which this application is based) apply generally to other properties in the same zone? Explain.

NO. THIS PROPERTY IS UNIQUE IN THAT IT IS THE
ONLY NEW STRUCTURE TO BE BUILT ON THIS BLOCK
SINCE CURRENT ZONING HAS BEEN IN PLACE.

3. Was the hardship caused by the applicant?

A. Did the condition exist when the property was purchased?

THE LOT CONFIGURATION DID EXIST WHEN THE PROPERTY
WAS PURCHASED. HOWEVER, THE LOT WAS IN EXISTENCE
BEFORE CURRENT ZONING WAS IN EXISTENCE AS EVIDENCED
BY THE EXISTING METAL STRUCTURE/BUILDING 4'0" FROM
THE EASTERN SIDE YARD AND ZERO FEET FROM THE
REAR YARD.

B. Did the applicant acquire the property without knowing of the hardship?

YES. THE APPLICANT WAS UNAWARE OF ALL OF THE
EXISTING ZONING REQUIREMENTS FOR THE PARTICULAR
LOT

C. How was the condition which creates the hardship first created?

THE HARDSHIP WAS CREATED BY THE IMPLEMENTATION
OF CURRENT ZONING BY THE CITY OF ALEXANDRIA.

D. Did the applicant create the hardship and, if so, how was it created?

No.

4. Will the variance, if granted, be harmful to others?

A. Will the applicant's proposal be harmful in any way to any adjacent property?

No. THE MOST AFFECTED PROPERTY OWNER, TO THE SOUTH (R22R) PREFERRED THE PROPOSED CONFIGURATION TO ANY ALTERNATIVE WHICH WOULD BLOCK HIS VIEWS. ADDITIONALLY, THIS IS PREFERRED BY THE STAFF OF THE BAR AS IT PRESERVES VIEWS OF THE HISTORIC PROPERTY TO THE WEST.

B. Will it harm the value of adjacent and nearby properties?

No. IT PRESERVES VIEWS FROM THE STREET OF ADJACENT STRUCTURES AND SIGNIFICANTLY PRESERVES OPEN SPACE.

C. Has the applicant shown the proposed plans to the adjacent most affected property owner? Has that neighbor objected to the proposed variance, or has the neighbor written a letter in support of the proposed variance? If so, please attach the letter.

NEIGHBORS WILL HAVE THE OPPORTUNITY TO VIEW DRAWINGS BEFORE THE BZA MEETINGS; THE MOST AFFECTED NEIGHBOR APPROVES OF THE CONFIGURATION.

D. Will it change the character of the neighborhood?

No. IT WILL PRESERVE THE CHARACTER OF THE NEIGHBORHOOD BY MAINTAINING SIGNIFICANT OPENSPACE AS THE LOT IS CURRENTLY CONFIGURED, IN ITS RELATIONSHIP BOTH TO THE STREET AND THE NEIGHBORS TO THE WEST / SOUTH.

5. Is there any other administrative or procedural remedy to relieve the hardship?

No.

PART C

1. Have alternate plans or solutions been considered so that a variance would not be needed? Please explain each alternative and why it is unsatisfactory?

YES. WE HAVE INVESTIGATED THE POSSIBILITY OF LEAVING THE CURB CUT WHERE IT IS, BUT THIS PLACES THE STRUCTURE CLOSE TO THE HISTORIC PROPERTY AT 126 PRINCE BLOCKING THE VIEW OF THE PROPERTY FROM THE STREET, AS WELL AS THE VIEW FROM THE NEIGHBOR TO THE SOUTH OF PRINCE STREET.

2) BY RIGHT, WE MAY BUILD A ONE STORY STRUCTURE AT THE LOCATION OF THE EXISTING BUILDING. BY NOT BUILDING OVER THIS, WE WOULD SIGNIFICANTLY REDUCE THE OPEN SPACE AVAILABLE TO THE STREET BECAUSE THE STRUCTURE WOULD NEED TO BE MORE SPREAD OUT. THIS WOULD NOT BE IN KEEPING WITH THE NEIGHBORHOOD IN STYLE OR LAYOUT.

3) IF WE BUILD ACROSS THE FRONT, WE WOULD HAVE A MUCH WIDER STRUCTURE THAN CONSISTENT WITH THE BLOCK, AND TO MAINTAIN THE REAR YARD WOULD IN ESSENCE, FILL UP THE FRONT, ELIMINATING ANY VIEW OF OPEN SPACE, ALTERING THE CURRENT FEEL OF THE BLOCK AND CROWD THE WESTERN NEIGHBOR AS WELL AS BLOCKING VIEWS FROM THE NEIGHBOR TO THE SOUTH.

BZA#2003-00064

**ALEXANDRIA DEPARTMENT OF PLANNING AND ZONING
FLOOR AREA AND OPEN SPACE COMPUTATIONS**

- A. 1. Street Address 122 PRINCE St.
 2. Zoning R.M. Total Lot Area 1773.2
- B. 1. Floor Area Ratio (F.A.R.) allowed by the Zone 1.5
 2. $\frac{1773.2}{\text{Lot Area}} \times \frac{1.5}{\text{F.A.R.}} = \frac{2659.80}{\text{Maximum Allowable Net Floor Area}}$

EXISTING GROSS AREA		DEDUCTIONS	
Basement		Basement	
First Floor	329.4	Stairways	
Second Floor		Mechanical/Elevator	
Third Floor		<7'6" headroom	
Porches/Other		Other	
Total Gross	329.4	Total Deductions	329.4 (Demo'd)

1. Existing Gross Floor Area* 329.4 Square Feet
 2. Allowable Deductions** 329.4 (Demo'd) Square Feet
 3. Existing Net Floor Area 0 Square Feet (subtract C-2 from C-1)

NEW GROSS AREA		DEDUCTIONS	
Basement	931.38	Basement	931.38
First Floor	931.38	Stairways	135.00
Second Floor	931.58	Mechanical/Elevator	
Third Floor	654.58	Other	
Porches/Other			
Total Gross	3448.72	Total Deductions	1066.38

1. New Gross Floor Area 3448.72 Square Feet
 2. Allowable Deductions 1066.38 Square Feet
 3. New Net Floor Area 2382.34 Square Feet (subtract D-2 from D-1)

EXISTING + NEW AREA

- E. 1. Total Net Floor Area Proposed 2382.34 Square Feet (add C-3 and D-3)
 2. Total Net Floor Area Allowed 2659.80 Square Feet (from B-2)
- F. 1. Existing Open Space 1343.28 Square Feet
 2. Required Open Space 620.42 Square Feet
 3. Proposed Open Space 622.80 Square Feet

* Gross floor area is measured from the face of the exterior walls and includes basements, outside garages, sheds, gazebos, guest buildings and other accessory buildings.

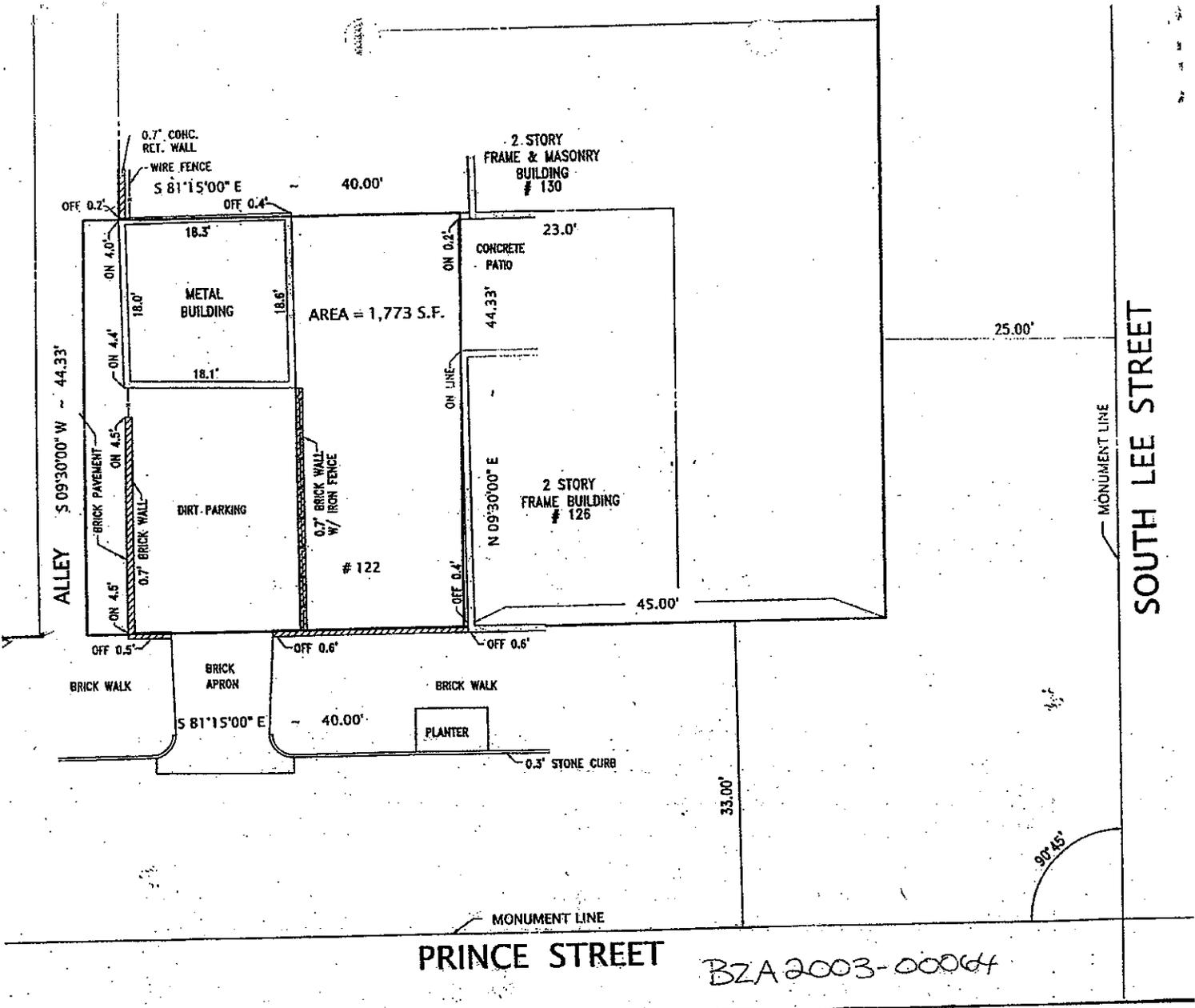
** Allowable deductions from gross floor area: Stairways, elevators, mechanical and electrical rooms; basements (if basement is less than four feet out of the ground as measured from the average finished grade at the perimeter of the bottom of the first floor).

NOTE: Open space calculations are required for all residential zones (except in the R-20, R-12, R-8, R-5, R-2-5 and RT zones), including all commercial, office and mixed use zones where residential uses are proposed. Refer to specific provisions in the zoning ordinance.

The undersigned hereby certifies and attests that, to the best of their knowledge, the above computations are true and correct.

Signature: [Signature]

Date: 10.25.03



H. Curtiss Martin
118 Prince Street
Alexandria, VA. 22314

January 6, 2004

Mr. Peter Leiberg
Planning Manager
City Hall
301 King Street
Alexandria, VA 22314

Dear Mr. Leiberg:

A hearing is scheduled for Thursday on an application for a variance at 122 Prince Street. I am the owner of 118 Prince Street, the property immediately to the east of 122 Prince Street. My residence is referred to in the staff report as the property that would be most affected by the granting of the variance. The matter was previously deferred from December. I was prepared at that time to appear before the Board of Zoning Appeals (the "Board") and state the reasons for my opposition to the granting of the variance.

My father died on Sunday morning and his funeral and burial are in New York and New Jersey, respectively, on Thursday. I have to be there and I do not know if I will be able to make it back to Virginia in time to appear at the hearing. I would like to assure you that I care a lot about the outcome of this application and look forward to the chance to address the many substantive reasons why the requested variance should not be granted.

Nonetheless, I do not believe the application is ready for presentation to the board. In part the applicant relies on a claim to ownership of half of the alley as a foundation for his assertion that he satisfies the applicable side yard set back requirements.

We have pulled some deeds in the applicant's chain of title. They do not support the applicant's claim as a factual matter. (I would also argue that the facts asserted would not, if true, be sufficient.)

In 1905 an owner of 122 Prince Street purported to convey more land than was described in the transfers to him.

The discrepancy arises as follows:

- a. In 1891 George Markell transferred to Miller a lot adjacent to 126 Prince Street i.e. beginning 45 east of Lee Street and running 20 feet east along Prince Street. (Deed Book 25:373)
- b. In 1894, the same George Markell transferred to Miller a lot on Prince Street beginning 65 east of Lee and running 16 feet east along Prince Street to an alley. The deed included a right of way over the alley. (Deed Book 31:363)

EXHIBIT

tabbles

4

c. In 1905 Miller transferred to Kicherer a lot purporting to run 40 feet along Prince Street. (Deed Book 52:473)

In sum, the 1905 conveyance by Miller to Kicherer purported to convey four feet more than he could claim under the 1891 and 1894 deeds. That 1905 conveyance contains a property description that is materially the same as the applicant's and, I submit both are flawed. I note that the 1891 and 1894 deeds taken together are consistent with other relevant documents including but not limited to the City's tax map while the unexplained increase in the 1905 deed is not. I understand that the applicant has been asked to but has not provided any title work.

I do not believe the application can be properly placed before the board until the apparent discrepancy between what Miller received from Markell and what he transferred to Kicherer is resolved. The extra four feet are relied on by the applicant to support his claim that he satisfies the side yard set back requirements and no variance has been requested with respect to those side yard set back requirements.

The break in title strongly suggests that he does not own those 4 feet. While it is doubtful, there may be an explanation of why his title is right and so many other property descriptions wrong, that explanation would bear more careful scrutiny than can be given between now and the scheduled hearing date. Accordingly, I suggest the application is not ripe for presentation to the Board and should be deferred by staff and that no hearing should be scheduled until the applicant explains the basis for his claim of ownership as he was previously asked to do.

Regards,



H. Curtiss Martin



City of Alexandria, Virginia

DEPARTMENT OF PLANNING AND ZONING

301 King Street, Room 2100
P. O. Box 178
Alexandria, Virginia 22313
(703) 838-4666
FAX (703) 838-6393



February 4, 2004

Mr. James Garner
25 North Glendale Avenue
Alexandria, Virginia 22301

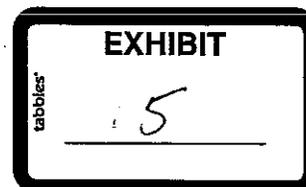
Re: 122 Prince Street
BZA Case # 2003-00064

Dear Mr. Garner:

Mayor Euille has asked that we respond to your letter regarding the above property, and your application for hearing before the Board of Zoning Appeals. As your letter describes, Peter Leiberg of this office has been assisting you and your architect with your proposal to build a new house at 122 Prince Street. While the zoning ordinance permits a house on this 1953 lot of record, your proposal to build all the way to the rear property line required a variance by the Board of Zoning Appeals. That case was originally scheduled to be heard in January. After you and I spoke last Friday, I have discussed the case thoroughly with Peter, and have reviewed the file.

As part of the variance case, Peter allowed you to consider the alley land as part of the required setback for the house. Peter's interpretation of the setback requirement was based on your representation, first verbally, and then by survey, that the alley portion of the land was part of the building lot you owned in fee. When, however, we received claims contrary to yours regarding the alley ownership, and after consultation with the city attorney, we could no longer allow the land to count as part of the lot for setback purposes. The change in position was not the result of the fact that a neighbor called us; it was because the neighbor provided title information which raised questions about your ownership of the alley. This change of course required that the application be delayed at the BZA. We have suggested that you pursue this title question, so that the matter may be definitively settled. However, as it now stands, we cannot consider half of the alley as part of your lot for zoning purposes.

In addition to the setback question, your letter raised two other points that deserve response. First, you question the issue of open space, which was not a zoning problem in the first application but has become one since the house has shifted to correct the setback problem. By

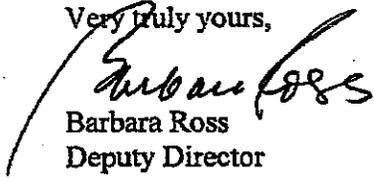


moving the house to the west to comply with the setback requirement, the amount of open land on the lot is reduced below the amount required for a new house on the lot. You have the option of either reducing the size of the house so that there is more open land on the lot or of applying to the Board of Zoning Appeals for an open space variance. Second, with regard to the existing garage structure on the lot, the fact that there has been a building at that location may help you argue to the Board that the house should be located at the rear setback. According to Peter, he did suggest to you that you make that argument to the Board. However, Peter never stated that it could serve as a basis for a new building as a zoning matter; if that were true, then there would be no need for the variance for which you have submitted an application.

While we are very sympathetic to your circumstances in being delayed at the Board of Zoning Appeals, and to the overall difficulties involved in building a new house on this important block in Old Town, we do not see that staff could have conducted itself differently in this matter. The case is clearly a difficult one, requiring not only careful attention by staff, but also close scrutiny by architects, attorneys and title experts. It is my understanding that you are now pursuing the title question, and will settle it prior to moving forward with your BZA application. Please keep us advised of the status of that issue, as we will be happy to work with you further on the application.

If you have any additional questions, or would like to discuss this matter further, please do not hesitate to contact me.

Very truly yours,



Barbara Ross
Deputy Director

cc: Hon. William D. Euille, Mayor
Eileen Fogarty, Director
Ignacio Pessoa, City Attorney

Docket Item #1
BZA CASE #2005-0023

Board of Zoning Appeals
July 14, 2005

ADDRESS: 122 PRINCE STREET
ZONE: RM, RESIDENTIAL
APPLICANT: JAMES AND CHRISTINE GARNER, BY MICHELLE ROSATI,
ATTORNEY

ISSUE: Variance to construct a 3 story single family dwelling with a two-story rear addition in the required east side yard and rear yard.

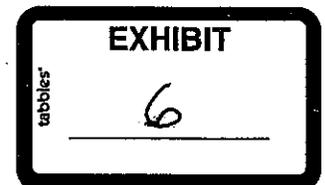
CODE SECTION	SUBJECT	CODE REQMT	APPLICANT PROPOSES	REQUESTED VARIANCE
3-1108(C)(1)	Side Yard (western edge of the private alley)	5.00 ft	0.00 ft	5.00 ft
3-1106(A)(3)(a)	Rear Yard	16.00 ft*	2.00 ft	14.00 ft

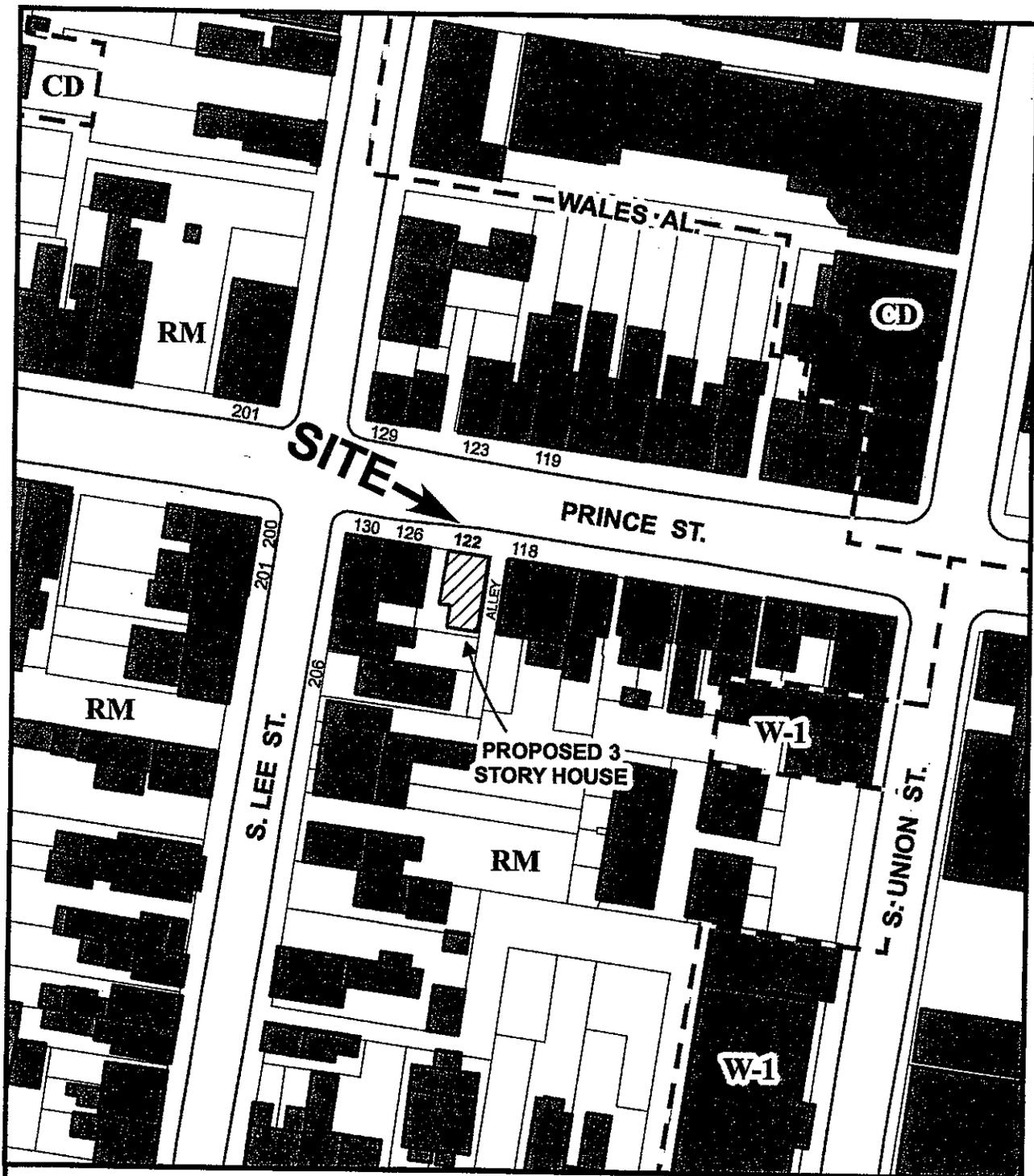
* Based upon a building height of 23.00 feet to the mid-point of the gable roof.

Staff **recommends denial of the request** because there is no justification of hardship.

If the Board decides to grant a variance, it should contain the conditions under the department comments. The variance must also be recorded with the deed of the property in the City's Land Records Office prior to the release of the building permit.

Deferred prior to the June 9, 2005 hearing.





BZA #2005-0023

07/14/05



I. Issue

The applicants propose to (1) demolish an existing metal garage structure, remove an existing curb cut on Prince Street, and (3) build a three-story single-family dwelling with a rear two-story addition located in the required east side and south rear yard at 122 Prince Street.

II. Background

The subject property, a lot of record as of February 10, 1953, is one lot with 40.00 feet of frontage facing Prince Street, a depth of 44.33 feet and a lot area totaling 1,773 square feet. An private alley 8.00 feet wide abuts the property along the east property line. As indicated on the submitted plat, the applicants' represent that their property includes half of the alley width. An existing curb cut is located near the east side property line provides access to an existing metal garage structure which at one time provided off-street parking for the property at 123 Prince Street.



Figure 1- Existing Metal Structure

III. Discussion

The proposed three-story single-family detached dwelling is located on the front property line facing Prince Street, 5.00 feet from the center of a private alley, 12.00 feet from the west side property line and 2.00 feet from the rear property line. As seen from Prince Street, the house is 29.00 feet in height to the eave line of the roof which is parallel to Princes Street; approximately 23.00 feet to the mid-point of the gable roof as seen from the rear property line; the overall building height is a little over 38.50 feet to the roof ridge. As shown on the submitted plat, the proposed house will be placed 5.00 feet from the centerline of the 8.00 feet wide alley to the east. The City Attorney has ruled that the zoning rules do not allow a side yard alley to be counted in the applicable side yard setback (in this instance 5.00 feet). The City has determined that the minimum side yard is measured from the western edge of the alley not the centerline of the alley. As indicated on the submitted plat, the house will be located 2.00 feet from the rear property line. A variance of 5.00 feet from the east side property line and 14.00 feet to place the proposed house 2.00 feet from the rear property line is required.

The proposed house will comply with the floor area, west side yard setback and open space requirements for a new detached single-family dwelling in the RM zone. Access to off-street parking for a new house in the Old and Historic District must be from an alley or court as

BZA CASE #2005-0023

required by the zoning regulations. A new residential dwelling is required to provide two off-street parking spaces. Since the applicants cannot provide required parking from an alley or court they are exempt from providing required parking. The applicants propose to eliminate an existing curb cut to be consistent with the development pattern along the 100 block of Prince Street.

This property is located in the Old and Historic Alexandria District. New construction visible from the public right-of-way require reviews and approval of the Old and Historic Alexandria District Board of Architectural Review. The applicants have filed an application for demolition and a Certificate of Appropriateness for the new house. No action will be taken on the applications until after the Board of Zoning Appeals has taken action on the requested variances.

Staff believes that the new construction should be pulled as far away as possible from the east elevation of the house at 126 Prince Street. The weatherboard siding on the east elevation of 126 Prince Street appears never to have been painted. Painting only the front facade of a frame dwelling was common practice in Alexandria during the late 18th and early 19th century. Thus, this house is a rare example of a once common building practice. Several years ago, restoration work was undertaken on this siding and severely deteriorated siding was replaced with siding that was salvaged from the rear elevation and the rear of the house was re-sided with new replacement siding. 126 Prince Street is a two story, attached frame house that likely dates from the late 18th century. Staff examination of the house several years ago, indicated that at least portions of the house survived the January 1827 fire. There was evidence of charring of some timbers, but the structural system appeared to be largely intact.

There have been no variances previously approved for the subject property.

IV. Master Plan/Zoning

The subject property was zoned RM, residential and has been so zoned since adoption of the Third Revised Zoning Map in 1951. In 1992 the property is identified in the adopted Old Town Small Area Plan for residential land use.

V. Requested variances

Section 3-1108(C)(1). Side Yard:

The RM zone requires a lot of record which is 35 feet or wider to provide two side yards of a minimum of 5.00 feet. The proposed dwelling is located 5.00 feet from the center line of a private alley (western edge of the alley). The applicants request a variance of 5.00 feet.

Section 3-1106(A)(3)(a), Rear Yard:

The RM zone requires a detached residential dwelling to provide a minimum rear yard setback of 16.00 feet or two feet of building height for each foot of setback. The proposed dwelling is located on the rear property line. Based on a building height of 23.00 feet to the mid-point of the gable roof facing the rear property line a rear setback of 16.00 feet is required. The applicants request a variance of 16.00 feet.

VI. Staff analysis under criteria of section 11-1103

To grant a variance, the Board of Zoning Appeals must determine that a unique characteristic exists for the property. Section 11-103 of the zoning ordinance lists standards that an applicant must address and that the Board believes exists and thus warrants varying the zoning regulations.

- (1) The particular physical surroundings, shape, topographical condition or extraordinary situation or condition of the property that prohibits or unreasonably restricts the use of the property.
- (2) The property's condition is not applicable to other property within the same zoning classification.
- (3) Hardship produced by the zoning ordinance was not created by the property owner.
- (4) The granting of a variance will not be detrimental to the public or other property or the neighborhood in which the subject property is located. Nor will the granting of a variance diminish or impair the value of adjoining properties or the neighborhood.
- (5) The granting of the variance will not impair light and air to the adjacent property.
- (6) The granting of a variance will not alter the character of the area nor be detrimental to the adjacent property.
- (7) Strict application of the zoning ordinance will produce a hardship.
- (8) Such hardship is generally not shared by other properties in the same zone and vicinity.
- (9) No other remedy or relief exists to allow for the proposed improvement.

(10) The property owner has explored all options to build without the need of a variance.

VII. Applicant's Justification for Hardship

The applicants state that the few undeveloped lots in the RM zone where double side yards are imposed is not the development pattern on Prince Street. The majority of the homes on Prince street are in fact placed on the side property lines. Shifting the house to accommodate the necessary setbacks will result in the house encroaching into required open space, obstructing views from adjoining properties. The subject property is required to comply with more rigorous side yards which is uncharacteristic for the immediate area and historically appropriate. The subject property is unique and not similarly situated to adjoining properties in the neighborhood.

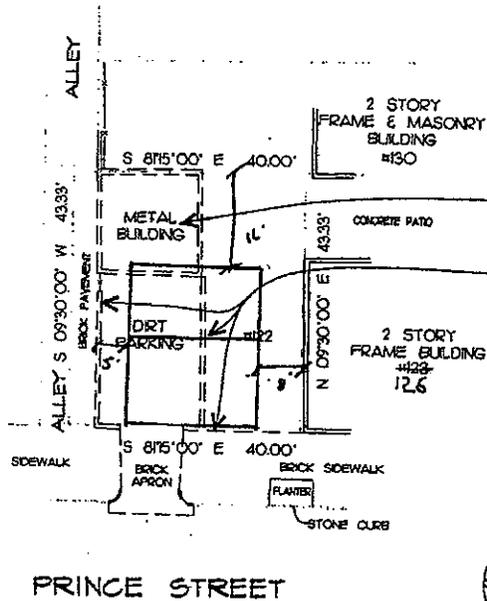


Figure 2- Footprint allowed by right

VIII. Staff Analysis

There is no justification for hardship. A new house (23 feet wide facing Prince Street by 28 feet deep by three-stories) can be constructed on this property in compliance with the east side and rear yard setbacks. (Refer to Figure 2).

The lot is level and no trees will be affected by the placement of the new house. Although, the lot is less than half the depth (44.33 feet) compared to the standard Old Town lot of 100 feet deep it is twice as wide as the minimum lot width required for an RM zoned lot. The wider lot does compensate for the loss of lot depth, but does not limit the placement of a new house on the lot. The placement of the new house is located in compliance with the zoning rules from the west side property line to maintain open space, respect the historic wall at 126 Prince Street and maintain views of Prince Street for the neighbors directly behind the applicants at 130 South Lee Street. The BAR will require the new house to not impede the view nor allow a new structure that could effect the historic wood wall on the east side of the house at 126 Prince Street.

By shifting the new house west by another 4.00 feet from the western edge of the private alley to address the east side yard setback will still provide 8.00 feet of distance from the historic wall at 126 Prince Street. No side yard variance will be needed. By placing the house in such a manner will increase open space on the lot and improve visual and limit building mass impact on the existing house at 116 Prince Street. There is no hardship nor justification to support an east side yard variance.

BZA CASE #2005-0023

The property is not unique to support the placement of the house closer to the rear property line than the minimum of 16.00 feet there is no hardship. The two-story house at 126 Prince Street west of the subject property is built on a similar size lot (lot width, lot area and depth) as the applicants' property, but is located almost 16.00 feet from the rear yard property line as required by the zoning code. Given the similar lot conditions and placement of the house, staff believes a reasonable size house can still be built that respects the rear yard setback requirement. The need of a two-story addition is unnecessary and contributes over development on a limited depth lot. An open rear yard will provide not only important visual and building relief but help reduce the amount of building coverage on a lot which is similar in characteristics to the neighboring lot. Open rear yards are a historic characteristic of Old Town homes and provide important relief from buildings tightly placed up against a neighboring building to assure light and air to their neighbors.

The subject property can maintain and compliment the existing development pattern and land use on Prince Street where street parking is the norm and within the zoning rules as to side and rear yard setbacks. The combination of the above factors does not severely restrict the placement nor limits buildable area for a new house that complies with the side and rear yard setbacks.

The applicants have not demonstrated a legal hardship. Staff recommends **denial** of the variance.

STAFF: Hal Phipps, Chief, Planning and Zoning
Peter Leiberg, Zoning Manager

BZA CASE #2005-0023

DEPARTMENTAL COMMENTS

Legend: C - code requirement R - recommendation S - suggestion F - finding

* The applicant is advised that if the variance is approved the following additional comments apply.

Transportation and Environmental Services:

- C-1 All utilities serving this site shall be placed underground. (Sec. 5-3-3)
- C-2 Pay sanitary sewer tap fee prior to issuance of a building permit.(Sec. 5-6-25.1)
- C-3 Any work within the right-of-way requires a separate permit from T&ES.(Sec. 5-3-61)
- C-4 Roof drains and sub-surface drains shall be connected to the city storm sewer system, if available, by continuous underground pipe. (Sec. 8-1-22)
- C-5 Per City Ordinance No. 3176, requests for new driveway aprons, unless approved at public hearing as part of a related item, must be accompanied by an adjacent **Property Owners Acknowledgment** form.
- C-6 Change in point of attachment or removal of existing overhead utility services will require undergrounding or a variance. (Sec. 5-3-3)
- R-1 A PLOT PLAN showing all improvements and alterations to the site must be approved by T&ES prior to issuance of a building permit. (T&ES)
- R-2 Applicant shall be responsible for repairs to the adjacent city right-of-way if damaged during construction activity. (T&ES)
- R-3 All improvements to the city right-of-way such as curbing, sidewalk, driveway aprons, etc. must be city standard design. (T&ES)
- R-4 An erosion and sediment control plan must be approved by T&ES prior to any land disturbing activity greater than 2500 square feet. (T&ES)
- R-5 No permanent structure may be constructed over any existing private and/or public utility easements. It is the responsibility of the applicant to identify any and all existing easements on the plan. (T&ES)

BZA CASE #2005-0023

- R-6 City Code Section 8-1-22 requires that roof, surface and sub-surface drains be connected to the public storm sewer system. Where storm sewer is not available applicant must provide a design to mitigate impact of stormwater drainage onto adjacent properties and to the satisfaction of the Director of Transportation & Environmental Services. (T&ES)
- R-7 Where the construction of a residential unit that results in land disturbing activity in excess of 2500 square feet, the applicant is required to comply with the provisions of Article XIII of the City's zoning ordinance for stormwater quality control. The applicant may request, in writing to the Director of T&ES, a waiver from the requirements of the ordinance. Contact the Division of Environmental Quality, T&ES (703/519-3400, ext. 219) for information. **(APPLICANT MUST CONSTRUCT a BMP FACILITY or PARTICIPATE IN THE CITY'S "FEE-IN-LIEU OF" PROGRAM)**

Code Enforcement:

- F-1 The East side of the property is located along a private alley and as such the fire separation distance for the proposed shall be measured from the edge of the alley and the interior lot line to the structure. This distance is shown as zero distance. As such, C-1 below shall apply.
- C-1 All exterior walls within 5 feet from an interior property line shall have a fire resistance rating of 1 hour, from both sides of the wall. As alternative, a 2 hour fire wall may be provided. This condition is also applicable to skylights within setback distance. Openings in exterior walls between 3 and 5 feet shall not exceed 25% of the area of the entire wall surface (This shall include bay windows). Openings shall not be permitted in exterior walls within 3 feet of an interior lot line.
- C-2 Prior to the issuance of a demolition permit or land disturbance permit, a rodent abatement plan shall be submitted to Code Enforcement that will outline the steps that will taken to prevent the spread of rodents from the construction site to the surrounding community and sewers.
- C-3 Roof drainage systems must be installed so as neither to impact upon, nor cause erosion/damage to adjacent property.

BZA CASE #2005-0023

- C-4 A soils report must be submitted with the building permit application.
- C-5 New construction must comply with the current edition of the Uniform Statewide Building Code (USBC).
- C-6 Alterations to the existing structure must comply with the current edition of the Uniform Statewide Building Code (USBC).
- C-7 Construction permits are required for this project. Plans shall accompany the permit application that fully detail the construction as well as layouts and schematics of the mechanical, electrical, and plumbing systems.
- C-8 Permission from adjacent property owners is required if access to the adjacent properties is required to complete the proposed construction. Otherwise, a plan shall be submitted to demonstrate the construction techniques utilized to keep construction solely on the referenced property.
- C-9 A wall location plat prepared by a land surveyor is required to be submitted to this office prior to requesting any framing inspection.

Recreation (Arborist):

- F-1 No trees are affected by this plan.

Historic Alexandria (Archaeology):

- F-1 Tax records indicate that a house was present on this lot by 1810. The structure was destroyed in the Great Fire of 1827 and was never rebuilt. The property therefore has the potential to yield archaeological resources which could provide insight into domestic activities in Alexandria during the early 19th century and possibly during the late 18th century.
- R-1 Contact Alexandria Archaeology (703-838-4399) two weeks prior to any ground disturbing activity (such as coring, grading, filling, vegetation removal, undergrounding utilities, pile driving, landscaping and other excavations as defined in Section 2-151 of The Zoning Ordinance) on this property. City archaeologists will provide on-site inspections to record significant finds.

BZA CASE #2005-0023

- R-2 Call Alexandria Archaeology immediately (703-838-4399) if any buried structural remains (wall foundations, wells, privies, cisterns, etc.) or concentrations of artifacts are discovered during development. Work must cease in the area of the discovery until a City archaeologist comes to the site and records the finds.
- R-3 The above statements in R-1 and R-2 must appear in the General Notes of the site plan so that on-site contractors are aware of the requirement.

Other Requirements Brought to the Applicant's Attention:

- C-1 A wall check survey plat shall be submitted to Planning and Zoning when the building footprint is in place, pursuant to Alexandria City Code section 8-1-12.



WALSH COLUCCI
LUBELEY EMRICH
& WALSH PC

John H. Foote
(703) 680-4664 Ext. 114
jfoote@pw.thelandlawyers.com
Fax: (703) 680-2161

December 23, 2009

Ms. Faroll Hamer
City of Alexandria
301 King Street, Room 2100
Alexandria, Virginia 22314

Re: 122 Prince Street / Request for Zoning Opinion

Dear Ms. Hamer:

This firm represents James and Christine Garner, who are the owners of a lot of record¹ at 122 Prince Street in the City, further identified as Tax Map Parcel 075.01-11-03. The property is presently improved with a small metal building and a brick wall on the easternmost portion of the parcel. The site is zoned to the City's RM District, permitting a single-family dwelling.

As you may be aware because of the extensive contact that the Garners have had with the City, they have been laboring to obtain approvals to construct a new home on the property. Over time a number of issues have been raised with respect to its construction but for the purposes of this inquiry, however, the only issue as to which we request your opinion is from what line must the Garners measure the required five foot side yard setback on the eastern property boundary.

1. The Garner's lot is adjacent to, and extends into, an unnamed eight-foot wide alley² that separates it from the property at 118 Prince

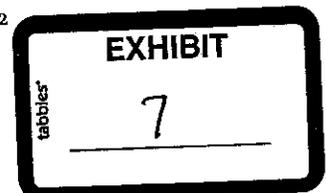
¹ The lot was created in its present form in 1953 and is exempt from the provisions of subsection 1-400 (d).

² Zoning Ordinance § 2-107 defines "alley" as a "public or private right-of-way primarily designed to afford access to the side or rear of properties whose principal frontage is on a street." This is a private alley.

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4310 PRINCE WILLIAM PARKWAY, SUITE 300 ■ PRINCE WILLIAM, VA 22192

ARLINGTON OFFICE 703 528 4700 ■ LOUDOUN OFFICE 703 737 3633

ATTORNEYS AT LAW



Street, identified as Tax Map Parcel 075.01-11-06. The alley is brick paved, and there is a brick wall on the eastern and a small portion of the northern sides of the property. For the purposes of this request, the City is to assume that the Garners' ownership extends to the center of that alley.

2. The Garners contend that the required five-foot side yard setback is to be calculated from the centerline of the alley, and not from the western edge of the alley. The City's Zoning Ordinance so provides.

Section 2-207 of the Ordinance defines "Yard, side" as

[a]n open, unoccupied space on the same lot with the building, between the building and the side lot line and extending from the front yard to the rear yard and being the minimum horizontal distance between the side lot line and the main building or any or any projection thereof not permitted in section 7-202(A).

For the RM District, § 3-1106(A) sets out the bulk and open space regulations. Section 3-1106 (A)(2)(a) requires that

[e]ach single and two-family dwelling shall provide two side yards of a minimum size of five feet. Each interior end lot in a group of townhouses shall provide one side yard of a minimum size of five feet.

Emphasis supplied.

Since the legal side lot line for the Garner's property extends to the centerline of the alley, this necessarily means that the Garners must provide a five foot setback, an "open, unoccupied space on the same lot with the [proposed] building," as measured from that centerline.

The words "open" and "unoccupied" are not defined in the Zoning Ordinance, but standard definitions tell us that "open" bears many meanings. For these purposes it is defined as "not closed or barred at the time, as a door or passageway by a door; relatively free of obstruction; constructed so as not to be fully closed, relatively unoccupied by buildings, trees, etc. Random House Webster's College Dictionary (1991). "Unoccupied" is defined as "without occupants, empty, vacant." Id.

The Garners can both achieve an open and unoccupied five foot setback from the centerline of the alley without adversely affecting it, and their buildings plans heretofore submitted with their several applications demonstrate that they intend to do just that. To conclude that they would not or could not meet the five foot setback requirement would require the conclusion that the brick paving in the alley somehow "occupies" it and precludes it from being "open." The Garners can remove both that paving (which they do not propose to do) and the wall (which they do) at any time.

3. We recognize that the Ordinance also requires that there be a certain amount of "open and usable space" on a lot and it is possible that the City has heretofore conflated this requirement with the side yard requirement. The open and useable space standard is completely separate from side yard requirements. Section 3-1106(B) with respect to this mandates among other things that

- (1) Each residential lot shall provide open and usable space in an amount equal to the lesser of the following:
- (3) Driveways and alleys shall not be considered open space for the purpose of this section 3-1106(B). . . .

The Ordinance defines this term at § 2-180. "Open and usable space" is, in relevant part, that portion of a lot at ground level which is:

- (A) Eight feet or more in width;
- (B) Unoccupied by principal or accessory buildings;
- (C) Unobstructed by other than recreational facilities; and
- (D) Not used in whole or in part as roads, alleys, emergency vehicle easement areas, driveways, maneuvering aisles or off-street parking or loading berths.

The purpose of open and usable space is to provide areas of trees, shrubs, lawns, pathways and other natural and man-made amenities which function for the use and enjoyment of residents, visitors and other persons.

While each developed lot must provide the required open and useable space, absent relief from this provision, this provision is unrelated to and does not affect the requirements for the calculation of side yard set backs.

4. If the Garners construct the home that they intend, the existing alley would remain accessible and useable for pedestrian purposes as it is today, and construction would not reduce its size. The five foot side yard setback assures this, and is significant because it would retain access to 118 Prince Street, whose entrance door has been sealed up on the front of that building, and relocated to the alley.

5. We have also considered what effect, if any, §§ 2-193 and 7-1003 of the Ordinance may have on this question.

Section 7-1003 provides that "[w]henver any public or private alley occurs in any zone, one-half of the width of such alley shall be considered in the determination of the rear yard setback ratio requirement of any lot abutting on such alley. The "setback ratio is defined in § 2-193 as "[t]he ratio of the horizontal distance between any part of a building or structure and the nearest side or rear property line or the nearest building or the center line of a street or alley to the height of that part of the building above average finished grade of such line.

These sections do not apply here

First, the set back ratio is used to determine the permissible height of a structure, and permits a landowner to calculate that ratio (and height) measured from the centerline of an adjacent alley even when the landowner does not own to that centerline. It is an irrelevant consideration when the landowner does, as here, own the fee to that line.

Second, perhaps every other zoning district in the City employs setback ratios for rear and side yards. See, e.g., the R-20 District, § 3-106; R-12, § 3-206; RA, § 3-606; CL, § 4-106; CRMU-L, § 5-111. The RM District, however, provides for a rear yard setback ratio of 1:2 and a

Ms. Faroll Hamer
December 23, 2009
Page 5 of 5

minimum size of 16 feet but it simply does not require or use a setback ratio for side yards. It sets a fixed five feet. There is no side yard setback ratio required, or even authorized, for the RM District.

6. We note finally that the July 14, 2005, Staff Report for BZA Appeal #2005-0023 (requesting a variance to the side yard requirement without regard to the point from which it might be measured, in order to construct a three story home on the property) contains the statement that

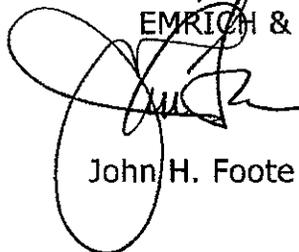
the City Attorney has ruled that the zoning rules do not allow a side yard alley to be counted in the applicable side yard setback (in this instance 5.00 feet). The City has determined that the minimum side yard is measured from the western edge of the alley not the centerline of the alley.

We have, however, seen no such ruling or determination. Under Va. Code Ann. § 15.2-2286(A)(4) only the Zoning Administrator or his authorized delegates may make binding interpretations and rulings under the Zoning Ordinance.

We respectfully request that you provide your opinion as to the question presented here, and please let us know if you need additional information.

Very truly yours,

WALSH, COLUCCI, LUBELEY,
EMRICH & WALSH, P.C.



John H. Foote

JHF/jhf

cc: Catharine Puskar, WCLEW
James and Christine Garner
James Banks, Esq.



DEPARTMENT OF PLANNING AND ZONING

301 King Street
Room 2100
Alexandria, VA 22314

Phone (703) 746-4666
Fax (703) 838-6393

www.alexandriava.gov

February 19, 2010

John H. Foote, Esq.
Walsh, Colucci, Lubeley, Emrich & Walsh, P.C.
4310 Prince William Parkway, #300
Prince William, Virginia 22192

Re: 122 Prince Street

Dear Mr. Foote:

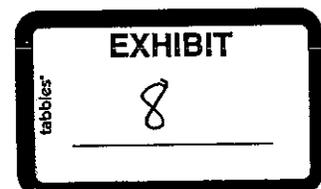
With apologies for any confusion, we enclose an updated letter, identical to the one we sent on January 28, 2010, except that it also includes the language required by Section 15.2-2311 of the Virginia Code.

Very truly yours,

Faroll Hamer

Faroll Hamer, Director
Planning and Zoning

cc: James Banks, City Attorney
Christopher Spera, Deputy City Attorney
Barbara Ross, Deputy Director, Planning and Zoning





DEPARTMENT OF PLANNING AND ZONING

301 King Street

Room 2100

Alexandria, VA 22314

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February 19, 2010

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4310 Prince William Parkway, #300
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Re: 122 Prince Street

Dear Mr. Foote:

You have requested a zoning determination regarding the use of an alley as part of the side yard requirement for the construction of a new house at the above property. The City has discussed this issue with your office and with the owners of the property in the past.

Your recent, December 23 letter states that the alley in question, which runs south from Prince Street between 122 and 118 Prince Street, is a private, eight foot wide, alley. That alley is shared by others and provides access to a series of homes on Prince and South Lee Streets. You have argued, however, that deeds and other land records demonstrate that the Garners own the half of the alley immediately abutting 122 Prince Street, and that the alley land is actually part of the 122 Prince Street lot for building purposes. We are unable to confirm these facts. We have recommended in the past that you pursue a quiet title action to settle this question. Instead, you are now asking us to assume, for purposes of this determination, that the Garners can show such title.

Side Yard Requirement

As you cite, the zoning ordinance at section 3-1106(A)(2) requires that each single family dwelling in the RM zone provide two five foot side yards. In this case, one of those required yards must be located on the eastern side of any future house. According to section 2-207, a "yard, side" is defined as

[a]n open, unoccupied space on the same lot as the building, between the building and the side lot line and extending from the front yard to the rear yard, and being the minimum horizontal distance between the side lot line and the main building or any projection thereof not permitted in section 7-202 (A).

Section 7-201 requires that

Every part of a required yard shall be open and unobstructed from the lowest point to the sky except as may be permitted in section 7-202.

Although in some contexts the terms "open," "unoccupied" and "unobstructed" have different meanings, in this context the meaning is clear. First, under section 7-202, the City specifies those items that may occupy a required yard, including fencing, open terraces up to two feet above grade, air conditioning equipment, clotheslines, bay windows, childrens' play equipment, small stairs, and other features typically associated with residential living. These items would not be consistent with the use of an alley for access purposes for either the Garners or their neighbors.

Further, the alley land fails to meet the requirement of being "open and unoccupied" to the extent others claim rights to it. If your clients can show that they have the exclusive right to use the portion of the alley they are claiming, not subject to the use, access, occupation or control of others, and that the alley land is part of the adjacent lot for building purposes, then it is our opinion that the claimed portion of the alley is "open" and "unoccupied" for the purposes of the side yard requirement and the Garners may measure the required five foot side yard setback from the centerline of the alley.

If your clients cannot establish that they own and have exclusive use of the lot to the centerline of the alley, then the space is not "open" and "unoccupied" and "unobstructed" as required by the zoning ordinance, and the claimed portion of the alley may not be counted toward side yard setback. We understand that at least one neighbor claims either use or ownership rights to the alley at issue. Further, an 1853 deed in the chain of title for this property states that the alley is "to be kept open," presumably for the use and occupancy by others.

Therefore, even if the Garners show ownership to the centerline of the alley in question, there remains an issue regarding the use rights that neighbors have to that alley. As long as the neighbors have any such use rights to that alley, no portion of the alley may be used in establishing the side lot line, because such property is not "open, unoccupied space" as that term is used in Section 2-207.

Open Space Requirement

Your letter cites other provisions of the zoning ordinance which you argue do not apply in this case. We agree. We have not conflated the open space requirement in section 3-1106(B) with the side yard requirement. Each is separately required.

Rear Yards Abutting Alleys

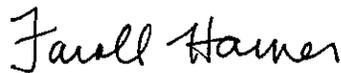
Nor is section 7-1003 applicable. It provides:

Whenever any public or private alley occurs in any zone, one-half of the width of such alley shall be considered in the determination of the rear yard setback ratio requirement of any lot abutting on such alley.

That provision does not apply here because it is not a rear yard being questioned. On the other hand, Section 7-1003 does demonstrate that the City is able to express itself when it finds that circumstances warrant allowing alley property to be considered for purposes of measuring yard dimensions. The City has not stated that alleys may be considered for purposes of measuring side yards.

We hope the above is helpful to you and responsive to the issues you have raised. If we may assist you further, please do not hesitate to contact us.

Very truly yours,



Faroll Hamer, Director
Planning and Zoning

cc: James Banks, City Attorney
Christopher Spera, Deputy City Attorney
Barbara Ross, Deputy Director, Planning and Zoning

Notice required by Virginia Code:

You may have the right to appeal this decision within thirty days in accordance with 15.2-2311 of the Code of Virginia. The decision will be final and unappealable if not appealed within thirty days.

EXHIBIT NO. 1

21
3-18-00

Docket Item # 19-A
TEXT AMENDMENT #2000-05

Planning Commission Meeting
March 7, 2000

CASE: TEXT AMENDMENT #2000-05
PROHIBITION ON EMERGENCY VEHICLE EASEMENTS AS OPEN SPACE
PROHIBITION ON ROADS WITHIN LOTS

ISSUE: Consideration of amendments to Section 2-180 (Definition of open space) and
1-400(B)(3)(d) (Interpretation of zone regulations) of the Zoning Ordinance to
provide additional open space in development.

PLANNING COMMISSION ACTION, MARCH 7, 2000: On a motion by Mr. Wagner, seconded
by Mr. Leibach, the Planning Commission voted to recommend approval of the text amendment.
The motion carried on a vote of 7-0.

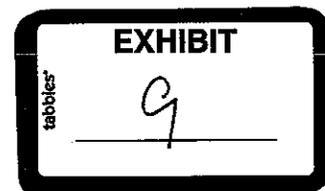
Reason: The Commission agreed with the staff analysis and the work of its own Committee on Open
Space.

Speakers:

Marilyn Doherty, League of Women Voters, spoke in support.

Lois Kelso Hunt, Taylor Run Civic Association, spoke in support.

Poul Hertel, North East Civic Association, spoke in support.



COMMITTEE RECOMMENDATION: The Planning Commission's Committee on Open Space recommends that the Planning Commission on its own motion initiate the following text amendment:

ARTICLE II: DEFINITIONS

Sec. 2-180 *Open and Usable Space:* That portion of a lot at ground level which is:

- (A) Eight or more feet in width;
- (B) Unoccupied by principal or accessory buildings;
- (C) Unobstructed by other than recreational facilities; and
- (D) Not devoted to used in whole or in part as roads, alleys, emergency vehicle easements areas, driveways, maneuvering aisles or off-street parking or loading berths.

ARTICLE I: GENERAL REGULATIONS

Sec. 1-400 *Interpretation of ordinance*

(B) *Interpretation of zone regulations*

(3) Maximum floor area ratio and maximum density shall be calculated as follows:

(d) Lots created for single family and two family dwellings may not contain areas used, in whole or in part, for public or private streets, including alleys or driveways providing access to three or more units. Lots created for townhouse dwelling units may not contain areas used, in whole or in part, for public or private streets, including alleys or driveways providing access to more than one dwelling unit.

Note: underlining denotes new text
~~strikeout~~ denotes deleted text

DISCUSSION

This text amendment is a result of the work of the Planning Commission's Committee on Open Space (Committee) and is designed to improve the quality of development by providing more open space.

Open Space Committee

The Committee was created by the Planning Commission in 1999, and asked to look at how the City can achieve additional public and private open space. In eight public meetings since then, the Committee has reviewed recent developments with staff, listened to the public regarding the need for additional open space, and joined forces with the Parks and Recreation Open Space Subcommittee with regard to the need for additional public open space. The Committee has developed an agenda of issues for discussion and decision, and has identified the potential for both Master Plan and zoning ordinance changes in the future. The Committee work will proceed, although it is suggesting this text amendment now as an interim step.

Excluding Emergency Vehicle Easement from Open Space

The Committee is bringing forward one change to the open space definition now, because it has been identified and there is agreement about it, even though the future work of the Committee may involve additional changes to the open space definition.

This part of the text amendment proposal addresses the phenomenon of emergency vehicle easements, an area of land typically required of a developer so that fire trucks and other emergency vehicles can access buildings on a site not accessible by external roadways. Those areas are usually paved and used as internal roadways. The question is whether that land area required for emergency access should be allowed to be counted as open space when it is not paved. The language of the open space definition is silent on this technical issue. In the case of the Lincoln Properties residential development on Route 1, staff was ultimately persuaded by the applicant to treat an emergency vehicle easement area as open space, because it was actually open, green, and useable, acknowledging that its use as a travelway for emergencies is a rare event. However, based on that experience, the Committee found several reasons to have such areas not count as part of the technical open space definition.

First, in order for the ground surface to be solid enough to support large emergency vehicles, it must be created with special materials. In the Lincoln Properties project, a plastic product composed of rings with openings through which grass can grow will be used. If successful, the area will appear like a lawn. Because the concept may work, staff was willing to count it as open space in that case. Nevertheless, no one is 100% certain that it will succeed. Because it is unlikely that such dual purpose space can achieve the same level of quality that areas devoted purely to open space do, The Committee believed better approach is to not allow such areas to be counted as open space.

In addition to the inability to grow certain landscape material on the land needed as a drive area, such as large shrubs or trees, there are restrictions on what can be placed in the way of potential emergency vehicles. No recreational structures are allowed. In addition, the Fire Marshall believes that the area must be marked and obvious as a travel route for firefighters in an emergency with, for example, posts and reflective markers.

Developers' representatives have argued that the proposed text amendment works as a disincentive to a developer's including green area on a site because the open space definition already disallows paved areas to be counted. Thus, if an unpaved emergency vehicle area is not counted, a developer may as well pave the area instead of leaving it open. However, the Committee noted that, even if the emergency easement area were paved, the text amendment would not result in any *less* open space being required on a development site.

Developers also argued that, if the text amendment is approved, then a project which includes an unpaved emergency vehicle area would have to seek a modification to allow it to substitute for technically pure open space. Staff acknowledged that the final result in the Lincoln Properties example was good and would receive support from staff if offered as a modification request.

The Committee noted the importance of placing the burden on the applicant to show that the land can be improved to function effectively as open space land does. The alternative approach, as exists now, places a heavy burden on staff to discount what an applicant notes as "green" space on a plan. As demonstrated in the Lincoln Properties example, an acceptable conclusion was reached only after numerous iterations, much delay, and lengthy negotiations. The Committee stressed the importance of communicating clearly with a developer via the ordinance that open space is a priority item and quality open space should not be achieved only as a result of arm twisting. By placing the burden on the applicant — by way of a request for a modification — the importance of the space is correctly defined.

Excluding Roads from Lot Area

This portion of the text amendment, while not addressing land area used as "open space," addresses another technical issue which allows buildings to be placed closer to each other than they might be under current regulations.

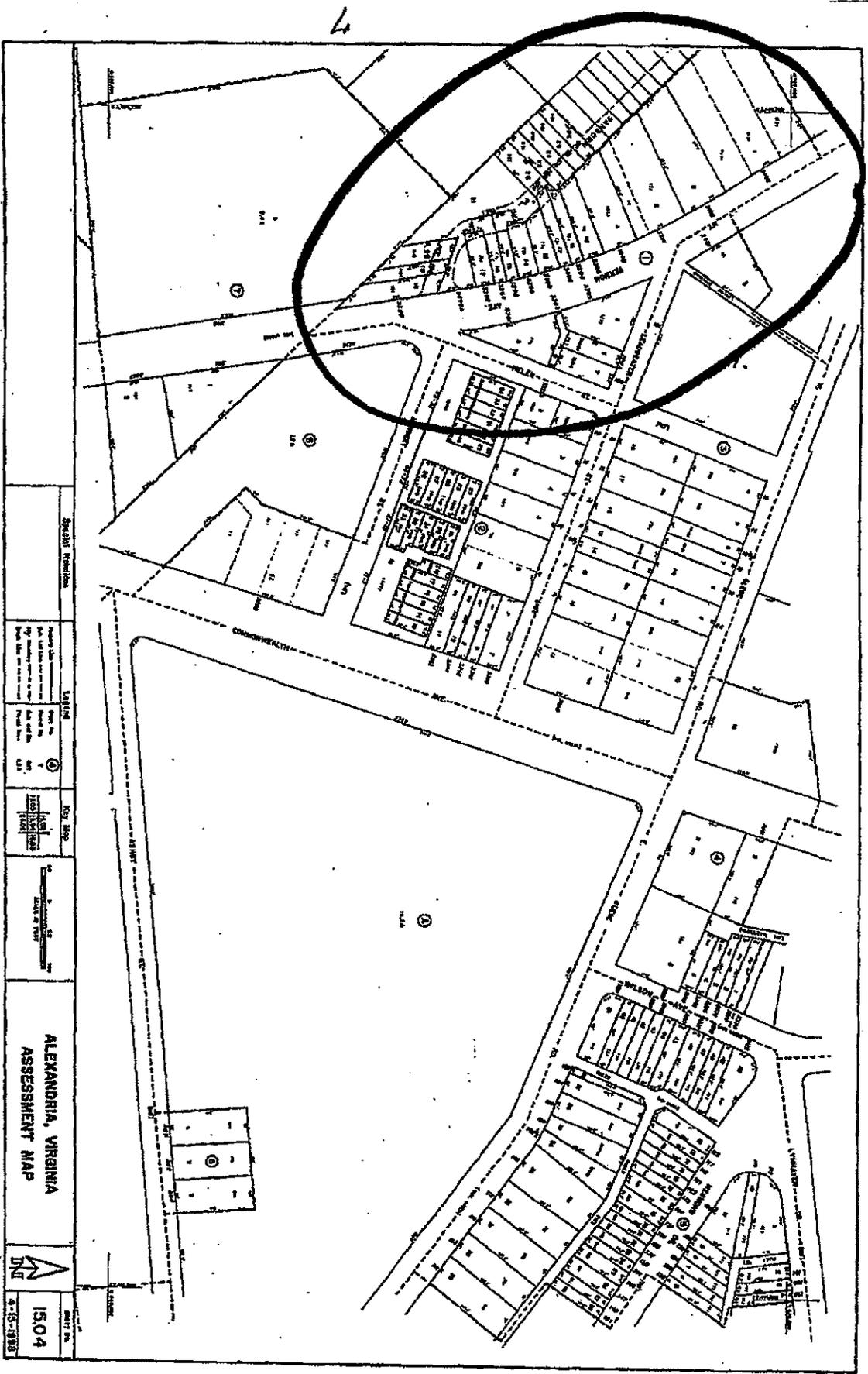
Given the scarcity of new land for development in the City, the design of residential projects over the last decade has taken a very specific turn toward the fee simple townhouse form on land accessed by private streets. Prior to that time, new development utilized public streets for frontage and access. Because private streets are allowed to be narrower than ones designed to public street standards, their use allows more land for townhouse units.

In addition to using private instead of public streets, the townhouse project design often incorporates the private streets *within and as part of* the townhouse lots. Because they are private, the ownership of the land in street use can be worked out among the owners of the individual units, typically utilizing cross easements which allow all lot owners to cross the private road areas of individual lots. When lots contain roads and alleys, development can be built to higher densities because separate areas do not have to be allocated to roads and alleys. When coupled with the practice of using private streets instead of public ones, allowing streets to be part of lots allows buildings to be placed closer to each other within a development.

In response to specific direction from the Committee, staff reviewed this issue and provided detailed maps and discussion of how development has utilized this approach, and how specific developments would be affected if roads were not allowed to be used as part of residential lots. See attached development examples, which show the use of roads within lots. Staff found that in many developments, if the roads and alleys were removed from the lot design, the arrangement of units would have to be redesigned to make the project work. Staff also found that several developments would not achieve the number of units already approved, although the difference in number of units achieved was modest. Even where the difference was not a decrease in density, the result was that buildings would be placed farther apart from each other.

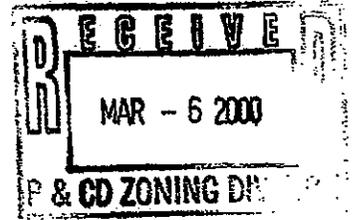
The Committee believes that each of the above proposals should be incorporated as changes to the zoning ordinance. Both are highly technical and derived from specific experience with recent developments. Neither proposal nor even the two in combination will result in a drastic change to the development in the City. Both should, however, help add additional space within development projects.

MOORE VERNON COOP (SPATT / PROTECT)



TA 2000 - 0005

#19 1A 2000-0005 (OPEN SPACE)
P.C. - 3/7/00



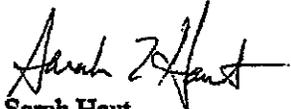
Ms. Barbara Ross
Department of Planning and Zoning
301 King Street, Room 2100
Alexandria, VA 22314

Dear Ms. Ross,

In reference to your letter regarding the march 7 meeting on Open Space, I would like to submit my comments. I attended the February 17th meeting on Open Space where it was decided that the proposed text amendment to the definition of "open space" would be included for consideration in the public hearing held on March 7th. I strongly support this proposed amendment and am concerned that if the existing text is not amended, Alexandria's open space will suffer.

There were a couple of developer representatives at the February 17th meeting who were urging the committee to allow Emergency Vehicle Easements (EVE) and other traditionally "non open space" characteristics to be considered open space if they are constructed to appear as such. I think this would be a terrible mistake. It is the nature of a developer to maximize the amount of construction on a site so as to maximize his profit. If the planning commission does not vote in favor of the text amendment, developers will construct buildings that occupy the maximum allowable space and will continue to push for exceptions for creatively constructed EVE lanes, etc. The end result will be huge buildings on small lots and dwindling open land. I think the text amendment will protect us from this problem. Please protect our open space and include the text amendment.

Sincerely,


Sarah Haut

19-A: TA 2000-0005
4 : TA 2000-0002



North Community Association

300 Montgomery Street, Suite 200
Alexandria, VA 22314

[Redacted]

Marian Clarke
Alexandria House

[Redacted]

Andrea Haslinger
Pitt Street Station

[Redacted]

Ray Lewis
Lewis & Assoc., Ltd.

[Redacted]

Marty & Bette Meisel
Hearthstone Mews

[Redacted]

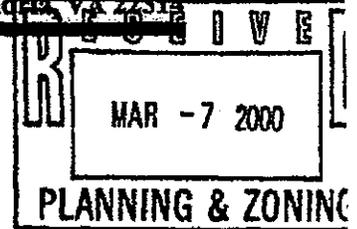
Tom Robinson
Harbor Terrace

[Redacted]

Mike Willsey
Canal Way

Mr. William Hurd, Chair
Alexandria City Planning Commission
301 King Street
Alexandria, VA 22314

7 March 2000



Dear Mr. Hurd and Members of Planning Commission,

I am writing to provide input regarding two issues that appear on your docket for March 7. The first of these concerns the text amendment and revisions to the definition of open space. After reviewing these proposed changes, the board of the Old Town North Community Association agrees that they are steps in the right direction. There have been several developments constructed in our neighborhood in recent years under the present definitions and we have seen their density. We should acknowledge that we supported these projects and continue to feel that they have contributed positively to our neighborhood. However, we also feel that the proposed revisions, which will reduce future townhouse density, better suit the City as a whole.

We noted a recommendation in the report that, "For new development, the City should consider an impact fee requirement, similar to one now collected for the Housing Trust Fund, or for the Eisenhower Avenue Traffic fund." We would also support this concept should it come before the commission; for we not only need to protect today's open space, but we, as a City, should pursue aggressively tomorrow's open space.

The second issue is Text Amendment 2000-0002, Apartments in the RM Zone. We note that this proposal will have minimal impact on Old Town North given that we have only about one block of land that fits under this zone. Concern was also expressed that such uses may be invoked by elderly individuals who desire to remain in their houses but need the added income provided by such rentals in order to do so. It was also noted that apartments can contribute positively to the mix of individuals in a neighborhood. It was suggested that rather than simply banning the use, other steps could be taken to achieve the same ends (e.g., limitations on unit self-sufficiency). However, as noted, we have little stake in the matter and so defer to your judgment.

Sincerely,

Peter Ramsberger
President, OTNCA

Planning Commission Testimony, March 7, 2000
Open Space

#19-A JA 2000-0005
#19-B OPEN SPACE Rec.
SUBMITTED AT P.C. MTS. of 3-7-00.

Chairman Hurd and Members of the Commission:

I am Marilyn Doherty, Co-President of the Alexandria League of Women Voters. The League is pleased that the Commission has created an Open Space subcommittee. The reports we have received on its meetings make us optimistic that some important League objectives may be realized through its work.

The growth and development position we adopted in the early 1990's contains, as part of a longer statement, these words about open space: "Open space should be truly usable space and should provide aesthetic values." The text amendment before you would prohibit counting emergency vehicle easement areas as open space. Specifying this prohibition dovetails with our long adopted position. We ask you to adopt it.

We also support the other part of the text amendment which would prohibit roads within lots. Roads within lots were allowed in many of our newest dense townhouse developments. Now that some of those developments are built out, we can clearly see that it was a mistake to do so. Not only do those developments not have enough usable open space, they hardly have breathing space.

This text amendment helps to achieve another League objective, to encourage public participation in government, by having a legal definition of open space that more nearly fits the definition that an ordinary citizen would use.

I want to say again that the League is very pleased that the Open Space Subcommittee composed of Mr. Wagner, Mr. Robinson, and Mr. Leibach is at work. Please adopt this text amendment. We look forward to testifying on further recommendations the Subcommittee will make.

Thank you.

HARRY R. HART
CYRIL D. CALLEY
LUIS CHINCHILLA

OF COUNSEL
ROBERT L. MURPHY

HART & CALLEY
A PROFESSIONAL CORPORATION
ATTORNEYS AND COUNSELLORS AT LAW
307 NORTH WASHINGTON STREET
ALEXANDRIA, VIRGINIA 22314-2557

(703) 836-5757
FAX (703) 548-5443

21
3-18-00

1201 CONNECTICUT AVENUE, N.W.
TWELFTH FLOOR
WASHINGTON, D.C. 20036

March 17, 2000

Mr. Ignacio Pessoa
Assistant City Attorney
City Hall, Room 1300
Alexandria, Virginia 22314

Re: Docket Item 21, March 18, 2000

Dear Mr. Pessoa:

There are some plans in the pipeline that would or may be affected by the text amendment that is Item #21 of the March 18th docket and which were not filed to avoid a proposed ordinance. Would you please raise the subject as you deem appropriate on March 18th and draw the ordinance to effective as to all plans filed on or after March 1st.

It is my understanding that City Planning staff does not object to this.

I will not be at the March 18th meeting, but Mary Catherine Gibbs will be there in my behalf.

Thank you very much.

Very truly yours,



Harry P. Hart

HPH/eah

TEXT AMENDMENT # 2000-0005

ISSUE DESCRIPTION: Amendments to the zoning ordinance
to provide additional open space in
development.

ZONING ORDINANCE SECTION: 2-180 & 1-400(B)(3)(d)

CITY DEPARTMENT: P-2

Date Application Filed: _____ Legal Advertisement: _____

ACTION - Planning Commission: 3/7/00 Recommend Approval 7-0

ACTION - City Council: 3/18/00 PH -- City Council approved the text
amendment, referred it to the City Attorney's
Office for the preparation of an ordinance and
that it would apply to all applications
submitted after March 1, 2000.

ORDINANCE NO. 4119

AN ORDINANCE to amend and reordain Section 2-180 (OPEN AND USABLE SPACE), of Article II (DEFINITIONS) of City of Alexandria Zoning Ordinance (TA NO. 00-0005).

THE CITY COUNCIL OF ALEXANDRIA HEREBY ORDAINS:

Section 1. That Section 2-180 of the City of Alexandria Zoning Ordinance be, and the same hereby is, amended to read as follows:

2-180 Open and usable space. That portion of a lot at ground level which is:

- (A) Eight feet or more in width;
- (B) Unoccupied by principal or accessory buildings;
- (C) Unobstructed by other than recreational facilities; and
- (D) Not used in whole or in part as roads, alleys, emergency vehicle easement areas, driveways, maneuvering aisles or off-street parking or loading berths.

The purpose of open and usable space is to provide areas of trees, shrubs, lawns, pathways and other natural and man-made amenities which function for the use and enjoyment of residents, visitors and other persons.

Section 2. That single-family, two-family, townhouse and multi-family dwellings on lots for which emergency vehicle easement areas were counted as open space in the site plan or special use permit approval therefor, existing on March 1, 2000, or for which a building permit application or preliminary site plan application was filed, and was pending or had been approved on March 1, 2000, shall not be subject to the provisions of Section 2-180(D) as amended by this ordinance, shall not be characterized as noncomplying structures, and shall be characterized as structures grandfathered under prior law, pursuant to Section 12-500 of this ordinance.

Section 3. That Section 1-400 of the City of Alexandria Zoning Ordinance, as amended by this ordinance, be, and the same hereby is, reordained as part of the City of Alexandria Zoning Ordinance.

Section 4. That this ordinance shall become effective upon the date and at the time of its final passage, and shall apply to all applications for land use, land development or subdivision approval provided for under the City of Alexandria Zoning Ordinance

which are on such date pending before any city department, agency or board, or before city council, or on judicial review; shall apply to all such applications which may be filed after such date, and shall apply to all other facts and circumstances subject to the provisions of the City of Alexandria Zoning Ordinance, except as may be provided in Section 2 of this Ordinance and Article XII of the Zoning Ordinance.

KERRY J. DONLEY
Mayor

Introduction: April 11, 2000
First Reading: April 11, 2000
Publication: April 13, 2000
Public Hearing: April 15, 2000
Second Reading: April 15, 2000
Final Passage: April 15, 2000

ORDINANCE NO. 4120

AN ORDINANCE to amend and reordain Section 1-400 (INTERPRETATION OF ORDINANCE), of Article I (GENERAL REGULATIONS) of City of Alexandria Zoning Ordinance (TA NO. 00-0005).

THE CITY COUNCIL OF ALEXANDRIA HEREBY ORDAINS:

Section 1. That paragraph (3) of Subsection 1-400(B) of the City of Alexandria Zoning Ordinance be, and the same hereby is, amended to read as follows:

- (3) Maximum floor area ratio and maximum density shall be calculated as follows:
 - (a) In every zone, the maximum floor area ratio and maximum density specified for the zone shall be determined on the basis of the gross area of the lot or tract of land involved, which shall include:
 - (1) Areas to be dedicated for street purposes that are in excess of:
 - (a) 30 feet from the centerline in the instance of property located in the R-20 through R-2-5 zones, inclusive.
 - (b) 33 feet from the centerline in the instance of property located in each of the other zones.
 - (2) Areas located within fire, emergency vehicle, buffer, scenic, channel, bicycle, utility, park or sewer easements.
 - (b) Except as provided in subparagraph (c) below, compliance with floor area ratio and density requirements shall be determined separately for each individual lot of record.
 - (c) An applicant for a special use permit for a CDD pursuant to section 5-602(D), for development in a CRMU zone or for a cluster development may request that the land covered by the application be treated as a "tract" for purposes of calculating floor area ratio and density so as to achieve an overall figure that meets the requirements of the zone without regard to compliance on a lot by lot basis.
 - (d) Lots created for single-family and two-family dwellings shall not contain areas used, in whole or in part, for

public or private streets, including alleys or driveways providing access to three or more dwelling units. Lots created for townhouse dwellings shall not contain areas used, in whole or in part, for public or private streets, including alleys or driveways providing access to more than one dwelling unit.

- (e) Single-family and two-family dwellings on lots which contain public or private streets, including alleys or driveways providing access to three or more dwelling units, and townhouse dwellings on lots which contain public or private streets, including alleys or driveways providing access to more than one dwelling unit, existing on March 1, 2000 or for which a building permit application or preliminary site plan application was filed, and was pending or had been approved on March 1, 2000, shall not be subject to the provisions of clause (d) of this paragraph, shall not be characterized as noncomplying structures or substandard lots, and shall be characterized as structures and lots grandfathered under prior law, pursuant to Section 12-500 of this ordinance.

Section 2. That Section 1-400 of the City of Alexandria Zoning Ordinance, as amended by this ordinance, be, and the same hereby is, reordained as part of the City of Alexandria Zoning Ordinance.

Section 3. That this ordinance shall become effective upon the date and at the time of its final passage, and shall apply to all applications for land use, land development or subdivision approval provided for under the City of Alexandria Zoning Ordinance which are on such date pending before any city department, agency or board, or before city council, or on judicial review; shall apply to all such applications which may be filed after such date, and shall apply to all other facts and circumstances subject to the provisions of the City of Alexandria Zoning Ordinance, except as may be provided in Section 1-400(B)(3)(e) and Article XII of the Zoning Ordinance.

KERRY J. DONLEY
Mayor

Introduction: April 11, 2000
First Reading: April 11, 2000
Publication: April 13, 2000
Public Hearing: April 15, 2000
Second Reading: April 15, 2000
Final Passage: April 15, 2000