

Docket Item #4  
BZA CASE #2008-0013

Board of Zoning Appeals  
May 8, 2008

**ADDRESS:** 334 COMMERCE STREET  
**ZONE:** CD, RESIDENTIAL  
**APPLICANT:** NEIL AND SHEILA JURINSKI, OWNERS

**ISSUE:** Variance to construct a two story rear addition in the rear yard reducing the open space from 379 to 346 square feet.

CODE SECTION	SUBJECT	CODE REQMT	APPLICANT PROPOSES	REQUESTED VARIANCE
4-506(A)(e)(1)(a)	Open Space	379 sf *	346 sf	33 sf

\* Existing lot is currently above the required open space. The lot contains 496 square feet, and the applicant proposes to reduce existing open space by 150 square feet.

**BOARD OF ZONING APPEALS ACTION OF MAY 8, 2008:** On a motion to defer by Mr. Goodale, seconded by Mr. Hubbard, the variance was deferred by a vote of 5 to 0.

Reason: To allow the Board more time to investigate case law and previous open space variance requests.

Speakers:

Sheila and Neil Jurinski, owners, made the presentation.

John Calvert, owner at 330 Commerce Street, spoke in support.

Staff **recommends denial** of the request because the applicants have 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 applicants propose to construct a two-story rear addition to an existing interior townhouse dwelling at 334 Commerce Street. The proposed two-story addition would reduce ground level open space on the property below requirements.

**II. Background**

The subject property is one lot of record with 12.50 feet of frontage on Commerce Street and a depth of 88.46 feet along. The rear property line is angled to the north side and south side property lines. The lot area totals 1,083 square feet. The property is substandard in lot area for a CD zone residential lot.

A two-story row dwelling occupies the property. It is built one foot from the front property line of Commerce Street, shares a party wall on the west side property line and a party wall on the east side property line, and is approximately 43.26 feet from the rear property line. There is no off-street parking area on the property.

The existing two-story row dwelling complies with the 35 percent open space requirement in the CD zone for residential property. The subject property has 496 square feet of existing open space. The open space requirement is 379 square feet.

**III. Description**

The applicants' state the proposed two-story rear addition is intended to make the ground floor handicapped-capable for future single-floor living as the applicants' age. The proposed addition will be built on existing open space, which now totals 496 square feet, resulting in a lost of 150 square feet of usable open space on the lot. The applicants propose to take a complying lot, as to required open space, and make it substandard for the purpose of adding more living area. The zoning ordinance requires a residential lot in the CD zone to provide open space in the amount of 35 percent of the lot or 379 square feet in this case. If the proposed addition is constructed, a total of 346 square feet of open space will be provided.

The applicants could build a smaller addition and comply with the open space requirement, thereby not triggering an open space variance. The applicants could also build a third story on the existing structure without affecting open space on the lot. The third floor requires approval by the Board of Architectural Review.

The proposed two-story addition measures 12.50 feet by 12.00 feet in depth (along the north property line) and 24.00 feet in depth (along the south property line). The proposed addition totals 380 square feet of floor area. The new addition will accommodate an expanded kitchen, bath and closets on the first floor and a master bedroom on the second floor. The new addition, including the rear balcony, will be located 23.40 feet from the south rear property line and on the east and west side property lines. The addition is

approximately 19.00 feet in height to the top of the roof facing the side and rear property lines

The proposed addition will comply with the east and west side yards and rear yard setback requirements as well as floor area.

The Old and Historic Alexandria District of the Board of Architectural Review (BAR) opposes open space variances as a matter of policy. The Board feels strongly that open space should be maintained in the historic district. The proposed construction requires approval by the BAR of a Permit to Demolish/Capsulate to encapsulate and demolish the existing east and south side building walls, as well as approval of a Certificate of Appropriateness for the design of the proposed addition.

No variances have been previously approved for the subject property.

Since 2000, the Board of Zoning Appeals has granted one variance for open space in the immediate area of the subject property at 330 Commerce Street. The variance was granted to reduce required open space from 391 square feet to 315 square feet to enable the property owner to build a rear two-story addition. The property had more open space than required, 573 square feet, before receiving the open space variance. (BZA Case#2001-00022).

**IV. Master Plan/Zoning**

The subject property is zoned CL, commercial low and has been so zoned since 1992, and is identified in the Eisenhower Small Area Plan for commercial low land use.

**V. Requested Variance**

Section 4-506(A)(e)(1)(a), Open Space:

The CD zone requires each residential lot to provide a minimum of 35 percent open and usable space. The subject property is required to provide 379 square feet of open space. If the proposed addition is built, the applicants will reduce existing complying open space, totaling 496 square feet, to 346 square feet (a loss of 150 square feet from the total of existing open space, and 33 square feet from the open space required).

**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 11-1103 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.
- (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.

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

The applicants state their lot of 1,083 square feet is substandard in lot area and lot width for a CD zoned residential lot that requires a minimum of 1,452 square feet. The applicants state the property is being based on a standard size lot when in fact it is 369 square feet smaller. The zoning ordinance prevents reasonable use of the property handicapped-capable for single floor living. The applicants' also state if the lot was not irregular in shape along the rear property line the lot would likely comply with the open space requirement.

**VII. Staff Analysis**

The property is not irregular in shape and does not have difficult topography which would prohibit or unreasonably restrict the use of the property. The applicants' property shares the same physical constraints as adjacent properties on the block. This property is one of eight other residential properties on the block which have almost identical physical conditions. The lots are narrow and deep; several lots are shallower and provide less open space than required. The applicants' property is one of the deeper lots on the block. The applicants propose to diminish open space below that required on a lot currently exceeding the zoning requirement. The proposal will create a lot which is substandard in open space.

The proposed two-story addition will occupy required open space. A slightly smaller addition can be built without the need of a variance. The requested variance will reduce the supply of light and air to adjacent properties. Open space is one means to control density on smaller lots, such as many properties in the CD zone. The addition will impact neighboring properties. These lots will now view more mass on a narrow lot. Approval of the variance will alter the open space character of the CD zoned residential properties on the block, be contrary to the public interest and detrimental to adjacent properties. It could serve as a precedent for nearby properties. Based upon the above factors, staff cannot find the requisite requirements to support the variance.

Staff recommends **denial** 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 An approved Grading Plan may be required at the time of building permit application. Insufficient information has been provided to make that determination at this time. A Grading Plan will be required if construction of the proposed addition:
- Results in a new building footprint that exceeds the area of the existing building footprint by 100% or more.
  - Results in less than 50% of the existing first floor exterior walls, in their entirety, remaining. The walls must comprise the footprint of the existing building and shall be measured in linear feet. The remaining walls must remain as exterior walls. The definition of a first floor exterior wall is that it must have its finished floor surface entirely above grade.
  - Results in land disturbance associated with the project of 2,500 square feet or greater in area. The disturbed area will be determined by adding a minimum of 10' to the perimeter of the building (or addition) footprint and calculating the area within the increased perimeter. In addition, a 10 foot wide access path from the edge of the disturbed area to the street or paved driveway must be included in the disturbed area calculation. Provision must be made for stockpile, staging, dumpsters and material storage areas within the limits of disturbance.
  - Changes to existing grade elevation of 1-foot or greater.
  - Changes to existing drainage patterns.
- R-1 The building permit plans shall comply with requirements of City Code Section 8-1-22 regarding the location of downspouts, foundation drains and sump pumps. Refer to Memorandum to Industry dated June 18, 2004. [Memorandum is available online at the City web site under Transportation\Engineering and Design\Memos to Industry.]. (T&ES)
- R-2 Applicant shall be responsible for repairs to the adjacent city right-of-way if damaged during construction activity. (T&ES)
- R-3 All improvements to the city right-of-way such as curbing, sidewalk, driveway aprons, etc. must be city standard design. (T&ES)

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- R-4 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)
- R-5 An erosion and sediment control plan must be approved by T&ES prior to any land disturbing activity greater than 2,500 square feet. (T&ES)
- R-6 Compliance with the provisions of Article XIII of the City's zoning ordinance for storm water quality control is required for any land disturbing activity greater than 2,500 square feet. (T&ES)

Code Enforcement:

- C-1 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 be taken to prevent the spread of rodents from the construction site to the surrounding community and sewers.
- C-2 Construction permits are required for this project. Plans shall accompany the permit application that fully details the construction as well as layouts and schematics of the mechanical, electrical, and plumbing systems.
- C-3 Sheeting and shoring shall not extend beyond the property line; except when the developer has obtained a written release from adjacent property owners which has been recorded in the land records; or through an approved encroachment process.
- C-4 A soils report must be submitted with the building permit application.
- 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.
- C-6 Roof drainage systems must be installed so as neither to impact upon, nor cause erosion/damage to adjacent property.
- C-7 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 an alternative, a 2 hour fire wall may be provided.
- C-8 New construction must comply with the current edition of the Uniform Statewide Building Code (USBC).
- C-9 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 No trees are affected by this plan.

Historic Alexandria (Archaeology):

- F-1 The G.M. Hopkins map indicates that buildings were present on this street face by 1877. The property therefore has the potential to yield archaeological resources that could provide insight into life in 19<sup>th</sup>-century Alexandria.
- R-1 The statements in archaeology conditions below 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, Utilities, Landscaping, and Sheeting and Shoring) so that on-site contractors are aware of the requirements:
  - a. 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.
  - b. The applicant/developer shall not allow any metal detection to be conducted on the property, unless authorized by Alexandria Archaeology.

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.