

**BOARD OF ZONING APPEALS
MINUTES**

The Winchester Board of Zoning Appeals held its regular monthly meeting on, June 10, 2009, 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: Vince Diem and Angie Walsh (2)
VISITORS: Mike Artz and Christina Thompson

MINUTES

Mr. Phillips moved, seconded by Mr. Hester, to approve the minutes as presented.

Motion passed unanimously 5-0.

PUBLIC HEARINGS

09-50 Request of Christina Thompson, on behalf of the subject property for a variance of lot area, lot width, side and rear setback and required off street parking, pursuant to Sections 5.1-3-2, 5.1-4-5, 5.1-5-2, 5.1-6-1.5, and 18-6-5.1 of the Winchester Zoning Ordinance at 715 S Kent Street (*MAP 213-01-H-14*) zoned Limited High Density Residential (HR-1) District.

Mr. Diem presented the request to obtain variances concerning lot area, lot width, side and rear setback and required off-street parking, so as to accommodate a change of use of a previously nonconforming use and occupancy.

Originally constructed in 1947 by J.G. Crisman, this commercial structure has been the subject of several actions including; a nonconforming use permit (1977), three Board of Zoning Appeals cases (1978, 1984, and 2009), and six Certificates of Occupancy for Business (1986, 1987, 1990, 1990, 1992, and 1993). There is little or nothing with regards to the subject property that would be considered as conforming to the current Zoning Ordinance provisions for HR-1 use and occupancy. The building and property have been vacant for more than two years, resulting in the loss of any lawfully protected nonconforming status associated with the property.

According to a previous survey performed by Lee Ebert, the property measures 50.0' wide and 70.15' deep; thus, totaling 3,507.5 square feet. The minimum required lot area in HR-1 zoning district for other permitted and conditional uses is 7,000 square feet. The minimum lot width for other permitted and conditional uses is 70'. The required setback for other uses in the HR-1 district is 30'. The required side and rear setback is 25'. The existing building, which measures 49' wide and 69'4" deep was essentially built with little or no setbacks provided. Therefore, the need for the aforementioned dimensional variances exists.

Since its introduction as a Laundromat/Cleaners business in 1957, the commercial structure and use have served as a neighborhood convenience establishment for the surrounding community. Within the 1978 Board of Zoning Appeals case (BZA-78-34), the applicant proposed a plan that would provide additional off-street parking to serve the nonconforming neighborhood convenience establishment. The proposal included demolition of an existing residential dwelling

at an adjacent property to 715 South Kent Street; therefore, creating an expansion of the nonconforming use. Concerns were raised by the Preservation of Historic Winchester, Inc. that the dwelling intended to be demolished for the purposes of creating the off-street parking area was to be identified on the National Register for Historic Places. The Board of Zoning Appeals denied the variance request to expand the nonconforming use and occupancy.

In 1984, a separate application was submitted to the Board of Zoning Appeals to alter the existing nonconforming use and occupancy of a neighborhood convenience establishment within the limits of the existing structure. The applicant proposed to retain 14 washing machines and 6 dryer machines, along with a new use dedicated to small grocery/deli use for residents within the surrounding neighborhood. As stated within the applicant's letter of intent at that time, "*...My reason for requesting this combined operation is so that the Laundromat would have an attendant on duty. The laundry operation alone does not financially warrant full time help, without such supervision invites vandalism. I believe that this combined operation would be an asset to the neighborhood and an improvement over the past...*" By a unanimous vote, the Board approved the request, citing that it will improve the property and upgrade the general area, and will pose no hardship to the adjacent property.

Staff has met with the applicant to discuss their intended use and occupancy of the existing structure and property. Initially, the applicant proposed to establish a single use of mini, personal storage spaces for persons in the immediate vicinity who had insufficient storage space within their rental dwelling units. Neighborhood Convenience Establishment is identified as a use allowed by Conditional Use Permit in the HR-1 District, pursuant to Section 5.1-2-8. The broad definition of a *neighborhood convenience establishment* would appear to accept this type of proposed use.

Since the initial discussion with the applicant, other recent events have occurred, which indicate that the former childhood residence of Patsy Cline (600 block of South Kent Street) will be approved for use as a museum honoring the country music icon. The applicant has met with representatives of Celebrating Patsy Cline, who have suggested that a small café or soda fountain use be considered within the subject property. The use would fall within the neighborhood convenience establishment category and would most likely resemble the use that was approved by the Board of Zoning Appeals in the referenced 1984 case.

The applicant has also expressed an interest in creating a small, single-family dwelling unit, by expanding the structure, vertically. An existing overhead garage door, facing South Kent Street, could be utilized for off-street parking of one vehicle for the proposed dwelling unit. The added benefit of a new dwelling unit would include security, as was identified as a need during the 1984 request. Additionally, the streetscape could be improved by decreasing the impact of a one-story commercial building, through the allowance of a second-story addition for the dwelling unit.

Mr. Diem added that the property has been subject to property maintenance concerns. Vacant buildings can pose a threat to the neighborhood. He felt this would be an opportunity to turn this property around.

Chairman Hurt opened the public hearing.

Mrs. Thompson had no additional comments. She stated that she would be available for questions.

Chairman Hurt closed the public hearing.

Mr. Roberson moved, seconded by Mr. Koneczny, to approve **09-50** based on the following reasons:

1. 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.
2. That it is also found:
 - i. That because of physical circumstances – such as, size, shape, topography, or other conditions, a limitation on the reasonable use of the property exists without this variance.
 - ii. It will have no adverse affect; and, instead will preserve the character of the neighborhood.
 - 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.
3. That the following conditions are imposed in conjunction with the granting of these variances:
 - i. Any future use and occupancy of the existing structure may only include uses that are either permitted by right or through a conditional use permit process.
 - ii. The proposed single-family dwelling unit may not contain more than two bedrooms.
 - iii. The number of required parking spaces for the sum of the uses included within the subject property cannot exceed fourteen spaces.

The motion was adopted by the affirmative roll-call vote of a majority of all members of the Board of Zoning Appeals, the votes being recorded as shown below:

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

09-74 Request of Artz & Associates, PLC, on behalf of the subject property owner, for a variance of the minimum required off-street parking area buffer, pursuant to Section 18-6-3.2c of the Zoning Ordinance, at 2241-2245 Papermill Road, (*Section 271, Double Circle 4, Lot 7*), which is zoned Highway Commercial (B-2) District.

Mr. Diem presented the request for relief of the 15' off-street parking area buffer required for commercially-zoned properties adjacent to residentially-zoned properties. The proposed buffer area would amount to 8.77'; therefore, representing a reduction of 6.23' from what is otherwise required.

Within the materials submitted, the applicant has submitted a comprehensive overview of the circumstances leading up to this request for a variance. Through the actions of the Commonwealth of Virginia, and through its agent, VDOT, the ability to use the subject property and availability of off-street parking accommodations have been drastically altered.

The adjacent property immediately to the south, 2253 Papermill Road, is zoned High Density Residential (HR) District; and, as stated within the application materials, is owned by the Commonwealth of Virginia. The property width of 2253 Papermill Road is 65', where only 50' is required for HR-zoned properties. If that property was to be re-zoned to B-2 without being assembled into 2241-2245 Papermill Road, it would become a nonconforming lot. Lot widths in B-2 are required to be a minimum of 100'. Therefore, it is worth noting that the residentially-zoned parcel at 2253 Papermill Road has a greater lot width than what is otherwise required; and, it could not be used as a separately platted commercial parcel in B-2 zoning. This is important in that it allows the existence or siting of a residential structure to be located further from the northern property line, thereby adding to the buffer between the commercial and residential uses.

As found within § 15.2-2309, Code of Virginia, et seq., and Section 20-2-3.1 of the Winchester Zoning Ordinance, this request represents unusual circumstances through no fault of the property owner or applicant. In fact, government action has created a situation that has caused the property owner to consider a variety of options for off-street parking accommodations.

Chairman Hurt opened the public hearing.

Mr. Artz pointed out that this situation is not necessarily self imposed. The attempt to redevelop the property includes covering an existing concrete ditch in order to add more parking. Without the improvements there may not be enough parking spaces. Mr. Choi in talks with VDOT to acquire additional property but nothing has been decided at this point.

Mr. Koneczny asked what the use will be that existing parking will not be enough.

Mr. Artz explained that its being used as a martial arts studio. The plan is to expand the office portion and maybe build a carwash on the adjoining property. The expansion would require additional parking as they are already in a deficit.

Mr. Koneczny asked Mr. Artz to clarify the situation because it sounded like the expansion is going to make a bad situation worse.

Mr. Artz explained that they had enough parking but then VDOT took another 40 to 50 feet to widen Papermill Rd leaving no parking in the front of the building. Currently they are using parking belonging to an existing auto shop in the back of the building. He stated that without the variance it will be next to impossible to meet the parking requirements.

Chairman Hurt closed the public hearing.

Mr. Hester moved, seconded by Mr. Koneczny, to approve **09-74** based on the following reasons:

1. That because of physical circumstances – such as, size, shape, topography, or other conditions including previous government action, the variance is necessary to afford relief.
2. It will have no adverse affect.
3. Light or air will not be impaired to adjacent property.
4. Congestion will not be substantially altered.
5. Neighborhood property values will not be substantially impaired.
6. The amount of the variance is the minimum needed to afford relief.
7. Article 19 of the Winchester Zoning Ordinance be adhered to.

The motion was adopted by the affirmative roll-call vote of a majority of all members of the Board of Zoning Appeals, the votes being recorded as shown below:

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

09-75 Request of Artz & Associates, PLC on behalf of the subject property owner, for a variance pertaining to expansion of a non-residential structure on a nonconforming lot of record, pursuant to Section 17-6-3 of the Zoning Ordinance, at 689 North Loudoun Street, (*Section 133, Double Circle 2, Lot 1*), which is zoned Commercial Industrial (CM-1) District.

Mr. Diem presented the request for relief of the required setbacks for a proposed expansion of an existing nonconforming building, located on a nonconforming lot of record.

Given the location of North Braddock Street (to the north and south of the property), the lot is unique in that it has two street frontages and neither street is improved. The other circumstance that arises is that the existing building is located within the required front yard.

While the applicant intends to expand the size of the building with a new addition, the required main building setbacks of 35' on either side of the lot would prevent a usable building from being erected. Additionally, the ability to provide vehicular access, parking, and green space between the building and property lines would be adversely affected.

Several improvements have been made regarding the appearance and maintenance of the subject property within recent years. The owner intends to maintain a higher standard of property maintenance, due to his desire of providing a quality import motor vehicle repair facility. It is

anticipated that the expansion of use will predicate other site improvements to be identified later on a site plan submission to the Director of Planning.

Chairman hurt opened the public hearing.

Mr. Artz explained that this is a non-conforming lot. Even if he was to try to redevelop the property, he would not be able to put a building there and meet the requirements. He felt that adding on to the existing one was the appropriate action to take.

Chairman Hurt asked what the addition would be

Mr. Artz stated that the existing garage wanted to add two more bays.

Mr. Diem added that if this was a residential property a variance would not be needed, even if it was not conforming to the setback requirements.

Chairman Hurt closed the public hearing.

Mr. Hester moved, seconded by Mr. Phillips, to approve **09-75** based on the following reasons:

1. That because of physical circumstances – such as, size, shape, topography, or other conditions, the variance is necessary to afford relief.
2. It will have no adverse affect.
3. Light or air will not be impaired to adjacent property.
4. Congestion will not be substantially altered.
5. Neighborhood property values will not be substantially impaired.
6. The amount of the variance is the minimum needed to afford relief.

The motion was adopted by the affirmative roll-call vote of a majority of all members of the Board of Zoning Appeals, the votes being recorded as shown below:

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

OLD BUSINESS

None

ADDITIONAL COMMENTS

Chairman Hurt reminded the member to review the copy of the draft by-laws they received and make any changes as they will be discussed at next month’s meeting.

OLD BUSINESS

None

Meeting adjourned: 4:42 PM.