

Docket Item #5
BZA CASE #2007-0027

Board of Zoning Appeals
October 11, 2007

ADDRESS: 3720 SEMINARY ROAD
ZONE: R-20, RESIDENTIAL
APPLICANT: WILLIAM AND MARGARET O'GRADY, OWNERS, BY MARY
CATHERINE GIBBS, ATTORNEY

ISSUE: Variance to construct a 8.00 feet brick privacy wall along a portion of the east side property line.

CODE SECTION	SUBJECT	CODE REQMT	APPLICANT PROPOSES	REQUESTED VARIANCE
7-202(B)(3)	Closed Fence (East Side Property Line)	6.00 ft	8.00 ft	2.00 ft

BOARD OF ZONING APPEALS ACTION OF OCTOBER 11, 2007: On a motion to approve by Mr. Goodale, seconded by Mr. Zander, the variance was approved by a vote of 5 to 1. Mr. Lantzy dissented.

Reason to approve: The applicant demonstrated a legal hardship as outlined in the staff report.

Dissenting reason: The application does not rise to the level of a legal hardship.

Mary Catherine Gibbs, attorney, made the presentation

Staff **recommends approval** of the request because the applicants have demonstrated a hardship.

If the Board decides to grant a variance, it should 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 prior to the release of the building permit.

(insert sketch here)

I. Issue

The applicants, located at 3720 Seminary Road, propose to build an 8.00 feet tall brick privacy wall along a portion of the subject property's east side property line.

II. Background

The subject property, an interior lot, has 93.19 feet of frontage on Seminary Road, a depth of 229.81 feet along its longest side (east) property line and contains 20,019 square feet. The rear property line is angled to the west and east side yard property lines. The subject property abuts the Protestant Episcopal Theological Seminary property along the east side property line.

An existing one and one-half story single-family dwelling is located 81.40 feet from the front property line facing Seminary Road, 14.00 feet from the east side property line and 14.80 feet from west side property line. A detached garage is located forward of the front building wall and is 40.90 feet from the front property line and 14.00 feet from the east side property line. Real Estate Assessment records indicate the house was built in 1986 in compliance with the R-20 zoning regulations.

Existing trees, shrubbery, and brick garden shed are currently installed along the applicants' east side property line facing the Protestant Episcopal Theological Seminary property.

III. Description

The applicants indicate that the 8.00 feet high brick wall is desired to screen faculty housing, a driveway, a parking area, and a trash location on the adjoining Seminary property. The faculty housing and driveway parallels the applicants' east side property line. The proposed brick wall will be built along 90.00 feet of the 229.91 feet of the east side property line.

The Seminary has reviewed the applicants' proposed brick wall proposal and has written in support of the variance request (refer to attached letter).

IV. Master Plan/Zoning

The subject property is zoned R20, residential and has been so zoned since adoption of the Third Revised Zoning Map in 1951, and is identified in the Taylor Run/ Duke Street Small Area Plan for residential land use.

V. Requested variance

Section 7-202(B)(3), Fences in Side and Rear Yards:

Fences and walls in required side and rear yards can either be open or closed style and cannot exceed 6.00 feet in height. The proposed brick wall is 2.00 feet taller than

allowed. The applicants are requesting a variance of 2.00 feet from the fence height requirement as it applies along the east side property line.

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 11-103 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. Applicant's Justification for Hardship

The applicants indicate they wish to buffer their backyard from the adjoining Seminary's faculty house, service drive and parking as well as trash collection area. The use and enjoyment of their backyard is impeded by the above conditions. The applicants state that a 6.00 feet tall wall is insufficient to screen the Seminary property in order to continue reasonable use of their backyard.

VIII. Staff Analysis

The hardship in this case arises from the fact that the subject property, which is residential, is in close proximity to a major institutional use. In fact, the subject property's lot configuration and placement of the home are unique when compared to other neighboring residential properties. The subject property and house are completely exposed to Seminary along the east side property line compared to abutting neighbors' properties that face the Seminary along their rear property lines. The applicants' home is also closer to the Seminary than its neighbors. There is limited transition space between the subject property and the Seminary. At a minimum, at least 25.00 feet is typically required for institutional uses and accompanying buildings near residentially zoned property.

The BZA has supported a similar variance to replace an existing 7.00 feet tall fence with an 8.00 feet tall wood fence along a residential rear property line at 1303 Bishop Lane facing the new TC William High School and new access road located within one foot of that property (BZA Case# 2005-0022 attached). The BZA agreed with the staff analysis that the subject property had a unique situation and there was a lack of transitional area between the residential property and the institutional use.

Staff believes that strict application of the fence/wall regulations as applied to this property within the required side yard creates an unreasonable restriction on the property. The fence rules were intended to prevent tall imposing fences facing other residential property. A tall fence structure will not change the appearance of the Seminary property either from the public street or from the Seminary property facing the applicants' side yard. The Seminary is in support of the applicants' request. There is a hardship along the east side property line.

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:

F-1 No comments.

Code Enforcement:

C-1 A Building Permit is required for the proposed project.

C-2 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 The Union Army was very active in this area during the Civil War. There is the potential for archaeological resources to be discovered in the ground on this property.

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 to be conducted on the property, unless authorized by Alexandria Archaeology.

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- R-3 The statements in Conditions 1 and 2 above shall appear in the General Notes of all site plans and on all site plan sheets that involve demolition or ground disturbance (including Erosion and Sediment Control, Grading, and Sheet piling and Shoring) so that on-site contractors are aware of the requirements. Additional statements to be included on the Final Site Plan will be determined in consultation with Alexandria Archaeology.