



**BOARD OF ZONING APPEALS
CITY OF FREDERICKSBURG, VIRGINIA
AGENDA
August 19, 2013
4:00 P.M.
COUNCIL CHAMBERS, CITY HALL**

1. Call To Order
2. Determination Of A Quorum
3. Determine Public Notice Requirements Have Been Met
4. Disclosure Of Ex Parte Communication
5. Disclosure Of Conflicts Of Interest
6. Approval Of Agenda

- 6.I. Agenda

Documents: [2016-04-18 BZA AGENDA.PDF](#)

7. Appeal Request - Hamilton Palmer

Documents: [1 2016-03-02 PALMER APPEAL REQUEST.PDF](#), [2 2016-04-01KD LETTER TO THE BZA.PDF](#), [3 2016 03 30 FINDINGS OF FACT AND CONCLUSIONS OF LAW.PDF](#), [4 2016_04_07 SUPPLEMENTAL MATERIALS.PDF](#)

8. Approval Of Minutes

- 8.I. Minutes - February 22, 2016

Documents: [2016-02-22 BZA MINUTES DRAFT.PDF](#)

9. Staff/Board Comments

10. Adjourn



**CITY OF FREDERICKSBURG
BOARD OF ZONING APPEALS
AGENDA
April 18, 2016
4:00 p.m.**

1. Call to Order
2. Determination of a Quorum
3. Determine public notice requirements have been met
4. Disclosure of *Ex Parte* Communication
5. Disclosure of Conflicts of Interest
6. Approval of Agenda
7. Appeal request – Hamilton Palmer
8. Review of Minutes
 - a. February 22, 2016
9. Staff/Board Comments
10. Adjourn

HGP, Inc.
Purina Tower, Suite 100
401 Charles Street
Fredericksburg, VA 22401
540-371-5171 373-4150 (fax)
email: hpalmer@hgp.biz

March 2, 2016

To: Board of Zoning Appeals
City of Fredericksburg, Virginia

re: Administrative Decision

via: hand Delivery

Dear Board Members,

I appeal the Administrative Decision by the Zoning Administrator that was mailed me sometime on or after January 5th, 2016. I requested a determination in a letter to the Zoning Administrator on November 24th, 2015. The determination was not made and my request followed with 'unable to perform the work you requested' together with 'the questions you have submitted were answered by the Fredericksburg Circuit Court on August 6, 2015.'

The determination in the Administrative Decision to not perform the work requested is not factual and I appeal same. I asked 4 questions, most which were not addressed by the Court's decision. Attached is a check in the amount of \$300.00 for the Appeal together with the Court Opinion, my request for interpretation, and the Zoning Administrator's response to my request.

I request the Board of Zoning Appeals have the full 5 members present to hear my appeal due to the strict requirements of having a majority of the Board (regardless if they are in attendance or not) to approve the appeal.

Sincerely,



Hamilton G. Palmer

attachments

April 1, 2016

Helen P. Ross, Chair
Fredericksburg Board of Zoning Appeals
City Hall
715 Princess Anne Street
Fredericksburg, VA 22401

Re: Hamilton G. Palmer
Appeal 2016-__

Dear Ms. Ross and members of the Board of Zoning Appeals:

On behalf of Zoning Administrator Mike Craig, I ask that you deny Mr. Palmer's appeal because of lack of jurisdiction under Code of Virginia § 15.2-2311. Mr. Craig did not issue an "order, requirement, decision or determination" which may be appealed to the Board. In fact, Mr. Craig declined Mr. Palmer's request for a decision, because the matter was purely advisory, and because it was the subject of pending litigation between Mr. Palmer and the City. Without a "decision," there is nothing to appeal to the Board.

Because the grounds for denial are lack of jurisdiction, the BZA may take this action without opening a public hearing. It should, however, provide Mr. Palmer equal time to speak to the issue of jurisdiction. In view of staff's position, no public hearing has been advertised for April 18. This provides an opportunity for the City to refund Mr. Palmer's \$400 filing fee (which covers the cost of the public hearing ad.) If the BZA disagrees with the staff's position, then a public hearing will be advertised for the May meeting.

The request for a zoning interpretation, response, appeal:

On November 24, 2015, Mr. Palmer submitted a request for a zoning interpretation to Zoning Administrator Mike Craig.¹ By letter of December 31, 2015, Mr. Craig declined to issue the requested zoning interpretation.² The letter stated:

I am unable to perform the work you requested in your letter dated November 24, 2015. The questions you have submitted were answered by the Fredericksburg Circuit Court on August 6,

¹ Exhibit A.

² Exhibit B.

2015. I understand you have appealed this decision to the Virginia Supreme Court. Ultimately, the Court's decision – either the letter opinion or any future Virginia Supreme court opinion – will be binding precedent.

Mr. Craig refunded Mr. Palmer's \$25 application fee. Mr. Palmer filed this appeal to the BZA on March 2, 2016.³

Zoning decisions:

The Albemarle County Land Use Law Handbook addresses the circumstances under which a zoning administrator may issue a binding decision in Chapter 14, an excerpt of which is attached for your review.⁴ Stated simply, zoning administrators do not issue binding determinations on the basis of hypotheticals, in the absence of a pending application. Unless there is a pending, specific factual situation, the decision would be advisory only. The application of a law, or in this case, a set of laws, often depends on a set of specific facts. In the absence of a specific application, there is a danger of not hearing from all affected parties.

An official determination must be based upon a set of existing facts, rather than upon a recitation of non-existent facts, hypotheticals, proposals, ideas, concepts, or "what-if" suppositions. 2015 Albemarle County Land Use Law Handbook § 14-210, citing *Lynch v. Spotsylvania County Board of Zoning Appeals*, 42 Va. Cir. 164 (1997).

If a zoning violation is not the issue, there must be some application pending for specific relief that triggers the zoning administrator's need to make an official determination. 2015 Albemarle County Land Use Law Handbook § 14-210, citing *Lilly v. Caroline County*, 259 Va. 291, 298 (2000). If there is no pending application or no zoning violation in issue, any "determination" of the zoning administrator likely will be found to be an advisory opinion that does not trigger the right to appeal under Virginia Code § 15.2-2311. 2015 Albemarle County Land Use Law Handbook § 14-210, citing *Vulcan Materials Co. v. Board of Supervisors of Chesterfield County*, 248 Va. 18 (1994).

Mr. Craig's letter of December 31, 2015 does not constitute an official order, requirement, decision or determination.

The powers of the BZA:

The Board of Zoning Appeals, as a creature of statute, possesses only those powers expressly conferred. *Board of Zoning Appeals of Fairfax County v. Board of Suprs. of Fairfax County*, 276 Va. 550, 552-554, 666 S.E.2d 315, 316-317 (2008). Code of Virginia § 15.2-2309(1) authorizes a board of zoning

³ Exhibit C.

⁴ The full handbook is available online at: [Albemarle County Virginia Land Use Law Handbook](#)

appeals “to hear and decide appeals from any order, requirement, decision, or determination made by an administrative officer in the administration or enforcement of this article or of any ordinance adopted pursuant thereto.”

The absence of an “appeal” and the absence of BZA jurisdiction:

Mr. Palmer’s March 2 letter of appeal concedes that “[t]he determination was not made.” Mr. Palmer asserts that “[t]he determination in the Administrative Decision to not perform the work requested is not factual and I appeal the same.” The appeal letter does not ask the BZA to make any particular decision with respect to any particular application. The appeal letter does not ask the BZA to uphold, modify, or reverse Mr. Craig’s decision. This is admittedly an “appeal” of a decision that was not made. There is nothing for the BZA to hear.

The importance of a record of decision:

For many years, reviewing courts have asked boards of zoning appeals to make a record of their decision, so that it may be reviewed on appeal. The BZA’s findings of fact are entitled to presumed to be correct. The BZA’s conclusions of law are decided by the court “de novo,” or without a presumption of correctness. It is therefore important for the BZA to adopt a record of decision, informing the court of the basis for its decision. A draft record of decision in this case is enclosed for your consideration. I respectfully request that the BZA make its final decision by adopting the draft record of decision.

Conclusion:

On behalf of the Zoning Administrator, I respectfully request that the BZA adopt the proposed record of decision and deny this appeal.

Sincerely,

Kathleen Dooley, City Attorney

CITY OF FREDERICKSBURG BOARD OF ZONING APPEALS

APPEAL 2016-0_
HAMILTON PALMER

RECORD OF DECISION

The City of Fredericksburg Board of Zoning Appeals considered the above-referenced appeal at its meeting on April 18, 2016. After consideration of the record of the appeal, the Board makes the following findings of fact and conclusion of law:

FINDINGS OF FACT

- A. On November 24, 2015, Hamilton Palmer sent a letter to Zoning Administrator Michael Craig, asking for a “zoning interpretation of the City Code and how it applies to the review of projects in the Fredericksburg Historic District (HFD).” The letter enclosed a \$25 application fee. The letter is attached as Exhibit A.
- B. Mr. Craig responded to Mr. Palmer by letter dated December 31, 2015, declining to issue the requested interpretation, and refunding the \$25 application fee. (Exhibit B).
- C. Hamilton Palmer filed this appeal on March 2, 2016. (Exhibit C).

CONCLUSION OF LAW

The letter of December 31, 2015 does not constitute an order, requirement, decision or determination of the zoning administrator which can be appealed to the BZA. The BZA has no jurisdiction to hear this matter.

The Fredericksburg Board of Zoning Appeals dismisses appeal 2016 - ____.

FREDERICKSBURG BOARD OF ZONING APPEALS

Date

Helen P. Ross, Chair

EXHIBIT A

HGP, Inc.
Purina Tower, Suite 100
401 Charles Street
Fredericksburg, VA 22401
540-371-5171 373-4150 (fax)
email: hpalmer@hgp.biz

November 24, 2015

Mr. Michael Craig,
Zoning Administrator
City of Fredericksburg
7xx Princess Anne Street
Fredericksburg, Virginia 22401

via: hand deliver

re: your interpretation

Dear Mr. Craig,

I would like a zoning interpretation of the City Code and how it applies to the review of projects in the Fredericksburg Historic District (HFD).

The Commonwealth of Virginia granted the City of Fredericksburg authority to adopt zoning laws within their corporate limits. The City Council adopted a Code of Ordinances to include creating and empowering an ARB in Chapter 10-52 and the UDO in Chapter 72. The City also adopted an ordinance to address infrastructure improvements in Chapter 66 of the City Code.

The ARB Powers and Duties enumerated in 10-52 include performance of duties outlined in the Virginia Uniform Statewide Building Code as amended; to implement and administer Chapter 78 (now Chapter 72, UDO); and, to provide advisory review.

Article II, Building Code, Chapter 18-32 provides for building permits within the HFD to include *"No permit required under this article shall be issued for any building or structure subject to view from any public street, right-of-way, or place within the Old and Historic Fredericksburg zoning district (HFD) until the Zoning Administrator has certified to the Building Official that such exterior alteration either does not require the issuance of a certificate of appropriateness pursuant to Chapter 78 (now Chapter 72, UDO)... or that such certificate has been issued by the Architectural Review Board or, on appeal, by the City Council"*

EXHIBIT A

Chapter 66 of the City Code addresses Infrastructure Improvements, establishes a CPURC Committee to review infrastructure improvements within the HFD and provides for exceptions to CPURC review, one of which the decision is granted the City Manager.

Chapter 72 is the UDO and includes development, subdivision and zoning ordinances and outlines the duties of the Zoning Administrator. The Applicability and Jurisdiction of the UDO are outlined in 72-13 and applies to the use and development of all land within the city unless expressly exempted by a specific section or subsection of this chapter. Conflicts with other City Codes are outlined in 72-15.1 and provide that the more restrictive provision shall govern.

The Administration of the UDO is outlined in 72-20 to include the ARB and decisions within the Development Review Structure and the Zoning Administrator to include authorization to enforce the zoning provisions of the UDO and includes specific authorities but excludes none. One such specific authority is to make decisions within the development review structure in Table 72-21.7 of the UDO.

Table 71-21.7 summarizes the roles of the advisory and decision-making bodies that participate in the process of review and approval of applications required or authorized by this chapter. The Zoning Administrator is authorized, using the criteria within the UDO, to review and recommend a project be reviewed by the ARB and for the ARB to hold a public hearing and to decide or not to issue a Certificate of Appropriateness.

Chapter 72-23.1 provides for ARB review and issuances of certificates of appropriateness for new construction, alterations of existing structures, demolitions/removal/relocation of structures or a sign in the HFD.

Chapter 72-34 provides for Overlay Zoning Districts and establishes the Old and Historic Fredericksburg District (HFD). Certificates of appropriateness are required in accordance with the procedures and requirements in 72-23.1 for new construction; for additions and expansions to an existing principal structure; changes to outside of a building visible from row; fences; signs. The overlay standards provide for conflicts with other standards within this section or other city regulation, the more restrictive standard shall apply.

I would like for your official interpretation of “a written description of a UDO requirement, aspect of the Official Zoning Map, condition of approval, or proffer that is prepared by the Zoning Administrator” as outlined in the Procedures Manual to include:

1. Chapter 66, Infrastructure Improvements on City Property in the Historic District, provides for exceptions to review by the CPURC within that section and Chapter 72 does not provide those exceptions yet provides for a public hearing and review by the ARB for a Certificate of Appropriateness for all lands within the HFD. If there is a conflict for projects within the HFD to be reviewed or not, which Chapter applies and why?

EXHIBIT A

2. Is the standard for review of a project in the HFD by the ARB more restrictive than an exception to not review that project?
3. Who has the authority to exempt a project within the HFD from review?
4. Who has authority to make decisions outlined in the UDO excepting 72-2 and 72-5?

Enclosed is a fee in the amount of \$25.00 for your review and interpretation of the above questions. Thank you very much for your help in this matter.

Sincerely,

Hamilton Palmer

EXHIBIT B

Mike Craig
Zoning Administrator



City of Fredericksburg
P.O. Box 7447
Fredericksburg, VA 22404-7447
Telephone: 540-372-1179
Fax: 540-372-6412
mjrcraig@fredericksburgva.gov

120-15L

December 31, 2015

HGP, Inc.
Hamilton Palmer
Purina Tower
Suite 100
401 Charles Street
Fredericksburg, Va 22401

Re: Request for interpretation

Dear Mr. Palmer,

I am unable to perform the work you requested in your letter dated November 24, 2015. The questions you have submitted were answered by the Fredericksburg Circuit Court on August 6, 2015. I understand you have appealed this decision to the Virginia Supreme Court. Ultimately, the Court's decision – either the letter opinion or any future Virginia Supreme Court opinion – will be binding precedent.

We are working on refunding your \$25 submitted as check 694. We will send you the refund as soon as it is available.

If you need further assistance please feel free to contact me at mjrcraig@fredericksburgva.gov.

Respectfully,

Mike Craig
Zoning Administrator



City of Fredericksburg
Planning Services Division
Community Planning &
Zoning Department
P.O. Box 7447
Fredericksburg, VA 22404-7447

FREDERICKSBURG
VA 230
05 JAN '16
PM 2 L



U.S. POSTAGE
MONEY ORDER
ZIP 22401 \$ 000.48⁵
02 48
0000336770 JAN 04 2016

HGP, Inc.
Hamilton Palmer
Purina Tower
Suite 100
401 Charles Street
Fredericksburg, VA 22401

EXHIBIT B

Commonwealth of Virginia

FIFTEENTH JUDICIAL CIRCUIT

JUDGES

Harry T. Taliaferro, III
Gordon F. Willis
Joseph J. Ellis
J. Overton Harris
Charles S. Sharp
Sarah L. Deneke
Michael E. Levy
Patricia Kelly
Herbert M. Hewitt
Victoria A. B. Willis



Herbert M. Hewitt
9483 Kings Highway, Suite 6
King George, Virginia 22485
(540) 775-1072
FAX (540) 775-0818

RETIRED JUDGES

Joseph E. Spruill, Jr., Retired
William H. Ledbetter, Jr., Retired
H. Harrison Braxton, Jr., Retired
Ann Hunter Simpson, Retired
John R. Alderman, Retired
Horace A. Revercomb, III, Retired
J. Martin Bass, Retired
David H. Beck, Retired

August 6, 2015

Hamilton G. Palmer, *pro se*
401 Charles Street
Fredericksburg, Virginia 22401

Kathleen Dooley
Fredericksburg City Attorney
Post Office Box 7447
Fredericksburg, Virginia 22404-7447

Re: Palmer V. City of Fredericksburg
CL15-442 City of Fredericksburg Circuit Court

Letter Opinion

This matter came on upon the Petition for a Writ of Mandamus and Respondent's Demurrer thereto.

The Court having considered the oral arguments of Petitioner and Counsel for the City in open Court, as well as Counsel for the City's written argument contained in the Demurrer finds as follows:

A Demurrer interposes the question whether or not the Petitioner is entitled to the relief sought even if each and every fact contained in his Petition is accepted as true.

A Writ of Mandamus compels execution of purely ministerial duties. It will not lie where the public official is vested with the exercise of discretion or judgment. Richmond-Greyhound Lines V. Davis, 200 Va. 147 (1958).

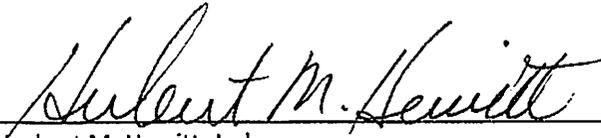
In this case, the operative City Code Section does not require all infrastructure improvement projects in the historic district to be reviewed by the City and Public Utility Review Committee, "CPURC." The City Code Section provides exceptions thereto. If there were no exceptions then mandamus would lie. An official must exercise judgment or discretion to determine whether any one or more of the exceptions apply.

EXHIBIT B

Hamilton G. Palmer, *pro se*
Kathleen Dooley, Fredericksburg City Attorney
August 6, 2015
Page 2

For the foregoing reason the Demurrer is sustained and the Writ denied.

Counsel for the City of Fredericksburg will please prepare, circulate and present an Order in accord with this ruling.



Herbert M. Hewitt, Judge

EXHIBIT C

HGP, Inc.
Purina Tower, Suite 100
401 Charles Street
Fredericksburg, VA 22401
540-371-5171 373-4150 (fax)
email: hpalmer@hgp.biz

March 2, 2016

To: Board of Zoning Appeals
City of Fredericksburg, Virginia

re: Administrative Decision

via: hand Delivery

Dear Board Members,

I appeal the Administrative Decision by the Zoning Administrator that was mailed me sometime on or after January 5th, 2016. I requested a determination in a letter to the Zoning Administrator on November 24th, 2015. The determination was not made and my request followed with 'unable to perform the work you requested' together with 'the questions you have submitted were answered by the Fredericksburg Circuit Court on August 6, 2015.'

The determination in the Administrative Decision to not perform the work requested is not factual and I appeal same. I asked 4 questions, most which were not addressed by the Court's decision. Attached is a check in the amount of \$300.00 for the Appeal together with the Court Opinion, my request for interpretation, and the Zoning Administrator's response to my request.

I request the Board of Zoning Appeals have the full 5 members present to hear my appeal due to the strict requirements of having a majority of the Board (regardless if they are in attendance or not) to approve the appeal.

Sincerely,



Hamilton G. Palmer

attachments



Minutes
Board of Zoning Appeals
February 22, 2016
Council Chambers, City Hall
Fredericksburg, Virginia

MEMBERS PRESENT

Helen P. Ross, Chair
Jay Jarrell III, Vice-Chair
Beatrice Paolucci
Matthew Muggeridge
Richard Conway, Alternate

MEMBERS ABSENT

Brian Raska

STAFF

Mike Craig, Zoning
Administrator
Kathleen Dooley, City
Attorney
Phaun Moore, Secretary

Ms. Ross called the meeting to order at 4:00 p.m.

OPENING REMARKS

Ms. Ross determined that a quorum was present and public notice requirements had been met.

DISCLOSURE OF EX PARTE COMMUNICATIONS

Ms. Ross asked if any Board member had engaged in *ex parte* communications on any item before the Board. No one indicated they had participated in any *ex parte* communications.

DISCLOSURE OF CONFLICTS OF INTEREST

Ms. Ross asked if any Board member had any conflicts of interest on any item before the Board. No one indicated that they had any conflicts of interest.

APPROVAL OF AGENDA

There were no additions or changes to the agenda.

Ms. Paolucci made a motion to accept the agenda as presented. The motion carried unanimously.

PUBLIC HEARING ITEMS

1. VAR 2015-02: General Washington Executive Center, LLC – (Owner) requests a Variance from City Code § 72-31.5.B., which states that multi-family units in the R-12, Residential zoning district must maintain a minimum of 18 feet in width. The requested variance would permit twelve 14 foot, 6 inch wide multi-family units at 2217 Princess Anne Street (GPIN 7779-89-7284). 2217 Princess Anne Street is zoned C-H, Commercial Highway.

Residential use in the C-H, Commercial Highway zoning district is regulated by the R-12, Residential zoning district dimensional standards. The property is currently used as office space.

Mr. Craig presented his case.

The applicant's attorney, Charlie Payne, presented the variance request for General Washington Executive Center, LLC.

James McGhee, the architect, gave a presentation of the proposed project.

The Board of Zoning Appeals members asked questions.

Public comment:

- Susan Pates – 2010 Fall Hill Avenue spoke in opposition.

The Board discussed the variance request.

Ms. Dooley commented that the case was not being heard in the right forum. She said that the case was not a variance application; it should be a rezoning request that goes through the Planning Commission and City Council.

Ms. Paolucci made a motion to deny the application based on Items 1, 2 and 8 from the attached Record of Decision – Conclusions of Law. **Item 1** – The applicant has not carried its burden of proof that the proposed variance meets the definition of a variance in Code of Virginia 15.2-2201. Specifically, the proposed variance is from a regulation of the width of multi-family units. It does not regulate the shape, size, or area of a lot or parcel of land, or the size, height, area, bulk, or location of a building or structure. **Item 2** – The Strict application of the terms of the zoning ordinance would not unreasonably restrict the use of the property. **Item 8** – The relief sought by the applicant is available through a zoning map amendment process, specifically, by an application for PD-MU zoning as shown on the 2015 Comprehensive Plan). Ms. Ross seconded. The motion carried unanimously.

REVIEW OF MINUTES

Ms. Paolucci made a motion to approve the meeting minutes from November 16, 2015 as presented. Mr. Jarrell seconded. Motion carried unanimously.

Mr. Conway made a motion to approve the meeting minutes from January 5, 2016. Ms. Paolucci seconded. Mr. Jarrell abstained as he was not present for the January 5, 2016 meeting. The motion carried 3-0-1.

STAFF / BOARD COMMENTS

Mr. Craig informed the Board that there was potential for a meeting on March 21, 2016.

Ms. Paolucci asked for an update on the circuit court case for APP 2015-01.

Ms. Dooley said there had been no action on the court case.

Mr. Conway asked for clarification on the Planning Commission's recommendation.

Mr. Craig said the Planning Commission had discussed the Variance application and recommended that the BZA deny the request.

ADJOURNMENT

Ms. Paolucci made a motion to adjourn. Mr. Conway seconded.

Meeting adjourned at 5:02 p.m.

Helen P. Ross, Chair

CITY OF FREDERICKSBURG BOARD OF ZONING APPEALS

VARIANCE APPLICATION 2015-02
GENERAL WASHINGTON EXECUTIVE CENTER
2217 PRINCESS ANNE STREET

RECORD OF DECISION

The City of Fredericksburg Board of Zoning Appeals heard the above-referenced appeal at its meeting on February 22, 2016. After consideration of the record of the appeal, the Board makes the following findings of fact and conclusions of law:

FINDINGS OF FACT

- A. The subject property is identified as 2217 Princess Anne Street, in Fredericksburg, Virginia, or GPIN 7779-89-7284. The applicant is the owner of the property.
- B. The property is approximately 2.8 acres in size, with relatively flat topography and no sensitive environmental features relevant to this application.
- C. The property is zoned Commercial Highway (C-H).
- D. The property is improved with two buildings, the General Washington Executive Center, and a building identified as "Building C."
- E. The General Washington Executive Center is currently used for general office, and Building C is currently used for medical office. Both uses are permitted by-right in the CH Zoning District.
- F. Building C is a two story cinderblock building, constructed in 1950, located on the southern portion of the lot, at the corner of Princess Anne Street and Hunter Street. Building C is approximately 12,200 square feet, with an "L" shape. The current units in Building C are one-story units with no interior vertical integration (stairways).
- G. The C-H zoning regulations permit residential development, but require that it shall conform to R-12 zoning district dimensional standards. (City Code §72-32.4(C).) The R-12 zoning district dimensional standards are set forth in City Code §72-31.5(B), including a requirement that multi-family residential units shall maintain a minimum width of 18 feet. The dimensional standard for multifamily residential units was adopted in 1984.
- H. Applicant proposes to convert Building C to multifamily residential use. Twelve of the proposed multifamily residential units are proposed to be 14' 6" in width and two-story. The remaining units are proposed to meet or exceed the 18 foot width requirement.

- I. The proposed conversion of Building C to multi-family residential use presents the applicant with design challenges and multiple design options.

CONCLUSIONS OF LAW

1. The applicant has not carried its burden of proof that the proposed variance meets the definition of a variance in Code of Virginia 15.2-2201. Specifically, the proposed variance is from a regulation of the width of multi-family units. It does not regulate the shape, size, or area of a lot or parcel of land, or the size, height, area, bulk, or location of a building or structure.
2. The strict application of the terms of the zoning ordinance would not unreasonably restrict the use of the property.
3. The applicant has not carried its burden of proof of an undue hardship that is due to a physical condition relating to the property or improvements thereon at the time of the effective date of the ordinance. The applicant's claim of an undue hardship is grounded in the design issues that are typical when an older building is converted to a new use; or specifically, when a two-story, sixty-year old office building with one-story units is proposed for conversion to multi-family residential use with two-story units. The basis of the application is the applicant's elective design choice for the project.
4. The applicant acquired the property in good faith.
5. The applicant has not carried its burden of proof with respect to the impact of the granting of the variance on adjacent properties and nearby properties in proximity to the project. In the case of this particular application, which involves multiple design options, this inquiry would be better suited to the legislative process.
6. Building C is one of several ageing two-story buildings in the CH Zoning District that could be redeveloped into multi-family units. Structural challenges encountered during any potential renovation of these buildings will be 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 zoning ordinance.
7. The granting of the variance would not result in a change of use that is not otherwise permitted on the property or a change in the zoning classification of the property.
8. The relief sought by the applicant is available through a zoning map amendment process, specifically, by an application for PD-MU zoning as shown on the 2015 Comprehensive Plan.

DECISION

The Fredericksburg Board of Zoning Appeals denies variance application 2015-02.

Date: _____

FREDERICKSBURG BOARD OF ZONING APPEALS

By: _____

Helen P. Ross, Chair