

BOARD OF ZONING APPEALS

MINUTES

November 21, 2019 Meeting

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 November 21, 2019 meeting at 4:00 pm in the Circuit Court III Courtroom, 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. § 9-44-101, et seq.

CALL TO ORDER

Chairman Kristin Grove called the meeting to order at 4:02pm.

ROLL CALL

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

Others in attendance were Peter Ahrens, Building Official; DeAnn Bogus, Building Official; Bryan Berry, Building Official; Christina Magrans, Staff Attorney; Lisa Hatfield, Staff Attorney; Joshua Frerichs, Stormwater Engineering; Amy Brooks, Knoxville-Knox County Planning Services Manager and Juliana LeClair, Board Secretary.

MINUTES

Member Charlie Van Beke made a motion to approve the Re-Scheduled October 29, 2019 meeting Minutes. It was seconded by member Daniel Odle. The Board voted 4-0 to **APPROVE**.

OLD BUSINESS

File: 10-D-19-VA
Applicant: The 9 Group (Shailesh Patel)

Parcel ID: 094MG012,094MG011,
094MG010, 094MG008

Address: 1100/1104/1110/1114 Clinch Ave. 094MG007
Zoning: O-1 (Office, Medical and Related Services) District 1st Council District

Variance Request:

- 1) Reduce the required front yard setback in an O-1 zone on Twelfth St. from 25' to 5' (Article 4, Section 2.2.1.D.1.)
- 2) Reduce the required front yard setback in an O-1 zone on Clinch Ave. from 25' to 5' (Article 4, Section 2.2.1.D.1.)
- 3) Reduce the required front yard setback in an O-1 zone on Eleventh St. from 25' to 5' (Article 4, Section 2.2.1.D.1.)
- 4) Reduce the required side yard setback in an O-1 zone along the existing alley from 15' to 0' (Article 4, Section 2.2.1.D.2.)
- 5) Increase the required maximum lot coverage in an O-1 zone from 35% to 85% (Article 4, Section 2.2.1.D.5.b.)
- 6) Increase the height maximum in an O-1 zone from 45' to 85' (Article 4, Section 2.2.1.E.2.)
- 7) Reduce the minimum distance between a driveway and an intersecting street from 50' to 33.9' (Article 5, Section 7.H.2.a Table 5.)

As per plan submitted to build a new hotel and parking garage in the O-1 (Office, Medical and Related Services) District, 1st Council District.

Peter Ahrens advised this process was also going through the Planning Commission for a Use on Review. The variances that were requested were separate from that process.

Joshua Frerichs advised he had asked for additional information to verify that the driveway in variance #7 was safe. That information had not been provided yet and a postponement for variance #7 was suggested.

Applicant representative Ben Mullins was present and advised the scope of design had changed from their initial application that was filed in October, in an effort to make it less intensive for the property.

Mr. Mullins referenced the existing Four Points Hotel, immediately to the south of the proposed project, and advised that what they were proposing was less intensive than the Four Point Hotel project.

Applicant representative Mark Randolph with Randolph Architecture was present and walked the Board through the drawings and changes that were made for each of the setbacks.

Applicant Shailesh Patel was present and advised that as a hotel developer, location was central, and that it was very important to maintain great building design to appeal to visitors.

Member Charlie Van Beke stated his appreciation for the revisions that the applicant had made to the design plans.

Member Daniel Odle asked if the applicant had explored re-zoning. Mr. Mullins advised they had explored re-zoning with the newly adopted zoning ordinance. The Planning Department was reluctant to allow any type of commercial zoning to move west across Clinch Ave. because of the precedent that could potentially develop with more and more commercial development there. As a result, the applicant felt it was best to minimize the variances they would need.

Chairman Kristin Grove asked for an explanation of hardship. Mr. Mullins advised it was a small lot with an allowed use and there wasn't enough space to build the hotel without the setbacks.

Member David Dupree asked why the applicant couldn't just build a smaller footprint on the hotel and not need the setbacks. Mr. Patel advised with the actual size, the hotel would still be the second or the third smallest hotel downtown.

Chairman Kristin Grove made a motion to postpone variance #7 to the December meeting. It was seconded by member Charlie Van Beke. The Board voted 4-0 to **POSTPONE** variance #7.

Member Daniel Odle made a motion to approve variance #1 based on topography. It was seconded by member Charlie Van Beke. Members Daniel Odle, Charlie Van Beke and David Dupree voted to approve. Chairman Kristin Grove was opposed. The Board voted 3-1 to **APPROVE** variance #1.

Member Charlie Van Beke made a motion to approve variance #2. It was seconded by member Daniel Odle. Members Charlie Van Beke, Daniel Odle and David Dupree voted to approve. Chairman Kristin Grove was opposed. The Board voted 3-1 to **APPROVE** variance #2.

Member Daniel Odle made a motion to approve variance #3. It was seconded by member Charlie Van Beke. Members Daniel Odle, Charlie Van Beke and David Dupree voted to approve. Chairman Kristin Grove was opposed. The Board voted 3-1 to **APPROVE** to variance #3.

Member Charlie Van Beke made a motion to approve variance #4. It was seconded by member Daniel Odle. Members Charlie Van Beke and Daniel Odle voted to approve. Members Kristin Grove and David Dupree were opposed. Member Kristin Grove made a motion to deny. It was seconded by member David Dupree. Members Kristin Grove and David Dupree voted to deny. Members Charlie Van Beke and Daniel Odle were opposed. Motion was **DENIED (Failed vote 2:2)**.

Member Daniel Odle made a motion to approve variance #5. It was seconded by member Charlie Van Beke. Members Charlie Van Beke and Daniel Odle voted to approve. Members Kristin Grove and David Dupree were opposed. Member Kristin Grove made a motion to deny. It was seconded by member David Dupree. Members Kristin Grove and David Dupree voted to

deny. Members Charlie Van Beke and Daniel Odle were opposed. Motion was **DENIED (Failed vote 2:2)**.

Christina Magrans provided clarification on the failed votes. A motion to reconsider was an option for the Board if they wanted to have further discussion they could reopen a particular item. Or, in the future, if there was a different way to design things, the applicant could come back with another solution. Peter Ahrens advised the voting process would allow the applicant to know how to re-design.

Member Daniel Odle made a motion to approve variance #6. It was seconded by member Charlie Van Beke. Members Daniel Odle, Charlie Van Beke and David Dupree voted to approve. Member Kristin Grove was opposed. The Board voted 3-1 to **APPROVE**.

NEW BUSINESS

File: 11-A-19-VA
Applicant: Ryan Steffy
Address: 3701 Sevierville Pike

Parcel ID: 109KD00203
1st Council District

Zoning: C-1 (Neighborhood Commercial) District

Variance Request:

1) Reduce the minimum required setback for a detached sign in the C-1 zone from 10' from Right-of-Way to 7' (Article 8, Section 7.1.a)

As per plan submitted to place a sign on the Sevierville Pike side of a restaurant in the C-1 (Neighborhood Commercial) District.

Peter Ahrens confirmed that during the platting process the right of way was expanded by 10 ft. which reduced the applicant's lot size by 10 ft.

Applicant Ryan Steffy was present and advised the existing sign was up on the Lancaster side and they wanted to advertise on the intersection of Sevierville Pike and Lancaster.

Member David Dupree asked if both signs would be in compliance with the maximum allowable size. The applicant confirmed they would.

Member Charlie Van Beke asked if there was a sign originally on the existing pedestal and the applicant confirmed the pedestal was from the businesses that were there prior.

Member Charlie Van Beke made a motion to approve. It was seconded by member Daniel Odle. The Board voted 4-0 to **APPROVE**.

File: 11-B-19-VA
Applicant: Bob Alcorn Architect
Address: 2126 & 2128 Forest Ave.

Parcel ID: 094NR013, 094NR014
1st Council District

Zoning: C-1 (Neighborhood Commercial) District

Variance Request:

- 1) Reduce the minimum depth of the setback between the parking lot and Forest Ave from 25 feet to 19 feet (Article V, Section 7.C.2)
- 2) Reduce the minimum depth of the setback between the parking lot and Twenty Second St from 6 feet to 2 feet (Article V, Section 7.C.3)
- 3) Reduce the minimum depth of the setback between the parking lot and the alley from 6 feet to 4 feet (Article V, Section 7.C.3)
- 4) Reduce the minimum depth of the setback between the parking lot and the neighboring property from 15 feet to 5 feet (Article V, Section 7.C.4.b)

As per plan submitted to remove two dilapidated buildings to create parking for a neighborhood convenience market in the C-1 (Neighborhood Commercial) District.

Applicant Bob Alcorn was present and advised the site contained three separate buildings, side by side, which were originally produce warehouses. The buildings had been vacant and neglected for several years. The applicant wanted to put in a convenient store and the issue was parking which required variances.

Member Daniel Odle confirmed that there were a couple of different lots involved in the project. The applicant advised that was correct and that they were removing the lot line.

Chairman Kristin Grove made a motion to approve. It was seconded by member Charlie Van Beke. The Board voted 4-0 to **APPROVE**.

File: 11-C-19-VA
Applicant: Hatcher Hill Properties, LLC.
Address: 6408 Papermill Dr.

Parcel ID: 121AA006
2nd Council District

Zoning: C-4 (Highway and Arterial Commercial) District

Variance Request:

1) To reduce the required number of parking spaces for a 1,779 sq. ft. addition from seven to zero (Article V, Section 7.D Table)

As per plan submitted to construct an addition on an existing building in the C-4 (Highway and Arterial Commercial) District.

Peter Ahrens advised the variance request was strictly based on the proposed addition and did not take into consideration the existing structure.

Applicant representative Mary Katherine Wormsley was present and advised the addition was for a new ambulatory surgery center which would not take away any existing parking and it would not increase parking needs. The addition would be for a waiting area and pre and post-op area.

Member David Dupree asked if there would be an increase in employees. Ms. Wormsley advised there would not be an increase in employees, they would have the same number of physicians and same number of operating rooms.

Chairman Kristin Grove made a motion to approve based on the lot size, flood line and explanation of use. It was seconded by member Charlie Van Beke. The Board voted 4-0 to **APPROVE**.

File: 11-D-19-VA
Applicant: Salam Habibi
Address: 3603 Dance Ave.

Parcel ID: 107DC018
6th Council District

Zoning: R-2 (General Residential) District

Variance Request:

1) Reduce the front yard setback on Harry St. from 25 feet to 13.51 feet (Article 4, Section 2.1.6.D.1.a)

As per plan submitted to construct a new single family residence in the R-2 (General Residential) District

Peter Ahrens advised it was a corner lot and therefore under the current code it had two front yards.

Applicant representative William McGhee was present and advised the lot was 40 ft. wide and with the current setbacks they could only build a 13 ft. wide house.

Member Charlie Van Beke confirmed that it was currently a vacant lot.

Member Daniel Odle made a motion to approve based on the property being a narrow lot with two front yards. It was seconded by member David Dupree. The Board voted 4-0 to **APPROVE.**

File: 11-E-19-VA
Applicant: Richard & Charlotte Higginbotham
Address: 1612 Starmont Trl.

Parcel ID: 107GB012
2nd Council District

Zoning: R-1 (Low-Density Residential) District

Variance Request:

1) Reduce the sum of the combined side yards in an R-1 zone for the construction of a garage from 20' to 18.3' (Article 4, Section 2.1.1.E.2.a)

As per plan submitted to construct a garage addition in the R-1 (Low Density Residential) District.

Applicant Richard Higginbotham was present and advised it was a house next door to his that his son was going to move into. The current house did not have a garage so they wanted to expand on the left side of the house.

Chairman Kristin Grove clarified for the Board that the addition would trigger the need for the variance because of the distance on both sides to the property line.

Member Charlie Van Beke made a motion to approve. It was seconded by member Daniel Odle. Chairman Kristin Grove asked for an explanation of hardship.

Mr. Higginbotham advised it wasn't necessarily a hardship. Rather than making the garage smaller they wanted to make it as big as possible.

Members Charlie Van Beke and Daniel Odle voted to approve. Members Kristin Grove and David Dupree were opposed. Chairman Kristin Gove made a motion to deny. It was seconded by member David Dupree. Members Kristin Grove and David Dupree voted to deny. Members Charlie Van Beke and Daniel Odle were opposed. The application was **DENIED (Failed vote 2:2)**.

File: 11-F-19-VA
Applicant: Len Johnson/Carl Lansden
Address: 1805 Forest Ave.

Parcel ID: 094NC020
1st Council District

Zoning: R-2 (General Residential) District

Variance Request:

- 1) Reduce the front yard minimum required setback in an R-2 zone from 25' to 20' (Article 4, Section 2.1.6.D.1.a.)
- 2) Reduce the left side yard minimum required setback from 5' to 0' (Article 5, Section 6.D.6)
- 3) Reduce the right side yard minimum required setback from 7' to 5.33' (Article 5, Section 6.D.6)
- 4) Reduce the minimum required lot width in an R-2 zone from 75' to 33.33' (Article 4, Section 2.1.6.D.4.a.)
- 5) Reduce the minimum required lot area in an R-2 zone for a duplex from 9,000 S.F. to 4,433 S.F. (Article 4, Section 2.1.6.D.5.b.)
- 6) Increase the maximum lot coverage in an R-2 zone from 30% to 33.4% (Article 4, Section 2.1.6.D.6.)

As per plan to construct a two bedroom, 1 bath addition to each apartment of a duplex in the R-2 (General Residential) District.

Peter Ahrens advised the last legal use was a single family. It appeared that some previous owner created a duplex and during the remodel the applicant wanted to legalize the duplex. Mr. Ahrens advised variance #6 was based on the addition so that was something that was not pre-existing. Mr. Ahrens also advised that they were providing parking in Fort Sanders which was always a good thing.

Applicant Len Johnson an architect was present representing the owner Carl Lansden. Mr. Johnson advised that the previous owner actually owned the property twice and to the best of his recollection it had been a duplex since 1968. Mr. Johnson felt it was important to establish that it was pre-existing, non-conforming which was the reason they were asking for the variances and in the process of making it legal they wanted to add an addition to it.

Member Daniel Odle asked if the property was permitted as a duplex a long time ago. Mr. Johnson advised that as best they could establish, there was a building permit pulled but it was never executed. The existing residence had two electric meters and two water meters, the previous owner couldn't remember the exact date that that took place. The previous owner owned it back in the 60's and purchased it from a landowner who had it as a rental property back then and the best he could tell, 68' was the year it was probably established as a duplex. Member Daniel Odle confirmed that it was a very narrow lot and confirmed that the house was divided up and down and the second unit was down below and sloped down to the back. Mr. Johnson advised there was an alley in the back and that is what they were accessing for their parking.

Christina Magrans advised that the Board of Zoning Appeals did not have the power to issue opinions on the use, whether it was legally pre-existing or not. Ms. Magrans cautioned the Board in terms of where the discussion would ultimately go and that it was really within the purview of the Planning Commission.

Member Charlie Van Beke asked about the new two-story addition. Mr. Johnson advised the west wall of the building was actually on the property line and as best they could tell it never actually met the requirements of a fire wall. Mr. Johnson advised if they were to get the variances then they planned on renovating the whole thing because it would need to meet the requirements of 2018 IRC. Member Charlie Van Beke asked if it was renovatable and Mr. Johnson advised that it was.

Member Daniel Odle made a motion to approve and noted that it was a small lot and a hard lot to work with which applied to all of the variances they were asking for. Member Charlie Van Beke stated that that didn't necessarily mean it had to be a duplex. Christina Magrans advised the Board did not have the power to rule on whether or not it was a permitted use or if it had ever been legal or pre-existing, that was more within the purview of the Planning Commission. Chairman Kristin Grove seconded the motion. Members Daniel Odle and Kristin Grove voted to approve. Members Charlie Van Beke and David Dupree were opposed. Member David Dupree made a motion to deny. It was seconded by member Charlie Van Beke. Members David Dupree and Charlie Van Beke voted in favor of denial. Members Kristin Grove and Daniel Odle were opposed. The application was **DENIED** (Failed Vote: 2-2).

File: 11-G-19-VA
Applicant: Urban Engineering
Address: 104 & 114 E. Fifth Ave.

Parcel ID: 094DH004, 094DH00402, 094DH002
4th Council District

Zoning: C-3 (General Commercial) District

Variance Request:

- 1) Reduce the required front yard setback in a C-3 zone from 25' to 0' (Article 4, Section 2.2.6.E.1.)
- 2) At the eastern parking lot, reduce the minimum parking lot setback to right-of-way (Fifth Ave) from 6 feet to 0 feet (Article V, Section 7.C.3.)
- 3) At the eastern parking lot, reduce the minimum parking lot setback to right-of-way (Interstate) from 6 feet to 2.0 feet (Article V, Section 7.C.3.)
- 4) At the western parking lot, reduce the minimum parking lot setback to right-of-way (Interstate) from 6 feet to 4.0 feet (Article V, Section 7.C.3.)
- 5) Reduce the required number of parking stalls from 63 to 24 (Article V, Section 7.D.1.)

As per plan submitted to construct a 7,187 sq. ft. building and parking lot in the C-3 (General Commercial) District.

Peter Ahrens advised this was rezoned to C-2 in October therefore variance request #1 would go from (25 ft. – 0 ft.) which was a C-3 requirement, to (5 ft. to 0 ft.). It would be a lesser variance so it could be heard by the Board. Variance request #5 would be eliminated because the C-2 zoning district does not require parking.

Applicant Chris Sharp advised there was an existing building that fronted on E. Fifth that would be an existing non-conforming structure. A second building was being proposed to the east on a wedge shaped vacant lot which backed up on I-40.

Chairman Kristin Grove made a motion to approve based on the Geometry of the lot. It was seconded by member Daniel Odle. Chairman Kristin Grove amended the motion to accept the revisions previously stated. The Board voted 4-0 to **APPROVE**.

File: 11-H-19-VA
Applicant: Smee + Busby Architects
Address: 531 Vanosdale Ave.

Parcel ID: 120BD008
2nd Council District

Zoning: R-1E (Low Density Exclusive Residential) District

Variance Request:

- 1) Permit the extension and erection of an additional building for a pre-existing non-conforming use (Article 6.A.)
- 2) Reduce the minimum parking lot setback from the street line (property line) from 25 feet to 10 feet (Article V Section 7.C.2.)

As per plan submitted to construct an After School Facility in the R-1E (Low Density Exclusive Residential) District.

Peter Ahrens advised the application was heard by the Board previously, it was a lesser various and a non-conforming use and any expansion of a non-conforming use had to be shown compliance with.

Applicant representative Gregor Smee was present and advised of a miscommunication with his client who was under the impression last time that the 50% rule applied to his after school building, which it did not because it was brand new construction under the IBC not the existing building code. By going from a 40 x 40 after school care facility to a 50 x 50, it would increase the number of students that could be cared for from 40 – 70. The applicant picked up the additional parking that would be required.

Member David Dupree stated that Mr. Smee would need to speak to each of the eight requirements for an expansion of a non-conformity. Mr. Smee noted that all of the yard requirements were shown. The building could not be pushed back to make more room for parking so some parking was shown to the front. The lot coverage was at 13% and they were allowed up to 30%. They tried to keep the architectural style residential and in scale. The off-street parking was screened and a landscape plan as provided. The building had only one sign that was not-illuminated and was the same size as the sign that was already in place. The variance would be binding on the property regardless of succession and they had provided site/building plans and photographs of the surrounding properties.

Chairman Kristin Grove made a motion to approve. It was seconded by member Charlie Van Beke. The Board voted 4-0 to **APPROVE**.

File: 11-I-19-VA
Applicant: Michael Davis
Address: 931 Langford Ave.

Parcel ID: 095OB02701, 095OB02801, 095OB03004
095OB03003, 095OB03002
1st Council District

Zoning: SW-2 (River Road, Goose Creek ROW and Island Home Ave. District)

Variance Request:

Empire Block: 1) Reduce the minimum required building frontage at setback for a principal building in an FD-SW-2 district from 75% to 32.3% for Building "A" along Empire St. (Article 4 Section 4.1.3.C.4)

Dixie Block: 2) Reduce the minimum required building frontage at setback for a principal building in an FD-SW-2 district from 75% to 49.2% for Building "F" along Waterfront Dr. (Article 4 Section 4.1.3.C.4)

Claude Block: 3) Reduce the minimum required building frontage at setback for a principal building in an FD-SW-2 district from 75% to 69.6% for Building "H" along Waterfront Dr. (Article 4 Section 4.1.3.C.4)

Barber Block: 4) Reduce the minimum required building frontage at setback for a principal building in an FD-SW-2 district from 75% to 62% for building "K" along Waterfront Dr. (Article 4 Section 4.1.3.C.4)

As per plan submitted to construct a 230-unit multi-family development in the SW-2 (River Road, Goose Creek ROW and Island Home Ave.) District.

Peter Ahrens advised the applicant had been working with the Administrative Review Committee to look for compliance with the zoning regulations, they adjusted their design and the only variances requested had to do with the curvature of the road. Feedback had been received from the neighborhood and council members.

Applicant representative John Sanders with Sanders Pace Architecture was present and advised they had received the second round of comments from the South Waterfront Architectural Review Committee, they had already completed that for the third submission and would turn that in the next day which would cancel out any concerns. Mr. Sanders advised all of the variances generally dealt with the same issue. In the south waterfront they had maximum setbacks, not minimums, and there were very curvy roads along Waterfront Dr. The calculation for frontage was a percentage base, not just based on setback, it's based on percentage of open space and its relationship to the street from the building front. They were required to have 75% frontage and they were deficient in four areas. Deficient on one block at 62%, the next block at 69.6%, the next block 49.2% and then 32.3% all the way to Empire. They were dealing with the strange curvature of the road and some orthogonal buildings. The areas that were left were heavily landscaped. The South waterfront district required quite a bit of landscaping as well as the right-of-way construction that would be done as part of the project. The right-of-way

construction dealt with on-street parking, the buffer areas between that parking and the sites and building areas. The applicant was providing 268 parking spaces on-site in addition to 104 spaces on parallel sites, which would create 372 parking spaces for the 230-unit development. The goal was to maximize parking in an effort to minimize the impact on the neighborhood. Some parking was being provided under buildings to conceal it. The applicant would exceed their open space per block which would include green space and parking islands. Mr. Sanders stated the hardship was the irregular lots that were created by Waterfront Dr.

Several neighborhood residents spoke in opposition and requested a postponement so that the South Knoxville community would have time to determine if the requests were injurious to the neighborhood.

Applicant representative Sean Chalmers with Dominion Group spoke in rebuttal and stated that they had presented to the neighborhood in August. They attempted to connect with the neighborhood president and tried to communicate and schedule meetings.

Chairman Kristin Grove asked if the applicant would be opposed to postponing to the December BZA meeting in the interest of the concerns expressed by the neighborhood. Mr. Chalmers advised that they would be fine with that, he believed that the issues the neighborhood had were not related to the variance requests but they could wait and postpone to the December meeting.

Chairman Kristin Grove made a motion to postpone to December. It was seconded by member David Dupree. The Board voted 4-0 to **POSTPONE**.

ADJOURNMENT

The meeting adjourned at 5:18pm.

OTHER BUSINESS

The next BZA meeting is December 19, 2019.