

Docket Item #5  
BZA CASE #2008-0030

Board of Zoning Appeals  
September 11, 2008

**ADDRESS:** 329 S. LEE STREET  
**ZONE:** R-M, RESIDENTIAL  
**APPLICANT:** TRUDY AND ROBERT PEARSON, OWNERS:

**ISSUE:** Variance to reopen an existing curb cut on South Lee Street for access to a compact parking space reducing the required open space from 515 square feet to 402 square feet.

CODE SECTION	SUBJECT	CODE REQMT	APPLICANT PROPOSES	REQUESTED VARIANCE
8-200(C) (5) (a)	Curb Cut	Alley or Interior Court	Street Access	Street Access
3-1106(B) (1) (a)	Open Space	515 sq ft (35%) (existing 621 sq ft)	402 sq ft	113 sq ft

**BOARD OF ZONING APPEALS ACTION OF SEPTEMBER 11, 2008:** On a motion to defer by Mr. Hubbard, seconded by Ms. Lewis, the variance was deferred by a vote of 4 to 1. Mr. Allen dissented.

Reason to defer: To allow the applicant time to meet with staff to clarify actual total of requested open space variance.

Dissenting Reason: To allow citizens present time to submit testimony to the Board.

Staff **recommends denial** of the request because the applicants have not demonstrated a hardship.

If the Board decides to grant the requested variance it must comply with the following condition that the driveway is replaced with brick to match the brick sidewalk and code requirements under the department comments. The applicant must submit the following prior to the release of a Certificate of Occupancy: (1) a survey plat prepared by a licensed surveyor confirming building footprint, setbacks, and building height compliance from average preconstruction grade and (2) certification of floor area from a licensed architect or engineer. 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.

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**09/11/08**



**I. Issue**

The applicants request a variance to (1) re-open an existing curb cut to South Lee Street to serve a non-required off-street parking space for the existing single-family dwelling at 329 South Lee Street and (2) reduce the required open space on the property by 113 sq ft to 402 sq ft once the parking pad is installed on the property.

**II. Background**

The subject property, a corner lot, is one lot of record with 32.00 feet of frontage on South Lee Street, 46.00 feet of frontage on Wolfe Street and has a total lot area of 1,472 square feet. An existing two-story frame dwelling is located on the front property lines facing South Lee Street and Wolfe Street, 2.72 feet from the west side property line and 13.11 feet from the north side property line. An open garden brick patio area located along the north side of the house is partially screened from South Lee Street by a partially collapsed brick wall. An existing 9.00 feet wide curb cut is located on South Lee Street facing the subject property.

The freestanding, two-story frame dwelling at 329 South Lee Street is located within the local Old and Historic Alexandria District and under the purview of the Old and Historic Alexandria District Board of Architectural Review. It is also located within the National Register Historic District (period of significance: 1749-1933) and the National Historic Landmark District (period of significance: 1749-1830). According to City real estate records, this house was constructed circa 1870 and it is present on the 1877 Hopkins map.

The applicants state that up until the 1950's the curb cut and the off-street parking on the subject property were in use. The parking space subsequently ceased to be used and a brick screen wall was constructed to separate the yard from the public sidewalk. However, the curb cut and driveway apron from South Lee Street to the subject property was never abandoned. As part of the recent City electric utility undergrounding project on South Lee Street, the curb cut and driveway apron were refurbished along with the adjoining side walks along the street. The applicants state that a recent storm felled a tree, knocking down a portion of the brick screen wall. (Refer to attached photographs).

The applicants request permission to reuse the curb cut, and a reduction in required open space to install one non-required compact parking space on the property, and will also have to seek Board of Architectural Review approval for the parking and to remove the partially collapsed brick wall. By installing one compact parking space the subject property will become deficient in required open space.

**III. Description**

The existing curb cut to be reused is approximately 9.00 feet wide and has been recently been replaced by the City as part of the Lee Street undergrounding project. As shown on the submitted survey plat, the new compact parking space (8.00 feet by 16.00 feet) is

proposed to be located along the north side property line and align with the front property line facing South Lee Street. The parking area will be screened from the neighboring property along the north side property line by a wood fence. By installing a non-required compact parking space, the open space on the lot will be reduced from the existing 621 square feet to 402 square feet, resulting in a loss of 113 square feet below the requirement of 515 square feet,(approximately 21 percent of the required open space on the property).

On June 24, 1992, the current zoning ordinance was adopted which prohibits new curb cuts in the RM zone, specifically affecting properties in the two Historic Districts. The purpose of the prohibition was to preserve the historic streetscape and enhance pedestrian experience, while also preserving shared parking on the public streets. In addition, the zoning rules require new off-street parking to be served from an alley or court.

An inspection of the 300 block of South Lee Street revealed that there are several curb cuts on both sides of the street. Reopening the existing curb cut will eliminate one on-street parking space if the curb cut is re-activated.

On-street parking is allowed on the north and south sides of this block of South Lee Street. An inspection of the property during the morning and evening revealed street parking was readily available during non-peak and peak hours. The Director of Transportation and Environmental Services is not opposed to the applicants' request.

Since adoption of the 1992 zoning ordinance, the Board of Zoning Appeals has granted curb cut variances for properties at 703 and 705 Potomac Street (BZA Case #6398) and 726 South Lee Street (BZA Case #95-0026) and 329 North Washington Street (BZA Case#2004-0005). Staff reports and Board actions are attached.

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

#### Board of Architectural Review

Although staff could not locate a date for the creation of the curb cut, the applicant notes that the curb cut was in existence and in use when the property was purchased in the 1950s. Regardless, a curb cut is generally not considered a historic feature in the Old and Historic Alexandria District. In the historic districts, parking is generally only appropriate at the rear of a property, typically accessed from a rear alley. The brick garden wall that, until recently, stood along the east elevation was more compatible with the character of the historic district. Staff's primary concern regarding the activation of this curb cut is the impact on the setting and surrounding area. BAR Staff finds the activation of the existing curb cut at 329 South Lee Street to be incompatible and not historically appropriate. The applicant is reminded that any future exterior alterations visible from public right-of-way, including but not limited to replacement windows, exterior materials, additions, fencing, garden walls, light fixtures, must be reviewed and approved by the Board of Architectural Review.

**IV. Master Plan/Zoning**

The subject property is zoned RM and has been so zoned since adoption of the Third Revised Zoning Map in 1951 and identified in the Old Town Small Area Plan for residential land use.

**V. Requested variances**

**Section 8-200(C) (5) (a), Curb Cut Access:**

The zoning ordinance requires access to required or non-required surface parking for property located in the Old and Historic District to be from an alley or interior court. An interior court is one that serves more than one dwelling. As is the case with many of the properties in the Old and Historic District and the RM zone, there is no alley or court access available to serve this property. The applicants are requesting a variance to resume use of an existing curb cut from South Lee Street to access a non-required compact parking space.

**Section 3-1106(B) (1) (a), Open Space:**

The zoning ordinance requires a residential lot in the RM zone to provide a minimum of 35 percent of the lot set aside for ground level open space. Parking areas and driveways cannot be counted towards the open space requirement. Based on the subject property's lot size a total of 515 square feet of open space is required. If the applicants' obtain permission to resume use of the curb cut and install a compact size parking space, the required open space will be reduced to a total of 402 square feet. The applicants request a variance to reduce required open space by 113 square feet.

**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.

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

The applicants state that the existing driveway was used up until the 1950's but never abandoned. The applicants relay that the City Department of Transportation and Environmental Services asked they applicants if they wanted to remove the curb cut and that the applicants said "no" because they might want to reopen it at some later date. If the curb cut is reopened, the applicants state that no on-street parking will be eliminated.

**VIII. Staff Analysis**

**Off-street Parking**

The issue in this case is whether having a residential property in Old Town without on site parking creates a legal hardship. Staff does not believe that it does, given that there is sufficient on-street parking and the fact that much of Old Town is characterized by similar conditions. Strict application of the zoning ordinance will not prevent reasonable use of the property. There is sufficient street parking to serve the applicants.

The applicant acquired the subject property in 2001. The prior owners decided in 1980 to forgo re-establishment of a curb cut. The applicants were aware, when they purchased the property, that it had no off-street parking. The addition of a curb cut on a block where the predominant historic pattern is very few curb cuts will affect the historic character of the block and not preserve the historic streetscape and disrupt the pedestrian experience. The need for off-street parking does not constitute a hardship.

The granting of the requested variance will be detrimental to the neighborhood which is served by few curb cuts. The reuse of the existing curb cut will alter historic character of the 600 block of South Lee Street. The subject property will no longer maintain and complement the existing development pattern and land use on South Lee Street. In addition, staff is concerned generally about this case creating a precedent for other requests for curb cuts in Old Town, although this case could be distinguished from some others in that the subject property is served by a curb cut that has never physically eliminated.

The applicants contend that there will be no loss in parking since the curb cut has been in place for years. However, because the curb cut has been unusable for decades and in effect non-existent, on-street parking has been in constant use adjacent to the curb cut. Re-activating use of this curb cut would result in no increased parking but would merely trade a public space on the street for a private space for one property owner, while decreasing open space and area that could remain pervious surface.

Open Space

By installing a non-required compact parking space the required open space on the subject property will reduce existing open space from 621 square feet to 402 square feet, a loss of 113 square feet below the required open space of 515 square feet (approximately 21 percent of the required open space on the property). The subject property is already substandard in lot area but complies with the open space requirement.

The zoning ordinance requires a residential lot in the RM zone to provide a minimum of 35 percent of the lot set aside for ground level open space. Parking areas and driveways cannot be counted towards the open space requirement. Based on the subject property's lot size, a total of 515 square feet of open space is required. The existing property without the proposed parking space provides 621 square feet of required open space. If the applicants' obtain permission to resume use of the existing curb cut and install a compact size parking space, a total of 493 square feet of open space will remain. The applicants request a variance to reduce required open space by 22 square feet.

The applicant's property shares the same physical constraints as adjacent properties on the block. Some lots are narrower and deeper; several lots are shallower and provide less open space than required. The applicants' property is one of the lots on the block that in fact complies with the open space requirement. 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.

Approval of the variance will alter the open space character of the RM zone residential properties on the block, be contrary to the public interest and detrimental to adjacent properties. It could serve as further precedent for nearby properties. Staff also believe the right to continue to use the lot for parking was abandoned in the late 1950's and evidence to support this claim was the construction of the brick wall facing the South Lee



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Street sidewalk that remained in place for decades. Although a portion of the brick wall was recently damaged and removed, the prior brick wall can be rebuilt to return the property to its historic street character.

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 No comments.

Code Enforcement:

F-1 No comments.

Recreation (Arborist):

F-1 No specimen trees are affected by this plan.

Historic Alexandria (Archaeology):

F-1 This case does not involve ground disturbance. No archaeological action is required.