



## Historic Alexandria Foundation

218 North Lee Street, Suite 310 • Alexandria, Virginia 22314  
(703) 549-5811 • FAX (703) 548-4399  
Email: [h.a.f@erols.com](mailto:h.a.f@erols.com) • Website: [HistoricAlexandriaFoundation.org](http://HistoricAlexandriaFoundation.org)

June 12, 2018

Board of Zoning Appeals  
City of Alexandria

**Re: BZA Case #2018-0007  
320 South Fairfax Street (Request for Variance)**

Dear Chair Altenburg and Members of the Board:

Historic Alexandria Foundation (“HAF”) opposes the application for a second variance of the side-yard setback requirements for the property now designated as 320 South Fairfax Street. In addition to the standard zoning requirements, the property is subject to the provisions of a consent decree entered by the Circuit Court of Alexandria, to which the Board is a party, and which places permanent restrictions on the further development of the property. The application does not meet the applicable standards for a variance or release from these restrictions. The staff report correctly finds that the application does not meet the standards to allow a variance, but did not adequately address the applicable restrictions of the consent decree that prohibit the addition of the second story that the applicant is seeking.

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 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 minimal limitations that are contained in the generous allotments of the RM zone.

### 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. Historical Background on 320 S. Fairfax Street**

The property in question was formed by a Deed of Subdivision executed on June 6, 1969 and recorded in the Land Records at Deed Book 698 Page 267 (copy attached). The subdivided lot enjoys a thirty-eight (38) foot frontage on Fairfax Street, or roughly twice the frontage of many homes in the RM zone.

Prior to the 1969 subdivision, on July 30, 1959 the owners of 318 S. Fairfax Street and the owners of 320 S. Fairfax Street entered into a Boundary Line Agreement duly recorded in the Land Records at Deed Book 502 Page 507 (copy attached). That voluntary Boundary Line Agreement created the three-foot indentation in the property line that forms the basis for the application in this case.

As the recorded Boundary Line Agreement shows, by 1959, the owners of 318 S. Fairfax Street had built their house on, and thereby taken possession of, a three-foot alley referenced in the Deeds to the two properties. The owners of 318 S. Fairfax had also enclosed a portion of the Lot that was then known as 320 S. Fairfax. Rather than contest the matter, the owners of 320 S. Fairfax voluntarily agreed to adjust their boundary. At the time they did so, and for as far back as at least 1885 (as shown on the Sandborn Insurance Map of 1885)(see attached), there existed an open side yard between the house located at 322 S. Fairfax (which is now designated as 320 S. Fairfax) and that at 318 S. Fairfax.

As shown by the Board's records, on April 12, 1984 a variance application filed on behalf of the contract purchasers of 320 S. Fairfax Street sought relief from what was then an eight (8) foot side yard setback requirement to allow the applicant to build within 3 feet of the property line. The variance request was opposed by the owner of 318 S. Fairfax Street on the grounds that: (1) the lot would permit an addition to be constructed on the rear of the building in question; (2) the same size addition that the applicant wanted could be done in a slightly different shape; (3) the shape of lot was not a restricting factor; and (4) any hardship was created by applicant. BZA Minutes (5/14/1984).

The Board voted to approve the variance request on a vote of 3-1. BZA Minutes (5/14/1984). The owner of 318 S. Fairfax filed a Petition for Writ of Certiorari in the Circuit Court. *McCance v. Board of Zoning Appeals for the City of Alexandria*, At Law No. 9009 (Cir. Ct. Alexandria, Va., Jun. 12, 1984). Rather than test the validity of the variance decision in court, the parties — including the Board, represented by the City Attorney — agreed to resolve the appeal through a consent decree to be recorded in the Land Records. The consent decree provided as “an agreement by and between the parties,” which included the City of Alexandria Board of Zoning Appeals, the following permanent restriction:

Any addition built to 322 South Fairfax Street, Alexandria, Virginia shall continue for no more than twenty-four (24) feet from the front lot line as a two story addition of normal height; and thereafter, as a one story addition of normal height for an additional nine and one-half (9 1/2) feet. The owner of said property covenants that there will never be any improvement built on top of the one story addition.

Consent Order, *McCance*, At Law No. 9009 (Cir. Ct. Alexandria, Va., Feb. 12, 1985), recorded at Deed Book 1142 Page 344 (copy attached).

As this consent decree was entered into in order to resolve the pending request for a variance, the conditions have the effect of a proffer on behalf of the applicant that was expressly accepted by the BZA. Accordingly, the conditions constitute binding restrictions that are considered part of the zoning regulation for this property. See Former Va. Code § 15.1-495(b)(1989 Repl. Vol.); *accord* Va. Code § 15.2-2309(2); Zoning Ordinance § 11-1104. It is not sufficient to have an agreement from the adjoining property owner to waive the conditions of the consent decree. Rather, the BZA must apply the standards for granting a variance to the entire proposal to add a second floor addition that is not permitted under the existing restrictions applicable to this property. The variance request only addresses the setback requirement and does not support a variance to the restriction against adding a second story to the existing addition.

**III. The Application Does Not Meet the Requirements for a Variance from the Generally Applicable Requirements of the RM Zone.**

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

The house located at 320 S. Fairfax Street has already added an extensive addition enclosing nearly fifteen feet of what was the historic side yard. With more than 38 feet of frontage on Fairfax Street, the property has more than enough area to fully comply with the existing side yard requirements. Even in cases where the lots were subdivided before February 10, 1953, lots that are more than 35 feet wide are required to have five-foot side yards. Zoning Ordinance § 3-1108(C). But since the property in question was not subdivided until 1969 — after the setback requirements were in the Code, and ten years after the Boundary Line Agreement created the “jog” between 318 and 320 S. Fairfax — there is no basis to relieve the property from the side yard restrictions.

The amendments to the Zoning Ordinance have already relaxed what was previously an eight-foot side yard requirement. Allowing a variance under these circumstances would result in “the granting of variances piecemeal that would ultimately

nullify the zoning ordinance requiring a [side] yard, thereby conflicting with the intended spirit and purpose of the ordinance.” *Martin*, 286 Va. at 73, 743 S.E.2d at 145. Indeed, by virtue of the settlement *agreed to when the prior variance was granted to this property*, the applicant already enjoys a larger dwelling than contemplated by the Zoning Ordinance. 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 RM zone. 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).

**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.**

The clear purpose of the variance request is to allow the applicants to build a larger addition than the Zoning Ordinance – and the covenants included in their chain of title through the consent decree – would otherwise allow. HAF respectfully submits that this is not the basis for a variance. The same reason could be claimed by any landowner who wants to exceed the requirements of the Zoning Ordinance.

**C. The Applicants have not shown that a “variance is not contrary to the purpose of the ordinance.” Zoning Ordinance § 2-201.1.**

The entire purpose of the side-lot setback requirement is to preserve open space and provide a five-foot buffer between detached buildings. Zoning Ordinance § 3-1108(C). For the reasons described in Section III.A, above, the restriction’s applicability to this more than 38 foot lot is at the core of the open space requirements of the Ordinance. Allowing a variance under these circumstances would result in “the granting of variances piecemeal that would ultimately nullify the zoning ordinance requiring a [side] yard, thereby conflicting with the intended spirit and purpose of the ordinance.” *Martin*, 286 Va. at 73, 743 S.E.2d at 145.

**D. 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 and the consent decree of record. 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.

**E. 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 “unusual configuration” of the northern boundary line is a voluntary creation of the predecessors in title to the applicants, and the Boundary Line Agreement that created that configuration was a matter of record when the applicants purchased their property. Equally a matter of record was the February 12, 1985 consent decree in *McCance v. Board of Zoning Appeals for the City of Alexandria*, with all of its restrictions. 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, and makes no suggestion that they were unaware of the restrictions contained in the consent decree. These circumstances do not satisfy the requirements of Zoning Ordinance § 11-1103(c). See *Alleghany Enterprises, Inc. v. Bd. of Zoning Appeals of City of Covington*, 217 Va. 64, 69, 225 S.E.2d 383, 386 (1976) (“self-inflicted hardship ... whether deliberately or ignorantly incurred, affords no basis for the granting of a variance); 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).

**F. 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).**

The application relies entirely on the stated support of the current owners of 318 S. Fairfax Street in an effort to avoid the substantial detriment to the adjacent property and nearby properties that will occur in the event that a variance is granted. One of the reasons for regulation by zoning ordinance is to provide permanent protection to the community from the ad hoc decisions of the individuals who own the land at any given time. Another is to guard against neighborly pressure which might otherwise inure to the detriment of the community as a whole. This is particularly so on questions of preserving open space and preventing the “tragedy of the commons” where the individual interests of single land owners’ conflicts with their general interests in preserving the common good. HAF submits that permitting an ad hoc variance to facilitate a greater building density than the Code and the consent decree allow works to the substantial detriment of the entire Old and Historic District. As noted above, when accepted by the City, representing the BZA, the development restrictions in the consent decree became conditions of the zoning variance granted in 1984 – in effect a proffer – that can only be modified by the granting of a new variance according to the standards of the Zoning Ordinance. The agreement of the neighboring property owner is not sufficient to allow the

second story addition unless the BZA determines that the release of the restriction meets the applicable standards, which we contend it does not.

**G. 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).**

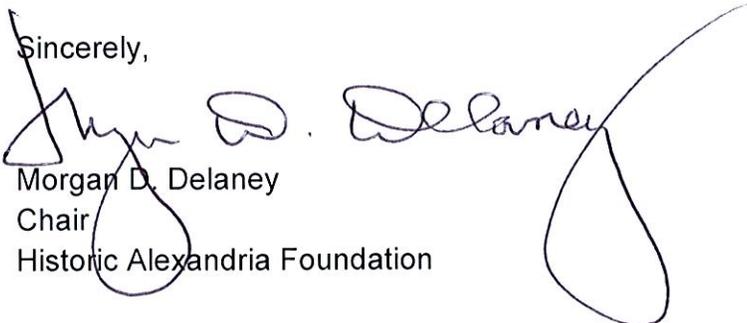
A slight offset of the property line like that existing in the present case – which involves a property with 38 feet of street frontage – is not the type of situation that confounds that drafters of zoning regulations. To the contrary, the City Council has plainly determined that a five-foot side yard is the current minimum for a detached house. Zoning Ordinance § 3-1106(A)(2). And the Virginia Supreme Court has been clear that this is a demanding standard to meet. *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”). “Moreover, authorization of the variance upon this ground would amount to a policy judgment that structures built in the Old and Historic District should only be subject to approval of the BAR and need not comply with the RM Zoning Ordinance and would, therefore, constitute an “administrative infringement upon the legislative prerogatives of the local governing body.” *Id.* at 75; 743 S.E.2d at 146 (citations omitted).

\* \* \*

For all of these reasons, HAF respectfully opposes the grant of the requested variance for 320 South Fairfax Street. The application does not satisfy any of the criteria for a variance set forth in Section 2-201.1, as well as the specific requirements of Section 11-1103(B), (C), (D) and (E).

Thank you for your consideration of our statement.

Sincerely,



Morgan D. Delaney  
Chair  
Historic Alexandria Foundation

Board of Zoning Appeals  
City of Alexandria  
Page 8

cc.

Duncan Blair

[DBlair@landcarroll.com](mailto:DBlair@landcarroll.com)

Sam Shelby, Urban Planner,

[sam.shelby@alexandriava.gov](mailto:sam.shelby@alexandriava.gov)

Mary Christesen,

Acting Land Use Services Division Chief,

[mary.christesen@alexandriava.gov](mailto:mary.christesen@alexandriava.gov)

Chrishaun Smith,

Acting Zoning Manager,

[shaun.smith@alexandriva.gov](mailto:shaun.smith@alexandriva.gov)

Attachments:

- (1) Deed Book 698 Page 267
- (2) Deed Book 502 Page 507
- (3) 1885\_Sandborn 300 Block S Fairfax
- (4) Deed Book 1142 Page 344

1841

BOOK 698 PAGE 267

DEED OF SUBDIVISION

THIS DEED, made this 6th day of June, 1969, by and between RICHARD E. PALMER and MARY LOU PALMER, his wife, parties of the first part; and JOSIAH S. EVERLY and WILLIAM C. TURNER, Surviving Trustees, parties of the second part; and SECURITY SAVINGS & LOAN ASSOCIATION, Beneficiary, party of the third part:

WHEREAS, the said parties of the first part are owners of property in the City of Alexandria, Virginia, known as 322 South Fairfax Street and 315 South Lee Street, having acquired the same by Deeds in Deed Book 692, Page 278, and Deed Book 317, Page 87, in the Land Records of the City of Alexandria, Virginia, respectively; and,

WHEREAS, premises 315 South Lee Street is encumbered by the lien of that certain Deed of Trust dated April 26, 1966, duly recorded in Deed Book 648, Page 447, City of Alexandria, Virginia, Land Records, to the said parties of the second part and Henry P. Thomas, now deceased, as Trustees, to secure to the party of the third part, Beneficiary, present holder of said indebtedness, as more particularly described in said Deed of Trust; and,

WHEREAS, it is the desire of the said parties hereto, being all the parties in interest, to subdivide said property in accordance with plat attached hereto and expressly made a part hereof, prepared by Alfred Copeland, C.L.S., dated March, 1969.

NOW, THEREFORE, THIS DEED WITNESSETH: That the said parties of the first and second parts, in consideration of the sum of Ten Dollars (\$10.00) and other valuable consideration, the said parties of the second part, Trustees as aforesaid, acting pursuant to authority of the party of the third part, Beneficiary, evidenced by its becoming a party to this instrument, does hereby subdivide the above-described property as shown on plat attached hereto and incorporated herein by reference, made by Alfred Copeland, C.L.S., dated March, 1969, and approved by the proper authorities of the City of Alexandria, Virginia, on March 20, 1969. The said subdivision hereby made is known and

*Davis & Knapp*  
*Turner &*  
*Hall*  
7-69

designated as Lots 500 and 501, Subdivision of the Property of RICHARD E. PALMER.  
The said parties of the first and second parts hereunto, do hereby certify that  
the subdivision is made with their free consent and in accordance with their  
desire.

NOW, THEREFORE, THIS DEED FURTHER WITNESSETH: That the said parties of  
the first part, in consideration of the foregoing facts and the sum of One  
Dollar (\$1.00), cash in hand paid, do hereby grant and convey to the parties  
of the second part, Surviving Trustees, all that portion of premises 322 South  
Fairfax Street which is now part of premises 315 South Lee Street, and desig-  
nated Lot 501, Subdivision of the Property of RICHARD E. PALMER, for the  
purpose of supplementing and adding to the description of property encumbered  
in Deed Book 648, Page 447, City of Alexandria, Virginia, Land Records. The  
said former Deed of Trust shall remain in full force and effect as herein  
supplemented.

WITNESS the following signatures and seals, the said party of the third  
part having caused this Deed to be signed by its respective appropriate  
officers, its respective corporate seal to be hereto affixed, attested by its  
appropriate respective officers, pursuant to due and proper authority duly  
heretofore had.



Richard E. Palmer (SEAL)  
Richard E. Palmer

Mary Lou Palmer (SEAL)  
Mary Lou Palmer

Josiah S. Everly (SEAL)  
Josiah S. Everly, Surviving Trustee

William C. Turner (SEAL)  
William C. Turner, Surviving Trustee

Attest:

Albert H. Jenaker  
Secretary

SECURITY SAVINGS & LOAN ASSOCIATION

By: Robert J. Paul  
Executive Vice President

STATE OF VIRGINIA:

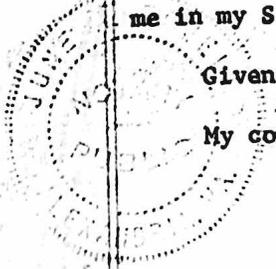
to-wit:-

CITY OF ALEXANDRIA:

I, June A. Dowell, a Notary Public in and for the State and City, aforesaid, do hereby certify that Richard E. Palmer and Mary Lou Palmer, his wife, whose names are signed to the writing foregoing and hereto annexed, bearing date on the 6th day of June, 1969, have acknowledged the same before me in my State and City, aforesaid.

Given under my hand this 17th day of June, 1969.

My commission expires: June 5th, 1971.



June A. Dowell  
Notary Public

STATE OF VIRGINIA:

to-wit:-

CITY OF ALEXANDRIA:

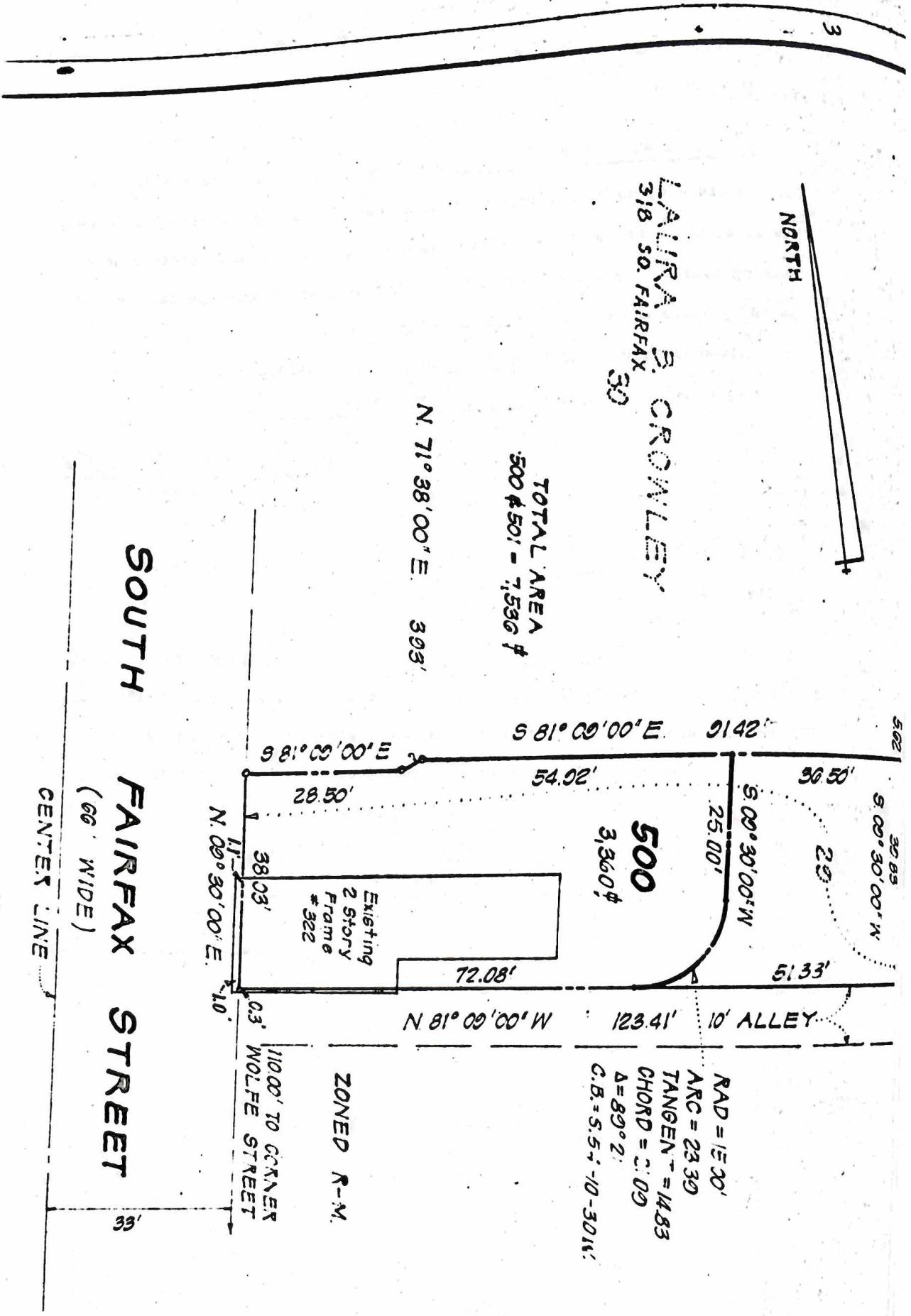
I, June A. Dowell, a Notary Public in and for the State and City, aforesaid, do hereby certify that Josiah S. Everly and William C. Turner, Surviving Trustees, whose names are signed to the writing foregoing and hereto annexed, bearing date on the 6th day of June, 1969, have acknowledged the same before me in my State and City, aforesaid.

Given under my hand this 17th day of June, 1969.

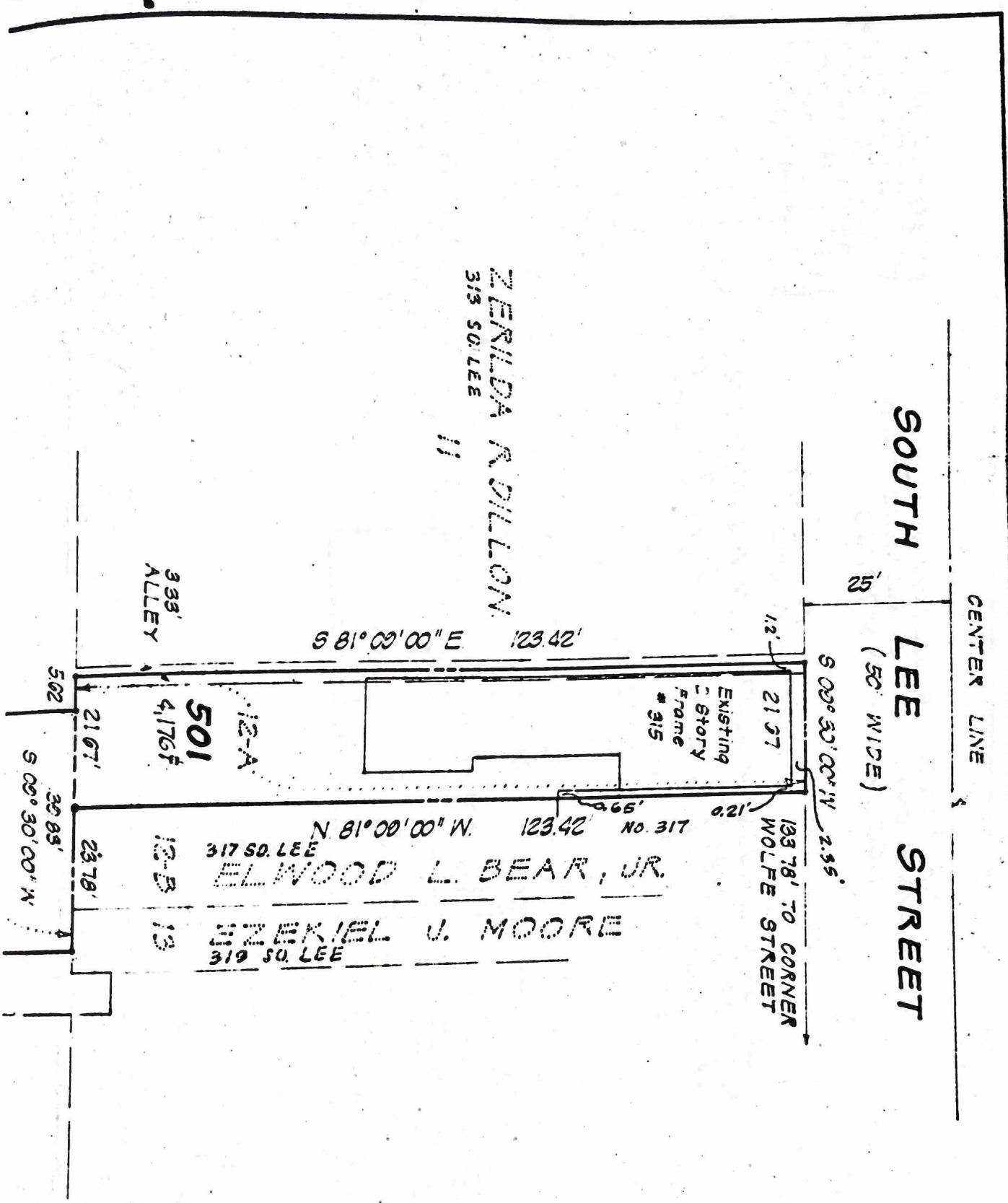
My commission expires: June 5th, 1971.



June A. Dowell  
Notary Public



Alexandria City  
 amended, Sec.  
 Approval of a  
 null and void  
 recorded with  
 after date of  
 Approval of th  
 and void after



SOUTH LEE STREET (50' WIDE)

CENTER LINE

ZERILDA R. DILLON  
313 SO. LEE

333' ALLEY

501  
4,176<sup>1</sup>/<sub>2</sub>-A

Existing 2 Story Frame # 315

ELWOOD L. BEAR, JR.  
317 SO. LEE No. 317

EZEKIEL U. MOORE  
319 SO. LEE

133.78' TO CORNER WOLFE STREET

STAT THE BEST RICH, D & U DEED OWEN HOUSE BOOK VIRGIN

Virginia City Code, 1965 88  
4, Sec. 34-14(5)  
of a final plat shall be  
nd void if the plat is not  
ed within ninety (90) days  
date of approval....  
al of this plat shall be null  
and void.

# RICHARD E. PALMER

SUBDIVISION  
OF THE PROPERTY OF

PARCELS 12-A & 20, BLOCK 2, ASSM'T MAP # 147  
ALEXANDRIA, VIRGINIA  
SCALE 1"=20' MARCH 1969

COPELAND & WATSON  
CIVIL ENGINEERING  
711 N. FAYETTE ST. ALEX., VA.  
LAND SURVEYING

<b>APPROVED</b>	
CITY PLANNING COMMISSION	
ALEXANDRIA, VA.	
3-20-69 DATE	Richard E. Maxwell CHAIRMAN DATE EST. OF PLANNING

1841

1841

# SURVEYOR'S CERTIFICATE

I ALFRED COPELAND, A DULY CERTIFIED LAND SURVEYOR IN THE STATE OF VIRGINIA, DO HEREBY CERTIFY, THAT I HAVE CAREFULLY SURVEYED THE PROPERTY DELINEATED BY THIS PLAT, THAT IT IS CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF; THAT THE PROPERTY IS NOW IN THE NAME OF RICHARD E. & MARY L. PALMER, THAT PARCEL 12-A WAS ACQUIRED FROM NELSON D. & JOSEPHINE F. ZIMMERMAN BY DEED DATED APRIL 11, 1951, AND RECORDED IN DEED BOOK 317 AT PAGE 87, THAT PARCEL 20 WAS ACQUIRED FROM HENRY ANDERSON, OWEN JONES & GLENN RICHARD, TRUSTEES OF THE OLD PRESBYTERIAN MEETING HOUSE OF ALEXANDRIA, VIRGINIA, BY DEED DATE DEC 20, 1968, AND RECORDED IN DEED BOOK 692 AT PAGE 278 AMONG THE LAND RECORDED OF THE CITY OF ALEXANDRIA, VIRGINIA.



*Alfred Copeland*  
ALFRED COPELAND  
CERTIFIED LAND SURVEYOR

VIRGINIA:  
In the Clerk's Office of the Corporation Court of the City of Alexandria, this instrument was received and the Taxes imposed by Sec. 5C-54, (a) and (b), of the Code have been paid and with the annexed certificate, admitted to record on June 12, 1969 at 11:30 o'clock A. M.  
Teste:

*Alvin W. Smith*

Clerk

111

BOUNDARY LINE AGREEMENT

THIS DEED, made this 30th day of July, 1959, by and between HENRY W. ANDERSON, JR., GEORGE M. ADAMS, JAMES H. BROWN and ~~JAMES H. BROWN~~ <sup>surviving</sup> TRUSTEES, parties of the first part; and CLAUDE R. YATES, JR. and MARGARET V. YATES, his wife, parties of the second part; and THOMAS J. GOBE and CAROLENA Y. GOBE, his wife, beneficiaries, parties of the third part. WHEREAS, by deed dated April 30th, 1957 and recorded in Deed Book 454, Page 58 of the City of Alexandria, Virginia Land Records, the parties of the first part acquired title to premises known as 320 South Fairfax Street, Alexandria, Virginia, and,

WHEREAS, by deed dated September 27th, 1956 and recorded in Deed Book 440, Page 212 of the City of Alexandria, Virginia Land Records, the parties of the second part acquired title to property known as premises 318 South Fairfax Street, Alexandria, Virginia, and

WHEREAS, by recent surveys of the properties aforesaid, it has been determined that the true boundary line does not conform to the deed descriptions, but as erected on the ground 318 South Fairfax Street encroaches upon the ownership of 320 South Fairfax Street to a varying extent, which condition has existed for a period in excess of the time required by the Statute of Limitations and of adverse possession, and,

WHEREAS, the parties hereto have mutually agreed and desire to adjust the matter by adopting the line of common ownership in conformity with actual occupancy of the improvements and to correct of record the boundary line by establishing the existing occupancy as the permanent boundary between said properties.

NOW, THEREFORE, THIS DEED WITNESSETH: In consideration of the foregoing facts and the sum of One Dollar (\$1.00), the parties of the first ~~and third~~ part do hereby grant, convey, release and quit-claim with special warranty unto the said parties of the second part, all that land to north of fence line on the south of 318



My Commission Expires April 19, 1960

Given under my hand this 25th day of August, 1959.

D. C. Wells

Notary Public

My Commission Expires April 19, 1961

STATE OF VIRGINIA :  
to-wit:-  
CITY OF ALEXANDRIA:

I, June A. Caldwell, a Notary Public in and for the State and City, aforesaid, whose commission expires on the 18th day of June, 1963, do hereby certify that Claude R. Yates, Jr. and Margaret V. Yates, his wife, whose names are signed to the writing foregoing and hereto annexed, bearing date on the 30th day of July, 1959, have acknowledged the same before me in my State and City, aforesaid.

Given under my hand this 10th day of September ~~August~~, 1959.

June A. Caldwell  
Notary Public

STATE OF MARYLAND:  
to-wit:-  
CITY OF BALTIMORE:

I, Harry J. Corbrough, a Notary Public in and for the State and City, aforesaid, whose commission expires on the 1st day of May, 1961, do hereby certify that James H. Brown, Trustee, whose name is signed to the writing foregoing and hereto annexed, bearing date on the 30th day of July, 1959, has acknowledged the same before me in my State and City, aforesaid.

Given under my hand and Notarial Seal this 29th day of September, 1959.

Harry J. Corbrough  
Notary Public

VIRGINIA:

In the Clerk's Office of the Corporation Court of the City of Alexandria on Nov. 10, 1959, this deed was received and with the annexed certificate, admitted to record at 1:00 clock, 35 P.M.

Testes

Carl R. Anderson  
Clerk



of 320 North Fairfax Street and  
ce line as a true boundary line  
vacate the alley referred to  
alley along the fence line to  
aid lines is attached hereto  
in herein, signing and  
are the beneficial owners  
k 454, page 58, and to  
thorize and confirm this  
eir Trustees.

W. Anderson  
Anderson, Jr., Trustee

Adams  
Adams, Trustee

Brown  
Brown, Trustee

Yates, Jr.  
Yates, Jr.

M. V. Yates  
Yates

Gore  
Gore

Gore  
Gore

Public in and for the State  
e 19 day of April  
Gore & Carolene  
are signed to the writing  
0th day of July, 1959,  
y, aforesaid.



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SEE

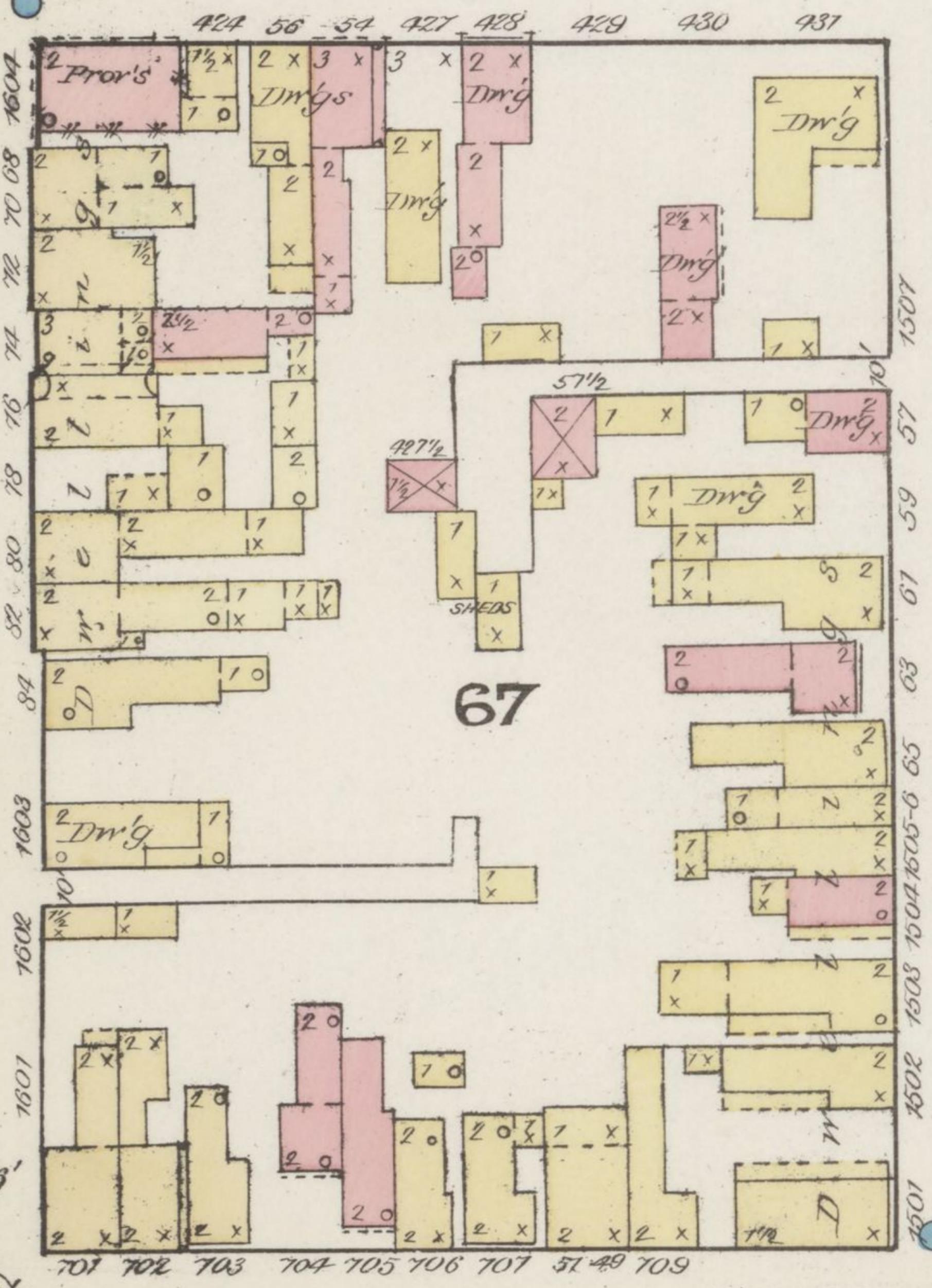
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8521-A

VIRGINIA:

1142-344

IN THE CIRCUIT COURT FOR THE CITY OF ALEXANDRIA

ANNE McCANCE,

Petitioner,

vs.

AT LAW NO. 9009

THE BOARD OF ZONING APPEALS  
FOR THE CITY OF ALEXANDRIA,

and

CAROLYN V. TITUS,

and

CHARLES D. ALLEN, JR.,

Defendants.

CONSENT ORDER

UPON MOTION of the parties for entry of this Consent Order in settlement of the Petition for Writ of Certiorari filed by the Petitioner, Anne McCance, against the Board of Zoning Appeals for the City of Alexandria, Defendant; and

IT APPEARING TO THE COURT that the Petitioner has appealed the decision of the Defendant rendered on May 10, 1984 in case no. 5045 granting a five (5) foot variance in the side yard set-back for the premises required by §7-6-21(d)(2) of the Alexandria City Code to the owners of 322 South Fairfax Street, Alexandria, Virginia, Charles D. Allen, Jr. and Carolyn V. Titus, also Defendants herein; and

IT FURTHER APPEARING TO THE COURT that the parties have settled this matter, the terms, conditions and covenants of which settlement are hereinafter set forth; it is, therefore,

ORDERED that the Petition filed herein shall be and hereby is dismissed with prejudice subject to the terms, condi-

tions and covenants of the settlement agreement by and between the parties, to-wit:

"Any addition built to 322 South Fairfax Street, Alexandria, Virginia shall continue for no more than twenty-four (24) feet from the front lot line as a two story addition of normal height ; and thereafter, as a one story addition of normal height for an additional nine and one-half (9-1/2) feet. The owner of said property covenants that there will never be any improvement built on top of the one story addition.

*AMC*

"Further, the owner covenants to not construct a building (excluding swimming pool and similar structures) in the area east of the one story addition for a period of ~~twenty (20)~~ years from date of this Consent Order. TEN (10)

*AMC*

"Further, the owner covenants that any chimney built for the new addition will be completely within the exterior wall of the proposed addition."

and, it is

FURTHER ORDERED that this Consent Order and settlement agreement between the parties shall be spread among the land records of the City of Alexandria by the Clerk of this Court; and

THIS ORDER IS FINAL.

ENTERED this 12<sup>th</sup> day of February, 1985

*[Signature]*  
\_\_\_\_\_  
Judge

SEEN AND AGREED:

*[Signature]*  
\_\_\_\_\_  
Anne McCance  
Petitioner

*[Signature]*  
\_\_\_\_\_  
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Carolyn V. Titus  
Carolyn V. Titus  
Owner of 322 South Fairfax  
Street, Alexandria, VA

Charles D. Allen, Jr.  
Charles D. Allen, Jr.  
Owner of 322 South Fairfax  
Street, Alexandria, VA

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Clerk