

**BOARD OF ZONING APPEALS  
MINUTES**

The Winchester Board of Zoning Appeals held its regular monthly meeting on, June, 13, 2007, at 4:00 p.m. in the Council Chambers, Rouss City Hall, 15 North Cameron Street, Winchester, Virginia.

**PRESENT:** Phillips, Wiley, Koneczny

**ABSENT:** Hurt

**VISITORS:** Evan Wyatt, Shuang Jennifer Zhai, Richie Pifer Jr., Louis DiBitonto, James Justice, Will Moore, Leslie Bowery

**STAFF:** Diem, Moore, Van Diest, Leslie Bowery, Jackson

On motion by Mr. Phillips, seconded by Mr. Wiley, the minutes of the, May 9, 2007 meeting were unanimously approved.

**CORRESPONDENCE**

None

Mr. Phillips asked for an update on the status of the new board member. Mr. Diem stated Wilborn Roberson will fill the board vacancy upon approval by a circuit judge.

**PUBLIC HEARINGS**

**BZA-07-03** – Request of Richard W. Pifer, Jr. for variances of the Winchester Zoning Ordinance, Section 5.1-5-1 pertaining to required main building setback and Section 17-6-1 pertaining to required side yard setback on a nonconforming lot of record at 120 East Cecil Street (Section 193, Double Circle 1, Block R, Lot 21) zoned Limited High Density Residential (HR-1) District. This request was previously tabled at the April 11, 2007 public hearing.

Mr. Diem presented the request. He stated the subject property is entirely within the Limited High Density Residential (HR-1) District and is within the Historic Winchester (HW) overly. The lot is nonconforming with regards to its width and area.

Mr. Diem stated that a surveyed drawing prepared by Montgomery Engineering Group, Inc., on March 20, 2007, depicts the parcel is at least 25.79' wide and 89.63' deep, with an approximate square footage of 2,374. He added that although the size of the lot is much 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, contingent upon approval from the Board of Architectural Review is proposed to be demolished. He added the minimum required lot

width in the HR-1 district is 40' and the majority of the residential properties located in the area are much less than the required 40' minimum.

Mr. Diem informed the board the applicant intends to construct a dwelling unit that is 21' wide and 36' deep, which would result in a 2.9' side yard on the west side of the structure and a 2' side yard on the east side of the structure. Nonconforming residential lots require 5' side yard setbacks (Section 17-6-1); however, the applicant intends to re-construct a dwelling unit that is similarly as nonconforming as the existing structure. Mr. Diem added at a Public Hearing held by the Winchester Board of Architectural Review on May 17, 2007, a request to demolish a structure older than 75 years at 120 East Cecil Street, was approved with a Certificate of Appropriateness granted.

Mr. Diem presented the recommendation from the Zoning Department. He stated 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 #07-01. He stated this request would re-develop a nonconforming lot of record with a use that is no more intensive than what had previously existed prior to demolition. Mr. Diem added it would appear 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, although several are nonconforming.

Mr. Koneczny opened the public hearing.

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

Mr. Pifer stated the only new information to add is the approval granted by the Board of Architectural Review for demolition.

Mr. Koneczny closed the hearing

Mr. Phillips asked Mr. Diem if any objections have been received on this case. Mr. Diem stated that no objections had been received by the Zoning Department. However, the department has received letters of approval by the community members.

Mr. Phillips, seconded by Mr. Wiley, motioned that the Board conditionally approve **BZA 07-03** 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; 1) In that the applicant will coordinate closely with the Building Official of the City of Winchester to ensure that the requirements of the Virginia Uniform Statewide Building Code be met, in consideration of the deficient setback distances; and, 2) Any deviations in materials, color, size, scale, and style from the originally designed single-family dwelling structure to be constructed shall be presented to the Winchester Board of Architectural Review for a Certificate of Appropriateness; and, 3) The single-family dwelling to be constructed shall be no more than 21' 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 3-0-0.

**BZA-07-09** – Request of the City of Winchester for a variance of the Winchester Zoning Ordinance, Section 16.1-5-1, pertaining to main building setback at 305 East Piccadilly Street (Section 194, Double Circle 1, Block F, Lot 3) currently zoned Limited High Density Residential (HR-1) District, but is pending rezoning to Educational, Institutional, and Public (EIP) District.

Mr. Diem presented the request. He stated that the subject property is currently located within the Limited High Density Residential (HR-1) District. High Density Residential (HR) District is to the south; and, Central Business (B-1) District is to the west. The site is the proposed location of the “after-school homework assistance” office for City students. However, as of the City Council meeting on June 12, 2007, the subject property has been rezoned and is now in the Educational, Institutional, and Public (EIP) District.

Mr. Diem stated an existing main building setback is depicted on an attached exhibit, as prepared by Painter-Lewis, P.L.C., on May 24, 2007; and, is represented as being 15.2’. The required main building setback in the EIP District is 35’. However, setback is also defined within Section 1-2-86 of the Winchester Zoning Ordinance, as follows: The minimum distance by which any main building or structure must be separated from the front lot line; except that no main building need be set back more than the average setback of the adjacent main buildings on each side. This shall be known as the “setback line.” If, on one side, there is no main building on the same lot or adjacent lot, the required setback shall be averaged with the setback of the adjacent main building on the other side. If either adjacent main building is not in compliance with the applicable setback requirements, and has not received a special exception therefore, or is not a nonconforming main building by reason of inadequacy of setback, the average setback exception shall not apply. Mr. Diem added if the adjacent dwelling unit to the east of the subject property were to be setback at a distance of 15.2’, for example, the average setback would be calculated as 25’ for the subject property. Therefore, a variance of only 10’, as opposed to 20’ would be required. At this time, there is no intention to construct any additions to the front of the structure, so as to further encroach into the required front setback area.

Mr. Diem presented the recommendation of the Zoning & Inspections Department. He stated that they recognize the hardship created by the existing location of the main building located at 305 East Piccadilly Street; and, has no objection to the change of use from single-family detached dwelling to office and homework assistance center for City youth, as conducted by the Winchester Department of Parks and Recreation.

Mr. Koneczny opened the public hearing.

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

Will Moore of the Planning Department stated he has been working with the Department of Park and Recreation on this project. He felt the request was straight forward and was present to answer any questions the board may have.

Mr. Phillips asked what is going to be the use of the property. Mr. Moore was joined by Leslie Bowery from the Department of Park and Recreation who stated the house will be used to hold the after school programs. Mr. Phillips asked what the hours will be. Ms. Bowery stated the hours will vary with the school day but not much is planned for the evening hours. She added there may be some evening hours added during the holidays to allow parents to go shopping without their children. Mr. Koneczny asked if there will be any construction. Ms. Bowery stated no.

Mr. Koneczny closed the public hearing.

Mr. Phillips asked if the board grants this, is there a limit on the use. Mr. Diem stated any future use of the property would be EIP (Educational, Institutional, and Public).

Mr. Wiley motioned that the Board approve **BZA 07-09** to permit the change of use and occupancy of a single-family dwelling to a governmental/educational office for the Department of Parks and Recreation by granting a variance to the requirement of main building setback; 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 variance 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.

Mr. Phillips stated he would like to see an additional sign added and seconded the motion.

The motion passed 3-0-0.

**BZA-07-10** – Request of Greenway Engineering for a variance of the Winchester Zoning Ordinance, Section 12-7-2, pertaining to minimum rear yard setback at 2150 South Loudoun Street (Section 272, Double Circle 1, Lot 7) zoned Intensive Industrial (M-2) District.

Mr. Diem presented the request. He stated the subject property is located within the Intensive Industrial (M-2) District; and, is bordered by the CSX Railroad right-of-way to the east and Intensive Industrial (M-2) District to the north. The zoning district immediately west of the subject property is Highway Commercial (B-2) District. The site currently consists of warehouse structures, above ground fuel storage tanks, and related accessory structures.

Mr. Diem presented comments from the Zoning & Inspections Department. He stated that on May 23, 2007, the Zoning & Inspections Department received a letter outlining the

concerns of the property owner, as prepared by Evan Wyatt, Greenway Engineering. Within the written request, Mr. Wyatt explains that the owner of the H.N. Funkhouser & Co., parcel is interested in constructing a 40' x 130' addition to an existing two-story office and warehouse building. Mr. Diem added that the addition is intended to be constructed with a similar rear yard setback as is currently provided for the existing structure. The required rear yard setback in the M-2 District is 25'. The existing setback between the main building and the railroad right-of-way is less than 25'; and, based on drawings submitted by the applicant appears to be encroaching onto the adjacent railroad right-of-way property. This existing situation is therefore considered to be nonconforming. Within the M-2 District, the requirement for a rear yard setback is waived, when it is determined that the close proximity of the structure to the railroad right-of-way is essential for transportation of materials and supplies. The applicant has stated that the railroad will not be used in this manner.

Mr. Diem presented the recommendation of the Zoning & Inspections Department. He stated that they acknowledge the limitations that exist for future development of this site, based on locations of existing buildings and structures. The proposal to construct an addition to an existing structure that is deficient of rear yard setback does not appear to defy the spirit or intent of the Ordinance; and, actually represents an effort by the applicant to otherwise improve a nonconforming setback by constructing the addition at a distance greater than what is represented between the existing building and the CSX railroad right-of-way.

Mr. Koneczny opened the public hearing.

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

Evan Wyatt presented on the addition of the warehouse and referred to the exhibit that was included in the Board packets to show the hardship.

Mr. Koneczny asked if the extension if going to be less than the existing building. Mr. Wyatt stated it will be 5 feet off the property line.

Mr. Koneczny closed the public hearing.

Mr. Phillips, seconded by Mr. Wiley, motioned that the Board approve **BZA 07-10** to permit the construction of an addition to an existing two-story office and warehouse building by granting a variance to the required rear yard setback; because, a. The variance is in harmony with the intended spirit of the Ordinance; and, b. That the strict application of the Ordinance would produce a clearly demonstrable hardship to the property; and, c. That the authorization of the variance 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 3-0-0.

**BZA-07-11** – Request of Frederick Ward, Associates, for variances of the Winchester Zoning Ordinance, Sections 18-8-6.2b(1) and 18-9-2.9, pertaining to proposed numbers and permitted square footage area of freestanding signs for a commercial center, and permitted height of retaining walls at the Shoppes at Tevis site located on East Tevis Street (Section 292, Double Circle 2, Lot 2) zoned Commercial Industrial (CM-1) District.

Mr. Diem presented the request. He stated that the subject property is located entirely within the CM-1 District, and is bordered on the east by the Interstate 81 right-of-way. The multi-frontage lot parcel is situated north of East Tevis Street, between the intersections of East Tevis Street and Legge Boulevard and East Tevis Street and the I-81 right-of-way.

Mr. Diem presented comments from the Zoning & Inspections Department. He stated that the case presented to the Board of Zoning Appeals is very similar to precedence established within BZA-04-21, affecting a property located at 2500 South Pleasant Valley Road, which is within the same vicinity as the subject parcel. A copy of that case was included in the board members' packets to reference. As was presented within the City Staff Report for BZA-04-21, a square footage comparison will be offered for consideration by the Board of Zoning Appeals. Within this particular request, the applicant proposes to construct one (1) freestanding sign, measuring 165 square feet in area, with five (5) additional monument style signs, each 25 square feet in area. The proposed sum of square footage of sign area would equal 290 square feet.

Mr. Diem added that the applicant has also indicated the parcel is deficient in the required amount of linear feet of public street frontage to conform with the standards outlined within Section 18-8-6.2(b) (1) for the number of signs proposed; however, with an additional 180 linear feet of public street frontage, the applicant would otherwise be permitted to have a sum of freestanding sign area of 300 square feet.

Mr. Diem informed the board the commercial development that is proposed will include four (4) main buildings, three (3) of which with three (3) or more tenants. An additional four (4) parcels for "pad sites" are identified on the site plan. For comparison purposes, if the site was not considered a commercial center and the freestanding signage standards of 18-8-6.2(a) were to be applied instead, the applicant would possibly be permitted to install approximately eight (8) freestanding signs, each measuring 75 square feet for a total sum of 600 square feet.

Mr. Diem stated that within their written letter of intent, the applicant addresses the proposed square footage of the large pylon type sign, to be erected within visible proximity of I-81. The sign is requested to be 165 square feet, which could be administratively approved within the standards outlined in the Winchester Zoning Ordinance, Section 23-3(b). The request represents a 10% deviation from the maximum amount of sign area. The proposal by the applicant to construct an aggregate sum of sign area less than would otherwise be allowed, may justify the request for the 10% variance.

Mr. Diem added that within the request the applicant also requests that the Board of Zoning Appeals consider and grant a variance pertaining to maximum height of a retaining wall within a front yard. As previously identified, the site is considered to be a multi-frontage lot. One of the frontages indicated, is the I-81 right-of-way. The spirit and intent of the Ordinance, in limiting retaining wall heights is believed to prevent an overwhelming sense of barriers between commercial development and public rights-of-way. The topographical conditions of this site are such that the height of the retaining wall is physically necessary, so as to minimize adverse impacts on adjoining properties. Additionally, the elevation of the site in comparison with the elevation of the travel lanes of I-81 would not appear to create the visual barrier that is intended to be minimized through the current Ordinance standards.

Mr. Diem presented the recommendation of the Zoning & Inspections Department. He stated that they recommend approval of these variance requests pertaining to the Shoppes at Tevis commercial center site. Previous BZA case precedence, within the same vicinity and for similar uses, has dictated the ability to deviate from Ordinance standards with regards to number of freestanding signs and amount of square footage. Although more signs will be constructed as a result, the impact of those signs will be greatly restricted by the self-imposed square footage limitation, as proposed by the applicant. City staff also acknowledges the hardships identified with regards to the proposed retaining wall and considers the variance request for excessive heights to be appropriate.

As an administrative note, Mr. Diem stated that during the BZA property visit before the meeting, the public hearing sign was not posted at the property. Mr. Diem researched two documents in the Zoning office and could not provide proof that a public sign deposit was paid. Lou DiBitonto, developer of the site, confirmed that a sign was erected and possibly removed by local children. Mr. Diem stated that the public hearing was published and the adjacent property owners were contacted by letter.

Mr. Koneczny asked if we know if a sign was actually erected. Mr. DiBitonto stated that he was at the property last Thursday and it was there. Mr. Moore of the Planning Department stated he has no recollection of the sign being picked up at the same location a sign was picked up and returned for sub-division SD-07-03. Mr. Koneczny stated the purpose of the sign is to make sure our citizens are aware of what is going on. Mr. Wiley stated that he works in construction and made the suggestion that the sign be chained to a post. Mr. DiBitonto stated that the suggestion has been tried but the sign was torn down. Mr. Koneczny asked if the sign was posted in the fenced in area. Mr. DiBitonto stated the sign was not in the fenced area and that he has not been to the property today.

Mr. Koneczny asked if there is a timeframe to be followed or if the board can hear the case in July. Mr. DiBitonto reported the tenants will not sign until this is done which is holding up the financing. Mr. Phillips stated that if we had a receipt, he would not have a problem with it. Mr. DiBitonto stated he understood that if we don't have the sign up, someone could protest.

Mr. DiBitonto requested the board table the request until the July meeting. He will also try to physically attach the public hearing sign to the project sign.

**BZA-07-12** – Request of James B. Justice, for variances of the Winchester Zoning Ordinance, Sections 10-5-1 and 18-6-5.1, pertaining to main building setback and required off-street parking at 537 North Cameron Street (Section 153, Double Circle 2, Block E, Lot 32) zoned Commercial Industrial (CM-1) District.

Mr. Diem presented the request. He stated that the subject property is located within the CM-1 District, and is bordered on the west and south by High Density and Limited High Density Residential (HR and HR-1) Districts. The corner parcel site is located at the intersection of Wyck Street and North Cameron Street.

Mr. Diem presented the comments from the Zoning & Inspection Department. He stated that the Board of Zoning Appeals established precedence with regards to the request for a variance of main building setback, within BZA-06-25, affecting a property located directly across the street and within the same zoning district. A copy of that case was included in the Board packets to reference. Mr. Diem added the applicant intends to utilize a steel frame, unenclosed pavilion structure as an outdoor venue for concerts, exhibits, farmer's market activities, and other similar types of assembly. Previously, the applicant was granted a temporary event permit, during the course of the 2007 Apple Blossom Festival, so as to host a variety of entertainment events. Additional interest in utilizing the structure for those types of activities has been noted by City staff, based on the amount of requests received. Assembly use is permitted by right within the CM-1 District; however, City staff feels that it would be in the best interests of the City to grant a permanent Certificate of Occupancy, as opposed to random temporary event permits. In order to accomplish this; however, the applicant has to formally address a nonconforming main building setback that currently exists, along with a deficient number of off-street parking spaces.

Mr. Diem added that the staff acknowledges the physical hardship that exists with regards to the location of the pavilion structure; and, has considered the positive site improvements that could occur as a result of redeveloping or changing the use of the former lumber yard site to an outdoor entertainment venue.

Mr. Diem informed the Board that the pavilion is approximately 12,000 square feet in size (a correction from the 4500 sq. ft. listed in the staff report), which would require a minimum of 120 off-street parking spaces (a correction from the 45 parking spaces listed in the staff report), based on the standards outlined within Section 18-6-5.1. A total of 39 spaces are provided on the subject parcel. The Winchester Zoning Ordinance allows for off-street parking to be delineated within 300' of the subject parcel; and, in an effort to accommodate the need for parking, the applicant has consulted with Bowman Consulting to outline a plan for off-street parking north of the subject property and within 300'. It is important to note that off-street parking that is proposed north of Wyck Street is also intended to be used for a variety of uses and occupancies existing and proposed at the former ZeroPak facility, 536-590 North Cameron Street. The applicant has indicated during prior meetings that the likelihood of simultaneous uses to occur between the outdoor assembly pavilion and the ZeroPak mixed-use development is minimal; and, that consideration of a time-shared parking arrangement would be advantageous.

Mr. Diem presented the recommendation of the Zoning & Inspections Department. He stated that they recommend approval of these variance requests pertaining to the redevelopment and use of the former lumber yard pavilion, located at 537 North Cameron Street as an assembly pavilion. He added it would be appropriate to consider limiting a reduction of required off-street parking on a percentage basis, as opposed to an actual number. For example, the Board could consider a variance that would allow for an overall reduction of 20% of the required off-street parking, based on the sum of the proposed uses, so as to facilitate mixed-use redevelopment of a former manufacturing and warehouse site where there is a recognizable hardship and limitation of ability to create off-street parking. Within the current provisions of the Ordinance, the Zoning Administrator is authorized to grant a 10% reduction, when warranted.

Mr. Diem stated that if the request is granted by the Board of Zoning Appeals, the 20% reduction of off-street parking would not apply to future uses and occupancies of the former ZeroPak facility, unless expressly granted by the Board of Zoning Appeals in a future public hearing regarding that specific property.

Mr. Diem stated that during the BZA property visit before the meeting, he did not see a public hearing sign at the location and could not find proof of a paid deposit in the Zoning office. He added that the applicant has sent out letters to the adjacent property owners.

James Justice stated the sign was not posted but would prefer not to have the case tabled until the July meeting. Mr. Koneczny reminded Mr. Justice that the last time he was before the Board, they congratulated him on his bravery but that he would be taking a chance of being denied.

Mr. Justice requested tabling the case so the public could be made aware of the situation. The Board accepted the request to table until the July meeting.

### **OLD BUSINESS**

None

### **OTHER**

With no further business to discuss, the meeting was adjourned at 4:42 pm.