

BOARD OF ZONING APPEALS  
MINUTES

The Winchester Board of Zoning Appeals held a regular meeting on, September 14, 2011, 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, W Roberson and D Crawford (6)  
**ABSENT:** B Pifer (1)  
**STAFF:** Aaron Grisdale  
Paula Le Duigou (2)

Chairman Hurt called the meeting to order at 4:00 p.m.

Chairman Hurt recognized Mr. Crawford as a new member of the BZA and the new secretary Paula Le Duigou.

**MINUTES**

Mr. Hester moved, seconded by C Koneczny, to approve the minutes of August 10, 2011 as presented. The motion passed unanimously 6-0, none abstained.

**ELECTION OF OFFICERS**

Mr. Hurt moved the election of officers to the end of the meeting after the Public Hearing .

**READING OF CORESPONDENCE**

Mr. Grisdale stated that there was no correspondence to read at this time.

**PUBLIC HEARINGS**

**BZA 11-499** Request of Painter-Lewis, PLC on behalf of Handley Crossing LLC, for a variance pertaining to location of an accessory structure pursuant to Section 18-10-1 of the Winchester Zoning Ordinance located at 1000-1004 Valley Avenue (*Map Numbers 212-1-J-1; 212-1-J-2; 212-1-J-3; 212-1-J-14*) zoned Central Business (B-1).

Aaron Grisdale stated that the applicant is seeking relief of the accessory structure provisions pertaining to their proposed location and construction of a dumpster pad and enclosure in a front yard area at an existing property.

The subject property is situated in the B-1 District, and has multiple public street frontages. The assembled parcels are located directly across the street and east of the John Handley High School campus, which is zoned EIP. Properties across the street (James Street) to the north, are zoned Limited High Density Residential (HR-1). Properties to the east and south are similarly zoned B-1.

The applicant has summarized their letter of intent, dated August 22, 2011, regarding the variance request *“to place a dumpster enclosure with landscaping in the front yard setback from the James Street right-of-way. The grounds of this request are that the restrictions in place prevent any*

*other placement of the dumpster.*” The Zoning & Inspection Administrator concurs with their argument.

The applicable section of the Zoning Ordinance, Section 18-10-1 states the following:

18-10-1 In all districts, accessory buildings or structures shall not be located in a front or side yard, unless specifically provided for elsewhere by the provisions of this Ordinance. (5/8/90, Case TA-90-01, Ord. No. 016-90)

As depicted on the aerial photograph above, the property is bounded by three public street rights-of-way; and, has a diminutive and inaccessible rear yard. The options for the property owner and applicant would either include partial demolition of the existing structure(s); or, seek relief from the aforementioned provision in the Ordinance.

The subject property has received a Preliminary Determination of Blight, as well as, a Derelict Building notice. The property owner has since initiated significant rehabilitation and blight remediation efforts, without a formal declaration of blight having been ordained by City Council. The future uses and occupancies may include restaurant and retail uses. The Board of Zoning Appeals may recall a previous variance request pertaining to the subject property and with regards to required off-street parking. A fifty (50%) percent variance was provided with regards to the total number of off-street parking spaces required, with a stipulation that restaurant use would not be permitted. However, subsequent to the BZA decision, the Zoning Ordinance was amended and the subject property is presently located within the 50% off-street parking exemption district. Restaurant, as a by-right use, would then be allowable, along with a by-right 50% reduction in off-street parking.

The Board of Zoning Appeals may also recall a similar variance request pertaining to the site of the Triangle Diner, which has been involved in a prolonged restoration effort. The variance pertaining to their placement of the dumpster and enclosure was granted by the Board.

Chairman Hurt stated that he performs work for the client and will have to abstain on the vote. He then asked if anyone else would need to abstain. None spoke.

Mr. Phillips abstained on voting because he owns a property across the street.

Chairman Hurt opened the public hearing at 4:06 p.m.

Mr. Koneczny swore in Mr. Brandon Pifer of Pifer Properties, who is opposed to the proposed placement. Pifer Properties is the owner of the property across James Street and will be adding two bedrooms and bath to the side of the building that overlooks the dumpster. He stated that they were opposed for a number of reasons, first the glare from the proposed lighting, as well as the smell. He stated that he believes that it is not a hardship for the property owner to move it to the other side of the building. If it were placed on the other side he assumed that the applicant would need a variance. He asked if they could put the dumpster on the southeast side of the building in the gravel parking lot as the applicant currently has trucks and box van parked there. He assumed the applicant would need a variance there as well since it is a side yard. Mr. Pifer stated that he does not believe they have a hardship on that side, he felt that the best place would be behind the building. His primary concerns are about smell, lighting, and noise from trash pickup in the early mornings. Mr. Pifer also asked for a time frame for trash pickup.

Mr. Koneczny asked if it was being suggested that the applicant be required to move the dumpster to a different parcel and encroach onto a different parcel of land and separate business. Mr. Koneczny stated that the other parcel was not a part of the applicant's original parcel at this time. Mr. Pifer pointed out on the site map different parcels, which are also owned by the applicant, being used in the complex for parking and other businesses. Mr. Pifer asked why the parcels could not be joined together and Mr. Hurt stated that there was different business on that subject at this time.

Mr. Koneczny was concerned about an adjacent property in the location proposed by Mr. Pifer and how the placement of the dumpster would affect that home. Mr. Pifer stated that if it were placed there it would only affect one home whereas in the proposed location it would affect three homes.

Mr. Koneczny administered the oath to Mr. Tim Painter of Painter Lewis.

Tim Painter of Painter-Lewis, representing Handley Crossing, LLC, stated that as part of the site plan development the applicant needs to consolidate all of the parcels that front on Bond Street, Valley Avenue, and James Street. (Mr. Painter identified the parcels by tax map number) As part of the consolidation, the existing building rests on the back property line, and the other property lines are on frontage which creates a hardship. Lighting will be downcast on the dumpster so as not to be a disturbance and the dumpster will be surrounded by masonry structure, not wood. The location suggested by Mr. Pifer has a different use and there- for is not part of this development. The applicant feels the landscaping of the grounds on the Bond Street and James Street side, and because of the placement of the utilities on the back side, that this is the appropriate place and a good solution to lessen impact.

Mr. Hester asked what the height of the masonry surround enclosure would be. Mr. Painter believed that it would be 6 feet tall. Mr. Koneczny asked if there would be any trees planted. Mr. Painter stated that there would be evergreens planted to at least the height of the enclosure walls.

Mr. Roberson stated that according to the plans the height would be 8 feet. Mr. Painter stated that there will be two 8 foot wide gates to give 16 feet of clearance. Mr. Hurt asked if the walls would be taller than the dumpster, Mr. Painter confirmed they would be. Mr. Hurt asked if there was any interest from potential restaurants, and Mr. Painter stated that he does not know of any at this time but it is an approved use.

Mr. Hurt confirmed with Mr. Painter that this was the most ideal location on the subject parcel for placement of the dumpster. Mr. Painter stated that in the past this was where materials and barrels were placed with the least impact, which is something the current ownership desires.

Chairman Hurt closed the public hearing at 4:22 p.m.

Mr. Phillips stated that he would like to see other alternatives for location of the dumpster, such as recessing it further back on the gravel lot where there is also additional access for a trash truck to enter. Mr. Hurt asked if Mr. Phillips was speaking as a board member or as a testimony. Mr. Phillips stated that he was speaking as a board member. He wanted to be sure that all alternatives were being reviewed. Mr. Hurt stated that there was another business back there, a repair shop.

Mr. Koneczny stated that for the Board to require the applicant to move the dumpster to another property that was not brought before the board, was overstepping our bounds and authority. Mr. Phillips stated that at the current time we don't know what they will use the property for.

Mr. Crawford stated that the Board can't tell the applicant where to put the dumpster but can stipulate where we do not want it and leave it up to the applicant to come back before the Board with another application.

Mr. Phillips stated that they don't need it for the businesses that are there and would like to see the purpose and what business it will be used for. Mr. Hurt stated that it is his personal opinion that it will most likely be retail.

Mr. Koneczny felt that they should be addressing what is in front of them at this time.

Mr. Phillips felt that the citizens of Winchester would not be thrilled to see a dumpster in the parking lot of a retail center. Mr. Hurt stated that the applicant has gone to great lengths to make the landscaping attractive along the Handley side of the site.

Referring to the site map, Mr. Phillips asked if the applicant owned another property. Mr. Hurt stated that the City owned it. Mr. Phillips stated that he understood that the City was giving it to the applicant for landscaping. Mr. Hurt asked the applicant to respond. Mr. Painter stated that there is not an agreement between the City and the applicant. He stated that the City is doing improvements on the sidewalk and curbing but the City is maintaining ownership of the parcel. From the sidewalk back will be a partnership in the landscaping.

Mr. Hester stated that the applicant is making a valid effort to add landscaping around the enclosure but the Board could stipulate that the height of the walls be addressed. Mr. Painter stated that the height of the masonry walls must be 6 feet high for city code.

Mr. Hester stated that as a stipulation of approval the height of the shrubbery should be higher than the wall. Mr. Hurt believed that the masonry walls would correspond with the finish of the building.

Mr. Koneczny motioned to grant the variance.

**BZA 11-499** Request for Painter-Lewis, P.L.C., on behalf of Handley Crossing, LLC, for a variance pertaining to location of an accessory structure pursuant to Section 18-10-1 of the Winchester Zoning Ordinance located at 1000-1004 Valley Avenue (*Map Numbers 212-01-J-1, 212-01-J-2, 212-01-J-3, 212-01-J-14*) zoned Central Business (B-1) District.

On a vote of 4-0-2, the Board approved **BZA 11-499** for the expressed purposes of allowing the construction of a dumpster pad and enclosure within a front yard area. The variance was approved because the Board found:

1. That the strict application of the Ordinance would produce a clearly demonstrable hardship.
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 variance will not be of substantial detriment to adjacent properties and that the character of the district will not be changed by the granting of the variance; with the following conditions imposed:

- a. The trash enclosure masonry walls be eight (8') feet high surrounding the dumpster pad; and,
- b. All lighting be cast downward; and,
- c. That the height of the evergreen landscape screening planted at the time of construction be consistent with the height of the masonry enclosure; and, if the landscape dies it shall be re-planted immediately.

The motion passed 4-0-2 with Mr. Hurt and Mr. Phillips abstaining.

#### **ELECTION OF OFFICERS**

J Phillips moved, seconded by C Koneczny, to recommend Mr. Hunter Hurt for Chairman. Motion passed unanimously 5-0, none abstained.

Mr. Hurt moved, seconded by Mr.Hester, to recommend Mr. Conrad Koneczny for Vice-Chairman. Motion passed unanimously 5-0, none abstained.

#### **OLD OR NEW BUSINESS**

No old or new business at this time.

#### **ADJOURN**

With no further business, Chairman Hurt adjourned the meeting at 4:34 p.m.