On Wednesday, February 5, 2003, 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 Times-Dispatch on January 22 and 29, 2003 and written notice having been sent to interested parties.

Members Present: Jean Thompson Williams, Chairman  
James H. Parks, III, Vice-Chairman  
Kathy Watkinson Ivins  
Rodney M. Poole  
Alan R. Siff  

Member Absent: Ann Cox  

Staff Present: Roger H. York, Secretary  
Roy Benbow, Planner III  
J. Neil Brooks, Planner II  
William Davidson, Zoning Administrator  
Jan Reid, 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. 2-03(CONTINUED)

APPLICANT: The Maynard P. Smith and Mary-Helen Smith Family Limited Partnership

PREMISES: 1833 AND 1835 MONUMENT AVENUE  
(Tax Parcel Number W000-0861/005)

SUBJECT: An application for a variance and a reversal of the decision of the Zoning Administrator concerning a permit to split the existing lot, convert the existing building (No. 1835) to a single-family detached dwelling and to construct a new single-family detached dwelling at 1833 AND 1835 MONUMENT AVENUE (Tax Parcel Number W000-0861/005), located in an R-6 Single-Family Attached Residential District. The Zoning Administrator has determined that the proposed lot split is not permitted as the lot area, lot width, side yard setback and lot coverage requirements are not met. A minimum
lot area of five thousand square feet (5,000 sf) and a lot width of fifty feet (50’) for each lot is required. For zoning purposes, one (1) lot having a lot area of 9,750.00 square feet and a lot width of sixty-five feet (65’) currently exists; two (2) lots having a lot area of 4,875.00 square feet and lot widths of 32.50 feet each are proposed. Side yards of not less than five feet (5’) are required; a side yard of 2.5 feet is proposed for the existing (#1835) building. Three-foot (3’) side yards would be provided for the proposed (#1833) single-family detached dwelling. Maximum lot coverage shall not exceed fifty-five percent (55%) of the area of the lot. A lot coverage of 2,681.25 square feet is permitted; a lot coverage of 3,000 square feet (60%) is proposed for #3833.”

APPLICATION was filed with the Board on December 12, 2002, based on Section 17.20(a) & (b) of the City Charter.

APPEARANCES:

For Applicant: John Russell
Larry Cummings

Against Applicant: none

FINDINGS OF FACT: The Board finds from sworn testimony and exhibits offered in this case by the applicant’s attorney, John Russell, that his client has filed an appeal of a decision of the Zoning Administrator, and failing that, a variance to accomplish the same objective.

The Zoning Administrator had ruled that when the property known as 1835 Monument Ave. was converted to offices and apartments in 1957, off-street parking was required. The same owner owned both 1833 and 1835 Monument. That same year, the owner applied for a driveway permit and improved 1833 as a parking area. Although no permits specifically tie the two lots together, the Zoning Administrator ruled that they have been combined for zoning purposes because the parking on 1833 was/is required to serve the use at 1835.

With respect to the appeal, Mr. Russell referred to the ordinance section 32-620.1 which exempts a lot from a number of zoning requirements if the lot was created before the requirements. In this case, the lot (No. 1833 Monument Ave.) does not meet lot area or width requirements. Although sometimes carried in the same deed as 1835 Monument Ave., it has always been described separately.

Mr. Russell stated that the ordinance definition of lot included “A lot may consist of a single lot of record or a combination of contiguous lots of record.” He emphasized the word “may”. He stated that there is no record of any intent to combine these two lots for zoning purposes. There have never been any buildings or structures on 1833 and it was not needed for any other zoning requirement such
Mr. Russell stated that merger of the two lots would require some improvement which would cross the common lot line.

Mr. Poole asked if Mr. Russell agreed that the parking at 1833 was required to support 1835. Mr. Russell responded that the owner of the properties in 1957 also owned another parcel across a rear alley which could have been used for parking. There is no reference on any City permits indicating that the required parking was at 1833.

Mr. Russell then stated that his client intends to renovate 1835 as a single-family dwelling which has adequate parking on site. There would no longer be any need for the parking lot at 1833 and his client proposes to construct a single-family dwelling on that lot. However, the Zoning Administrator has ruled that even if the need for the parking lot is eliminated, the lots have been combined and may not be separated.

At this point, the Zoning Administrator, William Davidson, appeared to defend his decision. He stated that the 1957 conversion of 1835 required parking and that the conversion coincided with the sanctioned development of the adjacent parking lot. In the absence of any other evidence, he has to assume that the parking at 1833 was intended to meet the parking requirement at 1835. Therefore, this relationship between the two properties combined them for zoning purposes. Even if 1835 reverts to single family, the lots are still combined for zoning purposes because the combination resulted in 1835 coming closer to compliance with lot area, lot width and yards. The proposed split would result in deficiencies for both lots.

Mr. Davidson introduced another issue related to the case. After the appeal/variance was filed, he received a request from the applicant for a zoning confirmation letter for 1831 Monument. He has determined that this property was converted to office use in 1960 and was subject to parking requirements. It was owned and developed by the owner of 1833 and 1835. Three of the spaces on the 1831 property can be accessed only through the parking area on 1833. In addition, three additional spaces were/are required which can be provided at 1833. Again, in the absence of any other evidence, he has determined that 1833 was/is also necessary to serve 1831.

Mr. Russell again pointed out that this required parking could have and can be provided on the other property across the alley.

Mr. Russell continued with the variance request. He stated that both 1833 and 1835 would be substandard with respect to lot area, lot width, side yard and lot coverage requirements. However, both lots are typical of others in the block. The lot at 1833 represents the only gap in the block face. The Commission of Architectural Review (the property is located within a historic district) has
approved conceptual plans for a proposed single-family dwelling and has
determined that it is important to fill in the gap along the street. There is support
from the Fan District Association and the Monument Ave. Preservation Society.

The members expressed concern about the possible impact of granting the
variance for 1833 on 1831. Mr. Russell responded that it was his client’s
intention to eventually convert 1831 to single-family as well, but that in the
interim, he would be able to provide parking on the lot across the alley.

With respect to the appeal, the Board agreed with the Zoning Administrator that
the facts surrounding the 1957 development of 1835 and the adjacent parking lot
at 1833 implied that one was intended to serve the other. Otherwise, the
conversion of 1835 would have been illegal.

With respect to the variance, the Board’s primary concern was that approval be
subject to conditions that 1835 be converted to single-family and that issues
involving 1831 be resolved. They made it clear that issues involving 1831 would
have to be resolved before any building permit is issued for 1833.

The Board is satisfied that the property was acquired in good faith and that an
exceptional situation exists due to the history of the properties, the conversion of
1835 to single-family and the requirements of the Commission of Architectural
Review whereby strict application of the lot area, lot width, side yard and lot
coverage requirements unreasonably restricts its use and the granting of a
variance in this case will be in harmony with the intended spirit and purpose of
the ordinance and the powers of the Board.

RESOLUTION: NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF
ZONING APPEALS that a request for a variance from the proposed lot split, lot
area, lot width, side yard setback, and lot coverage requirements be granted and
that a request for an appeal (a reversal of the decision of the Zoning
Administrator’s determination that the proposed lot split is not permitted as the lot
area, lot width, side yard setback and lot coverage requirements are not met) be
denied to The Maynard P. Smith & Mary-Helen Smith Family Limited
Partnership concerning a permit to split the existing lot, convert the existing
building (No. 1835) to a single-family detached dwelling and to construct a new
single-family detached dwelling as proposed at the subject premises.

ACTION OF THE BOARD (APPEAL): Denied (5-0)

Vote to Deny the Appeal
affirmative: Poole, Ivins, Williams, Siff, Parks

negative: none
ACTION OF THE BOARD (VARIANCE): Granted Conditionally (5-0)

Vote to Grant the Variance

affirmative: Poole, Ivins, Williams, Siff, Parks

negative: none

The following case had been continued from the January meeting so that the Board could question the proposed tenant for the subject property.

CASE NO. 10-03(CONTINUED)

APPLICANT: Ephriam H. Briggs

PREMISES: 520 NORTH 26TH STREET
(Tax Parcel Number E000-0383/001)

SUBJECT: A certificate of occupancy for a first-floor convenience store/deli

DISAPPROVED by the Zoning Administrator on December 6, 2002, based on Sections 32-300, 32-418.1, 32-418.2, 32-710.1(27)(a) and 32-800.4 of the zoning ordinance for the reason that: “R-53 Multi-Family Residential District. The proposed use is not permitted and the off-street parking requirements are not met. All nonconforming rights have expired as the building has been vacant for more than twenty-four (24) consecutive months. Ten (10) parking spaces are required; none are proposed/provided.”

APPLICATION was filed with the Board on December 17, 2002, based on Section 32-1040.3(6) of the City Code.

APPEARANCES:

For Applicant: Winifred Ross
Ephriam Briggs

Against Applicant: Joseph Edward Duvall
Alvis L. Oldham

FINDINGS OF FACT: The Board finds from sworn testimony and exhibits offered in this case by the owner/applicant, Ephriam Briggs, that his property was last used legally as a convenience store on the 1st floor with an apartment above. The property is zoned residential and the 1st floor has been vacant for more than two years. The 2nd floor has been being used illegally as a “neighborhood community center”. It was made clear to the applicant that the Board did not have the power
to legitimize that use. The Board’s special exception power was limited to
restoring the nonconforming rights to the 1st floor.

Mr. Briggs described the building as a commercial storefront not suitable for
residential use. It had last been used as a convenience store. He had a
prospective tenant, Winifred Ross, who wishes to operate a convenience store. At
the previous meeting, the Board had informed Mr. Briggs that it was the Board’s
policy not to permit ABC licenses for properties located within residential areas.
He protested, claiming that this was discriminatory. Ms. Ross stated that she did
not think she could make it without alcohol sales.

Two members of the adjacent church appeared in opposition. They described
many problems with trash and inappropriate behavior associated with the previous
operation of the store. They stated that it has been the subject of major City
enforcement efforts. They also pointed out that there has been much renovation
in the area recently and that the proposed use would probably have a negative
impact.

The Board concluded that the special exception criteria in this case had not been
met and that a less intense use, such as an office or personal service use would be
more appropriate. They also expressed concern that the applicant did not take
advantage of the continuance to meet with neighbors and the East District staff.

RESOLUTION: NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF
ZONING APPEALS that a request for a special exception from the proposed use
and the off-street parking requirements be denied to Ephriam H. Briggs for a
certificate of occupancy for a first-floor convenience store/deli as proposed at the
subject premises.

ACTION OF THE BOARD: Denied (5-0)

Vote to Deny
affirmative: Poole, Ivins, Williams, Siff, Parks

negative: none

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CASE NO. 12-03(CONTINUED)

APPLICANT: Association for the Preservation of Virginia Antiquities

PREMISES: 1813-1815 EAST GRACE STREET
(Tax Parcel Number E000-0131/007)
SUBJECT: A building permit for renovations and addition to the building to be used as a two-family detached dwelling

DISAPPROVED by the Zoning Administrator on December 17, 2002, based on Sections 32-300, 32-800.1(2)&(3) and 32-800.4 of the zoning ordinance for the reason that: “B-5 Central Business and City Old and Historic District. The proposed dwelling use and the enlargement of the building are not permitted as the nonconforming use rights have expired.”

APPLICATION was filed with the Board on, 2003, based on Section 17.20(b) of the City Charter and Section 32-1040.3 (6) of the City Code.

APPEARANCES:

For Applicant: C. Samuel McDonald
Charles MacFarlane

Against Applicant: none

FINDINGS OF FACT: The Board finds from sworn testimony and exhibits offered in this case by the applicant, Sam McDonald, that the Association for the Preservation of Virginia Antiquities (APVA) owns the subject property which is developed with what is known as the Crump Double House. It is an attached pair of dwellings constructed prior to the Civil War. They are considered architecturally significant. They are located within an M-1 Light Industrial District which does not permit residential use. Since they have been vacant for more than two years, they have lost their nonconforming status. Approval of the requested special exception would restore those rights. In addition, additions are proposed at the rear to accommodate kitchens and bathrooms (the buildings currently contain only two rooms per floor). Since the additions exceed 10% of the existing floor area, a variance is needed. Off-street parking will be provided.

Mr. McDonald stated that the buildings do not lend themselves to nonresidential use and the historic restrictions would preclude exterior changes which might be necessary for nonresidential use. The Board had previously approved a similar request for the adjacent property. There is a significant 17th century house across Grace St.

The Board is satisfied that the special exception criteria are met in this case and that there is a need for the additions to enable reasonable use of the buildings as dwellings.

The Board is satisfied that the property was acquired in good faith and that an exceptional situation exists due to the small size of the existing dwellings whereby strict application of the nonconforming use requirements unreasonably
restricts its use and the granting of a variance in this case will be in harmony with the intended spirit and purpose of the ordinance and the powers of the Board.

RESOLUTION: NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF ZONING APPEALS that a request for a variance from the nonconforming use requirements be granted to the Association for the Preservation of Virginia Antiquities for a building permit for renovations and additions to a building to be used as a two-family dwelling as proposed at the subject premises.

ACTION OF THE BOARD: Granted (5-0)

Vote to Grant the special exception
affirmative: Poole, Ivins, Williams, Siff, Parks
negative: none

Vote to Grant the variance
affirmative: Poole, Ivins, Williams, Siff, Parks
negative: none

CASE NO. 13-03

APPLICANT: Jack R. Wilson, III (for the Crisis Pregnancy Center of Metropolitan Richmond)

PREMISES: 4100 BROOK ROAD
(Tax Parcel Number N000-2274/015)

SUBJECT: An application for a reversal of the decision of the Zoning Administrator to deny a certificate of zoning compliance to legally operate its full range of business functions at 4100 BROOK ROAD (Tax Parcel Number N000-2274/015), located in an RO-1 Residential-Office District. The Zoning Administrator’s decision to deny was based upon his interpretation of the term “social service delivery use” (a use not permitted in the RO-1 District) as set forth in the “definitions” section (Section 32-1220.77:1) of the zoning ordinance.

APPLICATION was filed with the Board on November 7, 2002, based on Section 17.20(a) of the City Charter.
APPEARANCES:

For Applicant:  
Jack Wilson  
Bruce Kemp  

Against Applicant:  
Margaret D. Laurence  
Ann Neil Cosby  
Tim Pfohl  
J. Neil Turnage

FINDINGS OF FACT:  The Board finds from sworn testimony and exhibits offered in this case by the applicant’s attorney, Jack Wilson, that this case involved an appeal of an interpretation by the Zoning Administrator that his client, the Crisis Pregnancy Center, is a “social service delivery use” and therefore, not permitted at the proposed location (zoned RO-1 Residential-Office). The definition of the term social service delivery use includes: “A use which is operated for the purpose of providing to persons who are members of a specific client group, as opposed to the general public, one or more services...”. The focus of the interpretation was on this portion of the definition. It is a threshold criterion and the Zoning Administrator has ruled that the applicant serves a specific clientele.

Mr. Wilson stated that his presentation would consist of two parts. He would submit materials and provide testimony to show that the Crisis Pregnancy Center was not a social service delivery use, but rather, just a permitted office use. He also stated that even if the ordinance interpretation were correct, the ordinance is illegal because of vague, arbitrary and capricious language. Mr. Wilson stated that the ordinance provides no guidance to the Zoning Administrator on how to determine the difference between a specific client group and the general public. He also stated that this distinction has no relationship to the usual goals of zoning to protect health, safety and welfare and that there is no evidence that there is any adverse impact. Mr. Wilson stated that the applicant was informed by the City staff that if the Crisis Pregnancy Center charged a market rate fee for their services then they would be permitted. Mr. Poole stated that the Board could not rule on the legality of the ordinance, only the interpretation of the ordinance language. He stated that he appreciated the fact that Mr. Wilson was exhausting all his remedies if further legal action becomes necessary for his client.

Mr. Wilson stated that he was aware that the timeliness of the appeal was being challenged. He stated that an application for a certificate of zoning compliance for the proposed use was filed on July 10, 2002. It was rejected on October 10, and the appeal was filed on November 6, within the required 30 day time period. He stated that he was aware of a recent Virginia Supreme Court decision (the Lilly case – part of the record) in which the court ruled that a verbal determination made by the Zoning Administrator at a public hearing, pursuant to an application, constituted notice. In this case, the applicant had not applied for any permits or a
formal zoning determination but did apply for a special use permit on the assumption that they needed one. There was a Planning Commission hearing on the application on November 5, 2001. The application was withdrawn on May 28, 2002 prior to City Council consideration in order to pursue relief through the Board of Zoning Appeals. Mr. Wilson stated that the Zoning Administrator believes that the November 5, 2001 Planning Commission hearing constituted notice since the presentation by the staff indicated that the proposed use was not permitted. Mr. Wilson referred to another Virginia Supreme Court case (the Vulcan case – part of the record), which made a distinction on the basis that there had been no permit applied for to trigger a determination by the Zoning Administrator. In the present case, no permit was applied for and rejected until October 10, 2002.

Mr. Wilson submitted materials describing a wide range of services provided to the entire region by the applicant. Other services, such as counseling to sexually active men and women, non-pregnant women, post abortion women, employment assistance, material assistance, referrals, information on sexually transmitted diseases etc. are also provided. He stated that only 35% of the women clients tested for pregnancy are actually pregnant.

Mr. Poole made reference to a brochure submitted by Mr. Wilson which focuses only on services for pregnant women. Mr. Siff asked if there was any other literature of a more general nature which his client distributed. Mr. Wilson stated that there were such materials, but none were brought to the hearing. Mr. Wilson confirmed that the mission of the organization centers around pregnant women but that the services are open to all who are interested or concerned about the issue. Mr. Poole asked Mr. Wilson whom the Zoning Administrator had determined were the clientele. He responded that he described the clientele as “women who are unprepared for pregnancy”, who typically do not go to this facility except for this reason. Others (boyfriends, husbands, other family members) may also go there, but they would be limited in number; the majority are the targeted women clients. Mr. Wilson stated that the facility serves any member of the general public who has a need or is interested in the services.

The Zoning Administrator, William Davidson, appeared next to defend his position. Before he began, Ms. Williams asked him if the Crisis Pregnancy Center were operated for profit, would it be permitted. He responded that in his opinion, it would be.

Mr. Davidson stated that the key phrase in the definition of social service delivery use is “operated for the purpose of providing”. He stated that in this case the use focuses on pregnancy. He submitted a copy of an ad for the Crisis Pregnancy Center in the Yellow Pages which was listed under the heading “Pregnancy Counseling”. He agreed that there were many other subordinate elements of the use, but the primary focus was on pregnancy issues. He stated that he also
checked out their web site, and again, the orientation is for women are or are concerned about pregnancy and this is not the general public. As an example, he pointed out that anyone of the general population can be homeless, but that the homeless are a specific clientele. The purpose of the Crisis Pregnancy Center is to deal with women with pregnancy issues, not to deal with the general public.

In response to some questions, Mr. Davidson stated that he did not attend the November 5, 2001 Planning Commission meeting and was not specifically involved in making a determination at that time although he knew of the special use application.

The next speaker was Ann Neil Cosby, a zoning attorney from the firm of Sands Anderson. She stated that her firm handled the appeal for the applicant in the Lilly case. She distinguished it from the Vulcan case in that there had been no specific application to respond to in the Vulcan case. She stated the applicant in the present case became aggrieved when they applied for their special use permit in 2001.

Mr. Wilson noted that in the Lilly case, the Zoning Administrator stated that he was asked formally for an opinion at several hearings and that he stated at one hearing that there was a right of appeal. In the present case, any involvement by the zoning office was limited to an informal opinion, not in response to a formal request for one.

Tim Pfohl, the President of the Bellevue Civic Association, spoke in support of the Zoning Administrator. He noted that the applicant’s special use permit application emphasizes services to pregnant women. It also anticipates only 30 vehicle trips per day which suggests that it could not be providing a wise range of services to the entire metropolitan area.

Mr. Poole stated that he had read both the Vulcan and Lilly cases and concluded that the Vulcan case was most similar to the present circumstances and that the appeal was timely filed. He stated that there had been no formal request for a zoning determination until the filing of the certificate of zoning compliance application in November. The members voted unanimously to accept the application.

Mr. Poole, seconded by Ms. Ivins, moved to uphold the Zoning Administrator’s decision. He acknowledged that many of the issues are debatable, but the Zoning Administrator enjoys a presumption – based on case law. He stated that all of the evidence presented about the Crisis Pregnancy Center focused on pregnancy issues, and this constituted the purpose of the organization. Ms. Williams expressed concern that if the applicant were a profit making organization, they would be permitted. Mr. Poole stated that the language in the ordinance is clear
and it would be for a court to decide if there are legal problems with the ordinance.

RESOLUTION: NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF ZONING APPEALS that a request for a reversal of the decision of the Zoning Administrator concerning the proposed use of the subject premises be denied.

ACTIONS OF THE BOARD: Denied (5-0)

Vote to Deny
affirmative: Poole, Ivins, Williams, Siff, Parks
negative: none

The following case was withdrawn prior to the meeting:

CASE NO. 14-03

APPLICANT: Charles E. Holsinger, Jr.

PREMISES: 3841 COLLIER HILL ROAD (Tax Parcel Number C008-0878/062)

SUBJECT: An application for a reversal of the decision of the Zoning Administrator to deny a building permit for the construction of a single-family dwelling at 3841 COLLIER HILL ROAD (Tax Parcel Number C008-0878/062), located in an R-3 Single-Family Residential District. The Zoning Administrator has determined that the access easement for the lot has not been approved by the Director of Public Works, the Chief of Police, the Chief of Fire and Emergency Services and the City Attorney as required by the ordinance.

CASE NO. 15-03

APPLICANT: John Kinney

PREMISES: 3208 MIDLOTHIAN TURNPIKE (Tax Parcel Number S000-1874/004)

SUBJECT: A permit to enclose the front porch of a single-family dwelling
DISAPPROVED by the Zoning Administrator on December 16, 2002, based on Sections 32-300 and 32-630.2(a)(b) of the zoning ordinance for the reason that: “R-5 Single-Family Residential District. The front yard setback requirement is not met.”

APPLICATION was filed with the Board on January 10, 2003, based on Section 17.20(b) of the City Charter.

APPEARANCES:

For Applicant: John E. Kinney, Jr.
               Gerald Lindsey
               Donzella M. Kinney

Against Applicant: none

FINDINGS OF FACT: The Board finds from sworn testimony and exhibits offered in this case by the applicant, John Kinney, that he and his wife own and occupy a dwelling on the subject property. Mr. Kinney stated that his wife suffers from depression and that her doctor has indicated that she also suffers from sunlight deprivation (a letter from the doctor was submitted). Since the dwelling faces south, Mr. Kinney stated that he wishes to enclose his front porch to provide her with a sunroom.

The Board is satisfied that the property was acquired in good faith and that an exceptional situation exists due to the documented need to provide a sunroom addition with a southern exposure whereby strict application of the front yard requirements unreasonably restricts its use and the granting of a variance in this case will be in harmony with the intended spirit and purpose of the ordinance and the powers of the Board.

RESOLUTION: NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF ZONING APPEALS that a request for a variance from the front yard requirements be granted to John Kinney for a building permit to enclose a front porch as proposed at the subject premises.

ACTION OF THE BOARD: Granted (5-0)

Vote to Grant
affirmative: Poole, Ivins, Williams, Siff, Parks
negative: none

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CASE NO. 16-03

APPLICANT: Richmond Better Housing Coalition

PREMISES: 2023 WEST CARY STREET
(Tax Parcel Number W000-0896/001)

SUBJECT: A building permit to renovate the building for use as a two-family attached dwelling

DISAPPROVED by the Zoning Administrator on January 7, 2003, based on Sections 32-300, 32-438.1, 32-710.1(3) and 32-800.4 of the zoning ordinance for the reason that: “B-3 General Business District. The proposed use is not permitted and the off-street parking requirement is not met.”

APPLICATION was filed with the Board on January 10, 2003, based on Section 32-1040.3(6) of the City Code.

APPEARANCES:

For Applicant: Monique Johnson

Against Applicant: David Garraghty

FINDINGS OF FACT: The Board finds from sworn testimony and exhibits offered in this case by Monique Johnson, representing the applicant, the Better Housing Coalition, that the subject property was developed with a small (500 sq. ft./apartment) four-family dwelling that has been vacant for over two years. It is zoned B-3 General Business which does not permit this use and the nonconforming rights have expired. The applicant wishes to renovate the building as a two-family dwelling. It is in a block exclusively developed with residential buildings and it does not lend itself to nonresidential use. Historic tax credits require the retention of the existing three entrance doors on the front of the building, but one would become a dummy. It is possible to park at the rear of the property, but this requires crossing over a 4 ft. wide strip of land separating the subject property from an adjacent alley. Since the ownership of this strip is unclear and access across it cannot be guaranteed, the application includes a request for a waiver of the off-street parking requirements.

A nearby property owner, David Garraghty, appeared in opposition. He stated that the Cary St. Corridor Plan adopted by City Council, includes the provision of open space and that too many residential properties are being retained. The Board informed him that this plan had no bearing on the present case before the Board.
The Board is satisfied that the special exception criteria applicable in this case are met.

RESOLUTION: NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF ZONING APPEALS that a request for a special exception from the use and off-street parking requirements be granted to the Richmond Better Housing Coalition for a building permit to renovate a building for use as a two-family dwelling as proposed at the subject premises.

ACTION OF THE BOARD: Granted (5-0)

Vote to Grant
affirmative: Poole, Ivins, Williams, Siff, Parks

negative: none

CASE NO. 17-03

APPLICANT: Vogue Enterprises

PREMISES: 3145 WEST CARY STREET
(Tax Parcel Number W000-1404/001)

SUBJECT: A building permit to convert a retail florist to a restaurant for (2 floors)

DISAPPROVED by the Zoning Administrator on January 3, 2003, based on Sections 32-300, 32-710.3(4) and 32-910.2(2)(b) of the zoning ordinance for the reason that: “UB Urban Business and PO-2 Parking Overlay District. The off-street parking requirement is not met.”

APPLICATION was filed with the Board on January 15, 2003, based on Section 17.20(b) of the City Charter.

APPEARANCES:

For Applicant: Glenn Moore
Mark W. Davis

Against Applicant: Christopher Shaver

FINDINGS OF FACT: The Board finds from sworn testimony and exhibits offered in this case by the applicant’s attorney, Glenn Moore, that his client wishes to
develop the subject property with a sandwich shop. The restaurant would occupy about 1800 sq. ft., including a portion of the 2nd floor. The remainder of the 2nd floor would be occupied by office space. Although the uses are permitted, the off-street parking requirements are not met. The previous retail use had 2 on-site parking spaces and was “grandfathered” for an additional 4 spaces. The proposed use would require 11 spaces. This would result in a deficiency of 5 spaces.

Mr. Moore stated that the rear of the property could be arranged to provide the 2 existing spaces plus 2 captive spaces behind them. It might be possible to lease 2 spaces nearby or 5 over 500 ft. away. Mr. Moore stated that he was informed by the Secretary that in his experience, it was possible to get 50 seats into an 850 sq. ft. space. A restaurant of that size would be required to provide 5 parking spaces. Mr. Moore stated that his client was willing to proffer a 50 seat maximum even though it would be possible to get over 100 seats in the restaurant.

A property owner from across the alley, Christopher Davis, appeared in opposition. He has a garage on the other side of the alley and he was concerned about damage to his building due to maneuvering vehicles. As a result of his concerns, the applicant agreed to a number of conditions which would improve convenient access to the rear of the property.

The Board is satisfied that the property was acquired in good faith and that an exceptional situation exists due to the unavailability of additional parking and the proposed seating limitation whereby strict application of the off-street parking requirements unreasonably restricts its use and the granting of a variance in this case will be in harmony with the intended spirit and purpose of the ordinance and the powers of the Board.

RESOLUTION: NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF ZONING APPEALS that a request for a variance from the off-street parking requirements be granted to Vogue Enterprises for a building permit to convert a retail store into a restaurant as proposed at the subject premises, subject to the following conditions:

1. Four (4) parking spaces shall be provided on the property (two of the spaces may be stacked);
2. The existing gates shall be removed and a minimum of ten (10) ft. of the existing fence located along the western property line (measured from the adjacent alley) shall be removed, and;
3. A movable dumpster shall be provided for the collection of trash and garbage.

ACTION OF THE BOARD: Granted Conditionally (5-0)
Vote to Grant
affirmative: Poole, Ivins, Williams, Siff, Parks
negative: none

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The following case was withdrawn prior to the meeting:

CASE NO. 18-03

APPLICANTS: Scott and Anne Marie Elles
PREMISES: 6213 THREE CHOPT ROAD
(Tax Parcel Number W021-0350/012)
SUBJECT: A building permit to remove and to reconstruct a garage on an existing foundation

DISAPPROVED by the Zoning Administrator on January 3, 2003, based on Sections 32-300, 32-402.5(2) and 32-810.1 of the zoning ordinance for the reason that: “R-1 Single-Family Residential District. The side yard setback requirement is not met.”

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CASE NO. 19-03

APPLICANT: Amanda L. Powell
PREMISES: 3315 IDLEWOOD AVENUE
(Tax Parcel Number W000-1507/014)
SUBJECT: A building permit to construct a shed for the single-family detached dwelling

DISAPPROVED by the Zoning Administrator on January 7, 2003, based on Sections 32-300 and 32-410.6 of the zoning ordinance for the reason that: “R-5 Single-Family Residential District. The maximum permitted lot coverage is exceeded.”

APPLICATION was filed with the Board on January 13, 2003, based on Section 17.20(b) of the City Charter.
APPEARANCES:

For Applicant: Amanda Powell
Against Applicant: none

FINDINGS OF FACT: The Board finds from sworn testimony and exhibits offered in this case by the applicant, Amanda Powell, that she recently purchased the subject property. A deteriorated garage on the property had to be demolished. She wishes to construct a 320 sq. ft. shed/noncommercial artist studio in the rear yard. Setback requirements would be met but the allowable lot coverage would be exceeded. A small loft area would be used for storage (there is very little storage space in the house). There would be no bathroom.

The Board is satisfied that the property was acquired in good faith and that an exceptional situation exists due to the small size of the house and lot whereby strict application of the lot coverage requirements unreasonably restricts its use and the granting of a variance in this case will be in harmony with the intended spirit and purpose of the ordinance and the powers of the Board.

RESOLUTION: NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF ZONING APPEALS that a request for a variance from the lot coverage requirements be granted to Amanda L. Powell for a building permit for an accessory building as proposed at the subject premises.

ACTION OF THE BOARD: Granted (5-0)

Vote to Grant
affirmative: Poole, Ivins, Williams, Siff, Parks
negative: none

The following case was continued to the March 5 meeting:

CASE NO. 20-03

APPLICANT: Historic Manor LP
PREMISES: 100 WEST CLAY STREET
(Tax Parcel Number N000-0121/020)
SUBJECT: A certificate of occupancy to operate a retail store (Deli/Grocery) with off-premise alcohol sales
DISAPPROVED by the Zoning Administrator on January 9, 2003, based on Sections 32-300, 32-412.1 and 32-1040.2 of the zoning ordinance for the reason that: “R-6 Single-Family Attached Residential District. The conditions as imposed by a previous Special Exception (#12-01) are not met.”

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At this point in the meeting, Mr. Poole informed the Board that he had to leave.

CASE NO. 21-03

APPLICANTS: Donald and Carolyn A. W. Hodgins

PREMISES: 410-412 NORTH MADISON STREET
(Tax Parcel Number N000-0181/013)

SUBJECT: A building permit to construct two (2) single-family attached dwellings on individual lots

DISAPPROVED by the Zoning Administrator on January 10, 2003, based on Sections 32-300, 32-412.4(2)(b), 32-412.5(2)(b) and 32-710.1(2) of the zoning ordinance for the reason that: “R-6 Single-Family Attached Residential District. The proposed construction and lot split do not comply with the density, lot area, side yard and off-street parking requirements.”

APPLICATION was filed with the Board on January 13, 2003, based on Section 17.20(b) of the City Charter.

APPEARANCES:

For Applicant: Ron Reese
Herb Coleman

Against Applicant: Sharon Leiby
Ken Davidson
David Rhodes

FINDINGS OF FACT: The Board finds from sworn testimony and exhibits offered in this case by Ron Reese, representing the owners and contract purchaser, that the subject property was created by carving off the rear portions of three lots fronting on Clay St. many years ago prior to zoning. A garage was constructed on a portion of this property which was divided recently by a previous owner. Although the division was permitted, the remaining vacant portion of the lot cannot be used because the new lot does not meet zoning requirements.
Mr. Reese stated that the contract purchaser wishes to demolish the garage, re-combine the lots, divide the original lot perpendicular to Madison St. and construct two attached dwellings. The density, lot area and side yard requirements would not be met on either lot and one would not meet the off-street parking requirements. The proposed lots would each contain only 1960 sq. ft. of lot area. The Commission of Architectural Review has approved preliminary plans for the two dwellings.

Ken Davidson, owner of 305 W. Clay St. appeared in opposition. His is one of the properties from which the subject property was created. He stated that the developer’s need to construct two houses was due to too high a price for the property - $30,000. He stated that the entire lot is about the same size as others nearby and that one house would be reasonable and appropriate. Mr. Davidson stated that parking is a big problem in the area because of the nearby Dairy Building renovation and parking by employees of Broad St. businesses. He also pointed out that students are often tenants of apartments and houses in the area and this generates more vehicles per property.

Two other nearby property expressed similar concerns.

The Board finds that although the property was acquired in good faith, the applicant failed to show an extraordinary or exceptional situation whereby strict application of the density, lot area, side yard and off-street parking requirements unreasonably restricts its use or that there is a clearly demonstrable hardship bordering on confiscation of the property. The Board is satisfied that reasonable use can be made of the property under applicable zoning regulations. The granting of a variance in this case would constitute a special privilege or convenience to the owner and would not be in harmony with the intended spirit and purpose of the ordinance and the powers of the Board.

RESOLUTION: Now, therefore, be it resolved by the Board of Zoning Appeals that a request for a variance from the density, lot area, side yard and off-street parking requirements be denied to Donald & Carolyn A. W. Hodgins for a Building permit to construct two (2) single-family attached dwellings as proposed at the subject premises.

ACTION OF THE BOARD: Denied (4-0)

Vote to Grant
affirmative: Ivins, Williams, Siff, Parks

negative: none

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CASE NO. 22-03

APPLICANT: Richmond Better Housing Coalition

PREMISES: 2123 WEST CARY STREET
(Tax Parcel Number W000-0940/002)

SUBJECT: A permit to renovate the building for use as a two-family dwelling

DISAPPROVED by the Zoning Administrator on January 6, 2003, based on Sections 32-300, 32-438.1, 32-710.1(3) and 32-800.4 of the zoning ordinance for the reason that: “B-3 General Business District. The proposed use is not permitted and the off-street parking requirement is not met.”

APPLICATION was filed with the Board on January 10, 2003, based on Section 32-1040.3(6) of the City Code.

APPEARANCES:

For Applicant: Monique Johnson

Against Applicant: David Garraghty

FINDINGS OF FACT: The Board finds from sworn testimony and exhibits offered in this case by the applicant’s representative, Monique Johnson, that this case is identical to Case No. 16-03 at 2023 W. Cary St. A difference is that the Board had already approved a special exception for the property in February, 2000, but permits were not obtained within the required one year. It was noted for the record that the applicant owns a parking lot at the rear of the property but it is tied to another property as a condition of a special use permit.

David Garraghty appeared in opposition for the same reasons expressed in Case No. 16-03.

The Board is satisfied that the special exception criteria applicable in this case are met.

RESOLUTION: NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF ZONING APPEALS that a request for a special exception from the use and off-street parking requirements be granted to the Richmond Better Housing Coalition for a building permit to renovate a building for use as a two-family dwelling as proposed at the subject premises.

ACTION OF THE BOARD: Granted (4-0)
Vote to Grant

affirmative: Ivins, Williams, Siff, Parks

negative: none

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The minutes of the November 6, 2002 meeting were approved as distributed (3-0-1)(Ms. Ivins abstained since she did not attend the meeting).

The minutes of the December 4, 2002 meeting were approved as distributed (4-0).

The minutes of the January 8, 2003 meeting were approved as distributed (3-0-1)(Ms. Ivins abstained since she did not attend the meeting).

The Secretary informed the members that this was his last meeting prior to his retirement. This was also the last meeting for Ms. Ivins who is moving to Henrico County. The members agreed to get together for dinner in March.

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The meeting was adjourned at 6:15 p.m.

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Chairman

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Secretary