

## City of Alexandria, Virginia

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MEMORANDUM

DATE: DECEMBER 10, 2007

TO: THE HONORABLE MAYOR AND MEMBERS OF CITY COUNCIL

THROUGH: JAMES K. HARTMANN, CITY MANAGER *J*

FROM: FAROLL HAMER, DIRECTOR  
DEPARTMENT OF PLANNING AND ZONING *FW em PA*

SUBJECT: APPEAL OF THE PLANNING COMMISSION DECISION  
REGARDING SUB#2007-0006, SUBDIVISION AT 407 DUKE  
STREET & 219 SOUTH ROYAL ST.

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On November 8, 2007 the Planning Commission voted to deny a requested subdivision of parcels at 407 Duke Street and 219 South Royal Street. Mr. Dunn made the motion and Ms. Fossum seconded, the motion passed on a vote of 3-1.

The applicants, William and Denise Dunbar and 219 South Royal LLC, requested approval of a subdivision to adjust a boundary line separating their two properties by transferring most of the rear yard at 219 South Royal Street to the rear yard of 407 Duke Street. The property at the rear of 219 South Royal Street has been used by the owner of the property at 407 Duke Street for the past 15 years as an open space /brick patio area.

Approval of this subdivision will require that variations be granted for rear yard setback and open space at the 219 South Royal parcel. Per City Code Section 11-1713:

*Variations.* The commission may, by vote of a majority of its members, authorize specific variations from the provisions of Section 11-1700, when in its opinion a strict adherence to such provisions would result in substantial injustice and when one of the following circumstances exists; provided, however, that the use or character of the resulting lots or parcels in such a subdivision shall not be inconsistent with the use provisions of the zone in which the property is situated or the existing development in the immediate area:

- (A) Extremely rugged topography.
- (B) Irregularity in shape of parcel preventing conformance with normal lot area or frontage requirements.

(C) Insufficient frontage on existing street where the interior of the tract can be served only by a street substandard in width when not serving more than five lots, provided the street is not less than 30 feet in width. If only a single lot is served, the width may be less than 30 feet. A turn around area may be required.

(D) Streets along border of the subdivision where the subdivision borders on unsubdivided land and the remaining street width will be provided from adjacent land.

(E) Resubdivision of lots in subdivisions of record as of January 1, 1952, where, because of existing structures or gross area of land involved, the subdivided lots would not conform to all of the requirements of the zone in which the subdivision is located.

The staff recommendation was for denial. Staff finds that strict adherence to the provisions of the code will not result in substantial injustice. The Planning Commission felt that they could not approve the variations for these reasons as well. The applicant argued that this subdivision is beneficial to the City because it makes the rear yard of 219 South Royal open space in perpetuity, rather than developable as it is now. **Staff and Planning Commission did not feel that this justified granting the variations that would allow this subdivision.**

cc: Michele Evans  
Stewart Dunn

Docket Item #7  
SUBDIVISION #2007-0006

Planning Commission Meeting  
November 8, 2007

**ISSUE:** Consideration of a request to resubdivide the subject properties.

**APPLICANTS:** William F Dunbar, IV and Denise G. Dunbar and 219 South Royal, LLC  
by Duncan Blair, attorney

**STAFF:** Richard W. Bray  
Richard.bray@alexandriava.gov

**LOCATION:** 407 Duke Street and 219 South Royal Street

**ZONE:** RM/Residential

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**PLANNING COMMISSION ACTION, NOVEMBER 8, 2007:** On a motion by Mr. Dunn, seconded by Ms. Fossum, the Planning Commission voted to deny the request. The motion carried on a vote of 3 to 1. Ms. Lyman voted nay and Mr. Jennings abstained. Mr. Wagner and Mr. Robinson were absent.

Reason: The Planning Commission agreed with the staff analysis.

Speakers: Duncan Blair, representing the applicant, spoke regarding the beneficial aspects of the proposed subdivision.

**PLANNING COMMISSION ACTION, SEPTEMBER 6, 2007:** The Planning Commission noted the deferral.

Reason: The applicant requested a deferral.

**STAFF RECOMMENDATION:** Staff recommends **denial** of the request.

SUB #2007-0006  
407 Duke Street and 219 South Royal Street



**SUB #2007-0006**

**11/08/07**



**I. DISCUSSION**

REQUEST

The applicants, William and Denise Dunbar and 219 South Royal LLC, request approval to subdivide the back portion of 219 South Royal Street and consolidate it with the property at 407 Duke Street.

SITE DESCRIPTION AND SURROUNDING USES

The subject property at 407 Duke Street is one lot of record with 56.21 feet of frontage facing Duke Street, a depth of 92.00 feet and a lot area of 5,171 square feet. The subject property is occupied by a single-family dwelling. The subject lot at 219 South Royal Street is one lot of record with 15.14 feet of frontage facing South Royal Street, a depth of 128.21 feet and a lot area of 1,942 square feet and occupied by a single-family dwelling.

The surrounding neighborhood is developed predominately by large single-family residences along Duke Street. Row houses are the dominate land use on the 200 block of South Royal Street. A few lots have off-street parking, but for the most part the properties have modest rear yards. Buildings are located up to the front property lines and near side property lines.

APPLICANT'S PROPOSAL

The applicants propose to adjust a boundary line separating their two properties by transferring most of the rear yard at 219 South Royal Street to the rear yard of 407 Duke Street. The property at the rear of 219 South Royal Street has been used by the owner of the property at 407 Duke Street for the past 15 years as an open space /brick patio area.

If the subdivision is approved, the lot at 219 South Royal Street will be reduced by approximately 852 square feet of lot area resulting in the creation of a 1,090 square foot lot. The minimum lot area required for a lot in the RM zone is 1,452 square feet.

ZONING/MASTER PLAN

The subject property is zoned RM, residential and is located in the Old Town Small Area Plan, which designates the property for residential use.

**II. STAFF ANALYSIS**

COMPLIANCE WITH THE RM ZONE REGULATIONS

The RM zone requirements and the corresponding information for the subject properties are listed as follows.

Zoning Standard	RM Requirement	Proposed Lot 600	Proposed Lot 601
<b>Lot Area Required</b>	1,452 s.f.		
Existing		1,942 sf	5,171 sf
Proposed		1,090 sf	6,023 sf
<b>Change (from required)</b>			<b>+ 4,571 sf</b>
<b>Lot Width (no change)</b>	25.00 ft	15.14 ft	56.21 ft
<b>Front Yard Setback (no change)</b>	0 ft	1.00 ft	2.50 ft
<b>Side Yard (no change)</b>	5.00 ft	0 ft/0.6 ft	9.80 ft/2.00 ft
<b>Rear Yard Required</b>	16.00 feet		
Existing		68.61 ft	1.95
Proposed		12.40 ft	17.10 ft
<b>Change (from required)</b>			<b>+ 1.10 ft</b>
<b>Open Space Required</b>	Lesser of 35% of lot area or open space existing on June 24, 1992	382 sf (35%)	2,108 (35%)
Existing		1,059 sf (existing)	1,315.00 sf (existing)
Proposed		189 sf (proposed)	2,168 sf (proposed)
<b>Change (from required)</b>			<b>+ 60 sf</b>
<b>FAR (no change)</b>	1.50	1.50 +/-	.65 +/-

Section 11-1710(B) of the zoning ordinance requires a subdivision to meet the following standard:

“No lot shall be resubdivided in such a manner as to detract from the value of adjacent property. Lots covered by a resubdivision shall be of substantially the same character as to suitability for residential use and structures, lot areas, orientation, street frontage, alignment to streets and restrictions as other land within the subdivision, particularly with respect to similarly situated lots within the adjoining portions of the original subdivision.”

Although new lot 601 will meet the RM regulations as to lot area, rear yard setback, open space and floor area, new lot 600 will become noncompliant as to lot area, rear yard setback and open space. Approval of the subdivision can only occur if the Planning Commission grants variations under Section 11-713 of the Zoning Ordinance.

Per Section 11-1713 of the Zoning Ordinance, titled Variations, the Planning Commission may, by vote of a majority of its members, authorize specific variations from the provisions of section 11-1700, when in its opinion a strict adherence to such provisions would result in substantial injustice and when one of the following circumstances exists; provided, however, that the use or character of the resulting lots or parcels in such a subdivision shall not be inconsistent with the use provisions of the zone in which the property is situated or the existing development in the immediate area:

- (A) Extremely rugged topography.
- (B) Irregularity in shape of parcel preventing conformance with normal lot area or frontage requirements.
- (C) Insufficient frontage on existing street where the interior of the tract can be served only by a street substandard in width when not serving more than five lots, provided the street is not less than 30 feet in width. If only a single lot is served, the width may be less than 30 feet. A turn around area may be required.
- (D) Streets along border of the subdivision where the subdivision borders on unsubdivided land and the remaining street width will be provided from adjacent land.
- (E) Resubdivision of lots in subdivisions of record as of January 1, 1952, where, because of existing structures or gross area of land involved, the subdivided lots would not conform to all of the requirements of the zone in which the subdivision is located.

Staff cannot support the proposed subdivision. Staff finds that strict adherence to the provisions of the code will not result in substantial injustice. In addition, the proposed subdivision will create a lot that is substandard in lot area, open space, and rear setback in the RM zone. The proposed subdivision will reduce the size of one existing lot and make it noncomplying for the sole purpose of creating a larger rear yard for another lot.

### III. STAFF RECOMMENDATION

Based on the above, staff recommends **denial** of the proposed subdivision. However, if the subdivision is approved, it shall be subject to compliance with all applicable codes and ordinances and the following conditions:

1. The final subdivision plat shall comply with the requirements of Section 11-1700 of the Zoning Ordinance. (P&Z)
2. The final plat shall include the Surveyors Certification and plat title to indicate resubdivision of the existing lots. (P&Z)
3. That the new rear yard area behind the building at 407 Duke Street shall remain as open space in perpetuity and not be used for new building area. (P&Z)

4. That the rear yard area behind the building at 219 South Royal Street remain as open space in perpetuity. (P&Z)

STAFF: Faroll Hamer, Director, Department of Planning and Zoning  
Richard Josephson, Deputy Director  
Richard Bray, Urban Planner

Staff Note: This plat will expire 18 months from the date of approval.



CITY DEPARTMENT COMMENTS

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

Transportation & Environmental Services:

F-1 No comments received.

Code Enforcement:

F-1 No comment.

Police Department:

F-1 The Police Department has no objections to the subdivision.

Historic Alexandria Commission (Archaeology):

F-1 No comment.

Recreation, Parks & Cultural Activities (Arborist):

F-1 No comments received.

APPLICATION for SUBDIVISION

SUB # 2007-0006

PROPERTY LOCATION: 407 Duke Street and 219 South Royal Street, Alexandria, Virginia

TAX MAP REFERENCE: 074.04 05 04 and 05

ZONE: RM

APPLICANTS' NAME: William F. Dunbar, IV and Denise G. Dunbar

ADDRESS: 407 Duke Street, Alexandria, Virginia 22314

and

219 South Royal, LLC, a Virginia limited liability company

219 South Royal Street, Alexandria, Virginia 22314

PROPERTY OWNER NAME: William F. Dunbar, IV and Denise G. Dunbar

ADDRESS: 407 Duke Street, Alexandria, Virginia 22314

and

219 South Royal, LLC, a Virginia limited liability company

219 South Royal Street, Alexandria, Virginia 22314


SUBDIVISION DESCRIPTION: Approval of a plat of subdivision to adjust the boundaries of the properties at 407 Duke Street and 219 South Royal Street.

THE UNDERSIGNED hereby applies for a Subdivision in accordance with the provisions of Section 11-1700 of the Zoning Ordinance of the City of Alexandria, Virginia.

THE UNDERSIGNED, having obtained permission from the property owner, hereby grants permission to the City of Alexandria to post placard notice on the property for which this application is requested, pursuant to Article XI, Section 11-301 (B) of the 1992 Zoning Ordinance of the City of Alexandria, Virginia.

THE UNDERSIGNED also attests that all of the information herein provided and specifically including all surveys, drawings, etc., required of the applicant are true, correct and accurate to the best of their knowledge and belief.

Land, Clark, Carroll, Mendelson & Blair, P.C.



Duncan W. Blair, Esquire

Print Name of Applicant or Agent

Signature

524 King Street  
Mailing/Street Address

dblair@landclark.com  
E-mail

703 836-1000  
Telephone #

703 549-3335  
Fax #

Alexandria, Virginia  
City and State

22314  
Zip Code

June 28, 2007  
Date

=====**DO NOT WRITE BELOW THIS LINE - OFFICE USE ONLY**=====

Application Received: \_\_\_\_\_ Date & Fee Paid: \_\_\_\_\_ \$ \_\_\_\_\_

ACTION - PLANNING COMMISSION: Denied 3-1-1 11-8-07

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SUB 2007-0006

All applicants must complete this form.

1. The applicant is the *(check one)*:

Owners       Contract Purchaser

Lessee                       Other: \_\_\_\_\_

State the name, address and percent of ownership of any person or entity owning an interest in the applicant, unless the entity is a corporation or partnership in which case identify each owner of more than ten percent.

**219 South Royal, LLC is a Virginia limited liability company. The individuals owning in excess of a ten percent (10%) interest in the limited liability company are William F. Dunbar, IV and Robert Brandt.**

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 the agent is employed have a business license to operate in the City of Alexandria, Virginia?

Yes. Provide proof of current City business license

No.                      The agent shall obtain a business license prior to filing application, if required by the City Code.

2. Please describe the existing and proposed use of the property(ies). Include a description of any structures, trees and landscaping, or other elements that occupy the property(ies).

**The property owners of 219 South Royal Street and 407 Duke Street are requesting a boundary line adjustment between the two properties to reallocate a portion of the rear yard of 219 South Royal Street to the rear yard of 407 Duke Street. The beneficial use and enjoyment of the open space to be transferred has been used by 407 Duke Street for more than 15 years.**

**The owners are requesting a variation from the rear setback requirements and open and usable space regulations for new lot 600, 219 South Royal Street. The transferred land area will remove the rear yard noncompliance of 407 Duke Street and increase its open space. Lot 600 complies with the provisions of Section 3-1108(A) of the RM zone regulations with respect to lot area.**

**The variations are justified due to the fact that the existing land area of the two lots of record as of 1952 are insufficient to create two RM zone compliant lots. The boundary adjustment creates two (2) new lots that reduces the overall noncompliance from the zone regulations and accurately respects the existing use of the two properties.**

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**WAIVER OF RIGHT TO AUTOMATIC APPROVAL**

*SUBMITTED TO  
THE DEPARTMENT OF PLANNING AND ZONING  
CITY OF ALEXANDRIA, VIRGINIA*

SUBDIVISION # 2007-0006

Project Name: **407 Duke Street and 219 South Royal Street.**

Project Address: **407 Duke Street and 219 South Royal Street.**

Description of Request: **Approval of Plat of Subdivision.**

**The undersigned hereby waives on behalf of the Applicant the right to the 45 day automatic approval provision of Section 11-1708 (B)(2) of the Zoning Ordinance of the City of Alexandria, Virginia, for the application stated above, commencing on the date this Application is filed and up to and including the Planning Commission public hearing on September 6, 2007.**

Date: **June 28, 2007**

Applicant

Agent

Signature: \_\_\_\_\_



Printed Name: **Duncan W. Blair, Esquire  
Land, Clark, Carroll, Mendelson & Blair, P.C.**

December 13, 2007

19  
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12-15-07

Dear Alexandria City Council Members,



We are writing to you in support of our neighbors, Will and Denise Dunbar, on an issue that is coming before you at your Council meeting this Saturday, December 15<sup>th</sup>. The Dunbars, who live at 407 Duke Street, are attempting to legally attach the strip of land that runs behind their house to their property.

Like many properties in Old Town, 407 Duke Street has an interesting story behind its property boundaries. For almost 80 years, the property of 407 Duke Street included not only the existing lot and house, but also the entire lot of 401 Duke Street. In 1948, this 401 Duke Street lot was sold to the Red Cross, thus significantly reducing the lot size of 407 Duke Street. Just over 30 years later, in the early 1980s, the then-owners of 407 Duke Street reached an informal agreement with the then-owner of 219 S. Royal Street to tear down the fence separating their properties. The owners of 407 Duke Street were granted use of the strip of land in question in exchange for maintaining the property.

What the Dunbars are attempting to do is simply legalize what has been in place informally for the past 25 years, and in so doing restore this property to an approximation of its original size. Officially annexing the strip of land behind 407 Duke would also have the benefit of bringing 407 Duke into compliance with setback regulations, of which it is presently in violation. This proposal is a common sense, logical next step.

We support their efforts to annex this strip of land, and hope that you will also.

Sincerely,

Rev. Oran and Amy Warder  
411 Duke Street

December 13, 2007

Dear Alexandria City Council Members,

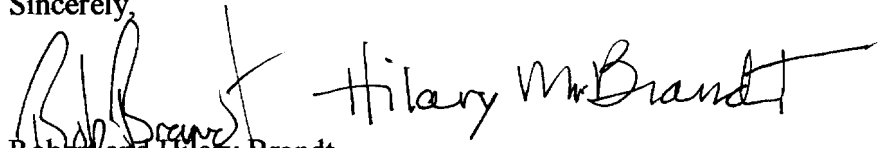
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What the Dunbars are attempting to do is simply legalize what has been in place informally for the past 25 years, and in so doing restore this property to an approximation of its original size. Officially annexing the strip of land behind 407 Duke would also have the benefit of bringing 407 Duke into compliance with setback regulations, of which it is presently in violation. This proposal is a common sense, logical next step.

We support their efforts to annex this strip of land, and hope that you will also.

Sincerely,

  
Robert and Hilary Brandt  
401 Duke Street

December 13, 2007

Dear Alexandria City Council Members,

We are writing to you in support of our neighbors, Will and Denise Dunbar, on an issue that is coming before you at your Council meeting this Saturday, December 15<sup>th</sup>. The Dunbars, who live at 407 Duke Street, are attempting to legally attach the strip of land that runs behind their house to their property.

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We support their efforts to annex this strip of land, and hope that you will also.

Sincerely,

A handwritten signature in black ink, appearing to read "Nels P. Nordquist", with a long horizontal line extending to the right.

Nels and D.J. Nordquist  
408 Duke Street

December 13, 2007

Dear Alexandria City Council Members,

We are writing to you in support of our neighbors, Will and Denise Dunbar, on an issue that is coming before you at your Council meeting this Saturday, December 15<sup>th</sup>. The Dunbars, who live at 407 Duke Street, are attempting to legally attach the strip of land that runs behind their house to their property.

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We support their efforts to annex this strip of land, and hope that you will also.

Sincerely,

  
Fred and Cathy Sachs  
410 Duke Street



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## SPEAKER'S FORM

DOCKET ITEM NO. 19

PLEASE COMPLETE THIS FORM AND GIVE IT TO THE CITY CLERK  
BEFORE YOU SPEAK ON A DOCKET ITEM.

**PLEASE ANNOUNCE THE INFORMATION SPECIFIED BELOW PRIOR TO SPEAKING.**

1. **NAME:** Duncan W. Blair, Esquire
2. **ADDRESS:** 524 King Street, Alexandria, VA 22314  
**TELEPHONE NO.** 703 836-1000 **E-MAIL:** dblair@landclark.com
3. **WHOM DO YOU REPRESENT, IF OTHER THAN YOURSELF?**  
William F. Dunbar, IV and Denise G. Dunbar
4. **WHAT IS YOUR POSITION ON THE ITEM?**  
For
5. **NATURE OF YOUR INTEREST IN ITEM (PROPERTY OWNER, ATTORNEY, LOBBYIST, CIVIC INTEREST, ETC.):**  
Attorney
6. **ARE YOU RECEIVING COMPENSATION FOR THIS APPEARANCE BEFORE COUNCIL?**  
Yes

This form shall be kept as a part of the permanent record in those instances where financial interest or compensation is indicated by the speaker.

A maximum of three minutes will be allowed for your presentation, except that one officer or other designated member speaking on behalf of each *bona fide* neighborhood civic association or unit owners' association desiring to be heard on a docket item shall be allowed five minutes. In order to obtain five minutes, you must identify yourself as a designated speaker, and identify the neighborhood civic association or unit owners' association you represent, at the start of your presentation. If you have a prepared statement, please leave a copy with the Clerk.

Additional time not to exceed 15 minutes may be obtained with the consent of the majority of the council present; provided notice requesting additional time with reasons stated is filed with the City Clerk in writing before 5:00 p.m. of the day preceding the meeting.

The public normally may speak on docket items only at public hearing meetings, and not at regular legislative meetings. Public hearing meetings are usually held on the Saturday following the second Tuesday in each month; regular legislative meetings on the second and fourth Tuesdays in each month. The rule with respect to when a person may speak to a docket item at a legislative meeting can be waived by a majority vote of council members present but such a waiver is not normal practice. When a speaker is recognized, the rules of procedures for speakers at public hearing meetings shall apply. If an item is docketed *for public hearing* at a regular legislative meeting, the public may speak to that item, and the rules of procedures for speakers at public hearing meetings shall apply.

In addition, the public may speak on matters which are not on the docket during the Public Discussion Period at public hearing meetings. The mayor may grant permission to a person, who is unable to participate in public discussion at a public hearing meeting for medical, religious, family emergency or other similarly substantial reasons, to speak at a regular legislative meeting. When such permission is granted, the rules of procedures for public discussion at public hearing meetings shall apply.

### Guidelines for the Public Discussion Period

- (a) All speaker request forms for the public discussion period must be submitted by the time the item is called by the city clerk.
- (b) No speaker will be allowed more than three minutes; except that one officer or other designated member speaking on behalf of each *bona fide* neighborhood civic association or unit owners' association desiring to be heard during the public discussion period shall be allowed five minutes. In order to obtain five minutes, you must identify yourself as a designated speaker, and identify the neighborhood civic association or unit owners' association you represent, at the start of your presentation.
- (c) If more speakers are signed up than would be allotted for in 30 minutes, the mayor will organize speaker