



# BOARD OF ZONING APPEALS

## MEETING MINUTES

June 5th, 2024

The duly advertised meeting of the Board of Zoning Appeals was held on June 5th, 2024, at 10:00 a.m. in conference room 1A of the Development Resource Center Building. Chair Scott McColpin called the meeting to order at 10:04 AM. Lori Roberson swore in all those who would be addressing the Committee.

**Members Present:** Ray Adkins, Paul Betbeze, Scott McColpin, Rudolph Foster, Alan Richelson, Susan Gilmore, Lee Brock

**Members Absent:** Joe Manuel, J.T. McDaniel

**Staff Members Present:** Presenter Levi Witt, Admin Support Specialists Shelby Ogle, City Attorney Andrew Trundle, Transportation Review Specialist Caleb Fisher, Court Reporter Lori Roberson, Landscape Architect Karna Levitt

**Swearing In:** Lori Roberson swore in people addressing the Committee.

**Applicant(s) Present:** David Fidati, Kevin Smith, Jason Farmer, Beck Towery, Ben Estes, Allen Jones, John and Sarah Kerns

**Rules and Regulations:** Chair Scott McColpin explained the rules and procedures and announced the meeting is being recorded.

**Approve Minutes:** Chair Scott McColpin presented the May 1st, 2024 Meeting Minutes to be voted on. No amendments need to be made. **Ray Adkins** motioned to **APPROVE** the minutes. **Alan Richelson** seconded the motion. **All in favor. The motion carries 7-0.**

**Voting Majority:** 7 members present - 4 is the majority.

**Agenda Update:** **BOZA-24-27 - 7415 Ziegler Rd. (D-4) - Setback Variance** - Applicant wishes to withdraw the case. Alan Richelson motioned to **WITHDRAW** case #: BOZA-24-27 - 7415 Ziegler Rd.. Lee Brock seconded the motion. No discussion. **All in favor. The motion carries 7-0.**

**BOZA-24-44 - 1000 Meroney St. (D-7) - Building Height Variance** - Applicant wishes to withdraw the case. Lee Brock motioned to **WITHDRAW** case #: BOZA-24-44 - 1000 Meroney St.. Rudolph Foster seconded the motion. No discussion. **All in favor. The motion carries 7-0.**

## OLD BUSINESS

- **BOZA-23-74 - 6011 Lee Hwy (D-5) - Relief from the Brainerd Overlay and UGC Requirements**

**Staff/Applicant Presentation:** Levi Witt presented the case to the Board. The City Attorney stated to the Board that City Counsel is going to vote on whether or not the Board of Zoning Appeals has the authority to hear and rule on

cases that are within the Brainerd Overlay. Chair Scott McColpin asked the City Attorney if the Board can rule on this case with a contingency of City Council passing the ruling. The Board discussed if it would be better to defer the case to the next meeting or not; they ultimately decided to hear the case as to not hold the Applicant up any longer. Applicant David Fidati of 298 Acorn Oaks Circle, presented to the Board that he is requesting relief from certain requirements within the Brainerd Overlay due to lot shape, topography, and a bridge that is located very near the property. Chair Scott McColpin stated that there were 5 different variance requests for this case and that the Board would need to discuss and rule on each one separately. The Chair then stated for the record: **Any motions made on case BOZA-23-74 is contingent upon City Council approving the resolution that the Board of Zoning Appeals can hear and rule on cases within the Brainerd Overlay. If City Council denies it, the applicant can come back before the Board.**

**Community Response:** No response.

#### → **Variance Request 1: Relief from the Brainerd Street Edge Requirement**

**Discussion:** Landscape Architect Karna Levitt was asked to clarify for the Board what the Applicant is requesting exactly and she explained that he was requesting relief from having to put the required landscaping details along the right-of-way and bike/pedestrian path. The Board then asked the Applicant if that would mean that there would just be a sidewalk and no landscaping? The Applicant stated that due to the bridge location and the requirements of the bridge there is no way to comply with the requirements of the overlay. Landscape Architect Karna Levitt stated that the code doesn't show where the street edge is supposed to be in relation to property lines and right-of-way. She believes it would need to be on private property. The question was posed to the Applicant, could the street edge plants go somewhere else on the property?; the Applicant stated that it was possible, but unsure at that moment. Board member Alan Richelson stated that he was involved in making the Brainerd overlay and stated that given the bridge location and the requirements for the bridge, there cannot be people walking under the bridge due to safety concerns.

#### **Board Motion and Vote:**

- Rudolph Foster made a motion to **APPROVE** variance request 1 of case #: BOZA-23-74 - 6011 Lee Hwy, with the following condition:
  - The required plants will be planted elsewhere on the property.

Paul Betbeze seconded the motion.

**All in favor. The motion carries 7-0.**

#### → **Variance Request 2: Relief from the Compactor Location Requirement**

**Discussion:** Chair Scott McColpin stated that the code states that the compactor cannot be visible from the street and the Applicant stated that he has a plan to ensure it is not visible. The Applicant then presented to the Board that there is a wetland buffer that cannot be impeached upon and so they had to move some buildings around to accommodate that. Due to these changes, the required compactor location would mean that the garbage trucks would drive over a large amount of asphalt and the Applicant believes that the asphalt would not hold up long term. The new location that is proposed will be fenced in with a wooden fence as well as have shrubs planted around it to help hide it from view. The Board then stated that they are concerned about the noise of the compactor with the proposed location - Applicant stated that it was all commercial property behind the compactor, but was open to suggestions about the timing the compactor would be run. The Applicant also confirmed for the Board that if the compactor was in the suggested location per the code, anyone walking across the bridge would look down right at the compactor.

#### **Board Motion and Vote:**

- Rudolph Foster made a motion to **APPROVE** variance request 2 of case #: BOZA-23-74 - 6011 Lee Hwy, with the following condition:
  - Sight obscuring fence to be on all sides of the compactor.

Alan Richelson seconded the motion.

- Amendment condition: Plants to be planted as stated in testimony around the compactor.

**All in favor. The motion carries 7-0.**

#### → **Variance Request 3: Relief from the Parking in Front**

**Discussion:** The Applicant stated that they were not sure if they needed a variance or not, because they are requesting parking in front of the clubhouse; this is not the front of the property though. The Chair stated that he does not believe that a variance is needed for this request. The Board agrees and it is decided that **no variance is needed for the request of relief from parking in the front.**

→ **Variance Request 4: Relief from 18 ft Setback Requirement to 15 ft**

**Discussion:** The Applicant presented to the Board that when the lot got rezoned, they were able to comply with all the setback requirements except for one section where a retaining wall takes up more space for the bridge. The Applicant stated that it is difficult to design a building due to the nature of the corner. The Applicant stated that this corner is well below the street view and that people would be looking at the 2nd story of the building.

**Board Motion and Vote:**

- Rudolph Foster made a motion to **APPROVE** variance request 4 of case #: BOZA-23-74 - 6011 Lee Hwy, with the following condition:
  - Only applies for the approximately 20 ft section at building 2.

Paul Betbeze seconded the motion.

- Amendment condition: Adding SouthWest corner of building 2.

**All in favor. The motion carries 7-0.**

→ **Variance Request 5: Relief from Request to Tie in to the Right of Way**

**Discussion:** The Applicant presented to the Board that the Brainerd Overlay requests that there be a pedestrian right of way be tied in to allow access to all buildings. The Applicant stated that due to the bridge topography/requirements, they are unable to tie in to the sidewalk. The Applicant stated that the sidewalks are tied into each other, just not directly to the building. Transportation Review Specialist Caleb Fisher stated that they would ask for site access and not specifically building access, so he believes that the Applicant meets the intent with the sidewalk connection that is provided.

**Board Motion and Vote:**

- Rudolph Foster made a motion to **APPROVE** variance request 5 of case #: BOZA-23-74 - 6011 Lee Hwy, with no conditions.

Paul Betbeze seconded the motion.

**All in favor. The motion carries 7-0.**

- **BOZA-24-11 - 1248 N. Concord Rd. (D-6) - Setback Variance, Accessory Structure in Front Yard**

**Staff/Applicant Presentation:** Levi Witt presented the case to the Board. Kevin Smith of 1248 N. Concord Rd, presented to the Board that he wants to rebuild the accessory structure that was destroyed by a tornado some years ago in the same spot. According to the Board, the structure would be in the front yard due to the address of the property. The Applicant stated that their house faces sideways and so he just wants to rebuild in the same spot.

**Community Response:** No response.

**Board Motion and Vote:**

- Alan Richelson made a motion to **APPROVE** case #: BOZA-24-11 - 1248 N. Concord Rd. with no conditions.

Ray Adkins seconded the motion.

**All in favor. The motion carries 7-0.**

- **BOZA-24-23 - 1908 Clearview Dr. (D-4) - Setback Variance**

**Staff/Applicant Presentation:** Levi Witt presented the case to the Board. Jason Farmer (contractor) of Riverstone Construction presenting for the Applicant, stated that they are only needing a 12 ft setback reduction from 15 ft for one corner of the property. They originally wanted to rezone the property but stated that Councilman Ledford felt very strongly about not changing the zone and so that is how they approved the plat. The Chair confirmed that address for the case (7503 Igou Gap Rd), and then questioned the Applicant on what the hardship is for needing the variance since it is a development and being designed by the Applicant. The Applicant stated that he believes that the development would be better if he built it as designed with the setback variance versus having to adjust the design to accommodate the one corner needing the variance. The Board discussed with the Applicant that there is no hardship other than the one that was created by the design of the development.

**Community Response:** No response.

### Board Motion and Vote:

- Scott McColpin made a motion to **APPROVE VARIANCE WITHDRAWAL** case #: BOZA-24-23 - 1908 Clearview Dr. without prejudice.

Rudolph Foster seconded the motion.

**All in favor. The motion carries 7-0.**

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## **NEW BUSINESS**

### **BOZA-24-37 - 1136 Highland Dr. (D-2) - Setback Variance**

**Staff/Applicant Presentation:** Levi Witt presented the case to the Board. Applicant Beck Towery of 1136 Highland Dr. presented to the Board, that the lot is not flat at all and is very steep at points. He stated that he accesses his property by an alleyway and stated that the property line is not correct on the mapping. He wants to rebuild a structure with the same foundation, but make it a little bigger. The Applicant stated that where he wants to put the building is in the backyard of his neighbors and is not visible from the roads. If the Applicant has to move the building out to accommodate more of a setback, he would have to pour a brand new driveway for the entire property. The Board then discussed with the Applicant whether or not the accessory structure is in the front yard or not and decided it was in the front yard due to the addressing. The Board then talked to the Applicant about if there was an option to move the building to accommodate the 5 ft side setback due to it being a Lot of Record and would therefore not need a variance for that.

**Community Response:** No response.

### Board Motion and Vote:

- Paul Betbeze made a motion to **APPROVE** case #: BOZA-24-37 - 1136 Highland Dr. per the amended site plan with a 5 foot side setback.

Ray Adkins seconded the motion.

**All in favor. The motion carries 7-0.**

### **BOZA-24-40 - 3002 Jersey Pike. (D-1) - Relief from Sec. 38-594**

**Staff/Applicant Presentation:** Levi Witt presented the case to the Board. Ben Estes of the civil engineering firm and Shaine Scott (senior engineer) of Mars Wrigley presented to the Board that they are updating the parking lot of the plant to accommodate the employees parking. They updated the parking layout and did not change it really, but they had to change the grading. Due to needing to change the grading, they now have to comply with the landscape code which means that they are required to add in landscape islands within the parking lot. They got flagged on a quality audit for failing a portion of it for two years in a row and now have to address the issues. They are requesting relief from having to put the landscape islands in the parking lot due to sanitary concerns getting tracked into the plant. Landscape Architect Karna Levitt informed the Board that because they are having to reconstruct the parking lot, it triggers the landscape ordinance requirements such as landscape islands. The Applicant stated that they are planning to replant as many shrubs/trees as possible in other areas of the property.

**Community Response:** No response.

### Board Motion and Vote:

- Alan Richelson made a motion to **APPROVE** case #: BOZA-24-40 - 3002 Jersey Pike. with the following condition:

- Alternate planting around the site will be 25% trees and the remaining 75% be shrubs.

Ray Adkins seconded the motion.

**All in favor. The motion carries 7-0.**

### **BOZA-24-41 - 2815 Cummings Hwy. (D-1) - Special Permit**

**Staff/Applicant Presentation:** Levi Witt presented the case to the Board. Applicant Allen Jones of 1112 Wilmouth Rd presented to the Board that they just went through the rezoning process that allowed them to have a glamping high



end campground and City Council was very specific in granting them the rezoning for this specific project. The Applicant then went over the layout of the site and surrounding areas and informed the Board of a broad view of the project. The Board asked the Applicant about access to the site and if there were existing curb cuts and the Applicant stated that it is all an open curb cut right now, but as they move through the project; they will narrow down the curb cut. The Applicant discussed with the Board about how the property is in a flood zone and they are working with an engineer to ensure they remain in compliance with the requirements for that.

**Community Response:** No response.

**Board Motion and Vote:**

- Ray Adkins made a motion to **APPROVE** case #: BOZA-24-41 - 2815 Cummings Hwy. with no conditions.  
Paul Betbeze seconded the motion.  
**All in favor. The motion carries 7-0.**

- **BOZA-24-42 - 2815 Cummings Hwy. (D-1) - Relief from Sec. 38-568 (15)(b)**

**Staff/Applicant Presentation:** Levi Witt presented the case to the Board. Applicant Allen Jones of 1112 Wilmouth Rd presented to the Board that the way the zoning ordinance reads is that travel trailers have to be 25 ft apart, but with all the environmental features of the property; they don't want to disturb/do away with the wetlands and respect all the other parts of the property. They are wanting to reduce the required distance from 25 ft to 15 ft, and the Applicant stated that some of the sites will be 25 ft. They just want to have the flexibility rather than be required to have the 25 ft for all of the sites, and also stated that some other locations that have done similar to what they are proposing have been very successful with the 15 ft separation.

**Community Response:** No response.

**Board Motion and Vote:**

- Ray Adkins made a motion to **APPROVE** case #: BOZA-24-42 - 2815 Cummings Hwy. conditional upon the Special Permit Checklist.  
Paul Betbeze seconded the motion.  
**All in favor. The motion carries 7-0.**

- **BOZA-24-43 - 520 S. Crest Rd. (D-9) - Setback Variance**

**Staff/Applicant Presentation:** Levi Witt presented the case to the Board. Applicants John and Sarah Kerns of 520 S. Crest Rd. presented to the Board that they are needing to request to change the requested setback variance amount from 15 ft to 3 ft, because the survey showed a change in their property line from what they thought it was. The Chair informed the Applicants that their property is a Lot of Record and asked the City Attorney to confirm where their front yard is due to the irregular lot shape. The Applicants stated that where they are wanting to put the pool is what they consider their backyard, but the Board decided it was actually considered the front yard due to the house being addressed off Crest Dr.. The Applicants plan to fence the pool in accordance with the requirements of the law and also plant some shrubs to hide the pool from the view of the road.

**Community Response:** No response.

**Board Motion and Vote:**

- Paul Betbeze made a motion to **APPROVE** case #: BOZA-24-43 - 520 S. Crest Rd. with no conditions.  
Rudolph Foster seconded the motion.  
**All in favor. The motion carries 7-0.**

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## **Other Business**

- **Officer Elections**

- Chairman Nomination/Election: Ray Adkins nominated Scott McColpin for Chairman.
  - All in favor - None opposed - Scott McColpin was reelected.
- Vice-Chairman Nomination/Election: Scott McColpin nominated Paul Betbeze for Vice-Chairman.

- All in favor - None opposed - Paul Betbeze was reelected.

- **Training**

- Training is scheduled for July 18th at 2 p.m..

- **Motion Forms**

- Staff presented to the Board that they are wanting to introduce motion forms similar to how the other Boards do to keep track of specifics with each motion. It was recommended by the Board to table the discussion to the next meeting to allow the Board to think about it.

- **Clarification on BOZA-24-19**

- Landscape Architect Karna Levitt wanted to get clarification on the motion for the interpretation of the regulation for BOZA-24-19 (1006 E. 14th St.). She stated that the motion in the minutes was not clear and asked the Board to clarify what they ruled on specifically. The topic was postponed for discussion.

**Scott McColpin adjourned the meeting at 12:37 p.m..**

  
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Scott McColpin, Chair

3-Jul-2024  
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Date

  
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Shelby Ogle, Admin

7/3/24  
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Date