

**BOARD OF ZONING APPEALS
MINUTES**

The Winchester Board of Zoning Appeals held its regular monthly meeting on, May 9 2007, at 4:00 p.m. in the Council Chambers, Rouss City Hall, 15 North Cameron Street, Winchester, Virginia.

PRESENT: Phillips, Hurt, Koneczny

ABSENT: Wiley

VISITORS: Don Shade, Chris Maben, Mark Mosely, Judy Shade, Perry Eisenach, Tom Hoy

On motion by Mr. Phillips, seconded by, Mr. Koneczny the minutes of the, April 11, 2007 meeting were unanimously approved.

CORRESPONDENCE

None

PUBLIC HEARINGS

BZA-07-04 – Request of Christopher K. Maben for variances of the Winchester Zoning Ordinance Section 5.1-6-2.1 pertaining to required rear yard setback; and, Section 17-6-1 pertaining to required side yard setbacks on nonconforming lots of record at 47 Race Street (*Section 154, Double Circle 1, Block H, Lot 1*) zoned Limited High Density Residential (HR-1) District.

Mr. Diem presented the request. He stated that the subject property is located entirely within the Limited High Density Residential District. The corner-lot parcel is situated on the southwest corner of the intersection of Race Street and a 14' wide public alley.

Mr. Diem stated that a site plan, dated April 18, 2007; depicts the parcel as measuring approximately 24'7 wide and 80' deep. He added that although the size of the lot is smaller than what would be permitted within current ordinance standards, the lot was recorded on a deed prior to the existence of the Zoning Ordinance; and is therefore a nonconforming lot of record. Additionally a single-family detached dwelling was previously constructed on the parcel; and has since been demolished. Mr. Diem informed the Board that the applicant intends to construct a dwelling unit that is 18' wide and 48' deep, which would result in a minimum of 3' side yards on either side of the structure. Nonconforming residential lots require 5' yard setbacks and

corner-side yards in the HR-1 District are required to be a minimum of 15'. The applicant's proposed rear yard will be 12' compared to the required 25' minimum.

Mr. Diem presented the recommendation from the Zoning Department. He stated that it would appear as though this effort, as proposed by the applicant, is similar to what was presented to the Board of Zoning Appeals in BZA#07-02. He said that this request would re-develop a non-conforming lot of record with a use that is no more intensive than what had previously existed prior to demolition. Mr. Diem added that it would appear that this request meets the intent of the ordinance, it identifies a clearly demonstrable hardship in that additional property width cannot be provided nor can adjacent buildings be relocated; and, there are few properties if any within the vicinity that share a similar hardship of such a narrow lot width and situated on a corner parcel, although several are nonconforming.

Chairman Hurt opened the public hearing.

He asked if there was any present to speak in reference to the request.

Mr. Christopher Maben, applicant was present to answer questions. Mr. Koneczny asked if there will be a bay window on the east side. Mr. Maben answered that there would not be. Mr. Koneczny asked what the distance between the buildings would be. Mr. Maben said that it would be about 6 feet. Mr. Diem added that anything within five feet of the property line must have additional fire rating. Mr. Diem stated that Mr. Maben would have to make sure the Uniform Building Code is being adhered to.

Chairman Hurt closed the public hearing.

Mr. Phillips, seconded by, Mr. Koneczny moved, that the Board conditionally approve **BZA 07-04** to permit the re-construction of a single-family detached dwelling on a nonconforming lot of record by granting a variance to the requirements of side yard setback(s) and rear yard setback; 1) In that the applicant will coordinate with the Building Official of the City of Winchester to ensure the requirements of the Virginia Uniform Statewide Building Code be met, in consideration of the deficient setback distances; and, 2) A house location survey be performed to ensure no further encroachment into adjoining or adjacent properties; and, 3) the single-family dwelling to be constructed shall be no more than 18' in width, with no bay windows, chimneys, heating/cooling appliances, or other items permitted in the remaining side yards; because, a. The variances are in harmony with the intended spirit of the Ordinance; b. that the strict application of the Ordinance would produce a clearly demonstrable hardship to the property; and, c. that the authorization of the variances will not be of substantial detriment to the adjacent properties and that the character of the district will not be changed by the granting of the variances. The motion passed unanimously.

BZA-07-05 – Request of the City of Winchester for a variance of the Winchester Zoning Ordinance Section 18-22-1 pertaining to underground installation of utilities at 301-303 East Cork Street (*Section 213, Double Circle 1, Lot 1*) zoned Commercial Industrial (CM-1) District.

Mr. Diem presented the request. He stated that that subject property is located in the CM-1 District, Medium Density Residential District is to the south and east; and Limited High Density Residential is to the west. The site is the current location of the City Yards buildings, including the newly constructed sign and signal shop.

Mr. Diem stated that in a letter dated April 18, 2007, Mr. Eisenach stated that the new sign and signal shop requires communication connections; and, the excessive amount of rock and unusual topographic conditions creates a hardship for installing the utility lines underground, as is required by the Zoning Ordinance. A site plan was submitted along with the application materials. Mr. Diem added that the purpose of this variance request is in response to Section 18-22-1. He said that as noted in the Ordinance section, there are no exceptions or administrative waivers available for commercial or industrial, or governmental facilities from the requirement to install new services underground. Similar requests have been reviewed and subsequently approved through an administrative waiver for residential work within the City since the adoption of the Ordinance.

Mr. Diem presented the recommendation of the Zoning & Inspections Department. He stated that they recognize the hardships, as stated by the applicant; and have no objection to the installation of above ground communication lines. Although, financial hardships are specifically not to be considered as justifications for the granting of variances, the detriment of requiring underground installation would actually be to the citizens of Winchester through the increased expense of burying the lines underground.

Chairman Hurt opened the public hearing.

He asked if there was anyone wishing to speak in reference to the request.

Perry Eisenach, the applicant, was present to answer questions.

Mr. Eisenach stated that to go underground would be \$10,000 extra. He added that in the five year plan at City Yards a new maintenance facility will be constructed and they did not want to have to move the underground utilities to do this.

Mr. Phillips asked if any trees would need to be removed. Mr. Eisenach replied in the negative.

Chairman Hurt closed the public hearing.

Mr. Koneczny, seconded by, Mr. Phillips moved, that the Board approve **BZA 07-05** to permit the above ground installation of communications utilities by granting a variance to the requirements of underground installation of utilities; because, a) The variance is in harmony with the intended spirit of the Ordinance; b) That the strict application of the Ordinance would produce a clearly demonstrable hardship to the property; and, c) That the authorization of the variances will not be of substantial detriment to the adjacent properties and that the character of the district will not be changed by the granting of the variance. The motion passed unanimously.

BZA-07-06 – Request of Donald L. Shade for a variance of the Winchester Zoning Ordinance Section 17-1-1 pertaining to enlargement of a nonconforming use and/or structure at 540 Monticello Street (*Section 330, Double Circle 2, Lot 27*) zoned Highway Commercial (B-2) District.

Mr. Diem presented the request. He stated that the subject property is located within the Highway Commercial District and is bordered by the Medium Density Residential District to the east. The interior lot is situated on the north side of Monticello Street, east of Valley Avenue. The property measures about 50' wide and 80' deep, with an estimated lot area of 4,000 square feet.

Mr. Diem presented comments from the Zoning & Inspections Department. He stated that on March 22, 2007, the Zoning and Inspections Department initiated a zoning violation case, #07-209, regarding an apparent expansion of a nonconforming use and/or structure, as well, as a vaguely described residential overcrowding concern. Mr. Diem said that as is the practice within the Department, cases are initiated following receipt of information regarding an alleged violation.

Mr. Diem reported that during a meeting with Mr. Shade on March 21, 2007, a discussion including the City's Building Official, Richard Nelson, eliminated the concern of suspected overcrowding; however, certain elements of concern were identified with regards to the expansion of the nonconforming structure. Mr. Diem stated that the general history of the building and how it transformed from an auto body shop with one attached dwelling unit, previously owned and occupied by Donald Shade's parents, to three-unit multiple family dwelling has been somewhat difficult to establish. City records, including tax assessment reports and building permit files leading up to a fire incident in January 2006 did not reflect the building conversions.

Mr. Diem provided further records to include a written Notice of Violation and a return receipt signed by Mr. Shade. Mr. Diem stated that Mr. Shade has extensively outlined his appeal. It is Mr. Shade's position that the multiple family dwelling has existed for several years. He states

that his wife and he lived in apartment number three when they got married in 1970. Mr. Shade attached floor plans where the dwelling units are identified as including Apartment 1 and Apartment 2 on the first floor and Apartment 3 on the second floor. However, Mr. Shade also submitted a color photo of the front elevation of the property (taken at an unknown date) in which there are six vehicles parked in front of the structure, including five Ford Mustangs. The sixth vehicle appears to be a mid 1970's Pontiac Firebird Coupe. In the picture an overhead door and a sign attached to a utility pole that says Mustang sales are visible, and, would appear to contradict the assertion that three apartments existed in 1970.

Mr. Diem stated that Mr. Shade recently received a building permit for “Interior Remodeling/Fire Repair” The particular circumstances regarding the issuance of the permit are depicted differently between Mr. Shade and City Staff.

Mr. Diem presented the recommendation of the Zoning and Inspections Department. He stated that City staff does not support this request and respectfully asks the Board of Zoning Appeals to uphold the Zoning Administrators determination because multiple family dwellings are not permitted by right use within the B-2 district. In addition, regardless of the building permit issues, Mr. Shade failed to notify the Zoning Administrator of his intent to expand or increase the nonconforming multiple family dwelling unit structure, nor did Mr. Shade present a site plan as is required by the Ordinance. Mr. Diem also presented a summary of some of the sections of the Zoning Ordinance of the Winchester Zoning Ordinance that apply.

Chairman Hurt opened the public hearing.

Chairman Hurt asked if there was anyone who wished to speak in reference to the request.

Mr. and Mrs. Shade were present to answer questions. Mr. Shade stated that they have invested a lot of money in the structure and have updated the electrical and the plumbing. After arson occurred they met with the Fire Department and the Building Inspectors and decided to add an apartment. They wanted to upgrade the cosmetics of the building with the fourth apartment. Mrs. Judith Shade stated that they bought the property as is when the family passed away and there have always been three apartments as far back as they can remember. She added that after the arsonist they decided to add a unit and got approval and are halfway through completion. She said that they plan to be done by the end of January.

Mr. Koneczny stated that the permit they were given was to repair fire damage and interior remodeling. Mr. Vince stated that the permit is completed and was submitted by Aspen Industries LLC. Mr. Koneczny added that the permit didn't say that they could build up. Mr. Shade said that he thought he could ride the existing permit. Mr. Koneczny asked if Mr. Shade checked with City Staff before going forward. Mr. Shade said that he checked with Mr. Nelson and Mr. Nelson must not have understood what he was asking. Mr. Nelson was present to answer questions. Mr. Koneczny asked him if anyone told Mr. Shade that they would go up.

Mr. Nelson said he issued a permit for fire damage repair and his assumption was that anything that extended up would be part of the existing 889 feet. Chairman Hurt asked when Mr. Shade came back for building plans. Mr. Nelson said he had to rework the variance and he didn't remember when Mr. Shade came back and there was no indication that the building would go up.

Chairman Hurt closed the public hearing.

Mr. Koneczny said that the building was non conforming to begin with, but the current structure changes the street scene with high front elevations. Mr. Phillips added that it looks like a block wall.

Mr. Koneczny, seconded by, Mr. Phillips, moved to deny the request. The motion passed unanimously.

BZA-07-07 – Request of Mark Moseley for a variance of the Winchester Zoning Ordinance Section 18-8-6.1 pertaining to building mounted sign area at 1365 Berryville Avenue (*Section 197, Double Circle 2, Lot 7A*) zoned Highway Commercial (B-2) District.

Mr. Diem presented the request. He stated that the applicant, identified as Mark Moseley, representing the subject property located at 1365 Berryville Avenue, is requesting an appeal of the Zoning Administrator's determination, which might otherwise represent a variance of the Winchester Zoning Ordinance pertaining to Building Mounted Signage in the B-2 District. He said that the subject property is located entirely within the B-2 District and the corner lot parcel is situated on the southwest corner of the intersection of Berryville Avenue (Rt. 7) and Interstate 81.

Mr. Diem presented the comments from the Zoning and Inspections Department. He stated that the case presented to the Board of Zoning Appeals is the result of an official determination letter prepared by the Zoning Administrator and sent to the applicant, in response to a written request for additional building mounted signage. Mr. Diem reviewed the Zoning Ordinance on Building Mounted Signs. Mr. Diem also attached the City Staff Report for BZA-06-07 and correspondence received from William H. Gordon and Associates. Mr. Diem said that the concessions offered by the applicant at that time, as presented by William H. Gordon & Associates were that the building mounted signage for FIVE GUYS toward I-81 would equal 63 square feet and the building mounted signage for FIVE GUYS toward Rt. 7 would equal 91 square feet. The total square footage of the building mounted sign proposed in 2006 was 154 square feet. However, the actual square footage of the sign that exists today is 106.75 square feet facing Rt. 7 and another 48 square feet at the entrance, which also faces Rt. 7. The total square footage is just within the 154 square feet that was proposed by the Board in 2006.

Mr. Diem presented the recommendation of the Zoning and Inspections Department. He stated that this request demonstrates a continuing trend throughout the history of ownership of this parcel in terms of signage. He said there were certain hardships that exist on the site, including its topographical conditions and location of utility easements that otherwise limit placement of freestanding signage. He stated that the applicant has erected signage that is in compliance, therefore, it is a matter for the Board to determine whether or not the circumstances and evidence presented demonstrate a need for another variance. He added that City Staff respectfully requests that the Board of Zoning Appeals uphold the determination of the Zoning Administrator in this case.

Chairman Hurt opened the public hearing.

Chairman Hurt asked if there was anyone who wished to speak in reference to the request.

Mark Moseley, the applicant, was present. He stated that there was a misunderstanding on his part as to the square footage of the sign. He said he needed a sign facing I-81 and that he has a sign prepared. Chairman Hurt asked if FIVE GUYS was on the food board on I-81. Mr. Moseley stated that they have applied to be and are in line. He added that the sign on the front of the building cannot be seen until you get right up to the building. He said he gave up the sign on the highway so that Shoney's would allow the restaurant to be built.

Mr. Koneczny asked Mr. Diem if the square footage could be divided between signs. Mr. Diem replied that it could be divided however the applicant wished. Mr. Moseley said he would get another sign but he just wanted to extend the square footage. Chairman Hurt said that was the issue because the square footage was already maxed out.

Chairman Hurt closed the public hearing.

Mr. Koneczny said that if you let one person exceed the square footage every retailer will want to.

Mr. Phillips asked if the sign could be mounted higher or at a different angle. Mr. Diem stated that there were no height requirements as long as the sign was on the building. Mr. Diem added that one of the previous issues was that a lot of freestanding signs exist on that corridor already.

Mr. Koneczny, seconded by, Mr. Phillips moved to deny the request due to the fact that there are other options rather than increasing the square footage. The motion passed unanimously.

With no further business the meeting adjourned at 4:50pm.

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With no further business to discuss, the meeting was adjourned.

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