

BOARD OF ZONING APPEALS
MINUTES

The Winchester Board of Zoning Appeals held a regular meeting on, August 8, 2012 at 4:01 p.m. in the Council Chambers, Rouss City Hall, 15 North Cameron Street, Winchester, Virginia.

PRESENT: Brian Hester, Jack Phillips, Don Crawford and Jason Ransom
ABSENT: Brandon Pifer
STAFF: Aaron Grisdale and Paula Le Duigou

Mr. Hester congratulated Mr. Grisdale on his appointment as the Director of Zoning & Inspections.

Approval of Minutes

Mr. Philips moved, seconded by Mr. Crawford, to approve the July 11, 2012 minutes as presented.

The motion passed unanimously.

Reading of Correspondence

None

PUBLIC HEARINGS

BZA 12-352 Request of Terry L. Doyle, subject property owner, for variances pertaining to Parking Space Dimensions and Off-Street Parking Area Buffer, pursuant to Sections 18-6-2.4 and 18-6-3.2 of the Winchester Zoning Ordinance, for the subject property located at 510 North Kent Street (*Map Number 174-01-B-4*) which is zoned Residential Business (RB-1) District. The proposed variances are requested to accommodate the creation of required off-street parking for the conversion of the property to a multi-family dwelling.

The request before the Board of Zoning Appeals is associated with a request to convert the property to a multi-family dwelling. As part of this change of use several site improvements are required, including the addition of off-street parking. With the designs submitted, the applicant is unable to meet the ordinance requirements for both off-street parking area buffer and parking space dimensions.

The subject property is located on the east side of North Kent Street and is zoned RB-1, Residential Business. The surrounding properties to the north and south are similarly zoned RB-1, the property to the west is zoned CM-1, and properties to the east are zoned HR-1.

As part of the change of use of this property, there will be a total of four multi-family residential units, which requires four off-street parking spaces to accommodate the use. The applicant has submitted a parking layout sketch in order to accommodate the required parking. However, it was discovered through staff review that variances would have to be sought through the Board to accommodate deficiencies related to off-street parking area buffer and parking space requirements.

The first variance the applicant is requesting is related to parking space requirements pursuant to Section 18-6-2.4. The Zoning Ordinance requires a total parking module width, including the parking space, of 42-feet. Based upon the numbers provided in the applicant's supporting materials, he plans to install four 21-foot long parking spaces with a 19-foot isle, for a total of 40-feet.

The second variance requested is in relation to the off-street parking area buffer, pursuant to Section 18-6-3.2 of the Ordinance. For properties located within the RB-1 Zoning District, a minimum buffer of three (3) feet is required between the parking surface and a side property line. The applicant intends to meet this buffer requirement on the southern property line, but is seeking relief along the northern property line. Similar variances were granted for recently proposed changes of use at 443 North Loudoun Street and 542 Gray Avenue; however, each variance request should be considered on its own merits and the unique factors related to such request.

According to Section 20-2 of the Ordinance, the Board of Zoning Appeals is required to make three (3) specific findings in order to approve a variance request. These findings are based on evidence, testimony, and demonstration of certain criteria, which are further defined in Section 20-2-3.1 of the Ordinance.

Section 20-2-3.1: When a property owner can show that his property was acquired in good faith and where by reason of the exceptional narrowness, shallowness, size, or shape of a specific piece of property at the time of the effective date of the Ordinance, or where by reason of exceptional topographic conditions or other extraordinary situation or condition of such piece of property, or of the use or development of property immediately adjacent thereto, the strict application of the terms of the Ordinance would effectively prohibit or unreasonably restrict the use of the property or where the Board is satisfied, upon the evidence heard by it, that the

granting of such variance will alleviate a clearly demonstrable hardship, as distinguished from a special privilege or convenience sought by the applicant, provided that all variances shall be in harmony with the intended spirit and purpose of the Ordinance.

1. **That the strict application of this Ordinance would produce a clearly demonstrable hardship.**

Staff Analysis: The proposed use of multi-family residential is a permitted by-right use within the RB-1 Zoning District. In order to fully accommodate ordinance requirements the lot width would have to be at least 48-feet. With the narrowness of this particular lot it appears that there is a hardship claim to be argued.

2. **That such hardship is not shared generally by other properties in the same zoning district and the same vicinity.**

Staff Analysis: Many of the nearby parcels within the RB-1 District have their own unique topographical and size limitations. This lot is unique in that the overall lot square footage will allow for four multi-family units; however, the lot width appears to be the most limiting factor.

3. **That 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 variances.**

Staff Analysis: This proposed use is a by-right use within the RB-1 district and the granting of the proposed variances will allow for this multi-family change of use to move forward. Should the variances be approved, staff recommends that the parking space dimensions requirement be reduced to a maximum of 38-feet and that a minimum of 1-foot buffer still be required along the north property line, in order to minimize effects on the adjacent property.

The applicant appears to have met all three (3) criteria for granting the variances. The Director of Zoning and Inspections recommends that the Board of Zoning Appeals **grant** the requested variances with conditions imposed.

The Board may approve the proposed variance, approve the variance with modifications/conditions, or deny the variance based upon the evidence presented as part of the application materials and testimony during the public hearing.

Note: Staff has received no letters of opposition or support.

Mr. Hester asked for background information on the property and whether there were previous additions made to the home. He said that it seemed pretty far into the process, stating that in the staff report that through one of the reviews it was determined that variances needed to be sought. Mr. Hester asked if this was something that came up after the fact or if it could have been dealt with before construction was begun.

Mr. Grisdale said there had been construction on the property prior to the issuance of building permits and was ceased by the applicant when the Building Official issued a stop work order.

Mr. Phillips asked if this was a single family dwelling originally.

Mr. Grisdale said that he believed it was.

Mr. Hester asked if the reason the request was made was due to the dimensions of the property. He asked if this had been a two or three unit property would this still have been an issue.

Mr. Grisdale said that it would depend on the proposed configuration of off street parking. He said that in order to get the minimum width with 90 degree parking as it was proposed, the current lot width wouldn't support the minimum parking isle dimension of 42 feet.

Mr. Hester opened the public hearing

*With no comments forthcoming
Mr. Hester closed the public hearing*

Mr. Crawford said that the lot is large enough, by right, to be a four family dwelling but as stated by Mr. Grisdale, the narrowness of the lot didn't allow for parking as conceived.

Mr. Hester said that is main issue was that construction had been done initially and then there was as cease order.

Mr. Phillips said that the lot appeared to be large enough. He said that he had been concerned about the yard area, and that it appeared the entrance was large enough, but that the variance should have been addressed before the building permit was issued.

Mr. Ransom asked Mr. Grisdale that if the builder had come to him before he had started construction and got a permit, would he be in the position is was in at this time.

Mr. Grisdale said that the applicant was present and that a permit had not been issued and was on hold pending the BZA and site plan processes to be completed before it would be issued.

Mr. Ransom asked if the applicant wanted to convert the home into a multi family building.

Mr. Grisdale said that that was correct.

Mr. Ransom asked what the property currently was.

Mr. Grisdale said that it was a single family dwelling.

Mr. Ransom asked if the applicant owned the building and intended to lease it out to tenants.

Mr. Grisdale said that that was his understanding.

Mr. Ransom asked that as a single family, was the parking up to code.

Mr. Grisdale said yes.

Mr. Crawford asked that if the property were a three family dwelling, would the proposed parking be acceptable.

Mr. Grisdale stated that with any proposed change of use for intensity of use beyond a single family dwelling it would require the site plan process to go through to accommodate required off street parking.

Mr. Crawford asked if it would require the minimum if 42 feet.

Mr. Grisdale said that if it were 90 degree parking as proposed, it would require this variance.

Mr. Ransom asked what the applicant was doing before he got a permit.

Mr. Grisdale said that there was an addition to the front of the structure.

Mr. Ransom asked what the purpose of the addition was.

Mr. Grisdale said that it was to create more interior space to meet the minimum square footage requirements per multi family unit.

Mr. Hester said that if the dwelling were converted to two family units, it could have been a different configuration and we would not be in this situation.

Mr. Grisdale said that any potential conversion of intensity of use would require off street parking.

Mr. Ransom asked how much building had been done before it was discovered that the applicant did not have a permit.

Mr. Grisdale said that it was his understanding that it was the front portion of the addition.

Mr. Ransom asked why the applicant did not get a permit.

Mr. Grisdale said that he had not spoken to the applicant about that particular issue.

Mr. Crawford asked if there was a fine for building without a permit.

Mr. Grisdale said that typically if it was discovered that someone was doing work without a permit, there are no penalties issued. He said that if they were to ignore the stop work order, then penalties can be issued.

Mr. Grisdale said that in this particular case work was observed and the applicant then came in and applied for a permit.

Mr. Phillips asked where the entrance was to the home.

Mr. Grisdale said that he would have to defer to the applicant to answer that question.

Mr. Phillips swore in the applicant.

Mr. Terry Doyle, applicant, said that the entrances were to the right side of the building which is common area between 508 and 510 North Kent Street. He described the entrances and which apartments they would serve.

Mr. Phillips asked how much space there was between the entrance and the side property line.

Mr. Doyle said that it was approximately five feet.

Mr. Phillips asked if they would be entering from the driveway side.

Mr. Doyle said no.

Mr. Ransom asked the applicant if he had tenants with signed leases yet.

Mr. Doyle said no.

Mr. Hester asked what kind of addition the applicant put on the house.

Mr. Doyle said that it had an existing first level porch that was redone and brought up to the second level. He said that it was a 10 x 20 first and second level addition and it was done to accommodate the interior square footage requirements on an average per unit total finished square footage.

Mr. Ransom asked why the applicant did not get a permit.

Mr. Doyle said that he had submitted plans and was given a verbal authorization to proceed and then it was discovered that there was a parking issue and they ceased construction at that point.

Mr. Ransom asked who had given verbal authorization to proceed.

Mr. Doyle said that John Knight had.

Mr. Hester asked if there was construction going on at the current time.

Mr. Doyle said that they were doing clean up of some storm damage but there was no construction going on.

Mr. Hester asked if there was an addition on the back of the house.

Mr. Doyle said no.

Mr. Hester asked if the structure was in its original state and that the applicant had made changes only to the front.

Mr. Doyle said that that was the case.

Mr. Hester asked that with the addition of the front porch if it was a separate apartment.

Mr. Doyle said that it wasn't and they were done to add square footage to the total dwelling but to meet the minimum average of 450 per unit so it would become the bedrooms for the first and second level apartments. He said it wasn't a separate apartment from the existing structure.

Mr. Hester said that his issue was that it appeared that the applicant was coming before the Board after the fact and that a verbal is not written consent. He said that it had to be taken into consideration because of what had all ready gone on and he hoped it would be a learning opportunity for the applicant to get written consent so that Planning and Zoning could review before he began any job.

Mr. Hester said that it was easier for the Board to make decisions before rather than after the fact.

*Mr. Crawford moved, seconded by Mr. Ransom, that the Board of Zoning Appeals **grant** variances to Terry L. Doyle, subject property owner, pertaining to Parking Space Dimensions and Off-Street Parking Area Buffer, pursuant to Sections 18-6-2.4 and 18-6-3.2 of the Winchester Zoning Ordinance, for the subject property located at 510 North Kent Street (Map Number 174-01-B-4) which is zoned Residential Business (RB-1) District, with the following conditions:*

- a. The Parking Space Dimension requirement is reduced to a minimum of 38-feet from 42-feet.*
- b. The Off-Street Parking Area Buffer requirement is reduced to one-foot along the north property line, and a minimum buffer of two feet for the driveway portion adjacent to the main structure.*
- c. Approval is contingent on the approval of a site plan and limited to uses no more intensive than multi-family residential.*

- d. *All building permits shall be applied for prior to any work taking place on the property.*
- e. *Screening shall be installed along the northern property in accordance with Planning Director's requirements.*

The motion passed unanimously.

BZA 12-370 - Request of Cogil Corp, subject property owner, for a variance pertaining to Multifamily Dwelling Density requirements, pursuant to Section 8-2-20d of the Winchester Zoning Ordinance, for the subject property located at 661-663 Millwood Avenue (*Map Number 253-03- -A*) which is zoned Highway Commercial (B-2) District with Floodplain (FP) District Overlay. The proposed variance is requested to alleviate density requirements for the creation of multi-family dwellings on the second floor of the property.

The request before the Board of Zoning Appeals is associated with a request to convert the second floor of the property to a multi-family dwelling. During the conditional use permit (CUP) review process, staff discovered that the applicant would not meet the density requirements outlined in the Zoning Ordinance. This variance seeks relief from the density requirements, due to limitations of the property being located partially within the Floodplain.

The subject property is located on the south side of Millwood Avenue and is zoned B-2, Highway Commercial and Floodplain (FP) District Overlays. The surrounding properties on the east, south, and western sides are similarly zoned B-2, properties to the north are zoned Higher Education (HE-1).

This property was the subject of BZA action in June 2012 regarding its location within the floodplain. As noted within the applicant's letter, the Zoning Ordinance requires that for Multi-Family Uses within the B-2 District, there can be one unit per 3500 square feet of Total Project Area. The Total Project Area is defined as the land within the exterior boundaries of the tract, but it excludes any land within the 100-year floodplain.

Per the calculations submitted, the parcel consists of 77,677.8 square feet of total area. However, 20,627 SF of area is located within the flood-way, and 28,480 SF of area is located within the 100-year floodplain. This results in the total project area being 28,571 square feet, after taking the deductions into consideration. For the fourteen units proposed of multi-family use, this normally requires 49,000 SF of total project area (14 units x 3500 SF/unit). The available project area outside the floodplain for this particular parcel creates a density of 2041 SF per unit (28,571 SF Total Project Area / 14 units). The applicant is therefore seeking a reduction of the density

standard from 3500 SF of Total Project Area (TPA) per unit, to a standard of 2041 SF of TPA per unit.

According to Section 20-2 of the Ordinance, the Board of Zoning Appeals is required to make three (3) specific findings in order to approve a variance request. These findings are based on evidence, testimony, and demonstration of certain criteria, which are further defined in Section 20-2-3.1 of the Ordinance.

Section 20-2-3.1: When a property owner can show that his property was acquired in good faith and where by reason of the exceptional narrowness, shallowness, size, or shape of a specific piece of property at the time of the effective date of the Ordinance, or where by reason of exceptional topographic conditions or other extraordinary situation or condition of such piece of property, or of the use or development of property immediately adjacent thereto, the strict application of the terms of the Ordinance would effectively prohibit or unreasonably restrict the use of the property or where the Board is satisfied, upon the evidence heard by it, that the granting of such variance will alleviate a clearly demonstrable hardship, as distinguished from a special privilege or convenience sought by the applicant, provided that all variances shall be in harmony with the intended spirit and purpose of the Ordinance.

1. That the strict application of this Ordinance would produce a clearly demonstrable hardship.

Staff Analysis: The proposed use of multi-family residential is a permitted conditional use within the B-2 Zoning District. The amount of lot area that is located within the Floodway and Floodplain severely limits the ability to utilize the structure for this use, thereby limiting the ability to effectively utilize this structure.

2. That such hardship is not shared generally by other properties in the same zoning district and the same vicinity.

Staff Analysis: This parcel is unique within the vicinity both in terms of having the floodplain located on the parcel, but also in the aggregate area affected by the floodplain.

3. **That 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 variances.**

Staff Analysis: This proposed use is surrounded on three sides by commercial uses and educational use on the north side of Millwood Avenue. The potential granting of this variance does not appear to have a substantial detrimental impact on the surrounding properties.

The applicant appears to have met all three (3) criteria for granting the variances. The Director of Zoning and Inspections recommends that the Board of Zoning Appeals **grant** the requested variances with conditions imposed.

The Board may approve the proposed variance, approve the variance with modifications/conditions, or deny the variance based upon the evidence presented as part of the application materials and testimony during the public hearing.

Note: Staff has received no letters of opposition or support.

Mr. Hester opened the public hearing

With no comments forthcoming, Mr. Hester closed the public hearing

Mr. Crawford said that if the Board does not pass the request, the applicant will only get 8 units and he was in a quandary. He said that if there is a well defined policy that states what you can do, why would the Board want to vary it in this case.

Mr. Crawford said that he didn't see the harm that the applicant was suffering.

Mr. Hester said that in his opinion it was going back to the 100 year flood plain. He said that there were parts of the floodplain that were outdated and that was why this request was before the Board, because there are certain circumstances where a variance could alleviate some of the hardship.

Mr. Crawford said that he would agree with that assessment and that over the last 50 years or so there have been drainage changes with roads that means they really aren't in the 100 year floodplain anymore.

Mr. Hester said that in the June meeting it was discussed how this building has been an eyesore for the City. He asked what else could be done with the property if the variance isn't granted.

Mr. Phillips asked Mr. Grisdale if it was originally set up for 14 units.

Mr. Grisdale said that that was what the applicant had proposed. He said that by ordinance it could be a maximum of 16 units or 8 units per building.

Mr. Hester said that he felt that this situation was different because the floodplain goes thru the building and makes it very much a demonstrable hardship.

*Mr. Phillips moved, seconded by Mr. Crawford that the Board of Zoning Appeals **grant** variances to Cogil Corp, subject property owner, for a variance pertaining to Multifamily Dwelling Density requirements, pursuant to Section 8-2-20d of the Winchester Zoning Ordinance, for the subject property located at 661-663 Millwood Avenue (Map Number 253-03- -A) which is zoned Highway Commercial (B-2) District with Floodplain (FP) District Overlay, with the following conditions:*

- a. The density is reduced to a requirement of 2,041 SF per unit.*
- b. Approval is contingent upon approval of a conditional use permit for such multi-family use by Winchester City Council.*

The motion passed unanimously.

NEW BUSINESS

None

OLD BUSINESS

None

ADJOURN

With no further business to discuss, the meeting was adjourned at 4:29 p.m.