

**BOARD OF ZONING APPEALS
MINUTES**

The Winchester Board of Zoning Appeals held a special meeting on, May 12, 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, B Pifer and W Roberson (6)
ABSENT: None (0)
STAFF: V Diem and A Walsh (2)
VISITORS: Jerry Fletcher

MINUTES

Mr. Hester moved, seconded by Mr. Phillips, to approve the April 14, 2010 minutes as presented.

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

COORESPONDENCE

None

PUBLIC HEARINGS

BZA-10-236 Request of Horizon Holdings, LLC, for a variance pertaining to minimum required side yard pursuant to Section 10-6-1 of the Winchester Zoning Ordinance at 2609 Papermill Rd. (Section 291, Double Circle 1, Lot 9), zoned Commercial Industrial (CM-1) District.

Mr. Koneczny recused himself.

Mr. Diem presented the request for relief of the required side yard setback for a vacant, nonconforming structure, so that future use and occupancy can occur.

The property owner is attempting to resolve an outstanding nonconformity as it relates to a deficient side yard setback at the subject property. The existing building, and its close proximity to the side property line pre-date the current provisions of the CM-1 district.

The most recent use of the property has been related to temporary events and seasonal display permits. Small, temporary produce vendors and other similar businesses have staged on the property; however, there are limits to such activity and the overall viability of the parcel is limited without first recognizing and resolving the nonconforming setback issue.

As stated in the applicant's letter, dated April 19, 2010; and, as reflected in the submitted boundary survey document as prepared by Montgomery Engineering Group on May 10, 2006, the existing building is only 2.19' from the side property line. The required side yard in the CM-1 district is 10'; therefore, amounting to a variance of 79%.

Chairman Hurt opened the public hearing.

Jerry Fletcher, owner of the property, reiterated what Mr. Diem said. The property is still in good condition, he would like to be able to lease the space and make it functional.

Mr. Hester asked how old the property was and if the fence would stay.

Mr. Fletcher stated that he was not sure of the age but it is structurally sound. He explained that the status of the fence would depend on renter. If they ask that it be removed, he would take it down.

Chairman Hurt closed the public hearing.

Mr. Phillips moved, seconded by Mr. Hester to approve **BZA 10-236** because:

1. Whereas, the property owner has demonstrated that his property was acquired in good faith and where by reason of the exceptional narrowness, shallowness, size, or other extraordinary situation or condition of such piece of property, the strict application of the terms of the ordinance would effectively prohibit or unreasonably restrict the use of the property; and,
2. Whereas, the granting of such variance will alleviate a clearly demonstrable hardship, as distinguished from a special privilege or convenience sought by the applicant; and,
3. Whereas, such hardship is not shared generally by other properties in the same zoning district and the same vicinity; and,
4. Whereas, 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.

One condition was made on the approval of the variance:

No windows shall be added to the south elevation of the existing building.

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

NEW BUSINESS

None

OLD BUSINESS

None

Meeting adjourned: 4:14PM