

**BOARD OF ZONING APPEALS  
MINUTES**

The Board of Zoning Appeals held its regularly scheduled meeting on Wednesday, April 13, 2016, at 4:00p.m. in Council Chambers, Rouss City Hall, 15 North Cameron Street, Winchester, Virginia.

**POINTS OF ORDER:**

**PRESENT:** Chairman Pifer, Vice Chairman Crawford, Mr. Whitacre, Ms. Marchant, Ms. Anderson

**ABSENT:** Mr. Lewis

**STAFF:** Aaron Grisdale, Erick Moore, Carolyn Barrett

**VISITORS:** Ben Montgomery, Carl Hales, Aaron Ranberger

**CONSENT AGENDA:**

Approval of Minutes of March 9, 2016:

Chairman Pifer called for corrections or additions to the minutes. Ms. Marchant made a motion to table the approval of the minutes until the next meeting due to the lateness of receiving them and the level of detail. Mr. Crawford seconded the motion. Chairman Pifer called for a vote. Roll call vote was taken and the motion passed 5-0.

**READING OF CORRESPONDENCE:**

None.

**PUBLIC HEARINGS:**

**BZA-16-106** Request of Carl S. Hales for variances of the Winchester Zoning Ordinance, Sections 10-5-1 and 10-6-2 pertaining to front and rear setbacks at 1328-1470 Commerce Street (*Map Number 233-01--11*) zoned Commercial Industrial (CM-1) District. The applicant is seeking these variances to allow for re-use of several non-conforming structures on the parcel.

Mr. Grisdale reviewed the staff report. The property has been before the Board previously. Until 1998, the property had been used for building supplies. The BZA granted variances in 1998 for front yard setbacks for several buildings facing Commerce Street. The property has changed hands since then. In 2014, City staff had noticed several new and different uses taking place on the property in violation of the previous BZA approvals. The current property owner filed a variance request in 2014 to amend the use restrictions imposed by the 1998 approval. They requested light auto repair and contractor's establishments be authorized in Buildings F and G/H. The Board approved the request with several conditions including submittal of complete site plan within six months to the Planning Department and implementation of all required site improvements within twelve months. Failure to implement the required improvements would cause the variances to expire.

Following the BZA decision in 2014, only a partial amount of the improvements had been completed by November 2015 which caused the site to fall out of compliance with the previous approval. The property owner has applied to re-establish the variances for the front buildings on the property. The 1998 variances are still in effect; however, the 2014 variances are now null and void. The Board will have to re-authorize the uses that are actually occurring. There have also been unauthorized uses of Building K which was grandfathered in as storage use. There are currently auto related uses occurring there and rear yard setbacks would have to be authorized as well. There are also non-compliance issues with the building code but those are not under the Board's purview.

There are several criteria that the Board must use to evaluate the request. The burden of proof is on the applicant to prove by preponderance of evidence that the application meets the standards of a variance. The standards include the property interest in which the variance was requested was acquired in good faith and any hardship was not created by the applicant. The granting of a variance would not be of substantial detriment to adjacent properties. The condition or situation of the property concerned is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to the ordinance. The granting of the variance does not result in a use that is not otherwise permitted on such property or a change in the zoning classification of the property. The relief or remedy sought by the variance application is not available through a special exception process or the process of an administrative modification. If the Board believes that the request does not satisfy each of the above considerations, then a variance cannot be approved by the Board.

Staff does believe a hardship had existed at one time in the past when it transitioned to a new owner. However, the continual changes of use on the property and the request to make those uses allowable have the appearance of being a convenience of the current owner rather than necessary to ensure there is reasonable use of the property. The applicant has met the fourth and fifth criteria but staff has reservations about the applicant meeting the other three. There have not been any letters of support or opposition to this request.

Vice Chairman Crawford asked if there had been a site plan for the property. Mr. Grisdale replied there had been several over the years. The applicant had submitted one in 2014 but it was only partially implemented. Vice Chairman Crawford asked if screening had been one of the items requested but not implemented. Mr. Grisdale said there were certain parking improvements associated with the request but he did not recall if a specific enclosure area had been required. The zoning ordinance requires that inoperable vehicles not be visible from public view. There are vehicles there that are in violation of the ordinance.

#### **Chairman Pifer Opened The Public Hearing**

Carl Hales apologized for not meeting the requirements in a timely manner. He had tenants that started out with one idea then progressed to other things. He has given termination notices to two of them which will get rid of most of the concerns for unauthorized uses of the property. Another tenant has vehicles that are out of public view but he had started parking and scrapping other vehicles. After discussions with him, he has agreed to stop those activities and remove the vehicles. The property is unique and Mr. Hales thought when he bought it in 2009, the use would be completely different. With the downturn in the economy, it has prevented making any improvements. He has asked for the variance to be re-implemented and he will have the necessary work done by June 30, 2016. It is now on the market with no offers yet.

### Chairman Pifer Closed The Public Hearing

Chairman Pifer said having the variance until June 30 is fair. Extending it for another year would not be a possibility. Vice Chairman Crawford said he was not inclined to agree with the applicant. He had been before the Board before and knew what needed to be done. He did not feel there was any intent to get in line with the BZA requirements. He suggested tabling it until July. Ms. Marchant asked if the applicant had come to the Zoning office or did staff contact him. Mr. Grisdale said staff had reached out to the property owner not long after the one year compliance period ended. Mr. Whitacre said it did not appear there had been much improvement on the site. He also agreed with Vice Chairman Crawford about tabling the item.

*Vice Chairman Crawford made a motion to table **BZA-16-106** until the July 13, 2016 meeting. Ms. Anderson seconded the motion. Chairman Pifer asked for a roll call vote.*

*Vice Chairman Crawford – yes*

*Ms. Marchant – yes*

*Mr. Whitacre – yes*

*Ms. Anderson - yes*

*Chairman Pifer – yes*

*Chairman Pifer stated the motion passed 5-0.*

**BZA-16-206** Request of Montgomery Engineering Group, Inc., on behalf of Southside Church of Christ, for a variance pertaining to parking/drive buffer pursuant to Section 18-6-3.2 of the Winchester Zoning Ordinance, for the property located at 3136 Papermill Road (*Map Number 332-01—1 - ><01*) zoned Medium Density Residential District. The applicant is seeking relief of the required parking/drive buffer in order to enhance the entrance to the church and provide safer parking.

Mr. Grisdale reviewed the staff report. An issue with the required off-street parking area/drive area buffer was observed. The buffer did not meet the required distance from the property line. The applicant has corrected several non-conformities and bringing the property closer to compliance. A similar request was granted in 2013. Since the church has not started the project to date, the Board will need to re-approve this variance request.

Vice Chairman Crawford said he remembered the previous application. The church did not have much room to do anything with.

### Chairman Pifer Opened the Public Hearing

Ben Montgomery said he had nothing to add to the staff report but he was available for questions. Ms. Marchant asked what had stopped the church from completing the project within the two years. Mr. Montgomery said it was money. Ms. Marchant asked if there was money available now and he said yes.

### Chairman Pifer Closed the Public Hearing

Vice Chairman Crawford said he did not have a problem approving it the first time and he did not have any problem with approving it again.

*Mr. Whitacre made a motion to approve **BZA-16-206** a variance of the Winchester Zoning Ordinance pertaining to parking/drive buffer pursuant to Section 18-6-3.2 of the Winchester Zoning Ordinance, for*

*the property located at 3136 Papermill Road (Map Number 332-01- -1) zoned Medium Density Residential District, with the following conditions:*

- a. *Failure to complete the required site improvements within two (2) years of the date of this decision will cause the variance for this property to expire.*

*The variance is approved because the strict application of the terms of the ordinance would unreasonably restrict the utilization of the property:*

- 1) *The property interest for which the variance is being requested was acquired in good faith and any hardship was not created by the applicant for the variance;*
- 2) *The granting of the variance will not be of substantial detriment to adjacent property and nearby properties in the proximity of that geographical area;*
- 3) *The condition or situation of the property concerned is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to the ordinance;*
- 4) *The granting of the variance does not result in a use that is not otherwise permitted on such property or a change in the zoning classification of the property; and,*
- 5) *The relief or remedy sought by the variance application is not available through a special exception process or the process of an administrative modification at the time of the filing of the variance application.*

*Ms. Anderson seconded the motion. Chairman Pifer asked for a roll call vote.*

*Vice Chairman Crawford – yes*

*Ms. Marchant – yes*

*Mr. Whitacre – yes*

*Ms. Anderson - yes*

*Chairman Pifer – yes*

*Chairman Pifer stated the motion passed 5-0.*

**NEW BUSINESS:**

None.

**OLD BUSINESS:**

None.

**ADJOURN:**

With no further business before the Board, the meeting was adjourned at 4:25pm.