

**BOARD OF ZONING APPEALS  
MINUTES**

The Winchester Board of Zoning Appeals held its regular monthly meeting on, April 9, 2008, at 4:00 p.m. in the Council Chambers, Rouss City Hall, 15 North Cameron Street, Winchester, Virginia.

**PRESENT:** Koneczny, Wiley, Hurt, and Phillips

**ABSENT:** Roberson

**VISITORS:** Sharon Solomon, Mark McKee, Karen Schultz, Rhonda Lamberson, Greg Poe, Zafar Jawaid, Muhammed Bhatti, Jeffery Fahnstock, Ann Park, Tim Painter, Tim Revere, Ethel Doherty, Jim Utt, Rocky Taylor, Clinton Ritter, Mike Bryant, Shannon Barbour, Charles Russell, B. Russell, Drew Houff(Winchester Star)

**MINUTES**

On motion by Mr. Phillips, seconded by Mr. Koneczny, the minutes of the March 12, 2008 meeting were unanimously approved as amended.

**CORRESPONDENCE**

None

**At the request of Chairman Hurt, Old Business was bumped up on the agenda.**

**OLD BUSINESS**

**BZA-08-08** Request of Mark E. McKee, on behalf of the subject property, requesting a variance pertaining to permitted fence heights in front and corner-side yards, Section 18-9-2.8 of the Winchester Zoning Ordinance, at 35 West Whitlock Avenue (*Section 232, Double Circle 3, Block C, Lot 1*), which is zoned Medium Density Residential (MR) District.

Mr. Diem read a letter from the applicant stating what he planned to do to reduce the appearance of fence height. The letter explained that he intends to build a flower box to reduce the appearance of fence height. If any utility work had to be done the applicant understood that it would be at his expense to remove the flower boxes. He drew attention to the attached drawings showing the proposed boxes.

Mr. Diem also read a letter from the City Engineer, Kelly Henshaw stating her approval of the flower boxes in the right-of-way.

Board of Zoning Appeals

Minutes – March 12, 2008

Page 2

Mr. Koneczny voiced concerns with allowing this workaround. He stated that because there have been so many fence cases, the Ordinance needed to be addressed instead of addressing these issues individually.

Chairman Hurt stated that staff has added criteria that are available in the Zoning office regarding fence requirements.

Mr. Diem added that currently there is a text amendment that will be voted on by Planning Commission this month requiring a permit for fences within the City. No fee will be charged but it's a way to make sure that contractors as well as homeowners are aware of the requirements. He explained that it wouldn't help this particular case but it will limit these sorts of issues.

*Mr. Phillips, seconded by Mr. Wiley motioned to approve BZA-08-08 as presented with changes.*

*Motion carried 3-1-1 (Mr. Koneczny opposed).*

## **PUBLIC HEARINGS**

**BZA 07-22** Requests of Charles M. & Betty T. Russell, on behalf of the subject property, for variances pertaining to minimum lot width, front setback, side yard setback, and off-street parking requirements, as required within Sections 8-3, 8-5-1, 8-8-2, and 19-1-2 of the Winchester Zoning Ordinance, at 29 Weems Lane (*Section 271, Double Circle 4, Lot 39*), which is zoned Highway Commercial (B-2) District.

Mr. Diem presented his staff report. He explained that on September 21, 1995, a Certificate of Occupancy-Business (COB# 95-164) for Da-Da's Place, located at 29 Weems Lane, Winchester, Virginia was issued. The intended use and occupancy was identified as a soft-serve ice cream restaurant. Further investigation conducted by former Zoning Administrator, Mr. Ben Caldwell, revealed that the COB was issued erroneously; and, several items of concern were required to be resolved or addressed.

Among the concerns noted, Mr. Caldwell indicated that the structure currently being used and occupied by Da-Da's Place did not conform to the required front and corner side yard setback standards. Additionally, Mr. Caldwell determined that a site plan reflecting the change of use from a professional office to a restaurant was required to be submitted. Mr. Caldwell was succeeded by Mr. David Beniamino, as Zoning Administrator in 2005. Zoning violation matters were then transferred to Mr. Beniamino for follow-up and resolution. During Mr. Beniamino's tenure, the matter had not been resolved, although correspondence was exchanged between the property owners, their legal counselor, and him.

Mr. Diem stated that the restaurant is a permitted by right use within the B-2 District, pursuant to Section 8-1-36 of the Ordinance. While the property is currently not in compliance with the Ordinance standards, the owners have demonstrated that re-use of the former office building (which appears to

have originally been a single-family dwelling, due to its form and architecture) has co-existed in the district, with minimal – if any – impacts on surrounding properties. Staff supports further use and occupancy of the property as a restaurant, with certain conditions imposed.

Chairman Hurt opened the public hearing.

Clinton Ritter, attorney, representing the applicant stated that this issue was caused by a clerical error made by City staff 13 years ago. A variance would put an end to all the issues. A new survey was done and it showed that the shop would not meet the requirements as it stands; they would have to tear it down and rebuild a smaller building. He explained that the applicants are willing to do whatever it takes, within reason, to rectify these issues. They can't do anything about the setbacks but they can try to make the parking lot work. He asked what those requirements were.

Mr. Diem explained that there is a separation requirement between the vertical structure and the parking area also a 6 in. vertical separation barrier such as concrete wheel-stops or landscaping timbers.

Mr. Ritter said it can be done.

Chairman Hurt closed the public hearing.

Mr. Koneczny stated that with the parking being in the back, there is no threat to pedestrian traffic.

Chairman Hurt stated that he has never seen it overcrowded but there are times when it's hard to find a parking spot.

***Mr. Koneczny, seconded by Mr. Phillips to Board conditionally approve BZA 07-22 to permit the continued use and occupancy of 29 Weems Lane as a soft-serve ice cream restaurant, by granting variances of Sections 8-3, 8-5-1, and 8-8-2 of the Winchester Zoning Ordinance; and, that the Board deny a variance of Section 19-1-2 of the Ordinance which requires a site plan to be submitted for a change of use, with the following conditions imposed:***

- 1. A change of use site plan must be submitted to the Director of Planning no later than May 9, 2008; and,***
- 2. That the parking lot will be brought into compliance with the necessary safety features and be striped as required by law and should be completed by June 30, 2008; and,***
- 3. That the site improvements, as depicted and approved on the change of use site plan be incorporated prior to the re-issuance of a Certificate of Occupancy; because,***
  - a. The variances are 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 4-0.***

Board of Zoning Appeals

Minutes – March 12, 2008

Page 4

**BZA-08-10** Request of Sonya Merriner dba Pawsitively Heaven LLC, on behalf of the subject property, for a variance pertaining to required side yard setback and kennels, as required within Section 10-6-1 and Section 10-1-34 of the Winchester Zoning Ordinance, at 2633 Papermill Rd (*Section 291, Double Circle 1, Lot 7*), which is zoned Commercial Industrial (CM-1) District.

Mr. Diem presented his staff report explaining that the applicant is seeking to establish a daytime dog boarding facility that will exceed the number of dogs allowed by the Ordinance. The applicant stated in her letter that no animals will be provided with overnight accommodations, nor will they be kept permanently outdoors. This facility, if permitted, would be the first of its kind in the City. With regards to the request for variances, a hardship exists concerning the proximity of the structure to the property line. The encroaching roof overhang could be removed; however, may require structural alterations to accommodate the change and may pose an unreasonable expectation of the lessee. The ability to apply for a Zoning Ordinance Text Amendment to delineate a difference between overnight boarding and daily boarding, thus allowing for more animals to be simultaneously cared for, is available.

Sonya Merriner stated that she is requesting the variance because 25 dogs would not sustain the business.

Mr. Wiley asked if she would need a minimum of 50 animals.

Ms. Merriner stated that yes she would need 50 for grooming and boarding together.

Chairman Hurt closed the public hearing.

Mr. Koneczny stated that he has no problem addressing the setbacks however as far as the 25 dogs are concerned, the Ordinance is very clear and it's not up to the Board to change the law.

Chairman Hurt stated that they need to be concerned with the request for the variance including the number of dogs.

Mr. Phillips asked why they will need twice the number of dogs.

Chairman Hurt asked Mr. Diem if there has been any communication as to why the increase in the number of dogs.

Mr. Diem stated he had not spoken to the applicant about it.

Mr. Koneczny explained that it is a self-imposed hardship. He stated that he could support the setback issues but he is not willing to question the intelligence and the research that went into determining the limited number.

Mr. Diem explained that the applicant could sponsor a text amendment to address the number of dogs.

Chairman Hurt asked for a motion.

Mr. Phillips asked if it the 25 dogs were approved could she then come back in a year's time and up the number to 50 if there hadn't been any issues.

Mr. Koneczny stated that the issue should not even be in front of the Board because there are other ways that it can be addressed such as a text amendment.

Sonya Merriner reminded the Board that all the dogs would be inside.

Chairman Hurt stated that numbers are numbers.

***Mr. Phillips, seconded by Mr. Koneczny to conditionally approve BZA-08-10 to allow a Certificate of Occupancy for a kennel establishment at 2633 Papermill Road to be granted, by granting variances to the required side yard setback and permitted number of animals, based on the following conditions:***

- 1. No more than twenty-five (25) animals are permitted to be kept, cared for, or otherwise maintained at the subject property, at any one time; and,***
- 2. Upon receiving any citizen complaint of excessive noise, odor, or other public nuisance emanating from the property, the owner/operator of the business shall immediately resolve such reported concerns; and,***
- 3. Prior to the granting of a Certificate of Occupancy, all site improvements shall be identified on a revised site plan submitted and approved by the Director of Planning, along with the completion of those improvements; and,***
- 4. No animals will be permitted to be kept or maintained outside of the existing structure between the hours of 7:00p.m. and 7:00a.m.; because,***
  - a. The variances are 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 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.***

***Motion carried unanimously 4-0.***

**BZA-08-11** Request of Zafar Jawaid, on behalf of the subject property, for a variance pertaining to minimum lot width, minimum lot area, and main building setbacks, as required within Section 4-4-2, Section 4-3-2 and Section 4-5-1 of the Winchester Zoning Ordinance, 601 Woodstock Lane, (*Section 195, Double Circle 10, Block B, Lots 69-72*), which is zoned Medium Density Residential (MR) District.

Mr. Diem explained that the applicant proposes to change the use of an existing single-family detached dwelling to a Church or other place of worship. A need for off-street parking to be established on-site has prompted the applicant to develop site plan improvement drawings to address those needs.

Board of Zoning Appeals

Minutes – March 12, 2008

Page 6

The actual front yard of the property is located along Pleasant Valley Road. The required main building setback is 30' within the MR District. The existing building is approximately 18' east of the public right-of-way. Therefore, a variance of 12' is requested by the applicant. This public hearing item is solely with regards to the Board's justification of the requested variances, as they pertain to the proposed change of use from single-family dwelling to a church or place of worship. The religious affiliation or denomination of the proposed use is of little relevance to the matter before the Board of Zoning Appeals.

Chairman Hurt opened the public hearing.

Zafar Jawaid, President of the Islamic Society of Winchester, explained that this society was formed 12 years ago. They have been working in conjunction with other religious societies to promote better understanding and consciousness of human morals. They are a dedicated group who believe in peace and promoting human values. He stated that they have been renting property for the last several years to assemble for prayers. They have purchased the subject property for their religious and communal obligations.

Mr. Phillips asked how many members are in attendance at any one time.

Mr. Jawaid stated that right now they are only five families that are active right now, about 10 people.

Chairman Hurt asked where they have been meeting prior to this.

Mr. Jawaid stated that they were renting 2737 Pleasant Valley Rd but the property was not in compliance. He met with Mr. Diem and at that point looked for a different place.

Chairman Hurt asked how many years they occupied the property.

Mr. Jawaid answered that it was one year.

Chairman Hurt asked how many members were attending at that point.

Mr. Jawaid stated that there were about 20 people. In the meantime, another group was formed in Frederick County and some of those people went there to be closer to their homes.

Mr. Wiley asked if they had already purchased the subject property.

Mr. Jawaid stated that they had.

Mr. Wiley stated that he was concerned with parking. He asked about traffic overflow.

Mr. Jawaid stated that considering the number in attendance he felt that it wouldn't be a problem.

Mr. Koneczny stated that they have every right to be in the MR district. It's up to the Board to make sure that the site is not compromised by the change of use because the house has economic value as a

Board of Zoning Appeals

Minutes – March 12, 2008

Page 7

residence and it can continue that same value without the variance. He expressed his concerns about parking stating that the only parking that's available is off-street.

Sharon Solomon, 131 N Euclid Ave, spoke in opposition stating that she had a petition signed by the neighbors that could not be present.

Mr. Koneczny stated that a petition is public opinion, and he couldn't accept it.

Ms. Solomon felt that granting the variances would cause noise and disruption to the neighborhood as well as complicate traffic and bring down property values. She also felt that the parking lot that's intended would destroy the view from her home making the neighborhood appear more commercial. The Islamic religion observes prayer meetings 5 times a day which she felt would cause a horrendous traffic issue due to the constant flow of visitors. She cited statistics provided by Chief David White stating that since January 1, 2008 there have been 19 criminal arrests on Woodstock Lane, 12 traffic crashes at Pleasant Valley Rd and Woodstock Lane and 215 traffic stops in Woodstock, Pleasant Valley and the Boyd Ave grid. She cited the Ordinance Section 20-3-2.2 and 23-3-1 stating that this variance will affect the adjoining property owners and will change the character of the neighborhood. She asked what happens as the mosque continues to grow. She concluded by saying that the Ordinance was written for a reason and shouldn't be taken lightly. Homeowners rely on these rules when they choose to buy homes in certain neighborhoods. If everyone gets an exception to the rules then there is no purpose in having them.

Muhammad Bhatti spoke in favor of the applicant. He added that the integrity of the property and the neighborhood would be preserved. He stated that the only meeting when all 10 members would be meeting at the same time would be Friday between 1pm and 2pm. He felt that 5 or ten more cars would not make an impact on the already congested street. He promised to keep the property in excellent condition.

Mr. Phillips asked if there were nighttime activities.

Mr. Bhatti explained that there is only one nighttime prayer and that's at sunset.

Rhonda Lamberson, 106 S. Euclid Ave, felt that the infrastructure of the neighborhood cannot handle anymore commercial establishments. She stated that their neighborhood is nestled in between the elementary school, the university, the park, and the middle school. Woodstock Lane is already the off-street parking for that. She stated that Kimberly Way is a rental unit for college students, so there are 3-4 people per unit trying to park on the street. There is no room for additional traffic.

Jeff Fahnestock, 24 S Pleasant Valley Rd, stated that he has no problem with the use but the traffic is a huge issue. He added that there are more and more residential buildings going up without ample parking so they are coming into the neighborhoods to find space.

Jim Utt, Pastor at Grace Lutheran Church, stated that he knows the members and has for a number of years. He felt that the Board should take their word on what they say they will do. He added that they are trustworthy, that they just want a place to worship. He understood the traffic concerns and felt that this can be worked out.

Board of Zoning Appeals

Minutes – March 12, 2008

Page 8

Cifford LaSalle of Boyd Ave, felt that it would be detrimental to the neighborhood to tear down the historic home. He shared his concern on the possible drop in the value of his home as well.

Chairman Hurt stated that he didn't believe they had any intention of tearing the house down.

Mr. Bhatti confirmed that they will be using the existing home for services.

Mr. Koneczny asked that the applicant address the parking situation so everyone could be clear.

Mr. Jawaid explained that all parking would be contained within the property. The house sits on one lot which leaves 3 lots that are included in the parcel. There is enough room for a lot that could hold approximately 10 cars. He stated that there are 3 spaces there now but he intends to put in 10 which will be more than they need.

Mr. Phillips asked if it would face Pleasant Valley Rd.

Mr. Jawaid stated that the design is not complete but it would be shown on the site plan. It is possible to come from the alley. He also added that if there is ever a gathering where a number of people would be attending that they would rent out a banquet room or something more suitable.

Chairman Hurt shared his concern with the limited parking. He asked what will happen in 15 years as the congregation grows.

Mr. Jawaid stated that they would either move or build.

Mr. Wiley asked about the parking access. He asked would it be one way in and one way out.

Mr. Jawaid stated that it hasn't been designed yet.

Mr. Wiley stated that he's trying to imagine what it would look like when numerous people are trying to leave at the same time.

Mr. Jawaid stated that by law the drive-way entrance will have to be wide enough for 2 cars.

Rocky Taylor, 116 N Pleasant Valley Rd, stated that with traffic backed up at the intersection they are forced to use the alley that Mr. Jawaid is talking about using. As it is you can sit on Woodstock Lane for 10-15 minutes before you're able to pull out onto Pleasant Valley. He felt that the traffic issues are severe as they are and adding a growing congregation would be too much.

Melony, neighbor of the subject property, stated that she doesn't have parking in front of her home, she has to use the alley ways. She is concerned that she will come home from work and not be able to get in or find a place to park. She felt that the lot they are talking about building will not hold 10 cars and the excess will spill over into the alley.

Board of Zoning Appeals

Minutes – March 12, 2008

Page 9

Mr. LaSalle added that they may start off small but its going to grow and there is no way of knowing how many people will be in attendance.

Mr. Bhatti stated that there will be 10 spaces which will be more than enough.

Karen Shultz, 501 Seldon Dr, stated that there are 10 houses of worship at the present time that are residentially placed, which she felt brings character to our neighborhoods. She agreed with the citizens that came forward that the traffic is an issue. She asked the Board to remember that this property is not in the Historic District. She stated that she knows the applicant and feels that they will take in all sides.

Chairman Hurt closed the public hearing.

Mr. Koneczny stated that the growth would be limited by the size of the house. He added that the property could easily accommodate 10 cars. He felt that the only thing that needed to be addressed was whether or not the property could accommodate the use.

Chairman Hurt asked Mr. Diem how easy it would be to take it back to residential use if Mr. Jawaid moves to another location.

Mr. Diem explained that there are a lot of unknowns at this time. This property as he understood it would be consolidated into one parcel which would mean it would have to be re-subdivided according to the Ordinance standards.

Mr. Phillips stated that the Ordinance is strict as to the setbacks.

Mr. Koneczny asked if it was possible to table this until a site plan is submitted and approved.

Mr. Diem stated that a site plan couldn't be approved without the granting of the variances. The site plan approval takes into consideration dimensional standards that apply to a property.

***Mr. Wiley, seconded by Mr. Koneczny, motioned to conditionally approve BZA-08-11 to allow a change of use and occupancy of the subject property at 601 Woodstock Lane by granting variances to the required minimum lot width, minimum lot area, and main building setback, with the following conditions imposed:***

- 1. The applicant shall submit a revised site plan to the Director of Planning; and,***
- 2. The site improvements identified on an approved site plan shall be completed prior to the granting of a Certificate of Occupancy; and,***
- 3. The change of use group classification shall conform to the provisions of the Virginia Uniform Statewide Building Code, as administratively maintained by the Building Official; because:***
  - a. The variances are 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 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.***

Board of Zoning Appeals

Minutes – March 12, 2008

Page 10

Mr. Phillip asked what happens if the site plan is not satisfactory to the planning dept.

Mr. Diem stated that it would be returned with comments for revision but would eventually come into conformance.

Mr. Phillips asked what if they can't make it conform.

Mr. Diem stated that the site plan would not be approved.

***Motion carried 4-0.***

**BZA-08-12** Request of Greg Poe, on behalf of the subject property, for a variance pertaining to off-street parking area buffer, as required within Section 18-6-3.2 of the Winchester Zoning Ordinance, at 710 Berryville Ave, (Section 175, Double Circle 1, Lot 2), which is zoned Highway Commercial Industrial (B-2) District.

Mr. Diem explained that the subject property has existed in use and occupancy as an automobile service station and repair facility for several years.

In a letter dated March 17, 2008 from David M. Falkenstein of Greenway Engineering, the applicant's need for the variance is explained through a desire to provide reasonable display and parking area for the site. The applicant proposes to provide an 8' buffer where a 15' buffer would be required; and, similarly a 3' buffer where a 5' buffer would otherwise be required. Adjacent to the Berryville Avenue right-of-way, the applicant proposes to provide a 6' buffer where a 10' buffer is required.

Mr. Diem concluded by saying that a site plan has been submitted to the Director of Planning. The proposed improvements would increase that particular buffer by at least 4'.

**Mr. Koneczny recused himself.**

Point-of-Order – Mr. Diem stated that since only 3 Board members are left all would have to be in favor for this item to be approved. He suggested that the Chairman ask the applicant if he would like to table this item until their next monthly meeting when they could have the full representation of the Board.

Jeff Collins, part owner, stated that he would like to proceed because they really can't afford to wait. He felt that the proposal is fair.

David Falkenstein, Greenway Engineering stated that he was available for questions.

Anne Poe, owner of the shopping mall behind the subject property, stated that she is opposed to the granting of the variance. She felt that the setbacks are in place to protect the property owners and that this project would take away from the improvements she's doing with the strip mall.

Board of Zoning Appeals

Minutes – March 12, 2008

Page 11

Jamie, 512 Dunlap St, asked for clarification on the reduction of buffer along the residential border.

Mr. Falkenstein explained that right now the pavement goes to the property line. They will take out the pavement and replace it with landscaping.

Jamie stated that his property is right behind the shed on the property, it's so close he can reach out from his property line and touch it. He asked how that happened in the first place, was there a prior variance granted.

Mr. Diem explained that the property was improved before the Ordinance standards so it was grandfathered in. The expectation of the Planning Dept is that the developer makes the change of use conform more to current standards.

Jamie asked what will happen to the shed. There is only 26 inches from the fence to the overhang.

Mr. Falkenstein stated that there is going to be a 6ft tall board on board fence on that corner that would run to within 35 ft of the right-of-way then the rest would be covered by 6ft evergreen trees.

Jamie stated that with that being said he is in favor of the variance.

Mr. Collins stated that his intention is to display 30 vehicles on the lot but without the variance they would only have room for 15 because they need to have room for flow through which would seriously jeopardize the business.

Chairman Hurt closed the public hearing.

***Mr. Phillips, seconded by Mr. Wiley motioned to Board conditionally approve BZA 08-12 to permit the proposed use and occupancy of 710 Berryville Avenue as an automobile sales establishment, by granting a variance of Section 18-6-3.2 of the Winchester Zoning Ordinance, with the following conditions imposed:***

- 1. That the site improvements, as depicted and approved on the change of use site plan (SP-08-15) be incorporated prior to the issuance of a Certificate of Occupancy; and,***
- 2. The variance granted shall apply only to future use and occupancy of the property as an automobile sales and service establishment, contractors' establishment, convenience and service establishments (i.e., barbershop, beauty parlors), business or professional office, or retail store; because,***
  - a. The variances are 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 (Koneczny abstained).***

Mr. Phillips requested a 10 minute recess.

Board of Zoning Appeals

Minutes – March 12, 2008

Page 12

Chairman Hurt stated that there is a situation pertaining to the next case. As of yesterday there was no public sign posted on the property.

Mr. Diem showed a picture of the property taken on April 3<sup>rd</sup> that shows the sign posted.

Tim Painter, Greenway Engineering stated that they posted it and it was there at the end of last week, other than that they have no idea.

Chairman Hurt asked if there was any proof that it had been posted for 14 days.

Mr. Diem stated that he doesn't know that it has.

Mr. Koneczny stated that due process is there to protect the citizens as much as the applicant.

Chairman Hurt asked Mr. Diem to provide the date the sign was picked up.

Mr. Wiley explained to the applicant that it would be a few minutes while Mr. Diem retrieved the date it was picked up so they can be sure the requirements have been met.

Mr. Diem explained that application was made on March 19 and then on March 26 they picked up and paid the sign deposit. He stated that there is no way of knowing whether or not the sign was posted that day.

Chairman Hurt stated that based on that information they have to assume the sign was posted.

**BZA-08-13** Request of Painter-Lewis PLC, on behalf the subject property, for variances pertaining to front, rear, and corner-side yard setbacks; and, required off-street parking and buffer; and, location of accessory structures, as identified within Sections 8-5, 8-6, 18-6, and 18-10 of the Winchester Zoning Ordinance, at 1720 Valley Ave & 1701 & 1705 Roberts St (*Section 231, Double Circle 4, Block K, Lots 4, 6, 8, 19, and 21*), which are zoned Highway Commercial (B-2) District, with Corridor Enhancement (CE) District Overlay.

Mr. Diem explained that this change of use and occupancy required an increase in the number of off-street parking spaces. The re-development of the subject property to accommodate the parking requirement has stimulated the need for variances pertaining to the required number of off-street parking spaces and off-street parking area buffer. Separately, the re-orientation of the site (as a result of the lot consolidation) creates nonconforming building setback concerns, as well as, an issue regarding the proposed location of an outside trash dumpster with enclosure. The nonconformities that exist with regards to the building(s) built over several properties would be significantly reduced through a lot consolidation proposal; however, the creation of other nonconforming situations with regards to dimensional standards would result.

Board of Zoning Appeals

Minutes – March 12, 2008

Page 13

He explained that he had a meeting with Tim Painter of Painter-Lewis PLC to discuss their reactions to the staff report as it is public record once it's published. There was a misunderstanding between the applicant and staff as to what the number of parking represented. They are seeking a 20% parking reduction as a result a total of 88 spaces would be provided. The discussion narrowed down what those 88 spaces would represent. It appeared as though 80% of office space would be medical or retail with the remainder of space being office space.

Mr. Koneczny asked what would be the normal parking requirements for this building.

Mr. Diem explained it would be one space for every 300 sq ft for general office and one space for every 200 sq ft for retail or medical office.

Chairman Hurt opened the public hearing.

Tim Painter of Painter-Lewis and Tim Revere, architect, gave an overview of the project showing elevations and floor plans of what they intend the building to look like.

Mr. Painter explained that they want to preserve the building and register it with the National Registry of Historic Resources.

Mr. Revere stated that they want to put a new core in the 1970's portion of the building to incorporate the stairwell and elevator. They are planning to open up the upstairs portion of the building to let in more light. He felt that this will be a first class office building for Winchester.

Chairman Hurt asked if the building would be stucco stamped as brick.

Mr. Revere stated that it would be smooth stucco while the rest of the building would be the original brick.

Mr. Painter presented the site plan noting green and residential areas. He stated that the old out buildings are in bad shape and will be demolished. He explained that the intent is to keep most of the car traffic inside the property. It will look similar to downtown offices with traffic going in and out. After hours residents can use this for parking. He explained that they would like some flexibility in the

uses of the building. All of the lots will be consolidated to one lot making Burke St the front yard; this will cause the building to encroach on the building restriction lines. He stated that they wanted the flexibility of putting in a dumpster but as it stands it will be in the side yard when it's supposed to be in the back.

Mr. Phillips asked how many spaces the dumpster would require.

Mr. Painter explained that that the dumpster would be picked up after hours so they will be maintaining just the two spaces.

Chairman Hurt asked if the 10 spaces on Roberts St are available to the public during the day.

Board of Zoning Appeals

Minutes – March 12, 2008

Page 14

Mr. Painter explained that they would like to use it as part as their parking requirement for the facility.

Chairman Hurt asked what would happen if cars are left there overnight.

Mr. Painter stated that they would not be asked to leave.

Jim Deskins, OTDB, stated that the fact that there are 3 iconic buildings being renovated reflects good fortune for the City. He felt that this project would reduce the negative impact and produce a positive one. He mentioned the corridor overlay can only be designated if the corridor is the main access point to a historic district. He stated the City has decided that any property that is brought into compliance with the corridor overlay standards, you will be automatically granted a 12% requirement in required parking. Although this property won't meet the standards such as the setbacks, he felt it is depictive of what the overlay standards are designed to protect.

Mike Bryant, attorney, stated that he is in favor of the project and felt it would be great for the City.

Chairman Hurt closed the public hearing.

Mr. Koneczny asked if Coca-Cola has any issue with their name on the building.

Mr. Painter explained that it was conveyed with the purchase of the property.

***Mr. Wiley, seconded by Mr. Phillips motioned to conditionally approve BZA 08-13 to permit the proposed use and occupancy of 1720 Valley Avenue and 1701 & 1705 Roberts Street as a commercial office building, by granting variances of Sections 8-5, 8-6, 18-6, and 18-10 of the Winchester Zoning Ordinance, with the following conditions imposed:***

- 1. That the site improvements, as to be depicted and presumably approved on the change of use site plans be incorporated prior to the issuance of a Certificate of Occupancy; and,***
- 2. The variances granted shall apply only to future use and occupancy of the property as a mixed-use office building, not to include more than 80% medical offices which require greater amounts of off-street parking; because,***
  - a. The variances are 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, 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 4-0.***

### **ADDITIONAL COMMENTS**

Mr. Diem stated that it has been brought to his attention that there is a need for some improvements both procedurally and administratively for the functioning capacity of the BZA

Board of Zoning Appeals

Minutes – March 12, 2008

Page 15

to be consistent with accepted standards and guidelines found within the VA Association of Zoning Officials and the American Planning Association. None of the procedures are required by the Code of Virginia however in researching procedures it was found that there are no known by-laws for the BZA. He suggested that the Board members consider a weekend retreat or workshop. Possible dates suggested were April 26<sup>th</sup>; May 17th and May 24<sup>th</sup>.

**Meeting adjourned: 6:50 PM**