On Wednesday, April 2, 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 March 19 and 26, 2003 and written notice having been sent to interested parties.

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

Member Absent: Ann Cox

Staff Present: Roy W. Benbow, Secretary
Claude Cooper, Commissioner of Buildings
J. Neil Brooks, Planner II
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. 32-03

APPLICANTS: Gregory and Evelyn Giebel

PREMISES: 2611 STRATFORD ROAD
(Tax Parcel Number C003-0149/036)

SUBJECT: A permit to legitimize an existing accessory structure for a single-family dwelling

DISAPPROVED by the Zoning Administrator on December 18, 2002, based on Sections 32-300 and 32-404.5(2) of the zoning ordinance for the reason that: In an R-2 Single-Family Residential District, the side yard requirement is not met. A side yard of not less than nine feet (9’) is required; one foot (1‘) ± is proposed.

APPLICATION was filed with the Board on December 16, 2002 based on Section 17.20(b) of the City Charter.
APPEARANCES:

For Applicant: Gregory Giebel
Against Applicant: Mrs. Andrew G. Murray
Loretta Wiggins

FINDINGS OF FACT: The Board finds from sworn testimony and exhibits offered in this case that the applicants Gregory and Evelyn Giebel have requested a variance to legitimize an existing accessory structure for a single-family dwelling. Ms. Evelyn Giebel, owner of the property with her husband Mr. Gregory Giebel testified that they had entered into an agreement to purchase the property at 2611 Stratford Road on November 5, 2002. The property was previously owned by Richard and Janet Wills. The accessory structure in question was advertised as a "kids" house. It measures 12 feet 6 inches by 10 ft. 10 inches. The accessory structure has electricity, heating, air-conditioning and wall-to-wall carpeting. Ms. Giebel stated that the existence of the structure was taken into consideration as part of the purchase. Their real estate agent has appraised the accessory building at between $17,000 and $20,000. They were first advised of a potential problem with the property on November 20, 2002. It was disclosed to the Giebels by the seller’s real estate agent that the accessory building was too close to the property line. The Wills real estate agent assured the Giebels that the problem would be resolved prior to the closing on December 20, 2002. On December 2, 2002, the Giebels received a faxed copy of the notice sent to Mr. and Mrs. Wills from the Zoning Administration Office noting the violation. Contained with the violation notice was a memorandum from Janet Wills to her real estate agent discussing a conversation Mrs. Wills had had with Elizabeth Bawuah of the Zoning Administration Office indicating that the prospective purchasers should make application for the necessary variance prior to December 21, 2002. On December 9, 2002, the Giebels made application for the subject variance. Ms. Giebel indicated that they had no further contact with the Zoning Office regarding the variance and closed on the property on December 20, 2002. Ms. Giebel stated that she and her husband entered into a purchase agreement in good faith. Ms. Giebel stated that moving the structure would constitute a hardship by virtue of the potential effect on the subject accessory structure as well as the existing house.

In response to a question from Mr. Poole, Ms. Giebel responded that they had retained the services of a closing service to represent them in the closing of the house. In response to a question from Mr. Alexander, Ms. Giebel indicated that the structure is not being put to any current use. Ms. Giebel further stated that they intended to use the accessory building for an office or studio. Ms. Giebel stated that there was no plumbing in the structure.
Speaking in opposition, Ms. Peggy Murray of 2617 Stratford Road testified that the structure, which was built by the Wills, was done so over the opposition of the Murrays. The Murrays were originally advised that the shed was to be utilized to serve as a shelter for trashcans. Ms. Murray testified that the overall appearance of the shed was aesthetically displeasing and detracted from the peace and enjoyment of their property. Ms. Murray indicated that the accessory building in question was located immediately adjacent to a large oak tree and covered a substantial amount of the oak tree’s root system. She expressed concern over the ability to find a tree service that would assume the liability for trimming or removal of the tree given the location of the accessory building. Ms. Murray stated that the former owners of the property, the Wills, were notified at the end of November or beginning of December of 2002 that the building in question was not in compliance with the zoning ordinance. Ms. Murray indicated that they were advised by the Wills that the Wills would make arrangements with the subsequent purchasers to either have the structure moved or torn down. Further, the Giebel's indicated to the Murrays that a monetary fund had been set up by the Wills to address the problem. Ms. Murray stated that the Giebels closed on the property with the full knowledge that a zoning violation existed.

In response to a question from Mr. Alexander, Ms. Murray indicated that the accessory building was constructed approximately five years ago. Ms. Murray stated that they were not aware that a building permit had not been issued for the accessory building and only learned of this fact when they became aware that the Wills were going to sell the property and contacted the city regarding the accessory structure.

The Chairperson, Ms. Williams, requested that Ms. Giebel provide some clarification on whether the Wills had provided monetary compensation to correct the problem with the accessory building. Ms. Giebel stated that the Wills agreed to provide financial compensation if the building had to be moved. Ms. Giebel stated that they were not asserting a financial hardship but whether or not the building could physically be moved and where it could be relocated on the property. Ms. Giebel stated that the Wills had only offered financial compensation to have the structure moved to an alternate location and not to have it demolished. Ms. Giebel stated that a written statement is included from the Wills regarding relocation of the structure as part of the closing on the house. Mr. Poole stated that in his opinion the applicant had demonstrated good faith in the purchase of the property and inquired as to the hardship basis of the applicant's request. Ms. Giebel indicated that the hardship constituted the actual moving of the structure. Mr. Poole responded that the Giebels would be remunerated for the cost of moving the structure. Ms. Giebel indicated the question was whether it could be moved and to what location on the property it would be moved. In response to a question from Mr. Poole, Ms. Giebel indicated that they did have advance notice that a violation existed and were aware that the variance may or may not be granted.
Speaking in opposition, Ms. Loretta Wiggins of 2621 Stratford Road testified that she and her husband were opposed to the granting of the requested variance for the reason that such approval would damage the integrity of the ordinances on which citizens rely. Ms. Wiggins further stated that compliance with city ordinances was important to protect citizens' property values. Ms. Wiggins urged the Board not to grant the requested variance for the sake of convenience.

In response to a question from the Chairperson Ms. Williams, Mr. Claude Cooper, Commissioner of Buildings stated that in addition to violating the City of Richmond's zoning ordinance that the subject structure also violated the building code. Mr. Cooper indicated that in all probability the structure could be moved which would involve some deconstruction and reconstruction.

The Board finds that the applicant failed to demonstrate a hardship based on the fact that they will be remunerated by the prior owners of the property for relocation of the accessory building. Further, the applicant failed to show an extraordinary or exceptional situation whereby strict application of the side yard setback 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 side yard requirement be denied to Gregory and Evelyn Giebel for a permit to legitimize an existing accessory structure for a single-family dwelling as proposed at the subject premises.

ACTION OF THE BOARD: Denied (5-0)

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

negative: none

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CASE NO. 33-03

APPLICANT: JMYI Investments LLC
PREMISES: 2709 RETTIG ROAD  
(Tax Parcel Number C004-0552/001)

SUBJECT: A building permit to construct an accessory structure (carport)

DISAPPROVED by the Zoning Administrator on January 21, 2003, based on Sections 32-300, 32-404.5(1) and 32-630.1(1)(a) of the zoning ordinance for the reason that: In an R-2 Single-Family Residential District, the front yard (setback) requirement is not met. A thirty foot (30’) front yard is required along the Forest Hill Avenue frontage; 2’ + exists/is proposed.

APPLICATION was filed with the Board on February 20, 2003, based on Section 17.20(b) of the City Charter.

APPEARANCES:

For Applicant: Ivan Morton

Against Applicant: Carolyn Isaacs  
Kathryn Klein  
William H. Dunham, III  
J. G. Boehling, Jr.  
Sue Bellflower  
M. Houff  
P. Boehling  
Shirley J. Baber  
Thomas G. Baber  
Terry Ragsdale  
M. R. Ragsdale  
Jane Dwyer  
James H. Dwyer  
Tracey Deal  
Rose Lee Byrd  
Hal Berry  
C. E. Webb, Jr.  
Richard O’Hallaron  
David Schanz

FINDINGS OF FACT: The Board finds from sworn testimony and exhibits offered in this case that the applicant JMYI Investments LLC has requested variance for a building permit to construct an accessory structure (carport) at 2709 Rettig Road. Mr. Ivan Morton representing JMYI Investments LLC stated that he was requesting a variance for the reason that due to a change in building plans they recently learned that a building permit was required. Mr. Morton stated that a few years ago a pine tree fell on their garage. They also removed another deceased
pine tree along Forest Hill Avenue, which had helped to screen the rear of their property. Their original plans were to construct a patio and gazebo in the location of the former tree to assist in screening. Mr. Morton stated that the birds were eating the berries off the holly bushes, which convinced him to change his plans and construct a carport to shield his cars.

In response to a question from Mr. Siff, Mr. Morton responded that they began construction of the structure's columns and intended to get a building permit at that time. Mr. Siff stated that the charge of the Board was to bring things into compliance when possible. The Board must decide if the hardship is of the owners making or particular to the property in question. Mr. Siff stated that in his opinion the hardship was of the applicant's making. In response to a question from Mr. Alexander, Mr. Morton testified that his property was adjacent to the Willow Oaks Country Club and that there were no structures located to the immediate rear of his property.

Speaking in opposition, Mr. Hal Berry of 6406 Westchester Circle testified that there were approximately 30 people in attendance at the hearing who were opposed to the applicant's request. Mr. Berry stated that the property in question was in a general state of disrepair and detracted from the overall neighborhood.

Speaking in opposition, Mr. C. E. Webber, Jr. of 2841 Skipton Road and representing the Willow Oaks Civic Association testified that the property owner in question had exhibited a total disregard of the neighbors, the subdivision covenants or the City's building or zoning requirements. Mr. Webber felt as if there would be no problem with moving the structure. Mr. Webber was also concerned that widening of Forest Hill Avenue would place the structure even closer to the road.

Speaking in opposition, Mr. Richard O’Hallaron of 2908 Skipton Road testified that when an applicant appears before the Board they should do so with "clean hands”. Mr. O’Hallaron stated that contrary to the applicant's testimony, the structure was very visible from both Forest Hill Avenue and Rettig Road. Mr. O’Hallaron also expressed concern that the applicant was utilizing the storage sheds to conduct his business.

Speaking in opposition, Mr. James Dwyer of 2729 Rettig Road testified that the view from his house was of two tarpaper shacks in the rear of the applicant's property.

Speaking in opposition, Mr. David Schanz, City building inspector, testified that he had issued a stop work order for the structure in question. Mr. Schanz stated that the structure was in excess of 150 square feet and, therefore, required a building permit.
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 front yard setback requirement 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 front yard (setback) requirement be denied to JMYI Investments, LLC for a building permit to construct an accessory structure (carport) as proposed at the subject premises.

ACTION OF THE BOARD: Denied (5-0)

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

negative: none

CASE NO. 34-03

APPLICANT: William McFadden

PREMISES: 2933 KENMORE ROAD
(Tax Parcel Number C003-0820/010)

SUBJECT: A building permit for a previously constructed one-story garage addition to a single-family dwelling

DISAPPROVED by the Zoning Administrator on February 19, 2003, based on Sections 32-300, 32-404.5(2) and 32-1010.2 of the zoning ordinance for the reason that: In an R-2 Single-Family Residential District, the side yard (setback) requirement is not met. A nine-foot (9’) side yard is required; eight and two tenths feet (8.2’) is proposed/existing.

APPLICATION was filed with the Board on February 7, 2003, based on Section 17.20(b) of the City Charter.

APPEARANCES:

For Applicant: William S. McFadden
Against Applicant: Clyde Selfe

FINDINGS OF FACT: The Board finds from sworn testimony and exhibits offered in this case that the applicant, William McFadden, has requested a variance for a building permit for a previously constructed one-story garage addition to a single-family dwelling at 2933 Kenmore Road. Mr. McFadden testified that he currently resided in Clearwater, Florida and was appearing before the Board to attempt to clarify the problem. Mr. McFadden stated that he retained the services of a contractor in 1985 to have an attached garage put on his house. Two days before the house was scheduled to close Mr. McFadden was advised by the real estate agent that the subject garage had been built in violation of the zoning ordinance. Mr. McFadden stated that the violation amounted to approximately 9 inches. He stated that he was not aware why the garage was not built in conformance with the zoning ordinance but mentioned that the lot was pie shaped and that possibly that contributed to the mistake in the setback. Mr. McFadden stated that the buyer had closed on the house but that he was required to place $1500 in escrow, which would be made available to the buyer on May 1st if the was not successful in resolving the issue.

The Board is satisfied that the property was acquired in good faith and that an exceptional situation exists due to the fact that the lot is irregularly shaped whereby strict application of the side yard setback 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 side yard (setback) requirement be granted to William McFadden for a building permit for a previously constructed one-story garage addition to a single-family dwelling as proposed at the subject premises.

ACTION OF THE BOARD: Granted (5-0)

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

negative: none

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CASE NO. 35-03

APPLICANT: Bruce D. Brooks
PREMISES: 4321 NEW KENT AVENUE
(Tax Parcel Number S000-2485/013)

SUBJECT: A revised building permit to construct a two-story 14’x21’4”
kitchen and unfinished bedroom addition to the single-family
dwelling

DISAPPROVED by the Zoning Administrator on February 19, 2003, based on Sections
32-300, 32-408.5(1), 32-630.1(1)(a) and 32-810.1 of the zoning ordinance for the reason
that: In an R-4 Single-Family Residential District, the front yard (setback) and
nonconforming feature requirements are not met. Twenty-five foot (25’) front yard is
required along West 44th Street. A nonconforming front yard of 0.91’ exists; a 2.5’ front
yard is proposed. An increase in the extent of the nonconforming front yard feature
requirement is not permitted. A Variance from the street side yard requirement was
granted by the Board on May 1, 2002 and authorized a 12’x21’4” two story addition; a
larger (14’x 21’4”’) addition is proposed. However, the previous Variance (Case No. 34-
02) was not valid as a front yard is required along West 44th Street.

APPLICATION was filed with the Board on February 14, 2003, based on Section
17.20(b) of the City Charter.

APPEARANCES:

For Applicant: none

Against Applicant: none

FINDINGS OF FACT: The Board finds in this case that the applicant or applicant's
representative was not present at the hearing to offer testimony in support of Case
No. 35-03.

The Board finds that due to the failure of the applicant or applicant's
representative to attend the public hearing that no finding could be made in
support of the fact that the property had been purchased in good faith or that an
extraordinary or exceptional situation exists whereby strict application of the front
yard setback requirements unreasonably restricts its use or that there is a clearly
demonstrable hardship bordering on confiscation of the property.

RESOLUTION: NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF
ZONING APPEALS that a request for a variance from the front yard (setback) and
nonconforming feature requirements be denied to Bruce D. Brooks for a revised building
permit to construct a two-story 14’x21’4” kitchen and unfinished bedroom addition to the
single-family dwelling as proposed at the subject premises. The Board’s decision to deny
this request was for the reason that no one was present at the hearing to present this case.
The applicant was notified by the Secretary to the Board as follows: “The Board’s
decision to deny your request was for the reason that no one was present at the hearing to present your case. If extenuating circumstances of a significant nature prevented you from attending the meeting, you may request a reconsideration of your case. Reconsideration of your case may be initiated by a member of the Board of Zoning Appeals not later than the first regular meeting following the meeting at which the original hearing was held. However, it will be necessary for you to advise the Secretary of the Board of Zoning Appeals in writing of your intent to request a reconsideration. Such notice must be received by the Secretary not later than Monday, May 5, 2003. Should the Board of Zoning Appeals approve your request, it will be necessary for you to submit a filing fee for the reconsideration in the amount of $500.”

ACTION OF THE BOARD: Denied (5-0)

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

CASE NO. 36-03

APPLICANT: JMJ Properties, Inc.

PREMISES: 2125 FAIRMOUNT AVENUE
  (Tax Parcel Number E000-0557/009)

SUBJECT: A building permit to convert a drug store to a beauty salon

DISAPPROVED by the Zoning Administrator on February 24, 2003, based on Sections 32-300, 32-412.1 and 32-800.4 of the zoning ordinance for the reason that: In an R-6 Single-Family Attached Residential District, the proposed use is not permitted as the previous nonconforming use rights have expired. Whenever a nonconforming use of a building is discontinued for a period of two (2) years or longer, any subsequent use of the premises must conform to the regulations applicable in the district in which it is located. The property’s R-6 zoning allows single and two-family dwellings; the first floor will be devoted to a commercial use (beauty salon) and the second floor will be a dwelling unit.

APPLICATION was filed with the Board on February 14, 2003, based on Section 32-1040.3(6) of the City Code.

APPEARANCES:
  For Applicant: Miles H. Joyner, III
Against Applicant: none

FINDINGS OF FACT: The Board finds from sworn testimony and exhibits offered in this case that JMJ Properties has requested a special exception for a building permit to convert a drug store to a beauty salon at 2125 Fairmount Avenue. Mr. Miles Joyner representing JMJ properties indicated that he had purchased the property in question in order to utilize the first floor for a beauty salon. Subsequent to his purchase, he learned that the property had lost its nonconforming rights. Mr. Joyner indicated that he had several conversations with the New Visions Civic League and that the civic league had indicated that a beauty salon would be an appropriate use for the property in question. The Chairperson, Ms. Williams read into the record a letter of support from the New Visions Civic League. Mr. Siff indicated that he was abstaining from this case. Mr. Joyner indicated that he had not pursued a tenant for the beauty salon awaiting the Board's decision. Mr. Joyner also stated that he had interest from three separate tenants in renting the premises. The Chairperson, Ms. Williams confirmed with Mr. Joyner that he met the applicable special exception criteria. Mr. Joyner indicated that it would cost somewhere in excess of $30,000 to convert the building to a residential use.

The Board is satisfied that the property was acquired in good faith and that the building cannot reasonably be devoted to a conforming use. 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 proposed use requirements (which is not permitted as the previous nonconforming use rights have expired) be granted to JMJ Properties, Inc. for a building permit to convert a drug store to a beauty salon as proposed at the subject premises.

ACTION OF THE BOARD: Granted (4-0-1)

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

CASE NO. 37-03

APPLICANTS: Charlie and Anna Locklear
BZA MEETING MINUTES -12- APRIL 2, 2003

PREMISES: 5501 BURTWOOD LANE
(Tax Parcel Number C008-0534/004)

SUBJECT: A building permit to construct a 10’x24’ enclosed porch and to legitimize an existing carport

DISAPPROVED by the Zoning Administrator on February 24, 2003, based on Sections 32-300, 32-408.5(1), 32-630.1(1)(a), 32-630.2(2)(b) and 32-810.1 of the zoning ordinance for the reason that: In an R-4 Single-Family Residential District, the front yard (setback) and nonconforming feature requirements are not met. A front yard, as per the 1 in 4 Rule, of twenty-five feet (25’) is required along the Crumpton Drive frontage. A 15.28’ nonconforming front yard exists and front yards of seventeen and one half feet (17.5’)(enclosed porch) and twelve feet (12’)(carport) are proposed. An increase in the extent of the nonconforming front yard feature is not permitted.

APPLICATION was filed with the Board on February 18, 2003, based on Section 17.20(b) of the City Charter.

APPEARANCES:

For Applicant: Charlie Locklear
Against Applicant: none

FINDINGS OF FACT: The Board finds from sworn testimony and exhibits offered in this case that the applicants Charlie and Anna Locklear have requested a variance to construct a 10 ft. by 24 ft. enclosed porch and to legitimize an existing carport at 5501 Burtwood Lane. Mr. Locklear testified that he began doing work on an enclosed porch and was notified that he needed a building permit. While making application for the building permit he learned that the proposed porch and existing carport violated the front yard setback requirements. Mr. Locklear also stated that he was not aware of any opposition from his neighbors. Mr. Locklear presented a letter from Patricia A. Lewis who is the property owner at 2406 Crumpton Drive. Ms. Lewis stated her support for the requested variances.

In response to a question from Ms. Williams, Mr. Locklear stated that he would be willing to remove the carport. In response to a question from Mr. Poole, the staff indicated that the property had dual front yards. In response to a question from Mr. Siff, Mr. Locklear testified that the porch would not extend beyond the existing house line. In response to question from Mr. Alexander, staff responded that the existing house was nonconforming with respect to setbacks and was built prior to annexation. In response to a question from Mr. Siff, Mr. Locklear stated that the carport was a "tin" shed that was portable. In response to question from Mr. Poole, the staff responded that inclusion of the property in flood zone "x" did not affect the applicant’s ability to construct a porch.
The Board is satisfied that the property was acquired in good faith and that an exceptional situation exists as it relates to the porch enclosure whereby strict application of the setback requirements unreasonably restricts its use and the granting of a variance for the porch enclosure will be in harmony with the intended spirit and purpose of the ordinance and the powers of the Board.

The Board finds that although the property was acquired in good faith that the applicant failed to show an extraordinary or exceptional situation whereby strict application of the setback requirements as they relate to the carport 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 for the carport 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 front yard (setback) and nonconforming feature requirements be granted to Charlie and Anna Locklear for a building permit to construct a 10’x24’ enclosed porch. The Board also adopted a resolution that a request for a variance to legitimize an existing carport be denied to Charlie and Anna Locklear as proposed at the subject premises.

ACTION OF THE BOARD: Granted Enclosed Porch (5-0)

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

negative: none

ACTION OF THE BOARD: Denied Existing Carport (5-0)

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

negative: none

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CASE NO. 38-03

APPLICANT: Southside Community Development
PREMISES: 1212 BAINBRIDGE STREET
(Tax Parcel Number S000-0085/006)

SUBJECT: A permit to build a new detached single-family dwelling

DISAPPROVED by the Zoning Administrator on February 24, 2003, based on Sections 32-300, and 32-710.1(1) of the zoning ordinance for the reason that: In an R-53 Multi-Family Residential District, the off-street parking requirement is not met. One (1) off-street parking space is required; none is proposed.

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

APPEARANCES:

For Applicant: Curtis Smith
Geraldine Evans

Against Applicant: none

FINDINGS OF FACT: The Board finds from sworn testimony and exhibits offered in this case that the applicant, Southside Community Development requested a variance to build a new detached single-family dwelling at 1212 Bainbridge Street. Mr. Curtis Smith testifying on behalf of Southside Community Development stated that the property in question did not abut an alley, which precluded parking in the rear of the property. Mr. Smith noted that the lotting pattern was similar throughout the neighborhood.

In response to a question from Mr. Alexander, Mr. Smith noted that the alley shown on the plat did not in fact exist.

The Board is satisfied that the property was acquired in good faith and that an exceptional situation exists due to the fact that there is no alley access 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 requirement be granted to Southside Community Development for a permit to build a new detached single-family dwelling as proposed at the subject premises.

ACTION OF THE BOARD: Granted (5-0)

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

negative: none

CASE NO. 39-03

APPLICANT: Southside Community Development

PREMISES: 114 EAST 15TH STREET
(Tax Parcel Number S000-0151/019)

SUBJECT: A permit to build a new detached single-family dwelling

DISAPPROVED by the Zoning Administrator on February 24, 2003, based on Sections 32-300, and 32-710.1(1) of the zoning ordinance for the reason that: In an R-6 Single-Family Attached Residential District, the off-street parking requirement is not met. One (1) off-street parking space is required; none is proposed.

APPLICATION was filed with the Board on February 18, 2003, based on Section 17.20(b) of the City Charter.

APPEARANCES:

For Applicant: Curtis Smith
Geraldine Evans

Against Applicant: none

FINDINGS OF FACT: The Board finds from sworn testimony and exhibits offered in this case that the applicant, Southside Community Development requested a variance to build a new detached single-family dwelling at 114 East 15th Street. Mr. Curtis Smith, testifying on behalf of Southside Community Development, stated that the property in question did not abut an alley, which precluded parking in the rear of the property. Mr. Smith noted that the lotting pattern was similar throughout the neighborhood.

Speaking in favor, Ms. Geraldine Evans testified that she was a homeowner and Mr. Smith's plans would be an asset to the neighborhood.

The Board is satisfied that the property was acquired in good faith and that an exceptional situation exists due to the fact that there is no alley access 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 requirement be granted to Southside Community Development for a permit to build a new detached single-family dwelling as proposed at the subject premises.

ACTION OF THE BOARD:  Granted (4-0-1)

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

CASE NO. 40-03

APPLICANT:  Southside Community Development
PREMISES:  125 EAST 15TH STREET
(Tax Parcel Number S000-0193/018)
SUBJECT:  A permit to add a second story to a single-family detached dwelling

DISAPPROVED by the Zoning Administrator on February 25, 2003, based on Sections 32-300, 32-630.1(1)(a) and 32-810.1 of the zoning ordinance for the reason that:  In an R-6 Single-Family Attached Residential District, the front yard (setback) and nonconforming feature requirements are not met.  A front yard of not less than eleven feet two inches (11’2’’) is required along the Stockton Street frontage; a nonconforming front yard of 0.31 feet exists.  Vertical expansion of a nonconforming feature is not permitted.

APPLICATION was filed with the Board on February 18, 2003, based on Section 17.20(b) of the City Charter.

APPEARANCES:

For Applicant:  Curtis Smith

Against Applicant:  none
FINDINGS OF FACT: The Board finds from sworn testimony and exhibits offered in this case that the applicant Southside Community Development has requested a variance to add a second story to a single-family detached dwelling at 125 East 15th Street. Mr. Curtis Smith, representing Southside Community Development testified that the existing single story house did not meet the required front yard setback and it was the desire of Southside Community Development to add a second story, which would not constitute a further encroachment into the required setback.

The Board is satisfied that the property was acquired in good faith and that an exceptional situation exists due to the fact that the applicant is requesting vertical expansion of a nonconforming feature whereby strict application of the front yard setback 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 (setback) and nonconforming feature requirements be granted to Southside Community Development for a permit to add a second story to a single-family detached dwelling as proposed at the subject premises.

ACTION OF THE BOARD: Granted (4-0-1)

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

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CASE NO. 41-03

APPLICANT: Sonja Nixon

PREMISES: 932 WEST FRANKLIN STREET
(Tax Parcel Number W000-0468/037)

SUBJECT: A building permit to change the use to a multi-family dwelling with three (3) units

DISAPPROVED by the Zoning Administrator on February 27, 2003, based on Sections 32-300 and 32-420.5(2)(b) of the zoning ordinance for the reason that: In an R-73 Multi-Family Residential District, the side yard (setback) requirement is not met. A side yard of not less than fifteen feet (15’) is required; none exist/is proposed.
APPLICATION was filed with the Board on February 18, 2003, based on Section 17.20(b) of the City Charter.

APPEARANCES:

For Applicant: Ron Nixon
Brett Burnam

Against Applicant: none

FINDINGS OF FACT: The Board finds from sworn testimony and exhibits offered in this case that the applicant Sonja Nixon has requested a variance for a building permit to change the use to a multi-family dwelling with three units at 932 WEST Franklin Street. Mr. Ron Nixon representing his mother testified that his mother had recently purchased the property. The building is located at the corner of North Harrison Street and West Franklin Street. Mr. Nixon noted that the building had most recently been used as a halfway house. Prior to its use as a halfway house, the building served as a nine unit multi-family dwelling. Mr. Nixon stated that it was their intent to occupy the building for three dwelling units. Mr. Nixon submitted a petition signed by five of the surrounding residents in support of his application.

In response to a question from the Chairperson Ms. Williams, Mr. Nixon stated that the largest unit would remain owner-occupied. Mr. Nixon also stated that retention of the largest unit as an owner-occupied unit was one of the conditions offered to the Fan District Association to receive their support. In response to a question from Mr. Alexander, the staff stated that the property had previously been the subject of a special use permit. Approval of the halfway house's special use eliminated all previous nonconforming features. Once the nonconforming features had been eliminated, in order to re-occupy the building it was necessary to comply with all of the underlying setback provisions. In response to a question from Mr. Poole, Mr. Nixon stated that he was aware that future owners would likewise be required to live in the largest unit.

Speaking in favor, Mr. Brett Burnam testified that the Fan District Association supported the applicant's request contingent upon the largest unit being owner-occupied as long as a variance was in full force and effect.

The Board is satisfied that the property was acquired in good faith and that an exceptional situation exists due to the previously approved special use which eliminated all prior nonconforming features whereby strict application of the side yard setback requirements unreasonably restricts its use and the granting of a variance in this case will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by
the owner and that the variance 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 side yard (setback) requirement be granted to Sonja and Ron Nixon for a building permit to change the use of a multi-family dwelling with three (3) units as proposed at the subject premises conditioned on the fact that the largest unit will be owner occupied which condition will run with the property and must be adhered to by any successors in title.

ACTION OF THE BOARD: Granted Conditionally (5-0)

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

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CASE NO. 42-03

APPLICANTS: Brian and Jennifer O’Flynn

PREMISES: 2117 STUART AVENUE
(Tax Parcel Number W000-0950/005)

SUBJECT: A building permit to construct a two-story addition (12’8” x 15’2”) to a single-family detached dwelling

DISAPPROVED by the Zoning Administrator on February 20, 2003, based on Sections 32-300, 32-620.1(3) and 32-810.1 of the zoning ordinance for the reason that: In an R-6 Single-Family Attached Residential District, the side yard (setback) and nonconforming feature requirements are not met. A three foot (3’) side yard is required; a nonconforming side yard of 0.14’ exists and is proposed for the addition along the western property line. An increase in the degree or extent of the nonconforming feature is not permitted.

APPLICATION was filed with the Board on February 18, 2003, based on Section 17.20(b) of the City Charter.

APPEARANCES:

For Applicant: Jennifer O’Flynn
Brett Burnam
Against Applicant: none

FINDINGS OF FACT: The Board finds from sworn testimony and exhibits offered in this case the applicants Brian and Jennifer O'Flynn have requested a variance to construct a two-story addition to a single-family detached dwelling at 2117 Stuart Avenue. Ms. Jennifer O'Flynn stated that she was appearing before the Board to request a variance to permit construction of a 12’8” x 15’2” addition. Ms. O'Flynn indicated that both of the adjoining neighbors supported their request. Ms. O'Flynn stated that the proposed two-story addition would represent an extension of the existing house line. The first floor would be utilized for an expanded kitchen and the second floor would be utilized for a bedroom.

Speaking in favor, Brett Burnam of the Fan District Association testified that the Fan was in support of Ms. O'Flynn's request.

The Board is satisfied that the property was acquired in good faith and that an exceptional situation exists due to narrowness of the lot whereby strict application of the side yard setback 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 side yard (setback) and nonconforming feature requirements be granted to Brian and Jennifer O'Flynn for a building permit to construct a two-story addition (12’8” x 15’2”) to a single-family detached dwelling as proposed at the subject premises.

ACTION OF THE BOARD: Granted (5-0)

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

The minutes of the March 5, 2003 meeting were approved as distributed (4-0)(Mr. Alexander abstained since he did not attend that meeting).

The meeting was adjourned at 3:50 p.m.
Chairman

Secretary