

The Town of Collierville **Board of Zoning Appeals** met in regular session on Thursday, January 21, 2016 at 5:00 p.m. in the Board Chambers of Town Hall, at 500 Poplar View Parkway.

Staff members present were: Town Planner, Mr. Jaime Groce; Assistant Town Planner, Mrs. Nancy Boatwright; Planner, Mr. Matthew Wilkinson, Planner, Mr. Scott Henninger and Administrative Specialist, Mrs. Sandi Robbins.

Roll Call:

Chairman Counts asked Mrs. Robbins to call roll.

Kelsey – present, Oakes – present, Luttrell – present, Hamilton – present, Counts – present.

Quorum Present

Election of Officers:

Chairman Counts asked if there were any nominations for Chairman for 2016.

Commissioner Hamilton nominated Commissioner Counts to serve as the Chairman for 2016.

Chairman Counts asked if there were any further nominations.

Hearing none, he closed the nominations and asked if there was any opposition.

Hearing none, Mr. Steven Counts was voted in as Chairman by acclamation.

Roll Call:

Hamilton – yes, Kelsey – yes, Oakes –yes, Luttrell – yes

Motion approved

Chairman Counts asked if there were any nominations for Vice-Chairman for 2016.

Commissioner Luttrell nominated Commissioner Hamilton to serve as the Vice-Chairman for 2016.

Chairman Counts asked if there were any further nominations.

Hearing none, he closed the nominations and asked if there was any opposition.

Hearing none, Mr. David Hamilton was voted in as Vice-Chairman by acclamation

Roll Call:

Kelsey – yes, Oakes –yes, Luttrell – yes, Counts – yes,

Motion approved

Chairman Counts asked if there were any nominations for Secretary for 2016.

Commissioner Hamilton nominated Commissioner Kelsey to serve as the Secretary for 2016.

Chairman Counts asked if there were any further nominations.

Hearing none, he closed the nominations and asked if there was any opposition.

Hearing none, Mr. Carr Kelsey was voted in as Secretary by acclamation

Roll Call:

Hamilton – yes, Oakes –yes, Luttrell – yes, Counts – yes

Motion approved

Approval of the Minutes:

Chairman Counts asked if there were any corrections or deletions to the minutes from the December 15, 2015 meeting.

Hearing none, he called for a motion to approve the minutes as presented.

Motion by Commissioner Oakes, and seconded, to approve the minutes as presented.

Hearing no further discussion, Chairman Counts asked Mrs. Robbins to call the roll.

Roll Call:

Kelsey – yes, Luttrell – yes, Hamilton- yes, Oakes- yes, Counts – yes

Motion approved

Approval of the Agenda:

Chairman Counts asked if there were any additions or changes to the Agenda.

Mrs. Nancy Boatwright stated there are none.

Motion by Commissioner Kelsey, and seconded, to approve the agenda as presented.

Hearing no further discussion, Chairman Counts asked Mrs. Robbins to call the roll.

Roll Call:

Kelsey – yes, Luttrell – yes, Hamilton- yes, Oakes- yes, Counts – yes

Motion approved

Formal Agenda:

**BZA15-12 179 Hwy 72 E - Supply Line Memphis-
Request a Variance to allow uncovered Outdoor
Storage in a GC: General Commercial**

Mrs. Nancy Boatwright gave the staff presentation. This is a reapplication initiated by Department of Development based on new evidence not considered at the December 15th BZA meeting. The applicant is proposing a 130' x 60' uncovered storage area that

1-21-16 BZA Minutes

EXHIBITS

1. Applicant's cover letter (12/3/15)
2. Photos of uncovered storage in the area (12/15/15)
3. 2006 Site plan with proposed location of outdoor storage
4. Aerials of the subject property (12/3/15)
5. Examples of pipe storage racks and ground storage (12/3/15)
6. Site Photographs (12/3/15)
7. Zoning map keyed to adjacent properties
8. Draft 12/15/15 BZA Minutes

equals 7,800 sq. ft. that will be storing 10' to 20' pipes. The previous use on the property began with Tractor Supply Company in 1974. They had uncovered outdoor storage of farm equipment, agricultural products, lawn care equipment. In 2006 Global Power Sport received a Conditional Use Permit (CUP) to allow motorcycle/ATV/personal water craft sales. In 2014 another CUP was granted for Lawrence Stewart CarStar that allowed outdoor storage of vehicles in the rear of the property. She explained the different uses of the surrounding areas and how they are nonconforming uses that are more industrial than retail. She stated this could be considered a hardship for physical surroundings. The use of retail at 179 Hwy 72 E could be difficult because it is surrounded by industrial uses. She explained the outdoor storage standards if the outdoor storage is allowed. She stated the outdoor storage would only be visible from one area which will be blocked by an opaque fence. She named some other properties with uncovered outdoor storage in the surrounding area. She stated these pipes can't be stored indoor because of lack of space and if a canopy were to be installed you could view it off site.

The physical surroundings of the property include nearly all industrial uses, even though the zoning is GC General Commercial, making it difficult to use the property for a retail use. An industrial zoning would allow the storage of the pipes uncovered in the rear yard of the property. If the property were zoned industrial, the Town Planner would have the option of allowing uncovered storage; however, the property is zoned GC even though all the surrounding properties are used as industrial. The Town Planner does deem the uncovered storage at this property inappropriate. Most property within the GC District is used for commercial, rather than industrial, purposes. The use, a plumbing showroom/wholesale business, is allowed in the GC District. There are factors other than financial gain being considered, such as physical characteristics of the lot. The hardship was created over the years by the continued nonconforming uses surrounding the property. The variance makes possible a reasonable use of the property by allowing the property to operate in a similar manner as surrounding properties. Uncovered outdoor storage will not be detrimental to the public welfare or injurious to other property or improvements in the area as it will be entirely concealed within the subject property, behind a fence. The requested variance will not impair an adequate supply of light and air to adjacent property, increase the danger of fire, endanger the public safety, or substantially diminish or impair property values within the area. The requested variance will not interfere with or encroach upon a recorded public or private.

Chairman Counts asked if there were any questions of staff.

Chairman Counts asked if there were any questions of applicant.

Chairman Counts asked if the applicant would like to make a statement.

The applicant did not wish to make a statement

Commissioner Kelsey stated he is in favor of granting the request because the covering would be more visible to the public than not having a covering. Even though it is general commercial, it is very industrial in this area. The neighbors of this property don't have any issue with it and there were CUPs in the past that allowed it.

Commissioner Luttrell stated he is in favor as well. It will blend in with the surroundings and he believed it will not have any negative effect on the surrounding businesses.

Commissioner Hamilton stated he previously voted against the proposal because of difficulty at establishing a hardship as presented in the information at the 12/15/15 BZA meeting. He stated Staff and the applicant have done excellent work in pointing out something that wasn't presented last time, but does in fact show a hardship that is being created. The concept of starting to spot zoning differently doesn't make sense, so he is very favorably inclined to this proposal.

Commissioner Oakes stated he is inclined to being in favor because the variance proposed makes possible a reasonable use of the property by allowing the property to operate in a similar manner as surrounding properties. He believed they have a precedence and it makes sense in this case to grant the variance.

Chairman Counts stated the staff report states the predominantly industrial area could make it difficult to use the subject property for a retail use. He interrupts that to mean this property needs to be General Commercial to be used for a retail use, but it needs to be industrial to allow for an uncovered outdoor storage. He doesn't consider this to be any kind of a physical impediment. He understands that within the nine tests this is a limited issue. Clearly this meets all the other issues but he doesn't believe they meet the first one.

Hearing no further questions or discussion, Chairman Counts called for a motion.

Motion by Commissioner Hamilton, and seconded, to approve the applicant's request of a variance to allow the uncovered outdoor storage of pipe products in the rear of the property at 179 E. Highway 72, subject to the following conditions.

- 1. The products shall meet all requirements of Zoning Ordinance §151.025(D)(13)(b).***
- 2. The products shall be fully screened from view off-site or from public rights-of-way with an opaque material (§151.025(D)(13)(c).***
- 3. A site plan shall be provided that delineates the location of the outdoor storage.***
- 4. Any deviation from the approved variance shall require the approval of Staff and/or the Board of Zoning Appeals.***

Hearing no further comments, Chairman Counts asked Mrs. Robbins to call the roll.

Roll Call:

Kelsey – yes, Luttrell – yes, Hamilton- yes, Oakes- yes, Counts – abstain

Motion Approved

BZA15-14 Cartwright Place Drive Zoning Boundary Extension - Request an Extension of the SCC Shopping Center Commercial Zoning District Boundary on property located at the northwest corner of Poplar Avenue and Bray Station Road

Mr. Jaime Groce gave the staff presentation. He stated to the north of the property is the Du Bray Planned Development, to the west is Baptist Memorial Hospital to the east are retail uses, restaurants, banks, and a hotel, institutional uses, and Incarnation Catholic Church, and to the south is vacant land in the Schilling Farms Planned Development. This was split zoned in 1999. He explained the history of the BZA's power to interpret zoning map issues. The applicant could engage the BMA to rezone this property but it's hard to correctly define the area line. It's expensive to rezone a property, which causes a financial impact. The Zoning Map will not change if the BZA grants this request. It will only allow this property to extend the SCC zoning district regulations. There are no special criteria needed to grant this request. He stated this request will comply with the Land Use Plan. He explained the intent of the rezoning of the property in 1999 and that MPO

EXHIBITS

1. Applicant's cover letter (12/14/15)
2. Zoning Exhibit, 11/2/15
3. 2040 Land Use Plan Excerpt, 2012
4. Ordinance 1999-22, June 1999.
5. 5/17/99 PC minutes
6. Comparison of MPO and SCC Regulations

was used as a buffer against the residential area to the north. He explained the different uses allowed with MPO.

Chairman Counts asked if there were any questions of staff.

Commissioner Hamilton asks if there was any way to appropriately recognize the intent of what the developer wants to do and keeping the MPO as the transitional buffer to residential. He stated everything seems to be referencing an imaginary line.

Mr. Groce stated the way the motion is structured is flexible until they plot this property and the new road is set. The quadrant up against Poplar and Bray Station is going to be SCC and everything north of that line is going to be MPO. The intent of the Land Use Plan is to provide guidance and give the property owners assurance of what will happen.

Commissioner Hamilton asks how they know the SCC won't keep encroaching into MPO area.

Mr. Groce stated that's a legislative decision. If they want to do SCC on the other side they would need to come back before the BZA, which would not be consistent with the Land Use Plan, and have to ask the BMA to change the MPO to part SCC. The Land Use Plan would not support this change.

There was a discussion over how far the encroachment can be.

Chairman Counts asked if there were any questions of the applicant.

Chairman Counts asked if the applicant would like to make a statement.

Mr. Kevin Vaughan, Township Services Development, 1115 Halle Park Circle, explained he started on this project in 1998. In 2003 the Church of Incarnation established more curb cuts along Bray. In 2006 the Town asked if they would install a signal arm and improve it at Bray Station as well as widen their section at Bray Station, then TDOT would improve Poplar along the frontage of this property. The curb cut that TDOT installed was farther west than their imaginary curb line. At that time, the Town Engineer wanted their curb cut to be shifted north of where they had originally planned so they would eliminate turn conflicts. Several months ago they were looking at development prospects and discovered this issue with the zoning line. He stated they are not asking for more zoning on the property they just want the new road to define the SCC boundary. They would like to get this cleaned up so they can know where the line is and to have clarification so they can move forward.

Chairman Counts asked if anyone from the public would like to make a statement.

Hearing no further questions or discussion, Chairman Counts called for a motion.

Motion by Commissioner Hamilton, and seconded, to approve the request to extend the SCC: Shopping Center Commercial Zoning District regulations into the MPO: Medical Professional Office Zoning District portion of the 22.956-acre property located at the northwest corner of West Poplar Avenue and Bray Station Road, to a point along the centerline of the future Cartwright Place Drive (Exhibit 1).

Hearing no further comments, Chairman Counts asked Mrs. Robbins to call the roll.

Roll Call:

Kelsey – yes, Luttrell – yes, Hamilton- yes, Oakes- yes, Counts – yes

Motion approved

BZA15-16 11199 Shelby Post Road – Request a Variance to allow a fence to exceed 6 feet in the front yard setback

Mrs. Nancy Boatwright gave the staff presentation. The applicant would like an eight foot solid wood fence along the Byhalia Road frontage. This lot is a corner lot so it has two front yards. She stated there is a 4 grade change from the right-of-way to the house and a 5 foot change in elevation from the centerline of the road. The grade change allows traffic to be visible and audible from the residence, which used to be screened by dense brush. They had lost 25 feet right-of-way when the 2-lane road was widened to a 5-lane road. The privacy was reduced by the removal of vegetation. The widening of the road has increased traffic.

- | EXHIBITS | |
|-----------------|---|
| 1. | Applicant’s cover letter (received 12/21/15) |
| 2. | Applicant’s responses to Standards for Variances (received 1/11/16) |
| 3. | Aerial photo with contours and spot elevations (1/13/16) |
| 4. | Staff photo of previous property condition (5/10/13) |
| 5. | Staff photos of current property condition (1/13/16) |
| 6. | Applicant’s “Before” and “After” photos (received 12/21/15) |

This is a corner lot that requires a 50-foot setback along both roads. There are two things in the Zoning Ordinance that govern the fence: it can’t be any more than 10 feet into the front setback line and in no case shall a fence greater than 48” be located closer than 20 feet back of the curb. The applicant wishes to place an 8 foot fence 15 feet from the back of the curb. If it was placed forty feet from the sidewalk it wouldn’t screen anything between the road and the residence.

With the recent improvements to Byhalia Road, there is a 5-foot change in grade between the centerline of the road and the residence, making a 6-foot fence, setback 40 feet from the property line, of little use for privacy or a sound barrier. Most properties in the R-L1 District aren’t located along a rural road that was improved to a major collector road with an increase in the elevation of the roadway. The variance will not authorize activities or uses other than those permitted by ordinance in the R-L1 District as fences are allowed on residential lots. There are factors other than financial gain being considered, such as physical surroundings and topographic conditions of the lot. The applicant has not created the hardship as Byhalia Road was a two-lane, rural road when Mr. Haynes purchased the property. TDOT improved the road to a major collector road. The variance makes possible a reasonable use of the property by allowing the fence to be placed at a height and location that would provide privacy for the residence, given the slope of the lot. The granting of the variance would not be detrimental to the public welfare or injurious to other property or improvements in the area as it will only be placed along the Byhalia Road frontage. The variance will have no effect on the supply of light and air to adjacent property, the congestion in public streets, the danger of fire, or public safety, or substantially diminish or impair property values within the area and will not block the sight distance at the intersection as Shelby Post Road will soon become a cul-de-sac at this location when the construction of Shelby Drive to Byhalia Road is completed later this year. Adding landscaping along the base of the fence will reduce the appearance of the height as visible from Byhalia Road just 15 feet away. The variance will not interfere with or encroach upon any know public or private easement.

Chairman Counts asked if there were any questions of staff.

Chairman Counts asked if there were any questions of the applicant.

Chairman Counts asked if the applicant would like to make a statement.

The applicant did not wish to make a statement.

Chairman Counts asked if anyone from the public would like to make a statement.

Commissioner Kelsey stated he is in favor of granting the request. The applicant didn't create this hardship with the widening of Byhalia Road and had made several efforts with moving the trees. He thinks it is a reasonable request.

Commissioner Luttrell stated he agrees with Commissioner Kelsey. The land owner has done much up to this point which shows he values this property and is in favor of this request.

Commissioner Hamilton stated he is favorably inclined. He thinks this is a reasonable variance request because it does not hinder others and provides a very reason and suitable solution.

Commissioner Oakes stated he is favorably inclined because of all the aforementioned reasons.

Chairman Counts stated one thing they have to consider is that this is basically the taking of property. At least the enjoyment of his property has been taken. He believed granting this variance would serve to rectify that, so he is inclined to approve the variance.

Hearing no further questions or discussion, Chairman Counts called for a motion.

Motion by Commissioner Kelsey, and seconded, to approve the applicant's request for a variance (Exhibit 1) to allow an 8-foot fence to be located thirty-five feet (35') past the front setback line on the street side on which the house does not face at 11199 Shelby Post Drive, subject to the following conditions.

- 1. All required permits shall be obtained prior to construction of the fence.***
- 2. An evergreen hedge shall be provided adjacent to the fence along the street frontage to help reduce the mass of the fence. An exhibit shall be included with the fence permit application that shows the location, spacing, installed height, and species of the plantings. The plant selection shall be approved by staff, with shrubs at least 24 inches tall at installation.***
- 3. If the fence varies in height with an adjacent fence, then the new fence shall transition to match the adjoining fence. The transition shall be provided over a minimum distance of eight feet or 4:1 ratio.***
- 4. Any deviation from the approved variance shall require the approval of Staff and/or the Board of Zoning Appeals.***

Hearing no further comments, Chairman Counts asked Mrs. Robbins to call the roll.

Roll Call:

Kelsey – yes, Luttrell – yes, Hamilton- yes, Oakes- yes, Counts – yes

Motion approved

BZA15-17 595 W Poplar Ave - Discount Tire Store - Request a Variance to exceed the maximum allowed parking

Mr. Scott Henninger gave the staff presentation. The applicant intends to request site plan approval showing 50 parking spaces for a new 7,373 square foot retail building (Discount Tire), exceeding the maximum limit of 15 spaces based on the 1 space for every 500 sq. ft. of building area. The applicant interprets the ordinance differently, and believes the maximum is 37 spaces. The 50 space request would be 1:147 sq. ft. He compared the existing site (formerly Trustmark Bank) to the proposed site (Discount Tire). He stated the bank site is protected under legal nonconforming protections provided that no change in the use of the land is undertaken. He stated the applicant intends to redevelop the site from a bank use to tire sales, a clear change in use. The structural nonconformities of the site will no longer be protected. He stated if the applicant were to redevelop this site as a bank, they would still be allowed to use the nonconforming protections.

He explained why the Town has a parking limitation and how those limitations worked. He stated there are alternative to exceeding the maximum allowed parking. The applicant could reduce the number to 15 spaces; however, the applicant states in his cover letter, even the 37 spaces would still not meet their needs. He stated the applicant will be adding buffers and screening the parking so it shouldn't be injurious to other properties. The only thing that could be considered injurious would be the lack of access to the properties that currently have access. As part of the final site plan process, this could even be changed. He explained different parking space ratios this property could have compared to other tire stores and auto shops.

Chairman Counts asked if the use did not require a CUP, what parking quantity would the applicant be permitted.

Mr. Henninger stated they would be allowed 37 parking spaces.

Chairman Counts asked are they only allowed 15 because this is a CUP.

Mr. Henninger stated correct.

Chairman Counts asked if there were any questions of staff.

Commissioner Kelsey asked if there were any examples that staff knows of that have that high of parking ratio.

Mrs. Boatwright stated last month the BZA granted a similar request for a unified development on Byhalia and Poplar, but the ratio was not this high and the proposed development could not be a unified development with the surrounding uses.

There was a discussion over the allowed ratio and what the applicant would like for parking spaces.

Chairman Counts asked, if there were 50 spaces could they would still meet the requirement for 30% greenspace.

Mr. Henninger stated that is correct.

EXHIBITS

1. Applicant's Cover Letter & Variance Test Responses (12/22/15)
2. Proposed Site Plan (12/22/15)
3. Color Elevations (12/22/15)
4. Aerial & Site Photos (Taken 01/07/16)
5. Letter from Trustmark Bank rescinding parking agreement with Collierville Auto (dated 12/03/15)
6. Gateway Tire Site Plan (02/25/13)

There was a discussion over the required greenspace.

Commissioner Kelsey asked if the applicant cannot do this project without the 50 spaces.

Mr. Henninger stated it is stated in the applicant's cover letter.

A discussion ensued over tire sale businesses not requiring 50 parking spaces.

Chairman Counts asked if the applicant would like to make a statement.

Mr. Mike Fahy, Prime Development Group, 7520 Capital Drive, Ste. 200, Germantown, TN 38138, stated they believe the intent of the regulation is to meet the minimum greenspace requirement. They exceed that by quite a bit. They're bigger than the Gateway site. Their building is half the size of the Gateway store. Discount Tire has been around for 56 years and has over 900 stores. They still continue to grow and have obviously perfected something. He stated all the competitors provide other vehicle services. All Discount Tire does is change tires. They need to move vehicles efficiently and quickly. Their tire storage is inside the building and they don't have outside storage of vehicles. This use is very specific to a certain amount of parking spaces and to abide by the current regulation for tire stores would be detrimental to this business. He stated this store has three bays. Other tire stores have 10 to 12. This company has looked at the best method to take care of a car. He explained how they are going to clean up this property. He stated there is no benefit for asking for 37 spaces when the applicant needs 50 to survive.

Chairman Counts asked if there were any questions of the applicant.

Commissioner Hamilton asked what is the basis of 50 parking spaces.

Mr. Fahy stated it is based on the customer movement and having 20 employees on the property.

Commissioner Hamilton asked what the average number of parking spaces at the other stores.

Mr. Fahy stated 50 plus, 50 is the lowest number they have.

Commissioner Hamilton asked what is the average square footage of the stores is across the country.

Mr. Fahy stated this store we are working on right now is a prototype. He can't tell you about the ones they did decades ago.

There was a discussion over the intent of the 50 parking spaces.

Commissioner Kelsey asked at 50 spaces is there still a 40% greenspace for this lot.

Mr. Henninger stated that is correct.

Commissioner Oakes asked if having 3 bay in the stores is standard.

Mr. Fahy stated yes it is.

Chairman Counts asked if anyone from the public would like to make a statement.

Commissioner Kelsey stated it seems they could do it with 37, but obviously they want 50. The 40% is still a large portion of green space even with 50 parking spaces. The current motion is not acceptable to the applicant and would have to be amended.

Commissioner Luttrell stated he is on the fence. They are trying to justify 13 extra spaces by saying this is the standard for this concept. Are 50 parking spaces absolutely necessary or something they have become accustomed to.

Commissioner Hamilton stated he is caught between the facts and the implications. He believes they have done a very nice job with the layout, the setbacks, and the design. The problem is it doesn't meet the standards. He has not heard any substantiation of the basis for this number. By law they take what they have been presented to make a decision.

Commissioner Oakes stated he knows enough about basic business to know that you don't develop 900 stores by spending money needlessly on parking spaces. He has no reason not to accept that across their 900 stores the average of three bays and minimum 50 parking spaces. They obviously are going to better the property and it is good for the economy.

Chairman Counts stated the issue before us is whether they can grant a variance. He believes the intention of the Ordinance is to limit the amount of impervious parking around the Town and present a pleasant appearance. This is 40% or more green space which more than satisfies that requirement. In this case he has no problems with granting this variance.

Hearing no further questions or discussion, Chairman Counts called for a motion.

Motion by Commissioner Kelsey, and seconded, to approve the applicant's request (Exhibit 1) to exceed the maximum allowed parking limitation at 595 W. Poplar Avenue, subject to the following conditions:

- 1. The variance shall become void if a Final Site Plan and Development Agreement for the Discount Tire Store at subject property is not approved by January 21, 2017, by the Board of Mayor and Aldermen.***
- 2. Any deviation from the approved parking variance shall require the approval of Staff and/or the Board of Zoning Appeals.***
- 3. Maximum parking limit shall be 1 space per 147 square feet.***

Hearing no further comments, Chairman Counts asked Mrs. Robbins to call the roll.

Roll Call:

Kelsey – yes, Luttrell – yes, Hamilton- yes, Oakes- yes, Counts – yes

Motion approved

BZA15-18 218 N Main Street - Request a Variance to allow the principal structure to encroach 18 feet into the required rear yard

Mr. Matthew Wilkinson gave the staff presentation. He stated the lot is in the process of being subdivided and rezoned. He stated

EXHIBITS

1. Applicant's cover letter (12/7/15)
2. Existing Conditions (12/7/15)
3. Proposed Plot Plan (12/7/15)
4. Example Lot Layout (12/7/15)
5. Historic District Guidelines Excerpt
6. 12/17/15 HDC Meeting Minutes
7. 1/7/16 PC Meeting Minutes

the original house was constructed in the 1890s and is an existing nonconforming structure. This property is located in the Town's Historic District. He explained the applicant's proposed additions. He stated the house does not sit parallel to the lot lines. He stated there are a few alternatives to the existing proposal for the garage. One would be to reconfigure the proposed addition and the other option is to bend the hallway to make the garage conform to the existing setback. This might have pushed the garage passed the center line of the house which would no longer comply to the HDC guidelines. The home's presence in the Historic District limits where you can place a garage. This design was approved by the HDC at the December 18, 2015 meeting.

The original house has an unusually shallow rear yard setback of 13.7 feet, which makes it out of conformance with its original R-1 zoning designation, as well as its target R-2 zoning designation. Also, the home was not constructed parallel to the rear property line. In addition to this very shallow rear setback and unusual placement of the home on the lot, the property is also contained within the Historic District overlay, which applies additional regulations on design and building placement. One such regulation dictates that garages cannot be placed in front of the centerline of the home. Given the period for development of the surrounding neighborhood, there are many non-conformities with current zoning regulation. Some of these non-conformities do involve homes encroaching on the required rear yard setback, as well as abnormal lot shapes. The variance will not authorize activities other than those permitted by ordinance in the R-2 zoning district. There are factors other than financial gain being considered, such as physical characteristics of the lot. The applicant has not created the alleged hardship as the historic building placement existed when the current owners purchased the property. The applicant did, however, create the need for parking by asking the Historic District Commission to demolish the existing detached garage on the future Lot #2. The variance allows for the addition of the two car garage very similar to the placement of the existing home on the lot, which is not parallel to the rear lot line and has been approved by the Historic District Commission as the addition is consistent with the Historic District Guidelines. The requested variance will not be detrimental to the public welfare or injurious to other property or improvements in the area. The requested variance will not impair an adequate supply of light and air to adjacent property, substantially increase the congestion in public streets, increase the danger of fire, endanger the public safety, or substantially diminish or impair property values within the area. The requested variance will not interfere with or encroach upon a recorded public or private easement.

Chairman Counts asked if there were any questions of staff.

There was a discussion over the adjacent property.

Commissioner Hamilton asked if this variance only applies to Lot 1.

Mr. Wilkinson stated this variance only applies to the existing structure and the proposed addition to said structure.

Chairman Counts asked if there were any questions of the applicant.

Chairman Counts asked if the applicant would like to make a statement.

Robert Estes, Parker, Estes & Associates, 3460 Ridge Meadow Drive, Memphis, TN 38115, stated the adjacent area of the property behind the house is a parking area for the neighbors. If they were to redesign the addition and turn the garage where the courtyard is they would still need a variance. The Historic Commissioner really did like that the garage was setback as far as it was.

Chairman Counts asked if anyone from the public would like to make a statement.

Hearing no further questions or discussion, Chairman Counts called for a motion.

Motion by Commissioner Oakes, and seconded, to approve the applicant's request of a variance (Exhibit 1) to allow the principal structure to encroach 18 feet into the required rear yard, subject to the following conditions.

- 1. The variance will be voided if the minor subdivision is not approved by January 21, 2017.***
- 2. The variance will be voided if the rezoning to R-2: Medium Density Residential is not approved by the Board of Mayor & Aldermen by January 21, 2017.***
- 3. Any deviation from the approved variance shall require the approval of Staff and/or the Board of Zoning Appeals.***
- 4. The final plat for the minor subdivision at 218 N. Main Street shall show a 12' rear setback for Lot #1 with a note on the plat explaining the Board of Zoning Appeals' action on BZA 15-18.***

Hearing no further comments, Chairman Counts asked Mrs. Robbins to call the roll.

Roll Call:

Kelsey – yes, Luttrell – yes, Hamilton- yes, Oakes- yes, Counts – yes

Motion approved

BZA15-15 330 E Nolley Drive - Request a Variance to allow the principal structure to encroach into the required rear yard

The applicant arrived late to the meeting causing this item to move to the bottom of the agenda.

Mr. Mathew Wilkinson gave the staff presentation as outlined in the staff report. The applicant would like to encroach up to 9 feet into the required rear yard setback. He stated he will be addressing the following key questions in his presentation:

EXHIBITS

1. Applicant's cover letter (12/18/15)
2. Applicant's standards for variance (12/18/15)
3. Letter of support from affected neighbor (12/18/15)
4. Site Plan including area to be covered (12/18/15)
5. Property & vicinity aerial (12/18/15)
6. Covered patio elevations (12/18/15)

1. Are there alternatives to a 9-foot encroachment?
2. Is there something unusual about this lot?
3. Would a 9-foot encroachment into the rear yard be injurious to other property in the neighborhood?

The alternative would be a smaller patio but it will not provide adequate depth for reasonable use. He stated the smaller patio would either leave a large portion of the existing patio uncovered or add the burden of replacing concrete. Corner lots are typically larger to accommodate the issue of double frontage, in which they have two front yards giving them larger setback than interior lots. In addition, the property owner at 984 Copper Leaf Cove has submitted a letter of support for the variance.

The lot, located on a corner, is relatively small for a corner lot in R-1 zoning. This substandard size for a corner lot with two front yard creates a shallower backyard than a standard, interior lot. The condition caused by the shape of the lot is not applicable, generally, to other property throughout Collierville within the R-1 District, as most corner lots are larger than the minimum 15,000 sq. ft. requirement to accommodate the two front yards. The variance will not authorize activities or uses other than those permitted by ordinance in the R-1 zoning district. An attached, covered patio is allowed in the R-1 zoning district. There are factors other than financial

gain being considered, such as physical characteristics of the lot and its smaller size. The owner purchased the property in 1994 and was not responsible for drawing the lot. The variance makes possible a reasonable use of the property by requesting the minimum encroachment into the required rear yard for the addition of a covered patio to adequately shelter the rear of the house and encompass the entirety of the existing patio. The requested variance will not be detrimental to the public welfare or injurious to other property or improvements in the area as the encroachment into the minimum required rear setback line is less than what would be allowed for a side yard if the lot were considered an interior lot. The requested variance will not impair an adequate supply of light and air to adjacent property, substantially increase the congestion in public streets, increase the danger of fire, endanger the public safety, or substantially diminish or impair property values within the area. The requested variance will not interfere or encroach upon a recorded public or private easement.

Chairman Counts asked if there were any questions of staff.

Chairman Counts asked if the applicant would like to make a statement.

Chairman Counts asked if there were any questions of applicant.

Chairman Counts asked if anyone from the public would like to make a statement.

The applicant did not wish to make a statement.

Commissioner Oakes recused himself at this time.

Commissioner Hamilton stated he is very favorably inclined and believes the applicant was proactive to have a neighbor put their support in writing.

Commissioner Kelsey stated he always likes to hear neighbors being favorable and believes it to be a hardship in the sense that this corner lot is smaller than the average.

Commissioner Luttrell stated he is in favor for most of the same reasons as stated by Commissioner Kelsey.

Hearing no further questions or discussion, Chairman Counts called for a motion.

Motion by Commissioner Hamilton, and seconded, to approve the applicant's request of a variance (Exhibit 1) to allow the principle to encroach up to 9 feet into the required 30-foot rear yard setback at 330 E. Nolley Drive, subject to the following conditions.

- 1. The covered patio(s) shall not be enclosed by adding walls so as to create additional inhabitable building square footage.***
- 2. All required permits shall be obtained prior to construction of the addition.***
- 3. Any deviation from the approved variance shall require the approval of Staff and/or the Board of Zoning Appeals.***

Hearing no further comments, Chairman Counts asked Mrs. Robbins to call the roll.

Roll Call:

Kelsey – yes, Luttrell – yes, Hamilton- yes, Counts – no

Motion approved

OTHER BUSINESS

Chairman Counts asked if there was any other business.

Mrs. Boatwright stated there was none.

Hearing no further business, Chairman Counts adjourned the meeting at 7:13pm.

Commissioner Carr Kelsey, Secretary

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