

BOARD OF ZONING APPEALS
MINUTES

The Winchester Board of Zoning Appeals held a regular meeting on, February 8, 2012 at 4:00 p.m. in the Council Chambers, Rouss City Hall, 15 North Cameron Street, Winchester, Virginia.

Roll Call

PRESENT: Chairman Hester, Vice-Chairman Phillips, Mr. Roberson and Mr. Crawford
ABSENT: Mr. Pifer
STAFF: Vincent Diem, Paula Le Duigou

Approval of Minutes

Mr. Crawford moved, seconded by Mr. Phillips, to approve the minutes of December 14, 2011 as written. Mr. Roberson abstained.

Reading of Correspondence

Mr. Diem said that he had a letter that was part of the Board's meeting packet regarding the public hearing item on this day's agenda. He then read the letter to the Board which was from Michael L. Bryan, Esq., of Bryan and Coleman PLC, Attorneys at Law and stated that he had no objection to the applicants' request.

PUBLIC HEARINGS

BZA 12-25 Request by Stan Brooks for a variance pertaining to the City of Winchester floodplain provisions in order to construct a deck at the rear of the structure pursuant to Sections 14.1-15 and 14.1-16 pertaining to variances and existing structures in floodplain districts for the subject property located at 19 East Boscawen Street (*Map Number 193-01-M-15*) zoned Central Business (B-1) District, with Historic Winchester (HW) and Floodplain (FP) overlay.

The request before the Board of Zoning Appeals is related to the proposed change of use of an existing building located within the floodplain and to erect a new exterior deck structure to the rear of the existing building. The property owner intends to re-use the structure for mixed-use development including a single-family dwelling unit (2nd floor) and a retail/restaurant space (1st floor).

The subject property is located on the south side of East Boscawen Street and is zoned B-1, with HW and FP overlays. The surrounding properties are similarly zoned. The property is also identified within the Secondary Assessment District and is considered part of the historic downtown core of the city.

Within the application materials submitted by the applicant, the letter of intent provides an overview of the proposed change of use for the existing structure. Substantial improvements will be made to within the structure to accommodate the change of use; and, the applicant intends to erect a two-story deck structure in the rear to further enhance the existing deck for the second floor dwelling unit. The applicant has expressed that the deck structure will not be expanded such that the watercourse would be altered or otherwise obstructed. *“The extension will be supported by posts, rather than solid walls, and will not result in unacceptable or prohibited increases in flood heights or cause any threat to public safety, as stipulated by the City’s ordinance.”*

Based on the type of exterior deck construction proposed, the City Engineer and Floodplain Coordinator, Kelly Henshaw, P.E., has determined that there will be no adverse impacts or prohibited increases in flood heights.

Article 14.1, Floodplain, of the Winchester Zoning Ordinance addresses the requirements and considerations pertaining to new construction, rehabilitation and alteration of structures within the floodplain district. When considering variance applications for structures and properties within the FP district, the Board of Zoning Appeals may take into consideration the location of a property within a historic district.

§ 14.1-15(L) The repair or rehabilitation of historic structures upon a determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and the variance is the minimum necessary to preserve the historic character and design of the structure.

The Zoning & Inspections Administrator recommends that the Board of Zoning Appeals **grant** the requested variance pertaining to rehabilitation and new construction of an expanded deck structure at 19 East Boscawen 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 floodplain boundaries and associated provisions through the variance process to allow for the adaptive re-use and occupancy of the structure, the structure could eventually become derelict. Certain topographical issues exist on site that would render other options unavailable or infeasible. The existing buildings cannot be relocated or situated any differently on-site so as to allow for an alternative structural configuration and the proposed construction represents the least objectionable option.

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

Staff Analysis: Many properties within this vicinity and zoning district share similar hardships; however, the majority of which have a much larger footprint and assume a greater lot density ratio than the subject property. Therefore, the subject property is somewhat unique.

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 re-use and occupancy of a vacant building within the historic district and downtown core of the city. The proposal is consistent with the Comprehensive Plan and does not pose any substantial concerns for the City Engineer, as presented.

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

Note: Staff has received no letters of opposition; however, a letter of support was received from a neighboring property owner, Michael L. Bryan, Esq. of Bryan & Coleman, P.L.C., Attorneys at Law.

Chairman Hester opened the public hearing

Mr. Phillips swore in Stan Corneal, adjacent property owner, stated that he was all for this request, he just had a question. He asked if any property owner could build out on the town run. Mr. Diem said that he didn't know if that was possible and would need to be discussed with the City engineer.

Chairman Hester closed the public hearing

Mr. Crawford said that he had been to the subject property and that no one can see the deck area from anywhere and the addition of the deck would make this building even with the others next to it. He said that he didn't see any issues with the request. Chairman Hester said that based on the drawings submitted the deck would be 8 x 21.

Mr. Crawford moved, seconded by Mr. Roberson, that the Board of Zoning Appeals **grant** variances to Stan Brooks, Jr., pertaining to new construction and substantial improvements within the Floodplain.

The motion passed unanimously.

NEW BUSINESS

None

OLD BUSINESS

None

ADJOURN

With no further business to discuss, the meeting was adjourned at 4:13 p.m.