

The Town of Collierville **Board of Zoning Appeals** met in regular session on Thursday, December 15, 2016 at 5:00 p.m. in the Board Chambers of Town Hall, at 500 Poplar View Parkway.

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

Roll Call:

Chairman Counts asked Mrs. Robbins to call roll.

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

Quorum Present

Approval of the Minutes:

Chairman Counts asked if there were any corrections or deletions to the minutes from the October 20, 2016 meeting.

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

Motion by Commissioner Kelsey, 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, Counts – yes.

Motion approved

Approval of the Agenda:

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

Mr. Jaime Groce stated no additions or deletions. There has been a request to defer one of the items, BZA 16-12 Collierville Subdivision, Lot 82 a setback for a porch encroachment variance. The HDC turned down the applicant's request for a new house. The applicant still plans to build a new house but he has to revised his house plans and may still need a variance. He would like to defer to a future meeting because he doesn't want to ask for a variance on a house plan he no longer will be using. Mr. Groce stated it might be appropriate to move up item #6 which is the official action to terminate Mr. Riley's services.

Motion by Commissioner Kelsey, and seconded, to defer item BZA 16-12 Collierville Subdivision, Lot 82 - to next meeting and move item #6 up on the agenda making it #5 and the formal agenda #6.

Roll Call:

Kelsey – yes, Luttrell – yes, Counts – yes.

Motion approved

Mr. Groce stated the BZA is involved in a lawsuit that dates back to several years ago when the BZA made a decision that the BMA didn't agree with. The BMA sued the BZA and through the course of the decision the BMA's decision prevailed. The question is does the BZA want to continue to appeal or do they no longer need an attorney to pursue this case.

Chairman Counts asked if there were any questions of staff or any discussion.

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

Motion by Commissioner Kelsey, and seconded, to terminate Mr. Riley's services to the BZA.

Kelsey – yes, Luttrell – yes, Counts – yes.

Motion approved

Formal Agenda:

BZA16-08 - Landers Ford — Request approval of a Variance to waive the requirement for undulating berms one to two feet in height within the required minimum 20-foot wide landscape buffer along all side and rear property lines for an auto dealership.

Mrs. Nancy Boatwright gave the staff presentation as outlined in the staff report. She stated there are special conditions for car dealerships. They are required to have a minimum 20-foot wide landscape buffer along all side and rear property lines. Within the landscape buffer shall be undulating berms one to two feet in height supplemented with evergreens and trees. The berm can be eliminated if the parking area is completely enclosed in a solid masonry fence and supplemented with evergreen trees and shrubs.

An auto dealership was established in 1985 before this property was part of the Town. It was annexed in 1987. Landers Ford occupies an existing, non-conforming site owned by Crain Investment LP, who are in Arkansas. The inventory lot is owned by Ritchey Management IV, LLC which is Landers Ford. The main reason they are seeking this approval is because they have been parking excess inventory all around town in vacant lots. They would have to drive these cars, as they were requested by customers, back and forth. This is a nonresidential non-conforming site which may only expand if there is a reasonable space for the expansion on the actual property owned by such nonresidential business. Since this business is owned by Crain Investment LP, they can't expand a non-conformity onto the site. She stated the landscape and site plan will meet buffer depth requirements but does not include the berm. The berm could be eliminated if a site-proof fence is installed, but the applicant would like to see into the lot for security purposes.

The expansion lot is a flag lot that is 2.544 acres and will have only 25' of Poplar Avenue frontage. She stated there is a wooded lot to the south of this lot that is currently undeveloped. When the empty wooded lot is developed it will develop into retail and most likely have a service area facing it. She stated the property to the east is a detention pond and will always remain a detention pond. To the north there is a loarge grade change that places the lot above the Lifetime Fitness development.

EXHIBITS

1. Applicant's cover letter with Standards for Variances (received 10/4/16)
2. Special Conditions for an Auto Dealership Conditional Use Permit (§151.024(J))
3. Pages from the Final Site Plan Package
 - a. Existing Conditions
 - b. Overall Site Layout
 - c. Site Layout
 - d. Landscape Plan
4. Shelby County Assessor's Aerial Map
5. Shops at Houston Levee Final Plat

She stated the non-conforming, flag-shaped lot includes a 590-foot by 25-foot “flagpole” that connects the area proposed for the parking lot to Poplar Avenue and provides an access easement for the adjacent property to the east. The remoteness of the site, the isolation from the surrounding properties through elevation change, the presence of a detention area, and the likely development of a retail site with a service area adjacent to the site make providing a berm along the side and rear property lines unnecessary. The shape of the lot is unusual and would be grounds for a variance to be granted. Most GC General Commercial lots are not flag-shaped with a 590-foot “flagpole.” The variance will not authorize activities or uses other than those permitted by ordinance in the GC zoning district as outdoor display for auto dealerships is allowed in the district. There are factors other than financial gain being considered, such as physical characteristics of the lot. The lot was created in 2000 as part of the Shops at Houston Levee Subdivision. The unusual, flag-shape was created by the property owner at that time, Trip Trezevant. The variance proposed makes possible a reasonable use of the property by requesting to waive only the undulated berms on the side and rear property lines. The applicant has not requested to waive the landscaping requirement. There will be landscaping in the buffer. The variance will not be detrimental to the public welfare or injurious to other property or improvements in the area as the property is, and will continue to be, remote from public streets and other developed property. 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 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 surrounding areas of the proposed expansion property.

Chairman Counts asked for the purpose of the request to not include the berm.

Mrs. Boatwright stated the applicant feels like it is pointless and would hinder visibility into the site.

There was a discussion over the applicant not wanting to use berms because of security reasons.

Hearing no further questions, Chairman Counts called the applicant to the podium.

Mr. Kevin Vaughan, Township Development Services, 1115 Halle Park Circle, stated the reason they are asking for the waiver is primarily for the northern border of the property. They don't want a landscaping buffer that leads over the retaining wall. They are most concerned for the northern section. Typically berms reduce visibility onto the site but this site will not be visible from any public way.

Chairman Counts asked if there were any questions of applicant.

Chairman Counts stated we are making an assumption that the south will develop as a service area. He stated the BZA is not supposed to make assumption of future development. There is nothing that says this area has to be a service area. It could be anything.

Mr. Vaughan stated it could be anything but it will have the benefit of having a 20' landscaping buffer in between it. He believes these berms are useless and need to be removed from the ordinance.

A discussion ensued over the ordinance that requires berm to be in the buffer and how the applicant is still using landscaping for buffering.

Chairman Counts asked the applicant if he would consider using a berm on just the south side of the property.

Mr. Vaughan stated he thinks it would be creating a useless item, but it's not the first time they had to do that.

Commissioner Kelsey stated he is inclined to waive the require berm because it is so far back from Poplar, the odd flag shape of the property and the berm seems unnecessary because of the future retail property and detention pond surrounding the area.

Commissioner Luttrell stated he agrees with everything Commission Kelsey said but he is troubled about not knowing what will for sure happen with the undeveloped lot. He is concerned that someone may not want to move into that undeveloped lot because they would see is that car lot. He would be in favor if they kept the berm on the south side and not require it on the north or east of the property.

Chairman Counts stated he has no problem with it and wouldn't mind issuing the variance with the exception of not knowing what will for sure occupy the undeveloped lot to the south. He would like to modify the motion to just have the berm on the south side.

Commissioner Kelsey asked what retail space is going to face the opposite direction of the traffic coming in. He thinks it a very reasonable assumption that the future retail space will face southward towards Poplar.

Chairman Counts stated that's a good point.

Commissioner Kelsey stated but if the only way to grant this variance is by amending the motion to allow berm only on the south side, he will be fine with that too.

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 to waive the requirement for undulating berms one to two feet in height within the required landscape buffers along all property lines for the inventory expansion lot (Lot 1, Shops at Houston Levee Subdivision) at the Landers Ford auto dealership.

- 1. The landscaping around the inventory parking lot shall meet the requirements of the Zoning Ordinance and Design Guidelines.***
- 2. 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, Counts – yes.

Motion Approved.

BZA16-09 - 244 College Street — Request approval of a Variance to allow the principal structure to encroach into the required rear yard.

Mrs. Nancy Boatwright gave the staff presentation as outlined in the staff report. She stated the HDC approved a Certificate of Appropriateness for exterior alterations in November 2016. She stated it would not be practical to fit the applicants need into an 8' space. The applicant is not expanding the width they are only expanding to the rear. This lot is non-conforming because of two reasons. The lot is an R-1 lot and should have a minimum of 15,000 square feet and 100' lot width. This lot is only 10,846 square feet with a 75' lot with. If the house was built closer to the front setback the applicant would have plenty of room in the back yard to expand. The house was built in 1940 (prior to the adoption of the Zoning Ordinance) with an addition in 1974. The applicant had an existing survey and then they had the property resurveyed. They are not quite sure where the actual property line is so they are erring on the side of caution.

She stated the lot is a nonconforming, substandard lot for the R-1 Low Density Residential District. It is 4,154 square feet smaller than the required 15,000 square feet, and 25 feet narrower than the required 100 foot lot width. The size and width of the lot result in a hardship on the owners as they are unable to expand the residence to the sides or rear which might be possible on a conforming lot. Had the house been placed farther up toward the front yard setback line, there would have been more than adequate space for the proposed rear addition. The condition caused by the nonconformities of the property are not typical of other R-1 lots as most R-1 lots were created after the Town adopted zoning regulations. The applicants provided Exhibit 11 to show that their lot is among the smallest in this R-1 neighborhood. The variance will not authorize activities or uses other than those permitted by ordinance in the R-1 zoning district as additions to residential structures are allowed. There are factors other than financial gain being considered, such as physical characteristics of the lot and because it's nonconforming. The lot was created prior to the effective date of the Zoning Ordinance. The variance makes possible a reasonable use of the property by requesting no further encroachment into the required rear yard than is required to provide a modern, usable master bedroom/bathroom suite. The requested variance will not be detrimental to the public welfare or injurious to other property or improvements as the encroachment by the proposed addition would be farther away from the rear property line than the existing accessory structure at the rear of the property. 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 variance will not interfere with or encroach upon a recorded public or private easement.

Chairman Counts asked if there were any questions of staff.

Hearing no further questions, Chairman Counts called the applicant to the podium.

EXHIBITS

1. Applicants' cover letter (11/22/16)
2. Applicants' description of requested variance with lot survey detail description (11/22/16)
3. Standards for a variance (11/22/16)
4. Lot Survey of 244 College Street (11/22/16)
5. Applicants' original property improvement site plan (11/22/16)
6. Applicants' revised property improvement site plan (11/22/16)
7. Applicant's photos (11/22/16)
8. Letter from applicants' architect (11/22/16)
9. HDC Certificate of Appropriateness granted on November 15, 2016
10. Aerial photo of 244 College Street (11/22/16)
11. Applicants' Lot size comparison (11/22/16)
12. Applicants' Historic District Map with non-conforming R-1 lots (11/22/16)
13. Letter from Joe Brock, owner of property at 245 W. Poplar Avenue (11/22/16)
14. Existing floor plan (10/27/16)
15. Proposed floor plan for addition (10/27/16)
16. 11/15/16 Draft HDC minutes

Mr. Greg Brewer, 244 College Street, stated his request for the variance is basically to make modern improvements to the property for them and to benefit the Historic District. They only looked at what was the minimum they can build in the rear addition to meet modern standards. They worked within the limitations of the lot as best as they could.

Chairman Counts asked if there were any questions of applicant.

Commissioner Luttrell stated the HDC and the neighbor located at the rear of the property have given their approved. The additions are improvements to the lot and the Historic District. He is in favor of this request.

Commissioner Kelsey stated within the Historic District, these houses are set so far back. If it had been moved up 12' they wouldn't need a variance.

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

Motion by Commissioner Luttrell, and seconded, to approve the applicant's request for a variance to allow the principal structure to encroach 7.26 feet into the required 30-foot rear yard setback at 244 College Street, per Exhibits 2 & 6, subject to the following conditions.

- 1. All required permits shall be obtained prior to construction of the addition.***
- 2. 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, Counts – yes.

Motion Approved.

BZA16-10 – 555 E. Winding Wood Circle – Request approval of a Variance to allow an accessory structure to be set back from the rear property line a distance less than the height of the structure.

Mrs. Nancy Boatwright gave the staff presentation as outlined in the staff report. She stated this lot is zoned R-1 but does have a PD overlay that allows for reduced front yard setbacks. She showed and explained illustrations of the proposed accessory structure and stated the purpose of it is to screen their back patio area from the lot behind them. The structure was designed to match the house. The northwest corner of the structure will encroach because of where it needs to be placed in order to provide the best screening and because the rear property line is at an angle to the house. The applicant does not want to move the structure closer to the house because it wouldn't be the right proportion, it would restrict the patio space and would be less effective the closer it is to the house. The house wasn't built centered on the lot. If it had been closer to the south side yard

EXHIBITS

1. Applicants' Cover Letter with Standards for Variances (11/22/16)
2. Lot Survey of 555 E. Winding Wood Circle (11/21/16)
3. Site Plan and Elevations of Proposed Accessory Structure (11/21/16)
4. Developer Email of Approval for the Accessory Structure (12/2/16)
5. Applicants' Photos (11/21/16 & 11/22/16)
6. Email From Applicant Outlining Purpose of Proposed Location (12/5/16)
7. Detail of Pavilion Showing Portion Closer to Property Line Than 14'

setback line then there may have been enough room to place the structure where they would have liked to have it. She stated there is a change in grade, so a 6' fence has little effectiveness in providing screening and privacy.

Mrs. Boatwright stated the lot has an irregular shape, with the rear lot line not being parallel to either the front lot line or the rear façade of the house. The house was not built in the center of the lot, but rather to the north side, which is the narrowest portion of the lot (see Exhibit 2). These two factors make the placement of the proposed accessory structure in a location that benefits the applicants difficult. There is a change in grade. The lot sloping from the northeast corner to the southwest corner of the property is sloping. This slope limits the effectiveness of a 6' opaque fence as a privacy screen between the applicants' home and the home being constructed on the lot backing up to their rear property line. The conditions that create the need for screening are not generally applicable to other lots in the Shepherd's Creek PD or the R-1 Zoning District as most lots have front and rear property lines that are parallel and do not have a rear yard that slopes towards the rear property line. The variance will not authorize activities or uses other than those permitted by ordinance in the R-1 zoning district as accessory structures are allowed in residential districts. There are factors other than financial gain being considered, including the shape and physical characteristics of the lot. The applicants have not created the alleged hardship as they did not create the lot. They purchased the property, including the house, in 2015. The variance makes possible a reasonable use of the property by allowing an accessory structure that can be placed in such a manner as to ensure its ability to provide adequate screening and its proportionality to the house. Only one corner of the structure will encroach into the required setback. The proposed structure setback variance will not be detrimental to public welfare or injurious to other property or improvements in the area. It will be fully contained within the rear yard of the subject property and is architecturally and aesthetically compatible with the house on the property. The variance will not impair the adequate supply of light and air to adjacent property, substantially increase congestion, increase the danger of fire, endanger public safety, or substantially diminish or impair property values in the area. The requested variance does not interfere with a recorded public or private easement.

Chairman Counts asked if there were any questions of staff.

Chairman Counts wanted to confirm the structure will be 14' high.

Mrs. Boatwright stated that is correct.

Commissioner Kelsey asked if she had heard anything from the neighbor regarding this structure.

Mrs. Boatwright stated there is a house under construction, but currently is not occupied. According to the applicant, Reggie Gardner of Magnolia Homes, is okay with the structure.

Hearing no further questions, Chairman Counts called the applicant to the podium.

Denise & Jack Billings, 555 E. Winding Wood Circle, stated they had talked to all the neighbors and they are all fine with the structure. All the homes in their neighborhood with the exception of theirs and the lot next to them have big back yards without any houses right against them. There is a problem with the houses being too close and, because of that, not having privacy. They wouldn't be building this if they had more privacy. Aesthetically the structure will tie in. The back fence is at the angle which causes a tight space between the fence and the patio. The structure is mainly being used as a screen.

Chairman Counts asked if there were any questions of applicant.

Chairman Counts asked if the BZA couldn't grant them a variance, what they would do to. He stated they would have to decrease the height of the structure by a foot and move it closer to the fence.

Mr. Billings stated they are keeping with the pitch line of the roof.

Mrs. Billings stated the ceiling of the patio is the same height as the proposed structure. The yard drops off and it will block the home behind them which is the purpose of this structure.

There was a discussion over the height of the accessory structure.

Commissioner Luttrell stated there are a couple of things working against the applicant. The back fence is at an angle and the slope of the yard.

Commissioner Kelsey stated he thinks structure would look odd if it wasn't even with the back of the house. He is inclined to say yes because it is a small sliver of the building that will be encroaching. If the house would have been shifted a little over to the south, it wouldn't be a problem.

Chairman Counts stated when you buy a house and you know you have houses all around you, there are going to be people looking into your backyard. If you wanted the lot that didn't have houses built into your back yard you have to buy the other lot. There is nothing particularly aggrieved about this lot. He stated these conditions would apply to many lots in Collierville or in Shelby County. What is the hardship?

Mrs. Boatwright stated the shape of the lot, the topography of the lot and the placement of the house.

Mr. Billings stated they aren't trying to change everything they just want the benefit to have this structure that will tie in to the lot and neighborhood. A screen needs to be placed. Both patios are looking directly at each other and this would be a good remedy to a problem that exists. They didn't know what would be built behind them until the house was already built.

Chairman Counts asked if he knew if a home was going to be built on the lot behind him.

Mr. Billings stated yes but they didn't know what the home was going to be like or how it was going to be shaped.

Chairman Counts stated they have to abide by the law. There are legal requirements for issuing a variance.

Mr. Billings stated the variance they are requesting is because of the shape of the lot and how the home was built. The structure they want to use is very attractive and inoffensive. He stated they need a variance in order to do it right. He stated it is important to them because he doesn't know what else to do. It is a hardship for him.

There was a discussion over the grade slope and if it was 2.5' less than that would affect the structure height allowing it to not be an issue.

There was a discussion over measuring the distance of the structure from the required setback.

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

Motion by Commissioner Luttrell, and seconded, to approve the applicants' request for a variance (Exhibit 1) to allow the northwest corner of an accessory structure to be set back 11.5 feet from the property line at 555 E. Winding Wood Circle subject to the following conditions.

- 1. All required permits shall be obtained prior to construction of the accessory structure.*
- 2. 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, Counts – no.

Motion Approved.

BZA16-11 – 1154 Talamore Cove – Request approval of a Variance to allow the principal structure to encroach into the required rear yard.

Mr. Scott Henninger gave the staff presentation as outlined in the staff report. He explained the concept plan. He stated the home is right at the setback line. The height of the structure is 12' and is attached to the house. There are alternatives to a 15' encroachment. There is an opportunity to have a smaller covered patio but really it is not deep enough to provide useable space. The other alternative is to do a detached structure, but the issue with that is it is not located near a usable area of the house. The western portion of the lot is located within a flood plain, making it difficult to construct a detached structure. The lot is unusual because it is on a bulb in a cul-de-sac which is similar to another case on Keisie Cove that was approved. The 15' encroachment would not be injurious to other properties in the neighborhood. Condition #1 would prevent the structure from being enclosed.

He stated the lot's pie shape (on the bulb of a cul-de-sac) creates a hardship forcing the residence to be placed farther back into the lot to meet the 40' setback requirement. In addition, the western portion of the lot is located in the 100 year floodplain which would make it difficult to construct a detached accessory structure since it would need to be raised at least one-foot above the base flood elevation. The requested variance will not be detrimental to the public welfare or injurious to other property or improvements in the area as the encroachment would be less than the distance from the rear property line that would be allowed for a detached accessory structure.

Chairman Counts asked if there were any questions of staff.

Hearing no further questions, Chairman Counts called the applicant to the podium.

Mr. Gregg Webb, Morgreen, Inc., 468 Hwy 72 W, stated the applicant wanted to do a covered porch on the back of the house and quickly found out that the house was pushed back because it was on a bulb. He stated the applicant has minimal adequate out door space. The owner has added in some landscaping to screen from the rear neighbor. He explained what type of landscaping was used.

EXHIBITS
1. Applicant's cover letter including Standards for Variance responses (11/21/16)
2. Applicants Exhibits (11/21/16) <ol style="list-style-type: none">a. Aerial Mapb. Aerial Enlargement with Setbacksc. Photos of Rear of Existing Residenced. Concept Plane. Elevation Sketch of Covered Patiof. Layout Exhibit with Dimensions
3. Wellington Ridge Subdivision Plat – Partial

Chairman Counts asked if there were any questions of applicant.

Commissioner Kelsey stated there are alternatives such as using something smaller but it would only allow 5' of useable space. The way they set these houses back causes these houses to need a variance almost every time they want to do something like this. The BZA has approved this for a similar case before.

Commissioner Luttrell stated, as Commissioner Kelsey mentioned, they have dealt with a lot of these cul-de-sac type issues. Anytime they want to do something to improve their back yard they have to see us. He is in favor of approval.

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

Motion by Commissioner Kelsey, and seconded, to approve the applicant's request of a variance (Exhibit 1) to allow a covered patio to encroach 15 feet into the required 30-foot rear yard setback at 1154 Talamore Cove, per Exhibit 2.f., subject to the following conditions.

- 1. The covered patio 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, Counts – yes.

Motion Approved.

OTHER BUSINESS

Chairman Counts asked if there was any other business.

Mrs. Boatwright stated we would like to thank Commissioner Kelsey for his years of service to the BZA. The BZA will be getting a new member named Leon Floyd.

Hearing no further business, Chairman Counts adjourned the meeting at 6:22 pm

Commissioner Carr Kelsey, Secretary