

**BOARD OF ZONING APPEALS
MINUTES**

The Winchester Board of Zoning Appeals held a special meeting on, October 13, 2010, at 4:00 p.m. in the Council Chambers, Rouss City Hall, 15 North Cameron Street, Winchester, Virginia.

PRESENT: B Hester, C Koneczny, J Phillips, W Roberson and B Pifer (5)
ABSENT: H Hurt (1)
STAFF: None (0)
ALTERNATE: Donald Crawford
EX-OFFICIO: Jim O’Conner (City Manager)
VISITORS: Michelle Bouve Hoffman and Eric Hoffman

MINUTES

Mr. Hester moved, seconded by Mr. Roberson, to approve the minutes of September 8, 2010 as submitted.

CORRESPONDENCE

None

PUBLIC HEARINGS

BZA-10-570 Request of Eric Hoffman, on behalf of Stanley Stokes, for a variance pertaining to required side yard setback pursuant to Section 4-6-1.1 of the Winchester Zoning Ordinance at 517 West Cork Street (*Map Number 192-01-C-32*) zoned Medium Density Residential (MR) District.

Aaron Grisdale presented the request for a variance of 15’ from a required corner side yard setback to enclose an existing porch and add a first floor bathroom, so as to accommodate a physically disabled person.

It is necessary to first clarify the provision of the Zoning Ordinance, for which the applicant is seeking relief. The subject property is located at the corner of West Cork Street and Academy Lane; and, therefore is correctly identified as a corner property. The portion of the property that fronts along Academy Lane, which is also the specific area identified in the variance request is more correctly identified as a corner side yard. The application suggests that the variance sought is with regards to side yard setback, pursuant to Section 4-6-1.1, which is not entirely correct; however, reference is made within that section to the more accurate section of 4-8. Section 4-8-1 identifies the required corner side yard setback for single-family dwellings in the MR District, as 20’. That being said, the existing setback of 11.5’ is nonconforming and the proposal represents further encroachment into the required corner side yard, resulting in a 5’ setback, where 20’ is otherwise required.

Two key factors were considered during the staff review of this variance request. First, the proposed encroachment represents a similar encroachment as what currently exists at the immediately adjacent property to the south. Additionally, the statements from medical professionals suggest that an actual hardship approaching physical disability exists. In light of the latter, it is important to note that the Americans with Disabilities Act (ADA) requires that reasonable accommodations be made available, when necessary and which would not otherwise impose an undue hardship on the person making the accommodations available.

The ADA prohibits discrimination on the basis of disability in employment, State and local government, public accommodations, commercial facilities, transportation, and telecommunications. It also applies to the United States Congress.

To be protected by the ADA, one must have a disability or have a relationship or association with an individual with a disability. An individual with a disability is defined by the ADA as a person who has a physical or mental impairment that substantially limits one or more major life activities, a person who has a history or record of such impairment, or a person who is perceived by others as having such impairment. The ADA does not specifically name all of the impairments that are covered.

Vice-Chairman Koneczny opened the public hearing.

Michelle Bouve Hoffman, representing Stanley Stokes, explained that he has had issues with his colon, bowels and knees. He is requesting a bathroom on the first floor for medical reasons. She stated that his doctors provided letters stating that fact.

Mr. Koneczny asked if this would be a permanent change.

Ms. Hoffman explained that if necessary the sides could be removed and it could go back to being a porch.

Mr. Hester asked if there was a bedroom on the first floor or if he walked the stairs for that.

Ms. Hoffman stated that his bedroom is on the second floor but he had been staying on the couch when necessary.

In looking at the survey, Mr. Phillips stated that it looked as if the bathroom would be going on the back of the home.

Mr. Grisdale explained that a building permit was submitted for an alternate plan in case the variance was denied moving the bathroom to the back of the house.

Vice-Chairman Koneczny closed the public hearing.

Mr. Koneczny asked why the variance was necessary if there was an alternative plan.

Mr. Grisdale stated that the applicant preferred to have it on the porch.

Mr. Koneczny stated that if the bathroom goes in the back the variance would not be needed. He explained that he could not be sympathetic if there was another option.

Mr. Pifer asked if there were building limitations making the porch a better option.

Ms. Hoffman stated that the back of the house is less desirable because the area is smaller. If Mr. Stokes would be put in a wheelchair he would not be able to get in and out. She wanted to make clear that this would not mean adding to the back of the house but using the existing space already in the house.

Mr. Roberson pointed out that the property to the south has the same encroachment today.

Mr. Koneczny stated that having two properties in the same area that do not conform to code was where they wanted to go.

Mr. Hester suggested instilling a time period or issuing a condition that if the house is sold the porch would need to be restored.

Mr. Phillips moved, seconded by Mr. Roberson, to grant a 15' variance of the required corner side yard setback, pursuant to Section 4-8-1 of the Winchester Zoning Ordinance for the property located at 517 West Cork Street, as identified in BZA-10-570, because the Board finds:

- 1. That the strict application of this Ordinance would produce a clearly demonstrable hardship, in direct conflict with the guidelines and statutory requirements identified within the ADA; and,*
- 2. That such hardship is not shared generally by other properties in the same zoning district and the same vicinity, and the granting of this variance will further establish parity between neighboring properties; and,*
- 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.*

Mr. Hester stated for the record that he felt that a condition be imposed if its sold.

<u>MEMBER</u>	<u>VOTE</u>
Mr. Koneczny	No
Mr. Pifer	Yes
Mr. Roberson	Yes
Mr. Phillips	Yes
Mr. Hester	Yes

NEW BUSINESS

None

OTHER DISCUSSION

Mr. Koneczny had questions regarding the July hearing for the Winchester Medical Center and the article in the Sept 22nd issue of the Winchester Star. He stated that the article created discomfort among some of the members due its content regarding the advertising ability of the Wellness Center while preparing their text amendment. The BZA granted a four (4) month time frame to continue advertising while it went through the procedural steps to get its amendment approved. He asked how the City had the ability to overlook that condition when it can only be overturned through the court.

Mr. O'Conner fielded the question, stating that at this point it is still going through the hearing process. He stated that to his knowledge the Wellness Center had not been told any different.

Mr. Koneczny stated that based on his calculations the Wellness Center will have a period of thirty (30) days or more where they will not be able to advertise.

Mr. O'Conner stated that he was correct unless something happened in the meantime with the BZA appeal to Circuit Court.

Meeting adjourned: 4:30PM