

BOARD OF ZONING APPEALS
MINUTES

The Winchester Board of Zoning Appeals held a regular meeting on, March 14, 2012, at 4:00 p.m. in the Council Chambers, Rouss City Hall, 15 North Cameron Street, Winchester, Virginia.

PRESENT: Chairman Brian Hester, Co-Chairman Jack Phillips, Wilborn Roberson, Brandon Pifer and Donald Crawford (5)

ABSENT: None (0)

STAFF: Zoning Administrator Vince Diem and Deputy Administrator Aaron Gridale (2)

Approval of Minutes

Mr. Roberson moved, seconded by Mr. Crawford, to approve the February 8, 2012 minutes as recommended. The motion passed unanimously 5-0.

Reading of Correspondence

None to present.

PUBLIC HEARINGS

BZA 12-56 Request by Gordon Thompson for a variance pursuant to Sections 7-6-2 pertaining to rear yard setback for the subject property located at 111 West Clifford Street (*Map Number 192-01-R-2-><01*) zoned Residential Business (RB-1) District with Historic Winchester (HW) overlay.

Mr. Diem presented the request by Gordon Thompson for a variance pursuant to Section 7-6-2 pertaining to rear yard setback for the subject property located at 111 West Clifford Street (*Map Number 192-01-R-2*) zoned Residential Business (RB-1) District with Historic Winchester (HW) overlay. He stated the purpose of the variance request is to indefinitely perpetuate the use and occupancy of the structure as a single-family dwelling, despite the deficient rear yard setback.

The request before the Board of Zoning Appeals is related to the deficient rear yard setback at the aforementioned property. The property owner intends to transfer ownership of the property to an interested purchaser, who wishes to maintain the use and occupancy as a single-family dwelling. Due to the insufficient rear yard however, there is some difficulty in obtaining a mortgage due to the unforeseen potential for the nonconformity to lapse; thereby, rendering the structure unusable at some point in the future.

The subject property is located on the south side of West Clifford Street and is zoned RB-1, with HW overlay. The surrounding properties are similarly zoned.

The Zoning & Inspections Administrator recommends that the Board of Zoning Appeals **grant** the requested variance pertaining to rear yard setback at 111 West Clifford 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.

1. *That the strict application of this Ordinance would produce a clearly demonstrable hardship.*

Staff Analysis: Without addressing the deficient rear yard setback through the variance process to allow for the indefinitely perpetuated use and occupancy of the structure as a single-family dwelling, the structure if damaged, would not be permitted to be re-built. Therefore, the property would become obsolete and unusable. The existing building cannot be relocated or situated any differently on-site so as to allow for an alternative structural configuration.

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

Staff Analysis: Based on the portion of the aerial photography included within this report, it appears as though the situation described is unique to this property. He added there are other properties in that neighborhood that would not comply to the zoning ordinance as it is now and have been grandfathered in.

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 perpetuated use and occupancy of a single-family dwelling, in an area that expressly permits that particular use by right.

Mr. Diem stated the applicant appears to have met all three (3) criteria for granting the variances. One citizen did come into the office to ask about the intent of the variance and if it was going to be used as a business location. Although that is a by-right use, it is not the intent of the applicant.

Chairman Hester asked if the board had any questions for Mr. Diem. Seeing none, he opened the public hearing at 4:07 p.m.

Co-Chairman Phillips swore in Ralph A. Thompson of 9074 Loreleigh Way in Fairfax, Virginia.

Mr. Thompson stated he is representing the applicant, Gordon Thompson. He and his three brothers' own the property on Clifford Street. The appraiser for the buyer brought this to the lender's attention and they want to get this squared away.

Co-Chairman Phillips swore in Donald Ramey of 301 South Braddock Street in Winchester, Virginia.

Mr. Ramey stated he owns the house on the corner that borders this property and asked whether or not it will continue to be a single family dwelling. Chairman Hester stated the applicant has submitted that it will remain a single family dwelling.

Seeing no one else to address the board, Chairman Hester closed the public hearing at 4:10 p.m.

Co-Chairman Phillips moved, seconded by W Roberson, to approve BZA 12-56 for the property at 111 West Clifford Street to remain a single family dwelling. The motion carried 4-1 with Mr. Crawford voting in the negative.

BZA 12-91 Request of the Economic Development Authority, as the subject property owner, for variances pertaining to minimum lot area, required lot width, main building setback, and side yard setback, in accordance with Sections 5-3-2, 5-4-5, 5-5-3, and 5-6-1.4 of the Winchester Zoning Ordinance, for the subject property located at 443 North Loudoun Street (*Map Number 173-001-I-25*), which have been re-zoned to High Density Residential (HR) District, with Historic Winchester (HW) District overlay. The owner intends to change the use and occupancy of a previously nonconforming boarding house to a multi-family dwelling unit at 433 North Loudoun Street.

Mr. Diem presented the request of the Economic Development Authority, as the subject property owner, for variances pertaining to required lot width, side yard setback and rear yard setback in accordance with Sections 5-4-5, 5-6-1.5 and 5-6-2.1 of the Winchester Zoning Ordinance, for the subject property located at 443 North Loudoun Street (*Map Number 173-01-I-25*), which is zoned High Density Residential (HR) District with Historic Winchester (HW) overlay. Purpose of the requested variances is to accommodate a change of use and occupancy from a nonconforming boardinghouse to a multi-family dwelling consisting of three (3) units, as well as, a potential change of use proposal of an existing accessory structure to a neighborhood convenience establishment consisting of mini-storage through the Conditional Use Permitting process.

The request before the Board of Zoning Appeals is related to the deficient yard dimensions at the aforementioned property. The property owner intends to transfer ownership of the property to an interested purchaser, who wishes to change the use and occupancy from a nonconforming boardinghouse to a three unit, multi-family dwelling. In recent years, the property has been the subject of zoning and code enforcement efforts by the city. In an effort to resolve some the problems associated with the property, the EDA purchased the foreclosed property and immediately entered an indefinite deed restriction barring it from being used as a boardinghouse.

The subject property is located on the west side of North Loudoun Street and is zoned HR, with HW overlay. The surrounding properties are similarly zoned.

The Zoning & Inspections Administrator recommends that the Board of Zoning Appeals **grant** the requested variances pertaining to lot width, side yard setback, and rear yard setback at 443 North Loudoun 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.

1. *That the strict application of this Ordinance would produce a clearly demonstrable hardship.*

Staff Analysis: Without addressing the deficient lot width and yard dimensions through the variance process to allow for the proposed change of use and occupancy of the structure to multi-family dwelling, the structure could potentially be overcrowded due to its large size and floor area; and would essentially be unreasonable to expect a single family unit lease or purchase the structure, given a cost analysis and appraisal as performed by the EDA. Therefore, the property would become obsolete and unusable. The existing building cannot be relocated or situated any differently on-site so as to allow for an alternative structural configuration. He added because of its history as a nonconforming boarding house, it is already cut up inside. Someone could come in and occupy it as before as an unlawful boarding house. The appraised value has caused the banks and lenders to see this as a possible income producing property.

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

Staff Analysis: Several properties in the vicinity have previously been converted to two- or three-family (multi-family) dwelling units and have been grandfathered in due to their legitimate nonconformity. Any expectation of the city to retain the use and occupancy of the property for single-family dwelling use only is unreasonable and would be unique to this particular 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: The granting of the requested variances would allow for the proposed change of use and occupancy, which could actually result in less occupants and transiency of the residents, as compared to the prior nonconforming boardinghouse use.

Mr. Diem stated the applicant appears to have met all three (3) criteria for granting the variances. *Note:* Staff has received no letters of opposition or support. One phone call was received asking about the proposal. The citizen thought 2 -3 families would be ok but a boarding house would be unacceptable.

Mr. Pifer informed the board that his company did some work on these properties for the EDA but he did not think that would impact his decision.

Mr. Crawford asked if the property becomes a boarding house, would the City have the power to shut it down. Mr. Diem stated once a non-conforming use is interrupted by a conforming use, it negates the non-conformity and it would require a Conditional Use Permit to become a new boarding house.

Mr. Crawford asked if it reverts prior to changing the conformity, would the City have the tools to force it to comply with the variance. Mr. Diem stated he thought in that case the City Attorney would decide if it is a violation of the deed restriction and it would become a civil matter not necessarily a zoning ordinance matter. There would be deed restrictions in the deed of transfer for these three properties barring them from reverting back to that use.

Chairman Hester asked Mr. Pifer to remove himself due to the possible conflict of interest.

Chairman Hester opened the public hearing at 4:22 p.m.

Co-Chairman Phillips swore in James Deskins, Executive Director of Economic Development.

Mr. Deskins stated the EDA acquired these three properties in foreclosure from Summit Bank. The properties had been operated as boardinghouses for a period of time. The properties had a deed of trust note in the amount of \$975,000 on all three based on the income stream that came from these units. This particular unit has 18 paying residents paying \$160 - \$240 a week to live there. It was the EDA's belief that kind of occupancy in the neighborhood was truly a detriment to achieving any potential for revitalization. In order to remove that element from the community, the properties were purchased for \$500,000. The contract to sell this property is at \$100,000. The EDA anticipates they will lose \$250,000 on all three properties. The investment was not based on an economic return. The EDA wanted to find a way to embrace the community as a wholesome living area for the people living there and people who might be enticed to move there. He asked the board's support in that effort.

Co-Chairman Phillips asked if the individuals living there had vehicles since there was no off street parking. Mr. Deskins stated he could not say but there were a lot of cars parking illegally in the neighborhood. This property does have an 8 car garage in the back that was used for storage. There was also evidence found to show there were people living in the lofts in the garage.

Seeing no one else to address the board, Chairman Hester closed the public hearing at 4:26 p.m.

Co-Chairman Phillips asked if the same party is buying all three properties. Mr. Deskins state it was not the same party. Richard Bell is the purchaser and owns the adjoining property. His intent is to use historic tax credits to take it back to its original grandeur. Mr. Bell's desire is to have two units but is asking for three to insure the costs are covered.

Mr. Crawford stated in full disclosure, Mr. Bell and his wife are co-teachers of a Sunday school class with him and his wife which could present a conflict. Chairman Hester decided there would not be a conflict.

*Mr. Roberson moved, seconded by J Phillips, to **grant** variances to the Economic Development Authority, pertaining to lot width, side yard setback and rear yard setback at 443 North Loudoun Street, for the specific purpose of accommodating the use and occupancy of a multi-family dwelling; and, in further consideration of a neighborhood convenience establishment consisting of a mini-storage facility in the accessory structure. The motion carried 4-0 with Mr. Pifer removed.*

BZA 12-92 Request of the Economic Development Authority, as the subject property owner, for variances pertaining to minimum lot area, required lot width, main building setback, and side yard setback, in accordance with Sections 5-3-2, 5-4-5, 5-5-3, and 5-6-1.4 of the Winchester Zoning Ordinance, for the subject property located at 448, 450-452 North Loudoun Street (*Map*

Number 173-001-J-14, 15), which have been re-zoned to High Density Residential (HR) District, with Historic Winchester (HW) District overlay. The owner intends to change the use and occupancy of a previously nonconforming boarding house to a multi-family dwelling unit at 450-452 North Loudoun Street.

Mr. Diem presented the request of the Economic Development Authority, as the subject property owner, for variances pertaining to required lot area, lot width, main building setback and side yard setback in accordance with Sections 5-3-2, 5-4-5, 5-5-3, and 5-6-1.4 of the Winchester Zoning Ordinance, for the subject properties located at 448 and 450-452 North Loudoun Street (*Map Number 173-01-J-14, 15*), which were re-zoned High Density Residential (HR) District with Historic Winchester (HW) overlay. Purpose of the requested variances is to accommodate a change of use and occupancy from a nonconforming boardinghouse to a multi-family dwelling consisting of three (3) units.

The request before the Board of Zoning Appeals is related to the deficient yard dimensions at the aforementioned property. The property owner intends to transfer ownership of the property to an interested purchaser, who wishes to change the use and occupancy from a nonconforming boardinghouse to a three unit, multi-family dwelling. In recent years, the property has been the subject of zoning and code enforcement efforts by the city. In an effort to resolve some of the problems associated with the property, the EDA purchased the foreclosed property and immediately entered an indefinite deed restriction barring it from being used as a boardinghouse.

The subject property is located on the east side of North Loudoun Street and is zoned HR, with HW overlay. The surrounding properties are similarly zoned.

The Zoning & Inspections Administrator recommends that the Board of Zoning Appeals **grant** the requested variances pertaining to lot area, lot width, main building setback and side yard setback at 448, 450-452 North Loudoun 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.

1. *That the strict application of this Ordinance would produce a clearly demonstrable hardship.*

Staff Analysis: Without addressing the deficient lot width and yard dimensions through the variance process to allow for the proposed change of use and occupancy of the structure(s) to multi-family dwelling, the structure(s) could potentially be overcrowded due to their large size and floor area; and would essentially be unreasonable to expect a single family unit to lease or purchase the structure(s), given a cost analysis and appraisal as performed by the EDA. Therefore, the property would become obsolete and unusable. The existing building cannot be relocated or situated any differently on-site so as to allow for an alternative structural configuration.

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

Staff Analysis: Several properties in the vicinity have previously been converted to two- or three-family (multi-family) dwelling units and have been grandfathered in due to their legitimate nonconformity. Any expectation of the city to retain the use and occupancy of the property for single-family dwelling use only is unreasonable and would be unique to this particular 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: The granting of the requested variances would allow for the proposed change of use and occupancy, which could actually result in less occupants and transiency of the residents, as compared to the prior nonconforming boardinghouse use.

Mr. Diem stated the applicant appears to have met all three (3) criteria for granting the variances. Staff has received no letters of opposition or support.

Chairman Hester opened the public hearing at 4:33 p.m.

Co-Chairman swore in James Deskins, Executive Director of Economic Development.

Mr. Deskins stated this property is under contract for \$100,000 to the adjoining property owner who has taken this property through the necessary rezoning. The purchaser has yet to prepare a final site plan to provide the necessary off street parking but will remove the accessory structure in the back of the property to provide adequate parking for the tenants. He has managed the neighboring property in a way that improved the quality of life for his tenants and the EDA has confidence in him to do the same here.

Seeing no one else to address the board, Chairman Hester closed the public hearing at 4:36 p.m.

*Mr. Crawford moved, seconded by Mr. Phillips, to **grant** variances to the Economic Development Authority, pertaining to lot area, lot width, main building setback and side yard setback at 448, 450-452 North Loudoun Street, for the specific purpose of accommodating the use and occupancy of a multi-family dwelling. The motion carried 4-0 with Mr. Pifer removed.*

BZA 12-93 Request of the Economic Development Authority, as the subject property owner, for variances pertaining to required lot width, in accordance with Section 5.1-4-2 of the Winchester Zoning Ordinance, for the subject property located at 513 North Loudoun Street (*Map Number 153-001-D-11*), which is zoned Limited High Density Residential (HR-1) District. The owner intends to change the use and occupancy of a previously nonconforming boarding house to a two-family dwelling unit.

Mr. Diem presented the request of the Economic Development Authority, as the subject property owner, for a variance pertaining to required lot width in accordance with Section 5.1-4-2 of the Winchester Zoning Ordinance, for the subject property located at 513 North Loudoun Street (*Map Number 153-01-D-11*), which is zoned Limited High Density Residential (HR-1) District. Purpose of the requested variance is to accommodate a change of use and occupancy from a nonconforming boardinghouse to a two-family dwelling.

The request before the Board of Zoning Appeals is related to the deficient lot width dimension at the aforementioned property. The property owner intends to transfer ownership of the property to an interested purchaser, who wishes to change the use and occupancy from a nonconforming boardinghouse to a two-family dwelling. In recent years, the property has been the subject of zoning and code enforcement efforts by the city. In an effort to resolve some of the problems associated with the property, the EDA purchased the foreclosed property and immediately entered an indefinite deed restriction barring it from being used as a boardinghouse.

The subject property is located on the west side of North Loudoun Street and is zoned HR-1. The surrounding properties are similarly zoned.

The Zoning & Inspections Administrator recommends that the Board of Zoning Appeals **grant** the requested variance pertaining to lot width at 513 North Loudoun 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.

1. *That the strict application of this Ordinance would produce a clearly demonstrable hardship.*

Staff Analysis: Without addressing the deficient lot width through the variance process to allow for the proposed change of use and occupancy of the structure to two-family dwelling, the structure could potentially be overcrowded due to their large size and floor area; and would essentially be unreasonable to expect a single family unit to lease or purchase the structure, given a cost analysis and appraisal as performed by the EDA. Therefore, the property would become obsolete and unusable. The existing building cannot be relocated or situated any differently on-site so as to allow for an alternative structural configuration.

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

Staff Analysis: Several properties in the vicinity have previously been converted to two- or three-family (multi-family) dwelling units and have been grandfathered in due to their legitimate nonconformity. Any expectation of the city to retain the use and occupancy of the property for single-family dwelling use only is unreasonable and would be unique to this particular 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: The granting of the requested variance would allow for the proposed change of use and occupancy, which could actually result in less occupants and transiency of the residents, as compared to the prior nonconforming boardinghouse use.

Mr. Diem stated the applicant appears to have met all three (3) criteria for granting the variances. Staff has received no letters of opposition or support.

Chairman Hester opened the public hearing at 4:41 p.m.

Co-Chairman Phillips swore in James Deskins, Executive Director of Economic Development.

Mr. Deskins stated the property has a pending contract for \$65,000. It will be owner occupied on the ground level with an apartment above. The purchaser is a young architect who wants to restore it to the original state and improve the quality of the neighborhood.

Seeing no one else to address the board, Chairman Hester closed the public hearing at 4:42 p.m.

*Mr. Crawford moved, seconded by J Phillips, to **grant** a variance to the Economic Development Authority, pertaining to lot width at 513 North Loudoun Street, for the specific purpose of accommodating the use and occupancy of a two-family dwelling. The motion carried 4-0 with Mr. Pifer removed.*

NEW BUSINESS

None to present.

OLD BUSINESS

None to discuss.

ADJOURN

With no further business to discuss, Chairman Hester adjourned the meeting at 4:44 p.m.