

**BOARD OF ZONING APPEALS
MINUTES**

The Winchester Board of Zoning Appeals held its regular meeting on Wednesday, February 12, 2014, at 4:00 p.m. in Council Chambers, Rouss City Hall, 15 N. Cameron Street, Winchester, Virginia.

POINTS OF ORDER:

PRESENT: Chairman Phillips, Mr. Pifer, Ms. Marchant, Mr. Lewis, Mr. Ridgell
ABSENT: Mr. Crawford
STAFF: Aaron Grisdale, Nasser Rahimzadeh, Catherine Clayton
VISITORS: Scott Rosenfeld, Don Crigler, Tim Painter, Carl Hales, Lori Lievre

CONSENT AGENDA:

Approval of Minutes of January 8, 2014.

Chairman Phillips called for corrections or additions to the minutes. Hearing none, he called for a motion. Mr. Pifer moved to approve the minutes as submitted. Mr. Lewis seconded the motion. Voice vote was taken and the motion passed 5-0.

READING OF CORRESPONDENCE:

None.

PUBLIC HEARINGS:

BZA-14-041 Request of DFC Architects, PC, for a variance pertaining to maximum height limit regulations pursuant to Section 13-1-9.1 of the Winchester Zoning Ordinance, for the property located at 940 Cedar Creek Grade (Map Number 249-01- -2 - > <01), zoned Highway Commercial (B-2) District with Planned Unit Development (PUD) District and Corridor Enhancement (CE) District overlays. The applicant is seeking this variance to increase the allowable height of one (1) of the eight (8) proposed buildings.

Mr. Grisdale presented the staff report stating that the applicant is seeking this variance of maximum height limit regulations for a proposed structure at 940 Cedar Creek Grade. He said that the applicant recently received approval for a rezoning of a parcel for a planned development to complete a mixed-use development consisting of commercial space and several freestanding multi-family residential buildings. He explained that this request pertains to the middle building on the development and is being requested due to the inclusion of a partial basement with garage parking and as a result of changing topography and grades on the property. He added that staff does believe that the applicant can show a demonstrable hardship. He concluded his presentation by adding that he is available for questions from the Board.

Chairman Phillips Opened the Public Hearing

Don Crigler, DFC Architects, was sworn in by Vice Chairman Pifer and advised the Board that he is available to answer any questions the Board may have as it pertains to the project and the request. He explained the issues with the topography and the various grades at the site and stated that it will only be for one (1) of the eight (8) proposed buildings. He also said that if they remove the garages, they would end up having to grade up to that point because they need to get into the building on the upper half for handicap access. He said that on the drawings, the roof lines are very shallow pitches because of the size of the buildings. He added that they have kept them down as far as they can short of going to a flat roof which would not be as attractive for the building. He concluded stating that he would be happy to answer any questions.

Ms. Marchant reiterated that out of the eight (8) buildings, only this one has an issue to which Mr. Crigler stated yes and it is only a small portion of the building that will actually be seen. Ms. Marchant said then when you speak about facing the street, there are other buildings in between the actual street and this building to which Mr. Crigler stated yes that there is actually a three-story building that is blocking most of this building. Mr. Ridgell then added that the impact would not be as bad as it would if it were right on the street. Mr. Crigler responded no and that this is right in the middle of the site and there are two, three-story buildings between Cedar Creek Grade and this building.

Mr. Ridgell then asked about the handicap accessibility to which Mr. Crigler said that all of the buildings have to meet the Fair Housing requirements and there will be an elevator for use in the building from the garages up. Mr. Ridgell then asked if it is all residential or mixed to which Mr. Crigler responded that it will be all residential in this building.

Hearing no other questions from the Board, Chairman Phillips asked if there was anyone else wishing to speak either in favor of or in opposition to the request.

At this time, Lori Lievre, 2301 Stoneridge Road, approached and was sworn in by Vice Chairman Pifer. She stated that some of the questions she had were answered previously but that with the way it was worded, she was wondering if they were adding a fifth floor. She was initially concerned but now that she understands that it is just slightly higher, she is okay. She thanked the Board at this time.

Tim Painter, site engineer, Painter-Lewis, was sworn in by Vice Chairman Pifer and advised that he would be happy to explain the site plan. He added that across the site, there is a 31-foot elevation difference and in order to make that up, they are trying to terrace the site as they come down. Mr. Painter then presented the site plan to the Board and explained how the buildings would be terraced through-out the project site.

Chairman Phillips Closed the Public Hearing

Mr. Pifer asked if there are any other buildings in the vicinity that have had a variance for height to which Mr. Grisdale stated not in the immediate vicinity.

Ms. Marchant said that when you are standing across Cedar Creek Grade it is not like you are going to see this one (1) building to which Mr. Crigler responded no because there will be two three-story buildings in front of it.

Chairman Phillips asked if there were any other questions or discussion from the Board. Hearing none, he called for a motion.

Mr. Pifer moved to approve and grant a variance to BZA-14-041 because the strict application of this Ordinance would produce a clearly demonstrable hardship; that such hardship is not shared generally by other properties in the same zoning district and the same vicinity; and 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. Lewis seconded the motion. Roll call vote was taken and the motion passed 5-0.

BZA-14-048 Request of Carl S. Hales for a variance pertaining to front setback requirements pursuant to Section 10-5-1 of the Winchester Zoning Ordinance, for the property located at 1328-1470 Commerce Street (Map Number 233-01- -11 - > <01), zoned Commercial Industrial (CM1) District. The applicant is seeking this variance to modify previous use restrictions on several buildings on the property put in place by a previous Board of Zoning Appeals decision.

Mr. Grisdale presented the staff report stating that the applicant is seeking a variance of front setback requirements for main building to modify previous use restrictions on several buildings on the property put in place by a previous Board of Zoning Appeals. He advised that this property has been the question of previous Board of Zoning Appeals actions. He added that the present variance request involves buildings F and G/H on the property and seeks to modify the use restrictions associated with these buildings to allow for the following two (2) uses typically permitted in the CM-1 District: 1) 10-1-29 – Service stations, provided that all repairs of vehicles take place in a fully enclosed building and 2) 10-1-8 – Contractors’ establishments, offices and display rooms. The proposed modification of the use restrictions would allow for the light service work that typically accompanies the use in Section 10-1-29, but not the more intensive work covered in Section 10-2-9 of the Zoning Ordinance and that the second auto detailing and auto transport use would be permitted under Section 10-1-8, which is proposed to be included. Mr. Grisdale concluded by stating that staff does believe that the current configuration of the property qualifies as a demonstrable hardship to the property owner; however, staff does support limits to the potential uses of the buildings that are adjacent to Commerce Street and are in close proximity to residential districts across the street as they may result in a higher likelihood of negative impacts on the community.

Chairman Phillips called for questions or discussion from the Board.

Ms. Marchant asked about the installation of the opaque fence or screening to which Mr. Grisdale responded that this would be done in concurrence with the site plan process. Screening would not be a required approval by the Board of Zoning Appeals rather it would be in accordance with current standards outlined in the Ordinance.

Chairman Phillips Opened the Public Hearing

Carl Hales, applicant, was sworn in by Vice Chairman Pifer and explained a brief history of his purchase and ownership and decrease of income by about \$80,000 per year from the property. He advised the Board that when he purchased the property, the personal use auto repair was already there but that the towing operation was gone. He also presented the Board with photos to clarify which buildings are in question here. He concluded by stating that he is available to answer questions from the Board.

Mr. Lewis stated that he wanted to confirm that the applicant advised that when he purchased the property, the personal use auto repair was already there and that the towing operation was gone to which Mr. Hales said yes. Mr. Lewis then asked if there were any welders or anything like that being done on site to which Mr. Hales said no. Mr. Lewis said that the towing operation was his concern because sometimes that type of business turns in to a repossession business with vehicles sitting all around.

Chairman Phillips Closed the Public Hearing

Chairman Phillips called for questions or discussion from the Board.

Mr. Grisdale said that he had one (1) clarification of the staff report. There is a layout of the property with all of the buildings with the lettering included in the packets that helps to illustrate the buildings that are being discussed and to help reinforce the aerial imagery.

Chairman Phillips asked Mr. Grisdale if he would review this in six (6) months to which Mr. Grisdale responded that in staff's recommendation there would be a requirement that a site plan be submitted and approved by the Planning Director and for subsequent site improvements be implemented on the property within a specified period of time to ensure that some outstanding site improvements are being completed on the property.

Chairman Phillips asked if there were any other questions or discussion from the Board. Hearing none, he called for a motion.

Mr. Pifer moved to grant a variance to BZA-14-048 with the following conditions:

- a. Submittal of a complete site plan application and fee to the Planning Director within six (6) months of the date of Board approval;
- b. Implementation of all required site improvements within 12 months of site plan approval;
- c. All inoperable vehicles legally stored on the property and associated with a permitted automotive repair use shall be screened by a 6-foot opaque fence or other material(s) as approved by the Planning Director; and
- d. Failure to implement the aforementioned improvements shall cause this variance to become null and void.

Ms. Marchant seconded the motion. Roll call vote was taken and the motion passed, 5-0.

NEW BUSINESS:

None.

OLD BUSINESS:

None.

ADJOURN:

With no further business before the Board, the meeting adjourned at 4:34 p.m.

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