

**BOARD OF ZONING APPEALS
MINUTES**

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

POINTS OF ORDER

Roll Call

PRESENT: Brian Hester, Jack Phillips, Brandon Pifer, Don Crawford and Jason Ransom (5)
ABSENT: None (0)
STAFF: Aaron Grisdale and Paula Le Duigou (2)
GUESTS: Dennis McLoughlin, Tom Bell, Kathy Bell, Scott Wolford, Pete Pitcock, Ron Mislowsky

Approval of Minutes

Mr. Crawford moved, seconded by Mr. Phillips, to approve the June 13, 2012 as presented. The motion passed unanimously.

Reading of Correspondence

None

PUBLIC HEARINGS

BZA 12-324 Request of Dennis J. and Mary Carolynn McLoughlin, subject property owners, for a variance pertaining to Unenclosed Porches and Decks, pursuant to Section 18-9-2.1 of the Winchester Zoning Ordinance, for the subject property located at 1223 Rodes Circle (*Map Numbers 189-03-C-29*) which is zoned Low Density Residential (LR) District with Planned Unit (PU) District Overlay. The proposed variance is requested to allow for construction of a deck addition to encroach into the required rear setback a distance of six (6) feet for which a ten (10) foot setback is required by ordinance.

The request before the Board of Zoning Appeals is related to a proposed deck addition at the residence of Dennis J. and Mary Carolynn McLoughlin at 1233 Rodes Circle. The proposed addition to an existing deck will be six feet deep and ten feet wide.

The subject property is located on the west side of Rodes Circle and is zoned Low Density Residential (LR) with Planned Unit (PU) District Overlay. The surrounding properties to the north, east, south and west are all similarly zoned.

The subject property owner intends to add an addition to the existing deck located on the rear of his single family dwelling. When the applicant purchased the property in 2001 there already existed a roughly

10'x22' deck with a 2'x10' cantilevered bump out. This cantilevered portion of the deck extended into the required rear setback 2-feet. Recently the applicant submitted a building permit with the intention of replacing the existing deck, enclosing the 10'x22' portion of the deck with a roof and screen. Additionally, the applicant desired to change the bump out of the deck to a 6'x10' size in order to accommodate a space for cooking outside and a couple bird feeders. The applicant has submitted his proposed plan to the Meadow Branch Downs Homeowners Association Board of Directors and received unanimous approval at their meeting on June 4, 2012. The proposed variance of Section 18-9-2.1 is to allow for a six-foot extension of a deck into a required rear setback with the height of the deck in excess of the permitted 3-feet.

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: The applicant faces difficult topography on the rear of his property, specifically a steep drop off that limits any intrusion into the required rear setback. When the residence was initially built, it was constructed close to the rear setback line resulting in a very limited space to construct a deck.

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

Staff Analysis: While many of the surrounding properties in the neighborhood are built particularly close to the setback lines, the applicant's property appears to be uniquely located along the rear setback line when compared to similar properties in the vicinity.

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 applicant has consulted with the local homeowners association and received unanimous approval for the proposed deck. The neighbor who would be most immediately impacted to the south was apparently a voting member of the homeowner's association board who voted in favor of approval. The area to the rear of the property is a heavily wooded green space area for the community, so the impacts to the rear should the variance be granted are minimal.

The applicant appears to have met all three (3) criteria for granting the variances, with the threshold of a *clearly demonstrable hardship* being the least clearly met. The applicant does currently have a deck on the rear of the structure, and the further addition of a deck may be construed by the Board as a self-imposed hardship. However, the topography of the property slopes downward to the rear of the property thus limiting the ability for the property owner to construct a deck that could potentially encroach into the rear yard as permitted within Section 18-9-2.1 of the Ordinance.

The Board may approve the proposed variance, approve the variance with modifications/conditions, or deny the variance based upon the evidence presented as part of the application materials and testimony during the public hearing.

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

Mr. Hester opened the Public Hearing

Dennis McLoughlin was sworn in by Mr. Phillips.

Mr. McLoughlin said that Mr. Grisdale had explained the situation perfectly and he asked the Board to consider his request. He stated that he suffers from arthritis and that it was difficult for him to navigate the uneven terrain under the deck, which was the only place that he could grill.

Mr. Hester stated that it appeared that it sloped down in the back away from the home. He asked the applicant if he intended to enclose only the top area because it appeared that the deck was two levels.

Mr. McLoughlin said that there was an existing deck at ground level that will remain the same. He said that the upper deck is the one that needed to be replaced because it was rotting, and he will use composite on that one.

Mr. McLoughlin said that the upper deck had a roof and that they were waiting to screen it in until they had gotten the decision of the Board.

Mr. Pifer asked the applicant if they intended at a later time to enclose the deck and make it livable space or an extension of the home.

Mr. McLoughlin stated that that was not part of their plan at this point, but he didn't know what that would have to do with the application before the Board. He said that he wanted to have a place to grill and to screen it in so that they could better enjoy the outside.

Scott Wolford, contractor for the applicant, stated that he had tried to find another solution for the homeowner but because of the limited space and topography, this was the only one he could find.

Mr. Hester closed the public hearing.

Mr. Hester said that because of the terrain, there was not much else the applicant could do.

Mr. Crawford said that normally he would not have been in favor of this type of request, but because there were no homes behind this one, he would be all right with it.

Mr. Pifer asked if the land behind was a spillway.

Mr. Grisdale said that it was part of the required green space and that there were drainage qualities to it as well.

*Mr. Phillips moved, Mr. Crawford seconded that the Board of Zoning Appeals **grant** variances to Dennis J. and Mary Carolynn McLoughlin, subject property owners, for a variance pertaining to Unenclosed Porches and Decks, pursuant to Section 18-9-2.1 of the Winchester Zoning Ordinance, for the subject property located at 1223 Rodes Circle (Map Numbers 189-03-C-29) allowing for a six foot deck encroachment into the required rear yard.*

Motion passed unanimously 5-0, None abstained.

BZA 12-326 Request of Patton Harris Rust & Associates/A Pennoni Company, on behalf of property owner Papermill Road, LLC, for variances pertaining to Side Yard Setback and Rear Yard Setback for existing structures, pursuant to Sections 10-6-1 and 10-6-2 of the Winchester Zoning Ordinance, for the subject property located at 2641 Papermill Road (*Map Number 311-01--14*), which is zoned Commercial Industrial (CM-1) District. The proposed variances are for setback deficiencies for two existing structures thereby allowing for a potential change of use of the property.

The request before the Board of Zoning Appeals is related to the deficient setbacks of two existing structures: side yard setback for Building 'D' and rear setback for Building 'B'. The property owner

intends to convert Building 'B' to an automotive repair and storage use and eliminate use restrictions for Building 'D'.

The subject property is located on the west side of Papermill Road and is zoned CM-1, Commercial Industrial. The surrounding properties to the north, northeast and south are similarly zoned CM-1, the property to the west is zoned EIP, and properties to the east and southeast are zoned B-2.

Presently, the front principle structure, Building 'D', is deficient of the required side yard setback of 10-feet, as it currently encroaches 9.5-feet into the required setback. This building was the subject of a Board of Zoning Appeals action in 2001 (BZA-01-06), when the Board granted a variance for the side yard encroachment and limiting the use to automobile servicing. The requested variance of Section 10-6-1 of the Winchester Zoning Ordinance will remove the use restriction and allow for any permitted or conditional use to occupy the structure. In the time period since the 2001 conversion the building was converted to an equipment rental business, thus out of compliance with the 2001 decision. This proposed variance will correct this use issue and allow for different tenants to potentially use the structure in the future without having to obtain approval from the Board prior to any subsequent change.

Secondly, the applicant is requesting a variance for the required rear yard setback for Building 'B' located at the rear of the property. This building was the subject of a Board of Zoning Appeals decision in 1984 (BZA-84-37). This approved variance granted relief of the required side yard encroachment of 6.9-feet, resulting in a 3.1-foot setback. With the proposed change of use of the structure to automotive repair, a conditional use in the CM-1 district, relief must be sought for the rear setback deficiency. The applicant requests a 23.6-foot variance of Section 10-6-2, resulting in a 1.4-foot rear yard setback.

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: The two structures included as part of this request are both existing structures that would have to be either demolished or dramatically reconstructed in order to meet current zoning ordinance setback requirements. Requiring conformance with the ordinance produces a clearly demonstrable hardship upon the property owner.

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

Staff Analysis: The surrounding properties located within the Commercial Industrial (CM-1) District are mixed when analyzing their conformance with zoning ordinance setback requirements. However, none of the properties in the vicinity share the same limitations that exist on this particular property, resulting in a unique hardship for the subject 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: Should the variances be granted, it is not likely that there will be adverse impacts on the surrounding vicinity. To the west of the subject property is the Frederick Douglass Elementary School, which is screened from the property by evergreens and the railroad right-of-way. The variance for Building 'D' will correct a noncompliant use situation, and the variance for Building 'B' will allow for automotive repair to move forward through its review process.

The applicant appears to have met all three (3) criteria for granting the variances. The Director of Zoning and Inspections recommends that the Board of Zoning Appeals **grant** the requested variances pertaining to required side yard for Building 'D' and rear yard setback for Building 'B' as part of the redevelopment and change of use at 2641 Papermill Road.

The Board may approve the proposed variance, approve the variance with modifications/conditions, or deny the variance based upon the evidence presented as part of the application materials and testimony during the public hearing.

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

Mr. Hester asked if they were fixing what was set forth in a previous decision and what is currently in the building.

Mr. Grisdale said that for building B, the first building on the property, somewhere along the way from the 2001 decision staff signed off on a Certificate of Occupancy allowing for this particular use to be in the building, which should not have happened. He said that the applicant wanted to correct the use restriction to allow the business to continue.

Mr. Grisdale said that with the change of use on the rear property, building B will be a normal by- right auto repair and associated storage. He said that the 1984 BZA decision did not include a rear setback alleviation probably due to the Ordinance allowing for buildings that abutt up to a railroad right of way to have a zero setback requirement if they are related to railroad use, which is no longer true today.

Mr. Hester opened the public hearing

Ron Mislowsky, applicant, was sworn in. He said that he had nothing to add to Mr. Grisdale's statement other than that both of these buildings are existing and both uses would be allowed uses within the current site plan ordinance. He said the request is to continue the use in the front building and to change the use in the rear building.

Mr. Hester closed the public hearing

*Mr. Pifer moved, seconded by Mr. Crawford, that the Board of Zoning Appeals **grant** variances to Patton Harris Rust & Associates/A Pennoni Company, on behalf of property owner Papermill Road, LLC, for variances pertaining to Side Yard Setback and Rear Yard Setback for existing structures, pursuant to Sections 10-6-1 and 10-6-2 of the Winchester Zoning Ordinance, for the subject property located at 2641 Papermill Road (Map Number 311-01--14).*

The motion passed unanimously 5-0, None abstained.

NEW BUSINESS

Adoption of regular meeting schedule for July 2012 thru June 2013

Mr. Crawford moved, seconded by Mr. Phillips, to adopt the regular meeting schedule for July 2012 – June 2013 as presented.

The motion passed unanimously.

Distribution of the Virginia Public Meeting Notice Requirements

Mr. Grisdale stated that this had been distributed to all the City Boards by the City Attorney and if the Board had any questions, they should reach out to Mr. Williams for assistance.

OLD BUSINESS

None

ADJOURN

With no further business to discuss, the meeting was adjourned at 4:26 p.m.