

**BOARD OF ZONING APPEALS  
MINUTES**

The Winchester Board of Zoning Appeals held a special meeting on, March 24, 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, B Pifer and M Lynch  
(6)  
**ABSENT:** W Roberson (1)  
**STAFF:** V Diem and A Walsh  
**VISITORS:** Don Crigler, Mike Kilmer and Steve Brown

**MINUTES**

None

**COORESPONDENCE**

Mr. Diem welcomed Brandon Pifer and Mark Peter Lynch to the Board of Zoning Appeals. Both will be serving as alternates when a regular board member cannot be present. Today Mr. Lynch will be sitting in for Mr. Roberson.

**PUBLIC HEARINGS**

None

**NEW BUSINESS**

None

**OLD BUSINESS**

**BZA-10-72** Request of DFC Architects, PC on behalf of Stewart Street Properties, LLC, for variances pertaining to minimum lot area, lot width, off-street parking buffer and front, side yard, and corner-side yard setbacks pursuant to Sections 6-3-2; 6-4; 6-5-1; 6-6-1; 6-8; 18-6-3.2- and 18-6-3.2c of the Winchester Zoning Ordinance at 120 South Stewart Street (*Section 192, Double Circle 1, Block 5*), which is zoned Residential Office (RO-1) District.

Mr. Diem presented the request seeking relief of the dimensional standards within the RO-1 District, in order to develop a vacant parcel and construct a new commercial office building that is intended to be sympathetic to the surrounding scale, streetscape, and architecture.

The RO-1 District in this particular neighborhood is limited to only the east side of South Stewart Street between West Cork Street and West Boscawen Street. Therefore, it is reasonable to consider that there will be some deviation from a strictly residential neighborhood between the HS District of the Valley Health office building on West Cork Street and the western portion of the B-1 District along West Boscawen Street. South Stewart Street is a major street for the neighborhood, as well as, other motorists who intend to avoid traveling directly through the center of the City.

The subject property is a nonconforming lot of record, based on lot area and lot width. While the Zoning Ordinance provides relief for residential uses on a nonconforming lot of record (§ 17-6-1), the applicant would more than likely still need to apply for relief of the Ordinance for front setback and corner-side setback.

The applicant has chosen to pursue commercial use of the property, which is permitted by right in the RO-1 District, however the lot dimensions currently restrict their ability.

As is evident in the applicant's architectural drawings, dated February 17, 2010, the scale, character, and architectural appearance of the proposed structure are sympathetic to the transitioning nature of the RO-1 District from commercial to residential neighborhoods. The proposed front setback reflects the setback established by the existing neighboring commercial structure to the north along South Stewart Street. Similarly, the corner-side yard reflects the setback established by the neighboring residential structure to the east along West Cork Street. By incorporating a shared access easement with the adjoining commercial property, there will be no adverse impacts to the current traffic flow. A sufficient amount of off-street parking is proposed and will be shared with the adjoining parcel.

**Chairman Hurt opened the public hearing.**

Mr. Kilmer felt the new building would enhance the neighborhood. The last thing he wanted to do was affect the residential community.

Mr. Koneczny asked how he would get an office building with sufficient property on such a small lot.

Mr. Kilmer explained that there would be shared parking with 116 Stewart Street. The new parcel will have eight (8) spaces and then an additional two (2) spaces close to the back.

Mr. Koneczny stated that he failed to see the hardship in the request.

Mr. Kilmer stated that the hardship is that the lot is surrounded by commercial property. Economically, building commercial makes sense. He added that even if he wanted to build residential, the variances would still be required.

Mr. Koneczny argued that there would be no need for a variance pertaining to the front set back with residential use. He felt that this would compound problems with a non conforming structure and that the applicant was asking for an exception.

Mr. Kilmer argued that he would be asking for that same exception if it was a residential building.

Mr. Kilmer's intent was to try and maintain the streetscape by setting the building back to line up with 116 S Stewart Street.

Mr. Lynch asked if there would be a problem closing off the alley during the day.

Mr. Kilmer explained that it is not a public alley. He did not intend to close it.

Mr. Koneczny asked what the degree of variance would be.

Mr. Diem explained that the corner side requires thirty (30) feet; the applicant is requesting twenty-five (25) feet be waived. He explained that this demonstrated some of the hardship. The setback would make the site unusable.

Mr. Phillips stated that the retaining wall dictated a setback anyway. He asked if the shared parking could be put into the deed.

Mr. Koneczny stated that the variance on the front was significant. The property had a value when it was purchased and that value has not changed. He felt there was no hardship in this case.

Mr. Phillips stated that he would rather see a house there than a parking lot.

Chairman Hurt asked what would happen to the deeded parking if the building was ever converted to residential.

Mr. Diem stated that he did not know but the process would have to go through a site plan review and possibly the Planning Commission..

Mr. Kilmer explained that in the shared parking agreement 116 S Stewart would have to share with 120 S Stewart, not the other way around. The converted parking would be relinquished at that time.

Mr. Koneczny was also concerned about the four (4) way stop at the intersection. Moving the building forward on the lot could block the view making the intersection hazardous.

Mr. Crigler explained that a study was done for a residential lot. It would need to be a fifteen hundred (1500) square feet footprint with a two (2) car garage with access. This would place the garage right up on the rear property line right next to the neighboring house. They spoke to that homeowner, and they are not in favor of that plan. He explained that all they wanted to do is replace the house that was already on the site and disguise it as an office building. Currently there is on-street parking on all four (4) corners, which limits the view more than the building would.

Mr. Hester stated that the garage would be bigger than the house.

Mr. Koneczny asked why the house couldn't go deeper in the lot.

Mr. Crigler explained that the extended parking is there. They could try to slide it back a little but they would like to have a sidewalk with some greenspace.

Steve Brown, of the neighboring property at 214 W Cork St, was in support of the request. He would have rather had the city take it over and keep it as greenspace, but he wanted to make sure that whatever goes there is consistent with the historical nature of the area. He wanted that building as close to Stewart Street as it can be, because it will block the light at his residence. He stated that he saw the residence plan and to build a garage would block out all the light. He added that the alley way is rarely used and in bad condition.

**Chairman Hurt closed the public hearing.**

Mr. Koneczny stated that the board's responsibility is the setbacks, which he felt were extreme. The lot was purchased as it and it hasn't diminished in value. He stated that the request is for economic advantage, sacrificing laws for profit.

Mr. Hurt stated that the building has been turned to face W Cork Street. He felt that there was some advantage of it being setback.

Mr. Hester stated that there was a building there before. Residential would cause more of an issue to the neighborhood.

Mr. Hurt’s concern was with the deed and how it would read.

Mr. Phillips stated that the proposal would be an improvement to a vacant lot. He felt that once it was built, it would look like it belonged there.

*Mr. Koneczny moved, seconded by Mr. Phillips, to approved **BZA 10-72** based on the following reasons:*

- a. The proposed commercial development of the subject property is consistent with the stated intent of the RO-1 District; and,*
- b. That the strict application of this Ordinance would produce a clearly demonstrable hardship and restrict the future use of the property; and,*
- c. That such hardship is not shared generally by other properties in the same zoning district and the same vicinity; and,*
- d. That the authorization of such variances will not be of substantial detriment to adjacent property and that the granting of the variances will not change the character of the district.*

*The approval is based on the following conditions:*

- 1. The shared access easement and off-street parking arrangement between 116 and 120 S Stewart Street shall be recorded as permanent deed restrictions and not be dictated;*
- 2. Parking at 120 S Stewart Street will not be used by 116 S Stewart Street under any circumstances;*
- 3. If 120 S Stewart Street converts to residential use, then and only then, can the parking be vacated from the deed; and,*
- 4. The retaining wall and steps shall remain a permanent site fixture and shall be maintained by the property owner.*

*The board asked that the applicant or his legal representative provide a draft of the conditions to be submitted to City Council for approval and added to the deed before construction begins.*

[5:05:49 PM](#)

<b><u>MEMBER</u></b>	<b><u>VOTE</u></b>
Mr. Hester	Yes
Mr. Koneczny	No
Mr. Hurt	Yes
Mr. Lynch	Yes
Mr. Phillips	Yes

**Meeting adjourned: 5:07PM**