

**BOARD OF ZONING APPEALS  
MINUTES**

The Winchester Board of Zoning Appeals held a regular meeting on, May 9, 2012, at 4:00 p.m. in the Council Chambers, Rouss City Hall, 15 North Cameron Street, Winchester, Virginia.

**POINTS OF ORDER**

**PRESENT:** Mr. Phillips, Mr. Pifer, Mr. Crawford and Mr. Ransom  
**ABSENT:** Mr. Hester  
**STAFF:** Mr. Grisdale and Ms. Le Duigou

**Approval of Minutes - April 11, 2012**

Mr. Pifer moved, seconded by Mr. Crawford, to accept the April 11, 2012 minutes as presented.

The motion passed unanimously 4-0, None abstained.

**Reading of Correspondence**

None

**PUBLIC HEARINGS**

**BZA 12-235** Request of the Economic Development Authority, as the subject property owner, for variances pertaining to required setback for multifamily use, required side yard for multifamily use, required side yard for Neighborhood Convenience use, required rear yard for Neighborhood Convenience use, and off-street parking area buffer, in accordance with Sections 5-5-2, 5-6-1.4, 5-6-1.5, 5-6-2.1 and 18-6-3.2 of the Winchester Zoning Ordinance, respectively, for the subject property located at 443 North Loudoun Street (*Map Number 173-001-I-25*), which is zoned High Density Residential (HR), 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 and Neighborhood Convenience use at the subject property.

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

Mr. Grisdale stated that this was a request of the Economic Development Authority, as the subject property owner, for variances pertaining to required setback for multifamily use, required side yard for multifamily use, required side yard for Neighborhood Convenience use, required rear yard for Neighborhood Convenience use, and off-street parking area buffer, in accordance with Sections 5-5-2, 5-6-1.4, 5-6-1.5, 5-6-2.1 and 18-6-3.2 of the Winchester Zoning Ordinance, for the subject property located at 443 North Loudoun Street (*Map*

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*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 a follow-up to BZA-12-91 that the Board considered at its March 7, 2012 hearing. Specifically this application is related to deficient setbacks, side yard requirements, rear yard requirements, and off-street parking area buffer requirements 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 less intensive residential occupancy, with the maximum occupancy being a three-unit multi-family dwelling as well as convert an existing accessory structure to a neighborhood convenience facility. 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 proposed variances will grant relief of the most intensive of the considered uses, three-unit multifamily dwelling, while staff recognizes that the future land owner may choose to utilize the property for two-family or a single-family dwelling.

The subject property is located on the west side of North Loudoun Street and is zoned HR, with HW overlay. The surrounding properties to east and south are zoned HR-1, properties to the west zoned MR, the properties to the north are similarly zoned.

Presently, the main structure has a setback of 31.6-feet, which is deficient of the required front setback for multi-family structures of 35-feet. The requested variance of Section 5-5-2 of the Winchester Zoning Ordinance will allow this deficiency of 3.4-feet.

Secondly, the main structure currently does not meet the side yard setback requirements on either the north or south side yards. The Zoning Ordinance requires that each side yard be at least 25 feet, pursuant to Section 5-6-1.4. Presently the north side setback is 13-feet and the south side setback is 4.3-feet. The proposed variance will granted relief of a 12-foot deficiency on the north side and a 20.7-foot deficiency on the south side of the property.

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The third portion of the variance request is pertaining to the required side yard for the neighborhood convenience establishment. Section 5-5-3 of the Zoning Ordinance requires a side yard setback of 25-feet. The current side yard setbacks for the accessory structure are 2-feet on the south side and 6.5-feet on the north side. This variance will grant relief of 23-feet on the southern side yard and 18.5-feet on the northern side yard.

The fourth part of the variance request is pertaining to the required rear yard setback for the existing accessory structure, which is proposed to be converted to a neighborhood convenience establishment. Section 5-6-2.1 of the Zoning Ordinance requires a minimum setback of 25-feet. The structure currently has a 13.5-foot rear yard setback. This variance will grant relief of this 11.5-foot deficiency for the required rear yard.

Lastly, the variance request is related to the required off-street parking area buffer. Section 18-6-3.2 of the Zoning Ordinance requires a 15-foot off-street parking area buffer when adjacent to a residentially used property. Since both properties on the northern and southern sides of the property are both residentially used, this 15-foot buffer is required. The current layout of the property has a zero-foot off-street parking area buffer. There is a joint driveway on the northern side of the parcel that straddles the property line all the way from the frontage on North Loudoun Street to the alley. Additionally, there is an existing gravel off-street parking area in the yard between the accessory structure and the main building. Lastly, there is an existing off-street parking area between the accessory structure and the alley. This variance will grant relief of the 15-foot deficiency.

Staff recommends for the existing parking area in between the accessory structure and the main building, for the board to grant relief of only 12-feet of the required 15-feet along the south property line, along with screening in accordance with Section 19-5-6.4, in order to negate any possible impacts on the adjacent properties. Secondly, staff recommends that the off-street parking area come no closer to the southern property line than the edge of the accessory structure in the rear parking area adjacent to the alley.

The Zoning & Inspections Administrator recommends that the Board of Zoning Appeals **grant** the requested variances pertaining to setback and side yard requirements for the main structure and side yard, rear yard and off-street parking area buffer requirements for neighborhood convenience use at 443 North Loudoun Street.

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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 deficient setback yard dimensions and off-street parking area buffer through the variance process to allow for the proposed change of use and occupancy of the structure, the structure could potentially be overcrowded due to its large size and floor area. 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. This property, should the variances would not be permitted, would not be able to be utilized due to the deficient dimensional standards, and would continue to be vacant and a problem for the community.*

**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.**

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*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.*

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. Phillips opened the public hearing**

No comments were forthcoming

### **Mr. Phillips closed the public hearing**

Mr. Crawford moved, seconded by Mr. Ransom to **grant** variances to the Economic Development Authority, pertaining to required setback for main structure, required side yard for main structure, required side yard for Neighborhood Convenience use, required rear yard for Neighborhood Convenience use, and off-street parking area buffer, in accordance with Sections 5-5-2, 5-6-1.4, 5-6-1.5, 5-6-2.1 and 18-6-3.2 of the Winchester Zoning Ordinance at 443 North Loudoun Street, for the specific purpose of accommodating the change use and occupancy of the principle structure from a non-conforming boardinghouse; and, in further consideration of a neighborhood convenience establishment consisting of a mini-storage facility in the accessory structure, with the following conditions:

1. Along the south property line for the portion of the parking area between the accessory structure and the main building, proper screening shall be installed in accordance with Section 19-5-6.4 of the Zoning Ordinance, and relief is granted for only 12-feet of the required off-street parking area buffer, resulting in a 3-foot buffer, for this same parking area.
2. The off-street parking area adjacent to Lafayette Place shall not be located closer to the southern property line than the southwest corner of the accessory structure.
3. The variance will grant relief for only the neighborhood convenience use and the following potential residential uses: single family residence, two-family residence, and three-unit multi-family residence.

The motion passed 3-0, Mr. Pifer abstained.

### **NEW BUSINESS**

None

### **OLD BUSINESS**

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None

**ADJOURN**

With no further business, the meeting was adjourned at 4:12 p.m.

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