

Docket Item #5  
BZA CASE #2004-00036

Board of Zoning Appeals  
October 14, 2004

**ADDRESS:** 115 SOUTH ALFRED STREET  
**ZONE:** CD, RESIDENTIAL  
**APPLICANT:** TED AND DELORES SHINE, OWNERS

**ISSUE:** Variance to raise the roof of an existing noncomplying garage located in the required north side yard.

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CODE SECTION	SUBJECT	CODE REQMT	APPLICANT PROPOSES	REQUESTED VARIANCE
3-506(A)(2)	Side Yard (North)	5.00 ft	0.00 ft	5.00 ft

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(insert sketch here)

**STAFF CONCLUSION:**

Staff recommends **denial** of the variance because the request does not meet the criteria for a variance.

**I. Issue**

The applicant proposes to rebuild and enlarge a deteriorating garage/carriage house for the property at 115 South Alfred Street. The applicants state that the existing garage will be renovated to (1) accommodate two vehicles and (2) raise the existing flat roof by three feet to create a loft space for storage and/or home office. The existing building footprint will remain the same, but the height of the garage will increase from 14.50 feet to 17.50 feet. As shown on the submitted drawings the new pitched garage roof will replace the existing flat roof. New windows will be added above the replacement garage doors facing the court; replacement windows will be installed in the existing openings facing the garden. An existing door opening facing the garden will be bricked over.

**II. Background**

The subject property is one lot of record with 21.58 feet of frontage facing South Alfred Street and a depth of 110.00 feet. The property contains a total of 2,372 square feet.

The property is developed with a three-story attached single family dwelling with an open rear yard located on the front property line facing South Alfred Street, shares a common party with the adjoining neighbor's residence along the south property line, 1.68 feet from the north side property line and 53.60 feet from the rear west property line.

**III. Discussion**

The existing one-story brick detached garage has window openings facing the garden and wood garage doors facing the open court. The garage measures 21.10 feet by 18.00 feet by 14.50 feet to the top of the flat roof. The garage is located on the north and south side property lines and rear property line. Real estate assessment records indicate the house and garage were built in 1815. The applicant purchased the property in 2003 but does not reside on the property. The property is rented.

An open space scenic easement is recorded for the property which limits and protects the use of the existing residential building and detached garage and restricts any building on the open rear yard of the property. The open space easement listed a number of specific restrictions and limitations that are relevant to the pending variance application to increase the height of the garage roof. (Refer to copy of open space easement attached).

- (1) The premises shall be used only for residential purposes, but not for a boarding house, rooming house, or dormitory, and no industrial or commercial activities shall

be carried on the premises. Staff has informed the applicant that the proposed home office space shown on the submitted plans cannot be used by the applicant since he does not reside on the premises; the home office could be used by one of the applicant's tenants.

- (2) The premises shall not be further subdivided.
- (3) No extension of the existing structures or erection of additional structures shall be permitted, except in the event of damage resulting from casualty loss to an extent rendering repair or reconstruction of the existing improvements impracticable.

The Office of the City Attorney has rules (in a letter dated July 16, 2004) that the intent of this specific restriction was to protect the exterior open space on the property, but does not prohibit the holder of the easement to increase the height of the existing garage. The easement is intended to prohibit the extension of the building into the surrounding open space which the applicant is not intending to do.

- (4) No utility transmission lines, except those required for the existing residences, may be permitted on the premises. The Office of the City Attorney has advised staff that the open space easement prohibits overhead utility lines. However, underground lines which do not impact the open space, are permissible.

Section 12-102(C) of the zoning ordinance permits the applicant to repair, renovate or completely rebuild the existing garage at its present size, height and location. However, section 12-102(A) of the zoning ordinance prohibits the expansion of a noncomplying structure unless it complies with zoning. The existing garage does not meet the CD zone regulations, and the proposed taller garage structure also will not comply with CD zone regulations as to the required setback from the north side property line. Therefore, the applicant must seek a variance from the side yard setback requirement.

A comparison of the existing garage with the renovated taller garage is as follows:

	<u>Existing Garage</u>	<u>Proposed Garage</u>	<u>Change</u>
Height	14.50 ft	17.50 ft	+3.00 ft
Width	21.10 ft	21.10 ft	no change
Length	18.00 ft	18.00 ft	no change
Floor Area	380 sq ft	760 sq ft	+380 sq ft

There have been no variances previously granted for the subject property. Since 1993, there have been no similar variance requests for garages in the immediate area heard by the Board of Zoning Appeals.

The property is located in the Old and Historic Alexandria District. Additions visible from the public right-of-way require review and approval of the Old and Historic Alexandria District Board of Architectural Review.

**IV. Master Plan/Zoning**

The subject property is zoned CD, commercial downtown and has been so zoned since 1992, and is identified in the Old Town Small Area Plan for mixed use.

**V. Requested Variance**

Section 4-506(A)(2)(b)(1), Side Yard (North):

In the CD zone each semi-detached dwelling requires two side yards of 5.00 feet. The existing renovated garage will continue to be located on the north and south side yard property lines. Because the existing house shares a common party wall with the property at 117 South Alfred Street no side yard is required from the south side property line. However, because the existing garage will increase in height the new structure will not comply with the north side property line, therefore a 5.00 side yard setback is required. The applicant requests a variance of 5.00 feet from the north side property line.

**VI. Noncomplying Structure**

The existing garage/carriage house at 115 South Alfred Street is a noncomplying structure with respect to the following:

	<u>Required</u>	<u>Provided</u>	<u>Noncompliance</u>
North Side Property Line	5.00 ft	0.00 ft	5.00 ft

**VI. 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?

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The property is a slightly larger property than is required for a single family residential lot. The property does not have difficult topography which would prohibit or unreasonably restrict its use. The property is under an open space easement which states the garden and existing garage structure must remain. No condition of the property creates a hardship that would permit a larger garage than now exists. Staff finds no hardship in this case.

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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?
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There is no hardship in this case. The condition upon which the petition for a variance is based, as stated by the applicant, is the need to renovate a deteriorating structure to accommodate two vehicles and storage. The proposed garage could be renovated without the need to increase in building height and still accommodate the parking of two vehicles without a variance. The existing noncomplying garage structure if altered as the applicant wishes will take a relatively benign use to park vehicles to a more intense use as a home office. The change in use of the building is unnecessary simply to preserve the historic character of the structure. Similar garages in the area have not been converted to more intense use as proposed by the applicant.

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?
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There is no hardship. The applicant was aware of the existing garage and its proximity to the side property line. In fact the applicant was aware of the condition of the garage and the garage's contribution to the historic character of the property as cited in the recorded open space easement. The existing garage can be rebuilt at its current size and height.

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?
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The increase in building height and use of the proposed garage will have both a visual as well as activity impact on immediately adjoining property. The introduction of a taller detached accessory structure on this property is unnecessary.

5. Have alternate plans been considered so that a variance would not be needed?
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None that would meet the desires of the applicant.

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

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None.

**DEPARTMENTAL COMMENTS**

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

\* The applicant is advised that if the variance or special exception is approved the following additional comments apply.

Transportation and Environmental Services:

F-1 No objections or recommendations.

Code Enforcement:

- F-1 There is insufficient detail provided on the application concerning the interior stairs leading to the first floor. Additional requirements concerning fire separation walls and other conditions as required under the Uniform Statewide Building Code may apply and will be addressed at the time of Building Permit application.
- 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, with no openings permitted within the wall. As alternative, a 2 hour fire wall may be provided. This condition is also applicable to 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 New construction must comply with the current edition of the Uniform Statewide Building Code (USBC).
- C-5 Alterations to the existing structure must comply with the current edition of the Uniform Statewide Building Code (USBC).
- C-6 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-7 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.

Recreation (Arborist):

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

Historic Alexandria (Archaeology):

- F-1 There is minimal ground disturbance associated with this project. No archaeological action is required.