



CITY OF WINCHESTER, VIRGINIA

Rouss City Hall
15 North Cameron Street
Winchester, Virginia 22601
www.winchesterva.gov

Telephone: (540) 667-1815
FAX: (540) 722-3618
TDD: (540) 722-0782

BOARD OF ZONING APPEALS AGENDA

May 14, 2014 - 4:00 P.M.
Council Chambers - Rouss City Hall

1. POINTS OF ORDER

- A. Roll Call
- B. Approval of Minutes – March 12, 2014
- C. Reading of Correspondence

2. PUBLIC HEARINGS

BZA-14-249 Request of Marsh And Legge Land Surveyors, PLC, on behalf of Emily M. Seiler, for a variance pertaining to the 8,000sf minimum lot area and the 60' minimum lot width pursuant to Sections 4-3-1 and 4-4-1 of the Winchester Zoning Ordinance, for the properties located at 679 Berryville Avenue (*Map Number 175-02-A-4 - > <01*) and 683 Berryville Avenue (*Map Number 175-02-A-5 - > <01*), zoned Medium Density Residential (MR) District with Corridor Enhancement (CE) District overlay. The request involves a boundary line adjustment between two nonconforming lots of record.

BZA-14-254 Request of Manuel C. Medina for a variance pertaining to required side yard setback, off-street parking setback (side and front), required lot width, vehicular travel lane width, and required off-street parking pursuant to Sections 8-6-1d, 18-6-3.2, 8-4, 19-5-2, and 18-6-5.1 of the Winchester Zoning Ordinance, for the property at 2109 Valley Ave (*Map Number 250-02- -7 - > <01*), zoned Highway Commercial (B-2) District with Corridor Enhancement (CE) District overlay. The request involves a request to modify use restrictions previously established by the Board of Zoning Appeals.

3. NEW BUSINESS

None

4. OLD BUSINESS

None

5. ADJOURN

**BOARD OF ZONING APPEALS
MINUTES**

The Winchester Board of Zoning Appeals held its regular meeting on Wednesday, March 12, 2014, at 4:00 p.m. in Council Chambers, Rouss City Hall, 15 N. Cameron Street, Winchester, Virginia.

POINTS OF ORDER:

PRESENT: Chairman Phillips, Mr. Pifer, Ms. Marchant, Mr. Crawford
ABSENT: Mr. Ridgell, Mr. Lewis
STAFF: Aaron Grisdale, Catherine Clayton
VISITORS: Eric Lowman

CONSENT AGENDA:

Approval of Minutes of February 12, 2014.

Chairman Phillips called for corrections or additions to the minutes. Hearing none, he called for a motion. Mr. Pifer moved to approve as submitted. Ms. Marchant seconded the motion. Voice vote was taken and the motion passed 4-0.

READING OF CORRESPONDENCE:

None.

PUBLIC HEARINGS:

BZA-14-95 Request of Oakcrest Properties for a variance pertaining to off-street parking requirements pursuant to Section 18-6-5 of the Winchester Zoning Ordinance, for the property located at 609 S. Kent Street (Map Number 213-01-G-15 - > <01), zoned Limited High Density Residential (HR-1) District. The applicant is seeking this variance to eliminate the off-street parking requirement of one (1) space.

Mr. Grisdale presented the staff report stating that the request is for a variance of off-street parking requirements for a proposed single family dwelling. The applicant is seeking to construct a single family dwelling that is similar in size and orientation as the previous dwelling that was demolished in 2011 under the spot blight program. The lot is legally nonconforming and the dwelling may be constructed by right on the parcel provided the minimum development setback standards are met. He further advised that the parcel was subject to a previous Board of Zoning Appeals action in 2009 which involved the relief of side yard setback requirements. The Board granted the variance conditioned on a footing survey be completed when the SFD is constructed and the structure meeting the fire separation requirements of the Uniform Statewide Building Code. He concluded by stating that the previous single family dwelling was situated closed to the street and did not provide off-street parking which is the same as the applicant is

now requesting. He then advised that staff has not received any correspondence to this application either positive or negative and that he is available for any questions.

Chairman Phillips called for questions and discussion from the Board.

Mr. Pifer asked if the HR zoning and the off-street parking requirements have anything to do with the number of bedrooms a property has. Mr. Grisdale responded that the current parking standards do not take in to account the number of bedrooms a single family dwelling has rather it is strictly off the use as a single family dwelling so it is just one (1) space required for that type of use.

Chairman Phillips Opened the Public Hearing

Mr. Eric Lowman of Oakcrest Properties was sworn in by Mr. Crawford. Mr. Lowman stated that he is in favor of the project and that Oakcrest is looking to construct a single family dwelling to re-establish a little beauty in the South Kent Street area. He then thanked the Board.

Chairman Phillips called for questions from the Board.

Mr. Pifer asked if the property is to be sold or rented to which Mr. Lowman stated that everything is for sale. He added that builders will be building it but that he is not sure if Oakcrest will be actively selling it on the market. Mr. Lowman added that if it does not sell, it may be sold internally to their properties division for rental. Mr. Pifer then asked if the previous structure was a two (2) or three (3) bedroom to which Mr. Lowman stated that he is not aware of that information. Mr. Pifer then added that the plans show a four (4) bedroom dwelling and that he is concerned about parking because with a four (4) bedroom home, an additional parking space may be needed. He also added that parking seems tight as it is now on South Kent Street. He is concerned that if you add another bedroom, you will potentially be adding another vehicle to the street and eliminating an additional off-street parking space. Since the frontage is on the 32-foot side, that is only enough parking for about two (2) cars and with more bedrooms you may take a space from a neighbor.

Ms. Marchant asked Mr. Grisdale about the 2009 variance and whether his office helps an applicant determine if there are other variances that may be needed or has the zoning changed since 2009. Mr. Grisdale responded that the zoning designation for the property has not changed and typically in these types of development scenarios, staff may walk through the application process and advise if there are any specific variances or deficiencies to the application. He said that he cannot speak to the application at that time because it was under a previous Zoning Administrator and that he was not privy to the conversations.

Chairman Phillips Closed the Public Hearing

Chairman Phillips called for discussion from the Board.

Chairman Phillips asked if the Board could restrict the number of bedrooms that would be allowed as it relates to this variance request. Mr. Grisdale stated that is within the Board's

purview if they choose to do so. Chairman Phillips then asked if the Planning Commission would be reviewing this application to which Mr. Grisdale stated no, that this is a permitted by right use so it only requires an application for a building permit, staff review and issuance. The only reason that this has to go before the Board of Zoning Appeals is because of the deficiency for proposed parking.

Mr. Pifer stated that he is concern about the lack of parking for a four (4) bedroom dwelling especially if it is used as a rental. Mr. Lowman then addressed this concern stating that if it is leased, it would be done as a single-lease rental. Mr. Crawford said that if the Board proposed a three (3) bedroom limitation on the request, he could support it. Ms. Marchant commented about the number of bedrooms stating that since it is a single family dwelling, whether it has three (3) bedrooms or four (4) bedrooms, and whether the applicant decides to rent it out, really should not be of concern to the Board. It would be the applicant's concern about parking or the lack thereof. She further added that she is not sure if the Board should restrict this.

Chairman Phillips called for further discussion. Hearing none, he called for a motion.

Mr. Pifer moved to grant a variance to BZA-14-95 because the strict application of this Ordinance would produce a clearly demonstrable hardship; that such hardship is not shared generally by other properties in the same zoning district and the same vicinity; and that the authorization of such variance will not be of substantial detriment to adjacent property and that the character of the district will not be changed by the granting of the variance. The approval is contingent upon the following conditions:

- 1.The issuance of this variance is approved only for the proposed use of single family residential; any other uses established on the property will need to meet the established parking requirements.
- 2.The previously issued variance (09-199) shall remain valid.
- 3.The issuance of this variance is granted conditioned upon the construction of not more than a three (3) bedroom, single family dwelling.

Mr. Crawford seconded the motion.

Roll call vote was taken and the motion passed 4-0.

NEW BUSINESS:

None.

OLD BUSINESS:

None

ADJOURNMENT:

With no further business before the Board, the meeting adjourned at 4:17 p.m.

CASE #: 14-249
 FEE AM'T: \$1650.00
 DATE PAID: 04-21-14



Rouss City Hall
 15 North Cameron Street
 Winchester, VA 22601
 540-667-1815
 TDD 540-722-0782

APPLICATION FOR BOARD OF ZONING APPEALS

Please print or type all information	Michael M. Artz c/o Marsh and Legge Land Surveyors, PLC		
540-667-0468	Applicant		
Telephone	560 North Loudoun Street		
mikeartz@marshandlegge.com	Street Address		
E-mail address	Winchester	VA	22601
	City	State	Zip

<i>Emily Seiler</i>	Emily M. Seiler		
OWNER'S SIGNATURE (use reverse to list additional owners)	Owner Name (as appears in Land Records)		
540-678-3999	683 Berryville Avenue		
Telephone	Street Address		
E-mail address	Winchester	VA	22601
	City	State	Zip

REQUEST TYPE CODE - Please mark type of request and complete information
KEY: V = Variance; AM = Administrative Modification; I = Interpretation

REQUEST TYPE	ORDINANCE SECTION	PERTAINING TO:
V	4-3-1	8,000 square foot minimum lot area
V	4-4-1	60' minimum lot width

APPLICATION FEE: \$500 for 1st code section; \$100 for each additional code section
Public hearing sign deposit fee: \$50

PROPERTY LOCATION Current Street Address(es) 679 and 683 Berryville Avenue Zoning MR (CE)
 Tax Map Identification - (sections, blocks, lots) TM #175-2-A-4, 5

REQUIRED MATERIALS LIST

- 1 copy of application (this form completed)
- 10 copies of letter explaining request and grounds for request
- 10 Copies of plans/or drawings, and surveys
- Fee (check made payable to the **Treasurer, City of Winchester**)
- List of adjacent property owners (public hearing items only). List must provide name and mailing address as appears in Land Records for owners of all properties within 300 feet of any portion of the subject site. If provided by staff, there is a \$25 fee.
- Disclosure of Real Parties in Interest (list all equitable owners)
- Public Hearing Sign Deposit Fee - \$50 (refundable upon return of sign)

All public hearing materials must be submitted at one time by 5:00 PM on the deadline date for the next regular meeting in order to be placed on the agenda. Only complete applications, which include the above materials, will be accepted.

I/we hereby certify that the above information is complete and correct and that public notification will be properly posted on the site not later than 14 days before the public hearing (if applicable) and that all delinquent real estate taxes have been paid per Section 23-9.

APPLICANT'S SIGNATURE Michael M. Artz DATE 4/21/14

MARSH & LEGGE LAND SURVEYORS, P.L.C.

560 North Loudoun Street, Winchester, VA 22601 ■ 540-667-0468 ■ Fax: 540-667-0469 ■ E-mail: office@marshandlegge.com

April 18, 2014

VIA E-MAIL AND FIRST CLASS MAIL

Mr. Aaron Grisdale, Director
Department of Zoning and Inspections
City of Winchester
15 North Cameron Street
Winchester, Virginia 22601

Re: Request to Board of Zoning Appeals for Boundary Line Adjustment
Lots 4 and 5, Block One, Harris Addition to the City of Winchester
679 and 683 Berryville Avenue
City of Winchester, Virginia
M & L Project No. 9657

Dear Mr. Grisdale:

Please accept this formal request for the City of Winchester Board of Zoning Appeals to consider variances to Zoning Ordinance Section 4-3-1, which requires an 8,000 square foot minimum lot area, and Section 4-4-1, which requires a 60-foot minimum lot width.

Both of the above referenced lots have existing non-conformities with regard to these sections of the Ordinance. In addition, the common boundary line between the two lots runs through the existing shed/garage. The purpose of this request is to logically adjust the boundary lines so that the shed/garage will be wholly situated on proposed Lot 4-A, and straighten the common property line between the two lots to coincide with the existing driveway.

Thank you for your consideration of this matter. If you have any questions, please do not hesitate to give me a call.

Sincerely,



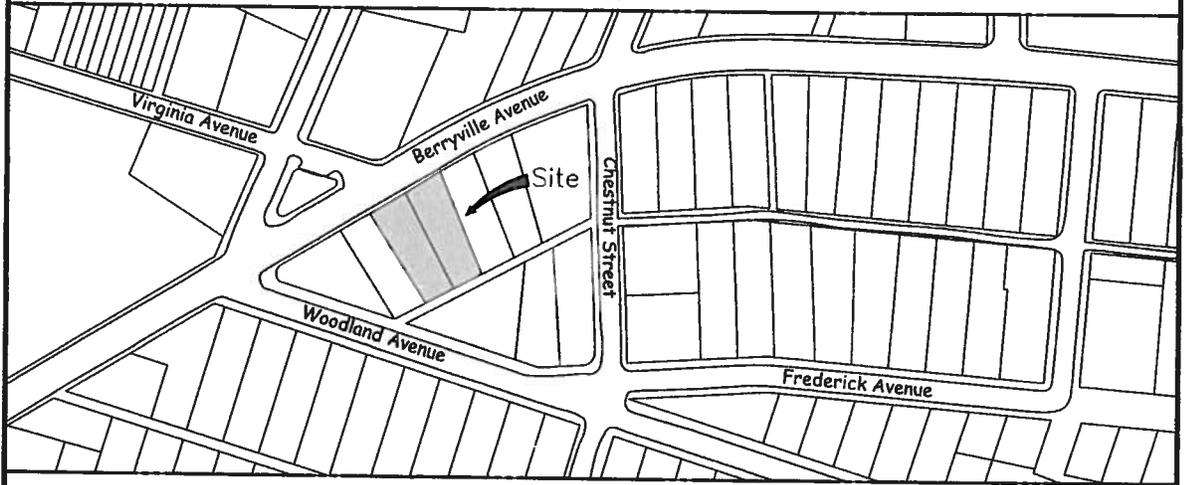
Michael M. Artz, L.S.

MMA/clh

**Boundary Line Adjustment of Lots 4 and 5,
Block One, Harris Addition to the City of Winchester**

Emily M. Seiler
679 Berryville Avenue TM #175-2-A-4 Instrument #040003395 ~ Lot 4
683 Berryville Avenue TM #175-2-A-5 Instrument #040003395 ~ Lot 5
April 17, 2014 City of Winchester, Virginia

Vicinity Map
1"=200'



SURVEYOR'S CERTIFICATE:

I, Michael M. Artz, a duly authorized land surveyor, do hereby certify that the land hereby adjusted is in the name of Emily M. Seiler and was acquired as stated in the Owner's Certificate. I further certify that these tracts are properly and accurately described and are within the boundaries of the original tracts.

Certified Land Surveyor

OWNER'S CERTIFICATE:

The undersigned fee simple owners hereby certify that the land herein adjusted is all of the property conveyed to the Emily M. Seiler by deed dated July 28, 2004 and recorded in Instrument #040003395. Said deed being of record in the Clerk's Office of the City of Winchester, Virginia.

This Boundary Line Adjustment as it appears on the accompanying plat is with the free consent and in accordance with the desires of the undersigned owner of said land and the same is hereby confirmed and submitted for record in the Clerk's Office of the City of Winchester, Virginia.

Emily M. Seiler

NOTARY CERTIFICATE:

STATE OF VIRGINIA; CITY/COUNTY OF _____, to-wit:

The foregoing owners consent and dedication was acknowledged before me by Emily M. Seiler this _____ day of _____, 2014.

My commission expires _____

Notary Public

CERTIFICATE OF APPROVAL

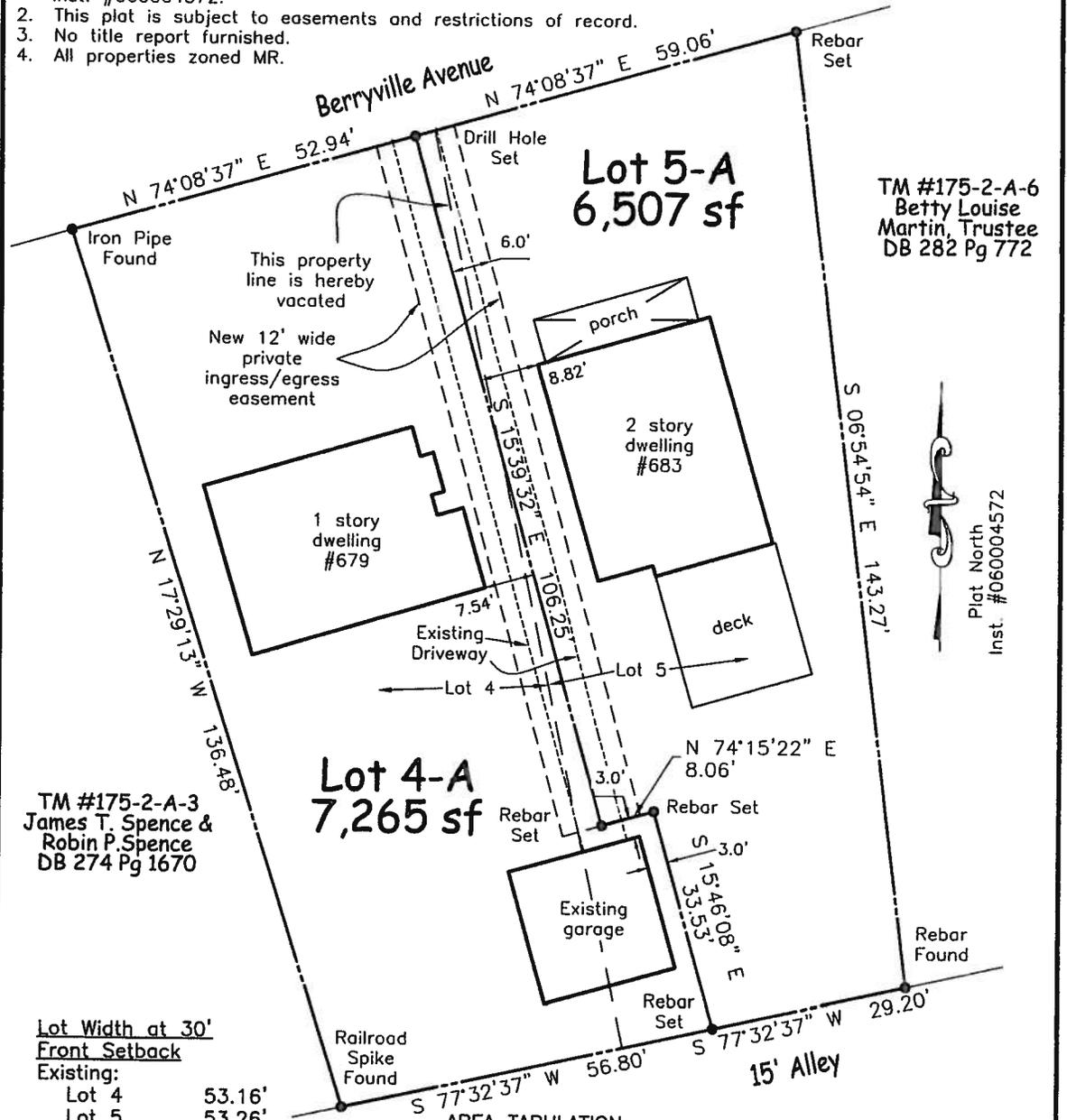
This Boundary Line Adjustment is approved by the undersigned in accordance with existing subdivision regulations and may be admitted to record.

date

Subdivision Administrator

Notes:

1. Boundary shown hereon was taken from survey of record in Inst. #060004572.
2. This plot is subject to easements and restrictions of record.
3. No title report furnished.
4. All properties zoned MR.



TM #175-2-A-6
Betty Louise
Martin, Trustee
DB 282 Pg 772

TM #175-2-A-3
James T. Spence &
Robin P. Spence
DB 274 Pg 1670

Lot Width at 30'
Front Setback

Existing:	
Lot 4	53.16'
Lot 5	53.26'
PROPOSED:	
Lot 4-A	51.98'
Lot 5-A	54.45'

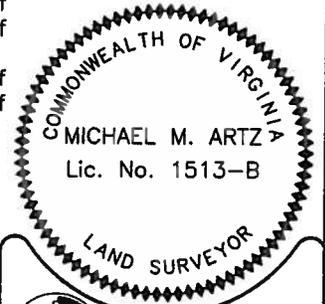
AREA TABULATION

EXISTING:	
TM #175-2-A-4	6,814 sf
TM #175-2-A-5	6,957 sf
PROPOSED:	
TM #175-2-A-4	7,265 sf
TM #175-2-A-5	6,507 sf

**Boundary Line Adjustment of
Lots 4 and 5**
Block One, Harris Addition to the City of Winchester

City of Winchester, Virginia
Scale: 1" = 20' Date: April 17, 2014

Present Owner:
Emily M. Seiler
TM #175-2-A-4 Inst.#040003395 ~ Lot 4
TM #175-2-A-5 Inst.#040003395 ~ Lot 5



**Marsh & Legge
Land Surveyors, P.L.C.**
560 North Loudoun Street
Winchester, VA 22601
Phone (540) 667-0468
FAX (540) 667-0469
EMAIL office@marshandlegge.com

**WINCHESTER BOARD OF ZONING APPEALS
REPORT AND RECOMMENDATION**



ISSUE/BACKGROUND

Case: BZA-14-249

Applicant: Michael M. Artz c/o Marsh and Legge Land Surveyors, PLC.

Location: 679 and 683 Berryville Avenue

Zoning: Medium Density Residential with Corridor Enhancement District Overlay

Future Land Use: Single Family Residential.

Legal Notice: The request for variance was advertised in the *Winchester Star* on April 30, 2014 and May 7, 2014. The property was required to be posted with a public hearing sign and notices were mailed to property owners within 300' of the subject property.

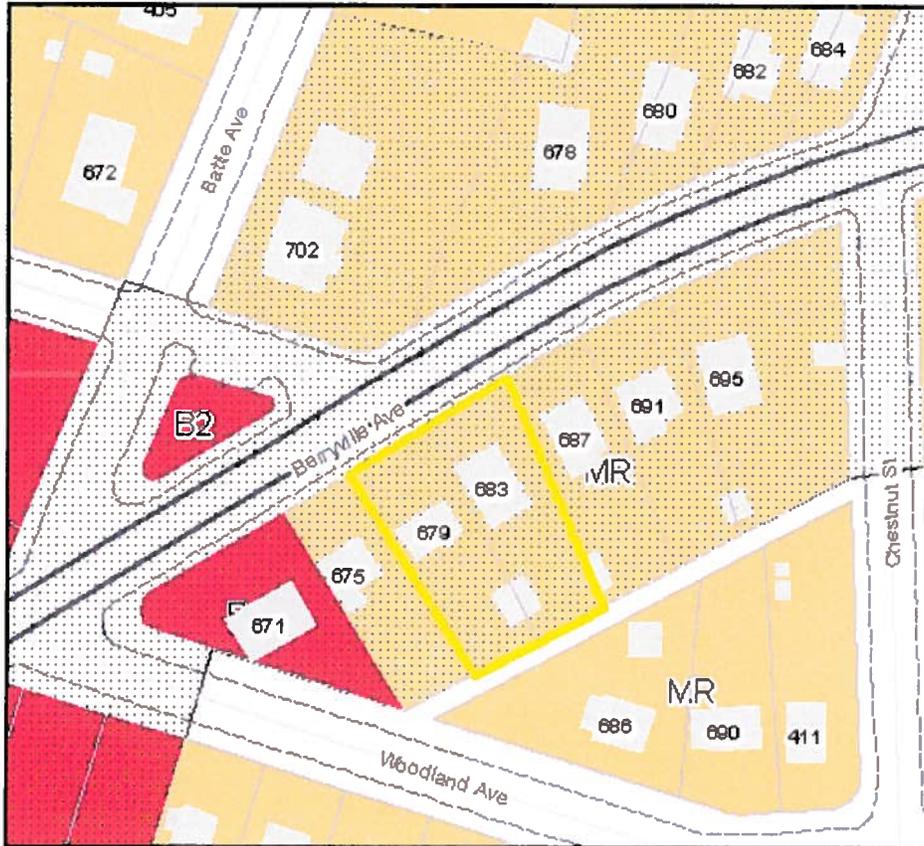
Applicant's Request: Request of Marsh And Legge Land Surveyors, PLC, on behalf of Emily M. Seiler, for a variance pertaining to the 8,000sf minimum lot area and the 60' minimum lot width pursuant to Sections 4-3-1 and 4-4-1 of the Winchester Zoning Ordinance, for the properties located at 679 Berryville Avenue (*Map Number 175-02-A-4 - > <01*) and 683 Berryville Avenue (*Map Number 175-02-A-5 - > <01*), zoned Medium Density Residential (MR) District with Corridor Enhancement (CE) District overlay. The request involves a boundary line adjustment between two nonconforming lots of record.

DISCUSSION/FINDINGS

The request before the Board of Zoning Appeals is for two variances pertaining to the minimum lot area and minimum lot width for parcels within the Medium Density Residential (MR) district.

The subject property is located on the south side of Berryville Avenue and is located within the Medium Density Residential (MR) district with Corridor Enhancement district overlay. Both 679 and 683 Berryville Avenue are improved with single family detached dwellings. The immediately adjacent properties on the east, south and west are similarly zoned MR and consist of primarily single family detached dwellings. The properties to the northwest and west are located in the Highway Commercial (B-2) district and

consist of a variety of uses including the post office, a church, and single family detached dwellings. The properties on the north side of Berryville Avenue are primarily zoned MR and are improved with single family dwellings.



Vicinity Zoning Map

Both of these parcels are legal nonconforming lots of record, meaning that they were legally platted years ago under different zoning standards and do not conform to the current zoning ordinance dimensional requirements for the MR district. As the applicant states within the request letter, there is presently a property line that divides the two parcels that goes through an existing garage. The properties are under common ownership and the owner desires to correct this issue and have the detached accessory structure entirely on the 679 Berryville Avenue parcel. An existing driveway off of Berryville Avenue straddles the property line leading to the garage.

Presently the two lots are fairly equal in terms of the deficient lot width and lot area. As a result of the boundary line adjustment, the lot at 679 Berryville Avenue will become more conforming to Zoning Ordinance standards and the lot at 683 Berryville Avenue will become less conforming.

	Existing Lot Width	Proposed Lot Width		Existing Lot Area	Proposed Lot Area
679 Berryville	53.16'	51.98'		6814 sf	7265 sf
683 Berryville	53.26'	54.45'		6957 sf	6507 sf

STAFF ANALYSIS & CONCLUSION

According to Section 20-2 of the Ordinance, the Board of Zoning Appeals is required to make three (3) specific findings in order to approve a variance request. These findings are based on evidence, testimony, and demonstration of certain criteria, which are further defined in Section 20-2-3.1 of the Ordinance.

Section 20-2-3.1: When a property owner can show that his property was acquired in good faith and where by reason of the exceptional narrowness, shallowness, size, or shape of a specific piece of property at the time of the effective date of the Ordinance, or where by reason of exceptional topographic conditions or other extraordinary situation or condition of such piece of property, or of the use or development of property immediately adjacent thereto, the strict application of the terms of the Ordinance would effectively prohibit or unreasonably restrict the use of the property or where the Board is satisfied, upon the evidence heard by it, that the granting of such variance will alleviate a clearly demonstrable hardship, as distinguished from a special privilege or convenience sought by the applicant, provided that all variances shall be in harmony with the intended spirit and purpose of the Ordinance.

1. **That the strict application of this Ordinance would produce a clearly demonstrable hardship.**
2. **That such hardship is not shared generally by other properties in the same zoning district and the same vicinity.**
3. **That the authorization of such variance will not be of substantial detriment to adjacent property and that the character of the district will not be changed by the granting of the variances.**

Staff is supportive of this variance request due to it being a minimal deviation from the Zoning Ordinance requirements in order to correct an existing undesirable site condition: the location of an accessory structure that is located on two separate parcels.

Note: Staff has received no letters of support or opposition to this application.

POSSIBLE MOTION(S)

1. **MOVE**, that the Board of Zoning Appeals **grant** a variance to Marsh And Legge Land Surveyors, PLC, on behalf of Emily M. Seiler, for a variance pertaining to the 8,000sf minimum lot area and the 60' minimum lot width pursuant to Sections 4-3-1 and 4-4-1 of the Winchester Zoning Ordinance, for the properties located at 679 Berryville Avenue (*Map Number 175-02-A-4 - > <01*) and 683 Berryville Avenue (*Map Number 175-02-A-5 - > <01*), zoned Medium Density Residential (MR) District with Corridor Enhancement (CE) District overlay, with the following condition:

- a. The issuance of this variance is approved only for the proposed boundary line adjustment dated April 17, 2014 or a version that is in substantial conformance with the proposal.

This variance is approved because:

- a. *The strict application of this Ordinance would produce a clearly demonstrable hardship.*
- b. *That such hardship is not shared generally by other properties in the same zoning district and the same vicinity.*
- c. *That the authorization of such variance will not be of substantial detriment to adjacent property and that the character of the district will not be changed by the granting of the variance.*

2. **MOVE**, that the Board of Zoning Appeals **deny** a variance to Marsh And Legge Land Surveyors, PLC, on behalf of Emily M. Seiler, for a variance pertaining to the 8,000sf minimum lot area and the 60' minimum lot width pursuant to Sections 4-3-1 and 4-4-1 of

the Winchester Zoning Ordinance, for the properties located at 679 Berryville Avenue (*Map Number 175-02-A-4 - > <01*) and 683 Berryville Avenue (*Map Number 175-02-A-5 - > <01*), zoned Medium Density Residential (MR) District with Corridor Enhancement (CE) District overlay, for the following reasons:

- a. (List reasons for denial).



Aaron M. Grisdale, CZA
Director of Zoning and Inspections



CASE #: 14-254
 FEE AM'T: \$975.00
 DATE PAID: 04-23-14

Rouss City Hall
 15 North Cameron Street
 Winchester, VA 22601
 540-667-1815
 TDD 540-722-0782

APPLICATION FOR BOARD OF ZONING APPEALS

Please print or type all information

Manuel Medina
Applicant

540-327-4116
Telephone

509 Cather Ave.
Street Address

manuel.c.medina@gmail.com
E-mail address

Winchester VA 22601
City State Zip

Manuel Medina
OWNER'S SIGNATURE (use reverse to list additional owners)

Manuel Medina
Owner Name (as appears in Land Records)

540-327-4116
Telephone

2109 Valley Avenue
Street Address

manuel.c.medina@gmail.com
E-mail address

Winchester VA 22601
City State Zip

REQUEST TYPE CODE - Please mark type of request and complete information
 KEY: V = Variance; AM = Administrative Modification; I = Interpretation

REQUEST TYPE	ORDINANCE SECTION	PERTAINING TO:
<input checked="" type="checkbox"/>	<u>8-6-1d</u>	<u>Required side yard setback</u>
<input checked="" type="checkbox"/>	<u>18-6-3.2</u>	<u>Off-street parking setback (side and front)</u>
<input checked="" type="checkbox"/>	<u>8-4-</u>	<u>Required lot width</u>
<input checked="" type="checkbox"/>	<u>19-5-2</u>	<u>vehicular travel lane width</u>
<input checked="" type="checkbox"/>	<u>18-6-5.1</u>	<u>Required off-street parking</u>

APPLICATION FEE: \$500 for 1st code section; \$100 for each additional code section
 Public hearing sign deposit fee: \$50

100.00 + \$50/sign + \$25 = \$175

PROPERTY LOCATION
 Current Street Address(es) 2109 Valley Ave. Winchester VA. 22601 Zoning B-2 (CE)
 Tax Map Identification - (sections, blocks, lots) 250-02-7-01

REQUIRED MATERIALS LIST

- 1 copy of application (this form completed)
- 10 copies of letter explaining request and grounds for request
- 10 Copies of plans/or drawings, and surveys
- Fee (check made payable to the Treasurer, City of Winchester)
- List of adjacent property owners (public hearing items only). List must provide name and mailing address as appears in Land Records for owners of all properties within 300 feet of any portion of the subject site. If provided by staff, there is a \$25 fee.
- Disclosure of Real Parties in Interest (list all equitable owners)
- Public Hearing Sign Deposit Fee - \$50 (refundable upon return of sign)

All public hearing materials must be submitted at one time by 5:00 PM on the deadline date for the next regular meeting in order to be placed on the agenda. Only complete applications, which include the above materials, will be accepted.

I/we hereby certify that the above information is complete and correct and that public notification will be properly posted on the site not later than 14 days before the public hearing (if applicable) and that all delinquent real estate taxes have been paid per Section 23-9.

APPLICANT'S SIGNATURE Manuel Medina DATE 4-23-2014

**Manuel Medina
509 Cather Avenue
Winchester Virginia
540 327 4116**

April 22, 2014

Rouss City Hall
15 North Cameron Street
Winchester, VA 22601

Request By Manuel Medina pertaining provide sufficient variety of commercial use of my property located at 2109 Valley Avenue, Winchester VA 22601

On December 10, 2003 the Board of Zoning Appeals held a meeting concerning the request to convert an existing non-conforming residence into a multiuse commercial establishment. The approval was conditioned on the first floor being retail; basement level being office; and the second story being storage. On a unanimous vote; the motion passed.

We believe the use of my property is due to the fact is zone highway commercial B-2, we are entitled to the proper use. This will allowed us to fully enjoy the property value; expanding uses do not conflict with adjacent properties.

Ordinance section pertaining to:

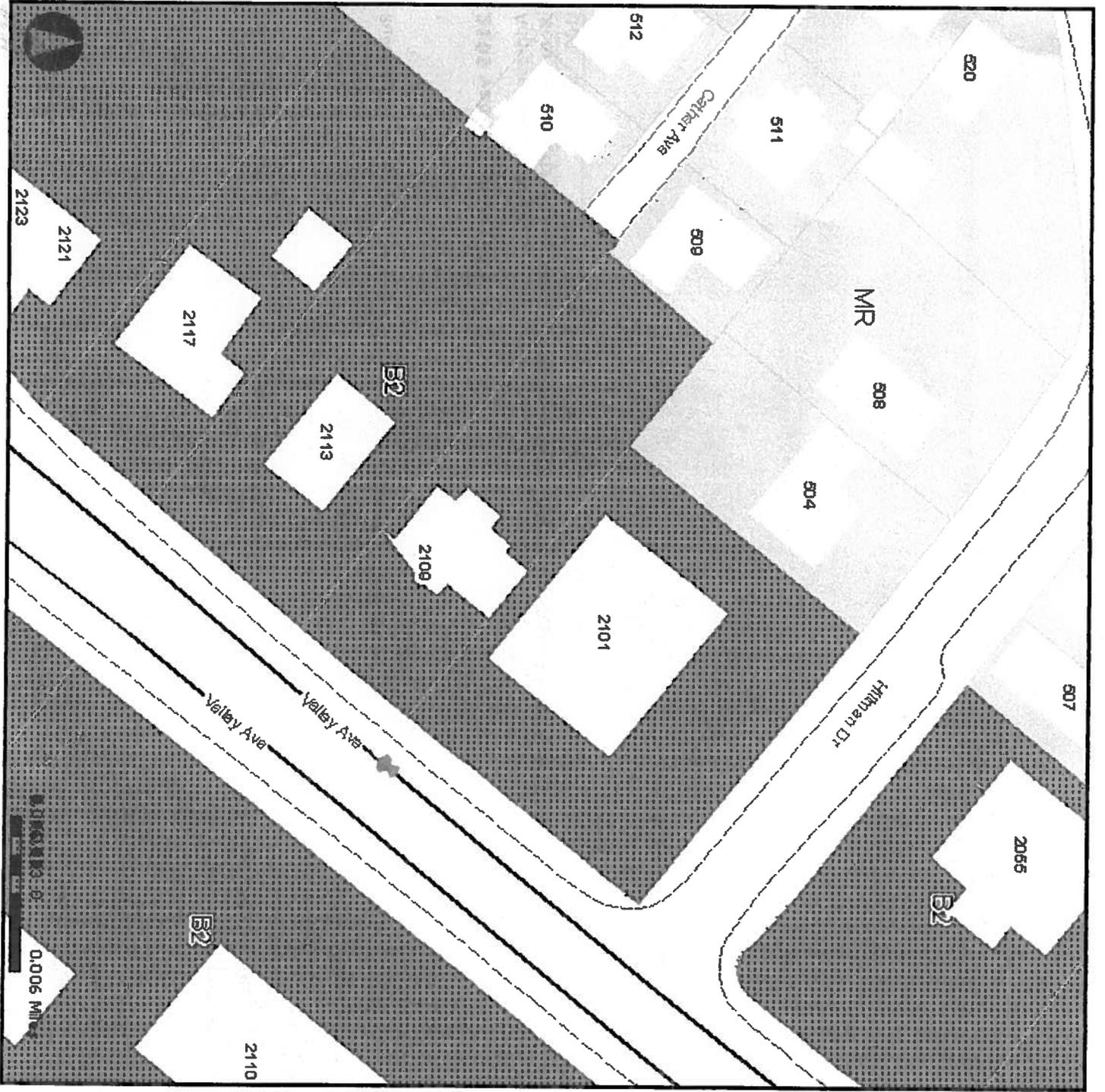
- | | |
|--------|--|
| 8-1-14 | Contractors' establishments. Offices and display rooms. |
| 8-1-15 | Convenience and service establishments such as. But not limited to, barber shops, beauty parlors, tailors, automatic self-service Laundries. |
| 8-1-27 | Office, business and professional. |

- 8-1-30 Philanthropic and charitable institutions.
- 8-1-35 Repair services or businesses, including repair of bicycles, guns, Radios, television sets, electrical appliances, locks, and other home appliances, shoes, toys, typewriters, watches, and clocks.
- 8-1-37 Retail stores.
- 8-1-48 Print Shops

Please give my request your thoughtful consideration.

Respectfully,

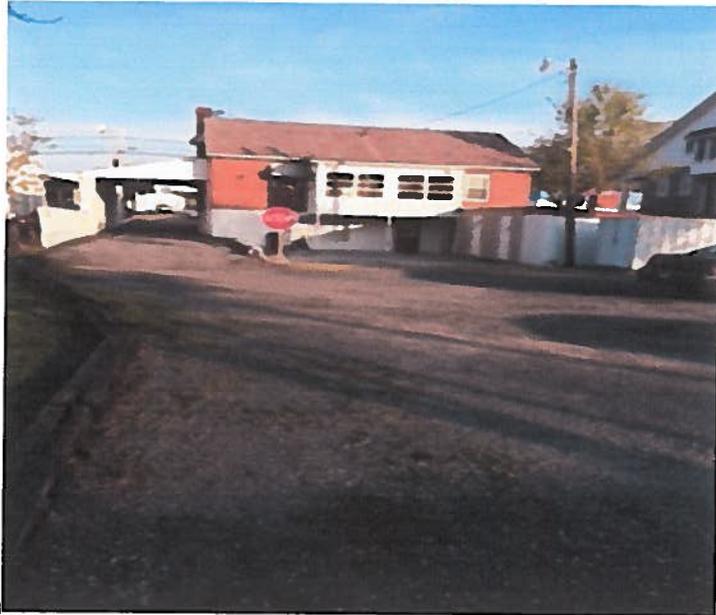
Al Medina





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**WINCHESTER BOARD OF ZONING APPEALS
REPORT AND RECOMMENDATION**



ISSUE/BACKGROUND

Case: BZA-14-254

Applicant: Manuel C. Medina.

Location: 2109 Valley Avenue

Zoning: Highway Commercial with Corridor Enhancement District Overlay

Future Land Use: Commercial.

Legal Notice: The request for variance was advertised in the *Winchester Star* on April 30, 2014 and May 7, 2014. The property was required to be posted with a public hearing sign and notices were mailed to property owners within 300' of the subject property.

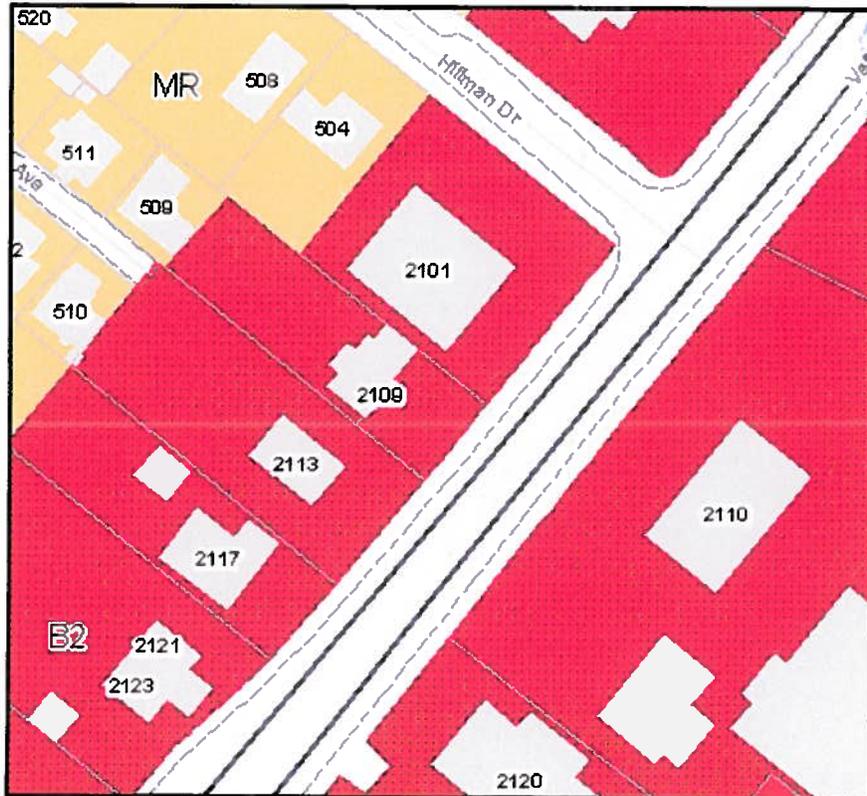
Applicant's Request: Request of Manuel C. Medina for a variance pertaining to required side yard setback, off-street parking setback (side and front), required lot width, vehicular travel lane width, and required off-street parking pursuant to Sections 8-6-1d, 18-6-3.2, 8-4, 19-5-2, and 18-6-5.1 of the Winchester Zoning Ordinance, for the property at 2109 Valley Ave (Map Number 250-02- -7 - > <01), zoned Highway Commercial (B-2) District with Corridor Enhancement (CE) District overlay. The request involves a request to modify use restrictions previously established by the Board of Zoning Appeals.

DISCUSSION/FINDINGS

The request before the Board of Zoning Appeals is for five variances pertaining to the required side yard setback, off-street parking setback (side and front), required lot width, vehicular travel lane width and required off-street parking.

The subject property is located on the west side of Valley Avenue and is located within the Highway Commercial (B-2) district with Corridor Enhancement district overlay and is improved with a single family dwelling that has been converted to commercial space. The immediately adjacent properties to the north and south are similarly zoned B-2 with CE overlay and are improved with commercial buildings. The properties to the west are zoned Medium Density Residential (MR) and are improved with primarily single family dwellings. The properties on the

east side of Valley Avenue are zoned B-2 with CE district overlay and are improved with commercial buildings involving a fast food restaurant, retail sales, and automobile sales business.



Vicinity Zoning Map

The subject property was originally a single family dwelling, that became a legal nonconforming use when the property was zoned Highway Commercial (B-2) prior to the adoption of the 1976 Zoning Ordinance. When the property owner desired to change the use of the property to a conforming use in 2003, several variances were needed due to the lot being a nonconforming lot of record and not meeting the minimum dimensional requirements of the B-2 district. The BZA ultimately approved each of these variances and conditioned the approval on the use of the structure being limited to the following: the first floor being retail, the basement level being office, and the second story being storage.

The most current use of the building is for a massage therapy office, which is located on the basement level, in conformance with the previous BZA decision (BZA-03-22). The property owner desires to allow for greater flexibility with the property by modifying the use restrictions on the property. The property owner requests that the following uses be permitted by-right as a condition of the variance approval:

- §8-1-14 Contractor’s establishments, offices and display rooms.

- 8-1-15 Convenience and service establishments such as, but not limited to, barber shops, beauty parlors, tailors, automatic self-service laundries.
- 8-1-27 Office, business and professional.
- 8-1-30 Philanthropic or charitable institutions.
- 8-1-35 Repair services or businesses, including repair of bicycles, guns, radios, television sets, electrical appliances, locks and other home appliances, shoes, toys, typewriters, watches and clocks.
- 8-1-37 Retail stores.
- 8-1-48 Print shops.

The applicant believes that each of the above uses which are typically permitted by-right within the Highway Commercial (B-2) district should be included within the variance conditions. The reason that the uses were limited at the time of the 2003 variance request was due to the potential impacts of allowing every use typically permitted in the B-2 district within a lot that does not meet the minimum standards. In the present case, the applicant is proposing uses that he believes will be of a lesser impact on this smaller parcel.

STAFF ANALYSIS & CONCLUSION

According to Section 20-2 of the Ordinance, the Board of Zoning Appeals is required to make three (3) specific findings in order to approve a variance request. These findings are based on evidence, testimony, and demonstration of certain criteria, which are further defined in Section 20-2-3.1 of the Ordinance.

Section 20-2-3.1: When a property owner can show that his property was acquired in good faith and where by reason of the exceptional narrowness, shallowness, size, or shape of a specific piece of property at the time of the effective date of the Ordinance, or where by reason of exceptional topographic conditions or other extraordinary situation or condition of such piece of property, or of the use or development of property immediately adjacent thereto, the strict application of the terms of the Ordinance would effectively prohibit or unreasonably restrict the use of the property or where the Board is satisfied, upon the evidence heard by it, that the granting of such variance will alleviate a clearly demonstrable hardship, as distinguished from a special privilege or convenience sought by the applicant, provided that all variances shall be in harmony with the intended spirit and purpose of the Ordinance.

1. That the strict application of this Ordinance would produce a clearly demonstrable hardship.
2. That such hardship is not shared generally by other properties in the same zoning district and the same vicinity.
3. That the authorization of such variance will not be of substantial detriment to adjacent property and that the character of the district will not be changed by the granting of the variances.

Staff is supportive of this variance request. The applicant is trying to continue an adaptive reuse of an old nonconforming residential structure in the B-2 district. The site has already been improved with the development requirements following the 2003 BZA variance approvals. Staff attempted to work with the applicant to only propose uses that would be of a smaller impact than some of the other uses which are typically permitted in the B-2 district.

Note: Staff has received no letters of support or opposition to this application.

POSSIBLE MOTION(S)

1. **MOVE**, that the Board of Zoning Appeals **grant** a variance to Manuel C. Medina for a variance pertaining to required side yard setback, off-street parking setback (side and front), required lot width, vehicular travel lane width, and required off-street parking pursuant to Sections 8-6-1d, 18-6-3.2, 8-4, 19-5-2, and 18-6-5.1 of the Winchester Zoning Ordinance, for the property at 2109 Valley Ave (Map Number 250-02- -7 - > <01), zoned Highway Commercial (B-2) District with Corridor Enhancement (CE) District overlay, with the following condition:
 - a. The only permitted uses at the property will be:
 - i. 8-1-14 Contractor's establishments, offices and display rooms.
 - ii. 8-1-15 Convenience and service establishments such as, but not limited to, barber shops, beauty parlors, tailors, automatic self-service laundries.
 - iii. 8-1-27 Office, business and professional.
 - iv. 8-1-30 Philanthropic or charitable institutions.
 - v. 8-1-35 Repair services or businesses, including repair of bicycles, guns, radios, television sets, electrical

appliances, locks and other home appliances, shoes,
toys, typewriters, watches and clocks.

- vi. 8-1-37 Retail stores.
- vii. 8-1-48 Print shops.

- b. The variances are for the building setbacks and site dimensions as approved in the most recent site plan.

This variance is approved because:

- a. *The strict application of this Ordinance would produce a clearly demonstrable hardship.*
- b. *That such hardship is not shared generally by other properties in the same zoning district and the same vicinity.*
- c. *That the authorization of such variance will not be of substantial detriment to adjacent property and that the character of the district will not be changed by the granting of the variance.*

- 2. **MOVE**, that the Board of Zoning Appeals **deny** a variance to Manuel C. Medina for a variance pertaining to required side yard setback, off-street parking setback (side and front), required lot width, vehicular travel lane width, and required off-street parking pursuant to Sections 8-6-1d, 18-6-3.2, 8-4, 19-5-2, and 18-6-5.1 of the Winchester Zoning Ordinance, for the property at 2109 Valley Ave (Map Number 250-02- -7 - > <01), zoned Highway Commercial (B-2) District with Corridor Enhancement (CE) District overlay, for the following reasons:

- a. (List reasons for denial).



Aaron M. Grisdale, CZA
Director of Zoning and Inspections