

BOARD OF ZONING APPEALS MINUTES

The Winchester Board of Zoning Appeals held its regular monthly meeting on, August 13, 2008, at 4:00 p.m. in the Council Chambers, Roush City Hall, 15 North Cameron Street, Winchester, Virginia.

PRESENT: Hurt, Koneczny, Phillips and Wiley.
ABSENT: Roberson.
STAFF: Diem and Walsh
VISITORS: Andrew & Shirley Pederson and Richard & Jennifer Flint

MINUTES

On motion by Mr. Phillips, seconded by Mr. Wiley, the minutes of the July 9, 2008 meeting were unanimously approved as presented.

CORRESPONDENCE

Updated Amendments to the Zoning Ordinance
TA-08-02 – Approved Amendments to the Zoning Ordinance

PUBLIC HEARINGS

BZA-08-21 Request of Andrew J. Pedersen, on behalf of the subject property, for an appeal of the Zoning Administrator's determination pertaining to a nonconforming structure, pursuant to Section 17-5-1 of the Winchester Zoning Ordinance, at 435 Kern Lane (*Section 173, Double Circle 1, Block J, Lot 6*), which is zoned Limited High Density Residential (HR-1), with Historic Winchester (HW) District overlay.

Mr. Diem presented the request of Andrew J. Pedersen to appeal the Zoning Administrator's determination regarding the restoration or replacement of a nonconforming structure located to the rear of 432 North Loudoun Street and previously known as 435 Kern Lane.

On November 15, 2007, David Parker, Codes Compliance Inspector, issued a notice to Mr. Pedersen concerning the status of the nonconforming structure located to the rear of his property at 432 North Loudoun Street and known as 435 Kern Lane. Within the notice, Mr. Parker explained the requirements for replacing or restoring a destroyed or damaged nonconforming structure. The nonconforming status is specifically related to the existence of two (2) single family detached dwelling structures on a single parcel of land within the HR-1 District, which is not a permitted by right use. The nonconforming structure was reportedly constructed in 1930, which pre-dates the adoption of the Winchester Zoning Ordinance.

It had been noted that the structure was significantly damaged and declared unfit for human habitation, as the result of a fire incident which occurred on May 6, 2007. Mr. Pedersen's written request for appeal confirms the date of the fire incident; and, that the fire was caused by a *"trespasser who left a candle burning in an upstairs bedroom."* Mr. Pedersen further states within the letter of appeal that *"the former tenant, Mr. Lawrence Trent, lived in the house...until his unfortunate passing due to old age in late 2006."* Presumably, there was no permitted residential use and occupancy of the structure between Mr. Trent's death and the fire incident of May 6, 2007.

On December 10, 2007, Mr. Pedersen applied for – and was subsequently issued – an approved building permit for Residential Remodeling of Fire Damage. The approved permit was not retrieved by Mr. Pedersen and has since expired as of June 7, 2008. Additionally, no inspections have been requested for any work performed at the subject property, since December 10, 2007.

Within Mr. Pedersen's application, the valuation of the restoration project was estimated at \$39,000. A tax assessment survey of the subject property was conducted on April 4, 2006, nearly thirty days prior to the fire incident. The initial subtotal of assessed value of the nonconforming dwelling unit was noted as being \$98,805; however, the total assessed value was noted as being \$33,300 due to economic depreciation. A re-assessment of the dwelling following the fire incident would most likely produce an even lower value. Therefore, it would appear as though the most appropriate section of the Ordinance for the Board's consideration is 17-5-2, as the cost of restoration would exceed fifty (50%) percent of the cost of reconstructing the entire structure.

Chairman Hurt opened the public hearing.

Andrew Pederson explained that he wants to renovate the home. He and his father have both been ill, which has prevented him from getting started on the work. Since then he has come into some inheritance, which will go toward the project. He stated he has already lined up contractors to do the work. Given the opportunity he would like to put up a fence and motion lights for security.

He stated that he used to work in real estate so he felt the dollar amounts given were inaccurate. He felt that once the home was fixed up it could easily rent for \$700 a month making its value about \$75,000.

Chairman Hurt asked for the reason the permit wasn't picked up in December.

Mr. Pederson stated that he didn't know that he had to pick it up; he thought it could be mailed. He asked for a 6 month extension.

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Mr. Konecny stated that he found the death certificate for Mr. Trent which indicated that he died in Nov 2005 not 2006. This means that the property has lost the nonconforming us as its not been used for more than 2 years. He stated that the Board is not authorized to change the law. Based on this information it shouldn't be in front of them for a decision.

Shirley Pedersen asked who is authorized to change it.

Mr. Diem explained that it is a Virginia State Law and that any decision could be appealed to the court. He added that the accurate date of Mr. Trent's passing was not made available until now.

Mr. Pedersen asked if they could split it into two lots.

Mr. Diem explained that the second lot would have to front a public street. The alley doesn't count as a public street even though it's a public right-of-way.

Jennifer Flint, an adjacent neighbor stated that she would really like to see it cleaned up. She asked if the Pedersen's aren't allowed to clean it up, what they can do.

Mr. Konecny stated that the Board is not qualified to answer that question. He suggested meeting with the City Planner.

Richard Flint added that the City would benefit from something being done with the house.

Mr. Pedersen asked if they had the right to use it for anything else.

Mr. Diem explained that it can be used as a number of things and then there are a number of things that it can't be used for. He offered to discuss these outside the public hearing.

Chairman Hurt closed the public hearing.

It was moved by Konecny, seconded by Phillips, to deny BZA-08-21.

Motion passed unanimously 4-0.

NEW BUSINESS

None

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OLD BUSINESS

Review of Draft By-Laws and discussion of annual election of Chairman and Vice-Chairman positions.

Mr. Diem explained that draft by-laws were given out months ago yet he has received limited feedback regarding the content. He asked that the Board take the time to look them over.

He asked about nominations for Chairman and Vice-Chairman.

Mr. Koneczny suggested waiting until there was a full Board.

It was moved by Phillips, seconded by Wiley, to table the discussion until there is a full Board present.

Motion passed unanimously.

ADDITIONAL COMMENTS

Meeting adjourned: 4:53