

**BOARD OF ZONING APPEALS
MINUTES**

The Winchester Board of Zoning Appeals held its regular meeting on Wednesday, August 13, 2014, at 4:00 p.m. in Council Chambers, Rouss City Hall, 15 N. Cameron Street, Winchester, Virginia.

POINTS OF ORDER:

PRESENT: Vice Chairman Pifer, Mr. Lewis, Mr. Crawford
ABSENT: Mr. Ridgell
STAFF: Aaron Grisdale, Nasser Rahimzadeh, Catherine Clayton
VISITORS: Katia Hernandez

ELECTION OF OFFICERS:

Mr. Grisdale advised that, since there is not a full Board, he would call for nominations for Acting Chairman for this current meeting and formal nominations at a subsequent meeting. Mr. Crawford nominated Mr. Pifer for the Acting Chairman position. Mr. Lewis seconded the nomination. Voice vote was taken and the nomination stands, 2-0-1 Abstention (Pifer).

CONSENT AGENDA:

Approval of Minutes of July 9, 2014.

Acting Chairman Pifer called for corrections or additions to the minutes. Hearing none, he called for a motion. Mr. Lewis moved to approve as submitted. Mr. Crawford seconded the motion. Voice vote was taken and the motion passed 3-0.

READING OF CORRESPONDENCE:

None.

PUBLIC HEARINGS:

BZA-14-452 Request of Titan Sign Corporation or a variance pertaining to signage in the B-2 (CE) District pursuant to Section 18-8-6.2 of the Winchester Zoning Ordinance, for the property located at 1041 Berryville Avenue (Map Number 196-08-E-3 - > <01), zoned Highway Commercial (B-2) District with Corridor Enhancement (CE) District overlay. The request involves alteration of an existing nonconforming freestanding sign.

Mr. Grisdale briefly reviewed the bylaws and rules of quorum requiring all three (3) members voting in accord either for or against the request. He then presented the staff report and advised that the applicant is seeking the variance to allow for the alteration of an existing freestanding sign at 1041 Berryville Avenue, currently occupied by Title-Max. This parcel has been the subject of Board of Zoning Appeals review previously in 1984 and 1994. In 1984, C & S Bank requested a variance to allow for a freestanding sign which was not permitted by ordinance to be installed. At the time, the Board approved for the freestanding sign and the sign was on the property until 1993 when it was torn down when the bank closed. In 1994, the BZA approved a variance request for the Marathon Bank for a variance to approve a freestanding sign. The Board was favorable to the applicant and granted an approval that was conditioned with the following: "It is approved for the proposed sign and for this use only." In 1994, in the zoning ordinance provisions, a

freestanding sign would not ordinarily have been permitted for this parcel due to its inclusion with the remainder of Eastgate Plaza as a commercial center. The commercial center at that time and to this day, has a nearly 300 square foot freestanding sign several hundred feet to the east. At the time of this variance consideration, the property was permitted to have one 150-foot freestanding sign to advertise the various businesses in the center. However, the BZA approved a variance to allow for a separate and additional sign for the bank. Over the years, the building has changed to different branches of banks, but it was not until this year that the property changed use and became a TitleMax. The TitleMax use is defined separately from a bank and is considered an alternative financial institution:

As a result of this change of use and the condition that was associated with the 1994 BZA approval, the sign may not be modified by-right. Within the applicant's brief letter, a statement is made that "the subject property is NOT included within the commercial center of Eastgate Plaza." However, this determination of whether or not the building is part of the commercial center is consistent with Zoning Administrator interpretations for the last 20 years. The current Zoning Ordinance provisions for commercial centers provide for several options. Staff does not believe that the hardship stated by the applicant has been articulated. Also, staff has received no letters of support or opposition to this application. Mr. Grisdale concluded by stating that he is available to answer any questions.

Acting Chairman Pifer called for questions from the Board.

Mr. Crawford asked who pays the taxes on the parcel that this sign sits on to which Mr. Grisdale responded that it is owned by EastGate Plaza, LC.

Acting Chairman Pifer Opened the Public Hearing

Katia Hernandez, representative for TitleMax, was sworn in by Mr. Crawford and briefly reiterated the request and said that the main concern right now is the difference of property owners. She said that they checked the records of the property and it does not show that it belongs to the shopping center.

Mr. Lewis reiterated that Ms. Hernandez said that based upon their search, Eastgate is not listed as the property owner to which Ms. Hernandez said that based upon the assessor's record online, it shows a Richard Butcher and that is who TitleMax is paying. The lease agreement does not say Eastgate Plaza. Mr. Lewis said that the City is saying that this property is part of the Eastgate Plaza property.

Mr. Grisdale responded saying that, looking at the application, Winchester East is identified as the property owner on the applicant's submittal. Mr. Lewis then asked if Mr. Butcher is the owner to which Mr. Grisdale responded that the Butcher family is the persons behind the entity, Winchester East. Mr. Lewis then reiterated to the applicant that she is stating they were unaware and that they believe this to be a separate property. Ms. Hernandez said that it shows on the records are a single person.

Acting Chairman Pifer Closed the Public Hearing

Acting Chairman Pifer called for questions or discussion from the Board.

Mr. Lewis said that he has no real concern about utilizing the existing sign with the same space but not increasing the size or moving it based upon what was already approved.

Mr. Crawford also stated that, looking at the definition of commercial center, characteristics A and B, these do appear to represent this property. However, C, D, and E do not apply. He then added that he has no real concern and that it would be a detriment to the business if they had to put their information on the sign that

is a block away. Also, as Mr. Lewis pointed out, the existing sign or one similar to it, with the exception of one (1) year, has been there for 30 years or so.

Acting Chairman Pifer said that he likes the existing sign design and that use of the original sign would make sense. Although it was approved in 1994, it does share some of the characteristics of a shopping center and that he would agree to using the original sign so long as the applicant does not expand it or change the submitted design. It should be limited only to this use and if another use comes in, they would have to submit for approval at that time.

Mr. Lewis then said that if the Board does approve the request, there could be an addition made referencing Alternative Financial Institutions and Motor Vehicle Title Lenders as part of the approval so that if it changes hands five or ten years from now, they would have to come back for approval from the Board. Mr. Grisdale responded that yes that is an option.

Acting Chairman Pifer called for additional discussion from the Board. Hearing none, he called for a motion.

Mr. Lewis moved to grant a variance to BZA-14-391 for a variance pertaining to signage in the B-2 (CE) district pursuant to Section 18-8-6.2 of the Winchester Zoning Ordinance, for the property located at 1041 Berryville Avenue (*Map Number 196-08-E-3*), zoned Highway Commercial (B-2) District with Corridor Enhancement (CE) District overlay, with the following conditions:

- a. The freestanding sign may remain and be altered provided that the modified sign does not project any closer to the road than the existing sign pole base.
- b. Only Alternative Financial Institutions definitions be added to this approval.
- c. Should the freestanding sign be removed, any future signage must fully conform to the current Zoning Ordinance provisions of that time.

This variance is approved because:

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

NEW BUSINESS:

None.

OLD BUSINESS:

None.

ADJOURN:

With no further business before the Board, the meeting adjourned at 4:23 p.m.