

Docket Item #1-A  
BZA CASE #2005-00018  
(REVISED)

Board of Zoning Appeals  
November 10, 2005

**ADDRESS:** 500 EAST NELSON AVENUE  
**ZONE:** RB, RESIDENTIAL  
**APPLICANT:** MARK NEBERGALL, OWNER

**ISSUE:** Variance to construct a detached garage on the north property line and facing Dewitt Avenue.

CODE SECTION	SUBJECT	CODE REQMT	APPLICANT PROPOSES	REQUESTED VARIANCE
3-706(A)(1)	Front Yard (West) (Dewitt Ave)	20.00 feet	16.00 feet	4.00 feet

Staff **recommends denial** of the request because the applicant has not demonstrated a hardship.

If the Board decides to grant a variance, the variance must 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.

Deferred prior to the April, May, and June and September hearings.

**BOARD OF ZONING APPEALS ACTION OF NOVEMBER 10, 2005:** On a motion to approve by Mr. Lantzy, seconded by Mr. Allen the variance was approved by a vote of 4 to 3. Mr. Koenig, Ms. Lyman and M.r. Hubbard dissented.

Reason to Approve: A hardship was demonstrated due to the lot having 2 front yards.

Dissenting Reason: The applicant failed to demonstrate a legal hardship.

Speakers:

Warren Almquist, architect, made the presentation.

Eric Zander, neighbor on East Nelson Avenue, spoke in opposition.

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Paul Linehan, neighbor at 401 East Monroe Avenue, spoke in opposition.

Sarah Hout, Co-Chair Del Ray Land Use Committee, the took no position on the garage, but were in opposition to the fence.

Dave Levy, neighbor at 309 East Nelson Avenue, spoke in opposition.

Kate Daniels, neighbor at 320 East Monroe Avenue, spoke in opposition.

Gaver Nichols, neighbor at 319 East Monroe Avenue, spoke in opposition.

**BOARD OF ZONING APPEALS ACTION OF OCTOBER 13, 2005:** On a motion to defer by Mr. Curry, seconded by Mr. Allen, the variance was deferred by a vote of 7 to 0.

Reason: To allow the applicant time to revise the plans to address the concerns of the neighbors and the Board.

Speakers:

Eric Zander, neighbor on East Nelson Avenue, spoke in opposition.

Paul Linehan, neighbor at 401 East Monroe Avenue, spoke in opposition.

Gaver Nichols, neighbor at 319 East monroe Avenue, spoke in opposition.

**BOARD OF ZONING APPEALS ACTION OF JULY 14, 2005:** On a motion to defer by Mr. Hubbard, seconded by Mr. Koenig the variance was deferred by a vote of 5 to 0.

Reason: To allow the case to be heard by a full board.

Speakers:

Mr. Warren Almquist, architect and Mark Nebergall, owner made the presentation.

David Levy, neighbor at 309 East Nelson Avenue, spoke in opposition.

Amy Slack, Co-Chair of the Del Ray Civic Association's Land Use Committee, spoke in opposition.

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**I. Issue**

The applicant proposes several building improvements to the dwelling located at 500 East Nelson Avenue. Some of the improvements were approved by the BZA on July 14, 2005, to (1) construct a two-story rear addition and (2) construct a covered open porch. The applicant is now before the BZA to request approval of the following improvements:

- (a) Construction of a six foot stockade fence and
- (b) **construction of a detached garage.**

This case focuses on the construction of the proposed detached garage. On October 13, 2005, the Board of Zoning Appeals deferred the applicant's request in order for the applicant to explore reducing the size of the proposed detached garage. The applicant has revised his garage plan by eliminating the side door projection facing DeWitt Avenue. The garage is now located 16.00 feet instead of 7.00 feet from the front property line facing DeWitt Avenue.



*500 East Nelson Avenue*

**II. Background**

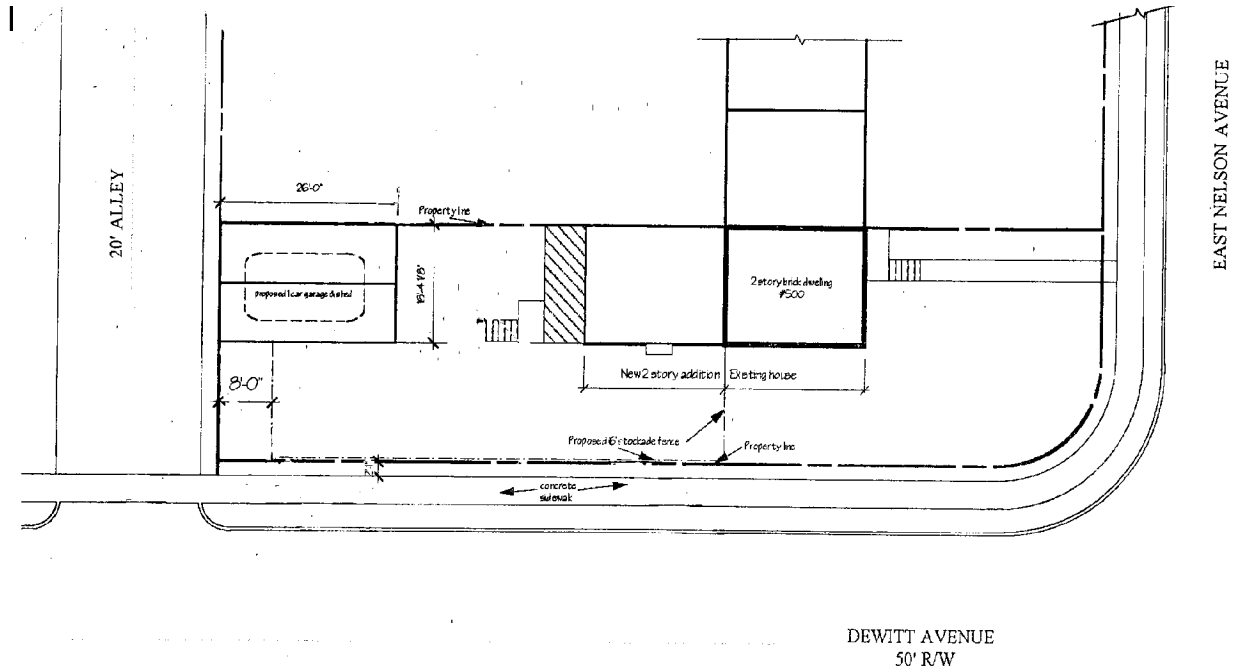
The existing dwelling is located on one lot of record. The lot is a corner lot which contains a two story masonry dwelling attached by a party wall to the adjacent dwelling at 502 East Nelson Avenue. The lot contains approximately 28.93 feet of frontage on East Nelson Avenue and approximately 126.83 feet of frontage on Dewitt Avenue. The dwelling is located 35.00 feet from the south primary front property line adjacent to East Nelson, 16.00 feet from the west secondary front property line adjacent to Dewitt Avenue, 69.00 feet from the north side property line adjacent to the alley, and on the east side property line adjacent to 502



*View from East Nelson Avenue*

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East Nelson Avenue. An existing deck and stair on the north facade would be demolished to accommodate a new two-story addition and covered porch.



*Proposed Alterations at 500 East Nelson Avenue*

**III. Description**

*Detached Garage:*

*The applicant has revised his earlier submission to reorient the proposed detached one-car garage previously facing Dewitt Avenue to face a public alley along the north property line.*

The applicant has dropped his proposal to orient the detached garage with a new curb cut for vehicular access to the garage structure from Dewitt Avenue. The revised placement for the proposed detached garage is now located on the north side property line facing a 20.00 feet wide public alley, on the east side property line and 16.00 feet from the front property line facing Dewitt Avenue. The revised submission reflects a garage that measures 26.00 feet facing Dewitt Avenue and 16.40 feet wide on



*Alley along side property line  
(subject property on the right)*

the north side property line facing the alley. The proposed garage is now placed on the east side property line. The height of the proposed structure is 15.00 feet from grade to the top of the roof.

**IV. Master Plan/Zoning**

The subject property is zoned RB, residential and has been so zoned since adoption of the Third Revised Zoning Map in 1951 and is identified in the Potomac West Small Area Plan for residential land use.

**V. Requested variances *Detached Garage*  
Section 3-706(A)(1) Front Yard (West)**

RB zone regulations state that each use must provide a minimum required 20.00 foot front yard. The garage will be located 16.00 feet from the front property line facing Dewitt Avenue. The applicant seeks a variance request of 4.00 feet to construct the garage within the required front setback.

**VI. Noncomplying structure**

The existing dwelling at 500 East Nelson Avenue is a noncomplying structure with respect to the following:

	<u>Existing</u>	<u>Required</u>	<u>Noncomplying</u>
Front Yard (Dewitt Avenue)	16.00 feet	20.00 feet	4.00 feet

**VII. Variance criteria under 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 variance.

**VIII. Applicant's Justification for Hardship**

The applicant states enforcement of the zoning ordinance could create a garage mass and scale unlike other properties in the subdivision. Further, the subject property is not similar in size to nearby properties (the majority of properties in the subdivision are interior townhouse lots) as well as its relationship to adjacent commercial use.

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**IX. Staff Analysis**

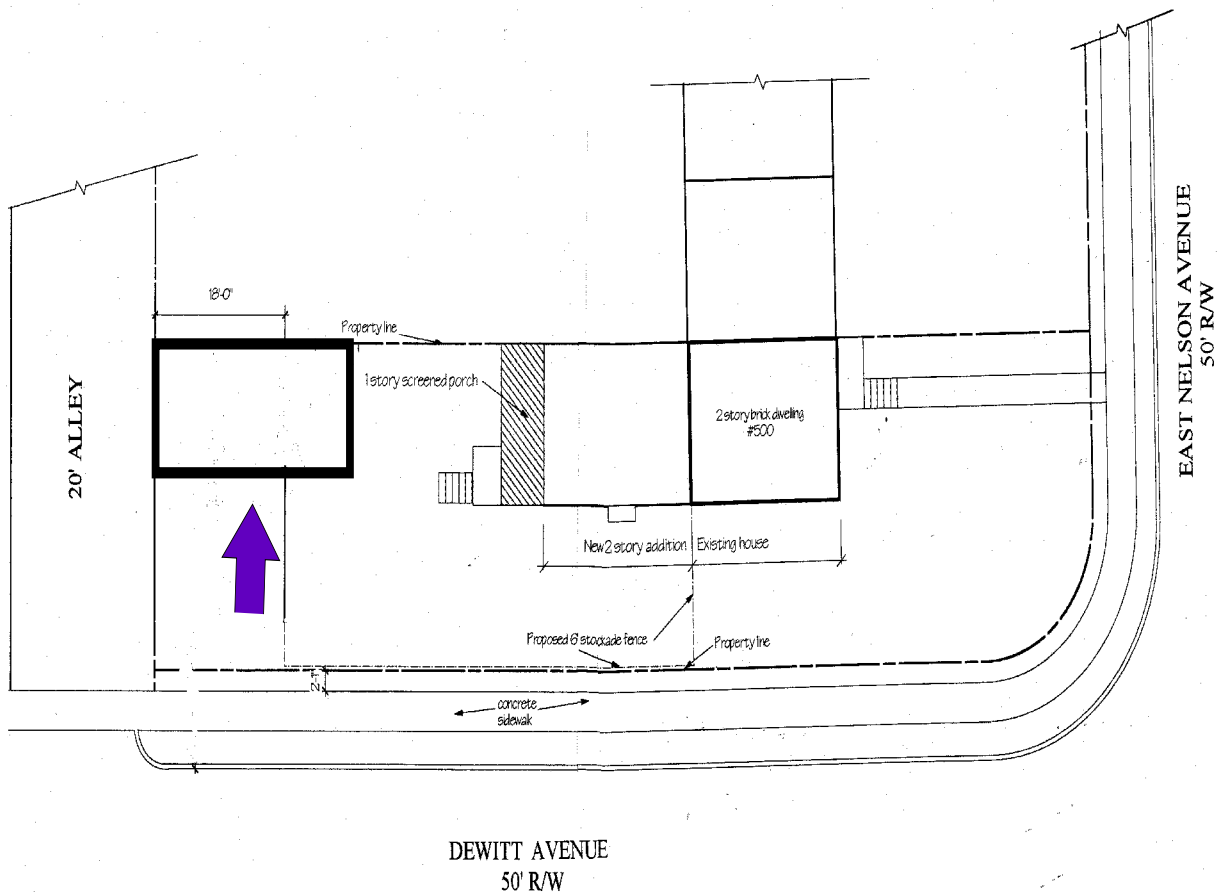
Staff finds that there continues to be no legal hardship based upon the revised plan. Surface off-street parking or a smaller garage can be provided on the property with access from the rear alley without the need of a variance. The proposed development does not meet any of the criteria prescribed by the zoning ordinance for variance approval. The zoning ordinance requires that the subject property must be physically unique in character in such a way that development would be prohibited or unreasonably restricted. The subject property is a rectangular corner lot similar in size and configuration to other lots in the vicinity. There is no unique characteristic inherently represented in this particular lot which is not also shared by several other residential corner lots adjacent to commercial uses in this block and in this zone. The parcel far exceeds the minimum square footage for lots in the RB zone thus affording ample opportunity to construct improvements completely within non-required yards.

**XII. Alternatives for Development**

Staff finds no hardship to justify siting the garage structure as proposed. This is a self-imposed hardship which cannot be used as justification for a variance. Staff concludes that a narrower garage in compliance with the front yard setback or pad parking are available to address the applicant's needs without a variance.

By-right option

A 12.00 foot wide garage structure could be located along the east common property line completely within non-required yards and will project no further than the west facade of the



*Location of by-right 12' x 28' garage  
in non-required yards*

existing dwelling and proposed additions. This design would also facilitate access from the adjacent alley.

**X. Staff Conclusion**

Staff finds that the revised garage location and wider garage fails to meet any of the criteria set forth by the zoning ordinance for approval of a variance and **recommends denial** of the requested variance.

STAFF: Hal Phipps, Division Chief, Planning & Zoning  
Peter Leiberger, Zoning Manager, Planning & Zoning



**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:

- ~~F-1~~ Per the revised plan, T&ES does not support a curb cut and interruption of the public sidewalk along Dewitt Avenue to provide access to the proposed garage. The existing alley has sufficient width to allow for adequate access to a reoriented garage.
- ~~R-1~~ Reorient the proposed two-car garage to provide access from the existing 20 foot alley. (T&ES)
- R-2 A plot plan showing all improvements and alterations to the site must be approved by T&ES prior to issuance of a building permit. The footprint, elevations, and reoriented parking facilities of the plot plan shall be generally consistent with what is shown on this application. (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 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 If construction of the building addition and parking garage result 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-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)
- C-1 All utilities serving this site shall be placed underground. (Sec. 5-3-3)
- C-2 Any work within the right-of-way requires a separate permit from T&ES.(Sec.

5-3-61)

Code Enforcement:

- 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 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 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.
- C-8 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 One or two maples will be removed as a result of this plan. These trees do not qualify as specimen trees.

Historic Alexandria (Archaeology):

- F-1 There is low potential for this project to disturb significant archaeological

resources. 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.