



## BOARD OF ZONING APPEALS

### MINUTES

Re-Scheduled March 26, 2019

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 Re-Scheduled March 26, 2019, 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. § 9-44-101, et seq.*

### **CALL TO ORDER**

Chairman Kristin Grove called the meeting to order at 4:03p.m.

### **ROLL CALL**

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

Others in attendance were Peter Ahrens, Building Official; Scott Elder, Zoning Chief; 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.

### **SPECIAL CIRCUMSTANCES**

City Staff Attorney Lisa Hatfield approached the podium and acknowledged the passing of Arthur Seymour Jr. Member David Dupree made a motion to dedicate the meeting to the memory of Arthur Seymour Jr. It was seconded by member Daniel Odle. The Board voted 5-0 to **APPROVE**.

### **MINUTES**

Member Charlie Van Beke made a motion to approve the February 21, 2019 minutes. It was seconded by member Daniel Odle. The Board voted 5-0 to **APPROVE**.

## **SPECIAL MOTION**

Chairman Kristin Grove made a motion to move 3-J-19-VA to the top of New Business so that it could be heard in conjunction with another variance request from the same owner of an adjoining property. It was seconded by Member Daniel Odle. The Board voted 5-0 to **APPROVE.**

## **OLD BUSINESS**

**File:** 02-C-19-VA  
**Applicant:** Rainier Services, LLC  
**Address:** 2921 Pershing St.  
**Zoning:** I-3 (General Industrial) District

**Parcel ID:** 081CM001  
5<sup>th</sup> Council District

### **Variance Request:**

- 1) Reduce north side yard setback at railroad from 25 ft. to 7 ft. (Article 4, Section 2.3.2.E.3)
- 2) Reduce south side yard setback from 25 ft. to 5 ft. (Article 4, Section 2.3.2.E.3)
- 3) Reduce rear setback from 25 ft. to 6 ft. (Article 4, Section 2.3.2.E.4)

As per plan submitted to construct a 4,800 sq. ft. warehouse and office space in the I-3 (General Industrial) District.

Peter Ahrens advised it was a smaller, Industrial zoned property and the Plans Review and Inspections staff questioned whether there was another reasonable use of the property based on its size and zoning.

The applicant David Drozhzhun was present and advised the lot size was a quarter of an acre, setback for the front was 35 ft., 25 ft. for the back and both sides which would limit the possible building size to 2,100 sq. ft. The applicant could not find a possible use for what the lot could be used for with such small square footage.

The current President of the Oakwood Lincoln Park Neighborhood Association, Deborah Thomas, was present to speak in opposition. Ms. Thomas advised the property was deep within the residential portion of the neighborhood, abutting the railroad tracks. The area is zoned industrial because of the railroad tracks. Atlantic Ave. is a Parent Responsibility zone and Ms. Thomas' Board had been lobbying for a sidewalk with construction to begin leading down to the bus lines. Ms. Thomas advised the proposed building would be big and would face the residential buildings on Atlantic with no real screening or landscaping.

David Drozhzhun advised they could provide screening if that was an issue and that all of the properties surrounding his property were industrially zoned and they would not be using any full 18-wheeler sized trucks.

Ms. Thomas added that there was no real, valid hardship.

Member Don Horton asked what the intended use was for the building. The applicant advised the building was for owner-occupied warehouse space, no tenants. Member Daniel Odle asked if the applicant could build a warehouse as a 2,800 sq. ft. structure vs. a 4,800 sq. ft. structure. The applicant advised they could but at 2,800 sq. ft. they would have no use for it and no one else would have a use for it. Member Daniel Odle advised that that statement was speculative and that some people could need small warehouse space. Member Daniel Odle asked if the applicant had done research to determine how big of a structure they could fit on the lot before they bought the property. The applicant advised he had not.

Chairman Kristin Grove stated that she felt the lot was buildable and by not granting the variances the Board would not be denying the applicant reasonable use of the land. With that being said, Chairman Kristin Grove made a motion to deny. It was seconded by member Don Horton. Member Daniel Odle advised that for him it was border line because it was a small lot in an industrial zone and that the Board does make adjustments on new build construction from time to time in order to allow a build to work to a property based on conditions.

Members David Dupree, Kristin Grove and Don Horton voted in favor of denial. Members Daniel Odle and Charlie Van Beke were opposed. The Board voted 3-2 to **DENY**.

**File:** 02-G-19-VA  
**Applicant:** 1410 Boyd, LLC  
**Address:** 1410 Boyd St.  
**Zoning:** R-1A (Low Density Residential) District

**Parcel ID:** 094FP018  
6<sup>th</sup> Council District

**Variance Request:**

- 1) Reduce front yard setback from 25 ft. to 8.5 ft. (Article 4, Section 2.1.2.D.1.a)
- 2) Reduce required parking spaces from 2 to 0 (Article 5, Section 7.D.1 Table 1)

As per plan submitted to construct a new detached house in the R-1A (Low Density Residential) District.

Scott Elder advised it was a carry-over from the previous month. It was a house that began as a general repair, the applicant continued to work on it and it came to a point where the City considered it new construction and the applicant would have to meet the standards of a newly constructed house.

The applicant Bentley Marlow was present and advised it was a small, old lot of record, less than 43 ft. wide sitting approximately 4 ft. higher than the sidewalk grade with a width and grading problem in cutting a driveway. The original house had an enclosed front porch which brought the house about 3.5 ft. within the sidewalk edge. The applicant removed the old front porch and will stay within the original footprint of the house.

Member Charlie Van Beke asked if the lack of a driveway was consistent throughout the neighborhood and the applicant advised that very few properties in that neighborhood have a driveway. Member Don Horton asked what the setbacks were for the other houses on the street. The applicant advised that according to his surveyor the house to the north was 15 ft. to the edge of the sidewalk, the house next to that had a reduced setback and the corner house was 4 ft. 8 in. off of the sidewalk on Boyd and 5 ft. 6 in. off of the sidewalk on Douglas. The applicant advised he was the owner of all of those properties.

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

## **NEW BUSINESS**

**File:** 03-J-19-VA  
**Applicant:** 1408 Boyd, LLC  
**Address:** "0" Boyd St.  
**Zoning:** R-1A (Low Density Residential) District

**Parcel ID:** 094FP020  
6<sup>th</sup> Council District

### **Variance Request:**

- 1) Reduce the minimum required front yard setback from 25 feet to 8 feet (Article 4, Section 2.1.2.D.1.a)
- 2) Reduce the minimum number of required parking spaces from 2 spaces to 0 spaces (Article 5, Section 7.D.1.Table 1)

As per plan submitted to construct a single family dwelling in the R-1A (Low Density Residential) District.

Applicant Bentley Marlow was present and advised it was a small lot, less than 33 ft. wide which caused a width constraint when trying to cut in a driveway, no alley access and a grade difference of approximately 4 ft. above the sidewalk grade. It was a long skinny lot and would have to be a long skinny house so the closer it could be to the road the more usefulness would be provided for the backyard. The applicant quoted setbacks from related application 2-G-19-VA.

Member Charlie Van Beke made a motion to approve. It was seconded by member Don Horton. The Board voted 5-0 to **APPROVE**.

**File:** 03-A-19-VA  
**Applicant:** Bethel African Methodist Episcopal Church  
**Address:** 2460 Parkview Ave.  
**Zoning:** R-2 (General Residential) District

**Parcel ID:** 082OG017  
6<sup>th</sup> Council District

**Variance Request:**

- 1) Reduce the required Parkview Ave. front yard setback from 10 ft. to 5 ft. (Article 8, Section 7.1.a)
- 2) Reduce the required Chestnut St. front yard setback from 10' to 6' (Article 8, Section 7.1.a)

As per plan submitted to allow a new ground sign in the R-2 (General Residential) District.

Scott Elder advised it was a sign setback request for an existing church who was installing a new sign.

Member David Dupree recused himself.

The applicant Reverend Lee Russell Brown Jr. was present and advised that the church recently moved back to the property. They were at a rental property and had a sign on that property. When they moved back to their original property they brought the sign with them. The 10 ft. setback from both property lines on Chestnut and Parkview, because of the size of the sign, would cause them to put one side of the sign flush against the building so they requested a modification on the setback.

Chairman Kristin Grove stated that she had previously asked Traffic Engineering if they had any concerns for vehicular sight lines for that corner and Traffic Engineering said they did not.

Member Charlie Van Beke asked if the sign would be visible from both streets and the applicant advised it would. Member Don Horton asked if the 5ft. dimension was from the back of the sidewalk. The applicant advised the building was right on the property line.

Member Daniel Odle advised that the location of the present structure created a hardship and he made a motion to approve. It was seconded by member Don Horton. The Board voted 4-0 to **APPROVE**.

**File:** 03-B-19-VA  
**Applicant:** Kenny Boatman  
**Address:** 6600 Jim Sterchi Rd.  
**Zoning:** C-6 (General Commercial Park) District

**Parcel ID:** 05714904  
5<sup>th</sup> Council District

**Variance Request:**

- 1) Reduce the south side yard building setback from 20 feet to 11.97 feet (Article 4, Section 2.2.9.D.2.b.)
- 2) Reduce the east rear yard building setback from 60 feet to 2.08 feet (Article 4, Section 2.2.9.D.2.c.)
- 3) Reduce the east rear yard landscaping strip from 15 feet to 2.08 feet at area directly behind

existing building (Article 4, Section 2.2.9.E.2.)

As per plan submitted to construct a building on existing slab remaining from fire damage in the C-6 (General Commercial Park) District.

Peter Ahrens advised the setback variances were associated with the balance of the building that remained after a fire and it was a matter of legalizing what was already in place.

Will Robinson, the applicant representative, was present and advised it was an existing building that suffered a catastrophic fire and because of that the project was considered new construction.

Applicant Kenny Boatman was present and advised they were going to put the same building back on the same footprint.

Member Charlie Van Beke confirmed that what was going to be built back did not require variances, it was the corners of the two buildings that didn't burn down that required the variances. The applicant advised that everything would remain the same they would just add the metal part of the warehouse that was damaged.

Member Charlie Van Beke made a motion to approve. It was seconded by member Don Horton. Chairman Kristin Grove requested member Charlie Van Beke clarify his motion. Member Charlie Van Beke stated that the variance he moved to approve did not affect at all the new building that would be built there. The variance he moved to approve would affect only the two existing buildings shown on the drawing that were already encroaching. Chairman Kristin Grove and member Daniel Odle confirmed or the applicant that the motion to approve applied to variances 1 and 3. Peter Ahrens clarified that the City would make sure the applicant landscaped the 15 ft. wide landscape buffer where there was 15 ft. of space.

The Board voted 5-0 to **APPROVE**.

**File:** 03-C-19-VA  
**Applicant:** Tru by Hilton/Pratt Partners  
**Address:** 5418 Pratt Rd.  
**Zoning:** O-1 (Office, Medical and Related Services) District

**Parcel ID:** 068EC02601  
5<sup>th</sup> Council District

**Variance Request:**

- 1) Increase the maximum square footage of a wall sign in an O-1 zone from 24 sq. ft. to 62.6 sq. ft. (Article 8, Section 11.5.b.1)
- 2) Increase the maximum overall height of a monument sign from 6 ft. to 10 ft. (Article 8, Section 11.5.b.2)

As per plan submitted to install signage for Hilton tru brand in the O-1 (Office, Medical and Related Services) District.

Scott Elder advised it was a new hotel in the O-1 zone which had a restriction on wall signage with maximum of 24 sq. ft. and 6ft. tall for a ground sign. The variances were asked for the area to be increased on the wall sign and the height of the ground sign to be increased.

Ben Mullins, the applicant representative, was present and advised the parcel had previously been rezoned to Office by Arthur Seymour with this development in mind. The entire parcel was not zoned Office, just a portion was zoned O-1, perpendicular to Pratt Rd. The reason for the re-zoning was not only to put the hotel on the property but also to minimize the impact. With Commercial to the east and to the south there was residential to the west, the zoning served as more of a buffer from the more intensive commercial zones. The only things that would not fit on the O-1 zone that they wanted to do were the two signs in question.

Mr. Mullins advised of a slope to the southeast between the commercial property which sloped down from the property line to the back paved, loading area for the building. On that slope were several old, mature trees and those trees were what was causing a problem with the signage. The applicant had requested the minimum recommended signage from the Tru by Hilton brand. It was necessary not only to meet the minimum but to overcome the visibility issues created by the tree line along the hill. The applicant submitted supplemental photographs for the record to show how the line of trees blocked the hotel and covered the area where the sign was. Mr. Mullins advised a guest would be right up on the hotel before they could see the signs because of the topography and vegetation. Mr. Mullins pointed out that the property to the south and east was zoned C-4 with a hotel across the street where this type of signage would be allowed. Although the applicant's property was not zoned C-4, it was mentioned to show that the applicant's sign would be in conformity with the neighborhood itself and that the signs would not face the residential.

Member Daniel Odle asked who owned the trees. Mr. Mullins advised the trees were on the other property and they had no control of the trees. Member Daniel Odle asked about an increase of topography. Mr. Mullins had not made calculations but pointed out that the lines on the topography map were fairly close together which indicated a fairly steep slope. The trees were planted up on the slope itself which exacerbated the visibility problems.

Member David Dupree asked if the applicant had spoken to the neighbor about the trees. The applicant Edward Smith was present and advised of a limited conversation with the neighbors regarding cutting down part of the trees for the KUB pole line. The applicant advised he loved the trees and would hate to see them cut down. The preference was to have it so that you could at least see part of the sign coming on Merchant Dr. and up Pratt St.

Chairman Kristin Grove asked the applicant to confirm that the submitted signage was the Brand's smallest available signage. The applicant advised the signage was their standard and if it was disapproved they'd have to go back to them and tell them they were doing some different. Mr. Smith advised he imagined they would probably approve it because it was a zoning issue but that their preference would be that the property in question would have the same signage as the other two that were being built in Knoxville.

Chairman Kristin Grove asked if the other two were in a different zone. Mr. Smith advised one was in Turkey Creek and one was by the airport. Scott Elder advised that the one in Turkey Creek was in a different zone, C-6, against the Interstate.

Member Daniel Odle advised that variance 2 from his perspective was not a big variance in comparison to the topography and that granting that variance seemed very reasonable based on the topography. The Board has been very hesitant to grant many exceptions to the sign ordinance but when there was a legitimate reason to he didn't see a reason not to considerate it. The topography issue was a reason and the applicant couldn't cut down the neighbor's trees.

Member Charlie Van Beke asked how the wall sign was measured. Scott Elder advised it was the total diameter and all the way down to the bottom of the Hilton, the City staff squared it off and boxed it so that the sign was inside a rectangle. Peter Ahrens advised that was standard for how the City measured signs.

Member David Dupree advised that he agreed with the topography issue and although the vegetation did seem to have a possibility of remediation, at least it did with KUB involved, but without KUB involved they did need some vegetation out there. Member David Dupree made a motion to approve. It was seconded by member Don Horton. Members David Dupree, Daniel Odle, Charlie Van Beke and Don Horton voted in favor. Chairman Kristin Grove voted to oppose. The Board voted 4-1 to **APPROVE**.

**File:** 03-D-19-VA  
**Applicant:** Design Innovation Architects  
**Address:** 835 N. Central St.  
**Zoning:** C-3 (General Commercial) District

**Parcel ID:** 094DQ032  
4<sup>th</sup> Council District

**Variance Request:**

1) Increase the maximum permitted lot coverage from 75% to 86.5% (Article 4, Section 2.2.6.E.4)

As per plan submitted to construct a covered balcony on an existing building in the C-3 (General Commercial) District.

Peter Ahrens advised it was the Dobbs building on north central and the applicant was requesting an increase in lot coverage. Through the course of the proposed construction the applicant would remove a portion of the building which would decrease the lot coverage but then add additional space on.

Member Daniel Odle recused himself.

The applicant Harold Doughty II was present and advised the building was built in 1921. When it was built it exceeded the current limitations on the area coverage. The applicant was proposing to reduce the amount of area coverage, removing a shed roof on the southwest portion of the building, but it would still exceed the current limitations.

Chairman Kristin Grove asked the applicant to advise the status of historic zoning. The applicant advised H-1 historic overlay had approved the design. Amy Brooks advised it was



approved on February 21<sup>st</sup> and would be heard on April 9<sup>th</sup> by City Council. Amy Brooks clarified that HZC did not review the design; they only reviewed the H-1 request.

Chairman Kristin Grove advised she did not feel a true hardship had been presented in the application. The applicant advised that even if the ramp that was added in the mid 40's was removed it would still exceed and a part of the building would have to be removed for it to be under the 75% lot coverage.

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

**File:** 03-E-19-VA  
**Applicant:** Brantley Basinger  
**Address:** 2230 Chapman Hwy.  
**Zoning:** FD (Form District) SW-6 (Henley Gateway) Districts

**Parcel ID:** 109AK013  
1<sup>st</sup> Council District

**Variance Request:**

- 1) Reduce the required Sherrod Road building frontage at setback from 50% to 0% (Article 4.1.3.G.4.)
- 2) Increase the minimum required front setback on Sherrod Road from 0 feet to 70.06 feet. (Article 4.1.3.G.4)
- 3) Increase the maximum permitted lot size from 3 acres to 7.16 acres (Article 4.1.3.G.4)
- 4) Increase the maximum permitted side setback from 25 feet to 37.46 feet on the northern property line (Article 4.1.3.G.4.)
- 5) Increase the maximum permitted side setback from 25 feet to 100.35 feet on the southern property line (Article 4.1.3.G.4)
- 6) Reduce the minimum required rear yard setback from 3 feet to 1 foot on the western property line (Article 4.1.3.G.4)
- 7) Increase the maximum permitted driveway width for two way traffic from 26 feet to 36 feet (Article IV Section 4.1.3.G.7.g.i)

As per plan submitted to construct apartment buildings, clubhouse and parking in the FD (Form District) SW-6 (Henley Gateway) Districts.

Peter Ahrens advised it was in the South waterfront, south of the railroad tracks. There were several setback requests, 1 and 2 went hand in hand. If 1 were to be approved then 2 would become irrelevant. It was a unique property with unique zoning.

The applicant representative Aarron Gray was present and advised the majority of the variances dealt with the unique topography of the old Kerns building in the South waterfront area. Because of the slope on the site the buildings had to be pushed further off the property lines. Variance 7 was in order to have a wider driveway to accommodate traffic.

Chairman Kristin Grove asked Mr. Gray to provide information on the process with TDOT for the driveways. Mr. Gray advised the traffic study had been submitted as part of the South waterfront review and had gone to TDOT for review as well. The final application for the driveway would not be submitted until construction plans were done and they would approve a Right of Way permit at that time for the actual driveway cut.

Chairman Kristin Grove asked Joshua Frerichs if it was too early to be looking at a driveway variance. Joshua Frerichs advised it could be. Mr. Gray advised that even if the variance was approved and TDOT wasn't comfortable with it during the Right of Way process then they wouldn't give permission to build. Mr. Gray advised that as part of a study that was done, the driveway level of service was an F and D for the access based only on the exit portion. Going down to 2 lanes would be even worse.

Member Don Horton asked how the applicant planned to deal with the topography and control the water. Mr. Gray advised they tried to place the buildings generally on the part of the site that had been cut in already with a flatter part on top. The apartment buildings would have a wall in the front facing out toward Kerns and a wall in the back that was cut into the hillside in an effort to not gash the hillside going back up to Sherrod Rd.

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

**File:** 03-F-19-VA  
**Applicant:** Allen Sign Company/Lazy Days  
**Address:** 835 Huckleberry Springs Rd.  
**Zoning:** C-4 (Highway and Arterial Commercial) District

**Parcel ID:** 07302306  
4<sup>th</sup> Council District

**Variance Request:**

1) Increase the maximum overall height of a ground sign from 35 ft. to 60 ft. (Article 8, Section 11.6.c.table)

As per plan submitted to install detached ground sign in the C-4 (Highway and Arterial Commercial) District.

Scott Elder advised it was a sign request for an existing RV Center at Strawberry Plains Pike. According to the City, if the head of the existing sign is taken off it is then, in effect, a new sign.

The applicant Tom Allen was present and advised Lazy Days RV wanted to remove then reduce the size of the sign head but maintain the elevation due to trees along the interstate which blocked the line of site.

Member Charlie Van Beke made a motion to approve. Member David Dupree asked who the trees belonged to and the applicant advised they belonged to the State of Tennessee. Chairman Kristin advised there was a motion and without a second that motion would die. Member Daniel Odle advised he had trouble finding a hardship and that trees and landscaping

didn't fall under justification for granting a variance. Member Daniel Odle made a motion to deny. Chairman Kristin Grove advised the first motion died due to no second. The new motion to deny was seconded by member David Dupree. The Board voted 5-0 to **DENY**.

**File:** 03-G-19-VA  
**Applicant:** Mark A. Bialik  
**Address:** 4001 Middlebrook Pike  
**Zoning:** C-6 (General Commercial Park) District

**Parcel ID:** 093KB002  
6<sup>th</sup> Council District

**Variance Request:**

- 1) Increase the maximum allowable driveway width for a use serving a substantial number of large trucks from 40 feet to 73.79 feet (Article V Section 7.H.3.c. Table 7)
- 2) Increase the maximum allowable curb cut width for a use serving a substantial number of large trucks from 90 feet to 126.55 feet (Article V Section 7.H.3.c. Table 7)

As per plan submitted for a wider curb cut to allow for semi-truck entrance and exit in the C-6 (General Commercial Park) District.

Joshua Frerichs advised the variance was for a truck terminal, asking for a wider curb cut and driveway allowing semi-trucks entering and exiting room to operate. The applicant had submitted a truck turning template and a traffic impact study. City Engineering felt that those two items didn't support the need for the variance. The truck turning template showed a need for much less room than what was being asked for and the traffic impact study showed an a.m. peak traffic of 5 trucks entering the site per hour and one leaving and a p.m. peak of two entering the site and 5 leaving per hour.

The applicant Mark Bialik was present and advised the reason for the variance was so that trucks wouldn't collide when they did enter and exit at the same time. The truck turning radiuses showed that without the requested width the trucks would end up driving over curbs and landscaping to avoid each other.

Member Daniel Odle asked Joshua Frerichs to further explain the Engineering Department's position. Joshua Frerichs advised that what the applicant was showing was not required. There are not a lot of trucks coming in and out at the same time and the amount of room they need is far less than what they were asking for.

The applicant advised there was nothing currently on the property and that it was a proposed development.

Member Daniel Odle made a motion to approve. It was seconded by Charlie Van Beke. Members Daniel Odle, Charlie Van Beke, Don Horton and David Dupree voted to approve. Chairman Kristin Grove voted to oppose. The Board voted 4-1 to **APPROVE**.

**File:** 03-H-19-VA  
**Applicant:** Clear Springs II, L.P.  
**Address:** 1716 Merchant Dr.  
**Zoning:** R-1A (Low Density Residential) District

**Parcel ID:** 080CA00303  
5<sup>th</sup> Council District

**Variance Request:**

- (Parking Lot Dimensions) 1) Reduce the minimum drive aisle width for 90 degree parking from 26 feet to 24 feet (Article V Section 7.E.d.Table 3)
- 2) Reduce the minimum width of an ADA pedestrian access aisle from 5.0 feet to 4 feet for 2 aisles (Article V Section 7.E.1.a)
- 3) Reduce the minimum width of an ADA pedestrian access aisle from 5.0 feet to 2 feet for 2 aisles (Article V Section 7.E.1.a)
- (Interior Landscaping) 4) Increase the maximum number of spaces in a parking row from 15 to 20 before it shall be broken by an interior island for 1 run of spaces (Article V Section 7.J.3.b)
- 5) Increase the maximum number of spaces in a parking row from 15 to 19 before it shall be broken by an interior island for 1 run of spaces (Article V Section 7.J.3.b)
- 6) Increase the maximum number of spaces in a parking row from 15 to 18 before it shall be broken by an interior island for 1 run of spaces (Article V Section 7.J.3.b)
- 7) Reduce the number of required number of trees per landscaped island from 1 to 0 for 9 islands (Article V Section 7.J.3.a.1)
- (Northeast Landscaping) 8) Reduce the minimum depth of a side or rear setback of a parking lot for a multi-dwelling structure or development abutting a single family residential zoning district from 10 feet to 9.22 along the northeast property boundary (Article V Section 7.C.4.c)
- 9) Reduce the minimum width of a perimeter screening area between a parking lot and a residential zoning district from 10 feet to 9.22 along the northeast property boundary (Article V Section 7.J.2.c.1)
- 10) Reduce the minimum number of required evergreen trees from 33 trees to 7 trees for a perimeter screening area on northeast property boundary (Article V Section 7.J.2.c.1)
- 11) Reduce the minimum number of required deciduous trees from 25 trees to 10 trees for a perimeter screening area on northeast property boundary (Article V Section 7.J.2.c.1)
- 12) Reduce the minimum required number of shrubs from 116 shrubs to 0 shrubs for a perimeter screening area on northeast property boundary (Article V Section 7.J.2.c.1)
- (Southwest Landscaping) 13) Reduce the minimum number of required evergreen trees from 2 trees to 0 trees for a perimeter screening area on southwest property boundary (Article V Section 7.J.2.c.1)
- 14) Reduce the minimum required number of shrubs from 6 shrubs to 0 shrubs for a perimeter screening area on southwest property boundary (Article V Section 7.J.2.c.1)
- (Northwest Landscaping) 15) Reduce the minimum number of required evergreen trees from 7 trees to 0 trees for a perimeter screening area on northwest property boundary (Article V Section 7.J.2.c.1)
- 16) Reduce the minimum number of required deciduous trees from 5 trees to 0 trees for a perimeter screening area on northwest property boundary (Article V Section 7.J.2.c.1)
- 17) Reduce the minimum required number of shrubs from 23 shrubs to 0 shrubs for a perimeter screening area on northwest property boundary (Article V Section 7.J.2.c.1)

As per plan submitted to renovate and rehabilitate existing apartment complex in the R-1A (Low Density Residential) District.

Peter Ahrens advised it was considered a re-development of the property because the value of the work being performed exceeded 50% of the value of the property. Mr. Ahrens cautioned the Board to consider Variances 2 and 3 because they related to ADA access aisles and the impacts they would have would be negative not only to this project but moving forward, opening the door to reducing accessibility features on this property and others.

The applicant Carr Hagan was present and advised the apartments were built and permitted in 1980 and had been in continuous use since then. The applicant's company would be taking over ownership and would create proper accessibility and address a long list of overdue maintenance items. If the prior owners had maintained the property properly over the years, many of the items would have happened in an incremental manner and thus the re-development category would not have been triggered. It was the applicant's feeling that his company was not into re-development, they were into maintenance and the property wasn't new construction. They would not add any square footage of new usage, they would not change the usage or the affordability factor, parking was adequate aside from modifying a few spaces to be more compliant to ADA standards and they were not planning to change the occupancy type, density or hazard classifications. The applicant advised there was a Section 8 contract that covered all 110 units.

Greg Presnell was present and advised that the intent was to update the buildings, not the site. Some parking had been taken away and if they were to take away more parking by widening some of the existing striping then they would be getting close to not conforming to other things with parking counts.

Scott Falvey with Design Innovations was present and provided supplemental documents for the record which showed the existing mature landscaping onsite. Because the project was being considered as a re-development, Mr. Falvey felt that the applicant was being asked to add to things that served the purpose of what the landscaping does already. As the applicant was requested to increase the size of the parking, that would increase the impervious surface area on the lot which would kick in storm-water issues.

Chairman Kristin Grove made a motion to allow an additional speaker. It was seconded by member Charlie Van Beke. The Board voted 5-0 to approve an additional speaker.

Alvin Nance was present and advised it was a pre-existing property that would continue to operate as it currently was and the current residents would continue to pay the same amount of rent that they were currently paying.

Christina Magrans asked if the apartment complex would receive federal funds to subsidize the resident's housing. Carr Hagan advised the complex received project based Section 8 rental assistance derived from HUD, it would have an FHA 221-D4 mortgage and it would have Section 42 low-income housing tax credits. Mr. Hagan advised that every facet of what they were doing in the renovation effort would be compliant with those particular overlay federal programs. Christina Magrans advised that typically, if there's federal funding involved, even if it is a property that normally wouldn't be covered under ADA or aspects of Fair Housing, the moment federal funds are accepted then the recipient agrees to be covered by those laws. Mr. Hagan advised that was true to the extent applicable and there was still an exemption on projects originally placed in service before 1991. Ms. Magrans advised her understanding was that that was in terms of internal and the structure itself, not necessarily the site but that she would have to look into that issue to confirm.

Chairman Kristin Grove stated re-development is triggered at 50% of value and asked the applicant where they were in regard to that percentage. Mr. Hagan advised he did not remember what the tax appraisal was but they were well in excess of 50%. Mr. Hagan advised a fairly good percentage of the building permit value was in things like cabinets, stoves, windows, sidings, things that on their one-off you wouldn't have to pull a permit for but that it was all being done en masse.

Member Don Horton asked why the number of trees was being reduced on site. Mr. Hagan advised that there were code requirements in terms of the specific diameter and number of trees and in lieu of that they planned to keep what was already there. Mr. Presnell advised the perimeter was already there, there was already landscaping in the islands and they would add more landscaping it just may not be in the islands or in the perimeter because of existing root balls and utilities in the islands. The code is saying the landscaping has to be in the islands and the variance request was for it to not be in the islands.

Chairman Kristin Grove asked Christina Magrans if her earlier statement meant that once the applicant accepted federal funding, ADA would apply regardless, or that she was unsure. Ms. Magrans advised typically that does apply at the time but the distinction between the parking vs. the building was one that Ms. Magrans had not looked into and she would need to do research on that particular issue.

Chairman Kristin Grove suggested that because the parking situation was unclear in regards to variance 2 and 3 and because there were concerns of over-ruling things such as ADA, would the applicant want to postpone variance 2 and 3 and the Board would vote on all other variances with the exception of variance 2 and 3.

Mr. Hagan asked if that were the only barrier to an approved building permit then could a permit be issued with that particular caveat.

Peter Ahrens advised if the proposed motion was approved then the applicant would need to submit a site plan showing the access aisles stripped off and they would lose those spaces. The applicant would have to show compliance with the code, assuming that the proposed motion was approved. Then other scenarios could be worked through and the applicant could potentially come back before the Board if needed. The City would not issue a permit unless the applicant showed compliance with the code.

Mr. Hagan advised that if they could pull variance 2 and 3 for the sake of a clean, up or down vote on the remaining variances, they would be willing to abide and do what would be needed on the spots given what appears to be a fairly good surplus of spaces.

Chairman Kristin Grove confirmed that the applicant would want to remove variances 2 and 3 rather than postpone them. Mr. Hagan confirmed yes on removal of variance 2 and 3.

Member David Dupree stated concern regarding landscaping requirements and that if Chairman Grove's proposed motion were to proceed he wouldn't want to give the applicant permission to eliminate the landscaping that they currently have. Peter Ahrens stated that given that concern, the motion could be conditioned subject to the applicant providing an as-built landscape plan and not removing any landscaping that is already there. That way the applicant would provide the landscape plan and provide the survey, committing to not removing any of it.

Chairman Kristin Grove made a motion to approve all items excluding variance 2 and 3 on the parking lot dimension application and condition it based upon an as-built landscape survey turned in that would allow the existing landscape to be maintained and if things are cut they're replaced for what is removed. It was seconded by member David Dupree. The Board voted 5-0 to **APPROVE**.

**File:** 03-I-19-VA  
**Applicant:** Brian Ewers  
**Address:** 2304 West Blount Ave.  
**Zoning:** SW-1 (Old Sevier and Scottish Pike) District

**Parcel ID:** 108EB021  
1<sup>st</sup> Council District

**Variance Request:**

1) Appeal the determination of the Building Official that the proposed dwelling is a three-story building (Article 4, Section 4.1.3.B.4)

As per plan submitted to construct a new single family residence in the SW-1 (Old Sevier and Scottish Pike) District.

Peter Ahrens advised that it was an appeal of his determination. The South-Waterfront District has a maximum height of 2.5 stories or 35 ft. The proposed dwelling was less than 35 ft. but in Mr. Ahrens' opinion it was three stories. From Mr. Ahrens' perspective, a half story is that which is a one story and the half story is that which is constructed under the rafters which are part of the entire first story. The half story would be bounded by gable on either end, rafters on the top, first floor ceiling on the bottom. What was proposed functionally looked like a three story. From Mr. Ahrens' perspective, Zoning is different from Building code. Zoning is, "How do things look to the average person walking down the street?" It looks like a three story house and that's why it was turned down in Plans Review.

The applicant Brian Ewers was present and advised that the determination/definition came out of the South Waterfront design review and the project hadn't yet been submitted for a building permit. The applicant did not want to disagree with Peter Ahrens' interpretation, he was asking for a broader definition. The applicant advised there is not a definition written in the zoning ordinance and there is not a definition written in the International Residential Code. With a lack of definition to design from, the applicant was putting forth the argument defining it as a half story. The applicant stated that the floor below on the property was 2,100 sq. ft. and the enclosed area on the deck was 540 sq. ft. The rest of the space was open, covered roof-deck. The back portion was more of an equipment deck with an emergency generator and condensing units for the mechanical systems for the house. One of the requirements for the South Waterfront was for the equipment to be screened.

Member David Dupree asked Peter Ahrens to define again, what constitutes a half story and to provide any support that he had for his definition within the Knoxville Building or Zoning requirements. Mr. Ahrens advised that he did not have any support in Knoxville City Code, Zoning Ordinance or Building Code but that based on his experience as a building inspector

since 1999, a half story has traditionally been the space above the ceiling between the ceiling and the rafters. The applicant's situation didn't fit that traditional definition and that's why Mr. Ahrens looked at the Zoning Code as if a layman read the code, would what they read match up with what they saw on the street. Mr. Ahrens advised that his determination was consistent with his background and his history and that was why it was up for appeal at the meeting.

Peter Ahrens read the definition of a full story out of the Zoning Code: "A story is that portion of a building included between the upper surface of a floor and the upper surface at the floor or roof next above."

Member Don Horton advised that when you look at a 2.5 story, it's still three floors with three levels of occupancy. The roof on the top level of the property covered over the entire footprint which suggested a full story.

Chairman Kristin Grove felt that the gray, shaded portion could be viewed as a half story. However, when the remainder of the area is roofed, a full story was created. The gap could be in-filled with glass and enclosed which would make it a full story.

Peter Ahrens advised that although the Residential Code doesn't define a half story, it has added a definition of a habitable attic which from Mr. Ahrens perspective was consistent with his definition of a half story. The definition of a habitable attic is that space which is above the ceiling below and underneath essentially the sloped rafters of the roof.

The applicant advised that his interpretation of the intention of the 35 ft. or 2.5 stories was a height restriction and that the proposed building would meet the intent of the Zoning Ordinance as far as height regulations.

The owner of the property Lynette Purdue was present and advised that one of the reasons for the large roof was to increase albedo, making it more environmentally sound. Ms. Purdue also advised of an intention to eventually put solar panels on the roof, the greater the roof area the more solar panels could be placed.

Member David Dupree made a motion to deny the appeal. It was seconded by Chairman Kristin Grove. Members Kristin Grove, David Dupree and Daniel Odle voted in favor of the denial. Members Charlie Van Beke and Don Horton opposed the denial. The Board voted 3-2 to **DENY**.

## **ADJOURNMENT**

The meeting adjourned at 6:02p.m.

## **OTHER BUSINESS**

The next BZA meeting is April 18, 2019.