

A called meeting of the **Board of Zoning Appeals** was held on Thursday, March 23, 2023, at 6:00 p.m., in the James H. Lewellen Board Chambers in Town Hall.

Staff members present: Assistant Town Administrator, Mr. Adam Hamric; Town Planner, Mr. Jaime Groce; Town Attorney, Mr. Josh Whitehead; Assistant Town Planner, Ms. Donquetta Singleton; Planner, Mr. Josh Hankins; Administrative Specialist, Sr., Ms. Lynette Denzer; and Administrative Specialist, Sr., Ms. Angela Gizzarelli

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Chairman Luttrell asked Ms. Denzer to call the roll.

**Roll Call:**

Sledd	Frazier	O’Hare	Floyd	Luttrell
Present	Present	Absent	Present	Present

**Quorum Present**

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**Approval of the Minutes:**

Chairman Luttrell asked if there were any corrections to the minutes from the January 19, 2023, meeting.

Hearing none, Chairman Luttrell called for a motion to approve the minutes as presented.

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

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

**Roll Call:**

Frazier	O’Hare	Floyd	Sledd	Luttrell
Yes	Absent	Abstain	Abstain	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 stated there are no additions or changes.

Chairman Luttrell asked for a motion to approve agenda.

*Motion by Commissioner Frazier, and seconded, to approve the agenda.*

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

**Roll Call:**

Floyd	Sledd	O’Hare	Frazier	Luttrell
Yes	Yes	Absent	Yes	Yes

**Motion approved.**

**Formal Agenda:**

**5.a Case #230325 – 1629 Painted Horse Pass – Request approval for a Variance to allow an accessory structure within the side yard setback and closer to the side property line than the height of the structure.**

Mr. Josh Hankins reviewed the Staff Report, which is an exhibit for the record. The applicant is requesting a variance to allow an accessory structure 5 ½ feet from the side property line in lieu of the 14-foot requirement. Mr. Hankins stated the ordinance for accessory structures must have a setback that is equal or greater than the height of the structure. The applicant is asking for the lot variance on the basis of the usability of the rear yard. The applicant has drainage issues, which were confirmed by Town Engineering staff. The applicant is in the process of grading the rear yard to correct the drainage issues and ensure storm water is properly exiting to the street and adding drainage inlets.

Chairman Luttrell asked if there were any questions for Staff.

A discussion ensued about the location of the structure on the property and other structures like this in the development.

Confirmation was made that there are two letters of support by neighbors that were submitted and on the record.

A question was asked if the Homeowner’s Association has approved this project as designed at this time. Staff stated they do not have that answer.

Chairman Luttrell asked the applicant to come forward.

Mr. Robert Kokaska, 1629 Painted Horse Pass, stated his neighbors support the project. Mr. Kokaska responded that the Stables HOA has been notified and his request is in the approval process.

Discussion ensued about the height of the structure.

Discussion ensued about the HOA and its denial or approval for the project. Mr. Groce stated that HOAs can be more restrictive than the Town. If the HOA denies the project, then any motion approved by the Town cannot supersede a decision from an HOA.

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

<p><b>EXHIBITS</b></p> <p><b>The staff report and the following:</b></p> <ol style="list-style-type: none"> <li>1. Example Conditions &amp; Next Steps (3/17/23)</li> <li>2. Cover Letter (2/18/23)</li> <li>3. BZA Standards for Variance (Applicant &amp; Staff Analysis) (2/18/23)</li> <li>4. Plot Plan (2/18/23)</li> <li>5. 3D Renderings (2/18/23)</li> <li>6. Zoning Map (3/7/23)</li> <li>7. Aerial Showing Approx. Location of Accessory Structure (3/17/23)</li> <li>8. Stables Grading Plan (8/22/16)</li> <li>9. State Law Regarding Movement of Stormwater on Private Property</li> <li>10. Letter from Contractor, Letters of support (3/23/23)</li> </ol>
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***Motion made by Commissioner Fraizer, and seconded, to approve a Variance to allow an accessory structure to be constructed within the side yard setback and closer to the side property line than the height of the structure at 1629 Painted Horse Pass, subject to the conditions in Exhibit 1.***

Conditions of Approval from Exhibit 1:

1. The accessory structure shall not be located any closer to the street than the front façade of the house.
2. The accessory structure shall not be located within 5 feet of any other structure on the property.
3. No portion of the accessory structure can be within 5.5 feet of the property line or in an easement.
4. The accessory structure shall not exceed more than thirty (30) percent of the total gross area of the principal building.
5. The accessory structure shall be only one story tall and not exceed 14 feet in height measured from the finish grade to the average distance between the eaves and ridge level and the accessory structure shall be built in a like-manner to the principal building in terms of architectural style, roof style, and building materials.
6. No more than two (2) accessory structures are permitted for the property.
7. Any deviation from the request must be approved by Staff or the BZA, as appropriate, prior to commencing any work.

Discussion ensued about the accessory structure being supported by neighbors and the applicant is doing the neighborhood a service for grading the property to help existing stormwater drainage issues on and around his lot.

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

**Roll Call:**

Frazier	O’Hare	Floyd	Sledd	Luttrell
Yes	Absent	Yes	Yes	Yes

**Motion approved.**

**5.b Case #221739 – Almadale Farms PD, Phase 15 - Chick-fil-A #5174 – Request approval of a Variance to allow a restaurant to exceed one parking space for every two seats provided.**

Ms. Donquetta Singleton reviewed the Staff Report, which is an exhibit for the record. Exhibit 8-11 were added as exhibits to the staff report prior to the start of the meeting. The applicant is requesting a variance for additional parking spaces. The property is part of the Almadale Farms PD with an overlay that allows for Shopping Center Commercial uses. A restaurant use is permitted at this location. Ms. Singleton clarified that this applicant does not have a Preliminary Site Plan application on record with the Town. Ms. Singleton stated there are alternatives for the applicant for requesting a variance. The applicant could reduce the size of the proposed building and outdoor seating area, which would reduce the maximum parking limitation. The applicant could secure additional (off-site) parking from adjacent property owners (of future retail developments) within Parcel 11 of the Almadale Farms PD. The applicant could request an amendment to Almadale Farms PD in Parcel 11. The applicant could request an amendment to the Town’s parking regulations for restaurants. Ms. Singleton

<p><b>EXHIBITS</b></p> <p><b>The staff report and the following:</b></p> <ol style="list-style-type: none"> <li>1. Conditions of Approval (3/10/23)</li> <li>2. Cover Letter &amp; Applicant’s Variances Criteria Responses (2/20/23)</li> <li>3. Staff Analysis of Standards for a Variance (3/10/23)</li> <li>4. Vicinity Map (3/10/23)</li> <li>5. Example Site Layout &amp; Parking Layout (2/20/23)</li> <li>6. Public Comments (3/15/23)</li> <li>7. Letter from Martin, Tate, Morrow &amp; Morrison, P.C. (3/15/23)</li> <li>8. Supplemental Public Comments (3/23/23)</li> <li>9. Neighborhood Petition #1 (3/23/23)</li> <li>10. Neighborhood Petition #2 (3/23/23)</li> <li>11. Neighborhood Petition #3 (3/23/23)</li> </ol>
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stated that there are no unusual characteristics to the shape or topography of the parcel that could be declared a hardship. The applicant believes the hardship to the parking ordinance is due to the popularity of the product. According to the Town's Traffic Engineer, International Transportation Engineering (ITE) standards state that fast food restaurants need more parking during peak times.

Chairman Luttrell asked if there were any questions for Staff.

Clarification was made that the applicant does not have any site plans submitted at this time, and that the assumption is the applicant is waiting for the parking variance before submitting Preliminary Site Plans or a Subdivision Plat.

Discussion ensued about the idea of the applicant having shared parking.

Discussion ensued about the process of amending the zoning ordinance related to parking.

Discussion ensued about parking trends and the popularity of curbside pickup during the pandemic.

Discussion ensued about any government rules about traffic standing on an active roadway.

Town Attorney, Mr. Whitehead stated that 151.308 of the code about approving variances that the request should be granted only without a substantial determinant to the public good, which would address any evidence of traffic safety concerns and issues at hand.

Hearing no further discussion, Chairman Luttrell asked the applicant to step forward.

Allan Wiley of 565 White Pond, Drive, Akron, OH, stated the maximum parking limit does not take into account employee parking or curbside parking. Additionally, the design of most drive thru restaurants allows for an extension of the drive thru allowing one or two cars to pull forward into parking spaces to prevent any cars sitting in active roadway.

Todd Williams, 5200 Buffington Way, Atlanta, GA, stated that the site design of a Chick-Fil-A has evolved due to the changes in operations. The site design is complex and takes into account traffic flow, drive thru service, curbside pick as well as employee parking.

Discussion ensued about a traffic study and fast-food restaurant trends for the proposed area.

Hearing no further questions for the applicant, Chairman Luttrell called for citizen comment.

The following stated they oppose the variance:

1. Mr. David Wade, 6410 Poplar Ave, Memphis, TN
2. Mr. Don Blane 1885 Penshurst Drive, Collierville, TN
3. Ms. Debbie Wiles, 1700 Laurel Knoll, Collierville, TN
4. Mr. Darrin Gerlach 1851 Lyles Lane, Collierville, TN
5. Mr. Clayton Dark 1806 E Laurel Hall Lane, Germantown, TN 38139

Ms. Herbert Ann Krisel of 786 Royal Forest, Collierville, TN, stated support of the request if traffic issues could be addressed.

Hearing no further comments, Chairman Luttrell called for the applicant for rebuttal.

Todd Williams, 5200 Buffington Way, Atlanta, GA, stated that there is not a physical hardship to the parcel. But, as stated in the report, the town uses both minimum and maximum parking limits to ensure nonresidential sites are designed to minimize off-site impacts. They are intended to prevent customers from parking on neighboring sites or on streets. That is the request for the parking variance that Chick-Fil-A is not impacting other businesses or residents.

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

***Motion made by Commissioner Frazier, and seconded, to request approval of a Variance to allow a restaurant to exceed one (1) parking space for every two (2) seats provided subject to the following conditions in Exhibit 1.***

Conditions of Approval from Exhibit 1:

1. Any deviation from the approved variance shall require the approval of the Board of Zoning Appeals.
2. No more than eighty-one (81) on-site parking spaces shall be provided.
3. None of the required parking spaces shall be used for curbside pick-up. Only spaces provided above the minimum requirement can be designated for curbside pick-up.
4. Provide at least thirty (30%) percent green space/pervious area on the site (excluding public right-of-way).
5. Provide additional landscaping in the front, side, and rear landscape buffers to screen the parking lot. The Design Review Commission shall review the extent of the landscaping. Reductions in the required buffer yard width shall not be permitted.
6. Show the location of the designated curbside pick-up parking spaces on the Preliminary Site Plan and note these spaces differently in the site plan data chart.
7. Any signage for the designated curbside pick-up parking spaces shall meet the requirements of the Town’s Sign Regulations. Additionally, the signs shall be permanent and have decorative poles painted black or dark bronze.

Hearing the motion, Chairman Luttrell asked for discussion.

Discussion ensued that without a traffic analysis there is no proof that there would be a detriment to the community. Based on the criteria in the ordinance, there is no hardship to approve the variance. There are alternative paths for the applicant to acquire increased parking spaces based on their current seating count and square footage of the building.

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

**Roll Call:**

Sledd	Floyd	Frazier	O’Hare	Luttrell
No	No	No	Absent	No

**Motion denied.**

**Announcements**

Mr. Groce stated that Chick-Fil-A may have been denied for the variance request, but the Town could see other applications from them for this site if they wish to continue with a store at this location.

**Adjournment**

Hearing no further business, Chairman Luttrell adjourned the meeting at 7:28 pm.

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Secretary Frazier

APPROVED