

Docket Item #6
BZA CASE #2007-0028

Board of Zoning Appeals
October 11, 2007

ADDRESS: 1001 RUSSELL ROAD
ZONE: R-5, RESIDENTIAL
APPLICANT: KEVIN BLACK, OWNER

ISSUE: Variance to allow a fence taller than 3.5 feet to remain in the required front yards facing Russell Road and West Spring Street and in the vision clearance triangle.

| CODE SECTION | SUBJECT | CODE REQMT | APPLICANT PROPOSES | REQUESTED VARIANCE |
|--------------|------------------|------------|--------------------|--------------------|
| 7-202(A)(1) | Fence | 3.50 feet | 4.04 feet | .54 feet |
| 7-801(A) | Vision Clearance | 100 feet | 50 feet | 50 feet |

BOARD OF ZONING APPEALS ACTION OF OCTOBER 11, 2007: On a motion to approve by Mr. Hubbard, seconded by Mr. Allen the variance was approved by a vote of 5 to 0 to 1. Mr. Zander abstained.

Reason: The applicant demonstrated a hardship due to the slight variations of the topography and the modest nature of the request.

Speakers:

Kevin Black, owner, made the presentation.

Staff **recommends denial** of the request because the applicant has not 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 applicant, located at 1001 Russell Road, requests a variance to allow an open fence, ranging in height from 3.38 feet to 4.04 feet to remain (1) in the required front yards and (2) in the vision clearance triangle at the intersection of Russell Road and West Spring Street.

II. Background

The subject property, a corner lot, is one lot of record, with 51.10 feet of frontage facing Russell Road, 89.68 feet of frontage facing West Spring Street and contains 4,901 square feet of lot area.

The existing one and one-half story single-family dwelling is located 12.80 feet from the front property line facing West Spring Street, 21.00 feet from the front property line facing Russell Road, 15.50 feet from the east side property line, and 48.00 feet from the north side property line. An existing driveway is located parallel to the east side property line leading to a one story frame garage.

III. Description

In early 2007, the applicant hired a fence contractor to construct a 3.50 foot picket fence in the required front yards and a 6.00 foot privacy fence on their north and east side property lines outside of the required front yard setback. The 6.00 foot portion of the fence is in compliance with zoning regulations. The pickets of the fence in the required front yards do not exceed 3.50 feet in height, but because of changes in topography and in order to keep the top of the fence level, the height of the fence from grade ranges from 3.38 feet to 4.04 feet. Open style fences located in required front yards cannot exceed 3.50 feet from grade; therefore the applicant must seek a variance to allow the fence to remain.

The fence is also located within the vision clearance triangle at the intersection of Russell Road and West Spring Street. Within the vision clearance triangle a fence cannot exceed 3.50 feet from curb level. Therefore, the applicant must also seek a variance to allow the fence to remain in the vision clearance triangle.

There have been no variances previously granted for the subject property.

IV. Master Plan/Zoning

The subject property is zoned R-5 and has been so zoned since adoption of the Third Revised Zoning Map in 1951 and identified in the Potomac West Small Area Plan for residential land use.

V. Requested variances

Section 7-202(A)(1) Fences in Required Front Yards

Fences located in the required front yard must be at least 50 percent open and cannot exceed 3.50 feet from grade. The applicant requests a variance to allow an open fence ranging in height from 3.38 feet to 4.04 feet from grade to remain in the required front yards facing Russell Road and West Spring Street.

Section 7-801(A) Vision Clearance

In any residential zone, for the purpose of safe vehicular travel, there shall be no structure, fence or shrubbery taller than 3.50 feet above the curb level within the vision clearance triangle. A small portion of the applicant's home and screened porch are currently located in the vision clearance triangle at the intersection of Russell Road and West Spring Street. The applicants request a variance to reduce the 100 feet vision clearance minimum requirement to 50.00 feet, a reduction of 50.00 feet to allow the existing fence to remain.

VI. Noncomplying structure

The existing building at 1001 Russell Road is a noncomplying structure with respect to the following:

| <u>Yard</u> | <u>Required</u> | <u>Existing</u> | <u>Noncompliance</u> |
|----------------------|-----------------|-----------------|----------------------|
| Front (Russell Rd) | 25.00 feet | 21.00 feet | 4.00 feet |
| Front (W. Spring St) | 25.00 feet | 12.80 feet | 12.20 feet |
| Vision Clearance | 100.00 feet | 89.00 feet | 11.00 feet |

VII. 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 11-1103 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.

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- (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.

VIII. Applicant's Justification for Hardship

The topography of the lot along the front property line varies and slopes down towards the curb, therefore creating a hardship for the applicant to construct an adequate fence to enclose the front of this property. The pickets of the fence do not exceed 3.50 feet but, in order to accommodate for the changes in topography and in order to keep the top of the fence level, the fence exceeds 3.50 feet by at most 0.54 feet. According to the applicant, a shorter fence would make the front yard too dangerous for his children to play and therefore they would lose the use of a portion of their land.

IX. Staff Analysis

The applicant could have constructed a fence using shorter pickets so that the changing topography could have been accommodated without exceeding the maximum height requirement of 3.50 feet. Alternatively, the bottoms of some pickets could have been shortened to accommodate the changes in topography, while maintaining a fence that does not exceed 3.50 feet from grade.

Given the reasonable alternatives above, the staff **recommends denial** because there is no legal hardship.

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:

F-1 No comments.

Recreation (Arborist):

F-1 No trees are affected by this plan.

Historic Alexandria (Archaeology):

F-1 There is no ground disturbance associated with this appeal. 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.