



**AGENDA
FARRAGUT BOARD OF ZONING APPEALS**

**Farragut Town Hall
Wednesday, December 27, 2017
7:00 p.m.**

- 1. Approval of Minutes for the August 23, 2017 meeting.**
- 2. Public hearing on a request for a front yard setback variance of up to eleven and one-half (11.5) feet for Parcel 63.08, Tax Map 151, 1.34 Acres, Zoned C-1 (GBS Engineering, Applicant).**

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**MINUTES
FARRAGUT BOARD OF ZONING APPEALS**

August 23, 2017

Present: Keith Alley, Ron Williams, Scott Meyer, Michael Wilson, and Jennifer Collins
Absent: None
Staff: Mark Shipley, Community Development Director
Bart Hose, Assistant Community Development Director

Item 1. Approval of Minutes for the July 26, 2017 meeting

A motion was made by Williams to approve the minutes. The motion was seconded by Meyer. Motion passed 4-0-1.

Ayes: Alley, Williams, Meyer, and Wilson
Nays: None
Absent: None
Abstaining: Collins

Item 2. Public hearing on a variance request from Section 14-407 part (5) of the “Sinkhole Ordinance” to construct a single-family residence at 614 Witherspoon Lane, Zoned OSR-R1 (David B. Fiser, Applicant).

The staff (Bart Hose) reviewed this item and noted that the requested variance from the requirement to elevate a building that would be constructed at 614 Witherspoon Lane one foot above the elevation of the sinkhole lip elevation of the sinkhole on the abutting Lot 59 may not be necessary given the language of the ordinance and the physical circumstances of the lot in question. The language of the “Sinkhole Ordinance” requires elevating the finished floor of a habitable structure above the sinkhole lip elevation within “*sinkhole areas*”. The ordinance specifically defines a *sinkhole area* as, “the area including the sinkhole and fifty (50) feet from the sinkhole lip elevation”. In addition, the FFE requirement is found in Section 14-407 part (5) “Building construction in sinkhole drainage areas” and the ordinance defines *sinkhole drainage area* as, “the contributing surface drainage area to a sinkhole”

In staff’s view, the purpose of the required fifty (50) foot building setback line, *sinkhole area*, and the *sinkhole drainage area* is twofold. The first involves limiting building construction within the *sinkhole area* due to ground instability and the potential for building damage due to settling and/or further sinkhole collapse. The second involves the potential for flooding where a sinkhole (depression) fills and inundates the surrounding area. The imposition of the finished floor elevation (FFE) requirement is related to flooding. It is staff’s interpretation that the FFE requirement is

not applicable outside of the 50 foot setback line in this case, because this portion of the lot is not located within the *sinkhole area* and does not drain to the sinkhole.

The staff noted that if the Board agrees with staff's interpretation, the applicant can build without elevating above the platted sinkhole lip elevation provided the building remains outside of the platted fifty (50) foot building setback line from the sinkhole.

Russ Rackley spoke on behalf of the applicant and explained that, in addition to the variance from the FFE, they were also requesting to build within the 50 foot building setback from the sinkhole lip elevation. The staff noted that this was not included with their application and, in fact, would need to be first addressed with the Planning Commission in accordance with the Sinkhole Ordinance.

In response to this procedural issue, the applicant agreed to withdraw their request. No action was necessary on the part of the Board of Zoning Appeals.

Item 3. Public hearing on a request for a special exception to re-occupy and repair/renovate a nonconforming building at 12640 Kingston Pike, .68 Acres, Zoned C-1 (Trent Ferrell, Applicant)

The staff (Shipley) noted that Agenda Items 3 and 4 are related to the same property. The applicant has requested to re-use the existing building at 12640 Kingston Pike which includes the space occupied by a former Weigel's convenience store and its roughly 20 foot overhang (this does not include the canopy over the former gas pump areas). This building was constructed prior to the Town and neither the building nor the site improvements (e.g. parking lot) meet current setbacks provided for in the C-1, General Commercial Zoning District. The lot on which the building is situated also does not comply with the one acre minimum lot size provided for in the C-1 District.

The staff indicated that in 2006, Weigel's sold the property to W&L Properties and in March of 2014 W&L Properties sold the property to Southeast Bancorp, Inc. The convenience store, which is a permitted use in the C-1 District, was discontinued prior to the Southeast Bancorp, Inc., purchase. As provided for in Chapter 4, Section XVII. A. 1., of the Farragut Zoning Ordinance, if a tract or parcel has located thereon an existing nonconforming building or nonconforming structure which has

remained vacant from a conforming use or has remained vacant from a nonconforming grandfathered use for more than 365 days, then in such event such building or structure may not again be occupied for any purpose unless a variance or special exception for such further occupancy be granted by the board. This section further states that in considering an application by a party for such variance or special exception the board may impose such reasonable conditions as it may determine so as to bring such building or structure as nearly as possible into conformity with but not exceeding current zoning rules and regulations and current building and occupancy code standards.

In relation to the request to re-occupy the nonconforming building at 12640 Kingston Pike, the staff noted that they would recommend that, if a special exception is approved to allow such re-occupancy, the special exception should impose a reasonable condition that would provide for the building to comply to the greatest extent possible with current Town requirements. In this case, in order to bring such building as nearly as possible into compliance while still providing for a reasonable use of the property, the staff would recommend that the extended overhang be removed since it factors into the front yard setback requirements. This would also lessen the adjustment requested in the next item concerning setback variances for the use of the existing building.

The applicant, Trent Ferrell, indicated that there were likely structural issues in removing the overhang and that it would be cost prohibitive. A long discussion ensued. Board members asked for more details and the applicant stated he could not obtain that information and that it would not be worth trying to formulate an estimate on what it would take to remove the overhang of the building. Board member Meyer moved to deny the special exception due to the lack of information provided by the applicant in terms of how reasonable it would be to remove the overhang. The motion was not seconded and was withdrawn. A motion was then made by Wilson to approve a special exception provided the building would not be altered to compound its condition of nonconformity. Chairman Alley moved to amend the motion made by Wilson by adding that the applicant shall comply with the rules and regulations as would be applicable to new construction insofar as such related to matters other than the actual building. This would mean that the site would have to be brought into compliance with all current Town requirements. Commissioner Meyer seconded the amended motion and the motion passed unanimously.

Ayes: Alley, Williams, Meyer, Wilson, and Collins
Nays: None
Absent: None
Abstaining: None

Item 4. Public hearing on a request for the following variances associated with the property at 12640 Kingston Pike, .68 Acres, Zoned C-1 (Trent Ferrell, Applicant)

- a. Front yard setback along Kingston Pike from a required 80 foot setback to a proposed 58 foot setback;**
- b. Front yard setback along Way Station Trail from a required 80 foot setback to a proposed 48 foot setback;**
- c. Rear yard/buffer strip setback from a required 35 foot setback to a proposed 33 foot setback**

Related to the previous item the Board discussed the requested variances that would be needed to fulfill the applicant's planned renovation of the existing building at 12640 Kingston Pike. Since, as a result of the action taken on the previous item, the applicant could re-occupy the existing building, subject to the conditions noted, a motion was made by Meyer to deny the requested variances. The applicant has a reasonable use of the property without approval of the variances. The motion was seconded by Wilson and the motion passed unanimously.

Ayes: Alley, Williams, Meyer, Wilson, and Collins
Nays: None
Absent: None
Abstaining: None

The meeting adjourned at 9:24 p.m.

Scott Meyer, Secretary _____

FARRAGUT BOARD OF ZONING APPEALS

December 27, 2017 Meeting – Staff Recommendation

2. Public hearing on a request for a front yard setback variance of up to eleven and one-half (11.5) feet for Parcel 63.08, Tax Map 151, 1.34 Acres, Zoned C-1 (GBS Engineering, Applicant)

The item involves a front yard setback variance request (**Exhibit A**) for up to eleven and one-half (11.5) feet in association with the property referenced as Parcel 63.08, Tax Map 151. This parcel was platted most recently in 2005 as part of what would largely become the Renaissance Farragut development. This parcel is shown as Lot 5 in this subdivision and contains a 20 foot drainage easement to the east and a sanitary sewer and drainage easement to the south, a portion of which is also required open space (**Exhibit B**).

On this plat, the remnant right of way that was used for a TDOT weigh station is evident along the western portion of Lot 5. At its greatest width along the Lot 5 frontage, the right of way is approximately 61.5 feet from the centerline of Kingston Pike. Based on its classification as a major arterial on the Major Road Plan, the required right of way for Kingston Pike is a total of 100 feet (50 feet from the centerline of Kingston Pike).

Typically, when a property that fronts along a major arterial is submitted for subdivision plat review, if it contains less right of way than is required, the additional right of way is dedicated as part of the platting process. If a property is not subdivided and is an existing lot of record that does not contain the required right of way, the building setback line is established by using the required right of way based on a measurement from the centerline of the street. This helps to plan ahead and situate improvements so that they meet the same setback requirements as parcels that go through the subdivision regulation process. This also helps to ensure that improvements are coordinated to accommodate work (street, pedestrian, utility, drainage, etc.,) that may occur within or adjacent to the public right of way.

In the case before you, however, the area shown in diagonal lines on **Exhibit C** reflects right of way that was in place due to the TDOT weight station and that is in excess of the 50 foot from centerline minimum required for Kingston Pike. Since this creates additional right way along Kingston Pike, the front yard setback requirement is greater than would normally be applied if the right of way were 50 feet from the centerline of Kingston Pike.

The applicant is requesting a variance due to the presence of this excessive right of way and is asking to extend the front yard setback line parallel with the centerline of Kingston Pike as measured consistently 50 feet from the centerline. The property owner of Lot 5 has apparently tried to purchase the excess right of way from TDOT but has not been successful.

The staff acknowledges that this excess right of way is a unique characteristic of the property which was out of the property owner's ability to control. Applying a front yard setback consistently in relation to the measurement of 50 feet from the centerline of Kingston Pike would help provide for a more uniform placement of buildings abutting Kingston Pike. This would also

correct a situation inherent to the property where a property owner was being held to a setback requirement that was in excess of normal Town requirements. For these reasons, the staff would not be opposed to the applicant's request.

BOARD OF ZONING APPEALS APPLICATION
TOWN OF FARRAGUT, TENNESSEE

Exhibit A

FOR OFFICE USE ONLY

Fee Paid: 100.00

11/29/17

APPLICANT NAME: GBS Engineering - Mark A. Bialik
Address: 1313 Karmia Rd City/State/Zip: Knoxville TN 37906
Phone Number: 540-0195 Fax Number: 888-985-7005 E-mail: mark@gs-engineering.net

DESCRIPTION OF PROPERTY (Attach Map of Property):

Name of Owner: Noah & Nick Myers
Address: 12002 Kingston Pike
Phone #: 615-3823 Fax #: 615-3824 E-mail: noah@myers-bus.com
Parcel(s) No.: 43.00 Tax Map No.: 151 Size of Tract: _____
Zoning District: C-1 Subdivision: _____

NATURE OF APPEAL (Check One):

____ Administrative Review X Variance* - State number of feet requesting: 11'12"
____ Special Exception ____ Map Interpretation

Reason/Justification (attach any additional supporting materials): FRONT YARD SETBACK
VARIANCE DUE FORMER WEIGHT STATION

IF REQUESTING A VARIANCE, APPLICANT HAS BURDEN OF SHOWING:

- (1) That the granting of the permit will not be contrary to the public interest.
- (2) That the literal enforcement of the ordinance would deprive the applicant any reasonable use of the land.
- (3) That by granting the permit contrary to the provisions of the ordinance, the spirit of the ordinance will be observed.
- (4) That by granting the permit, substantial justice will be done.

* Variances shall be granted only where special circumstances or conditions exist, such as exceptional narrowness, topography, or siting that without a variance would render the property unusable.

I HEREBY CERTIFY THAT THE ABOVE INFORMATION IS ACCURATE AND COMPLETE AND I AM THE APPLICANT OR THE LEGAL REPRESENTATIVE OF THE APPLICANT.

Mark A. Bialik
NAME (SIGNATURE)

11.29.2017
DATE

BZA ACTION TAKEN:

Approved: _____ Denied: _____ Date: _____
Conditions: _____

Exhibit C

KINGSTON PIKE



NER: GJWHF
ID: 151 064
00803310027775
00409210024675
LOT 1R2
G PINES RESUB. S/D