

**BOARD OF ZONING APPEALS  
MINUTES**

The Winchester Board of Zoning Appeals held its regular meeting on Wednesday, November 12, 2014, at 4:00 p.m. in Council Chambers, Rouss City Hall, 15 N. Cameron Street, Winchester, Virginia.

**POINTS OF ORDER:**

**PRESENT:** Acting Chairman Pifer, Mr. Crawford, Ms. Marchant, Ms. Anderson  
**ABSENT:** Mr. Lewis  
**STAFF:** Aaron Grisdale, Catherine Clayton  
**VISITORS:** James Boyd, Shafqat Malik, Don Crigler

*Acting Chairman Pifer advised that Ms. Anderson will be a voting member in lieu of a full complement of regular Board members.*

**ELECTION OF OFFICERS:**

Mr. Grisdale called for nominations for Chairman. Mr. Crawford nominated Mr. Pifer. Ms. Marchant seconded the nomination. Voice vote was taken and the motion passed 3-0-1 Abstention (Pifer).

Mr. Grisdale then called for nominations for Vice Chairman. Ms. Marchant nominated Mr. Crawford. Mr. Pifer seconded the nomination. Voice vote was taken and the motion passed 3-0-1 Abstention (Crawford).

**CONSENT AGENDA:**

Approval of Minutes of October 8, 2014.

*Chairman Pifer called for corrections or additions to the minutes. Hearing none, he called for a motion. Ms. Marchant moved to approve the minutes as submitted. Mr. Crawford seconded the motion. Voice vote was taken and the motion passed 4-0.*

**READING OF CORRESPONDENCE:**

None.

**PUBLIC HEARINGS:**

**BZA-14-662** Request of James Boyd, property owner, for a variance pertaining to a yard encroachment for an unenclosed deck pursuant to Section 18-9-2.1 of the Winchester Zoning Ordinance for the property located at 434 Handley Avenue (*Map Number 192-01-F-14 - > <01*), zoned Medium Density Residential (MR) District. The applicant seeks relief of the permitted yard encroachment limitation in order to construct a deck higher than three (3) feet above the ground in a required side yard.

Mr. Grisdale presented the staff report stating that this is a request for a variance pertaining to a yard encroachment for an unenclosed deck. The applicant seeks to construct a deck higher than three (3) feet above the ground in a required side yard to the rear of the property. In order for the applicant to

have access to the deck from the main level of the house, the applicant is proposing to have access along the walkway along the north side of the house. At the point where the walkway meets the deck, the proposed deck will exceed the allowable 3-feet in height for porches and decks that encroach into a required side yard. The required side yard is typically six feet; however, this house is nonconforming at 4.8-feet and as such, a deck is permitted to be constructed in line with the main structure. There are two (2) factors that the applicant needs relief of: the height limitation of 3-feet for decks that encroach into a required side yard setback, and the permissible encroachment distance of 3-feet into the required side yard. Per the drawings submitted by the applicant, the deck is proposed at a setback of 20.5 inches or 1.7 feet.

Mr. Grisdale stated that the applicant has had several conversations with staff to develop an application that is in less conflict with the code and this current request does appear to be fairly minimal in scope and requirements of deviation from the Zoning Ordinance provisions. However, there are still questions that exist as to whether the residential remodeling could be altered to allow for a door from the kitchen directly onto the deck, therefore eliminating the need to include the landing in the required side yard. Staff has received no letters of support or opposition to this application. He closed by stating that he is available for questions.

*Chairman Pifer called for questions from the Board.*

#### **Chairman Pifer Opened the Public Hearing**

James Boyd, applicant, was sworn in by Mr. Crawford. Mr. Boyd stated that Mr. Grisdale gave a good description of the project. He then gave an explanation of the stairs and brick wall and stated that he intends to remove the brick wall and put up some minimal screening along there like lattice or vegetation. He added that the only access they currently have to their back yard is to walk out in to the alley and then enter their yard or to go through their basement. He concluded by stating that he is available for questions.

Mr. Crawford asked Mr. Boyd if there are two kitchens in the house to which Mr. Boyd responded yes there are because there was an in-law addition to the house. Mr. Crawford then asked what, if any, objection Mr. Boyd would have to taking a door from what is the applicant's kitchen on to the deck as opposed to coming around. Mr. Boyd said that his challenge right now is that they want to make as minimal a disruption to the house and that would require tearing out the door there and they would have to go back to the architect to determine what is the best space and if it would be efficient to have two (2) doors.

Shafqat Malik, neighbor, was sworn in by Mr. Crawford. Mr. Malik said that Mr. Boyd told him that they were going to do some renovations but he has not seen any plans so he does not know exactly what work is going to be done. He then stated that he does know that Mr. Boyd intends to build a deck that will be visible from his property and that he is concerned about the height and how much protection he will have in his own backyard. Mr. Crawford showed Mr. Boyd's plans to Mr. Malik. Mr. Malik said that he has no objection to the plan but that he wants to know what type of screening Mr. Boyd is going to put in.

#### **Chairman Pifer Closed the Public Hearing**

*Chairman Pifer called for discussion from the Board.*

Mr. Crawford asked Mr. Boyd if he has thought about screening to close off the sight lines from the neighbor's property. Mr. Boyd responded that he has thought about it and that he has no problem removing some of the mass from the five foot wall and six foot fence and softening it up with some lattice work or vegetation because he said that they want privacy for everyone. Mr. Crawford then asked Mr. Malik if this is a good solution for him. Mr. Malik said that it will be with the screening.

*Hearing no further questions or discussion from the Board, Chairman Pifer called for a motion.*

*Ms. Marchant moved to grant a variance pertaining to a yard encroachment for an unenclosed deck pursuant to Section 18-9-2.1 of the Winchester Zoning Ordinance for the property located at 434 Handley Avenue (Map Number 192-01-F-14) zoned Medium Density Residential (MR) District, with the following conditions:*

- 1. The variance is to allow for a deck exceeding three feet above the ground to encroach to within 1.7 feet of the northern side yard.*
- 2. The variance only pertains to the general plans included within the proposal;*
- 3. The construction of the dwellings to be completed within two years of this date of approval;*

*This variance is approved because:*

- a. The strict application of this Ordinance would produce a clearly demonstrable hardship.*
- b. That such hardship is not shared generally by other properties in the same zoning district and the same vicinity.*
- c. 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 variance.*

*Ms. Anderson seconded the motion. Roll call vote was taken and the motion passed 4-0.*

**NEW BUSINESS:**

None.

**OLD BUSINESS:**

**BZA-14-517** Request of DFC Architects, PC, on behalf of the property owner, Long Term Care Properties, LLC, for variances pertaining to an expanded use and structure in the 100 year floodplain pursuant to Sections 14.1-15-3C, D, E, and J and Section 14.1-15-6A of the Winchester Zoning Ordinance, for the property located at 380 Millwood Avenue (Map Number 233-01- -3 - > <01), zoned Medium Density Residential (MR) District with Floodplain (FP) District overlay. The applicant is requesting these variances to obtain relief from required flood proofing and building elevation requirements for a proposed building expansion.

Mr. Grisdale presented the revised staff report stating that the request has been modified from the original request as discussed during the October 8, 2014, public meeting and that the public hearing was opened and closed at that meeting so there is no need to reopen the public hearing. Since that time, the applicant and staff have worked to develop a more agreeable solution that allows for the expansion of the existing building to take place while meeting the intent of the floodplain requirements. The applicant has rescinded his request for the variances pertaining to Sections 14.1-15-3C, D, E, and J. The only remaining section associated with this request is Section 14.1-15-6A. As noted previously, the

parcel is improved with a nursing home and is considered a legal nonconforming use within the Medium Density Residential (MR) District. The project is designed to bring existing beds up to current standards for patient care, patient gathering space, and handicapped accessibility. Mr. Grisdale stated that the applicant has modified the proposal to a point that is more acceptable to staff. The request still involves the request of relief from the elevation requirement of the first floor elevation. However, the applicant has submitted plans and discussed with the Building Official efforts to fully flood-proof the proposed addition in conformance with the Uniform Statewide Building Code and FEMA requirements to one foot above the base flood elevation. The applicant has submitted ten bullet points that speak to the efforts being made to comply with the code. As a result of these modifications, staff has removed our denial recommendation from this project. Additionally, staff has received no letters of support or opposition to this application. He concluded by stating that he is available for questions.

*Chairman Pifer called for questions from the Board.*

Ms. Marchant asked Mr. Grisdale if staff had to re-advertise this application to which Mr. Grisdale responded that it did not have to be re-advertised because the public hearing was closed at the October 8, 2014, public hearing session. It is just a continuation of the case.

*Chairman Pifer asked if Mr. Crigler, DFC Architects, would like to speak on behalf of the applicant.*

Mr. Crigler was sworn in by Mr. Crawford. Mr. Crigler spoke about the site plan revision (giving each Board member a copy) whereby they removed the concrete ditch and are planning to go to a bio-retention swale. This is an additional thing that has been done as well as the flood-proofing.

Mr. Crawford asked Mr. Crigler to explain, for the record, the advantage of the bio-retention swale as opposed to the concrete ditch that exists there now. Mr. Crigler said that the concrete ditch just carries the water that dumps in to the floodway. The bio-retention swale will absorb water as it goes down so it will absorb more ground water and produce less runoff versus the originally proposed concrete ditch that was to be moved from its existing location. Chairman Pifer said that it is essentially a dry well to which Mr. Crigler responded yes it is, just longer. Mr. Crigler concluded by stating that he would be glad to answer any more questions concerning the revised application.

*Chairman Pifer called for discussion from the Board.*

Ms. Marchant said that she appreciates the changes that the applicant has made to address her concerns from the last meeting. She said that it shows good effort and better protection for the patients and the environment. Chairman Pifer and Mr. Crawford both stated that they agreed and said that the compromise is good.

*Chairman Pifer called for a motion.*

*Mr. Crawford moved to grant a variance to DFC Architects, PC, on behalf of the property owner, Long Term Care Properties, LLC, for variances pertaining to an expanded use and structure in the 100 year floodplain pursuant to Section 14.1-15-6A of the Winchester Zoning Ordinance, for the property located at 380 Millwood Avenue (Map Number 233-01- -3 - ><01), zoned Medium Density Residential (MR) District with Floodplain (FP) District overlay, with the following conditions:*

- a. *The issuance of this variance is approved only for the expansion as proposed within the application materials, including those materials that were presented to the Board today, November 12, 2014.*
- b. *The issuance of a variance to construct a structure below the one hundred (100)-year flood elevation (a) increases the risks to life and property and (b) will result in increased premium rates for flood insurance.*

*This variance is approved because:*

- a. *The strict application of this Ordinance would produce a clearly demonstrable hardship.*
- b. *That such hardship is not shared generally by other properties in the same zoning district and the same vicinity.*
- c. *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 variance.*

*Ms. Marchant seconded the motion. Roll call vote was taken and the motion passed 4-0.*

**OTHER DISCUSSION:**

Mr. Grisdale asked the Board if they would be receptive to having a working retreat for all members to review the Zoning Ordinance, Roberts Rules of Order, and other topics as the Board may wish to address. All members were amiable and Mr. Grisdale stated that Cathy will get some information together for a date and time and then advise the Board.

**ADJOURN:**

With no further business before the Board, the meeting adjourned at 4:32 p.m.