

BOARD OF ZONING APPEALS
MINUTES

The Winchester Board of Zoning Appeals held a regular meeting on, November 9, 2011 at 4:00 p.m. in the Council Chambers, Rouss City Hall, 15 North Cameron Street, Winchester, Virginia.

PRESENT: B Hester, H Hurt, J Phillips, B Pifer and D Crawford (5)
ABSENT: W Roberson
STAFF: V Diem, and P Le Duigou
VISITORS: Sharen Gromling, Sean Munson, Kristine Stoehr, Terry Sloane Carter, Tim Painter, Carmen Crawford

Approval of Minutes

Mr. Hester moved, seconded by Mr. Phillips, to approve the minutes of September 14, 2011, as presented. The motion passed unanimously.

Election of Officers

~~Chairman Hurt~~ Mr. Phillips nominated Mr. Hester for Chairman, seconded by Mr. Pifer. The motion passed unanimously.

Chairman Hester nominated Mr. Phillips for Vice-Chairman, seconded by Mr. Pifer. The Motion passed 3-0, with Mr. Phillips abstaining.

Reading of Correspondence

Mr. Diem stated that there was no new correspondence to report at this time.

PUBLIC HEARINGS

Chairman Hester opened the public hearing.

BZA -11-588 - Request of Kristine Stoehr for a variance pertaining to unenclosed carport setbacks, pursuant to Section 18-9-2.5 of the Winchester Zoning Ordinance, for the subject property located at 114 South Euclid Avenue (Map 195-10-D-46 -47A), which is zoned Medium Density Residential (MR) District. Staff recommends tabling this request.

Section 18-9-2.5 of the Winchester Zoning Ordinance (hereinafter “the Ordinance”) requires that unenclosed carports shall be setback a minimum of five (5’) feet from the side property line.

Section 18-9-2.5: An unenclosed carport, attached to a dwelling, may extend into any required side yard a distance of not more than five (5) feet but not nearer to any side lot line than a distance of five (5) feet.

Section 1-2-17 of the Ordinance defines carport and provides further clarification of the type of structure proposed.

Section 1-2-17: CARPORT: Any space outside a building and contiguous thereto, wholly or partly covered by a roof, and used for the shelter of motor vehicles. An unenclosed carport is a carport with no side enclosure that is more than eighteen (18) inches in height, exclusive of screens (other than the side of the building to which the carport is contiguous).

It is important to note that the current tax assessment records, as well as, recorded deed information suggest that the applicant owns both lots 46 and 47A, which would provide a total lot width of 45'; thus, negating any need for a variance of side yard setback, provided that the structure does not encroach within 5' of the side property line for a carport, or 6' of the side property line for an addition to the dwelling unit structure. Further complicating this issue, is that the adjoining property owner at 122 South Euclid Avenue is identified in tax assessment records and recorded deed information as having a total lot width of 45' and their access drive appears to be situated on lot 47A, which is reportedly owned by the applicant for this case. Therefore, until the perceived discrepancy regarding ownership and property boundaries is resolved through a professionally licensed surveyor, the requirement for a variance is questionable.

It is also important to note that aside from the aforementioned property ownership concerns, the proposed carport will be constructed in the same area as the previously erected structure, which according to the applicant was removed due to foundation work required in order to pass inspection. The removal of the nonconforming structure abandoned any previously established nonconformity at the time of demolition. The new structure will include a second-story living space that will not encroach into the remaining side yard setback any closer than the proposed carport structure at grade level.

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.**

Staff Analysis: Considering the previously existing carport at the same location as where the applicant intends to construct a new carport, the application of the Ordinance would prevent her from enjoying the same benefits that had previously existed.

2. **That such hardship is not shared generally by other properties in the same zoning district and the same vicinity.**

Staff Analysis: As identified on the aerial map below (City of Winchester GIS Department), the subject property appears to be as wide, if not wider than other properties within the same district and vicinity. However, the subject property currently does not accommodate off-street parking accessible from the public alley in the rear; and, the existing driveway access is located in the front of the subject property from South Euclid Avenue.

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.**

Staff Analysis: The subject property is bordered on the south by a 15' wide parcel, which according to the City's Tax Assessment records is also owned by

the applicant; however, appears to be utilized for a private access drive by the neighboring property owner at 122 South Euclid Avenue. Therefore, any encroachment enabled by the granting of the requested variance would presumably have no impact on the applicant, as she is the owner of the affected adjacent parcel. The character of the district will not be changed, as there appears to be several properties with diminished side yard setbacks and a very tight streetscape. The improvement of the property with the proposed carport will encourage off-street parking and remove some of the congestion from the narrow two-way street.

Mr. Diem concluded that the applicant may not be required to pursue a variance request, due to the property ownership discrepancies, as previously outlined in this report. Therefore, staff recommends that this matter be tabled pending the outcome of the official survey report.

Note: Staff has received no letters of opposition or support for the requested variance.

With no questions and no citizens wishing to address the Board, Chairman Hester closed the public hearing.

With no further discussion, Vice-Chairman Phillips moved, seconded by Mr. Pifer, to table this variance request made by Kristine Stoehr, pertaining to required side yard setbacks for unenclosed carports, for the subject property located at 114 South Euclid Avenue, until such time that a professional survey has identified that such a need exists. The motion passed unanimously.

BZA-11-595 - Request of Sean S. Munson for variances pertaining to minimum lot area, minimum lot width, and rear yard setback pursuant to Sections 4-3-1, 4-4-1, and 4-6-2 of the Winchester Zoning Ordinance, for the subject property located at 405 Elm Street (Map 196-08-J-98A), which is zoned Medium Density Residential (MR) District.

Section 4-1 of the Winchester Zoning Ordinance (hereinafter “the Ordinance”) establishes the allowable uses in the Medium Density Residential (MR) District.

Section 4-1: Structures to be erected or land to be used shall be for one (1) of the following uses. Only one (1) main building and its accessory buildings may be erected on any lot or parcel of land in this district.

Section 4-1-1: Single family detached dwellings.

The dimensional standards pertaining to the Medium Density Residential (MR) District are further outlined in Article 4 of the Ordinance; and, include: Section 4-3-1, Area Regulations (single family detached dwelling); Section 4-4-1, Lot Width Requirements (single family detached dwelling); and, Section 4-6-2, Yard Regulations (rear setback).

Section 4-3-1: Single family detached dwelling – 8,000 square feet.

Section 4-4-1: Single family detached dwelling – 60 feet.

Section 4-6-2: Rear setbacks for all uses in this district – 25 feet.

It is important to note that the applicant is not proposing any new construction at this time; and, is only seeking relief of the Ordinance, so as to alleviate the substantial nonconformity of two (2) single family detached dwellings located on one parcel.

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.**

Staff Analysis: Without addressing the existing nonconformity through the subdivision and variance process, the applicant could potentially lose the benefit of owning two single family detached dwellings, if the use and occupancy of one of the two dwellings should ever lapse for a period of two (2) or more years. Furthermore, if the applicant were ever in a situation where one of the two structures were damaged or destroyed certain restrictions would apply for the rehabilitation or re-construction of the nonconforming structures.

2. **That such hardship is not shared generally by other properties in the same zoning district and the same vicinity.**

Staff Analysis: Few properties in the same zoning district and same vicinity are improved with two (2) single family detached dwellings. The hardship presented in this case is therefore unique.

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 Analysis: The granting of the requested variances would allow for the subdivision of an existing parcel that is currently improved with two (2) single family detached dwellings. Property subdivisions are generally not manifested externally beyond deeds, plats, and other court documents. Off-street parking for the dwelling located in the rear of the subject property will remain situated along the public alley that is immediately adjacent to the north. The character of the district will not be changed by the granting of the variances.

Mr. Diem stated that the applicant appears to have met all three (3) criteria for granting the variances and recommends that the Board of Zoning Appeals **grant** the requested variances to Sean S. Munson, pertaining to required lot area, lot width, and rear setback, for the subject property located at 405 Elm Street.

Note: Staff has received no letters of opposition or support for the requested variance. Mr. Diem stated that there have been phone calls asking the nature of the project but no opposition raised.

Chairman Hester opened the public hearing.

Chairman Hester swore in the applicant, Sean Munson, who stated that he was willing to answer any questions that the Board had.

Mr. Crawford, referring to the map provided by the applicant, asked the applicant to confirm the location where the subdivision would be, between the two homes and out to Elm Street.

Mr. Diem further clarified that every lot is required to have frontage on to a public street. He said the public alley depicted on the map cannot be considered a street for lot frontage requirements therefore there is a pipe stem arrangement where there is a narrow width of lot frontage that fronts onto Elm Street. Whether it could be used as driveway in the future is up to the property owner. He said that they would have to secure permits from the Public Services Department for curb cuts and access to the street for the driveway entrance.

Chairman Hester stated that the applicant appeared to be attempting to make the property more conforming, not less.

With no more questions, Chairman Hester closed the public hearing.

Vice-Chairman Phillips moved, seconded by Mr. Pifer, to grant the requested variances as recommended. The motion passed unanimously.

BZA-11-572 - Request of Terry Sloane Carter, on behalf of the subject property owner, for a variance pertaining to corner side yard setback, pursuant to Section 5.1-8-1 of the Winchester Zoning Ordinance for the subject property located at 568 North Kent Street (Map 154-04- -4), which is zoned Limited High Density Residential (HR-1) District.

Section 5.1-8-1 of the Winchester Zoning Ordinance (hereinafter “the Ordinance”) requires that all single-family dwellings, two-family dwellings and townhouses be provided with a corner side yard of at least 15 feet.

Section 5.1-8-1: For single family dwellings, two family dwellings, and townhouse dwellings: fifteen (15) feet or more.

Section 1-2-95.1 of the Ordinance provides a definition of corner side yard.

Section 1-2-95.1: YARD, CORNER SIDE: A yard between the corner side line (as defined for Corner Lots) and the closest point or plane of the main building excluding steps) and extending from the front yard to the rear lot line. For multi-corner lots with two front yards, the corner side yard shall extend between the two front yards. (8/13/02, Case 02-06, Ord. No. 021-2002)

It is important to note that, according to the City’s Tax Assessment records, the subject property dimensions are 38’ x 171.8’, which are in compliance for lot width and lot area within the HR-1 District for single-family dwelling use; therefore, the applicant would not otherwise be provided with the relief associated with Section 17-6-1 of the Ordinance.

Section 17-6-1: Where a lot of record at the time of the effective date of this Ordinance has less area or width than herein required in the district, in which it is located, said lot may nevertheless be used for a single-family detached dwelling if that use is permitted in the district in which it is located. Provided, however, that side yards of not less than ten percent (10%) of the required lot width, with a minimum width of five (5) feet, are provided; and that the setback and rear yard requirements shall be as required by the zoning district in which the lot is located. If the lot is a corner lot, a side yard facing on the side street of not less than twenty percent (20%) of the required lot width, with a minimum of ten (10) feet shall be provided.

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. (7-15-09, Case # 09-66, Ord. No. 2009-18)

- 1. That the strict application of this Ordinance would produce a clearly demonstrable hardship.**

Staff Analysis: Considering the 38' width of the existing lot, in addition to the required side yard setback of 4' and required corner side yard setback of 15', the buildable area and width of the house would be reduced to no more than 19'. As a matter of comparison, if the subject property were an interior lot and not a corner property, the required side yard setbacks of 4' would allow for a 30' wide house on the same size lot.

- 2. That such hardship is not shared generally by other properties in the same zoning district and the same vicinity.**

Staff Analysis: The majority of residential lots within the vicinity have already been improved with single-family dwellings. Many of which, do not meet main building or corner side yard setback requirements; however, because they were developed prior to the enactment of the Ordinance, they are considered lawfully nonconforming and do not require conformance with the current standards.

- 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.**

Staff Analysis: The adjacent properties to the north and east will benefit from the applicant proposing to meet the required rear yard and side yard setbacks. As the subject property is a corner lot, there would be no substantial detriment caused by the variance to the south, if granted by the Board. The applicant further proposes to meet the main building setback requirements.

Mr. Diem stated that the applicant appears to have met all three (3) criteria for granting a variance. Therefore, staff is in support of this variance request.

Mr. Diem stated that no letters of opposition or support for the requested variance has been received. However, staff did receive a phone call as recently as yesterday from an adjoining property owner who had concerns about emergency personal being able to respond to a home located to the rear and north of the subject property. Staff's response was that whether or not this request was before this Board today, the property could still be improved with a one or two single family detached house, and that the applicant is seeking relief so they can have a wider house. Whether or not there is access to the North rear property is not this applicants concern or issue. This is a situation that has existed for many years and to which the property owner had the benefit

of being adjacent to a vacant, unimproved lot. However, the applicant has the right to improve his vacant lot with a single family detached dwelling.

Mr. Crawford asked if the setback on the north side was part of this and does it affect this so they can build a house today but narrower than what they want, but right out to the setback from the north side. Mr. Diem said that that was correct and that it was a four foot requirement from the northern property line to the setback on the side.

Vice-Chairman Phillips asked if the rear of the property was the north side. Mr. Diem stated that the rear was the eastern most boundary which would be perpendicular to Liberty Avenue. He said the lot is not proposed to be subdivided, the narrow portion of lot will front on Kent Street. There are no changes with the lot as platted. Vice-Chairman Phillips asked if the north was the side line and Mr. Diem confirmed it was.

Mr. Pifer asked if both houses would front on Kent Street. Mr. Diem stated that staff has not received any building permit applications yet so he wasn't sure how the home would be oriented. He presumed that the home would face on Kent Street and based on the dimensions that remain after the setbacks are outlined on the lot that may dictate where the second structure is located.

Mr. Phillips asked if the Planning Commission would address house location and Mr. Diem stated that they would not. He said that if it were a two family dwelling it would require review by site plan, but because it will be a single family dwelling it does not require that a site plan be submitted to the Planning Commission. He stated that the applicant would be required to provide off street parking.

Chairman Hester opened the public hearing.

Chairman Hester swore in the applicant, Terry Carter Sloane.

Ms. Sloane stated that her father owns the property and that she is acting on his behalf. She said that she has lived here in Winchester her whole life and wants the opportunity to build a home place for her and her family to always have to come to.

Vice-Chairman asked if Ms. Sloane intended to live in the home and she stated that she would. She also said that she wasn't sure that they would ever build a second house on the property, but maybe they would at a later date. She said that her Father had certain stipulations and that they do not intend to sell the house but to keep it in the family.

With no more questions forthcoming, Chairman Hester closed the public hearing.

Mr. Pifer stated that he was concerned with the layout of the houses facing Kent Street and Liberty. He said that many of the homes on the street are shotgun houses and that the area is a high density location with many homes like this. He stated that he didn't know what the master plan was for this area. Mr. Crawford stated that this was not in the scope of what was up for discussion for today and Chairman Hester said that all they were to address was the variance for this particular location. Mr. Crawford said that the applicant was attempting to avoid a shotgun style home in an already high density area. Chairman Hester stated that as the lot is, if the Board does not grant the variance the house would certainly have to be a shotgun style, so granting the variance would help to prevent that. He said that he too would rather see a nineteen foot wide home built but that was not feasible with the size of the lot.

Vice-Chairman asked Mr. Diem if the lot was being divided. Mr. Diem stated that it wasn't and that it was not required for the Board to grant permission for two houses to be built on the lot. He said that that permission is all ready expressed in the ordinance. He stated that the applicant is requesting relief of the fifteen foot setback requirement from Liberty Avenue so they can have a wider footprint home facing Kent Street. Vice- Chairman Phillips asked if two homes would remain on one lot. Mr. Diem stated that it would if a second house is ever built. Vice-Chairman Phillips stated that it was up to the applicant to improve the property to the best of their ability. Mr. Diem reiterated that it was in the staff report that the applicant was seeking relief of six feet.

With no more discussion, Mr. Crawford moved, seconded by Mr. Pifer, to grant a variance to Terry Sloane Carter, pertaining to corner side yard setback requirements for the subject property located at 568 North Kent Street. The following condition(s) were imposed:

The amount of variance shall not exceed 6' in reduction of the 15' required distance.

The motion passed unanimously.

BZA-11-604 - Request of Sharen Gromling, on behalf of Our Health Community Enterprise, for a variance pertaining to the projection of a structure beyond the property line, pursuant to Section 18-18-1 of the Winchester Zoning Ordinance, for the subject property located at 411 North Cameron Street (*Map 173-01-L-11*), which is zoned Central Business (B-1) District, with Historic Winchester (HW) District overlay.

Section 18-18-1 of the Winchester Zoning Ordinance (hereinafter "the Ordinance") requires that permanent awnings or similar structures that will be permanently attached to a City sidewalk extend no closer to the curb line than five (5) feet in from the curb line.

Section 18-18-1: No marquee, permanent awnings, pent roofs, porches, or similar structures that will be permanently attached to a City sidewalk or will be less than eight (8) feet above a City sidewalk, shall be erected, altered, or remodeled to extend closer to the curb line than any other adjacent existing building, porch, or other structure, but in no case closer than five (5) feet in from the curb line.

To provide the maximum amount of protection from inclement weather for clients and visitors, the proposed awning structure will be constructed onto the City sidewalk, with a setback of 3'1", as opposed to the required setback of 5'.

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.**

Staff Analysis: The public sidewalk area is approximately 10' wide in front of the subject property entrance. The proposed awning structure has a depth of 7', which results in a 3' setback from the curb line. If the awning were less than 7' in depth, the efforts to afford protection from the elements for Dementia and Alzheimer adults would be adversely impacted. The remaining three feet of clearance between the structure and the curb line would continue to allow for unobstructed access by disabled persons and pedestrians.

2. **That such hardship is not shared generally by other properties in the same zoning district and the same vicinity.**

Staff Analysis: The hardship is relatively unique to the subject property due to the types of services provided and the condition(s) of clients who will frequent the establishment. Because of this unique arrangement, the hardship is not shared generally by other properties in the same zoning district and 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.**

Staff Analysis: The proposed location of the awning structure fronts directly onto North Cameron Street. The awning would not create a visual obstruction due to the limited number of access drives located along that particular section of North Cameron Street. The awning will require the issuance of a Certificate of Appropriateness from the Board of Architectural Review to ensure adherence to the Historic District Design Guidelines; therefore, the character of the district will not be changed.

Mr. Diem stated that the applicant appears to have met at all three (3) criteria for granting a variance and therefore recommends that the Board of Zoning Appeals grant the requested variance.

Note: Staff has received no letters of opposition or support for the requested variance.

Chairman Hester opened the public hearing and swore in the applicant, Sharon Gromling.

Ms. Gromling stated that they had an opportunity to add to the Our Health campus another non profit agency that assists individuals with Dementia and Alzheimers by providing adult day care. They are assisting 23 clients and would like to increase that number to 45. In their current location at Braddock Street UMC, they have an awning that keeps the clients out of the weather, and they would like to provide this for them at the new location as well.

Mr. Pifer asked Ms. Gromling if the 3' 1" represented the awning from the curb or the columns from the curb. She stated that it represented the columns. He asked if there was an overhang, and she confirmed there was.

Mr. Crawford asked if there was something specific about the population that would utilize the facility that required them to need protection from the weather. Ms. Gromling stated that it was for the health and safety of this population. She said they come from a location that provides them with an awning and they would like to give them the same. Mr. Crawford asked if they had signed a lease and whether their occupancy was contingent on having an awning. Ms. Gromling stated that they had signed a lease and it was not contingent on having an awning.

Chairman Hester closed the public hearing.

Mr. Pifer said that his main concern was whether the public would have room to move along the sidewalk. He wondered if there was a way for the columns to be shifted back or eliminated so there is an overhang, allowing for more space to walk on. Vice-Chairman Phillips agreed and suggested another option to hang the awning. Mr. Pifer wanted to find a way to keep the sidewalk open so people would have open access to walk unimpeded.

Mr. Crawford asked if this was a two story building. Ms. Gromling confirmed that it was multiple stories. Mr. Diem added that either end of the awning would not be enclosed and still be open to pedestrians, not requiring them to access the building to navigate through. Mr. Crawford asked if they could eliminate the columns by using guide wires.

Chairman Hester said that it may look strange to move the columns further back, but that the clients would need something as a safety issue. He felt that this was commendable to be providing the clients with an awning.

Mr. Crawford clarified with Ms. Gromling the intent of the awning and access for the clients both with and without wheelchairs. She said that the awning would extend out 7 feet from the building and leave a small area where the client would not be protected and the columns would be in 3' 1" from the curb. Ms. Gromling said that she had spoken with Mr. Vorhees about the awning and the columns and he had said that the columns are very important for the structural safety of the awning and that they were necessary. Chairman Hester said that he felt that they were important as well. Vice-Chairman Phillips and Mr. Crawford discussed the use of wires and how wind would affect the awning.

Chairman Hester asked if there were any other questions. None forthcoming, Vice-Chairman Phillips moved to table the request for other options, with the motion seconded by Mr. Pifer. The motion passed with Chairman Hester voting no to tabling the request.

BZA-11-605 - Request of Painter-Lewis, PLC, on behalf of Green Frog Ventures, LLC, for a variance pertaining to permitted fence heights, pursuant to Section 18-9-2.8 of the Winchester Zoning Ordinance for the subject property located at 144 Weems Lane (*Map 271-02-4*), which is zoned Commercial Industrial (CM-1) District.

Section 18-9-2.8 of the Winchester Zoning Ordinance (hereinafter "the Ordinance") requires that fences erected in front yards shall not exceed four (4') feet in height above grade.

Section 18-9-2.8: Fences and non-retaining walls up to eight (8) feet in height above surrounding grade, may be installed in any required rear or non-corner side yard. Fences up to four (4) feet in height above surrounding grade which are at least twenty-five (25) percent open (e.g. picket, chain link, rail, etc.) and non-retaining walls up to three (3) feet in height above surrounding grade may be installed in any required front or corner side yard except as per Section 18-12 of this Ordinance. On double-frontage residential lots, fences up to six (6) feet in height above surrounding grade may be installed in the one required front yard that is situated between a public street and the rear elevation of the main building on the lot provided that they are set back from the public right of way at least three (3) feet plus one (1) additional foot of setback for every one (1) additional foot of height above four (4) feet.

It is important to note that the proposed use of the subject property is an electric utility substation, which is not intended to be accessible to the general public. In the interests of

facility security and public health, safety, and welfare, the chain-link fence is proposed to be erected up to 7' above grade, with three (3) strands of barbed-wire fencing above that for a total height of 8' above grade.

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.**

Staff Analysis: Considering proposed use of the property for a new electric utility substation, a four (4') foot fence would provide little, if any, security or public safety; and, therefore be essentially useless.

- 2. That such hardship is not shared generally by other properties in the same zoning district and the same vicinity.**

Staff Analysis: The only other electric utility substation in the same vicinity is similarly enclosed; however, the new substation location will replace the existing site. No other such facilities exist in the area; thus, rendering this hardship unique to the subject property and use proposal.

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.**

Staff Analysis: The subject property site is isolated from the public thoroughfares along South Loudoun Street and Weems Lane; and, is situated behind existing commercial structures. Therefore, the proposed installation of an electric utility substation and perimeter fence will be of no substantial detriment to adjacent properties and will not change the character of the district.

Mr. Diem stated that the applicant appears to have met all three (3) criteria for granting a variance. Therefore, staff is in support of this variance request and recommends that the Board of Zoning Appeals grant the requested variance.

Note: Staff has received no letters of opposition or support for the requested variance.

Chairman Hester opened the public hearing.

Chairman Hester swore in the applicant, Tim Painter.

Mr. Painter, referring to distributed material with the conceptual lay out of the station to the Board, describing the site, the necessity of the fence and what the fence would look like.

Chairman Hester closed the public hearing.

No discussion forthcoming, Vice-Chairman Phillips moved, seconded by Mr. Pifer, to grant a variance to Painter-Lewis, PLC, pertaining to permitted fence heights in a front yard setback for the subject property located at 144 Weems Lane as recommended.

NEW BUSINESS

City Attorney, Anthony Williams, made a presentation to the Board concerning the Conflict of Interest Act and Conduct of Board Members. Please see attached power point.

After the presentation, Vice-Chairman Phillips stated that he had a prior engagement and would have to leave soon, but he did feel that this was important and had many questions to ask. Mr. Williams suggested that he write them down and give them to Mr. Diem to gather the answers for the Board. Vice-Chairman Phillips said that he would like to have another meeting if possible to go over his questions and Mr. Williams said that he would discuss it with Mr. Diem.

Mr. Williams pointed out to the Board that because he is not their legal counsel, there were restrictions on holding closed meetings. He said that he could meet with them in a public forum where the press and others can attend. He stated that there was need to be cautious about the wording of any questions because they could put themselves in a precarious position. He further stated that this happens in Council as well, and that it was important to exercise caution because

what was said could end up in the paper. Mr. Williams said that he would speak with Mr. Diem to determine how to handle the questions that the Board has.

Vice- Chairman Phillips asked Mr. Williams if the Board should go to him on a case to case basis. Mr. Williams said that the Board should go to Mr. Diem because he was not their attorney.

Chairman Hester said that at the BZA school at Virginia Tech they discussed this topic. He said that some jurisdictions have attorneys on hand in the meetings. Mr. Williams said that that can be done and the way it works is if the local government attorney consents to be a legal advisor for the BZA, they forfeit the right to use that attorney in any opposition case that arises. In order to prevent the City from having to hire outside counsel, they just don't allow the City attorney to advise BZA.

Vice- Chairman Phillips leaves at 5:31

Chairman Hester understood that if you need to talk to an attorney, that it is best to go to Alex Iden with any questions. Mr. Williams stated that he didn't know that Alex Iden would give advice because he is a prosecutor, but in a conflict of interest issue, he would be the first stop because his opinion would carry greater weight in protecting them. Mr. Williams said that it was entirely up to Mr. Iden as to whether he would issue an opinion or not. His primary function by statute is to prosecute. Mr. Williams stated that they should go to Mr. Diem first and if Mr. Diem has an issue, he can then go to Mr. Williams for an answer and aid him in answering a question. Mr. Williams stated that it was beneficial for the Board to have a member who is an attorney that could assist them in a general way.

Chairman Hester requested a copy of the power point presentation, which Mr. Williams said he would make it available to Mr. Diem.

OLD BUSINESS

None

ADJOURN

With no further business to discuss, the meeting was adjourned.