

**MINUTES
FARRAGUT BOARD OF ZONING APPEALS**

March 23, 2016

Present: Keith Alley, Jesse Boling, Louis LaMarche, and Ron Williams
Absent: Corky Ives
Staff: Mark Shipley, Community Development Director

Item 1. Approval of Minutes for the January 27, 2016 meeting

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

Ayes: Alley, LaMarche, Boling, and Williams
Nays: None
Absent: None
Abstaining: None

Item 2. Public hearing on a request for a special exception to expand a nonconforming building to cover an existing patio at the Big Kahuna Wings at 12828 Kingston Pike, Zoned C-1, 1.38 Acres (Big Kahuna Wings, LLC, Applicant).

The staff reviewed this item and noted that it involved a request for a special exception to expand a nonconforming building by covering the existing outdoor patio associated with the building at 12828 Kingston Pike. This patio area is roughly 20x24 (approximately 480 square feet).

The staff noted that the building has been the subject of two previous special exception requests involving expansions. The first in January of 2008 involved a request to enclose an existing 14x18 foot covered carport. The second in December of 2013 involved a request for a 328 square foot addition.

In each of these special exception requests, the staff recommended approval and the board agreed. The expansions did not compound the building's condition of being nonconforming. Nor did either request create a parking shortage or lot coverage violation.

The special exception request at this time would not expand the lot coverage since the existing patio area is over an improved surface. However, the staff explained that the expansion that was permitted in 2013 expanded the building footprint to the maximum size that could be allowed and still satisfy the parking space requirements for this use. As

applied in the Town's zoning ordinance, a building is any structure having a roof supported by columns or walls.

Consequently, unlike the previous special exception requests, the staff noted that the request at this time would not be consistent with the parameters that govern approval for a special exception to expand a nonconforming building. The addition of a permanent roof over the patio area would expand the square footage of the building in such a manner that a parking space allocation deficit would be created. This would create a condition that could not be rectified through a special exception because it would create a new violation of an existing requirement in the zoning ordinance.

Consequently, the staff indicated that they could not support this special exception request. Any remedy for this issue would need to be addressed legislatively through a text amendment. In the interim, the staff recommended that temporary measures (e.g. umbrellas) for providing covered seating be considered. Such measures would not be considered as part of the "building" and thus would not affect the parking ratio.

A long discussion ensued. Matt Beeler was present as the applicant. A motion was made by LaMarche to approve the special exception because the covered area would be detached from the building and the patio area was already existing and covering the patio would not affect the intent of the parking space provisions. The motion was seconded by Boling and motion passed 3-1, with Alley voting in opposition.

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

Item 3. Public hearing on a request for a variance to Chapter 4, Section XXII. – Pedestrian Facilities, of the Farragut Zoning Ordinance to omit approximately 20 feet of sidewalk along the easternmost Kingston Pike frontage of the property referenced as Parcel 36, Tax Map 143G, east intersection of Thornton Drive and Kingston Pike, Zoned C-1, 1.04 Acres (Thornton Drive, LLC, Applicant).

The staff noted that this item involves a request for a variance from Chapter 4, of the Farragut Zoning Ordinance, Section XXII. Pedestrian Facilities. The applicant is redeveloping the parcel that is situated at the

east intersection of Thornton Drive and Kingston Pike. As part of the site plan review by the planning commission, pedestrian facilities are required along both abutting streets. The applicant is proposing a sidewalk along both streets with the exception of a 20 foot section east of the proposed access onto Kingston Pike.

Thus, the staff explained, the variance request is specifically for the omission of this 20 foot section. The area east of the applicant's proposed access onto Kingston Pike contains a large drainage ditch. In order to extend the sidewalk to the eastern property line it would have to be constructed to span this ditch. The applicant is requesting a variance due to this significant topographic issue and the fact that the sidewalk would terminate into a parcel that is not within the Town of Farragut and that does not contain a sidewalk. Essentially the sidewalk would dead end.

The staff mentioned that they had visited the site and would concur with the applicant's rationale for a variance. David Robinette was present on behalf of the applicant. The property itself has a unique topographic condition and the sidewalk, at this time, would terminate into an area that does not have sidewalks. The staff recommended, however, that as part of a subdivision plat related to this development, an easement be platted as part of an access easement that will be required to stub into the property to the east. In this manner, if conditions changed in the future, a sidewalk could more easily be extended to the eastern property line of this parcel.

A motion was made by LaMarche to approve the variance for topographic and context reasons that are inherent to the property. The motion was seconded by Williams and motion passed 4-0.

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

- Item 4. Public hearing on a request for a variance to Chapter 4, Section XII. – Landscaping, of the Farragut Zoning Ordinance to grade steeper than 4:1 within a portion of a required buffer strip on the property referenced as Parcel 36, Tax Map 143G, east intersection of Thornton Drive and Kingston Pike, Zoned C-1, 1.04 Acres (Thornton Drive, LLC, Applicant).**

The staff reviewed this item and noted that it involves a request for a variance to permit grading within a required buffer strip to exceed the 4:1 (run/rise) ratio that is provided for in Chapter 4, Section XII.D., 5. h. of the Farragut Zoning Ordinance. The grading in question is in association with a proposed redevelopment of the property at the east intersection of Thornton Drive and Kingston Pike. Along the southern portion of this parcel there is a required 35 foot buffer strip. The adjacent property is zoned General Single-Family Residential (R-2) and contains an existing residence.

In order to address some drainage around the proposed building, which is situated much closer to the buffer strip than the existing building that will be demolished, the applicant was asking for the ability to grade up to 2.5:1 in the northeastern portion of the buffer strip.

Based on the tree preservation plan that was provided with the site plan development submittal there are existing trees in the area where grading is proposed. Though permitting a steeper slope than 4:1 could help lessen the impact to these trees, the ordinance specifically does not permit *any grading* within buffer strips where wooded areas exist. A discussion ensued regarding the tree cover in the affected area. David Robinette was present as the applicant.

The staff noted that they had visited the site with the project engineer, Annette Hommel, and looked at the tree cover in the area. The area was mostly invasive exotic plants, privet and bush honeysuckle, and the trees that were in the area were in poor condition partly due to invasive material, such as vines, that had grown up into the trees. The trees that would be affected by the proposed grading were very compromised. The staff discussed whether the building could be reconfigured or the size lessened to reduce the need for a variance. The applicant provided staff with a document that demonstrated that the building that was proposed was not excessive in size, given the property's limitations in terms of setbacks and buffer strip. The ability to clean up the affected portion of the buffer strip, it was noted, would help protect any new plant material that may be planted to fulfill the buffer strip planting requirements.

The staff noted that allowing for a steeper grade would lessen disturbance near a large red cedar tree that was worthy of saving. The staff recommended that if a variance was granted to steepen the grade in the buffer strip the plant material that would be required should be based on the 50 foot rather than the 35 foot buffer strip planting requirements. The

FBZA Minutes
March 23, 2016
Page 5

rationale for the variance would be based on the improved ability to save the cedar tree and the fact that the trees that would be affected were already in seriously poor condition.

A motion was made by LaMarche to approve the variance due to the improved preservation of the high quality red cedar tree and the poor condition of the plant material in the affected area. As part of this motion, the buffer strip would have to be planted to the specifications of a 50 foot rather than a 35 foot buffer strip. The motion was seconded by Williams and motion passed 3-0-1, with Alley abstaining.

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

Meeting adjourned at 8:33 p.m.

Louis LaMarche, Secretary

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