

**MINUTES
FARRAGUT BOARD OF ZONING APPEALS**

July 25, 2012

7:00 p.m.

Present: Corky Ives, Cleve Porter, Keith Alley, and Louis LaMarche
Absent: Ron Williams
Staff: Mark Shipley, Assistant Community Development Director

Item 1. Approval of Minutes for the April 25, 2012 meeting

A motion was made by LaMarche and seconded by Porter to approve the minutes as submitted. Motion passed 4-0.

Ayes: Alley, Porter, LaMarche, and Ives
Nays: None
Absent: Williams
Abstaining: None

Item 2. Public hearing on a request for an administrative review of the Town staffs' application of the requirement to screen HVAC units at the Farragut Public Market at 11221 Outlet Drive from adjacent properties or rights of ways, as provided for in Chapter 4, Section I., B., 2, of the Farragut Zoning Ordinance. Zoned C-2-R/W, 15.47 acres (Danny Kirby, Applicant).

Chairman Ives provided an overview of this item and stated that this was basically an appeal of the staff's application of the Farragut Zoning Ordinance requirement to screen HVAC units so they are not visible from adjacent properties or rights of ways. The chairman noted that the ordinance was very clear in Chapter 4, Section I., Accessory Structures, that HVAC units "shall be screened with opaque materials and shall not be visible from adjacent properties or rights-of ways." The chairman noted that the applicant was aware of this requirement and had plans that were approved by the planning commission that demonstrated compliance with the requirement to screen the units. In fact, there was even a note on the plan that stated that the HVAC screening "shall comply with the Town of Farragut Zoning Code." The chairman stated that a number of HVAC units were still very visible from adjacent properties and rights of ways at the Public Market and that this matter would seem to be very straightforward. The chairman asked if the staff had anything to add to this introduction and the staff basically acknowledged that the chairman had provided a good overview.

Danny Kirby was present as the applicant. Mr. Kirby responded to the introduction by stating that, after a review of the Town's zoning ordinance, the section that addresses HVAC unit screening is flawed because it is under the heading "Accessory Structures" and, as defined in Chapter 2 of the zoning ordinance, accessory structures are detached from a principal building. The units in question are not detached and are mounted to the roof of the building.

Mr. Kirby questioned whether such units fell under the provisions that require screening. He stated that it would appear, based on the definition of accessory structures, that the intent behind the HVAC unit screening requirement was to screen those units that are detached from the building.

Chairman Ives stated that the board of zoning appeals was not the body to address an alleged text related issue with the zoning ordinance. The applicant could request an amendment to the zoning ordinance if they felt that clarification was needed. Chairman Ives suggested that this disagreement with the ordinance wording should have been pointed out prior to plans being approved for the Public Market.

Board member Alley noted that technically all HVAC units are attached to a building even those that are not roof mounted. Moreover, the Accessory Structures section in Chapter 4 of the zoning ordinance that governs HVAC unit screening indicates in subsection B. that these are "Requirements on Specified Accessory Structures for Non-Single-Family and Non-Two-Family Residential Uses." The key word in this sentence was "Specified." Mr. Alley asserted that since the word "Specified Accessory Structures" was not defined, specifically listing such uses in a section of the zoning ordinance clearly implied that these were requirements specifically related to those uses that were specified herein. The staff agreed with board member Alley and also noted that, if there are apparently conflicting sections in the zoning ordinance, the stricter requirement would apply.

The staff also explained that the Town has been consistent with its application of the requirement to screen HVAC units and that if there was something that the applicant felt was unclear in the ordinance then they could request a text amendment. To essentially waive a requirement that all other entities have complied with would be an inequitable application of the ordinance and could establish a precedent that this or any other Town requirement could simply be waived upon request.

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Board member's Ives, LaMarche, and Alley stated that they did not see where the staff erred in the application of the zoning ordinance in this regard.

Board member Alley moved to deny the applicant's request and to uphold the staff's application of the ordinance. Motion was seconded by Ives. Motion passed 4-0.

Ayes:	Alley, Porter, LaMarche, and Ives
Nayes:	None
Absent:	Williams
Abstaining:	None

Meeting adjourned at 8:05 p.m.

Louis LaMarche, Secretary