

**BOARD OF ZONING APPEALS
MINUTES**

The Winchester Board of Zoning Appeals held a special meeting on, December 8, 2010, at 4:00 p.m. in the Council Chambers, Rouss City Hall, 15 North Cameron Street, Winchester, Virginia.

PRESENT: B Hester, H Hurt, C Koneczny, J Phillips, and W Roberson
ALTERNATE: B Pifer - Observing Only
ABSENT: None
STAFF: V Diem, A Grisdale, and A Walsh.
EX-OFFICIO STAFF: J O'Connor (City Manager), J Taglesi (City Council Member)
VISITORS: Lee Braithwaite, Lawton Saunders, and Rick Hassinger

MINUTES

Mr. Phillips moved, seconded by Mr. Hester, to approve the minutes for November 10, 2010 as presented. Motion passed unanimously 5-0.

CORRESPONDENCE

Mr. Diem explained that the correspondence would be read once the case it pertained to was called.

PUBLIC HEARINGS

BZA 10-657 Request for Lee W Braithwaite for a variance pertaining to a front yard setback pursuant to section 4-5-1 of the Winchester Zoning Ordinance at 631 Pennsylvania Ave (MAP 133-02- -25A) zoned Medium Density Residential (MR) District.

Mr. Diem presented the request for a variance of main building setback, so as to resolve the encroachment of a recently enclosed front porch into the required front yard setback, located at 631 Pennsylvania Avenue.

On September 20, 2010, Deputy Zoning Administrator, Aaron M. Grisdale, issued a Notice of Violation to property owner Lee W. Braithwaite for a recently enclosed front porch that encroaches into the required front yard setback. The corresponding case file, #10-1659, was identified on the notice, along with the 30-day right to appeal the determination, pursuant to the Code of Virginia §15.2-2311, et seq.

In response to the notice, Mr. Braithwaite filed an application for appeal to the Board of Zoning Appeals. The case was presented to the Board at their regularly scheduled public hearing on November 10, 2010. As a result of the appeals hearing, the Board of Zoning Appeals upheld the Deputy Zoning Administrator's determination and affirmed that the encroachment was, in fact, in violation of the Zoning Ordinance. However, overwhelming support from the surrounding property owners, suggested that a variance could potentially alleviate the infraction. There was no opposition to the encroachment and no adverse impact to the surrounding neighborhood was communicated to the Board by any of the public hearing witnesses.

Mr. Braithwaite hired a contractor to enclose a 7ft.-9in x 23ft front porch. The enclosure of this front porch converts the area from a *Porch* to part of the principle residential building. As noted within the Notice of Violation, this conversion resulted in a requirement for this converted porch to meet front

setback requirements for the Zoning District, which is normally thirty (30) feet, pursuant to Section 4-5-1 of the Winchester Zoning Ordinance.

Before the alteration took place, the main structure was located exactly on the front setback line. The enclosure results in the subject property encroaching into the required front yard setback by the depth of the porch, seven feet and nine inches, 7ft-9in, thus constituting a violation of Section 4-5-1 of the Zoning Ordinance. Therefore, in order to resolve the encroachment issue, a variance of 7'9" is being requested by the applicant.

Mr. Diem read an email sent by Rick and Erica Funkhouser in favor of the variance, into record.

Chairman Hurt opened the public hearing.

Lee Braithwaite thanked staff for all their help in getting to this point. He asked that the board allow him to keep his porch.

Mr. Koneczny asked if a building permit had been issued.

Mr. Braithwaite stated that it had not.

Mr. Koneczny stated that it was stated at the appeal hearing that a building permit would have had to been applied for and approved before the variance would be granted.

Mr. Diem explained that the Zoning Department would have to sign off on that permit for it to be issued and they would not be able to do that with a zoning violation open. The variance will need to be approved before the permit can be obtained.

Katie Storo, of 623 Pennsylvania Avenue, explained that she testified at the appeal hearing but wanted to make sure that the board understood that she thought the work was well done and enhanced the neighborhood.

Rick Hassinger, contractor for the applicant, wanted to clear up the licensing issue from the previous hearing. He stated that he has a Frederick County license that allows him to do work in the city under a certain amount.

Chairman Hurt closed the public hearing.

Mr. Koneczny stated that if approved, the board would want proof that the building permit was obtained and all fees were paid. He added that a copy of the contractor's license should also be submitted.

Mr. Hester stated that he understood that it was not the owners fault this occurred, however if the variance was approved, the entire street could come to the board requesting a variance for the same thing. There would be no way to safeguard against it.

Mr. Phillips moved, seconded by Mr. Roberson, to grant a variance for BZA 10-657, pertaining to front yard setback for the property located at 631 Pennsylvania Avenue, because:

- 1. The variance, if granted, will provide the minimum amount of relief necessary to the applicant; and,*

2. *The variance will not adversely impact the surrounding properties, as was indicated during a previous public hearing held on November 10, 2010; and,*
3. *The applicant acted in good faith and relied on the expertise of a hired professional contractor, who admittedly failed to confirm required setbacks prior to initiating construction.*
4. *Proof that a building permit was obtained, all bills were paid and a copy of the contractor's license shall be provided to the Board.*

MEMBER

Mr. Koneczny
 Mr. Roberson
 Mr. Hurt
 Mr. Phillips
 Mr. Hester

VOTE

No
 Yes
 No
 Yes
 No

The motion was defeated 2-3.

BZA 10-675 Request of Lawton Saunders, on behalf of Yount Hyde & Barbour Leasing, for a variance pertaining to the continuation of nonconforming use pursuant to Section 17-1 of the Winchester Zoning Ordinance at 13 E Clifford Street (*Map Number 193-01-K-9*) zoned Central Business (B-1) District with Historic Winchester (HW) Special Overlay.

Mr. Diem presented the request for a variance pertaining to the continuation of the nonconforming use of an encroaching front porch structure, in support of a proposed change of use.

The applicant is in the process of revitalizing existing structures at the subject property, as well as, an immediately adjacent property, using historic rehabilitation tax credit incentives. The subject property had previously been rented as a single-family dwelling unit; however, it is the applicant's intent to convert the use of the structure to a commercial office building. The exterior form of the existing structure will essentially remain the same, except for an alteration to the rear of the structure, in which the applicant is going to remove a second-floor enclosed porch area and return the first floor porch roof to its originally intended design. The proposal was presented to the Board of Architectural Review, which approved the proposed change.

The existing front porch encroaches into the public right-of-way; and, has been nonconforming for several years. The applicant proposes no change to the front porch structure; however, the change of use requires that the structure be brought into compliance with the current Ordinance provisions. Without removing the front porch and dramatically affecting the historic character of the building, as well as, the streetscape, a variance is necessary to accommodate the proposed change of use. A right-of-way vacation would also serve to alleviate the discrepancy; however, would create a jigsaw piece of property within the existing boundaries of the City's public right-of-way and may not represent the best planning practice.

Mr. Koneczny stated that this was not a zoning issue but a deed issue. He asked why it was presented as a variance.

Mr. Diem explained that the property does not conform to ordinance requirements. It is undergoing a change of use so the non-conformity has to be addressed even though it has gone uncontested by the City for several decades.

Mr. Koneczny stated that the Board could not take property from the City, so this is something that has to be worked out between them; a deed issue.

Mr. Diem stated that staff was looking at it as a variance to allow the continuation of the non-conformity under the new use.

Chairman Hurt stated that he agreed with both view points. Even if the variance was granted the portion in question would still be owned by the City.

Mr. Koneczny stated that the board's jurisdiction ends at the property line. This portion exceeds that and is not within their prevue. It would be up to the court at this point.

Mr. O'Connor stated that even if the court says that the City owns it, that portion would still be non-conforming.

Chairman Hurt opened the public hearing.

Lawton Saunders, representing Yount Hyde and Barbour, explained that this type of situation exists on probably 50 properties on Loudoun Street. It was commonplace at the time; there is no other way to get in the building.

Chairman Hurt closed the public hearing.

Mr. Koneczny stated that he still did not see it as zoning issue but an encroachment. The Board could approve the setback, but just to the property line.

Mr. O'Connor stated that the City would allow the encroachment.

Mr. Hester agreed with Mr. Koneczny; the board has no jurisdiction past the property line.

Mr. Hester moved, seconded by Mr. Koneczny, that this is not a variance that can be granted by the Board.

<u>MEMBER</u>	<u>VOTE</u>
Mr. Koneczny	Yes
Mr. Roberson	Yes
Mr. Phillips	Yes
Mr. Hester	Yes
Mr. Hurt	Yes

The motion passed 5-0.

NEW BUSINESS

None

Meeting adjourned: 4:43PM.

DRAFT