

## **BOARD ZONING APPEALS MINUTES**

The Winchester Board of Zoning Appeals held its regular monthly meeting on November 14, 2007 at 4:00 p.m. in the Council Chambers, Rouss City Hall, 15 North Cameron Street, Winchester VA

PRESENT: Koneczny, Wiley, Roberson

ABSENT: Hurt, Phillips

VISITORS: David Spence, Gary Chrisman

STAFF: Diem, Chasteen

On motion by Mr. Wiley, seconded by Mr. Roberson, the minutes of October 10, 2007 were unanimously approved.

Mr. Diem read the following to the Board:

BZA 07-20 Request of Dave Spence, on behalf of the subject property owners, for variances of Section 5.1-3-1, Section 5.1-6-1.1, and 5.1-6-2.1 of the Winchester Zoning Ordinance, pertaining to minimum required lot area, side yard setback, and rear yard setback, at 255 East Street (*Section 194, Double Circle 1, Block B, Lot H*), zoned Limited High Density Residential (HR-1) District.

Dave Spence, on behalf of the subject property owners, is requesting variances of the Winchester Zoning Ordinance, so as to allow for the subdivision of an existing residential parcel and ability to improve the vacant portion that would remain with a detached single-family dwelling.

The subject property is located within the Limited High Density Residential (HR-1) District, and is bordered to the east by High Density Residential (HR) District and to the north by Highway Commercial (B-2) District. The north side of the property fronts onto National Avenue and the east side of the property fronts East Street.

Within the application materials submitted by the applicant, an exhibit prepared by Montgomery Engineering Group, Inc., demonstrates the proposed subdivision of an existing parcel located at 255 East Street, Winchester VA. The current parcel consists of 6,727 square feet in area, 63.67 feet fronting on National Avenue, and 105.40 feet fronting on East Street. Three existing structures are depicted on the exhibit, including a single-family detached dwelling and two small accessory structures. Although the property maintains an East Street address, based on the Zoning Ordinance definitions, it would appear as though the actual front of the existing parcel is adjacent to National Avenue.

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A nonconformity exists on the current parcel, with regards to required setback distances. The current rear yard would actually be adjacent to a 12' alley that is on the south end of the parcel. The required rear yard dimension is 25', as compared to the current dimension of 3.25'.

The minimum required lot area for a single-family dwelling in the HR-1 District is 3,500 square feet. By subdividing the existing parcel, the applicant intends to create a parcel with 3,565 square feet, and a remaining parcel of 3,162 square feet. Although the Zoning Ordinance would provide an opportunity for an Administrative Modification with regards to the insufficient lot area, the applicant prefers to address all of their requests simultaneously before the Board of Zoning Appeals.

If the requests for variances were to be approved, the result would be a separately deeded parcel that could be improved with a single-family dwelling. The applicant proposes to meet the minimum required setback distances and lot area dimension for the newly created parcel. However, the process would create other nonconformities for the remaining parcel that has previously been improved with a dwelling. The subdivision would result in a change of site orientation, from what currently exists. The East Street side of both properties would become the front yard. The current nonconformity that exists at 255 East Street would be lessened by changing the existing rear yard to a designation as a side yard. The minimum required side yard distance is 4'. Although, the existing dwelling was constructed to face East Street, the portion of property west of the structure would actually be considered a side yard within the Zoning Ordinance and not a rear yard as it appears to be used. The subdivision process would actually create a nonconformity regarding the minimum required rear yard, but would align the current use of the property with the Zoning Ordinance classifications of yard areas.

The Hearing opened and Mr. Spence spoke to the Board.

Mr. Wiley verified that the house was to face North – National Avenue and the driveway would be from East Street.

Hearing closed.

Mr. Wiley, second by Mr. Roberson motioned to conditionally approve BZA 07-20 to permit the subdivision of an existing parcel located at 255 East Street and in doing so creating a separate parcel to be improved with a single-family dwelling, by granting variances of the Winchester Zoning Ordinance pertaining to minimum required lot area, side yard setback, and 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.

Motion carried 3-0-2 (Mr. Hurt and Mr. Phillips absent)

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**NEW BUSINESS -- None**

**OLD BUSINESS**

BZA 6-18 – Request of Gary Chrisman for modification of a previously granted variance pertaining to 1060 – 1068 Woodland Avenue.

Mr. Koneczny stated that Mr. Chrisman received approval to increase one lot at the rear of these units and he proffered that he would 1) plant trees; and (2) that he would take this unit and convert it into condominiums for more affordable housing.

Mr. Chrisman said this project would promote home ownership. It is quite costly to convert the units into condos. He was asking for a 5-year time frame so he could sell the lot in back and use the funds to develop the units/condos.

Mr. Koneczny said the proffer was in good interest. He asked if Mr. Chrisman had any idea of the value of the houses. He also asked if Mr. Chrisman considered keeping them as rentals or sell as condos.

Mr. Wiley said the Board's concern was the 5-year timeframe. He asked Mr. Chrisman was there a reason for choosing that length of time. Mr. Chrisman said this was a complex process he had no particular reason.

Mr. Koneczny asked Mr. Diem if the proffer could be removed?

Mr. Diem said it was his understanding that proffers are associated with site development in the subdivision or site development phase not necessarily as a part of the Board of Zoning Appeals variance process. These are probably more accurately defined as voluntarily self imposed conditions that were presented by the applicant. One of the things discussed between staff and the applicant as regards to this particular case was that perhaps some type of deed restriction be prepared by an Attorney of Law on the existing parcel containing the 5 apartment units that would prevent the sale, or transfer of ownership, or listing of the properties for sale prior to the conversion into condominiums. Perhaps with the assistance of an attorney the applicant could draw something up and recorded at the circuit court and it remains on the property either indefinitely or for a period of time stipulated between the Board and applicant or the applicant and his attorney.

Mr. Koneczny stated that looking at the units, \$3,000 is being optimistic.

Mr. Koneczny stated that Mr. Diem outlined an alternate situation. Once we say that is o.k. and you go and sell the house, we don't have much of a recourse. He said he is trying to protect the citizens to assure that some point in time this is done.

Mr. Diem said he felt an appropriate action on the part of the Board of Zoning Appeals  
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would be to direct the applicant to consult with his attorney, prepare a statement that could be added to the deed, the applicant returns to the Board of Zoning Appeals with a copy of that language and the Board determines whether or not that would meet their requirements or satisfies that concern.

Mr. Chrisman was asked if the Board tabled his request until December meeting, could he come back then with the appropriate documents. He stated he would.

Meeting adjourned at 4:25 p.m.