



ROCKY MOUNT BOARD OF ZONING APPEALS
REGULAR MEETING
AGENDA

June 2, 2022
6:00 PM

Council Chambers, Rocky Mount Municipal Building
345 Donald Avenue, Rocky Mount, Virginia

Call to Order and Welcome

1. Roll Call of Members Present
2. Approval of Agenda
3. Review and Consideration of Minutes
 - 3.a. April 7, 2022- Regular Meeting Minutes
4. Public Hearing
 - 4.a. The applicant, 325FranklinSt, LLC has appealed a decision or determination made by the Town Zoning Administrator regarding a Town sidewalk along Claiborne Avenue adjoining Franklin County Tax Map and Parcel Number 2070103300, commonly known as 325 Franklin Street, Rocky Mount, Virginia. The applicant reduced the sidewalk to approximately 31 inches, the approved site plan required 36 inches to meet accessibility standards and VDOT specifications per the Town of Rocky Mount Zoning Ordinance.
 - Staff Comment
 - Applicant/property owner Comment
 - Public Comment
5. New Business (None)
6. Board Concerns
7. Staff Updates
8. Adjournment

**TOWN OF ROCKY MOUNT
BOARD OF ZONING APPEALS
MEETING MINUTES
April 7, 2022
6:00 P.M.**

The Board of Zoning Appeals (BZA) of the Town of Rocky Mount, Virginia met at the Rocky Mount Municipal Building on Thursday, April 7, 2022 at 6:00 p.m., with Chairman C. Holland Perdue III calling the meeting to order.

Chairman Holland Perdue introduced the new Member Kevin Tosh and thanked him for joining the Board of Zoning Appeals.

ROLL CALL OF MEMBERS PRESENT

- C. Holland Perdue, III, Chair
- Member Lucas Tuning
- Kevin Tosh
- Member John Speidel via conference phone

Board Members Absent: Susan Hapgood, Vice Chair

STAFF MEMBERS PRESENT

- Jessica Heckman, Zoning Administrator
- Cherie Compton, Board of Zoning Appeals Clerk
- John Boitnott, Town Attorney
- Mark Moore, Assistant Town Manager
- Robert Wood, Town Manager
- Brian Mangano, Special Counsel

APPROVAL OF AGENDA

Additions or Corrections: Move the McQuain public hearing up to 4.a

Motion: To approve the agenda with the change of the public hearings order

Motion By: Member Lucas Tuning

Second By: Member Kevin Tosh

Action: Approved by a unanimous vote of members present

REVIEW AND CONSIDERATION OF MINUTES

Prior to the meeting, the Board received the following draft minutes for review and consideration of approval:

- December 2, 2021 Regular Meeting Minutes

Motion: To approve the minutes as presented

Motion By: Member Lucas Tuning

Seconded By: Chair, Holland Perdue

Action: Approved by a unanimous vote

PUBLIC HEARING:

Zoning Administrator Jessica Heckman described the five findings that must be met in order to grant a variance.

McQuain

The applicant, Rolan McQuain has applied for a variance for Franklin County Tax Map and Parcel Number 2100033300, commonly known as 310 Orchard Avenue, Rocky Mount, Virginia. The applicant seeks a variance of Article 20-1-5, of the Town of Rocky Mount Zoning Ordinance to allow an accessory structure in the side yard. The applicant seeks to place a carport on the existing driveway beside the residence.

Zoning Administrator Jessica Heckman presented the staff report. There was an email from Sophie Van Looock located at 290 Orchard and she spoke in favor of the request, also a letter from Wesley & Sarah McCarty 330 Orchard Ave who spoke in favor of the request. There was no one from the public who signed up or wanted to speak. The members of Board of Zoning Appeals had no comments or questions for the applicant Rolan McQuain.

Motion: To approve the request for the variance for Franklin County Tax Map and Parcel Number 2100033300, commonly known as 310 Orchard Avenue, Rocky Mount, Virginia to allow an accessory structure in the side yard of the residence.

Motion By: Chairman Holland Perdue

Second By: Member Lucas Tuning

Action: Approved by a unanimous vote

325 Franklin St, LLC

The applicant, 325FranklinSt, LLC has applied for a variance for Franklin County Tax Map and Parcel Number 2070103300, commonly known as 325 Franklin Street, Rocky Mount, Virginia. The applicant seeks a variance of Article 29-8-1, of the Town of Rocky Mount Zoning Ordinance to allow a building height of 54 feet. The maximum allowed building height in the Central Business District is 45 feet.

Zoning Administrator Jessica Heckman presented the staff report.

Phillip Bane, spoke on behalf of 325 Franklin St and explained the reason for the request and stated the height was increased to allow an elevator to the roof.

Members Kevin Tosh and Lucas Tuning asked about the height of the building, specifically how high the building is versus what was on the engineered plans. Chairman Holland Perdue asked if an engineer had been on site to look at the building. Mr. Bane stated the signed engineer plans were at the county per Mr. Bane waiting on review.

Amy Worley, 185 Claiborne Ave spoke in favor of the request and the need for lodging and amenities in downtown.

Brian Olinger, 285 Franklin Street spoke in favor of the request.

Town Manager Robert Wood expressed the Town's excitement about the building being restored and the future business that will be there. He expressed concern about the laws, codes, statutes regarding building and development and that they are in place for development purposes, to protect and maintain property values and for safety. Variances are exceptions and should be rare.

Chairman Holland Perdue stated he was thankful to see progress being done with the building, but he also understands the Town's concerns and that it isn't always good to ask for forgiveness after the fact but in the situation now he would like to see the request approved in his opinion. Member Lucas Tuning agreed with Chairman Perdue and stated that this was a very difficult decision and he understands both sides also. Member Kevin Tosh mentioned that from the site visit he understood that there was a pretty good structure from the elevator shaft before the construction that extended above the brick line and now from his understanding the new construction is less and closer to compliance. Zoning Administrator Jessica Heckman stated that the structure was altered prior to any plans being submitted or approved and further noted, the survey done by Cornerstone indicated a height increase. Chairman Perdue questioned the outcome if the variance was denied, and would the structure have to be taken down. He asked staff if the Town could appeal the decision if they didn't agree? Staff indicated the Town could appeal the BZA decision if they chose to do so. An open discussion ensued.

With no further comment and no public comment, Chairman Perdue made a motion.

Motion: To approve the request for the variance for Franklin County Tax Map and Parcel Number 2070103300, commonly known as 325 Franklin Street, Rocky Mount, Virginia to allow a building height of 54 feet.

Motion By: Chairman Holland Perdue

Second By: Member Lucas Tuning

Action: Approved by a unanimous vote

NEW BUSINESS

None at this time

BOARD CONCERNS

None at this time

STAFF UPDATES

None at this time

Hearing no further comments, Chairman Perdue asked for a motion to adjourn.

ADJOURNMENT

Motion By: Member Lucas Tuning

Seconded By: Member Kevin Tosh

Action: Adjourned by a unanimous vote of members present

Time: 6:22 p.m.

C. Holland Perdue, III, Chairman

ATTEST:

Cherie Compton, Clerk

Draft



To: Members of the Rocky Mount Board of Zoning Appeals

From: Jessica H. Heckman, Planning & Zoning Administrator

Date: April 28, 2022

Re: Zoning Violation appeal pending before Board of Zoning Appeals
Property Owner : 325 Franklin Street, LLC
Property Address: 325 Franklin Street, Rocky Mount, VA 24151
Zoning Violation: Town sidewalk altered, left non-compliant with approved site plan

The Zoning Administrator issued a zoning violation to 325 Franklin Street LLC for zoning violations relating to an ongoing development at 325 Franklin Street, Rocky Mount, VA 24151. The subject of this appeal is the violation regarding the sidewalk alterations that were not built in accordance with the approved site plan. Town code requires all sidewalks to be built with construction materials and specifications required by VDOT (Zoning Ordinance 10-2-10). The Town agreed to allow Mr. Bane to make alterations to the sidewalk so long as it maintained 36 inch clearance. Per VDOT, this is the minimum allowed. We approved the site plan based on that requirement and required the sidewalk to be at least 36 inches wide.

Below is the timeline of events leading to the notice of violation:

February 19, 2021 Approved site plan allowing alterations to existing town sidewalk elevation

March 17, 2021 Phillip Bane submitted for review an amended site plan to change the sidewalk to include a ramp for his entrance and leave an outer sidewalk of 36 inches which would be ADA compliant (Email attached)

March 19, 2021 I emailed Mr. Bane to confirm the measurements indicated were correct, He replied, the amended site plan would leave 3 feet of sidewalk and 3 feet for ramp/steps (Emails attached)

March 25, 2021 Public Facilities Disturbance Permit issued to ensure work on sidewalk was completed as approved on site plan. (Attached)

April 6, 2021 Approved amended site plan, requiring 36 inches to remain for sidewalk and new ramp (Attached)

August 10, 2021 Staff did a site inspection of the sidewalk and took measurements. The sidewalk measured 31 inches

August 13, 2021 Notified Mr. Bane of the issue regarding the sidewalk, requesting a discussion to remedy.

February 11, 2022 Zoning violation notice mailed as required by law (attached)

March 17, 2022 Mr. Bane filed an appeal.



Jessica Heckman <jheckman@rockymountva.org>

amended site plan

1 message

unitedhme@aol.com <unitedhme@aol.com>

Wed, Mar 17, 2021 at 8:52 AM

Reply-To: unitedhme@aol.com

To: "jheckman@rockymountva.org" <jheckman@rockymountva.org>

Good morning

I have attached an amended site plan for review. This plans leaves an ADA compliant sidewalk as well as providing access to the hotel.

I am also changing the size and location of the water line. I will applying for a waiver of the hookup fees this week.

Please let me know if you need anything else.

Thanks

Phillip

 **NEW SITE PLAN (1).pdf**
952K



Jessica Heckman <jheckman@rockymountva.org>

Re: Site plan

1 message

unitedhme@aol.com <unitedhme@aol.com>

Fri, Mar 19, 2021 at 3:46 PM

Reply-To: unitedhme@aol.com

To: "jheckman@rockymountva.org" <jheckman@rockymountva.org>

yes

that will leave 3 feet for the current sidewalk, 3 feet for the steps and 4 inches for the handrail.

-----Original Message-----

From: Jessica Heckman <jheckman@rockymountva.org>

To: unitedhme@aol.com

Sent: Fri, Mar 19, 2021 3:24 pm

Subject: Site plan

Phillip,

The drawing shows the sidewalk at 6'4", is that the current width? Wanted to make sure I understood the drawing. Call me if its easier 483.0907

Thanks!

Jessica H. Heckman, CZA
Town Planner

Town of Rocky Mount
345 Donald Avenue
Rocky Mount, Virginia 24151
540.483.0907
540.483.8830 FAX
jheckman@rockymountva.org

www.rockymountva.org

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Public Facilities Disturbance Application

Required for any non-Town activity which will damage any Town-maintained or Town-owned street, utility, building, sidewalk, drainage structure, conduit, line or other public facility. Failure to complete application prior to disturbance will result in civil penalties.

Applicant Name: 325 Franklin St LLC

Applicant Representative: Philip Bone

Address: 325 Franklin St Rocky Mt VA 24151

Phone Numbers: Office () Mobile (397-4318)

Email: United Home @ aol.com

Disturbance Type: (Check All Applicable Types)

- | | |
|--|--|
| ☐ Pavement | ☐ Town Utility |
| ☐ Curb & Gutter | ☐ Other Utility |
| ☒ Sidewalk | ☐ Conduit |
| ☐ Drainage | ☐ Bridge |
| ☐ Building | ☐ Other _____ |

Location: (attach map to application showing location and scale of work)

Reason(s) For Disturbance: complete work on approved site plan

Are there reasonable alternatives which will not damage town facilities? NO

Expected Start Date of Work: 4/12/2021

Expected Completion Date: 4/16/2021

(Include time necessary to repair town facilities)

Engineers Estimate of Cost to make whole the disturbed facilities:

Signature of Estimating Engineer: [Signature]

Work will be secured by: ☒ Deposit ☐ Bond ☐ Letter of Credit
☐ Other _____ ☐ Waived by _____

I certify, under penalty of perjury, I am authorized to make application to the Town of Rocky Mount for disturbance of a public facility, and that I have read, understand and agree to the provisions of Town Code regarding the disturbance proposed, and agree to the public obligation to minimize impacts to traffic, utilities and town facilities in the pursuit of this work.

Applicant Representative: [Signature] Date 3/25/21

Office Use Only

Site location reviewed ☐ Security received ☐ Application Complete ☐

Work is ☐ Approved ☐ Denied. If approved, permit is valid until _____

If Denied, first opportunity to appeal to Town Council is _____

Town Representative Signature _____ Date _____

Town Code References

Sec. 54-36. Article not applicable to work done by town.

The provisions of this article shall not apply to work done by town forces under the supervision of the town engineer.

Sec. 54-37. Permit required; appeal from denial.

No person, unless specially authorized by the council, shall take up or remove any portion of the surface of the sidewalk or street, or excavate in any public street of the town without a written permit from the town engineer, who shall not refuse such permit to any applicant except for cause, but in case of refusal the applicant may appeal to the town council.

Sec. 54-38. Deposits; acquiescence in provisions of article.

(a) Before a permit as required in section 54-37 is granted, the town engineer may require a deposit sufficient to pay for resurfacing the street to be disturbed, the amount of such deposit to be determined by the town engineer. (b) Every person who shall make application for such a permit shall be deemed to have assented thereby to all the provisions and terms of this article, including the right of the town to collect the actual cost of replacing the pavement, sidewalk or street surface in the manner above directed.

Sec. 54-39. Duty to prosecute work without delay.

It shall be the duty of every person to whom a permit required in section 54-37 shall have been granted to institute at once, and prosecute without delay, the work for which such permit was obtained, and promptly, on its completion, give written notice thereof to the town engineer.

Sec. 54-40. Replacing surface.

No pavement, sidewalk or street surface shall be replaced, after being taken up pursuant to a permit issued under this article, by any person except under the direction of the town engineer. If the applicant fails to resurface the street disturbed promptly and in a manner approved by the town engineer, the town engineer is authorized to cause such work to be done at the expense of the applicant.

Sec. 54-41. Protection of public.

Any person to whom a permit is granted under this article shall place guards or barriers around the excavation in question and shall protect it by warning lights at night, and shall be responsible for damages to persons or property caused by such excavations until taken in charge by the town engineer.



CLAIRBORNE AVENUE

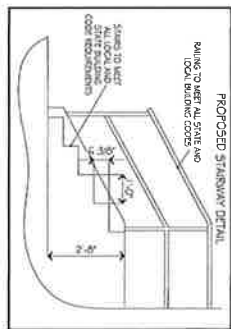
FRANKLIN STREET

SIDEWALK

SIDEWALK

SIDEWALK

EXISTING STRUCTURE
OTHER PLACE OF BUSINESS



EXISTING STRUCTURE
OTHER PLACE OF BUSINESS

MEZZANINE LEVEL SHOWN
FOR ROCKY MOUNT HOTEL

EXISTING PORTION
OF BUILDING

PROPOSED ADDITION
SHAPED FOR AN SHOWN NEW
EXPANSION TO EXISTING BUILDING

EXISTING CONCRETE WALL
TO BE REMOVED FOR NEW
ADDITION TO BUILDING

PROPOSED NEW SIDEWALK PLANTATION
WITH ADDED BUILDING

TO PARKING LOT

EXISTING STRUCTURE
OTHER PLACE OF BUSINESS

DESIGN CRITERIA

1. PROJECT LOCATION: 325 Franklin Street, Rocky Mount, VA	2. PROJECT TYPE: Commercial Building Renovation and Addition
3. CLIENT: Rocky Mount Hotel	4. DESIGNER: [Firm Name]
5. DATE: 3/16/21	6. SCALE: 1/8" = 1'-0"
7. PROJECT DESCRIPTION: Renovation and addition of existing building to create a new hotel structure.	8. DESIGN NOTES: See attached sheets for details.



PLANS ARE SUGGESTIVE ONLY AND SUBJECT TO ALL CITY, STATE, AND FEDERAL REGULATIONS. ALL DIMENSIONS ON PLANS SHALL BE CHECKED AND CORRECTED TO MATCH THE EXISTING BUILDING. ALL DIMENSIONS ON PLANS SHALL BE CHECKED AND CORRECTED TO MATCH THE EXISTING BUILDING. ALL DIMENSIONS ON PLANS SHALL BE CHECKED AND CORRECTED TO MATCH THE EXISTING BUILDING.

SITE PLAN

AMENDED SITE PLAN 3/16/21



ROCKY MOUNT HOTEL
325 FRANKLIN STREET, ROCKY MOUNT, VA

PROJECT DRAWN BY ROBERT F. HODGES JR. EMAIL: RHO@RFDENGINEERING.COM PHONE: (434) 485-7267	DATE 3/16/21	SCALE 1/8" = 1'-0"	SHEET # SP1
--	-----------------	-----------------------	----------------



COPY

February 11, 2022

325FRANKLINST LLC
ATTN: Phillip Bane
3430 Garst Mill Road
Roanoke, VA 24018

Sent via First Class U.S. Mail & Certified Mail

*RE: Property located at 325 Franklin Street, Rocky Mount, Virginia,
Tax Map ID 2070103300, Central Business District*

Mr. Bane:

As you know, the Town of Rocky Mount requires a site plan and zoning permit for commercial activities including new structures, additions, or alterations. The purpose of the site plan review and zoning permit are to ensure that new structures, additions, or alterations are in conformity with the Town zoning ordinance. We reviewed and approved a site plan allowing alteration of an existing sidewalk, requiring that it remain compliant with accessibility standards. As part of that permit, we required a facilities disturbance permit to ensure facilities that were disturbed were reconstructed and compliant. As we have discussed, we inspected the sidewalk on August 10, 2021, and found it to be too narrow and therefore, not compliant with accessibility standards.

We also permitted interior renovations as well as a small addition to the rear of your structure. I have attached a copy of your permit for your reference. During a visual inspection on January 14, 2022, we observed an increased elevation of the structure that was not reviewed or permitted by the Town. The Central Business District zoning classification has a height limit of forty-five (45) feet. If your structure exceeds that maximum height, it must be brought into conformance with the maximum height limit, or an after-the-fact variance must be obtained for the structure to remain at its current height. You may apply for an after-the-fact variance from the Board of Zoning Appeals within thirty (30) days of this notice. There is no guarantee that such request would be approved. The fee to apply for a variance is \$350.00 plus postage. If you are interested in pursuing an after-the-fact variance, please let me know, so that I can give you the details regarding the application process.

These violations must be brought into compliance immediately or the Town will seek legal remedies including injunction, abatement, or other appropriate action. From the Town Code:

5-1-1. Permit required. No permitted principal or accessory building or structure or use of buildings, structures and uses permissible by special exception or special use shall be constructed, reconstructed, moved, added to or otherwise allowed without a permit issued by the zoning administrator. No building and zoning permit shall be issued except in conformity with the provisions of this ordinance, unless the building inspector receives a written order

from the board of zoning appeals and zoning administrator in the form of an administrative order, special exception or variance as provided by this ordinance.

5-8-1. Zoning administrator. The zoning administrator shall have all necessary authority on behalf of the governing body to administer and enforce the zoning ordinance, including the ordering in writing of the remedying of any condition found in violation of this ordinance, and the bringing of legal action to ensure compliance with the ordinance, including injunction, abatement, or other appropriate action or proceeding. The zoning administrator shall be guided in all of his actions pursuant to this ordinance by the purposes, intent and spirit of this ordinance and the standards set forth in article 1 of this ordinance. The zoning administrator may be assisted in the enforcement of this ordinance by the chief of police, town attorney, Commonwealth Attorney and all other officials of the Town of Rocky Mount, and Franklin County, Virginia, pursuant to their respective fields.

12-2. Penalty for violation. Any person, firm, or corporation, whether as principal, agent, employer, or otherwise, violating, causing or permitting the violation of any of the provisions of this ordinance shall be guilty of a misdemeanor and upon conviction thereof, may be fined not less than \$10.00, and not more than \$500.00. Such person, firm, or corporation shall be deemed guilty of a separate offense for each and every day during which any portion of any violation of this ordinance is committed, continued, or permitted by such person, firm, or corporation, and shall be punishable as herein provided.

If you wish to challenge the determination that a zoning violation exists, you may do so by appealing to the Board of Zoning Appeals (BZA) within thirty (30) days of this notice. An appeal to the BZA is \$350.00 plus postage. If you are interested in pursuing an appeal to the BZA, please let me know, so that I can give you the details regarding the application process. After 30 days, the decision will be final and unappealable.

Please respond to this letter within seven (7) days with an explanation as to how you are going to address the issues outlined above.

Sincerely,



Jessica H. Heckman
Planning & Zoning Administrator

cc: John Boitnott, Town Attorney
Robert J. Wood, Town Manager
Mark W. Moore, Assistant Town Manager
John Broughton, Franklin County Building Official



Town of Rocky Mount ZONING APPLICATION

2P21-004

PERMIT No.

☒ ZONING PERMIT
NEW BUILDINGS OR ADDITIONS

☐ ZONING COMPLIANCE PERMIT
UPGRADES, REMODELS, AND BUSINESS LICENSE

APPLICANT NAME: 325 Franklin LLC

ADDRESS: 325 Franklin Street, Rocky Mount, Virginia 24151

PHONE: _____ EMAIL: _____

COPY

NATURE OF PROJECT (PLEASE PROVIDE A BRIEF DESCRIPTION OF THE PROJECT):

Interior remodel of all floors as well as a 19x21 Addition to existing structure, creating a new entrance on Claiborne Avenue side of building which requires alterations to existing sidewalk grade, and addition of pedestrian railing, all changes/railing to meet ADA Compliance

EXPECTED PROJECT COMPLETION DATE: _____ ESTIMATED COST OF THE PROJECT: TBD

PROPERTY OWNERS NAME & ADDRESS: Same
(If DIFFERENT FROM APPLICANT)

TAX MAP & PARCEL NUMBER: 2070103300

CURRENT ZONING: ☐ R-1 ☐ R-2 ☐ R-3 ☐ RA ☐ RB ☐ RPUD ☐ POS ☐ C-1 ☐ C-2 ☐ M-1 ☐ M-2
☒ CBD ☐ CBD-ARTS & CULTURE ☐ GB

ZONING PERMIT ONLY - NEW BUILDINGS OR ADDITIONS

☐ NEW BUILDING ☒ ADDITION ☐ ALTERATION ☐ PARKING LOT ☐ NEW OCCUPANT ☐ OTHER _____

1. CURRENT LAND USE: ☐ VACANT ☐ AGRICULTURAL ☐ RESIDENTIAL ☒ COMMERCIAL ☐ INDUSTRIAL

2. LOT DIMENSIONS (FT.) _____ LOT AREA (SQ. FT.) _____

3. PROPOSED USE OF THE BUILDING? _____

SEE SITE PLAN-MINOR BUILDING DIMENSIONS: 19 FT. X 21 FT. = TOTAL (SQ.FT.) 399

NUMBER OF STORIES: 1 BUILDING HEIGHT (FT.): _____

4. SETBACK INFORMATION

FRONT, FROM THE STREET RIGHT-OF-WAY? _____ FROM THE RIGHT PROPERTY LINE? _____

FRONT, FROM THE FRONT PROPERTY LINE? _____ FROM THE LEFT PROPERTY LINE? _____

IS THE PROPERTY ON A CORNER LOT? ☐ YES ☐ NO IF YES, WHICH SIDE? _____

5. PARKING: NUMBER OF PARKING SPACES: _____ (ENCLOSED) _____ (OUTDOORS)

CURB CUT REQUIRED FOR DRIVEWAY OR PARKING AREA? ☐ YES ☒ NO

TYPE OF PARKING AREA PAVEMENT: ☒ ASPHALT ☐ CONCRETE ☐ PLANT MIX ☐ GRAVEL ☐ BRICK ☐ OTHER _____

6. GRADING REQUIRED? ☐ YES ☒ NO IF YES, AMOUNT OF LAND DISTURBED (SQ. FT.)? _____

7. PUBLIC STREET ROAD FRONTAGE (FT.)? _____

8. IS ANY PORTION OF LOT IN FLOOD PLAIN OR FLOODWAY? ☐ YES ☒ NO

CONTRACTOR INFORMATION

STATE LICENSE No.: _____

NAME/COMPANY: TBD

ADDRESS: _____

PHONE: _____

EMAIL: _____

PLEASE NOTE: OUT OF TOWN CONTRACTORS WHO EXCEED THE SUM OF \$25,000 IN ANY GIVEN YEAR MUST OBTAIN A BUSINESS LICENSE FROM THE TOWN FINANCE OFFICE PRIOR TO THE START OF THE PROJECT.

BY SIGNING BELOW, I CERTIFY THAT THE INFORMATION ON THIS APPLICATION IS TRUE TO THE BEST OF MY KNOWLEDGE.

X [Signature]
OWNER/APPLICANT SIGNATURE

2/19/21
DATE

FOR COMMUNITY DEVELOPMENT OFFICE USE ONLY

TOWN OCCUPANCY PERMIT OR SITE INSPECTION PERMIT REQUIRED FOR THIS PROJECT? ☒ YES* ☐ NO

*BUILDING PERMIT REQUIRED: FRANKLIN COUNTY DEVELOPMENT SERVICES 1255 FRANKLIN STREET, SUITE 103 PHONE: 540-483-3047

SITE PLAN REQUIRED? ☒ YES ☐ NO

Approved
02/19/21

E & S PERMIT REQUIRED? ☐ YES ☒ NO

TOWN OF ROCKY MOUNT BUSINESS LICENSE REQUIRED? ☒ YES ☐ NO

BUSINESS LICENSE No.: _____

FEE AMOUNT: \$100.00

☐ WAIVED - ARTS & CULTURE DISTRICT

APPLICATION: ☒ APPROVED ☐ DENIED

**Facilities Disturbance Permit required prior to any work involving sidewalk construction/alteration can begin.

Jessica A. Heckman
ZONING ADMINISTRATOR SIGNATURE

02/19/2021
DATE

Proposed project diagram or Site Plan must accompany this application.

Blank area for project diagram or site plan.

KY MOUNT
VE
VA 24151

CERTIFIED MAIL



7020 2450 0000 7141 8962
7020 2450 0000 7141 8962



US POSTAGE IMPI PITNEY BOWES



ZIP 24151 \$ 007.33⁰
02 4W
0000379680 FEB 11 2022

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OFFICIAL USE

Certified Mail Fee \$ 8.15	
Extra Services & Fees (check box, and fees apply)	
☒ Return Receipt (hardcopy)	\$ 3.05
☐ Return Receipt (electronic)	\$
☐ Certified Mail Restricted Delivery	\$
☐ Adult Signature Required	\$
☐ Adult Signature Restricted Delivery	\$
Postage \$ 0.53	
Total Postage and Fees \$ 7.33	

Sent to 325 Franklins St / Philip Bane
Street and Apt. No., or PO Box No. 3430 Garst Mill Rd
City, State, ZIP+4® Radnoice VA 24018

Postmark Here

PS Form 3800, April 2015 PSN 7530-02-000-90-7 See Reverse for Instructions

TOWN OF ROCKY MOUNT BOARD OF ZONING APPEALS

**In re: February 11, 2022 Decision of the Town of Rocky Mount
Zoning Administrator**

Tax Map Number 207.01-033.00

Property Address: 325 Franklin Street

Owner: 325 Franklin St LLC

**MEMORANDUM IN SUPPORT OF THE TOWN OF ROCKY MOUNT ZONING
ADMINISTRATOR FEBRUARY 11, 2022 DECISION**

The Town Council of the Town of Rocky Mount, by counsel, submits this memorandum in support of the February 11, 2022, decision of the zoning administrator finding 325 Franklin St LLC in violation of the zoning ordinance for altering the existing town sidewalk along the Claiborne Avenue side of the building to less than the minimum allowed width of 36 inches.

Summary of Argument

The February 11, 2022, decision of the Town of Rocky Mount Zoning Administrator must be affirmed because the zoning administrator correctly interpreted the Town of Rocky Mount Zoning Ordinance to require a minimum sidewalk width of 36 inches along the Claiborne Avenue side of the building.

Argument and Authorities

The zoning administrator has the authority to administer and enforce the zoning ordinance, including the ordering in writing of the remedying of any condition found in violation of the ordinance. See § 5-8-1 of the Zoning Ordinance.

The Board of Zoning Appeals has the power to hear and decide appeals from any decision made by the zoning administrator in the administration or enforcement of the zoning ordinance. The decision on such appeal shall be based on the board's judgment of whether the zoning administrator was correct. See § 11-2-1 of the Zoning Ordinance.

Virginia Code § 15.2-2309. Powers and duties of boards of zoning appeals.

Boards of zoning appeals shall have the following powers and duties:

1. 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 decision on such appeal shall be based on the board's judgment of whether the administrative officer was correct. The determination of the administrative officer shall be presumed to be correct. At a hearing on an appeal, the administrative officer shall explain the basis for his determination after which the appellant has the burden of proof to rebut such presumption of correctness by a preponderance of the evidence. The board shall consider any applicable ordinances, laws, and regulations in making its decision. For purposes of this section, determination means any order, requirement, decision or determination made by an administrative officer. Any appeal of a determination to the board shall be in compliance with this section, notwithstanding any other provision of law, general or special.

A board of zoning appeals has no power to legislate nor to repeal or amend the provisions of a zoning ordinance. 8 McQuillin, Municipal Corporations, 3 ed., § 25.238 at p. 581. Belle-Haven Citizens Ass'n v. Schumann, 109 S.E.2d 139, 201 Va. 36 (1959).

The Sidewalk

The word "sidewalk" means the portion of a street between the curb line and the adjacent property line intended for the use of pedestrians. See § 1-2 of the Town Code.

Sidewalk construction materials and specifications shall meet current VDOT standards. See § 10-2-10 of the Zoning Ordinance.

Current VDOT sidewalk standards require a a minimum sidewalk width of 36 inches remaining after alterations to an existing sidewalk so long as there are passing spaces at least 5 feet in width within 200 feet.

On February 19, 2021, the zoning administrator issued a zoning permit for additions to the building at 325 Franklin Street, which included alterations to the existing town sidewalk along the Claiborne Avenue side of the building. The approval required a facilities disturbance permit before any work involving the sidewalk alteration.

On March 17, 2021, an amended plan was offered which changed the sidewalk alterations to include a building entrance ramp and leaving an outer sidewalk 36 inches in width. The amended plan was approved and a facilities disturbance permit was issued.

The "as built" sidewalk alterations leave an outer sidewalk 31 inches in width along the Claiborne Avenue side of the building, which violates the zoning permit and constitutes a violation of the zoning ordinance.

Zoning permits authorize only the use, arrangement, and construction set forth in the approved plans and applications, and no other use, arrangement or construction. Use, arrangement, and construction at variance with the authorized use shall be deemed a violation of this ordinance, and punishable as provided under article 12 thereof. See § 5-1-8 of the Zoning Ordinance.

The "as built" sidewalk alterations leave an outer sidewalk 31 inches in width along the Claiborne Avenue side of the building, which violates the current VDOT sidewalk standards and constitutes a violation of the zoning ordinance.

Upon becoming aware of the violation of the zoning ordinance, the zoning administrator is required to issue a notice of violation on the person committing or permitting the violation. See § 12-3 of the Zoning Ordinance.

Conclusion

For these reasons, the Town Council of the Town of Rocky Mount requests that the February 11, 2022, decision of the zoning administrator finding 325 Franklin St LLC in violation of the zoning ordinance for altering the existing town sidewalk along the Claiborne Avenue side of the building to less than the minimum allowed width of 36 inches be affirmed and dismiss the appeal of 325 Franklin St LLC.

Town Council of the Town of
Rocky Mount

BY:


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