

Docket Item #3  
BZA CASE #2008-0027

Board of Zoning Appeals  
October 16, 2008

**ADDRESS:** 116 E. ROSEMONT AVENUE  
**ZONE:** RB, RESIDENTIAL  
**APPLICANT:** RICARDO A. HENDI AND SILVIA BURSTEIN-HENDI, OWNERS

**ISSUE:** Variance to construct a rear open second story deck, reducing the required open space to 461 square feet.

CODE SECTION	SUBJECT	CODE REQMT	APPLICANT PROPOSES	REQUESTED VARIANCE
3-706(B)	Open Space	800 sf *	436 sf +/-	364 sf +/-

\* The house was built in 1950 with 762 square feet of open space; it predates the 1951 minimum open space requirement of 800 square feet.

**BOARD OF ZONING APPEALS ACTION OF OCTOBER 16, 2008:** On a motion to approve with the condition that the pergola be removed and that the porch never be covered by Mr. Goodale, seconded by Mr. Allen, the variance was approved by a vote of 5 to 0.

Reason: The applicant demonstrated a hardship due to the substandard nature of the lot and the unusual topography of the lot.

Speakers:

Ricardo Hendi, owner, made the presentation.

James Hummel, neighbor at 52 East Rosemont Avenue, spoke in support.

**BOARD OF ZONING APPEALS ACTION OF SEPTEMBER 11, 2008:** On a motion to defer by Mr. Hubbard, seconded by Mr. Goodale, the variance was deferred by a vote of 5 to 1. Mr. Lantzy dissented.

Reason to Defer: To allow the applicant time to explore design alternatives.

Dissenting Reason: No hardship was demonstrated by the applicant.

Speakers:

Ricardo Hendi, owner and architect, made the presentation.

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

If the Board decides to grant the requested special exception or variance it must comply with the code requirements under the department comments and 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.



**BZA CASE #2008-0027**

**10/16/2008**



**I. Issue**

The applicants request reapproval of a variance granted in 2003 to construct a second-story open deck at the rear of the existing townhouse at 116 East Rosemont Avenue. The applicants were unable to commence construction of the deck within the one year of the BZA approval and thus the variance has expired.

On June 12, 2003, the Board of Zoning Appeals unanimously granted an open space variance to the applicants to build a rear wood open deck on their interior townhouse dwelling. The variance was granted with the conditions that the open pergola be removed, that the columns extend no higher than the handrail height, and the decking not be solid to allow for water run-off. The BZA believed the applicants had demonstrated a legal hardship based on the substandard lot and the unusual topography of the site.

At the September 11, 2008, Board of Zoning Appeals hearing, the board deferred the applicants' request to enable the applicants to explore design alternatives for the proposed rear open porch and pergola. The board believed the design submission was similar to a rear addition as to mass and scale rather than an open deck and preferred a typical open style deck. The board asked the applicants to explore alternative designs to make the deck lighter in appearance and to eliminate the patio and deck solid side walls. One member dissented to the deferral and indicated that the project had no legal hardship to support a variance and believed no revision would qualify for a variance.

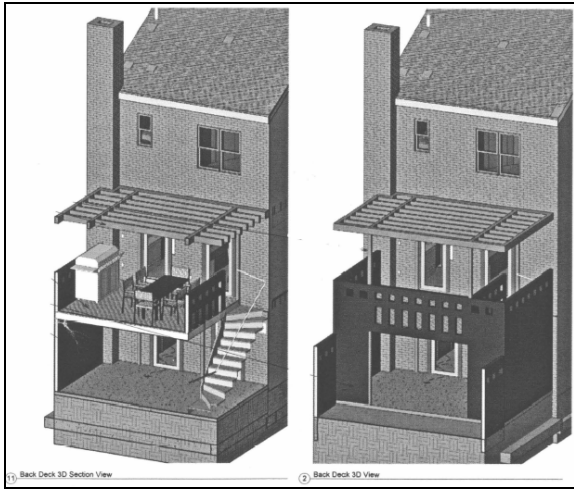
The applicants have revised the rear porch the design in the following manner:

- (1) Lower patio wall and upper level porch wall are replaced with a 6 .00 feet high wood fence along the patio level side yard property lines. No side screening walls at the deck level are proposed.
- (2) Replace solid screen wall on deck with a standard open fence railing.
- (3) Proposed deck matches similar neighboring decks.
- (4) Solid wood panels on the lower level patio facing the rear yard have been deleted.

The porch and second level pergola remain the same height and dimensions as depicted at the September 11, 2008, hearing.

**ORIGINAL SUBMISSION**

**REVISED SUBMISSION**



**II. Background**

The subject property is one lot of record with 17.00 feet of frontage on East Rosemont Avenue and a depth of 82.56 feet. The rear property line is at an angle to the east and west side property lines. The property contains 1,349 square feet of property area. A public alley abuts the property along the rear property line.

The property contains a two-story interior townhouse that is 17.10 feet wide and 28.40 feet in length and shares common party walls with townhouse dwellings along the west and east building walls. Real estate assessment records indicate the house was built in 1950.

The existing two-story townhouse is currently a noncomplying structure in that it does not comply with the RB zone open space requirement. Section 12-102(A) of the zoning ordinance states that no noncomplying structure may be physically enlarged or expanded unless such enlargement or expansion complies with the regulations for the zone in which it is located. Constructing a rear open deck off an existing house that is slightly substandard in open space requires a variance.

**III. Description**

The proposed open rear deck measures 10.00 feet by 14.00 feet and totals 140 square feet. Open stairs will be constructed along the west side of the deck. The deck will be approximately 7.00 feet in height above the ground, and will be an open deck with a roof pergola attached to the rear building wall and held up by two wood posts. The proposed deck and stairs will extend from the east side property line to the west side property lines and 12.00 feet at its closest point to the rear property line. The deck location will comply with the RB zone rear yard setback requirement.

The RB zone requires a residential property to provide a minimum of 800 square feet of open and usable space. The subject property currently has ground level open space at the front of the house, and a rear patio and ground level open space at the rear of the property, totaling approximately 762 square feet of open space. Since the house was built in 1950 it predates the 1951 zoning requirement of 800 square feet of open space.

Once the open deck is built and new air conditioning unit is placed at the rear of the property, open space will be reduced to 436 square feet, a loss of 364 square feet or a loss of 46 percent of the required open space. If the applicants were to use the existing open space of 762 square feet and deduct the amount of open space covered by the new open deck, a total of 436 square feet of open space will remain.

Upon completion of the proposed open deck, the property will continue to comply with the maximum floor area and yard requirements.

**IV. Master Plan/Zoning.**

The subject property is zoned RB and has been since 1951 and is identified in the adopted Potomac West Small Area Plan for residential low land use.

**V. Requested variances**

Section 3-706 (B), Open Space:

The required open and usable space is 800 square feet. The open space presently provided is approximately 762 square feet. If the requested open space variance is approved, there will be approximately 436 square feet of open space required by the zoning regulations.

**VI. Noncomplying structure**

The existing building at 116 East Rosemont Avenue is a noncomplying structure with respect to the following:

	<u>Requirement</u>	<u>Existing</u>	<u>Noncompliance</u>
Open Space	800 sq ft	762 sq ft	- 38 sq ft

**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.
- (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 applicants state the property's terrain has a sharp drop-off preventing full use and enjoyment of the property and backyard. Also, the applicants previously stated in their early variance application that other property owners have built rear decks of similar size and height.

A site inspection of the immediate neighborhood disclosed only four open decks built at the rear of similar row houses (43, 49, 112 and 126 East Rosemont Avenue). These lots within the same subdivision are larger than the applicant's property and complied with the required open space. The remainder of the row homes is characterized with back yards and patios

**IX. Staff Analysis**

The property is not truly irregular in shape (although the rear property line is at an angle to the side property lines) and does not have difficult topography which would prohibit or unreasonably restrict the use of the property or create a hardship. The lot is narrow and shallow with a reasonable size back yard and front yard, which is similar to the other townhouse properties platted in 1950. The house was built with slightly less open space

than required in the RB zone. The proposed open deck will reduce open space by half (436 square feet).

Other lots in the neighborhood are the same general size as the subject lot and share the same circumstances as the subject lot. If the proposed open space variance is granted, the subject lot will contain approximately 436 square feet of open space, or 364 square feet less than the 800 square feet required by the current RB regulations; and 326 square feet less open space than currently provided and which predates current RB regulations.

The requested variance, if granted, will impair an adequate supply of light and air to adjacent properties and to the neighborhood. The two next-door adjacent neighbors will now have a tall deck topped with a pergola looming over their backyards. Because of the small back yards, ground level open space acts as a buffer to the rear yards of the properties. Open space requirements are one means of providing open areas around and between buildings; yards and setback areas are another. The requested variance, if granted, will be a substantial detriment to adjacent properties and will essentially alter the character of the rear yard area on East Rosemont Avenue.

The zoning ordinance allows above ground residential decks to be counted as open space in several zones, such as the higher density residential, mixed use and commercial zones. Even in the RB zone, some above ground open space is permitted, but only for multifamily residences and not on townhouse lots. In order to maintain the open areas behind and around townhouses, only decks within 2.00 feet of the ground are counted as open space.

The proposal for a deck is motivated by the applicants. Any hardship produced by application of the zoning ordinance to the subject property is created by the applicants and is a self-imposed hardship. Strict application of the RB zone regulations will not result in unnecessary hardship on the applicant.

Staff recommends **denial** of the variance request.



**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.

In summary, City Code Section 8-1-22(d) requires that a grading plan be submitted to and approved by T&ES prior to the issuance of building permits for improvements involving:

- the construction of a new home;
- construction of an addition to an existing home where either
  - the addition exceeds the area of the existing building footprint by 100% or more; or
  - the construction of the addition results in less than 50% of the existing first floor exterior walls, in their entirety, remaining;
- changes to existing grade elevation of 1-foot or greater;
- changes to existing drainage patterns;
- land disturbance of 2,500 square feet or greater.

Questions regarding the processing of grading plans should be directed to the T&ES Site Plan Coordinator at (703) 838-4318. Memorandum to Industry No. 02-08 was issued on April 28, 2008 and can be viewed online via the following link. **<http://alexandriava.gov/uploadedFiles/tes/info/gradingPlanRequirements.pdf>**

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)

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 Additions and Alterations to the existing structure must comply with the current edition of the Uniform Statewide Building Code (USBC).
- C-5 Additions and Alterations to the existing structure and/or installation and/or altering of equipment therein requires a building permit. Five sets of plans, bearing the signature and seal of a design professional registered in the Commonwealth of Virginia, must accompany the written application. The plans must include all dimensions, construction alterations details, kitchen equipment, electrical, plumbing, and mechanical layouts and schematics.
- C-6 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-7 Roof drainage systems must be installed so as neither to impact upon, nor cause erosion/damage to adjacent property.
- 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 There is low potential for significant archaeological resources to be disturbed by this project. 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.