

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

Staff members present were: Town Administrator, James Lewellen; Town Planner, Mr. Jaime Groce; Assistant Town Planner, Mrs. Nancy Boatwright; Planner, Mr. Sean Isham; and Administrative Specialist, Mrs. Sandi Robbins.

Roll Call:

Chairman Counts asked Mrs. Robbins to call roll.

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

Quorum Present

Approval of the Minutes:

Chairman Counts asked if there were any corrections or deletions to the minutes from the August 18, 2016 meeting.

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

Motion by Commissioner Hamilton, 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 – abstain, Counts – abstain.

Motion approved

Approval of the Agenda:

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

Mr. Jaime Groce 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:

BZA16-06 240 New Byhalia Rd (Kroger Store V-387) — Request a Variance to allow greater than one parking space per 200 square feet of gross floor area for a shopping center

Mr. Jaime Groce gave the staff presentation. The lot size is 13.475 and is zoned and surrounded by Shopping Center Commercial (SCC). According to the Shelby County property assessor, in 1982 the Kroger shopping center was built. Since then the building has morphed with various add-ons. In 2004 the BZA approved a Conditional Use Permit (CUP) for the fuel center, and in 2007 at a time they were making lots of upgrades and changes to the site, a variance related to signage along New Byhalia Road. In August 2016, there was a site plan modification request to reconfigure the site and an aspect of the application doesn't meet the zoning requirements, the "parking cap"

EXHIBITS

1. Applicant's cover letters (8/16/16)
2. Existing Conditions and Demolition Plans, Site Layout, and Final Site Plan (received 8/16/16)
3. Existing Site Photographs (9/7/16)

He explained the parking cap is intended to prevent the paving of the whole site but also the correct adequate amount of parking for changes in use over time. The applicant will exceed the cap because they want to demolish the existing bank and so therefore will lose building square footage. As part of the demo the applicant wants to reconfigure the parking lot and realign the internal drive to improve circulation. This reconfiguration will cause a net gain of 18 parking spaces. If the applicant just demoed the existing bank building they would have 514 parking spaces which is also the minimum parking requirement for the site. They only exceed the maximum by the reconfiguration of the parking lot. He stated since this is a nonconforming shopping center it doesn't meet some of the modern requirements such as the minimum previous area/greenspace. We require 30% of the site to be previous area/greenspace and they only have 20.5%. The reconfiguration will be mostly in the southwest corner of the site next to Byhalia Road. They will preserve two existing trees and will have new landscaping islands to plant trees and add light poles. They are maintaining the existing 23' wide buffer along the New Byhalia Road which is nonconforming. A 40' buffer is now required. The 18 additional parking spaces, which would place the site over the maximum parking cap, would equate to 3,600 sf pervious/green space area.

He stated the minimum parking is not actually 514 spaces as is what is listed on their plan but is instead 461. A couple of years ago the BMA changed how we look at multi-tenant shopping centers. There now is a tiered parking formula is based on the theory that the large shopping center will share the parking. Because of this the shopping center Kroger is "over parked." With this new change they would pick up a little extra green space. He an internal drive aisle will be moved further away from New Byhalia Road and will be more efficient and easier to navigate.

Mr. Groce stated the applicant agrees with the conditions and example motion.

Chairman Counts asked if there were any questions of staff.

Commissioner Kelsey asked if they didn't approve the motion what will the applicant do with the space from the bank building if they still plan on demolishing it?

Mr. Groce stated Kroger would have to let you know what their plans would be if you did not grant the request. They could still demo the bank building, convert it to greenspace, and still reconfigure to align the north/south drive. These are all things they could do without exceeding the parking cap.

There was a discussion over if there were future plans to expand the shopping center and how at the present time the only current formerly submitted application is for the site plan modification request related to the demo of the bank and parking lot reconfiguration. This discussion was followed by a discussion over the BMA's change to how we calculate parking requirements for multi-tenant shopping centers. Mr. Groce said that the minimum parking amount would have been affected, but not how the maximum limit was calculated.

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

Ms. Cara Martin, Pickering Firm, 6775 Lenox Center Court, Memphis TN 38115, stated Kroger's desire is to clean up the front corner of the parking lot. The front building is vacant and there is a circulation concern in the throughout parking lot. She stated Kroger truly does need additional parking on this site. She stated while they do have the required amount of parking, the unusual shape of the property causes the parking lot to not be user friendly for customers and shopping carts. She stated a lot of the available parking is on the north. Currently if you look at the proposed plan, the ratio of the front parking area would only be 3.8 spaces per 1000 square feet which is less than the 5 spaces per 1000 square feet. Kroger truly relies on the front parking area for parking for their customers. She doesn't know what the plan will be if the variance was not approved and she can't speak for the future plans. They do agree with the proposed conditions outlined by Staff.

Chairman Counts asked if there were any questions of applicant.

Chairman Counts asked when you talk about the north percentage, how many of the 18 additional parking spaces will be in the north section.

Ms. Martin stated when she was referring to the north section she was speaking of the area that is in-between the fuel center, Bank of America, and retail. None of the proposed additional 18 parking spaces will be in this section. It's important for Kroger to apply more parking directly in front of the store. The area in front of the store is more user friendly to customers & shopping carts as opposed to having to park towards the north and walk across multiple rows of parking.

Chairman Counts asked what the hardship would be if they lost these 18 additional parking spaces.

Ms. Martin stated they need to be able to use the property and also be able to provide their customers with safe parking and circulation through the site. They believe that to have the ability to allow customers to be able to walk straight line through the parking lot from the front is the safest form of parking. The shape property and the location of the parking relative to the front of the store could be considered a hardship.

There was a discussion over the need to straighten out the circulation of the north/south drive aisle due to the past additions to the shopping center.

Chairman Counts asked if they could accomplish the realigned drive without adding 18 spaces, but instead putting in more green space or anything else in lieu of the 18 spaces that would fit within the Town's guidelines.

Ms. Martin stated you could but the goal is not only to clean up the internal site circulation and eliminate the vacant building, but it is also to enhance the front field parking.

Commissioner Hamilton stated he could see the preexisting parking as a hardship that is creating an ill desired safety for customers and layout and not taking advantage of cleaning up what appears to be years of change that have accorded.

Commissioner Oakes stated he likes the idea of having a straight shot at the other end and is surprised there have not been any accidents. He has never seen parking extend into the exiting spaces with it being taken up completely. He wonders if there is a way to straighten out the internal access drive and instead of putting in the extra 18 spaces add some green spaces but he doesn't know that can be done and look appealing.

Commissioner Luttrell stated he doesn't see a true hardship. He believes they can reconfigure that space to make it safer and still be able to meet Town requirements.

Commissioner Kelsey stated he is inclined to approve the request because the internal traffic flow will be beneficial to all citizens involved. He thinks the traffic flow will be improved and folks using Kroger will like having a few extra spaces and the cleaning up aspect of the plan will make the parking lot look more uniform to the front of the building.

Chairman Counts stated the Town has zoning guidelines and the reasons for a variance have to be compelling and you always have to meet the 9 criteria. In this case you have to demonstrate a hardship. It might be nice to have 18 additional spaces in front of the store along with better traffic flow but he doesn't think they have demonstrated a hardship. The applicant has said it's possible to do a better traffic flow without having an additional 18 spaces. The property doesn't meet the minimum pervious area requirement and this is an opportunity to move that in a better direction. They can comply with the zoning, enhance the pervious space, improve the traffic flow, and Kroger gets everything they want except the additional 18 parking spaces.

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

Motion by Commissioner Hamilton, and seconded, to approve the applicant's request to allow greater than one parking space per 200 square feet of gross floor area for the shopping center located at 240 New Byhalia Rd (Kroger Store V-387), subject to the following conditions:

- 1. The redevelopment of the property shall comply with the following:***
 - a. the maximum parking limitation for the subject property shall be 1 space per 190 square feet of gross nonresidential building square footage;***
 - b. the pervious area of the site (greenspace) shall not be decreased below the existing condition (20.5%) to prevent increasing the degree of nonconformity; and***
 - c. the two existing trees to the west of the bank building shall be preserved or replaced inch-per-inch if they die to the proposed parking lot reconfiguration.***
- 2. The variance shall become void if a Development Agreement is not executed by September 15, 2017, for a Final Site Plan substantially consistent with the layout shown in Exhibit 2.***
- 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 – no, Hamilton – no, Oakes – no, Counts – no.

Motion Denied.

BZA16-05 4650 Merchants Park Circle, Suite 856 (Frida's Restaurante Mexicano) – Request a Variance to allow internally illuminated individual channel letters with other than white, translucent plastic faces, or black or silver dual color film on white plastic faces

Mr. Sean Isham gave the staff presentation. The property is zoned R-1: Low Density Residential with a Planned Development overlay that allows SCC: Shopping Center Commercial uses. The planned development was approved in 1998 and Carriage Crossing is located in Area 2. There aren't any unique physical conditions other than the design of the shopping center because it faces inward unlike typical shopping centers that face outwards. Unlike most conventional side wall signs in the Carriage Crossing development the proposed fountain sign has a lower height than what you would typically see. The typical height is 12' and the sign on the fountain will be under or at 6' in height. This has happened before at the Crepe Maker which is located to the southwest of the subject property and has an internally-illuminated channel letter sign with red faces facing "out" towards south/southeast. This sign was approved in error in 2011 and is not consistent with the current Town sign provisions or Carriage Crossing Design Criteria.

EXHIBITS

1. Applicant's cover letter (dated 8/25/16)
2. Aerial View of Site Layout and Site Photos from East Perimeter Parking Area (received 8/26/15)
3. Proposed Fountain Sign and Patio Construction Plans (received 8/26/16) & Carriage Crossing Sign Approval (dated 7/15/16)
4. Approved Wall Sign & Hanging Sign plans
5. Email from Jaime Groce dated 9/14/16

The sign is obscured by landscaping and other structures but it is still visible off the lot and the adjacent roadway, Park Ridge Parkway. The signage from the east property is approximately 550' and approximately 715' from the Park Ridge Parkway.

A discussion ensued over the pictures on the PowerPoint that showed the public areas the sign would be visible.

Mr. Isham stated Carriage Crossing has approved this sign. He explained how there is more flexibility for interior facing facades than there is for outward facing facades. A variance wouldn't be needed if the sign used a white face instead of pink because the Town Ordinance allow white faces for internally illuminated sign faces. Additionally, the Carriage Crossing Criteria allows for a white, black, gold, bronze, silver, and pewter colors for side elevation signage.

Chairman Counts asked if there were any questions of staff.

Commissioner Hamilton asked if there are two sign faces involved with this applicant.

Mr. Isham stated yes.

There was a discussion over the L shape of the sign and how the non-interior sign is facing the parking lot. Then it was discussed to clarify that Staff has approved two: signs one sign is an interior facing wall sign with full color and the other is an internal facing blade sign, both meet Carriage Crossing Criteria.

Commissioner Oakes asked if the only issue is because it is facing out and pink.

Mr. Isham stated yes, if they were using the white face channel letters we wouldn't be here.

Commissioner Oakes stated he knows this sign is part of the brand but is it a standard feature at the other locations.

Mr. Groce stated he doesn't know if that is true. He would have to ask the applicant.

Commissioner Hamilton asked for more clarification on the L shape of the sign. The color pink would be acceptable on the part of the sign facing inward but the other portion of the sign that is not facing the interior, where the design manual is very specific, has to be one of these certain other colors that does not include pink.

Mr. Groce stated yes because of the Carriage Crossing's criteria but also because of the BMA's Zoning Ordinances. If the sign criteria would have allowed the color pink on the outward facing sign we wouldn't be here. Staff cannot sign off on a sign permit that does not comply with the Zoning Ordinance.

There was a discussion over if the sign would actually be visible from the public right-of-way, Park Ridge Parkway, because according to the Zoning Ordinance the sign ordinance applies if it is visible from the public right-of-way, not just another lot. If the sign isn't visible from the public right-of-way then the BZA does not need to grant any variance. The sign is 6' in height and 720' from Park Ridge Parkway. Staff interrupted the sign as being visible from the public right-of-way. The applicant could have appealed Staff's decision that the sign was visible from a public right-of-way but instead chose to file for a variance for the use of the pink letters. This initiated a discussion over whether the BZA should defer the item until Staff could provide more evidence of the sign's visibility from the public right-of-way. This discussion determined that Staff has already exhausted all options and could confirm the visibility of the sign from public right-of-way. It was decided to go forth with the hearing on the variance because if the sign is not actually visible from the public right-of-way than even if the variance were to be denied the applicant could still put up their pink sign since it wouldn't be visible. The BZA took notice that this hearing is based on the fact the sign would be visible and the applicant would like permission to use a pink sign. If after circumstances change and the sign is not visible from the public right-of-way than the applicant could go back and put up the pink sign even if the BZA chose to deny this request. It was determined that imprecise language was used in the staff report, the sign is in fact visible from the public right-of-way, and the photo evidence provided by Staff is adequate to show proof of the sign being visible from the public right-of-way.

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

Barry Jones, S. Berry Jones Architects, 1861 Madison Ave., Memphis, TN 38104, stated they respected staff's decision that the sign was visible and that prompted their decision to go with the variance. They didn't fully understand the grey area for a signage variance. He stated they want the pink sign since it is the company logo and is at the other location. They plan to expand into other cities and they want this feature used at every restaurant location. He stated it's a hardship for the applicant because the pink letters on the south facing side would be in contrast if they had to do white letters on the east facing side. The patio that extends out from the side of the building over 20' will shield part of the sign. The sign is located at the southern part of the building which is somewhat covered by the home store across the street. They believe due to the size and location of the sign it won't be very prominent.

Chairman Counts asked if there were any questions of applicant.

Commissioner Hamilton stated in your letter dated August 25, 2016, you indicate the damaging impact on this business to not allow this variance (use pink color on the sign) would be significant. Especially when you take into account that this sign will face the parking lot where Brewfest is held and not having this colorful sign during this event will hurt their business. He then asked if Mr. Jones could clarify that.

Mr. Jones stated the sign is so low that cars can obscure it. Especially if it's a van or SUV because then you wouldn't see the sign. He stated he agrees when the leaves fall off the sign may become a little more visible, but most of the trees are cut where the lowest limb is not higher than 5 1/2 feet or so. The trees may not screen the sign as well as the cars in the parking lot when the business is packed every night.

A discussion started over if the applicant agreed to the motion and all the conditions including condition 1. The proposed sign shall be fully screened from view off-site with opaque screening material to be located to the east of the proposed fountain and approved by Town staff. The applicant gave some concern due to the closeness of the curb.

Commissioner Kelsey asked if the applicant would rather have a white fountain sign that is visible or a pink one that is hidden.

Mr. Jones stated they would rather have the pink fountain sign that was screened.

Commissioner Oakes asked if this sign is unique to this location.

Mr. Jones stated no, the sign is their cooperate logo and they hope to use it wherever they go.

Chairman Counts asked if Mr. Jones was aware of the Carriage Crossing sign criteria.

Mr. Jones stated they were aware of restrictions on out facing signs. At the time, he believed they have grounds to believe the sign was not out facing. The sign is so close to being right across the street from another store, but obviously they have misinterpreted it.

Chairman Counts asked if there was any confusion about color.

Mr. Jones stated there was no confusion they didn't believe the sign would fall under that guideline.

Commissioner Kelsey asked could the sign remain pink and be moved elsewhere that's not visible to the public right-of-way.

Mr. Jones stated it could possibly be moved back a little. He can see a scenario where they screen it by moving the patio out a little and use another type of attractive screen. He believes there are some things they could do that would be architecturally tasteful. He was be glad to look at screening it and really making sure it's not visible year round. It would be difficult to move it.

Chairman Counts asked if Ms. Harwood's approval of your sign request lead him to believe that the deal was done.

Mr. Jones stated it certainly encouraged them, but Collierville has their own decision making process and obviously felt differently.

Chairman Counts called Ms. Carmon Harwood to the podium and asked her if she had approved the sign request for the Frida's Restaurante Mexicano and did it comply with the design manual?

Ms. Carmon Harwood, CAD Operator/Tenant Coordination for Carriage Crossing, 2650 Thousand Oaks Blvd, Memphis, TN 38118, stated she did and she felt like the sign complied with the design manual because the sign

faced Something Special (store in Carriage Crossing). She had not thought about to check all angles. The Crepe Maker also had a similar color sign so she figured this color would be fine too.

Mrs. Nancy Boatwright stated when the sign application was first submitted, they were looking at the Carriage Crossing design manual and there was nothing really that said a ground sign was allowed. Staff interrupted this ground sign as a secondary wall sign which is allowed for cornered tenant. When Staff determined it as a secondary wall sign that was when the sign had to meet the criteria for a secondary wall sign. She stated they were trying to find a way for the applicant to have the sign at all.

There was a discussion over the four different sign types that are allowed in in the Carriage Crossing design manual.

Commissioner Hamilton stated he thinks technically through looking at the rules and data that have been provided that this does not appear to be a proper fit for a variance because it specifically states of the colors that are allowed and pink is not one. He thinks finding a way to screen the sign could possibly work.

Chairman Counts asked Mr. Jones to describe what the hardship that will be created if the variance is not approved.

Mr. Jones stated there will be a sign that will be in contrast with the other two signs to have two in color (pink) and one white, especially since one pink sign will be within 24” of the white sign. Visually it will be difficult and the owners will not be happy. This pink fountain sign is their corporate logo and image. To him, the corner is so subdued and the sign is not prominent. He stated between the gaps of the buildings you can see signs from the parking lot that are “facing in.” They can screen where that part of the sign is even more. He stated there is only a few feet where you can even see it.

A discussion ensued if the sign were to be screened and no longer visible would the applicant still need a variance. It was determined the sign needed to already have a screen in place before the variance was requested.

Commissioner Luttrell stated he has opened over 50 restaurants in different places and when you go from one city to another, your contractor and the people who build this for you need to know all these rules and regulations. If you have to change the color a bit you have to then evaluate if this site is worth making those concessions. It sounds like the applicant feel like this site is a great location since they have already started construction on it. He doesn’t believe this one small concession will negatively impact their business and therefore does not see a hardship here.

Commissioner Kelsey stated he agrees with the applicant that this is not an egregious offence but this is a very clear violation. As much as he might want to say this is not that bad, it’s still a fairly clear sign ordinance that he believes they should follow it.

Chairman Counts explained his definition of a variance. He stated all the rules and zoning ordinances were in place when they moved to this property and they were aware of these. None of the rules have changed from underneath the applicant. He doesn’t believe any hardship of that magnitude to change or bend the rules has been demonstrated and agrees with Commissioner Luttrell & Commissioner Kelsey.

Commissioner Hamilton asked Staff if this variance as proposed is denied would that preclude the applicant from working further with Staff to assess a solution that would be viable considering the ordinances.

Mr. Groce stated they could keep on working with us. The issue today is whether you have enough evidence to grant a variance for this case at this time, but tomorrow the facts could change and this could be handled differently.

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 to allow internally illuminated individual channel letters with other than white, translucent plastic faces, or black or silver dual color film on white plastic faces, for 4650 Merchants Park Circle, Suite 856 (Frida's Restaurante Mexicano), subject to the following conditions.

- 1. The proposed sign shall be fully screened from view off-site with opaque screening material to be located to the east of the proposed fountain and approved by Town staff.*
- 2. Sign colors, illumination, size, and materials shall be substantially consistent with Exhibit 3.*
- 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 – no, Luttrell – no, Hamilton – no, Oakes – no, Counts – no.

Motion Denied.

OTHER BUSINESS

Chairman Counts asked if there was any other business.

Mr. Groce stated they have talked about having custom training and maybe bringing in the Town Attorney to assist. He had talked to the Town attorney about having training on a case that the BZA had already acted on.

The BZA seemed interested in having this training.

Hearing no further business, Chairman Counts adjourned the meeting at 6:38 pm

Commissioner Carr Kelsey, Secretary