

## BOARD OF ZONING APPEALS

### MEETING MINUTES

February 16, 2017

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 **February 16, 2017** meeting at 4:00 pm in the Small Assembly Room, City County Building, 400 Main St, 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 Kristin Grove called the meeting to order at 4:00 pm. Other members present were Don Horton, Daniel Odle, David Dupree, and Charlie Van Beke.

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

### APPROVAL OF MINUTES

Member Don Horton made a motion to approve the January 19, 2017 minutes. It was seconded by member Daniel Odle. The Board voted 4-0 to **APPROVE** the minutes. Member Charlie Van Beke abstained.

### AGENDA ORDER

Chairman Kristin Grove noted the amount of public interest in file 1-H-17-VA, and commented that it would take the longest to discuss. Member Daniel Odle made a motion to move it to the end of the agenda. It was seconded by member Don Horton. The Board voted 5-0 to **APPROVE** the motion.

### OLD BUSINESS

<b>File:</b>	<b>12-N-16-VA</b>	<b>Parcel ID:</b> 108CK006 &
<b>Applicant:</b>	Starboard Properties IV, LLC	009-013
<b>Address:</b>	2120 Cumberland Avenue	
<b>Zoning:</b>	FD-CU-1 & FD-CU-2 (Form District-Cumberland Avenue) Districts 1 <sup>st</sup> Council District	

### **Variance Request:**

Reduce the minimum required width for a parking space from 9 ft. to 8 ft. per Article 5, Section 7.A.4.a.2.Table.

As per submitted plan to permit redevelopment of the site with a multi-use project in an FD-CU-1 & FD-CU-2 Districts.

The staff received a request to postpone from the applicant.

Member Daniel Odle made a motion to postpone the request until the next meeting. It was seconded by member Charlie Van Beke. The Board voted 5-0 to **POSTPONE** the request until the March 16, 2017 meeting.

**File:** 1-A-17-VA  
**Applicant:** Church of God of Union Assembly, Inc.  
**Address:** 3428 Keith Avenue  
**Zoning:** R-2 (General Residential) District  
3<sup>rd</sup> Council District

**Parcel ID:** 093LG005

**Variance Requests:**

1. Reduce the minimum required front yard setback for an accessory structure for a church from 35 ft. to 30 ft. per Article 4, Section 2.1.6.D.1.b.
2. Reduce the minimum required east side yard setback for an accessory structure for a church from 35 ft. to 25 ft. per Article 4, Section 2.1.6.D.2.c.

As per submitted plan to permit a new accessory structure for the church in an R-2 District.

Jeff Moody, the applicant, was present. The accessory structure would be a one-vehicle garage with storage space. The property was too small to construct the building within the setback.

Member Charlie Van Beke made a motion to approve the requests. It was seconded by member David Dupree. The Board voted 5-0 to **APPROVE** the requests.

**NEW BUSINESS**

**File:** 2-A-17-VA  
**Applicant:** James Reynolds  
**Address:** 2341 Jefferson Avenue  
**Zoning:** R-1A / H-1 (Low Density Residential / Historical Overlay) Districts  
6<sup>th</sup> Council District

**Parcel ID:** 082JU013

**Variance Request:**

Reduce the minimum required front yard setback from 19 ft. 10 in. to 0 ft. per Article 4, Section 2.1.2.D.1.b.

As per submitted plan to permit the existing church to construct a covered handicap accessible walkway in an R-1A / H-1 District.

James Reynolds, the applicant, was present. He presented additional photos of the partially built covered walkway and ramp between the church and sidewalk. The hardships were the small lot, two front yards and the existing building in a historic neighborhood.

Member Daniel Odle made a motion to approve the request. It was seconded by member David Dupree. The Board voted 5-0 to **APPROVE** the request.

**File:** 2-B-17-VA  
**Applicant:** Reagan Design and Construction  
**Address:** 902 N. Central Street  
**Zoning:** C-3 (General Commercial) District  
4<sup>th</sup> Council District

**Parcel ID:** 081MU009

**Variance Request:**

Reduce the minimum required number of parking spaces from 4 spaces to 0 spaces per Article 5, Section 7.A.3.a.Table.

As per submitted plan to permit development of two dwelling units on the second floor of an existing commercial building in a C-3 District.

Luke Wilkerson, the applicant, was present. The hardship was the small lot and existing building. There was a Special Exception request pending in MPC, which required a parking variance approval before MPC consideration. He had not tried to obtain a parking lease agreement, but there was street parking available on Bearden Place, where traffic was minimal. Neighboring businesses did not use street parking because they had parking lots.

Member David Dupree noted that previous variances to reduce parking requirements were granted for the benefit of businesses. Commercial parking was transient, but residential parking was long-term. Granting an approval would reduce available commercial parking and potentially hurt nearby businesses. Board members commented about the on-going problem of limited parking in this growing area, and recommended that the applicant try to obtain a parking lease agreement. Mr. Wilkerson agreed to postpone this request to March, and work on securing a parking lease agreement with his neighbors.

Peter Ahrens clarified that a 5 year parking lease agreement that met certain specifications would satisfy the parking requirement and eliminate the need for a variance. Crista Cuccaro added that a postponement to March would also require Mr. Wilkerson to postpone his MPC application to April.

Member Charlie Van Beke made a motion to postpone the request to the next meeting, and advised the applicant to obtain a parking lease agreement. It was seconded by member Don Horton. The Board voted 5-0 to **POSTPONE** the request until the March 16, 2017 meeting.

<b>File:</b>	<b>2-C-17-VA</b>	<b>Parcel ID:</b> 067-277
<b>Applicant:</b>	Marina Blankenship – MBI	
<b>Address:</b>	6645 Clinton Hwy	
<b>Zoning:</b>	C-4 (Highway and Arterial Commercial) District	
	3 <sup>rd</sup> Council District	

**Variance Requests:**

1. Reduce front yard setback for a commercial building in a C-4 zone from 50 ft. to 18.2 ft. per Article 4, Section 2.2.7.E.2.a.
2. Reduce the minimum required side yard setback from 12 ft. to 2.2 ft. per Article 4, Section 2.2.7.E.3.

As per submitted plan to permit subdivision of the property in a C-4 District.

John Patterson, the applicant, was present. There were two existing buildings on the property, and they wanted to divide it into two separate lots. The lot line would be very close to one building so the other lot could have parking. There would be no physical changes.

Peter Ahrens stated that it was still subject to a building code compliance evaluation. Any deficiencies would need correction prior to the platting process.

Member Daniel Odle made a motion to approve the requests with the condition of MPC variance approval and the plat. It was seconded by member David Dupree. The Board voted 5-0 to **APPROVE** the requests with the **CONDITIONS** of MPC variance approval and the plat.

**File:** 1-H-17-VA  
**Applicant:** Capso Properties LLC  
**Address:** 3515 N. Broadway  
**Zoning:** C-3 / F-1 (General Commercial / Floodway) District  
5<sup>th</sup> Council District

**Parcel ID:** 069MA010

**Variance Request:**

Reduce the minimum required separation distance that an Alternative Financial Service facility must maintain from a residential zoning district from 1000 ft to 89.3 ft. per Article 5, Section 26.A.2.

As per submitted plan to permit an alternative financial service to occupy an existing building in a C-3 / F-1 District.

Chairman Kristin Grove stated that a timeline of events was submitted to the Board by the applicant during the Pre-Agenda meeting, but the material was not discussed. Crista Cuccaro had also presented packets to Board members, containing certified copies of the relevant ordinances and a timeline. For the record, she noted a typo on the timeline: The second line item was dated December 2, 2016 and should be corrected to December 2, 2015.

Maharaj Sood, the applicant, was present. During the process of applying for a permit, the City adopted the Alternative Financial Service (AFS) ordinance establishing the minimum required separation distance between an AFS facility and a residential district. It became effective in September 2016. He was not made aware of the proposed ordinance by City staff. After it was adopted, the City staff and MPC led him to believe the project could still move forward. He reviewed the timeline of events, from July 2015 to December 2016, describing meetings and conversations with City staff and MPC. It was not until December 2016 that he was told the property could not be used for a pawn shop. He stated that AFS businesses were legal, beneficial to communities, and paid taxes. Without these services, loan sharks and organized crime would fill the void.

John King, representing the applicant, was present. He referred to the timeline of events submitted earlier. The applicant made a significant investment in the property, believing the use was allowed. The hardship was an exceptional physical condition created by the adoption of the AFS ordinance, which deprived the owner of reasonable, beneficial use of the property. The applicant did not have any control of the circumstances that created the hardship. He had been diligent and careful to make sure the proposed use could be accomplished.

**In opposition:**

- Steve Cotham, representing the Fairmont-Emoriland Neighborhood Association, was present. The neighborhood was 150 feet from the proposed pawn shop. Other neighborhoods represented in the audience included Lincoln Park, Edgewood, Old North and Oakwood. While they supported commercial development on Broadway, they also supported the AFS ordinance. It was inappropriate for the applicant to ignore the new ordinance, which did not prohibit all business uses, just the one use the applicant wanted. There were other pawn shops on Broadway, so the applicant was not offering a new service.
- Kathleen Sherfick, a nearby resident, was present. Her home was located 350 feet from the proposed pawn shop, and was burglarized several times. As a senior, she felt vulnerable and believed the presence of a pawn shop so close to her home would increase her vulnerability. She asked the Board to deny the request.
- Phyllis Snodgrass, a nearby resident, stated that the City made a significant investment to improve and beautify the entrance to her neighborhood. The residents have also invested in maintenance of the entryway. The proposed pawn shop would lower the value of their homes and neighborhood.

Member Charlie Van Beke made a motion to allow 2 additional speakers. It was seconded by member Daniel Odle. The Board voted 5-0 to APPROVE the motion.

In opposition:

- Deborah Thomas, Treasurer of Oakwood-Lincoln Park Neighborhood Association, was present. She represented 2,500 households. She read the letter written by William Hutton, the association's president, which was submitted to the Board in January. The letter stated that they did not support the variance request; the applicant did not present a legal hardship; and asked the Board to deny the variance. There were other business uses allowed at this location. Many homeowners were also uncomfortable with the pawn shop selling guns.
- Lauren Rider, board member and resident of Old North Knoxville, was present. Ignorance of the law was not a valid hardship, nor a reason for non-compliance. The ordinance was reported through media outlets for a long time. This was an extreme variance request, and there were many other businesses the applicant could develop. She asked the Board to uphold the ordinance.

In rebuttal:

- Jake Proffitt, an attorney representing an affiliate company, was present. A significant investment was made in development of this property based on the communication from the City staff and MPC. They were told by City Council that they could open a pawn shop at this location after the AFS ordinance was passed. It was the City who miscommunicated and failed to take into account the ordinance.
- John King said they were not claiming ignorance of the law, but they did have a hardship caused by the City's adoption of AFS ordinance. They were in a unique position because they were the only applicants caught in these circumstances which were created by the ordinance.

Member Daniel Odle asked Mr. King to clarify his claim of a physical hardship. Mr. King described the physical hardship as the 1,000 foot distance established in the ordinance. He compared the distance requirement to a physical constraint, like a wall, that limited reasonable use of the property. Chairman Kristin Grove pointed out that the distance requirement was only relevant to the preferred use by the tenant, not other reasonable uses. Mr. King disagreed. If one reasonable use was limited, then that was sufficient justification to approve a variance.

Chairman Kristin Grove added that financial investment was not a valid hardship. Member Daniel Odle agreed. Mistakes, misunderstandings and miscommunications may have happened, but did not have any bearing on the Board's responsibilities. The applicant did not present a hardship that met the variance standards, and did not obtain a building permit before the ordinance change. Without the permit, the applicant did not have permission from the City for this project.

Member Charlie Van Beke sympathized with applicant's situation, but deprivation of one use out of many potential uses did not represent a true hardship.

Member David Dupree disagreed. Mr. Sood had submitted the application for a permit before the ordinance went into effect. This use would increase safety in the area because of their use of surveillance cameras.

Member Don Horton stated that denying this variance would not decrease the value of the property. It could be used for many other types of businesses. He also pointed out that the property was in a flood plain and no business should be there.

Member David Dupree made a motion to approve the request with the condition of building code compliance. It was seconded by member Charlie Van Beke. The Board voted 1-4 against the motion. The motion failed. Member David Dupree voted in favor of the motion.

Member Daniel Odle made a motion to deny the request. It was seconded by Chairman Kristin Grove. The Board voted 4-1 to **DENY** the request. Member David Dupree voted against the motion.

**OTHER BUSINESS**

The next BZA meeting is March 16, 2017.

**ADJOURNMENT**

The meeting adjourned at 5:20 pm.