BOARD OF ZONING APPEALS
MINUTES

The Winchester Board of Zoning Appeals held a regular meeting on, April 11, 2012, at 4:01 p.m. in the Council Chambers, Rouss City Hall, 15 North Cameron Street, Winchester, Virginia.

POINTS OF ORDER

PRESENT:	Mr. Hester, Mr. Phillips, Mr. Pifer and Mr. Ransom
ABSENT:	Mr. Crawford
STAFF:	Mr. Grisdale and Ms. Le Duigou
VISITORS:	Mark C. Green, Stephanie Nalon

Approval of Minutes

Mr. Phillips moved, seconded by Mr. Ransom, to approve the minutes of March 14, 2012 as presented. The motion passed 4-1.

Reading of Correspondence

Mr. Grisdale stated that one letter was received in regards to BZA 12-109, and that he would reserve the reading of it until the case was opened.

PUBLIC HEARINGS

BZA 12-109 Request of Jonathan Cole, on behalf of the commercial lessee, TC Tooties Sports Pub, LLC, for an appeal of the Zoning Administrator's determination; and, specifically pertaining to the Conditional Use Permit and Certificate of Occupancy for a business located at 2235 Valor Drive *(MAP 270-06- -4 -M)*, zoned Highway Commercial (B-2) District.

The request before the Board of Zoning Appeals is an appeal of all determinations included within a February 1, 2012 "NOTICE OF INTENT TO REVOKE CUP #11-62" by the previous Zoning and Inspections Administrator Vincent P. Diem. The aforementioned letter was sent to Jonathan Cole at TC Tooties Historic Sports Pub for numerous incidents that affect the conditional use permit (CU-11-62) for *Nightclub* approved by Winchester City Council on June 14, 2011. This notice included appeal language in accordance with Section 15.2-2311 of the Code of Virginia, upon which the applicant submitted his appeal of the Zoning Administrator's decision within the provided thirty (30) days.

The subject property is located on the west side of Valor Drive and is located within the Highway Commercial (B-2) zoning district. The properties to the north, east, and south are similarly zoned. The

properties to the west are also located within the B-2 district, but also have the Corridor Enhancement (CE) district overlay.

After reviewing the previous Zoning Administrator's letter to TC Tooties and Mr. Cole, it is my opinion that the letter is not in fact a formal zoning determination subject to appeal but is rather a notification to the business owner that the Zoning Administrator planned to recommend that City Council review the conditional use permit (CU-11-62) for possible revocation, pursuant to Section 18-2-3.9 of the Winchester Zoning Ordinance. However, due to the fact that the appeal language was included within the previous Zoning Administrator's letter, I feel obliged to honor the applicant's request for the Board to consider this appeal. It is my belief that the supporting facts included within Mr. Diem's letter will support his decisions set forth in the letter. Within the appellants supporting materials, he did not specify which specific points within the Zoning Administrator's letter he contested; instead the appellant is contesting the entire letter.

As part of City Council's approval of the *Nightclub* conditional use permit in June 2011, the following conditions were imposed:

1. Review in six months and reapproval required every three years thereafter;
2. Nightclub use to end no later than 11:59pm Sunday through Wednesday nights and no later than 1:30am Thursday night/Friday morning through Saturday night/Sunday morning;
3. The use may expand one tenant space to the south without reapproval of the CUP<u>; however, all other permits pertaining to new construction and building modification are required;</u>
4. The applicant taking into consideration the concerns of all of the neighbors and addressing them as they come up;
5. A maximum of four (4) criminal offense calls per month within or attributable to the establishment, after which private security may be required and the permit may be subject to revocation;
6. At no time shall the sound emanating from the use as measured from an outside wall or party wall exceed 75 dBA;
7. All windows and exterior doors to remain closed during nightclub use and no aspects of nightclub use to occur outside the building;
8. Strict obedience with all local and state laws, especially those pertaining to ABC licensing <u>and the timely</u> payment of meals tax;
9. The CUP expires automatically if the nightclub use ceases for more than one year or if the business changes ownership; and,

10. The applicant is responsible for cleaning up any trash outside the facility after closing.

Within the February 1, 2012, notice provided by the Zoning Administrator, the current certificate of occupancy was revoked, as provided for within Section 18-1-4 of the Winchester Zoning Ordinance:

> 18-1-4 EFFECT. A Certificate of Occupancy shall be deemed to authorize, and is required for, both initial and continued occupancy and use of the building or land to which it applies and shall continue in effect so long as such building and the use thereof or of such land is in full conformity with the provisions of this Ordinance and any requirements made pursuant thereto. **A Certificate of Occupancy for a Business or Home Occupation may be denied, suspended, or revoked by the Zoning Administrator where an applicant fails to produce satisfactory evidence that all delinquent business, personal property, meals, transient occupancy and admissions taxes owed by the business to the City have been paid, or it is otherwise determined that such taxes have not been paid. On the serving of notice of any violation of any of such provisions or requirements with respect to any building, or the use thereof or of land, the Certificate of Occupancy for such use shall thereupon become null and void and a new certificate shall be required for any further use of such building or land.** (9/8/09, Case TA-09-87, Ord. No. 2009-25)

As provided for in the abovementioned section, a Certificate of Occupancy for a Business may be revoked by the Zoning Administrator in cases for which the applicant fails to maintain payments of required City taxes. This revocation is specifically in reference to at least one incident in which the establishment permitted the charging of an admissions fee on January 27, 1012 in the amount of $10.00-$20.00 per person without indicating on their business license that admissions would be collected, and no admissions tax had been paid on such collections. In subsequent conversation between Mr. Cole and Vincent Diem, Mr. Cole stated that the January 27, 2012 collection of admissions was solely handled by the band and that he did not receive any money from those transactions. However, since the admissions were collected at Mr. Cole's place of business, the business is responsible for reporting and paying the necessary taxes on such collections. *This failure to comply with the payment of all applicable taxes is a direct violation of Condition #8 of the CUP outlined above.*

Additionally, the Zoning Administrator's notice references a shooting incident involving the use of a firearm in the parking lot of the establishment on January 22, 2012. This incident along with a doubling of number of police calls attributable to the establishment from an average of 1.41 criminal calls per month in 2010 to an average of 3.33 criminal offense calls per month from January 2011 through January 2012, raised staff concerns regarding the health, welfare and safety of persons frequenting this particular establishment and the vicinity. *While the number of criminal calls attributable to this business are not in*

excess of the number permitted in Condition #5 listed above, the rise in the number of calls and the severity of incidents have raised concerns for both staff and citizens.

Furthermore, the notice refers to numerous violations that were reported from Virginia Alcohol Beverage Control resulting in pending charges against the establishment. On January 27, 2012, four violations were discovered by ABC special agents, including the selling of alcoholic beverages in an unauthorized place or manner, the selling of alcoholic beverages in areas other than the formally designated areas, the aiding or abetting of persons in consuming or offering drinks in an unlicensed public place, and improper illumination in the area or room within which alcoholic beverages were being sold or consumed. *Any Virginia ABC violations are a direct violation of Condition #8 listed above.*

When each of these incidents and violations are considered collectively, staff is of the opinion that the situation warranted the revocation of TC Tooties' Certificate of Occupancy for Business and planned presentation before City Council for their consideration of revocation of the conditional use permit, as outlined within Section 18-2-3.9 of the Winchester Zoning Ordinance:

> 18-2-3.9 REVOCATION BY CITY COUNCIL
>
> If the applicant or successor fails to comply with any conditions imposed by City Council per Section 18-2-1.1, City Council may, in accordance with §15.2-2286, Code of Virginia, et seq., either amend or revoke the Conditional Use Permit upon notification from the Administrator of such failure to comply. No such amendment or revocation shall be considered by City Council until a public hearing has been held per Section 23-7-1 of this Ordinance. (2/10/09, Case TA-08-10, Ord. No. 2009-06)

The Zoning & Inspections Administrator recommends that the Board of Zoning Appeals **uphold and affirm** the decisions set forth in the February 1, 2012 letter to TC Tooties and Mr. Cole, as they are consistent with the intent of the Winchester Zoning Ordinance and the guidelines set forth by City Council in their adoption of CU-11-62.

Mr. Grisdale stated that a letter had been received from Timothy Stoltz in reference to this case, and Mr. Stoltz was present to speak to the Authority.

Mr. Ransom asked Mr. Grisdale about the other incidents that had taken place and what the nature of the calls were. Mr. Grisdale said that the calls were various and included theft.

Chairman Hester opened the public hearing

Mr. Timothy Stoltz, owner, 321 Weems Lane, read a letter from his tenant, Keith Troxell, who lives at 321 Weems Lane. Mr. Stoltz requested that the letter be entered into the public record, attached to these minutes is a copy of said letter.

Chairman Hester closed the public hearing

Mr. Ransom asked if the applicant was present. There was no response.

Mr. Hester said that in his opinion, and due to the severity of the issues, he found no evidence to reverse the decision of the City. Mr. Pifer agreed.

Mr. Pifer moved, seconded by Mr. Phillips, that the Board of Zoning Appeals ***uphold and affirm*** *the Zoning Administrator determinations set forth in the February 1, 2012 letter to Jonathan Cole of TC Tooties, pertaining to the conditional use permit for Nightclub.*

The motion passed unanimously.

BZA 12-139 Request of Mark C. Green, as the subject property owner, for a variance pertaining to required off-street parking area buffer pursuant to Section 18-6-3.2 of the Winchester Zoning Ordinance, for the subject property located 542 Gray Avenue *(Map Number 174-03- -9)*, zoned Limited High Density Residential (HR-1) District. Applicant intends to convert existing single-family dwelling to a two-family dwelling through the Conditional Use Permit and new site plan processes.

The request before the Board of Zoning Appeals is related to the deficient off street parking area buffer requirement at the aforementioned property. The property owner intends to convert the existing single-family dwelling to a two-family dwelling.

The subject property is located on the east side of Gray Avenue and is zoned HR-1. The surrounding properties are similarly zoned.

The applicant is proposing to convert the existing single-family dwelling to a two-family dwelling, which is a conditional use within the HR-1 Zoning District. The applicant is concurrently applying for a conditional use permit for the conversion to such use and has submitted the required site plan application to staff for review. However, the site plan cannot be approved until this variance is decided by the Board. As part of this potential conversion, the applicant must bring the off-street parking areas in conformance with Zoning Ordinance standards, thus invoking the requirement for a 15-foot buffer between the driving surface and the adjacent residential use.

The driveway has a zero-foot setback at front property line and the setback gradually increases towards the rear of the property. This variance seeks to remedy the deficiency of the portions of the driveway that encroach into that required 15-foot parking buffer along the southern edge of the property. In order to minimize potential effects on neighboring properties and to bring the property closer to conformance with

ordinance standards, staff has suggested that a condition of approval for be the off-street parking area to be improved to the standards regarding surfacing of off-street parking areas outlined in Section 18-6-3.5 of the Zoning Ordinance.

RECOMMENDATION

The Zoning & Inspections Administrator recommends that the Board of Zoning Appeals **grant** the requested variance pertaining to off-street parking area buffer at 542 Gray Avenue with conditions.

According to Section 20-2 of the Ordinance, the Board of Zoning Appeals is required to make three (3) specific findings in order to approve a variance request. These findings are based on evidence, testimony, and demonstration of certain criteria, which are further defined in Section 20-2-3.1 of the Ordinance.

Section 20-2-3.1: When a property owner can show that his property was acquired in good faith and where by reason of the exceptional narrowness, shallowness, size, or shape of a specific piece of property at the time of the effective date of the Ordinance, or where by reason of exceptional topographic conditions or other extraordinary situation or condition of such piece of property, or of the use or development of property immediately adjacent thereto, the strict application of the terms of the Ordinance would effectively prohibit or unreasonably restrict the use of the property or where the Board is satisfied, upon the evidence heard by it, that the granting of such variance will alleviate a clearly demonstrable hardship, as distinguished from a special privilege or convenience sought by the applicant, provided that all variances shall be in harmony with the intended spirit and purpose of the Ordinance.

1. **That the strict application of this Ordinance would produce a clearly demonstrable hardship.**

   Staff Analysis: Due to the layout of the existing structure on the property, there are limited potential areas along the southern portion of the property for the driveway to be located. The only other possible location for the driveway is along the northern property border; however the same space limitations apply. The physical layout of the property poses a hardship when considering alternate locations to place the driveway and off-

street parking area, therefore utilizing the existing driveway and parking area is the best option available.

2. **That such hardship is not shared generally by other properties in the same zoning district and the same vicinity.**

   Staff Analysis: Several properties in the vicinity have similar deficiencies related to their off-street parking areas but are legally nonconforming. With this potential change of use to a two-family dwelling, the property is affected by a unique hardship not shared generally by other properties located in the vicinity and same zoning district.

3. **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.**

   Staff Analysis: The granting of the requested variance would allow for the proposed change of use and occupancy. As noted in the applicant letter, the footprint of driveway and the building will not change, therefore minimizing the effects on the surrounding properties. Additionally, should the Board require that the driveway be surfaced in accordance with Section 18-6-3.5 of the Zoning Ordinance, negative impacts such as dust and gravel will be minimized on the adjacent properties and bring the property in line closer with current Ordinance standards.

STAFF'S CONCLUSION

The applicant appears to have met all three (3) criteria for granting the variances.

Note: Staff has received no letters of opposition or support.

Mr. Pifer asked if there were any other requests of this nature in the area. Mr. Grisdale said that there were not.

Chairman Hester opened the public hearing

Mr. Mark Green, applicant, addressed the Authority and stated that he would answer any questions that they had. He said that the garage and the structure would not be changing

Mr. Hester asked the applicant if he intended to simply convert the home into a two family dwelling, and he said yes.

Chairman Hester opened the public hearing

Mr. Pifer stated that the request was clear cut. Chairman Hester said that he had no issues with it.

Ms. Stephanie Nalon, citizen, asked if the hearing was pertaining to parking at the subject property. She asked if this was a request for special parking in front of the residence.

Mr. Grisdale stated that the existing driveway would be utilized and would go back to the garage. He said that it currently does not meet the 15 foot buffer requirement for current ordinance standards and that the applicant is seeking relief from the requirement.

Ms. Nalon said that she was concerned because that area has single family, apartments, and townhomes, and there is limited parking. She thought that the request was for reserved on street parking.

Mr. Grisdale stated that this request was for off street parking only.

Chairman Hester said that this property is unique and the drive way does go back and around the property and the applicant wants to be able to use it, but in order for him to be able to do that, he is asking for relief from the setbacks.

Mr. Pifer moved, seconded by Mr. Ransom, that the Board of Zoning Appeals ***grant*** *a variance to the Mark C. Green, pertaining to off-street area buffer pursuant to Section 18-6-3.2 of the Winchester Zoning Ordinance located at 542 Gray Avenue, for the specific purpose of accommodating the use and occupancy of a two-family dwelling, conditioned upon:*

1. *The off-street parking area brought into conformance with Section 18-6-3.5 of the Winchester Zoning Ordinance regarding surfacing of off-street parking areas.*
2. *Approval of the conditional use permit for two-family dwelling by City Council.*

The motion passed unanimously

BZA-12-161 Request of the Economic Development Authority, as the subject property owner, for variances pertaining to required side yard and off-street parking area buffer, in accordance with Section 5.1-6-1.2 and 18-6-3.2 of the Winchester Zoning Ordinance, for the subject property located at 513 North Loudoun Street *(Map Number 153-01-D-11)*, which is zoned Limited High Density Residential (HR-1) District. The owner intends to change the use and occupancy of a previously nonconforming boarding house to a two-family dwelling unit.

Mr. Pifer excused himself from this discussion.

The request before the Board of Zoning Appeals is in regards to a deficient required site yard and off-street parking area buffer at the aforementioned property. The property owner intends to transfer ownership of the property to an interested purchaser, who wishes to change the use and occupancy from a nonconforming boardinghouse to a two-family dwelling. In recent years, the property has been the subject of zoning and code enforcement efforts by the city. In an effort to resolve some of the problems associated with the property, the EDA purchased the foreclosed property and immediately entered an indefinite deed restriction barring it from being used as a boardinghouse. This property went before the Board in the March 2012 meeting, during which a variance was granted for deficient lot width.

The subject property is located on the west side of North Loudoun Street and is zoned HR-1. The surrounding properties are similarly zoned.

The applicant is concurrently applying for a conditional use permit for the conversion to such use and will be required to submit the required site plan application to staff for review. However, the site plan cannot be approved until this variance is decided by the Board. As part of this potential conversion, the applicant must bring the off-street parking areas in conformance with Zoning Ordinance standards, thus invoking the requirement for a 15-foot buffer between the driving surface and the adjacent residential use, as well as address an identified deficiency of the northern required side yard setback.

The required side yard setback on the northern side of the property does not currently meet Zoning Ordinance requirements. Based upon a neighboring property survey and an on-site measurement by staff it appears that the existing setback is approximately 2.5-feet. The ordinance requires there be a setback of 6-feet. The proposed variance request will grant relief of this 3.5-foot deficiency.

The existing off-street parking area for the property has a near zero-foot setback along the southern property line as it approaches the rear of the property. The Zoning Ordinance requires that there be a 15-foot buffer between the parking surface and an adjacent residential property. The requested off-street parking area buffer variance will correct this deficiency. Staff has proposed that should the Board grant this variance that is be conditioned upon the off-street parking be brought into compliance with the surfacing requirements for the portion of the driveway from the front property line to the rear edge of the residential structure.

RECOMMENDATION

The Zoning & Inspections Administrator recommends that the Board of Zoning Appeals **grant** the requested variance pertaining to lot width at 513 North Loudoun Street.

According to Section 20-2 of the Ordinance, the Board of Zoning Appeals is required to make three (3) specific findings in order to approve a variance request. These findings are based on evidence, testimony, and demonstration of certain criteria, which are further defined in Section 20-2-3.1 of the Ordinance.

Section 20-2-3.1: When a property owner can show that his property was acquired in good faith and where by reason of the exceptional narrowness, shallowness, size, or shape of a specific piece of property at the time of the effective

date of the Ordinance, or where by reason of exceptional topographic conditions or other extraordinary situation or condition of such piece of property, or of the use or development of property immediately adjacent thereto, the strict application of the terms of the Ordinance would effectively prohibit or unreasonably restrict the use of the property or where the Board is satisfied, upon the evidence heard by it, that the granting of such variance will alleviate a clearly demonstrable hardship, as distinguished from a special privilege or convenience sought by the applicant, provided that all variances shall be in harmony with the intended spirit and purpose of the Ordinance.

1. **That the strict application of this Ordinance would produce a clearly demonstrable hardship.**

   Staff Analysis: Without addressing the deficient required side yard setback and off-street parking area buffer through the variance process to allow for the proposed change of use and occupancy of the structure to two-family dwelling, the structure could potentially be overcrowded due to their large size and floor area; and would essentially be unreasonable to expect a single family unit to lease or purchase the structure, given a cost analysis and appraisal as performed by the EDA. Therefore, the property would become obsolete and unusable. The existing building cannot be relocated or situated any differently on-site so as to allow for an alternative structural configuration.

2. **That such hardship is not shared generally by other properties in the same zoning district and the same vicinity.**

   Staff Analysis: Several properties in the vicinity have previously been converted to two- or three-family (multi-family) dwelling units and have been grandfathered in due to their legitimate nonconformity. Any expectation of the city to retain the use and occupancy of the property for single-family dwelling use only is unreasonable and would be unique to this particular property.

3. **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.**

   Staff Analysis: The granting of the requested variance would allow for the proposed change of use and occupancy, which could actually result in less occupants and transiency of the residents, as compared to the prior nonconforming boardinghouse use.

STAFF'S CONCLUSION

The applicant appears to have met all three (3) criteria for granting the variances.

Note: Staff has received no letters of opposition or support.

Mr. Grisdale stated that subsequent to the staff report, the applicant had submitted revised plans that include pavers be used in the front yard drive, and gravel parking in the rear.

Mr. Grisdale recommended to the Authority that the motion reflect the current changes brought by the applicant.

Mr. Ransom stated that Mr. Grisdale was requesting that condition #1 be eliminated and replaced with the changes. Mr. Grisdale said yes.

Chairman Hester opened the public hearing

With no comments forthcoming, Chairman Hester closed the public hearing

Mr. Phillips moved, seconded by Mr. Ransom, that the Board of Zoning Appeals ***grant*** *a variance to the Economic Development Authority, pertaining to 3.5-foot deficiency for the required side yard and off-street parking area buffer, pursuant to Sections 5.1-6-1.2 and 18-6-3.2 respectively, for 513 North Loudoun Street, for the specific purpose of accommodating the use and occupancy of a two-family dwelling, conditioned upon the following:*

1. *The off-street parking area brought into conformance with Section 18-6-3.5 of the Winchester Zoning Ordinance regarding surfacing of off-street parking areas, specifically for the portion of the driveway from the front property line to the rear of the existing structure along with any additional off-street parking areas that staff identifies as part of the site plan review process, taking into consideration the new plans submitted by the applicant.*

The motion passed 3-1, with Mr. Pifer abstaining.

NEW BUSINESS

The Board and staff discussed emailing the agenda to the members and moving the distribution date up by two days, effective in May 2012.

OLD BUSINESS

ADJOURN

With no further business to discuss, the meeting adjourned at 4:39 p.m.