

**CITY OF KNOXVILLE
BOARD OF ZONING APPEALS
MEETING MINUTES
September 17, 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 **September 17, 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 4:08 p.m.

Board members present were: Don Horton, Kristen Grove, Barbara Clark and Daniel Odle.

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

APPROVAL OF MINUTES

Board member Kristin Grove made a motion to approve the August minutes. The motion was seconded by Board member Barbara Clark. The Board voted 4-0 to **APPROVE** the August 20, 2015 minutes.

OLD BUSINESS

File: 7-E-15-VA

Applicant: Courtland Group

Address: 317 Ogden Street

Parcel ID: 094EF011

Zoning: C-3 (General Commercial)
6th Council District

Variance Requests:

1. Reduce the minimum required Ogden Street front yard setback from 25 ft. to 0 ft. per Article 4, Section 2.2.6.E.1.
2. Reduce the minimum required W. Magnolia Avenue front yard setback from 25 ft. to 0 ft. per Article 4, Section 2.2.6.E.1.
3. Increase the maximum permitted lot coverage from 75% to 77% per Article 4, Section 2.2.6.E.4.
4. Reduce the minimum number of required parking spaces from 44 spaces to 0 spaces per Article 5, Section 7.A.3.a.Table.

As per submitted plan to permit construction of a mixed use development in a C-3 (General Commercial) District, 6th Council District.

The applicant asked for a postponement prior to the meeting.

Board member Kristin Grove made a motion to postpone hearing the requests. The motion was seconded by Board member Daniel Odle. The Board voted 4-0 to **POSTPONE** hearing the request until the October 15, 2015 meeting.

File: 7-F-15-VA
Applicant: Ben Garlington, Architect
Address: 708 Washburn Road **Parcel ID: 107EE010**
Zoning: R-2 (General Residential) District
6th Council District

Variance Requests:

1. Reduce the minimum number of required parking spaces from 40 spaces to 30 spaces per Article 5, Section 7.A.3.a.Table.
2. Reduce the minimum lot area required for a church from 30,000 sq. ft. to 20,473.2 sq. ft. per Article 4, Section 2.1.6.D.5.f.
3. Reduce the minimum drive aisle width for 90 degree parking from 26 ft. to 21 ft. per Article 5, Section 7.A.4.a.2.Table.
4. Reduce the required side yard setback from 5 ft. to 2 ft. per Article 5, Section 7.A.2.c.

As per submitted plan to permit reconstruction of a church in an R-2 (General Residential) District, 6th Council District.

The applicant **withdrew** the variance application prior to the meeting.

File: 8-C-15-VA
Applicant: Terrence McDonough
Address: 1208 Kenyon Street **Parcel ID: 081LD014**
Zoning: R-1A/H-1 (Low Density Residential / Historic Overlay) District
4th Council District

Variance Request:

Increase the maximum permitted lot coverage from 30% to 43% per Article 4, Section 2.1.2.D.6.a.

As per submitted plan to permit demolition and reconstruction of an existing carport in an R-1A/H-1 (Low Density Residential / Historic Overlay) District.

Scott Elder, Zoning Chief, stated that the building is located in a historic overlay, and the Certificate of Appropriateness is included in the Board's packet.

Terrence McDonough, applicant, was present. He intended to upgrade the home, including the removal of a deteriorated car port, and building a new garage with an extended roof line.

No opposition was present.

Board member Daniel Odle made a motion to approve the request. It was seconded by Board member Kristen Grove. The Board voted 4-0 to **APPROVE** the request.

NEW BUSINESS

File: 9-A-15-VA
Applicant: Alicia McAuley, Michael Brady, Inc.
Address: 104 N. Seven Oaks Drive **Parcel ID: 132-02515**

**Zoning: SC-3 (Regional Shopping Center) District
2nd Council District**

Variance Request:

Increase the maximum permitted distance a canopy may extend into the required rear yard from 3 ft. to 16.38 ft. per Article 5, Section 6.B.1.ii.3.

As per submitted plan to permit construction of a canopy over an existing patio in an SC-3 (Regional Shopping Center) District.

Alicia McAuley, applicant, was present. She stated that the owner would like to cover the existing patio, which is a concrete pad, with a Rusco canopy. The patio is positioned at the side of the building, and at the rear of the property. They considered decreasing the width of the canopy, but that would leave part of the patio uncovered. The variance request does not conflict with the Windsor Square covenants and restrictions. The owner also occupies the adjacent property, but does not own it. There is no intention to one-lot the properties or connect the buildings. Ms. McAuley presented additional pictures of the patio area to the Board.

Board Chairman Don Horton asked the staff if an approval would be a step toward enclosing the patio. Peter Ahrens, Director of Plans Review, answered no. The zoning ordinance allowed only canopies to extend into the setback. If the space were enclosed, it would become part the structure and subject to different regulations.

No opposition was present.

Board member Daniel Odle made a motion to approve the request. The motion was seconded by Board member Kristin Grove. The Board voted 4-0 to **APPROVE** the request.

File: 9-B-15-VA
Applicant: The Historic Sherrill House Partnership
Address: 9320 Kingston Pike **Parcel ID: 132-02709**
Zoning: PC-1 / H-1(k) (Retail and Office Park / Historic Overlay (conditioned)) District
2nd Council District

Variance Request:

Reduce the minimum required drive aisle width from 26 ft. to 22 ft. for a parking lot with 90 degree parking per Article 5, Section 7.A.4.a.2.Table.

As per submitted plan to permit renovation of this historic structure in a PC-1/H-1(k) (Retail and Office Park / Historic Overlay (conditioned)) District.

Scott Elder, Zoning Chief, stated that the same variance was requested and approved by the Board last year, but there were site issues that required alterations to the parking design.

Jeff Beckett of Cannon & Cannon, representing the applicant, was present. The parking area between the historic house and the tree line is too narrow to meet the minimum drive aisle width. Since the variance request was approved last year, the parking design was extended toward Kingston Pike and to the rear of the historic house. This change of site plan required a new variance approval. The number of parking spaces and driveway width were not changed.

No opposition was present.

Board member Kristin Grove made a motion to approve the request. The motion was seconded by Board member Daniel Odle. The Board voted 4-0 to **APPROVE** the request.

File: 9-C-15-VA

Applicant: Ben Kershaw

Address: 937 N. Broadway

Parcel ID: 081MS004

Zoning: C-3 (General Commercial) District
4th Council District

Variance Request:

Reduce the minimum number of required parking spaces from 59 spaces to 5 spaces per Article 5, Section 7.A.3.a.Table.

As per submitted plan to permit a change of use to an eating and drinking establishment in a C-3 (General Commercial) District.

Scott Elder, Zoning Chief, stated that the variance request was submitted for an eating and drinking establishment; and advised that new drawings were submitted to the Board.

Ben Kershaw, applicant, was present. He stated that the business plan had changed since he learned that the building's close proximity (253 feet) to the Boys & Girls Club would prohibit the granting of a beer permit. Another location was chosen to open the "barcade" and this variance request was no longer needed. There are no confirmed plans to open a business at this site, but approval for the parking variance would assist with future business plans, or in the sale of the property.

Board Chairman Don Horton advised the applicant that if the Board granted a variance on a property classified as "mercantile," and the occupancy was changed later, then the variance would have to be reheard. Mr. Kershaw stated that he was told the parking variance was the first step to getting a change of occupancy approval.

Crista Cuccaro, Law Department, stated that parking values are based on the use of the property. If the use is unclear, then the Board is put in the peculiar position of approving a variance for an undetermined minimum parking requirement. "Occupancy" and "use" are defined and applied differently and may be the reason for the dilemma. A *variance* is related to the use; and *occupancy* is related to building codes.

Board Chairman Don Horton asked the applicant if he wanted the Board to vote on the request, as submitted, for a restaurant. Mr. Kershaw replied yes.

In opposition:

- Gary Tener of Broadway Carpets was present. He stated that granting this variance would be a detriment to his business and other businesses in the area. Mr. Tener submitted photos and letters to the Board. The aerial photos show no additional parking on Mr. Kershaw's property, forcing customers to park at the nearest place, which is Broadway Carpets located across the street. The letters were from neighboring property owners stating that they would not enter into parking lease agreements. He asked the Board to deny the request.

Board Chairman Don Horton stated that he would park across the street when he visited the food co-op (KCFC aka Three Rivers Market – the previous tenant at this location). He asked if there were parking arrangements with the co-op, and if so, what is different now. Mr. Tener described it as an "uncomfortable arrangement." On multiple occasions, he had to advise them

that their customers were blocking his parking lot, and would sometimes park in the middle of the street. He liked the tenants, but was happy to see the co-op move to a better location, where they could improve their business.

- Hollie Renfro of Knoxville Optical Supply was present. She stated that, unlike Mr. Kershaw, the other business owners with inadequate parking have parking agreements or leases with nearby property owners. Granting this variance would come at the expense of the adjacent property owners. An office use would be more suitable for the property than a retail use.

Board members agreed that any business in this building would have the same parking issues. A restaurant use is allowed in C-3 zoning. Small lots and inadequate parking are common for the area, and the Board has granted similar variances for other nearby properties. The Board can only make decisions based on the limitations of the property, not on policing the neighborhood.

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

File: 9-D-15-VA
Applicant: Berry Engineers, LLC
Address: 5517 Ball Camp Pike **Parcel ID:** 093AE00202
Zoning: C-3 (General Commercial) District
3rd Council District

Variance Requests:

1. Reduce the minimum number of required parking spaces from 212 spaces to 194 spaces per Article 5, Section 7.A.3.a.Table.
2. Increase the maximum permitted curb cut length from 60 ft. to 146 ft. per Article 5, Section 7.B.3.c.Table.

As per submitted plan to permit construction of a fueling center in a C-3 (General Commercial) District.

Benjamin Berry, applicant, was present. Also present were Arthur Seymour of Frantz, McConnell & Seymour LLP, and Todd Kimling of Polestar Development. The widening of Western Avenue and McKamey Road reduced the available parking area, making it too small to comply with the minimum parking requirements. The increased curb cut is needed because TDOT will permit only a right-in-right-out entrance from Western Avenue.

Board member Daniel Odle asked about the storm water detention. Mr. Berry said it's on a parcel at the northeast corner of the property.

No opposition present.

Board member Kristin Grove made a motion to approve the requests. The motion was seconded by Board member Barbara Clark. The Board voted 4-0 to **APPROVE** the requests.

File: 9-E-15-VA
Applicant: Stovers LLC, Holston Properties LLC
Address: 4505 Asheville Hwy **Parcel ID:** 0711D018
Zoning: C-6(k) (General Commercial Park (conditioned)) District
6th Council District

Variance Requests:

1. Reduce the minimum number of required parking spaces from 178 spaces to 97 spaces per Article 5, Section 7.A.3.a.Table.
2. Reduce the minimum required width of terminal islands from 5 ft. to 0 ft. per Article 5, Section 7.A.5.b.3.

As per submitted plan to permit reconfiguration of the existing parking and outdoor storage area in a C-6 (k) (General commercial Park (conditioned)) District.

Taylor Forrester and Josh McGill, representing the applicant, were present. In response to complaints regarding the outdoor retail display, the applicant requested rezoning from a C-3. MPC approved C-6 zoning, which increased the front yard setback and landscape buffering. The additional landscaping requirement has reduced the available parking area, and made it too small to comply with the minimum parking requirements. They were requesting 97 spaces, which is two-thirds more parking than they have experienced at peak times. The area is too small to comply with the terminal islands requirements.

Board Chairman Don Horton asked the staff for the required ratio between landscaping and parking areas. Mark Johnson, Engineering, answered that there were no specific ratios, just a general statement that landscaping is required.

No opposition present.

Board member Daniel Odle made a motion to approve the requests. The motion was seconded by Board member Barbara Clark. The Board voted 4-0 to **APPROVE** the requests.

File: 9-F-15-VA
Applicant: Brian Hann
Address: 3701 Sevierville Pike Parcel ID: 109KD001 &
Zoning: C-1 (Neighborhood Commercial) District
109KD00202
1st Council District

Variance Request:

Reduce the minimum number of required parking spaces from 33 spaces to 15 spaces per Article 5, Section 7.A.3.a.Table.

As per submitted plan to permit conversion of existing building for mixed use in a C-1 (Neighborhood Commercial) District.

Scott Elder, Zoning Chief, stated that the application was pending use-on-review approval.

Brain Hann, applicant, was present. Renovation plans include removing 16 “back out” parking spaces on Sevierville Pike and Lancaster Drive to make room for a sidewalk, bistro seating, and bike racks to attract more pedestrian traffic. The building is vacant, but he would like to have a retail tenant, like a bike shop. Mr. Hann has ownership interest in adjacent parcels, and plans to preserve the tree canopy.

Because the parking area extends beyond the property line, Board members asked Mr. Hann to one-lot the two parcels as a condition of approval. Mr. Hann agreed. The building permit and use-on-review were also conditioned on the same requirement.

No opposition was present.

Board member Kristin Grove made a motion to approve the request with conditions. The motion was seconded by Board member Barbara Clark. The Board voted 4-0 to **APPROVE** the request **CONDITIONED** on the use-on-review and one-lot approval.

File: 9-G-15-VA
Applicant: Karen Black-Cook and Jon Cook
Address: 4700 Treybrooke Lane **Parcel ID: 049HF009**
Zoning: R-1 (Low Density Residential) District
4th Council District

Variance Request:

Increase the maximum permitted height for an opaque fence in the required front yard from 3.5 ft. to 6 ft. per Article 5, Section 6.C.2.

As per submitted plan to permit construction of a 6 ft. high privacy fence in an R-1 (Low Density Residential) District.

Karen Black-Cook and Jon Cook, applicants, were present. The property is a corner lot, so the yard on the right side of the house has road frontage on Shannondale Road. Fencing was installed this summer around the left side of the house and back yard. They proposed installing the same 6 ft. vinyl privacy fence on the right side of the house (facing Shannondale Road), inside the tree line, to fully enclose their back yard and block traffic noise. The fence line would extend past the house and end at the 25 ft. front yard setback on Treybrooke Lane. Ms. Cook presented additional photos to the Board to show that the fence would not be visible through the tree line from Shannondale Road. Mr. Cook stated that the tree line was not full enough to block traffic noise; and the proposed fence would only be visible from Treybrooke Lane when exiting the subdivision. The Treybrooke Homeowners Association Advisory Committee reviewed the Cooks' fence proposal and issued a written approval.

In opposition:

- Jeanette Tucker, a neighbor on the adjacent property, was present. She stated that the Cook's home is the first one seen when entering the subdivision. In such a visible location, a 6 ft. white vinyl privacy fence in the front yard could depreciate property values. No other resident in the subdivision has a privacy fence in the front yard. The existing section of fence in the back yard was installed next to the tree line that borders the property. The trees are maintained by the HOA, and she believes the fence has damaged the health of the trees and may be the cause of current drainage issues. Ms. Tucker submitted photos to the Board.

Ms. Cook reviewed the photos presented by Ms. Tucker, and stated that the trees are on her property and she bears the expense of maintenance. She believes statements made about drainage issues are inaccurate.

Board member Kristin Grove stated that the proposed fence line would be too visible to anyone as they drive out of the subdivision. She proposed eliminating the extension into the Treybrooke front yard, stopping the fence line at the building edge of the home. Ms. Cook agreed.

Board member Kristin Grove made a motion to approve the request with a condition. The motion was seconded by Board member Daniel Odle. The Board voted 4-0 to **APPROVE** the request **CONDITIONED** that the fence cannot extend past the building edge of the home.

File: 9-H-15-VA
Applicant: Kelley Hicks (Johnson Architecture)
Address: 407 McConnell Street
Zoning: R-2 (General Residential) District
6th Council District

Parcel ID: 095BF023

Variance Requests:

1. Reduce the minimum number of required parking spaces from 106 spaces to 103 spaces per Article 5, Section 7.A.3.a.Table.
2. Increase the maximum permitted building height from 35 ft. to 37.79 ft. per Article 4, Section 2.1.6.F.
3. Increase the intensity of lot area use from 90 units on 141,000 sq. ft. to 90 units on 135,000 sq. ft. per Article 4, Section 2.1.6.D.5.
4. Increase the maximum permitted building height for an accessory structure from 15 ft. to 16.79 ft. per Article 4, Section 2.1.6.F.

As per submitted plan to permit construction of an attached residential development and pavilion in an R-2 (General Residential) District.

Kelley Hicks, applicant, was present. Her client, KCDC, is building a 3-story apartment building with 90 units. 84 of the units will be one-bedroom; and 6 will be two-bedroom units. The tenants will primarily be elderly and/or handicapped, so they anticipate low parking demand. The building is about 2.8 ft. over the maximum allowable height, but was designed as compact as possible without compromising the structural requirements. Future plans to widen Kenner Avenue for two-way traffic will reduce the site area to 135,000 sf. The covered pavilion space has been reduced, but to keep with the scale of the building, the roof is about 1.8 ft. over the maximum allowable height.

No opposition was present.

Board member Barbara Clark made a motion to approve the requests. The motion was seconded by Board member Daniel Odle. The Board voted 3-0 to **APPROVE** the requests. Board member Kristin Grove recused herself from hearing the request and did not vote.

File: 9-I-15-VA
Applicant: Merchants Retail Partners LLC
Address: 1644 Ailor Avenue
Zoning: C-4 (Highway and Arterial Commercial) District
016 & 6th Council District

Parcel ID: 094KL001 –
094KL015 –
094KL01601

Variance Requests:

1. Reduce the minimum required N. Seventeenth Street front yard setback from 50 ft. to 20 ft. per Article 4, Section 2.2.7.E.2.a.
2. Reduce the minimum required Euclid Avenue front yard setback from 35 ft. to 20 ft. per Article 4, Section 2.2.7.E.2.b.
3. Reduce the minimum lot area required for a self-storage facility from 2 acres to 1.51 acres per Article 5, Section 3.F.7.d.

As per submitted plan to permit the construction of a self-storage facility in a C-4 (Highway and Arterial Commercial) District.

Scott Elder, Zoning Chief, stated that a new site plan was submitted and the first two requests were revised after publication of the Board meeting. The revised requests were for lesser variances than were published, and therefore could be heard. The revisions are: 1) Reduce the setback on N. Seventeenth St. from 50 ft. to **45 ft.**; and 2) Reduce the setback on Euclid Avenue from 35 ft. to **28 ft.**

Mike Kelly and Danny Kirby, representing the applicants, were present. Mr. Kelly presented a summary of the project and variance requests. They are constructing a vertical storage building which will have a smaller building footprint, and require less driveway and parking space than a traditional storage building. They anticipate very low parking demand, and only one staff member on site. Variance requests are based on one-lot approval.

No opposition was present.

Board member Daniel Odle made a motion to approve the revised requests with a condition. The motion was seconded by Board member Kristin Grove. The Board voted 4-0 to **APPROVE** the revised requests **CONDITIONED** on one-lot approval.

OTHER BUSINESS

The next BZA meeting is October 15, 2015.

ADJOURNMENT

The meeting was adjourned at 5:55 p.m.

Respectively submitted,

Angelia Rooks, Board Secretary