

**BOARD OF ZONING APPEALS  
MINUTES**

The Winchester Board of Zoning Appeals held its regular monthly meeting on, September 9, 2009, at 4:00 p.m. in the Council Chambers, Rouss City Hall, 15 North Cameron Street, Winchester, Virginia.

**PRESENT:** Mr. Hester, Chairman Hurt, Mr. Koneczny and Mr. Phillips (4)  
**ABSENT:** Mr. Roberson (1)  
**STAFF:** Mr. Diem and Mrs. Walsh  
**VISITORS:** Don Crigler, John Barker, G. Shank, Robert Shank, and Richard Hoffman

**MINUTES**

Mr. Koneczny moved, seconded by Mr. Hester, to approve the minutes of August 12, 2009 as presented.  
Motion passed unanimously 3-0. (Mr. Phillips abstained.)

**COORESPONDENCE**

None

**PUBLIC HEARINGS**

**BZA-09-199** Request of DFC Architects, PC, on behalf of the subject property owner, KSR, LLC for a variance pertaining to side yard setback on a nonconforming lot of record, pursuant to Section 17-6-1 of the Winchester Zoning Ordinance at 609 South Kent Street (Section 213, Double Circle 1, Block G, Lot 15), which is zoned Limited High Density Residential (HR-1) District.

Mr. Diem presented the request seeking relief of the side yard setback requirements to reconstruct a single family detached dwelling on a nonconforming lot of record.

This request before the Board follows an effort by the property owner to renovate an existing single family dwelling that has been vacant and uninhabitable for an extended period of time. During their restoration efforts, the property owner discovered that the deteriorated condition of the structure prevented economic and feasible rehabilitation to continue. Instead, they opted to pursue demolition of the existing structure and propose construction of a new single family detached dwelling.

The applicant proposes new construction of a single family detached dwelling that will exceed the minimum setback requirements established within 17-6-1 for the northern side of the property (5'2"); however, will more closely encroach within the side yard setback for the southern side of the property (2'10"). It is important to note that the average side yard setback provided for the existing structure amounts to 3.83' between both side yards. The proposed average side yard setback for the new structure, if the variance is approved, would amount to 4.00', which demonstrates a net decrease in nonconformity.

This request is similar to a previous variance request brought before the Board within BZA-07-03. On June 13, 2007, the Board unanimously approved a variance request pertaining to side yard setback for the re-construction of a single family dwelling on a nonconforming lot of record. Specifically, the proposal to provide a 2.0' side yard on the east side and 2.9' side yard on the west side of the property was approved.

**Chairman Hurt opened the public hearing.**

Don Crigler, DFC Architects, stated that this will be a reproduction of the current house. The major change is that it will be relocated slightly to the right to allow windows to be placed on the left side (5 ft setback is required per building code).

Both Chairman Hurt and Mr. Koneczny were concerned about the applicant's ability to adhere to the very strict setbacks.

Mr. Diem added that one of the conditions can be that a footing or foundation survey be required before any further construction.

**Chairman Hurt closed the public hearing.**

Mr. Koneczny stated that the setbacks are less than what currently exists. He felt the condition was necessary.

*Mr. Koneczny moved, seconded by Mr. Phillips, to approve BZA 09-199 for the following reasons:*

- i. That because of physical circumstances – such as, size, shape, exceptional narrowness of the lot, or other conditions, the variance is minimum amount necessary to afford relief.*
- ii. It will have no adverse affect; and, is intended to decrease the previously established nonconforming side yard setback.*
- 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.*

*This approval is subject to:*

- 1. A foundation survey be provided to staff to confirm the setback requirements have been met.*
- 2. The side of the building with less than 5ft variance shall have fire retardant material as specified.*

**MEMBER**

Mr. Hester  
Mr. Koneczny  
Mr. Phillips

**VOTE**

Yes  
Yes  
Yes

*Motion passed unanimously 4-0.*

**BZA-09-202** Request of DFC Architects, PC, on behalf of the subject property owner, KSR, LLC for a variances pertaining to minimum required lot area, minimum required lot width, minimum required side yard setbacks, and minimum required off-street parking, pursuant to Sections 5.1-3-1, 5.1-4-3, and 5.1-6-1.2 of the Winchester Zoning Ordinance at 314 South Kent Street (Section 193, Double Circle 1, Block T, Lot 3), which is zoned Limited High Density Residential (HR-1) District, with Historic Winchester (HW) District special overlay.

Mr. Diem stated that at the applicant's request that this item be tabled until further notice. Currently staff is working on a text amendment that would remedy some of these issues.

*Mr. Phillips moved, seconded by Mr. Hester, to table **BZA 09-202**.*

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

*Motion passed unanimously 4-0.*

**BZA-09-211** Request of Richard Hoffman, for variances pertaining to minimum required lot width, required lot area, and corner side yard, pursuant to Sections 5.1-4-4, 5.1-3-1, and 5.1-8-1 of the Winchester Zoning Ordinance, at 35 West Hart Street (*Section 212, Double Circle 1, Block P, Lot 1*), which is zoned Limited High Density Residential (HR-1) District.

Mr. Diem presented the request seeking relief of the minimum lot area, minimum required lot width, and minimum required corner side yard setback to replace an existing, nonconforming single family detached dwelling with two (2) separately platted townhouse dwelling units.

This request before the Board includes variances necessary to accommodate the future subdivision of the existing parcel, so as to allow re-development of a single-family detached dwelling parcel to a two-unit townhouse arrangement.

The site plan depicts the lot width as 48.50'. The minimum required lot width in the HR-1 District for single-family dwellings is 40'. Therefore, the property exists as a conforming lot of record for single-family detached dwellings. Minimum corner side yard setback for a single-family detached dwelling, two-family dwelling or townhouse is 15'; therefore, the existing corner side yard setback is nonconforming.

Within the HR-1 District, lot widths are required to be a minimum of 30' per unit for townhouse dwellings; therefore, requiring a variance of 5.75' for each of the proposed parcels following any future subdivision. The lot area is noted as containing 6,111 square feet; whereas, 3,500 square feet per unit is required for townhouse dwellings. The net result after a subdivision would amount to 3,055.50 square feet per lot, or a 13% deviation from what is otherwise required. Administrative modifications are authorized to provide a 10% variance, when justified.

Minimum side yard setback for a townhouse dwelling is 6' within the HR-1 District. The applicant has not requested a variance for side yard setback; therefore, it can be assumed that the new townhouse structure would not exceed 18.25' in width. Although the applicant has requested a 10' variance for corner side yard setback along the unimproved portion of South Braddock

Street, the actual setback may be 6' if the townhouse units are mirror images of each other. Any setback of corner side yard proposed would represent a decrease in nonconformity from the existing setback of 0'. The main building setback of the existing structure is nonconforming, as well; however, the applicant intends to establish a setback, as required, for the proposed structure(s). Finally, the applicant intends to provide off-street parking for each unit, as required by the Ordinance.

This request is unique from other recent requests for variances to increase density from a single family dwelling to two-family dwellings. With regards to corner side yard and main building, it represents a substantial decrease in nonconformity. Given the existing lot width and the applicant's intention of subdividing the property, a much less significant variance is required to accommodate the proposed use. As previously identified, the request for variance of lot width and lot area represent slight percentage increases beyond what could otherwise be administratively approved.

**Chairman Hurt opened the public hearing.**

G. Shenks, Jr of 29 W Hart St, was concerned that the lot is not going to be big enough for the duplex. He also pointed out the age and history of the existing home. He stated that it was one of the first homes built on that block and the last standing log cabin.

Robert Shenk, brother of Mr. Shenk Jr., agreed that the history of the home should not be overlooked.

Chairman Hurt explained that this property is not in the historic district. The history of the home is not in this boards prevue.

Richard Hoffman, owner of the property in question stated that he has spoken to the historic society and there was no record of any historic significance as far as this house is concerned. When he purchased the house, it had been vacant for a long period of time and the roof had caved in. It is a log house and it is his intent to have it dismantled, making the pieces available. He felt the proposed changes would be an improvement to Hart St.

**Chairman Hurt closed the public hearing.**

Mr. Koneczny asked about parking for each lot.

Mr. Hoff man explained that for off-street parking he would need a minimum of 14 ft. The lot is 120 ft deep with the houses only taking up 40 ft. He stated that he will meet whatever is required.

Chairman Hurt felt that it would help the streetscape by putting the house in line with the other houses.

Mr. Phillips was concerned with the parking due to the fact that there are very few families that have only one car. One would have to be parked on the street.

Mr. Diem pointed out that once a revised site plan has been submitted the parking would be reviewed by the planning director.

Chairman Hurt asked if there was any reason why the parking couldn't be in the back instead of the front.

Mr. Diem stated that there was not any reason and that it would be addressed in the plan review.

Mr. Koneczny moved, seconded by Mr. Phillips, to approve **BZA 09-211** for the following reasons:

- i. *That because of physical circumstances – such as, size, shape, exceptional narrowness of the lot, or other conditions, the variance is minimum amount necessary to afford relief.*
- 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.*

*This approval is subject to:*

- 1. *Once foundations are poured a survey be provided to confirm the setback requirements have been met.*
- 2. *Building setback is a minimum of 30ft.*
- 3. *Each structure will be no wider than 18ft each.*

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

*Motion passed unanimously 4-0.*

**BZA 09-229** Request of BSW Investments, LLC, for a variance pertaining to required off-street parking area buffer, pursuant to Section 18-6-3.2, of the Winchester Zoning Ordinance, at 2264 Papermill Rd. (*Section 271, Double Circle 7, Block B, Lot 1*), which is zoned Highway Commercial (B-2) District.

Mr. Diem presented the request seeking relief of the 5' off-street parking area buffer required for commercially-zoned properties. The proposed buffer area would amount to 3.0'; therefore, representing a reduction of 2.0' from what is otherwise required.

Through the actions of the Commonwealth of Virginia, and through its agent, VDOT, the ability to use the subject property and availability of off-street parking accommodations have been drastically altered. As stated within their letter of intent, this variance request "*was necessitated by the forfeiture of the majority of our parking and resulting hardship due to the widening of Papermill Road from 2 lanes to 5 lanes.*"

The applicant intends to create additional off-street parking to replace what had been lost as a result of the VDOT action. Their site engineer, Greenway Engineering, has developed a proposal that would include an ingress driveway on the south end of the building to access additional parking on the east side of the building. The ingress access is restricted due to the placement of

the existing building and its proximity to the side property line; therefore, creating further justification for this variance.

This request represents unusual circumstances through no fault of the property owner or applicant. In fact, government action has created a situation that has caused the property owner to consider a variety of options for off-street parking accommodations.

**Chairman Hurt opened the public hearing.**

**Hearing none, Chairman Hurt closed the public hearing.**

Mr. Koneczny felt that any front that was on that property had been devastated by the construction. He felt that there is adequate parking around back.

*Mr. Phillips moved, seconded by Mr. Hester, to approve BZA 09-229 for the following reasons:*

- i. That because of physical circumstances – such as, size, shape, topography, or other conditions including previous government action, the variance is necessary to afford relief.*
- 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.*

**MEMBER**

Mr. Hester  
Mr. Koneczny  
Mr. Phillips

**VOTE**

Yes  
Yes  
Yes

*Motion passed unanimously 4-0.*

**NEW BUSINESS**

None

**ADDITIONAL COMMENTS**

None

**OLD BUSINESS**

None

**Meeting adjourned: 4:56PM.**