

From: [Mary Christesen](#)
To: lee.perna.bza@gmail.com
Cc: aartemel@gmail.com; jbuono.alex_bza@gmail.com; larry@larryaltenburg.net; mark@kaoszdesign.com; seankumar@yahoo.com; Tim_Ramsey@msn.com; [Alex Dambach](#); [Kendra Jacobs](#); [Brian Hine](#)
Subject: RE: May Board of Zoning Appeals Final Docket
Date: Friday, May 06, 2016 10:15:09 AM

Good morning.

Yes, you are correct that the 5' setbacks would apply to the entire two-family building, however, the subject property is not a semi-detached dwelling with a party wall. 308 Commerce Street is a detached single family dwelling. As shown on the plat, the walls between 308 and 310 Commerce are abutting walls and not party walls. The requirement to provide 5' side yard setbacks applies to both side walls of this single family detached dwelling, resulting in the requested special exception.

Thanks. Let me know if you have further questions.

Mary Christesen
Urban Planner
Department of Planning and Zoning
City of Alexandria
703.746.3840

From: Lee Perna [mailto:lee.perna.bza@gmail.com]
Sent: Thursday, May 05, 2016 7:00 PM
To: Brian Hine
Cc: aartemel@gmail.com; jbuono.alex_bza@gmail.com; larry@larryaltenburg.net; mark@kaoszdesign.com; seankumar@yahoo.com; Tim_Ramsey@msn.com; [Alex Dambach](#); [Mary Christesen](#); [Kendra Jacobs](#)
Subject: Re: May Board of Zoning Appeals Final Docket

I would like staff to clarify a point in Alexandria's zoning ordinances. Section 4-506(A)(2)(b) (1) states that "Each ... two-family dwelling shall provide two side yards of a minimum size of five feet." When the two-family dwelling is a semi-detached house, doesn't the requirement for two sides yards apply to the combined structure? Section 2-140 defines a two-family dwelling as including "semi-detached (two dwelling units having a common vertical party wall) dwellings."

On Thu, May 5, 2016 at 4:16 PM, Brian Hine <brian.hine@alexandriava.gov> wrote:
Good afternoon,

The final docket for the April BZA hearing has been published and may be viewed on our website [here](#). Hard copies of the docket will be delivered to your homes this afternoon. Please let us know if you have any questions, and we look forward to seeing you all next Thursday.

Best regards,

Brian M. Hine
Administrative Analyst
Department of Planning & Zoning, City of Alexandria
[\(703\)-746-3846](tel:7037463846)

From: [Larry Altenburg](#)
To: [Alex Dambach](#); [Mary Christesen](#)
Cc: [aartemel@gmail.com](#); [lee.perna.bza@gmail.com](#); [jbuono.alex@bza@gmail.com](#); [mark@kaoszdesign.com](#); [seankumar@yahoo.com](#); [Tim_Ramsey@msn.com](#); [Kendra Jacobs](#); [Brian Hine](#)
Subject: Re: May Board of Zoning Appeals Final Docket
Date: Monday, May 09, 2016 8:38:37 AM

Mary and Alex,

Mr. Perna's last two messages and your response to the first should be shared with the applicant under the sunshine provision. Please send them to the applicants and copy the full board.

Additionally, I would like to understand how staff will address Mr. Perna's query prior to Thursday's meeting.

Thank you.

Larry

On May 8, 2016, at 19:27, Lee Perna <lee.perna.bza@gmail.com> wrote:

Mary,

Does the issuance of a special exception in this case preclude or impair any future applications for special exceptions or variances? I cannot find a section in the current zoning ordinances that precludes a variance or special exception if one has been previously granted, but I seem to recall one. Staff consistently notes that no previous special exception or variance has been granted, which implies this is an issue in the consideration of one. If this special exception would impede a future request, I would appreciate a review of the following question by the legal department.

I fundamentally disagree with staff's position that 308 Commerce Street constitutes a detached single-family dwelling based on the following points:

1. First and foremost, 308 Commerce Street is attached to 310 Commerce Street. The legal definition of a party wall is generally held to be a wall located upon or at the division line between adjoining landowners and used or intended to be used by both in the construction or maintenance of improvements on their respective tracts, or, more briefly, as a dividing wall for the common benefit and convenience of the tenements which it separates. (40 Am. Jur. Party Walls § 2 at 485 (1942)) I believe the masonry east wall of 310 Commerce Street constitutes a party wall because it lies at the division line between the properties and is used in the maintenance of the house at 308 Commerce Street as evidenced by the fact that 308 Commerce Street's roof is flashed and siding is caulked to the wall of 310 Commerce Street.
2. We do not know to what degree the east wall of 310 Commerce Street also supplies support to the structure at 308 Commerce Street. The records

indicate the former was built in 1800 and the latter in 1794. The masonry wall may very well have been built with the intention to support the older frame wall of 308 Commerce Street. A party wall can also be defined as a wall divided longitudinally into two strips, each contiguous owner being sole owner of the strip on his side of the boundary, but having an easement in the other strip for support of his building, which, in the United States, this is presumed. (40 Am. Jur. Party Walls § 2 at 485 (1942)) In other words, two longitudinally adjoined walls which may provide support from one to the other constitute a party wall. According to the Virginia Supreme Court, absent evidence to the contrary, every wall and separation between two buildings is presumed to be a common or party wall. (Bellenot v. Laube's Ex'r, 52 S. E. 698, 104 Va. 842)

3. We have no way of knowing whether there is still siding on the west side of 308 Commerce Street which would be necessary for a wall used as an exterior wall. Absent siding, the west wall of 308 Commerce Street would not be considered an exterior wall, and the masonry wall of 310 Commerce Street would be serving as 308 Commerce Street's western exterior wall. Bellenot v. Laube defined a party wall as “a dividing wall between two houses, to be used equally, for all the purposes of an exterior wall, by the respective owners of both houses.” Again, absent evidence that 308 Commerce Street is not using the masonry wall of 310 Commerce Street as its exterior wall, we must presume the wall is a common or party wall.
4. Furthermore, the plat clearly states that there is 0.17 foot overlap in the deed descriptions between 308 and 310 Commerce Street indicating dual ownership of the masonry wall which forms the east side of 310 Commerce Street. In Jones on Easements, sec. 632, as cited in the Virginia Supreme Court case of Bellenot v. Laube, 104 Va. 842 (1906), the term “party wall” may designate a wall divided longitudinally in two moieties, each moiety being subject to a cross-easement in favor of the owner of the other moiety. The masonry wall of 310 Commerce Street, which is on the division line between the two properties and appears to be partially owned by both, appears to fit this definition of a party wall.

I believe the east wall of 310 Commerce Street constitutes a party wall under the legal definition, and as such, 308 Commerce Street is a semi-detached dwelling. If this is the case, the owner may build this addition by right, and he does not require a special exception.

On Fri, May 6, 2016 at 10:15 AM, Mary Christesen
<Mary.Christesen@alexandriava.gov> wrote:

Good morning.

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Department of Planning and Zoning

City of Alexandria

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From: Lee Perna [mailto:lee.perna.bza@gmail.com]

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Brian M. Hine

Administrative Analyst

Department of Planning & Zoning, City of Alexandria

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<front 308 Commerce enlarged.jpg>

<front 308 Commerce.jpg>

<Rear 308 Commerce.jpg>