

**BOARD OF ZONING APPEALS
MINUTES**

The Winchester Board of Zoning Appeals held its regular meeting on Wednesday, May 14, 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,
Mr. Crawford
ABSENT: None
STAFF: Aaron Grisdale, Nasser Rahimzadeh, Catherine Clayton
VISITORS: Mike Artz, Manuel Medina, Deborah Baker, James Finchem

CONSENT AGENDA:

Approval of Minutes of March 12, 2014

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

READING OF CORRESPONDENCE:

None.

PUBLIC HEARINGS:

BZA-14-249 Request of Marsh and Legge Land Surveyors, PLC, on behalf of Emily M. Seiler, for a variance pertaining to the 8,000sf minimum lot area and the 60' minimum lot width pursuant to Sections 4-3-1 and 4-4-1 of the Winchester Zoning Ordinance, for the properties located at 679 Berryville Avenue (Map Number 175-02-A-4 - > <01) and 683 Berryville Avenue (Map Number 175-02-A-5 - > <01), zoned Medium Density Residential (MR) District with Corridor Enhancement (CE) District overlay. The request involves a boundary line adjustment between two nonconforming lots of record.

Mr. Grisdale presented the staff report stating that this request is for two variances pertaining to the minimum lot area and minimum lot width for parcels within the Medium Density Residential (MR) District. Both lots are legal nonconforming lots of record and are under common ownership. He also stated that the property line goes through an existing garage and the property owner wishes to have this corrected to have the accessory structure entirely on the 679 Berryville Avenue property. He concluded by stating that staff is supportive of this variance request and that there have been no letters of support or opposition to the application. He is available to answer any questions.

Chairman Phillips called for questions from the Board.

Chairman Phillips Opened the Public Hearing

Mike Artz, Marsh and Legge Land Surveyors, was sworn in and addressed the Board. He reiterated the purpose of the request and stated that he was available for questions from the Board.

Chairman Phillips called for questions from the Board.

Chairman Phillips Closed the Public Hearing

Chairman Phillips called for discussion or comments from the Board. Mr. Crawford said that the Board has two (2) nonconforming properties under the current regulations and if they make a change there will still be two (2) nonconforming parcels but it will straighten out some problems. He added that he is in favor of the request.

Chairman Phillips called for any further discussion or comments. Hearing none, he called for a motion.

Mr. Crawford moved to grant a variance to BZA-14-249. This variance is only for the proposed boundary line adjustment dated April 17, 2014, or a version that is in substantial conformance with the proposal. The variance is approved because:

- a) The strict application of this Ordinance would produce a clearly demonstrable hardship,
- b) That such hardship is not shared generally by other properties in the same zoning district and the same vicinity, and
- c) 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. Pifer seconded the motion.

Roll call vote was taken and the motion passed 5-0.

BZA-14-254 Request of Manuel C. Medina for a variance pertaining to required side yard setback, off-street parking setback (side and front), required lot width, vehicular travel lane width, and required off-street parking pursuant to Sections 8-6-1d, 18-6-3.2, 8-4, 19-5-2, and 18-6-5.1 of the Winchester Zoning Ordinance, for the property at 2109 Valley Avenue (Map Number 250-02- -7 - > <01), zoned Highway Commercial (B-2) District with Corridor Enhancement (CE) District overlay. The request involves a request to modify use restrictions previously established by the Board of Zoning Appeals.

Mr. Grisdale presented the staff report stating that this request is for five (5) variances pertaining to the required side yard setback, off-street parking setback (side and front), required lot width, vehicular traffic lane width, and required off-street parking. He added that the property owner desires to allow for greater flexibility with the property by modifying the use restrictions on the property. He concluded by stating that staff is supportive of this variance request and that the applicant is trying to continue an adaptive reuse of an old nonconforming residential structure in the B-2 district. The site has already been improved with the development requirements following the 2003 BZA variance approvals and that staff has attempted to work with the applicant to only propose uses that would be of a smaller impact than some of the other uses which are typically permitted in the B-2 district. Mr. Grisdale closed by saying that there have been no letters of support or opposition to the application and that he is available to answer any questions.

Chairman Phillips called for questions from the Board.

Chairman Phillips Opened the Public Hearing

Manuel Medina, applicant, was sworn in and said that he feels he is entitled to full use of the property. He added that right now the use is limited and this would allow him to enjoy the full value of the property. Mr. Medina said that the request does not conflict with the other properties since it is a B-2 and that he has fulfilled all of the standards that were required in 2003.

Mr. Crawford then asked Mr. Medina if he understands that, if the Board agrees to what is being proposed, he would not have the option of doing anything that is within the B-2 district, that it will in fact only be the uses as set out in this request. Mr. Medina said that yes he understands.

Chairman Phillips called for questions from the Board for Mr. Medina. Hearing none, he asked if anyone else wishes to speak.

Deborah Baker, neighbor, was sworn in and said that she is concerned if it will affect her property and she wants to be sure that it does not interfere with her property. Mr. Crawford said that the Board cannot definitively say that it will not adversely affect her property but, by looking at the documents contained in the case file, there should not be any problems.

James Finchem, neighbor, was sworn in and said that the applicant asked him why he could not run a right-away through the storm area between Mr. Finchem's house and Eddie's Tire. He said that he tried to explain that it is a storm area and that if the applicant is allowed to run through the storm area, then he will have flooding in his basement again. Mr. Lewis said that the Board is only approving usage on the building not improvements or alterations to the property itself. Chairman Phillips said that something like that would have to go to the Planning Commission and that the applicant cannot just come across Mr. Finchem's property. Mr. Finchem then said that Mr. Medina had asked him about putting a driveway through the storm area but that Mr. Medina has a driveway that comes off of Hillman Drive in one way and off of Valley Avenue in the other way and he does see why the applicant would need another driveway that comes between his house.

Mr. Grisdale said that the applicant has not proposed any site improvements but if he does, they would require a site plan with Planning Department approval.

Chairman Phillips called for any additional comments or questions from the Board.

Mr. Lewis asked about equipment parking to which Mr. Grisdale said that this use does allow equipment storage on the property and if that is the case, they would have to meet the Zoning requirements in terms of storage. They would have to go through the Zoning approval process before establishing that use there.

Ms. Marchant asked about the storage containers and whether they are a problem. She then asked if they are allowed. Mr. Grisdale said that in terms of their current use, he would have to defer to the property owner but there are certain time limitations on how long a mobile storage unit such as a container can be on the property. Chairman Phillips asked the applicant to respond. Mr. Medina said that the units have been there since the beginning and they are used for the tenants to store things in and they are not permanent.

Chairman Phillips Closed the Public Hearing

Chairman Phillips called for any additional questions or comments. Hearing none, he called for a motion.

Mr. Pifer moved to grant a variance to BZA-14-254 with conditions as follows:

- a. The only permitted uses at the property will be:
 - i. 8-1-14 Contractor's establishments, offices and display rooms.
 - ii. 8-1-15 Convenience and service establishments such as, but not limited to, barber shops, beauty parlors, tailors, automatic self-service laundries.
 - iii. 8-1-27 Office, business and professional.

- iv. 8-1-30 Philanthropic or charitable institutions.
- v. 8-1-35 Repair services or businesses, including repair of bicycles, guns, radios, television sets, electrical appliances, locks and other home appliances, shoes, toys, typewriters, watches and clocks.
- vi. 8-1-37 Retail stores.
- vii. 8-1-48 Print shops.

b. The variances are for the building setbacks and site dimensions as approved in the most recent site plan.

This variance is approved because:

- a) The strict application of this Ordinance would produce a clearly demonstrable hardship,
- b) That such hardship is not shared generally by other properties in the same zoning district and the same vicinity, and
- c) 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.

Ms. Marchant seconded the motion.

Roll call vote was taken and the motion passed 5-0.

NEW BUSINESS:

None.

OLD BUSINESS:

None.

ADJOURN:

Having no other business before the Board, the meeting adjourned at 4:28 p.m.