

**BOARD OF ZONING APPEALS
DEVELOPMENT RESOURCE CENTER BUILDING
CHATTANOOGA, TENNESSEE
JANUARY 4, 2023**

The Board of Zoning Appeals of the City of Chattanooga, Tennessee, met in regular meeting on January 4, 2023, at 10:00 a.m. In attendance were Chairman Scott McColpin presiding, Board members Mr. Ray Adkins, Mr. Alan Richelson, Ms. Susan Gilmore, Vice Chairman Paul Betbeze, Mr. Rudolph Foster, Mr. Joe Manuel and Mr. Lee Brock. Absent was Ms. Jackie Thomas. Also in attendance were City Attorney Phil Noblett and Ms. Dottie Cannon, Secretary to the Board.

Staff member in attendance was Mr. Ariel Soriano, Deputy Director of the Land Development Office. Ms. Lori Roberson, Court Reporter, was present and took transcription of the proceedings.

MINUTES:

The December minutes were ready to be approved. Ray Adkins made a motion to approve the December minutes. Paul Betbeze seconded the motion. All in favor, the minutes were approved.

SWEARING IN:

All the applicants, as well as staff were sworn in by Court Reporter Lori Roberson.

INTRODUCTION (RULES AND REGULATIONS):

Chairman Scott McColpin explained the rules and procedures to the applicants for addressing the Board. He said if it looks like your request is going to be denied, you have two (2) options: (1) before a vote on a motion is made on your case, you may request that the Board defer your case to a future meeting in order to modify your request; or (2) you may request that your case be withdrawn w/o prejudice. If your case is denied, you must wait one (1) year before you can reapply to this Board for the same request. If you want to appeal you must appeal to Chancery Court, not the City Council. Finally, it takes the majority of the Board present to approve a motion. This is a 9 member Board and the majority or a quorum of the Board would be 5 members. In the event of missing Board members, decisions are made by the majority of those present.

ANNOUNCEMENTS: Chairman Scott McColpin said next month's meeting would be held on Wednesday, February 1, 2023.

OLD BUSINESS:

**BOZA-22-75
RICHARD McCOY/SCOTT HARRIS
6701 SHALLOWFORD ROAD**

Richard McCoy with Miller-McCoy, Inc. on behalf of Scott Harris requests a landscape variance.

No opposition was present.

Mr. Soriano said the applicant wanted to withdraw his request without prejudice.

Alan Richelson made a motion to withdraw without prejudice BOZA-22-75. Ray Adkins seconded the motion. All in favor, the motion passed and the case was withdrawn without prejudice.

NEW BUSINESS:

**BOZA-22-78
DEVIN VAN WINKLE
4907 GUILD TRAIL**

Devin Van Winkle requests a reduction rear setback from 5' to 2' for an accessory building.

No opposition was present.

Mr. Soriano briefed the Board of the variance in his PowerPoint presentation.

Allison Van Winkle addressed the Board. Ms. Van Winkle said she was the homeowner. She said the shed that is existing they built 13 years ago where the original shed had been. They

wanted to move the shed closer to the fence because the current shed is in the middle of the flattest part of the yard and it is taking up all of the flat space. Now they want to put a garden there. The shed would fit 2 feet from the fence. They want to build a new shed that is 8 x 12. She said the old shed will be taken down and a neighbor will take it away to another property out of the neighborhood.

Discussion followed. During the discussion it was noted that the Chattanooga Historic Zoning Commission had approved this.

City Attorney Phil Noblett said there were conditions for the Board decisions that deal with the shape or topography of the property such as if there are exceptional topographic conditions or other extraordinary circumstances that gives the Board the ability to grant the variance, and the relief will not be a detriment to the public good and the peculiar hardships are not created by the owner and only apply to what is requested. Accessory buildings normally have a 5' setback. This is not a principal structure and not a permanent structure. It could be moved if there is an issue later on. He said that those conditions were the Board's authority under Sec. 38-567.

Chairman McColpin said this request was for a left side setback and not a rear setback.

Susan Gilmore made a motion to approve BOZA-22-78 for the reduction in left setback from 5' to 2' for an accessory structure and the reduction only applies to the accessory structure. Ray Adkins seconded the motion. Lee Brock wanted to amend the motion to say that it was not a permanent structure. The amendment was accepted by both Ms. Gilmore and Mr. Adkins.

A roll call was taken. Ray Adkins - yes, Paul Betbeze - yes, Joe Manuel - yes, Rudolph Foster - yes, Alan Richelson - yes, Susan Gilmore - yes, Lee Brock - yes, Scott McColpin - yes: All in favor, the motion passed and the case was approved.

**BOZA-22-79
BRANDON RAKOWSKI
315 RIVERSIDE AVENUE**

Brandon Rakowski on behalf of Lewis Barber requests a reduction in the front setback from 15' to 0', reduction in rear setback from 25' to 0' and a reduction in right side setback from 5' to 0' for new construction.

No opposition was present.

Mr. Soriano briefed the Board of the variance in his PowerPoint presentation.

Brandon Rakowski addressed the Board. Mr. Rakowski said he tried to make revisions to his setbacks on his application. He said he would like to purchase the property from Lewis Barber and would like the blessing from this Board. He said he did not have a contract with Mr. Barber and is open to amending the size of the house.

Discussion followed. The applicant said he did not talk with the railroad company. The history from the last cases were discussed about the railroad. Mr. Adkins suggested that Mr. Rakowski might want to defer his case to next month.

Morgan Lane addressed the Board. Mr. Lane said he is the owner and wanted to go over the concerns again. He is concerned with safety and aesthetics. From the railroad being so close the applicant would need to provide some incredible retaining wall solutions. He said he was still concerned that the integrity of the railroad would be jeopardized. He said he is worried about the future investment, roughly 6 million dollars on Riverside. Further with a 0 setback on the right side, the watershed would be an ongoing issue. Mr. Lane said they are putting in an amenity zone. Watershed and erosion controls and other concerns are a problem. He said the applicant did not have sewer access. Mr. Lane has been involved in ongoing discussion with the railroad and they are good with the solutions he came up with. He knows he has RTZ zoning for his lots which requires no left and right side setbacks on the interior lots.

Lewis Barber addressed the case. Mr. Barber said he is the present owner of the property in question. He said he wants to sell his property to Mr. Rakowski. Mr. Barber said he has hearing aids but they do not work well. He hears a lot of people talking but cannot tell what they are saying. He said from Mr. Lane's actions, he suspected that Mr. Lane was very negative about this action. He said Mr. Lane has been wanting to buy this very property from him for over a year but he turned Mr. Lane down. He said they had a dispute over it. He said he does not know what Mr. Lane said in his delivery but suspected they were negative and if he said bad things, why is Mr. Lane wanting to buy his property?

City Attorney Phil Noblett said there is a difference between RTZ and R-1 zones as the setback requirements are different for each zone. It would be beneficial to apply for RTZ rather than R-1 but it goes to the Planning Commission.

Chairman McColpin told Mr. Rakowski to send Ms. Dottie Cannon an email if he wanted to withdraw his case and then he can reapply to this Board.

Ray Adkins made a motion to defer BOZA-22-79 to the February meeting. Paul Betbeze seconded the motion.

A roll call was taken. Ray Adkins - yes, Paul Betbeze - yes, Joe Manuel - yes, Rudolph Foster - yes, Alan Richelson - yes, Susan Gilmore - yes, Lee Brock - yes, Scott McColpin - yes: All in favor, the motion passed and the case was deferred to the February meeting.

**BOZA-22-80
DARRYL SMITH
5608 ALABAMA AVENUE**

Darryl Smith requests a reduction in rear setback from 25' to 15' for an addition..

No opposition was present.

Mr. Soriano said the applicant requested to withdraw their request without prejudice.

Alan Richelson made a motion to withdraw without prejudice BOZA-22-80. Paul Betbeze seconded the motion. All in favor, the motion passed and the case was withdrawn without prejudice.

**BOZA-22-81
MERDAN IBRAHIM
1168 LINCOLN PARK LANE**

Merdan Ibrahim requests a reduction in rear setback from 25' to 5' for a carport.

No opposition was present.

Mr. Soriano briefed the Board of the variance in his PowerPoint presentation.

Merdan Ibrahim addressed the Board. Mr. Ibrahim said he built a carport already and did not know he needed a permit for any kind of setback. The carport is not attached to the property. The driveway and everything was built prior to the carport. The reason he built his carport is to park his cars in the back instead of on the street. He has had trees fall onto his house. He said there is no hardship.

Discussion followed. Chairman McColpin said it is considered attached to the house. He built a carport already and has a metal roof. There is no survey on his property.

Evan Green of 1906 Rossville Avenue addressed the Board. Mr. Green said he was in support of this request. He met Mr. Ibrahim for the first time yesterday and they applied for a temporary use permit to open the alley. He said he felt that Mr. Ibrahim had a hardship. The lot is 45' wide and 105' deep and there is no way to park in the front and there is a lot of traffic from Erlanger. He said the applicant has done a good job fixing the house up. The fence is close to the alley there and it is not a closed alley. The whole neighborhood is an R-3. He said it seems like the applicant made an honest mistake and the only person he is going to hurt is himself. The applicant did a good job in building. Mr. Green said he is in full support of the variance.

City Attorney Phil Noblett said in R-3 zones the minimum frontage is 60' and this is not 60'; it is a 45' lot. The side yard on each side should be not less than 6' and a rear yard needs to be at least 25' and that is the problem with the garage. He said there has to be a hardship. However, there are some exceptions if it is an existing building that might be no less non-conforming than other properties and not in conflict with the character of the area. He read the hardships under Sec. 38-567.

Mr. Ibrahim said he owns the accessory building which is on his lot. He said he can get a survey and can detach the carport by 3'. He then asked for a deferral.

Lee Brock made a motion to defer BOZA-22-81 for 60 days to allow for the applicant to get a survey. Rudolph Foster seconded the motion.

A roll call was taken. Ray Adkins - yes, Paul Betbeze - yes, Joe Manuel - yes, Rudolph Foster - yes, Alan Richelson - yes, Susan Gilmore - yes, Lee Brock - yes, Scott McColpin - yes: All in favor, the motion passed and the case was deferred for 60 days.

BOZA-22-83
RONY AMBROCIO
4216 10TH AVENUE

Rony Ambrocio requests a reduction in the rear setback from 25' to 7', reduction in left rear setback from 5' to 4.5' and a reduction in right street side setback from 10' to 8' for a storage unit.

No opposition was present.

Mr. Soriano briefed the Board of the variance in his PowerPoint presentation.

Yeraldin Avendano addressed the Board. Ms. Avendano said she would be translating for Mr. Ambrocio English to Guatemalan Spanish.

Rony Ambrocio addressed the Board in Spanish and gave his name and address. Mr. Ambrocio said he lived at 4216 10th Avenue.

Ms. Avendano said Mr. Ambrocio built a storage house in the back of the house and did not know he needed to get a permit. It is already built, although not completed. It is a storage unit that is 34' long and 17' wide. She said Mr. Ambrocio had pictures to show the Board.

Discussion followed.

City Attorney Phil Noblett said it is R-2 zoning to begin with. R-2 permits a single family structure or two family dwelling units on the property. But only one residential unit is permitted per lot. There are height and area regulations under the R-2 Zoning Ordinance. It has to have a 60' minimum lot frontage. Side building setbacks should not be less than 10' from corner yard requirements. It has to be approved by the City Traffic Engineer before the building permits can be issued. The rear building setback should not be less than 25'. That is the problem here because the structure is there in the location of the accessory units. The accessory units provision in the Code can be as close as 5' to the property line. There is an issue here with the size of the structure whether it is a normal accessory unit. The City has adopted revisions to the accessory dwelling unit provisions in the Zoning Ordinance. He said this is not a dwelling unit based upon any of the statements that were made.

Saltiel Navarro of 4214 10th Avenue addressed the Board. Mr. Navarro said he is a neighbor of Mr. Ambrocio and is also his pastor. He said he was there in support of Mr. Ambrocio.

Discussion followed.

Susan Gilmore made a motion to approve BOZA-22-83 for the reduction in left side setback from 5' to 4.5' for a storage unit. The hardship is the narrowness of the lot. Ray Adkins seconded the motion.

A roll call was taken. Lee Brock - yes, Joe Manuel - no, Rudolph Foster - no, Paul Betbeze - yes, Alan Richelson - yes, Susan Gilmore - yes, Ray Adkins - yes, Scott McColpin - yes: The motion passed and the case was approved.

BOZA-22-85
JASON KURR
716 BARTON AVENUE (UNIT A)

Jason Kurr requests a reduction in right side setback from 5' to 4' for an addition.

No opposition was present.

Mr. Soriano briefed the Board of the variance in his PowerPoint presentation.

Jason Kurr addressed the Board. Mr. Kurr said he is the homeowner of 716 Barton Avenue. He said he is interested in building a 2 story addition off the backside of the home. The current structure was built in 1917. When he had a survey done it looked like the right side wall was only 4.3 feet from the property line. He is requesting a 4' setback on the right side of the house to comply with the property line.

Discussion followed. He said his family lives upstairs and his mother-in-law lives in apartment B.

Paul Betbeze made a motion to approve BOZA-22-85 for the reduction in the right side setback from 5' to 4' for the entire structure, including the addition, with the hardship being that the property is no less non-conforming than the existing structure. Alan Richelson seconded the motion.

A roll call was taken. Ray Adkins - yes, Paul Betbeze - yes, Joe Manuel - yes, Rudolph Foster - yes, Alan Richelson - yes, Susan Gilmore - yes, Lee Brock - yes, Scott McColpin - yes: All in favor, the motion was passed and the case was approved.

BOZA-22-86
BRYAN BLEDSOE
108 RUTH STREET

Bryan Bledsoe requests a variance to the height requirement of 35' to 37' for new construction.

No opposition was present.

Chairman McColpin said the applicant requested to defer to next month. However he said he knew there was opposition to this case and asked if the opposition was present.

Ray Adkins made a motion to defer BOZA-22-86 to next month. Rudolph Foster seconded the motion. All in favor, the motion passed and the case was deferred to next month.

OTHER BUSINESS:

None

THERE BEING NO further business to come before the Board at this time, the meeting was adjourned.



CHAIRMAN



DATE



SECRETARY



DATE

**BOARD OF ZONING APPEALS
DEVELOPMENT RESOURCE CENTER BUILDING
CHATTANOOGA, TENNESSEE
FEBRUARY 1, 2023**

The Board of Zoning Appeals of the City of Chattanooga, Tennessee, met in regular meeting on February 1, 2023, at 10:00 a.m. In attendance were Chairman Scott McColpin presiding, Board members Mr. Alan Richelson, Ms. Susan Gilmore, Vice Chairman Paul Betbeze, Mr. Rudolph Foster and Mr. Lee Brock. Absent were Mr. Ray Adkins and Mr. Joe Manuel. Also in attendance were City Attorney Phil Noblett, City Staff Attorney Kathryn McDonald, City Staff Attorney Andrew Trundle and Ms. Dottie Cannon, Secretary to the Board.

Staff members in attendance were Mr. Ariel Soriano, Deputy Director of the Land Development Office and Mr. Caleb Fisher, Transportation Review Specialist. Ms. Lori Roberson, Court Reporter, was present and took transcription of the proceedings.

MINUTES:

The January minutes were ready to be approved. Alan Richelson made a motion to approve the January minutes. Rudolph Foster seconded the motion. All in favor, the minutes were approved.

SWEARING IN:

All the applicants, as well as staff were sworn in by Court Reporter Lori Roberson.

INTRODUCTION (RULES AND REGULATIONS):

Chairman Scott McColpin explained the rules and procedures to the applicants for addressing the Board. He said if it looks like your request is going to be denied, you have two (2) options: (1) before a vote on a motion is made on your case, you may request that the Board defer your case to a future meeting in order to modify your request; or (2) you may request that your case be withdrawn w/o prejudice. If your case is denied, you must wait one (1) year before you can reapply to this Board for the same request. If you want to appeal you must appeal to Chancery Court, not the City Council. Finally, it takes the majority of the Board present to approve a motion. This is a 9 member Board and the majority or a quorum of the Board would be 5 members. In the event of missing Board members, decisions are made by the majority of those present.

ANNOUNCEMENTS: Chairman Scott McColpin said next month's meeting would be held on Wednesday, March 1, 2023.

OLD BUSINESS:

**BOZA-22-79
BRANDON RAKOWSKI
315 RIVERSIDE AVENUE**

Brandon Rakowski on behalf of Lewis Barber requests a reduction in the front setback from 15' to 0', reduction in rear setback from 25' to 0' and a reduction in right side setback from 5' to 0' for new construction.

No opposition was present.

Mr. Soriano briefed the Board of the variance in his PowerPoint presentation.

Brandon Rakowski addressed the Board. Mr. Rakowski said since the last time he was here he spoke with Norfolk Southern, the railroad company and will have the engineers come out to determine whether there is a retaining wall that is needed to be built in order to potentially build a house there. He said he will not have that information for a month or so. He said he requested to defer his case to April so that it would give him enough time to get an answer from the railroad company. In response to Mr. Morgan Lane's concern, he said there is no sewer present. There is septic available on this site.

Discussion followed. Chairman McColpin said the size of the lot will require him to have sewer..

Paul Betbeze made a motion to defer BOZA-22-79 to the April meeting. Rudolph Foster seconded the motion.

A roll call was taken. Paul Betbeze - yes, Rudolph Foster - yes, Alan Richelson - yes, Susan Gilmore - yes, Lee Brock - yes, Scott McColpin - yes: All in favor, the motion passed and the case was deferred to the April meeting.

**BOZA-22-86
BRYAN BLED SOE
108 RUTH STREET**

Bryan Bledsoe requests a variance to the height requirement of 35' to 37' for new construction.

No opposition was present.

Mr. Soriano briefed the Board of the variance in his PowerPoint presentation.

Bryan Bledsoe addressed the Board. Mr. Bledsoe said he was the builder on the project. When they applied for the building permits they misunderstood where to establish grade elevations. They were working off where the driveway had been established by the previous builder who had segregated those lots. They thought they were working on what they believed to be the front of the property, which is clearly not in violation of the variance, but in the variance process they found out it was the rear of the property. Since then it was learned it was the address side of the property, which unfortunately due to the steep grade of the property the foundation walls are substantially out of the ground. So that created height challenges. He said he did not believe 37' was what he was asking for. He said it is more like 44.5'. Mr. Bledsoe said the original application says 108 Ruth Street, but he said it should include 106 Ruth Street.

Discussion followed.

Dave Schubert addressed the Board. Mr. Schubert said he was the project manager. He said that bottom level with the 3 windows is the basement. The garage is level with the first floor.

Mr. Bledsoe addressed the Board. Mr. Bledsoe said that back wall is all concrete. He said 44.5 is where they determined it to be. So they need 10'.

City Attorney Phil Noblett said he was looking in Sec. 38-44 at the height restrictions and they are straightforward. He read "no building shall exceed 2 ½ stories or 35' in height except that a building may exceed this height regulation provided that every 1 foot of additional height over 35' the building is set back 1 additional foot from all property lines." If the street is not wide enough it is detrimental to the health and safety of the firefighters and emergency personnel. The aspect of the variances that may be available still have to be under the conditions that this Board has under Sec. 38-567 in the Code.

Discussion followed.

Paul Betbeze made a motion to deny BOZA-22-86 for the height request from 35' to 44.5' based on the fact there is no viable hardship. Alan Richelson seconded the motion.

Discussion followed. Mr. Soriano suggested to the applicant to look at a reinforced soil slope and that would give them an opportunity to grade on the retaining wall at a fraction of the cost.

A roll call was taken. Lee Brock - yes, Susan Gilmore - yes, Alan Richelson - yes, Rudolph Foster - yes, Paul Betbeze - yes, Scott McColpin - yes: The motion to deny was passed and the case was denied.

NEW BUSINESS:

**BOZA-22-87
STEVE TALLEY
3601 ALTON PARK BOULEVARD**

Steve Talley requests a reduction in left and right side setback from 5' to 4.5' for new construction.

No opposition was present.

Mr. Soriano briefed the Board of the variance in his PowerPoint presentation.

Steve Talley addressed the Board. Mr. Talley said he was the property owner. He is trying to get a reduction for the setback for the side. The structure he is building is 36' wide and his setbacks are short like almost a foot. He needs 4.2 inches on each side.

Discussion followed. Mr. Betbeze said it would be beneficial for Mr. Talley to get a survey because he might have extra room he did not know. Mr. Talley said he did not have a hardship.

Chairman McColpin told Mr. Talley it would be best if he withdrew his case.

Susan Gilmore made a motion to withdraw without prejudice BOZA-22-87. Paul Betbeze seconded the motion.

A roll call was taken. Paul Betbeze - yes, Rudolph Foster - yes, Alan Richelson - yes, Susan Gilmore - yes, Lee Brock - yes, Scott McColpin - yes: The motion was passed and the case was withdrawn without prejudice.

City Attorney Phil Noblett told Mr. Talley that this was under the R-3 zone. R-3 does allow anyone to be able to have something with a front yard and a rear yard of 25'. The side yard normally is 6' but because it is a legal non-conforming use of the property it would be down 5'. He said there is no problem extending the building further back. If he can make it within the footage and have 5' on either side, that would be fine.

**BOZA-22-89
GUNNAR SIGURDSSON
1911 MULBERRY STREET**

Gunnar Sigurdsson requests a reduction in left side setback from 25' to 16' for a covered deck.

No opposition was present.

Mr. Soriano briefed the Board of the variance in his PowerPoint presentation.

Gunnar Sigurdsson addressed the Board. Mr. Sigurdsson said he was the property owner. He said he is building a new wooden deck and replacing the concrete pad and wanted to put a roof over it or awning. He did not get a permit for it.

Discussion followed.

Caleb Fisher, Transportation Review Specialist addressed the Board. Mr. Fisher said he would be concerned with the sight distance with pulling out onto 20th Street. The fence would be the issue that is over the 3'.

City Attorney Phil Noblett said under Sec. 38-567 this is an addition onto the property. You can allow an addition or extension when it would be no less non-conforming as the setback and the existing structure is on the same or adjacent property provided that it is not in conflict with the character of the area in which the property is located. The roof over the patio is the problem. The adjacent street close to 20th Street is really close to the property line. There is already a fence out to this area and it does not exceed the fence. It is a narrow lot, in this case 50' and it looks like it is built almost on the property line on the upper side of Mulberry Street.

Lee Brock made a motion to approve BOZA-22-89 for the reduction in left side setback from 25' to 16' for the covered deck area based on the fact that it is no less non-conforming than the original structure. Paul Betbeze seconded the motion.

Discussion followed.

A roll call was taken. Paul Betbeze - yes, Rudolph Foster - yes, Alan Richelson - abstained, Susan Gilmore - yes, Lee Brock - yes, Scott McColpin - yes: The motion passed and the case was approved.

**BOZA-23-2
DYLEN ROBERTS
1208 TALLEY ROAD**

Dylen Roberts requests a variance for Relief from Sec. 38-504 - Projection over Yards (Accessory Structure in the Front Yard and Accessory Structure in the Street Side Yard).

Opposition was present.

Mr. Soriano briefed the Board of the variance in his PowerPoint presentation.

Dylan Roberts addressed the Board. Mr. Roberts said he is the current owner of the property and has owned it for a little over a year. When he purchased the property, the previous owner had already laid a lot of the groundwork for what is the current structure. He said the previous owner told him he had already done all the research for the permits and such, but come to find out he did not. Mr. Roberts said because it was on a slope and the ground had to be graded he went ahead and put in a retaining wall. The previous owner paid for the concrete slab to be poured. He built the property based on the fact that the previous owner would build a shed. Mr. Roberts wanted the shed to house all his recreational tools because he did not want to keep them in his garage.

Discussion followed.

City Attorney Phil Noblett said under Sec. 38-504 as he understood it the setback for accessory structures was at least 5' away from the property line on the rear. And there is another accessory structure the applicant has that is similar. He said in this case it is clearly more than 5'.

Bernard King of 1212 Michael Lane addressed the Board. Mr. King said he got a letter in the mail and initially his focus was coming down to see how things work with the applicant's structure. Just to clarify a few things, he said he has lived in that neighborhood since 2005 and that lot looks like the picture on the screen when Mr. Roberts moved in. Nothing was on that lot when he moved in. His bigger concern is the house right across the street from him, which is right behind the house he lives in. A few years ago, a man was attempting to build something on the back and they stopped him in his tracks. So the entire time while the applicant was building this he was waiting for somebody to come through and stop him because he had not seen any structure of that magnitude in their neighborhood. He does not know why this man has not been stopped just for the size of it. He is not against what this applicant is doing but is trying to understand the process.

Discussion followed.

Angela Appleberry of 1213 Michael Lane addressed the Board. Ms. Appleberry said she grew up in the neighborhood. She said it is the applicant's property and whatever the Board sees fit to do is ok as long as it does not affect their family home.

Discussion followed.

City Attorney Phil Noblett said under Sec. 38-504, the issue becomes can you have something in a side lot? The detached small storage buildings, private automobile storage garages, pools, private shops of woodworking, metalworks or ceramics or other accessory buildings may be located inside in rear yards provided the requirements are met. One of the following requirements in the case of a corner lot, the structure may not project into the side yard adjacent to the street. So the side yard adjacent to the street in this case is Jacoway Lane. The front is Talley Road.

Discussion followed.

Mr. Roberts addressed the Board in rebuttal. Mr. Roberts said this has been educational and is not in front of the Board in rebuttal. He appreciates the others coming here today. When he moved in, the cement pad was not here. What the deal was over the course of him moving in, the previous owner already prepaid and planned for the building before he got there.

Paul Betbeze made a motion to approve BOZA-23-2 for the request for the detached garage and the corner lot based on the topography and shallowness of the lot. Lee Brock seconded the motion.

Discussion followed.

A roll call was taken. Paul Betbeze - yes, Rudolph Foster - no, Alan Richelson - no, Susan Gilmore - no, Lee Brock - yes, Scott McColpin - no: The motion to approve failed. Another motion was made at this time.

Scott McColpin made a motion to deny BOZA-23-2 for the request. Rudolph Foster seconded the motion.

A roll call was taken. Alan Richelson - yes, Susan Gilmore - yes, Lee Brock - no, Rudolph Foster - yes, Paul Betbeze - no, Scott McColpin - yes: The motion to deny was passed and the case was denied.

**BOZA-23-3
JD JACKSON
3101 E. 44th STREET**

JD Jackson requests a reduction in rear setback from 25' to 5.6' for new construction.

No opposition was present.

Mr. Soriano briefed the Board of the variance in his PowerPoint presentation.

JD Jackson addressed the Board. Mr. Jackson said he was the owner of the property at E. 44th Street. He said he is trying to build some new construction and it is an irregular shaped lot. There are some gas lines on the property so they need to shift over on the property to avoid the gas lines.

Chairman McColpin said the applicant came before the Board in September of last year and he was granted his setbacks on both sides. Now he wants to move 10' closer.

Caleb Fisher, Transportation Review Specialist addressed the Board. Mr. Fisher said in a corner lot like this it would not trigger anything provided there is 25' from the intersection.

Susan Gilmore made a motion to approve BOZA-23-3 for the reduction in rear setback from 25' to 5.6' for new construction and it is only applicable to the corner based on the hardship of irregular lot shape and easement of a gas line. Lee Brock seconded the motion.

A roll call was taken. Paul Betbeze - yes, Rudolph Foster - yes, Alan Richelson - yes, Susan Gilmore - yes, Lee Brock - yes, Scott McColpin - yes: The motion passed and the case was approved.

OTHER BUSINESS:

None

THERE BEING NO further business to come before the Board at this time, the meeting was adjourned.



CHAIRMAN



DATE



SECRETARY



DATE

**BOARD OF ZONING APPEALS
DEVELOPMENT RESOURCE CENTER BUILDING
CHATTANOOGA, TENNESSEE
MARCH 1, 2023**

The Board of Zoning Appeals of the City of Chattanooga, Tennessee, met in regular meeting on March 1, 2023, at 10:00 a.m. In attendance were Chairman Scott McColpin presiding, Board members Mr. Ray Adkins, Mr. Alan Richelson, Ms. Susan Gilmore, Vice Chairman Paul Betbeze, Mr. Rudolph Foster, Mr. Joe Manuel and Mr. Lee Brock. We had one (1) vacant position. Also in attendance were City Attorney Phil Noblett, City Staff Attorney Andrew Trundle and Ms. Dottie Cannon, Secretary to the Board.

Staff members in attendance were Mr. Ariel Soriano, Deputy Director of the Land Development Office, Mr. Caleb Fisher, Transportation Review Specialist, Ms. Elsy Interiano, Transportation Review Specialist and Ms. Karna Levitt, Landscape Architect. Ms. Lori Roberson, Court Reporter, was present and took transcription of the proceedings.

MINUTES:

The February minutes were not ready to be approved. They will be deferred to the April meeting.

SWEARING IN:

All the applicants, as well as staff were sworn in by Court Reporter Lori Roberson.

INTRODUCTION (RULES AND REGULATIONS):

Chairman Scott McColpin explained the rules and procedures to the applicants for addressing the Board. He said if it looks like your request is going to be denied, you have two (2) options: (1) before a vote on a motion is made on your case, you may request that the Board defer your case to a future meeting in order to modify your request; or (2) you may request that your case be withdrawn w/o prejudice. If your case is denied, you must wait one (1) year before you can reapply to this Board for the same request. If you want to appeal you must appeal to Chancery Court, not the City Council. Finally, it takes the majority of the Board present to approve a motion. This is a 9 member Board and the majority or a quorum of the Board would be 5 members. In the event of missing Board members, decisions are made by the majority of those present.

ANNOUNCEMENTS: Chairman Scott McColpin said next month's meeting would be held on Wednesday, April 5, 2023.

OLD BUSINESS:

**BOZA-22-81
MERDAN IBRAHIM
1168 LINCOLN PARK LANE**

Merdan Ibrahim requests a reduction in rear setback from 25' to 3' for a carport.

No opposition was present.

Mr. Soriano briefed the Board of the variance in his PowerPoint presentation.

The applicant was not present.

Caleb Fisher, Transportation Review Specialist addressed the Board. Mr. Fisher said there is a permitted streetcut involved for the driveway installation. The work had already been completed on July 6, 2022 not just for the streetcut but for the drop curb for the driveway.

Lee Brock made a motion to withdraw without prejudice BOZA-22-81. Paul Betbeze seconded the motion.

Discussion followed. It was noted that a survey was requested.

A roll call was taken. Ray Adkins - yes, Paul Betbeze - yes, Joe Manuel - yes, Rudolph Foster - yes, Alan Richelson - yes, Susan Gilmore - yes, Lee Brock - yes, Scott McColpin - yes: The motion passed to withdraw without prejudice and the case was withdrawn without prejudice.

NEW BUSINESS:

**BOZA-23-4
KYLE HECKATHORN
919 NORFOLK GREEN CIRCLE**

Kyle Heckathorn requests a reduction in rear setback from 25' to 16' for a covered porch.

No opposition was present.

Mr. Soriano briefed the Board of the variance in his PowerPoint presentation.

Kyle Heckathorn addressed the Board. Mr. Heckathorn said he is trying to put a shed roof over the existing porch. The porch will not be screened in. He said there is an edge of trees behind them and there are rumors that the trees will be removed so they want to put up some shade and have privacy to enjoy their deck.

Discussion followed.

City Attorney Phil Noblett read from Sec. 38-567 - Condition for Board decisions. He said before this Board can grant a variance, the hardships must be in place. Some of the hardships are exceptional narrowness, shallowness or shape of a specific piece of property or exceptional topography conditions or other extraordinary or exceptional situations or conditions, peculiar and practical difficulties or undue hardship to the owner to develop his property within the Code. The peculiar hardships must not be created as a result of the applicant. And the peculiar hardships only relate to this piece of property for the benefit of which any variance would not generally be applicable to other premises in the City.

Scott McColpin made a motion to approve BOZA-23-4 for the reduction in rear setback from 25' to 16' for a covered porch based on the fact that this is no less non-conforming than other houses in the subdivision. Ray Adkins seconded the motion.

A roll call was taken. Ray Adkins - yes, Paul Betbeze - yes, Joe Manuel - yes, Rudolph Foster - yes, Alan Richelson - yes, Susan Gilmore - yes, Lee Brock - yes, Scott McColpin - yes: The motion to approve passed and the case was approved.

**BOZA-23-5
HERBY DIXON
1703 LYNNBROOK AVENUE**

Herby Dixon requests a reduction in left side setback from 5' to 3.7' for new construction.

No opposition was present.

Mr. Soriano briefed the Board of the variance in his PowerPoint presentation.

Herby Dixon addressed the Board. Mr. Dixon said he was the owner of the property and the builder of the house. He said unfortunately this was a mistake by the mason. The plans that were submitted were submitted to be within the setbacks. They could not get the surveyor back out there to get this corrected. Now they are through with framing, through with the roof and with siding and they are off by a foot and 5 inches. They also own a house at 1509 Lynnbrook Street, which is right up the street. He said they dealt with this there as well because the neighbor's house is only 2' off the property line.

Discussion followed.

Santos Bernardo addressed the Board. Mr. Bernardo said he would try his very best because he is not good at speaking English. He said the applicant and he are friends but he was worried about the roof being too close that when it rains it will come on to his yard. He said he will leave it in the Board's hands. He said if one day he decides to sell his house will it be an issue.

City Attorney Phil Noblett stated from Sec. 38-567 all the provisions of the hardships. He said this is a 41' lot to begin with. So there is at least narrowness on this particular property. It is a square shaped piece of property and it is 100' long so it does have lot size issues. It is a lot of record and subject to 5' on either side because of the small size of the widths of the lot. He said it looks like the lot on the north side of this property is even closer to this one.

Lee Brock made a motion to approve BOZA-23-5 for the reduction in left side setback from 5' to 3.7' for new construction due to the exceptional narrowness of the lot. Paul Betbeze seconded the motion.

Discussion followed.

A roll call was taken. Ray Adkins - yes, Paul Betbeze - yes, Joe Manuel - no, Rudolph Foster - yes, Alan Richelson - yes, Susan Gilmore - yes, Lee Brock - yes, Scott McColpin - no: The motion passed and the case was approved.

BOZA-23-6
MICHAEL LAYER/EMG 6206 LEE HWY LLC
6206 LEE HIGHWAY

Michael Layer on behalf of EMG 6206 Lee Hwy LLC requests a side buffer relief of 10' from required 20' adjacent to residential zoned property for new construction.

No opposition was present.

Mr. Soriano briefed the Board of the variance in his PowerPoint presentation.

Drew Smith with EMG addressed the Board. Mr. Smith said he is the owner of 6206 Lee Highway. He said the notice sign was put up within the timeframe with the City's required notice date. The property is zoned C-2 and the required setback in residential zoning is 20'. The immediate adjacent property is zoned R-3. They are requesting a variance of the landscape buffer between the zoned R-3 and their zoning C-2. The 10' residential strip will not support any residential buildings. They need a variance on the 20' setback between different zonings. They are proposing a 10' setback with a Type C landscape buffer based on the fact that the neighbor, MAPCO, two lots over are C-2 and the 10' residential strip is not buildable based upon the zoning that it is in.

Karna Levitt, Landscape Architect addressed the Board. Ms. Levitt said the landscape screening buffers are by zone not land use. A 20' screen is required abutting an R-3 in this case. The Code does not address whether that is a functional land use on a neighbor's property or not. This owner has no ability to clean up that zoning. She asks that if the Board should decide to approve this request that this be conditioned to the approved plan rather than a straight 10' buffer because he is not showing the buffer in the area of the billboard, which is likely in some form of a hardship, as well as he is not showing the buffer to the full end of the property line on the planned south.

Discussion followed.

Wayne McCoy, Civil Engineer with Miller-McCoy addressed the Board. Mr. McCoy said it would not affect the parking. It might make them lose a space if they moved 10 more feet.

Alan Richelson made a motion to approve BOZA-23-6 for the landscape variance subject to the drawing, which indicates the landscaping on the east side of the building, Type C 10' landscape buffer, subject to the drawing and to extend to the property line as submitted on the site plan and to extend to the property line. Ray Adkins seconded the motion.

Discussion followed. That motion was dropped so a new motion was made.

Alan Richelson made a motion to approve BOZA-23-6 for the landscape variance subject to the buffer extending from the edge of the building on Lee Highway to the property line on the south side. This is to be a Type C 10' landscape buffer as indicated on the drawing. Ray Adkins seconded the motion

A roll call was taken. Ray Adkins - yes, Paul Betbeze - yes, Joe Manuel - Abstained, Rudolph Foster - yes, Alan Richelson - yes, Susan Gilmore - yes, Lee Brock - yes, Scott McColpin - yes: The motion to approve passed. The case was approved.

OTHER BUSINESS:

None

THERE BEING NO further business to come before the Board at this time, the meeting was adjourned.



CHAIRMAN



DATE



SECRETARY



DATE

**BOARD OF ZONING APPEALS
DEVELOPMENT RESOURCE CENTER BUILDING
CHATTANOOGA, TENNESSEE
APRIL 5, 2023**

The Board of Zoning Appeals of the City of Chattanooga, Tennessee, met in regular meeting on April 5, 2023, at 10:00 a.m. In attendance were Chairman Scott McColpin presiding, Board members Mr. Ray Adkins, Mr. Alan Richelson, Ms. Susan Gilmore, Vice Chairman Paul Betbeze, Mr. Rudolph Foster, Mr. Joe Manuel and Mr. J.T. McDaniel. Absent was Mr. Lee Brock. Also in attendance were City Attorney Phil Noblett, City Staff Attorney Andrew Trundle and Ms. Dottie Cannon, Secretary to the Board.

Staff members in attendance were Mr. Ariel Soriano, Deputy Director of the Land Development Office, Mr. Caleb Fisher, Transportation Review Specialist, Ms. Karna Levitt, Landscape Architect and Ms. Diane Serrano, Permit Clerk (in the capacity of a Spanish Interpreter). Ms. Lori Roberson, Court Reporter, was present and took transcription of the proceedings.

MINUTES:

The February minutes and the March minutes were ready to be approved. Also, an Amendment to the October 2022 Minutes was ready to be approved.

Ray Adkins made a motion to approve the February minutes. Alan Richelson seconded the motion. All in favor, the February minutes were approved as written.

Ray Adkins made a motion to approve the March minutes. Alan Richelson seconded the motion. All in favor, the March minutes were approved as written.

Chairman McColpin told the Board that the Minutes for the October 2022 meeting needed to be amended for 3 cases that came before the Board. The motion was read for the wrong type of landscape buffer. The type of landscape buffer that the applicant requested was for a **Type C** buffer, not Type A buffer. Therefore the Minutes were incorrect. He asked Ms. Karna Levitt, Landscape Architect to brief the Board of the differences between a Type C buffer and a Type A buffer.

Karna Levitt, Landscape Architect addressed the Board. Ms. Levitt said a Type A buffer is 30' horizontal distance and a Type C buffer is 10' horizontal distance. The applicant requested relief from the 10' buffer, which was the required buffer during the process. The correct buffer should be the Type C 10' buffer.

Chairman McColpin said we are voting to amend BOZA-22-60, BOZA-22-61 and BOZA-22-62. Let the record show that the Minutes will be reflected to show an Amendment to the October 2022 Minutes.

Joe Manuel made a motion to approve the Amendment. Alan Richelson seconded the motion. All in favor, the Amendment was approved.

SWEARING IN:

All the applicants, as well as staff were sworn in by Court Reporter Lori Roberson.

INTRODUCTION (RULES AND REGULATIONS):

Chairman Scott McColpin explained the rules and procedures to the applicants for addressing the Board. He said if it looks like your request is going to be denied, you have two (2) options: (1) before a vote on a motion is made on your case, you may request that the Board defer your case to a future meeting in order to modify your request; or (2) you may request that your case be withdrawn w/o prejudice. If your case is denied, you must wait one (1) year before you can reapply to this Board for the same request. If you want to appeal you must appeal to Chancery Court, not the City Council. Finally, it takes the majority of the Board present to approve a motion. This is a 9 member Board and the majority or a quorum of the Board would be 5 members. In the event of missing Board members, decisions are made by the majority of those present.

ANNOUNCEMENTS: Chairman Scott McColpin said next month's meeting would be held on Wednesday, May 3, 2023. Chairman McColpin extended a warm welcome to new Board member, Mr. J.T. McDaniel, who represents District 9. Chairman McColpin said a Spanish Interpreter was needed for case BOZA-23-1 so this case will be moved to the top of the Agenda today for the consideration of the Interpreter.

OLD BUSINESS:

**BOZA-22-79
BRANDON RAKOWSKI
315 RIVERSIDE AVENUE**

Brandon Rakowski on behalf of Lewis Barber requests a reduction in front setback from 15' to 0', reduction in rear setback from 25' to 0' and a reduction in right side setback from 5' to 0' for new construction.

No opposition was present.

Mr. Soriano briefed the Board of the variance in his PowerPoint presentation.

Brandon Rakowski addressed the Board. Mr. Rakowski said he hopes to purchase 315 Riverside Avenue. Since he last came before the Board, an engineer from Norfolk Southern Railroad Company came out and established that a retaining wall is not needed. As long as there was a 3' distance between that house and the Norfolk Southern Railroad property, and there was not a roof overhanging, he did not see that a retaining wall was needed. He said due to the topographic conditions and the shape of the lot, he has a hardship to build a house. Right now the lot is used as a dumping site. He wants the opportunity to add value to it. It is a 16 x 40 footprint and it is designed for a 2 story house.

Discussion followed.

Chairman McColpin told the applicant that if he had a major change he wanted to make on his application, he would need to withdraw his request and come back before the Board. He told the applicant if the Board voted on the request now, and it was denied, he would not be able to come back for one (1) year. Mr. Rakowski then requested to withdraw his application.

Scott McColpin made a motion to withdraw without prejudice BOZA-22-79. Ray Adkins seconded the motion. All in favor, the motion passed. The case is withdrawn without prejudice.

NEW BUSINESS:

**BOZA-23-1
ROSENDO GREGORIO-AMBROCIO
1116 E. 35TH STREET PLACE**

Rosendo Gregorio-Ambrocio requests a reduction in front setback from 25' to 19' for an addition.

No opposition was present.

Mr. Soriano briefed the Board of the variance in his PowerPoint presentation.

Since this case required an interpreter, the Court Reporter, Lori Roberson swore in both the Interpreter, Diane Serrano and the applicant, Rosendo Gregorio-Ambrocio, to which Ms. Serrano had to interpret the swearing in to Mr. Ambrocio.

Rosendo Gregorio-Ambrocio addressed the Board. Mr. Ambrocio said he had a family coming to the country and they needed a place to stay. The back of the property has room, but it has a steep grade so he decided to put the addition in the front. He said he was sorry he did not do the investigative work. He had friends doing the work and they are licensed plumbers and electricians.

Discussion followed. Mr. Ambrocio provided a new survey and that survey showed that he was within 1' of the front property line and not the 19' setback he was requesting.

Betzy Gregorio Jimenez addressed the Board. Ms. Jimenez said there is concrete all in the back and there is a slab and that is the reason they did not put the addition in the back.

Eva Jimenez addressed the Board. Ms. Jimenez said she wanted to express the same thing and that there is no possibility for building in the back.

City Staff Attorney Andrew Trundle read the Sec. 38-567 - Condition for Board decisions.

Paul Betbeze made a motion to deny BOZA-23-1 for the request based on the fact that there is no viable hardship. Rudolph Foster seconded the motion.

Discussion followed. It was noted that the Board was sympathetic to the applicant.

A roll call was taken. Ray Adkins - yes, Paul Betbeze - yes, Joe Manuel - yes, Rudolph Foster - yes, Alan Richelson - yes, Susan Gilmore - yes, J.T. McDaniel - abstained, Scott McColpin - yes: The motion to deny was passed. The case is denied with 1 abstention.

Ariel Soriano said the applicant had 30 days to tear down his structure.

At this time Board member Joe Manuel had to leave the meeting due to an emergency.

**BOZA-23-8
LEE HELENA
1500 E. 14TH STREET**

Lee Helena requests a reduction in front setback from 25' to 15' and a reduction in rear setback from 25' to 17' for new construction.

No opposition was present.

Mr. Soriano briefed the Board of the variance in his PowerPoint presentation.

Lee Helena addressed the Board. Mr. Helena said he was the owner of the property. His current address is 1011 Oak Street. He said he was renewing a variance that had expired. It was previously zoned C-2. The City in trying to preserve the character of the neighborhood, got rid of duplexes and other commercial uses and rezoned several properties in the 90's. The property across the street is zoned UGC. His property is zoned R-1. His intent is to use this property as R-1. He said he could build a house there now but it would not be in keeping with the neighborhood. He said he served 2 years on the Historic Zoning Commission. He applied for a variance before he bought the property and it was approved.

Discussion followed. Chairman McColpin said the Board heard this case in June 2016, Case 16-BZ-00048 and it was approved.

Paul Betbeze made a motion to approve BOZA-23-8 for the reduction in front setback from 25' to 15' and a reduction in rear setback from 25' to 17' for new construction based on the hardship of lot size and an easement that is on the property. The reduction in setbacks only applies to the house per the site plan and not the entire lot line. Rudolph Foster seconded the motion.

A roll call was taken. Ray Adkins - yes, Paul Betbeze - yes, Rudolph Foster - yes, Alan Richelson - yes, Susan Gilmore - yes, J.T. McDaniel - yes, Scott McColpin - yes: The motion passed. The case is approved.

**BOZA-23-9
BRIAN CALDWELL
1916 APPLING STREET**

Brian Caldwell requests a reduction in right setback from 10' to 5' for new construction.

Opposition was present.

Mr. Soriano briefed the Board of the variance in his PowerPoint presentation.

Brian Caldwell addressed the Board. Mr. Caldwell said he lived at 512 Menlo Street. He said he needs a variance for 5' on one side of the property for new construction. The lot is only 45' wide and the house he is going to build would not give him but 10' on one side.

Discussion followed. There was discussion that the variance might not be needed. The stoop/platform for the side door was not a violation of the setback variance but there was a question about that. The reason for a deferral was to give the applicant time to get an answer to that question.

Gloria Byerley addressed the Board. Ms. Byerley said she is the co-owner of the duplexes in question and lives at 1909 Appling Street directly across the street. Both her daughters live in the duplexes. She said if the applicant got the variance it would cut off the driveway to 1914 Appling Street. She said that would devalue the property. She said the fence is on the property line and he cannot cut it down.

Discussion followed. Chairman McColpin said this Board cannot stop the applicant from building a house and his own driveway.

Leslie Strickland addressed the Board. Ms. Strickland said she lived at 1912 Appling Street. She said her main concern is the fence that divides between the two properties. On one survey, it shows it is on the property line. On another survey it shows 7' on her side to that line. That was the main reason they were in opposition. And they have taken care of the lot for the last 12 years. She said it had not been maintained or cut and they have had to do that for the last 12 years.

Chairman McColpin said it would be in the best interest for all involved to get a survey to see where the fence lies.

Scott McColpin made a motion to defer BOZA-23-9 to the May meeting. Paul Betbeze seconded the motion. All in favor, the motion to defer passed. The case is deferred to the May meeting.

**BOZA-23-10
JEREMY MERRILL
2035 GALAHAD ROAD**

Jeremy Merrill requests a reduction in left side setback from 10' to 5' for a detached garage.

Opposition was present.

Mr. Soriano briefed the Board of the variance in his PowerPoint presentation.

Jeremy Merrill addressed the Board. Mr. Merrill said he lives at 2035 Galahad Road. They want to have a detached garage at the end of the driveway that is 16'x37'. They requested the variance to give them an additional 5' instead of making the detached garage 11' wide. The alternative would be to make it an attached garage but that is cost prohibitive because they would have to move utilities, tie into the roof line and keep it within the current existing structure. They need the detached garage to provide additional parking and extra storage.

Discussion followed. It was discussed that there were covenants and restrictions in that neighborhood that state that there should be no detached garages.

William Lloyd of 2020 Galahad Road addressed the Board. Mr. Lloyd said the Chairman adequately voiced the concerns he has with this request. He wanted to go on record as opposing the variance. He said there is a homeowners association that was just recently formed at the end of 2022 or early 2023.

At this point, Mr. Merrill said he would like to withdraw his application.

Scott McColpin made a motion to withdraw without prejudice BOZA-23-10. Alan Richelson seconded the motion. All in favor the motion passed. The case is withdrawn without prejudice.

**BOZA-23-11
RAPHAEL LANADE
2325 GUINEVERE PARKWAY**

Raphael Lanade requests a reduction in rear setback from 25' to 13.2' for a deck.

No opposition was present.

Mr. Soriano briefed the Board of the variance in his PowerPoint presentation.

Raphael Lanade addressed the Board. Mr. Lanade said he lived at 2325 Guinevere Parkway also. He said his house was hit by the tornado and is still trying to rebuild the house and a covered deck so that when he is outside he will not be bitten by mosquitoes. He said all his neighbors have a covered deck.

Discussion followed.

Scott McColpin made a motion to approve BOZA-23-11 for the reduction in rear setback from 25' to 13.2' for a covered deck. The reduction in the rear setback only applies to the deck area and not the entire lot line. The hardship is that it is no less non-conforming as the neighbors have the same covered decks. Paul Betbeze seconded the motion.

A roll call was taken. Ray Adkins - yes, Paul Betbeze - yes, Rudolph Foster - yes, Alan Richelson - abstained, Susan Gilmore - yes, J.T. McDaniel - yes, Scott McColpin - yes. The motion passed with 1 abstention. The case is approved.

OTHER BUSINESS:

None

THERE BEING NO further business to come before the Board at this time, the meeting was adjourned.


CHAIRMAN


DATE


SECRETARY


DATE

**BOARD OF ZONING APPEALS
DEVELOPMENT RESOURCE CENTER BUILDING
CHATTANOOGA, TENNESSEE
MAY 3, 2023**

The Board of Zoning Appeals of the City of Chattanooga, Tennessee, met in regular meeting on May 3, 2023, at 10:00 a.m. In attendance were Chairman Scott McColpin presiding, Board members Mr. Ray Adkins, Mr. Alan Richelson, Ms. Susan Gilmore, Mr. Rudolph Foster, Mr. Joe Manuel, Mr. Lee Brock and Mr. J.T. McDaniel. Absent was Vice Chairman Paul Betbeze. Also in attendance were City Staff Attorney Andrew Trundle and Ms. Dottie Cannon, Secretary to the Board.

Staff members in attendance were Mr. Ariel Soriano, Deputy Director of the Land Development Office, Mr. Caleb Fisher, Transportation Review Specialist, Ms. Karna Levitt, Landscape Architect. Ms. Lori Roberson, Court Reporter, was present and took transcription of the proceedings.

MINUTES:

The April Minutes were ready to be approved. Ray Adkins made a motion to approve the April Minutes. Rudolph Foster seconded the motion. All in favor, the April Minutes were approved.

SWEARING IN:

All the applicants, as well as staff were sworn in by Court Reporter Lori Roberson.

INTRODUCTION (RULES AND REGULATIONS):

Chairman Scott McColpin explained the rules and procedures to the applicants for addressing the Board. He said if it looks like your request is going to be denied, you have two (2) options: (1) before a vote on a motion is made on your case, you may request that the Board defer your case to a future meeting in order to modify your request; or (2) you may request that your case be withdrawn w/o prejudice. If your case is denied, you must wait one (1) year before you can reapply to this Board for the same request. If you want to appeal you must appeal to Chancery Court, not the City Council. Finally, it takes the majority of the Board present to approve a motion. This is a 9 member Board and the majority or a quorum of the Board would be 5 members. In the event of missing Board members, decisions are made by the majority of those present.

ANNOUNCEMENTS:

Chairman Scott McColpin said next month's meeting would be held on Wednesday, June 7, 2023.

OLD BUSINESS:

**BOZA-23-7
JIM MURPHY
2120 GUNBARREL ROAD**

Jim Murphy requests a special permit for an animal hospital.

No opposition was present.

Mr. Soriano said the applicant wanted to withdraw his request.

Ray Adkins made a motion to withdraw without prejudice BOZA-23-7. Alan Richelson seconded the motion. All in favor, the motion passed to withdraw without prejudice.

**BOZA-22-9
BRIAN CALDWELL
1916 APPLING STREET**

Brian Caldwell requests a reduction in right setback from 10' to 5' for new construction.

Opposition was present.

Mr. Soriano said the applicant needed more time and requested to defer to the June meeting.

Alan Richelson made a motion to defer BOZA-22-9 to the June meeting. Rudolph Foster seconded the motion. All in favor, the motion passed to defer June.

NEW BUSINESS:

**BOZA-23-12
DOMENIC BARSOTTI
1709 HIXSON PIKE**

Domenic Barsotti requests a reduction in left side setback from 5' to 2' for an ADU.

Opposition was present.

Mr. Soriano briefed the Board of the variance in his PowerPoint presentation.

Domenic Barsotti of 1709 Hixson Pike addressed the Board. Mr. Barsotti said he was the owner of the property. He planned to put in a 2 car garage with a second story above it. He said the issue is that the driveway is 8' wide and it is on the property line. There is a wall on both sides so you cannot drive into the grass. Mr. Barsotti said getting in the garage is the main reason for the request. If you were to keep the standard setback of 5', you would have to turn an aggressive right.

Discussion followed.

City Staff Attorney Andrew Trundle said this request would be under the standard zoning variances. He said if the applicant was going to use it as a workshop it would be a normal variance case. He read out loud the hardships from Sec. 38-567.

Oscar Spring of 1707 Hixson Pike addressed the Board. Mr. Spring said he is adjacent to Mr. Barsotti. Several months ago Mr. Barsotti proposed to purchase 3' of his property from Hixson Pike to the back of his lot. Mr. Spring spoke to several people and they advised him not to sell because he would have difficulty selling his property should he decide to sell in the future because Mr. Barsotti would take 3' away from his property, which is narrow. Mr. Spring has 8' of setback relative to the property line. The proposal was to purchase 3' leaving him with 5'. His wall is part of his driveway boundary. He understands it is constraining but it was not in his best interest, as he was told by an attorney and a real estate friend. Mr. Spring said he needed money, but even with the money it would not be in his best interest to do so. Mr. Spring said he did not discuss money with Mr. Barsotti. Mr. Barsotti is now asking the Board to grant him 3' of his property so that he does not have to move his garage, which he was not willing to sell. At some point Mr. Spring said he would like to add on to his property behind his house and have a garage built underneath; a porch and a master suite. His house is a 2 bedroom, 1 bath 1,300 square feet house, but eventually he would like to have that. Mr. Spring said he does not know what his boundaries would be, but would not want something that close. He feels for Mr. Barsotti, but he does not think it should have to come from his property sale or changing how close what he is trying to build to where his potential expansion would be.

Discussion followed.

Domenic Barsotti addressed the Board in rebuttal. Mr. Barsotti said if Mr. Spring wanted a setback variance in the back section of his property; he would not oppose it.

Joe Manuel made a motion to deny BOZA-23-12 for the request. Alan Richelson seconded the motion.

Discussion followed.

A roll call was taken. Ray Adkins - no, Joe Manuel - yes, Rudolph Foster - no, Alan Richelson - yes, Susan Gilmore - yes, Lee Brock - yes, J.T. McDaniel - yes, Scott McColpin - yes: The motion to deny was passed. The case is denied.

**BOZA-23-13
CHARLES BOWDEN
3355 OAK BURR DRIVE**

Charles Bowden requests a variance for an accessory structure in street side yard.

No opposition was present.

Mr. Soriano briefed the Board of the variance in his PowerPoint presentation.

Charles and Elizabeth Bowden of 3355 Oak Burr Drive addressed the Board. Mrs. Elizabeth Bowden said they are trying to build a detached garage. They still have 38' from the side street to the side of their garage and it will be in their backyard. It is just not in the fenced backyard. Mrs. Bowden said they could not put the garage on the other side of their house because the power lines drop so low. They have letters from their surrounding neighbors agreeing with them that they have no problem with having the garage there. She said there will be no sight problem.

Discussion followed.

City Staff Attorney Andrew Trundle stated to the Board that you did not need a hardship for the exception. This request is not asking a variance from the setbacks. He said he believed this would fall under a structure rather than a variance. There was some question about needing a hardship for an accessory structure so research was done at the meeting.

A 10 minute break was taken at this time. This break was necessary in order for staff to research a case where the Board granted a case similar to this one. A case was found in July in 2022 where the Board granted a special exception that had no hardship. Chairman McColpin said the Board is not dealing with a setback, just granting a special exception for a side yard. He said there was also debate about whether it is a side yard or a rear yard, but that is not in the purview that the Board is looking at today.

The meeting resumed.

Ray Adkins made a motion to approve BOZA-23-13 for the accessory structure in the street side yard. Alan Richelson seconded the motion.

A roll call was taken. Ray Adkins - yes, Joe Manuel - abstained, Rudolph Foster - yes, Alan Richelson - yes, Susan Gilmore - yes, Lee Brock - yes, J.T. McDaniel - yes, Scott McColpin - yes: The motion passed. The case is approved.

**BOZA-23-14
TRENT LANE/ANDREA L. ARNOLD
7150 BLOSSOM CIRCLE**

Trent Lane on behalf of Andrea L. Arnold requests a reduction in rear setback from 25' to 10' for a covered porch.

No opposition was present.

Mr. Soriano briefed the Board of the variance in his PowerPoint presentation.

Trent Lane addressed the Board. Mr. Lane said he is the contractor for this project. He is with Lane Consultant Construction. He specializes in property insurance claims, renovations and custom home construction. He was contracted to Andrea Arnold, the homeowner because she said she had an issue in the back of her home. He went to Ms. Arnold's house to inspect the situation. He said the house was built in 2007. She has French doors and a pre-existing patio slab that is 12x14. It has a 2 story roofline that has a 1' overhang. Everything is wind driven rain and the French Doors and the wood flooring are getting damaged. Mr. Lane said he proposed to put a shed roof over the pre-existing patio slab that was poured in 2007 when the house was originally built to get her problem corrected.

Discussion followed.

Andrea Arnold of 7150 Blossom Circle addressed the Board. Ms. Arnold said her neighborhood did not have an active HOA at this time. She read the covenants and restrictions and did not see anything that would restrict this happening.

Alan Richelson made a motion to deny BOZA-23-14 based on not knowing the actual variance request and there is no hardship. Rudolph Foster seconded the motion.

Discussion followed. Mr. Lane said he would request to defer his case to next month in order to get a survey. Chairman McColpin told the applicant not to spend money on a survey if there was no hardship. Ms. Arnold said she would like to withdraw her request.

Alan Richelson made a motion to withdraw his motion. Ray Adkins seconded the motion.

Alan Richelson made a motion to withdraw without prejudice BOZA-23-14. Ray Adkins seconded the motion.

Discussion followed.

A roll call was taken. Ray Adkins - yes, Joe Manuel - yes, Rudolph Foster - yes, Alan Richelson - yes, Susan Gilmore - yes, Lee Brock - yes, J.T. McDaniel - yes, Scott McColpin - yes: The motion passed to withdraw without prejudice. The case is withdrawn w/out prejudice.

**BOZA-23-15
ROBERT BIVIN
118 ISLAND AVENUE**

Robert Bivin requests a reduction in left side setback from 10' to 5' for new construction.

Opposition was present.

Mr. Soriano briefed the Board of the variance in his PowerPoint presentation.

Ken Bivin addressed the Board. Mr. Bivin said he was Robert Bivin's father. He said he lives at 102 Island Avenue right down the street. This property is owned by his wife and her sisters and her brother. It is a portion of the property that their father's house sat on. He passed away and they sold it. He said there was a little house on it that their grandmother lived in that his wife used as a studio for years after she had died. When they decided to sell the father's house they decided to subdivide and add some land to it and build something there. He applied for a variance and they were both 5' from the line. It would be up against the fence and further away from the driveway.

Discussion followed.

Susan Gilmore said she needed to recuse herself from this case.

Edward Haluska of 109 McFarland Avenue addressed the Board. Mr. Haluska said he purchased the lot from the Bivens estate. They tore down the house that was on the property and then they built this new construction and moved in November. He said they object to a home being built there. They also negotiated a first right of refusal in the purchase of this lot. He said if the overlay issue is present and real then this is just a moot point. Both of these lots were owned by the family and they created the unusual lot size. Aesthetics is by no means a hardship. They do not want a 2 story house looking into their bathroom. After having his son's bike stolen this past Friday at 2:00 a.m. there is no need to have any rental properties or Air BnB's on these properties. He said they have had zero information as to what was being built or what the intent of the house is until 2 hours ago. They prefer that nothing happens to this lot and that the Bivens sell it to him, and if not then they need to do everything to the letter of the law.

Amy Mahone with Baker Donelson addressed the Board. Ms. Mahone said she was outside counsel to GPS. Their concerns are they did not know what was planned to be built and the size of what was being built. They object to this request because there is a road as wide as 1 car, not construction vehicles. This lot is a small lot for a 1,500 square feet, 2 story house. They also object to this because it is too big of a house for this small space. If this is going forward they would like to have some communication with Mr. Biven to know what is going on there. They would like this to be to the letter of the law. She is concerned about the construction and does not know how long it is going to take. She said they are disappointed that they have not been contacted and would have liked to have known the plans before they got to this meeting. She said 5 people are here in opposition to this case.

Discussion followed. It was determined that it is not in the overlay.

Alan Richelson made a motion to deny BOZA-23-15 for the request based on the fact this is one of the few cases that was created by the applicant and that aesthetics do not come into play. Rudolph Foster seconded the motion.

A roll call was taken. Ray Adkins - yes, Joe Manuel - yes, Rudolph Foster - yes, Alan Richelson - yes, Lee Brock - yes, J.T. McDaniel - yes, Scott McColpin - yes: The motion to deny passed. The case is denied.

**BOZA-23-16
ADAM HARBIN/JAY FLOYD
1414 JENKINS ROAD, UNIT 120**

Adam Harbin on behalf of Jay Floyd requests a special permit for an animal grooming facility.

No opposition was present.

Mr. Soriano briefed the Board of the variance in his PowerPoint presentation.

Jay Floyd addressed the Board. Mr. Floyd said he lived at 1160 Rivercrest Drive. He said this is a pet retail store mostly selling retail items, food treats, collars and toys. There is a self wash in the back for doggies that need washing. He said he has been in the pet care industry for about 17 years. He has 4 locations where they do grooming and boarding. He said the self washes have become a demand nowadays. He said he loved the area and reached out to the neighbors and everyone loves the idea of them coming there. They do not board or daycare dogs. No dogs are there overnight. There is no play area or outdoor area and no dogs outside. The dogs will be there for no more than 15 to 20 minutes. There is good ingress/egress there and plenty of parking.

Discussion followed.

Scott McColpin made a motion to approve BOZA-23-16 for the special permit for an animal grooming facility based on the condition that there is no outdoor use and no overnight stay. Alan Richelson seconded the motion.

A roll call was taken. Ray Adkins - yes, Joe Manuel - yes, Rudolph Foster - yes, Alan Richelson - yes, Susan Gilmore - yes, Lee Brock - yes, J.T. McDaniel - yes, Scott McColpin - yes: All in favor, the motion passed. The case is approved.

**BOZA-23-17
DONNA SHEPHERD/BENNIE PARKER
2811 S. HICKORY STREET**

Donna Shepherd on behalf of Bennie Parker requests a reduction of building setback from 25' to 0', an increase in building height from 35' to 40' and in lieu of street yard trees, allow for streetscape trees along S. Hickory and E. 28th Street.

No opposition was present.

Mr. Soriano briefed the Board of the variance in his PowerPoint presentation.

Donna Shepherd with AD Engineering on behalf of Bennie Parker addressed the Board. Ms. Shepherd handed out a new site plan because when they originally submitted the application they had not replatted the property. This is all owned by Ben Parker. Brown Street was recently abandoned in order to build a building. This is an existing building that has a ramp that encroaches onto Brown Street and they have an existing parking lot. On the original application LDO asked to show intent to replat so they submitted a preliminary plat to Hamilton County GIS. She said when you have multiple road frontages you have multiple addresses. You cannot go over property lines. This will be a phased project. They have a building expansion that they would like to get a variance for. The first variance request for this is a request to get a 0' setback on S. Hickory Street. A typical ROW is 50'. They were denied by the City Council to abandon the ROW to make it 50'. She was told the City was going to do their own study and they may initiate a ROW abandonment. However, they do not have the resources to do that. They plan to make improvements on S. Hickory where they will do new sidewalks. So they would like to do a minimum foot setback. They will still have 25' from the backup sidewalk. They plan on making improvements to S. Hickory Street where they will do a new sidewalk and proposed street trees. Another reason to do a 0' setback is because of the flood. FEMA is about to issue new maps around August. The proposed maps out there raise the flood 3'. This is the higher portion of the site. The more she can push the building closer to the property line, it will provide a flatter pad and higher elevation because equipment is going to go through this old Brown Street. She needs to keep separation and have a flat pad. They need a height variance as well because there is no storm infrastructure along S. Hickory or E. 28th Street to take the stormwater. The reason they want to increase the building height from 35' to 40' is so they can do a shed style roof and pick up the water to drain towards the back, which ultimately goes to the creek. The third variance was for streetscape versus street yard. This is an industrial site. With a 0' setback she cannot put street yard trees, which are required for the M-1 and M-2 zones, which are in the first 8'. In lieu of that she would like to put those on S. Hickory Street on the verge and add the trees. Also, in lieu of street yard trees, she would like to do streetscape trees, which also tie into another variance request.

Evan Parker addressed the Board. Mr. Parker said he was the owner of Ben Parker Company and his father is Ben Parker.

Discussion followed.

Karna Levitt, Landscape Architect addressed the Board. Ms. Levitt said as long as everyone is clear on what CDOT takes care of in the ROW, which are street trees and what she takes care of. She wanted to mention the trees on the frontages in the City's ROWs are to be required by CDOT regardless of the variance. She said the applicants will be providing parking lot trees. What they are not planning to provide are the two elements of street yard trees, which are the 8' width on the private property and the actual plant material of the trees themselves.

Caleb Fisher, Transportation Review Specialist addressed the Board. Mr. Fisher said yes that would be a requirement when it comes in for permitting.

Susan Gilmore made a motion to approve BOZA-23-17 for the reduction of building setback from 25' to 0', as well as an increase in building height from 35' to 40' with no additional setback, and in lieu of street yard trees, the allowance of streetscape trees along S. Hickory Street and E. 28th Street. Alan Richelson seconded the motion.

A roll call was taken. Ray Adkins - yes, Joe Manuel - yes, Rudolph Foster - yes, Alan Richelson - yes, Susan Gilmore - yes, Lee Brock - yes, J.T. McDaniel - yes, Scott McColpin - yes: The motion passed. The case is approved.

Let the record show that Board Member Joe Manuel had to leave the meeting.

**BOZA-23-18
DONNA SHEPHERD/BENNIE PARKER
2900 WATAUGA STREET**

Donna Shepherd on behalf of Bennie Parker requests in lieu of street yard trees, allow for streetscape trees along E. 28th Street and no street yard (or streetscape required) on Watauga Street.

No opposition was present.

Mr. Soriano briefed the Board of the variance in his PowerPoint presentation.

Donna Shepherd with AD Engineering on behalf of Bennie Parker addressed the Board. Ms. Shepherd said the reason why it is separate is because it is a separate parcel, and the variance is based on the address. She said we are referring to lot 1 on the new plan. This is an existing parking lot. It initially encroached into the ROW and to remedy that they did partial abandonment of E. 28th Street and they set a new property line, which is even with lot 2. And now there is not enough room to do the street yard trees and maintain this existing condition. So in lieu of that they would like to put streetscape trees in the verge. On Watauga Street you can see the existing curb line. Currently Ben Parker has been using this property all the way up to the fence line. There is also a 10' power communication easement. This is overhead power there. This is an industrial site and there is really no room for street yard trees or streetscape trees because there is not enough ROW. So the request is for no streetscape or street yard trees on Watauga Street frontage and streetscape trees on E. 28th Street in lieu of a variance to have no street yard requirement on E. 28th Street.

Discussion followed.

Karna Levitt, Landscape Architect in response to a question addressed the Board. Ms. Levitt said the intent is to shade people on the City's streets and sidewalks, to intercept stormwater and to clear the air of dust and pollution. She said she would not suggest any mitigation if the customers wanted to offer that they could.

Susan Gilmore made a motion to approve BOZA-23-18 for the request not to require street yard trees along 28th Street but streetscape trees will be planted on E. 28th Street, and no street yard or streetscape required on Watauga Street. The parking lot trees will be pursuant to the site plan required. Alan Richelson seconded the motion.

A roll call was taken. Ray Adkins - yes, Rudolph Foster - yes, Alan Richelson - yes, Susan Gilmore - yes, Lee Brock - yes, J.T. McDaniel - yes, Scott McColpin - yes: The motion passed. The case is approved.

Staff City Attorney Andrew Trundle said the new site plan can be part of the record for all 3 cases, BOZA-23-17, BOZA-23-18, and BOZA-23-19.

BOZA-23-19
DONNA SHEPHERD/BENNIE PARKER
2900 WATAUGA STREET

Donna Shepherd on behalf of Bennie Parker requests no street yard (or Streetscape required) on Watauga Street.

No opposition was present.

Mr. Soriano briefed the Board of the variance in his PowerPoint presentation.

Donna Shepherd with AD Engineering on behalf of Bennie Parker addressed the Board. Ms. Shepherd said this is at 2900 Watauga Street, which is the official address of the parcel. Often when you have multiple road frontages there are multiple addresses assigned. She spoke to the City Attorney's office and they said the Board of Zoning Appeals applications are based off of an address. With this request, she submitted an application and it was advertised under 2900 Watauga Street, but she would like for any motion to include 2901 S. Hickory Street as the alternative address of Watauga Street. She said they would like to be able to do a building addition in the future and they are asking for the same request as the 2811 S. Hickory Street; so the 3 requests that were made were for a 0' setback, an increase in building height from 35' to 40' with no additional setback, and a request to not have street yard trees within the first 8' and plant streetscape trees in lieu of. She said we request that no street yard or streetscape trees be required.

Discussion followed.

Susan Gilmore made a motion to approve BOZA-23-19 the address of 2900 Watauga Street with the alternate address of 2901 S. Hickory Street, for the request for a variance similar to what was approved in BOZA-23-17 because the building is crossing the property line, and grant the request that no street yard trees or streetscape trees be required on Watauga Street. Lee Brock seconded the motion.

A roll call was taken. Ray Adkins - yes, Rudolph Foster - yes, Alan Richelson - yes, Susan Gilmore - yes, Lee Brock - yes, J.T. McDaniel - yes, Scott McColpin - yes: The motion passed. The case is approved.

BOZA-23-20
DREW SMITH/EMG 6206 LEE HWY LLC
6206 LEE HIGHWAY

Drew Smith on behalf of EMG 6206 Lee Highway LLC requests a reduction in front setback from 62' to 26' for new construction.

No opposition was present.

Mr. Soriano briefed the Board of the variance in his PowerPoint presentation.

Drew Smith of 6148 Lee Highway addressed the Board. Mr. Smith said they are the owners of the property and the developers of self storage. They are requesting a variance on the setback to 62' due to extreme topography on the side and the detention water quality requirement. The stormwater results in their pond being in the low point on the side, which is along Lee Highway. He made a mistake on his request and is requesting to go to **62', not 26'**.

Karna Levitt, Landscape Architect addressed the Board. Ms. Levitt said it is an issue with the Brainerd Overlay, which has a maximum setback.

Discussion followed.

Alan Richelson made a motion to approve BOZA-23-20 for the reduction in front setback from 26' to 62' for new construction. The hardship is extreme topography and the easement of the required detention pond. Ray Adkins seconded the motion.

A roll call was taken. Ray Adkins - yes, Rudolph Foster - yes, Alan Richelson - yes, Susan Gilmore - yes, Lee Brock - yes, J.T. McDaniel - yes, Scott McColpin - yes: The motion passed. The case is approved.

BOZA-23-21
DREW SMITH/EMG 6206 LEE HWY LLC
6206 LEE HIGHWAY

Drew Smith on behalf of EMG 6206 Lee Highway LLC requests a reduction in street edge zone from 12' to 5' for new construction.

No opposition was present.

Mr. Soriano briefed the Board of the variance in his PowerPoint presentation.

Drew Smith of 6148 Lee Highway addressed the Board. Mr. Smith said the Brainerd Overlay District defines 3 sections differently and the middle section is a multi-use path. There is a 12' minimum in the Brainerd Overlay. His request is just to match the 5' side walk.

Discussion followed.

Karna Levitt, Landscape Architect addressed the Board. Ms. Levitt said the Brainerd Overlay is all about getting businesses and activity up to the sidewalk so that there is more social interaction. She said parking and signage are to the rear because it is less attractive.

Alan Richelson made a motion to approve BOZA-23-21 for the reduction in street edge zone from 12' to 5' for new construction. Ray Adkins seconded the motion.

A roll call was taken. Ray Adkins - yes, Rudolph Foster - yes, Alan Richelson - yes, Susan Gilmore - yes, Lee Brock - yes, J.T. McDaniel - yes, Scott McColpin - yes: The motion passed. The case is approved.

BOZA-23-22
MICHAEL PRICE/BHARWANI PROPERTIES LLC
1905 GUNBARREL ROAD

Michael Price with MAP Engineers on behalf of Bharwani Properties LLC requests a reduction in rear setback from 25' to 15' and a reduction in rear landscape buffer from 20' to 10' for new construction.

No opposition was present.

Mr. Soriano briefed the Board of the variance in his PowerPoint presentation.

Mike Price with MAP Engineers addressed the Board. Mr. Price said previously this case came before the Board and a variance was granted for a different plan. The old plan was to tear down the existing gas station. The applicants have since decided that it was not a good plan. They want to separate the buildings, but provide the ability for the attached site plan. He said they are asking for a little bit less than what was granted. He said now they are asking for a 15' rear setback, reduce the landscape buffer requirement in the back, and plant a single row of Type C landscaping, which allows them to meet both the ingress and egress, fire access to the building and provide more landscape than what was previously approved. He said the variance ran out and then the applicants went with different plans and that is why they are before the Board.

Discussion followed.

Karna Levitt, Landscape Architect addressed the Board. Ms. Levitt said the width is 20' to 10' and the applicant is asking to use a different type of buffer, which eliminates the shade trees in the required buffer. She said the applicant is proposing to change the Type B buffer to a Type C buffer.

Discussion followed.

Caleb Fisher, Transportation Review Specialist addressed the Board. Mr. Fisher said they were for reducing curb cuts on Gunbarrel Road.

Ms. Levitt stated a point of order. She said in the last case the applicant stated that her variance covers 2 addresses, as the variance goes by address and not parcel. In this case the location of the work is already addressed as 1909 Gunbarrel Road, and the variance is for 1905 Gunbarrel Road, which is the entire parcel. She suggested to the Board to consider referencing the address of this specific location in the motion.

Discussion followed.

Scott McColpin made a motion to approve BOZA-23-22, as submitted as 1905 Gunbarrel Road, however it is for the old dentist's office that is located at 1909 Gunbarrel Road to approve the reduction in rear setback from 25' to 15' and the change in rear landscape buffer from Type B to Type C having a 10' from a 20' reduction. Alan Richelson seconded the motion.

A roll call was taken. Ray Adkins - yes, Rudolph Foster - yes, Alan Richelson - yes, Susan Gilmore - yes, Lee Brock - yes, J.T. McDaniel - yes, Scott McColpin - yes: The motion passed. The case is approved.

OTHER BUSINESS:

Elections - Chairman McColpin told the Board that the elections are held in June and he plans on seeking the Chairman's position again unless someone comes forward and wants to run as Chairman. He is asking everyone for their support. He said he will be calling all the members from now until next month's meeting to see if there is something the Board could do differently.

THERE BEING NO further business to come before the Board at this time, the meeting was adjourned.


CHAIRMAN


DATE


SECRETARY


DATE

**BOARD OF ZONING APPEALS
DEVELOPMENT RESOURCE CENTER BUILDING
CHATTANOOGA, TENNESSEE
JUNE 7, 2023**

The Board of Zoning Appeals of the City of Chattanooga, Tennessee, met in regular meeting on June 7, 2023, at 10:00 a.m. In attendance were Chairman Scott McColpin presiding, Board members Mr. Ray Adkins, Mr. Alan Richelson, Mr. Paul Betbeze, Mr. Rudolph Foster, Mr. Lee Brock and Mr. J.T. McDaniel. Absent were Ms. Susan Gilmore and Mr. Joe Manuel. Also in attendance were City Staff Attorney Andrew Trundle and Ms. Dottie Cannon, Secretary to the Board.

Staff members in attendance were Mr. Ariel Soriano, Deputy Director of the Land Development Office, Mr. Caleb Fisher, Transportation Review Specialist and Ms. Karna Levitt, Landscape Architect. Ms. Lori Roberson, Court Reporter, was present and took transcription of the proceedings.

MINUTES:

The May Minutes were ready to be approved. Ray Adkins made a motion to approve the May Minutes. Paul Betbeze seconded the motion. All in favor, the May Minutes were approved.

SWEARING IN:

All the applicants, as well as staff were sworn in by Court Reporter Lori Roberson.

INTRODUCTION (RULES AND REGULATIONS):

Chairman Scott McColpin explained the rules and procedures to the applicants for addressing the Board. He said if it looks like your request is going to be denied, you have two (2) options: (1) before a vote on a motion is made on your case, you may request that the Board defer your case to a future meeting in order to modify your request; or (2) you may request that your case be withdrawn w/o prejudice. If your case is denied, you must wait one (1) year before you can reapply to this Board for the same request. If you want to appeal you must appeal to Chancery Court, not the City Council. Finally, it takes the majority of the Board present to approve a motion. This is a 9 member Board and the majority or a quorum of the Board would be 5 members. In the event of missing Board members, decisions are made by the majority of those present.

ANNOUNCEMENTS:

Chairman Scott McColpin said next month's meeting would be held on Wednesday, July 5, 2023.

OLD BUSINESS:

**BOZA-23-9
BRIAN CALDWELL
1916 APPLING STREET**

Brian Caldwell requests a reduction in right setback from 10' to 5' for new construction.

Opposition was present.

Mr. Soriano briefed the Board of the variance in his PowerPoint presentation.

Brian Caldwell addressed the Board. Mr. Caldwell said he was a builder. He said Chairman McColpin was correct in that he did not need a 5' landing setback because the side door did not count as needing a setback. He said the variance he requested got kicked back from the Land Disturbance Department for a stream determination or a geo runoff. They told him he could not build.

Discussion followed. It was determined that the applicant did not need a setback variance from this Board. He needed to go to Site Development and to apply for a Stormwater variance.

Gloria Byerley of 1909 Appling Street addressed the Board. Ms. Byerley said she was part owner of 1912 and 1914 Appling Street. She said if that stormwater drain is messed with, it will cause flooding in the neighborhood any time there is a strong storm. That is why it was built to begin with.

Lee Brock made a motion to withdraw without prejudice BOZA-23-9. Paul Betbeze seconded the motion. All in favor, the motion was passed.

NEW BUSINESS:

**BOZA-23-23
MIKE POTTER
2704 E. 36TH STREET**

Mike Potter requests a reduction in left side setback from 10' to 0' for new construction to existing building.

No opposition was present.

Mr. Soriano briefed the Board of the variance in his PowerPoint presentation.

The applicant was not present.

Paul Betbeze made a motion to defer BOZA-23-23 to the July meeting. Rudolph Foster seconded the motion. All in favor, the case is deferred to the July meeting.

**BOZA-23-25
WILLIAM DICKSON
5468 OLD HIXSON PIKE**

William Dickson requests a special permit for commercial parking in an office zone.

No opposition was present.

Mr. Soriano briefed the Board of the variance in his PowerPoint presentation.

The applicant was not present.

Paul Betbeze made a motion to defer BOZA-23-25 to the July meeting. Rudolph Foster seconded the motion. All in favor, the case is deferred to the July meeting.

**BOZA-23-26
JOYCE JALKH/CHATTANOOGA ENGINEERING
1402 W. 55th STREET**

Joyce Jalkh with Chattanooga Engineering Group on behalf of UCI LLC requests a reduction in front setback from 25' to 15' for new construction.

No opposition was present.

Mr. Soriano briefed the Board of the variance in his PowerPoint presentation.

Rocky Chambers with Chattanooga Engineering Group addressed the Board. Mr. Chambers said they have an unusual triangular shaped lot. There is a major drainage area that goes along the west of the property. The drainage area has a pretty significant buffer that is associated with it as well. Then they have the 25' required front yards and that just left a small footprint to build a reasonable house on. They would like to see the secondary street, 55th Street taken down from the 25' setback to 15". There are other houses just as close to what they are asking.

Discussion followed.

Caleb Fisher, Transportation Review Specialist addressed the Board. Mr. Fisher said the 25' site triangles are the current requirement and the applicant appears to be meeting that requirement. He said we have a 25' site requirement for corners and it appears that the house is outside of that 25' from the intersection.

Paul Betbeze made a motion to approve BOZA-23-26 for the reduction in front setback from 25' to 15' based on the hardship of the lot having an unusual shape. Lee Brock seconded the motion.

A roll call was taken. Ray Adkins - yes, Paul Betbeze - yes, Rudolph Foster - yes, Alan Richelson - yes, Lee Brock - yes, J.T. McDaniel - yes, Scott McColpin - yes: The motion passed and the case is approved.

BOZA-23-27
BRIAN GESELBRACHT
1506 E. 14TH STREET

Brian Geselbracht on behalf of James & Anna Dickson requests a reduction in rear setback from 5' to 0' and a reduction in right side setback from 5' to 0' for new construction.

No opposition was present.

Mr. Soriano briefed the Board of the variance in his PowerPoint presentation.

Brian Geselbracht addressed the Board. Mr. Geselbracht said there was an existing garage. The new owners want to build a much larger garage but in the same setback.

Discussion followed.

Caleb Fisher, Transportation Review Specialist addressed the Board. Mr. Fisher said for alleys it is permitted to back into from your house for single family dwellings. In other words, the applicant can back out but for commercial use, it would not be permitted. He said it is common practice throughout the City.

Lee Helena addressed the Board. Mr. Helena said he was in support of this case. He currently lives at 1011 Oak Street and he owns property on this block directly across this house and on the adjacent corners. He wanted to speak on the historic precedent; BOZA-18-32 was two doors down that allowed for a garage where there was no previous structure there. That case allowed for a 1' setback from the property line. There is also more historic precedent. He said this is a historic precedent in the Highland Park neighborhood that will not stand out in any way.

Chairman McColpin looked up the case Mr. Helena mentioned and said that BOZA-18-32 was heard in June of 2018, but the address was in fact 951 Eastgate Loop and not two doors down.

City Staff Attorney Andrew Trundle read the hardships from Sec. 38-567 for the record.

Lee Brock made a motion to approve BOZA-23-27 for the reduction in rear setback from 5' to 0' and a reduction in right side setback from 5' to 0' for new construction based on the fact that it is no less non-conforming than the existing structure. J.T. McDaniel seconded the motion.

Discussion followed.

A roll call was taken. Ray Adkins - yes, Paul Betbeze - no, Rudolph Foster - no, Alan Richelson - yes, Lee Brock - yes, J.T. McDaniel - yes, Scott McColpin - no: The motion to approve passed and the case is approved.

Mr. Richelson said his vote was not based on the reasoning of granting the request because of a pre-existing condition, but because of the narrowness of the lot.

City Staff Attorney Andrew Trundle read some of the ADU's policy to be on record.

BOZA-23-28
DONALD MCKENNA
6218 JACQ COURT

Donald McKenna on behalf of Charlene Ellen Dame requests a reduction in rear setback from 25' to 13'.

No opposition was present.

Mr. Soriano briefed the Board of the variance in his PowerPoint presentation.

Donald McKenna addressed the Board. Mr. McKenna said he lives at 2206 Boynton Drive, Ringgold, Georgia 30736, and was the contractor for the case. He wants to add a screened room to the back of the condo. Currently the back of the house meets the 25' setback. The adjoining property to the right and to the left actually extend into that setback anywhere from 10' to 15'. They want to move the setback back from 25' to 13', which will give them the ability to be in line with all the other neighbors and the other condos.

Discussion followed.

Paul Betbeze made a motion to approve BOZA-23-28 for the reduction in rear setback from 25' to 13' for new construction based on the fact that it is no less non-conforming to the attached structure, as well as the property next door. Ray Adkins seconded the motion.

A roll call was taken. Ray Adkins - yes, Paul Betbeze - yes, Rudolph Foster - yes, Alan Richelson - yes, Lee Brock - yes, J.T. McDaniel - yes, Scott McColpin - yes: All in favor, the motion passed and the case is approved.

OTHER BUSINESS:

Election Nominations: Alan Richelson nominated Scott McColpin for Chairman. Paul Betbeze seconded the motion. Paul Betbeze made a motion to approve. All in favor, the motion was approved.

Scott McColpin nominated Paul Betbeze for Vice Chairman. Alan Richelson seconded the motion. Scott McColpin made a motion to approve. All in favor, the motion was approved.

Rules of Procedure: Chairman McColpin said it was brought to his attention that no applicant should be called on a first name basis because the audience could think this was a good ole' buddy system. From here on out, please address the applicants by their last name only. City Attorney Phil Noblett, who joined the meeting later said this could be put in the Rules of Procedure for the Board as well.

Teaching Session: Chairman McColpin also said if it was a short agenda for next month's meeting there would be a short teaching session following the meeting.

Hardships: Ariel Soriano said the hardships can also be linked in the application.

THERE BEING NO further business to come before the Board at this time, the meeting was adjourned.


CHAIRMAN

5-JUL-2023
DATE


SECRETARY

7/5/23
DATE

**BOARD OF ZONING APPEALS
DEVELOPMENT RESOURCE CENTER BUILDING
CHATTANOOGA, TENNESSEE
JULY 5, 2023**

The Board of Zoning Appeals of the City of Chattanooga, Tennessee, met in regular meeting on July 5, 2023, at 10:00 a.m. In attendance were Chairman Scott McColpin presiding, Board members Mr. Ray Adkins, Mr. Alan Richelson, Ms. Susan Gilmore, Mr. Paul Betbeze and Mr. Rudolph Foster. Absent were Mr. Joe Manuel, Mr. Lee Brock and Mr. J.T. McDaniel. Also in attendance were City Attorney Phil Noblett, City Staff Attorney Andrew Trundle and Ms. Dottie Cannon, Secretary to the Board.

Staff members in attendance were Mr. Levi Witt, Code Enforcement Inspector II, Mr. Caleb Fisher, Transportation Review Specialist, Mr. Zach Wiley, Code Enforcement Inspector II, Mr. Sean Mayfield, Code Enforcement Inspector I, and Ms. Karna Levitt, Landscape Architect. Ms. Lori Roberson, Court Reporter, was present and took transcription of the proceedings.

MINUTES:

The June Minutes were ready to be approved. Ray Adkins made a motion to approve the June Minutes. Paul Betbeze seconded the motion. All in favor, the June Minutes were approved.

SWEARING IN:

All the applicants, as well as staff were sworn in by Court Reporter Lori Roberson.

INTRODUCTION (RULES AND REGULATIONS):

Chairman Scott McColpin explained the rules and procedures to the applicants for addressing the Board. He said if it looks like your request is going to be denied, you have two (2) options: (1) before a vote on a motion is made on your case, you may request that the Board defer your case to a future meeting in order to modify your request; or (2) you may request that your case be withdrawn w/o prejudice. If your case is denied, you must wait one (1) year before you can reapply to this Board for the same request. If you want to appeal you must appeal to Chancery Court, not the City Council. Finally, it takes the majority of the Board present to approve a motion. This is a 9 member Board and the majority or a quorum of the Board would be 5 members. In the event of missing Board members, decisions are made by the majority of those present.

ANNOUNCEMENTS:

Chairman Scott McColpin said next month's meeting would be held on Wednesday, August 2, 2023.

OLD BUSINESS:

**BOZA-23-23
MIKE POTTER
2704 E. 36TH STREET**

Mike Potter requests a reduction in left side setback from 10' to 0' for new construction to existing building.

No opposition was present.

Mr. Levi Witt briefed the Board of the variance in his PowerPoint presentation.

Mike Potter addressed the Board. Mr. Potter said he was the Operations Manager at PDP, LLC. He said they purchased a new beam line for his facility and they need to add on to the building on the Southside. The addition will be a rectangle out and up and back to the back line and will be 25' to the house and 50' from the west and back up to the property line.

Discussion followed. The road that was abandoned was referenced in Ordinance #9527. The applicant drew on his site plan his dimensions, which will be a part of his file.

Karna Levitt, Landscape Architect addressed the Board. Ms. Levitt said it was hard to tell about the landscape requirements without a drawing because she did not know the applicability trigger for that requirement to be in place, but otherwise it will be a 30' buffer. She said if he remains under that threshold she cannot apply that buffer.

Chairman McColpin said he would like to see the complete drawings of this before a motion is made.

Susan Gilmore made a motion to defer BOZA-23-23 to the August meeting. Rudolph Foster seconded the motion. All in favor, the motion passed. The case is deferred to the August meeting.

**BOZA-23-25
WILLIAM DICKSON
5468 OLD HIXSON PIKE**

William Dickson requests a special permit for commercial parking in an office zone.

No opposition was present.

Mr. Levi Witt briefed the Board of the variance in his PowerPoint presentation.

William Dickson, owner of the property addressed the Board. Mr. Dickson passed around a new site plan to the Board members. He said he is building a Domino's, which would be an extra 1,000 feet. During the construction phase he was made aware of how incredibly small the property really is. They were going to squeeze the office in the back but that office had to be deleted because that is where the detention pond ended up being. They got it up to the architectural phase when they found out they could not use the 5 parking spaces in the back because of retail, which put the brakes on it. They are in the process of rezoning this to C-2. You could not park between the C-2 and O-1 line. He said a doctor's office next to a Domino's would be a good fit as well as anything else. Their intention is not to fill this space until they have this thing completed under a roof.

Discussion followed.

Assistant City Attorney Andrew Trundle said in connection with the permitted uses it would be with what the associated business is, not just parking. He said it is open to interpretation as to whether or not the permitted use of the commercial property would make the parking and office property deal in conjunction with that. This ruling could come from a Judge and would be arguable either way that the permitted use is in the commercial zone.

Inspector Zach Wiley addressed the Board. Mr. Wiley said the permitted use is for the O-1 zone. Even though it is a one continuous parcel you have two different zones with a boundary almost down the middle. The front part of that, which is facing Hixson Pike would be the C-2 zone and it would have permitted uses for its specific zone. The rear of it being an office zone has its own permitted uses for that specific zone. When he talked to Mr. Dickson about this, he would argue that those accessories and buildings would be used within the permitted uses of that zone. With that parking lot there he suggested to Mr. Dickson to have it rezoned to C-2. Originally there were plans for an office on the back part of that parcel. That is why when they got it rezoned originally they split it from C-2 to O-1. Then they axed that office building back there and just wanted to make it specific parking for that front building. Being that a restaurant was not an approved use in an O-1 zone they did not see that they could approve a special exception use for a permitted O-1 use that did not exist.

Paul Betbeze made a motion to defer BOZA-23-25 to the September meeting so this Board can review it again if the applicant is unable to get it rezoned. Rudolph Foster seconded the motion.

Discussion followed.

A roll call was taken. Ray Adkins - yes, Rudolph Foster - yes, Alan Richelson - yes, Susan Gilmore - yes, Scott McColpin - yes: All in favor, the motion passed. The case is deferred to the September meeting.

NEW BUSINESS:

**BOZA-23-29
TRAVIS SHIELDS/ STEVE TALLEY
3601 ALTON PARK BOULEVARD**

Travis Shields with The Land Consultants on behalf of Steve L. Talley requests a reduction in front setback from 15' to 2' for new construction.

No opposition was present.

Mr. Levi Witt briefed the Board of the variance in his PowerPoint presentation.

The applicant was not present.

Susan Gilmore made a motion to defer BOZA-23-29 to the August meeting. Paul Betbeze seconded the motion. All in favor, the motion passed. The case is deferred to the August meeting.

**BOZA-23-31
CHRISTI HOMAR/DISTEFANO
1713 GRAY STREET**

Christi Homar with Christi Homar Design on behalf of Deborah Distefano Millett requests relief from Sec. 38-502 - Accessory Structure in the Front Yard.

No opposition was present.

Mr. Levi Witt briefed the Board of the variance in his PowerPoint presentation.

Christi Homar, Designer & General Contractor addressed the Board. Ms. Homar passed around pictures to the Board members. Ms. Homar said the property was completely destroyed. On that lot there was 10 acres, 3 houses and 1 pool house and 8 ancillary structures that were all destroyed. There were 240 trees lost. It consisted of 3 parcels, which were 1707, 1711 and 1713. Her client owns all of it plus 6 ½ more acres. She never thought she would have to rebuild that. The guest house is in the building in question. They built this house between the main house and more to the back for privacy and not to compete with that house. They had to take everything down. They created this shell to come back later to finish out. They built it so that they could keep tools and materials from being stolen and ruined. In the beginning there was a 60 x 100 metal building that sat 100 feet off the property line. They took that out because it was an eyesore. So when they came back they made everything work together. When they put that building back they put it exactly where the one that was completely destroyed. It is in the exact same footprint and it is actually a little bit smaller but on the pad where it originally was.

Discussion followed.

Scott McColpin made a motion to approve BOZA-23-31 for relief from Sec. 38-504 - Accessory Structure in the Front Yard. Paul Betbeze seconded the motion.

A roll call was taken. Ray Adkins - yes, Paul Betbeze - yes, Rudolph Foster - yes, Alan Richelson - yes, Susan Gilmore - yes, Scott McColpin - yes: The motion passed. The case is approved.

A 5 minute break was taken. At this time City Attorney Phil Noblett joined the meeting. The last case was moved up to the next case on the Agenda.

The meeting resumed.

**BOZA-23-32
ART JOHNSON/JOSEPH ROMANCHIK
1704 GOLF STREET**

Art Johnson with Mountain City Construction on behalf of Joseph & Lisa Romanchik requests a reduction in left side setback from 10' to 5' for an addition.

No opposition was present.

Mr. Levi Witt briefed the Board of the variance in his PowerPoint presentation.

Art Johnson addressed the Board. Mr. Johnson said he is the contractor. He said what he would like to do is tear the deck down that is over the property line by 1 foot and build a little golf cart garage being 5' off the property line. He has a letter from the homeowner, Mr. McVey from that side, saying that has no problem with this request.

Joe Romanchik, owner, addressed the Board. Mr. Romanchik said the current house is actually over the current 5' setback by 1'. So it is already 4' off.

Discussion followed.

Paul Betbeze made a motion to approve BOZA-23-32 for the reduction in left side setback from 10' to 5' for an addition as long as it goes with the site plan submitted based on the fact that it is an irregular lot shape and size and it is no less non-conforming than the existing structure. Ray Adkins seconded the motion.

A roll call was taken. Ray Adkins - yes, Paul Betbeze - yes, Rudolph Foster - yes, Alan Richelson - yes, Susan Gilmore - yes, Scott McColpin - yes: The motion passed. The case is approved.

BOZA-23-33
SHANNON SMITH/REUBEN L. SMITH
3820 LONGVIEW AVENUE

Shannon Smith on behalf of Reuben Lawrence Smith requests a reduction in front setback from 24.5' to 9.1' for an addition.

No opposition was present.

Mr. Levi Witt briefed the Board of the variance in his PowerPoint presentation.

Shannon Smith addressed the Board. Mr. Smith said there is a correction to the variance. He is actually asking for a reduction from 15' to 9.1', not from 24.5'. There is actually a sidewalk that goes from the driveway to the right side to the front door. The addition would go right up to where that sidewalk is. His father is the owner of the property.

Discussion followed.

City Attorney Phil Noblett read into the record the hardships listed in Sec. 38-567.

Discussion followed.

Scott McColpin made a motion to deny BOZA-23-33 for the request. Alan Richelson seconded the motion.

A roll call was taken. Ray Adkins - yes, Paul Betbeze - yes, Rudolph Foster - yes, Alan Richelson - yes, Susan Gilmore - yes, Scott McColpin - yes: The motion passed. The case is denied.

BOZA-23-34
MICHAEL PRICE/POMEROY LAND HOLDING
1101 KINSEY DRIVE

Michael Price with MAP Engineers on behalf of Pomeroy Land Holding LLC requests a reduction of the landscape buffer width along the adjoining C-2 zoned properties from 20' to 10', relief from the shade tree requirement of Sec. 38-595(4)(a), relief from the street yard requirement in Sec. 38-593 for proposed new streets within the subdivision and allowance of approx. 175' long retaining wall to be located within the landscape buffer.

Opposition was present.

Mr. Levi Witt briefed the Board of the variance in his PowerPoint presentation.

Mike Price with MAP Engineers addressed the Board. Mr. Price passed to the Board members a handout of his project. He referred to the second sheet of his handout and the last sheet that depicted an email. He said the bank is not open in typical retail hours. They have agreed to the request. The property is located to the west of them and is currently a vacant lot. It has an engineer doing work in the area. A lot of people have looked at it for multi-family type uses. In the event that someone does come in there and develop it, they will have to build a 20' buffer. He said he did not think that the Landscape Ordinance was intended for him to build a 20' buffer. And that is the way the Landscape Ordinance has been applied in recent years. He talked to John Bridger, the author who concurred with him that that was not the intent by the way it is worded that currently is what the requirements are. There is a provision in the Landscape Ordinance that allows you to get a reduction if 15% of your property is taken up by the requirements of the Landscape Buffer. He said to his knowledge the Landscape Ordinance that was passed in 1998 has not had any revisions to it. Since that time the City and State requires you to have water quality buffers. Now we have street trees that were never taken into account in the Ordinance. Now we have far more trees taking up far more land with regards to these requirements that the Landscape Ordinance never took into account. He said 18% of his land is taken up by the requirements of both the Landscape Ordinance and the water quality buffer, not

even taking into account the street yard they have to plant. The hardship is that the Ordinance has not really been updated to reflect these things but they have an inordinate lot of land just set aside for landscaping and for non-use that they cannot build or pave on. Given that this is part of the reason we are asking for the same reduction that we should have received anyway. He said they will plant the same number of trees in the landscape buffer requirements adjacent to the residential neighbors. The 20% buffer is just to go down to 10', which then would not require them to plant any screening trees either but still do the evergreens.

Discussion followed.

Michelle Sanders addressed the Board. Ms. Sanders of 1136 Kinsey Drive said she did not know if she should be standing here. Her concern is the cut through on Kinsey Drive so that the residents of the new townhouses can get to East Brainerd, but that is not what is being voted on.

Karna Levitt, Landscape Architect addressed the Board. Ms. Levitt said it seems why would a residential development be required to buffer themselves against a commercial development. There was an intent so that there would not be complaints from commercial activity. There is a letter from the bank and an undeveloped parcel from the other side. That is not very controversial. On the street yard itself, these are developed as public streets, which we support for good public spaces in developments. The public streets have the requirement for the street yard trees. She said the applicant has given us a street yard area and is asking for the reduction in trees. They are showing the actual trees on the ROW which are street trees. She feels like that is fairly cut and dry for the request. She did ask Mr. Price to give the Board these graphic exhibits so that the Board could understand what relief was being asked for and what was being provided. If they can provide the required number of trees and/or shrubs there then that is what she will be looking for on the final submittal.

Discussion followed.

Karna Levitt, Landscape Architect addressed the Board. She said it was a very interesting point that Mr. Price pointed out the redundancy of the buffers. There was some intent there for the neighborhood itself to buffer itself so there would not be complaints from commercial activity. The public streets have the requirement for the street yard trees. The applicant gave the street yard area and is asking for the reduction in trees. They are showing the actual trees on the ROW, which are street trees. She appreciates the fact that the applicant did a deep dive on that. If the applicant can provide the required number of trees and/or shrubs there that is what she will be looking for.

City Attorney Phil Noblett said Sec. 38-64, which is the RT-1 zone, and it says Type C landscaping or equivalent is provided on the exterior street.

Karna Levitt, Landscape Architect addressed the Board. Ms. Levitt said she had not considered that section during her review.

Discussion followed.

Karna Levitt, Landscape Architect addressed the Board. Ms. Levitt said this states Type C landscape along the exterior street. Along the new street is not where anyone would want a buffer that screens people that back out of the driveways. That is why we have the street yard trees in those locations.

Discussion followed.

Karna Levitt, Landscape Architect addressed the Board in a point of order. Ms. Levitt said there are 5 parcels associates with this project and Mr. Price has placed all the additional addresses on the application but she wanted to make sure we followed legal protocol and the motions apply to all the parcels as appropriate.

Mr. McColpin said any motions made in this case are reflecting 1101 Kinsey Drive, 1113 Kinsey Drive, 8147 E. Brainerd Road, 8149 E. Brainerd Road and 8153 E. Brainerd Road.

Scott McColpin made a motion to approve BOZA-23-34 (a) (for addresses mentioned above) a reduction of a landscape buffer in Type B buffer from 20' to 10' where this property adjoins the C-2. Alan Richelson seconded the motion.

A roll call was taken. Ray Adkins - yes, Paul Betbeze - yes, Rudolph Foster - yes, Alan Richelson - yes, Susan Gilmore - yes, Scott McColpin - yes.

Scott McColpin made a motion to approve BOZA-23-34 (b) (for addresses mentioned above) the relief for the street yard requirement for the internal roads inside the subdivision not affecting the property on the ROW of E. Brainerd Road and not affecting the property on Kinsey Drive. Paul Betbeze seconded the motion.

A roll call was taken. Ray Adkins - yes, Paul Betbeze - yes, Susan Gilmore - no, Alan Richelson - yes, Rudolph Foster - yes, Scott McColpin - yes.

Scott McColpin made a motion to approve BOZA-23-34 (c) (for addresses mentioned above) to approve the request to allow an approximately 175' long retaining wall to be located between the landscape buffer, which is a Type C buffer on the western property line only. Paul Betbeze seconded the motion.

A roll call was taken. Ray Adkins - yes, Paul Betbeze - yes, Rudolph Foster - yes, Alan Richelson - yes, Susan Gilmore - yes, Scott McColpin - yes: The motions (a, b & c) were all passed. The case is approved.

BOZA-23-35
SWETLANA IWANOW
1144 HURRICANE CREEK ROAD

Swetlana Iwanow requests a reduction in rear setback from 25' to 10' and a reduction in front setback from 25' to 15' for new construction.

No opposition was present.

Mr. Levi Witt briefed the Board of the variance in his PowerPoint presentation.

The applicant was not present.

Scott McColpin made a motion to defer BOZA-23-35 to the August meeting. Ray Adkins seconded the motion. All in favor, the motion was unanimously approved to defer to the August meeting.

BOZA-23-36
AUSTIN EDELEN/FRC GENESIS FUNDSUB
5771 BRAINERD ROAD

Austin Edelen on behalf of FRC Genesis Fundsub IV LLC requests relief from the Brainerd Overlay Requirements for a proposed car wash.

No opposition was present.

Mr. Levi Witt briefed the Board of the variance in his PowerPoint presentation.

Alan Richelson said since he was involved in the Brainerd Overlay he will recuse himself from this case.

Austin Edelen with Kimley-Horn Engineering addressed the Board. Mr. Edelen said they are proposing a Tommy's Car Wash off of Brainerd Road. It is approximately 5,300 square feet with 2 entrances on Brainerd Road both matching the existing entrances with parking to the west and south of the side and drive thru aisle to the north. He said they are requesting two variances today from the Brainerd Road Overlay. The first one being the setback for the built 2 zone. The Brainerd Road Overlay requires a landscaping strip, then a sidewalk, then a landscaping strip and then your building. So the Brainerd Overlay requires your building to be after that second landscaping strip. For a car wash to function correctly you need a drive thru aisle up at the front of the building. So without this variance the site cannot have a car wash, an approved use in the Brainerd Overlay. The second variance is having 2 driveways. These driveways are going to match the existing driveways. He said after talking to Mr. Rudolph Foster, they realized it was in the best interest for the development for these to be a right turn exit only to leave the site. The 2 driveways will increase safety, increase flow and really for pedestrian safety the 2 driveways are for the betterment of the whole site.

Discussion followed. Mr. Edelen said the hardship is the narrowness of the site.

City Attorney Phil Noblett said the Brainerd Overlay was adopted by the City Council. The concern he has is under Sec. 38-563 (6), the jurisdiction of this Board to do things. And one of them is that we cannot have the authority to change and vary conditions imposed by the City Council or the Voting Ordinance changed, which has been adopted by Ordinance. If it has been

adopted by Ordinance that is a problem. He said for a Resolution the Board can give guidance on how that works but they do not have the authority to change conditions that are imposed by the Code. If it is not done by Ordinance there is some wiggle room. The City Council has definitely given some restraints on this body's capability to act clearly on any conditions that they imposed in a Zoning Ordinance. This Board does not have any authority to do that.

Discussion followed. Mr. Edelen said he was told that this was the place to come. He said he did not talk to Councilwoman Carol Berz. Chairman McColpin said he did not think this Board had the authority to make a ruling based on what City Attorney Noblett just stated. In response to Mr. Edelen, City Attorney Noblett said he did not think this Board could give a conditional approval. He said Mr. Edelen needed to have an amendment to the Brainerd Overlay Zoning Ordinance to allow that to occur by the City Council. He told him to talk to whoever's district it was to see if they would be willing to support an Amendment to that Brainerd Overlay Zone provision that makes that requirement. If they want to say that the City's Board of Zoning Appeals has the authority to make rulings on that, then that is great. The section that deals with the authority is Sec. 38-563(6) of the Code. He said It needs to be lifted or amended by the City Council. He said sometimes they do things by Resolution but it does not have the force of law. But if it is done by Ordinance Amendment that is in the Code, then Council has the authority of that, not this body.

Rudolph Foster made a motion to defer BOZA-23-36 to the August meeting to wait for the City Council's Ordinance answer. Paul Betbeze seconded the motion. All in favor, the motion was unanimously approved to defer to the August meeting.

BOZA-23-39
MICKEY MCCAMISH
100 RIVERFRONT PARKWAY

Mickey McCamish with Riverbend Festival requests a special permit for an open air market.

No opposition was present

Mr. Levi Witt briefed the Board of the variance in his PowerPoint presentation.

Mickey McCamish addressed the Board. Mr. McCamish said he chairs the Riverbend Festival and also Riverfront Nights and this has been 17 years of conducting Riverfront nights. This is free for the public. It starts on July 15th and goes every Saturday from 6:00 p.m. to 10:00 p.m. to August 26th. They sell alcohol and food to sell to the public. He said they have done this for 16 years.

Discussion followed.

Inspector Trevis Swilley joined the meeting at this time and addressed the Board. Mr. Swilley said under Form-Based Code there is a requirement if you are selling beer and whatnot that you get a special permit and calls it an open air market requiring a permit.

City Attorney Phil Noblett said he found something in Sec. 38-204 for UGC Code for Open Air Markets. He asked if there was another section under Form-Based Code.

Inspector Trevis Swilley addressed the Board. Mr. Swilley said under Form-Based Code this type of open air market reverted saying that a special permit was necessary for the operation. It is City owned property. Ms. Melissa Mortimer, who usually handles the Form-Based Code, questioned the need for the permit and brought it to our attention. Under this Code it says under the RPK zoning, which states that it must meet Sec. 38-568, a special permit for an open air market.

City Attorney Phil Noblett said part of the problem is that the Form-Based Code is not currently in the actual Chapter 38 of the City Code. Mr. Swilley said it is confusing at best but it does state under that Code Section in the Form-Based Code that a special permit is required from the Board of Zoning Appeals. Why it was not required in the past is a question for Emily Dixon and Sarrah Robbins who were the Form-Based Code Planners, who are no longer with us. It would just be the open air market requirements, as outlined in Sec. 38-568. The Section 24-101 would be the requirements for a special events permit.

Discussion followed. Chairman McColpin wanted this to be an interpretation of the regulation that if you get a special events permit on City property you do not have to come before the Board of Zoning Appeals to comply with the Form-Based Code to get an open air market permit. City Attorney Noblett said this would relieve the applicant of coming back to this Board.

Scott McColpin made a motion on BOZA-23-39 pursuant to Sec. 38-563, to state that this is not a special permit for an open air market. This is an interpretation of the regulation for Form-Based Code if you obtain a special events permit on City property you do not need to come before the Board of Zoning Appeals to get an open air market special permit. Alan Richelson seconded the motion.

A roll call was taken. Paul Betbeze - yes, Rudolph Foster - yes, Alan Richelson - yes, Susan Gilmore - Scott McColpin - yes: The motion passed. The case is approved.

OTHER BUSINESS:

THERE BEING NO further business to come before the Board at this time, the meeting was adjourned.


CHAIRMAN


DATE


SECRETARY


DATE

**BOARD OF ZONING APPEALS
DEVELOPMENT RESOURCE CENTER BUILDING
CHATTANOOGA, TENNESSEE
AUGUST 2, 2023**

The Board of Zoning Appeals of the City of Chattanooga, Tennessee, met in regular meeting on August 2, 2023, at 10:00 a.m. In attendance were Chairman Scott McColpin presiding, Board members Mr. Ray Adkins, Mr. Alan Richelson, Ms. Susan Gilmore, Mr. Joe Manuel and Mr. J.T. McDaniel. Absent were Mr. Paul Betbeze, Mr. Rudolph Foster and Mr. Lee Brock. Also in attendance were City Staff Attorney Andrew Trundle and Ms. Dottie Cannon, Secretary to the Board.

Staff members in attendance were Mr. Levi Witt, Code Enforcement Inspector II, Mr. Caleb Fisher, Transportation Review Specialist, and Ms. Karna Levitt, Landscape Architect. Ms. Lori Roberson, Court Reporter, was present and took transcription of the proceedings.

MINUTES:

The July Minutes were ready to be approved. Ray Adkins made a motion to approve the July Minutes. Alan Richelson seconded the motion. All in favor, the July Minutes were approved.

SWEARING IN:

All the applicants, as well as staff were sworn in by Court Reporter Lori Roberson.

INTRODUCTION (RULES AND REGULATIONS):

Chairman Scott McColpin explained the rules and procedures to the applicants for addressing the Board. He said if it looks like your request is going to be denied, you have two (2) options: (1) before a vote on a motion is made on your case, you may request that the Board defer your case to a future meeting in order to modify your request; or (2) you may request that your case be withdrawn w/o prejudice. If your case is denied, you must wait one (1) year before you can reapply to this Board for the same request. If you want to appeal you must appeal to Chancery Court, not the City Council. Finally, it takes the majority of the Board present to approve a motion. This is a 9 member Board and the majority or a quorum of the Board would be 5 members. In the event of missing Board members, decisions are made by the majority of those present.

ANNOUNCEMENTS:

Chairman Scott McColpin said next month's meeting would be held on Wednesday, September 6, 2023.

OLD BUSINESS:

**BOZA-23-23
MIKE POTTER
2704 E. 36TH STREET**

Mike Potter requests a reduction in left side setback from 10' to 0' for new construction to existing building.

No opposition was present.

Inspector Levi Witt briefed the Board of the variance in his PowerPoint presentation.

The applicant was not present, but he requested to withdraw his request without prejudice.

Scott McColpin made a motion to withdraw without prejudice BOZA-23-23. Alan Richelson seconded the motion. All in favor, the case is withdrawn without prejudice.

**BOZA-23-29
TRAVIS SHIELDS/ STEVE TALLEY
3601 ALTON PARK BOULEVARD**

Travis Shields with The Land Consultants on behalf of Steve L. Talley requests a reduction in front setback from 15' to 2' for new construction.

No opposition was present.

Inspector Levi Witt briefed the Board of the variance in his PowerPoint presentation.

The applicant was not present for the second month in a row.

Scott McColpin made a motion to withdraw without prejudice BOZA-23-29. Alan Richelson seconded the motion. All in favor, the motion passed. The case is withdrawn without prejudice.

Mr. Steve Talley came to the meeting late and addressed the Board members. He apologized for being late. He had a family emergency with a family member having a heart attack late this morning. He said he was under the impression that Mr. Travis Shields, his consultant and representative, would be present at last month's meeting. He said he paid Mr. Shields \$5,000.00 and thought that Mr. Shields would be present at both meetings. He requested that the Board hear this case.

Alan Richelson made a motion to reconsider BOZA-23-29 being moved to the last case on the Agenda. Joe Manuel seconded the motion. All in favor, the motion passed and the case would be reconsidered and was moved to the last item on the Agenda.

Steve Talley addressed the Board. Mr. Talley said he lives at 3531 Chandler Avenue. He said his understanding was when they did a survey that the City had rezoned this area, those 3 lots were switched and then got rezoned and later switched them back. They insisted that he get a survey to remove those lot lines. The surveyor said you had to go to the Board to get those removed. That is why he is here to put a structure on this lot.

Discussion followed.

Joe Manuel modified his motion to defer BOZA-23-29 to the September meeting and rescind the prior withdrawal that was predicated on the applicant's absence. J.T. McDaniel seconded the motion. All in favor, the motion carried to defer this to the September meeting.

**BOZA-23-35
SWETLANA IWANOW
1144 HURRICANE CREEK ROAD**

Swetlana Iwanow requests a reduction in rear setback from 25' to 10' and a reduction in front setback from 25' to 15' for new construction.

Opposition was present.

Inspector Levi Witt briefed the Board of the variance in his PowerPoint presentation.

Swetlana Iwanow addressed the Board. Ms. Iwanow said she was in the process of purchasing this property. She would just like to build a primary home on the property, which it is difficult to do because of the shape of the lot and the current setbacks. Therefore she is requesting that the setbacks be adjusted so she could build a home there. The house is under contract and is contingent on getting the setbacks being requested. There is a power line that runs on the back and she needs to stay off that power line.

Discussion followed.

City Staff Attorney Andrew Trundle read Sec. 38-567 - Condition for Board Decisions in the records.

Discussion followed.

Nick vonWerssowetz of 803 Brookhollow Lane addressed the Board. Mr. vonWerssowetz said he was the President of the Hurricane Creek Homeowners Association. He said he saw the sign go up a week or two ago. He does not have a problem with the setbacks per say but wanted to get a clarification on the setbacks. He stated that there are covenant restrictions that define that front setback. He said they would be willing to give her the variance to go to a 25' but pulling 15' off that main thoroughfare would not be a good idea in their neighborhood. There is a steep hill there and has had multiple wrecks in that vicinity. And pulling closer to the front property line would be good. As far as the back setback that would be fine.

Discussion followed.

Swetlana Iwanow addressed the Board in rebuttal. Ms. Iwanow said she was not aware of the rules and restrictions of the Homeowners Association and that the HOA was not mandatory to join, but that it was voluntary. She said she was not considering that those rules would apply to her property if she were to purchase it.

Scott McColpin made a motion to defer BOZA-23-35 to the September meeting. Joe Manuel seconded the motion.

Discussion followed.

Caleb Fisher, Transportation Review Specialist addressed the Board. Mr. Fisher said he would want to see sight distances and would have to pull the crash history data for the area as well. He said someone in CDOT would have that info.

A roll call was taken. Ray Adkins - yes, Joe Manuel - yes, Alan Richelson - yes, Susan Gilmore - yes, J.T. McDaniel - yes, Scott McColpin - yes: The motion passed. The case is deferred to next month.

**BOZA-23-36
AUSTIN EDELEN/FRC GENESIS FUNDSUB
5771 BRAINERD ROAD**

Austin Edelen on behalf of FRC Genesis Fundsub IV LLC requests relief from the Brainerd Overlay Requirements for a proposed car wash.

No opposition was present.

Inspector Levi Witt briefed the Board of the variance in his PowerPoint presentation.

The applicant was not present.

Chairman McColpin said he did not think we had the authority to rule on this case. So this case was sent to the City Council.

Scott McColpin made a motion to withdraw without prejudice BOZA-23-36. Joe Manuel seconded the motion. All in favor, the case was withdrawn without prejudice.

NEW BUSINESS:

**BOZA-23-37
NATHAN BROWN/SOUTHERN SUN HOME
1128 E. 13th Street**

Nathan Brown on behalf of Southern Sun Homebuilders LLC requests relief from Sec. 38-502(4) - Reduced Lot Size.

No opposition was present.

Inspector Levi Witt briefed the Board of the variance in his PowerPoint presentation.

Nathan Brown, owner of Southern Homebuilders LLC addressed the Board. Mr. Brown said the lot he is trying to build on is a lot of record. He is trying to build a duplex on it. The duplex does work with the setback requirements. However the lot itself per the City has to be a certain size and is not so that is why he needs a variance.

Discussion followed.

Joe Manuel made a motion to defer BOZA-23-37 to the September meeting to give the applicant time to comply with the application requirements. Ray Adkins seconded the motion.

A roll call was taken. Ray Adkins - yes, Joe Manuel - yes, Alan Richelson - yes, Susan Gilmore - yes, J.T. McDaniel - yes, Scott McColpin - yes: The motion passed. The case is deferred to the September meeting.

BOZA-23-38
BRETT BILLINGS
4415 ST. ELMO AVENUE

Brett Billings requests relief from Sec. 38-502 - Two Story Accessory Structure.

No opposition was present.

Inspector Levi Witt briefed the Board of the variance in his PowerPoint presentation.

Brett Billings, homeowner, addressed the Board. Mr. Billings said when they bought their home, their garage was in disrepair and they are getting to the point where they need to put a new roof on there. They are in the Historic District and the roof pitch has to match their home. So it pushed the height of the new roof on the garage up to 11'. He thought of utilizing this space for additional storage, adding the windows and the dormers and just different architectural designs for the property. The second floor will not be habitable. There is no plumbing so it is not an additional dwelling unit. Mr. Billings said he has no plans to rent it out. He said it is just going to be serving as storage and storing art materials since he is an artist as well.

Discussion followed. The applicant already has approval from the Historic Zoning Commission. He is not changing the walls or footprint. He is adding a half story with a steeper roof.

Susan Gilmore made a motion to approve BOZA-23-38 for the relief from Sec. 38-504 to allow the increased height on the roof of the garage structure pursuant to the Historical Zoning Commission's approval. Ray Adkins seconded the motion.

A roll call was taken. Ray Adkins - yes, Joe Manuel - yes, Alan Richelson - yes, Susan Gilmore - yes, J.T. McDaniel - yes, Scott McColpin - yes: The motion passed. The case is approved.

BOZA-23-40
JIMMY JACKSON
1322 HIXSON AVENUE

Jimmy Jackson requests relief from Sec. 38-504 Accessory Structure for ADU that is larger than the primary structure with the condition that the primary structure will be demolished.

No opposition was present.

Inspector Levi Witt briefed the Board of the variance in his PowerPoint presentation.

Jimmy Jackson, homeowner, addressed the Board. Mr. Jackson said he wants to put a 30x50 metal building behind the old house and wants to use it for storage. He wants to partition part of it and put a little apartment in there, an ADU unit.

Discussion followed. Chairman McColpin said the maximum square footage he can build is 700'.

City Staff Attorney Andrew Trundle said the Board has not been given that authority.

Chairman McColpin explained the difference between an ADU (accessory dwelling unit is where you have an apartment or somebody is living in it), and an ADU (accessory structure is a garage where you store stuff in.) If it all is going to be under the same roof, it will exceed 700 sq. ft. He said if the applicant builds an ADU and it is not larger than 700 sq. ft., the applicant does not need to come before this Board; the applicant could build a house on his lot and not have a problem. He suggested to the applicant that he speak to Dallas Rucker about building a house on the back and until he gets a COA you do not have two homes on the lot.

Joe Manuel made a motion to withdraw with prejudice BOZA-23-40 because this Board does not have jurisdiction to address or grant a request for a variance regarding an ADU. Ray Adkins seconded the motion.

A roll call was taken. Ray Adkins - yes, Joe Manuel - yes, Alan Richelson - yes, Susan Gilmore - yes, J.T. McDaniel - yes, Scott McColpin -yes: The motion passed. The case is withdrawn with prejudice.

BOZA-23-41
ELIJAH SMITH/HANSEL BLOODWORTH
4116 S. CREEK ROAD

Elijah Smith with Tyson & Associates Construction Company, Inc. on behalf of Hansel and Betty Bloodworth requests the landscape island at the front of the building be deleted.

No opposition was present.

Inspector Levi Witt briefed the Board of the variance in his PowerPoint presentation.

Elijah Smith with Tyson & Associates Construction Company addressed the Board. Mr. Smith said he was here on behalf of the owners. His residential address is 318 Williams Drive, Chattanooga, Tennessee 37421. He said their request is to delete the landscape island with the tree as well. On this site, the front of the office parking is very important to the owner. They already have a limited amount of personal parking and they will not have guest parking. They do propose 2 additional trees at this entry point to stay within road frontage ordinances. The intent is to be within 50' or 60'. He said this is not a huge road frontage.

Discussion followed.

Karna Levitt, Landscape Architect addressed the Board. Ms. Levitt said the landscape island requirement consists of a landscape area, which is required at the end of each row of parking and a tree. The landscape area is roughly equivalent to a parking space in size by design. She discussed this with the applicant to give them the opportunity to offer alternatives. They have provided the minimal landscape requirement and offered 3 additional trees as an offer in return for this variance.

Discussion followed.

Elijah Smith addressed the Board in rebuttal. Mr. Smith said he met the parking requirements otherwise.

Alan Richelson made a motion to deny BOZA-23-41 for the landscape variance. Susan Gilmore seconded the motion.

A roll call was taken. Ray Adkins - yes, Joe Manuel - yes, Alan Richelson - yes, Susan Gilmore - yes, J.T. McDaniel - no, Scott McColpin - yes: The motion passed. The case is denied.

BOZA-23-42
BJORN CROXALL/MARC LABOVITZ/DENBO
1701 GOLF STREET

Bjorn Croxall with Croxall Painting Company on behalf of Marc Labovitz and Rachel Denbo requests a reduction in front setback from 25' to 23' for front steps.

No opposition was present

Inspector Levi Witt briefed the Board of the variance in his PowerPoint presentation.

Joshua Gunter addressed the Board. Mr. Gunter said he lives at 882 Split Rock Trail, Hixson, TN 37343. He is the Director of Operations for Croxall Residential, the General Contractor representative of Croxall and here representing the owners. They are constructing an addition to this home. The front steps to the addition would infringe on the variance by 1'-7" and he is asking for 2'. And the steps themselves are 12' wide. He said he was made aware that if the steps were less than 5' in width they could go over but if they were more than 5' in width, because of the width of the front door and the front porch the steps were designed to be 12' wide.

Discussion followed.

Joe Manuel made a motion to approve BOZA-23-42 based on the fact that it is no less non-conforming to the neighborhood. Ray Adkins seconded the motion.

A roll call was taken. Ray Adkins - yes, Joe Manuel - yes, Alan Richelson - yes, Susan Gilmore - yes, J.T. McDaniel - yes, Scott McColpin - yes: The motion passed. The case is approved.

BOZA-23-43
JOSH BARR/HIGH POINT HOMES
1023 E. 13th STREET

Josh Barr on behalf of High Point Homes LLC requests a landscape variance for parking.

No opposition was present

Inspector Levi Witt briefed the Board of the variance in his PowerPoint presentation.

The applicant was not present.

Scott McColpin made a motion to defer BOZA-23-43 to the September meeting. Alan Richelson seconded the motion. All in favor, the motion passed. The case is deferred to the September meeting.

BOZA-23-44
RAUN SWAFFORD
3900 DALEVIEW TERRACE, UNIT 102

Raun Swafford with Swafford Property Group requests relief from Sec. 38-504 Accessory Structure for ADU.

No opposition was present

Inspector Levi Witt briefed the Board of the variance in his PowerPoint presentation.

Alan Richelson recused himself in this case to avoid any appearance of impropriety. Chairman McColpin said he did the closing as the title company for the people to purchase this property and he did not think it would influence his decision in any way today because that closing took place a long time ago.

Raun Swafford of 8139 Savannah Bay Drive, Ooltewah addressed the Board. Mr. Swafford said he built a primary residence and an ADU on this property. He said it was his understanding the ADU had to be on the other side or on the back of the property. Once he built the ADU and made sure they had the setbacks in place, the front left corner of the ADU crossed the front plane of the house by about 6'. He is requesting relief for this particular section in order for the ADU to remain as an ADU as opposed to having to attach the ADU to the house and make it one residence. Inspector Bryan Malone gave him the option to talk to this Board as an option.

Chairman McColpin said this Board cannot grant a variance on an ADU. The City Council has not given us authority to grant a variance on an ADU. He suggested that the applicant talk to Councilwoman Coonrod and then go from there. So he suggested that we defer this to one month in order for him to talk to City Council and Councilwoman Coonrod.

City Staff Attorney Andrew Trundle reiterated that it was his understanding that this Board does not have the authority to grant variances on an ADU.

J.T. McDaniel made a motion to defer BOZA-23-44 to the September meeting. Joe Manuel seconded the motion. All in favor, the motion carried to defer to the September meeting.

BOZA-23-45
CHAD TAYLOR/TERRY BLAYLOCK
960 BOY SCOUT ROAD

Chad Taylor on behalf of Terry & Vickie Blaylock requests relief from Sec. 38-504 Accessory Structure in Front Yard for a pool.

No opposition was present

Inspector Levi Witt briefed the Board of the variance in his PowerPoint presentation.

Vickie Blaylock of 960 Boy Scout Road addressed the Board. Ms. Blaylock said they are trying to put a pool in the yard. She explained how her property was laid out. Her front door faces Smith Road.

Discussion followed.

Ray Adkins made a motion to approve BOZA-23-45 for the relief from Sec. 38-504 Accessory Structure in Front Yard for a pool. J.T. McDaniel seconded the motion.

A roll call was taken. Ray Adkins - yes, Joe Manuel - yes, Alan Richelson - yes, Susan Gilmore - yes, J.T. McDaniel - yes, Scott McColpin - yes: The motion passed. The case is approved.

BOZA-23-47
GARY CROWE
486 E. VIEW DRIVE

Gary Crowe with Uptown Firm requests a reduction in front setback from 25' to 0' for new construction due to topography.

Opposition was present

Inspector Levi Witt briefed the Board of the variance in his PowerPoint presentation.

Tara Maner, Civil Engineer of 4160 Wade Drive and Gary Crowe, owner of the property addressed the Board. Ms. Maner said they are applying for a variance on the front part from 25' to 0' based on a physical hardship, exceptional topographic condition. They submitted numerous photos and a site plan. She said the upper portion of the lot that is closest to the road is a 2 to 1 slope. Gradually it goes into a 3 to 1 slope. She said from there are numerous properties along E. View Drive that are already within 10' and some are even within 1' of the ROW lot.

Discussion followed.

Gary Crowe addressed the Board. Mr. Crowe said he submitted the application to start construction and they said that the bridge was a part of the visible home. So the bridge needed to start at the setback. So they wanted to start the bridge at the 15' lot of record and then the home. Basically the variance is for the bridge, not necessarily the home. The Building Code is requiring this.

Tara Maner addressed the Board. Ms. Maner said because of the topography there and if you are 15' back from the ROW line you are about 8' below from the ROW line. You could put the feet back but you would be 15' lower.

Discussion followed.

There were 10 people in opposition at the meeting today.

Todd Boyd of 476 S. Crest Road, Chattanooga, TN addressed the Board. Mr. Boyd said his concern is the bridge. If there is no retaining wall or backfill happening on the lot, there is no parking at all for the people who live in this house. Eastview Street, from his house, is 16' wide. The picture that shows the driveway, half of the car is in the street. When you have garbage trucks, UPS or the mailman, it is hard to pass any vehicles in this area. He said if you are talking about the bridge, He feels like they need more to have half of the cars on the street and half off because the road is so narrow. If this bridge comes out to the street it is a hazard. If cars come out they will hit the bridge. All of the houses on this block go to Eastview. It is a heavily traveled street. There are a lot of people that walk this street. No one has ever wanted to build on this property yet. It would have to be backfilled correctly.

Ty York of 510 E. View Drive addressed the Board. Mr. York said he wants to point out that a lot of rescue trucks cannot make that corner on S. Crest. The fire trucks take a left turn on S. Crest. His concern is if a fire truck cannot get to the fire he will be blocked by parked cars. The garbage trucks follow each other and it is really an alley.

Caleb Fisher, Transportation Review Specialist addressed the Board. Mr. Fisher said it is a narrow road and it will have problems with 2-way traffic. He will have to go out there and measure the actual asphalt width and determine if it is a yield street or not. The plans show the parking outside the travel way so he is not sure that the parking would affect that.

Laura Bell of 462 S. Crest addressed the Board. Ms. Bell said one of the things she wanted to bring to everyone's attention is that E. View is the old trolley line. There is a shared driveway. The outcome of that shared driveway is directly opposite of this. She said we are talking about a lot of the limitations to a narrow road.

Chuck Crowder of 518 S. Crest addressed the Board. Mr. Crowder said that he wanted to bring up a point that there is a fire lane sign at the bottom of E. View. So it is a no parking fire lane. It is a City sign and is on the west side of the road.

Ashley Raymond of 2925 West Side Drive addressed the Board. Ms. Raymond said she is related to this property. She is the Missionary Ridge Neighborhood Association President. Her only concern other than what is brought up is that if this variance is granted there will be a flood of developers coming in and building on the steep slopes of Missionary Ridge, which is R-1 zoning.

Sherry Gravitt of 480 S. Crest Road addressed the Board. Ms. Gravitt said she lives directly across the street from the property. She and Mr. Boyd share a driveway. One of the main problems is that they cannot turn left out of their driveway if there are cars on the street. That is another issue they have with parking.

Gary Crowe addressed the Board in rebuttal. Mr. Crowe said the bridge will not have anything to do with the ROW or the curb. It stops at the property line. Everything is off the street.

Susan Gilmore made a motion to approve BOZA-23-47 for the reduction in front setback from 25' to 0' based on the topography and only applicable to the 6' bridge. Alan Richelson seconded the motion.

Discussion followed.

A roll call was taken. Ray Adkins - no, Joe Manuel - no, Alan Richelson - yes, Susan Gilmore - yes, J.T. McDaniel - yes, Scott McColpin - no: The motion failed since it was a tie vote so the case will be deferred to the September meeting.

OTHER BUSINESS:

THERE BEING NO further business to come before the Board at this time, the meeting was adjourned.


CHAIRMAN

4-Oct-2023
DATE


SECRETARY

10/4/23
DATE

**BOARD OF ZONING APPEALS
DEVELOPMENT RESOURCE CENTER BUILDING
CHATTANOOGA, TENNESSEE
SEPTEMBER 6, 2023**

The Board of Zoning Appeals of the City of Chattanooga, Tennessee, met in regular meeting on September 6, 2023, at 10:00 a.m. In attendance were Chairman Scott McColpin presiding, Board members Mr. Alan Richelson, Ms. Susan Gilmore, Mr. Paul Betbeze, Mr. Rudolph Foster, Mr. Joe Manuel, Mr. Lee Brock and Mr. J.T. McDaniel. Absent was Mr. Ray Adkins. Also in attendance were City Staff Attorney Andrew Trundle and Ms. Dottie Cannon, Secretary to the Board.

Staff members in attendance were Mr. Levi Witt, Code Enforcement Inspector II, Mr. Caleb Fisher, Transportation Review Specialist, Ms. Jennifer Cruise-Palmer, Landscape Inspector and Mr. Kurt Martig, Landscape Inspector. Ms. Lori Roberson, Court Reporter, was present and took transcription of the proceedings.

MINUTES:

The August Minutes were not ready to be approved, but they would be ready for approval at the October meeting.

SWEARING IN:

All the applicants, as well as staff were sworn in by Court Reporter Lori Roberson.

INTRODUCTION (RULES AND REGULATIONS):

Chairman Scott McColpin explained the rules and procedures to the applicants for addressing the Board. He said if it looks like your request is going to be denied, you have two (2) options: (1) before a vote on a motion is made on your case, you may request that the Board defer your case to a future meeting in order to modify your request; or (2) you may request that your case be withdrawn w/o prejudice. If your case is denied, you must wait one (1) year before you can reapply to this Board for the same request. If you want to appeal you must appeal to Chancery Court, not the City Council. Finally, it takes the majority of the Board present to approve a motion. This is a 9 member Board and the majority or a quorum of the Board would be 5 members. In the event of missing Board members, decisions are made by the majority of those present.

ANNOUNCEMENTS:

Chairman Scott McColpin said next month's meeting would be held on Wednesday, October 4, 2023.

OLD BUSINESS:

**BOZA-23-25
WILLIAM DICKSON
5468 OLD HIXSON PIKE**

William Dickson requests a special permit for commercial parking in an office zone.

No opposition was present.

Inspector Levi Witt briefed the Board of the variance in his PowerPoint presentation.

The applicant was not present and he requested to withdraw his request without prejudice.

Joe Manuel made a motion to withdraw without prejudice BOZA-23-25. Paul Betbeze seconded the motion. All in favor, the case is withdrawn without prejudice.

**BOZA-23-29
TRAVIS SHIELDS/ STEVE TALLEY
3601 ALTON PARK BOULEVARD**

Travis Shields with The Land Consultants on behalf of Steve L. Talley requests a reduction in front setback from 15' to 2' for new construction.

No opposition was present.

Inspector Levi Witt briefed the Board of the variance in his PowerPoint presentation. He said the applicant requested to defer his case to the October meeting.

Mr. McColpin said the applicant was late to the August meeting and we rolled it to the September meeting. Now the applicant is requesting to defer the October meeting. It is up to this Board on whether this Board wants to grant a motion to defer this case again to the October meeting.

Susan Gilmore made a motion to allow the applicant with case number BOZA-23-29 to defer to the October meeting. Rudolph Foster seconded the motion.

A roll call was taken. Paul Betbeze - yes, Joe Manuel - no, Rudolph Foster - yes, Alan Richelson - yes, Susan Gilmore - yes, Lee Brock - yes, J.T. McDaniel - yes, Scott McColpin - no: The motion passed and the case is deferred to the October meeting.

**BOZA-23-35
SWETLANA IWANOW
1144 HURRICANE CREEK ROAD**

Swetlana Iwanow requests a reduction in rear setback from 25' to 10' and a reduction in front setback from 25' to 15' for new construction.

No opposition was present.

Inspector Levi Witt briefed the Board of the variance in his PowerPoint presentation.

Swetlana Iwanow addressed the Board. Ms. Iwanow said at the last meeting the HOA President put in a veto. He made 3 particular claims that she would like to dispute. She said first he said the sign was up for only 2 days, which was incorrect. Secondly, the President of the HOA said that the area had a lot of accidents. He himself referred to an accident he caused, but did not report. Ms. Iwanow went to the Police Department to get a police report and they said there were no accidents in that area and no reports to print out. Lastly, she said the HOA President said the HOA rules require the setbacks to be 35' from the property line, which is incorrect. She said the statement on the HOA website actually states the street line, not property line. She attended the HOA meeting where a member explained how a street line is measured from the center of the street, not the side of the street. She measured the setback and is more than what the HOA is requesting. She did get a letter from the HOA President stating that it was no longer a conflict.

Discussion followed.

Scott McColpin made a motion to approve BOZA-23-35 for the reduction in rear setback from 25' to 10', and a reduction in front setback from 25' to 15' for new construction based on the unusual lot shape with the condition that we are not overriding the subdivision restrictions that are of record. Paul Betbeze seconded the motion.

A roll call was taken. Paul Betbeze - yes, Joe Manuel - no, Rudolph Foster - yes, Alan Richelson - yes, Susan Gilmore - yes, Lee Brock - yes, J.T. McDaniel - yes, Scott McColpin - yes: The motion passed and the case is approved.

**BOZA-23-37
NATHAN BROWN/SOUTHERN SUN HOME
1128 E. 13th Street**

Nathan Brown on behalf of Southern Sun Homebuilders LLC requests relief from Sec. 38-502(4) - Reduced Lot Size.

No opposition was present.

Inspector Levi Witt briefed the Board of the variance in his PowerPoint presentation.

The applicant was not present and had asked to defer his case to the October meeting. Chairman McColpin said this is a second deferral for this applicant, but he was given time to provide regulations that he needed to provide to this Board. He was lacking information for Code Sec. 38-568(23).

Lee Brock made a motion to defer BOZA-23-37 to the October meeting. Joe Manuel seconded the motion.

A roll call was taken. Paul Betbeze - yes, Joe Manuel - yes, Rudolph Foster - yes, Alan Richelson - yes, Susan Gilmore - yes, Lee Brock - yes, J.T. McDaniel - yes, Scott McColpin - yes: The motion passed and the case is deferred to the October meeting.

**BOZA-23-43
JOSH BARR/HIGH POINT HOMES
1023 E. 13th STREET**

Josh Barr on behalf of High Point Homes LLC requests a landscape variance for parking.

No opposition was present

Inspector Levi Witt briefed the Board of the variance in his PowerPoint presentation.

Josh Barr of 2120 Dayton Boulevard addressed the Board. Mr. Barr said he was the owner and applicant of this property. He is requesting a parking setback. The property next door was actually approved last year for a multi-family unit; 6-8 units. The property currently is a single-family vacant house that has been boarded up and needs to be torn down. The property owner still has not torn down the property. He learned that when he went to apply for a land disturbance permit, since the single-family is still standing, they are requiring a 10' parking setback versus what it normally would be if the single house was already torn down.

Discussion followed.

Jennifer Cruise-Palmer, Landscape Inspector addressed the Board. Ms. Palmer said the landscape buffer is supposed to provide a landscape between any new development and residential.

Discussion followed.

Trevis Swilley, Plans Review Specialist III addressed the Board. Mr. Swilley said the adjacent property BOZA-23-25, which was heard in May, was approved for multi-family on that R-3 lot. There is a 2 year timeline for action on a BOZA case. Obviously there has been no action taken so they are coming up on 6 months or so of that case being tossed. Under the current R-3 regulations had he not rezoned, he could get 3 units on Mr. Barr's lot.

Discussion followed.

Mr. Brock said he wanted to allow Mr. Barr a chance to defer and come up with another site plan that would allow him to build his 8 units. Mr. Barr said he would like a deferral.

Lee Brock made a motion to defer BOZA-23-43 to the October meeting to give the applicant time to consider all concerns. Joe Manuel seconded the motion.

Discussion followed.

A roll call was taken. Paul Betbeze - yes, Joe Manuel - yes, Rudolph Foster - yes, Alan Richelson - no, Susan Gilmore - no, Lee Brock - yes, J.T. McDaniel - no, Scott McColpin - no: It was a tie vote so the motion failed. Susan Gilmore said she would change her vote.

Lee Brock made a second motion to defer BOZA-23-43 to the October meeting. Joe Manuel seconded the motion.

A roll call was taken. Paul Betbeze - yes, Joe Manuel - yes, Rudolph Foster - yes, Alan Richelson - no, Susan Gilmore - yes, Lee Brock - yes, J.T. McDaniel - no, Scott McColpin - yes: The motion passed and the case is deferred to the October meeting.

**BOZA-23-44
RAUN SWAFFORD
3900 DALEVIEW TERRACE, UNIT 102**

Raun Swafford with Swafford Property Group requests relief from Sec. 38-504 Accessory Structure for ADU.

No opposition was present

Inspector Levi Witt briefed the Board of the variance in his PowerPoint presentation.

Chairman McColpin said this was brought before this Board in August. He said under the City Attorney, Phil Nobllett, this Board does not have the authority to rule on an ADU. By the grace of this Board we gave the applicant one (1) month to go to the City Council.

Scott McColpin made a motion to withdraw without prejudice BOZA-23-44. Paul Betbeze seconded the motion. All in favor, the case was withdrawn without prejudice.

**BOZA-23-47
GARY CROWE
486 E. VIEW DRIVE**

Gary Crowe with Uptown Firm requests a reduction in front setback from 25' to 0' for new construction due to topography.

Opposition was present

Inspector Levi Witt briefed the Board of the variance in his PowerPoint presentation.

Gary Crowe of 1216 E. Main Street addressed the Board. Mr. Crowe said he was the owner and applicant.

Chairman McColpin said there were several members of the Board not present at the last meeting and there was a lot of opposition as well. It was a tie vote at the last meeting and because there were only 6 members present at the time, we had to defer it to the next meeting. He said this Board could not make a ruling on this case.

Gary Crowe addressed the Board. He said some things had changed. Since the meeting he met with the people who were opposing. They told him their concerns, which he heard. He then met with the architect, engineers and higher and came up with a new site plan. He went to the HOA meeting with the new site plan. Prior he was requesting a 0' front setback to do a bridge, which would take him into the home. There is now a retaining wall and a 10' setback. He is now requesting a 10' setback instead of 0'. This allows the dirt to be less disturbed, which is a major requirement of the City. They now have off-street parking and they have off-street shoulder parking that people want in there. And they are not doing anything with the street.

Discussion followed.

There were 11 people in opposition at the meeting today.

Ashley Raymond of 2935 West Side Drive addressed the Board. Ms. Raymond said they are not an HOA. She is the Missionary Ridge Neighborhood Association President. She said the applicant met with the Board and neighbors. Their biggest issue is the precedent it will set with steep lots on Missionary Ridge. Missionary Ridge is extremely congested and this street in particular is extremely congested because it is an extremely small and narrow street. They are worried about people coming in and buying tiny lots that are on steep slopes.

Ty York of 510 E. View Drive addressed the Board. Mr. York said for those who were not at the last meeting, they beat to a pulp the size of the street. It's 15' of asphalt from one side to the other. There is not enough room for garbage trucks to pass each other. His question is this, is the property line measured from the edge of the asphalt or from the ROW? Chairman McColpin said from the edge of the road ROW. Mr. York said if the Board grants the applicant the variance does that automatically exempt him from off-street parking? Chairman McColpin, no he can still park on the road. Mr. York was upset and said the rules need to be the same for everyone.

Caleb Fisher, Transportation Review Specialist addressed the Board. Mr. Fisher said 40' according to GIS and the road is not centered in the ROW.

Barbara Clark of 488 E. View Drive addressed the Board. Ms. Clark's concern was that Mr. Crowe has been very cooperative but for some reason still lacks specificity for why he needs this variance. She said everyone in the neighborhood has a setback. Why is he building a house with no yard? His yard or no yard affects her yard and the person on the other side. The whole neighborhood has setbacks and has yards.

Deanne Schiller of 424 S. Crest Road addressed the Board. Ms. Schiller said she has owned property on the Ridge since May of 2010. Her family has been on the Ridge since 1961. This is their home. She said it is important to say that she has nothing against these lovely people at all. They have been very nice. They would like to ask the Zoning Committee to honor the regulations that are in place. As residents who walk that way and drive that way, this is a challenge they face every day. They love their neighborhood and it works and they all work together to keep it that

way. And they honor the regulations that a Zoning Commission determined is important for their neighborhood. They are grateful for those regulations because it makes their unique geographically challenge workable for them. As people who intend to live their lives out there, they are interested in the quality of life and safety and security. It is very unique but it has its challenges.

Jennifer Crowe, wife of Gary Crowe addressed the Board. Ms. Crowe said she was doing the design of the house. Her dad has a physical disability and if they set the house further back and have stairs down to it, he could not visit them.

J.T. McDaniel made a motion to approve BOZA-23-47 for the reduction in front setback from 15' to 10' based on the topography. Alan Richelson seconded the motion.

Discussion followed.

A roll call was taken. Paul Betbeze - yes, Joe Manuel - no, Rudolph Foster - yes, Alan Richelson - yes, Susan Gilmore - yes, Lee Brock - yes, J.T. McDaniel - yes, Scott McColpin - no: The motion passed and the case is approved.

NEW BUSINESS:

BOZA-23-48 JENNIFER WISE/MYRTLE HULSEY ET AL 6040 RELOCATION WAY

Jennifer Wise with Grace Construction on behalf of Myrtle Lee Husley, et al requests to decrease the landscape screen along the northern property line from 20' to 0'.

No opposition was present

Inspector Levi Witt briefed the Board of the variance in his PowerPoint presentation.

Alex Grace with Grace Construction addressed the Board. Mr. Grace said they are under contract to purchase this property from the Hulsey Family. He plans to develop a hotel on this site. They have a C-3 zoning that abuts an R-3. And when you get into two different uses you are required to have a 20' landscape buffer. What is unique about this project is that it has 2 utility easements, which are hardships that are shown on the plan. On the top of the sheet is a WWTA utility easement and to the south is another 30' utility access easement. Behind this property is an apartment complex. They are going to develop a Marriott Hotel. So part of that hotel is an extensive landscape. They are unable to provide that 20' landscape buffer. To mitigate that they can modify their request from 20' to 10'. They are able to provide the shrubbery but not the trees. The reason they cannot provide the trees is the root ball. It is prohibited by WWTA because it would have an impact on their sewer line. They have added additional landscape islands that will allow them to plant the tree canopy into the parking lot. And to mitigate it even further they have proposed to install a 6' opaque fence. They believe the buffer they are providing would satisfy their neighbors. They believe the proposed solution is consistent with the Code. It provides the shrubs. It provides the screening that is required. He would like to ask the Board to go from 20' to 10' instead of 0'. They want to provide that screen for their own use as well. He handed the Board a new site plan to pass around.

Discussion followed.

Kurt Martig, Landscape Inspector addressed the Board. Mr. Martig said they looked over it this morning and everything looked good to them. It made sense as to what they are doing with mitigating.

Jennifer Cruise-Palmer, Landscape Inspector addressed the Board. Ms. Palmer said she would like to make sure the applicant was aware of all the parking lot tree requirements. She said she just did not see it on the plans but wanted him to know that it is a tree for every 5 spaces for the parking lot.

Alan Richelson made a motion to approve BOZA-23-48 for the request subject to the revised site plan. Paul Betbeze seconded the motion.

A roll call was taken. Paul Betbeze - yes, Joe Manuel - yes, Rudolph Foster - yes, Alan Richelson - yes, Susan Gilmore - yes, Lee Brock - yes, J.T. McDaniel - yes, Scott McColpin - yes: The motion passed and the case is approved.

BOZA-23-49
GEORGE BECKMANN/DANIEL STANCIL II
3410 HARRIS LANE

George Beckmann with Clayton Homes on behalf of Daniel S. and Stephanie M. Stancil II requests a reduction in rear setback from 25' to 10.6' for new construction.

No opposition was present

Inspector Levi Witt briefed the Board of the variance in his PowerPoint presentation.

George Beckmann with Clayton Homes addressed the Board. Mr. Beckmann said he works with Clayton Homes and is here on their behalf. He has done all the permitting and everything on this project. He said he was the builder. The hardship is the topography of the property in the front of the house. It slopes pretty steeply. There is an existing driveway that ran up to the barn and has since been torn down and that is the only suitable site for this home.

Discussion followed.

Stephanie Stancil, owner of the property addressed the Board. Ms. Stancil said she was the owner of the property along with her husband. She wants to get this house on this property. She said the property is pretty steep and it goes on an angle. She plans on gardening a lot.

Paul Betbeze made a motion to approve BOZA-23-49 for the request for the reduction in rear setback from 25' to 10.6' due to the irregular lot shape as well as the topography. Rudolph Foster seconded the motion.

A roll call was taken. Paul Betbeze - yes, Joe Manuel - no, Rudolph Foster - yes, Alan Richelson - no, Susan Gilmore - yes, Lee Brock - yes, J.T. McDaniel - yes, Scott McColpin - yes: The motion passed and the case is approved.

BOZA-23-50
KENAN MARKUM
2401 BACHMAN STREET

Kenan Markum requests a special permit for an animal grooming/veterinary hospital.

No opposition was present.

Kenan Markum of 2401 Bachman Street addressed the Board. Mr. Cox said he was an employee of Justin Cox LLC who owns this property. Mr. Markum wants to open an animal grooming and kennel facility as shown on the site plan. It is already an existing structure there. It is a warehouse type structure and they will lease it out as an animal grooming and kennel. It is only for indoor use. There are more than 7 parking spaces and there is actually a lot more parking on a lot shown on the site plan an adjoining lot, which is owned by the same entity. Access would be through a door and a sidewalk as well to an exit as well. The hours of operation would be regular business hours and they would not house dogs overnight.

Discussion followed.

David Messenger of 2401 Bachman Street, Vice President of Justin Cox, LLC addressed the Board. Mr. Messenger said generally the insulation for a 2 x 4 wall is going to be R-13. It is a metal wall so they would actually frame that additional wall. They would put insulation in on both the inner half and the outer half of it to create that extra barrier. Where you see that already framed it, it was already done that way before they purchased it. The interior is already done. The exterior is an outdoor area. They did some remodeling inside. They also looked at the option of using spray foam insulation.

J.T. McDaniel made a motion to approve BOZA-23-50 for the special permit for an animal grooming kennel facility with the condition of no outdoor use. Alan Richelson seconded the motion.

A roll call was taken. Paul Betbeze - yes, Joe Manuel - abstain, Rudolph Foster - yes, Alan Richelson - yes, Susan Gilmore - abstain, Lee Brock - yes, J.T. McDaniel - yes, Scott McColpin - abstain: The motion passed and the case is approved.

Board Member Joe Manuel had to leave the meeting.

**BOZA-23-51
BENJAMIN ESTES/BARRY LIGON TRUST
8488 E. BRAINERD ROAD**

Benjamin Estes with Estes Engineering on behalf of Barry N. Ligon Trust requests a landscape buffer variance.

No opposition was present.

Inspector Levi Witt briefed the Board of the variance in his PowerPoint presentation.

Benjamin Estes with Estes & Estes Engineering, of 8488 E. Brainerd Road, addressed the Board. Mr. Estes said he was the engineer for the project. They are adding in additional parking because business has been booming and they need the additional parking to accommodate all the customers they have. They have chosen the side of the property due to topography and the room would not allow all the parking. Due to the 20' landscape buffer he is asking for a variance to allow the parking.

Discussion followed.

Jennifer Cruise-Palmer, Landscape Inspector addressed the Board. Ms. Palmer said it has to be more than 24' because you have to include the intrusion of the buffer with the stalls at the end you are going into the buffer as well because it is a 20' buffer.

Mr. Estes said he would appreciate a deferral.

Scott McColpin made a motion to defer BOZA-23-51 to the October meeting to allow the applicant to consider other options. Paul Betbeze seconded the motion.

A roll call was taken. Paul Betbeze - yes, Rudolph Foster - yes, Alan Richelson - abstain, Susan Gilmore - yes, Lee Brock - yes, J.T. McDaniel - yes, Scott McColpin - yes: The motion passed and the case is deferred to the October meeting.

**BOZA-23-52
CHRISTOPHER WINTERS
1018 PINEVILLE ROAD**

Christopher Winters requests relief from Sec. 38-504 - Accessory Structure over Front Yard.

No opposition was present.

Inspector Levi Witt briefed the Board of the variance in his PowerPoint presentation.

Christopher Winters of 1126 E. Elmwood Drive, owner and applicant addressed the Board. Mr. Winters said he and his wife purchased this property last year and demolished the previous structure because it was unfit to live in. And they are building a new 6,500 square foot home. Previously there was a shed placed from the old building and they replaced that with a new shed because it was also dilapidated. Now that shed will be in their front yard, not their side yard. So they are hoping for a variance to allow that in their front yard. They purchased this property because there is a very large cherry bark oak tree with a 100' canopy. They do not want to disturb the land. They would have to excavate a pretty substantial spot and impact the critical root zone of the tree. They are trying to protect the tree.

Discussion followed.

Paul Betbeze made a motion to approve BOZA-23-52 for the relief from Sec. 38-504 Accessory Structure Over Front Yard. J.T. McDaniel seconded the motion.

A roll call was made. Paul Betbeze - yes, Rudolph Foster - yes, Alan Richelson - yes, Susan Gilmore - yes, Lee Brock - yes, J.T. McDaniel - yes, Scott McColpin - yes: The motion passed and the case is approved.

BOZA-23-53
PAUL WILKINSON/LOGAN WATSON, RENEE
120 MCFARLAND AVENUE

Paul Wilkinson with Reflective Homes LLC on behalf of Logan Jacob Watson and Renee Devani requests a reduction in front setback from 25' to 15' for new construction.

No opposition was present.

Inspector Levi Witt briefed the Board of the variance in his PowerPoint presentation.

Logan Watson of 686 E. 11th Street, part owner of the property addressed the Board. Mr. Watson said Mr. Wilkinson could not be here today so he is here representing himself. He said he wants to move 10' closer to the existing structure towards McFarland Avenue. That is the only variance they are requesting, from 25' to 15'. The current structure already sits within this setback. They will demo the house but do not need to change the existing setbacks. They want to bring the garage 10' closer to McFarland Avenue. They are just trying to minimize the on-street parking. It is a nice neighborhood. They have a growing family with kids. They are trying to minimize how far the home reaches out to.

Discussion followed.

Blake Roberts of 510 Sterling Avenue addressed the Board. Mr. Roberts said he wants to maintain land, trees etc. He chose this home and this area because of the lot sizes. The lot sizes were healthy. What has happened is that they maximized the square footage to try to gain that. He feels that the essential characteristic of the neighborhood is being jeopardized by doing so and doing variances in these areas. He said his concern is in this area people have chosen these larger lots for that very reason. If we go against that we are not holding the general characteristics of the neighborhood. In this area, the setbacks are different and are intended to be different. And they have been maintained throughout history and that is the intent and design of the development of this neighborhood.

Logan Watson addressed the Board. Mr. Watson said in rebuttal the home will be 4500 or 4600 square feet. And that is because that slope comes in from excavating a hole as large as the house and you are just using the slope to build a walkout basement on the bottom side of it. He said his plans are still up in the air because it is a basement.

Paul Betbeze made a motion to deny BOZA-23-53 for the request based on the fact there is no viable hardship. Alan Richelson seconded the motion.

A roll call was taken. Paul Betbeze - yes, Rudolph Foster - yes, Alan Richelson - yes, Susan Gilmore - yes, Lee Brock - yes, J.T. McDaniel - yes, Scott McColpin - yes: The motion passed and the case is denied.

OTHER BUSINESS:

Chairman McColpin said parking today for the meeting was atrocious. At one point in time City Attorney Phil Noblett had a talk with someone in the Mayor's office about this. Today Chairman McColpin saw a lot of CDOT vehicles in the lot. He said the Board members are not paid to serve on this Board and there needs to be parking provided.

THERE BEING NO further business to come before the Board at this time, the meeting was adjourned.



CHAIRMAN

4-Oct-2023

DATE



SECRETARY

10/4/23

DATE

**BOARD OF ZONING APPEALS
DEVELOPMENT RESOURCE CENTER BUILDING
CHATTANOOGA, TENNESSEE
OCTOBER 4, 2023**

The Board of Zoning Appeals of the City of Chattanooga, Tennessee, met in regular meeting on October 4, 2023, at 10:00 a.m. In attendance were Chairman Scott McColpin presiding, Board members Mr. Ray Adkins, Mr. Alan Richelson, Mr. Paul Betbeze, Mr. Rudolph Foster, Mr. Joe Manuel, Mr. Lee Brock and Mr. J.T. McDaniel. Absent was Ms. Susan Gilmore. Also in attendance were City Staff Attorney Andrew Trundle and Ms. Dottie Cannon, Secretary to the Board.

Staff members in attendance were Mr. Levi Witt, Code Enforcement Inspector II and Mr. Caleb Fisher, Transportation Review Specialist. Ms. Lori Roberson, Court Reporter, was present and took transcription of the proceedings.

MINUTES:

The August Minutes were ready to be approved. Ray Adkins made a motion to approve the August Minutes. Paul Betbeze seconded the motion. All in favor, the August Minutes were approved.

The September Minutes were ready to be approved. Alan Richelson made a motion to approve the September Minutes. Ray Adkins seconded the motion. All in favor, the September Minutes were approved.

SWEARING IN:

All the applicants, as well as staff were sworn in by Court Reporter Lori Roberson.

INTRODUCTION (RULES AND REGULATIONS):

Chairman Scott McColpin explained the rules and procedures to the applicants for addressing the Board. He said if it looks like your request is going to be denied, you have two (2) options: (1) before a vote on a motion is made on your case, you may request that the Board defer your case to a future meeting in order to modify your request; or (2) you may request that your case be withdrawn w/o prejudice. If your case is denied, you must wait one (1) year before you can reapply to this Board for the same request. If you want to appeal you must appeal to Chancery Court, not the City Council. Finally, it takes the majority of the Board present to approve a motion. This is a 9 member Board and the majority or a quorum of the Board would be 5 members. In the event of missing Board members, decisions are made by the majority of those present.

ANNOUNCEMENTS:

Chairman Scott McColpin said next month's meeting would be held on Wednesday, November 1, 2023.

OLD BUSINESS:

**BOZA-23-29
TRAVIS SHIELDS/ STEVE TALLEY
3601 ALTON PARK BOULEVARD**

Travis Shields with The Land Consultants on behalf of Steve L. Talley requests a reduction in front setback from 15' to 2' for new construction.

No opposition was present.

Inspector Levi Witt briefed the Board of the variance in his PowerPoint presentation. The applicant was not present.

Chairman McColpin said the applicant has since recorded a new plat abandoning that lot line and no longer needs the variance..

Paul Betbeze made a motion to withdraw without prejudice BOZA-23-29. Rudolph Foster seconded the motion.

Discussion followed. Mr. Manuel said it should be withdrawn with prejudice. He said if the Board denies the case, he cannot come back to this Board for a year. He needs to be treated as an adult and has come back too many times to this Board.

Mr. Betbeze moved to withdraw his motion and Mr. Foster seconded the motion.

Joe Manuel made a motion to withdraw BOZA-23-29 with prejudice. Alan Richelson seconded the motion.

Discussion followed. Mr. Betbeze said he agrees with Mr. Manuel. The applicant has been here several times and it is time to treat him like an adult.

A roll call was taken. Paul Betbeze - yes, Joe Manuel - yes, Rudolph Foster - yes, Alan Richelson - yes, Susan Gilmore - yes, Lee Brock - yes, J.T. McDaniel - yes, Scott McColpin - yes: The motion passed and the case is denied.

**BOZA-23-37
NATHAN BROWN/SOUTHERN SUN HOMEBUILD
1128 E. 13TH STREET**

Nathan Brown on behalf of Southern Sun Homebuilders LLC requests relief from Sec. 38-502(4) - Reduced Lot Size.

No opposition was present.

Inspector Levi Witt briefed the Board of the variance in his PowerPoint presentation.

The applicant was not present.

Scott McColpin made a motion to withdraw without prejudice BOZA-23-37. Ray Adkins seconded the motion. All in favor, the case was withdrawn without prejudice.

**BOZA-23-43
JOSH BARR/HIGH POINT HOMES LLC
1023 E. 13TH STREET**

Josh Barr on behalf of High Point Homes LLC requests a landscape variance for parking.

No opposition was present.

Inspector Levi Witt briefed the Board of the variance in his PowerPoint presentation.

The applicant was not present.

Scott McColpin made a motion to withdraw without prejudice BOZA-23-43. Ray Adkins seconded the motion. All in favor, the case was withdrawn without prejudice.

**BOZA-23-51
BENJAMIN ESTES/BARRY N. LIGON TRUST
8488 E. BRAINERD ROAD**

Benjamin Estes with Estes Engineering on behalf of Barry N. Ligon Trust requests a landscape buffer variance.

No opposition was present

Inspector Levi Witt briefed the Board of the variance in his PowerPoint presentation.

The applicant was not present.

Scott McColpin made a motion to withdraw without prejudice BOZA-23-51. Ray Adkins seconded the motion. All in favor, the case was withdrawn without prejudice.

Discussion followed.

NEW BUSINESS:

**BOZA-23-54
CHANDLA PESNELL
806 BLISSFIELD COURT**

Chandla Pesnell requests a reduction in rear setback from 25' to 10' for a porch.

No opposition was present

Inspector Levi Witt briefed the Board of the variance in his PowerPoint presentation.

The applicant was not present.

Scott McColpin made a motion to withdraw without prejudice BOZA-23-54. Ray Adkins seconded the motion. All in favor, the case was withdrawn without prejudice.

**BOZA-23-55
JEFFREY BENNETT
1147 DARTMOUTH STREET**

Jeffrey Bennett requests a reduction in right side setback from 5' to 0' and a reduction in rear setback from 5' to 0' for new construction.

No opposition was present

Inspector Levi Witt briefed the Board of the variance in his PowerPoint presentation.

The applicant was not present. Chairman McColpin said this applicant requested to defer to the November meeting.

Paul Betbeze made a motion to defer BOZA-23-55 to the November meeting. Joe Manuel seconded the motion. All in favor, the case was deferred to November.

**BOZA-23-56
TIMOTHY P. ALLEN
105 S. GERMANTOWN ROAD**

Timothy P. Allen requests a reduction in left side setback from 10' to 6' for new construction.

No opposition was present

Inspector Levi Witt briefed the Board of the variance in his PowerPoint presentation.

Timothy Allen, owner, addressed the Board. Mr. Allen said the neighbor's carport encroached on his property a little over 2 feet. He said he decided to move it over 4' to give it 16" between the two houses they propose to build. He said they were trying to be neighborly so that he would have the 10' setback that the City requires.

Discussion followed. It was discovered that the applicant rezoned the property.

City Staff Attorney Andrew Trundle read the hardships under Sec. 38-567 - Condition for Board Decisions.

Discussion followed.

J.T. McDaniel made a motion to approve BOZA-23-56 for the reduction in left side setback from 10' to 6' for new construction based on the narrowness of the lot. Ray Adkins seconded the motion.

Discussion followed.

A roll call was taken. Ray Adkins - yes, Paul Betbeze - no, Joe Manuel - no, Rudolph Foster - no, Alan Richelson - no, Lee Brock - yes, J.T. McDaniel - yes, Scott McColpin - no: The majority of the votes voted in favor of denial of the motion. The motion is denied.

Discussion followed. City Staff Attorney Andrew Trundle said that the case is still open until a motion passes.

Frank Maier of 102 Vista Drive. addressed the Board. Mr. Maier said he lived in the house behind this house. He said he and several others objected to it because the applicant initially wanted to put in 7 townhomes. There were dumpsters involved, a lot of concrete and a lot of drainage that was brought up before the Planning Commission. The applicant got Councilwoman Coonrod in on this and she agreed with people in objection. So the applicant got it down to this particular rezoning so he could put in 2 houses there, as opposed to the 7 townhomes initially. The applicant did come back with 5 townhomes but he and others objected to that also. So it got down to this particular rezoning with the 2 houses in with no ADU, no addition. So those were the restrictions that were put on it that he was unaware of. When he was at the City Council's meeting, Councilwoman Coonrod put the restrictions in place and then the City Council approved it. Mr. Maier said he was in a meeting a few days ago in Mr. Green's house and a particular neighbor that was being talked about with the carport was there. Mr. Green had a discussion with this neighbor and the neighbor did not have an objection to this. He did buy the house without the title company making him aware of this encroachment. Mr. Maier thinks this neighbor is doing this resident a favor by not having him tear his carport down. The house is up for sale again. So if anything, Mr. Maier thinks it is favorable for this particular neighborhood. Also, the setting of the homes on the lot will be less of an encroachment to his home and Mr. Green's home. So it is favorable for other neighbors.

Discussion followed.

Timothy Allen addressed the Board in rebuttal. Mr. Allen said they have space behind the lot. He said they are trying to stay away from the back neighbors and side neighbors. He said they would probably end up dumping a lot of water onto the carport. Mr. Allen said the guy's property is on his property line.

Alan Richelson made a motion to deny the BOZA-23-56 for the request for a reduction in left side setback from 10' to 6' based on the fact the applicant has created the hardship. Joe Manuel seconded the motion.

A vote was taken. Ray Adkins - yes, Paul Betbeze - yes, Joe Manuel - yes, Rudolph Foster - yes, Alan Richelson - yes, Lee Brock - yes. J.T. McDaniel - no, Scott McColpin - yes: The motion passed to deny. The case is denied.

**BOZA-23-57
JOSH COOPER
5101 TENNESSEE AVENUE**

Josh Cooper requests a reduction in rear setback from 25' to 18' for a screened porch addition.

No opposition was present

Inspector Levi Witt briefed the Board of the variance in his PowerPoint presentation.

Josh Cooper addressed the Board. Mr. Cooper said he is the owner of the property. He purchased the property in July and is making improvements in the interior and working with the floor plan and spaces on the inside. He said they would like to have a new screened porch off of that. He said there is a view of Lookout Mountain from that area.

Discussion followed.

Paul Betbeze made a motion to approve BOZA-23-57 for the reduction in rear setback from 25' to 18' for a screened porch addition based upon the hardship of irregular lot shape and no less conforming than the property next door. The reduction in rear setback only applies to the deck area as shown on the site plan as submitted, not the entire lot. Rudolph Foster seconded the motion.

A roll call was taken. Ray Adkins - yes, Paul Betbeze - yes, Joe Manuel - yes, Rudolph Foster - yes, Alan Richelson - yes, Lee Brock - yes, J.T. McDaniel - yes, Scott McColpin - yes: The motion passed and the case is approved.

**BOZA-23-58
LAUREN DUNN/DAVID MARCUS ROWE
1502 W. 45TH STREET**

Lauren Dunn on behalf of David Marcus Rowe requests a reduction in rear setback from 25' to 21' for a rear addition.

No opposition was present.

Lauren Dunn, Architect for the applicant addressed the Board. Ms. Dunn said on the survey there is an existing covered porch at the back of the house and then you can see the existing house footprint. You can also see on the survey that the existing house and porch already encroaches the rear setback. The back rear steps from the property line are 21'-8". The addition that they would like to construct is actually within the same existing covered porch. They want to enclose it and make it part of the house. There would be an additional stair that would be on the right side of the porch but it would not encroach into the side yard or the setback or the rear setback any further than the existing house does.

Discussion followed.

David Rowe, owner of the property addressed the Board. Mr. Rowe said in the City records there is a photograph of the house from the 1990's that in the original construction of the sleeping porch, that was in there. The previous homeowner opened it up and turned it into a deck and they want to enclose it. They would like to make it a bedroom.

Paul Betbeze made a motion to approve BOZA-23-58 for the reduction in rear setback from 25' to 21' for a rear addition due to the fact the footprint is no less conforming than they are currently, and only applies to the addition for the screened in porch, as submitted to the Board. Lee Brock seconded the motion.

A roll call was taken. Ray Adkins - yes, Paul Betbeze - yes, Joe Manuel - yes, Rudolph Foster - yes, Alan Richelson - yes, Lee Brock - yes, J.T. McDaniel - yes, Scott McColpin - yes: The motion passed and the case is approved.

OTHER BUSINESS:

None.

THERE BEING NO further business to come before the Board at this time, the meeting was adjourned.



CHAIRMAN

1-Nov-2023

DATE



SECRETARY

11/1/23

DATE

**BOARD OF ZONING APPEALS
DEVELOPMENT RESOURCE CENTER BUILDING
CHATTANOOGA, TENNESSEE
NOVEMBER 1, 2023**

The Board of Zoning Appeals of the City of Chattanooga, Tennessee, met in regular meeting on November 1, 2023, at 10:00 a.m. In attendance were Chairman Scott McColpin presiding, Board members Mr. Ray Adkins, Mr. Alan Richelson, Mr. Paul Betbeze, Mr. Rudolph Foster and Mr. Joe Manuel. Absent were Ms. Susan Gilmore, Mr. Lee Brock and Mr. J.T. McDaniel. Also in attendance were City Staff Attorney Andrew Trundle and Ms. Dottie Cannon, Secretary to the Board. City Attorney Phil Noblett was in attendance to conduct a brief training on STVR cases and then left the meeting after he concluded the training.

Staff members in attendance were Mr. Levi Witt, Code Enforcement Inspector II, Mr. Zach Wiley, Code Enforcement Inspector II, Mr. Ken Martin, Code Enforcement Inspector I, Ms. Melissa Mortimer, Development Review Planner and Mr. Caleb Fisher, Transportation Review Specialist. Ms. Lori Roberson, Court Reporter, was present and took transcription of the proceedings.

MINUTES:

The October Minutes were ready to be approved. Ray Adkins made a motion to approve the October Minutes. Rudolph Foster seconded the motion. All in favor, the October Minutes were approved.

SWEARING IN:

All the applicants, as well as staff were sworn in by Court Reporter Lori Roberson.

INTRODUCTION (RULES AND REGULATIONS):

Chairman Scott McColpin explained the rules and procedures to the applicants for addressing the Board. He said if it looks like your request is going to be denied, you have two (2) options: (1) before a vote on a motion is made on your case, you may request that the Board defer your case to a future meeting in order to modify your request; or (2) you may request that your case be withdrawn w/o prejudice. If your case is denied, you must wait one (1) year before you can reapply to this Board for the same request. If you want to appeal you must appeal to Chancery Court, not the City Council. Finally, it takes the majority of the Board present to approve a motion. This is a 9 member Board and the majority or a quorum of the Board would be 5 members. In the event of missing Board members, decisions are made by the majority of those present.

ANNOUNCEMENTS:

Chairman Scott McColpin said next month's meeting would be held on Wednesday, November 1, 2023.

OLD BUSINESS:

**BOZA-23-55
JEFFREY BENNETT
1147 DARTMOUTH STREET**

Jeffrey Bennett requests a reduction in right side setback from 5' to 0' and a reduction in rear setback from 5' to 0' for new construction.

No opposition was present.

Inspector Levi Witt briefed the Board of the variance in his PowerPoint presentation.

Jeffrey Bennett addressed the Board. Mr. Bennett said he lived at 1147 Dartmouth Street. He said they would like to accommodate a second structure on the property, which will function as a garage workshop space with a covered parking area on the front. This will replace the previously existing building that was on his property survey, which was in 2017. It was a metal structure and was damaged by a tree fall prior to purchasing the property. He said their goal is to improve their property with that structure. The second consideration is the current use is the adjacent property to the right, which is zoned R-4 with rear side and parking for the business purposes for that structure. He said he has spoken to his neighbors who are in support of his project stating that it will improve the back lot of his property in terms of designating and visual appeal.

Discussion followed.

Alan Richelson made a motion to approve BOZA-23-55 for the reduction in right side setback from 5' to 0' and a reduction in rear setback from 5' to 0' for new construction only for the garage area. Ray Adkins seconded the motion.

A roll call was taken. Ray Adkins - yes, Joe Manuel - abstained, Rudolph Foster - yes, Alan Richelson - yes, Scott McColpin - yes: The motion passed and the case is approved.

STVR Presentation:

A 15 minute break was taken at this time so that City Attorney Phil Noblett and City Staff Attorney Andrew Trundle could brief the Board of the upcoming STVR case. A handout was passed out to all the Board members present.

During the briefing, Board member Paul Betbeze came to the meeting.

City Attorney Phil Noblett addressed the Board. Attorney Noblett said under your normal provisions of Section 38-463, this Board has the power to review the action of the members of the Land Development Office staff if there is a dispute between what the staff has ruled in case they appealed to this body. Most recently in Ordinance #13981 this is the alternate version that was passed on May 16, 2023 and went into effect 2 weeks later. It was a complete revamp of the STVR certificates that was done by the Council because there had been a moratorium in effect for about a year and a half. The initial concern whenever this Ordinance was passed by the City Council was to try to deal with non-owner occupied absentee properties differently than homestay properties whenever it was provided. As you can see under Section 38.431, absentee properties are only allowed throughout the City in the following commercial zones, which are C-2, C-3, C-4, UGC and FBC areas that are listed and defined in the Zoning Ordinance. It was also allowed on parcels of 20 acres or more with common ownership that allowed home residential uses but that is not applicable to this case. Owner occupied or homestays or to be allowed in all zones that are residential uses are allowed within the existing overlay map for a specified commercial zones, but absentees were only allowed in commercial zones.

In Ordinance #13981, there are application review requirements that are involved and initial fees whenever somebody is trying to get a certificate to have a short term vacation rental. The review is to be done by the Development and Review Permitting Division for both homestay and absentee properties. If the Development Review and Permitting Division denies an application for homestay or absentee short term vacation renter certificate, the applicant has the right to appeal the denial to the Board of Zoning Appeals and then if this body denies it, the applicant has the right to appeal it to Chancery Court within 60 days of revocation. It is the requirement that the applicant has to be present at the hearing before the Board of Zoning Appeals regardless of whether it is occurring because of the Development Review Permitting Division or the applicant. If someone is not present, then it would result in an automatic denial. If a certificate is denied after the appeal hearing, the applicant has to wait 12 months before reapplying. And if the property owner requests to be rezoned, any commercial zone that permits residential uses or Form-Based Code that allows that, the owner cannot apply for an absentee short term vacation rental certificate within 18 months following the effective date of the rezoning. Those are the obligations of the City Council that have not been given to your Board here in connection with the Short Term Vacation Rental Ordinance, which was passed in May. There have been amendments to that Code section that occurred in August as well.

On August 29th, Ordinance No. 14022 was also passed regarding short term vacation rental certificates. And the one Amendment that is significant is that the application review process does not allow any type of short term vacation rentals that are currently in a table at Section 38.568 to be granted by short term vacation rentals by special exceptions permit by this body. Under Section 38.568, this Board's powers included special exceptions in the downtown Form-Based Code to allow short term rentals, but now that has been taken away. Those are the exceptions in the law that have come in between May of 2023 and August 29, 2023 that affect this Board.

Discussion followed.

The next case that was heard was the STVR case, BOZA-23-68.

NEW BUSINESS:

**BOZA-23-59
JARVIS COPELAND
2375 CAMDEN STREET**

Jarvis Copeland requests a special permit for a duplex on a lot of record.

No opposition was present.

Inspector Levi Witt briefed the Board of the variance in his PowerPoint presentation.

Javis Copeland of 1603 Wheeler Avenue addressed the Board. Mr. Copeland said he was short 500'. He said he wants to build another duplex for low income residents. Since this is a lot of record, it was already built before some of the new ordinances. This is a 50 x 140 lot which gives him 7,000 square feet. By Code he is short 500 square feet. So he needs a variance for 500 square feet.

Discussion followed.

Chairman McColpin asked Mr. Copeland if he would like to defer to the December meeting in order to give him a chance to submit plans with a side view and height.

Rudolf Foster made a motion to defer BOZA-23-59 to the December meeting. Paul Betbeze seconded the motion.

A roll call was taken. Ray Adkins - yes, Paul Betbeze - yes, Joe Manuel - yes, Rudolf Foster - yes, Alan Richelson - yes, Scott McColpin - yes: The motion passed and the case is deferred to the December meeting.

**BOZA-23-63
PATRICK RYAN/TIMOTHY A. KELLY & V. SMITH
915 VINE STREET**

Patrick Ryan on behalf of Timothy Ayers Kelly & Virginia Smith Co-Trs requests a reduction in right side setback from 5' to 0' and a reduction in rear setback from 5' to 0' for shade structure to cover existing concrete pad.

No opposition was present.

Inspector Levi Witt briefed the Board of the variance in his PowerPoint presentation.

Patrick Ryan, Designer of 2100 Kirby Avenue addressed the Board. Mr. Ryan said the shed is deteriorating so they would like to rebuild the shed and extend it out for a shaded structure in the yard. The shade structure is the additional 11' on the front. It is an old garage slab and that is what they are trying to cover. He said they were approved at the Historic Zoning Commission meeting.

Discussion followed.

Melissa Mortimer, Historic Preservation Planner addressed the Board. Ms. Mortimer said she was a staff member for the City of Chattanooga. She said the case was approved unanimously at the Chattanooga Historic Zoning Commission meeting. Because the pergola was being added into the yard, it is typical of these historic districts to have these outbuildings right on the edge of the property. She said we want these people to have usable spaces and storage for these historic districts.

Paul Betbeze made a motion to approve BOZA-23-63 for the reduction in right side setback from 5' to 0' and a reduction in rear setback from 5' to 0' just for the shade structure on the site plan submitted to cover the existing concrete pad based on the hardship of being no less non-conforming than the property next door. Rudolph Foster seconded the motion.

Discussion followed.

A roll call was taken. Ray Adkins - yes, Paul Betbeze - yes, Joe Manuel - abstained, Rudolf Foster - yes, Alan Richelson - abstained, Scott McColpin - yes: The motion passed and the case is approved.

BOZA-23-64
DEBBIE SUE PRZYBYSZ
4917 VIRGINIA AVENUE

Debbie Sue Przybysz requests a reduction in right side setback from 5' to 3'-4" for a rear addition.

No opposition was present

Inspector Levi Witt briefed the Board of the variance in his PowerPoint presentation.

Debbie Sue Przybysz addressed the Board. Ms. Przybysz said she lives at 4700 Florida Avenue. She said 4917 Virginia Avenue sat on two lots of record. It was originally built as a 16'-4" wide home and it was a shotgun style home. A previous owner extended the building out onto the additional lot. Then she moved so they could have 2 separate lots. Ms. Przybysz received a COA to renovate 4917. It started leaning towards the neighbor's house quickly so she reached out to Melissa Mortimer, Historic Preservation Planner, and they got approval for demolition. It has since been removed. When 4917 was historically built, it was 1.8" off of the north property line. She is requesting to move the existing structure 16' x 48' just the addition of the rear just the existing shape of this historic structure 3'-4" over the north side setback. The importance of this 3'-4" from 1.8" is that she can now add a window. Historically there was not a window in the bedroom. She is accomplishing a couple of things here: Historically building an appropriate shotgun style house in the shape that it was. She is adding an addition in the back and it will be in the 5' setback. She is putting an egress in the bedroom. She is going to build another house on the lot she owns at 4923 and does not want to come before the Board. She is not asking for a variance on 4923. Without a variance she is building a 13' wide house. She is working hard to make it appropriate for the Historic Commission and not have to come back before the building. This home she is working on at 4917 will be ADA compliant so she needs a hallway, 5' in the backroom, 5' for an individual in a wheelchair to get around.

Discussion followed.

Paul Betbeze made a motion to approve BOZA-23-64 for the reduction in right side setback from 5' to 3'-4" for a rear addition. This is only applicable to the site plan that was submitted and the hardship is based on complying with the Historic Zoning regulations, and on the unusual narrowness of the lot. Joe Manuel seconded the motion.

A roll call was taken. Ray Adkins - yes, Paul Betbeze - yes - Joe Manuel - yes, Rudolph Foster - yes, Alan Richelson - yes, Scott McColpin - yes: The motion passed and the case is approved.

BOZA-23-65
NOAH SCHUSSLER
1710 W. 56TH STREET

Noah Schussler requests a reduction in left side setback from 5' to 1' and a reduction in rear setback from 5' to 4' for a shed.

No opposition was present

Inspector Levi Witt briefed the Board of the variance in his PowerPoint presentation.

Noah Schussler addressed the Board. Mr. Schussler said he lived at 1710 W. 56th Street. He said he wants to build a 10 x 14 shed. He said he lives on the west side of St. Elmo Avenue and closest to Lookout Mountain. He said he is requesting the variance due to topographical issues. He has a hilly lot and the back left corner is the flattest area of his lot. He said the hardship is the elevation and topography. He already has the approval of a COA from the Chattanooga Historic Zoning Commission. He said he submitted pictures with the historic application but did not submit pictures to this Board of Zoning Appeals application.

Discussion followed.

City Staff Attorney Andrew Trundle read Sec. 38-567 - Condition for Board Decisions, hardships necessary for this Board to make a decision.

Discussion followed. During the discussion Mr. Manuel told the applicant that he might want to defer his case and come back with pictures and a different site plan with the topography.

At this point, Mr. Schussler requested a deferral.

Paul Betbeze made a motion to defer BOZA-23-65 to the December meeting. Rudolph Foster seconded the motion.

A roll call was taken. Ray Adkins - yes, Paul Betbeze - yes, Joe Manuel - yes, Rudolph Foster - yes, Alan Richelson - yes, Scott McColpin - yes: The motion passed and the case is deferred to the December meeting.

Mr. Richelson asked Mr. Schussler if the Board had permission to walk behind his house to look. Mr. Schussler said yes.

BOZA-23-66
MITZI SMITH
1253 DUANE ROAD

Mitzi Smith requests a reduction in left side setback from 5' to 3' and a reduction in rear setback from 25' to 8' for an addition.

Opposition was present

Inspector Levi Witt briefed the Board of the variance in his PowerPoint presentation.

Mitzi Smith addressed the Board. Ms. Smith said she lived at 1253 Duane Road. She said she has a very unusual lot line. It is not a parallelogram, but it is odd shaped. She said she is hoping to add a 12 x 15 room addition, which would go in place of an existing deck and then add a deck to the side of the new addition.

Discussion followed.

Oscar Benjamin Spring of 1707 Hixson Pike addressed the Board. Mr. Spring said he has the corner that juts into Ms. Smith's property. The impact to him would be the left side variance from 5' to 3'. He said as he understands it he would be impacted by the left side and could very well be impacted by the rear. The unusual shape of her lot and the placement of the dwelling is where it is causing the issue. He knows she cannot take up her house and move but this was also as it existed when it was purchased. He feels like he would have almost a house or a room almost on top of him.

Discussion followed.

Mitzi Smith addressed the Board in rebuttal. Ms. Smith said the area does not exist where it says porch on the drawing. Where it says porch is where the room will be. The dark areas on the site plan are stairs.

Paul Betbeze made a motion to approve BOZA-23-66 for the reduction in left side setback from 5' to 3' and a reduction in rear setback from 25' to 8' for an addition. This only applies to the addition based on the site plan submitted, and the hardship is based on the irregular lot shape, and that it is no less non-conforming than the current structure. Rudolph Foster seconded the motion.

A roll call was taken. Ray Adkins - yes, Paul Betbeze - yes, Joe Manuel - abstained, Rudolph Foster - yes, Alan Richelson - yes, Scott McColpin - yes: The motion passed and the case is approved.

BOZA-23-67
JAY MURPHY
2218 ENCOMPASS DRIVE

Jay Murphy requests a special permit for an animal grooming/boarding facility.

No opposition was present

Inspector Levi Witt briefed the Board of the variance in his PowerPoint presentation. He said the applicant requested to withdraw his variance.

Alan Richelson made a motion to withdraw without prejudice BOZA-23-67. Ray Adkins seconded the motion. All in favor, the motion was withdrawn without prejudice.

BOZA-23-68
PETER VAUGHN
5538 GLENN FALLS

Peter Vaughn requests an interpretation of the regulation of the Short-Term Vacation Rental (STVR) rules and regulations.

No opposition was present

Inspector Levi Witt briefed the Board of the variance in his PowerPoint presentation.

Peter Vaughn addressed the Board. Mr. Vaughn said he lives at 5532 Glen Falls, which is right next door to the above-referenced address. He and his wife operate a non-profit development here in Chattanooga and they sustain themselves through short term vacation rentals and long term rentals. They have 2 licensed rentals. They have an owner occupied license for their house and they own this property that they had licensed as absentee or non-owner occupied operators before the Ordinance was changed. They have operated a licensed AirBnB for 4 or 5 years at their house. In March of 2022 before the Ordinance was changed, they had this as a long-term rental but they applied for both these properties before the Ordinance changed in March, 2022 while it was still legal. This application went through and got approved. And now it is currently operating as a non-owner occupied licensed AirBnB. For this one, it was pending payment for a year for the application. He went back and checked his email records and he only got one notification from ViewPoint Cloud to pay the applications. He paid that payment assuming it was for both applications since they were submitted at the same time. He said this tenant decided to stay and they did not follow up to explore the STVR because they were not looking to rent it as an STVR at that time. They are new to the process and did not realize that the Ordinances could change very easily. They just thought that when the tenant leaves they could start operating it again. They then realized that the payment was still pending in the ViewPoint Cloud system. They went ahead and paid for the application, which was denied because there is a 60-day time for applications. They applied again and then it was denied because the new Ordinance did not allow non-owner occupied licenses. That second application was before the Ordinance #14022 was passed. That is the one they are here talking to this Board.

Discussion followed.

Zach Wiley Code Enforcement Inspector II addressed the Board. Mr. Wiley said he works for the Zoning office in the Department of Public Works for the City. He said the case that was applied for was assigned a number in 2020 related to 5538 Glen Falls is STV-22-125. That application was entered in March 2022. The portal is the official portal and communication hub for permits in the City of Chattanooga. So in the timeline you have an intake review for permits. Staff makes sure you have all the correct required information for the permit application to be reviewed. On April 1, 2022 Caleb Fisher, who at that time was in Zoning, did the intake review and determined that Mr. Vaughn did upload all the required information and approved the intake, which then passed it to the next step, which is the payment step. Nothing is reviewed in the Division unless it is paid for. So the next step is payment and then the step after that would be department review. The payment was paid on August 12, 2022, which was 16 months after the application was submitted. At that point, many things had changed. He emailed back and forth with Mr. and Mrs. Vaughn. He said his email was from Friday, October 6, 2023 was a reply to Mr. Vaughn's email. Mr. Vaughn stated that on another note they were trying to permit the house next door to his but the permit was denied due to the recent regulation changes. He said Mr. Vaughn said he would like to appeal since starting this process before the regulations changed. Mr. Wiley told Mr. Vaughn to pay the \$150.00 appeal fee. He said to choose Interpretation of the Regulation on the application because the Land Development Office currently does not have an option for an appeal to the Department's decision. That was the closest related selection that would get him to this Board. He said he provided a hyperlink to Mr. Vaughn.

Peter Vaughn addressed the Board in rebuttal. Mr. Vaughn explained the Viewpoint cloud system will give you an email at every stage that it is time to move to the next stage. He has not done that. He just never had that reminder of the next step. When other factors reminded him to take the next step like the tenant moving out and looking at the license, that is when he saw the application sitting there not being paid. He said he did not know of the City Ordinances related so he did not know of the 60-day lifetime limit applications. So if it is sitting there waiting to be paid he thought he would go ahead and pay it.

Discussion followed.

Peter Vaughn addressed the Board. Mr. Vaughn continued in rebuttal stating that he checked his email record and searched for the sender ID on the email of the City of Chattanooga and has 2 emails that acknowledge receipt of his application. And he has 1 email that requested payment, which he paid and an email saying they received payment.

Discussion followed. City Attorney Phil Noblett answered the Moratorium questions.

At this time, Chairman McColpin said we were ready for a motion. Chairman McColpin wanted to point out that this case was not an interpretation of the regulation.

Paul Betbeze made a motion to deny BOZA-23-68 for the request for the permit for STVR due to the fact that the applicant did not submit the payment in the 60 day time period allowed for payment therefore the first application is no longer valid. Rudolph Foster seconded the motion.

Discussion followed.

City Staff Attorney Andrew Trundle said the motion needed to reference the first application. City Attorney Phil Noblett said the following Ordinances were referenced and needed to be on record. These were given to the Court Reporter for her files. They were: Ordinance #13515, the second reading, Ordinance #13981 of May 2023, Ordinance #14022, which became effective in August, 2023.

Discussion followed.

A roll call was taken. Ray Adkins - no, Paul Betbeze - yes, Joe Manuel - no, Rudolph Foster - yes, Alan Richelson - yes, Scott McColpin - yes: The motion to deny passed and the case was denied.

OTHER BUSINESS:

None.

THERE BEING NO further business to come before the Board at this time, the meeting was adjourned.



CHAIRMAN

6-Dec-2023

DATE



SECRETARY

12-6-23

DATE