



CITY OF RICHMOND

DEPARTMENT OF
PLANNING AND DEVELOPMENT REVIEW
BOARD OF ZONING APPEALS

BOARD OF ZONING APPEALS

MEETING MINUTES

WEDNESDAY, AUGUST 1, 2018

On Wednesday, August 1, 2018, the Board of Zoning Appeals held a public hearing in the Fifth Floor Conference Room, 900 East Broad Street, at 1:00 p.m.; display notice having been published in the Richmond Legacy Newspaper on July 18 and 25, 2018 and written notice having been sent to interested parties.

Members Present: Burt F. Pinnock, Chair
 Roger H. York, Jr., Vice-Chair
 Rodney M. Poole
 Edward H. Winks, Jr.

Staff Present: Roy W. Benbow, Secretary
 William C. Davidson, Zoning Administrator
 Brian P. Mercer, Planner II
 Neil R. Gibson, Assistant City Attorney

The Chairman called the meeting to order and read the Board of Zoning Appeals Introductory Statement, which explains the proceedings of the meeting. The applicant and those appearing in support of an application speak first, followed by those appearing in opposition.

CASE NO. 26-18

APPLICANT: David C. and Flora F. Williams

PREMISES: 7910 BURRUNDIE DRIVE
 (Tax Parcel Number C003-0169/018)

SUBJECT: A building permit to legitimize a previously enclosed carport into an attached garage (420 SF) to a single-family dwelling.

DISAPPROVED by the Zoning Administrator on June 18, 2018, based on Sections 30-300, 30-404.5(2) & 30-810.1 of the zoning ordinance for the reason that: In an R-2 (Single-Family Residential District), the side yard (setback) and nonconforming feature requirements are not met. A side yard of nine feet (9') was/ is required; a nonconforming side yard of 5.3 feet exists/ is proposed along the western property line. No building or structure having a nonconforming feature shall be reconstructed with another building or structure unless such nonconforming feature is hereby eliminated and the building or structure is made to conform.

APPLICATION was filed with the Board on June 15, 2018, based on Section 15.2-2309.2 of the Code of Virginia.

APPEARANCES:

For Applicant: Sandra Ferguson

Against Applicant: None

FINDINGS OF FACT: The Board finds from sworn testimony and exhibits offered in this case that the applicants, David and Flora Williams, have requested a variance to legitimize a previously enclosed carport into an attached garage to a single-family dwelling for property located at 7910 Burrundie Drive. Ms. Sandra Ferguson, daughter of the applicant's, testified that she has been the primary caregiver for both her parents since August of 2016. Ms. Ferguson stated that in the process of preparing the home for sale it was discovered that a garage enclosed in 1970 had not been done in accordance with applicable zoning provisions. Ms. Ferguson noted that her parents moved to the subject dwelling in 1968. Ms. Ferguson indicated that the original construction consisted of a carport with a rear toolshed and a 2 to 3 foot knee wall along the open side. Ms. Ferguson indicated that the remainder of the open side of the carport was enclosed and a garage door placed on the front of the former carport. Ms. Ferguson noted that the footprint had remained unchanged as had the roofline of the structure. Ms. Ferguson stated that there was no objection to conversion of the carport to a garage in the almost 50 years since it was undertaken.

Mr. York noted that applicants had merely enclosed a portion of the west facing wall of the existing carport. Mr. York further noted that enclosure of the garage does not negatively impact light or air.

The Board finds that evidence shows that the strict application of the terms of the ordinance would unreasonably restrict the utilization of the property or that the

granting of the variance would alleviate a hardship due to a physical condition relating to the property or improvements thereon at the time of the effective date of the ordinance, and (i) 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; (ii) the granting of the variance will not be of substantial detriment to adjacent property and nearby properties in the proximity of that geographical area; (iii) 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; (iv) 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 (v) the relief or remedy sought by the variance application is not available through a special exception process that is authorized in the ordinance pursuant to subdivision 6 of § 15.2-2309 or the process for modification of a zoning ordinance pursuant to subdivision A4 of § 15.2-2286 at the time of the filing of the variance application.

RESOLUTION: NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF ZONING APPEALS that a request for a variance from the side yard (setback) and nonconforming feature requirements be granted to David C. and Flora F. Williams for a building permit to legitimize a previously enclosed carport into an attached garage (420 SF) to a single-family dwelling.

ACTION OF THE BOARD: (4-0)

Vote to Grant

affirmative: Pinnock, York, Winks, Poole

negative: None

CASE NO. 27-18 (WITHDRAWN BY APPLICANT)

APPLICANT: Washington Reid Developments LLC

PREMISES: 1339 NORTH 29TH STREET
(Tax Parcel Number E000-0624/032)

SUBJECT: A Certificate of Occupancy for a new single-family detached dwelling.

DISAPPROVED by the Zoning Administrator on June 20, 2018, based on Sections 30-300, 30-620.1(c) & 30-1010.2 of the zoning ordinance for the reason that: In an R-6 (Single-Family Attached Residential District), the street side yard (setback) requirement is not met as the dwelling was not constructed in accordance with the approved site plan. A street side yard of not less than three feet (3') is required and three feet (3') was proposed; 2.71' exists along T Street.

APPLICATION was filed with the Board on June 20, 2018, based on Section 15.2-2309.2 of the Code of Virginia.

CASE NO. 28-18 (WITHDRAWN BY APPLICANT)

APPLICANT: Jerry Peters

PREMISES: 3008 GRAYLAND AVENUE
(Tax Parcel Number W000-1354/020)

SUBJECT: A Certificate of Occupancy for a new single-family dwelling.

DISAPPROVED by the Zoning Administrator on June 15, 2018, based on Sections 30-300, 30-410.5(1), 30-630.2(a)(1) & 30-1010.2 of the zoning ordinance for the reason that: In an R-5 (Single-Family Residential District), the front yard (setback) requirement is not met as the dwelling was not constructed in accordance with the approved site plan. A front yard of fourteen feet and four inches (14'-4") is required and was proposed; 12.14' exists.

APPLICATION was filed with the Board on June 15, 2018, based on Section 15.2-2309.2 of the Code of Virginia.

CASE NO. 29-18

APPLICANT: Leigh Street, LLC

PREMISES: 2915 & 2919 WEST LEIGH STREET
(Tax Parcel Number N000-1592/016)

SUBJECT: A building permit for a grocery store use with an accessory outdoor dining patio (705 sq. ft.) and to construct an open balcony (19' x 60') on the second floor.

DISAPPROVED by the Zoning Administrator on June 13, 2018, based on Sections 30-300, 30-457.2. (25)a & 30-630.9.(g) of the zoning ordinance for the reason that: In a TOD-1 (Transit-Oriented Nodal District), no deck, patio, terrace or other area outside a completely enclosed building and used for the service or accommodation of patrons shall be situated within 100 feet of any R district; the outdoor dining patio is situated approximately 13'-7" from an R-7 district. The side yard (setback) requirement is not met for the new open balcony on the second floor. A side yard of sixteen feet (16') is required; none is proposed along the western property line.

APPLICATION was filed with the Board on June 13, 2018, based on Section 15.2-2309.2 of the Code of Virginia.

APPEARANCES:

For Applicant: Douglas Albertson

Against Applicant: None

FINDINGS OF FACT: The Board finds from sworn testimony and exhibits offered in this case that the applicant, Leigh Street LLC, has requested a variance for a grocery store use with an accessory outdoor dining patio and to construct an open balcony on the second floor for property located at 2915 and 2919 W. Leigh Street. Mr. Doug Albertson, representing the applicant, testified that the proposal is to construct a balcony across the front of the building with an entrance to what will be office space on the second floor. Mr. Albertson noted that the balcony will be utilized exclusively by tenants of the second-floor office space. Mr. Albertson further noted that the area beneath the second floor balcony is intended to be utilized for outdoor dining. Mr. Albertson indicated that the proposed development is consistent with the TOD district adopted in 2017. Mr. Albertson stated that what is being proposed is an asset to the neighborhood by virtue of rehabilitating a dilapidated structure. Mr. Albertson indicated that he has the support of the neighborhood association as well as the surrounding neighbors. Mr. Albertson stated that he had received no negative responses from the tenants of the dwellings located within the R-7 zoning district. Mr. Albertson noted that it was important to understand that the requested variances would have been permitted by right under the prior M-1 zoning. Mr. Albertson further noted that it was unclear to him why the R-7 zoning had been applied as it was since it was incompatible with the TOD district zoning. Mr. Albertson stated that the R-7 zoning imposes unreasonable restrictions on the adjoining property which are in

direct conflict with the stated TOD objectives. Mr. Albertson indicated that the existing parking area will be converted to outdoor dining which is consistent with the TOD provisions. Mr. Albertson noted that the required side yard setback severely impacted the proposed construction. Mr. Albertson stated that there is not another lot located within the TOD district which is similarly affected by adjoining R-7 zoning. Given these facts Mr. Albertson indicated that the existence of the R-7 zoning constituted an undue hardship as far as development of his property was concerned.

In response to a question from Mr. Winks, Mr. Albertson stated that there are six parking spaces located behind the building. Mr. Albertson noted that based on the TOD requirements he has sufficient parking and indicated that in his opinion the TOD parking requirements were too lenient.

In response to a question from Mr. York, Mr. Albertson noted that the prior use was some type of machine shop consistent with the M-1 zoning.

It was noted by Mr. Pinnock that the application requested a building permit for a grocery store.

The Board finds that evidence shows that the strict application of the terms of the ordinance would unreasonably restrict the utilization of the property or that the granting of the variance would alleviate a hardship due to a physical condition relating to the property or improvements thereon at the time of the effective date of the ordinance, and (i) 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; (ii) the granting of the variance will not be of substantial detriment to adjacent property and nearby properties in the proximity of that geographical area; (iii) 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; (iv) 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 (v) the relief or remedy sought by the variance application is not available through a special exception process that is authorized in the ordinance pursuant to subdivision 6 of § 15.2-2309 or the process for modification of a zoning ordinance pursuant to subdivision A4 of § 15.2-2286 at the time of the filing of the variance application.

RESOLUTION: NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF ZONING APPEALS that a request for a variance from the deck, patio, terrace or other area outside a completely enclosed building and used for the service or accommodation of patrons situated within 100 feet of any R district requirement and the side yard (setback) requirement for the new open balcony on the second

floor be granted to Leigh Street, LLC for a building permit for a grocery store use with an accessory outdoor dining patio (705 sq. ft.) and to construct an open balcony (19' x 60') on the second floor.

ACTION OF THE BOARD: (4-0)

Vote to Grant

affirmative: Pinnock, York, Winks, Poole

negative: None

CASE NO. 30-18

APPLICANT: ES Properties I, LLC

PREMISES: 904 MILTON STREET
(Tax Parcel Number N000-1161/013)

SUBJECT: A building permit to authorize a single-family detached dwelling in an existing one-story vacant building (1,504 sq. ft.).

DISAPPROVED by the Zoning Administrator on May 15, 2018, based on Sections 30-300, 30-412.4.(1) & 30-412.5(1)b & c of the zoning ordinance for the reason that: In R-6 (Single-Family Attached Residential District), the lot area, lot coverage and side and rear yard (setback) requirements are not met. A minimum lot area of not less than 5,000 sq.ft. in area is required; 2,649 sq.ft. is existing/proposed. A minimum five foot (5') side and rear yard is required; 1.9' and 3' are existing/proposed. A maximum lot coverage of fifty five percent (55%) is permitted; 56.4% is existing/proposed.

APPLICATION was filed with the Board on June 15, 2018, based on Section 15.2-2309.2 of the Code of Virginia.

APPEARANCES:

For Applicant: Eric Schmoldt

Against Applicant: None

FINDINGS OF FACT: The Board finds from sworn testimony and exhibits offered in this case that the applicant, ES Properties I, LLC, has requested a variance to

authorize a single-family detached dwelling in an existing one-story vacant building for property located at 904 Milton Street. Mr. Eric Schmoldt, representing the applicant, explained that he had recently purchased 904 and 907 Milton Street. Mr. Schmoldt noted that they are too old commercial properties located within R-6 Single-Family Attached Residential District. Mr. Schmoldt explained that the 907 Milton Street property had been renovated. Mr. Schmoldt stated that he had received all the requisite permits 904 Milton Street but during construction a problem was discovered involving a byright use issue.

Mr. York noted that the Zoning Administrator had determined that there was no byright use of the property which is a hardship approaching confiscation. Mr. Poole injected that this is a case of unvarnished confiscation.

The Board finds that evidence shows that the strict application of the terms of the ordinance would unreasonably restrict the utilization of the property or that the granting of the variance would alleviate a hardship due to a physical condition relating to the property or improvements thereon at the time of the effective date of the ordinance, and (i) 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; (ii) the granting of the variance will not be of substantial detriment to adjacent property and nearby properties in the proximity of that geographical area; (iii) 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; (iv) 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 (v) the relief or remedy sought by the variance application is not available through a special exception process that is authorized in the ordinance pursuant to subdivision 6 of § 15.2-2309 or the process for modification of a zoning ordinance pursuant to subdivision A4 of § 15.2-2286 at the time of the filing of the variance application.

RESOLUTION: NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF ZONING APPEALS that a request for a variance from the lot area, lot coverage and side and rear yard (setback) requirements be granted to ES Properties I, LLC for a building permit to authorize a single-family detached dwelling in an existing one-story vacant building (1,504 sq. ft.).

ACTION OF THE BOARD: (4-0)

Vote to Grant

affirmative: Pinnock, York, Winks, Poole

negative: None

CASE NO. 31-18

APPLICANT: Saoud Khaled

PREMISES: 19 WEST LEIGH STREET
(Tax Parcel Number N000-0102/004)

SUBJECT: A building permit to convert a vacant building into a sit-down restaurant (1st floor) and dwelling unit (2nd floor).

DISAPPROVED by the Zoning Administrator on April 9, 2018, based on Sections 30-300 & 30-419.3(b) (3) of the zoning ordinance for the reason that: In an R-63 (Multi-Family Urban Residential District), the proposed use (restaurant) is not permitted as the feature requirement is not met. The proposed use shall be located at the street corner; the existing building is not located at the street corner.

APPLICATION was filed with the Board on June 15, 2018, based on Section 17.20(b) of the Charter of the City of Richmond and Section 15.2-2309.2 of the Code of Virginia.

APPEARANCES:

For Applicant: Jeff Keith

Against Applicant: Stella Jenkins
Andrew Jenkins

FINDINGS OF FACT: The Board finds from sworn testimony and exhibits offered in this case that the applicant, Saoud Khaled, has requested a variance to convert a vacant building into a sit-down restaurant (first floor) and dwelling unit (second floor). The Zoning Administrator noted that this is not a use issue but one involving a feature requirement. Specifically the R-63 Multifamily Urban Residential District permits corner commercial uses. In this specific instance an accessory parking area is located at the corner of East Leigh Street and North Adams Street. Mr. Jeff Keith, representing the applicant, testified that the two-story building had been used for various commercial uses. Mr. Keith explained that the intent is to utilize the first floor for a restaurant use and the second floor will be converted to a dwelling unit. Mr. Keith noted that the R-63 district permits a restaurant on the corner but since the building is not situated on the corner a variance is being sought. Mr. Keith stated that due to the relatively small

size of the building seating will be minimal. Mr. Keith stated that the first floor encompasses less than 1200 ft.². Mr. Keith indicated that the first floor use will be used exclusively for restaurant and there will be no nightclub or private facility. Mr. Keith noted that in accordance with the Zoning Ordinance outdoor dining is not be permitted. After discussion Mr. Keith offered the following conditions for approval of the requested variance:

- 1) Hours of operation: 10 a.m.-11 p.m. Sunday-Thursday and 10 a.m.-12 midnight Friday & Saturday.
- 2) Outdoor dining shall not be permitted.
- 3) Parking area shall be screened in accordance with applicable provisions of the Zoning Ordinance.
- 4) Leasing of parking spaces within the accessory parking area shall not be permitted.

Mr. Keith indicated that the homeowners association did not oppose the request based on the foregoing conditions.

Speaking in opposition, Stella Jenkins expressed concern over the proximity of the proposed restaurant to an existing school, its hours of operation and sale of alcohol beverages.

The Board finds that evidence shows that the strict application of the terms of the ordinance would unreasonably restrict the utilization of the property or that the granting of the variance would alleviate a hardship due to a physical condition relating to the property or improvements thereon at the time of the effective date of the ordinance, and (i) 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; (ii) the granting of the variance will not be of substantial detriment to adjacent property and nearby properties in the proximity of that geographical area; (iii) 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; (iv) 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 (v) the relief or remedy sought by the variance application is not available through a special exception process that is authorized in the ordinance pursuant to subdivision 6 of § 15.2-2309 or the process for modification of a zoning ordinance pursuant to subdivision A4 of § 15.2-2286 at the time of the filing of the variance application.

RESOLUTION: NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF ZONING APPEALS that a request for a variance from the proposed use (restaurant) and the feature requirement be granted to Saoud Khaled for a building

permit to convert a vacant building into a sit-down restaurant (1st floor) and dwelling unit (2nd floor), subject to the following conditions:

- 1) Hours of operation: 10 a.m.-11 p.m. Sunday-Thursday and 10 a.m.-12 midnight Friday & Saturday.
- 2) Outdoor dining shall not be permitted.
- 3) Parking area shall be screened in accordance with applicable provisions of the Zoning Ordinance.
- 4) Leasing of parking spaces within the accessory parking area shall not be permitted.

ACTION OF THE BOARD: (4-0)

Vote to Grant Conditionally affirmative:

Pinnock, York, Winks, Poole

negative:

None

The Board could not approve the July minutes for the reason that there were not three members in attendance from that meeting.

The meeting was adjourned at 2:00 p.m.



Chairman



Secretary