

**BOARD OF ZONING APPEALS
MINUTES**

The Winchester Board of Zoning Appeals held its regular monthly meeting on, November 12, 2008, at 4:00 p.m. in the Council Chambers, Rouss City Hall, 15 North Cameron Street, Winchester, Virginia.

PRESENT: Hurt, Koneczny, Phillips and Wiley.
ABSENT: Roberson.
STAFF: Diem, Deskins and Walsh.
VISITORS: Ron Mislowsky and Milt McIntriff

MINUTES

It was moved by Koneczny, seconded by Phillips, to approve minutes as submitted.

Motion passed unanimously 4-0.

CORRESPONDENCE

None

PUBLIC HEARINGS

BZA 08-32 Request of Patton Harris Rust & Associates, on behalf of the subject property owner, for a variance of the minimum required off-street parking, pursuant to Section 18-6-5.1 of the Zoning Ordinance, at 326-328 Amherst Street, (*Section 171, Double Circle 1, Block A, Lot 1 and Section 171, Double Circle 1, Block F, Lot 14*), which are zoned Central Business (B-1) District and Residential Office (RO-1) District, with Historic Winchester (HW) District special overlay.

Mr. Diem presented the request for a variance of the minimum required off-street parking to support the proposed re-development of a commercial property at 326-328 Amherst Street.

The request that is before the Board at this time identifies an increase in the amount of reduced off-street parking from 10% to 18%. The increase represents the minimum necessary so as to preserve the historic trees and landscaping on the subject property, while providing 47 off-street parking spaces on-site. The factors of consideration that were utilized in granting the Administrative Modification are still relevant with this revised proposal; pedestrian access is promoted and practical in the B-1 District; several off-street parking spaces exist immediately adjacent to the property and it is conceivable that visitors to the Selma Medical Center would park at one location and then walk to the commercial pharmacy site without relocating their vehicle; and, this proposal demonstrates a willingness of the developer to preserve the character and natural environment that exists.

A petition was received from neighboring property owners supporting the reduction in parking in order to support the trees.

Mr. Koneczny recused himself from the discussion.

Chairman Hurt opened the public hearing.

Mr. Mislowsky explained that they are asking for an 18% reduction in order to save all the trees. He felt that this is a reasonable request because the drive thru will see about 250 cars a day, therefore the total number of parking spaces that are required for this type of business may not be needed. He stated that he would be available for questions.

Mr. Phillips asked if it is going to cost the City anything to reset the traffic light. He felt if there is a need to change the traffic light, the cost should be incurred by Walgreens.

Mr. Mislowsky stated that he doesn't know of any changes that need to be made.

Mr. Deskins stated that this is a wonderful example of a business trying to design a project that fit in with the community. It is another step to make Winchester a walk-able community. Walgreens has made every effort to meet the requirements imposed on them and also, the citizens needs.he asked that this variance be granted.

Chairman Hurt closed the public hearing.

It was moved by Wiley, seconded by Phillips, to approve BZA-08-32 based on the following:

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:
 1. That because of physical circumstances – such as, size, shape, topography, or other conditions (including existing historic landscaping), a limitation on the reasonable use of the property exists without this variance.
 2. It will have no adverse affect; and, instead will preserve the character of the neighborhood.
 3. Light or air will not be impaired to adjacent property; but, will be protected by preserving the trees.
 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.

Motion passed unanimously 3-0, Koneczny abstained.

BZA-08-33 Request of Patton Harris Rust & Associates, on behalf of the subject property owner, for a variance pertaining to maximum retaining wall height within a required corner-side yard, pursuant to Section 18-9-2.8 of the Zoning Ordinance, at 645 East Jubal Early Drive, (*Section 253, Block A, Lot 4*), which is zoned Highway Commercial (B-2) District.

Mr. Diem presented the request for a variance pertaining to maximum retaining wall height within a required front or corner-side yard for the subject property located at 645 East Jubal Early Drive.

The subject property has been re-developed from a former restaurant use and occupancy (as depicted in the above photograph from 2006), to a commercial retail pharmacy. Significant site improvements and re-grading occurred during the re-development process of the property. One of the features of the site is a concrete masonry unit retaining wall located along northern edge of the property, adjacent to East Jubal Early Drive.

The wall was depicted on the submitted and subsequently approved site plan; however, was identified as not exceeding 32" in height. During the construction of the retaining wall, the approved height of 32" was exceeded, which did not comply with the Ordinance and prevented the City from granting a permanent Certificate of Occupancy.

The applicants have outlined their request for the variance, along with justification for granting the variance, in accordance with the Code of Virginia and the Winchester Zoning Ordinance. Within their written request, the applicants cite that circumstances, not created by them, were identified during the construction phase of the project. Included, were Walgreen's directive to not exceed a 3:1 slope for the landscaped lawn area, and a discovery of underground fiber optics utilities. A separate conversation with the general contractor revealed that a considerable amount of sub-surface rock was discovered during the excavation of the site. They are seeking the minimum amount of relief necessary, so as to receive their permanent Certificate of Occupancy and use the property.

It is unknown, based on the application materials provided, if any other solutions are possible or economically feasible to resolve this situation.

Chairman Hurt opened the public hearing.

Mr. Mislowsky of PHR&A, explained that they had to cut 46 ft of rock off the hill to meet Walgreens requirements for grades. The retaining wall was set to be installed just behind the back of the sidewalk, but a fiber optic cable was located there. An agreement was reached with Verizon to stay 1 ft from cable. Having to excavate further into the hill increased the cost and caused a greater slope. The contractor was under a time crunch to get the project finished and was unaware of ordinance restrictions; they thought they were making it better. He felt the wall looks nice and because there is no adverse impact, he is asking that the variance be approved. He stated that he was available for questions.

Mr. Koneczny asked what the distance is between the sidewalk and the wall.

Mr. Mislowsky stated that it's about 2feet.

Chairman Hurt closed the public hearing.

Mr. Koneczny stated that the ordinance was written for a reason. The slope is a hazard, which could mean a significant fall. He was not comfortable with it all. He suggested a fence be put up or something to prevent accidents from occurring.

Mr. Mislowsky explained that they have been instructed to install a railing system along the top of the wall, at the points where the wall exceeds the ordinance requirements.

Mr. Wiley asked what type of railing would be installed.

Mr. Mislowsky explained that it will be galvanized steel with vertical pickets.

Mr. Koneczny felt that the fence should span the entire wall because it would be more attractive to City.

Chairman Hurt didn't agree, stating that they should keep fence to the right to not obstruct view.

Mr. Mislowsky stated that the design could be negotiated, however that the fences are normally designed with the ends at a 45 degree angle that keeps pedestrians from climbing up on top. To cover just the section that is too high it would be about a hundred feet of railing.

Mr. Phillips asked how high the railing would be.

Mr. Mislowsky explained that it will be 40 inches. He pointed out that the Ordinance requires a fence or a 36 in high hedge that is already in place. They are putting in the fence for added protection where the wall exceeds the Ordinance.

It was moved by Koneczny, seconded by Phillips, to approve BZA-08-33 with the following conditions imposed:

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; and that conditions have been imposed to make these findings operative.
2. That it is also found:
 - i. That because of physical circumstances – such as, size, shape, topography, or other conditions, no reasonable use can be made of the property without this variance.
 - ii. It will have no adverse affect.
 - 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 have been imposed:
 - i. *That a 40 inch tall galvanized steel fence be installed on the wall, for the length of the wall, with the corners cut as suggested within 30 days of this hearing.*

Motion passed unanimously 3-1. Chairman Hurt opposed.

NEW BUSINESS

None

OLD BUSINESS

None

ADDITIONAL COMMENTS

Meeting adjourned: 4:37 pm