

**BOARD OF ZONING APPEALS
MINUTES**

The Winchester Board of Zoning Appeals held its regular monthly meeting on, May 14, 2008, at 4:00 p.m. in the Council Chambers, Rouss City Hall, 15 North Cameron Street, Winchester, Virginia.

PRESENT: Koneczny, Wiley, Hurt, Roberson and Phillips

ABSENT: None

VISITORS: Eds Coleman and Bill Randolph

MINUTES

On motion by Mr. Koneczny, seconded by Mr. Phillips, the minutes of the April 9, 2008 meeting were unanimously approved as amended.

CORRESPONDENCE

None

PUBLIC HEARINGS

BZA-08-15 Request of HWA Enterprises, L.P., L.L.P., on behalf of the subject property for an appeal of the Zoning Administrator's determination pertaining to signs, as per Section 18-8-2 of the Winchester Zoning Ordinance, and regarding a change of prior decision/determination pursuant to VAC §15.2-2311(c) at 2412-2446 Valley Avenue (*Section 270, Double Circle 1, Lot 6*), which is zoned Highway Commercial (B-2) District, with Corridor Enhancement (CE) District overlay.

Mr. Diem presented the appeal to the Zoning Administrator's determination regarding changes made to a nonconforming sign.

On March 12, 2008, Deputy Zoning Administrator, Aaron M. Grisdale, issued a Notice of Violation to HWA Enterprises regarding changes to an existing freestanding sign that had not received the prerequisite Certificate of Appropriateness for Corridor Enhancement standards. The corresponding case file, #08-0242, was identified on the notice, along with a 30-day right to appeal the determination, pursuant to the Code of Virginia, §15.2-2311, et seq.

Within Mr. Grisdale's Notice of Violation, the following concerns were noted:

- On May 30, 2007, the freestanding sign on the subject property was severely damaged following a windstorm and was cited to be removed due to its dilapidated nature. Subsequently, the freestanding sign was removed, and the zoning investigation was closed. (Case No. #07-000579)
- A new freestanding sign was erected without a sign permit, pursuant to Section 18-8-2.1 of the Ordinance.

- Any additions or changes to signage within the Valley Avenue Corridor Enhancement (CE) District must receive a Certificate of Appropriateness through the Department of Planning.
- Within the CE District, internally illuminated signage is discouraged; and, if internally illuminated, the sign must have light lettering on a dark background, pursuant to Section 14.2-7.6 of the Ordinance.

Mr. Grisdale presented several options to the property owner(s), so as to resolve the aforementioned concerns, as were outlined in the Notice of Violation.

City Planner, Will Moore, issued written fax correspondence to “Elmer” at fax number (540)891-8010 on June 1, 2007. Within the correspondence, Mr. Moore provided the following statements:

Per our conversation today, you are planning to repair an existing sign in the shopping center at 2412-2442 Valley Ave., which is located in the Corridor Enhancement (CE) District. The sign is to be repaired in like-for-like fashion. That is, there is to be no change in the form, material or color of the sign which is to be repaired. As such, no review is necessary.

Should plans change and it become desired or necessary to make any repairs other than in a like-for-like fashion, a Certificate of Appropriateness will need to be obtained from the Planning Director. I would encourage you to take some photos prior to the repair to document the current condition in case question[s] should later be raised as to the like-for-like status of the repair.

Mr. Grisdale identified the damaged sign in the 2007 Case History Report as the ‘Naken [sic] Oyster’ freestanding sign. There was no indication within Mr. Grisdale’s notes that the sign had split copy on its face. Regardless of the message or copy content, the previous ‘Naked Oyster’ sign would have presumably contained the colors of blue, orange, red, and green, as can be found on the existing building mounted sign and the lower portion of the replaced sign face on the freestanding sign. The color of black was not previously included on the sign face, prior to the May 2007 windstorm. Corridor Enhancement District guidelines for freestanding signs limit the number of colors to no more than three (3) colors, discourage internal illumination, and stipulate that light letters over darker backgrounds should be used if the sign is to be internally illuminated. As the previous freestanding sign was erected prior to the Rezoning action of June 13, 2006 (RZ-06-01) that incorporated the Corridor Enhancement District overlay along the Valley Avenue corridor, the excessive number of colors (4), the internal illumination, and the dark letters over a white background were all considered to be nonconforming.

Within Mr. Moore’s faxed correspondence of June 2007, as presented, a specific recommendation to photograph the existing sign prior to making any repairs was included. No photographs have been provided by the appellant or their legal representative to further establish the extent of lawful nonconformity regarding the previous sign.

Chairman Hurt opened up the public hearing.

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Eds Coleman, attorney for the applicant, explained that sign was changed from Anthony's Pizza in Nov 2005. That sign was damaged by a windstorm (bent over) in April 2007. He referred to the initial letter sent by the City demanding removal of the sign on May 30, 2007. Two days later a call was placed to the zoning office requesting specifics as to what was required at which point Mr. Moore sent a fax acknowledging that the sign can be repaired in a like-for-like fashion. Based on the contents of the fax a company was contracted to replace the sign which cost \$6000. That sign has been up since June 2007. Mr. Coleman presented a picture of the sign prior to the damage and compared it to the present sign. He pointed out that there are seven different colors on the old sign and five of those colors are present in the new one. He explained that the fax stated no change in color, dimension or material, so he didn't feel that the reduction of the two colors represented a "change" in color. He stated that even though the sign is now a split face, it is not prohibited under the Ordinance. He felt that the applicant complied with what was being asked. The sign was up by late June early July 2007 however the Notice of Violation was received on March 12, 2008. Mr. Coleman cited Virginia Code Section 15.2.2311 Sub Section C stating that "In no event shall a written order decision or determination made by an administrative zoning officer be subject to change, modification or reversal by any other zoning administrator or administrative officer after 60 days has elapsed from the date of the written order of decision." Mr. Coleman stated that the fax sent by Mr. Moore is clearly a determination made by a zoning officer and the March 12, 2008 notice is more than 60 days past the fax determination. He stated that the applicant relied on the fax in good faith and repaired the sign in accordance with the fax order.

Chairman Hurt asked if the sign was internally or externally lit.

Mr. Randolph stated that it is internal.

Mr. Koneczny stated that in his opinion the fax is only instructional advice so he does not see where the 60 days has lapsed.

Mr. Coleman disagreed stating that March 2008 is way beyond 60 days from June 1, 2007.

Chairman Hurt stated that it isn't like for like if a business name is added that wasn't there before.

Mr. Coleman cited the Ordinance stating that a change in wording doesn't require a permit.

Mr. Randolph stated that he is a contributing member to the community and wouldn't do anything unlawful. He was simply going by what was stated in the fax he was provided.

Mr. Koneczny asked if anyone was present from the sign company.

Mr. Randolph stated that they are out of town and weren't able to get here in time for the meeting.

Chairman Hurt asked for a motion.

Mr. Koneczny motioned to deny the appeal based on the fact that the violation was self-inflicted.

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Mr. Phillips stated that he disagreed with Mr. Koneczny and would like to propose another motion. ***He motioned to reverse the Zoning Administrator's decision because it is improper. This motion was seconded by Mr. Wiley.***

Mr. Koneczny stated that adding a business name and changing the colors is stretching the like-for-like rule.

Mr. Roberson asked if there was a change in form with the addition of the business on the sign.

Mr. Diem explained that they are both rectangular but the new picture of the original sign clearly shows a roof on the sign which is different from what's there now. He pointed out that on the fax it clearly shows Will Moore as Planner not Zoning Official. Mr. Diem added that it's against the law to regulate copy so the wording on the sign is not the reason for the violation.

Mr. Phillips didn't feel that the sign is obtrusive. He reiterated his motion.

Mr. Wiley felt that this is a hardship case, they spent a lot of money and in his opinion the 60 days have lapsed. He stated that the City did not stay on top of this issue.

Motion carried 4-1 (Koneczny opposed).

NEW BUSINESS

BZA-08-16 Request of Therese W. Tillmann, for a Special Use permit to reconstruct a destroyed or damaged nonconforming structure, pursuant to Section 17-5-2 of the Winchester Zoning Ordinance, at 134 Morningside Drive, Winchester, Virginia. *Board approval required prior to Zoning Administrator granting Special Use Permit. This is not a public hearing item.*

Mr. Phillips, seconded by Mr. Koneczny motioned to approve the permit.

Motion carried 5-0.

OLD BUSINESS

None

ADDITIONAL COMMENTS

The Board was reminded of the Retreat on May 24, 2008 at 9:30am in Council Chambers.

Meeting adjourned: 5:55 PM