

**CITY OF KNOXVILLE  
BUILDING BOARD OF ADJUSTMENTS AND APPEALS  
MEETING MINUTES  
September 18, 9:00 a.m.**

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 Secretary Angelia Rooks called the meeting to order at 9:15 am.

Members present: David Smith, Gregor Smee, David Icové, and Albert Beasley.

Others in attendance: Peter Ahrens, Director of Plans Review and Inspections; Crista Cuccaro, Law Department; Marty Clay, Chief Building Inspector; Angelia Rooks, Board Secretary; and Sonny Partin, Fire Inspections.

Board Chairman Doyle Webb was not present. Board member David Icové made a motion to elect Gregor Smee to chair the meeting. The motion was seconded by Board member Albert Beasley. The Board voted 4-0 to elect Gregor Smee to chair the meeting.

**APPROVAL OF MINUTES**

Board member Albert Beasley made a motion to approve the August minutes. The motion was seconded by Board member David Smith. The Board voted 4-0 to **APPROVE** the August 21, 2015 minutes.

**NEW BUSINESS**

**BD-09-A-15-BU**

**Address:** 333 Depot Avenue

**Owner:** Regas Property, LLC

**Applicant:** Faris Eid (Design Innovation Architects, LLC)

**Action Requested:** Appeal the decision of the Building Official, in accordance with IBC Section 109.4.1: who classified this building as a high rise, due to only a small residential loft area of less than 600 sf, as well as its private deck of less than 300 sf; thus not mandating the requirements of IBC Section 403.

Faris Eid, applicant, was present. Also present were Joe E. Petre of Conversion Properties, Inc., representing the owner; and Ken W. Dungan, fire protection engineer with PDT. Mr. Eid described the construction of a 6 story building with retail tenant space on the ground floor, and residential space on 5 floors. An interim garage level is located between the first and second floor, and an underground garage level for parking in the basement. Measuring from the lowest point of the building to the 6<sup>th</sup> floor is less than 75 ft. above the fire service level, which is below the minimum height to classify the building as a high rise.

The design includes one penthouse unit at the southwest corner, with a raised mezzanine and roof deck area of 300 sf. The upper level of the penthouse unit is about 600 sf. The only entrance and exit to this unit is from the 6<sup>th</sup> floor corridor. The penthouse does not have roof top access beyond the roof deck, but the building design does include a service stair to the roof for emergency access. Measuring from the penthouse side of the building, the 6<sup>th</sup> floor is 4 ft. over the 75 ft. limit. Mr. Eid stated that this

one element of one unit does not increase safety concerns for the entire building and should not be used to justify a high rise classification.

Mr. Dungan stated that classifying the building as a high rise would require additional and unnecessary features, such as a fire control panel, standby power, voice evacuation and separate command center. These features would not increase the safety of the building, but would add significant costs. With or without the penthouse area, the building population and emergency procedures would not change, so the small loft area does not support the requirement of these extra controls. The intent of the code does not apply if it has no effect on the safety of the building.

Peter Ahrens, Director of Plans Review, stated that the loft area is an occupiable floor. The code does not allow any provisions in regard to the size of the floor. The Board has the authority to interpret the code's intent, and determine if meets with the applicant's request.

Sonny Partin, Fire Inspections, stated that the code is very clear. The loft area is an occupiable floor, it does not meet any defined exceptions, and both sides of the building are above the 75 ft. limit. He would not be comfortable making exceptions or compromises in regards to building safety.

Mr. Petre agreed with Mr. Partin, but pointed out that there is no increase in liability, the building design is safe, and the Fire Department has the proper equipment to reach the roof level from either end of the building. He stated that there is a high demand for penthouse units. The addition of this unit improves the aesthetics of the building design, and it would increase the building's market value. Replacing the penthouse with a standard unit would keep the building below the 75 ft. limit, but would cost the project approximately \$400,000.

Board member David Icové asked the staff if they would consider sending the request to the ICC for an independent review. Mr. Ahrens replied that the code is clear, and does not allow for compromise. The ICC would be slow to respond, and based on experience, they would not offer any new exceptions that were not already in the code.

Board member Gregor Smee stated that the applicant has expressed two hardships: aesthetics and financial. The Board has granted variances to other applicants with similar hardships. Ms. Cuccaro clarified that this is an appeal of the Building Official's decision, and not a variance request. Mr. Ahrens explained that approval of a *variance* request to increase the 75 ft. limit would open the door to build additional square footage on that level. By submitting an *appeal*, the applicant is claiming that the true intent of the code does not apply to their circumstances. The Board's approval would be limited to the plans submitted, and would not extend to later additions.

Board members asked the staff their opinion on whether or not the building's safety, in regards to a fire event, would be affected by the Board's decision. Mr. Ahrens and Mr. Partin agreed that any answer would require too many assumptions. The staff preferred to remain neutral, and defer to the expertise of the fire design engineer. The staff has to work within the limitations of the code as written. The Board is tasked with interpreting the code's intent.

Board member David Icové made a motion to formally request a verbal ICC interpretation. The motion was not seconded. The motion failed.

The applicants advised the Board that they preferred a denial or postponement rather than delay the project and wait for an ICC review or performance based review. The 4 ft. overage is a technicality, and the Board should consider the overall safety of the building design.

Board member Gregor Smee stated that after hearing the discussion, he believes that the intent of the code was not meant to classify this building as a high rise. The Board's approval would not create an

unsafe situation, or create issues for the Fire Department. An ICC review would not provide any additional facts to consider.

Board member Gregor Smee made a motion to approve the request with a condition. The motion was seconded by Board member Albert Beasley. The Board voted 3-1 to **APPROVE** the request with the **CONDITION** that the design and square footage of the loft and roof deck will not exceed that of the submitted site plan.

### **OTHER BUSINESS**

The next BBAA meeting is October 16, 2015.

### **ADJOURNMENT**

The meeting was adjourned at 11:00 am.

Respectively submitted,

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Angelia Rooks, Board Secretary