

**CITY OF KNOXVILLE
BOARD OF ZONING APPEALS
MEETING MINUTES
October 15, 2015**

The City of Knoxville **BOARD OF ZONING APPEALS** considered the following petitions for variance of requirements of the Knoxville City Code, Appendix B, Zoning Regulations at their **October 15, 2015**, meeting at 4:00 p.m. in the Small Assembly Room, City/County Building, 400 Main Street, Knoxville, TN.

This meeting and all communications between the Board members is subject to the provisions of the Tennessee Open Meetings Act, Tenn. Code. Ann. § 8-44-101, et seq.

ROLL CALL

Board Chairman Don Horton called the meeting to order at 4:00 p.m.

Board members present: Don Horton; Kristen Grove; Barbara Clark; Daniel Odle; Charlie Van Beke

Others in attendance: Peter Ahrens, Director of Plans Review and Inspections; Scott Elder, Zoning Chief; Brandon Littlejohn, Zoning Inspector; Mark Johnson, Engineering; Crista Cuccaro, Law Department; Angelia Rooks, Board Secretary; and Dan Kelly, MPC.

APPROVAL OF MINUTES

Board member Barbara Clark made a motion to approve the September minutes. The motion was seconded by Board member Daniel Odle. The Board voted 4-0 to **APPROVE** the September 17, 2015 minutes. Board member Charlie Van Beke abstained.

OLD BUSINESS

File: 7-E-15-VA
Applicant: Courtland Group
Address: 317 Ogden Street **Parcel ID: 094EF011**
Zoning: C-2 (Central Business) District
6th Council District

Variance Requests:

1. Reduce the minimum required Ogden Street front yard setback from 5 ft. to 0 ft. per Article 4, Section 2.2.5.E.1.
2. Reduce the minimum required W. Magnolia Avenue front yard setback from 5 ft. to 0 ft. per Article 4, Section 2.2.5.E.1.

As per submitted plan to permit construction of a mixed use development in a C-2 (Central Business) District, 6th Council District.

Scott Elder, Zoning Chief, stated that the staff received a request to postpone from a neighboring property owner, who is in opposition to the request, and could not attend this meeting.

Chris Sharp of Urban Engineering, the applicant, was present. He said he was not aware of any opposition, and advised the Board that he would like to proceed with the request. The lot size and a utility easement limited the use of this property; and approval of the variances would be consistent with the other lots on the street.

In opposition:

- Gloria Pressley was present. She said there was not enough parking available, and asked the Board not to approve a parking reduction to zero.

Mr. Sharp explained that his application had been revised since the July Board meeting. He has applied for C-2 zoning, which has no parking requirements, and expects approval from City Council. Parking was available in the vicinity, including over 300 spaces located under the I-40 overpass.

Ms. Pressley said those space were for the general public, and not reserved for residential parking. Residents of existing condo units in the area already cause problems by parking on the street.

The staff confirmed that C-2 zoning eliminates parking, but not setback requirements. The status of Mr. Sharp's rezoning application was still pending a second hearing from City Council. He asked the Board to approve the request pending C-2 approval. Board member Kristin Grove said with C-2 zoning and approval of these requests, the property would fit into the context of the neighborhood.

Board member Barbara Clark made a motion to approve the request with a condition. The motion was seconded by Board member Daniel Odle. The Board voted 5-0 to **APPROVE** the request with the **CONDITION** of C-2 zoning approval from City Council.

NEW BUSINESS

File: 10-A-15-VA
Applicant: K-Town Tavern
Address: 320 N. Peters Road **Parcel ID: 132-02616**
Zoning: C-3 (General Commercial) District
2nd Council District

Variance Request:

Reduce the minimum number of required parking spaces from 148 spaces to 135 spaces per Article 5, Section 7.A.3.a.Table.

As per submitted plan to permit the expansion of an existing restaurant in a C-3 (General Commercial) District, 2nd Council District.

Gary Kalogeros, the applicant, was present. The restaurant concept has changed to a tavern with the addition of a patio for outdoor dining. The patio design includes glass garage doors which increased the enclosed space by making it part of the building structure. The additional square footage increased the minimum required parking spaces. He provided additional documents to the Board, including written agreements from Baymont Suites and Comfort Inn to allow use of their parking lots.

Board member Charlie Van Beke made a motion to approve the request. The motion was seconded by Board member Kristin Grove. The Board voted 5-0 to **APPROVE** the request.

File: 10-B-15-VA
Applicant: Peggy Hambright – Magpies Bakery
Address: 846 N. Central Street **Parcel ID: 094DC020**
Zoning: C-2(k) (Central Business District with condition(s))
4th Council District

Appeal Request:

Appealing the decision of Knoxville's Chief Building Official that the roof structure as proposed is an advertising device per Article 8, Section 2.2.

The site is zoned C-2(k) (Central Business District with condition(s)), 4th Council District.

Board members reminded everyone about the time limits for discussion, and advised the audience that the Board was not deciding on what is *art*. The Board was deciding on what is *advertising*.

Mr. Ahrens stated that the Board received copies of his evaluation and determination that the proposed roof sign was advertising.

Peggy Hambright, the applicant, was present. Her permit application for the roof sign was denied in July. She stated that it should be allowed because of an exception in the City's ordinance that applied to works of art bearing no advertising. The decision to deny her sign was contrary to the purpose of the ordinance: to preserve the right of free speech and expression, and provide for effective communication. The bakery location is unpopular, difficult to find, and has inadequate sign coverage. The intention of the sign is not to draw attention to their bakery, but to draw attention to their growing business corridor. Allowing the roof sign will cover the existing steel sign structure that was recently refurbished; celebrate their unique neighborhood; and provide an icon and landmark directing customers down Central Street.

Board member Charlie Van Beke asked if cute and adorable dancing beer bottles on the roof of every bar would be any different. If every business could install any whimsical roof sign related to their business activity, this would become a slippery slope.

In support of the appeal:

- Scott Carpenter, the applicant's spouse, stated that the definition of advertising in the sign ordinance, "any drawing used, or intended for advertising," is circular and has no meaning. In the City's brief, advertising is defined as "to make something known, to call public attention to." This could apply to anything and is insufficient. The definition of advertising from dictionary sources includes "persuading...to take action," or "inducing...to buy or support." The sign did not contain a name or phone number, and the bakery does not sell eggs or butter. The sign was not a logo; it had been used in discussions about the bakery; it had appeared with different backgrounds on the bakery's Facebook page; and it was not trademarked. The bakery has trademarked another logo. The sign draws attention, but does not induce anyone to buy, so it fits within the art exemption provided in the sign ordinance.

Board Chairman Don Horton asked if the sign could be used as a landmark to attract customers to the bakery. Mr. Carpenter answered that it would be like using the Sunsphere as a reference point. Board member Daniel Odle asked if the image had ever been associated with branding the business. Mr. Carpenter said it was not trademarked, but had appeared on Facebook, and was later removed.

Board member Mr. Odle asked if the image was submitted as signage or art on the original sign application. Mr. Carpenter said it was submitted by a sign company. Neither he nor Ms. Hambright ever saw it, and did not know how it was written. Peter Ahrens, Director of Plans Review & Inspections, stated that the original sign application included the Egg & Butter sign with Magpies language. When he explained that roof signs were prohibited, the Magpies language was removed.

- Preston Farabow, owner of Ironworks Studio, stated that he served as a member of the Public Art Committee. The Committee's responsibilities included evaluating murals as art or advertising. He had no problem deciding that this sign was art, and asked the Board to support projects like this.
- Robin Easter, owner of Robin Easter Design, stated that the applicant was an artist before she opened the bakery. Using a logo to establish a brand identity is very expensive, and Ms. Hambright does not intend to use it for branding. It is a whimsical draw for the street. It is a way to be inviting and a comfort to some people who may find that street scary.

In opposition to the appeal:

- Carlene Malone, representing Fountain City Town Hall, stated that this issue is about the rule of law. If this sign was not advertising, then the City does not have a sign ordinance. Then any logo without

lettering, such as the Starbuck's Mermaid, Nike's Swoosh, and McDonald's Golden Arches were also not advertising. Because the City does not regulate art, any business could install dancing wine bottles, forks and knives on any roof or pole without any regulation of size, height, or setbacks. The Egg & Butter sign is obviously advertising. The applicant has said her intention was to make the business stand out; and it has been used on the bakery's website. The egg and butter characters are consistent with a bakery, and with their "all butter all the time" slogan. All graphics contain artwork. The definition of advertising in the sign ordinance has been used for decades and is not new. The only thing new is the prohibition of roof signs. She asked the Board to deny the appeal and uphold the decision of the Chief Building Official.

- Joyce Feld, representing Scenic Knoxville, stated that she served as a member of the City Council Sign Task Force. Roof signs were prohibited because they contribute to visual clutter. Ms. Hambright has clearly stated that she wanted to call attention to her business with this sign, to make it more visible, and to stand out from the surrounding blight. This is the same excuse used by every business owner that wants a bigger, taller, louder sign; and the reason for sign ordinances. The ordinance was written to protect the appearance of the City. If this sign is allowed, then any business could install any kind of roof sign and label it as art. The applicant has used this sign to brand her business on the bakery's website and Facebook page. A sign does not require a business name to make it advertising. The Starbuck's Mermaid sign is an example of "a call to action" just like the Egg & Butter sign would be. Relocating the sign or the use of wall signs can accomplish her goals of making the business stand out and attracting customers. Ms. Feld asked the Board to deny the variance.

Crista Cuccaro, Law Department, clarified that this is an appeal, and not a variance hearing. The standards and criteria for a variance do not apply in this case. The Zoning Code gives the Board the authority to hear and decide appeals where it is alleged there is an error in any order, requirements, decision, or determination made by an administrative official in carrying out any provisions of the code.

Ms. Hambright stated that the building has an existing sign structure on the roof, which is ugly and cannot be removed. If it did not exist, then she would not have an interest in installing a roof sign to cover it. Board member Kristin Grove asked why the sign structure cannot be removed. Ms. Hambright answered that it was a permanent part of the building, bolted to concrete pads, and they have a foam roof that is very delicate. It could be cut down, but it would be expensive and damage the roof by leaving a lot of holes.

Board members agreed that allowing an exception for the bakery would set a precedent for other businesses to bypass the City's sign ordinance and install roof signs if they call it art. Board member Daniel Odle stated that Board's task, and the limit of their authority, is to judge whether or not the zoning ordinance was interpreted correctly by the Building Official. He liked the spirit of the community, and would like to see an overlay enacted in this district within the ordinance that would allow for projects like this, but the Building Official did not misinterpret the ordinance as written.

Board member Charlie Van Beke made a motion to deny the appeal. The motion was seconded by Board member Daniel Odle. The Board voted 5-0 to **DENY** the appeal.

File: 10-C-15-VA
Applicant: Dile M. Brown
Address: 5800 Clinton Hwy **Parcel ID:** 068KA06801
Zoning: C-4 (Highway and Arterial Commercial) District
5th Council District

Variance Requests:

1. Increase the maximum number of permitted primary signs from 1 sign to 4 signs per Article 8, Section 11.6.b.1.

2. Increase the maximum permitted ground sign height for sign #1 from 20 ft. to 27 ft. per Article 8, Section 11.6.c.Table.
3. Increase the maximum permitted ground sign height for sign #2 from 20 ft. to 37 ft. per Article 8, Section 11.6.c.Table.
4. Increase the maximum permitted ground sign height for sign #3 from 20 ft. to 27 ft. per Article 8, Section 11.6.c.Table.
5. Increase the maximum permitted ground sign height for sign #4 from 20 ft. to 32 ft. per Article 8, Section 11.6.c.Table.
6. Increase the maximum permitted sign area for sign #4 from 165 sq. ft. to 201 sq. ft. per Article 8, Section 11.6.d.Table.

As per submitted plan to permit the installation of signs on the site in a C-4 (Highway and Arterial Commercial) District.

Dile Brown, the applicant, was present. A new building was constructed on the property which consisted of three parcels with a total of four sign poles. To simplify the construction process, the parcels were combined into one lot. The sign-heads were dismantled for maintenance, and one pole was removed. Since then, the City passed the sign ordinance. Now, he cannot reinstall the sign-heads because they do not comply with the new ordinance. Stacking the signs on one structure would look too cluttered. Each sign should be located in front of the appropriate building for each brand. The topography and location of light poles require taller sign poles to keep the signs at a visually similar height.

Scott Elder, Zoning Chief, confirmed that the maximum sign height is measured from the top of the sign.

In opposition:

- Joyce Feld, representing Scenic Knoxville, stated that the purpose of the sign ordinance was to reduce the number of signs, lower sign height, and reduce visual clutter. The applicant's requests are in direct conflict with the intent of the sign ordinance. She asked the Board to deny these requests.

Crista Cuccaro, Law Department, confirmed the maximum number of signs, types and square footage permitted in the sign ordinance.

Mr. Brown said he wasn't asking for any additional signs or larger signs. He only wanted to relocate and use existing poles and existing sign-heads that have been there since the 1970's.

Board members agreed that they would like to see a compromise on the number and height of the signs. Mr. Brown was willing to make modifications. Board member Kristin Grove suggested stacking the 3 smaller brands on one monument sign and allow the existing Harley-Davidson sign head on a pole that stays within the 20 ft. maximum height requirement. The applicant asked the Board to postpone the hearing until the next meeting, so that he can consider revisions to the site plan.

Board member Kristin Grove made a motion to postpone the requests. The motion was seconded by Board member Daniel Odle. The Board voted 5-0 to **POSTPONE** hearing the requests until the November 19, 2015 meeting.

File: 10-D-15-VA
Applicant: Dale Thompson
Address: 2233 Keith Avenue
Zoning: C-3 (General Commercial) District
6th Council District

Parcel ID: 094HF033

Variance Request:

Decrease the minimum required northeast side yard setback abutting a residential district from 25 ft. to 0 ft. per Article 4, Section 2.2.6.E.2.

As per submitted plan to permit the construction of a new commercial building in a C-3 (General Commercial) District.

Dale Thompson, the applicant, was present. The TDOT project to widen Western Avenue has blocked access to his property from Keith Avenue. He has to move his driveway and parking areas, which required him to reconstruct his building 50 ft. further back on the property to comply with the 26 ft. required between the building and the new driveway entrance. The adjacent property, where he requested a zero setback, was vacant land owned by TDOT, and will not be developed.

Board member Charlie Van Beke made a motion to approve the request. The motion was seconded by Board member Barbara Clark. The Board voted 5-0 to **APPROVE** the request.

File: 10-E-15-VA
Applicant: Sharon Adams
Address: 1421 Southgate Road **Parcel ID:** 121DH013
Zoning: R-1 (Low Density Residential) District
2nd Council District

Variance Requests:

1. Reduce the minimum required Taliluna Drive front yard setback from 25 ft. to 0 ft. per Article 4, Section 2.1.1.E.1.a.
2. Increase the maximum permitted lot coverage for principal and accessory buildings from 30% to 41% per Article 4, Section 2.1.E.6.a.

As per submitted plan to permit an addition to an existing house in an R-1 (Low Density Residential) District.

The applicant postponed the request prior to the meeting.

File: 10-F-15-VA
Applicant: Hatcher-Hill Properties LLC
Address: 519, 521-603 W. Vine Avenue **Parcel ID:** 094EJ03201
Zoning: C-2 / D-1 (Central Business/Downtown Design Overlay) Districts
6th Council District

Variance Request:

Reduce the minimum required driveway width from 20 ft. to 10 ft. per Article 5, Section 7.B.3.c.Table.

As per submitted plan to permit the construction of a multi-unit residential structure in a C-2/D-1 (Central Business /Downtown Design Overlay) Districts.

John Sanders, representing the applicant, was present. The topography, size and shape of the lot do not allow compliance with the minimum 20 ft. driveway width. He requested a reduction of width to 10 ft. for one-way access to private garage spaces for seven single family homes. The private driveway loops around to the rear of the property, and will be wider than 10 ft. where possible. He presented turning radius diagrams to the Board to show that the 10 ft. width is sufficient. There was an existing retaining wall on the Jackson Avenue side of the property, with plans to add a low landscaping wall and fencing. Compliance with the design guidelines for townhomes in the D-1 district also reduced the usable space for a wider driveway.

Board member Daniel Odle made a motion to approve the request. The motion was seconded by Board member Charlie Van Beke. The Board voted 5-0 to **APPROVE** the request.

File: 10-G-15-VA
Applicant: Dean Evans
Address: 846 Bluff Drive
Zoning: R-1 (Low Density Residential) District
2nd Council District

Parcel ID: 108PD010

Variance Request:

Increase the maximum permitted driveway width from 25 ft. to 87 ft. per Article 5, Section 7.B.3.a.Table.

As per submitted plan to permit the construction of a driveway in an R-1 (Low Density Residential) District.

Allison Lederer, the owner, was present. Also present was Ray Lacy, representing the owner. Water run-off from the street has created drainage issues and has previously flooded the finished basement. Moving the driveway and changing the elevation in front of the house would alleviate the drainage problems by diverting the water away from the house and toward the side of the property. The width of the driveway, as shown on the submitted sketch, may be reduced. Richard LaMay, a civil engineer, was working on the detailed drawings. Several engineers have visited the site, evaluated the drainage issues, and determined that the slope of surrounding properties has caused the water run-off to drain toward their house.

Board members agreed that a hardship exists, but they wanted to see the actual plans with accurate measurements before deciding on such a wide driveway variance. Board member Charlie Van Beke suggested that the Board postpone the hearing to next month so the engineer will have time to complete the plans. Mr. Lacy stated that it was urgent to begin the project as soon as possible to prevent further damage to the home. Board member Daniel Odle asked the staff for a timeline to process a building permit. Mark Johnson, Engineering, said there is a 10-day review period, but the process may be quicker if the work volume is low during that time. Ms. Lederer asked the Board to consider the request as submitted.

Board member Charlie Van Beke made a motion to approve the request. The motion was seconded by Board member Barbara Clark. The Board voted 5-0 to **APPROVE** the request.

File: 10-H-15-VA
Applicant: Keith Julian
Address: 202 Sherway Road
Zoning: C-3 (General Commercial) District
2nd Council District

Parcel ID: 131-12510

Variance Request:

Reduce the minimum number of required parking spaces from 35 spaces to 20 spaces per Article 5, Section 7.A.3.a.Table.

As per submitted plan to permit the expansion of an existing business in a C-3 (General Commercial) District.

Keith Julian, the applicant, was present. When applying for an unrelated permit, it was discovered that his client was out of compliance with parking. He added a few parking spaces to the site plan, but the large paved area behind the building was reserved for deliveries by tractor-trailers, which require more space to turn around and back up to the loading dock. He did not know how often deliveries were made, but they were only open three days a week, and had low traffic volume.

Board members agreed that there was enough property for additional parking spaces to comply with the 35-space minimum; and the applicant had not demonstrated a hardship to grant a variance. The

applicant could withdraw the request and comply with the parking requirements; or postpone and submit a revised site plan that would be closer to the parking minimum. The applicant asked the Board to postpone the request so his client could consider other options.

Board member Kristin Grove made a motion to postpone hearing the request. The motion was seconded by Board member Daniel Odle. The Board voted 5-0 to **POSTPONE** hearing the request until the November 19, 2015 meeting.

File: 10-I-15-VA
Applicant: LeConte Equities Group LLC
Address: 0 E. Emory Road **Parcel ID: 047-08614**
Zoning: C-6 (General Commercial Park) District
5th Council District

Variance Request:

Reduce the minimum required front yard setback from 25 ft. to 0 ft. per Article 4, Section 2.2.9.D.2.a.

As per submitted plan to permit the construction of a multi-tenant commercial development in a C-6 (General Commercial Park) District.

Board member Kristin Grove recused herself from hearing this request.

Scott Elder, Zoning Chief, stated that C-6 approval is required before building permits are issued.

Chris Sharp, representing the applicant, and Garrett Jernigan, representing the owner, were present. The property was subdivided into three lots. Topography and easements reduce the lot's usable space, and the area within the setback is needed for parking. The tenants include a restaurant with a high parking demand during lunch hours. They are in compliance with parking requirements. The north side of the lot is 8 ft. below grade. No retaining wall is planned, but they may include a low landscape wall. The adjacent lot to the east was already under construction and unavailable to use for parking. Additional drawings were distributed and Mr. Sharp explained that the biggest difference was the landscaping. A landscaping plan will be submitted with the C-6 review.

Board member Charlie Van Beke made a motion to approve the request. The motion was seconded by Board member Barbara Clark. The Board voted 4-0 to **APPROVE** the request.

OTHER BUSINESS

The next BZA meeting is November 19, 2015.

ADJOURNMENT

The meeting was adjourned at 6:16 p.m.

Respectively submitted,

Angelia Rooks, Board Secretary