

**BOARD OF ZONING APPEALS
MINUTES**

The Winchester Board of Zoning Appeals held a special meeting on, September 8, 2010, at 4:00 p.m. in the Council Chambers, Rouss City Hall, 15 North Cameron Street, Winchester, Virginia.

PRESENT: H Hurt, C Koneczny, J Phillips, W Roberson and B Pifer (5)
ABSENT: B Hester and M Peter Lynch (2)
STAFF: V Diem and A Walsh
VISITORS: Stephen Arnold

MINUTES

*Mr. Koneczny moved, seconded by Mr. Roberson, to approve the minutes of August 11, 2010 as presented.
Motion passed unanimously 5-0.*

CORRESPONDENCE

A revised letter of explanation was submitted by Mr. Arnold prior to the meeting and emailed to all members.

PUBLIC HEARINGS

BZA-10-415 REQUEST OF STEPHEN ARNOLD FOR A VARIANCE PERTAINING TO THE USE OF AN OUTBUILDING FOR A HOME OCCUPATION AND SIGNAGE PURSUANT TO SECTION 18-19 OF THE WINCHESTER ZONING ORDINANCE AT 1531 SOUTH LOUDOUN STREET, (MAP NUMBER 232-16-3) ZONED MEDIUM DENSITY RESIDENTIAL (MR) DISTRICT.

Mr. Diem presented the request seeking relief of the Zoning Ordinance to accommodate an expansion to a previously-established home occupation, and install signage indicating the location of the home occupation.

He explained in summary that Mr. Arnold was requesting an opportunity to utilize 750sf of finished space in an existing accessory structure located on the property for small group classes, music lessons in guitar and piano by similarly degreed, business licensed and experienced teachers. Mr. Arnold was also requesting an opportunity to modify an existing address sign-shaped like a violin-to include name of business, lessons, sales, repairs, and phone number by appointment.

Each of the items requested by the applicant are specifically not allowed as identified in Section 18-19-2.2, the Home Occupation may only be conducted in the main building. Section 18-19-2.3 stipulates that the use may not be identified by any sign or display of merchandise visible from the exterior. Section 18-19-2 excludes employees who otherwise do not reside in the dwelling. Finally, Section 18-19-2.1 specifies that the use is clearly incidental and subordinate to the dwelling unit's use for residential purposes.

The home occupation, as it exists, may continue; but, may be encroaching upon the standards of Section 18-19-2.1, as the applicant has indicated that his family uses the second floor of the home and the kitchen for residential purposes. It would appear that the current arrangement might actually exceed an appearance of being incidental and subordinate to the dwelling unit. Further expansion of the use to include the accessory structure would establish the home occupation as the principal use of the dwelling,

as opposed to being incidental and subordinate. The artistic address sign shaped like a violin does not constitute any form of advertisement in the opinion of the Zoning Administrator. Additional signage indicating hours of operation, phone number, and related services would constitute a commercial sign and should not be visible from the exterior of the building. Any future intentions of including employees, who are not residents of the dwelling, would not be permitted at the property.

In conclusion, Mr. Diem suggested that an alternative option could include relocating the music education business to a commercial location either through a lease or purchase opportunity.

Chairman Hurt opened the public hearing.

The applicant, Stephen Arnold, explained that he has degrees in violin performance and education. He has grown to teaching groups and is in the need of more space. His business is family owned. Most of his students are between the ages of 4-17 years old. There is only one person working at this business with limited hours. Currently he teaches in a space approx 259 sq. ft. but needs 552sq. ft. The property has seven (7) existing parking spaces. Students are advised to never park in front of other houses. Mr. Arnold explained that he is not in a position at this time to rent or lease. He would love to do it in the future but needs an intermediate step before he gets to that point. Other homes do not share this hardship. Would not be a detriment to the neighborhood and would leave the neighborhood unchanged.

Mr. Arnold explained that he has been at this current location for three (3) years and provided lessons approximately 16.5 hours a week. There are no lessons on Sundays and Mondays he teaches at a community music school. Saturdays he teaches at his church to allow his family some time alone in the house. The church does not charge him to use it however they do ask for donations.

Mr. Koneczny asked about other employees.

Mr. Arnold explained that they would be independent contractors, having their own business licenses.

Mr. Phillips asked about the number of students he teaches at one time.

Mr. Arnold explained that he teaches one (1) student at a time, except for the group class on Saturday, which is held at the church.

Mr. Koneczny stated that the law is clear. It is structured as it is to retain the residential appearance and protect the people living there. He stated that he could not see a hardship in this case. He felt the applicant was asking for privilege that other homeowners cannot enjoy.

Mr. Arnold stated that there are business in his neighborhood that has employees and deliveries. He would be no different.

Mr. Koneczny explained that those businesses are grandfathered and are not subject to the same regulations.

Mr. Arnold explained that he cannot afford to move the business right now. Other businesses on the street put signs out and have employees; he felt he should be given the same options.

Mr. Phillips asked Mr. Diem if he had received any complaint as the home occupation exists today.

Mr. Diem stated that he had not.

Chairman Hurt closed the public hearing.

Mr. Koneczny stated that he understood the situation but it is in contrary to the code. He felt that the board would not be approving a variance but would be changing the law.

Chairman Hurt agreed. He could not see the hardship. He suggested that instead of spending money on a sign spend it on advertising in the local paper.

Mr. Roberson also agreed. He stated the surrounding properties are zoned differently than the subject property, making their existence irrelevant.

Mr. Phillips asked the applicant if the signage was necessary.

Mr. Arnold explained that he already sent out flyers and has a website. Advertising is expensive. He stated that the sign would be professionally made and would look nice.

Mr. Roberson moved, seconded by Mr. Koneczny, to deny the requested variances identified in BZA-10-415, pertaining to Home Occupations for the property located at 1531 South Loudoun Street, because the applicant has not presented a demonstrable hardship to justify the granting of the variances; and, that the granting of such variances would constitute a special privilege or convenience for the applicant.

<u>MEMBER</u>	<u>VOTE</u>
Mr. Koneczny	Yes
Mr. Pifer	Yes
Mr. Roberson	Yes
Mr. Phillips	Yes
Mr. Hurt	Yes

NEW BUSINESS

None

OLD BUSINESS

None

Meeting adjourned: 4:28PM