



CITY OF RICHMOND

DEPARTMENT OF
PLANNING AND DEVELOPMENT REVIEW
BOARD OF ZONING APPEALS

BOARD OF ZONING APPEALS

MEETING MINUTES

WEDNESDAY, APRIL 3, 2019

On Wednesday, April 3, 2019, the Board of Zoning Appeals held a public hearing in the Fifth Floor Conference Room, 900 East Broad Street, at 1:00 p.m.; display notice having been published in the Richmond Legacy Newspaper on March 20 and 27, 2019 and written notice having been sent to interested parties.

Members Present: Burt F. Pinnock, Chair
 Roger H. York, Jr., Vice-Chair
 Rodney M. Poole
 Kenneth R. Samuels, Sr.
 Susan Sadid

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

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

BZA 04-2019 (CONTINUED FROM JANUARY 2, 2019 MEETING)

APPLICANT: Nancy and Ernest Bush, Jr.

PREMISES: 900 NORTON STREET
(Tax Parcel Number N000-0573/021)

SUBJECT: A building permit to construct a new single-family attached dwelling.

DISAPPROVED by the Zoning Administrator on November 16, 2018, based on Sections 30-300, 30-413.6(1) & 30-630.1(a)(1) of the zoning ordinance for the reason that: In an R-7 (Single- and Two-Family Urban Residential District), the front yard (setback) requirement is not met. Fifteen feet (15') is required along the Catherine Street frontage; 3.08 feet ± is proposed.

APPLICATION was filed with the Board on November 16, 2018, based on Section 17.20(b) of the Charter of the City of Richmond.

APPEARANCES:

For Applicant: Ernest Bush, Jr.

Against Applicant: None

FINDINGS OF FACT: The Board finds from sworn testimony and exhibits offered in this case that the applicant, Nancy and Ernest Bush, have requested a variance to construct a new single-family attached dwelling for property located at 900 Norton Street. Mr. Bush testified that the property is located at the corner of Norton Street and Catherine Street and as such is required to have two front yards. Mr. Bush noted that the setback along Catherine Street is 15 feet on a 17 1/2 foot wide lot which leaves approximately 2 1/2 feet of buildable width. Mr. Bush further noted that the setback requirement amounted to confiscation of the property. Mr. Bush stated that the setback waiver is requested along Catherine Street which will permit construction of a 14 1/2 foot wide house. Mr. Bush indicated that he had secured the support of the Carver Civic League subject to the following conditions:

- 1) Substantial compliance with the plans submitted to the Board.
- 2) Maximum of three and one-half (3.5) bathrooms for #900 and #902 Norton Street.
- 3) Removal of second level front porch for #900 and #902 Norton Street.
- 4) Provision of cementitious siding.
- 5) Provision of two additional second floor windows along the Catherine Street frontage in a location as discussed with the Board.
- 6) Provision of one additional first floor window along the Catherine Street frontage in a location as discussed with the Board.

The Board finds that evidence shows that the strict application of the terms of the ordinance would unreasonably restrict the utilization of the property or that the granting of the variance would alleviate a hardship due to a physical condition relating to the property or improvements thereon at the time of the effective date of the ordinance, and (i) the property interest for which the variance is being requested was acquired in good faith and any hardship was not created by the applicant for the variance; (ii) the granting of the variance will not be of substantial detriment to adjacent property and nearby properties in the proximity of that geographical area; (iii) the condition or situation of the property concerned is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to the ordinance; (iv) the granting of the variance does not result in a use that is not otherwise permitted on such property or a change in the zoning classification of the property; and (v) the relief or remedy sought by the variance application is not available through a special exception process that is authorized in the ordinance pursuant to subdivision 6 of § 15.2-2309 or the process for modification of a zoning ordinance pursuant to subdivision A4 of § 15.2-2286 at the time of the filing of the variance application.

RESOLUTION: NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF ZONING APPEALS that a request for a variance from the front yard (setback) requirement be granted to Nancy and Ernest Bush, Jr. for a building permit to construct a new single-family attached dwelling, subject to the following conditions:

- 1) Substantial compliance with the plans submitted to the Board.
- 2) Maximum of three and one-half (3.5) bathrooms for #900 and #902 Norton Street.
- 3) Removal of second level front porch for #900 and #902 Norton Street.
- 4) Provision of cementitious siding.
- 5) Provision of two additional second floor windows along the Catherine Street frontage in a location as discussed with the Board.
- 6) Provision of one additional first floor window along the Catherine Street frontage in a location as discussed with the Board.

ACTION OF THE BOARD: (5-0)

Vote to Grant Conditionally
affirmative:

Pinnock, York, Poole, Samuels, Sadid

negative: None

BZA 12-2019

APPLICANT: Corwin W. & Jane A. Cominsky

PREMISES: 3420 EAST MARSHALL STREET
(Tax Parcel Number E000-0973/011)

SUBJECT: A building permit to construct a one-story addition (10.5' x 19.0')
to a single-family detached dwelling.

DISAPPROVED by the Zoning Administrator on January 18, 2019, based on Sections 30-300, 30-413.15(1)b, 30-413.15(2)a & 30-810.1 of the zoning ordinance for the reason that: In an R-8 (Urban Residential District), the front, side yard (setbacks) and nonconforming feature requirements are not met. A front yard of eleven feet (11'), as established by 410 North 35th Street is required; a nonconforming front yard of 0.11 feet exists/ is proposed along the North 35th Street frontage. A side yard of three feet (3') is required; a nonconforming side yard of 2.78 feet exists/ is proposed. No building or structure having a nonconforming feature shall be reconstructed with another building or structure unless such nonconforming feature is hereby eliminated and the building or structure is made to conform.

APPLICATION was filed with the Board on January 18, 2019, based on Section 1040.3(1) of the City of Richmond Zoning Ordinance.

APPEARANCES:

For Applicant: Bill Voorhees
Jane Cominsky

Against Applicant: None

FINDINGS OF FACT: The Board finds from sworn testimony and exhibits offered in this case that the applicants, Corwin and Jane Comiskey, have requested a special exception to construct a one-story addition to a single-family detached dwelling for property located at 3420 E. Marshall Street. Mr. Bill Voorhees, representing the applicant, testified that the property is located at the corner of East Marshall

Street and North 35th Street and as such has a dual front yard setback requirement. Mr. Voorhees stated that the Commission of Architectural Review had reviewed and approved the project. Mr. Voorhees noted that the project will provide a laundry room and craft room. Mr. Voorhees further noted that the structure is limited size and has no basement. Mr. Voorhees indicated that the building elevations have been designed to reflect the current architecture of the dwelling and that the proposed design will be compatible with the surrounding neighborhood.

In response to question from Mr. York, Mr. Voorhees stated that the requested setback of 2.87 feet was necessary to achieve proper alignment between the existing hallway in the home and the proposed addition.

Mr. Poole stated that while input from the Commission of Architectural Review is valuable it plays no role in the decision of the Board to grant or deny a request.

Speaking in favor, Ms. Jane Comiskey, testified that when the house was purchased the laundry room was/is located under the stairs and is nonfunctional. Ms. Comiskey stated that architecturally it was not possible to construct a basement to accommodate the laundry room. In the final analysis the only viable option was to add on to the rear of the dwelling. Ms. Comiskey noted that the Church Hill Civic Association supported the requested special exception. Ms. Comiskey stated that the proposed design was consistent with other properties in the neighborhood.

The Board is satisfied that the property was acquired in good faith and pursuant to Section 114-1040.3(1) of the City Code, the intended purpose and use of the proposed addition is consistent with the zoning district regulations; departure from the yard requirements is the minimum necessary to accommodate the intended purpose of the addition; the addition or similar construction serving the same purpose cannot reasonably be located elsewhere on the lot in compliance with the zoning ordinance; and the addition will be in keeping with the architectural character of the dwelling and development within the neighborhood.

RESOLUTION: NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF ZONING APPEALS that a request for a special exception from the front, side yard (setbacks) and nonconforming feature requirements be granted to Corwin W. & Jane A. Cominsky for a building permit to construct a one-story addition (10.5' x 19.0') to a single-family detached dwelling.

ACTION OF THE BOARD: (5-0)

Vote to Grant

affirmative: Pinnock, York, Poole, Samuels, Sadid

negative: None

BZA 13-2019

APPLICANT: Charles Schmidt

PREMISES: 308 WEST 25th STREET
(Tax Parcel Number S000-0699/007)

SUBJECT: A building permit to split a lot and construct a new single-family detached dwelling (#310).

DISAPPROVED by the Zoning Administrator on February 13, 2019, based on Sections 30-300, 30-412.4(1) & 30-412.5(1)b of the zoning ordinance for the reason that: In an R-6 (Single-Family Attached Residential District), the lot area, lot width, and side yard (setback) requirements are not met.. Lot areas of five thousand square feet (5,000 SF) and lot widths of fifty feet (50') are required. For zoning purposes, one (1) lot having a lot area of 9,176 square feet and a lot width of sixty feet (62') currently exists. A lot area of 4,677 square feet and width of 31.6 feet is proposed for No. 308. A lot area of 4,499 square feet and width of 30.4 feet is proposed for the newly created lot (No. 310). A side yard of five (5) feet is required; 3.2' is proposed along the northern property line for the existing dwelling (No. 308).

APPLICATION was filed with the Board on February 13, 2019, based on Section 1040.3(2) of the City of Richmond Zoning Ordinance.

APPEARANCES:

For Applicant: Charles Schmidt

Against Applicant: None

FINDINGS OF FACT: The Board finds from sworn testimony and exhibits offered in this case that the applicant, Charles Schmidt, has requested a special exception to split a lot and construct a new single-family detached dwelling for property located at 308 W. 25th Street. Mr. Schmidt testified that he had owned his home since 2006 and that the house was originally constructed in 1915. Mr. Schmidt stated that his desire is to split the lot and construct a new single-family dwelling on the remaining property. Mr. Schmidt noted that the lot is currently 62 feet

wide and that the proposal will be to have two lots of approximately 31 feet in width. Mr. Schmidt further noted that the property originally existed as two lots that were combined by deed sometime in the 1930s or 40s. Mr. Schmidt stated that his desire is to build a home which reflects the character of the neighborhood but at the same time includes all of the modern amenities associated with current living standards. Mr. Schmidt explained that the lot widths in the immediate neighborhood vary but that the predominant lot width in the block is approximately 30 feet. Mr. Schmidt indicated that the typical dwelling within the neighborhood is approximately 24 to 25 feet in width having 3 to 4 foot side yard setbacks. Mr. Schmidt stated that he was aware of no objection from the surrounding neighbors and that the request was supported by the Woodland Heights Neighborhood Association.

In response to question from Mr. York, Mr. Schmidt stated that the siding will be cementitious.

The Board is satisfied that the property was acquired in good faith and pursuant to Section 114-1040.3 (2) of the zoning ordinance, the subject lots have previously consisted of legal lots of record that were subsequently combined by deed, and the number of lots to be created do not exceed the number of previously existing lots of record, the new lots comply with Section 114-610.1 of the zoning ordinance and off-street parking requirements will be met, each lot created by the division will comply with the requisite side yard requirements, the division will comply with applicable requirements of the subdivision regulations and that dwellings to be constructed on the lots will be compatible with the dwellings existing or to be constructed in the immediate vicinity of the property.

RESOLUTION: NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF ZONING APPEALS that a request for a special exception from the lot area, lot width, and side yard (setback) requirements be granted to Charles Schmidt for a building permit to split a lot and construct a new single-family detached dwelling (#310), subject to substantial compliance with the plans submitted to the Board and provision of cementitious siding.

ACTION OF THE BOARD: (5-0)

Vote to Grant Conditionally

affirmative: Pinnock, York, Poole, Samuels, Sadid

negative: None

BZA 14-2019

APPLICANT: Cava Capital LLC

PREMISES: 1727 NORTH 28th STREET
(Tax Parcel Number E000-0951/062)

SUBJECT: Building permits to divide an existing lot into two (2) lots and to construct a new single-family detached dwelling on each of the vacant lots.

DISAPPROVED by the Zoning Administrator on February 11, 2019, based on Sections 30-300 & 30-410.4 of the zoning ordinance for the reason that: In an R-5 (Single-Family Residential District), the lot area and lot width requirements are not met. Lot areas of six thousand square feet (6,000 sq ft) and lot widths of fifty feet (50') are required. For zoning purposes, one (1) lot having an area of 7,800 square feet and a lot width of sixty feet (60') currently exists; lot areas of 3,900 square feet and lot widths of 30.0 feet are proposed for both 1725 & 1727 North 28th Street.

APPLICATION was filed with the Board on February 14, 2019, based on Section 1040.3(2) of the City of Richmond Zoning Ordinance.

APPEARANCES:

For Applicant: Kelly Henderson

Against Applicant: None

FINDINGS OF FACT: The Board finds from sworn testimony and exhibits offered in this case that the applicant, Cava Capital LLC, has requested a special exception to divide an existing lot into two lots and to construct a new single-family detached dwelling on each of the vacant lots for property located at 1727 N. 25th Street. Ms. Kelly Henderson, representing Cava Capital LLC, testified that the special exception is being sought to construct two 18 foot wide dwellings on 30 foot wide lots each. Ms. Henderson noted that a request involves relief from the lot area and lot width requirements. Ms. Henderson stated that the lot area of each lot will be 3900 ft.². Ms. Henderson noted that the existing lot originally consisted of two separate lots that were combined by deed. Ms. Henderson further noted that the requisite side yard setback requirements will be met. Ms. Henderson indicated that the siding will be cementitious. Ms. Henderson noted that letters were sent to all the residents within a 150 foot radius and were aware of no opposition to the request. Ms. Henderson stated that architecturally the homes will be consistent with other dwellings in the neighborhood. Ms.

Henderson noted that there is a mixture of one and two-story homes in the neighborhood and that single-story homes are being proposed in this instance.

In response to a question from Mr. Poole, the applicant stated that off-street parking will be provided for each dwelling unit.

The Board is satisfied that the property was acquired in good faith and pursuant to Section 114-1040.3 (2) of the zoning ordinance, the subject lots have previously consisted of legal lots of record that were subsequently combined by deed, and the number of lots to be created do not exceed the number of previously existing lots of record, the new lots comply with Section 114-610.1 of the zoning ordinance and off-street parking requirements will be met, each lot created by the division will comply with the requisite side yard requirements, the division will comply with applicable requirements of the subdivision regulations and that dwellings to be constructed on the lots will be compatible with the dwellings existing or to be constructed in the immediate vicinity of the property.

RESOLUTION: NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF ZONING APPEALS that a request for a special exception from the lot area and lot width requirements be granted to Cava Capital LLC for building permits to divide an existing lot into two (2) lots and to construct a new single-family detached dwelling on each of the vacant lots, subject to substantial compliance with the plans submitted to the Board and provision of cementitious siding.

ACTION OF THE BOARD: (5-0)

Vote to Grant Conditionally

affirmative: Pinnock, York, Poole, Samuels, Sadid

negative: None

BZA 15-2019

APPLICANT: Lee Medical Building LLC

PREMISES: 1805 MONUMENT AVENUE
(Tax Parcel Number W000-0861/020)

SUBJECT: A building permit to convert a nonconforming office building to a multi-family dwelling containing 63 dwelling units.

DISAPPROVED by the Zoning Administrator on February 7, 2019, based on Sections 30-300, 30-412.1, 30-800.1 & 30-800.2(a) of the zoning ordinance for the reason that: In an R-6 (Single-Family Attached Residential District), a nonconforming use shall not be extended, expanded, enlarge or moved to occupy a different or greater area of land, buildings or structures than was occupied by such use at the time it became nonconforming. No building devoted to a nonconforming use shall be structurally altered unless such building is thereafter devoted to a conforming use. Extension, expansion, enlargement and occupancy of a greater area of the building than was previously occupied by the nonconforming use is proposed. Areas of the building previously used as a mechanical room, duct and mechanical shafts are proposed to be converted into areas to be used as floor area for dwelling units. Structural alterations are proposed, including structural support and concrete slabs for dwelling use floor area.

APPLICATION was filed with the Board on February 15, 2019, based on Section 1040.3(13) of the City of Richmond Zoning Ordinance.

APPEARANCES:

For Applicant: Jennifer Mullen

Against Applicant: Joseph K. Reid III
Martha Warthen
Kimberly Gray
Tom Innes

FINDINGS OF FACT: The Board finds from sworn testimony and exhibits offered in this case that the applicant, Lee Medical Building LLC, has requested a building permit to convert a nonconforming office building to a multi-family dwelling containing 63 dwelling units for property located at 1805 Monument Avenue. Jennifer Mullen, attorney for the applicant, testified the application is to make certain improvements in the units to increase the efficiency of those units. Ms. Mullen stated this is not about the conversion of the building to medical office or the number of units nor is it to change the nonconforming rights of the property. Ms. Mullen stated those rights have been confirmed for over 30 years. Ms. Mullin explained that this is only about modest structural alterations and an extension to modernize the building to enhance the compatibility of the use. Ms. Mullin further explained it is about doing less than the property rights permit in a better matter. Ms. Mullin indicated that the Board would hear from neighbors and associations in opposition but their opposition is not with respect to the special exception before the Board today. Ms. Mullin stated that the opposition is focused on the conversion rights and the number of units both of which are permitted regardless of the special exception. Ms. Mullen explained that the

request only makes the property better. Ms. Mullin stated that the requests are twofold. First to permit floors to be installed where the ductwork is being removed. Second to use an alternate portion of the basement that was designed as a boiler room and mechanical equipment to be added to the dwelling unit square footage. Neither request increases the number of units which are permitted in the building. Those requests are internal to the building, no physical expansion of the building is proposed.

Ms. Mullin explained that the request specifically meets the criteria set forth in §30-1040.3 (13) as follows:

- a. extension and structural alteration is primarily for the purpose of enabling the nonconforming use to be operated more efficiently or safely and in a manner that does not adversely impact adjoining and surrounding properties; Ms. Mullen noted that with respect to the extension the basement has the same ceiling height as the upper floors. It was designed and arranged for officers as well as mechanical equipment. This request is to extend the nonconforming use into the space that was formerly used as a boiler room and mechanical equipment to create better and more efficient units. Previously about 60% of the basement was utilized for office and that is consistent with the residential use. The adjoining properties are not adversely impacted as units remain located within the building and the unit count has not been increased and remains far less than what is allowed by right. Ms. Mullen stated that with respect to the structural alterations the former heating system included significant ductwork along the south and the west wing of the building. This request is to construct a floor where the ductwork is being removed to improve the efficiency of those units. The adjoining properties are not adversely impacted as the units increase by 80 ft.² on the south wing and 56 ft.² on the west wing. The unit count is not increased and remains far less than what could be done by right. The units could be developed without the floor but the floor allows for better living space. Simply put a floor is being put down where ductwork was formerly located. The request is not increase the use or the number of units.
- b. in no case shall the amount of floor area devoted to the nonconforming use be increased more than ten percent; the basement accounts for 1817 ft.², the shaft area in the south wing 480 ft.² and 36 ft.² in the west wing which is approximately 5% of the building area and less than the 10% which is allowed.
- c. there shall be no increase in the number of dwelling units on the property, nor shall the granting of such exception result in noncompliance with any yard, open space, parking or other requirements of this chapter or any increase in the degree or extent of any nonconforming feature; there is no increase in the unit count based on request and it actually decreases the degree of the nonconforming feature. The properties nonconforming rights include grandfathered parking

spaces otherwise known as a nonconforming feature for a total of 106 spaces. Sixty-one spaces exist in the parking lot today which means there could be 106 units in the building with 61 parking spaces. The building permit includes 63 units with 63 parking spaces. The use is conforming as to as to the parking regulations in the district where the use is first permitted.

d. there shall be no increase in area of the lot devoted to the nonconforming use; the lot area does not change at all.

Ms. Mullen stated that not only are all the criteria met but the request is consistent with the intent statement. The improvement and modernization of the nonconforming use is in the best interest of the city. It enables reasonable use of the building with little or no other potential. Ms. Mullen explained that the context of reasonableness in the ordinance is with respect to the number of units that could be converted pursuant to the nonconforming rights. It is not a matter of opinion regarding the number of units that could be converted. This is a modest expansion and structural alteration and represents a small fraction of the overall building square footage. It enhances the compatibility of the nonconforming use. It is preferable to an underutilized poorly-maintained property where the conversion to a single or two-family use is not practical. In summary the special exception makes units more efficient and better. The criteria of §30-1040.3 (13) are met and exceeded.

In response to a question from Mr. York, Ms. Mullen stated that there are 12 units in the shaft and two basement units. Ms. Mullen stated that if the request were denied that there would still be 63 units. Ms. Mullen stated that the simple answer would be that the shaft would be closed in. In the basement the units would go back to the other side. Ms. Mullen stated that the boiler room and mechanical room areas make for unique units.

Mr. Poole stated that the intent statement makes reference to "enable reasonable use of a building". Mr. Poole further stated that the reference is to a nonconforming building. Mr. Poole acknowledged that the zoning administrator had ruled that conversion from an office use to multifamily use is permitted. Mr. Poole referenced the fact that Ms. Mullen had stated that all the criteria had been met. Mr. Poole referred to §30-1040.3 (13) (a) that stipulates "in a manner that does not adversely impact adjoining and surrounding properties". Mr. Poole said that it was Ms. Mullin's position that that had been met since everything that was being done was in the interior. Mr. Poole said that the use affects the entire neighborhood.

Ms. Mullin said that subsection (a) refers to the special exception. Ms. Mullin stated that there are 63 units either with or without the special exception. Ms. Mullen acknowledged that the units are inside the building and would exist even

without the special exception. Ms. Mullin stated that the special exception is being requested to make the units more efficient which increases the square footage but allows for a better floor plan. Ms. Mullen stated that you have better units that do not adversely affect the adjoining neighbors. Ms. Mullen said that the use question is separate and apart from the special exception and deals with traffic, the number of units and parking. Ms. Mullen said the project will be conforming with respect to parking where multi-family use is first permitted. With respect to noise this allows for a better unit. Ms. Mullen stated that the units are getting larger which lessens the adverse impact.

Mr. Poole asked if Ms. Mullen agreed or disagreed that the reasonable use reference of the intent statement addresses the actual use of the property and not just 14 units or that you are making them more effective or more compatible. Ms. Mullen stated that the special exception is for structural alterations and extension which is what §30-1040.3 (13) (a) addresses. Ms. Mullins said it is with respect to the special exception. The change in use to multifamily which allows for the 63 units has already been determined. Ms. Mullen was of the opinion that the reasonableness issue with respect to the use question does not come into play and is only with respect to special exception which again is only making the units larger.

Mr. Poole stated that there is a communication problem. Mr. Poole further stated that the intent statement according to the ordinance is part and parcel of the special exception and if that applies to the actual change in use does not the Board still have to look at the provision that requires reasonable use. Mr. Poole said the special exception allows something different to be done which involves the request to make structural changes so that is where the intent statement comes in to play to determine reasonable use. Ms. Mullen replied by saying the intent statement is with respect to the special exception. Mr. Mullen said they meet the intent statement where we are talking about the use itself because the use is less intense than what is permitted under the medical office and less intense than what is permitted by the nonconforming rights. The special exception is to install the floor within an area that previously had a shaft in it and to move units from one side of the basement to the other. Ms. Mullen said it is more than reasonable in the context of their nonconforming rights, the property's location, the traffic generated on Monument Avenue which is approximately 18,000 vehicles daily. The traffic generated by the multifamily use is 342 versus medical office which is over 1800. Ms. Mullen stated that the change in use to multifamily is to bring it closer to conformance with respect to use and parking.

Mr. Poole stated that in reality when you have an office building that generally speaking is open between the hours of 9 AM and 5 PM, 6 PM or occasionally 8 PM. but apartments operate 24/7. Ms. Mullen stated it is often the case that

medical offices open earlier. Ms. Mullen said that the request is to make units better and more efficient that meets the criteria and intent statement.

Mr. Poole said that at the risk of repeating himself when you request the ability to make structural alteration and expansion changes that you have to meet the reasonableness test which is where there is disagreement. Ms. Mullen said that they meet the reasonableness test in either case. Ms. Mullen stated that the test is met in the context of changing the use from medical office to multifamily. From a reasonable standpoint it is met in the context of what the properties rights are. Ms. Mullins reiterated that medical office buildings operate more intensely than 9 to 5 and is a higher driver of traffic generation and parking which was determined in the Zoning Administrator's February 7, comment letter.

In response to a question from Ms. Sadid, Ms. Mullen stated that the intensity of the use is based on where the use is first permitted. Medical offices being less restricted in terms of the use while multifamily uses are more restricted. Ms. Mullen noted that the R-53 district is the first multifamily district and RO is the first permitted office district. Ms. Mullen stated that in terms of intensity of the use that multi-family is less intense in terms of traffic count and parking. Ms. Mullen stated that it has been determined not only from the standpoint of this property but from properties all over the city that office use is a more intense use than multifamily use.

Speaking in opposition, Mr. Joe Reed, attorney with McGuire Woods and resident of 1821 Monument Avenue said he would speak briefly on the issues and evidence and introduce a neighbor, Ms. Martha Warthen and Councilwoman Kim Gray. Mr. Reed stated the Board is very familiar with the requirements of § 30-1040.3. Under paragraph 13 of the exception section the Board must be satisfied that alterations and extensions as requested here will not adversely impact adjoining and surrounding properties those include adverse impacts to neighboring property values, increased congestion in the streets and unreasonable impacts to public safety. Importantly in the intent section for the subdivision you are also instructed that such alterations or expansions must be necessary to enable a reasonable use of the building and if they are part of improvements when taken together enhance the compatibility of the building with neighboring properties. These requested alterations and expansions impact over 20% of the proposed apartments in the building and they significantly impact the potential size of these units. Mr. Reed stated that he finds that the suggestion that they can still build 63 units including some that will be in the neighborhood of 300+ square feet with no kitchen to be highly dubious. These alterations are in fact enabling 63 units in the building. The question is whether that use and specifically that proposed residential density which is enabled by the alterations meets the criteria of reasonableness, compatibility and no adverse impact. In terms of the evidence you have the expert testimony of Mr. Tom Innes on negative impact on property

values. Mr. Innis is available for questions. Ms. Warthen will speak directly to other negative impacts including traffic and parking concerns. You also have before you the affirmation of 460 residents almost all of which are from the Fan that signed the petition stating that they believe that the special exception will negatively impact the surrounding properties. Many of these concerned citizens have taken the time to be here today. Mr. Reed asked the assembled that were in opposition to the request to stand and asked that the record reflect that approximately 100 people have stood in opposition to the request. Mr. Reed pointed out that the Board has within its record the neighborhood association opposition of MAPS, FDA, West Grace and West Avenue that have universally opposed the special exception request. Mr. Reed stated that in short the evidence is overwhelming that the governing criteria to grant this exception has not been met.

Speaking in opposition, Ms. Martha Warthen resident of 1803 Park Avenue which is located directly behind the Lee Medical Building. Ms. Warthen stated that she was there as a representative of the neighborhood to express their opposition to the special exception request. Ms. Warthen indicated that she had read and agrees with the affidavit of Mr. Innis concerning the impact of these alterations and expansion on surrounding property values. Lee Circle has a very challenging traffic pattern with unusual rotary design and slick asphalt pavers. At one point it was one of the most accident prone intersections in the city. Monument Avenue is a very popular destination throughout the day and evening for pedestrians, dog walkers, joggers and tourists. Adding perhaps 100 or more youthful and active residents to Lee Circle along with the surrounding side streets and alleys with their vehicles, guests, Ubers and deliveries will increase congestion in the streets and create safety and welfare concerns for the occupants of the adjoining and surrounding properties as well as to the general public. The available off-street parking for the building will be inadequate to avoid an adverse impact for the surrounding properties from an overload of occupants and guess vehicles particularly on nights and weekends when parking restrictions do not apply. We have aging neighbors with no off-street parking. There will be effects on noise to go from a daytime medical office use to 24/7 dormitory type housing. To protect the future of the city it must be recognized that development must be reasonable and compatible with existing neighboring uses. Ms. Warthen concluded by requesting on behalf of her several hundred neighbors that the Board find that the requirements for the special exception have not been met and deny the application.

Speaking in opposition, Councilwoman Kim Gray stated the project would have an adverse impact on the neighborhood. Ms. Gray noted that there is no proposal before the Planning Commission or City Council. Ms. Gray said that the project is not reasonable nor compatible with the existing neighboring uses. Ms. Gray asked that the Board deny the requested special exception.

Mr. Poole inquired why the special exception is not a moot point given the Zoning Administrator's determination that the proposed conversion to multifamily units is permitted. Mr. Reed stated the proposed conversion under the nonconforming provisions is not before the Board. Mr. Reed explained that when you read the intent statement the requirement specifies that the structural alteration and expansion must result in a reasonable use. It is not limited to the alterations themselves. If there is a nonconforming use which is being altered to another nonconforming use then there must be the requirement that you look at the overall reasonableness of the proposed use. The requirement exists as a result of section 30-1040.3 (13). If you're going to alter the property in connection with the new proposed nonconforming use then the issue of reasonableness must be determined. The question is whether it is reasonable to put 63 multifamily units on Lee Circle.

Mr. Poole stated that Ms. Mullen also referenced subsection a. of §30-1040 (13) and asked Mr. Reed if he agrees that there is no adverse impact on the adjoining and surrounding properties. Mr. Reed stated that if there is the suggestion that the question of adverse impact applies only to the alterations it is a ludicrous contention. The question is what effect the alterations combined with the overall proposed use have on the surrounding properties.

Mr. Poole inquired of Mr. Innis, real estate expert for the opposition, what is the economic effect on the surrounding properties. Mr. Innis stated he was referring to §30-1040.3 that there are several conditions under which it should be denied. One of the important ones regards the prohibition against increasing congestion in the streets. When you go to see a doctor you go once and leave once. When you live in apartment you go back and forth several times. A second condition specifies that the established property values shall not be impaired. The increase in traffic in addition to utilization of the rear parking lot 24 hours a day represents an unsafe condition. Mr. Innis stated that with 63 units there will be a minimum of 63 individuals and possibly several times that amount. There is not enough parking for visitors and given permit parking it would be prudent that tenant on-street parking be precluded. Mr. Poole asked Mr. Innis to elaborate on his statement regarding the project's adverse economic impact. Mr. Poole noted that Mr. Innis's affidavit outlines his background as an expert. Mr. Innis stated that if you live in a house and have constant traffic going in and out of the alley and constant pedestrian traffic that the surrounding properties would not be worth as much. There would be a diminished value. Mr. Poole noted that Mr. Innis also made reference to a similarly situated property of a larger size. Mr. Innis stated he was referring to One Monument which was converted from a hospital to apartments and is subsequently being converted to condominiums. The project has a substantial amount of parking provided across the street in a parking deck and the residents are prohibited from applying for Fan district parking permits so

the impact of the density will be limited. The difference in the One Monument project and the Lee Medical project involves the disparity in unit sizes.

Mr. York asked Mr. Innis if the property values would be reduced or just not increase at the rate they would have otherwise been expected to achieve. Mr. Innis stated the potential for appreciation for existing owners will be hindered by the proposed use. Mr. York noted that the words being dealt with are diminished and impaired. A finding in support of diminished and impaired would require that the property values actually have to be reduced. Mr. Innis said that people will not see their full expectation of value. Mr. Innis stated that the closer you get to the multifamily use the more the expectation that the use will have some impact. Mr. Innis stated that he is still comfortable with the word diminish.

Speaking in rebuttal, Ms. Mullen stated that the petition that was discussed indicates that it is to alter the building in order to allow conversion of the building to 63 units. That is not what is being discussed today. It has already been established by the Zoning Administrator that the building can be converted to 63 dwelling units. With respect to the traffic the demand for multifamily units is far less than for a medical office. On an a.m. the peak basis trip generation is 97 cars less for multifamily than for office and on a p.m. peak basis it is 141 cars less. Overall less traffic is generated by this use. Fewer parking spaces are required and the property is coming closer to conformity. Mr. Innis discussed the effect on property values in so far as the change in use is concerned but the issue before the Board is not the change in use but the structural alterations and expansion. Mr. Innis has suggested that multifamily use exists in a vacuum and that no other uses are permitted. This is in the context of nonconforming rights. The nonconforming rights for the property are for a medical office. In your packet you have a letter from Mr. Jarvis regarding property values. You have a poorly maintained medical office building that will be replaced by professionally maintained multifamily use. A commitment has been made to the neighbors that parking permits will not be requested for the subject property. This property is an improvement and will permit more efficient use of the units. It is not about the density and not about the conversion to multifamily use. It has been established that the criteria outlined in section 30-1040.3 (13) have been exceeded and it is respectfully requested a special exception be approved.

Motion was made for the purpose of discussion by Mr. Poole and seconded by Mr. York to deny the applicant's special exception request. Mr. Poole stated that he was very disturbed and troubled by this case. Mr. Poole noted that the case was very well presented by both sides. Mr. Poole indicated that in his view it comes down to the intent statement and how it applies to this type of a process. We have always been told by case law and our own procedures that the intent statement is as applicable to the discussion and the decision-making process as are the other provisions in the special exception. Mr. Poole noted that the intent

statement talks about the actual use of the property being reasonable. It is triggered by an application to change something such as a structural alteration. The question is whether or not this is a reasonable use. Mr. Poole stated that it is an extremely close case based on what is in the special exception which is what the Board is governed by.

Mr. York stated that in §30-1040.3(13)(a) it discusses in part traffic and property values. Mr. York noted that two expert opinions disagree on the effect on property values. Neither opinions were submitted by appraisers but knowledgeable real estate professionals. Mr. York was of the opinion the testimony in this regard seemed to cancel each other out. Mr. York noted that the applicant stated that if the request were denied that the property could still be developed for 63 multi-family dwelling units. Mr. York questioned whether they could get 63 units that are marketable. Mr. York noted that Mr. Reed made a point that the criteria on which the Zoning Administrator based his determination regarding the change in the nonconforming uses and the criteria that are included section 30-1040.3 (13) do to some degree overlap. Mr. York stated that his concern is whether the proposed structural alteration and expansion were necessary to enable reasonable use of the building. Mr. York noted that the Zoning Administrator did not have to take that sentence into consideration when making the determination regarding the change in the nonconforming use. Mr. York stated that the irony is that the applicant is subjected to a higher standard in so far as the special exception is concerned.

Mr. Poole expressed concern regarding testimony by the applicant's attorney that the capability will continue to exist to construct 63 units irrespective of approval of the special exception. Mr. Poole stated that that is not the issue that is before the Board. When the City Council created the special exception they instructed the Board to make a specific determination which is why the reasonable use is applicable to the nonconforming use that is being proposed.

Mr. Pinnock stated that it appeared to be the cart before the horse. If they had already developed a project which included 55 units and sought a special exception they would not be allowed to increase the number of units if they were going to undertake structural or expansion changes. This method is in order to get this number of units for the special exception.

Mr. Poole stated that it is the underlying zoning that is causing the problem. The Zoning Administrator has made a ruling regarding the special exception and has not been appealed. Mr. Poole stated what is being talked about is a special exception and the applicability of the intent statement and the reasonableness applies to the actual use. Given the totality of the testimony Mr. Poole stated that in his opinion it was not a reasonable use.

In response to Mr. Pinnock, Mr. Poole stated if they choose to use it as a medical office building they have an absolute right to do it.

The Board is not satisfied pursuant is Section 114-1040.3 (13) of the zoning ordinance, the applicant has shown that the proposed structural alteration and expansion is primarily for the purpose of enabling the nonconforming use to be operated more efficiently or safely and in a manner that does not adversely impact adjoining and surrounding properties, is necessary to enable reasonable use of the building and that the structural alteration and expansion will enhance the compatibility of the nonconforming use.

RESOLUTION: NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF ZONING APPEALS that a request for a special exception from Sections 30-300, 30-412.1, 30-800.1 & 30-800.2(a) of the zoning ordinance be denied to Lee Medical Building LLC for a building permit to convert a nonconforming office building to a multi-family dwelling containing 63 dwelling units.

ACTION OF THE BOARD: (5-0)

Vote to Deny

affirmative: Pinnock, York, Poole, Samuels, Sadid

negative: None

BZA 16-2019

APPLICANT: Fresh Start Property Solutions, LLC

PREMISES: 3004 HANES AVENUE
(Tax Parcel Number N000-0972/008)

SUBJECT: A building permit to renovate a single-family detached dwelling.

DISAPPROVED by the Zoning Administrator on February 15, 2019, based on Sections 30-300, 30-433.2.(8) & 30-800.4 of the zoning ordinance for the reason that: In a UB-PE7 (Urban Business Parking Exempt Overlay District), the proposed use is not permitted as the commercial frontage and dwelling commercial use ratio requirements are not met. Dwelling units are permitted when contained within the same building as other principal uses, provided that such dwelling units shall

be located above the ground floor of the building or to the rear of other permitted principal uses so as not to interrupt commercial frontage in the district, and provided further that the total floor area devoted to dwelling uses not to exceed three (3) times the area of the portion of the ground floor of the building devoted to other permitted uses. No commercial use is proposed as the entire building will be devoted to a residential (single-family dwelling) use. The proposed use is not permitted as the previous nonconforming use rights have expired. Whenever nonconforming uses of a building is discontinued for a period of two years or longer, 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 February 15, 2019, based on Section 1040.3(5) of the City of Richmond Zoning Ordinance.

APPEARANCES:

For Applicant: None

Against Applicant: None

FINDINGS OF FACT: The Board finds from sworn testimony and exhibits offered in this case that the applicant, Fresh Start Property Solutions, LLC, has requested a special exception to renovate a single-family detached dwelling for the property located at 3004 Hanes Avenue.

The Board finds that the property owner failed to be in attendance at the designated hearing date and time to present their case or request a continuance as required and as a consequence the Board denied the applicant's request.

RESOLUTION: NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF ZONING APPEALS that a request for a special exception from the commercial frontage and dwelling commercial use ratio requirements be denied to Fresh Start Property Solutions, LLC for a building permit to renovate a single-family detached dwelling.

ACTION OF THE BOARD: (5-0)

Vote to Deny

affirmative: Pinnock, York, Poole, Samuels, Sadid

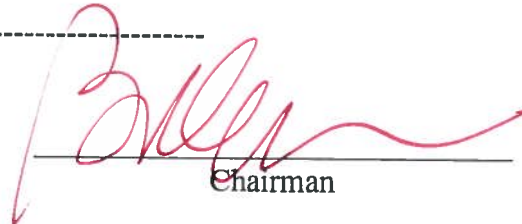
negative: None

Upon motion made by Mr. Poole and seconded by Mr. York and, Members voted (3-0) to adopt the Board's March meeting minutes.

The meeting was adjourned at 3:15 p.m.



Secretary



Chairman