



BOARD OF ZONING APPEALS

MINUTES

July 20, 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 July 20, 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.

CALL TO ORDER

Board Chairman Kristin Grove called the meeting to order at 4:00 pm.

ROLL CALL

Board members present were David Dupree, Kristin Grove, Daniel Odle, Don Horton, and Charlie Van Beke.

Others in attendance were Peter Ahrens, Building Official; Crista Cuccaro, Staff Attorney; Scott Elder, Zoning Chief; Mark Johnson, Engineering; Dan Kelly, MPC Deputy Director; Brandon Littlejohn, Zoning Inspector; and Angelia Rooks, Board Secretary.

APPROVAL OF MINUTES

Member Daniel Odle made a motion to approve the June 15, 2017 meeting minutes. It was seconded by member Don Horton. The Board voted 5-0 to **APPROVE** the June minutes.

OLD BUSINESS

File:	6-A-17-VA	Parcel ID: 093HB056
Applicant:	John Zimmerman	3 rd Council District
Address:	3343 Dewine Road	
Zoning:	O-1 (Office, Medical and Related Services)	

Appeal of the Building Official’s interpretation that the proposed use of the property is a hospital per Article 4, Section 2.2.1.C.2. and Article 2, Definitions in an O-1 District.

Peter Ahrens explained how he reached his determination that the facility met the standards and functions of a hospital. He clarified that comparisons to the state definition were irrelevant. The state defers to the city to regulate its land use. Only the City’s definition was in consideration. He cannot create new definitions for the City code. His role was to take the options presented to him, and make it fit. How the patients arrived at the facility did not change how the facility was used. Patients would stay at the facility for several days to receive medical treatment. From the options available for in-patient medical care, the definition for *hospital* was the best fit.

Crista Cuccaro briefly reviewed the legal and technical issues regarding this appeal request. The proposed facility had received UOR approval from MPC and City Council. The time period to appeal that decision through the Chancery Court had expired. She believed the applicant had vested rights under the Vested Rights Act of 2015. The BZA Board was hearing this appeal as a cautionary approach. If there was a question later about the Board's jurisdiction to hear this appeal, then that would be decided in court.

Jason Long, representing the applicant, said the facility did not meet the state's definition of hospital because its primary service was not medical care. It equally offered incarceration and detention services. It also was not accessible to the general public, only to individuals who would otherwise be in jail.

Speaking in favor of the appeal, Ben Koyle stated that the facility did not fit the character neighborhood, which was a mix of commercial and residential. He lived near the proposed facility site. The Board should also consider the previous use of the site (a church) in their decision, as well.

Speaking in opposition to the appeal, Matthew Knable stated that this facility would benefit individuals with addictions, and keep them from living on the streets or in jails where they would not receive the treatment they needed. It would not be out of place in the neighborhood, and would not attract too much traffic, like *Walmart*. He asked the Board to deny the appeal.

Speaking in opposition to the appeal, Arthur Seymour Jr., representing the Helen Ross McNabb Center, stated that it was too late to oppose the progress of the facility since MPC and City Council had already approved the UOR. He also repeated the City's position that the state's definition of hospital was irrelevant. Only the City's definition was in consideration.

In rebuttal, Mr. Long stated that *Walmart* was open to the public and this facility was not. This BZA appeal was filed when City Council was considering the UOR appeal, but he wasn't sure of the date. The proposed facility did not fit the state's definition of hospital. The City's code did not address this type of facility. It had elements of a halfway house, a jail, and a hospital. It could not be classified as any one of these facility types. He wasn't sure how they would be licensed and regulated, either by the Dept of Health or Dept of Corrections.

Crista Cuccaro stated for the record that this BZA appeal was filed on May 2, 2017. City Council made its determination for the UOR on April 25, 2017.

Jerry Vagnier, representing Helen Ross McNabb Center, stated that all the services provided would be medical services and licensed by the Tennessee Department of Mental Health and Substance Abuse Services.

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

Member Daniel Odle made a motion to deny the appeal. It was seconded by Chairman Kristin Grove. The Board voted 4-1 to **DENY** the appeal, upholding the Building Official's decision. Member Charlie Van Beke voted against the motion.

File: 6-C-17-VA
Applicant: Civil and Environmental Consultants Inc
Address: 1010 E. Jackson Avenue
Zoning: I-3 (General Industrial)

Parcel ID: 095AK019
6th Council District

Variance Requests:

1. Reduce the minimum required width of a perimeter parkway from 10 ft. to 0 ft. per Article 5, Section 7.A.5.b.1.
2. Reduce the minimum required drive aisle width for 90 degree parking from 26 ft. to 20 ft. per Article 5, Section 7.A.4.a.2.Table.

As per submitted plan to permit construction of a parking lot in an I-3 District.

Member Daniel Odle recused himself.

Charles Robinson, representing the applicant, was present. The hardship was the shape of the lot, an existing retaining wall, and the lot was covered in concrete. It operated as a foundry for about 100 years, a coal yard was onsite for several years, and it was located next to a railroad spur, which left significant contamination on the property. The EPA performed remediation work in 1998, but it was limited mostly to 3 small areas. The concrete on the site acted as a cap on the contaminated soil. He stated it was best to leave that barrier in place. KUB's plan was to minimize the disturbance to the site and layer it with asphalt.

Speaking in opposition, Mark Hines, stated that they should comply with the 10-foot setback on Willow and Jackson Avenue, and have landscaping because it was a pedestrian walkway. He developed the property adjacent to this project. He noted the site plan provided to the Board was an earlier version. He also stated that the EPA did not add the concrete cap, nor was there to protect the site. It was added illegally by the former owner over a period of three years. Aerial views of the property from 2011 showed 15 – 20 feet of green space on the Willow and Jackson sides. Mr. Hines provided a site map of EPA excavation work.

In rebuttal, Mr. Robinson confirmed that the site plan had changed. The difference was the entrance had been moved from Willow Avenue to Kentucky Street because it required less site work. However, it did not affect the variance requests. He provided a current site plan. The EPA did not add the concrete cap, but that was irrelevant. It prevented water from getting to the contaminated soil. EPA rules had changed since 1998. The levels of contamination found then would be actionable in 2017. Removing the cap would require remediation work. They would prefer to just pave over it.

Chairman Kristin Grove suggested using above ground planters instead. Mr. Robinson pointed out that it would create maintenance issues.

Member David Dupree made a motion to deny item 1 (width of a perimeter parkway). It was seconded by Chairman Kristin Grove. The Board voted 4-0 to **DENY item 1**.

Member Charlie Van Beke made a motion to approve item 2 (drive aisle width). It was seconded by member David Dupree. The Board voted 4-0 to **APPROVE item 2**.

File: 6-J-17-VA
Applicant: BET Investments Inc
Address: 0 Lake Avenue
Zoning: FD-CU-1 (Form District – Cumberland Ave)

Parcel ID: 108CH01801
1st Council District

Variance Requests:

1. Reduce the minimum side street parking setback from 10 ft to 5 ft per Article 4, Section 4, Lake Avenue District 4.2.3.A.2.F.
2. Reduce the minimum required number of parking spaces from 223 spaces to 176 spaces per Article 4, Section 4, Lake Avenue District 4.2.6.
3. Reduce the minimum facade wall offset depth from 4 ft to 2 ft on the 1st, 2nd, & 3rd floors per Article 4, Section 4, Lake Avenue District 4.2.3.A.3.E.
4. Reduce the required balcony extension from the vertical plane of the lot line at the alley elevation from 2 ft to 1 ft per Article 4, Section 4, Cumberland Avenue District, 4.2.4.C.1.
5. Reduce the minimum parking space width from 9 ft to 7 ft, 2 inches for 62 out of 176 spaces (35%) per Article 5, Section 7.A.4.a.2.
6. Reduce the minimum aisle width for 75 degree spaces with one-way traffic from 22 ft to 18 ft. per Article 5, Section 7.A.4.a.2.
7. Reduce the minimum module width for multilevel parking facilities with 90 degree spaces with parking on both sides of the aisle from 60 ft to 59 ft per Article 5, Section 7.A.4.d.1.
8. Reduce the minimum module width for multilevel parking facilities with 90 degree spaces with parking on one side of the aisle from 44 ft to 41 ft per Article 5, Section 7.A.4.d.1.
9. Reduce the minimum module width for multilevel parking facilities with 60 degree spaces with parking on both sides of the aisle from 55 ft to 54 ft per Article 5, Section 7.A.4.d.1.

As per submitted plan to permit the construction of an 8-story residential building in an FD-CU-1 District.

The staff noted that variance request item 6 (aisle width) was not required. It was withdrawn by the applicant.

Brad Brown, the applicant, and Arthur Seymour, Jr. were present. They submitted a summary of the variance requests. The hardships were topography, slope, and the combination of small lots with existing conditions. Parking was assigned based on car size. Without the balcony variance, they would have to eliminate the balconies completely.

Member Charlie Van Beke made a motion to approve the requests, except item 6. It was seconded by member Don Horton. The Board voted 5-0 to **APPROVE** the requests, except item 6 (aisle width), which was withdrawn.

NEW BUSINESS

File: 7-A-17-VA
Applicant: Andrew Edens
Address: 1700 N. Central Street
Zoning: C-3 / IH-1 (General Commercial / Infill Housing Overlay)

Parcel ID: 081KJ034
5th Council District

Variance Request:

Reduce the minimum required number of parking spaces from 38 spaces to 6 spaces per Article 4, Section 7.A.3.a.Table.

As per the submitted plan to permit a change of use to a retail lumber store in C-3 / IH-1 Districts.

Andrew Edens, the applicant, was present. He had 3 employees. Street parking was available.

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

File: 7-B-17-VA
Applicant: Tony Saffles
Address: 5508 Lonas Road
Zoning: O-3 (Office Park)

Parcel ID: 107IB01703
2nd Council District

Variance Requests:

1. Increase the maximum area permitted for a wall sign from 24 sq. ft. to 425 sq ft for “sign A” per Article 8, Section 11.5.b.1.
2. Increase the maximum area permitted for a wall sign from 24 sq ft to 88 sq. ft. for “sign B” per Article 8, Section 11.5.b.1.
3. Increase the maximum permitted ground sign height from 6 ft. to 8 ft. 1 in. per Article 8, Section 11.5.b.2.

As per submitted plan to permit a sign change-out at an existing business in an O-3 District.

Brandon Littlejohn clarified that none of the proposed signs would be illuminated as shown on the submitted drawings, neither internally nor externally. Illuminated signs were not allowed in this zone. There were existing sign variances for the current building signage.

Tony Saffles, the applicant, was present. The hardship was the new *Pilot-Flying-J* logo design. The proposed wall sign-A on the I-40 side would be smaller than the current signage. The wall “sign B” on the Lonas Road side could not be seen from the road. The higher monument sign would hide the brick structure so they would not have to remove it.

Brandon Parks, representing *Pilot-Flying-J*, was present. In the corporation’s assessment and review of the City’s code, only the logo should be measured, not the background imagery or cabinet of the sign. Therefore, they were reducing the signage area on the I-40 side of the building from 187 sf to 155 sf.

Speaking in opposition, Joyce Feld, stated that they did not have a hardship that’s required for a variance. She asked the staff to explain the difference between the 425 sf sign area in the variance request for sign-A, and the 155 sf sign area stated by the applicant. Brandon Littlejohn clarified that the applicant calculated a smaller number because he only measured the lettering, and not the entire sign, which included the background. If they only added lettering to the building, then 155 sf would be correct. But the image included a background, so the variance request of 425 sf for sign-A was accurate.

In rebuttal, Mr. Parks asked the staff to clarify the City code regarding sign illumination. Brandon Littlejohn stated that in the new sign code, no illumination is allowed in this zone. Crista Cuccaro clarified for the Board that the variances were for the size and height of signage only.

Member Charlie Van Beke stated that there was no hardship, and the new design could fit within the ordinance size requirements. He made a motion to deny the requests. It was seconded by member Don Horton. The Board voted 5-0 to **DENY** the requests.

File: 7-C-17-VA
Applicant: Paul Bush
Address: 3308 Forestdale Avenue
Zoning: R-1A (Low Density Residential)

Parcel ID: 070JA006
4th Council District

Variance Request:

Reduce the minimum required side yard setback for an accessory building from 5 ft. to 30 in. per Article 4, Section 2.1.2.D.2.b.

As per submitted plan to permit an accessory building in an R-1A District.

The staff received a request from the applicant to **POSTPONE** to the Aug 17, 2017 meeting.

File: 7-D-17-VA
Applicant: Hal Wilhoit
Address: 2718 N. Central Street
Zoning: I-3 (General Industrial)

Parcel ID: 081FU016
5th Council District

Variance Requests:

1. Reduce the minimum required rear yard setback from 25 ft to 15 ft per Article 4, Section 2.3.2.E.4.
2. Reduce the minimum required northwest and southeast side yard setbacks from 25 ft to 6.5 ft per Article 4, Section 2.3.2.E.3.

As per submitted plan to permit the construction of a warehouse in an I-3 District.

Seth Schweitzer, representing the applicant, was present. The hardships were the lot size and existing building.

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

File: 7-E-17-VA
Applicant: BHNP
Address: 2885 Tazewell Pike
Zoning: C-6 (General Commercial Park)

Parcel ID: 058ME004
4th Council District

Variance Requests:

1. Reduce the minimum required N. Broadway front yard setback from 25 ft to 2 ft per Article 4, Section 2.2.9.D.2.a.
2. Reduce the minimum required Tazewell Pike front yard setback from 25 ft to 9 ft per Article 4, Section 2.2.9.D.2.a.

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

Gary Norvell, the applicant, was present. The hardship was rezoning, and existing pavement in the setback. They were flood-proofing the building, raising windows, and replacing doors.

Member Daniel Odle made a motion to approve the requests. It was seconded by member Don Horton. The Board voted 5-0 to **APPROVE** the requests.

File: 7-F-17-VA
Applicant: Tyson Court, LLC
Address: 814 Tyson Street
Zoning: C-2 (Central Business)

Parcel ID: 094DP002
 6th Council District

Variance Request:

Reduce the minimum required 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 3-story residential building in a C-2 District.

Member Daniel Odle recused.

Faris Eid, the applicant, was present. He provided an aerial photo to the Board. Enforcing the setback would be out of character for the area, as the building would not be in alignment with other buildings; and the alternative was a parking variance. Joe Petre, one of the project developers, stated that this project would improve the area.

Member Don Horton made a motion to approve the request. It was seconded by Chairman Kristin Grove. The Board voted 4-0 to **APPROVE** the request. Member Daniel Odle recused.

File: 7-H-17-VA
Applicant: Sara Martin
Address: 1019 Eleanor Street
Zoning: R-1A / H-1 (Low Density Residential / Historic Overlay)

Parcel ID: 081MH013
 4th Council District

Variance Requests:

1. Reduce the minimum required rear yard setback from 5 ft to 0 ft per Article 4, Section 2.1.2.D.3.b.
2. Reduce the minimum required side yard setback from 5 ft to 0 ft per Article 4, Section 2.1.2.D.2.b.
3. Increase the maximum permitted lot coverage from 30% to 39% per Article 4, Section 2.1.2.D.6.

As per submitted plan to permit a detached garage in an R-1A / H-1 District.

The staff received a request from the applicant to **POSTPONE** to the Aug 17, 2017 meeting.

File: 7-I-17-VA
Applicant: Joel Hargis
Address: 4110 Central Avenue Pike
Zoning: R-2 (General Residential)

Parcel ID: 069PC013
5th Council District

Variance Request:

Reduce the minimum required northwest side setback from a residential district from 115.5 ft to 60 ft per Article 5, Section 20.B.2.a.

As per submitted plan to permit construction of a telecommunications tower in an R-2 District.

Joel Hargis, the applicant, was present. He represented the interests of his client, Verizon, which had a lease agreement with the church. He provided additional aerial photos to the Board. The hardship was the lot shape, specifically the width. This was the only area the church allowed the client to lease. The height of the tower was the shortest possible design to accomplish the client's goals. He had not applied for a UOR, yet.

Chairman Kristin Grove stated that she would be more comfortable if the tower were placed further from the residential area. Member Daniel Odle asked where he posted the variance sign. The applicant stated that he did not know he was responsible for posting the sign. He explained that he lived in another city and assumed that MPC would do it. MPC used to post the variance signs, but changed the process a few weeks ago. Crista Cuccaro clarified that signage was a courtesy only, and not a rule.

Chairman Kristin Grove made a motion to deny the request. It was seconded by member David Dupree. The Board voted 5-0 to **DENY** the request.

File: 7-J-17-VA
Applicant: Ward Land Surveying
Address: 4201 W. Martin Mill Pike
Zoning: C-3 (General Commercial)

Parcel ID: 123AG003
1st Council District

Variance Requests:

1. Reduce the minimum required Ogle Avenue front yard setback from 25 ft to 0 ft per Article 4, Section 2.2.6.E.1.
2. Reduce the minimum required W. Martin Mill Pike front yard setback from 25 ft to 0 ft per Article 4, Section 2.2.6.E.1.
3. Reduce the minimum required clear height for an awning extending to the curb line from 14 ft to 8 ft per Article 5, Section 6.B.1.b.i.2.

As per submitted plan to permit platting of the property with non-compliant buildings in a C-3 District.

Scott Elder explained that these were existing conditions, and the variances for items 1 and 2 were required for platting purposes. The violations were discovered during the survey process. Item 3 was for an existing awning.

Stephen Ward, the applicant, was present. Part of the property was unplatted. Platting was required to get a building permit.

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

OTHER BUSINESS

Norma Hubard spoke to the Board regarding the long-term impact of their decisions. She described a negative experience when she learned that the County BZA had granted her neighbor a setback variance from 15 feet to 1 foot a few years before she purchased the adjacent property. The neighbor was now building one foot from her home, which caused her to lose the privacy and enjoyment of her property, and possibly the value, which is contrary to the purpose of the setback ordinances. She appreciated that the Board had to make difficult decisions, and wanted them to know that their work was very important to the community.

The next BZA meeting is August 17, 2017.

ADJOURNMENT

The meeting adjourned at 6:36 pm.