

Docket Item #2
BZA CASE #2010-0013

Board of Zoning Appeals
June 10, 2010

ADDRESS: 1403 ORCHARD STREET
ZONE: R-8, RESIDENTIAL
APPLICANT: STEVEN KOZAK, OWNER

ISSUE: Variance to construct an open deck and install a swimming pool with decking in the required front yard facing Braddock Road.

CODE SECTION	SUBJECT	CODE REQMT	APPLICANT PROPOSES	REQUESTED VARIANCE
3-306(A)(1)	Front Yard (pool)	30.00 feet	17.00 feet	13.00 feet
3-306(A)(1)	Front Yard (deck)	30.00 feet	19.00 feet	16.00 feet

BOARD OF ZONING APPEALS ACTION OF JUNE 10, 2010: On a motion to approve by Mr. Lantzy, seconded by Mr. Keegan the variance was approved by a vote of 6 to 0.

Reason: The applicant demonstrated a hardship due to having two front yards as outlined in the staff report.

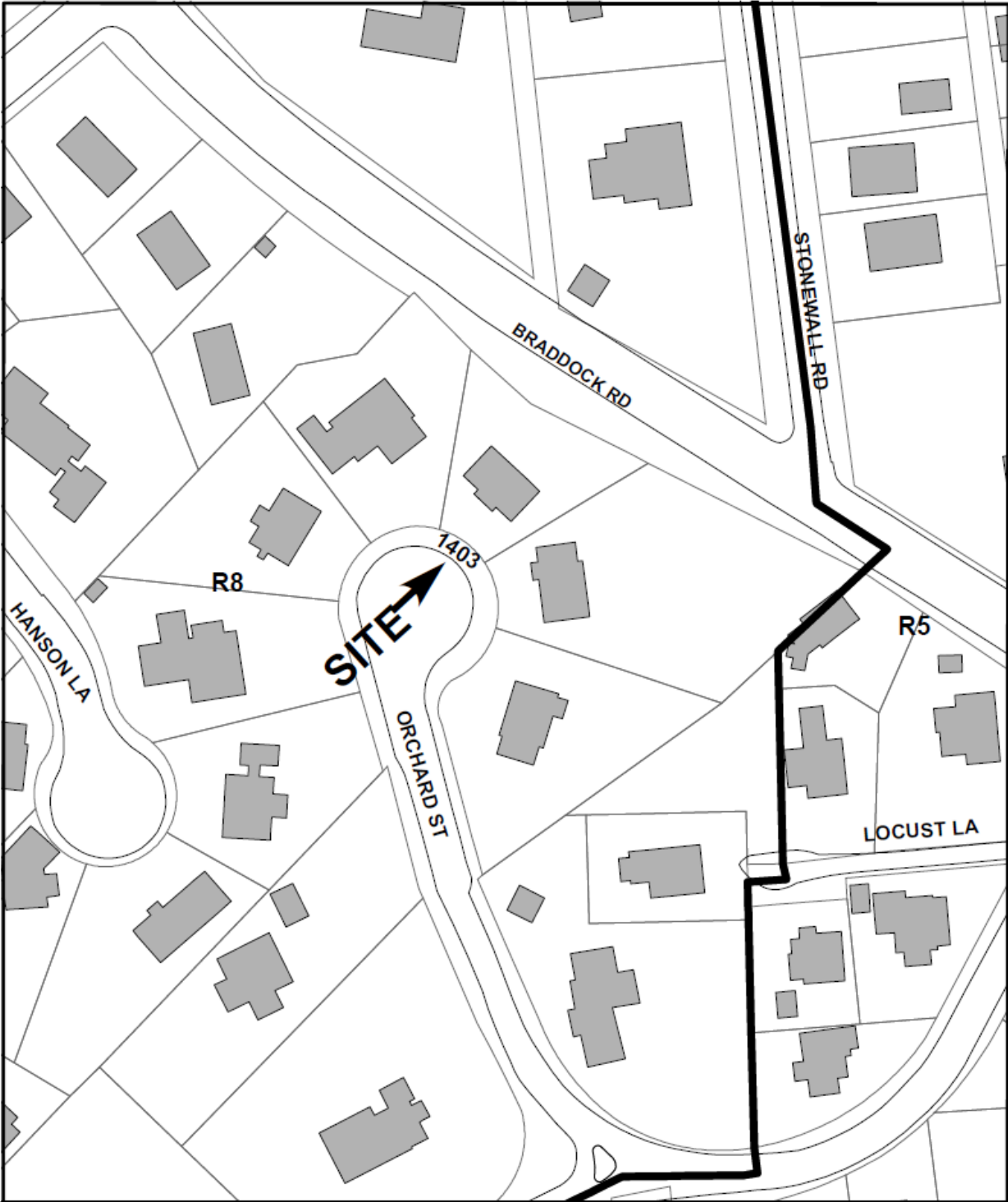
Speakers:

Steve Kozak, owner, made the presentation.

Staff **recommends approval** of the request because the applicant has demonstrated a hardship.

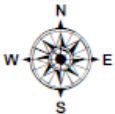
If the Board decides to grant the requested variances, the construction must comply with the code requirements under the department comments and the applicant must submit the following upon completion of construction: (1) a survey plat prepared by a licensed surveyor confirming foot print and setbacks for the new deck and swimming pool. 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.

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6/10/2010



I. Issue

The applicant requests variances to install an open deck and an in-ground swimming pool at the rear of the dwelling located at 1403 Orchard Street.



II. Background

The subject property, a through lot, is one lot of record with 41.61 feet of frontage on Orchard Street, 149.22 feet of frontage on Braddock Road and has a total lot area of 10,664 square feet. A two-story single-family with basement is located 34.40 feet from the front property lines facing Orchard Street and 41.00 feet from the front property line facing Braddock Road. An asphalt driveway is located on the south side of the building. According to real estate assessment records, the house was constructed in 1968.

III. Description

The applicant proposes to install an in-ground swimming pool 17.00 feet from the front yard facing Braddock Road. The pool will measure 15.00 feet by 30.00 for a total of 450 square feet and will be located 11.00 feet from the west side property line.

In addition, the applicant also proposes to construct a raised open deck from the rear second floor of the house which measures 16.00 feet by 14.00 feet for a total of 224 square feet and will be approximately 8.00 feet above the ground level. The deck will be located 19.00 feet from the north east property line. The required front yard for the subject property is 30.00 feet facing Braddock Road.



Rendering # 1



Rendering # 2

The existing building is a complying structure. There have been no variances previously granted for the subject property.

There are other properties on Orchard Street (1400 and 1404 Orchard Street) that have pools in their secondary front yard. Both swimming pools were granted variances from the 30.00 feet front yard setback. 1404 Orchard Street was granted Variance # 1271 on May 13, 1971 and 1400 Orchard was granted Variance # 1581 on October 14, 1976.

IV. Master Plan/Zoning

The subject property is zoned R-8 and has been so zoned since adoption of the 1992 Zoning Ordinance and identified in the North Ridge Small Area Plan for residential land use.

V. Requested variances

Section 3-306(A)(1) Front Yard

The first variance is for a swimming pool to be located 17.00 feet from the front property line facing Braddock Road. The required setback is 30.00 feet. The applicant requests a variance of 13.00 feet.

The second variance is for a 224 square foot deck to be located 19.00 feet from the front property line facing Braddock Road. The required front setback is 30.00 feet. The applicant requests 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 11-1103 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 subject property is a through lot; therefore, the applicant feels that the secondary front yard has a greater restriction on the setback as a front yard as opposed to what would be required if rear yard standards were applied.

VIII. Staff Analysis

The subject property's lot configuration and having two street frontages combine to create a legal hardship to install a swimming pool and deck. For all intent and purposes, the area behind the house is a rear yard and not a front yard. There is no other place on the lot to accommodate the pool and deck without a variance.

It is impossible for the subject property to meet the average prevailing setback along the Braddock Road frontage. The City right of way for Braddock Road varies in width making it extremely difficult to compute the average front setback.



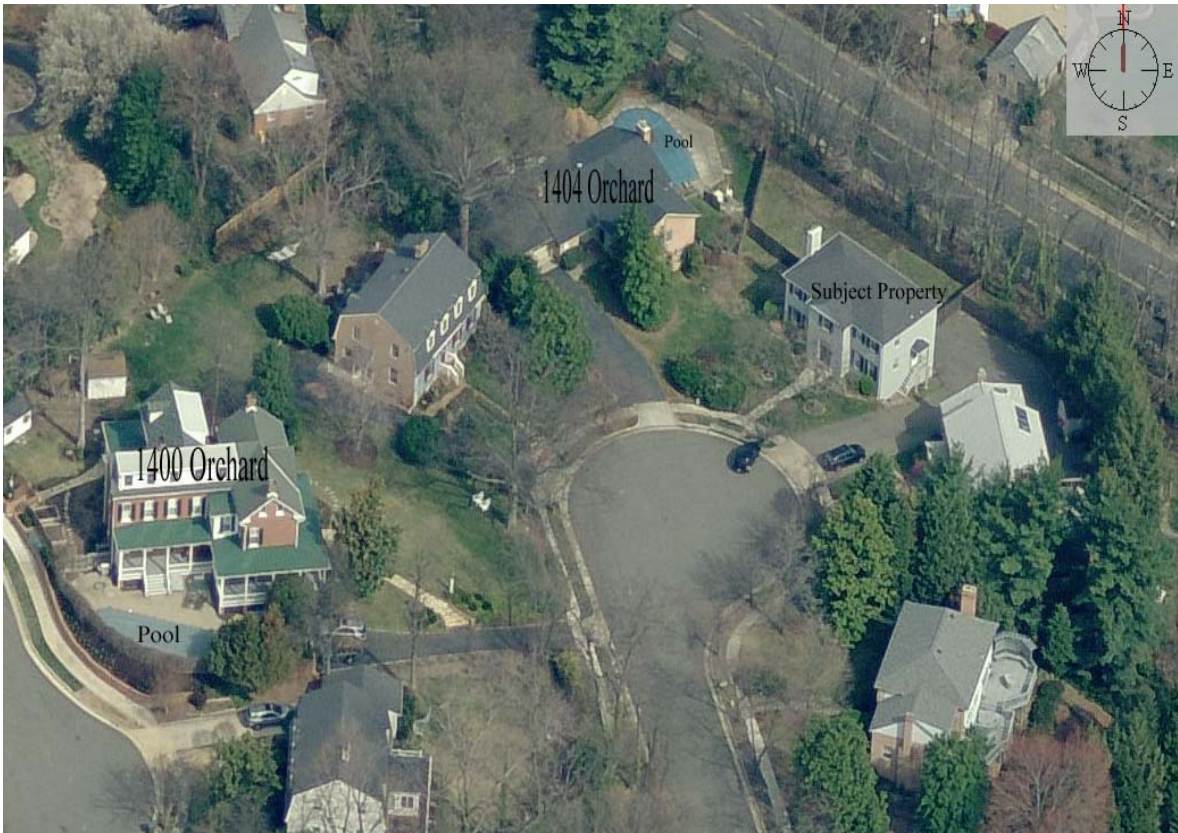
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Regarding the subject of “through lots,” staff has received guidance from the City Attorney’s Office. It has been discussed that it is reasonable that for through lots, the average front setback requirement only applies to the primary front yard. The secondary front must comply with the applicable zone requirement. In the case of subject property, neither the pool nor the deck would meet this requirement, thus the need to seek a front yard variance from section 3-306(A)(1) which would be 30.00 feet as required in the R-8 zone.

IX. Conclusion

Staff has no objection in recommending approval for the two variances. There are other properties on Orchard Street (1400 and 1404 Orchard Street) that have pools in their secondary front yard. Both swimming pools were granted variances from the 30.00 feet front yard setback. The Board of Zoning Appeal has supported other pools with similar yard frontage characteristics as the subject property. Based upon the lot configuration and the need to comply with the front yard, staff believes the applicant has a good case to justify the variance.

Staff recommends approval of the 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:

R-1 An approved GRADING PLAN will be required for this project and must be attached to the building permit application. City Code Section 8-1-22(d) requires that a grading plan be submitted to and approved by T&ES prior to the issuance of building permits for improvements involving:

- the construction of a new home;
- construction of an addition to an existing home where either
 - the addition exceeds the area of the existing building footprint by 100% or more;
 - or, the construction of the addition results in less than 50% of the existing first floor exterior walls, in their entirety, remaining;
- changes to existing grade elevation of 1-foot or greater;
- changes to existing drainage patterns;
- land disturbance of 2,500 square feet or greater.

Questions regarding the processing of grading plans should be directed to the T&ES Site Plan Coordinator at (703) 746-4064. Memorandum to Industry No. 02-08 was issued on April 28, 2008 and can be viewed online via the following link.

<http://alexandriava.gov/uploadedFiles/tes/info/gradingPlanRequirements.pdf>

R-2 The building permit plans shall comply with requirements of City Code Section 8-1-22 regarding the location of downspouts, foundation drains and sump pumps. Refer to Memorandum to Industry dated June 18, 2004. [Memorandum is available online at the City web site under Transportation\Engineering and Design\Memos to Industry.]. (T&ES)

R-3 Applicant shall be responsible for repairs to the adjacent city right-of-way if damaged during construction activity. (T&ES)

R-4 All improvements to the city right-of-way such as curbing, sidewalk, driveway aprons, etc. must be city standard design. (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 grading plan. (T&ES)

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- R-6 An erosion and sediment control plan will be required and must be approved by T&ES prior to any land disturbing activity greater than 2500 square feet. An erosion and sediment control bond shall be posted prior to release of the grading plan. (T&ES)
- R-7 The construction of the swimming pool and deck 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. (T&ES)
- R-8 The Discharge from pool(s) shall be connected to the sanitary sewer. (T&ES)
- C-1 The applicant shall comply with the City of Alexandria's Solid Waste Control, Title 5, Chapter 1, which sets forth the requirements for the recycling of materials (Sec. 5-1-99).
- C-2 The applicant shall comply with the City of Alexandria's Noise Control Code, Title 11, Chapter 5, which sets the maximum permissible noise level as measured at the property line.
- C-3 Roof, surface and sub-surface drains be connected to the public storm sewer system, if available, by continuous underground pipe. 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. (Sec.8-1-22)
- C-4 All secondary utilities serving this site shall be placed underground. (Sec. 5-3-3)
- C-5 Payment of the sanitary sewer tap fee will be required prior to release of Grading Plan. (Sec. 5-6-25)
- C-6 Any work within the right-of-way requires a separate permit from T&ES. (Sec. 5-3-61)

Code Administration:

- C-1 Construction permits are required for this project. Plans shall accompany the permit application that fully details the construction as well as layouts and schematics of the mechanical, electrical, and plumbing systems.
- 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 A fire prevention permit may be required if the amount of hazardous cleaning materials are above the maximum amount.
- C-4 Health Department review is required for this operation.

Recreation (Arborist):

F-1 No trees are affected by this plan.

Historic Alexandria (Archaeology):

F-1. This property is in the vicinity of a historical house and is located on Braddock Road, a Civil War thoroughfare. It is possible that the property could yield archaeological resources that could provide insight into activities in the area during the 19th century.

*R-1. The applicant/developer shall 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.

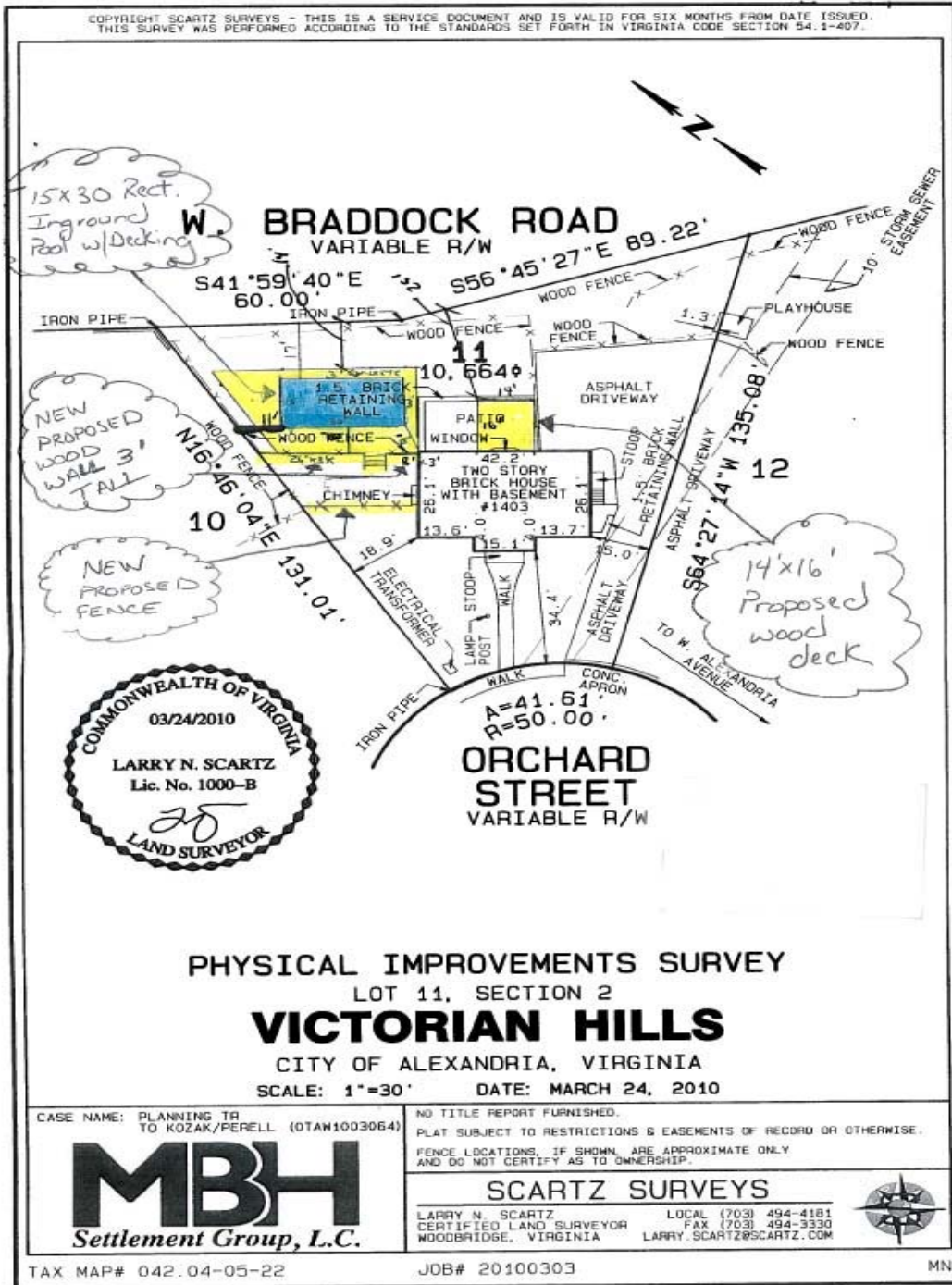
*R-2. The applicant/developer shall not allow any metal detection or artifact collection to be conducted on the property, unless authorized by Alexandria Archaeology.

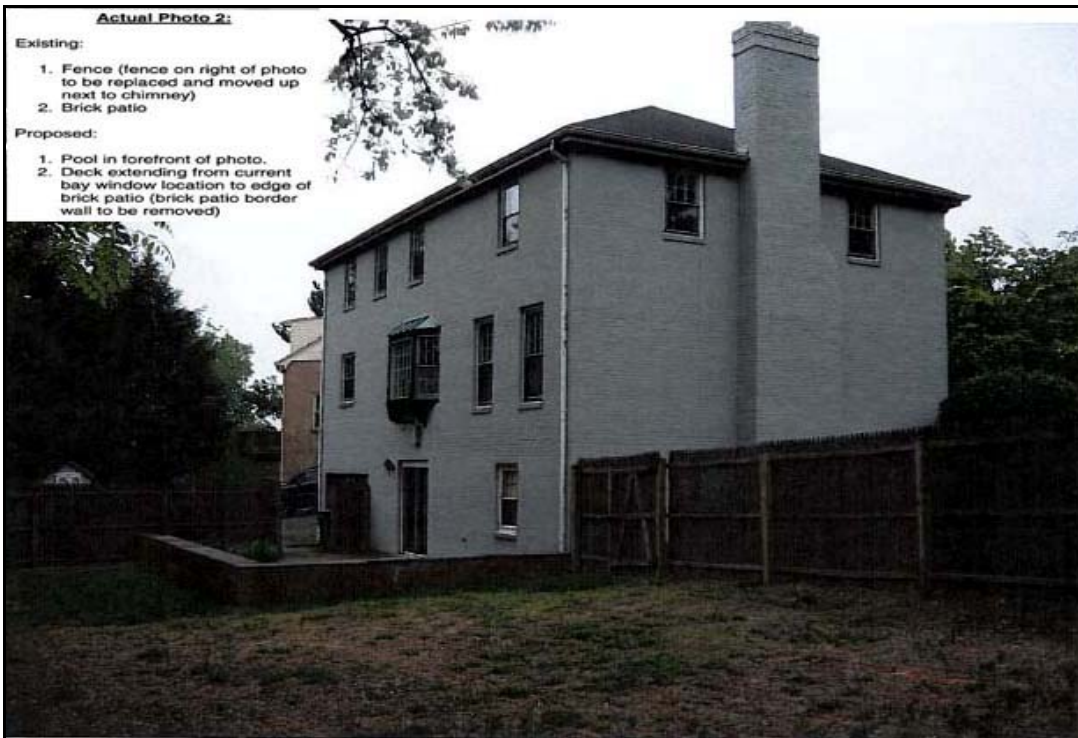
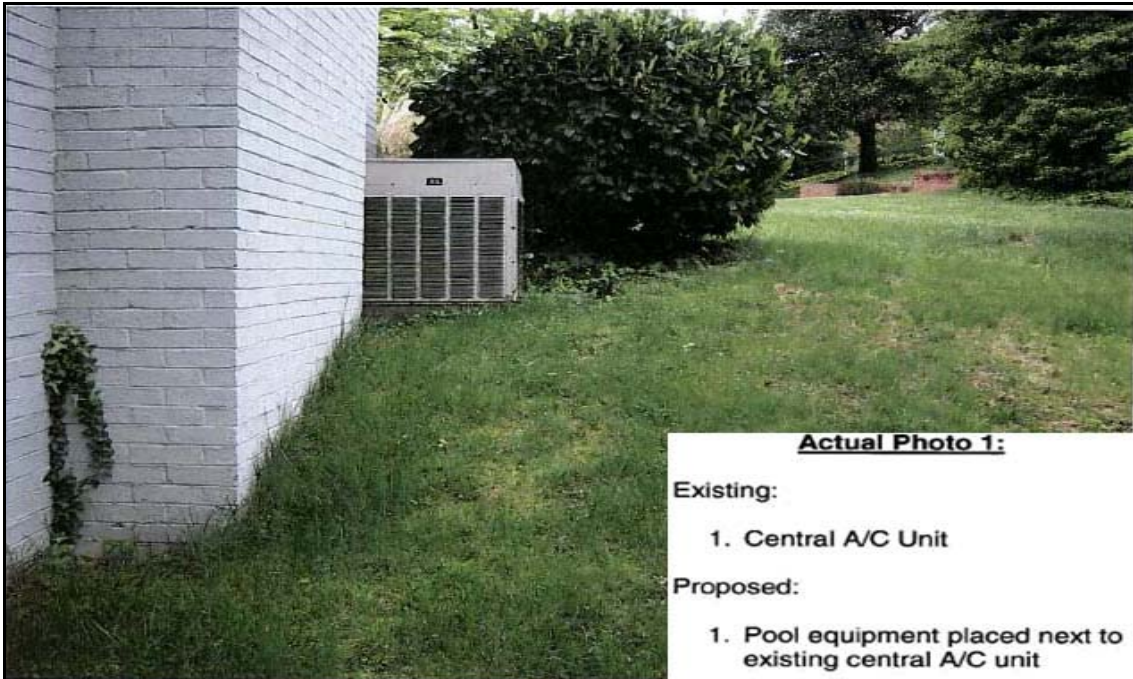
R-3. The statements in archaeology conditions above marked with an asterisk "*" shall appear in the General Notes of all site plans and on all site plan sheets that involve demolition or ground disturbance (including Basement/Foundation Plans, Demolition, Erosion and Sediment Control, Grading, Landscaping, Utilities, and Sheeting and Shoring) so that on-site contractors are aware of the requirements.

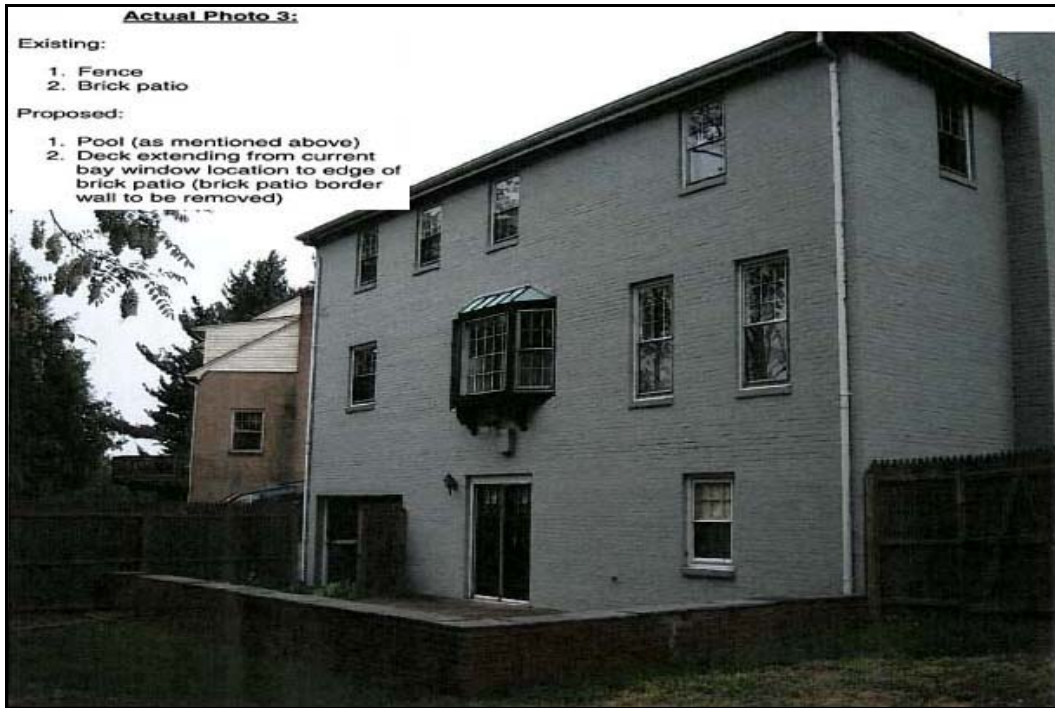
Other Requirements Brought to the Applicant's Attention:

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.

X. Images











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**APPLICATION
BOARD OF ZONING APPEALS**

VARIANCE

Section of zoning ordinance from which request for variance is made:

Front yard set-back - R-8

PART A

1. Applicant: Owner Contract Purchaser Agent

Name STEVEN KOZAK

Address 1403 Orchard St.

Alexandria VA 22302

Daytime Phone 571-457-8691

Email Address SKozak20@gmail.com

2. Property Location 1403 Orchard St. Alex 22302

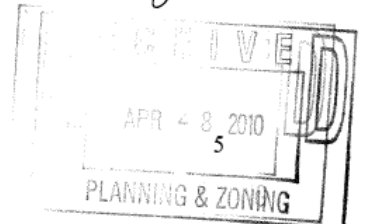
3. Assessment Map # 042.04 Block 05 Lot 22 Zone R8

4. Legal Property Owner Name STEVEN KOZAK / JOHN PERELL, JR

Address 1403 Orchard St

Alexandria VA 22302

Ⓢ Closed on property on 4/22/10. Closing conducted by MBH.



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OWNERSHIP AND DISCLOSURE STATEMENT

Use additional sheets if necessary

1. Applicant. 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. The term ownership interest shall include any legal or equitable interest held at the time of the application in the real property which is the subject of the application.

Name	Address	Percent of Ownership
1. NONE		
2.		
3.		

2. Property. State the name, address and percent of ownership of any person or entity owning an interest in the property located at 1403 Orchard St Alexandria VA 22302 (address), unless the entity is a corporation or partnership, in which case identify each owner of more than ten percent. The term ownership interest shall include any legal or equitable interest held at the time of the application in the real property which is the subject of the application.

Name	Address	Percent of Ownership
1. STEVEN KOZAK	1403 Orchard St Alexandria VA 22302	50%
2. JOHN A. PERELL, JR	1403 Orchard St Alexandria VA 22302	50%
3.		

3. Business or Financial Relationships. Each person or entity listed above (1 and 2), with an ownership interest in the applicant or in the subject property is required to disclose any business or financial relationship, as defined by Section 11-350 of the Zoning Ordinance, existing at the time of this application, or within the 12-month period prior to the submission of this application with any member of the Alexandria City Council, Planning Commission, Board of Zoning Appeals or either Boards of Architectural Review.


Name of person or entity	Relationship as defined by Section 11-350 of the Zoning Ordinance	Member of the Approving Body (i.e. City Council, Planning Commission, etc.)
1. NONE		
2.		
3.		

NOTE: Business or financial relationships of the type described in Sec. 11-350 that arise after the filing of this application and before each public hearing must be disclosed prior to the public hearings.

As the applicant or the applicant's authorized agent, I hereby attest to the best of my ability that the information provided above is true and correct.

4/21/10
Date

STEVEN KOZAK
Printed Name


Signature

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Alexandria City Council

William Eulle, Mayor
Kerry Donnelly, Vice Mayor
Frank Fannon IV
Alicia Hughes
Rob Krupicka
Redella "Del" Pepper
Paul Smedberg

Planning Commission

John Komoroske, Chair
H. Steward Dunn, Vice Chair
Donna Fossum
J. Lawrence Robinson
Mary Lyman
Jesse Jennings
Eric Wagner

Board of Zoning Appeals

Harold Curry, Chair
Mark Allen, Vice Chair
Geoffrey Goodale
David Lantzy
Jennifer Lewis
Eric Zander
John Keegan

**Board of Architectural Review
Old and Historic District**

Thomas Hulfish, Chair
Oscar Fitzgerald
Arthur Keleher
Wayne Neale
Peter Smeallie
James Spencer
John Von Senden

Board of Architectural Review

Parker-Gray District

Christina Kelley, Chair
William Conkey
H. Richard Lloyd, III
Thomas Marlow
Douglas Meick
Philip Moffat
Deborah Rankin

Definition of business and financial relationship.

Section 11-305 of the Zoning Ordinance defines a business or financial relationship as any of the following:

- (1) a direct one;
- (2) by way of an ownership entity in which the member or a member of his immediate household is a partner, employee, agent or attorney;
- (3) through a partner of the member or a member of his immediate household;
- (4) through a corporation in which any of them is an officer, director, employee, agent or attorney or holds 10 percent or more of the outstanding bonds or shares of stock of a particular class. In the case of a condominium, this threshold shall apply only if the applicant is the title owner, contract purchaser, or lessee of 10% or more of the units in the condominium;
- (5) not as an ordinary customer or depositor relationship with a professional or other service provider, retail establishment, public utility or bank, which relationship shall not be considered a business or financial relationship;
- (6) created by the receipt by the member, or by a person, firm, corporation or committee on behalf of the member, of any gift or donation having a value of more than \$100, singularly or in the aggregate, during the 12-month period prior to the hearing on the application from the applicant.

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5. Describe request briefly:

I would like to receive a variance to install a
14x16 deck and 15x30 inground swimming pool
in the backyard of 1403 Orchard St.

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 a 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 prior to filing 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:

STEVEN KOZAK
Print Name

[Signature]
Signature

571-457-8691
Telephone

4/21/10
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.

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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 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 pages where necessary.)

1. Does strict application of the zoning ordinance to the subject property result in a hardship to the owner? (Answer A or B).

A. Explain how enforcement of the zoning ordinance will amount to confiscation of the property.

B. Explain how enforcement of the zoning ordinance will prevent reasonable use of the property.

We will be unable to use our property
and backyard ~~as a true~~ as a true
backyard. b/c the property has two
front yards.

2. Is this hardship unique to the property?

A. Explain if the hardship shared by other properties in the neighborhood.

I believe two other homes on the cul-de-sac
share a similar situation, 1401 Orchard
and 1404 Orchard.

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

1401, 1403 and 1404 all border 2 public streets requiring variances to construct things such as pools or possibly decks. However, any work we do will not impact VICNS, hamper air flow or cause excessive disruption.

3. Was the hardship caused by the applicant?

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

Yes- The condition was confirmed two weeks prior to the closing on the sale of 1403 Orchard.

B. Did the applicant purchase the property without knowing of this hardship?

Yes- It was known as a potential issue, but not confirmed until near closing.

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

I am fairly confident the through-lot ordinance has been in place a while. House was built in ~~1968~~ 1968.

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

No.

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

A. Explain if the proposed variance will be detrimental to the adjacent properties or the neighborhood in general.

No - I do not believe the variance will be detrimental. The proposed project has the potential to raise property value.

B. Explain how the proposed variance will affect the value of the adjacent and nearby properties.

The variance will allow for significant property improvement to include landscaping. I believe property values will increase.

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

I have verbally discussed the plans with Dave Woodroft. He expressed great excitement regarding the improvement. I have not discussed with any other neighbors.

D. Explain how the proposed variance will change the character of the neighborhood.

In general, it will add to a more social environment. Both next door neighbors have decks and pools so adding them to our house will only improve the character.



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A

DEPARTMENT OF PLANNING AND ZONING
FLOOR AREA RATIO AND OPEN SPACE CALCULATIONS FOR
SINGLE AND TWO-FAMILY RESIDENTIAL OUTSIDE HISTORIC DISTRICTS

A. Property Information

A1. Street Address 1403 Orchard St, Alex, VA 22302 Zone R-8
 A2. 10,664 x .35 = 3732.40
 Total Lot Area Floor Area Ratio Allowed by Zone Maximum Allowable Floor Area

B. Existing Gross Floor Area

Existing Gross Area*		Allowable Exclusions	
Basement	847	Basement**	
First Floor	1198	Stairways**	91.5
Second Floor	1198	Mechanical**	29
Third Floor		Porch/Garage**	
Porches/Other <i>*garage</i>	351	Attic less than 5**	
Total Gross*	3594	Total Exclusions	120.5

B1. Existing Gross Floor Area *
3594 Sq. Ft.
 B2. Allowable Floor Exclusions**
120.5 Sq. Ft.
 B3. Existing Floor Area minus Exclusions
3473.50 Sq. Ft.
 (subtract B2 from B1)

↳ includes garage and walk-out basement.

C. Proposed Gross Floor Area (does not include existing area)

Proposed Gross Area*		Allowable Exclusions	
Basement		Basement**	
First Floor		Stairways**	
Second Floor		Mechanical**	
Third Floor		Porch/Garage**	
Porches/Other <i>Deck</i>	224	Attic less than 5**	
Total Gross*		Total Exclusions	

C1. Proposed Gross Floor Area *
224 Sq. Ft.
 C2. Allowable Floor Exclusions**
0 Sq. Ft.
 C3. Proposed Floor Area minus Exclusions
224 Sq. Ft.
 (subtract C2 from C1)

D. Existing + Proposed Floor Area

D1. Total Floor Area (add B3 and C3) 3697.50 Sq. Ft.
 D2. Total Floor Area Allowed by Zone (A2) 3732.40 Sq. Ft.

*Gross floor area for residential single and two-family dwellings in the R-20, R-12, R-8, R-5, R-2-5, RB and RA zones (not including properties located within a Historic District) is the sum of all areas under roof of a lot, measured from exterior walls.

** Refer to the zoning ordinance (Section 2-145(A)) and consult with zoning staff for information regarding allowable exclusions. If taking exclusions other than basements, floor plans with excluded areas illustrated must be submitted for review. Sections may also be required for some exclusions.