

**BOARD OF ZONING APPEALS
MINUTES**

The Winchester Board of Zoning Appeals held its regular monthly meeting on, February 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 and W Roberson (5)
ABSENT: None (0)
STAFF: V Diem , A Walsh and J O'Connor (City Manager) (3)
VISITORS: Scott Rosenfeld, Moshen Sadeghzadeh, Mary Lowery, Frank D'Alessto, and Gary Oates

MINUTES

*Mr. Koneczny moved, seconded by Mr. Hester, to approve the minutes of December 9, 2009 as presented.
Motion passed unanimously 5-0.*

COORESPONDENCE

09-430 Request of Thomas Scully, Jr., on behalf of the subject property owner, Gillespie Ltd., for a variance pertaining to repairs in excess of 50% of the market value of a structure in a flood plain, pursuant to Section 14.1-2 of the Winchester Zoning Ordinance at 1313 Whittier Avenue (*Section 151, Double Circle 10, Block 13, Lot 01*), which is zoned Low Density Residential (LR) District. --**Withdrawn**

Mr. Diem announced the names of the alternates forwarded to the circuit court for appointment, which are Brandon Pifer and Mark Lynch.

PUBLIC HEARINGS

09-443 Request of Frank D'Alessto, on behalf of the subject property owner, Berryville Square, LLC, for a variance pertaining to accessory structures located in a side yard, pursuant to Section 18-10-1 of the Winchester Zoning Ordinance at 714 Berryville Avenue (*Section 175, Double Circle 1, Block 1A, Lot 03*), which is zoned Highway Commercial (B-2) District.

Mr. Diem presented the request to seek relief of the zoning ordinance regarding the placement of an accessory structure (walk-in cooler) in a required side yard, subsequent to an erroneous interpretation by the Zoning & Inspections Administrator.

During the recent construction phase of the single story commercial building at 714 Berryville Avenue, staff received a request to consider the siting requirements for a walk-in cooler located to the rear of a new restaurant (dba, City Bagel). Due to the unusual configuration of the subject property, the Zoning & Inspections Administrator considered the rear of the new building to be the rear yard. Instead, it was later determined that the area between the new building and the neighboring properties on Dunlap Street was, in fact, the side yard.

A very narrow portion of property serves as an access drive to the commercial center and fronts onto Berryville Avenue. By definition within the Zoning Ordinance, the narrow frontage on Berryville Avenue constitutes a front yard, albeit nonconforming for the current B-2 dimensional standards. Therefore, the walk-in cooler was incorrectly permitted to be located in the side yard.

Section 18-10-1 of the Winchester Zoning Ordinance states that in all districts, accessory buildings or structures shall not be located in a front or side yard, unless specifically provided for elsewhere by the provisions of this Ordinance. Additionally, the required side yard for a main structure that abuts a residential district is 25', pursuant to Section 8-6-1(d) of the Ordinance.

Historically speaking, the area of property that has recently been improved with the commercial building and walk-in cooler unit was used for off-street parking. The off-street parking in that specific area of the property was nonconforming, as it did not provide the required landscape buffer between the residentially-zoned or used properties and the improved parking area. An area of at least 15' is currently required as a buffer between off-street parking areas and adjacent residential properties. The previous condition provided no buffer. Arguably, the existence of a walk-in cooler, surrounded by landscaping would create less of an adverse impact than an immediately adjacent parking area.

The requested variance is due to an administrative oversight in this particular case and in no way at the fault of the applicant. Additionally, it is worth noting that the required proportional improvements of the property for landscaping and better-defined off-street parking areas have otherwise prevented the applicant from siting the cooler at any other location.

Mr. Phillips asked if there have been any calls requesting the removal of the cooler.

Mr. Diem explained that there have been calls inquiring as to what the variance was for but none in opposition.

Mr. Koneczny stated that the fence is approximately four (4)ft when the freezer is approximately ten (10) ft tall. He felt the freezer would be better suited on the north end of the property.

Chairman Hurt opened the public hearing.

Mr. D' Alessto explained that the cooler is actually eight (8) feet tall and the privacy fence is six (6) feet tall. From the street it simply looks like an extension of the building.

Chairman Hurt asked if Mr. D' Alessto called the city officials before placing the freezer.

Mr. D' Alessto explained that he had and was told it would not be a problem. All the inspections went fine, it wasn't until the CO was to be issued that there was an issue.

Mr. Koneczny asked how the freezer is accessed.

Mr. D' Alessto stated that there is a rear door on the outside.

Chairman Hurt closed the public hearing.

Mr. Koneczny stated that he had troubled with this. He stated that it was the board's job to protect the citizens; this freezer is not in conformance with the code. He felt that if approved, it must be with the provision that some mature trees planted in between the fence and freezer.

Mr. Hester asked Mr. Diem to clarify if the City stated that it would be ok to proceed with the freezer.

Mr. Diem stated that the initial approval was given by the Zoning Administrator, the rest was a domino effect.

Mr. Koneczny stated that the mistake is understandable but now it has to be brought into compliance.

Mr. Roberson stated that it is not up to the applicant to be financial responsible for fixing the City's mistake.

Mr. Koneczny made a motion requiring the applicant to plant a row of mature trees between the freezer and the exiting privacy fence.

Mr. Roberson asked who would be responsible for shouldering the financial burden to plant the trees.

Mr. Koneczny stated that it's the applicant's responsibility. The board has no authority to ask the city to cover the cost.

Mr. Roberson stated that the applicant should not have to pay for the City's mistake. He asked Mr. Diem what could be done.

Mr. Diem stated that the Planning Commission uses landscaping to mitigate situations like these. He felt the question should be, if the existing fence and plantings provide adequate screening.

Mr. Phillips moved, seconded by Mr. Hester, to approve the variance request based on the following:

- a. *That there are special circumstances applicable to the property which, if strictly enforced, will deprive such property of privileges enjoyed by other property of same classification in the same zoning district(s); and which were not self-imposed; and that this variance will not be a grant of special privilege to applicant; and that conditions have been imposed to make these findings operative.*
- b. *That it is also found:*
 - i. *That because of physical circumstances – such as, size, shape, topography, or other conditions (i.e., nonconforming lot dimensions), reasonable use of the property is restricted without this variance.*
 - ii. *It will have no adverse affect.*
 - iii. *Light or air will not be impaired to adjacent property.*
 - iv. *Congestion will not be substantially altered.*
 - v. *Neighborhood property values will not be substantially impaired.*
 - vi. *The amount of the variance is the minimum needed to afford relief.*

Mr. Roberson amended the motion to include that the existing fence and plantings would meet the criteria of what would generally be included as landscape requirements.

<u>MEMBER</u>	<u>VOTE</u>
Mr. Hester	Yes
Mr. Koneczny	Nay
Mr. Phillips	Yes
Mr. Hurt	Abstain
Mr. Roberson	Yes

09-447 Request of Scott Rosenfeld for a variance pertaining to driveway spacing pursuant to Section 18-6-3.6 of the Winchester Zoning Ordinance at 804 Amherst Street (*Section 171, Double Circle 1, Lot 18*), zoned Residential Office (RO-1) district with Historic Winchester (HW) overlay.

Mr. Diem presented the request for a variance of driveway spacing to accommodate a change of use from a single-family dwelling residential property to a commercial office property.

After an extensive listing period in the real estate market, the applicant, who intends to create a commercial office facility at the subject property, recently purchased the subject property. The RO-1 zoning district permits the proposed use and occupancy; however, existing limitations on the site require modifications for access ingress and egress, off-street parking, and other factors. The proposed modifications are outlined on a site plan prepared by Gary R. Oates, LS, dated December 18, 2009, and identified by the Department of Planning as SP-09-448.

In order to address the need for off-street parking and site access, the referenced site plan depicts an ingress drive located adjacent to Amherst Street and utilizing an existing curb cut on the southwest corner of the property. The site plan also depicts an egress drive located on the northwest corner of the property, establishing a one-way traffic aisle from Amherst Street to Whittier Avenue.

In accordance with Section 18-6-3.6 of the Zoning Ordinance, driveway spacing standards are predicated by the category of public street that is being accessed by the driveway. For example, Whittier Avenue, which is a Category I street, requires only 60' of spacing between driveways. In comparison, Amherst Street, which may have been originally intended and constructed as a Category II street, has since generated enough vehicular use to be considered a Category III street. Category III streets with a posted speed limit of 35mph or more require a minimum driveway spacing of 175 feet.

The existing curb cut located on the southwest corner of the subject property, adjacent to Amherst Street, is approximately 14.5' east of the curb cut and access driveway for the neighboring property to the west. Therefore, the amount of variance required to accommodate the requested change of use is at least 160.5'. The proposed egress drive adjacent to Whittier Avenue is also within 60' of the neighboring property access drive, which similarly requires a variance to further entertain and approve the proposal.

Mr. Koneczny recused himself.

Chairman Hurt opened the public hearing.

Hearing none, Chairman Hurt closed the public hearing.

Mr. Roberson moved, seconded by Mr. Phillips, to approve the request based on the following:

- a. *That there are special circumstances applicable to the property which, if strictly enforced, will deprive such property of privileges enjoyed by other property of same classification in the same zoning district(s); and which were not self-imposed; and that this variance will not be a grant of special privilege to applicant; and that conditions have been imposed to make these findings operative.*
- b. *That it is also found:*
 - i. *That because of physical circumstances – such as, size, shape, topography, or other conditions (i.e., existing curb cut), no reasonable use can be made of the property without this variance.*
 - ii. *It will have no adverse affect.*
 - iii. *Light or air will not be impaired to adjacent property.*
 - iv. *Congestion will not be substantially altered.*
 - v. *Neighborhood property values will not be substantially impaired.*
 - vi. *The amount of the variance is the minimum needed to afford relief.*
- c. *That the following conditions have been imposed:*
 - i. *Site plan, SP-09-448, shall be approved by the Department of Planning and Planning Commission, prior to implementation;*
 - ii. *Individually designated access driveways for ingress and egress at 804 Amherst Street, shall remain one-way in or one-way out only, as designed and depicted on SP-09-448, so long as the subject property remains separately platted from any neighboring properties; and,*
 - iii. *In the event of any future lot consolidation, access driveways shall be consolidated to the extent possible to minimize the impact on surrounding properties and public streets.*

<u>MEMBER</u>	<u>VOTE</u>
Mr. Hester	Yes
Mr. Koneczny	Abstained
Mr. Phillips	Yes
Mr. Hurt	Abstained
Mr. Roberson	Yes

BZA-09-457 Request of Mohsen Sadeghzadeh for a variance pertaining to required side setback for a single family dwelling, pursuant to § 5-6-1.1 of the Winchester Zoning Ordinance, for a property located at 2242 Roosevelt Blvd (*Section 271, Double Circle 4, Lot 33*), which is zoned High Density Residential (HR) District.

Mr. Diem presented the request for relief of the side yard setback requirements for a single family dwelling, after enclosing a pre-existing and otherwise conforming, unenclosed carport.

This variance request is the result of construction having been performed without a building permit to enclose an existing carport. Upon discovery of the condition, the Codes Compliance Inspector notified the property owner that the matter needed to be resolved by filing an application for a permit. The owner submitted a permit application, which was denied, based on an encroachment into the required side yard setback.

Within the applicant's materials submitted with the variance application, he indicated that a survey revealed a setback of 5.5' from the side boundary line, which would constitute a violation of the Zoning Ordinance.

Prior to being enclosed, the carport was permitted and did not violate the setback requirements, pursuant to § 18-9-2.5 of the Zoning Ordinance, which states:

An unenclosed carport, attached to a dwelling, may extend into any required side yard a distance of not more than five (5) feet but not nearer to any side lot line than a distance of five (5) feet.

After the carport was enclosed by the property owner, it became part of the principle structure and the side yard setback requirement of § 5-6-1.1, which requires a minimum of 6' became applicable.

For clarification purposes, the definition of *carport*, as found in the Zoning Ordinance, is as follows:

1-2-17 **CARPORT:** Any space outside a building and contiguous thereto, wholly or partly covered by a roof, and used for the shelter of motor vehicles. An unenclosed carport is a carport with no side enclosure that is more than eighteen (18) inches in height, exclusive of screens (other than the side of the building to which the carport is contiguous).

Prior to processing the variance request, the Zoning & Inspections Administrator suggested a couple of options to the property owner, including returning the carport to its original unenclosed state completely, or by changing the permanent walls to a screened enclosure as specified in the aforementioned definition of carport.

Chairman Hurt opened the public hearing.

Mr. Sadeghzadeh stated that he measured from the edge of the carport to the fence which was eight (8) feet. It wasn't until the survey was done that he learned that the fence does not sit on the property line.

Chairman Hurt asked how long he has owned the property.

Mr. Sadeghzadeh stated that he has owned it about one (1) year. When he purchased it, it was in bad shape. He spent two months fixing it up.

Chairman Hurt asked if he was given a plat when he purchased it.

Mr. Sadeghzadeh stated that it was a special warranty deed, so he did not receive anything.

Mr. Koneczny asked if he stopped work once he was notified that he needed a building permit.

Mr. Sadeghzadeh stated that it was already complete. It only took two days to add the window.

Chairman Hurt closed the public hearing.

Mr. Koneczny felt that it is an improvement to the neighborhood.

Mr. Hester moved, seconded by Mr. Koneczny, to approve the request based on the following:

- a. That there are special circumstances applicable to the property which, if strictly enforced, will deprive such property of privileges enjoyed by other property of same classification in the same zoning district(s); and which were not self-imposed; and that this variance will not be a grant of special privilege to applicant; and that conditions have been imposed to make these findings operative.*
- b. That it is also found:*
 - vii. That because of physical circumstances – such as, size, shape, topography, or other conditions, reasonable use of the property is restricted without this variance.*
 - viii. It will have no adverse affect.*
 - ix. Light or air will not be impaired to adjacent property.*
 - x. Congestion will not be substantially altered.*
 - xi. Neighborhood property values will not be substantially impaired.*
 - xii. The amount of the variance is the minimum needed to afford relief.*

<u>MEMBER</u>	<u>VOTE</u>
Mr. Hester	Yes
Mr. Koneczny	Yes
Mr. Phillips	Yes
Mr. Hurt	Abstained
Mr. Roberson	Yes

NEW BUSINESS

None

OLD BUSINESS

BZA-09-202 Request of DFC Architects, PC, on behalf of the subject property owner, KSR, LLC for a variances pertaining to minimum required lot area, minimum required lot width, minimum required side yard setbacks, and minimum required off-street parking, pursuant to Sections 5.1-3-1, 5.1-4-3, and 5.1-6-1.2 of the Winchester Zoning Ordinance at 314 South Kent Street (Section 193, Double Circle 1, Block T, Lot 3), which is zoned Limited High Density Residential (HR-1) District, with Historic Winchester (HW) District special overlay.

Mr. Diem explained that this case has been withdrawn. Based on a text amendments that was recently adopted, there is no longer a need for a variance. The case has been heard by the Planning Commission and forwarded to City Council for approval.

Meeting adjourned: 5:05PM.