

Docket Item #8  
BZA CASE #2005-0066

Board of Zoning Appeals

**ADDRESS:** 3100 CIRCLE HILL ROAD  
**ZONE:** R-8, RESIDENTIAL  
**APPLICANT:** CAROL WIESER AND GEORGE WEIDNER, OWNERS

**ISSUE:** Variance to build a new house located in the required front yard facing Old Dominion Boulevard and in the required east side yard.

CODE SECTION	SUBJECT	CODE REQMT	APPLICANT PROPOSES	REQUESTED EXCEPTION
3-306(A)(1)	Front Yard (Old Dominion)	30.00 ft	10.00 ft	20.00 ft
3-306(A)(2)	East Side Yard	13.50 ft*	8.00 ft	5.50 ft

\* Based on a building height of 27.00 feet to the midpoint of the gable roof.

**BOARD OF ZONING APPEALS ACTION OF JULY 13, 2006:** On a motion to defer by Mr. Allen, seconded by Mr. Hubbard, the variance was deferred by a vote of 6 to 0.

Reasons: To allow the applicants time to explore design alternatives.

Speakers:

Carol Weiser and George Weidner, owners, made the presentation.

David Brown, neighbor at 503 Woodland Terrace and representative for the Northridge Citizens Association, spoke in opposition.

Megan Rainey, President of Northridge Civic Association, spoke in opposition.

David Myer, neighbor at 3103 Circle Hill Road, spoke in opposition.

Matt Page, neighbor at 2905 Old Dominion Road, spoke in opposition.

The staff **recommends denial** of the requested variance because the applicants have not met the criteria for a variance.

If the Board decides to grant a variance, it should contain the conditions under the department comments. Variances must also be recorded with the deed of the property in the City's Land Records Office prior to the release of a building permit.

(insert sketch here)

**I. Issue**

The applicants propose to demolish an existing two-story single-family dwelling and construct a larger single-family dwelling at 3100 Circle Hill Road. The proposed new two-story brick house with a basement will be located within the required front yard facing Old Dominion Boulevard and within the east side yard setback that the R-8 zoning requires.

**II. Background**

The subject property, a corner lot, is a lot of record with 115.00 feet of lot width facing Old Dominion Boulevard, 60.00 feet of frontage on Circle Hill Road and a lot area of 6,900 square feet. The subject property is substandard in lot area for a corner lot where the minimum lot size is 9,000 square feet. A two-story single-family dwelling with an attached

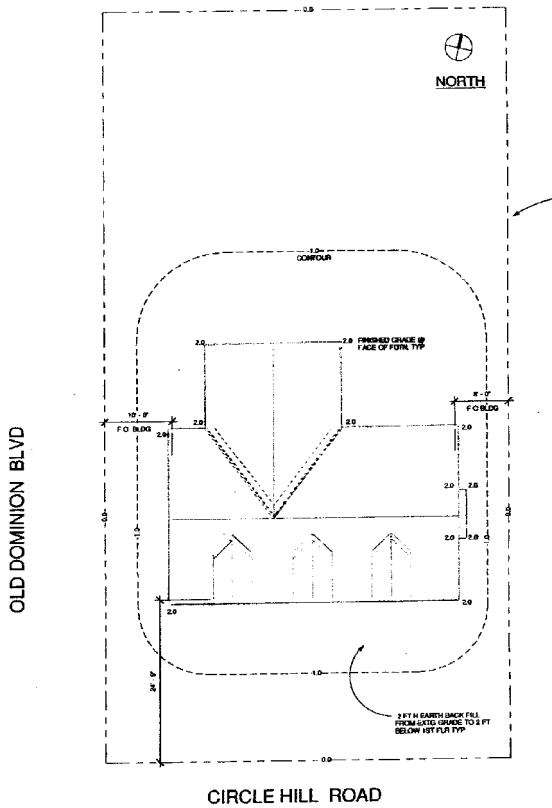


building wing that accommodates space for a one car garage totaling 1,844 square feet occupies the site and is located 9.00 feet from the front property line facing Old Dominion Boulevard, 24.90 feet from the front property line facing Circle Hill Road, 6.70 feet from the east side property line and 51.00 feet from the north side property line. A gravel driveway is located along the north side of the building and wraps around the rear of the building. Real Estate Assessment records indicate the existing house was built in 1942.

**III. Description**

The proposed new two-story single-family dwelling (*Figure 1*) is located 10.00 feet from the front property line facing Old Dominion Boulevard, 24.90 feet from the front property line facing Circle Hill Road, 8.00 feet from the east side property lines and approximately 54.00 feet from the north side property line. The entrance to the house is located facing Circle Hill Road. The proposed building is 29.75 feet tall from grade to the top of the roof; 27.00 feet in height from grade to the midpoint of the





**Figure 1- Proposed Single Family Dwelling**  
setback to the north.

gable roof. Upon completion of the project the new house will total 2,414 square feet of net floor area (the allowable net floor area for the site is 2,415 square feet).

The construction of a new single-family dwelling triggers all of the current R-8 yard requirements. Based upon a building height of 27.00 feet, a side yard setback of 13.50 feet is required facing the east side property line. The proposed house will be placed 8.00 feet from the east side property line; the applicant requests a side yard variance of 5.50 feet. Although the existing house is now located 9.00 feet from the front property line facing Old Dominion Boulevard removing the existing house triggers the 30.00 feet front setback requirement facing Old Dominion Boulevard. The new house is to be located 10.00 feet from the front property line facing Old Dominion Boulevard. The applicant requests a front yard setback variance of 20.00 feet. The proposed house complies with the prevailing front setback facing Circle Hill Road and facing the side yard

Although the subject lot is substandard, the existing house is a legal noncomplying structure. Under section 12-102(B) of the zoning ordinance, a noncomplying structure if demolished may be reconstructed, provided there is no increase in the degree of noncompliance that existed prior to such demolition. In this case, the existing house is noncomplying as to the front setback facing both Old Dominion Boulevard and Circle Hill Road as well as the east side yard setback.

**IV. Master Plan/Zoning**

The subject property is zoned R-8 and has been so zoned since adoption of the Third Revised Zoning Map in 1951 and identified in the North Ridge Small Area Plan for residential land use.

**V. Noncomplying Structure**

The existing building at 3100 Circle Hill Road is a noncomplying structure with respect to the following:

<u>Yard</u>	<u>Required</u>	<u>Existing</u>	<u>Noncompliance</u>
Side (East)	8.00 feet	6.70 feet	1.30 feet
Front Yard (Old Dominion)	30.00 feet	9.00 feet	21.00 feet

**VI. Variance 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 11-103 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 a variance.

**VII. Applicants' Justification for Hardship**

The applicants state that the subject property is a substandard corner lot and the zoning restricts the ability to rebuild. A complying structure that meets the applicable zoning setbacks will result in a narrow house not in keeping with the architectural character of the neighborhood. The inability for the property owner to recreate a home in a solid, stable manner, and as necessary to address a crumbling foundation is effectively a confiscation of the property and unreasonable restriction on the use of the property.

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**VIII. Staff Analysis**

There is no legal hardship. As shown on the submitted plat, a reasonable size house is currently built on the lot that is a legal noncomplying structure.

In *Cochran v. Fairfax County Board of Zoning Appeals*, the Virginia Supreme Court dealt with a similar case. In *Cochran*, the owner wanted to demolish an existing house and replace it with a larger house. In order to build the house as planned, a 2-foot variance was sought. In this case, the Supreme Court reversed the finding of the BZA and concluded that the facts did not support the granting of a variance. The Court held:

[T]he BZA has authority to grant variances only to avoid an unconstitutional result...

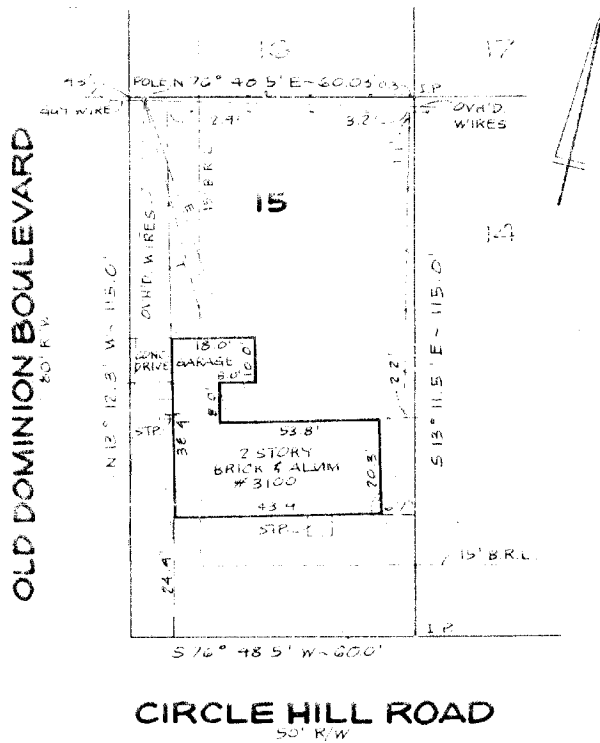
[W]e construe the statutory terms “effectively prohibit or unreasonably restrict the utilization of the property,” “unnecessary hardship” and “undue hardship” in that light and hold that the BZA has no authority to grant a variance unless the effect of the zoning ordinance, as applied to the piece of property under consideration, would, in the absence of a variance, “interfere with all reasonable beneficial uses of the property taken as a whole.”

The Court concluded that under the facts of the *Cochran* case, without a variance the property retained substantial beneficial use and substantial value. The house could have been reconfigured or moved two feet, or the project could have been abandoned and the existing residential use continued in effect.

In the current case at 3100 Circle Hill Road, a two-story single-family dwelling with an attached building wing and a one-car garage already exists on the property. On the basis of the Supreme Court decision cited above, there is a clear basis to conclude that there is no hardship because there is reasonable beneficial use of the property.

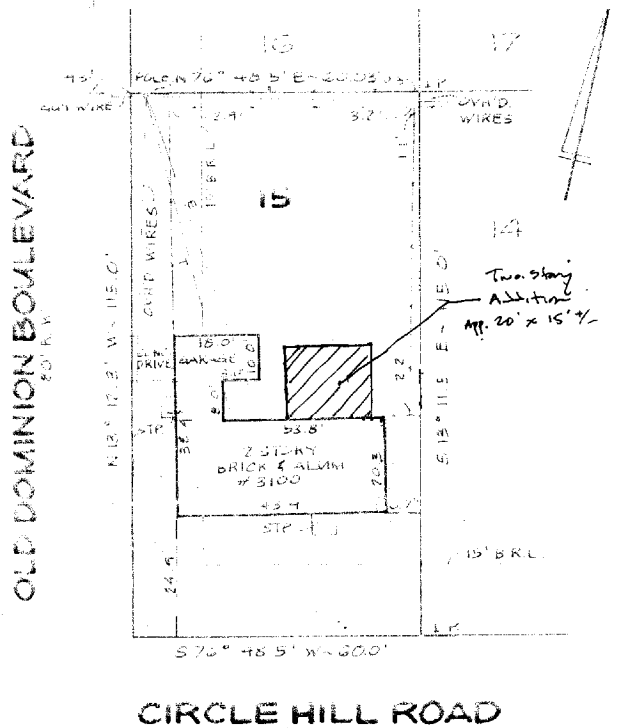
IX. Alternatives Available to the Applicants

Since there is already a house built on the property (*Figure 2*), there is no hardship or a confiscation of the property as the property owners claim. A modest addition to the current house could add additional floor space without the need for a variance.



**Figure 2 - Existing Conditions**

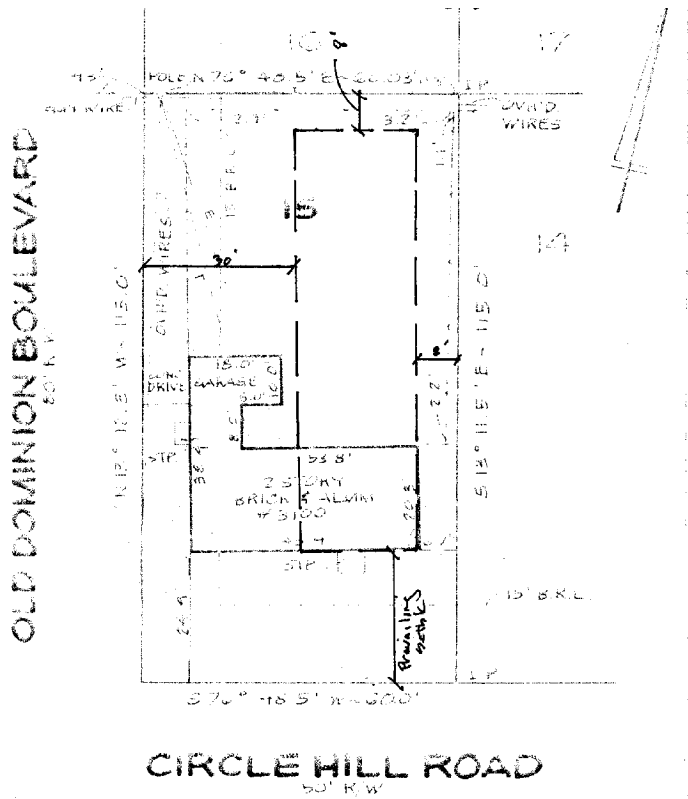
*Figure 3* shows how an addition could be configured at the rear of the existing house. Such an addition could meet zoning requirements without the need for a variance. Alternatively, if the addition were to be constructed in line with the existing house's east wall, the owner could apply for a special exception.



**Figure 3 - Addition in compliance with R-8 zoning.**



**BZA CASE #2005-0066**



**Figure 4 - Footprint of new single family dwelling without a variance.**

**X. Conclusion**

Given the available building alternatives and no conditions that approach a legal hardship to support a variance, staff **recommends denial** of the variances.

STAFF: Hal Phipps, Division Chief, Planning and Zoning  
Peter Leiberg, Zoning Manager, Planning and 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:

- R-1 A PLOT PLAN showing all improvements and alterations to the site must be approved by T&ES prior to issuance of a building permit. (T&ES)
- R-2 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)
- 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 An erosion and sediment control plan must be approved by T&ES prior to any land disturbing activity. (T&ES)
- R-6 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 plan. (T&ES)
- C-1 All utilities serving this site shall be placed underground. (Sec. 5-3-3)
- C-2 Pay sanitary sewer tap fee prior to issuance of a building permit. (Sec. 5-6-25.1)
- C-3 Any work within the right-of-way requires a separate permit from T&ES. (Sec. 5-3-61)

**BZA CASE #2005-0066**

- C-4 Roof drains and sub-surface drains shall be connected to the city storm sewer system, if available, by continuous underground pipe. (Sec. 8-1-22)
- C-5 Change in point of attachment or removal of existing overhead utility services will require undergrounding or a variance. (Sec. 5-3-3)
- C-6 Prior to release of the plot plan the applicant shall post an Erosion and Sediment control bond.
- F-1 Section 8-1-17 of the City Code requires that curb, gutter and sidewalk be installed at the property owner's expense whenever construction or alteration of a building site will increase the fair market value of the property by more than 50 percent. However, the City Manager has the authority to waive this requirement upon finding that installation of the public improvements will not be compatible with the character of the neighborhood or serve a substantial useful purpose. Provide a design for the missing curb/gutter and sidewalk to be installed as part of this project or seek waiver for same. (T&ES)
- F-2 Where the construction of a residential unit that 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)

Code Enforcement:

- C-1 Roof drainage systems must be installed so as neither to impact upon, nor cause erosion/damage to adjacent property.
- C-2 New construction must comply with the current edition of the Uniform Statewide Building Code (USBC).
- C-3 Alterations to the existing structure must comply with the current edition of the Uniform Statewide Building Code (USBC).
- C-4 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.

**BZA CASE #2005-0066**

- C-5 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 specimen trees are affected by this plan.

Historic Alexandria (Archaeology):

- F-1 This project does not involve significant ground disturbance. 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.