

**CITY OF KNOXVILLE
BOARD OF ZONING APPEALS
MINUTES
September 17, 2009 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 **September 17, 2009, meeting at 4:00 P. M. in the Small Assembly Room, City/County Building, 400 Main Street, Knoxville, TN.**

CALL TO ORDER

Chairman Rob Dansereau called the meeting to order at 4:00 p.m. Members present: Rob Dansereau, Chairman; Barbara Clark; Dawn Michelle Foster; and Clifford Beach.

Others in attendance: Tom Reynolds, Building/Zoning/ Plans Review Chief; Anita Cash, Zoning Coordinator; Angela Rauber, City of Knoxville Law Department; Charles Wilson, Plans Examiner; Scott Brenneman, Sign Inspector; Gary Norman, Building Inspections Director; and Mark Johnson, City of Knoxville Engineering Department.

APPROVAL OF MINUTES

The motion was made by Dawn Michelle Foster and properly seconded by Clifford Beach to approve the minutes of the August 20, 2009 BZA meeting. Motion passed with a vote of 4-0.

OLD BUSINESS

File: 7-A-09-VA
Applicant: Knoxville Habitat/Smokey Mountain Land Surveying
Address: 407 Ellen Street Parcel ID: 123HB003
Zoning: R-1 Low Density Residential District
1st Council District

Variance Request:

1. Reduce minimum required rear yard setback from 25 feet to 15 feet per Article 4, Section 2.E.3.a.
2. Reduce minimum required lot width at building line from 75 feet to 50 feet per Article 4, Section 2.E.4.a.
3. Reduce minimum required lot size from 7500 square feet to 4400 square feet per Article 4, Section 2.E.5.a.
4. Increase maximum lot coverage from 30% to 33 % per Article 4, Section 2.E.6.a.
5. Increase maximum front yard porch extension into required front yard setback from 6 feet to 8 feet per Article 5, Section 6.B.11.

As per site plan to construct a house on a deeded lot in the R-1 Low Density Residential District.

Anita Cash, Zoning Coordinator, said the staff had not received the deed that showed the property prior to annexation in the same configuration as it was now. Ms. Cash said therefore the request could not be before the board.

Mark Steinle, Batson Himes Norvell & Poe, said they did not have a deed going back prior to 1917. Mr. Steinle said they did have a deed going back to 1942. Mr. Steinle said there have been ten different landowners since 1981 and all having been paying taxes to the City of Knoxville. Mr. Steinle said the argument has been that the request did not meet under Article 5, Section 6. Mr. Steinle said they had an

argument under Article 7, Section 2: The Board of Zoning shall have the power and authority to grant variances from terms of this ordinance according to the procedure and under the restrictions set out in this section. Mr. Steinle said the section went on to say: Any unnecessary hardship which would deprive an owner of the reasonable use of his land, the variance should be used only where necessary to overcome some obstacle which is preventing an owner from using his property as the Zoning Ordinance intended. Ms. Angela Rauber, Law Department, said in response that variances did need to be done in compliance with zoning ordinances. Ms. Rauber said the only section that did provide for cases for lots smaller than required for district regulations was Article 5, Section 6.D.6. (small lot of record). Ms. Rauber said this was not a small lot of record because it was not recorded upon the city's ward map. Ms. Rauber said it did not meet Article 5, Section 6.D.5. which was the section that allowed for seeking a variance in a case where a recorded lot did not conform but was a deeded parcel and could be shown to have been deed in its present configuration prior to annexation. Ms. Rauber said that since the lot did not meet either situation, there was no variance in the zone. Board Chairman Rob Dansereau asked Ms. Rauber what the procedure would be for the applicant since the Board could not hear the variance request. Ms. Rauber said they could not advise to that because the applicant could not seek an appeal and they would have to consult with their attorney on what is the next step. Ms. Rauber said the procedure to seek a variance at all was a relatively new procedure and was recently added to the ordinance and revised in such a way that it was changed and made something possible. Ms. Rauber said the staff has discussed seeking the City Council's approval to have a procedure for situations like this to be addressed appropriately. Ms. Rauber said as of now there was no such procedure.

Mr. David Harmon, 4334 Papermill Road, asked where it said in Article 5, Section 6 that they had meet one of the situations in order for the Board to grant a variance. Ms. Rauber said it was stated in Article 5, Section 6.D.5. Mr. Harmon said in Article 7, Section 2, there were four or five items that he had to demonstrate in order to get a variance. Mr. Harmon said he thought they met all of the items. Mr. Harmon said he did not meet any situation in Article 5, Section 6. Mr. Harmon said he was not dividing a lot and it was a parcel of land that has been by deed since 1942. Ms. Rauber said it was not recorded on the city ward map. Mr. Harmon said the lot was in possession and they were not subdividing it. Mr. Harmon said they were merely recording what was on the deed of parcels since 1942 that has changed hands a dozen of times and the City of Knoxville has assessed and collected property taxes on it. Mr. Harmon said his client (Habitat) has purchased the land and a reasonable expectation would be to get a building permit once again since they have purchased the land. Mr. Harmon said the previous house was pretty sub-standard and was torn down and was preparing to be a new house there. Mr. Harmon said they came for a variance and the way they were hearing it they could not ask for a variance on the land. Ms. Rauber said the lot was not about subdivision but about division from the ward map. Ms. Rauber said it was not recorded on the ward map and it appeared as an undivided lot. Ms. Rauber said the applicant was seeking to divide a portion of how it appears on the ward map and it did not meet the size requirements for the district. Ms. Rauber said they have to be able to get a smaller lot than what is required by the current zoning regulation and be able to seek a variance for that and meet one of the criteria in order to seek the criteria. Mr. Harmon said he respectively disagreed and would not say they could not get a variance if it did not meet the criteria. Board Chairman Rob Dansereau said technically the Board could not hear the variance request and suggested if the applicants had legal counsel for the legal counsel to contact the City of Knoxville Law Department to try to work through what a good procedure would be if it was a buildable lot. Mr. Dansereau said if the Board postponed the request, the code was not going to change between now and next month. Mr. Dansereau said if the applicant wanted to withdraw until they could seek counsel or ask for postponement. Ms. Rauber said technically the item could not be heard and usually if the item was heard and denied, it could not be reheard for one year. Ms. Rauber said the applicant was not facing that obstacle because the Board could not hear the item at all. Ms. Rauber said if the code were to change in the next year to provide for situations like this, the applicant would not be limited to the one-year and could reapply to be heard.

Mr. Harmon said he would like to consult with his client and decide what to do. Board Chairman Rob Dansereau said the item would be moved to the end of the agenda.

At the end of the agenda, Mark Steinle said since the Board could not hear the request, they wanted to withdraw the request and get a refund of the request fee. Board Chairman Rob Dansereau said the applicant would need to discuss the refund with MPC. Anita Cash, Zoning Coordinator, said the only way the applicant could get a refund was if the Board approves it. Ms. Cash said this was advertised in June for the July agenda and has been subsequently advertised and posted every month. Mr. Steinle commented that they should receive their refund since it was improperly put on the agenda since it could not be read in the first place. Mr. Dansereau said he thought that when the item came forward before the variance was applied for that a discussion took place to whether or not this could be heard by the Board before the fee was paid. Ms. Cash said that was correct and they had already investigated this for somebody else and told them that they could not build on the lot. Ms. Cash said a discussion did happen with them previous to the variance request. Mr. Dansereau said the funds had already been expended to pay for the advertisements over and over again for the months this has been on the agenda. Mr. Dansereau asked if the applicant could tell him that the discussion did not happen previous to the item going on the agenda then he would be happen to recommend that MPC give a refund. Mr. Dansereau said if the discussion happened then the applicant should pay the money. Mr. Danny Mitchell, the applicant, said they had discussed this on other properties and Ms. Cash had even recommended to the Board one time because it was improperly researched by the City of Knoxville and was put on the agenda when it should not have. Mr. Mitchell said Ms. Cash had recommended a motion on a different property that the applicant receive a refund. Mr. Dansereau asked if a discussion occurred previously to the applicant paying the fee for this particular parcel about whether the Board would be able to hear it. Mr. Dansereau asked if they chose to move forward with the understanding that the Board might or might not be able to hear it. Mr. Mitchell said they were represented by another company at that time and he was not present at that meeting. Mr. Mitchell said he did not know the answer to the questions. Mr. Dansereau said he would leave it to the Board to whether they wanted to make a recommendation that MPC refund the money or whether it was their diligence to know whether or not they were going to be able to afford this. Board member Clifford Beach said he would not make a recommendation for a refund. Mr. Dansereau asked the other Board members if they wanted to make a recommendation and they said no. Mr. Dansereau said in this situation the Board appreciated the fact that this could not be heard by the Board and did not think the Board could recommend a refunding of the money at this point. Mr. Dansereau said based on what the staff has said that there was a discussion previously to the fee being paid. Mr. Dansereau said hopefully this was going to be resolved and the applicant could build on the property.

Mark Steinle asked about withdrawing or tabling the item. Mr. Dansereau said tabling meant it has to be heard at the next meeting and the Board could not table indefinitely. Mr. Dansereau said the applicant could ask for a postponement. Mr. Steinle asked if they could table the item for three months. Ms. Angela Rauber, Law Department, said she would need to research the rules on tabling. Mr. Steinle asked if they could postpone for three months. Mr. Dansereau said no because the item has to be heard within 120 days from the first time it appears on the agenda or technically it is pocketed. Ms. Rauber said at this point the application could not be heard and hopefully when they come back the application could be heard. Ms. Rauber said she was going to expedite this situation and would like to discuss this with the applicant before the ordinance going to MPC to have a change and also City Council. Mr. Dansereau said they would have to act on the item by November 19, 2009 (the last possible date of the 120 days). Ms. Cash asked if the Board could make a motion to ask MPC not charge upon resubmittal. Mr. Dansereau said that would be reasonable and if the applicant resubmits the application within a year, MPC would not charge a fee. Ms. Rauber asked if the Board would be willing to consider a request for a refund if the item comes back before the Board again and the applicant has paid another \$250.00. Mr. Dansereau asked if the applicant wanted to postpone because he did not feel they were going to get the ordinance changed in two months. Mr. Mitchell said the purpose and intent of advertising was to allow the community to come in and see what was going on and what changes were being made. Mr. Dansereau said they still had the leadway to publish it again and the fees were designed to cover the cost of that publication. Mr. Mitchell said the posting has been done and no one has come in. Ms. Cash

said the staff had received two calls. Mr. Mitchell said that all you could do with the property was give it to the next-door neighbor. Ms. Cash said they were trying to work it out to let the applicant do what he wanted to do but it would take some time. Mr. Dansereau asked the applicant if he wanted to withdraw or the Board make a motion to postpone. Ms. Rauber suggested the Board postpone the item to a date certain and that way they would avoid the tabling issue. Ms. Rauber said what tabling does, in a fact, is kill an issue. Ms. Rauber said if they postpone it to a date certain then it would be possible for an ordinance change to be considered by MPC.

Board Chairman Rob Dansereau made a motion to POSTPONE the request and it was properly seconded by Board member Barbara Clark. The Board voted 4-0 to **POSTPONE** the five requests until the December 17, 2009 meeting.

File: 8-A-09-VA
Applicant: Wayne E. Carmichael
Address: 115 E. Oldham Avenue Parcel ID: 081KH033
Zoning: C-3/IH-1 General Commercial/Infill Housing Overlay Districts
5th Council District

Variance Request:

Appeal of an administrative official's decision to deny placement of a new single-wide mobile home in a legally pre-existing non-conforming mobile home park because the mobile home space has been vacant for more than six months per Article 6, Section E.1.b.

As per site plan to place a mobile home in the C-3/IH-1 General Commercial/Infill Housing Overlay Districts.

Anita Cash, Zoning Coordinator, said this was a pre-existing, non-conforming trailer park in the C-3 zone. Ms. Cash said the owner requested to add another single-wide trailer. Ms. Cash said the building official issued a written interpretation denying this request and the applicant was appealing the building official's decision.

Wayne Carmichael, 7101 Castalie Lane, said a mobile home was there and he had the home moved when he bought the property. Mr. Carmichael said the connections were there and he wanted to put another home in its place. Mr. Carmichael said he had talked with Paul Kelly and Mr. Kelly had no objection to this request. Mr. Carmichael said he had talked with other people in the neighborhood. Mr. Carmichael said the lot had been vacant probably 15 years.

Gary Norman, Building Inspections Director, said they spoke to Mr. Carmichael and actually visited the site. Mr. Norman said he did agree that at some point there was a trailer on the location. Mr. Norman said his decision was based on what was a reasonable period of time to what was a non-conforming situation that existed that it went away. Mr. Norman said the code stated six months. Mr. Norman said Mr. Carmichael said the lot had been vacant 15 to 20 years. Mr. Norman said they had aerial maps from KGIS and explained what existed in the trailer park: 10 mobile homes in the park based on the 2008 KGIS map, 8 mobile homes on the 1985 KGIS map, and 10 mobile homes on the 1960 KGIS map. Mr. Norman said there was a configuration on the 2008 KGIS that looked like a new space. Mr. Norman said that Mr. Carmichael had said there were 11 mobile homes now. Mr. Norman said it appeared that they had a greater occupancy load now that when Mr. Carmichael purchased the property. Mr. Carmichael said it was grandfathered for 12 mobile homes and he talked to MPC in 1988. Mr. Norman said if additional information was provided to help the staff to make a decision then they would do it. Mr. Norman said at this point, they had to make a decision based on the information that they had. Board Chairman Rob Dansereau said that was completely reasonable.

Anita Cash, Zoning Coordinator, informed the Board that anything would have had to exist prior to 1962 to be considered pre-existing and non-conforming. Mr. Dansereau said that meant that the configuration could not have changed between that time and now and had to be exactly the same as it was. Ms. Cash said that was correct.

Board member Clifford Beach made a motion to DENY the appeal of the administrative official's decision and it was seconded by Board member Barbara Clark. By a vote of 4-0, the Board voted to **DENY** the appeal. Mr. Dansereau said the applicant could appeal to City Council.

NEW BUSINESS

File: 9-A-09-VA
Applicant: Kimberly Romines
Address: 310 Mayfield Avenue Parcel ID: 123AK032
Zoning: R-1 Low Density Residential District
1st Council District

WITHDRAWN PRIOR TO PUBLICATION

File: 9-B-09-VA
Applicant: Mark Morgan
Address: 720 Avenue A Parcel ID: 123HB011
Zoning: R-1 Low Density Residential District
1st Council District

Variance Request:

1. Reduce minimum allowable lot width at building line from 75 feet to 50 feet per Article 4, Section 2.1.1.E.4.a.
2. Reduce minimum lot area from 7500 square feet to 7100 square feet per Article 4, Section 2.1.1.E.5.a.

As per site plan to record an unrecorded lot (verification of annexation date is required) in the R-1 Low Density Residential District.

Anita Cash, Zoning Coordinator, said they had not received a deed showing the property in the same configuration as it was prior to annexation as it was now. Ms. Cash said the 1915 and 1916 deeds did not show the same configurations as it was now. Ms. Cash said they did receive a 1915, 1916, and 1924 deed and those deeds did not show the same property and the same configuration as it was now. Ms. Cash advised the Board would not be able to proceed with hearing the request.

Mark Morgan, 153 Roberts Road, said he went back to obtain the prior deeds and the land attorney said the way surveys were done prior to 1924 that there would be no possible way of saying that any deed, prior to the 1924 deed, matched it. Mr. Morgan said the land attorney said if the two prior deeds had the same reference to the 1924 deed that would be the only way. Board Chairman Rob Dansereau asked the legal department to explain the situation and said they would try to figure out a way to help move the item forward and give the applicant satisfaction. Mr. Dansereau said they had multiple deeds pulled over the years but the descriptions on the deeds did not match. Mr. Morgan said he had been told that the descriptions would not match prior to 1924 because that was the way they were done then.

Angela Rauber, Law Department, said they were not expecting the deeds to state the same property description because corners may be described differently and things of that nature. Ms. Rauber said the 1915 and 1916 deeds showed different street frontages than what this property shows. Ms. Rauber said they were not sure the 1915 and 1916 deeds showed the same property. Ms. Rauber said the 1924

deed appeared to show the same property and probably the same configuration. Ms. Rauber said they needed something prior to the annexation (1917) and the 1915 and 1916 deeds did not appear to be for the same property at all.

Board Chairman Rob Dansereau asked Mr. Morgan if he thought he would be able to provide something prior to the annexation. Mr. Dansereau said in order for the Board to hear the request, Mr. Morgan would have to provide the documentation. Mr. Morgan said he would try. Mr. Dansereau said they could not legally hear it today. Mr. Dansereau suggested postponing the request since they had read it into the record. Ms. Rauber said they could postpone the request to give the applicant time to find what he needs. Ms. Rauber said, if the applicant did not find the deed in the configuration, there was also a possibility that the applicant might fit into a revised ordinance that would correct this problem. Ms. Rauber said the applicant would not be prevented from coming back before the Board if the ordinance was changed to seek a variance to cover the applicant's situation. Mr. Dansereau said if the applicant came up with a deed, the Board could move forward and vote on it. Mr. Dansereau said they could not vote on the request right now but could vote on a postponement.

Anita Cash, Zoning Coordinator, said just because the applicant comes up with a deed does not mean the Board would be able to hear it. Ms. Cash said the deed would have to be reviewed by the Law Department and the Engineering Department and it would have to match. Mr. Dansereau said that once the deed was accepted then the Board would hear the item. Mr. Morgan asked for postponement in order to see documentation.

Board member Clifford Beach said it seemed like the rule would be keyed off of when the zoning ordinance came into effect. Angela Rauber, Law Department, said it was based on 1917 because the zoning ordinance did not contain anything addressing the situation. Ms. Rauber said there was no procedure at all before this and the reason they went by annexation was that they go the date the zoning rules went into effect in Knoxville.

Board member Dawn Michelle Foster made a motion to POSTPONE the request based on the approval of the deed by the Law Department and City Engineering and it was properly seconded by Board member Barbara Clark. The Board voted 4-0 to **POSTPONE** the two requests until the October 15, 2009 meeting.

File: 9-C-09-VA
Applicant: Jose Luis Mora Espinosa represented by Steve Abbott
Address: 3820 Bonnie View Lane Parcel ID: 070ML004
Zoning: R-2 General Residential District
6th Council District

Variance Request:

1. Reduce Bonnie View Lane minimum required front yard setback from 25 feet to 18 feet per Article 4, Section 2.1.6.D.1.a.
2. Reduce minimum required rear yard setback from 25 feet to 23 feet per Article 4, Section 2.1.6.D.3.a.

As per site plan to construct a new single family residence (multi-sectional manufactured dwelling) in the R-2 General Residential District.

Anita Cash, Zoning Coordinator, said this was a small lot of record and the applicant was proposing to construct a single-family residence on the property.

Steve Abbott, 1109 East Woodshire Drive, said due to the shape of the lot, the applicant was unable to place the new dwelling on the lot and the topography limited the sizing of the proposed house.

No opposition was present at the meeting.

Board member Clifford Beach made the motion to APPROVE and it was properly seconded by Board member Dawn Michelle Foster. By a vote of 4-0, the Board voted to **APPROVE** the two requests. Mr. Dansereau said he thought the hardship was based on the topography and the shape of the lot and it was a small lot of record.

File: 9-D-09-VA
Applicant: Knoxville Habitat for Humanity
Address: 3601 Lyle Avenue Parcel ID: 107FD027
Zoning: R-2 General Residential District
6th Council District

Variance Request:

1. Reduce Jade Road minimum required front yard setback from 25 feet to 10 feet per Article 4, Section 2.1.6.D.1.a.
2. Increase distance open porch can extend into minimum required front yard setback from 6 feet to 8 feet per Article 5, Section 6.D.11.

As per site plan to construct a new single family residence on a small lot of record in the R-2 General Residential District.

Board Chairman Rob Dansereau said that Items 9D and 9E would be heard together.

Anita Cash, Zoning Coordinator, said these were small lots of record on a corner with two front yards and the code required 25-foot front-yard setbacks on both streets.

Danny Mitchell, Knoxville Habitat, said these were small lots of record and with double setbacks, it made it difficult to put a house on the lot. Mr. Mitchell said the house size was a 5-bedroom on Lyle Avenue and a 3-bedroom on Van Dyke Drive. Mr. Mitchell said it required that much space to put those types of houses.

No opposition was present at the meeting.

Board member Dawn Michelle Foster made the motion to APPROVE and it was properly seconded by Board member Barbara Clark. By a vote of 4-0, the Board voted to **APPROVE** the two requests on Item 9D.

File: 9-E-09-VA
Applicant: Knoxville Habitat For Humanity
Address: 4300 Van Dyke Drive Parcel ID: 107FD006
Zoning: R-2 General Residential District
6th Council District

Variance Request:

Reduce Jade Road minimum required front yard setback from 25 feet to 15 feet per Article 4, Section 2.1.6.D.1.a.

As per site plan to construct a new single family residence on a small lot of record in the R-2 General Residential District.

(Discussion for this item is under Item 9D.)

Board member Dawn Michelle Foster made the motion to APPROVE and it was properly seconded by Board member Barbara Clark. By a vote of 4-0, the Board voted to **APPROVE** the one request on Item 9E.

File: 9-F-09-VA
Applicant: Wilford Isadore
Address: 2255 McCalla Avenue Parcel ID: 082OM018
Zoning: C-3 General Commercial District
6th Council District

Variance Request:

Reduce minimum required number of off-street parking spaces from 7 spaces to 4 spaces per Article 5, Section 7.A.3.a. Table.

As per site plan to accommodate change of occupancy from residential to mercantile in the C-3 General Commercial District.

Anita Cash, Zoning Coordinator, said this proposal was to convert an existing residence into a business. Ms. Cash said the lot was 50 feet wide and parking requirements for commercial uses were more than what was required for a single-family residence.

Slemons Mathes, 2520 Boyds Bridge Pike, said the hardship was that it was a small lot. Mr. Mathes said they were changing it from residential to commercial. Mr. Mathes said there were parking spaces up in the front that they could not count for but was wondering if they could use that in consideration. Mr. Mark Johnson, City Engineering, said Mr. Mathes was asking the Board to consider the on-street parking spaces in their decision. Mr. Mathes said they had met with Mr. Johnson at the site and Mr. Johnson gave them some recommendations for the rear-parking spaces. Mr. Mathes said they came up with the conclusion (handicapped space) that they were satisfied to give him a building permit. Anita Cash, Zoning Coordinator, asked if Mr. Mathes had a revised plan that showed the dimensions. Mr. Mathes said yes and presented the plan to the staff. Ms. Cash said it was the same plan that was in the agenda packet and they would need to get the dimensions changed on the plan. Mr. Mathes said his handicapped parking space was 18 feet wide and was not labeled correctly on the plan. Mr. Mathes labeled the site plan to indicate 18 feet (8 and 10).

Wilfred Isadore, 6707 Orabella Road, was the owner of the property and was present at the meeting.

Board member Dawn Michelle Foster asked if the applicant was allowing for access to the business from the alley in the back and did the neighboring residences and business have access to the alley as well. Mr. Mathes said yes they did. Mr. Mathes said the City of Knoxville picked up trash on this alley and the alley is a paved road. Ms. Foster asked if the houses had access to the alley like a back driveway. Mr. Mathes said yes they did.

Board member Barbara Clark asked what type of business was going in. Mr. Mathes said it would be a bookstore and selling merchandise (soaps, lotions, and novelties). Board Chairman Rob Dansereau said the applicant would be held to the five spaces per 1,000 square feet of retail. Mr. Dansereau said it was a pre-existing situation except for the use and the use was the reason this was coming up.

Board member Dawn Michelle Foster made the motion to APPROVE and it was properly seconded by Board member Barbara Clark. By a vote of 4-0, the Board voted to **APPROVE** the one request.

File: 9-G-09-VA
Applicant: Insignia Sign Group for Sonny's BBQ

Address: 350 N. Peters Road
Zoning: C-6 Commercial Park District
2nd Council District

Parcel ID: 132 02517

Variance Request:

Increase maximum allowed ground sign height from 50 feet to 75 feet per Article 5, Section 10.A.7.

As per site plan for installation of a new ground sign in the C-6 Commercial Park District.

Anita Cash, Zoning Coordinator, said this was an existing business and they would like a sign that could be seen from the interstate. Ms. Cash said they were proposing to reduce the size of their existing sign.

Todd Baker, Insignia Sign Group, said their request was increase the visibility of the sign especially moving east. Mr. Baker said you do not have enough time to see the sign and then make a decision to take the exit. Mr. Baker said they wanted to increase the height to 75 feet. Mr. Baker said the sign was put in a ditch down below several businesses. Mr. Baker said they were not trying to get above anybody but be competitive with the ground level for several other signs. Mr. Baker said the applicant was willing to sacrifice 75% of the visible area just to be seen.

In opposition, Joyce Feld (1540 Agawela Avenue) said she was representing Scenic Knoxville. Ms. Feld said the day before the meeting, she drove east and west on the interstate and the sign in question was clearly visible from both directions. Ms. Feld explained the photos submitted. Ms. Feld said the business was located on Peters Road and not on the interstate. Ms. Feld asked why should the business be entitled to have an overly-tall sign and visible for miles on the interstate. Ms. Feld said there were a few businesses with taller signs and a lot of businesses on Peters Road do not have signs that can be seen from the interstate. Ms. Feld said this sign in question was not out-of-line with the surrounding properties. Ms. Feld said she was also had a retail business in the City of Knoxville and her sign could not be seen from the interstate. Ms. Feld said an engineer could probably tell her how tall her sign would need to be to be visible from the interstate or how tall it would need to be to be visible before the interstate exit. Ms. Feld said her retail business was not in competition with this restaurant. Ms. Feld said the very-tall sign in question would not be in the best interest of the public or the City of Knoxville to have it. Ms. Feld said the more signs they have and the bigger and taller they are, the less visible they all become. Ms. Feld said the owner wanted a taller sign because the other businesses have taller signs. Ms. Feld said the owner of the tallest sign will eventually want a taller sign. Ms. Feld said this mentality leads to a never-ending arms race of signs and is a race that will never be won. Ms. Feld said the clutter of giant signs mars the landscape and makes the city unattractive. Ms. Feld said data collected during the Nine Counties/One Vision and feedback from Scenic Knoxville shows that sign clutter was one of the major concerns of Knoxville residents. Ms. Feld said, in order to consider a variance, the applicant is required to show a hardship and not granting the variance would be contrary to the public interest. Ms. Feld said enforcement would result in unnecessary hardship of the local merchant and the applicant was being denied reasonable use of his land. Ms. Feld said that was not the case here. Ms. Feld said a solution that they proposed would be a logo sign put up next to the relative exit. Ms. Feld said the owner was free to advertise on the logo sign. Ms. Feld said the owner would have to pay for the sign and she did not know how much they cost. Ms. Feld said it would be a solution instead of a monstrous sign in the City of Knoxville.

Anita Cash, Zoning Coordinator, asked what the current sign size was and if they were proposing to go down to 119 square feet. Mr. Baker said the current sign size was 392 square feet. Board Chairman Rob Dansereau said the applicant was looking to increase the sign in height and decrease it in size. Mr. Baker said they were trying to be competitive with the neighboring signs. Mr. Baker said their sign was approximately 25 feet shorter. Mr. Baker said their concern was when you are traveling east, the Fowler building makes the sign difficult to see. Mr. Baker said they believed it was unsafe at some points to make the transition from the fast lane to the slow lane to take the exit. Mr. Baker said they understood

the law states 50 feet is the maximum height and they were willing to sacrifice some size to get some visibility to have the opportunity to win over people driving especially eastbound. Mr. Dansereau asked if there was a trail blazer interstate sign that the applicant could advertise on for the Cedar Bluff exit. Mr. Scott Brenneman, Sign Inspector, said what Ms. Feld was saying was that she proposed to have one put up; there was not one along the interstate. Mr. Dansereau said that would be a TDOT decision. Mr. Dansereau asked if the applicant does not receive the variance, would they reface the sign that they currently have so the community would actually be stuck with a 390 square-foot sign instead of a 119 square-foot sign. Mr. Baker said yes. Mr. Dansereau asked the opposition to address the visual clutter that occurs from having a 119 square-foot sign versus the 392 square-foot sign and why they would be better off having a 392 square-foot sign that was 50 feet tall versus a 119 square-foot sign that would be 75 feet tall. Mr. Dansereau said he would personally like to have the less square footage because it was less visual clutter than the taller sign. Ms. Feld asked what the hardship was for the business. Mr. Dansereau said the hardship was a topography issue and their sign sat down in a gully. Mr. Dansereau said the Board had not voted whether that was a valid hardship or not. Ms. Feld said the sign was clearly visible to passing motorists. Ms. Feld said it sat a bad precedence to granting variances for bigger or taller signs.

Board member Dawn Michelle Foster asked if this request fell under the scenic highway rule. Anita Cash, Zoning Coordinator, said this was not a scenic highway. Ms. Cash said there had been a number of issues come before the Board and some with this Board but typically some were not granted because the signs were farther away from the interstate who were seeking the height variances. Ms. Cash said prior to Ms. Foster's service on the Board, there had been a number of variances issued for a number of signs down there immediately adjacent to this area. Mr. Dansereau said this was not a typical situation, in that, the Board generally did not see a reduction in square footage. Mr. Dansereau said they generally saw signs that people were proposing to put higher and maintain or increase the square footage. Mr. Dansereau said rarely did the Board see a request to decrease the sign of signage that they had by about 75%. Mr. Dansereau said he believed that causes less visual clutter if the sign was smaller. Ms. Foster asked the applicant if he had any signage going westbound. Mr. Baker said it was the same sign that was visible from both directions on the east side. Mr. Baker said the sign was perpendicular from the interstate and it could be seen from both directions. Mr. Baker said you could see if going west. Mr. Baker said it was lower but the sign was mammoth. Ms. Foster said in her opinion the sign should be at the existing level and if you were going to Sonny's, you would see the sign. Mr. Baker said the reason they were asking for the variance was to win over new customers and that was their job to market themselves. Mr. Baker said they were willing to sacrifice a dramatic amount of space in the air to get a little bit higher to give people the opportunity to see it. Ms. Foster asked if the applicant had looked into the blue trail-blazing signs for restaurants and gas stations. Mr. Baker said the signs were not available at that offering at this time.

Board member Clifford Beach asked what support was there in the Zoning Code to negotiate with applicants asking for smaller signs and in exchange for them reducing the signage. Angela Rauber, Law Department, said there had to be a legal hardship in order for the Board to grant a variance. Ms. Rauber said in making the decision, you could consider factors that you think are relevant to that decision. Ms. Rauber said if you find that the person has a hardship but there are factors that make it more likely that you are going to grant the variance, in this case such as reducing the sign that would be a factor not the reason for your decision as long as there was also the legal hardship. Ms. Rauber said there could be a case where a person has a legal hardship but there were factors that come into play that might make it less likely that you are going to grant the request for the variance. Ms. Rauber said the key was there has to be a legal hardship. Ms. Rauber said it could not be that the Board was just negotiating.

Board member Barbara Clark commented to the opposition of the variance regarding the precedence that each request for a variance was made on a case-to-case determination in line with the implacable laws. Ms. Clark said the Board does not randomly say they are going to do this variance or not. Ms. Clark said the Board makes the decision based on the implacable laws.

In opposition, Lisa Starbuck, 6229 Babelay Road, said she did appreciate that the applicant was reducing the sign size and though that was a good step. Ms. Starbuck said you have to think about why the applicant was asking for the variance. Ms. Starbuck said it was because they wanted the sign to be more visible and not less visible. Ms. Starbuck added that to say it was going to reduce the visual impact by making it smaller, she thought that was being offset by the request to stick it up so much higher. Ms. Starbuck said to the comment made that each item stands alone, one of the reasons that the Board might be considering the granting of the request was because of the variances that had already been granted in that area obviously to let other signs get up higher. Ms. Starbuck said that went back to the arms race idea of if you were doing it for one, why not do it for others.

Todd Baker said the only comment that he requested as a legal hardship was that the topography issue did make a difference with their height with the other signs that were competing in the same area. Mr. Baker said most of the signs were for hospitality and a few signs were non-competing restaurants. Mr. Baker said being significantly lower than the grade for the other signs and the buildings did put them at a disadvantage in his opinion.

Board member Dawn Michelle Foster made the motion to DENY the request and it was seconded by Board member Clifford Beach. The Board voted 2-2 and the motion **FAILED**.

Board Chairman Rob Dansereau made the motion to APPROVE the request and it was seconded by Board member Barbara Clark. The Board voted 2-2 and the item **FAILED**. Mr. Dansereau said the applicant could appeal to City Council.

File: 9-H-09-VA
Applicant: Rick Parker
Address: 5930 Slater Mill Lane Parcel ID: 092CH018
Zoning: R-1 Low Density Residential District
3rd Council District

Variance Request:

Reduce Outer Drive minimum required front yard setback from 25 feet to 10 feet per Article 4, Section 2.1.1.E.1.a.

As per site plan to construct an addition to an existing dwelling in the R-1 Low Density Residential District.

Anita Cash, Zoning Coordinator, said this property was improving an existing single-family residence that is located on a corner lot. Ms. Cash said the proposal stated on the application was to construct an attached addition. Ms. Cash said that since it was on a corner lot, the applicant must meet a 25-foot setback on both streets.

Rick Parker, 5930 Slater Mill Lane, said the hardship was that he had two front yards and on one side of the house was where he wanted to do the expansion and orientation of the site.

No opposition was present at the meeting.

Ms. Cash said she had noticed on the application that the applicant needed this addition for his ailing mother-in-law and wanted to make sure this was not going to be a separate living unit. Mr. Parker said no.

Board member Dawn Michelle Foster made the motion to APPROVE and it was properly seconded by Board member Clifford Beach. By a vote of 4-0, the Board voted to **APPROVE** the one request.

File: 9-I-09-VA
Applicant: Dale Rhoton
Address: 5619 Clinton Highway Parcel ID: 068OD010
Zoning: C-4 Highway and Arterial Commercial District
3rd Council District

Variance Request:

Reduce McClain Drive minimum required front yard setback from 35 feet to 22 feet per Article 4, Section 2.2.7.E.2.b.

As per site plan to allow subdivision of a parcel in the C-4 Highway and Arterial Commercial District.

Anita Cash, Zoning Coordinator, said this property currently existed as one large lot with the existing buildings. Ms. Cash said the owner was proposing to subdivide the property in order to have each building on a separate lot. Ms. Cash commented on Item 9J saying that the building was partially occupied and no parking was shown on the plans. Ms. Cash said if the Board approved Item 9J that there might be a need for additional variances for parking if the applicant did not comply with the regulations.

Dale Rhoton, 3801 South View Circle, said he sold the property and then ended up getting it back in lieu of foreclosure. Mr. Rhoton said in order to resell he needed to separate the one large parcel (almost two acres). Mr. Rhoton said there were totally separate businesses with parking on the property.

Board Chairman Rob Dansereau asked if Mr. Rhoton understood that if the Board granted the variance for Item 9J that it does not mean the Board approved the parking plan for that particular piece of property. Mr. Dansereau said it could mean that Mr. Rhoton would have to come back to the Board if he did not meet the parking requirements for that piece of property. Mr. Rhoton said he understood.

No opposition was present at the meeting.

Board member Barbara Clark asked if the applicant knew about the KUB easement on all three parcels. Mr. Rhoton said yes.

Board member Clifford Beach made the motion to APPROVE and it was properly seconded by Board member Barbara Clark. By a vote of 4-0, the Board voted to **APPROVE** the one request.

File: 9-J-09-VA
Applicant: Dale Rhoton
Address: 1501 McClain Drive Parcel ID: 068OD010
Zoning: C-4 Highway and Arterial Commercial District
3rd Council District

Variance Request:

Reduce McClain Drive minimum required front yard setback from 35 feet to 22 feet per Article 4, Section 2.2.7.E.2.b.

As per site plan to allow subdivision of a parcel in the C-4 Highway and Arterial Commercial District.

(Discussion for this item is under Item 9I.)

Board member Clifford Beach made the motion to APPROVE and it was properly seconded by Board member Barbara Clark. By a vote of 4-0, the Board voted to **APPROVE** the one request. Board

Chairman Rob Dansereau said the applicant would need to submit a parking plan and meet the parking requirement.

File: 9-K-09-VA
Applicant: Dale Rhoton
Address: 1509 McClain Drive Parcel ID: 068OD010
Zoning: C-4 Highway and Arterial Commercial District
3rd Council District

Variance Request:

Reduce minimum required west side yard setback abutting a residential district from 50 feet to 30 feet per Article 4, Section 2.2.7.E.3.

As per site plan to allow subdivision of a parcel in the C-4 Highway and Arterial Commercial District.

(Discussion for this item is under Item 9I.)

Board member Clifford Beach made the motion to APPROVE and it was properly seconded by Board member Barbara Clark. By a vote of 4-0, the Board voted to **APPROVE** the one request.

OTHER BUSINESS

None.

ADJOURNMENT

The meeting was adjourned at 5:15 p.m.

Respectively submitted,

Deborah Brooks, Board Secretary