

**BOARD OF ZONING APPEALS  
MINUTES**

The Winchester Board of Zoning Appeals held its regular monthly meeting on, April 11, 2007, at 4:00 p.m. in the Council Chambers, Rouss City Hall, 15 North Cameron Street, Winchester, Virginia.

**PRESENT:** Uthman, Hurt, Koneczny, Wiley

**ABSENT:** Phillips

**VISITORS:** Kevin Wolford, Lilly Triplett, Chris Maben, Richie Pifer, Jr.

**MINUTES**

On motion by Mr. Koneczny seconded by, Mr. Uthman the minutes of the, March 14, 2007 meeting were unanimously approved with the addition of Mr. Phillips's name under those present at the March 14 meeting.

**CORRESPONDENCE**

Mr. Diem stated that there was no formal correspondence.

Mr. Diem thanked Mr. Uthman for his years of service on the Board of Zoning Appeals.

**PUBLIC HEARINGS**

**BZA #07-02** Request of Lillian M. Triplett for a variance of the Winchester Zoning Ordinance Section 17-6-1 pertaining to required side yard setback on a nonconforming lot of record at 505 Highland Avenue (Section 174, Double Circle 1, Block M, Lot 17) zoned Limited High Density Residential (HR-1) District.

Mr. Diem stated that it was an administrative oversight that the public hearing sign did not get displayed later than should have been the case, however, the notice was sent out.

Mr. Diem reviewed the request. He stated that the applicant, Lillian Triplett, is requesting a variance of the Winchester Zoning Ordinance regarding side yard setback requirements. The residential lot, located at 505 Highland Avenue, is nonconforming with regards to its lot width. The proposed construction of a new single family detached dwelling would require a variance to formally recognize the deficient side yard setback distance. He added that the subject property is located entirely within the Limited High Density Residential District.

Mr. Diem informed the Board that the vacant parcel is approximately 19' wide and 95' deeps, with an approximately 1,805 square feet. The size of the lot is much smaller than what would

be permitted within the current ordinance standards, however, the lot was recorded on a deed prior to the existence of the Zoning Ordinance; and is therefore a nonconforming lot of record. Additionally, a single-family detached dwelling was previously constructed on the parcel; and has recently been demolished. The minimum required lot width in the HR-1 district is 40' and the majority of the residential properties located in the 300, 400 and 500 blocks of Highland Avenue are much less than this.

Mr. Diem stated that the applicant intends to construct a dwelling unit that is 18' wide and 48' deep, which would result in either 6'' side yards on either side or 1' side yard on one side with a 0' lot line on the opposite side. Nonconforming residential lots require 5' side yard setbacks; but; the applicant intends to re-construct a dwelling unit that is no more non-conforming than what previously existed.

Mr. Diem added that this request represents a continuing trend throughout the City to rehabilitate a deteriorating housing stock which in turn creates additional home ownership opportunities. The Zoning Department recommends that the Board approve this request because the use is no more intensive than what had previously existed prior to demolition. He stated that it appears as though this request meets the intent of the ordinance and identifies a clearly demonstrable hardship in that additional property width cannot be provided nor can adjacent buildings be relocated; and, there are few properties if any within the vicinity that share a similar hardship of such a narrow lot width, although several are nonconforming.

Chairman Hurt opened the public hearing.

Chairman Hurt asked if there was anyone wishing to speak in reference to the request.

Mr. Kevin Wolford and Ms. Lilly Pritchett were present to answer questions and they provided the Board with a new survey.

Mr. Koneczny asked if there was a 0' or a 6' lot line. Mr. Wolford stated there would be a 6' lot line but there will be an additional 5 ft between the adjoining existing house with 6 inches on both sides. Mr. Koneczny asked if there was six inches on the north or south side. Mr. Wolford replied it would be six inches on both sides. He stated that the lot was 19 ½ foot wide and the house would be 18 foot wide.

Mr. Koneczny inquired about fire board. Mr. Wolford replied that anything under five feet requires a fire board and though they would have five feet they intended to put the burn board on the exterior.

Mr. Wolford stated that the house would be nine inches on both sides from the existing sidewalk. He added that there was a five foot walkway between both houses, except for in the back alleyway there was an addition to a property that sits on the property line.

Mr. Koneczny asked if there will be an appendage coming out of the dining area. Mr. Wolford replied that due to the fire code no windows are allowed on the gable side, however, he will add two dormers to provide egress. Chairman Hurt asked if there would be a window on the side or just fire board. Mr. Wolford stated that to be safe it would be just fire board.

Chairman Hurt closed the public hearing.

Mr. Koneczny asked that the motion include a provision for fire retardant material.

Mr. Koneczny, seconded by, Mr. Wiley, moved that the Board conditionally approve BZA-07-02 to permit the re-construction of a single-family detached dwelling on a nonconforming lot of record by granting a variance to the requirements of side yard setback; 1) In that the applicant will coordinate with the Building Official of the City of Winchester to ensure the requirements of the Virginia Uniform Statewide Building Code be met, in consideration of the deficient setback distances; and, 2) A house location survey be performed to ensure no further encroachment into adjoining or adjacent properties; and, that the owner include extended fire resistant construction. 3)The single-family dwelling to be constructed shall be no more than 18' in width, with no bay windows, chimneys, heating/cooling appliances, or other items permitted in the remaining side yard, because, a)The variances are in harmony with the intended spirit of the Ordinance; b) That the strict application of the Ordinance would produce a clearly demonstrable hardship to the property; and, c) That the authorization of the variances will not be of substantial detriment to the adjacent properties and that the character of the district will not be changed by the granting of the variances. On a vote of 4-0-0 the motion passed.

**BZA #07-03** Request of Richard W. Pifer, Jr., for variances of the Winchester Zoning Ordinance, Section 5.1-5-1 pertaining to required main building setback and Section 17-6-1 pertaining to required side yard setback on a nonconforming lot of record at 120 East Cecil Street (Section 193, Double Circle 1, Block R, Lot 21) zoned Limited High Density Residential (HR-1) District.

The applicant picked up the public hearing sign at the time of submitting the application.

Mr. Diem reviewed the request. He stated that the applicant, Richard W. Pifer Jr., is requesting variances of the Winchester Zoning Ordinance regarding main building setback and side yard setback requirements. The residential lot, located at 120 East Cecil Street, is non-conforming with regards to its lot width and area. The proposed demolition of a deteriorating single family dwelling and construction of a new sing-family detached dwelling would require variances to formally recognize the deficient side yard setback distance. Mr. Diem added that the property is located entirely within the Limited High Density Residential District, and is within the Historic Overlay District.

Mr. Diem stated that as identified on a surveyed drawing map prepared Montgomery Engineering Group, Inc. on March 20, 2007, the parcel is at least 25.79 feet wide and 89.63 feet deep, with an approximate square footage of 2,374. He said that although the size of the lot is much smaller than what would be permitted within the current ordinance standards, the lot was recorded on a deed prior to the existence of the Zoning Ordinance; and is therefore a nonconforming lot of record. He added that a single family detached dwelling was previously constructed on the parcel; and contingent upon approval from the Board of Architectural Review it is proposed to be demolished. In addition, the minimum required lot width in the HR-1 district is 40' and the majority of the residential properties in that area are much less than that.

Mr. Diem stated that the applicant intends to construct a dwelling unit that is 21' wide and 36' deep, resulting in a 2.9' side yard on the west side of the structure and a 2' side yard on the east side. Mr. Diem told the Board that non conforming residential lots require 5' side yard setbacks; however, the applicant is construction a dwelling unit that is similarly as non-conforming as the existing one.

Chairman Hurt opened the public hearing.

Chairman Hurt asked if there was anyone wishing to speak in reference to the request.

Mr. Richard W. Pifer Jr. was present to answer questions. He pointed out that his request was of course contingent upon BAR approval for demolition and that this was one of the properties on the blighted list. He added that he had received support from the City Manager and the Blight Committee and that this will be a homeownership opportunity as opposed to a rental. He has also worked with John Knight on the fire ratings.

Mr. Koneczny asked what he was proposing to construct. Mr. Pifer replied that it would be a 1400-1500 square foot two story dwelling similar to what is there with Hardy siding and appropriate windows and doors.

Mr. Koneczny asked the Board if they should be hearing this prior to the BAR. Chairman Hurt stated that the request should be tabled until it receives BAR approval. Mr. Pifer stated that he understood this was out of order; however there had been precedent set as to getting a variance approved contingent upon BAR approval. Mr. Hurt stated that because the house has not been condemned, it would probably not pass by the BZA. He asked Mr. Pifer what happens if the request gets denied. Mr. Pifer replied that the variance will not need to occur because if demolition isn't approved by the BAR or City Council there wouldn't be a structure built in its place. Chairman Hurt stated that if the BAR did approve the request it would make the BZA support stronger. In addition he added that the BZA is trying to change they way things have been done in the past. Mr. Pifer added that he would be sending in the BAR application

tomorrow. He added that if there hadn't been precedent he would be here. Mr. Koneczny referenced **BZA-07-01** which took a non conforming situation and made it less non-conforming. Mr. Pifer stated that the net result of his variance request would be great conformity. Chairman Hurt stated that they would essentially be approving a demolition, if they approve the variance. Mr. Uthman added that it would be more logical to take the case to the BAR first.

Chairman Hurt closed the public hearing.

Mr. Uthman, seconded by, Mr. Koneczny moved to table **BZA-07-03** contingent upon BAR approval of demolition.

### **OLD BUSINESS**

None

### **OTHER**

Mr. Chris Maben was present at the meeting to ask the BZA their opinion. He stated that he bought a duplex at 45-451/2 Grey St. It is located in the corner where Highland ends. He purchased the lot next to it which is 23 ½ feet by 80 feet long. He asked if it would be permissible to join the property and turn the duplex into a triplex. Mr. Diem stated that the zoning is HR-1 and that a single family detached dwelling or townhouses were only permitted. Multi-family dwellings would not be permitted by right or through a conditional use permit. Mr. Diem added that at best he could look at a two family dwelling on one lot and a single family dwelling on another which would require variances through the BZA and a conditional use permit from City Council.

Mr. Wiley gave Mr. Maben a previous submission as an example. He told Mr. Maben that his best bet is a single family dwelling with adjusted lot lines. He suggested he apply for a variance out right.

With no further business to discuss, the meeting was adjourned at 4:35pm.

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