

**MINUTES
FARRAGUT BOARD OF ZONING APPEALS**

September 25, 2013

7:00 p.m.

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

Item 1. Approval of Minutes for the July 24, 2013 meeting

Board member Williams moved to approve the minutes as submitted. The motion was seconded by Alley. Motion passed 3-0.

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

Item 2. Public hearing on a request for a special exception to expand a nonconforming building at 13044 Kingston Pike. Zoned C-1 (Mark Bialik, applicant).

The staff reviewed this item and noted that it involved a roughly 1,500 square foot addition to an existing building, the Dixie Lee Liquor Store, at 13044 Kingston Pike. The building does not comply with the front yard setbacks from both S. Watt Road and Kingston Pike.

Consequently, the applicant was before the board requesting approval of a special exception for the expansion of a nonconforming building as provided for in Chapter 4, Section XVII. A., 2., of the *Farragut Zoning Ordinance*.

The staff reviewed this request and the applicable ordinance provisions and recommended approval of the special exception for the following reasons:

- a) Much of the building's nonconforming condition abutting S. Watt Road is the result of improvements to S. Watt Road that required additional right of way and that was not initiated by the applicant; The building's setback from Kingston Pike complied with the setbacks that were in place at the time of construction and the proposed addition does not position the building any closer to Kingston Pike (or S. Watt Road);

- b) The proposed expansion does not compound the building's nonconformity and there is reasonable space for the expansion. The expansion is to the east and complies with the setbacks from the east side property line;
- c) Related to the previous comment, the proposed expansion does not create a lot coverage violation. The lot coverage is increased slightly from 52% to 54%, well below the 70% maximum permitted; and
- d) The proposed expansion also does not create a parking space shortage. Based on the size of the building (including the proposed addition), 21 parking spaces are required. The site has 32 parking spaces.

Mark Bialik and Sam Taylor were present as the applicant. A brief discussion ensued and a motion was made by Alley to follow staff's recommendation for the reasons enumerated by staff. The motion was seconded by Williams and motion passed unanimously.

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

Item 3. Public hearing on a request for a variance to construct pedestrian facilities along Kingston Pike, as required in Chapter 4 of the *Farragut Zoning Ordinance*, Section XXII.,A., in association with a site plan review for an expansion to the Dixie Lee Liquor Store at 13044 Kingston Pike. 1 acre, zoned C-1 (Mark Bialik, applicant).

The staff reviewed this item and noted that it involves a request for a variance from the requirement in Chapter 4, Section XXII. Pedestrian Facilities A. of the *Farragut Zoning Ordinance* for a walking trail or sidewalk to be constructed on all abutting streets as part of a site plan review for new construction. In this case, the specific request involved a variance from constructing a pedestrian facility along Kingston Pike in association with the proposed roughly 1,500 square foot expansion to the Dixie Lee Liquor Store at 13044 Kingston Pike. A sidewalk was constructed along the S. Watt Road frontage as part of the improvements to S. Watt Road.

The staff recommended approval of the variance for the following reasons:

- a) To construct a pedestrian facility along the Kingston Pike frontage would require a complete re-work of this area and the rational nexus between the relatively small addition and the provisions for this pedestrian facility would be questionable; and
- b) Related to the previous comment, there is little available space along Kingston Pike for a pedestrian facility to be retrofitted. Such work would be more efficient and practical as part of a road improvement project.

A short discussion ensued and a motion was made by Williams to follow staff's recommendation for the reasons enumerated by staff. The motion was seconded by Alley and motion passed unanimously.

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

Item 4. Public hearing on a request for a special exception to expand a nonconforming building at 418 Lost Tree Lane (Thomas J. Bailey, applicant).

The staff reviewed this item and noted that it involved a request to cover an existing deck on a home in the Fox Den Villas. The staff provided a detailed overview and indicated that it could not support this request namely because the building footprint of a completely noncompliant building is being expanded and the expansion not only exacerbates the building's encroachment into required setbacks but is most notably extending the building into a 10 foot drainage and utility easement. The existing building abruptly stops at the drainage and utility easement and it would appear from the plat that the intent of the build out on this lot was to terminate the building, as originally constructed, and only have an uncovered deck extending into the easement.

As constructed, the staff noted that the building already encroaches well within the rear and side setbacks. The new encroachment resulting from this request and that the staff was most concerned with would be the presence of a covered structure within the drainage and utility easement. Any future use of this easement would be much less encumbered with an uncovered deck vs. a covered and enclosed extension of the dwelling unit.

Thomas Bailey was present as the applicant. A long discussion ensued and board members were in agreement with staff that the new encroachment into the drainage and utility easement was a great concern. Mr. Bailey testified that a number of other homes along this street already encroached into this same drainage and utility easement. The staff indicated that if any additional encroachment were approved in this easement the board should require that a covenant that runs with the land and that is reviewed and approved by the Town Attorney be prepared by the applicant's attorney to ensure that any costs related to the removal of this encroachment be covered by the property owner and that this covenant be recorded before any building permit could be issued.

Since the deck was already situated within the drainage and utility easement the board members seemed to agree that a covenant that would protect the Town and utility companies from any expenses and liability due to a covered structure being within the easement would be a minimum condition for any approval of this request.

A motion was made by Alley to approve the requested expansion because it does not greatly exacerbate the problem that is already there. And, in order to address the area of new encroachment within the drainage and utility easement, the motion stipulated that the applicant must prepare the covenant outlined by staff. This covenant would then have to be approved by the Town Attorney and recorded prior to the issuance of a building permit. The motion was seconded by Williams and motion passed unanimously.

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

Item 5. Public hearing on a request for a setback variance related to a proposed addition at 418 Lost Tree Lane (Thomas J. Bailey, applicant).

The staff indicated that this item involved the setbacks associated with the previous item. A motion was made by Alley to approve the variance for the reasons noted in Item 4 and subject to the same conditions noted in

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Item 4. The motion was seconded by Williams and motion passed unanimously.

Meeting adjourned at 7:56 p.m.

Louis LaMarche, Secretary

A handwritten signature in cursive script, reading "Louis LaMarche", written over a horizontal line.