

Docket Item #7
BZA CASE #2004-00027

Board of Zoning Appeals
July 8, 2004

ADDRESS: 128 NORTH PAYNE STREET
ZONE: RB, RESIDENTIAL
APPLICANT: KATHLEEN MURPHY

ISSUE: Variance to construct a two-story rear addition and one-story mud room addition reducing the required open space.

| CODE SECTION | SUBJECT | CODE REQMT | APPLICANT PROPOSES | REQUESTED VARIANCE |
|--------------|------------|-------------|--------------------|--------------------|
| 3-706(B) | Open Space | 800 sq. ft. | 654 sq. ft. | 146 sq. ft. |

*Property currently provides 847 square feet of complying open space.

(insert sketch here)

STAFF CONCLUSION:

The staff **recommends denial** of the requested variance because the request does not meet the variance criteria.

Issue

The applicant proposes to build a two-story rear addition at 128 North Payne Street which will reduce the required open space to 460 square feet.

Background

The subject property is one lot of record with 12.83 feet of frontage on North Payne Street a depth of 123.42 feet and a lot area totaling 1,187.61 square feet. A gravel pathway crosses the property at the rear of the lot providing access to garages built on neighboring lots. The applicant indicates the “historic” neighborhood pathway has existed for many years and crosses the applicant’s property. No formal easement has been executed to allow adjoining property owners to cross the applicant’s lot to access the garages and the rear of the adjoining lots.

The property is developed with a two-story interior row house with an open rear deck located on the front property line facing North Payne Street, shares a common party wall with the adjoining home along the south property line and abuts the adjoining home along the north side property lines, and is approximately 96.00 feet from the rear property line. Real estate assessment records indicate the house was built in 1945.

The proposed rear one-story addition measures 12.83 feet by 28.00 feet by 22.50 feet in overall height. The addition will be built on the side property lines. A small one-story mud room will be attached to the new addition along the south property line and measures feet 4.00 feet by 4.33 feet by 11.50 feet in overall height. The new addition will accommodate a new kitchen and family room on the first floor and washer/dryer and built-ins, master bath, closet and master bedroom on the second floor.

Discussion

Residential lots that share a common party wall are not subject to side yard setback requirements. In addition, because the property is located in the Parker-Gray historic district and is less than 25.00 feet wide no side yards are required, therefore, the addition can be built up to the north property line.

Section 3-706(B) of the zoning ordinance specifies in the RB zone that a minimum of 800 square feet of open space must be maintained for each residential parcel. The proposed addition will reduce the existing complying open space, currently at 847 square feet (66.00 feet by 12.83 feet), which does not count the historic pathway area at the rear of the lot to 654 square feet.

The applicant indicates that if she were allowed to include the historic pathway at the rear of the lot there would be no real change in the existing open space and in fact she would meet the open space requirement with 847 square feet of complying open space. Because the zoning ordinance does not recognize nor credit a driveway or vehicle alley towards required open space the applicant can only provide 654 square feet of required open space thus a variance of 146 square feet is required.

The proposed addition will comply with the floor area ratio requirements. (Refer to floor area calculations.)

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

There has been one similar variance for open space within the immediate area heard by the BZA:

| <u>Case #</u> | <u>Date</u> | <u>Address</u> | <u>Variance</u> | <u>Action</u> |
|---------------|-------------|------------------|-------------------------|---------------|
| 5830 | 6/6/89 | 124 N. Payne St. | Open Space of 70 sf | Granted |
| | | | Side Setback of 8.00 ft | Granted |

The property is a designated 100 Year Old Building. Additions visible from the public right-of-way require review and approval of the Old and Historic Alexandria District Board of Architectural Review. As a matter of policy, the Boards of Architectural Review oppose the reduction of required residential open space in order to construct an addition.

Master Plan/Zoning: The subject property is zoned RB and has been so zoned since adoption of the Third Revised Zoning Map in 1951 and identified in the Old Town Small Area Plan for residential land use.

REQUESTED VARIANCE:

Section 3-706(B): Open Space

The RB zone requires each residential lot to provide a minimum of 800 square feet of open and usable space. The subject property currently provides 847square feet of open space, which exceeds the open space requirement. Because alleys and driveways cannot be counted towards open space the proposed two-story rear addition and mud room will reduce complying open space to 654 square feet. The applicant requests an open space variance of 146 square feet from the zoning ordinance requirement of 800 square feet.

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?
-

Application of the zoning ordinance does not result in an undue hardship amounting to confiscation of this property, nor prevent reasonable use of the property. The subject property is not irregular in configuration and is similar in size and shape to several other lots in this block. The parcel currently complies with the minimum open space requirement and, in fact, is slightly above the requirement by 47.00 square feet.

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?
-

The subject property is not irregular in configuration and is similar in size and shape to several other lots in this block. This block is characterized by row houses on the front property line, thereby providing the open space at the rear of the properties. Adjoining row houses are located on similar size lots as the applicant's lot. The proposed addition will take a complying lot and reduce required open space below the minimum in the RB zone.

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.

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?
-

The proposed addition will reduce the amount of required open space by 146 square feet. The granting of this variance will be detrimental to the neighborhood because it will infringe upon adjoining neighbors' enjoyment of light and air, which is protected by enforcing minimum open space standards. Waiving these standards will have the potential to set a precedent for others to seek open space variances to enlarge modest-size homes and reduce

complying open space now afforded by properties throughout the neighborhood. The applicant's request is for relief from the zoning ordinance requirement; by arguing the historic acceptance and continued use by adjoining properties across her property has reduced her complying open space. Loss of open space will erode an important quality and characteristic now enjoyed by neighborhood residents. A smaller addition can be built, but not at the size the applicant wants without the need of a variance. Alternatively, the applicant can fence off the area now used by the neighbors which will permit her to build an addition without the need of a variance. There is no executed or recorded easement to cross the subject property.

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

None that would meet the desires of the applicant.

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

No other administrative remedy exists except a variance.

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 Change in point of attachment or removal of existing overhead utility services will require undergrounding or a variance. (Sec. 5-3-3)
- R-1 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.
- 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.
- 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).

BZA Case #2004-00027

- 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 applications 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 There is low potential for significant archaeological resources to be disturbed by this project. No archaeological action is required.

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.