

DOCKET ITEM #4

Text Amendment #2004-0009 Subdivision Variations

Issue: Consideration of a request for an amendment to regulations in the City's Zoning Ordinance regarding subdivision variations.	Planning Commission Hearing:	January 5, 2010
	City Council Hearing:	January 23, 2010
Staff: Barbara Ross, Deputy Director, Department of Planning and Zoning Barbara.ross@alexandriava.gov		

This text amendment is being brought forward as the next step in the Planning Commission's discussion of potential changes to the subdivision variation process in the zoning ordinance.

Background

Adopted as part of the subdivision regulations in 1940, the City has long had a mechanism for allowing flexibility in subdivision approval. In recent years, that mechanism – the subdivision variation process – has been a concern for the Planning Commission. Last June, at the Commission's request, staff discussed potential changes to the regulations with the Commission. After some discussion and debate, the Commission voted to initiate this text amendment. It requested that staff return with suggested text amendment language and that staff discuss how the new language will be applied and interpreted.

This staff report continues the discussion by:

- outlining the existing variation process;
- enumerating each of the proposed text changes (which are the same as those discussed with the Commission in June); and
- discussing the application of the potential text changes using both real and hypothetical case examples.

Staff's memorandum of May 21, 2009, which formed the basis for the Commission's discussion in June, is attached.

Existing Variation Standard

Each new lot in an approved subdivision is required by the zoning ordinance to comply with the zoning requirements for the zone in which the subdivision is located (section 11-1710(D)). However, under section 11-1713, a lot may be approved which does not comply with all zoning requirements if it meets the standards for a "variation" from the subdivision requirements. Section 11-1713 includes three standards to be reviewed as part of the variation process:

- (1) Whether, as a threshold matter, the proposal falls within one of the following circumstances:
 - (A) Extremely rugged topography.
 - (B) Irregularity in shape of parcel preventing conformance with normal lot area or frontage requirements.
 - (C) Insufficient frontage on existing street where the interior of the tract can be served only by a street substandard in width when not serving more than five lots, provided the street is not less than 30 feet in width. If only a single lot is served, the width may be less than 30 feet. A turn around area may be required.
 - (D) Streets along the border of the subdivision where the subdivision borders on unsubdivided land and the remaining street width will be provided from adjacent land.
 - (E) Resubdivision of lots in subdivisions of record as of January 1, 1952, where, because of existing structures or gross area of land involved, the subdivided lots would not conform to all of the requirements of the zone in which the subdivision is located.

(2) Whether substantial injustice will result from strict adherence to the zoning rules; and

(3) Whether the use or character of the resulting lots or parcels is consistent with the use provisions of the zone in which the property is located or the development in the immediate area.

Analysis of Proposed Text Changes

The proposed text changes are attached as Exhibit 2. They amend the zoning ordinance as follows:

- Add language at section 11-1710 to make clear that lots must comply with zoning unless a variation is granted;
- Clarify the language and decision framework of 11-1713, including required Commission findings and “special” circumstances;
- Add a definition of “substantial injustice;” and
- Clarify that it is the applicant’s burden to show that the proposal meets the variation standard.

Staff recommends approval of the proposed text changes. They do not necessarily change the variation standard. They clarify certain aspects of it and provide a better decision-making framework for staff and the Commission.

1. **Changes to section 11-1710(B)(3) to tie zoning compliance requirement to variation exception.** The proposed additional language at section 11-1710 (B)(3) ties the requirement for zoning compliance to the variation language in a direct way, making the variation an exception to the zoning requirements. Staff supports this language change because it links the two provisions and makes their relationship clear.

At the June discussion, Commissioner Dunn suggested that additional language (*shown here in bold italics*) be added to staff’s proposed language in section 11-1710 (B)(3) as follows:

- (3) **No resubdivision shall be approved which results in the creation *or the continuation* of a lot, building or structure which does not comply with the provisions of this ordinance, unless the planning commission expressly authorizes a variation pursuant to section 11-1713 of this ordinance.**

Staff can support this change but points out that it does change the way staff has processed subdivision cases in the past. In addition, it may make some cases more difficult to approve.

This new language captures all lots that do not now comply with zoning and makes clear that they are to be reviewed as variation cases. Variation requests are processed as part of subdivision applications; there is no additional process or fee. Nevertheless, because so many lots in Alexandria are already not zoning compliant, even though legal lots, this language creates many more variation cases. As variation cases, they must be analyzed under the variation standard, and the Commission must determine that they meet that standard in order to be approved. In the past, Staff has not typically considered these to be variation cases, although it

usually has been clear in the staff report regarding existing noncomplying aspects of the lot and how those will be affected if the subdivision requested is approved. If the Commission wishes these cases to be considered variation cases and not entitled to approval unless the standards for a variation are met, the language should be clarified as suggested by Commissioner Dunn and included in the proposed new text. The result will be greater consistency in the process and analysis even if the result and decision turns out to be the same.

The Commission has recently considered two such cases, the Bonnitt subdivision at 710-712 Braddock Road and the Gold Crust Bakery/Dominion substation subdivision. Each is included in the case examples below. In both of these cases, the change to lot lines was small and the change to zoning noncompliance was also small, though positive. In neither case does staff believe that zoning should preclude approval of the subdivision.

2. ***Adding a framework to section 11-1713(A).*** Additional language and numbers in section 11-1713(A) help clarify the standards involved in the review of a variation proposal.

11-1713 Variations. (A) The commission may, by vote of a majority of its members, authorize specific variations from the provisions of this section 11-1700, when ~~in its opinion the commission finds that~~ (i) a strict adherence to such provisions would result in substantial injustice; and (ii) ~~when one or more~~ of the following special circumstances exists; ~~provided, however, and (iii) that~~ the use ~~or~~ and character of the resulting lots or parcels in such a subdivision shall not be inconsistent with the use provisions of the zone in which the property is situated ~~or~~ and with the existing development in the immediate area.

The existing language is in paragraph form. It is difficult to read through, discern clearly that there are three separate standards, and see the relation of one standard to another. The added numbering helps achieve a more regular format and an outline for deciding variation cases. In addition, the proposed new language requires that the Commission make findings regarding the variation standards, which is advisable, and makes clear that both use *and* character must be consistent with the zone and the area. If this language and requirement is adopted, staff will provide proposed findings in its staff report and recommendation to the Commission. As proposed, and especially in the aggregate, these changes are very helpful because they provide a framework for the variation standard.

3. ***Substantial Injustice Definition.*** The proposed new language provides a definition of “substantial injustice:”

“[S]ubstantial injustice” means that the strict application of this ordinance would create an unreasonable burden on the development, use and enjoyment of the property which outweighs the material land use or land development purposes served by the specific provision or provisions of this ordinance at issue.

This standard requires a balancing between the harm to the applicant in terms of limitations on the use and development of his property, on the one hand, and the benefit to the community of zoning compliance on the other. There are cases in which the zoning benefits of a particular lot

width, or FAR, is elusive, especially in a neighborhood where the lot and building in question have been part of the community and the streetscape without harm for decades, if not centuries. By the same token, changes in lot lines in established neighborhoods are typically to benefit a private owner and his particular preference, such as a larger yard, more ample separation from neighbors, or a larger house. Subdivisions in established areas are often necessary as a precursor to development or to the sale of land. Thus, on both sides of the equation, there is room for judgment and flexibility.

This additional language, especially when considered with the already existing use and character standard for variations (Section 11-1713(A)(iii)) and the “character” requirement for all subdivisions (Section 11-1710(B)) is very helpful. In the variation context, the result of the three considerations is tantamount to a balancing of planning standards with zoning standards, a determination on a case by case basis whether they are different and, if so, a decision about which provides greater benefit. If the zoning rules are not met but the stated planning considerations are, then staff will typically recommend in favor of the variation.

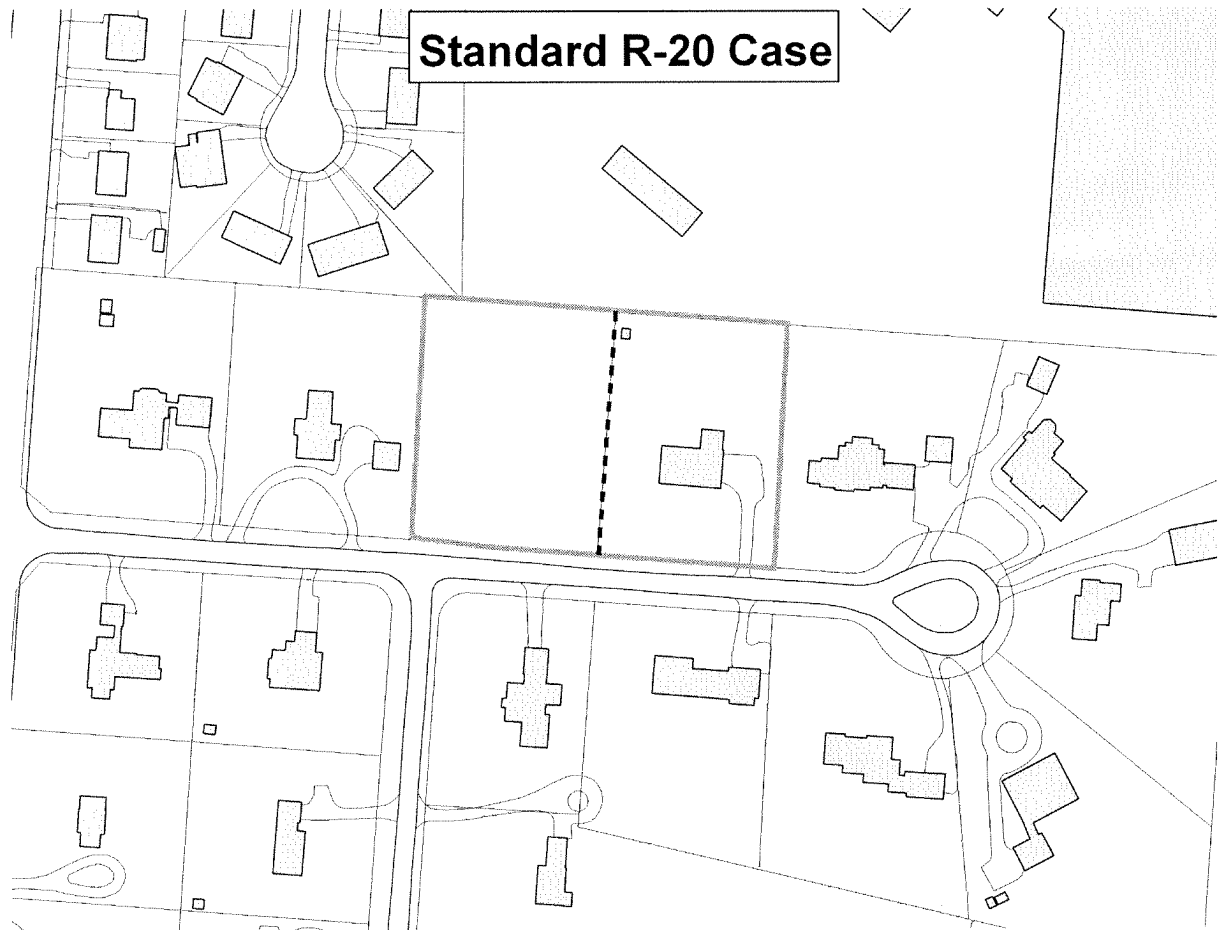
4. ***Burden of proof.*** The proposed text changes include new language at Section 11-1713(C) that state that it is the applicant’s burden to prove adherence to the variation standards.

The applicant shall have the burden of establishing each element required for the grant of a variation.

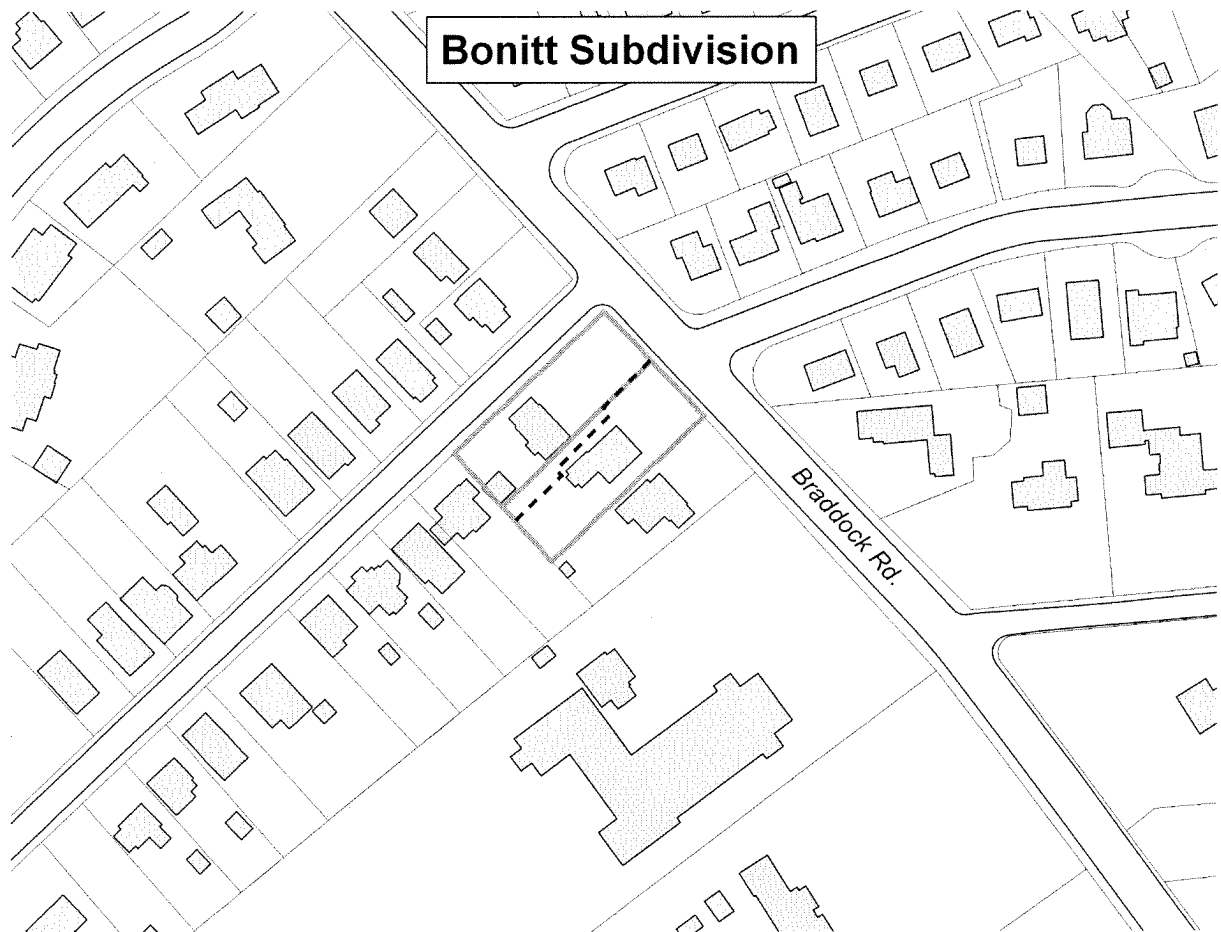
This proposal is different from the language presented in June in that it does not require proof of a variation *by clear and convincing evidence*, an especially stringent level of proof. Given the variation context, where the standards are, in the main, issues of planning, neighborhood character and judgment, that degree of proof does not seem appropriate.

Application of Text Changes to Specific Examples

The following subdivision examples are taken from actual cases – past and present. For staff, they help elucidate the issues and the need for flexibility in the City’s application of its subdivision regulations.



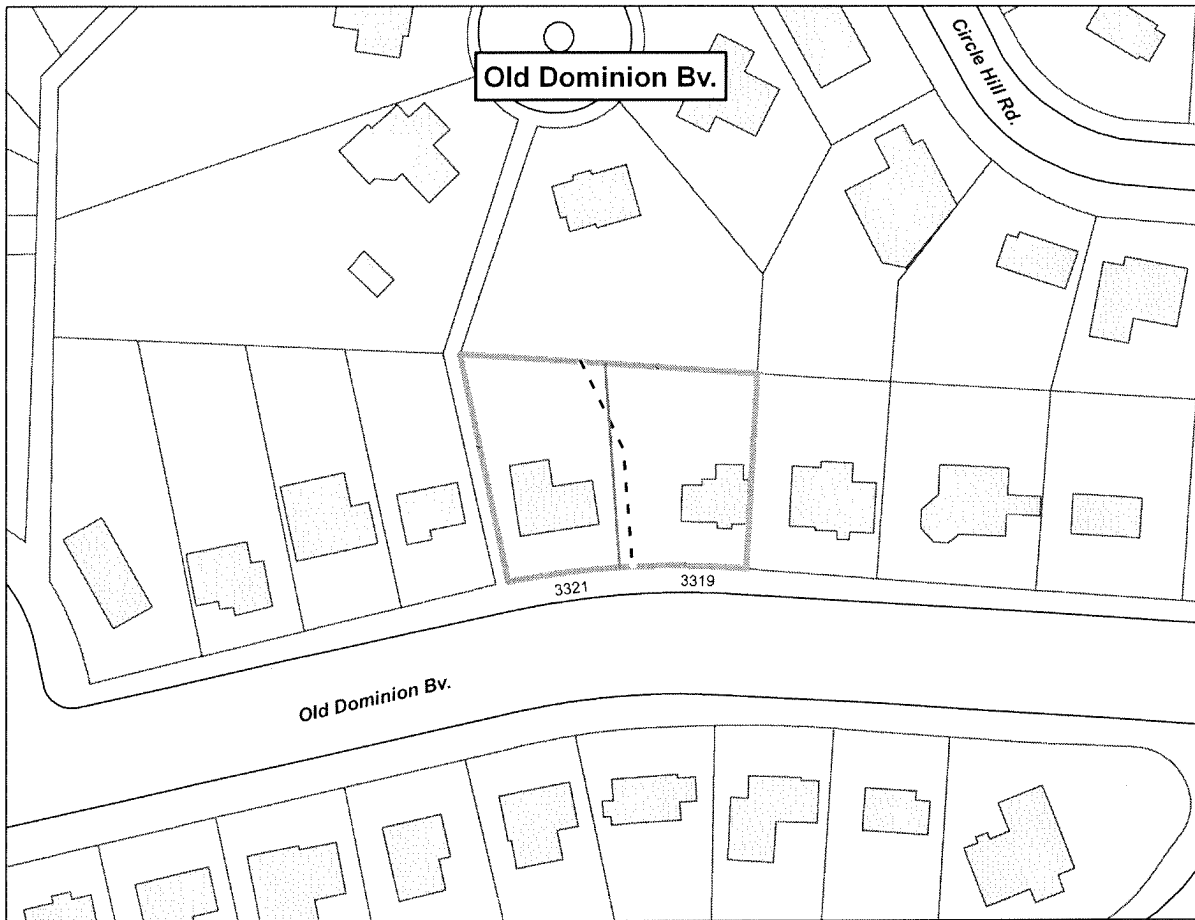
In the typical single family residential lot case, such as the one below, the owner of a double lot may wish to divide his land in order to build a second house. Assuming adequate lot size, width and frontage to meet zoning, and compliance with the other subdivision requirements, including consistency with the character of the original subdivision and the neighborhood, then staff would support the subdivision. No variation would be required.



In June, the Commission approved, by a 5-1 vote, the above subdivision at 710-712 Braddock Road. In that case, the owner of two lots, including a corner lot without sufficient width to meet zoning, sought to change the line between the two lots to allow more land on the corner lot. The interior lot was and remains in compliance with zoning. The corner lot was noncomplying as to lot width prior to the subdivision as a result of changes to corner lot widths in the 1992 zoning ordinance. The extent of noncompliance was reduced by the subdivision approval.

In the past Staff has not always considered this a variation case because it does not start with a complying lot and propose to change it to a noncomplying one. Under the recommended new language for section 11-1710(B)(3), it will be clearly a variation case and subject to standards listed on pp. 1-2 above. If the new regulations had been in place last June, neither staff's recommendation nor the Commission's decision would not have been different.

To meet the "special" circumstances requirement of section 11-1713 (E) for pre-1952 lots, the Commission found that the subdivision was necessitated by the location of the buildings or gross amount of land. In addition, the Commission found both a substantial injustice and that the resulting lots are consistent with the use and character of the area.



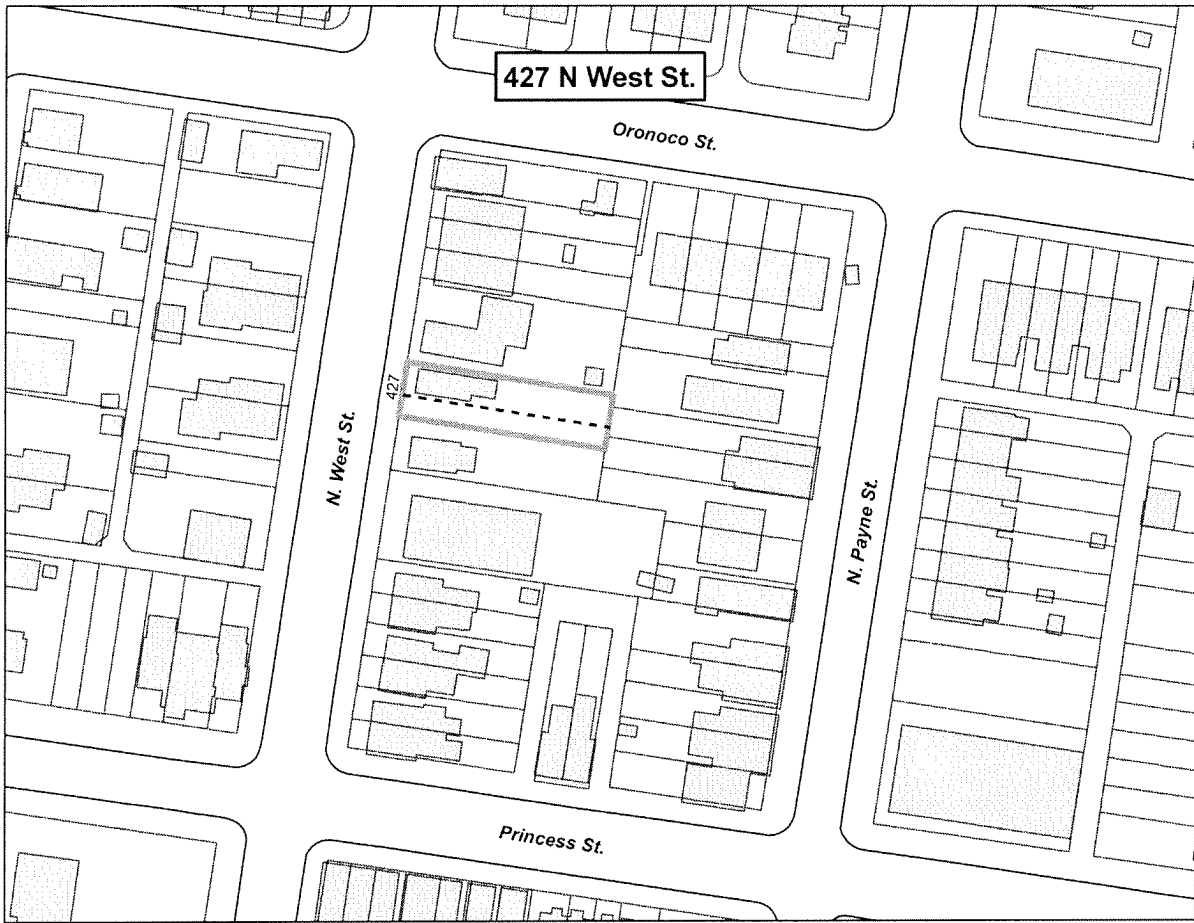
In this 1995 residential subdivision case, both lots are R-8 and predate 1952. Each is developed with a single family home. Neither lot now complies with the lot size or front setback for a single family dwelling in the zone; in addition, one lot is noncomplying as to a sideyard setback. The landowners jointly seek to move their dividing property line to reflect the historical usage. The new lot line will move a driveway and brick patio onto the lot of the party who built and has long used those elements of his home at 3221 Old Dominion. The result will be two irregularly shaped lots and a continuation of the noncomplying lot size for each lot. In addition, one lot will become noncomplying as to lot width and frontage.

Staff can argue that the location of the buildings and gross amount of land leads necessarily to the need for a variation. Staff can also find an injustice from denying the subdivision in that the deviation from the zoning rules for lot size and width are seemingly overridden in this case by the need to reflect the actual use, possession and enjoyment of land and the fact that the change maintains a strong neighborhood character.

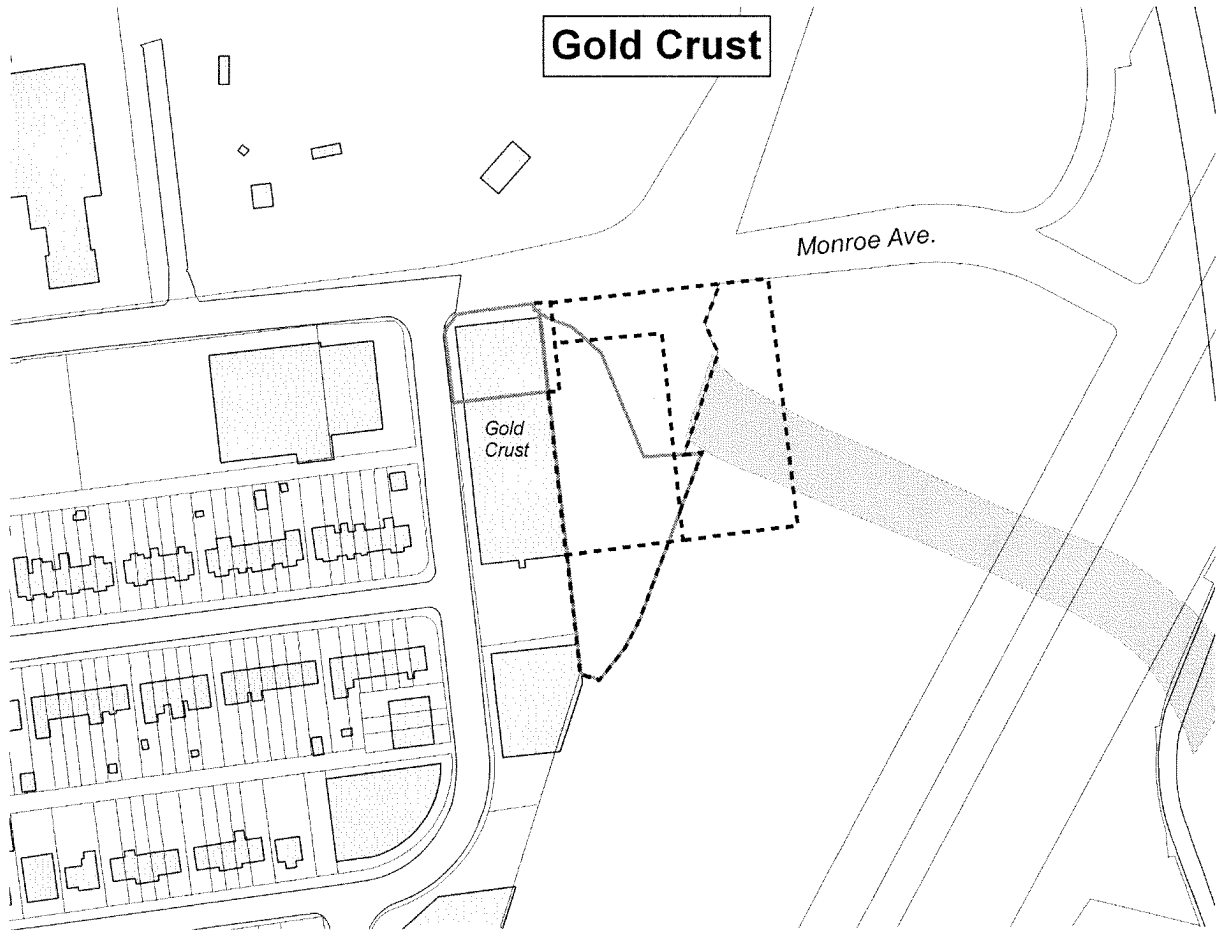


There is a type of subdivision case that is not uncommon in Old Town or Inner City and it occurs in both residential and commercial settings. In these cases, historic buildings which have existed as we see them for many years, perhaps centuries, seek to create or to change the lot line that separates them. In many cases, neither property complies with zoning.

In the above 2004 subdivision case at the corner of King and Patrick Streets, the owner of the building on a single lot sought to divide the building and the lot into three components. As a zoning matter, the single commercial lot and building exceeded the FAR in the CD zone. The proposed three lot subdivision did not comply with zoning either; each of the new lots continues to exceed FAR as either a commercial or residential use and the one proposed residential building will also exceed lot width and frontage requirements. Nevertheless, the subdivision was approved with variations, allowing the improvement and restoration of the building into three units. It falls clearly within the parameters of section 11-1713 (E) for pre-1952 lots, where the subdivision is necessitated by the location of the buildings or gross amount of land, and arguably would create an injustice if the subdivision were not approved.



This case, which includes a proposed subdivision variation, is on the Commission's January docket and staff is recommending approval. The details are presented in SUB #2009-0004. As discussed at greater length in its report, staff finds that, even though the subdivision includes a rather radical variation from the zoning lot width/frontage, the new lot, while small, fits into the character of the neighborhood, and is consistent with the use and development of the several blocks in the vicinity. Without discussing or considering design or architectural issues, which will be reviewed by the BAR, the regularity of an additional small house, as opposed to a rebuilding of the existing structure into a single large home, is particularly beneficial for consistency with the character of the neighborhood and the development pattern in the Parker Gray Historic District.



Here, as a result of a very complex series of land exchanges, including the addition of land for the bakery building for access purposes, a subdivision case was processed for approval on the Commission's December docket. Based on the Commission's comments in June, staff addressed the bakery lot portion of that subdivision as a variation case, and discussed the fact that while there is no lot size requirement for commercial zones, in this case the building and lot arrangement was noncomplying as to FAR prior to the subdivision, and would continue as noncomplying, although to a lesser extent, after subdivision approval.

The "special" circumstances requirement of section 11-1713 (E) for pre-1952 lots arguably exists, in that the subdivision – in this case the expansion of the Gold Crust lot – is necessitated by the location of the buildings or gross amount of land. In addition, it would be unjust to deny the subdivision in this case as the benefits of the zoning FAR limits are outweighed by the benefit of providing access for the bakery and making it part of the overall subdivision scheme with adjacent landowners.

STAFF RECOMMENDATION

Staff recommends approval of the text changes above. While the ultimate result in most variation cases is not likely to change, the text amendment makes the process clearer for applicants and decision makers. As a result of the changes, there is a greater opportunity for consistent application of the variation standards leading to better ultimate decisions on subdivision variation cases.

ATTACHMENT: Subdivision Variation Memo
to the Planning Commission, May 21, 2009

STAFF: Faroll Hamer, Director, P&Z
Barbara Ross, Deputy Director, P&Z

PROPOSED NEW TEXT LANGUAGE

11-1710 Subdivision requirements. In reviewing an application, the commission shall consider the following:

* * *

(B) No lot shall be resubdivided in such a manner as to detract from the value of adjacent property. Lots covered by a resubdivision shall be of substantially the same character as to suitability for residential use and structures, lot areas, orientation, street frontage, alignment to streets and restrictions as other land within the subdivision, particularly with respect to similarly situated lots within the adjoining portions of the original subdivision. In determining whether a proposed lot is of substantially the same character for purposes of complying with this provision, the commission shall consider the established neighborhood created by the original subdivision, evidence of which may be shown by:

(1) Subdivision plat documents, including amendments to the subdivision over time, as well as the development that has occurred within the subdivision; and

(2) Land in the same general location and zone as the original subdivision with the same features so as to be essentially similar to the original subdivision area.

(3) No resubdivision shall be approved which results in the creation or the continuation of a lot, building or structure which does not comply with the provisions of this ordinance, unless the planning commission expressly authorizes a variation pursuant to section 11-1713 of this ordinance.

* * *

11-1713 Variations. (A) The commission may, by vote of a majority of its members, authorize specific variations from the provisions of this section 11-1700, when ~~in its opinion the commission finds that (i) a~~ strict adherence to such provisions would result in substantial injustice; ~~and (ii) when one or more of the~~ following special circumstances exists; ~~provided, however, and (iii) that the use or and character of the~~ resulting lots or parcels in such a subdivision shall not be inconsistent with the use provisions of the zone in which the property is situated ~~or and with~~ the existing development in the immediate area:

~~(A)~~ (1) Extremely rugged topography.

~~(B)~~ (2) Irregularity in shape of parcel preventing conformance with normal lot area or frontage requirements.

~~(C)~~ (3) Insufficient frontage on existing street where the interior of the tract can be served only by a street substandard in width when not serving more than five lots, provided the street is not less than 30 feet in width. If only a single lot is served, the width may be less than 30 feet. A turn around area may be required.

~~(D)~~ (4) Streets along border of the subdivision where the subdivision borders on unsubdivided land and the remaining street width will be provided from adjacent land.

~~(E)~~ (5) Resubdivision of lots in subdivisions of record as of January 1, 1952, where, because of existing structures or gross area of land involved, the subdivided lots would not conform to all of the requirements of the zone in which the subdivision is located.

(B) As used in this section, "substantial injustice" means that the strict application of this ordinance would create an unreasonable burden on the development, use and enjoyment of the property which outweighs the material land use or land development purposes served by the specific provision or provisions of this ordinance at issue.

(C) The applicant shall have the burden of establishing each element required for the grant of a variation.

City of Alexandria, Virginia

MEMORANDUM

DATE: MAY 21, 2009
TO: CHAIRMAN AND MEMBERS OF PLANNING COMMISSION
FROM: FAROLL HAMER, DIRECTOR, PLANNING AND ZONING *FH*
SUBJECT: SUBDIVISION VARIATIONS/PROPOSED NEW LANGUAGE

During a recent discussion of subdivision cases, and especially with regard to those subdivisions in Old Town which include proposed variations, the Commission requested that staff review the standard for the granting of variations, as well as the Commission's past practice in applying this standard, and make suggestions as to potential improvements for the future.

Subdivision Variation Permitted

Section 11-1700 of the zoning ordinance covers subdivisions, including the requirements for applying for one (Sec. 11-1706), the standards for review (Sec. 11-1710), and the procedures for the Commission in deciding a subdivision case (Sec. 11-1708). Under section 11-1710 (D) all lots created by a subdivision must comply with the zone in which the subdivision is located. Thus, a new or resubdivided lot will be reviewed by staff to determine if it is within the zoning rules for lot size, lot width, frontage, and whatever other regulations apply to the lot. Where a building, such as a single family home, already exists on the lot, a resubdivision case will additionally be reviewed for the lot's compliance with setbacks, FAR, and other zoning requirements. While not frequent, there are cases in Alexandria where existing lots do not meet the zoning requirements, typically because the lots were created and homes built prior to the imposition of modern zoning rules. In addition, there are occasionally cases which create lots or new lot lines that cannot comply with zoning because of the location of preexisting buildings, or for other particular reasons. Given the historic nature of the houses and land subdivisions there, these cases happen with particular frequency in Old Town.

The zoning ordinance recognizes such cases at Section 11-1713, which provides:

Variations. The commission may, by vote of a majority of its members, authorize specific variations from the provisions of this section 11-1700, when in its opinion a strict adherence to such provisions would result in substantial injustice and when one of the following circumstances exists; provided, however, that the use or character of the resulting lots or parcels in such a

subdivision shall not be inconsistent with the use provisions of the zone in which the property is situated or the existing development in the immediate area:

- (A) Extremely rugged topography.
- (B) Irregularity in shape of parcel preventing conformance with normal lot area or frontage requirements.
- (C) Insufficient frontage on existing street where the interior of the tract can be served only by a street substandard in width when not serving more than five lots, provided the street is not less than 30 feet in width. If only a single lot is served, the width may be less than 30 feet. A turn around area may be required.
- (D) Streets along border of the subdivision where the subdivision borders on unsubdivided land and the remaining street width will be provided from adjacent land.
- (E) Resubdivision of lots in subdivisions of record as of January 1, 1952, where, because of existing structures or gross area of land involved, the subdivided lots would not conform to all of the requirements of the zone in which the subdivision is located.

It is often the last provision – allowing resubdivision to provide adequate land area for buildings that existed prior to the City’s modern zoning – that is cited as grounds for approving lots which do not comply with zoning rules.

Prior Cases and Issues

In January of 2008, City Council vacated the Planning Commission’s denial of a subdivision at 407 Duke Street and 219 South Royal Street and remanded it for further action. The Commission had denied the requested resubdivision consistent with staff’s recommendation. In that case, the land behind the small house at 219 South Royal was proposed to be added to the rear of the lot and house at 407 Duke Street, consistent with the historical use of the land. The Commission’s denial was appealed to Council. On appeal, counsel for the applicant was able to cite prior precedent for the approval of a similar resubdivision which occurred on South Fairfax Street in 1999. The Planning Commission’s ultimate approval of the case on remand resulted in the 219 South Royal Street house losing most of the land behind the house, making the lot not conform to zoning as to land area, rear yard and open space. Prior to that time, the lot had complied with zoning.

The similar case cited as precedent was heard in October of 1999, when the Commission approved the resubdivision of two lots at 308 and 310 to reflect the fact that the rear yard at 310 South Fairfax Street had actually been used by the occupants of 308 South Fairfax as part of its rear garden. Neither Old Town lot had complied fully with zoning prior to the subdivision, but the subdivision created new nonconformities at 310 South Fairfax in terms of both lot size and open space. Staff supported the variation in this case because it did relate to the location of the historic homes in relation to the property lines.

Copies of these two cases are attached. Summaries of additional subdivision cases which involved variations between 1999 and 2008 are included as Attachment 1. Copies of those cases are available on request.

Recommendations for Potential New Zoning Language

Variation cases are difficult because they deal with exceptions to the zoning rules, but also with what property owners view as necessary adjustments to assist them with property sales,

neighborhood modifications and correcting historical uses when they differ with property lines. They therefore pit the technical adherence to the zoning goals against the practical realities in the field. The existing variation language in Alexandria attempts to find a balance between the technical zoning rules and the historical areas of the city built before modern zoning took effect. While helpful in some cases, section 11-1713 is often difficult to administer consistently and can be abused. Staff is therefore proposing those changes included in Attachment B for consideration to strengthen the variation provisions.

The attached language does several things to assist with the variation practice. First, it makes clear as part of the general subdivision requirements of section 11-1710, and specifically the language regarding the need for resubdivisions to retain the character of the original subdivision, that resubdivisions must comply with zoning, unless a variation under section 11-1713 is approved. Thus the two sections are tied together in a way they are not linked today.

In addition, the language of section 11-1713 covering variations is clarified, including to require Commission findings, to require "special" circumstances and most significantly to include a definition of "substantial injustice," which is the umbrella standard by which all variations are to be judged. The new language defines the standard as follows:

"[S]ubstantial injustice" means that the strict application of this ordinance would create an unreasonable burden on the development, use and enjoyment of the property which outweighs the material land use or land development purposes served by the specific provision or provisions of this ordinance at issue.

With the new language, the substantial injustice standard will require that the Commission evaluate whether the burden on the property owner is greater than the goal of the zoning regulation sought to be varied.

Finally, the proposed language adds a statement regarding it being the applicant's burden to show he has met the requirements of the rule and to do it by "clear and convincing evidence," which is a more rigorous standard than the typical preponderance of evidence of standard, which requires the point to be essentially more than 50% true. Clear and convincing is a higher and more stringent burden.

If, after consideration and discussion by the Planning Commission, the Commission directs, staff will return with a formal text amendment.

Attachment 1

SUBDIVISION CASES REQUIRING VARIATIONS FROM 1999- 2008

SUB2008-0002

714 Wythe Street

Request to resubdivide the existing lots to provide equal frontage on Wythe Street for the purpose of constructing two semi-detached dwellings. The resulting lots would be 2,240 and 2,662 square feet in size. The resulting lots require variations for minimum lot size, minimum lot width, and side yard setbacks. Staff analysis indicates that the "variations requested have precedence in the Old and Historic area of the City." Staff recommended approval and Planning Commission approved the request.

SUB2007-0006

407 Duke Street and 219 S. Royal Street

Request to adjust a boundary line separating two properties by transferring most of the rear yard at 219 South Royal Street to the rear yard of 407 Duke Street to reflect actual use of the property. One proposed lot would require variations for lot area, rear yard setback, and open space. Staff recommended denial because variations could not meet standards of section 11-1713. Planning Commission initially denied the request. City Council vacated the decision and remanded the case back to Planning Commission when the case was appealed. Planning Commission approved the request when it was reheard.

SUB2006-0005

5350 Fillmore Avenue

Request to subdivide the existing lot into two lots in order to build two new single family dwellings. The first resulting lot would meet all zoning requirements, however the second resulting lot would require variations for lot area and lot width. Staff recommended denial of the application because the lot did not qualify for these variation. Planning Commission approved the request.

SUB2005-0007

2619 E. Randolph Avenue

Request to subdivide the existing lot into two separate lots for the construction of two new two-story, semi-detached houses. One resulting lot would require a variation for lot width and frontage. Staff recommended approval and Planning Commission approved the request.

SUB2004-0013

207 Franklin Street and 619 S. Lee Street

Request to subdivide the existing lot into two separate lots, with one lot to include the manor house, swimming pool, and parking spaces, and the other to include the carriage house. One lot requires variation for rear yard setbacks, which is justified in the staff report by the location of preexisting buildings under section 11-1713(E). Staff recommended approval and Planning Commission approved the request.

SUB2004-0001

1001 King Street

Request to subdivide the existing lot into three lots, resulting in three townhouse building units (as originally existed) but closing openings made by the previous tenant in the fire walls. Two of

the resulting lots would be commercial and the third would be residential. The commercial lots require variations for FAR and vision clearance. The residential lot requires variations for all CD zoning requirements (lot size, frontage, front yard setbacks, side yard setbacks, rear yard setbacks, FAR, and open space). Variations are justified by the location of what will be party walls for an existing building under section 11-1713(E). Staff recommended approval and Planning Commission approved the request.

SUB2003-0001

913 and 915 Cameron Street

Request for subdivision to increase the width of the pipestem portion of the lot from 4' to 6.5' which improves pedestrian access to the dwelling at 913. A variation was required for the side yard requirement at 915 Cameron. Staff analysis found that the side yard requirement's purpose, to provide a buffer between uses and structures on adjacent properties, is met because the area involved in the resubdivision would remain open. Staff recommended approval and Planning Commission approved the request.

SUB2002-0008

334 N. Patrick Street

Request to subdivide existing lot into two lots in order to construct a new single family dwelling. Variations requested for frontage requirements of both new lots, which is justified by section 11-1713(E). Staff recommended approval and Planning Commission approved the request.

SUB2002-0006

420-422 Gibbon Street and 610 S. Pitt Street

Request to subdivide the rear yard of the South Pitt Street property and add it to the Gibbon Street properties in order to extend its rear yard area. Variations requested for the lots as follows: Lot 1 – required lot size, frontage, and side yard setback; Lot 2 – frontage and side yard setback; Lot 3 – lot size, frontage, and side yard setback. Staff analysis indicates that the proposed variations do not alter the appearance of the existing conditions along the frontage of both S. Pitt and Gibbon Streets and that the location of existing buildings warrant a variation. Staff recommended approval and Planning Commission approved the request.

SUB2002-0005

211 Franklin Street and 632 S. Fairfax Street

Request to subdivide the existing lot into two lots, one of which is zoned RM, and the other of which is zoned CL. Variations required for the first lot include side and rear yard requirements, and for the second lot include zone transition, lot size, front yard, and open space requirements. Variations are justified by section 11-17-13(E). Staff recommended approval and Planning Commission approved the request.

SUB2002-0004

500 N. Columbus Street

Request to subdivide the existing lot into three separate lots, resulting in the existing dwelling units becoming three townhouses on separate properties. Variations requested for the lots are as follows: Lot 1 – lot size, front yard setback, and frontage; Lot 2 – lot size and front yard setback; and Lot 3 – front yard setback and frontage. Variations justified by section 11-1713(E) and the location of existing buildings. Staff recommended approval and Planning Commission approved the request.

SUB2000-0012

610 and 612 S. Fairfax Street

Request to resubdivide two existing lots to preserve open space and limit the development potential of the 610 S. Fairfax Street property. Both lots require variations for lot frontage and lot width, which is justified for section 11-1713(E). Staff recommended approval and Planning Commission approved the request.

SUB2000-0004

114 and 116 Commerce Street

Request to subdivide the property into two fee simple lots. Variations for both lots required for lot area, FAR, and open space. Variations justified under section 11-1713(B) and location of existing buildings. Staff recommended approval and Planning Commission approved the request.

SUB99-0020

1312 and 1314 Princess Street

Request to resubdivide two properties to adjust a common property line to reflect the physical dimensions of their properties indicated by an existing fence. The existing lots do not comply with zoning and proposed lots require variations for lot size, frontage, lot width, open space, and FAR. Variations justified under section 11-1713(B). Staff recommended approval and Planning Commission approved the request.

SUB99-0016

308 and 310 S. Fairfax Street

Request to resubdivide two existing lots to reflect the actual use of the subject properties which had been under common ownership for more than 50 years. Variations requested for the lots are as follows: Lot 1 – frontage, lot width, and FAR; Lot 2 – lot size, frontage, lot width, and open space. Variations justified by section 11-1713(E). Staff recommended approval and Planning Commission approved the request.

SUB99-0004

311 and 313 N. Fayette Street

Request to resubdivide existing lots to adjust lot lines in order to create two lots of equal width and size with plans to build a new semi-detached building with two units. Proposed lots require variations for lot area, lot width, and lot frontage. Variations justified by section 11-1713(E). Staff recommended approval and Planning Commission approved the request.

PROPOSED NEW TEXT LANGUAGE

11-1710 Subdivision requirements. In reviewing an application, the commission shall consider the following:

* * *

(B) No lot shall be resubdivided in such a manner as to detract from the value of adjacent property. Lots covered by a resubdivision shall be of substantially the same character as to suitability for residential use and structures, lot areas, orientation, street frontage, alignment to streets and restrictions as other land within the subdivision, particularly with respect to similarly situated lots within the adjoining portions of the original subdivision. In determining whether a proposed lot is of substantially the same character for purposes of complying with this provision, the commission shall consider the established neighborhood created by the original subdivision, evidence of which may be shown by:

- (1) Subdivision plat documents, including amendments to the subdivision over time, as well as the development that has occurred within the subdivision; and
- (2) Land in the same general location and zone as the original subdivision with the same features so as to be essentially similar to the original subdivision area.
- (3) No resubdivision shall be approved which results in the creation of a lot, building or structure which does not comply with the provisions of this ordinance, unless the planning commission expressly authorizes a variation pursuant to section 11-1713 of this ordinance.

* * *

11-1713 Variations. (A) The commission may, by vote of a majority of its members, authorize specific variations from the provisions of this section 11-1700, when ~~in its opinion~~ the commission finds that (i) a strict adherence to such provisions would result in substantial injustice; ~~and~~ (ii) ~~when~~ one or more of the following special circumstances exists; ~~provided, however,~~ and (iii) ~~that~~ the use ~~or~~ and character of the resulting lots or parcels in such a subdivision shall not be inconsistent with the use provisions of the zone in which the property is situated ~~or~~ and with the existing development in the immediate area:

- (A) (1) Extremely rugged topography.
- (B) (2) Irregularity in shape of parcel preventing conformance with normal lot area or frontage requirements.
- (C) (3) Insufficient frontage on existing street where the interior of the tract can be served only by a street substandard in width when not serving more than five lots, provided the street is not less than 30 feet in width. If only a single lot is served, the width may be less than 30 feet. A turn around area may be required.
- (D) (4) Streets along border of the subdivision where the subdivision borders on unsubdivided land and the remaining street width will be provided from adjacent land.
- (E) (5) Resubdivision of lots in subdivisions of record as of January 1, 1952, where,

because of existing structures or gross area of land involved, the subdivided lots would not conform to all of the requirements of the zone in which the subdivision is located.

(B) As used in this section, "substantial injustice" means that the strict application of this ordinance would create an unreasonable burden on the development, use and enjoyment of the property which outweighs the material land use or land development purposes served by the specific provision or provisions of this ordinance at issue.

(C) The applicant shall have the burden of establishing each element required for the grant of a variation by clear and convincing evidence.

Docket Item #7
SUBDIVISION #2007-0006

Planning Commission Meeting
November 8, 2007

ISSUE: Consideration of a request to resubdivide the subject properties.

APPLICANTS: William F Dunbar, IV and Denise G. Dunbar and 219 South Royal, LLC
by Duncan Blair, attorney

STAFF: Richard W. Bray
Richard.bray@alexandriava.gov

LOCATION: 407 Duke Street and 219 South Royal Street

ZONE: RM/Residential

PLANNING COMMISSION ACTION, FEBRUARY 5, 2008: On a motion by Mr. Dunn, seconded by Mr. Jennings, the Planning Commission voted to approve the request, subject to compliance with all applicable codes, ordinances and staff recommendations. The motion carried on a vote of 6 to 0. Ms. Lyman was absent.

Reason: The Planning Commission disagreed with the staff analysis.

Speakers:

Duncan Blair represented the application.

CITY COUNCIL ACTION, JANUARY 22, 2008: City Council moved to vacate the decision of the Planning Commission with respect to Subdivision No. 2007-0006, 407 Duke Street and 219 South Royal Street, which is currently pending on appeal before the Council, and remand the matter to the Commission for further proceedings.

CITY COUNCIL ACTION, JANUARY 8, 2008: City Council deferred this item to the Tuesday, February 12, 2008 City Council meeting at the request of the applicant/attorney.

CITY COUNCIL ACTION, DECEMBER 15, 2007: City Council deferred action on the appeal to the next legislative meeting and asked that staff prepare further commentary on the questions that have been brought up today and also any other information that seems pertinent from both sides of the case that Council can review in a more thoughtful process.

PLANNING COMMISSION ACTION, NOVEMBER 8, 2007: On a motion by Mr. Dunn, seconded by Ms. Fossum, the Planning Commission voted to deny the request. The motion carried on a vote of 3 to 1. Ms. Lyman voted nay and Mr. Jennings abstained. Mr. Wagner and Mr. Robinson were absent.

Reason: The Planning Commission agreed with the staff analysis.

Speakers: Duncan Blair, representing the applicant, spoke regarding the beneficial aspects of the proposed subdivision.

PLANNING COMMISSION ACTION, SEPTEMBER 6, 2007: The Planning Commission noted the deferral.

Reason: The applicant requested a deferral.

STAFF RECOMMENDATION: Staff recommends **denial** of the request.

SUB #2007-0006
407 Duke Street and 219 South Royal Street



SUB #2007-0006

11/08/07



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I. DISCUSSION

REQUEST

The applicants, William and Denise Dunbar and 219 South Royal LLC, request approval to subdivide the back portion of 219 South Royal Street and consolidate it with the property at 407 Duke Street.

SITE DESCRIPTION AND SURROUNDING USES

The subject property at 407 Duke Street is one lot of record with 56.21 feet of frontage facing Duke Street, a depth of 92.00 feet and a lot area of 5,171 square feet. The subject property is occupied by a single-family dwelling. The subject lot at 219 South Royal Street is one lot of record with 15.14 feet of frontage facing South Royal Street, a depth of 128.21 feet and a lot area of 1,942 square feet and occupied by a single-family dwelling.

The surrounding neighborhood is developed predominately by large single-family residences along Duke Street. Row houses are the dominate land use on the 200 block of South Royal Street. A few lots have off-street parking, but for the most part the properties have modest rear yards. Buildings are located up to the front property lines and near side property lines.

APPLICANT'S PROPOSAL

The applicants propose to adjust a boundary line separating their two properties by transferring most of the rear yard at 219 South Royal Street to the rear yard of 407 Duke Street. The property at the rear of 219 South Royal Street has been used by the owner of the property at 407 Duke Street for the past 15 years as an open space /brick patio area.

If the subdivision is approved, the lot at 219 South Royal Street will be reduced by approximately 852 square feet of lot area resulting in the creation of a 1,090 square foot lot. The minimum lot area required for a lot in the RM zone is 1,452 square feet.

ZONING/MASTER PLAN

The subject property is zoned RM, residential and is located in the Old Town Small Area Plan, which designates the property for residential use.

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II. STAFF ANALYSIS

COMPLIANCE WITH THE RM ZONE REGULATIONS

The RM zone requirements and the corresponding information for the subject properties are listed as follows.

Zoning Standard	RM Requirement	Proposed Lot 600	Proposed Lot 601
Lot Area Required	1,452 s.f.		
Existing		1,942 sf	5,171 sf
Proposed		1,090 sf	6,023 sf
Change (from required)		- 362 sf	+ 4,571 sf
Lot Width (no change)	25.00 ft	15.14 ft	56.21 ft
Front Yard Setback (no change)	0 ft	1.00 ft	2.50 ft
Side Yard (no change)	5.00 ft	0 ft/0.6 ft	9.80 ft/2.00 ft
Rear Yard Required	16.00 feet		
Existing		68.61 ft	1.95
Proposed		12.40 ft	17.10 ft
Change (from required)		-3.60 ft	+ 1.10 ft
Open Space Required	Lesser of 35% of lot area or open space existing on June 24, 1992	382 sf (35%)	2,108 (35%)
Existing		1,059 sf (existing)	1,315.00 sf (existing)
Proposed		189 sf (proposed)	2,168 sf (proposed)
Change (from required)		- 193 sf	+ 60 sf
FAR (no change)	1.50	1.50 +/-	.65 +/-

Section 11-1710(B) of the zoning ordinance requires a subdivision to meet the following standard:

“No lot shall be resubdivided in such a manner as to detract from the value of adjacent property. Lots covered by a resubdivision shall be of substantially the same character as to suitability for residential use and structures, lot areas, orientation, street frontage, alignment to streets and restrictions as other land within the subdivision, particularly with respect to similarly situated lots within the adjoining portions of the original subdivision.”

Although new lot 601 will meet the RM regulations as to lot area, rear yard setback, open space and floor area, new lot 600 will become noncompliant as to lot area, rear yard setback and open space.

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Approval of the subdivision can only occur if the Planning Commission grants variations under Section 11-713 of the Zoning Ordinance.

Per Section 11-1713 of the Zoning Ordinance, titled Variations, the Planning Commission may, by vote of a majority of its members, authorize specific variations from the provisions of section 11-1700, when in its opinion a strict adherence to such provisions would result in substantial injustice and when one of the following circumstances exists; provided, however, that the use or character of the resulting lots or parcels in such a subdivision shall not be inconsistent with the use provisions of the zone in which the property is situated or the existing development in the immediate area:

- (A) Extremely rugged topography.
- (B) Irregularity in shape of parcel preventing conformance with normal lot area or frontage requirements.
- (C) Insufficient frontage on existing street where the interior of the tract can be served only by a street substandard in width when not serving more than five lots, provided the street is not less than 30 feet in width. If only a single lot is served, the width may be less than 30 feet. A turn around area may be required.
- (D) Streets along border of the subdivision where the subdivision borders on unsubdivided land and the remaining street width will be provided from adjacent land.
- (E) Resubdivision of lots in subdivisions of record as of January 1, 1952, where, because of existing structures or gross area of land involved, the subdivided lots would not conform to all of the requirements of the zone in which the subdivision is located.

Staff cannot support the proposed subdivision. Staff finds that strict adherence to the provisions of the code will not result in substantial injustice. In addition, the proposed subdivision will create a lot that is substandard in lot area, open space, and rear setback in the RM zone. The proposed subdivision will reduce the size of one existing lot and make it noncomplying for the sole purpose of creating a larger rear yard for another lot.

III. STAFF RECOMMENDATION

Based on the above, staff recommends **denial** of the proposed subdivision. However, if the subdivision is approved, it shall be subject to compliance with all applicable codes and ordinances and the following conditions:

1. The final subdivision plat shall comply with the requirements of Section 11-1700 of the Zoning Ordinance. (P&Z)
2. The final plat shall include the Surveyors Certification and plat title to indicate resubdivision of the existing lots. (P&Z)

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SUB #2007-0006
407 Duke Street and 219 S. Royal Street

3. That the new rear yard area behind the building at 407 Duke Street shall remain as open space in perpetuity and not be used for new building area. (P&Z)
4. That the rear yard area behind the building at 219 South Royal Street remain as open space in perpetuity. (P&Z)

STAFF: Faroll Hamer, Director, Department of Planning and Zoning
Richard Josephson, Deputy Director
Richard Bray, Urban Planner

Staff Note: This plat will expire 18 months from the date of approval.

CITY DEPARTMENT COMMENTS

Legend: C - code requirement R - recommendation S - suggestion F - finding

Transportation & Environmental Services:

F-1 No comments received.

Code Enforcement:

F-1 No comment.

Police Department:

F-1 The Police Department has no objections to the subdivision.

Historic Alexandria Commission (Archaeology):

F-1 No comment.

Recreation, Parks & Cultural Activities (Arborist):

F-1 No comments received.

SUBDIVISION #99-0016
Planning Commission Meeting
October 5, 1999

ISSUE: Consideration of a request for subdivision.

APPLICANT: William R. and Catherine M. Phillippe
by Duncan W. Blair, attorney

LOCATION: 308-310 South Fairfax Street

ZONE: RM/Residential

PLANNING COMMISSION ACTION, OCTOBER 5, 1999: The Planning Commission approved the request, subject to compliance with all applicable codes, ordinances and staff recommendations and an amendment of Condition #1. The motion carried on a vote of 6 to 0. Mr. Dunn was absent.

Reason: The Planning Commission agreed with the staff analysis but included language in the condition to prohibit any additional building on either lot.

Speakers:

Duncan Blair, attorney representing the applicant, stated that the applicant agreed to the amended language of the condition.

STAFF RECOMMENDATION:

Staff recommends **approval** of the applicant's request, subject to compliance with all applicable codes and ordinances and the following conditions:

1. The final plat shall include the following notes:
(PC) (SUB 99-0016)
 - A. No additional building will be allowed on Lot 501 or on that portion of Lot 500 that is behind Lot 501 that decreases the amount of open land existing as of the time of approval of this subdivision.
 - B. Access from the sidewalk to the rear open space shall remained shared between the two lots.

Staff Note: This plat will expire 18 months from the date of approval, or on April 5, 2001, unless recorded sooner.

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DISCUSSION:

1. The applicants, William R. and Catherine M. Phillippe by Duncan Blair, attorney, request subdivision approval for 308 and 310 South Fairfax Street.
2. The subject properties are two lots of record with a combined frontage of 40.95 feet on South Fairfax Street, a depth of 79.42 feet and a total lot area of 3,175 square feet. The lots are developed with two detached residential buildings. The site is surrounded by residential uses.
3. The applicants seek subdivision approval to resubdivide the two existing lots and have submitted the required plat indicating the proposed location of the new property lines. (See attached plat.)
4. According to the application materials, the applicants seek to adjust the property lines to reflect the actual use of the subject properties, which have been under common ownership for more than fifty years. During that time, the rear yard of the property located at 310 South Fairfax Street has actually been used by the occupants of 308 South Fairfax Street as part of its rear garden. The applicants, who own both lots, indicate that they are in the process of selling the property located at 310 South Fairfax Street and seek to relocate the property line so that the open area used by 308 South Fairfax Street is within the legal property lines of the 308 lot.
5. The proposed subdivision would reallocate the land area between the two lots as follows:

	<u>Existing size</u>	<u>Proposed size</u>
308 South Fairfax (Lot 500)	1588 sf	1913 sf
310 South Fairfax (Lot 501)	1515 sf	1262 sf

6. The property does not now comply with zoning requirements as to FAR (308 South Fairfax only), lot width and yard requirements. It does currently comply with lot area and open space requirements.
7. The new lots will not comply with the land requirements in the RM zone, as follows:

	<u>RM Minimum Requirements</u>	<u>Lot 500 (308)</u>	<u>Lot 501 (310)</u>
Lot Size	1,452 sf	1,913 sf	<u>1,262 sf</u>
Lot Frontage	25 ft	20 ft	20.95 ft

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Lot Width	25 ft	20 ft	20.95 ft
Open Space	35 % of lot area, or the amount that existed on 6/24/92, whichever is less	169.5 (required) 448.1 (provided)	441.7 (required) 231 (provided)
FAR	1.50	1.59	1.22

8. The subdivision regulations require that each subdivision comply with the zoning requirements of the zone unless, under section 11-1713, the Planning Commission authorizes a variation, after finding that substantial injustice would otherwise result, that the use or character of the resulting lots is not inconsistent with the development in the surrounding area, and that one of a series of circumstances exist, including:
- (E) Resubdivision of lots in subdivisions of record as of January 1, 1952, where, because of existing structures or gross area of land involved, the subdivided lots would not conform to all of the requirements of the zone in which the subdivision is located.
9. Master Plan/Zoning: The subject property is zoned RM/Townhouse zone, and is located in the Old Town small area plan chapter of the Master Plan.

STAFF ANALYSIS:

Most of the open space on the combined parcel is on the lot at 310 South Fairfax Street. As the existing subdivision line is drawn between the two buildings, 310 has a large back yard and 308 has very little open space. Therefore, the owner proposes to resubdivide the land behind 310 between the two properties, so that each has a private back yard. To do so, however, results in an "L" shaped lot at 308 and the lot at 310 will be made deficient in terms of both lot size and open space. The property owner is willing to agree to a condition of the subdivision that the open space behind 310 will not be built on, so that it will remain forever open. Staff has also recommended requiring that the existing front access to the rear of 310 South Princess Street be retained, by the existing gate or otherwise.

While staff prefers not to recommend irregular or substandard lots, staff believes the proposed subdivision is supportable under section 11-1713 (E). The buildings are historic and cannot be demolished, and there is a condition that the open space will remain in perpetuity; therefore, the footprints are unlikely to change. The proposed subdivision will give each property owner a share of the currently shared space. Staff recommends approval of the application.

STAFF: Sheldon Lynn, Director, Department of Planning and Zoning; Kathleen Beeton, Urban Planner.

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