

BOARD OF ZONING APPEALS  
MINUTES

The Winchester Board of Zoning Appeals held a regular meeting on August 10, 2011, at 4:00 p.m. in the Council Chambers, Rouss City Hall, 15 North Cameron Street, Winchester, Virginia.

**PRESENT:** B Hester, H Hurt, C Koneczny and B Pifer (4)  
**ABSENT:** J Phillips, W Roberson, M Peter Lynch and D Crawford (4)  
**STAFF:** Vincent Diem (1)

Chairman Hurt called the meeting to order at 4:01 p.m.

**MINUTES**

Mr. Hester moved, seconded by Mr. Pifer, to approve the minutes of July 13, 2011 as presented. The motion passed unanimously 4-0, none abstained.

**CORRESPONDENCE**

Mr. Diem presented two items of correspondence which consisted of a letter from a neighboring property regarding BZA 11-430 and a revised staff report on BZA 11-428.

**PUBLIC HEARINGS**

**BZA 11-428** Request of Painter-Lewis P.L.C to obtain variances for main building limitations, lot width, main building setback and, side and rear yard setbacks pursuant to Sections 4-1; 4-3-1; 4-4-1; 4-5-1; 4-6-1; and, 4-6-2 of the Winchester Zoning Ordinance located at 125 -125 ½ and, 127 S Euclid Ave (*Map Number 195-10-C-20A*) zoned Medium Density Residential (MR) District.

Chairman Hurt announced that Mr. Koneczny will need to excuse himself from this item which will require a unanimous approval by the board. He asked the applicants if they would like to proceed or defer the item to the next meeting. Mr. Pifer disclosed that his company did some construction work for Summit Bank but does not feel it would affect his vote on the issue. The applicants choose to proceed with the public hearing.

Mr. Diem presented BZA 11-428 the request of Painter-Lewis, P.L.C. to obtain variances for main building limitations, lot width, main building setback and, side and rear yard setbacks pursuant to Sections 4-1; 4-3-1; 4-4-1; 4-5-1; 4-6-1; and, 4-6-2 of the Winchester Zoning Ordinance for the property located at 125-125½ and 127 South Euclid Avenue (*Map Number 195-10-C-20A*) zoned Medium Density Residential (MR) District. He stated the applicant, on behalf of Summit Bank, is requesting to re-configure the property boundaries so as to address certain nonconformities that exist on the residential property and resolve discrepancies that have been identified between recorded deed information and city records. The subject property is located entirely within the MR District and is identified in the city's tax assessment records as one parcel, containing three (3) single-family detached dwellings. The surrounding parcels are similarly-zoned.

Mr. Diem stated in reviewing the application materials submitted, the Zoning & Inspections Administrator agrees that there is substantial deviation between the tax assessment records and the deed information reportedly discovered by the applicant. However, a previously known fact remains, in that there are multiple single-family detached dwellings situated on a single parcel that is zoned MR. Obviously, a substantial nonconformity exists and is in the best interests of both the city and the applicant to resolve either through demolition and redevelopment of the parcel(s) for single-family dwelling use, limited only to one building per parcel; or, proceed with the authorization of variances to create a more conforming situation. Similar cases pertaining to unusual or unsubstantial lot sizes within the MR district; and, within this general vicinity have been presented to the Board of Zoning Appeals over the past few years. Each was approved; and some included specific conditions imposed so as to mitigate the potentially adverse impacts associated with the approvals. The applicant's letter explains the situation in thorough detail, providing a clear overview of the existing conditions of the property lines, as recorded on official deeds and plats. There is no plan, at this time, that would suggest that any or all of the existing structures would be razed or redeveloped. By obtaining the requested variances, the applicant will be able to proceed with a minor subdivision application and the extent of nonconformity will be improved. From an enforcement perspective, the property was previously the subject of investigation and enforcement for illegal boardinghouse use and occupancy. A recommended condition to be imposed would be that the existing structures could only be used for single-family dwelling purposes.

Mr. Diem noted the three sub-conditions listed in the proposed approval motion and presented an alternate layout developed by staff.

Chairman Hurt opened the public hearing at 4:12 p.m.

Mr. Koneczny swore in John Lewis of Painter-Lewis PLC. Mr. Lewis stated as shown on the plat there are a number of issues. The intention of the subdivision is to clean up as much nonconformity as possible and to clean up the lot for resale. There are 6 portions of the ordinance needing approval to get this done. He stated the applicants concur with all of the conditions in the staff report and offered to answer any questions.

Mr. Koneczny swore in Tevis Sensil of 100 Jubal Early Drive. Mr. Sensil stated when the bank took the property it was being used as a rooming house. They thought this would be a better use and be better for resale.

Seeing no one further to address the board, Chairman Hurt closed the public hearing at 4:16 p.m.

Mr. Hester stated the applicant is trying to make best of situation in getting property lines realigned.

Mr. Pifer stated he likes the alternate drawing the best since it provides off street parking for the property in the back and would be easier to realign the property lines.

Mr. Hester moved, seconded by Mr. Pifer, that the Board of Zoning Appeals grant a variance to Painter-Lewis, P.L.C., on behalf of Summit Bank, for the subject property located at 125-125½ and 127 South Euclid Avenue, as identified in BZA 11-428, for the

expressed purposes of reducing the extent of nonconformity and subdividing the property with the alternate layout provided by staff. The variance is approved because the Boards finds:

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 variance; and,
4. That the variance is granted with the following condition(s) imposed, so as to mitigate or reduce the potentially adverse conditions created by the subdivision:
  - a. The approval is subject to re-platting the 3 lots into 2 lots consistent with (applicant's layout) or (alternate City staff layout)
  - b. The dwelling at 125½ South Euclid Avenue may not be re-built if unoccupied for more than one (1) years; or, if destroyed or damaged to an extent greater than 50% of the replacement cost of the structure.
  - c. The dwelling unit at 125½ South Euclid Avenue shall not be enlarged.

The motion passed unanimously 3-0 with Mr. Koneczny abstaining.

**BZA 11-429** Request of Starlite Sign Company to obtain a variance pertaining to building mounted signage pursuant to Section 18-8-6.1 of the Winchester Zoning Ordinance located at 2047 S Pleasant Valley Rd (*Map Number 272-01- -12*) zoned Commercial Industrial(CM-1) District.

Mr. Diem presented BZA 11-429 the request of Starlite Sign Company to obtain a variance pertaining to building mounted signage pursuant to Section 18-8-6.1 of the Winchester Zoning Ordinance for a property located at 2047 South Pleasant Valley Road (*Map Number 272-01- -12*) zoned Commercial Industrial (CM-1) District.

Mr. Diem stated the applicant, on behalf of Hobby Lobby, is requesting to install 397.9 square feet of building mounted signage at the subject property. A total amount of 200 square feet of building mounted signage is allowed by right. The subject property is located entirely within the CM-1 District and is identified as a commercial center, hosting several retail and restaurant establishments. With exception to B-2 zoning to the east and across the street (South Pleasant Valley Road) and M-2 zoning further to the south, the majority of the surrounding parcels are similarly-zoned.

Mr. Diem stated in reviewing the application materials submitted, along with the applicant's assertion of the demonstrable hardships associated with the subject property, the Zoning & Inspections Administrator respectfully disagrees. As the Board of Zoning Appeals is well aware, there are certain criteria for which a variance may be granted, in accordance with § 15.2-2309 of the Code of Virginia (1950), et seq., and Section 20-2-3.2 of the Winchester Zoning Ordinance. Specifically, no such variance shall be authorized by the Board unless it finds:

- a. That the strict application of the ordinance would produce undue hardship relating to the property;
- b. That the hardship is not shared generally by other properties in the same zoning district and the same vicinity; and
- c. That the authorization of the 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.

With regards to the aforementioned criteria for granting a variance, the Zoning & Inspections Administrator presents the following argument:

1. Strict application of the ordinance would allow the applicant to erect building mounted signage of up to 200 square feet. As presented, the “HOBBY LOBBY” brand alone exceeds the total amount of square footage allowable by the Ordinance, without including any of the other proposed signage indicating the various aspects of the establishment. The Ordinance does allow building mounted signage and there are no prohibitions regarding internal illumination of the building mounted signage associated with the subject property. Therefore, there would appear to be a lack of a demonstrable or undue hardship in this matter.
2. Given the commercial nature of the South Pleasant Valley Road corridor, there are few commercial establishments that are located immediately adjacent to the public right-of-way. The majority of which, are significantly set back from the public rights-of-way and feature vast areas of off-street parking between South Pleasant Valley Road and the storefront façade. There is little to substantiate that this particular hardship, as asserted by the applicant, is unique to the subject property and not shared generally by other properties in the same zoning district and same vicinity.
3. Although, less of a concern than the preceding points, the authorization of the variance could eventually pose a substantial detriment to adjacent property and that the character of the district would be changed. As businesses that are congregated together in a particular commercial area often compete for customer attention, the allowance of increased signage for one establishment and not the others could pose certain financial detriments to other businesses. Additionally, expanded areas of internally-illuminated signage could dramatically change the character of the district.

Mr. Diem stated he recommends that the Board of Zoning Appeals deny the variance request, based on the fore drawn arguments and conclusions. The applicant further has the opportunity to submit a privately-sponsored text amendment regarding building mounted signage provisions for the CM-1 District.

Chairman Hurt opened the public hearing at 4:28 p.m.

Mr. Koneczny swore in Debbie Stellar of Starlite Signs in Denton, Texas. Ms. Stellar stated Hobby Lobby feels a larger sign is needed to look proportional to the amount of space taken. Smaller signs make the building look emptier than it really is.

Mr. Koneczny asked why the applicant is asking for double the amount allowed by law. Ms. Stellar stated the size was based on the amount of space. Hobby Lobby has the space of three units.

Chairman Hurt closed the public hearing at 4:36 p.m.

Mr. Diem stated the applicant could submit a privately sponsored text amendment for the Zoning Ordinance if they feel the situation is unique.

Mr. Koneczny stated the applicant is requesting a huge sign but he does not see a hardship. He feels the ordinance is fair and a huge sign would be distracting to traffic.

Mr. Koneczny moved, seconded by Mr. Hester, that the Board of Zoning Appeals deny a variance to Starlite Sign, LP, on behalf of Hobby Lobby, for the subject property located at 2047 South Pleasant Valley Road, as identified in BZA 11-429. The motion passed unanimously 4-0.

**BZA 11-430** Request of Robert Carter to obtain a variance pertaining to rear yard setback pursuant to Section 4-6 of the Winchester Zoning Ordinance located at 2069 Taylor Grace Ct (*Map Number 250-02-45 -47*) zoned Medium Density Residential (MR) District.

Mr. Diem presented BZA 11-430 the request of Robert Carter to obtain a variance pertaining to rear yard setback pursuant to Section 4-6 of the Winchester Zoning Ordinance located at 2069 Taylor Grace Court (*Map Number 250-02-45 -47*) zoned Medium Density Residential (MR) District.

He stated the applicant proposes to erect a wooden deck structure with a finished floor elevation at 10' above grade, which would encroach into the required rear yard setback. The subject property is located entirely within the Medium Density Residential (MR) District and is surrounded by similarly zoned parcels. The graphic illustration in the staff report depicts the topographical conditions at the subject property and demonstrates a considerable slope from the street level to the rear property line. It would appear as though the post-construction conditions, which are not identified on the illustration, presented a significantly steeper slope from the front of the property to the rear.

Mr. Diem stated the request that is presented before the Board reflects a hardship condition that was essentially created by the homebuilder, Richmond American Homes, Inc. When the property was improved with a single-family detached dwelling, the front façade of the structure was pushed back a few feet from the required front setback line; thus, shifting the footprint of the structure to meeting the rear setback line. The finished floor elevation of the first floor of the residence is approximately 10' above the finished grade elevation at the rear of the house. The house was furnished with patio French doors intended to lead to the back yard area; however, no deck or patio was provided. Therefore, if someone were to step outside the door, they would fall

approximately 10' to the ground below. Anticipating that this would eventually become an issue, the matter was addressed with Richmond American Homes during the plans review and permitting process. Since then, more effort has been afforded toward avoiding similar situations.

The Zoning Ordinance establishes setback requirements for decks that are less than 3' above the finished grade, within Section 18-9-2.1, which reads as follows:

18-9-2.1 Unenclosed porches, decks, or terraces not over three (3) feet above the ground except for railings and roof structures, may extend five (5) feet into a required front yard or corner side yard, ten (10) feet into a required rear yard, and three (3) feet into a required non-corner side yard, provided that any such structure having a roof shall not extend into any required yard area to a greater distance than one-half (1/2) the required yard depth or width. (8/16/02, Case TA-02-02, Ord. No. 010-2002)

Because the proposed structure will be more than 3' above the ground, it is required to meet the main building setback standards. The required rear yard setback for the subject property is 25', pursuant to Section 4-6 of the Zoning Ordinance. The applicant is requesting that the Board provide relief in the form of a 50% variance from the rear yard setback requirement, which would allow him to erect a wooden deck structure in the rear yard area. As proposed, the total amount of encroachment into the rear yard setback would be no more than 12'6". The applicant provides further explanation and basis for their request within a letter submitted with the application, dated July 20, 2011. In reviewing the photographs submitted by the applicant, there appears to be a noticeable change in elevation between the rear of the subject property and other properties situated behind it. Therefore, it is conceivable that the proposed encroachment of the wooden deck could create a situation where privacy of neighboring properties could be affected. In light of this observation, the Zoning & Inspections Administrator would recommend that a condition of the variance, if granted, include some type of screening element associated with the deck. Choices may include evergreen shrubbery planted in the rear yard, but outside of the 20' drainage easement; or, privacy fencing/lattice/screening erected on at least the eastern perimeter of the deck. This type of scenario has been presented to the Board of Zoning Appeals on at least one prior occasion for a property located on Fort Braddock Court. As it pertained to that case, the Board granted the variance which allowed the property owner to construct an elevated wooden deck structure within the required rear yard.

Chairman Hurt opened the public hearing at 4:47 p.m.

Mr. Koneczny swore in Robert Carter of 2069 Taylor Grace Court. Mr. Carter presented his reasoning for the request and stated the neighbors have been supportive.

Chairman Hurt asked if Mr. Carter has intentions to build stairs with the deck. Mr. Carter stated he would like stairs but if it is a condition for approval, he would abide.

Mr. Koneczny asked how wide the deck will be. Mr. Carter stated the deck would extend no more than 12 feet out and about 20 feet wide.

Mr. Koneczny asked if there would be any problems if the stairs do not go out the end of the deck and are adjacent to the house. Mr. Carter stated the bump out of the house would require the stairs to be out a bit.

Seeing no one further to address the board, Chairman Hurt closed the public hearing at 4:58 p.m.

Mr. Koneczny stated he did not see a problem with a 12 x 20 deck with stairs adjacent to the house instead of encroaching further into the rear. He It is impractical for evergreen trees to be high enough and lattice work would ruin the intention of a deck.

Mr. Koneczny moved, seconded by Mr. Pifer, that the Board of Zoning Appeals grant a rear yard variance to Robert Carter for the subject property located at 2069 Taylor Grace Court, as identified in BZA 11-430, for the expressed purposes of constructing a wooden deck structure in the rear yard area. The variance is approved because the Board finds:

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 variance; and,
4. That the variance is granted with the following condition(s) imposed, so as to mitigate or reduce the potentially adverse conditions created by the encroachment of the deck structure:
  - a. 12x20 size
  - b. stairs be built adjacent to the house

The motion passed unanimously 4-0.

## **NEW BUSINESS**

Nomination and Election of Chairman and Vice-Chairman of the Board

Mr. Diem recommended tabling the nomination and election due to the shortage of members.

Mr. Koneczny moved, seconded by Mr. Hester, to table the nomination and elections as recommended. The motion passed unanimously 4-0.

## **OLD BUSINESS**

## **ADJOURN**

With no further business, Chairman Hurt adjourned the meeting at 5:02 p.m.