

Docket Item #1-B  
BZA CASE #2005-00031

Board of Zoning Appeals  
November 10, 2005

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

**ISSUE:** Special exception to erect a six-foot fence in a required front yard facing DeWitt Avenue.

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CODE SECTION	SUBJECT	CODE REQMT	APPLICANT PROPOSES	REQUESTED EXCEPTION
7-1702(B)(1)	Fence Forward of the Rear Wall	Rear Wall	Forward of the Rear Wall	
7-1702(B)(2)	Fence Distance from Edge of Sidewalk	3.00 Feet	2.10 Feet	0.90 feet

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

If the Board decides to grant a special exception, it should contain the conditions under the department comments. The special exception must also be recorded with the deed of the property in the City's Land Records Office.

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

**BOARD OF ZONING APPEALS ACTION OF NOVEMBER 10, 2005:** On a motion to approve with conditions by Mr. Curry, seconded by Mr. Koenig the special exception was approved by a vote of 6 to 1.

CONDITION: FENCE TO BEGIN AT REAR OF EXISTING BUILDING WALL AND NOT TO EXTEND CLOSER THAN 26.00 FEET FROM THE NORTH PROPERTY LINE ALONG THE ALLEY AND NO CLOSER THAN 3.00 FEET FROM THE WEST SIDE PROPERTY LINE ALONG DEWITT AVENUE WITH PLANTINGS.

Reason to Approve: The application with conditions meets the criteria for a special exception and is minimally intrusive.

Dissenting Reason: The proposal truncates the yard into sections.

Speakers:

Warren Almquist, architect, made the presentation.

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

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

Sarah Haut, Co-Chair Del Ray Land Use Committe, 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 special exception 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.

(insert sketch here)

**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 6.00 feet tall stockade fence facing DeWitt 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



*500 East Nelson Avenue*

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 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.

**(1) Description**

*Fence*

A six-foot high wood stockade fence is proposed along the west property line. The stockade fence replaces an existing 3.50 foot chain link fence just off the west property line. The proposed fence will be erected within 8.00 feet of the north side property line parallel to a public alley, placed 2.10 feet from the inside edge of the public sidewalk parallel to the front property line adjacent to Dewitt Avenue and turn east towards the rear building wall of the existing house but forward of the new addition and existing rear addition. (See BZA case #2005-018).

**III. 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.

**IV. Requested special exceptions**

7-1702(B)(1) Fences on Corner Lots (West Front Yard)

7-1702(B)(2) Fences on Corner Lots (West Front Yard)

The zoning ordinance states that six foot fences on corner lots must be located no closer than the rear wall of the dwelling and no closer than 3.00 feet to the edge of the adjacent sidewalk. The proposed fence would be located forward of the rear wall of the dwelling and 2.10 feet from the sidewalk on Dewitt Avenue on the west secondary front property line. The applicant seeks a special exception of 0.90 feet to erect the fence within the prescribed setback and forward of an existing addition to the house and another new addition recently approved by the BZA.

**V. Noncomplying structure**

The existing building 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 (West)	16.00 feet	20.00 feet	4.00 feet

**VII. Staff analysis under criteria of section 11-1302**

This case asks the Board of Zoning Appeals to rule on whether a six foot closed fence located in the required secondary front yard facing DeWitt Avenue and forward of the rear building wall meets the standards adopted for a special exception for a corner lot fence.

Special Exception Standards

The rules for corner lot fences reflect Council's decision that property owners should be able to seek relief when the proposal is modest in a required secondary front yard. Under the adopted corner lot fence rules, the Board must determine whether the improvement affects neighboring homes, whether the improvement is similar in character to other fences within the immediate neighborhood and, finally, whether the proposed fence represents the only reasonable location on the lot to build. The specific standards are:

1. Whether approval of the special exception will be detrimental to the public welfare, to the neighborhood or to the adjacent properties.
2. Whether approval of the special exception will impair an adequate supply of light and air to the adjacent property, or cause or substantially increase traffic congestion or increase the danger of fire or the spread of fire, or endanger the public safety.

**BZA CASE #2005-0031**

3. Whether approval of the special exception will alter the essential character of the area or the zone.
4. Whether the proposal will be compatible with the development in the surrounding neighborhood.
5. Whether the proposed development represents the only reasonable means and location on the lot to accommodate the proposed structure given the natural constraints of the lot or the existing development of the lot.

In this particular case the applicant desires to place an 6 foot tall closed fence close to the front property line facing DeWitt Avenue and forward of the rear building wall.

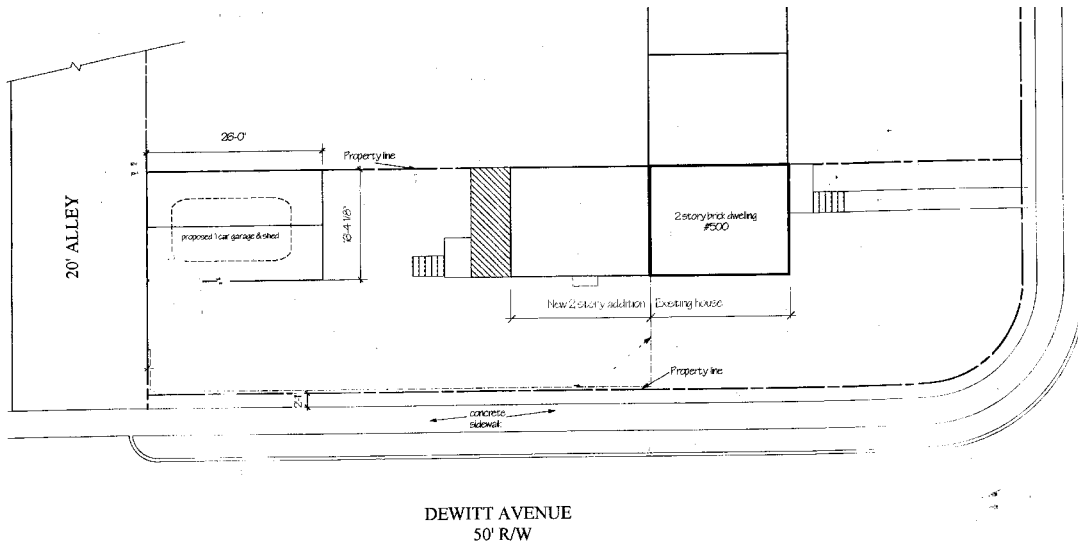
**VIII. Staff Analysis**

Staff finds that the proposed fence configuration creates a public safety hazard by obscuring visibility from the adjacent alley to the sidewalk along Dewitt Avenue. The proposed six foot stockade fence creates a formidable obstruction unreasonably close to pedestrians on the sidewalk and limits visibility along the sidewalk and from the alley.

One of the tenant's of the zoning ordinance is that fences should not create a detriment to the public welfare nor endanger public safety. Staff believes a 3.50 feet open style fence along the north side property line and front property line facing DeWitt Avenue is more appropriate given the conditions of the lot in relation to an active public alley and the proposed size of the new detached garage to occupy the site on a large corner lot.

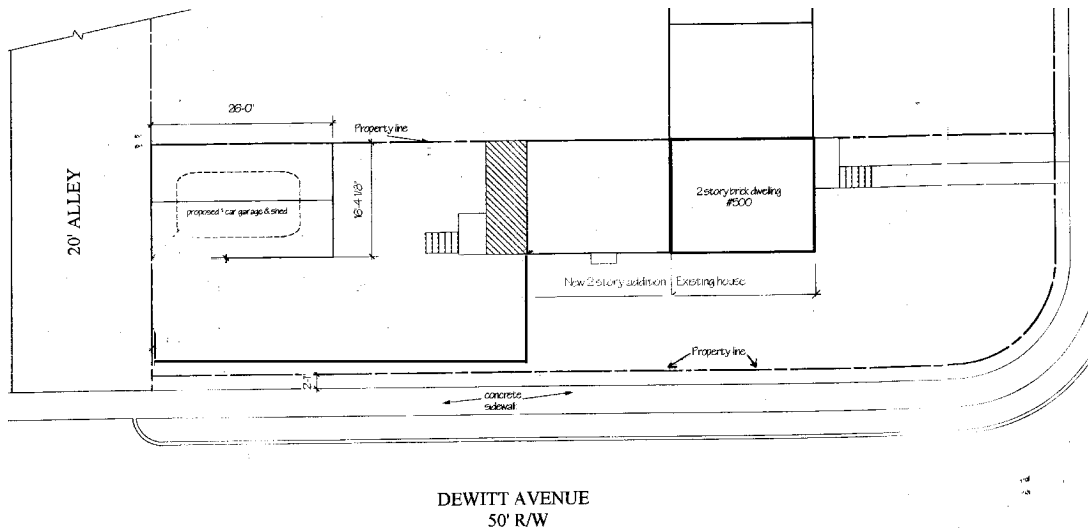
**IX. Fence Alternatives Without the Need of a Special Exception**

The first by-right alternative is to install an open 3.50 feet tall fence which would allow greater visibility and safety from the alley and along the DeWitt Street frontage. The fence can be installed in the same location as the proposal by the applicant in compliance with the corner lot fence rules. Given the amount of structures proposed and built on a large corner lot and active public which abuts the property, staff believes the prudent choice of fence is a 3.50 feet open style fence that will afford the applicant a level of security without creating a wall along the DeWitt Avenue sidewalk.



*Alternative design- 3.50' fence and open*

The second by-right alternative is to bring the edge of the six foot fence back 3.00 feet from the sidewalk and up to the rear building wall of the future rear addition. Such an alternative will afford some reasonable viability when vehicles exit the public alley onto DeWitt Avenue. Staff finds that reasonable alternatives exist which would afford the lot privacy and will not create an unreasonable public safety hazard.



*Alternative location of fence behind the rear building wall and 3.00 feet from the sidewalk edge*



**IX. Staff Conclusion**

Staff **recommends denial** of the special exception.

STAFF: Hal Phipps, Division Chief, Planning & Zoning  
Peter Leiberg, 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 T&ES does not support a curb cut and interruption of the public sidewalk along Dewitt Avenue to provide access to the proposed garage.~~

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.