MINUTES OF A MEETING OF THE BOARD OF ZONING APPEALS
WEDNESDAY, MAY 14, 2003

On Wednesday, May 14, 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 April 30 and May 7, 2003 and written notice having been sent to interested parties.

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

Staff Present: Roy W. Benbow, Secretary
William C. Davidson, Zoning Administrator
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.

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CASE NO. 55-03

APPLICANTS: Andrew and Amanda Scudder

PREMISES: 107 NORTH CRENSHAW AVENUE
(Tax Parcel Number W000-1513/035)

SUBJECT: A building permit to construct a two-story 14’+ x 22’+ family room, kitchen and bedroom addition and to repair/replace existing fence

DISAPPROVED by the Zoning Administrator on March 19, 2003, based on Sections 32-300, 32-412.5(1)(b), 32-630.1(1)(a), 32-630.9(2) 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), nonconforming feature requirements and fence height regulations are not met. A front yard of not less than fifteen feet (15’) is required along North Crenshaw Avenue; a three foot (3’) yard exists/is proposed. An increase in the extent of the nonconforming
feature requirement is not permitted. A four foot (4’) maximum fence height is permitted in the required front yard; a six foot (6’) fence exists/is proposed.

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

APPEARANCES:

For Applicant: Amanda Scudder
Andrew Scudder

Against Applicant: none

FINDINGS OF FACT: The Board finds from sworn testimony and exhibits offered in this case that the applicants Andrew and Amanda Scudder have requested a variance for a building permit to construct a two-story 14’+ x 22’+ family room, kitchen and bedroom addition and to repair/replace an existing fence at 107 North Crenshaw Avenue. Mr. Scudder explained that his house is located on the corner of Floyd Avenue and North Crenshaw Avenue and as such, it has dual front yards. Mr. Scudder further explained that they are seeking to add a family room, kitchen and bedroom addition to the house and to repair and replace an existing fence. The proposed addition will be slightly offset from the existing house line. Mr. Scudder testified that he is an architect and has investigated several different construction alternatives and that the addition is needed to accommodate his growing family. In response to a question from Ms. Cox, Mr. Scudder explained that he has discussed his proposed plans with his neighbors and they are in support of the project.

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 of limited size and is subject to dual front yards which precludes any useful expansion of the dwelling unit whereby strict application of the front yard, nonconforming feature and fence height 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), nonconforming feature requirements and fence height regulations be granted to Andrew and Amanda Scudder for a building permit to construct a two-story 14’+ x 22’+ family room, kitchen and bedroom addition and to repair/replace existing fence as proposed at the subject premises.

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

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CASE NO. 56-03

APPLICANTS: Richard S. and Joyce E. Johnson

PREMISES: 9850 CHEROKEE ROAD
(Tax Parcel Number C001-0285/035)

SUBJECT: A building permit to construct a garage (48’0” x 39’4”) accessory to a single-family detached dwelling

DISAPPROVED by the Zoning Administrator on March 17, 2003, based on Sections 32-300 and 32-680.4 of the zoning ordinance for the reason that: In an R-1 Single-Family Residential District, the building height requirement is not met. The maximum building height for an accessory building shall not exceed twenty feet (20’); 22’6” ± is proposed.

APPLICATION was filed with the Board on March 17, 2003 based on Section 17.20(b) of the City Charter.

APPEARANCES:

For Applicant: Richard Johnson
Jack Shady

Against Applicant: none

FINDINGS OF FACT: The Board finds from sworn testimony and exhibits offered in this case that the applicants Richard S. and Joyce E. Johnson have requested a variance for a building permit to construct a garage (48’0” x 39’4”) accessory to a single-family detached dwelling at 9850 Cherokee Road. Mr. Poole announced that he would abstain from voting on this case due to a business relationship with the applicant, Mr. Johnson. Mr. Johnson testified that he and his wife purchased their new home in September of 2002. Mr. Johnson indicated that although he had been in the real estate business for over 30 years that the entirety of his experience was in the commercial field and he did not have any experience in the permit process or residential construction. Mr. Johnson testified that his lot was an irregularly shaped infill lot that was offset in the middle. Prior to purchasing the lot, Mr. Johnson indicated that they had retained the services of a landscape architect in January of 2002 with all the planting being completed in August of
2002. Mr. Johnson indicated that during that planning process the landscape architect located the accessory building to the maximum degree practical behind the house. The architect developed plans for the accessory building that were complementary to the existing house. Mr. Johnson explained that the variance was necessitated due to one small portion of the accessory building which exceeds the maximum permissible height. The variance is needed to maintain the architectural integrity of the building. Mr. Johnson indicated that if the variance is not approved that it would result in a mismatch between the slopes of the different roofs which will impair the architectural integrity of the new structure. Mr. Johnson indicated that he had spoken with the neighbors on both sides of his home explaining that the request is for a 2 ft. 6 in. height variance. No concern was expressed by the neighbor to the east and the neighbor to the west, although not particularly pleased with the fact that a structure was being added, was not in opposition if the required variance is based on it being needed to improve the final product. Mr. Johnson explained that when the plans were first drawn that the accessory structure included two baths which they later learned were not permitted by the zoning ordinance. Mr. Johnson explained that there is absolutely no intent to utilize the accessory building for dwelling purposes, and the plans have been amended to comply with the zoning ordinance.

In response to a question from the Chairperson, Ms. Williams, Mr. Johnson indicated that no ground had been broken on the proposed accessory structure. In response to a question from Ms. Cox, Mr. Johnson stated that lowering the accessory building would materially affect its appearance and the height variance was required to create a match between the roof pitches of both buildings.

Testifying on behalf of the applicant, Mr. Jack Shady, architect for the applicant, indicated that there are a number of gable elements which are interfaced with the geometry of the garage. Mr. Shady explained that if the 2 1/2 foot height variance is not approved that the pitches in the roofs of the main house and accessory building would be mismatched. In response to a question from Mr. Siff, Mr. Shady explained that lowering the overall height of the accessory building would materially affect utilization of a portion of the second floor by reducing the overall ceiling height.

The Board is satisfied that the property was acquired in good faith and that an exceptional situation exists due to the regular shape of the lot and the need to maintain the architectural integrity of the proposed structure whereby strict application of the height 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 building height requirement be granted to Richard S. and Joyce E. Johnson for a building permit
to construct a garage (48’0” x 39’4”) accessory to a single-family detached
dwelling as proposed at the subject premises.

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

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

negative: none

abstain: Poole

CASE NO. 57-03

APPLICANT: Bellona Arsenal

PREMISES: 1914 PARKWOOD AVENUE
(Tax Parcel Number W000-0849/028)

SUBJECT: A permit to legitimize an existing two-story deck on an attached
two-family dwelling

DISAPPROVED by the Zoning Administrator on March 19, 2003, based on Sections 32-300, 32-800.1(2) and 32-830.2 of the zoning ordinance for the reason that: In a B-3 General Business District, the nonconforming use and previous side yard requirements are/were not met. Expansion of the grade level deck is not permitted as a nonconforming use cannot be extended, expanded or enlarged. The lower deck was extended an additional ten feet (10’) beyond its original location. The second story deck was constructed in 1967, when the use was permitted. At that time, a side yard of three feet (3’) was required; a 1.7 foot side yard is provided. The previously constructed deck is deemed to be unlawful as it was constructed in violation of previous regulations.

APPLICATION was filed with the Board on March 17, 2003 based on Section 17.20(b) of the City Charter and Section 32-1040.3(5) of the City Code.

APPEARANCES:

For Applicant: Andrew Scudder

Against Applicant: none

FINDINGS OF FACT: The Board finds from sworn testimony and exhibits offered in this case that the applicant, Bellona Arsenal, has requested a variance and special
exception for a permit to legitimize an existing two-story deck on an attached two-family dwelling at 1914 Parkwood Avenue. Mr. Andrew Scudder, representing the applicant, testified that the second-story deck was constructed in 1967. Mr. Scudder explained that the problem with the second-story deck was discovered when application was made for expansion of the grade level deck which was not permitted by the zoning ordinance for the reason that it constituted an expansion of a nonconforming use. Mr. Scudder testified based on his site inspection that there had always been a second-story deck, evidenced by the fact that there is an existing roof overhang which appears original to the structure and that the electric meters and fuse box are located on the second floor. Mr. Scudder stated that the original second-story deck was expanded in 1967.

In response to a question from Mr. Poole, Mr. Davidson indicated that a violation notice had gone out to the property owner regarding construction of the rear deck and front porch repairs, and that apparently work had been commenced by the applicant without obtaining the requisite permits. In response to a question from Ms. Cox, Mr. Scudder acknowledged that based on the roofline of the original structure, the new porch was larger on the first floor. In response to a question from the Chairperson, Ms. Williams, Mr. Scudder testified that the proposed expansion of the grade level deck complies in all respects with the applicable special exception provisions.

The Board is satisfied that the property was acquired in good faith and the special exception criteria applicable in this case, to legitimize the 10-foot expansion of the lower deck, have been met.

The Board further finds that the applicant failed to show an extraordinary or exceptional situation whereby strict application of the side yard setback requirements relative to the portion of the second-story deck which was constructed in 1967 unreasonably restricts use of the property 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 special exception to legitimize the 10 ft. expansion of the lower deck be granted and that a request for a variance to legitimize the portion of the second-story deck (which was constructed in 1967) be denied to Bellona Arsenal, as proposed at the subject premises.

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

ACTION OF THE BOARD: Denied (5-0)

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

CASE NO. 58-03

APPLICANT: William Earl Bradley

PREMISES: 1908 PARKWOOD AVENUE
(Tax Parcel Number W000-0849/015)

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

DISAPPROVED by the Zoning Administrator on March 19, 2003, based on Sections 32-300, 32-438.1 and 32-800.4 of the zoning ordinance for the reason that: In a B-3 General Business District, the proposed use is not permitted as the previous nonconforming use rights have expired. Four-family dwellings are not a permitted principal use in the B-3 (General Business) district. Whenever a nonconforming use of a building or structure is discontinued for a period of two (2) years or longer, whether or not equipment or fixtures are removed, any subsequent use of the premises shall conform to the regulations applicable in the district in which it is located.

APPLICATION was filed with the Board on March 17, 2003 based on Section 32-1040.3(6) of the City Code.

APPEARANCES:

For Applicant: Earl Bradley
Against Applicant: none

FINDINGS OF FACT: The Board finds from sworn testimony and exhibits offered in this case that the applicant, William Earl Bradley, has requested a special exception for a permit to renovate a building for use as a four-family detached
dwelling at 1908 Parkwood Avenue. Mr. Earl Bradley representing Bradley Development, LLC testified that after making application for a building permit that he became aware that the property was zoned B-3 General Business District and that the building housing the four-family dwelling had been vacant for more than two years, and as such had lost its nonconforming rights. Mr. Bradley indicated that he had already purchased the property and secured a loan before learning of the zoning problem. Mr. Bradley stated that there are other residential properties within the area that are also being renovated. Mr. Bradley submitted a copy of a letter of commitment from the Virginia Housing Development Authority. Mr. Bradley noted that the City had approved the previous owner’s application for $38,000 of Community Development Block Grant Funds to renovate the property. Mr. Bradley indicated that in addition to VHDA financing, he would be assuming the prior owner's $38,000 obligation as well as paying off all delinquent taxes. Mr. Bradley advised the Board that the renovations proposed for the property would include addressing security issues, intercom systems and compliance with all building safety codes.

In response to a question from the Chairperson, Ms. Williams, Mr. Bradley indicated that the proposed project would comply with all applicable special exception provisions of the zoning ordinance. In response to a question from Ms. Cox, Mr. Bradley stated that the building has always been designed for four units.

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 requirement (four-family dwelling), which is not permitted as the previous nonconforming use rights have expired, be granted to William Earl Bradley for a permit to renovate the building for use as a four-family detached dwelling as proposed at the subject premises.

ACTION OF THE BOARD: Granted (5-0)

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

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CASE NO. 59-03
APPLICANTS: Matt and Amanda May

PREMISES: 5311 NEW KENT ROAD  
(Tax Parcel Number S006-0114/012)

SUBJECT: A building permit to construct a two-story 10’+ x 16’+ family room and master bedroom addition to a single-family dwelling

DISAPPROVED by the Zoning Administrator on March 19, 2003, based on Sections 32-300, 32-406.5(2) and 32-810.1 of the zoning ordinance for the reason that: In an R-3 Single-Family Residential District, the side yard (setback) and nonconforming feature requirements are not met. A seven and one-half foot (7.5’) side yard is required. A nonconforming side yard of 6.3’ exists/is proposed for the two-story addition. An increase in the extent of the nonconforming side yard feature requirement is not permitted.

APPLICATION was filed with the Board on March 17, 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 were not present at the hearing to offer testimony in support of Case No. 59-03.

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 side yard setback and nonconforming feature 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 side yard (setback) and nonconforming feature requirements be denied to Matt and Amanda May for a building permit to construct a two-story 10’+ x 16’+ family room and master bedroom addition to a 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 informed in writing by the Secretary of the Board that: “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 May 26, 2003. In the event you desire to pursue a reconsideration of your case, it will also be necessary for you to be present at the June 4, 2003 meeting of the Board to formally submit your request. 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 $150.00.”

ACTION OF THE BOARD: Denied (5-0)

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

CASE NO. 60-03

APPLICANT: John F. Jackson

PREMISES: 309 CARSON STREET
(Tax Parcel Number S000-2150/017)

SUBJECT: A building permit to enclose an existing front porch (15’1” x 8’10”)

DISAPPROVED by the Zoning Administrator on March 17, 2003, based on Sections 32-300, 32-410.5(1) and 32-630.2(1)(b) 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 per the “one-in-four rule”, a front yard of not less than twenty-five feet (25’) is required for the proposed front porch enclosure. Twenty-one feet (21’) ± is proposed.

APPLICATION was filed with the Board on March 17, 2003 based on Section 17.20(b) of the City Charter.

APPEARANCES:

For Applicant: John F. Jackson
Against Applicant: none
FINDINGS OF FACT: The Board finds from sworn testimony and exhibits offered in this case that the applicant, John F. Jackson, has requested a variance for a building permit to enclose an existing front porch at 309 Carson Street. Mr. Jackson testified that he is applying to the Board to enclose the porch on the front of his house. Mr. Jackson stated that the porch would be enclosed with glass and vinyl siding. Mr. Jackson indicated that he had talked with the adjoining neighbors and those across the street and there was no opposition to his requested variance.

In response to a question from Ms. Cox, Mr. Jackson indicated that the setback from the front door to the property line was 29 ft. 8 inches. The porch has a depth of approximately 8 feet 10 inches. Mr. Jackson stated that the proposed porch enclosure would project approximately 4 ft. into the required 25 ft. setback. Mr. Jackson stated that the remaining houses on the block have similar porches with similar setbacks.

The Board is satisfied that the property was acquired in good faith and that an exceptional situation exists due to the fact the existing porch is situated similarly to other front porches located along the street, the porch will not be enlarged as part of the enclosure and the neighbors are in support of the requested variance 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) requirement be granted to John F. Jackson for a building permit to enclose an existing front porch (5’1” x 8’10”) as proposed at the subject premises.

ACTION OF THE BOARD: Granted (5-0)

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

negative: none

CASE NO. 61-03

APPLICANTS: J. W. Harman, Jr., Torrence M. Harman, Hertless Brothers Incorporated, and RT 60/Page Road LLC
PREMISES: 611-619 WEST CARY STREET  
(Tax Parcel Number W000-0211/002, 004 & 005)  

SUBJECT: A building permit to renovate a two-story building containing commercial and dwelling uses and to construct a four-story addition containing dwelling use with an unenclosed parking garage  

DISAPPROVED by the Zoning Administrator on March 31, 2003, based on Sections 32-300, 32-434.1(9), 32-436.1(1), 32-438.1(1), 32-438.3(5), 32-438.5 and 32-1220.9 of the zoning ordinance for the reason that: In a B-3 General Business District, the proposed dwelling use is not permitted, maximum permitted floor area devoted to dwelling use is exceeded, spaces between buildings on the same lot and the height requirements are not met and the structure is not enclosed. A dwelling is not a permitted use unless it is located to the rear or above a permitted principal use. The total floor area devoted to a dwelling use shall not exceed three (3) times the area of that portion of the ground floor of the building devoted to other permitted principal uses. Eleven thousand one hundred five (11,105) square feet is proposed for ground floor area permitted principal use; 33,315 square feet of total floor area devoted to dwelling use is permitted; 47,156± square feet is proposed. No building or structure shall exceed thirty-five (35) feet in height; 212.91± feet is proposed.

APPLICATION was filed with the Board on March 17, 2003 based on Section 17.20(b) of the City Charter.

APPEARANCES:

For Applicant:  Glenn Moore  
Stephen Salomonsky  
J. W. Harman  
Steven Cross  
Gayla Mills  
Mimi Sadler  
V. E. McConnell  
E. Martin Jewell  
Kimberly Chen  
Alan Schintzius  
Erika Gay  

Against Applicant:  Todd Woodson  
Gladys Chittenden  

FINDINGS OF FACT: The Board finds from sworn testimony and exhibits offered in this case that the applicants, J. W. Harman, Torrence M. Harman, Hertless Brothers Inc. and RT 60/Page Road LLC, have requested a variance for a
building permit to renovate a two-story building containing commercial and dwelling uses and to construct a four-story addition containing dwelling uses with an unenclosed parking garage at 611-619 West Cary Street. Mr. Glenn Moore, an attorney representing the contract purchaser Mr. Stephen Salomonsky, stated that his client had held extensive meetings and conversations with various neighborhood groups and city officials. Mr. Moore explained that the existing buildings on West Cary Street would be maintained. Mr. Moore indicated that at the southeast corner of West Cary Street and Pine Street is the Jacob House which was moved to that location by VCU. Mr. Moore further indicated that it was Mr. Salomonsky's intent to convey this property at some later date to some type of community group which would convert the building to a museum reflecting its pre-Civil War history as part of the Underground Railroad. Mr. Moore stated that the building located at 617 West Cary Street is presently being utilized for commercial purposes and that the building would be put to some type of commercial use such as a coffee shop. Mr. Moore noted that no variances are being requested at this time for either 619 or 617 West Cary Street. Mr. Moore noted that variances are being requested with respect to 611 West Cary Street, namely the fact that the first floor will include dwelling units which are not permitted by the zoning ordinance. Mr. Moore pointed out that to the south of and abutting 611 West Cary Street will be a parking garage and parking deck on the first floor with apartment units on the upper floors. Mr. Moore indicated that Mr. Salomonsky had gone to great lengths to work out the design of the proposed addition with the Oregon Hill Neighborhood Association and the Virginia Department of Historic Resources. Mr. Moore pointed out that the proposed addition was set back significantly from Pine Street which was done as a concession to the community. Letters of support have been submitted by the Oregon Hill Neighborhood Association, the Oregon Hill Home Improvement Council and the Virginia Department of Historic Resources. Mr. Moore passed out to the Board members a copy of an agreement reached between Mr. Salomonsky and the Oregon Hill Neighborhood Association.

Mr. Moore testified that in order for his client to develop the property in a manner consistent with that agreed-upon with the various groups, a total of five variances will be required. Mr. Moore noted that in each instance the variances requested are justified due to extraordinary or exceptional circumstances that would suggest that strict application of the zoning ordinance would unreasonably restrict the use of the property as the developer and the community desires.

Mr. Moore spoke to the variances as follows:

1. The variance for 611 West Cary Street is necessary because of the zoning ordinance's requirement that the first floor be reserved for commercial uses. Most of the first floor of the subject building is below ground and is not conducive to commercial usage. The applicant is proposing to put three apartment units in the English basement portion of the building. The applicant will utilize the portion of
the building adjoining Cary Street which is closest to the existing grade for commercial purposes.

2. With respect to the proposed addition, the zoning ordinance requires that the ratio of residential usage to non-residential usage may not exceed 3 to 1. The ratio proposed for the applicant's property will be approximately 4.3 to 1. The proposed ratio does not take into consideration the non-residential usage of either 617 or 619 West Cary Street. The overall development has a residential to non-residential usage ratio of approximately 3 to 1. In addition, a large portion of the property is not suited for commercial development.

3. The zoning ordinance requires that there be not less than a 15 ft. separation between buildings if one of the buildings contains a dwelling use. This variance is necessitated by virtue of the relationship of the Hertless building to the proposed construction. This setback requirement does not seem to accomplish a great deal when it is understood that 617 and 619 West Cary Street already abut one another.

4. The zoning ordinance requires that the maximum height of a building in a B-3 General Business District not exceed thirty-five feet. The applicant is requesting a height variance in the amount of 5 feet to construct the proposed addition to a maximum height of 40 feet. The height variance is needed by virtue of the irregular topography of the property which slopes severely down to one corner. The majority of the building is actually included within a thirty-seven foot height umbrella. The variance is needed by virtue of the extensive setbacks provided along Pine Street which were requested by the neighborhood.

5. The zoning ordinance requires that in the event dwelling units are located to the rear or above permitted non-residential uses, the subject non-residential uses be enclosed by building walls. The applicants feel that it would be inappropriate from the standpoint of security if the parking garage/deck were enclosed with building walls.

Mr. Moore reiterated the fact that to insist upon the strict application of the ordinance would unreasonably restrict the use of the property and would prevent Mr. Salomonsky from developing his property in a manner that the community finds acceptable.

In response to a question from Ms. Cox, Mr. Moore indicated that the parking area would be available for lease by some of the residents of the dwelling units. In response to a question from Ms. Cox, Mr. Moore indicated that given the broad neighborhood support and relatively minor nature of the requested variances that the applicant’s request was well suited for the Board of Zoning Appeals.
Testifying on behalf of the application, Mr. Salomonsky stated that 611 West Cary Street has an English basement with a sunken patio in the rear. Mr. Salomonsky indicated that the windows on the front of the building are 2 1/2 feet by 5 feet and the windows on the rear are full-size. Mr. Salomonsky stated that the building heights of 611 West Cary Street and the proposed apartment building are comparable. Mr. Salomonsky indicated that he had consulted with the City's traffic engineering department and there was no problem with providing ingress and egress to the deck from the existing alley.

In response to a question from Ms. Cox, Mr. Salomonsky stated that seventeen parking spaces are required to be provided for the residential construction. The original plans called for seven of the spaces to be provided in the deck and the remaining spaces to be provided at the rear of the property. The zoning office determined, however, that the spaces in the rear of the property were not suitably zoned and could not therefore be counted to meet the parking demand. Mr. Salomonsky indicated that the options available to him were to either lease the remaining ten spaces off-site or to redesign the surface parking lot situated adjacent to Pine Street. The decision was made to lease the spaces off-site given that the design of the subject surface parking lot was agreed upon with the Oregon Hill Neighborhood Association. Mr. Salomonsky stated that it is his plan to at a later date request permission to utilize the rear of the property for parking purposes. In response to a question from Mr. Siff, Mr. Salomonsky stated that there would be approximately sixty-five or sixty-six dwelling units. In response to a question from Mr. Poole, Mr. Salomonsky replied that, with the exception of the Jacob House, the entirety of the property will be under single ownership.

Mr. Davidson explained that the variances that have been applied for are predicated on the property being a single lot for development purposes. Mr. Davidson further explained that if the Jacob House is severed from the remainder of the property in such a manner that it creates the need for additional variances, a new application would be required.

Speaking in favor, Mr. J. W. Harman testified that he is the owner of 611 West Cary Street and is speaking in favor of the application for the reason that the proposed development will be of benefit to the neighborhood. Mr. Harman stated that he had owned the subject property for 20 years. Mr. Harman stated that Mr. Salomonsky had gone to great lengths to preserve the existing structures, including the Jacob House. Mr. Harman stated that the proposed project was consistent with development changes that were taking place in the neighborhood.

Speaking in favor, Mr. Steven Cross testified that he is the owner of 116 South Pine and that Mr. Salomonsky is attempting to improve the neighborhood.

Speaking in favor, Ms. Gayla Mills, of the Oregon Hill Neighborhood Association, testified that the neighborhood came to support Mr. Salomonsky's
plan only after significant changes were made in the proposed project as a result of six different neighborhood meetings. Ms. Mills stated that each individual condition contained within the written agreement between the Oregon Hill Neighborhood Association and Mr. Salomonsky received a two-thirds vote by the membership. In response to a question from Ms. Cox, Ms. Mills stated that the plan presented to them provided one parking space per dwelling unit while the zoning ordinance only required one parking space per four dwelling units. Ms. Mills referred to a clause in their agreement with Mr. Salomonsky which specifies, "All parking spaces located on 611-619 West Cary Street, except for 14 spaces required for 705 West Cary Street and the five spaces donated with the Jacob House, will serve only the tenants of this property. None of the tenant's parking spaces will be rented out to non-tenants."

Speaking in favor, Ms. Mimi Sadler testified that she was a historical architect and possessed particular knowledge of this property. Ms. Sadler stated that she worked with members of the neighborhood in establishing the Oregon Hill Historic District. Ms. Sadler stated that in her professional opinion the project met the standards of the Secretary of the Interior and is a good project for the historic neighborhood.

Speaking in favor, Ms. Virginia McConnell, representing the Virginia Department of Historic Resources, testified that Mr. Salomonsky had worked closely with their department and had exhibited an extraordinary willingness to make changes to the project consistent with their recommendations.

Speaking in favor, Mr. E. Martin Jewell testified that his interests were primarily related to the Jacob House and he was in support of Mr. Salomonsky's project based on the efforts to preserve this property.

Speaking in favor, Ms. Kimberly Chen testified that she was representing the Alliance to Conserve Old Richmond Neighborhoods (ACORN) and was also appearing as an architectural historian and consultant retained by Mr. Salomonsky to assist in the design of the project. Ms. Chen stated that normally ACORN does not directly support a project but supports the decision of the community. Ms. Chen stated that members of ACORN had met with the Oregon Hill Neighborhood Association and the Oregon Hill Home Improvement Council, and were supporting these organizations in their support of the project. Ms. Chen submitted a letter from ACORN to the Board. Ms. Chen pointed out that Mr. Salomonsky did not have to retain the services of an architectural historian and that she was hired to work with the neighborhood and the Virginia Department of Historic Resources which was only one of numerous concessions made by Mr. Salomonsky to ensure compatibility of the project with the neighborhood.
Speaking in favor, Mr. Alan Shintzius testified that he was originally involved in preservation of the Jacob House and supported the proposed project based on numerous concessions made by Mr. Salomonsky.

Speaking in opposition, Mr. Todd Woodson testified that he was the owner of Candyland Music Inc. located at 701 West Cary Street and had been in this location since 1998. Mr. Woodson stated that his residence was located at 302 South Cherry Street. Mr. Woodson indicated that he was the treasurer of the Oregon Hill Neighborhood Association. Mr. Woodson acknowledged Mr. Salomonsky's efforts with respect to the proposed project. Mr. Woodson expressed opposition to the extensive nature of the proposed project. Mr. Woodson indicated that the parking problems associated with Mr. Salomonsky's project would negatively affect the long-term viability of his business. Mr. Woodson stated that he was aware of at least one individual that would not be parking in Mr. Salomonsky's project in the 700 block of West Cary Street for the reason that it was too expensive. Mr. Woodson expressed concern over this fact and the fact that future development, especially that of VCU, would negatively affect parking in the area and would ultimately harm his business. Mr. Woodson referred to the co-mingling of parking between the 700 block of West Cary and the proposed project in the 600 block of West Cary Street as a "shell game." Mr. Woodson stated that the ground floor of the proposed project were actually dwelling units and that the parking structure was located below grade. Mr. Woodson pointed out that the property immediately to the east of the proposed project is an historic home built in the 1890s. Mr. Woodson stated that Mr. Salomonsky's project was located approximately 5 feet from the property line immediately adjacent to this home. Mr. Woodson also pointed out that the home in question had just sold for $334,000 which is the most any dwelling has ever sold for in Oregon Hill. Mr. Woodson contended that since the property abutted an R-7 Single and Two-Family Urban Residential District, a 20 ft. rear yard was required and that the staff's position that no rear yard was required in this case was subject to litigation. Mr. Woodson also expressed concern that not all of the proffers submitted by Mr. Salomonsky were enforceable which is reason why the project should be the subject of a special use. Mr. Woodson concluded by urging the Board not to approve the proposed project.

Speaking in opposition Ms. Gladys Chittenden testified that she, along with her husband, were the owners of 609 West Cary Street which immediately abutted Mr. Salomonsky's project on the east. Ms. Chittenden stated that she attempted to purchase 611 West Cary Street from Mr. Harman and later learned that Mr. Salomonsky was purchasing the property. Ms. Chittenden also stated that she had attempted to purchase the property for Mr. Salomonsky. Ms. Chittenden stated that although Mr. Salomonsky declined to sell her the property that he assured her that her privacy would be protected. Ms. Chittenden expressed concern over the fact that the residents of Mr. Salomonsky's apartment project would be overlooking her backyard. Ms. Chittenden indicated that the alley to the rear of
her property, which is to provide access to Mr. Salomonsky’s apartment complex, was very narrow and she questioned its adequacy. Ms. Chittenden stated that there was not sufficient parking on Cary Street and was concerned about her ability to access the rear of her property given the number of vehicles also utilizing the alley for the purposes of accessing the apartment complex. Ms. Chittenden also expressed concern over the architectural appearance of the proposed complex.

The Chairperson, Ms. Williams, requested that Mr. Salomonsky clarify allocation of parking for the proposed project. Mr. Salomonsky indicated that with the exception of 16 spaces, which were required for his project at 705 West Cary Street, all of the remaining spaces would be devoted to either the commercial or the residential usage on the property. Mr. Salomonsky also indicated that 10 parking spaces were being leased from the proposed project to be utilized by the residents of 705 West Cary Street. Mr. Salomonsky stated that this was necessary due to the fact that they were not allowed to utilize the parking spaces adjacent to the R-7 zoned property and in order to abide by the agreement with the Oregon Hill Neighborhood Association, it was necessary to create a cross easement arrangement between 705 West Cary Street and the proposed project. In response to a question from Mr. Siff, Mr. Salomonsky indicated that he was not able to answer how many spaces would be assigned to the commercial usage for the reason that he could not predict the future commercial usage of the property. Mr. Siff commented that according to testimony, Mr. Salomonsky’s agreement with the Oregon Hill Neighborhood Association required that he provide one parking space for each dwelling unit. Mr. Salomonsky stated that immediately upon learning that they could not utilize the 10 parking spaces located adjacent to the R-7 zoned property, he informed Ms. Gayla Mills with the Oregon Hill Neighborhood Association of this fact. In response to a question from Mr. Siff, Mr. Salomonsky stated that there were 15 spaces in the proposed parking garage that would be allocated for residential use as well as an additional 10 spaces at 705 West Cary Street and 6 compact spaces located in the surface parking lot situated on the property for a total of 31 spaces. In response to a question from Ms. Cox, Mr. Salomonsky stated that the alleys providing access to the parking garage are approximately 15 feet in width. Mr. Salomonsky indicated that the deck could accommodate a total of 31 parking spaces. In response to a question from Mr. Siff, Mr. Salomonsky indicated that their agreement with the Oregon Hill Neighborhood Association did not specify one parking space per dwelling unit; only that the total number of parking spaces located on the project site (including those required for commercial usage) were equivalent to the total number of dwelling units.

Mr. Glenn Moore, attorney for Mr. Salomonsky, stated that his client would comply with all of the requisite zoning requirements. Mr. Moore stated that in order to address the issue of the number of variances being requested, his client was withdrawing the variance request to permit three dwelling units within the
basement area of 611 West Cary Street and also withdrawing the variance request pertaining to the setback violation (8 feet +) between 617 West Cary Street and the proposed four-story building.

In response to a question from Mr. Siff, Ms. Gayla Mills stated that when Mr. Salomonsky originally presented his plans that their understanding was there would be one parking space per unit, but that the agreement between Mr. Salomonsky and the Oregon Hill Neighborhood Association only provided that the parking spaces that exist on site and are not required by prior agreement to go elsewhere would be utilized for the proposed project. Ms. Mills stated that they were aware that there might be some changes in the parking. Ms. Mills also stated that the Oregon Hill Neighborhood Association reached a compromise position that aesthetics were more important than having additional parking spaces. Ms. Mills indicated that as part of the negotiation process they requested that Mr. Salomonsky eliminate parking spaces adjacent to Pine Street and that an additional 10 spaces were lost as a result of the determination by the City that the parking spaces adjacent to the R-7 zoned property could not be utilized. Ms. Mills indicated that the Association did not want to void their agreement with Mr. Salomonsky. In response to a question from Mr. Siff, Ms. Mills stated that it was understood that commercial utilization could erode the number of spaces available for the residential use.

The Board is satisfied that: the property was acquired in good faith and that an exceptional situation exists due to the fact that the proposed 3 to 1 ratio of residential square footage to commercial square footage does not take into consideration the non-residential usage of either 617 or 619 West Cary Street; a large portion of the property is not suited for commercial development; the height variance is needed by virtue of the irregular topography of the property which slopes severely to the southeast corner, provision of extensive setbacks required along Pine Street at the request of the neighborhood and due to the fact it would be inappropriate from the standpoint of security if the parking garage/deck were enclosed within building walls whereby strict application of maximum permitted floor area devoted to dwelling use, height requirements and the requirement that the structure be enclosed 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 maximum permitted floor area devoted to a dwelling use requirement; from the height requirements; and from the requirements regarding unenclosed structures, be granted to the applicants for a building permit to construct a four-story addition containing dwelling units with an unenclosed parking garage subject to the following conditions: withdrawal of the variance request to permit three dwelling units within the basement area of 611 West Cary Street, withdrawal of the variance
request pertaining to the setback violation (8 feet ±) between 617 West Cary Street and the proposed four-story addition and compliance with the April 23, 2003 agreement between the applicant and the Oregon Hill Neighborhood Association. Finally, in the event the applicant chooses to sever the Jacob House (619 West Cary Street) from the remainder of the property and the subject severance cannot be accomplished in accordance with applicable provisions of the zoning ordinance, it will be necessary for the applicant to request appropriate relief from the Board.

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

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

CASE NO. 62-03

APPLICANT: Paul Lowsley Williams

PREMISES: 2034 MONUMENT AVENUE
(Tax Parcel Number W000-0953/041)

SUBJECT: A building permit to erect a fence

DISAPPROVED by the Zoning Administrator on March 19, 2003, based on Sections 32-300 and 32-630.9(2) of the zoning ordinance for the reason that: In an R-6 Single-Family Attached Residential District, the maximum permitted height for a fence located within the required side yards is exceeded. A six and one-half foot (6.5’) maximum height is permitted. A fence varying in height from eight feet (8’) to ten feet (10’) is proposed.

APPLICATION was filed with the Board on March 17, 2003 based on Section 17.20(b) of the City Charter.

APPEARANCES:

For Applicant: Paul Williams
Leigh Hulcher

Against Applicant: none
FINDINGS OF FACT: The Board finds from sworn testimony and exhibits offered in this case that the applicant, Mr. Paul Williams, has requested a variance for a building permit to erect a fence at 2034 Monument Avenue. Mr. Williams indicated that he was appearing before the Board to seek a variance for the height of his fence. Mr. Williams acknowledged that the maximum height of a fence permitted by the city ordinance was 6 1/2 feet and that with the exception of one small section of fence located between his porch and his neighbors porch (which would be 10 feet in height), the remainder of the fence would be 8 feet in height. Mr. Williams indicated that the additional height was required for security and privacy reasons. Mr. Williams stated that both of the neighbors located on either side of his property were in support of the requested variance. Mr. Williams also stated that the Commission on Architectural Review, Fan District Association and the Monument Avenue Preservation Society had all approved the proposed fence.

Speaking in favor, Leigh Hulcher testified that the Fan District Association had approved the requested variance.

The Board is satisfied that the property was acquired in good faith and that an exceptional situation exists due to the established need for security and privacy and broad neighborhood support, whereby strict application of the fence height requirements within the side yard 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 to exceed the maximum permitted height for a fence located within the required side yards be granted to Paul Lowsley Williams for a building permit to erect a fence as proposed at the subject premises.

ACTION OF THE BOARD: Granted (4-0)

Vote to Grant
affirmative: Poole, Cox, Williams, Siff

negative: none

Upon motion made by Mr. Siff and seconded by Ms. Cox, Board members voted (5-0) to continue to its meeting of Wednesday, June 4, 2003, consideration of the following case. The Board’s decision to continue this case included a determination that a continuance fee would be required.
**CASE NO. 63-03**

**APPLICANT:** Ygiagam, LLC  

**PREMISES:** 2401 WEST MAIN STREET  
(2ND FLOOR) (Tax Parcel Number W000-1076/015)  

**SUBJECT:** A certificate of occupancy for an art gallery

DISAPPROVED by the Zoning Administrator on March 30, 2003, based on Sections 32-300 and 32-710.7 of the zoning ordinance for the reason that: In a B-3 General Business District, the off-street parking requirement is not met. Ten (10) off-street parking spaces are required; none is proposed. On February 14, 2001, the Board approved a Variance (Case No. 25-01) from the off-street/off-site parking distance requirement; sixteen (16) parking spaces were to be provided at 2311-2313 West Cary Street for a banquet hall facility. However, the off-site parking spaces to be leased were later deemed unavailable.

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

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Upon motion made by Mr. Poole and seconded by Mr. Siff, Board members voted (5-0) to continue to its meeting of Wednesday, July 2, 2003, consideration of the following case. The Board’s decision to continue this case included a determination that a continuance fee would not be required.

**CASE NO. 64-03**

**APPLICANT:** Circle Realty, LLC  

**PREMISES:** 3910 HULL STREET ROAD  
(Tax Parcel Number C006-0154/038)  

**SUBJECT:** A sign permit to install additional signage on existing freestanding sign

DISAPPROVED by the Zoning Administrator on March 31, 2003, based on Sections 32-300, 32-515(4) and 32-525(2) of the zoning ordinance for the reason that: In a B-3 General Business District, one freestanding sign not exceeding one hundred fifty (150) square feet in area or thirty-five (35) feet in height identifying the name of a shopping center and not more than five (5) tenants in such shopping center shall be permitted on shopping center sites of not less than two (2) acres in area. One freestanding sign not exceeding one hundred fifty (150) square feet in area or thirty-five (35) feet in height
identifying the name of a shopping center and not more than five (5) tenants in such shopping center shall be permitted on shopping center sites of not less than two (2) acres in area. Five (5) tenant freestanding signs having an area of 24, 48, 55, 62 and 102 square feet exist. One (1) additional sign (to be added to an existing pole) of 29 square feet is proposed. The nonconforming regulations required that the signs be eliminated or made to conform to the B-3 sign requirements no later than November 22, 1998.

APPLICATION was filed with the Board on March 28, 2003 based on Section 17.20(b) of the City Charter.

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The secretary advised the Board that an appeal to Circuit Court had been filed in regards to Case 33-03, JMYI Investments LLC.

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The meeting was adjourned at 4:25 p.m.

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Chairman

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Secretary