

Docket Item # 3
BZA Case #2022-00006
Board of Zoning Appeals
September 12, 2022

ADDRESS: 322 & 324 SOUTH LEE STREET
ZONE: RM/TOWNHOUSE ZONE
APPLICANT: AVONLEA, LLC
ISSUE: Variance request to access parking from the street rather than an alley or interior court.

CODE SECTION	SUBJECT	CODE REQUIREMENT	APPLICANT PROPOSES	REQUESTED VARIANCE
8-200(C)(5)(a)	Access to Parking	Alley or Interior Court	Street Access	Street Access

BOARD OF ZONING APPEALS ACTION SEPTEMBER 12, 2022: On a motion by Mr. Foley, seconded by Mr. Wacławski, the variance was approved with conditions subject to all applicable codes, ordinances, staff recommendations and conditions. The motion carried on a vote of 4 to 2.

Conditions:

- 1) Locate the curb cut in line with the southern edge of the parking pad.
- 2) Pending BAR approval, utilize the same bricks currently in the sidewalk.
- 3) Pending BAR approval, condition the new curb to look like the existing curb.
- 4) Pending BAR approval, maintain the look of the existing fence for the new fence and gate.
- 5) Make the curb cut width the smallest possible for access.

Reason to Approve:

Mr. Foley, Mr. Wacławski, Ms. Bauman, and Mr. Patel disagreed with staff's recommendation as they believed the request met the variance definition and the standards for a variance. They found the lack of parking to be a hardship, did not believe the request would be of substantial detriment to adjacent properties, and believed the situation to be unique within the Old and Historic Alexandria District.

Dissenting Reason:

Mr. Perna and Ms. Nguyen did not find that the request met all the criteria for a variance.

Speakers:

Duncan Blair, representing the applicant and Lisa Herget, the subject property owner made the presentation.

Gail Rothrock, representing the Historic Alexandria Foundation, spoke in opposition to the request.

Linda Lovell, representing the Historic Alexandria Resource Commission, spoke in opposition to the request.

Yvonne Callahan, representing Old Town Civic Association, spoke in opposition to the request.

Stephen Milone, representing Old Town Civic Association, spoke in opposition to the request.

Charlene MacDonald, property owner at 328 South Lee Street, spoke in opposition .

Shawn Martin, property owner at 328 South Lee Street, spoke in opposition. to the request.

Susan Horne, representing the Alexandria Historical Restoration and Preservation Commission, spoke in opposition to the request.

Patricia Clausen, property owner at 323 South Lee Street, spoke in opposition to the request.

Valentine Kass, property owner at 125 Wolfe Street, spoke in support of the request.

Amy Biondi, property owner at 833 South Lee Street, spoke in support of the request.

Alden Philbrick, property owner at 133 North Fairfax Street, spoke in support of the request.

Kate Pinson, property owner at 119 Wolfe Street, spoke in support of the request.

Tom Scully, property owner at 300 South Lee Street, spoke in support of the request.

Discussion:

Mr. Wacławski said the speakers for and against the project showed that there can be people truly invested in Old Town that have differing views of what it means to preserve Old Town. He said that he found the applicant's request to not be a far deviation from the existing curb cuts on this block and he does not think adding another curb cut will significantly change the block. He said he was struggling with the idea that denying the access to parking would unreasonably restrict the use of the property, but he was leaning in favor of the proposal because of the special facts in this case, especially because the proposal was in line with the historic character of Old Town. He said that each case is reviewed according to its own special and unique facts and therefore the vote on this case would not directly impact the board's view of future cases. He said he did not think the proposal was inconsistent with the overall intent of this regulation as it does comply with the historic nature of the community.

Mr. Foley said precedent has already been set as there have been several curb cuts approved within Old and Historic Alexandria District since the ordinance prohibiting them was adopted.

He explained personal experiences with parking challenges that make him believe a lack of access to parking is a hardship. He said there is enough variation on how you interpret the standards for a variance that he could answer that the request meets each one. He said it was within the Board's authority to decide based on the individual case's merits and that there is enough subjectivity in the criteria for this case to go either way.

Mr. Patel said that the Board's job was to make equitable decisions based on the standards and to balance out what each of the standards mean. He said the aesthetics of the proposal were consistent with the area and mentioned the existing curb cuts on this block. He said he did believe a lack of parking was a hardship but asked the applicant to further explain how the proposal would meet 11- 1103(e).

Ms. Bauman said she agreed that precedent has already been set with previously approved cases that allowed access to parking from a street, but that they look at every request on an individual, case-by- case basis. She said five of the 12 residences on this block have curb cuts, some providing access to forward-facing garages. In looking at this case on this particular street, she said it would be consistent with the way this historic street looks to approve this variance request.

Ms. Nguyen said the existing curb cuts were approved before the ordinance restricting new access to parking from the street was adopted by City Council. She said there was no parking requirements for this property, and she agreed with staff's finding that there was not a hardship nor was it a unique situation.

Mr. Perna said that he appreciated the applicant's efforts to improve the dilapidated property and preserve the house, however a variance request must meet all of the variance standards, not just the majority of the standards. He said the Board's job was to interpret how the existing law applies to each case and he was focused on what the Board's authorities are and not exceeding those authorities. He also suggested the Board could add conditions addressing some of the concerns that were discussed.

BOARD OF ZONING APPEALS ACTION, June 13, 2022: The applicant requested a deferral to the September 12, 2022 hearing. On a motion by Mr. Foley, seconded by Mr. Patel, the Board of Zoning Appeals voted to defer BZA#2022-00006. The motion carried on a vote of 5-0.

BOARD OF ZONING APPEALS ACTION, APRIL 11, 2022: The applicant requested a deferral to the June 13, 2022 hearing. On a motion by Mr. Foley, seconded by Mr. Yoo, the Board of Zoning Appeals voted to defer BZA#2022-00006. The motion carried on a vote of 4-0.

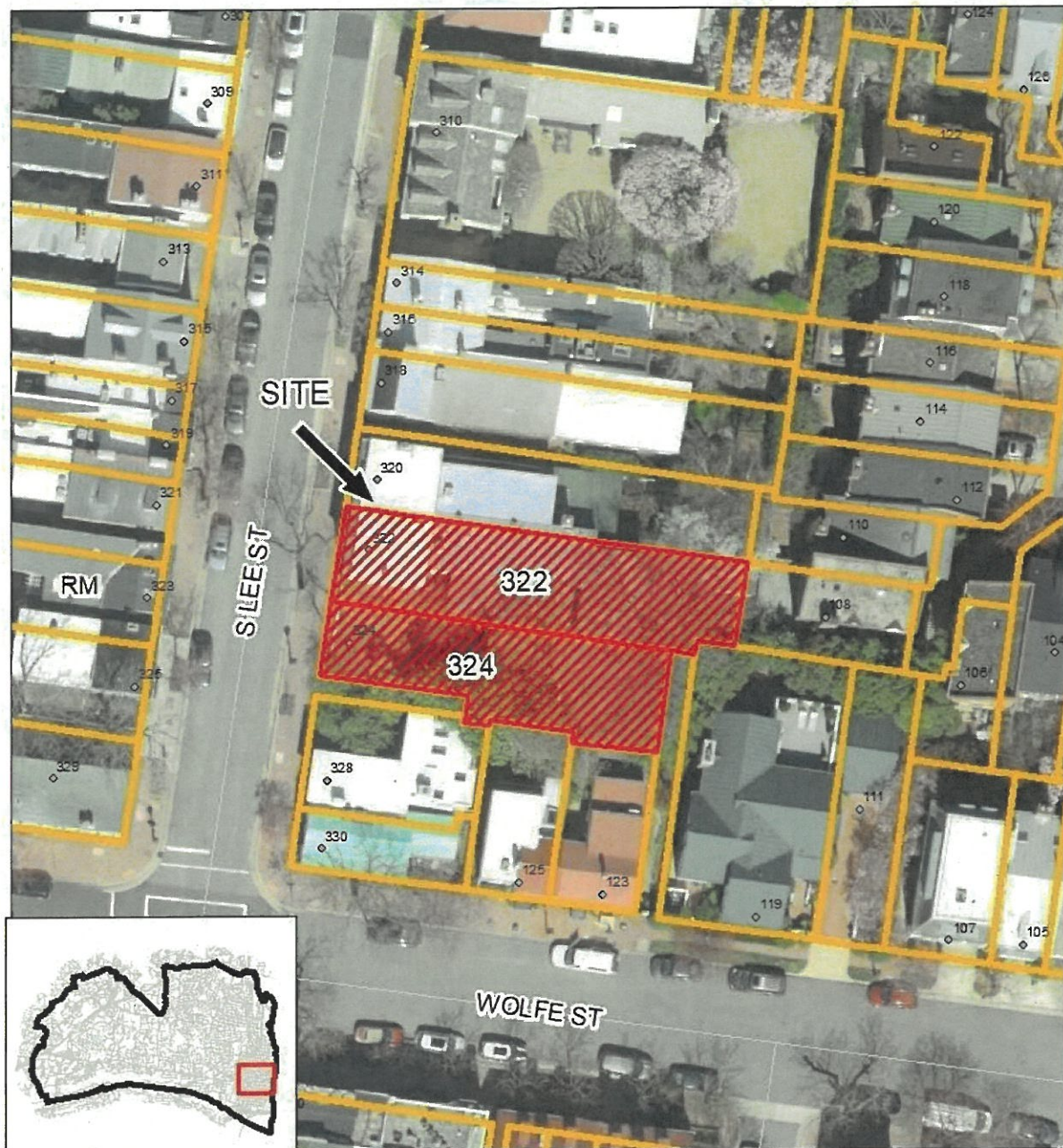
Staff **recommends denial** of the request because it does not meet the variance definition or standards.

If the Board grants the requested variance, the applicant must comply with all requirements of this report's department comments and the condition listed below. The variance must be recorded with the property's deed in the City's Land Records Office prior to the release of

the Curb Cut approval.

Condition:

1. The proposed driveway must be constructed of permeable surface that is approved by the Board of Architectural Review.



BZA #2022-00006
322 & 324 South Lee Street



0 15 30 60 Feet

I. Issue

The applicants propose to construct two non-required off-street parking spaces at 322 and 324 South Lee Street. The proposed parking would be in the front yard and accessed from South Lee Street.

II. Background

The subject property is comprised of two lots of record and is predominately rectangular in shape. The subject property has 49.42 feet of frontage along South Lee Street, 100.02 feet of depth along the south side property line,



Figure 1- Subject Property

117.00 feet of depth along the north side property line, and 57.8 feet at the rear of the property. The rear and south property lines are not straight, as they have several portions that jut in and out of the property. The property contains 5,790 square feet of lot area and complies with the RM zone's minimum lot size, width, and frontage.

The property is currently developed with a two-story semi-detached dwelling unit located 1.40 feet from the front property line facing South Lee Street, on the north side property line attached to 320 South Lee Street, 25.87 feet from the south side property line and 29.87 feet from the rear property line. According to Historic Preservation records, the three-bay, two-story Italianate frame dwelling was likely constructed between 1885 and 1891. The subject property is located within the Old and Historic Alexandria District (OHAD).

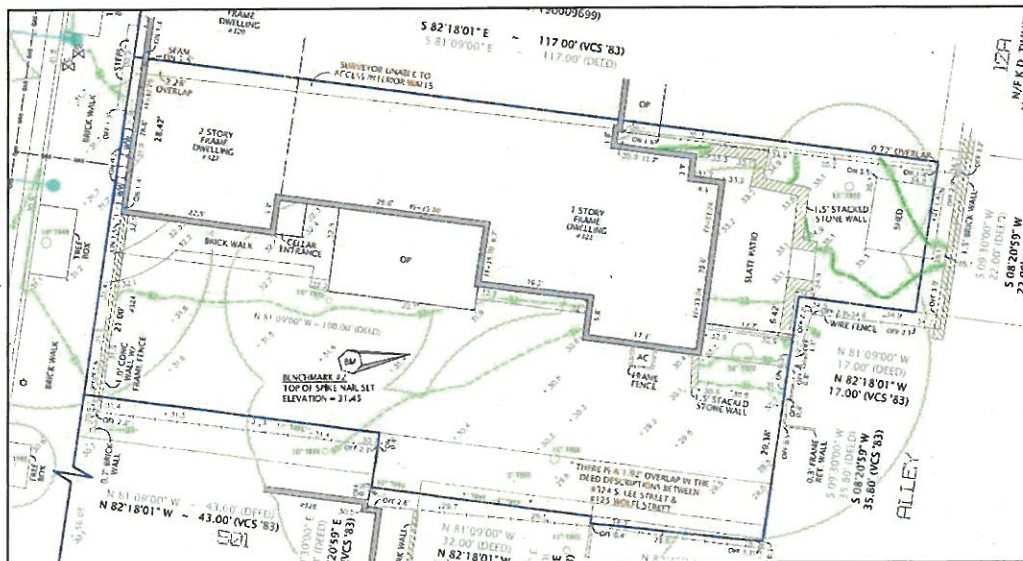


Figure 2- Subject Property Survey

In February 2022, the Board of Architectural Review approved BAR2021-00655 and BAR2021-00654 for some exterior alterations and minor demolition to the dwelling located at 322 South Lee Street.

In 1994, the Zoning Ordinance was amended to prohibit access to parking from a public street by amending the Zoning Ordinance to add section 8-200(C)(5)(a) which requires off-street parking in the Old and Historic Alexandria District to be accessed from and interior court.

Table 1. Zoning Table

RM Zone*	Requirement	Existing	Proposed
Lot Area	1,452 sq. ft.	5,790 sq. ft.	5,790 sq. ft.
Lot Width	25.00 ft.	49.42 ft.	49.42 ft.
Lot Frontage	25.00 ft.	49.42 ft.	49.42 ft.
Front Yard	0.00 ft.	1.40 ft.	1.40 ft.
Side Yard (North)	0.00 ft.	0.00 ft.	0.00 ft.
Side Yard (South)	5.00 ft.	25.87 ft.	25.87 ft.
Rear Yard	16.00 ft. minimum	29.87 ft.	29.87 ft.
Open Space	2,026.5 sq. ft. (35% of lot area)	3,298 sq. ft.	2,628 sq. ft.

*All measurements are based on the total land area and property lines of 322 and 324 S Lee Street

III. Description

The applicants propose to construct two non-required off-street parking spaces accessed from South Lee Street (a public street). Parking is not required for subject property because the house was constructed prior to off-street parking requirements. The proposed parking area located at the front of the property to the south of the building would measure roughly 19.00 feet by 21.50 feet for a total of 408.50 square feet. The curb cut and driveway would be 12.00 feet in width with a 12-foot-wide gate.

IV. Master Plan/Zoning

The subject property is currently zoned RM, Townhouse and has been so zoned since adoption of the Third Revised Zoning Map in 1951 and is identified in Old Town Small Area Plan.

V. Applicant's Justification for Variance

The applicants state that strict application of section 8-200(C)(5)(a) prevents the reasonable use of the property due to the fact that they cannot access parking from an alley or interior court as there is no alley or interior court adjacent to the property. The applicants state that the addition of the on-site parking for two cars would not decrease parking along South Lee Street as there is no parking allowed on the east side of the street. The applicants also state that they can use fencing, screening, and landscaping to maintain the streetscape and pedestrian experience along this block of South Lee Street.

VI. Requested Variance

8-200(C)(5)(a) Access to Parking

The applicants request a variance to provide access to non-required off-street parking from South Lee Street. Per the zoning ordinance, access to all parking for properties located within the boundaries of OHAD must be from an alley or interior court.

VII. Analysis of Variance Definition

Per zoning ordinance section 11-1103, the Board of Zoning Appeals shall not grant a variance unless it finds that the request meets the definition of a variance per zoning ordinance section 2-201.1 as follows:

- a. The request is a reasonable deviation from those provisions regulating the shape, size, or area of a lot or parcel of land or the size, height, area, bulk, or location of a building or structure.

Allowing non-required off-street parking from the public street is not a reasonable deviation because the Zoning Ordinance requires that all access to parking within OHAD be from an alley or interior court. Allowing this parking would undermine this particular provision especially since there is no requirement to provide off-street parking at this property.

- b. Strict application of the zoning ordinance would unreasonably restrict the utilization of the property.

Strict application of the zoning ordinance would not unreasonably restrict the utilization of the property because the property has been used as semi-detached dwelling without off-street parking since the late 1800s. Further, there is no requirement to provide off-street parking for this property.

- c. The need for a variance is not shared generally by other properties.

The neighborhood is exclusively residential use, most without off-street parking. The properties along the 300 block of South Lee Street were predominately constructed in the 1800's when there was no Zoning Ordinance. While many properties in the OHAD have access to parking from an alley or interior court, many do not. The need for this variance would be shared by all properties in OHAD that cannot provide access to parking from an alley or interior court.



Figure 3 - Development Pattern of Neighborhood

- d. The variance is not contrary to the purpose of the ordinance.

The requested variance is contrary to the purpose of the ordinance. Section 8-200(C)(5)(a) of the Zoning Ordinance is intended to protect the historic character of OHAD by minimizing curb cuts and vehicular access to parking from the front of properties by requiring access via an alley or interior court.

The Design Guidelines for the Old and Historic Alexandria District that help guide the decisions of the BAR also provide a further exploration of why parking accessed from a public street is not allowed under the Zoning Ordinance. The chapter on Parking states, "In many sections of the historic districts, individual driveways in the front of residential properties are not desirable because the automobiles parked in the front yards create a visual intrusion and disrupt the scale, rhythm and unity of the architecture." It is the opinion of BAR staff that the creation of the proposed access to parking and the parking of an

automobile in historic open space will both disrupt the streetscape of South Lee Street and adversely affect the visual open space of the lot.

As also stated in the Design Guidelines chapter on Parking, "Parking lots should be screened and landscaped so that they do not create a visual disruption of the streetscape while being consistent with safety requirements." "The creation of a driveway or parking area usually involves the erection of a gate and wall or fence to delineate the parking area or driveway". The Design Guidelines also state that "The Boards have become increasingly concerned about inappropriate and excessive paving of open space within the historic districts and inappropriate at-grade materials which detract from the historic character of the districts."

e. The variance does not include a change in use, which change shall be accomplished by a rezoning.

The variance request does not include a change in use. The property will continue to be used as residential semi-detached dwelling.

VIII. Analysis of Variance Standards

Per zoning ordinance section 11-1103, the Board of Zoning Appeals shall not grant a variance unless it finds that the request meets the variance standards as follows:

a. 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.

The variance would not alleviate a hardship due to a physical condition relating to the property. While the lot is not adjacent to an alley or interior court, there is no off-street parking requirement for this property. Additionally, strict application of the zoning ordinance would not unreasonably restrict the utilization of the property because the property has been used as semi-detached dwelling without off-street parking since the late 1800s and there is no requirement to provide off-street parking for this property.



Figure 4 - Existing Conditions



Figure 5 - Proposed Driveway

b. The property interest for which the variance is being requested was acquired in good faith and any hardship was not created by the applicants for the variance.

The applicants acquired the property in good faith, however, their desire to have off-street parking creates the need for the requested variance.

c. The granting of the variance will not be of substantial detriment to adjacent property and nearby properties in the proximity of that geographical area.

The proposed curb cut would alter the character along the south portion of the 600 block of South Lee Street and the parking area would be visible from the street. The cars parked in the proposed parking area would also be visible from both the dwelling and the side yard located at 328 South Lee Street.

The City Arborist recommends the curb cut should not be considered as it will negatively impact the street tree located on the sidewalk within the public right-of-way (see Figures 2 and 4). The proposed curb cut, which will be roughly 1.00-foot from the tree box and 5.00 feet from the tree trunk, will cause root loss sufficient to not only kill the tree, but potentially destabilize it through the loss of anchorage.

d. 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.

This property is one of the larger properties on this block. Unlike smaller properties, it has the capacity to accommodate parking and still meet the required open space. However, the requirement to provide access to parking from an alley or interior court applies to all properties located within the OHAD. Any property without access from an alley or interior court would need to request a variance to provide access to parking from the street. Additionally, a change to the regulation would undermine its purpose which is still supported by staff.

e. The granting of the variance does not result in a use that is not otherwise permitted on such property or a change in the zoning classification of the property.

The variance request will not change the use or zoning of the residential property.

f. The relief or remedy sought by the variance application is not available through a special exception process that is authorized in the ordinance or the process for modification of a zoning ordinance at the time of the filing of the variance application.

Relief from the requirement to provide access to parking from alley or interior court for properties located within the OHAD can only be achieved by requesting a variance from the Board of Zoning Appeals.

IX. Staff Conclusion

As outlined above, staff **recommends denial** of the requested variance to provide access to non-required parking from South Lee Street.

Staff:

Maggie Cooper, Urban Planner, margaret.cooper@alexandriava.gov

Mary Christesen, Zoning Manager, mary.christesen@alexandriava.gov

Tony LaColla, AICP, Land Use Division Chief, anthony.lacolla@alexandriava.gov

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.

Historic Preservation:

- F-1 The subject property is located in the locally regulated Old and Historic Alexandria District (OHAD). Any demolition/capsulation, addition, or alterations to the subject property requires a Permit to Demolish/Capsulate or Certificate of Appropriateness from the Board of Architectural Review.
- F-2 According to Ethelyn Cox in her book Historic Alexandria, Virginia Street by Street, A Survey of Early Buildings, the existing structure at 322 South Lee Street was built about 1853 by Frederick Miller. The three-bay, two-story Italianate frame duplex consists of a main block and a two-story ell with a two-story modern (1999) addition at the rear. Staff has never doubted Ms. Cox's work but has found inconsistencies between her 1853 date and Sanborn Fire Insurance Maps. The earliest Sanborn Map for Alexandria, which dates to 1885, does not include street numbers for this block but does not appear to show a building in this location. It is possible there is a small brick building here, but that would not be the same as the building that is there now. The 1891 Sanborn Map shows the two-story frame building with a non-combustible roof at this location; it is a bakery and confectioner and a twin to the adjacent dwelling at 320 South Lee. Therefore, there is a chance that the building dates to between 1885 and 1891. Whatever the exact construction date, this is an early building and will be evaluated accordingly. The 1891 map also depicts a side porch on the south elevation where the ell meets the main block of the house.
- F-3 In addition to being contrary to the Zoning Ordinance, Design Guidelines for the Old and Historic Alexandria District chapter on Parking, "In many sections of the historic districts, individual driveways in the front of residential properties are not desirable because the automobiles parked in the front yards create a visual intrusion and disrupt the scale, rhythm and unity of the architecture." It is the opinion of BAR staff that the creation of the proposed access to parking and the parking of an automobile in historic open space will both disrupt the streetscape of South Lee Street and adversely affect the visual open space of the lot. As also stated in the Design Guidelines chapter on Parking, "Parking lots should be screened and landscaped so that they do not create a visual disruption of the streetscape while being consistent with safety requirements." "The creation of a driveway or parking area usually involves the erection of a gate and wall or fence to delineate the parking area or driveway". The Design Guidelines also state that "The Boards have become increasingly concerned

about inappropriate and excessive paving of open space within the historic districts and inappropriate at-grade materials which detract from the historic character of the districts.”

Code Administration:

No comments.

Recreation (City Arborist):

F-1 Proposed curb cut will kill publicly owned street tree. We do not permit its removal.

Historic Alexandria (Archaeology):

F-1 According to *Historic Alexandria, Virginia, Street by Street*, by Ethelyn Cox, the house currently on this lot was probably constructed in the early 1850s by Frederick Miller. Miller’s heirs held title to the house until the late 1880s. There is a possibility for the discovery of archaeological resources that could provide insight into 19th-century domestic activities. To ensure that information about the past is not lost because of this project, the following requirements are recommended.

R-1 The applicant/developer shall call Alexandria Archaeology immediately (703-746-4399) if any buried structural remains (wall foundations, wells, privies, cisterns, etc.) or concentrations of artifacts are discovered during development. Work must cease in the area of the discovery until a City archaeologist comes to the site and records the finds.

R-2 The applicant/developer shall not allow any metal detection to be conducted on the property, unless authorized by Alexandria Archaeology.

R-3 The statements in archaeology conditions above marked with an asterisk (“*”) shall appear in the General Notes of all site plans and on all site plan sheets that involve demolition or ground disturbance (including Basement/Foundation Plans, Demolition, Erosion and Sediment Control, Grading, Landscaping, Utilities, and Sheet piling and Shoring) so that on-site contractors are aware of the requirements.

Transportation and Environmental Services

CONDITIONS

R-1 The building permit must be approved and issued prior to the issuance of any permit for demolition if a separate demolition permit is required. (T&ES)

R-2 The applicant shall be responsible for repairs to the adjacent city right-of-way if damaged during construction activity. (T&ES)

- R-3 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)

FINDINGS:

- F-1 The applicant should provide a determination of disturbed area per City Guidelines to T&ES prior to submitting for permits. If the land disturbance meets or exceeds 2500 square feet, a released grading plan will be required prior to submitting for permits. (T&ES)

CODE REQUIREMENTS

- C-1 The applicant shall comply with the City of Alexandria's Solid Waste Control, Title 5, Chapter 1, which sets forth the requirements for the recycling of materials (Sec. 5-1-99). (T&ES)
- C-2 The applicant shall comply with the City of Alexandria's Noise Control Code, Title 11, Chapter 5, which sets the maximum permissible noise level as measured at the property line. (T&ES)
- C-3 Roof, surface, and sub-surface drains are connected to the public storm sewer system, if available, by a continuous underground pipe. Where storm sewer is not available applicant must provide a design to mitigate the impact of stormwater drainage onto adjacent properties and to the satisfaction of the Director of Transportation & Environmental Services. (Sec.5-6-224) (T&ES)
- C-4 All secondary utilities serving this site shall be placed underground. (Sec. 5-3-3) (T&ES)
- C-5 Any work within the right-of-way requires a separate permit from T&ES. (Sec. 5-2) (T&ES)
- C-6 All improvements to the city right-of-way such as curbing, sidewalk, driveway aprons, etc. must be city standard design. (Sec. 5-2-1) (T&ES)