

**BOARD OF ZONING APPEALS
MINUTES**

The Winchester Board of Zoning Appeals held a special meeting on, November 10, 2010, at 4:00 p.m. in the Council Chambers, Rouss City Hall, 15 North Cameron Street, Winchester, Virginia.

PRESENT: B Hester, H Hurt, C Koneczny, J Phillips, and B Pifer (5)
ABSENT: W Roberson (1)
STAFF: V Diem, A Grisdale and A Walsh (3)
VISITORS: Justin Bogaty, Lee Braithwaite, Cheryl Green, Robert Hassinger, Vernon Joyner, Chris Hamilton, Ann White, Chris Furstenuau, Terry Doyle, Cathlene Storo, and John Habbic

MINUTES

Mr. Koneczny moved, seconded by Mr. Hester, to approve the minutes of October 13, 2010 as presented.

Motion passed unanimously 5-0.

CORRESPONDENCE

Mr. Grisdale stated that several letters had been received pertaining to BZA 10-605. He would share them after reading the staff report for that case.

PUBLIC HEARINGS

BZA 10-618 Request of Terry Doyle for a variance pertaining to minimum lot area and minimum lot width pursuant to Sections 4-3-1 & 4-4-1 of the Winchester Zoning Ordinance located at 18-22 N Pleasant Valley Rd (*Map Number 195-10-B-59 -60*) zoned Medium Density Residential (MR) District.

Mr. Diem presented the request for relief of the Zoning Ordinance, to effectively subdivide an existing parcel, which currently consists of a single-family detached dwelling and a commercial-type structure. The commercial use of the property has since lost its nonconforming status due to vacancy for more than 2 years.

The applicant is attempting to subdivide the subject property and convert the use of an existing commercial garage structure to a single-family detached dwelling. The MR District provisions do not allow for either the commercial use of a residential property, or the existence of two (2) single-family detached dwellings on the same parcel. Therefore, the proposed subdivision provides the best solution to resolve the nonconforming issues affecting the future use and occupancy.

As identified on a plat prepared by Christopher D. Furstenuau, LS, and dated October 19, 2010, the subject property, which was previously improved with a single-family dwelling and a two-story block building, will be subdivided, subsequent to the granting of the requested variances. The resulting lot dimensions will be 33.90' feet of lot width for Lot 59A, which is addressed as 18 North Pleasant Valley Road; and, 36.10' feet of lot width for Lot 60A, which is addressed as 22 North Pleasant Valley Road. The proposed lot areas for each will amount to 4,070sf and 4,335sf, respectively. The remaining parcel, which is currently vacant and unimproved, will consist of a 30' lot width and 3,605sf of lot area. If granted, the variances would allow for a diminished lot width from what is otherwise required as 60' in the MR

District, as well as, substantial relief of the side yard setbacks. The amount of side yard provided will equal an average of 3' from the southern property line for 18 North Pleasant Valley Road, and exactly 1' from the northern property line for 22 North Pleasant Valley Road. The side yards proposed between the structures on the subject property, will comply with the Ordinance requirements of 6'. The proposed lot areas would also amount to approximately 50% of what is otherwise required in the MR District.

Chairman Hurt opened the public hearing.

Chris Furstenau, representing the applicant, explained that it is not a subdivision but a simple boundary line adjustment. He stated that moving the line made more sense to equal out the lots.

Chairman Hurt asked if there were any plans in the works for lot 61.

Mr. Furstenau stated there are not any at this time.

Chairman Hurt closed the public hearing.

Mr. Hester moved, seconded by Mr. Koneczny, to grant the requested variances identified in BZA-10-618, pertaining to minimum lot area and minimum lot width, as well as, the recognized discrepancies in required side yard setback, based on the following circumstances:

1. The Board finds that the strict application of the Ordinance would produce a clearly demonstrable hardship; and,
2. That such hardship is not shared generally by other properties in the same zoning district and the same vicinity; and,
3. That the authorization of such variances will not be of substantial detriment to adjacent properties and that the character of the district will not be changed by granting the variances.

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

BZA 10-605 Request of Lee Braithwaite for an appeal of the Zoning Administrator's decision for front yard setback pursuant to Section 4-5-1 of the Winchester Zoning Ordinance at 631 Pennsylvania Ave (*Map Number 133-02- -25A*) zoned Medium Density Resident (MR) District.

Mr. Grisdale presented the request to appeal the Deputy Zoning Administrator's decision regarding the encroachment of a front porch enclosure into the required front yard setback, located at 631 Pennsylvania Avenue, Winchester, Virginia.

Mr. Braithwaite hired a contractor to enclose a 7ft.-9in x 23ft front porch. The enclosure of this front porch converts the area from a *Porch* to part of the principle residential building. A building permit was not filed with the Zoning and Inspections department for this construction, resulting in staff not able to identify and address this concern before construction.

Before the alteration took place, the main structure was located exactly on the front setback line. The enclosure results in the subject property encroaching into the required front yard setback by the depth of the porch, seven feet and nine inches, 7ft-9in, thus constituting a violation of Section 4-5-1 of the Zoning Ordinance.

Mr. Grisdale read into record all received correspondence.

Mr. Hester asked when the porch was brought to staff's attention.

Mr. Grisdale explained that he was doing a routine inspection of the neighborhood when he saw it. The work had already been completed.

Chairman Hurt opened the public hearing.

Justin Bogaty was in support of allowing the enclosed porch to remain. He was against allowing government officials to dictate what can be done to someone's home.

Cheryl Green, a neighbor directly across the street from the applicant, was also in support of maintaining the enclosed porch. She stated that an exception should be made in this case because the applicant did not intentionally try to do something illegal. He hired a contractor that did excellent work, it was just an oversight. She added that some neighbors have no respect and the enclosed porch helps isolate him from that.

Rob Hassinger, the contractor for this job, explained that most of his work has been done in Frederick County. Their guidelines state that any attached structure is within the setback requirement. He thought Winchester City was the same. He apologized stating that he would do whatever it took to make it right.

Mr. Koneczny asked if he was a licensed contractor.

Mr. Hassinger stated that he is licensed in Frederick County. He assumed that included Winchester City as well.

When asked how long he has been a contractor, Mr. Hassinger stated seven (7) years. He had worked under someone else and was not responsible for the paperwork. He has been on his own for one (1) year.

Mr. Koneczny asked where his business was located.

Mr. Hassinger stated that he has a class C license and is located in Frederick County. He also explained that he attempted to obtain a building permit but was told it was too late; the hearing would have to proceed.

Vernon Joyner stated that he has lived or owned property on Pennsylvania Avenue for the last fifty (50) years. Mr. Braithwaite has been an exceptional neighbor, adding he is an asset to the community. Mr. Joyner did not understand the issue of enclosing the porch. He stated that the distance to the street or the lot size has not changed. He asked how something that was so well built could be a violation when the neighboring house that is building a shack in the backyard was not.

Chrisella Hamilton lives two (2) doors down, south of the applicant. She stated that the porch looks very nice and should be able to remain. She stated that routine inspections are great but what about the problems that have not been addressed. Mr. Braithwaite's porch is an improvement to the neighborhood. She asked about the neighbors running an auto shop out of their home and trash lying around their yards.

Ann White, a neighbor that resides beside Mrs. Green, stated she was also in favor of leaving the enclosure. She explained that now she can leave her bedroom window open and not hear Mr. Braithwaite's conversations taking place on the porch.

Cathlene Storo of 633 Pennsylvania Avenue stated that she has lived on the street for six (6) years. Enclosing the porch without a permit was an honest mistake. It was tastefully done and she would hate to see it removed.

John Habbic of 664 Pennsylvania Avenue stated that he could not add anything new, but affirmed what had already been said. He stated that Mr. Braithwaite has been an excellent neighbor. The project was well thought out and the construction was well done. He requested that a compromise be made and a variance granted.

Mr. Braithwaite stated that when he bought the house it was a fixer-upper. The windows were falling out, he had to replace the furnace and reline the chimney. He tried to set a good example in the neighborhood by improving his property. He had no idea that he was breaking the law. He stated that he believed his contractor did the work in good faith. Once Mr. Hassinger was notified that he needed a permit he attempted to get one but was told it was too late.

Chairman Hurt thanked everyone for their testimony. He explained that the hearing was to determine if the Deputy Zoning Administrator's decision was inappropriate. If the decision was affirmed the applicant would have to come back at a later time for a variance.

Chairman Hurt closed the public hearing.

Mr. Koneczny stated that while the construction was done well, the fact remains that it was the done without a permit. He stated that he did not see how the board could not affirm the decision.

Mr. Koneczny moved, seconded by Mr. Hester, to uphold the Deputy Zoning Administrator's determination.

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

NEW BUSINESS

None

Meeting adjourned: 5:11PM.