

**BOARD OF ZONING APPEALS  
MINUTES**

The Winchester Board of Zoning Appeals held its regular monthly meeting on, January 14, 2009, at 4:00 p.m. in the Council Chambers, Roush City Hall, 15 North Cameron Street, Winchester, Virginia.

[3:59:41 PM](#)

**PRESENT:** Koneczny, Phillips, Roberson and Hester.  
**ABSENT:** Hurt.  
**STAFF:** Diem and Walsh.  
**VISITORS:** Ron Mislowsky and Richard Cadmus

**MINUTES**

It was moved by Phillips, seconded by Roberson, to approve minutes as presented.

[4:00:13 PM](#)

Motion passed unanimously 4-0.

**ADDITIONAL COMMENTS**

Mr. Koneczny welcomed Mr. Brian Hester to the board.

**CORRESPONDENCE**

None

**PUBLIC HEARINGS**

**BZA-08-35** Request of Exectrams & Courier Service, LLC, on behalf of the subject property owner, for variances pertaining to main building and corner side yard setbacks pursuant to Sections 10-5-1 and 10-8 of the Winchester Zoning Ordinance at 427 North Cameron Street (*Section 173, Double Circle 1, Block K, Lot 1*), which is zoned Commercial Industrial District.

**Mr. Koneczny recused himself.**

Mr. Diem explained that the requests for setback variances are the result of a proposal to change the use and occupancy of an existing nonconforming structure at 427 North Cameron Street. The applicant is proposing to locate a taxi and non-emergency medical transport business to the address, which is permitted by right within the CM-1 District. However, because the current and former uses and occupancies did not include a similar use to what is proposed, the nonconforming conditions become void.

This request is similar to other variance requests that have come before the Board, in that changes of use and occupancy within older, existing structures, can be anticipated and often require dimensional variances to overcome the nonconforming setbacks. To limit the future use and occupancy of the building to storage/warehouse only, as it is currently being used, would severely

limit the viability of the building and property. The dimensional deficiencies were not created by either the property owner or the applicant; and, no further encroachment to the property line is possible.

The change of use and occupancy will also require certain site improvements, as to be identified on a revised site plan to be submitted to the Director of Planning.

[4:01:39 PM](#)

Richard Cadmus on behalf of Yellowcab of Winchester; felt that this is a good location for the business because it will help to service the community. They are currently located in the county but all their customers are downtown. They need to be available to the customers in order to succeed. In 2 years they have grown 600%, maxing out capacity. He didn't foresee any additional growth within the next 10 years. He explained that he thought that the set back was a technicality because there is a church there near this location and they have had no parking issues.

Mr. Phillips opened the public hearing.

Mr Diem read a letter from Glaze Partnership 12/09/08, requesting that the setback request be applied to any and all businesses in the CM-1 district.

Mr. Phillips closed the public hearing.

It was moved by Roberson, seconded by Hester, to approve BZA-08-35 because:

- i. That because of physical circumstances – such as, size, shape, topography, or other conditions, the variance is necessary to afford relief.
- 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.

[4:09:12 PM](#)

Motion passed unanimously 3-0 with Koneczny abstaining.

**BZA-08-36** Request of Patton, Harris, Rust & Associates, on behalf of the subject property owner, for a variance pertaining to main building setback pursuant to Section 8-5-1 of the Winchester Zoning Ordinance at 2016-2028 South Loudoun Street (*Section 252, Double Circle 1, Lots 13 and 14*), which is zoned Highway Commercial (B-2) District.

Mr. Diem explained that the request for setback variances is the result of a proposal to change the use and occupancy of an existing nonconforming structure at 2012-2028 South Loudoun Street. The applicant is proposing to change the use of an existing retail space amounting to 2,000 square feet, to a restaurant use, which is permitted by right within the B-2 District. However, because the current and former uses and occupancies did not include a similar use to what is proposed, the nonconforming conditions become void.

This request is similar to other variance requests that have come before the Board, in that changes of use and occupancy within older, existing structures, can be anticipated and often require dimensional variances to overcome the nonconforming setbacks. To limit the future use and occupancy of the building to retail use only, as it is currently being used, would severely limit the

viability of the building and property. The dimensional deficiencies were not created by either the property owner or the applicant. In fact, the recent street widening project by VDOT in the area of the subject property resulted in an increase in nonconformity.

The change of use and occupancy will also require certain site improvements, as to be identified on a revised site plan to be submitted to the Director of Planning.

[4:11:37 PM](#)

Ron Mislowski, PHR&A, stated that this is an older building. The recent improvements to South Loudoun Street required a right-of-way to be granted, which brought the parking lot closer to the building. He was requesting a variance to allow the building to remain and for it to allow any uses allowed in the B-2 district. Mr. Mislowsky explained that there were 8 spaces, along the front but now they are gone. At this point he doesn't feel that a variance for parking will be needed. He must bring in a site plan to show that the required parking will fit. He stated he would be available for questions.

Mr. Phillips asked if the parking will be in the front.

Mr. Mislowsly stated that it will be on the side and wrap around to the back.

Mr. Phillips asked which use is being proposed for change.

Mr. Koneczny asked if he was asking for universal use without any further approvals in that building.

Mr. Mislowsky explained that his thinking was that the uses are approved already by Ordinance. The building wont change and any additional parking that would be required would be subject to a site plan.

Mr. Koneczny added that there are no other uses that would require heavier parking than a restaurant, which is already there.

**Mr. Koneczny opened the public hearing.**

Richie Wilkins, owner of the building stated that the tenant has been a carry out business for about 10 years. They would now like to add some tables that will allow some of the customers to eat there. He stated that he would also be available for questions.

**Mr. Koneczny closed the public hearing.**

It was moved by Phillips, seconded by Roberson, to approve BZA-08-36 because:

- i. That because of physical circumstances – such as, size, shape, topography, or other conditions, the variance is necessary to afford relief.
- 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.

[4:18:33 PM](#)

Motion passed unanimously 4-0.

**NEW BUSINESS**

None

**OLD BUSINESS**

None

**Meeting adjourned: 4:18pm**

DRAFT