

**BOARD OF ZONING APPEALS
MINUTES**

The Board of Zoning Appeals held its regularly scheduled meeting on Wednesday, May 17, 2017, at 4:00p.m. in Council Chambers, Rouss City Hall, 15 North Cameron Street, Winchester, Virginia.

POINTS OF ORDER:

PRESENT: Vice Chairman Crawford, Ms. Marchant, Mr. Whitacre, Ms. Anderson, Mr. Pahl
ABSENT: Mr. Lewis
STAFF: Aaron Grisdale, Erick Moore and Carolyn Barrett
VISITORS: Betsy Dance, Sandra Bosley, Charlotte Van Duser, Linda Ross, Patrick Farris, Jesse Von Fange

CONSENT AGENDA:

Vice Chairman Crawford designated Ms. Anderson and Mr. Pahl as voting members.

Approval of minutes of April 12, 2017.

Vice Chairman Crawford called for corrections or additions to the minutes. Ms. Marchant made a motion to approve the minutes as submitted. Mr. Whitacre seconded the motion. Voice vote was taken and the motion passed 5-0.

READING OF CORRESPONDENCE:

None.

PUBLIC HEARINGS:

BZA 17-226 – Request of Karen Darby for a variance of the Winchester Zoning Ordinance, Section 5.1-6-2.1, pertaining to rear setback requirement at 501 North Loudoun Street (Tax Map #: 153-01-D-9) zoned Limited High Density Residential (HR-1) district with Historic Winchester (HW) district overlay. The applicant is requesting relief of the deficient rear setback requirement in order to allow for an adaptive reuse of the structure as a *Neighborhood Convenience Establishment* (neighborhood pizza shop). (Presented by Aaron Grisdale)

Mr. Grisdale reviewed the staff report and criteria for approval. The structure does not meet the rear twenty-five foot setback. The structure's footprint will not be expanded. City Council approved a Conditional Use Permit with several conditions including BZA approval.

Ms. Anderson asked if Ms. Darby was the owner of the property. Mr. Grisdale said she is the contract purchaser of the property.

Mr. Pahl asked if Bonnie Blue required a CUP from the Council. Mr. Grisdale said it was in a separate zoning district so it was a different scenario.

Mr. Whitacre asked about substantial detriment and was it staff's opinion or what happened in the public hearing with City Council. It seemed all adjacent properties were opposed to it. Mr. Grisdale said in this situation, the CUP had been evaluated and staff's opinion is based on the grandfathered status being lost due to vacancy.

Vice Chairman Crawford opened the public hearing

Charlotte Van Duser stated she took a financial risk in buying a derelict property to fix it up and worked with the city to renovate it. She is concerned about the mixed use coming into the neighborhood. She checked before she bought her property to make sure the area would stay residential. She is not opposed to a business being in the neighborhood but it needs to be appropriate for the neighborhood. She asked about the parking situation and where customers would park. Also, the hours are not reasonable for a residential community. The Board asked her what led her to believe the property would be zoned residential. Ms. Van Duser said she had checked with the City and also online and it said residential. Ms. Anderson asked if it had ever been zoned residential. Mr. Grisdale said the current zoning is high-density residential and that would not change. There are a variety of uses allowed and a Conditional Use process. The Board asked Ms. Van Duser if the granting of the two point two foot variance would affect her property. She said it would not but it would affect her neighbors.

Betsy Dance, 5 East North Avenue, said she could see the property from her front windows and front porch. She hoped the variance request would not be a setback to the Darby's plan for opening a pizza café in the neighborhood.

Sandra Bosley said she is the Executive Director of Preservation of Historic Winchester. They would like to see a business move into the property and get the building occupied again. They are in favor of granting the variance.

Patrick Farris stated the Board had correspondence from him and asked them to turn to page three of the pictures he had included. He noted where his property line is, where the variance would be and the proximity to his house. He spoke about the six foot fence and the elevation of his house and how that would not prevent headlights from shining into his home. Green screening was attempted in the past but most of it is insufficient and dying. The late hours proposed for the business will also affect his family. He recognizes that the charge of the Board is to grant or not grant a setback variance. Granting a variance would have a serious impact on the value of his home. If he were to fix it up and market it, people looking around inside his house will perceive the business on the outside and it will affect the marketability. The back corner of the lot is within 13 ½ feet from the back porch of his house. The public right-of-way along North

Loudoun Street and West North Avenue take up a significant amount of space. Whoever uses the lot will not have much additional space to do anything extra. There is no screening that can change the noise pollution, light pollution, odor etc. coming from that area towards his home. Categories B and D do not meet the threshold of standards set by the Virginia Board of Appeals. It is his opinion that this will harm the value of his property and its marketability.

The Board asked about the photographs that had been taken. Had the paint color changed or is that what the building has always looked like. Mr. Farris said he had lived in his house for over 12 years and he had seen the owners clean the property occasionally but he had not noticed any painting. The Board asked how a vacant structure next to his property would affect its value. Mr. Farris said he had a long list. The issue that any occupation of the structure is better than none etc. He did not have a problem with the building being used. The vacancy was not harming his family's quality of life or property value. It was this particular usage that was the problem. The Board asked about the parking situation and how many spaces were there. Mr. Farris said there was no parking on the west side of North Loudoun Street. Many homes do not have off street parking. Parking for the establishment would take up spaces on the east side. It is already crowded with residential parking. That will also affect his property.

Vice Chairman Crawford asked Mr. Farris about photograph number four. What was the distance from the curb to the property line? Mr. Farris said it was about five feet. Ms. Anderson asked staff if there would be parking behind the building. Mr. Grisdale said there are a couple of spaces according to the site plan but it was a concept at this point. The applicant would still need to go through a formal site plan review process with the Planning Department to make sure the site met requirements. The Board asked if City Council had taken up the parking issue with the CUP. Mr. Grisdale said he did not believe there were any specific conditions.

The Board asked if the applicant was allowed to build a dumpster pad without setback requirements. Mr. Grisdale said it could be right up against the property line.

Jesse Von Fange, Ms. Darby's business partner, spoke about the required setback and why they are requesting relief of the requirement. He noted what they will be doing as far as trash, fencing and lighting. The Board asked about the current location and height of the fence. Mr. Von Fange said it was on the property line and he did not know how tall it was.

The Board asked how many parking spaces there would be and how big was the establishment. Mr. Von Fange said there was about 600 square feet of space inside for dining. There were eight parking spaces including one handicap spot and some street parking. The dumpster will about 13 feet off the property line in the rear of the building and it will be completely screened and out of view.

Linda Ross, 529 Jefferson Street, former President of Preservation Historic Winchester, she has also worked for the French and Indian War House. She believes the building is important to the Historic District. She is very concerned about the neighborhood. She has worked hard to generate a lot of interest in a better North Loudoun Street corridor. She has encouraged people to buy properties in the neighborhood. She does not believe a gourmet pizza café will harm the neighborhood. Ms. Darby is capable of doing very good things with the building. It should stay commercial and she believes it will improve the neighborhood.

Betsy Dance said that as a single woman living in the neighborhood she walks around a lot. The thought of having a light four or five blocks ahead of her when she's walking home is very comforting. There is a vacant building diagonal from her and there are boarding houses at the end of the block and on Loudoun Street. A good business, a carefully manicured business, will bring a lot to the neighborhood including a sense of safety.

Patrick Farris said there are no boarding houses in the neighborhood. They have worked with the City to get rid of them. It is one reason they are asking the Board to seriously look at the application and not approve the request. It is because of the decade plus progress made in making changes to the neighborhood. He believes the neighborhood should be all residential. He specifically tailored his letter to the Board noting the criteria they have to meet in order to approve it.

Vice Chairman Crawford closed the public hearing

Ms. Anderson said they have heard a lot of comments but they are there to address the issue of the setback. Mr. Grisdale said that was correct.

Vice Chairman Crawford said there were a number of things he did not like whereas it would be good to get the building back on the tax rolls and not be vacant. The parking will be a problem and he is also concerned about the placement of the dumpster and when trash is picked up, the noise and the smell. The City has already said that the use as a restaurant is acceptable. Granting a variance of 2.2 feet seems reasonable if they look at just that angle.

Mr. Whitacre said he agreed with Vice Chairman Crawford. He loves seeing the area gentrified and thinks the building has great potential. He keeps coming back to the criteria that granting the variance will not be detrimental to adjacent property. There will be noise and odors. He disagrees with staff that it will not be detrimental. Is a pizza shop the best use for that location?

Mr. Pahl said his sentiments were similar to those already expressed; however, they were not there to determine the use. When they are talking about the second criteria, he was not inclined to give much weight to the different values. He did not hear anything one way or the other that this was going to substantially lower values. What he highlighted concerning substantial detriment were parking, lights in the windows and

the issue with the dumpster. He was a little reassured when the applicant mentioned the eight-foot fence. He was not concerned with the dumpster being 13 feet away and screened. He was not satisfied with the parking situation, it was something City Council did not address.

Ms. Anderson said she felt the opposite. She saw it as place that will bring the neighborhood together. People could walk there and eat. It would be a quaint place to go eat pizza and enjoy a drink. The parking is not going to be that big a deal, the majority of people will probably walk there. There is nothing that stipulates that because you own a house on a city street that you will be able to park in front of it. As far as setbacks are concerned, in her neighborhood, she is seven feet from the corner of her neighbor's house and it's not an issue. In a year from now, people will say they brought up issues that didn't need to be brought up. The Board is there for one purpose and that is the setback. They are not there for the noise or parking or anything else; that was up to City Council. The Board should go on the staff's recommendation as they are the professionals and deal with it every day.

Mr. Pahl said he agreed some with the evaluation but he disagreed that they should not take parking into consideration. Ms. Marchant said they have discussed parking before on other cases. There should be requirements for business or multi-family dwellings. She drives by that location a lot and sees many people who don't own the property parking there. It will no longer be available to neighbors who are parking there, probably when they shouldn't be. She agreed that parking was not the issue. City Council has already approved it and it meets the zoning requirements. She is in favor of the variance. Mr. Pahl asked if it did meet the parking requirements. Mr. Grisdale said there was an exemption for neighborhood convenience establishments from parking requirements unless City Council specifically states a number of spaces with approval. On its face, the zoning ordinance does not require parking. The applicant will provide parking that still needs to be negotiated with site plan approval.

Mr. Whitacre asked if any other business came in, would the Board still have to grant a setback. Mr. Grisdale said any use would need a variance. Mr. Whitacre said they would eventually have to approve something and if City Council had already approved a CUP then it's not their decision to say a pizza shop can't be there unless they apply condition number two. That was the only sticking point for him. Vice Chairman Crawford agreed with Mr. Whitacre.

The Board members discussed the City Council decision and that some of them did not agree with it. However, they would be exceeding their jurisdiction after the CUP had already been issued. It was not for them to decide if there should be a pizza shop or not.

Ms. Marchant moved that the Board of Zoning Appeals approve a variance of the Winchester Zoning Ordinance, Section 5.1-6-2.1, pertaining to rear setback requirement at 501 North Loudoun Street (Tax Map #: 153-01-D-9) zoned Limited High Density

Residential (HR-1) district with Historic Winchester (HW) district overlay, with the following conditions:

- a. The variance will expire if the property becomes vacant for at least two (2) years.*
- b. The variance applies to the current structure in its existing footprint, or a footprint that reduces the deficiency of the rear yard requirement.*
- c. An eight-foot fence be installed adjacent to the north property line in conformance with the Zoning Ordinance.*

The variance is approved because the strict application of the terms of the ordinance would unreasonably restrict the utilization of the property:

- 1) The property interest for which the variance is being requested was acquired in good faith and any hardship was not created by the applicant for the variance;*
- 2) The granting of the variance will not be of substantial detriment to adjacent property and nearby properties in the proximity of that geographical area;*
- 3) The condition or situation of the property concerned is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to the ordinance;*
- 4) The granting of the variance does not result in a use that is not otherwise permitted on such property or a change in the zoning classification of the property; and,*
- 5) The relief or remedy sought by the variance application is not available through a special exception process or the process of an administrative modification at the time of the filing of the variance application.*

Ms. Anderson seconded the motion. Roll call vote was taken and the motion passed 4-1. (Voting in favor were Vice Chairman Crawford, Ms. Marchant, Ms. Anderson and Mr. Pahl. Mr. Whitacre voted in opposition).

NEW BUSINESS:

None.

OLD BUSINESS:

None.

ADJOURN:

With no further business before the Board, the meeting was adjourned at 5:07pm.