

**CITY OF KNOXVILLE
BOARD OF ZONING APPEALS
MEETING MINUTES
June 16, 2016**

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 **June 16, 2016** 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 Don Horton's called the meeting to order at 4:00 pm. Other Board members present were David Dupree and Daniel Odle. Board members Kristin Grove and Charlie Van Beke were absent.

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

APPROVAL OF MINUTES

Board member Daniel Odle made a motion to approve the May minutes. It was seconded by Board member David Dupree. The Board voted 3-0 to **APPROVE** the May 19, 2016 minutes.

OLD BUSINESS

File: 3-F-16-VA
Applicant: Brett Honeycutt
Address: 4125 McKinley Street
Zoning: C-6 (General Commercial) District
5th Council District

Parcel ID: 069LA013

Variance Requests:

1. Reduce the minimum required south side yard setback from 20 ft to 17 ft. per Article 4, Section 2.2.9.D.2.b.
2. Reduce the minimum required rear yard setback from 60 ft to 50 ft. per Article 4, Section 2.2.9.D.2.c.
3. Reduce the minimum required landscape strip from 15 ft to 6 ft. per Article 4, Section 2.2.9.E.2.

As per submitted plan to permit construction of a new building in a C-6 District.

Brett Honeycutt, the applicant was present. Since the April 2016 meeting, the property was rezoned from C-3 to C-6. They also own the adjacent lot, and wanted to reduce the side yard setback on that property line. The rear yard included a rail road easement that was zoned residential and had a right-of-way of 150 ft. Because the building would not be serviced from the rear yard, the applicant **withdrew item 2** and asked to Board to consider only items 1 and 3.

Board member Daniel Odle stated that the parcel shape and topography qualified as hardships, and made a motion to approve items 1 and 3. It was seconded by Board member David Dupree. The Board voted 3-0 to **APPROVE items 1 and 3**.

File: 5-A-16-VA
Applicant: Paige Coleman
Address: 7824 Kingston Pike
Zoning: C-4 (Highway and Arterial Commercial) District
2nd Council District

Parcel ID: 120JB00801

Variance Request:

Reduce the minimum required front yard setback for a new detached ground sign from 10 ft. from the property line to 0 ft. from the property line per Article 8, Section 7.1.a.

As per submitted plan to permit construction of a new ground sign in a C-4 District.

Scott Elder, Zoning Chief, clarified that the KUB setback restrictions were a separate matter from the sign ordinance variance request.

Paige Coleman, the applicant, and John Campbell, an engineer, were present. The hardship was topography and visibility from Kingston Pike. A ground sign was added without a permit, and later removed when she was notified that it was out of compliance. Her business traffic increased 200% when that sign was used, but declined by the same amount when it was removed. Installing a ground sign in compliance with the sign ordinance would not solve her problem because of a 4 ft. slope between the sidewalk and the pavement. It would not be visible to traffic. The proposed sign would be in the same position as a previous sign, which was half on the grassy slope, and half on the blacktop.

Mr. Elder clarified that the height measurement would start at the side walk level so the slope would not have any affect.

In opposition, Joyce Feld of Scenic Knoxville was present. She stated the applicant had previously installed a ground sign without a permit. They had room to comply with the sign ordinance, and already had a very large non-conforming roof sign with no visibility issues. She asked the Board to deny the request, or condition the approval upon the removal of the roof sign.

Board Chairman Don Horton asked the applicant why they could not comply with the sign ordinance and move the sign further back onto the paved area, which was not used for parking. Ms. Coleman answered that compliance with the sign ordinance would not solve their problem because the building was too far back from the road and the sign would still not be visible. Mr. Horton noted that the other tenants in the building did not have signs on Kingston Pike, yet they did not seem to have visibility problems. Ms. Coleman agreed, and said the other tenants had an established clientele, which was not so for her business. The services offered by her business far outweighed the aesthetics of meeting the sign ordinance requirements; and the importance of her business services were more valuable to the citizens of Knoxville than a clutter-free Kingston Pike.

Mr. Elder stated that the utility easement should be considered when installing the proposed sign. Mr. Campbell he was working on a construction design that would allow them to avoid digging, and comply with utility easements.

Board member Daniel Odle asked the staff where the proposed sign could be located to comply with the sign ordinance. Mr. Littlejohn answered that the distance from the property line at the edge of the sidewalk to the building was over 32 ft, and a sign could be placed anywhere within that area as long as it was 10 ft from the property line. Also, the sign's height measurement began at the sidewalk level, benefitting the applicant. Mr. Odle asked if the building owner supported the applicant's variance request, and placement of the sign. Ms. Coleman said yes, the owner was onboard with it.

Mark Johnson, Engineering noted that the parcel map that the Board was viewing was out of date. The property line was moved to the edge of the sidewalk when Kingston Pike was widened. Board member Daniel Odle stated that the existing conditions were in place when the applicant leased the property last

August. Financial hardships were not valid, and there had been no changes to support the approval of a variance. Ms. Coleman said there was never a survey of the property; she did not know the sign she installed was out of compliance; and if the property line had never changed, then the sign would have been in compliance. Mr. Odle disagreed.

Mr. Campbell said they did not want to move the sign to the paved area because they were considering using it for handicapped parking. But they could not benefit from the additional parking if the sign were moved to comply with the ordinance. Compliance would also be a financial hardship because the business was new and not yet profitable. In the end, it all depended on finances. Ms. Coleman agreed that their argument wasn't about anything other than that. She clarified by saying financial hardships were a valid reason for granting variances. Board member Daniel Odle explained that valid reasons were topography, lot shape, and if the lot was usable. Ms. Coleman said they had spoken to all of those reasons and the Board was being dismissive. Mr. Odle said there was nothing about the topography or any other criteria that would justify the granting of a variance. They could place the sign on the property and comply with the sign ordinance. The existing property conditions, the property lines and the sign ordinance were in place when the applicant leased the property. Based on that, Mr. Odle said he could not vote in favor of the variance. Board Chairman Don Horton added that any new handicapped parking spaces would have no impact on the sign location. He asked the applicant if she would like to consider postponing her request to the July meeting to allow time to consider alternative sign locations.

Ms. Coleman asked if the criteria for meeting a variance approval were published. Ms. Cuccaro answered yes, and explained that the zoning code included sections regarding the standards and criteria for variances. Special circumstances or conditions must exist such as exceptional narrowness, topography or siting. Mr. Campbell said postponing would be a waste of time since the Board would not grant the variance even if the sewer line were not there. If the reason for a variance was to stay in business and help the community was not good enough for the Board, then it would not be good enough if the sewer line was not there.

Board member David Dupree made a motion to postpone the request to the July meeting. It was seconded by Board member Daniel Odle. The Board voted 3-0 to **POSTPONE** the request to the July 21, 2016 meeting.

NEW BUSINESS

File:	6-A-16-VA	Parcel ID: 093EE035
Applicant:	Chris Mershon	
Address:	2706 Piedmont Street	
Zoning:	R-1A (Low Density Residential) District	
	3rd Council District	

Variance Requests:

1. Increase the maximum permitted driveway width from 25 ft. to 100 ft. per Article 5, Section 7.B.3.a.Table.
2. Reduce the minimum required Canna Avenue front yard setback from 25 ft. to 9 ft. per Article 4, Section 2.1.2.D.1.a.
3. Reduce the minimum required rear yard setback for an accessory structure from 5 ft. to 3 ft. per Article 4, Section 2.1.2.D.3.b.

As per submitted plan to permit construction of an accessory building and driveway expansion in an R-1A District.

Mr. Elder stated that the driveway was already built, and the variances were required for compliance.

Barbara and Chris Mershon, the property owners, were present. She presented additional photos for the Board. The property had a flooding problem. The cost to build a sump system would be \$15,000 to \$20,000. Their solution was to add concrete. They also have 6 children, of whom 5 were of legal driving age, and they continued to expand the driveway to accommodate additional vehicles (11 total). At the time, they were not aware of the City's permit requirements. The cost to remove the concrete to comply with the maximum driveway width would be a financial hardship. The second item was for an accessory building in the yard facing Canna Avenue, which was located 9.5 ft from the property line. They did not know this was a front yard, and placed the building within the setback. It was a portable building which could be moved. The third variance was not needed. It was added to the application before they measured the distance from the property line. The building was actually 6.1 ft. from the property line and not 3 ft. as stated on the application. Board Chairman Horton advised that the measurement would have to be confirmed and documented.

Mark Johnson said Engineering did not support the variance and suggested that the applicants should remove the concrete that was in the right-of-way. Ms. Mershon stated that there was little traffic in that area, and the alternative was to park in the street, which she deemed more hazardous.

Board member Daniel Odle made a motion to deny the requests. It was seconded by Board Chairman Don Horton. The Board voted 2-1 to deny the requests. Board member David Dupree voted against the motion. The motion failed.

Board member David Dupree made a motion to approve item 2 only. The motion was not seconded. Mr. Dupree amended the motion to approve items 2 and 3. The motion was seconded by Board Chairman Don Horton. The Board voted 2-1 to approve items 2 and 3. Board member Daniel Odle voted against the motion because there was no hardship. The motion failed.

Board member Daniel Odle made a motion to postpone the request to the July meeting. It was seconded by Board member David Dupree. The Board voted 3-0 to **POSTPONE** the request to the July 21, 2016 meeting.

File: 6-B-16-VA
Applicant: Damon Falconnier
Address: 2550 E. Fifth Avenue
Zoning: R-2 (General Residential) District
6th Council District

Parcel ID: 082JK016

Variance Requests:

1. Decrease the minimum required lot width from 100 ft. to 50 ft. per Article 4, Section 2.1.6.D.4.b.
2. Decrease the minimum required lot area from 10,500 sq. ft. to 7,000 sq. ft. per Article 4, Section 2.1.6.D.5.b.
3. Reduce the minimum required number of parking spaces from 6 to 4 per Article 5, Section 7.A.3.a.Table.

As per submitted plan to permit creating a triplex in an existing structure in an R-2 District.

Damon Falconnier, the applicant, was present. He amended item 3 to read "**from 6 spaces to 5.**" The building was originally a duplex, and was later modified to include 10 units. The new owner was remodeling the home to a triplex, with the 3rd unit in the basement.

Board member Dupree asked the staff about the administrative rules regarding recusal. Ms. Cuccaro explained the recusal conditions, and asked if Mr. Dupree needed to recuse. He said he did not.

Mr. Horton commented that the owner was improving the property. Board member Daniel Odle made a motion to approve the requests as amended. It was seconded by Board member David Dupree. The Board voted 3-0 to **APPROVE** the requests **AS AMENDED**.

File: 6-C-16-VA
Applicant: John Daniel
Address: 570 E. Emory Road
Zoning: C-6 (General Commercial Park) District
5th Council District

Parcel ID: 047-08614

Variance Request:

Increase the maximum permitted wall signage size from 81 sq. ft. to 148 sq. ft. per Article 8, Section 11.6.a.2.

As per submitted plan to permit the installation of wall signage in a C-6 District.

John Daniel of Design Team Sign Company, the applicant, was present. His client, a Salsarita's franchisee, needed the larger signage because the building was further from the road, had a lower elevation than the road, and the surrounding businesses had comparatively larger signs which were installed before the City's new sign ordinance was in effect.

Board member Daniel Odle asked for clarification about the hardship claimed on the application. Mr. Daniel said when the tenant leased the building he had the expectation that he could use the same sized signs that he used at his other franchise locations, which were also installed before the new sign ordinance was in effect.

In opposition, Joyce Feld of Scenic Knoxville stated that the larger signage of neighboring businesses did not qualify as a legal hardship. The building was set further back from the road, but the view was completely unobstructed. She said the application mentioned trees, but there were no trees on the property. The hardship did not meet the standards for a variance approval. The applicant just wanted a bigger sign.

In rebuttal, Mr. Daniel presented additional site photos to the Board members to show the visibility of the building from the road. Board member Daniel Odle restated that the larger signage of surrounding businesses were not a valid hardship. Board Chairman Don Horton agreed. Board members and staff discussed a pole sign or tenant panel sign as an alternative. Mr. Daniel asked if the purpose of the sign ordinance was to eliminate clutter, then why suggest a pole sign that no one wanted instead of allowing an increase for a wall sign. Mr. Odle asked Ms. Feld why the sign ordinance did not address this question. She stated that this type of situation was not discussed, but it was an example of how the sign ordinance could be improved.

Board Chairman Don Horton asked the staff if the Board could impose a condition of approval to restrict the owner from later installing a pole sign. Ms. Cuccaro said she would research the possibility, but advised the Board that it was probably not an appropriate condition for the Board to make. She presumed that the old sign ordinance had an allowance for a wall sign and a pole sign; and the new sign ordinance just reduced size of that allowance, but it was not intended to eliminate signage.

Mr. Daniel asked if a written agreement to change the wall signage if the owner installed a pole sign would be sufficient for an approval. Ms. Cuccaro advised the Board to consider the implications of such an agreement for future applications. Board members agreed that they did not want to set a precedent. They advised the applicant of his option to appeal to City Council.

Board member David Dupree made a motion to deny the request. It was seconded by Board member Daniel Odle. The Board voted 3-0 to **DENY** the request.

File: 6-D-16-VA
Applicant: Brett Honeycutt
Address: 100 Lockett Road

Parcel ID: 120DE009

**Zoning: C-3 (General Commercial) District
2nd Council District**

Variance Request:

Reduce the minimum number of required parking spaces from 43 spaces to 0 spaces per Article 5, Section 7.A.3.a.Table.

As per submitted plan to permit a brewery/restaurant in an existing building in a C-3 District.

Mr. Elder stated that minutes before the meeting, Mr. Seymour presented a parking agreement and a letter referencing off-site parking. The staff did not have time to review it. If it is valid, then the variance was not required. However the staff could not substantiate it until it was reviewed, and recommended hearing the variance request as written.

Arthur Seymour, Jr., and the tenant, Jesse Bowers, were present. Mr. Seymour stated that the building had no use unless the parking variance was granted. There was a verbal agreement with the adjacent church to use their parking lot with the exception of Sunday and Wednesday night services. A written agreement will be provided when the church receives confirmation that they are named on the tenant's certificate of insurance as an additional insured party. Mr. Bowers stated that church services on Sundays ended by 11:30 am, before the brewery would open at noon. The church services on Wednesdays were small, using less than 25% of their parking capacity.

Board member David Dupree stated that he would prefer to have the parking lease agreement in hand before approving the variance. Mr. Seymour agreed.

Board member David Dupree made a motion to postpone the request to the July meeting. It was seconded by Board member Daniel Odle. The Board voted 3-0 to **POSTPONE** the request to the July 21, 2016 meeting. The Board requested that the applicant provide a copy of the lease agreement.

File: 6-E-16-VA
Applicant: Damon A. Falconnier
Address: 2885 Tazewell Pike
Zoning: C-6 (General Commercial Park) District
4th Council District

Parcel ID: 058ME004

Variance Request:

Reduce the minimum required floor elevation from 964.4 ft. (one foot above the 500 year flood elevation) to 962.1 ft. (one foot above the 100-year flood elevation) above sea level (NAVD88) per City Code Chapter 12, Article 3, Section 12-52(2).

As per submitted plan to permit the renovation of an existing building in a C-6 District.

Damon Falconnier, the applicant, was present. The new tenant, McAlister's, planned several building upgrades to meet current codes. The hardship was that the 2007 flood study did not show the property in the flood zone; but the 2013 flood study did. There were a number of issues with the 2013 study including items that were incomplete or incorrect. He said they could not rent the building without approval of this variance. They were only asking for a 2.3 ft. variance from the 500 year flood line. The variance application packet submitted to the Board included 3 different ways to successfully flood proof the building to 962.1 ft. The building was located 425 ft. from the center of the creek. Based on the elevations of the creek, the water would have to rise 14.5 ft. to reach the floor elevation; and rise 15 ft. to reach the parking lot. He said a 100 year flood meant there was a 1% chance in 100 years that there would be that kind of storm. A 500 year flood meant there was a 0.2% chance in 5 years of having this kind of storm.

Mark Johnson clarified that a 100 year flood had a 1% chance in 1 year of occurring; and a 500 year flood had 0.2% chance in 1 year of occurring.

Board member Daniel Odle asked Mr. Falconnier why they could not install a flood barrier entrance to get to the 500 year base line. Mr. Falconnier answered that they have not performed the extensive studies required to determine if the walls or foundation had the capacity to carry 4 ft. of water. He was confident that with flood proofing at 19 inches, the building would not float. But there were no studies to determine if the building would float at 4 ft. There were no existing drawings of the building, which was 20 years old; and flood proofing at the 100 year flood elevation would meet with FEMA standards.

Mr. Johnson pointed out that this area typically experienced flash floods, and an important consideration was the danger to life and property since the building was an assembly use. He strongly urged the Board to denying the variance request. The City participated in the national flood insurance program and was required to pass and enforce ordinances to control development in the flood plain. In return, the federal government agreed to provide flood insurance to the citizens of Knoxville. Without participation in the program, we could not purchase flood insurance. If a variance from the ordinance was approved, we run the risk of exclusion from the program. Also, by adopting the 500 year flood elevation, the City was able to increase its community rating which led to lower premiums. A variance from this standard could increase our flood insurance premiums. Mr. Johnson said there was nothing unique about the property that would necessitate a variance approval.

Mr. Falconnier said without the variance approval, the tenant would not be able to provide as many upgrades as originally planned to offset the cost of compliance. He felt it was a reasonable request. The owner didn't know the building was in a flood plain when it was built. Mr. Johnson said flood plains changed due to several factors such as development in the flood plain, new data, or more accurate data.

Board member Daniel Odle said the applicant did not meet the requirements of a hardship, and he was not comfortable approving a variance that would affect the City's insurability. Board Chairman Don Horton agreed.

Board member Daniel Odle made a motion to deny the request. It was seconded by Board member David Dupree. The Board voted 3-0 to **DENY** the request.

At 6:05 pm, Board member David Dupree had to leave the meeting, which left the Board without a quorum. Board member Daniel Odle made a motion to postpone the remaining agenda items to the July meeting or until a special meeting was called. The Board voted 3-0 to **POSTPONE** the remaining agenda items (**6-F-16-VA, 6-H-16-VA, and 6-I-16-VA**) until the July 21, 2016 meeting or until a special BZA meeting was called on a date to be determined.

File: 6-F-16-VA
Applicant: CDM Smith
Address: 1311 Cumberland Avenue
Zoning: O-2 (Civic and Institutional) District
1st Council District

Parcel ID: 094MH016, 017,
018, 019, 020,
021, and 022

Variance Requests:

1. Increase the maximum permitted driveway width from 30 ft. to 53.36 ft. per Article 5, Section 7.B.3.c.Table.
2. Increase the maximum permitted curb cut length from 60 ft. to 83.51 ft. per Article 5, Section 7.B.3.c. Table.
3. Increase the maximum permitted number of driveways for a street frontage of 540 ft. from 3 to 4 per Article 5, Section 7.1.b.Table.
4. Decrease the minimum permitted distance between two driveways from 53.36 ft. to 35 ft. per Article 5, Section 7.B.1.d.

5. Reduce the minimum required distance the eastern driveway can be constructed from a projected right-of-way line on the non-continuous leg of a "T" intersection from 25 ft. to 0 ft. per Article 5, Section 7.B.2.b.
6. Reduce the minimum required distance the western driveway can be constructed from a projected right-of-way line on the non-continuous leg of a "T" intersection from 25 ft. to 0 ft. per Article 5, Section 7.B.2.b.

As per submitted plan to permit the construction of a building for academic use in an O-2 District.

File: 6-H-16-VA **Parcel ID: 108PF012**
Applicant: F.E. Trainer Construction Co.
Address: 1185 Keowee Avenue
Zoning: C-1 (Neighborhood Commercial) District
 2nd Council District

Variance Request:

Reduce the minimum required front yard setback for a ground sign from 10 ft. to 0 ft. per Article 8, Section 7.1.a.

As per submitted plan to permit the relocation of the on premise ground sign in a C-1 District.

File: 6-I-16-VA **Parcel ID: 106CC02010**
Applicant: Gary Smith, Southeast Commercial, LLC
Address: 6215 Enterprise Drive
Zoning: I-3 (General Industrial) District
 3rd Council District

Variance Requests:

1. Reduce the minimum required southeast front yard setback from 35 ft. to 7.5 ft. per Article 4, Section 2.3.2.E.2.
2. Reduce the minimum required southwest front yard setback from 35 ft. to 27.5 ft. per Article 4, Section 2.3.2.E.2.
3. Reduce the minimum required north side rear yard setback from 25 ft. to 5 ft. per Article 4, Section 2.3.2.E.4.

As per submitted plan to permit the replacement of a fire damaged building in an I-3 District.

OTHER BUSINESS

The next BZA meeting is July 21, 2016.

ADJOURNMENT

The meeting was adjourned at 6:06 pm.

Respectively submitted,

Angelia Rooks