

**BOARD OF ZONING APPEALS
MINUTES**

The Winchester Board of Zoning Appeals held its regular monthly meeting on, September 10, 2008, at 4:00 p.m. in the Council Chambers, Rouss City Hall, 15 North Cameron Street, Winchester, Virginia.

PRESENT: Hurt, Koneczny, Phillips, Wiley and Roberson.
ABSENT: None.
STAFF: Diem, Deskins and Walsh
VISITORS: Dave Burleson, Shotsie Bayliss, Linda Ross, and Jack Schutte

MINUTES

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

Motion passed unanimously 5-0.

CORRESPONDENCE

None

PUBLIC HEARINGS

BZA 08-23 Request of Madison Farms, LLC, on behalf of the subject property, for an interpretation of Section 14-3-1, pertaining to Certificates of Appropriateness; and, an appeal of the Zoning Administrator's determination regarding an alteration to a structure within the Historic Winchester (HW) District, at a property located at 305 North Loudoun Street (Section 173, Double Circle 1, Block H, Lot 23), which is zoned Central Business (B-1) District, with Historic Winchester (HW) District overlay.

WAS REMOVED FROM THE AGENDA

BZA 08-24 Request of Linda Q. Ross, on behalf of the French & Indian War Foundation, for variances pertaining to main building setback and side yard setbacks, as required by Sections 5.1-5-2 and 5.1-6-1.5 of the Winchester Zoning Ordinance, at a property located at 419 North Loudoun Street (*Section 173, Double Circle 1, Block I, Lot 34*), which is zoned Limited High Density Residential (HR-1) District, with Historic Winchester (HW) District overlay.

Mr. Diem presented the request for relief of the Winchester Zoning Ordinance regarding dimensional standards, so as to accommodate the change of use from an existing single family detached dwelling to a library establishment for the French & Indian War Foundation.

The existing setback dimensions comply with the Ordinance standards; however, the proposed change of use to a library requires an increase in setback dimension from what is otherwise required for a single family dwelling use.

The applicant contends that there will be no adverse impact onto the surrounding neighborhood and that the character of the district will not be changed. There is some degree of hardship

identified, in that the building is not likely to be approved by the Board of Architectural Review for alteration or demolition that would alleviate the dimensional deficiencies.

Certain improvements will be required of the site, so as to accommodate the required off-street parking spaces. Those improvements are anticipated to be presented to the Director of Planning for review and approval.

Mr. Diem concluded by saying that the BAR has made a recommendation that this request be approved.

Chairman Hurt opened the public hearing.

Linda Ross, Vice-President, explained that they plan to do tours of the Fort and open up one room to be a library/resource center. They will display books, relics and maybe a CD on the French and Indian War, and hope to grow from that. She stated that they still anticipate renting the house but will block off the study to be used as the public resource center.

Mr. Koneczny asked if the rental was for office or residential use.

Ms. Ross stated that it's residential use at this time.

Chairman Hurt closed the public hearing.

Mr. Koneczny stated that this property is three blocks from the Handley Library. He asked what were the differences in setbacks.

Mr. Diem explained that the Handley Library is located within a different zoning district. The setbacks are more favorable there. Because this is in a residential area, they are less generous. He explained that this property won't have the amount of foot traffic that's found at a regional library.

Mr. Koneczny asked how long she thought it would continue to be residential.

Ms. Ross stated that they would like to take over the building within the next 5 years, but there is still a lot to do before that can happen.

Mr. Koneczny asked if it would create a problem having a mixed use in a single family dwelling.

Mr. Diem explained that there is nothing in the Ordinance that would prohibit it. He checked the requirements in B-1 for comparison and the same language appears there. He stated that the Board could consider restricting the use of the property to this. Should the use ever go away, it would revert back to a single-family dwelling.

It was moved by Phillips, seconded by Koneczny, to approve BZA-08-24 for the following reason:

1. 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.
2. It will have no adverse affect.
3. Light or air will not be impaired to adjacent property.
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 5-0.

BZA 08-25 Request of Oakcrest Properties, LLC, on behalf of the subject property, for a variance pertaining compliance and liability within the Flood Plain (FP) overlay district, as per Section 14.1-2 of the Winchester Zoning Ordinance, at a property located at 163-165 North Loudoun Street (*Section 173, Double Circle 1, Block F, Lot 17*), which is zoned Central Business (B-1) District, with Historic Winchester (HW) District overlay.

Mr. Koneczny recused himself.

Mr. Diem presented the request for relief from the Winchester Zoning Ordinance, regarding structural alterations and reconstruction to a structure that is currently located within the Flood Plain.

Dave Burleson, on behalf of Oakcrest Properties, LLC, has prepared and submitted a written overview of the variance request. Within his letter of request, Mr. Burleson indicates that the site, which is the location of the “Lovett Building,” will undergo an extensive renovation effort. The result will include mixed use, dwelling units and commercial space; and, will feature a design that has been approved by the Board of Architectural Review. The unique character of the building and the surrounding streetscape would be altered significantly, if there was a requirement to raise the floor elevation to accommodate the Flood Plain provisions.

On February 21, 2008, the Board of Architectural Review approved the Certificate of Appropriateness application, for the proposed remodeling and renovation of the Lovett Building.

The City has received written correspondence, as provided by the applicant, from the Virginia Department of Historic Resources, supporting the historical significance of the structure.

Should the variance be granted, written notification must be provided to the applicant that the issuance of a variance to construct a building below the base flood elevation (BFE) will result in increased flood insurance premium rates as high as \$25 per \$100 of coverage, and such construction below the BFE increases risk to life and property.

Chairman Hurt opened the public hearing.

Mr. Burleson stated that he would be available for questions.

Chairman Hurt closed the public hearing.

It was moved by Roberson, seconded by Phillips, to approve BZA-08-25 based on the following reasons:

1. 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.

2. It will have no adverse affect.
3. Light or air will not be impaired to adjacent property.
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 4-0, Koneczny abstained.

BZA 08-26 Request of C.H. Schutte, Inc., on behalf of the subject property, for variances pertaining to required off-street parking and underground utilities, as required by Sections 18-6-5.1 and 18-22-1 of the Winchester Zoning Ordinance, at a property located at 1000-1004 Valley Avenue (Section 212, Double Circle 1, Block J, Lots 1 and 2), which are zoned Central Business (B-1) District.

Mr. Diem presented the request for relief from the Winchester Zoning Ordinance, pertaining to required number of off-street parking spaces and required installation of underground utilities for upgrades or increases to service capacity, due to proposed renovation and revitalization efforts at 1000-1004 Valley Avenue.

The applicant has submitted separate written requests outlining each of the variances applied for. The first request, which pertains to relief from the required number of off-street parking spaces, describes the circumstances that exist and would prevent full compliance with the Ordinance. The existing improvements to the property include a series of buildings and an expansive area of paved surface. The proposal being considered by the applicant is to change the use and occupancy of the property from a car dealership, general and wholesale retail, to complete use and occupancy of the 13,672 square feet of first floor building space for general retail, excluding 1,040 square feet of office space on the second floor mezzanine.

The proposed change of use and occupancy requires conformance with the current Ordinance standards regarding site improvements. The current lack of landscaping, end-islands, and delineated parking spaces within the paved surface area, would be required to be improved as part of that compliance effort. However, due to the site improvement requirements, along with additional fire service access, a significant reduction in available off-street parking will occur. It is estimated that the site could conceivably accommodate more than 50 off-street parking spaces, in its present condition. With the anticipated site improvements, the number of available spaces will be reduced to no more than 38, which includes 2 handicapped spaces.

A variety of uses is permitted and could be considered within the B-1 zoned property. Each of the various uses might present more or less stringent off-street parking requirements, based on their perceived intensity or generated traffic patterns. For example, restaurant space would require 1 space for each 100 square feet of floor area, while a furniture or home furnishings retail use would only require 1 space for each 400 square feet of floor area. In contrast, the future use of the entire floor area for home furnishings and furniture retail, with office use on the second floor would require exactly the same number of off-street parking spaces as is intended to be provided with the site improvements added. Obviously, there is no way for the applicant to pre-determine the tenants who are likely to seek use and occupancy within the remodeled commercial building; however, identifying the potential use and occupancy as general retail throughout 13,672 square feet of floor area might have an adverse consequence for parking – both off-street and on-street in the surrounding neighborhood. Instead, a variety of uses might best apply in this situation. For example, a percentage of floor area could be designated as general retail, while

other area is classified as office. Some space could possibly be allocated for restaurant. Considering the proximity of residential neighborhoods and a high school to the subject property, it is likely that a significant portion of business will be generated by pedestrians, as well as, persons utilizing the adjacent transit system. Therefore, some reduction in the required off-street parking would be appropriate, in consideration of the built environment and lack of additional property to construct parking spaces.

The second request for a variance is with regards to the requirement to install any new or upgraded utilities underground. The applicable Ordinance section, as correctly identified by the applicant as Section 18-22-1, clearly outlines the requirements for underground utilities. It is at the Board's discretion as to whether or not the circumstances that exist at the subject property present a demonstrable hardship, so as to relieve the applicant from the Ordinance requirement.

Chairman Hurt asked that the parking issue be addressed first.

He opened the public hearing.

Shotzie Bayliss, stated that he is in favor of the variance. His office is across the street from this property. He would like to see something positive done with it that the City can be proud of.

Mr. Schutte expressed the respect that he has for the Board having served on the BZA board for Clarke County. He felt that the request of a waiver of 32 spaces is reasonable based on information provided by Tim Youmans, Director of Planning. The property will provide 38 spaces.

Mr. Koneczny asked if the office space upstairs was calculated in the requirements. He asked if medical space required more parking than regular office space.

Mr. Schutte stated that the upstairs has been included.

Mr. Diem explained that medical is the same as retail.

Mr. Wiley asked if there is public parking on the Handley side of the street.

Mr. Schutte stated that there is. He presented a slide showing how the parking lot was modified in order to maximize their space, and still have the required green space.

Mr. Koneczny asked if he would have a problem if they excluded restaurant use.

Mr. Schutte asked if it would include a coffee shop.

Mr. Diem explained that a restaurant would mean a full service meal; a coffee shop would be classified as retail.

Mr. Phillips asked how that could be restricted.

Mr. Koneczny explained that food service can be excluded or anything that provides seating.

Mr. Schutte asked if it could just be limited to food service. He stated that it would be nice to consider something like Starbucks for the space.

Mr. Koneczny explained the problem that with retail, you go in and buy something and leave. With Starbucks, you go in buy a coffee and sit down and drink it which could take 20- 30 mins. He added that he would like to see a restriction added that the space not be used for medical.

Jim Deskins, Director of Economic Re-Development, explained that this request fits the second condition to which a variance can be granted. He strongly supports the project and is eager to see it move forward.

Chairman Hurt closed the public hearing. He reminded everyone that this motion should be for parking only.

It was moved by Koneczny, seconded by Phillips, to approve the off-street parking variance for BZA -08-26 based on the following:

1. 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.
2. It will have no adverse affect.
3. Light or air will not be impaired to adjacent property.
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.

That the following conditions have been imposed:

1. The total required number of off-street parking spaces, based on the uses and occupancies at the property shall not exceed 71 spaces.
2. The percentages of floor area designated for the various uses shall be determined by the property owner; however, shall not exceed the aforementioned condition (3)(i).
3. The uses permitted at the subject property shall be consistent with those uses permitted within the B-1 district, limited only by the required number of off-street parking spaces.
4. There will not be any food establishments permitted that would provide seating or any office space that would be used for medical.

Motion passed unanimously 5-0.

Mr. Diem presented a slide showing the power-line in question. The utility pole will remain and a wire for a heavier service will replace what's currently attached to the building. He explained that if the variance is denied, the drop will be put underground, through or around the storm sewer and then back up to the side of the building.

Chairman Hurt opened the public hearing.

Mr. Schutte stated that he agrees with underground wiring. This situation will provide no public benefit because the pole will remain where it is. Burying the wire will come at great expense because they will have to go around or through the storm sewer. The back of the building is not a public access, it is a service entrance only.

Mr. Phillips asked if any changes to the wire will affect anyone else being serviced from the pole.

Mr. Schutte stated that it won't affect anyone.

Chairman Hurt asked if all the site lighting will be underground.

Mr. Koneczny asked if this is only about money.

Mr. Schutte stated that yes, all the lighting will be underground. He stated that the issue is a site issue not a money issue.

Mr. Roberson asked about the other line showing in the slide. He asked about the installation of the telephone wire.

Mr. Schutte stated that he wasn't sure where the phone service would come from. He wouldn't ask for a variance for it because he wouldn't have to go through the storm sewer to bury it.

Chairman Hurt closed the public hearing.

Chairman Hurt stated how much he enjoyed walking down the street not seeing the poles and wires.

Mr. Koneczny agreed. He felt that they shouldn't bend Ordinances that they didn't have to. He stated that he would be very uncomfortable approving this.

It was moved by Koneczny, seconded by Phillips, to deny the variance for underground utility installation because:

1. That the granting of this variance would give special privileges to applicant not enjoyed by other property in the same classification and vicinity and zoning district(s).
2. That the special circumstances or conditions are self-imposed or were created by applicant.
3. That it is also found:
 - i. There are no similar variances nearby.
 - ii. The variance would have an adverse affect.
 - iii. The amount of the variance is substantial.
 - iv. Reasonable use can be made of the property without this variance.

Motion carried 4-1, Wiley against.

NEW BUSINESS

None

OLD BUSINESS

Review of Draft By-Laws and discussion of annual election of Chairman and Vice-Chairman positions.

Mr. Diem request the Board consider nominations.

It was moved by Phillips, seconded by Wiley, to appoint Hunter Hurt as Chairman and Conrad Koneczny as Vice-Chairman.

Motion passed unanimously 5-0.

ADDITIONAL COMMENTS

Meeting adjourned: 5:20