

The Town of Collierville **Board of Zoning Appeals** met in regular session on Thursday, January 16, 2020 at 5:00 p.m. in the Board Chambers of Town Hall, at 500 Poplar View Parkway.

Staff members present were: Development Director, Mr. Jay Cravens; Town Planner, Mr. Jaime Groce; Assistant Town Planner, Ms. Nancy Boatwright; Planner, Ms. Donquetta Singleton; and Administrative Specialist, Sr., Ms. Amy Jensen.

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Chairman Luttrell asked Ms. Jensen to call the roll.

**Roll Call:**

Oakes – present, O’Hare –present, Frazier – present, Luttrell – present, Floyd – present.

**Quorum Present**

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**Election of Officers:**

Commissioner Oakes made the motion to elect Chairman Luttrell as the Chairman for the BZA for 2020. Commissioner O’Hare seconded it.

The motion was approved by acclamation as there were no other nominations.

Commissioner Floyd made the motion to elect Commissioner Oakes as the Vice Chairman for the BZA for 2020. Commissioner O’Hare seconded it.

The motion was approved by acclamation as there were no other nominations.

Commissioner O’Hare made the motion to elect Commissioner Frazier as the Secretary for the BZA for 2020. Chairman Luttrell seconded it.

The motion was approved by acclamation as there were no other nominations.

**Approval of the Minutes:**

Chairman Luttrell asked if there were any corrections or deletions to the minutes from the December 19, 2019, meeting.

Hearing no corrections, Chairman Luttrell called for a motion to approve the minutes as presented.

***Motion by Commissioner Oakes, and seconded, to approve the minutes as presented.***

Hearing no further discussion, Chairman Luttrell asked Ms. Jensen to call the roll.

**Roll Call:**

O’Hare – yes, Oakes – yes, Floyd – yes, Frazier – abstained, Luttrell – yes.

**Motion approved.**

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**Approval of the Agenda:**

Chairman Luttrell asked if there were any additions or changes to the Agenda.

Mr. Groce explained that there are none.

Chairman Luttrell asked for a motion to approve the agenda as presented.

*Motion by Commissioner Oakes, and seconded, to approve the agenda as presented.*

Hearing no further discussion, Chairman Luttrell asked Ms. Jensen to call the roll.

**Roll Call:**

Frazier - yes, Floyd – yes, Oakes – yes, O’Hare – yes, Luttrell – yes .

**Motion approved.**

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**Formal Agenda:**

***BZA19-005 – 1950 W. Poplar Avenue – Criss Cross Lodge – Request approval of a Variance to allow for a different minimum off-street parking requirement for a real estate agent office.***

Commissioner O’Hare recused himself from this issue because he is in the real estate business and works for a competing firm.

Ms. Boatwright gave the staff presentation. She explained that the applicants from the Criss Cross Lodge bought the building over a year ago and are planning to use it as a real estate office. They are also planning to add on a second level to the office. They are asking to reduce the minimum required parking spaces. It currently is a 3,386 square foot building which was last used as a law office. That use required 1 parking space per 300 sq. ft. of building equating to 12 spaces. It actually has 13 spaces. Now that they are planning to make it a real estate office and add on to the building, it requires 1 parking space per 200 sq. ft. of building equating to 25. Based on a building of 4,976 total square feet, the applicants are asking for the formula to be 1 space per 237 square feet of building equating to 21 spaces (8 additional spaces).

The DRC denied the request to reduce the required minimum front yard open space in December of 2019. The parking was proposed to encroach into that space.

The Design Guidelines prevent parking within the 40-foot front yard open space.

Crisscross Lodge is on the National Register of Historic Places, being built in 1913 as a single-family dwelling. Some of its unique characteristics are its hexagonal shape and the fact it was unaltered until it was converted to a law office in 2007. The National Register status does not provide protection from alterations and it is not within the Town’s Historic District. There are some unusual circumstances with the property. The historic residence does not sit parallel to the property lines due to its hexagonal shape. There is a historic pump house structure at northeast corner of property. The parcel has been reduced over the last century from 4.26 acres to 0.685 acre as surrounding properties have developed. And there was a right-of-way dedication of 35 feet of the front yard open space to the widening of Poplar Avenue in 2006. There is a brick landing on the home that is another unique feature of the property. The Family Cancer Center that is east of this property was granted a

**EXHIBITS**

1. Conditions of Approval (1/10/20)
2. Applicant’s Cover Letter (12/19/19)
3. Applicant’s Variance Request Information (12/19/19)
4. Exiting Site Plan for 1950 W. Poplar Avenue (12/19/19)
5. Revised Site Plan for 1950 W. Poplar Avenue (12/19/19)
6. Shelby County Assessor Property Record Card
7. Crisscross Lodge National Register of Historic Places Registration Form (10/17/88)
8. Standards for Variances Staff Analysis (1/10/20)
9. Draft DRC Minutes (12-12-19)
10. Appeal to the DRC of Staff Decision Related to the Encroachment into the Minimum Required Front Yard Open Space Staff Report (12/12/19)

variance in 2003 to reduce its required minimum parking from one space for every 100 sq. ft. of building to 1 per every 200 sq. ft. The Family Cancer Center is also a historic building.

Ms. Boatwright said there are a few alternatives the applicants could consider that would not create the need for extra parking like reducing the amount of the building addition, no addition at all, an offsite parking agreement with the Family Cancer Clinic – although they already have reduced parking as was mentioned, or more parking added at the front or rear. Most of these changes could result in a reduction of the historic significance of the property. Parking in the front might mean the removal of the brick landing on the building or in the back would mean removing the rear pump house. The applicant feels the parking demand would be less than the required 21 spaces. They intend to provide a right turn lane for use in exiting the site that will alleviate onsite congestion.

In order to grant a variance, the Board must find that there are exceptional physical conditions with the property that make a strict application of the requirements of the Zoning Ordinance an undue hardship or practical difficulty that would deprive the owner reasonable use of the property. The Zoning Ordinance states that a variance may only be granted if it will not cause “substantial detriment” to the public good and it will not substantially impair “the intent of the Zoning Ordinance.”

Ms. Boatwright discussed the Standards for a Variance and gave the individual responses for this situation.

Mr. Michael Walker came to the microphone and explained that he is the architect for this project, and he was also the architect that worked on the museum a few years ago in Collierville. He said it is an adaptive reuse just as the museum was and the building is on the lot at an uncommon angle. They want to keep everything they can about the building, including the brick pavers that are currently there. He said they have tried many different designs to provide the required parking. Mr. Walker said the owners bought the building to keep it as beautiful as it is.

Chairman Luttrell asked the owner how many spaces he thought they would use at one time.

Mr. Walker explained the very most parking spaces they have used so far is 16 at one time.

Mr. John Quinn came to the microphone and explained at his office in Germantown there are rarely more than 8 people in the building at one time even though there are 100 agents working out of it. Agents now go to the homes the clients are looking at buying and spend most of the time there.

Commissioner Oakes asked if he thought there would be more growth in the coming years.

Mr. Quinn said his organization is as big as he wants to be. He has been in the business for 30 years.

Mrs. Jackie Quinn said the office addition will be just for Mr. John Quinn’s use. They will not be bringing in more agents.

Commissioner Floyd asked if there would be a hardship if they did not get the variance.

Mr. Quinn said he cannot use the office if they cannot have more parking spaces and do the addition.

Commissioner Frazier asked what the addition upstairs will be used for.

Mr. Quinn said it will be used for him and his team. There will not be clients taken up there so there are not a lot of parking spaces needed. He would like to be able to use the front yard space the way the next door business has been able to add more parking.

Chairman Luttrell said he was ready to discuss the issue among the Commissioners.

A discussion ensued on the need for the extra parking spaces. The Town's decision in 2006 to acquire the 35 foot Right of Way for Poplar Avenue was discussed. Commissioner Floyd and Chairman Luttrell both said that was a long time ago and the applicants knew this when they bought it last year so it cannot be considered a hardship.

Hearing no further questions or discussion, Chairman Luttrell called for a motion.

***Motion by Commissioner Oakes, and seconded, to request approval of a Variance to allow for a different minimum off-street parking requirement for a real estate agent office, with the condition in Exhibit 1.***

**CONDITIONS OF APPROVAL:**

1. This variance is only applicable to the real estate use.
  - This variance does not apply to uses with a higher parking demand per §151.117 Table of Off-Street Parking Requirements and Off-Street Loading Berth Codes such as a physician or dentist office.
  - The intensity of this use shall not be increased by increasing the building size beyond 4,976 square feet or by more intensive uses, such as a call center or the introduction of accessory uses that would increase the parking demand (e.g., closing attorney, title insurance, etc.).
2. Submit a Site Plan Modification/Exterior Alteration Application for any improvements to the property, including the expansion of the building and parking.
3. The landscaping for the revised parking shall meet the requirements of the Design Guidelines including, but not limited to, street trees and evergreen screening for the parking.
4. New parking areas shall meet the requirements of the Zoning Ordinance and the Design Guidelines (e.g., landscaping, lighting, buffer yards, dimensions, surfaces, etc.).
5. Any deviation from the approved variance shall require the approval of Staff and/or the Board of Zoning Appeals.

Hearing no further comments, Chairman Luttrell asked Ms. Jensen to call the roll.

**Roll Call:**

Floyd – no, Oakes - yes, Frazier –yes, Luttrell – no.

**Motion denied.**

***BZA19-003 – Request approval of a Variance to allow an accessory structure into the required side yard setback at 538 Fox Run Lane.***

Commissioner O'Hare rejoined the commissioners.

Ms. Donquetta Singleton gave the staff presentation. She explained that Mr. Robert Coleman is requesting a variance to allow an encroachment into the side yard setback with the construction of an accessory structure. The property is located on the east side of Fox Run Lane north of White Road and is zoned R-1: Low Density Residential with a Planned Development overlay. The Zoning Ordinance states that accessory structures must have a setback from a property line that is equal to or greater than its height, but in no case shall an accessory structure be located closer than five feet from a property line or other building or structure. The accessory structure is approximately 12-13 feet in height and therefore would need to be 12 or 13 feet from the side yard property line. The height of a building is defined as the vertical distance from finished ground to the average distance between the eaves and the ridge level. The applicant has requested the accessory structure be placed 5 feet from the side yard property line. The placement of the accessory structure based on the Zoning Ordinance would conflict with the usefulness of the accessory structure, dwelling, and backyard based on the cover letter from the applicant. The lot does not have any shape or topographic conditions that result in a particular hardship. The lot is rectangular in shape and is approximately 16,073 square feet with a 3,225-square foot dwelling. There are alternatives to creating an encroachment into the required side setback for an accessory structure. The accessory structure could be placed 12-13 feet from the side yard setback, the accessory structure could be turned 180 degrees to accommodate the side yard setback, the accessory could be smaller and shorter in height to meet the require side yard setback, or the applicant could expand the existing garage to the east and south. These alternatives might not be practical according to the property owner.

### **EXHIBITS**

1. Cover Letter with Variance Criteria & Responses (12/16/19)
2. Plot Plan & Building Footprint (12/16/19)
3. Accessory Structure Rendering (12/16/19)
4. Examples of other Accessory Structures (12/16/19)
5. Letters of Support (12/16/19 & 1/8/20)
6. Fox Run Subdivision Final Plat
7. Staff Analysis of Standards for a Variance
8. Conditions of Approval

The encroachment into to side yard setback could be reduced by moving the accessory structure to the north. The proposed accessory structure will be 24 feet by 28 feet, 672 square feet and have lap siding and asphalt shingles. There will be one garage door facing Fox Run Lane and a door on the north elevation of the structure. The building will be approximately 104 feet from the road and approximately 16 feet behind the front yard fence. The accessory structure will be used as a hobby shop for the property owner. The encroachment into the side yard setback for the accessory structure will not be detrimental to other properties in the neighborhood. The accessory structure will be approximately 36 feet from the abutting property's dwelling to the southwest, approximately 37 feet from the abutting property's accessory structure to the southeast, and approximately 101 feet from the abutting property's dwelling to the northeast.

Several neighbors have provided letters of support for the accessory structure. There is no active Homeowners' Association for the Fox Run Subdivision. The applicant has provided several examples of properties in close proximity that do not meet these standards.

In order to grant a variance, the Board must find that there are exceptional physical conditions with the property that make a strict application of the requirements of the Zoning Ordinance an undue hardship or practical difficulty that would deprive the owner reasonable use of the property. The Zoning Ordinance states that a variance may only be granted if it will not cause "substantial detriment" to the public good and it will not substantially impair the intent of the Zoning Ordinance. The Ordinance requires the Board to review a specific set of criteria in considering each request. The Board must find that the request meets the criteria based upon the evidence presented. If the request does not meet the criteria, it must be denied.

The lot does not have any shape or topographic conditions that result in a particular hardship. However, there is a large tree and a deck in the backyard that would conflict with the placement of the accessory structure 12-13 feet away from the side yard property line.

Mr. Robert Coleman came to the microphone and explained that he cannot get the height of his shed any lower than it is. The only way it fits in his yard the way he wants it is to put it 5 feet from his property line. He explained several of his neighbors have but in accessory structures in the last few years so they either got a variance or they did not bring it to the Town for approval.

Commissioner O'Hare asked why extending the existing garage is not an option.

Mr. Coleman stated it gets into the setback of his yard. He could only add 3 feet to it.

Commissioner Oakes asked if the applicant made the accessory structure lower and smaller could he still put it in and comply?

Ms. Singleton said she was not sure because of the other regulations for accessory structures.

Mr. Jaime Groce said there is a "competing" ordinance that says the accessory structure must be compatible with the house. If the roof went too flat it would not be appropriate.

***Motion by Commissioner O'Hare, and seconded, to request approval of a Variance to allow an accessory structure into the required side yard setback at 538 Fox Run Lane.***

**CONDITIONS OF APPROVAL:**

1. The accessory structure shall be no closer than five (5) feet from the south property line. Eaves shall be permitted to extend up to twenty-four (24) inches beyond the wall toward the side yard property line.
2. The accessory structure shall not exceed more than thirty (30) percent of the total gross area of the principal building.
3. All required permits shall be obtained from the Codes Division.
4. Any deviation from the location of the approved variance shall require the approval of the Board of Zoning Appeals.

A discussion ensued by the commissioners about whether there was a true hardship in this situation. They talked about variables that could be explored this application does not meet and that the guidelines for a variance.

Hearing no further comments, Chairman Luttrell asked Ms. Jensen to call the roll.

**Roll Call:**

Oakes - no, O'Hare – no, Frazier –no, Floyd – no, Luttrell – no.

**Motion denied.**

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**OTHER BUSINESS**

Chairman Luttrell asked if there was any other business.

Mr. Groce explained there is a requirement for the BZA to have 4 hours of training a year so they are setting that up.

Commissioner Oakes asked about the email to confirm their appointment for another year.

Mr. Groce said an email was not sent but it is understood that they were all appointed for another year.

Hearing no further business, Chairman Luttrell adjourned the meeting at 6:02 pm.

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Secretary Frazier