

## MINUTES KINGSPORT BOARD OF ZONING APPEALS (BZA)

Thursday July 11, 2013

NOON

Bob Clear Conference Room, on the first floor of the Development Services Building

**MEMBERS PRESENT:**

Leland Leonard, Chairman  
Bill Sumner  
Diane Hills

**MEMBERS ABSENT:**

Frank Oglesby, Vice Chairman  
Bob Winstead Jr

**STAFF PRESENT:**

Karen Combs  
Lynn Tully  
Steve Robbins – Storm Water Manager

**VISITORS:**

Carol Pitts  
Dan Clark  
Richard Johnson  
Barbara Lane  
Jo Olinger  
Tony Queen  
Greg Walters  
John Moody  
Susie Noel

Will Ratcliff  
Ralph Lincoln  
Cynthia Johnson  
Robert Darter  
Renee' Queen  
Joe Begley  
Phillip McManus  
Wayne Noel  
Brenda Walters

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Chairman Leonard called the meeting to order.

Chairman Leonard then explained the meeting procedures.

**Public Hearing:**

**Case: 13-701-00011 – Properties located at 1401, 1405 Prospect Street and 1308 Post Street Control Map 61C, Group D, Parcel 4.00, 5.00 and 3.00** Requested a special exception to [Sect.114-182(c)(4)] in order to use property for church purposes and special exception to [Sect.114-563(4)] and a landscaping variance to [Sect. 114.600(d)(4)(a)] in order to construct a parking lot in a Single Family Residential District. The properties are located in a R-1B, Single Family Residential District that requires Board approval. Staff left one variance request off the initial presentation and that was a variance to the rear yard setback of 30 feet. Mr. Richard Johnson was sworn in by Karen Combs. Mr. Johnson presented the case to the Board. In his presentation he stated that the Church had been in the neighborhood for over 50 years providing multiple services to the area. He explained that at the time of construction only 19 spaces were available on Church property. Through agreements with the businesses fronting Center Street the Church has been allowed to use their lots for Church services after business hours. With the redevelopment of the site directly in front of the Church facing Center Street known as Mac's Medicine Mart, the loss of approximately 41 spaces will be detrimental to the Church. Mr. Johnson explained that through the years, the Church has tried to purchase property surrounding its current location to no avail. The properties in question came on the market and they eventual were able to purchase these three properties and would

like to construct a parking lot on two of them and keep the structure for church use on one. The houses had already been removed. Board members brought up the recent flooding issues. Making sure to quantify that there had been a significant amount of rain fall within a short period of time but asked how the Church plans on taking care of this issue. Mr. Johnson explained to the Board that the Church was working with City staff concerning this matter and they were prepared to hire an engineer to provide solutions to present to the City's Storm Water Manager for approval. Before Chairman Leonard opened the floor for public comments, staff presented the Board with two petitions signed by church members and daycare workers who were in favor of the parking lot. Staff also noted an anonymous letter that had been distributed throughout the neighborhood. Staff clarified a few things presented on the flyer that were misinterpreted by the writer. One was that the church was asking to build a parking lot in a residential neighborhood for church purposes only and not everything that is allowed in the ordinance such as parking buses, selling cars or storing vehicles overnight. With that clarification, Chairman Leonard opened the floor for public comments.

#### PUBLIC COMMENTS:

Mr. Richard Johnson reminded the Board of the two petitions (attached) in favor of the request and stated that though there were members attending that were favor, he wished to let the petitions stand as oppose to taking the Board's time.

Mr. Wayne Noel – 1329 Post St – spoke against this item. His comments related to design guidelines of the parking lot concerning the health, safety and welfare of the public, specifically limiting criminal activities. Staff informed the Board that as part of the Church's design phase, staff encouraged Mr. Johnson to seek out advice from the City's Police Department. Mr. Johnson affirmed that he had followed staff's advice and were incorporating some features into the overall design but stated that no one could limit 100% of crime anywhere. Board Member Sumner pointed out that there was a large parking lot across the street belonging to another church.

Susi Noel – 1329 Post St – Also spoke against this item. She stated that she has lived there for 35 years. This parking lot would definitely change the neighborhood and that most church members did not live in the neighborhood. She stated that there is already a "drug" problem in the neighborhood up at the Coin Laundry across the street and doesn't want the parking lot that will allow this activity.

Tony Queen – 1417 Prospect - Stated that he sees the need for the parking lot but is against the variances requested for smaller setbacks. He stated that the variances open the door for other things that are allowed in the ordinance. Though Chairman Leonard stated that if the variances were grant they do stay with the property forever. Staff pointed out the special exception is specific to the church, meaning another church could buy out the existing one and use the property as such but a commercial business would have to go through another process. Staff at this time referred to the State Law that prohibits any government or agent of government from inhibiting or curtailing religiously motivated practice even if the burden results from a rule of general applicability.

Seeing no one wishing to speak on this item, Chairman Leonard closed the public Hearing for this item.

Case: 13-701-00013 – Property located at 1503-1505 Fort Henry Drive Control Map 61C, Group C, Parcel 3.00 Requested a 10 foot front yard variance to [Sect.114-195(f)(1)(c)] in order to construct an addition to the existing structure at this location. The code requires a 20 foot front yard setback. Mr. John Moody was sworn in by Karen Combs. Mr. Moody presented the case to the Board. In his presentation, Mr. Moody stated that the owners would like to tear down an existing building that is not in compliance with the current zoning ordinance and add that square footage approximately 360 to an existing building. In order to accomplish this, a front yard variance of 10 feet is requested. He stated that the entrance is a

right in/right out and this extension would not be an obstruction to traffic turning right as is with the structure that they would like to remove. Mr. Moody also stated that a requirement of the owner is that the addition match the building in such a way that on one would be able to tell that an addition had been constructed. No one spoke for or against this item.

**Other Business:**

On a motion by Diane Hills, the Board voted unanimously to approve the June 6, 2013 minutes as mailed.

The BZA stated for the public record the next application deadline on August 15, 2013 at noon. Since the next scheduled meeting (August 1) was being cancelled due to a request for a special called meeting on July 25, 2013.

Staff had one report and that was to provide for information purposes only of a request and approval of the Reasonable Accommodation to the Kingsport Housing Authority so they may build a structure that is ADA complaint for a small group home on Tennessee Street.

**Adjudication of Cases:**

**Case: 13-701-00011 – Properties located at 1401, 1405 Prospect Street and 1308 Post Street Control Map 61C, Group D, Parcel 4.00, 5.00 and 3.00**

Upon receipt and discussion of the State of Tennessee's Preservation of Religious Freedom Act (TCA 4-1-407) the Chairman made the following motion:

"We as the Board of Zoning Appeals are tasked to uphold not only our local zoning ordinances but also State and federal Law. Therefore under the State of Tennessee's Preservation of Religious Freedom Act, I move to grant both the special exception and variance requests from Waverly Church as presented to this Board and regulated under TCA 4-1-407. However, with the City's compelling interest of health, safety and welfare to its Citizens especially pertaining to storm water management, I would request the following condition to this approval be applied: the requirement of the Church to adhere to all city regulations regarding storm water management by providing a site plan and engineering plan for approval by the City's Storm Water manager before the construction of the parking lots." A second was presented by Bill Sumner

**VOTE:** 3-0 to approve the request as presented because of TCA 4-1-407.

**Case: 13-701-00013 – Property located at 1503-1505 Fort Henry Drive Control Map 61C, Group C, Parcel 3.00**

The Board discussed if the request would allow enough room to achieve what the petitioner wanted. After many versions of mathematical equations were review, it was decided that 10 feet would allow for the addition as requested.

**PROOF PRESENTED:**

1. The specific conditions in detail which are unique to the applicant's land. Such hardship is not shared generally by other properties in the same zoning district and the

same vicinity. *This lot contains a building that was grandfathered which does not meet the current City's ordinance. The removal of the building will greatly improved the site especially since this area is experiencing redevelopment. With the requested variance, the site can be improved while keeping the same amount of square footage and also bring the property into compliance.*

2. The manner in which the strict application of this chapter would deprive the applicant of a reasonable use of the land.

*Again, the structure is grandfathered an is out of compliance with the current ordinance. If a variance was not granted the property owner would lose approximately 360 square feet of rental property. This request allows for the property to be brought into compliance with current ordinance while keeping the same amount of leasable square footage.*

3. The unique conditions and circumstances are not the result of actions of the applicant taken subsequent to the adoption or amendment of this chapter.

*The adoption of the zoning ordinance which placed this structure out of compliance was not a result of any action taken by the applicant.*

4. Reasons that the variance will preserve not harm the public safety and welfare and will not alter the essential character of the neighborhood.

*The variance as requested will not alter the essential character of the front of the structure along Center Street. The removal of the structure that is current not in compliance will improve the overall site and allow for future redevelopment of this property.*

**MOTION:** made by Bill Sumner; seconded by Diane Hills – To grant the variance of 10 feet to the front yard setback as requested.

**VOTE:** 3-0 to approve the request as presented because the variance would have no impact on the existing are and would allow for further redevelopment of adjacent property. This variance would bring the property more into compliance with the current zoning ordinance.

With no further business the meeting was adjourned.



Karen B. Combs, Principal Planner