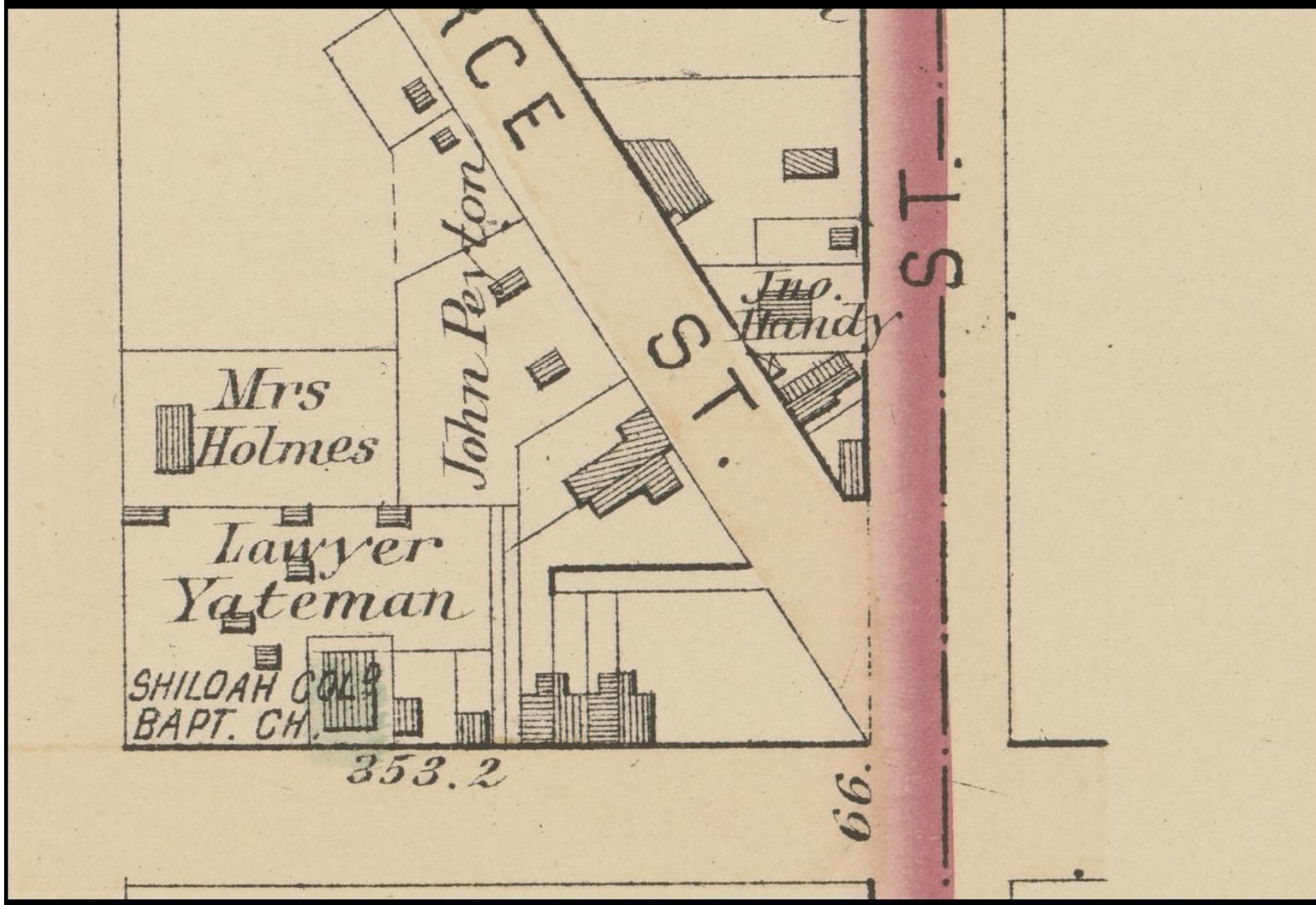
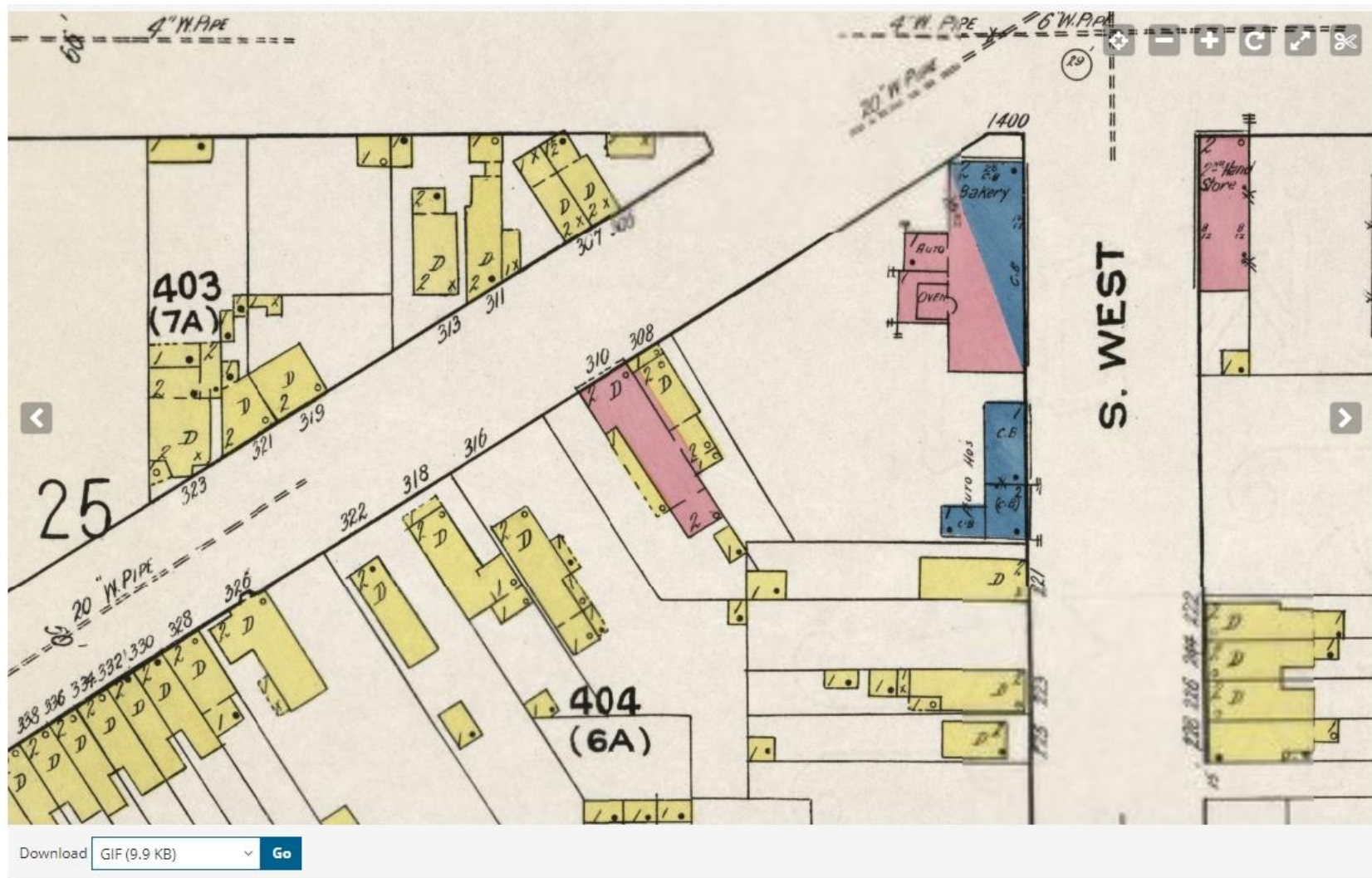


City atlas of Alexandria Va. : from official records, private plans, and actual surveys, based upon plans deposited in the Dept. of Surveys.





About this Item

Title

Sanborn Fire Insurance Map from Alexandria, Independent Cities, Virginia.

Created / Published

Sanborn Map Company, Aug 1921

Part of

Geography and Maps Division (18,687)

Sanborn Maps (18,695)



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January 13, 2020

Board of Zoning Appeals
City of Alexandria

**Re: BZA Case #2019-00016
310 Commerce Street (Request for Variance)**

Dear Chair Altenburg and Members of the Board:

Historic Alexandria Foundation ("HAF") opposes the application for a variance at the property designated as 310 Commerce Street. We agree with your staff's report that the application does not meet the applicable standards for a variance.

As you know, HAF was formed "to preserve, protect and restore structures and sites of historic or architectural interest in and associated with the City of Alexandria, Virginia, to preserve antiquities, and generally to foster and promote interest in Alexandria's historic heritage." In furtherance of this mission, we are vitally concerned with the proper administration of the Zoning Ordinance in the Old and Historic District, and the preservation of the dwindling resource of historic open space in Old Town. Particularly in light of the recent amendments to the Code and Zoning Ordinance pertaining to variance requests, we believe it is important for the Board to adhere to the high standards that are required before an applicant is relieved of the general parking regulations applicable throughout the Old and Historic Alexandria District and are designed to protect our historic streetscape from additional curb cuts.

HAF is both a property owner in the Old and Historic District and its Board and membership are composed of numerous City taxpayers and property owners in the Old and Historic District who are intimately familiar with both the burdens and benefits of complying with these regulations of general application in the district, but which do not similarly affect the general population. Both HAF and its membership, therefore, would

experience particularized harm from any misapplication of the zoning regulation at issue in this application.

I. Legal Standards for a Variance

In submitting our comments, HAF is fully conscious that the Zoning Ordinance was recently amended by the City Council on May 13, 2017 to conform with the 2015 amendments to Va. Code § 15.2-2201 (2017) and Va. Code § 15.2-2309 (2017). But while these amendments were designed, in part, to somewhat reduce the showing necessary to obtain a variance, an applicant still faces a very high burden to justify a variance. This was confirmed by the testimony of the City's Zoning Staff and Legal Counsel during the public hearing on May 13, 2017. Statement of Alex Dambach, Division Chief ("[I]t's not substantially easier, it's just a moderate adjustment in the way the language is written."); Statement of Joanna Anderson, Assistant City Attorney: ***"But Alex is right that it is further loosening it but it is still a very high standard to get a variance as it should be."***(emphasis added).

Under the new ordinance the applicant must still show (1) that "the strict application of the ordinance would unreasonably restrict the utilization of the property," (2) that the "need for a variance would not be shared generally by other properties," and (3) that the "variance is not contrary to the purpose of the ordinance." Zoning Ordinance § 2-201.1. We suggest that the application fails to make a showing under any of these three requirements.

In addition, Section 11-1103 of the revised ordinance requires, among other things, that the applicant prove that:

(B) The strict application of the terms of the ordinance would unreasonably restrict the utilization of the property or that the granting of the variance would alleviate a hardship due to a physical condition relating to the property or improvements thereon at the time of the effective date of the ordinance;

(C) The property interest for which the variance is being requested was acquired in good faith and any hardship was not created by the applicant for the variance;

(D) The granting of the variance will not be of substantial detriment to adjacent property and nearby properties in the proximity of that geographical area;

(E) The condition or situation of the property concerned is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to the ordinance;

As we will discuss below, we do not believe the applicant has or can make any of these required showings.

II. The Application Does Not Meet the Requirements for a Variance from the Generally Parking Regulations.

A. The Application does not meet the requirement that “the strict application of the ordinance would unreasonably restrict the utilization of the property,” Zoning Ordinance § 2-201.1.

Like many houses in the Old and Historic District, the house located at 310 Commerce Street has been utilized without a curb cut or dedicated parking for decades and there is no basis to believe that the lack of a curb cut unreasonably restricts the use of the property. Allowing a variance under these circumstances would result in “the granting of variances piecemeal that would ultimately nullify the zoning ordinance ... thereby conflicting with the intended spirit and purpose of the ordinance.” *Martin*, 286 Va. at 73, 743 S.E.2d at 145. Quite simply, there is no unreasonable restriction on the utilization of the property by complying with the same requirements that are applicable to other properties in the Old and Historic District. See *Martin*, 286 Va. at 73, 743 S.E.2d at 145. For the same reasons, the applicants have not shown that “the strict application of the terms of the ordinance would unreasonably restrict the utilization of the property” as required by Zoning Ordinance § 11-1103(B). See also Va. Code § 15.2-2309(2).

B. The Applicants have not shown that the “need for a variance would not be shared generally by other properties,” Zoning Ordinance § 2-201.1, and that a “variance is not contrary to the purpose of the ordinance.” Zoning Ordinance § 2-201.1.

The clear purpose of the variance request is to allow the applicants to make a curb cut when preventing such changes in the streetscape is precisely the purpose of the Regulation. The same reasons could be claimed by any landowner who wants relief from the General Parking Regulations applicable to the Old and Historic District.

C. The Applicants have not shown “that the granting of the variance would alleviate a hardship due to a physical condition relating to the property or improvements thereon at the time of the effective date of the ordinance” as required by Zoning Ordinance § 11-1103(B).

There is no “hardship” being experienced by the owners of this property. The owners have full enjoyment of the property they bought subject to the restrictions of the Zoning Ordinance. While all zoning restrictions place limitations on the use and development of real estate, complying with those restrictions that have been put in place for the common good is not the type of “hardship” contemplated by the Code. Being subject to these restrictions “is a condition shared by every other property holder in the same zone.” *Martin*, 286 Va. at 74, 743 S.E.2d at 146.

D. The Applicants have not shown that the property interest for which the variance is being requested was acquired in good faith and any hardship was not created by the applicant for the variance as required by Zoning Ordinance § 11-1103(C).

The configuration of the subject property is a voluntary creation of the predecessors in title to the applicant. While the application states that the current owners were unaware of the technicalities of the zoning setback requirements, it acknowledges that they were fully aware of the configuration of the property. These circumstances do not satisfy the requirements of Zoning Ordinance § 11-1103(c). See, e.g., 3 Rathkopf’s *The Law of Zoning and Planning* § 58:21 at 58-132 (2017 ed.)) (“If the conditions affecting the property have been caused or created by the property owner *or his predecessor in title*, the essential basis of a variance ... is lacking.” “Variances generally will not be granted when courts determine that the hardship was created by an affirmative act by the owner *or his predecessor*.”)(emphasis added); see also *Alleghany Enterprises, Inc. v. Bd. of Zoning Appeals of City of Covington*, 217 Va. 64, 69, 225 S.E.2d 383, 386 (1976).

E. The Applicants have not shown that the granting of the variance will not be of substantial detriment to adjacent property and nearby properties in the proximity of that geographical area as required by Zoning Ordinance § 11-1103(D).

One of the purposes of the General Parking Regulation is to preserve the on-street parking available to all, which would otherwise be removed by a curb cut to provide purely private parking. Another is to protect against the disruption of the sidewalk and streetscape inherent in multiple curb cuts. HAF therefore does not agree that proposals for curb cuts are not detrimental to the adjacent properties and the neighborhood in general.

F. The Applicants have not shown that “the condition or situation of the property concerned is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to the ordinance” as required by Zoning Ordinance § 11-1103(E).

The City Council has plainly determined that a curb cuts for the purpose of serving a single property is contrary to public policy. Zoning Ordinance § 8-200(C)(5)(a). And the Virginia Supreme Court has been clear about how demanding the standard is to show that the condition cannot be addressed by a general regulation. *See Martin*, 286 Va. at 74, 743 S.E.2d at 146 (“this condition was of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to the ordinance”). HAF submits that, like similar requests for individual curb cuts, this application does not satisfy the prerequisites for a variance.

* * *

For all of these reasons, HAF respectfully opposes the grant of the requested variance for 310 Commerce Street. The application does not satisfy any of the criteria for a variance set forth in the City Charter § 9.18, VA. Code § 15.2-2309(2), and the Zoning Ordinance, § 2-201.1, as well as the specific requirements of Zoning Ordinance §§ 11-1103(B), (C), (D) and (E).

Thank you for your consideration of our statement.

Sincerely,

A handwritten signature in blue ink, appearing to read 'John Thorpe Richards, Jr.', with a stylized flourish extending to the right.

John Thorpe Richards, Jr.
Board and Advocacy Committee Member
Historic Alexandria Foundation