



## CITY OF RICHMOND

DEPARTMENT OF  
PLANNING AND DEVELOPMENT REVIEW  
BOARD OF ZONING APPEALS

### BOARD OF ZONING APPEALS

#### MEETING MINUTES

**WEDNESDAY, OCTOBER 7, 2020**

On Wednesday, October 7, 2020, the Board of Zoning Appeals held an electronic public hearing at 1:00 p.m due to the disaster represented by the spread of COVID-19 pursuant to and in compliance with Ordinance 2020-093; display notice having been published in the Richmond Legacy Newspaper on September 30, 2020 and written notice having been sent to interested parties.

Members Present:            Roger H. York, Jr., Vice-Chair  
                                     Rodney M. Poole  
                                     Mary J. Hogue  
                                     Kenneth R. Samuels, Sr.  
                                     Edward H. Winks, Jr.

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

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The Chairman called the meeting to order and read the Board of Zoning Appeals Introductory Statement, which explains the proceedings of the meeting including the fact that the public hearing is being held electronically due to the state of emergency that exists as a result of the spread of Covid-19 pursuant to and in compliance with Ordinance 2020-093. The applicant and those appearing in support of an application speak first, followed by those appearing in opposition.

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**BZA 30-2020 (CONTINUED FROM AUGUST 5, 2020 MEETING)**  
**(CONTINUED TO NOVEMBER 4, 2020 MEETING with fee)**

APPLICANT: Twenty O Ten Grove Ave LLC

PREMISES: 2010 GROVE AVENUE  
(Tax Parcel Number W000-0904/024)

SUBJECT: A building permit to construct a freestanding deck abutting a nonconforming multi-family dwelling.

DISAPPROVED by the Zoning Administrator on June 12, 2020, based on Sections 30-300, 30-800.1 & 30-800.2 of the zoning ordinance for the reason that: In an R-6 (Single-Family Attached Residential) District, the nonconforming use requirements are not met. The addition of an exterior deck is an expansion of the nonconforming use. No building or structure devoted to a nonconforming use shall be enlarged or extended unless such building or structure is thereafter devoted to a conforming use.

APPLICATION was filed with the Board on June 12, 2020, based on Section 1040.3(13) of the City of Richmond Zoning Ordinance.

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BZA 36-2020 (CONTINUED FROM SEPTEMBER 2, 2020 MEETING)

APPLICANT: Willis J W Attn: Bryan Willis

PREMISES: 2309 WEST BROAD STREET  
(Tax Parcel Number W000-1048/025)

SUBJECT: A certificate of occupancy for a restaurant with a drive-up use.

DISAPPROVED by the Zoning Administrator on July 17, 2020, based on Sections 30-300, 30-433.2 & 30-800.4 of the zoning ordinance for the reason that: In an UB (Urban Business) & PO4 (Parking Overlay) District, the proposed use is not permitted as the previous nonconforming use rights have expired. Whenever nonconforming uses of a building are 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 July 17, 2020, based on Section 1040.3(14) of the City of Richmond Zoning Ordinance.

## APPEARANCES:

For Applicant:        Andrew Condlin  
                             David Kreis  
                             Faye Browning

Against Applicant:    None

**FINDINGS OF FACT:** The Board finds from sworn testimony and exhibits offered in this case that the applicants, Willis J W Attn: Bryan Willis, have requested a special exception to reinstate nonconforming use rights for an accessory drive-up facility for property located at 2309 W. Broad Street. Mr. Andy Condlin, attorney for the applicants, testified that the application is a request for a special exception by the owner of 2309 W. Broad Street. Mr. Condlin explained the property is currently improved with a building that was constructed as a restaurant with a drive-up facility which was formally occupied by an Arby's restaurant. Mr. Condlin stated the property is zoned UB Urban Business District and is within the PO-4 W. Broad Street parking overlay district. Mr. Condlin noted that the restaurant use is permitted and that the request is to reestablish nonconforming use rights for an accessory drive-up facility. Mr. Condlin stated that the proposed use is for a Starbucks coffee shop. Mr. Condlin noted that the building had been utilized for an Arby's restaurant from 1968 to 2016 when it became vacant. Mr. Condlin indicated that all requisite special exception criteria had been met as set out in the applicant's statement dated August 13, 2020. Mr. Condlin noted that the project had the support of Scott's Addition Neighborhood Association, the Fan District Association and the West Grace Street Association. Mr. Condlin indicated that they had worked closely with the West Grace Street Association in devising acceptable development conditions. Mr. Condlin offered the following as binding conditions of approval:

1. The "CONCEPT PLAN, 2309 WEST BROAD STREET", prepared by Kimley Horn, and dated September 17, 2020
  - a. Curbing, a minimum of 12 inches wide, shall be placed along the southern boundary of the property (along the alley);
  - b. The existing menu board shall be removed from the area shown as "EXISTING MENU BOARD AND ORDER BOARD SPEAKER TO BE REMOVED" on the Concept Plan;
  - c. A bypass Lane shall be provided adjacent to the curbing with the existing pavement striping to be removed and a "Do Not Enter" sign installed;
  - d. The drive-through lanes shall be moved closer to the building on the property;

- e. The order board, with the call box with the speaker (the “Order Board”), shall be located generally as shown on the Concept Plan as “ORDER BOARD WITH CANOPY”, but in no instance any closer than 30 feet to the southern boundary of the property (along the alley);
  - f. The Order Board shall be oriented such that it points to the west or north;
  - g. The menu board shall be positioned South of the Order Board to block the Order Board from the alley as generally shown on the Concept Plan as “5-PANEL MENU BOARD”;
  - h. Wheel stops shall be placed along the parking spaces facing the southern boundary of the Property (along the alley); and
  - i. Any dumpster on the property shall be located as shown on the Concept Plan as “PROPOSED DUMPSTER ENCLOSURE” and shall be screened with a masonry wall on three sides and faced with brick, with the opening facing north (toward West Broad Street).
2. The drive-through service hours of operation will be limited to no earlier than 6:00 am and no later than 9:30 pm each day.
  3. A sign shall be placed along the drive through lane west of the building requesting customers to keep music volume low in consideration of residential neighbors.

The Board is satisfied that the property was acquired in good faith and pursuant to Section 114-1040.3 (14) of the zoning ordinance, the property owner has demonstrated that the property was acquired in good faith and that the building cannot reasonably be devoted to a conforming use without the benefit of reinstatement of the nonconforming accessory drive-up facility.

RESOLUTION: NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF ZONING APPEALS that a request for a special exception from the nonconforming use rights be granted to Willis J W Attn: Bryan Willis for a certificate of occupancy for a restaurant with a drive-up use, subject to substantial compliance with the following:

1. The “CONCEPT PLAN, 2309 WEST BROAD STREET”, prepared by Kimley Horn, and dated September 17, 2020
  - a. Curbing, a minimum of 12 inches wide, shall be placed along the southern boundary of the property (along the alley);
  - b. The existing menu board shall be removed from the area shown as “EXISTING MENU BOARD AND ORDER BOARD SPEAKER TO BE REMOVED” on the Concept Plan;
  - c. A bypass Lane shall be provided adjacent to the curbing with the existing pavement striping to be removed and a “Do Not Enter” sign installed;

- d. The drive-through lanes shall be moved closer to the building on the property;
  - e. The order board, with the call box with the speaker (the “Order Board”), shall be located generally as shown on the Concept Plan as “ORDER BOARD WITH CANOPY”, but in no instance any closer than 30 feet to the southern boundary of the property (along the alley);
  - f. The Order Board shall be oriented such that it points to the west or north;
  - g. The menu board shall be positioned South of the Order Board to block the Order Board from the alley as generally shown on the Concept Plan as “5-PANEL MENU BOARD”;
  - h. Wheel stops shall be placed along the parking spaces facing the southern boundary of the Property (along the alley); and
  - i. Any dumpster on the property shall be located as shown on the Concept Plan as “PROPOSED DUMPSTER ENCLOSURE” and shall be screened with a masonry wall on three sides and faced with brick, with the opening facing North (toward West Broad Street).
- 2. The drive-through service hours of operation will be limited to no earlier than 6:00 am and no later than 9:30 pm each day.
  - 3. A sign shall be placed along the drive through lane west of the building requesting customers to keep music volume low in consideration of residential neighbors.

ACTION OF THE BOARD: (5-0)

Vote to Grant Conditionally

affirmative: York, Poole, Hogue, Samuels, Winks

negative: None

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BZA 37-2020

APPLICANT: 2314 Jefferson Avenue LLC

PREMISES: 2314 JEFFERSON AVENUE  
(Tax Parcel Number E000-0293/009)

SUBJECT: A building permit for a restaurant use with an accessory outdoor dining patio.

DISAPPROVED by the Zoning Administrator on July 14, 2020, based on Sections 30-300 & 30-433.2.(21)a of the zoning ordinance for the reason that: In an UB

(Urban Business) & PE-4 (Parking Exempt) District, no deck, patio, terrace or other area outside a completely enclosed building and used for the service or accommodation of patrons shall be situated within 100 feet of any R district. The outside dining area is situated approximately fifty-nine feet and one and a half inches (59.1') from an R-63 district.

APPLICATION was filed with the Board on July 17, 2020, based on Section 15.2-2309.2 of the Code of Virginia.

APPEARANCES:

For Applicant: Jodi Dubyoski  
Elaine Odell

Against Applicant: None

FINDINGS OF FACT: The Board finds from sworn testimony and exhibits offered in this case that the applicant, 2314 Jefferson Avenue LLC, has requested a variance to permit an outdoor dining patio that does not meet the requisite 100 foot setback requirement from an "R" District. Ms. Jodi Dubyoski, representing the applicant, testified that the zoning is UB Urban Business District & PE-4 Parking Exempt District. Ms. Dubyoski noted that the zoning ordinance requires an outdoor dining area to be set back 100 feet from an R district and that the proposed outdoor dining area is located approximately 59 feet from a subject R district. Ms. Dubyoski stated that the property is located at the corner of Jefferson Avenue and North 24<sup>th</sup> Street. The outdoor dining area is proposed to be located along the side of the property opposing Jefferson Avenue. Ms. Dubyoski indicated that the project had been approved by the Commission of Architectural Review. Ms. Dubyoski further indicated that the building will be utilized for a pizza restaurant, wine shop and bakery. Ms. Dubyoski noted that the outdoor dining area will facilitate pedestrian traffic along the adjoining streets and is located on a GRTC bus route. Ms. Dubyoski stated that the outdoor dining area is critical both from a business standpoint and as a result of the Covid pandemic. Ms. Dubyoski further stated that there other outdoor dining establishments located within the surrounding area. Ms. Dubyoski indicated that the application was consistent with the requisite variance criteria. Ms. Dubyoski noted that letters were sent out to approximate 40 neighbors explaining the proposed project and she was aware of no opposition. Ms. Dubyoski also noted that they had received the support of the Union Hill Civic Association.

Mr. York noted that the building serves as a buffer between the dining area and the adjoining residential property.

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.

Board Members originally voted to approve the requested setback variance for the accessory outdoor dining patio by a vote of 4-0. Upon a motion to reconsider by Mr. Poole and seconded by Mr. Samuels the Board voted to impose a closing time for the accessory outdoor dining patio of 11 PM Monday through Sunday.

**RESOLUTION:** NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF ZONING APPEALS that a request for a variance from the deck, patio, terrace or other area outside a completely enclosed building and used for the service or accommodation of patrons situated within 100 feet of any R district requirement be granted to 2314 Jefferson Avenue LLC for a building permit for a restaurant use with an accessory outdoor dining patio, subject to substantial compliance with the plans submitted to the Board and with the provision that the operation of the outdoor dining area shall cease not later than 11:00p.m. Monday through Sunday.

**ACTION OF THE BOARD:** (5-0)

Vote to Grant Conditionally

affirmative: York, Poole, Hogue, Samuels, Winks

negative: None

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BZA 38-2020 (CONTUNIED TO NOVEMBER 4, 2020 MEETING without fee)

APPLICANT: Kees and Vera Davison

PREMISES: 2793 STRATFORD ROAD  
(Tax Parcel Number C003-0134/029)

SUBJECT: A building permit to construct a new single-family (detached) dwelling.

DISAPPROVED by the Zoning Administrator on August 14, 2020, based on Sections 30-300, 30-404.5(1) & 30-630.2(a)(2) of the zoning ordinance for the reason that: In an R-2 (Single-Family Residential) District, the front yard (setback) requirement is not met. A front yard of one hundred feet (100') is required along Stratford Road; thirty feet (30') is proposed.

APPLICATION was filed with the Board on August 11, 2020, based on Section 1040.3(1) of the City of Richmond Zoning Ordinance.

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BZA 39-2020

APPLICANT: Kirk Washington

PREMISES: 1921 5<sup>th</sup> AVENUE  
(Tax Parcel Number N000-0508/019)

SUBJECT: A building permit to construct a new single-family (detached) dwelling.

DISAPPROVED by the Zoning Administrator on August 19, 2020, based on Sections 30-300, 30-412.5(1)a & 30-630.1(a)(1) of the zoning ordinance for the reason that: In an R-6 (Single-Family Attached Residential) District, the front yard (setback) requirement is not met. A front yard of fifteen feet (15') is required along the Althea Street frontage; five feet (5') ± is proposed.

APPLICATION was filed with the Board on August 13, 2020, based on Section 1040.3(1) of the City of Richmond Zoning Ordinance.

APPEARANCES:

For Applicant: Kirk Washington

Against Applicant: William Shewmake



**FINDINGS OF FACT:** The Board finds from sworn testimony and exhibits offered in this case that the applicant, Kirk Washington, has requested a special exception to construct a new single-family (detached) dwelling for property located at 1921 5<sup>th</sup> Avenue. Mr. Kirk Washington testified that he purchased the lot in 2018. Mr. Washington noted he applied for a zoning confirmation letter and was advised by the Zoning Administration Office that 1921 5<sup>th</sup> Avenue was a legal lot of record. Mr. Washington also noted that the title investigation revealed no problems. Based on this information Mr. Washington indicated that he purchased the subject lot. Mr. Washington stated that he advised the adjoining neighbors at 1915 5<sup>th</sup> Avenue of his intent to construct a dwelling on the property. Mr. Washington indicated he received no negative feedback at that time. After applying for an administrative variance as permitted under the Zoning Ordinance Mr. Washington first learned of his neighbors written objection. Based on the Code of Virginia requirements the administrative variance was denied. Mr. Washington stated that he was advised by his neighbors of their desire to purchase his property in order that they may utilize it for access purposes and to park their vehicles. Mr. Washington indicated that he provided his neighbors with a copy of the survey. Mr. Washington stated that his neighbors were opposed to having a dwelling constructed on his property. Mr. Washington indicated that he had the support of the Oregon Hill Neighborhood Association (a letter of which is included in the packet).

The Acting Chairman, Mr. York, observed that applying the required front yard requirement of 15 feet along Althea Street and the interior side yard setback requirement of 3 feet that only 12 feet of buildable lot width remained. Mr. Washington observed that a 12 foot wide house was not feasible nor was it consistent with the surrounding neighborhood.

Speaking in opposition, Mr. William Shewmake, testified that he was representing the Peter Jones Trust which was the adjoining property owner at 1915 5<sup>th</sup> Avenue. Mr. Shewmake noted that the trust was created in 2017 upon the death of Mr. Jones. Mr. Shewmake indicated that his daughter continues to reside on the premises. Mr. Shewmake stated that the proposed construction is not consistent with the development pattern of the neighborhood and in particular the proximity to Althea Street. Mr. Shewmake indicated that based on the existing development pattern that there was not an intent to develop the lots immediately adjacent to Althea Street. Mr. Shewmake noted that for decades his clients have utilized 1921 5<sup>th</sup> Avenue for parking purposes and raised the issue of a prescriptive easement and adverse possession rights. Mr. Shewmake stated that there are not other houses that come within 5 feet of Althea Street. Mr. Shewmake noted that development of 1921 5<sup>th</sup> Avenue would result in the loss of parking and a private driveway for his clients.

Mr. Poole noted that the Board does not have the authority to deal with the issue of a prescriptive easement or adverse possession and that Mr. Shewmake would need to pursue these issues in circuit court. Mr. Poole also noted that the Zoning administrator had issued a zoning confirmation letter in 2018 indicating that 1921 5<sup>th</sup> Avenue was a legal lot of record and that the subject opinion had not been appealed within the required 30 day period.

Mr. York pointed out that 1921 5<sup>th</sup> Avenue was part of a 1927 Chestnut Hills subdivision plat which reinforced its existence as a legal lot of record (the subject plat was provided to both Mr. Shewmake and Mr. Washington). Mr. York questioned the conclusion that lots adjacent to Althea Street were not intended to be developed since they were included as lots in the subject subdivision plat.

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 dwelling is consistent with the zoning district regulations; departure from the yard requirements is the minimum necessary to accommodate the intended purpose of the dwelling; the dwelling or similar construction serving the same purpose cannot reasonably be located elsewhere on the lot in compliance with the zoning ordinance; and the dwelling will be in keeping with the architectural character of 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 yard (setback) requirement be granted to Kirk Washington for a building permit to construct a new single-family (detached) dwelling, 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: York, Poole, Hogue, Samuels, Winks

negative: None

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BZA 40-2020 (CONTINUED TO JANUARY 6, 2021 MEETING)

APPLICANT: Tim Farrow

PREMISES: 622 HOLLY STREET  
(Tax Parcel Number W000-0139/039)

SUBJECT: A building permit to construct an addition on to a single-family attached dwelling.

DISAPPROVED by the Zoning Administrator on August 14, 2020, based on Sections 30-300, 30-413.6(2)a & 30-413.7 of the zoning ordinance for the reason that: In an R-7 (Single- and Two-Family Urban Residential) District, the side yard (setback) and lot coverage requirements are not met. A side yard of three (3) feet is required along the eastern and western property lines; zero is proposed. A maximum lot coverage of fifty-five (55) percent is permitted; 46.87%± exists 65.66%± is proposed.


APPLICATION was filed with the Board on August 14, 2020, based on Section 1040.3(1) of the City of Richmond Zoning Ordinance.

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

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The meeting was adjourned at 2:55 p.m.  
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Chairman



Secretary