

BOARD OF ZONING APPEALS  
MINUTES

The Winchester Board of Zoning Appeals held a regular meeting on Wednesday, January 9, 2013, at 4:00 p.m. in the Council Chambers, Rouss City Hall, 15 North Cameron Street.

**POINTS OF ORDER:**

**PRESENT:** Chairman Hester, Mr. Phillips, Mr. Pifer, Mr. Ransom, and Mr. Crawford

**ABSENT:** None

**STAFF:** Aaron Grisdale and Catherine Clayton

**CONSENT AGENDA:**

Approval of Minutes for November 14, 2012

Chairman Hester asked for approval of the minutes.

Mr. Phillips moved for approval.

Mr. Pifer seconded the motion.

The motion to approve the minutes passed by voice vote.

Reading of Correspondence

Mr. Grisdale states there is no additional correspondence, only what is included in the packet.

**PUBLIC HEARINGS**

**BZA-11-588** Request of Kristine Stoehr, subject property owner, for a variance pertaining to side yard setbacks pursuant to Section 4-6-1.1 of the Winchester Zoning Ordinance, for the property located at 114 South Euclid Avenue (*Map Number 195-10-D-46-47A*), which is zoned Medium Density Residential (MR) District. The applicant is seeking relief of the required side yard setback in order to construct a building addition.

Chairman Hester opened by asking for a staff report.

Mr. Grisdale read the staff report and stated that applicant previously removed an addition on the south side of the house due to a deteriorated foundation. Additionally applicant has been subject before the Board of Zoning Appeals on November 9, 2011, where there was confusion regarding the exact dimensions of the lot width. At that time, the Board decided that there was not enough information and tabled Ms. Stoehr's request.

Mr. Grisdale then stated that applicant is now requesting a variance of the required side yard setback to install an addition onto the southern side of the existing single family dwelling with the addition totaling 18-feet deep and 12-feet wide. He further advised that a professional survey was completed and based upon the findings thereof; the requested variance will be for 1.6-feet of relief which would result in a new setback of 4.4-feet.

Mr. Grisdale further stated that there are three (3) considerations that the Board must take in to account when evaluating this request. First that the strict application of the Ordinance would produce a clearly demonstrable hardship and second that such hardship is not shared generally by other property in the same zoning district and the same vicinity. Third, that the authorization of such a variance will not be a substantial detriment to adjacent property and that the character of the district will not be changed by the granting of the variance.

Additionally, Mr. Grisdale advised that numerous properties in the same zoning district and vicinity that are legally nonconforming pertaining to required side yard setback, especially the next four properties to the south on Euclid Avenue (122, 126, 130, and 134 South Euclid). He stated all four (4) of these properties are deficit of the required six (6) foot setback. The applicant's proposal appears to be a minimal request in order to construct a carport to replace an existing carport and relief granted would be less than the existing setback deficiencies of similar properties in the neighborhood.

Mr. Grisdale, Director of Zoning and Inspections, concluded the staff report barring any questions from the Board. Chairman Hester thanked Mr. Grisdale and asked if anyone had any questions.

Having none, Chairman Hester invited anyone to speak, whether in favor or in opposition to the Zoning decision. With no one to speak, Chairman Hester closed that portion of the meeting to the public and asked the Board if they had any questions or concerns.

Mr. Pifer asked about the removal of the deteriorated structure and Mr. Grisdale explained the confusion about the lot size and some other issues when the applicant purchased the house.

Having no other questions or concerns, Chairman Hester requested a motion.

Mr. Pifer moved to grant the variance.

Mr. Phillips seconded the motion.

Chairman Hester then requested a roll call vote. Having no objections, the motion passed unanimously by voice vote (4-0) and the variance was approved with the following conditions:

1. The variance only pertains to the addition as presented in the supporting documents, and
2. The construction of the addition is to be completed within two (2) years.

**BZA-12-621** Request of Habitat for Humanity-Winchester Frederick County, for variances pertaining to required lot area, front yard setback, side yard setback, rear yard setback, corner side yard setback, and front porch encroachment pursuant to Sections 5.1-3-1, 5.1-5-1, 5.1-6-1.1, 5.1-6-2.1, 5.1-8-1, and 18-9-2.1 of the Winchester Zoning Ordinance, respectively, for the property located at 319-321 South Kent Street (*Map Number 193-1-R-19*) zoned Limited high Density Residential (HR-1) District with historic Winchester (HW) District Overlay. The

applicant is seeking relief of the aforementioned dimensional requirements in order to construct two single family houses.

Chairman Hester reclused himself from this case prior to its beginning due to his business relationship with Habitat for Humanity through his outside employment.

Mr. Phillips served as Acting Chairman. He then asked for the staff report as it relates to this case.

Mr. Grisdale read the staff report and advised that this case has been the subject of the Board of Zoning Appeals in December 10, 2008. At that time, applicant requested to construct a two-family dwelling on the property. At this meeting, the Board granted the required variances with no time constraints; therefore, the approval is still valid should the property owner decide to pursue this option.

Mr. Grisdale further advised that the applicant has developed an alternate design which includes the construction of two individual single family homes on the lot with the lot to be subdivided in the future prior to construction. The applicant has submitted plan drawings dated December 3, 2012, in which the proposed layout is detailed. Additionally, there is a table that breaks down each of the requested variances. He also advised that off-street parking would not be required due to the revision to the City's parking regulations in 2009 allowing for the creation of off-street spaces if the requirement is less than five (5) spaces. Following the Board's decision, the proposed structures will need to gain approval through the Board of Architectural Review for historical appropriateness.

Mr. Grisdale stated that there are three (3) considerations that the Board must take into consideration when evaluating this request. First that the strict application of this Ordinance would produce a clearly demonstrable hardship and second that such hardship is not shared generally by other properties in the same zoning district and the same vicinity. Third, that the authorization of such variance will not be of substantial detriment to adjacent property and that the character of the district will not be changed by the granting of the variances.

Furthermore, Mr. Grisdale advised that the variances requested appear to be the minimum necessary to accommodate the request and that the requested setbacks appear closer to the standard than many of the existing residential units in the same vicinity. He also stated that the lot area is in proportion to numerous other properties within the 300 block of South Kent Street.

Mr. Grisdale, Director of Zoning and Inspections, concluded the staff report barring any questions from the Board.

Acting Chairman Phillips requested the drawings of the proposed site plan design as they were not originally included in the meeting packet. Mr. Grisdale distributed the appropriate drawings to each board member. Upon receipt, Acting Chairman Phillips requested that the Board be excused for a few minutes so they may have time to read the documentation.

After a short period of time, Acting Chairman Phillips opened the meeting for public comment.

At this time, Dave Shore, representative/volunteer for Habitat for Humanity, was sworn in. He then advised the Board that he really did not have anything to add other than to say that Habitat has worked closely with Mr. Grisdale and Mr. Youmans, Director of Planning, to create this proposal that would work real well for Habitat. He advised the Board that he is available if anyone has any questions.

Mr. Pifer then asked Mr. Grisdale if a side-by-side duplex was permitted in this area versus a top and bottom unit to which Mr. Grisdale replied that he does believe that a two-family unit is permitted but it may require a Conditional Use Permit so it is not something by right.

Mr. Pifer then asked Mr. Shore why not construct a duplex side-by-side to which he responded that he had the understanding that doing a townhouse-style duplex was not permitted. Mr. Grisdale then stated that townhouses are permitted with a Conditional use Permit but it might have dimensional requirements that might have been the condition that was recommended against.

Mr. Shore then advised that Mr. Youmans suggested against going that route and that he (Mr. Shore) was concerned about the legal business and being required to establish a Condo association and that does not really lend itself to a two (2) unit structure. Mr. Pifer stated that he was referring to a side-by-side duplex not one on top of the other stating that they could get a bigger building with a duplex for each side than you can with two (2) smaller houses.

Mr. Pifer also questioned the size of the other properties in the area to determine if the new construction would be consistent in size because some of the other houses, especially those across the street were a little smaller but there are decent size houses on Kent Street. Mr. Shore advised that the homes would be in line with other homes in the area and easier to obtain financing and that they went with the suggestion of Mr. Youmans to stay away from a duplex-type home because of all of the extra variances and such.

Acting Chairman Phillips then asked if there were any other question or concerns and having none, closed the meeting to public comment. He then requested a motion from the Board.

Mr. Crawford moved to grant the variances as submitted in the general plan with conditions.

Mr. Pifer seconded the motion.

Having no objections, the motion passed unanimously by voice vote (4-1 abstain) and the variance was approved with the following conditions:

1. The variance only pertains to the general plans included within the proposal;
2. The construction of the dwellings to be completed within two (2) years of this date of approval;
3. Approval is contingent upon receiving a certificate of appropriateness through the Board of Architectural Review for the proposed single-family dwellings, and completion of a minor subdivision with the Planning Department; and

4. The December 10, 2008, BZA approval shall be null and void when/if the applicant follows through with the submitted proposal for construction of two single family dwellings in place of a two-family dwelling structure.

At this time, Chairman Hester resumed his post and asked if there was any new business. He requested that Mr. Grisdale look into the state training at Virginia Tech for Board of Zoning Appeals for Mr. Crawford, Mr. Pifer, and Mr. Ransom to which Mr. Grisdale replied that he would check in to it. Chairman Hester advised that if funding is needed for this training to advise him and that he felt sure he could speak with anyone on the board for funding, he would be happy to do so.

Chairman Hester then asked if there was any Old Business.

At this time, Mr. Grisdale introduced Catherine Clayton to the board as the new secretary and liaison.

With nothing further, Chairman Hester adjourned the meeting at 4:22 p.m.