BOARD OF ZONING APPEALS
MINUTES

The Winchester Board of Zoning Appeals held a regular meeting on, June 13, 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, Mr. Crawford and Mr. Ransom
ABSENT:	None
STAFF:	Aaron Grisdale and Paula Le Duigou

Approval of Minutes

Mr. Phillips moved, seconded by Mr. Pinner, to approve the minutes of May 9, 2012 as presented. The motion passed unanimously.

Reading of Correspondence

None

PUBLIC HEARINGS

BZA 12-271 Request of John Barker, on behalf of property owner Oakcrest Properties LLC, for a variance pertaining to Existing Structures in Floodplain Districts pursuant to Section 14.1-16 of the Winchester Zoning Ordinance, for the subject properties located at 29-31 and 33-35 East Boscawen Street (*Map Numbers 193-1M-16 and 193-2-A, respectively*), which are zoned Central Business (B-1) District with Historic Winchester (HW) District and Floodplain (FP) District Overlays.

The applicant on behalf of the property owner is seeking a variance to Section 14.1-16 of the Winchester Zoning Ordinance, Existing Structures in Floodplain Districts, to enable the modification/renovation of existing buildings. The subject property is located within the floodplain and the structure affected is noted as a historical structure.

The subject properties are located on the south side of East Boscawen Street and are zoned B-1, Central Business District with Historic Winchester (HW) and Floodplain (FP) District Overlays. The surrounding properties on all sides are similarly zoned B-1.

As presented in the application materials, the applicant intends to conduct interior alterations to the existing structures in order to provide approximately 1,100 square feet of office space and ten (10) one

and two bedroom apartments throughout the remainder of the buildings. The current buildings' footprint are not planned to be expanded therefore creating no new impediments to the floodplain.

In the factors for the Board of Zoning Appeals to consider as part of a floodplain variance request, the Board may consider:

§14.1-15 VARIANCES: FACTORS TO BE CONSIDERED

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 on the structure.

The structures are eligible for a variance due to their location within the National Historic District and have been determined to be contributing structures to the Historic District.

The Director of Zoning and Inspections recommends that the Board of Zoning Appeals **grant** the requested variances pertaining to floodplain standards, as it will enable the careful rehabilitation and development of a historic property.

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 is attempting to rehabilitate and redevelop existing historic structures that are located in the floodplain. The denial of a variance or strict application of the ordinance would create a situation that would effectively prevent rehabilitation.

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 are similarly zoned; however, not all nearby properties are located within the City's floodplain district, thus creating a unique hardship.

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: With the redevelopment proposal, there will not be any exterior additions that will impact the potential flow of floodwaters thereby alleviating the concern of impacting the floodplain.

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. Hester opened the public hearing.

Mr. John Barker, applicant, introduced himself to the Board for questions.

Mr. Pifer excused himself from the discussion due to conflict of interest.

With no further discussion, Mr. Hester closed the public hearing.

Mr. Phillips moved, seconded by Mr. Crawford, that the Board of Zoning Appeals ***grant*** *variances to John Barker, on behalf of property owner Oakcrest Properties LLC, for a variance pertaining to Existing Structures in Floodplain Districts pursuant to Section 14.1-16 of the Winchester Zoning Ordinance, for the subject properties located at 29-31 and 33-35 East Boscawen Street.*

The motion passed 4-1 with Mr. Pifer abstaining.

BZA 12-278 Request of Greenway Engineering, Inc, on behalf of property owner Windy Hill, LLC, for variances pertaining to Main Building Setback and Front Yard Encroachment for an Unenclosed Terrace, pursuant to Sections 8-5-1 and 18-9-2.1 of the Winchester Zoning Ordinance, for the subject property located at 443 Millwood Avenue (*Map Number 253-08-40A*), which is zoned Highway Commercial (B-2) District.

The request before the Board of Zoning Appeals is related to the deficient main building setback and encroachment of a terrace into the required front yard. The property owner intends to add four residential units with outdoor terraces to the second floor of the structure as part of a larger redevelopment of the property including replacing the existing flat roof system with a new pitched-roof system.

The subject property is located on the southwest side of Millwood Avenue and is zoned B-2, Highway Commercial. The surrounding properties to west, north, and northeast are zoned Medium Density Residential (MR), and the properties to the southeast and south are similarly zoned B-2.

Presently, the main structure is deficient of the required main building setback of 35-feet, as it currently encroaches 24.9-feet into the required setback. The requested variance of Section 8-5-1 of the Winchester Zoning Ordinance will allow the change of use to take place within the existing building footprint and grant relief of this 24.9-foot encroachment.

Secondly, the applicant intends to utilize the existing second story parking deck surface structure as an outdoor terrace for the planned apartment units. This existing parking structure encroaches into the required front setback 10.3-feet and is well over three feet above the ground. The current ordinance within Section 18-9-2.1 provides for decks, terraces and similar structures to encroach into a required front yard a maximum of 5-feet but no more than one-half of the required setback as long as the structure is no more than 3-feet above the ground. The applicant is request a variance of these requirements allowing an encroachment of 10.3-feet into the required front yard and to allow the terrace to be located higher than 3-feet above the ground.

With the redevelopment proposal, the applicant will also be required to obtain a conditional use permit through City Council, subsequent to the Board of Zoning Appeal's decision, for the multifamily residential units on the second floor.

The Director of Zoning and Inspections recommends that the Board of Zoning Appeals **grant** the requested variances pertaining to main building setback and terrace encroachment for redevelopment of the Goodwill Building to include four apartment units at 443 Millwood Avenue.

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 new walls constructed as part of the second floor redevelopment will be in line with the existing structure walls that are presently deficient of Zoning Ordinance standards. To require that the property owner meet current setbacks rather than construct in line with the existing structure would impose a clearly demonstrable hardship.

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 Highway Commercial (B-2) District are more recently constructed and in conformance with Zoning Ordinance standards, specifically pertaining to setback requirements. The subject property was

constructed many years prior to the current standards and therefore is unique in the neighborhood for having such a hardship.

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: With the realignment of Spring Street and the elimination of through traffic from Greystone Terrace, the impacts on the surrounding property owners will be minimal. The building footprint will not be changed, and in fact staff believes that the volunteered improvements, such as the new roof installation, additional window and awning treatments and landscape improvements will benefit the neighborhood as a whole.

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. Hester made known that in the past his family had done business with Greenway but does not have any current business relationship with them at this time.

Mr. Crawford asked about the Spring Street vacation that was depicted in the drawing.

Mr. Grisdale stated that it had no bearing on the current case but it was included to give the Board a greater understanding of what was occurring around it.

Mr. Hester opened the public hearing.

Mr. Evan Wyatt, Greenway Engineering, addressed the Board. He said that the request was a result of Greenway wanting to do a redevelopment for the existing structure which includes converting a flat roof system to a 3/12 system.

He said that in their discussions with Planning Staff, they felt there was an opportunity to include a second story addition, which will require them to go through a Conditional Use process in order to do that land use. He said that the current structure as it faces Spring Street, and because they are on a corner lot, will require front yard setbacks, which it currently does not have.

Mr. Wyatt discussed the exterior changes that would be made to reduce the industrial feel.

Mr. Wyatt referred to the elevation drawing in the submitted information and discussed the changes that would be made to the upper level façade facing Millwood Avenue, the addition of awnings and windows treatments, as well as the overall landscape plan and screening.

Mr. Wyatt said that in order to go to the next step in the Conditional use process, the BZA would need to agree to grant the variance that is requested.

Mr. Hester asked if Goodwill would remain in the building.

Mr. Wyatt stated that they would remain on the ground and office levels, with the four apartments being marketed to the Shenandoah University students that are more serious.

Mr. Hester asked if the balcony would extend past the current roof line.

Mr. Wyatt said no.

Mr. Hester asked if there would be screening on all sides.

Mr. Wyatt said yes.

Mr. Hester closed the public hearing.

Mr. Pinner moved, seconded by Mr. Crawford, that the Board of Zoning Appeals ***grant*** *variances to Greenway Engineering, Inc, on behalf of property owner Windy Hill, LLC, for variances pertaining to Main Building Setback and Front Yard Encroachment for an Unenclosed Terrace, pursuant to Sections 8-5-1 and 18-9-2.1 of the Winchester Zoning Ordinance, for the subject property located at 443 Millwood Avenue, zoned Highway Commercial (B-2) District with the following condition:*

1. *Variances are contingent upon the approval of a conditional use permit from City Council for multifamily residential use.*

The motion passed unanimously 5-0, None abstained.

BZA 12-282 Request of Sara D'Amato, on behalf of property owner Cogil Corp., for a variance pertaining to Existing Structures in Floodplain Districts pursuant to Section 14.1-16 of the Winchester Zoning Ordinance, for the subject property located at 661-663 Millwood Avenue (*Map Number 253-03-A-01*), which is zoned Highway Commercial (B-2) District and Floodplain (FP) District Overlay.

The applicant on behalf of the property owner is seeking a variance to Section 14.1-16 of the Winchester Zoning Ordinance, Existing Structures in Floodplain Districts, to enable the modification/renovation of an existing building. The subject property is partially located within the 100-year floodplain and the structure affected is noted as a historical structure.

The subject property is located on the south side of Millwood Avenue and is zoned B-2, Highway Commercial and Floodplain (FP) District Overlays. The surrounding properties on the east, south, and western sides are similarly zoned B-2, properties to the north are zoned Higher Education (HE-1).

The applicant intends to conduct a substantial improvement to the property, as part of an overall restoration and rehabilitation of the structure. The property was identified by Zoning and Inspections staff

as a “Derelict Property” in 2011 and the property owner is acting to correct the derelict conditions. As part of the restoration and rehabilitation the applicant has received preliminary eligibility from the Virginia Department of Historic Resources for designation as a historic structure.

In the factors for the Board of Zoning Appeals to consider as part of a floodplain variance request, the Board may consider:

§14.1-15 VARIANCES: FACTORS TO BE CONSIDERED

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 on the structure.

The structure is eligible for a variance due to its approval of a preliminary determination of a historic structure by the Virginia Department of Historic Resources.

The Director of Zoning and Inspections recommends that the Board of Zoning Appeals **grant** the requested variances pertaining to floodplain standards, as it will enable the careful rehabilitation and development of a historic property.

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 is attempting to rehabilitate and redevelop a historic structure that is located in the floodplain. The denial of a variance or strict application of the ordinance would create a situation that would effectively prevent rehabilitation and provide little opportunity to abate derelict conditions at the property.

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 are similarly zoned; however, not all nearby properties are located within the City's floodplain district, thus creating a unique hardship.

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: With the redevelopment proposal, there will not be any exterior additions that will impact the potential flow of floodwaters thereby alleviating the concern of impacting the floodplain.

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. Hester opened the public hearing

Ms. Sara D'Amato, Applicant, stated that she would be happy to answer any questions the Board may have.

Mr. Crawford asked the applicant if she knew the site lasted flooded.

Ms. D'Amato said that she believed it came close about 35 years ago.

Mr. Hester asked the applicant what her plans were for the site.

Ms. D'Amato stated that it was the last intact woolen mill in Frederick County and her intention was to renovate the second floor and make it into apartments for the Shenandoah University students and have retail tenants downstairs. She said that they want to restore the front elevation back to its original state as well.

Mr. Hester closed the public hearing.

Mr. Crawford moved, seconded by Mr. Phillips, that the Board of Zoning Appeals ***grant*** *variances to Sara D'Amato, on behalf of property owner Cogil Corp., for a variance pertaining to Existing Structures in Floodplain Districts pursuant to Section 14.1-16 of the Winchester Zoning Ordinance, for the subject property located at 661-663 Millwood Avenue.*

The motion passed unanimously 5-0, None abstained.

NEW BUSINESS

Mr. Hester said that he had spoken with Mr. Grisdale about the new Board members attending certification training at Virginia Tech next year, as the class for this year had all ready been held.

OLD BUSINESS

NONE

ADJOURN

With no further business to discuss, the meeting was adjourned at 4:28 p.m.