

File #

4-E-21-VA



## BOARD OF ZONING APPEALS APPLICATION

| APPLICANT INFORMATION |   | APPLICANT IS:                             | THIS PROPOSAL PERTAINS TO:  |
|-----------------------|---|---|---|
| Name                  | Benjamin C. Mullins o/b/o Dr. Todd Stinnett | Owner <input type="checkbox"/>            | New Structure <input checked="" type="checkbox"/>                         |
| Street Address        | 550 West Main Street, Suite 500             | Contractor <input type="checkbox"/>       | Modification of Existing Structure <input type="checkbox"/>               |
| City, State, Zip      | Knoxville, TN 37902                         | Tenant <input type="checkbox"/>           | Off Street Parking <input type="checkbox"/>                               |
| Phone Number          | 865-546-9321                                | Other <input checked="" type="checkbox"/> | Signage <input type="checkbox"/>  |
| Email                 | bmullins@fmsllp.com                         |   | Other Height, Setback, Interpretation <input checked="" type="checkbox"/> |

### THIS IS A REQUEST FOR:

- |  |   |
|--|---|
| <input checked="" type="checkbox"/> Zoning Variance (Building Permit Denied)     | <input type="checkbox"/> Extension of Non-Conforming Use/or Structure |
| <input checked="" type="checkbox"/> Appeal of Administrative Official's Decision | <input type="checkbox"/> Map Interpretation                           |

### PROPERTY INFORMATION

Street Address 4605 Central Avenue Pike

City, State, Zip Knoxville TN 37912

Parcel # (see KGIS.org) 068LC01801

Zoning District (see KGIS.org) Office "O"

### VARIANCE REQUIREMENTS

#### City of Knoxville Zoning Ordinance Article 7, Section 2

The City of Knoxville Board of Zoning Appeals shall have the power and authority to grant variances from terms of this ordinance according to the procedure and under the restrictions set out in this section.

The purpose of the variance is to modify the strict application of the specific requirements of this ordinance in the case of exceptionally irregular, narrow, shallow or steep lots, or other exceptional physical conditions, whereby such strict application would result in practical difficulty or unnecessary hardship which would deprive an owner of the reasonable use of his land. The variance shall be used only where necessary to overcome some obstacle which is preventing an owner from using his property as the zoning ordinance intended.

### DESCRIPTION OF APPEAL

#### Describe your project and why you need variances.

Applicant seeks to construct a stand-alone 45 foot cross on excess property owned by his family. This cross is a "stand-alone work of art bearing no advertising" pursuant to Sec. 13.3 of the zoning ordinance. See Site Plan Cross Elevation attached as Exhibit A.

Initially, codes informed applicants that the cross qualified as a second principal building on the lot and could be constructed to the maximum of 45'. Codes subsequently changed its interpretation and stated that it could be a accessory structure with a height limit of 18'. This interpretation, that a stand-alone work of art cannot be a principal use and building (without meeting a minimum occupancy requirement), is being appealed.

Alternately, if the interpretation is upheld, then a variance for height of an accessory structure is required to match the allowed height of a principal structure. Additionally, a setback for the interior side setback from 15' to 5'-10" is required.

Finally, the denial of a variance, or the requirement that a building capable of occupancy is required to construct a stand-alone work of art is not a second principal use and structure of the property, creates a substantial burden the applicant's free exercise of religion. Furthermore, the denial of approval of the requested height is neither essential to further a compelling governmental interest, or, if it can be demonstrated by clear and convincing evidence that the height variance denial is essential to a compelling governmental interest then it is not the least restrictive means of furthering that compelling governmental interest. Therefore, the denial of the requested height of the cross, under either the variance analysis or the interpretation analysis, violates Tenn. Code Ann. Section 4-1-407.

#### Describe hardship conditions that apply to this variance.

Exceptional Irregular and narrow shaped lot with location to maximize usage and avoid visual conflict with existing signs in vicinity and to not impede future buildings on site. Regarding interpretation, complying with staff's interpretation that a building capable of occupancy is not supported by the ordinance and would detract from the religiously motivated message of the cross. For additional justification for hardship and interpretation, see letter attached as Exhibit B and additional supporting documentation attached as Exhibit C.

The owner of the property, and the adjacent property owners are in support of this application.

### APPLICANT AUTHORIZATION

I hereby certify that I am the authorized applicant, representing ALL property owners involved in this request and that all owners have been notified of this request in writing.

APPLICANT'S SIGNATURE

DATE March 11, 2021

File # 4-E-21-VA



**BOARD OF ZONING APPEALS APPLICATION**

**\*\*\*\*\*OFFICE USE ONLY\*\*\*\*\***

Is a plat required? Yes  No

Small Lot of record?

**VARIANCE REQUEST(S) WITH ORDINANCE CITATION(S):**

1. Appeal of the Zoning Administrator's interpretation that the proposed development is an accessory structure. Per Article 14, Section 14.4.

2. If the BZA overturns the Zoning Administrator's interpretation in #1 and holds that the proposed development is a principal building: Reduce the minimum required interior side yard setback from 15 feet to 5 feet 10 inches. Per Article 5, Section 5.3. Table 5-1.

**PROJECT INFORMATION**

Date Filed 3-11-21

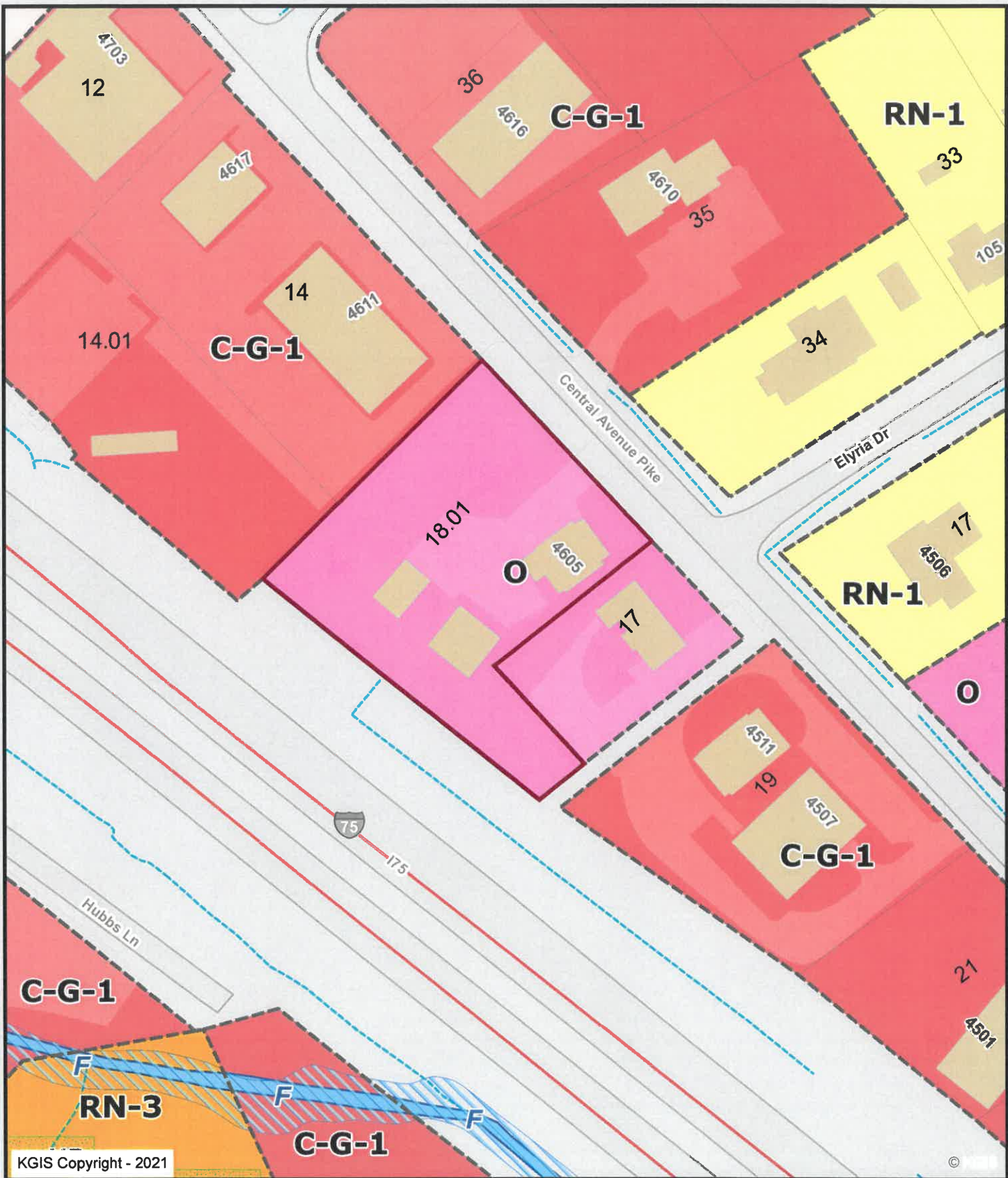
Fee Amount \$250.00

Council District 5th

BZA Meeting Date 4-20-21

PLANS REVIEWER Scott Elder

DATE 3-25-21



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**4-E-21-VA**

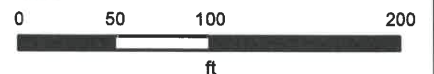
4605 Central Ave.

Benjamin C. Mullins o/b/o Dr. Todd Stinnett

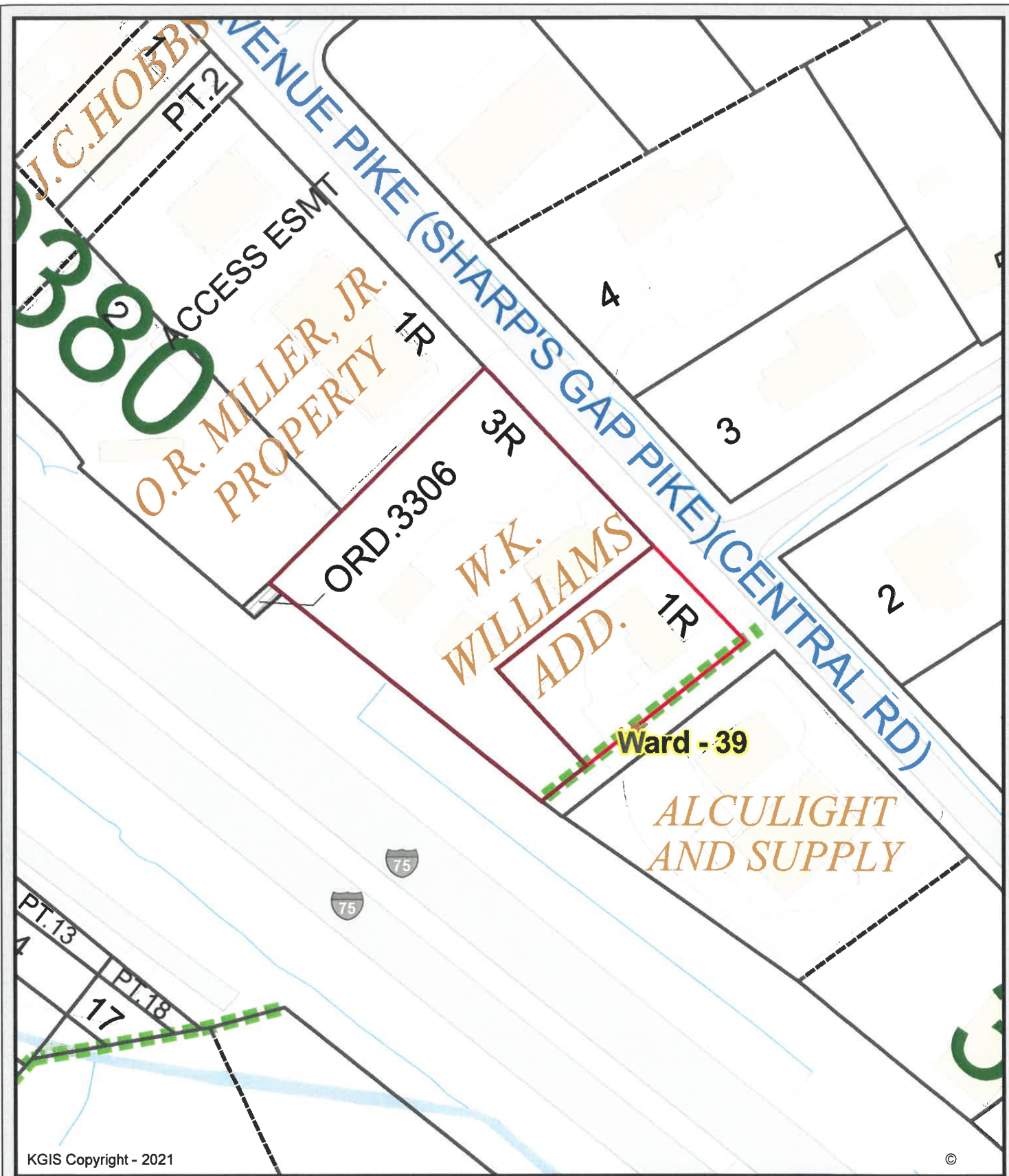
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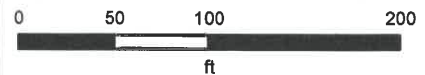
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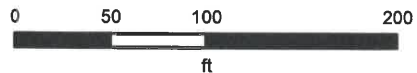
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Benjamin C. Mullins o/b/o Dr. Todd Stinnett

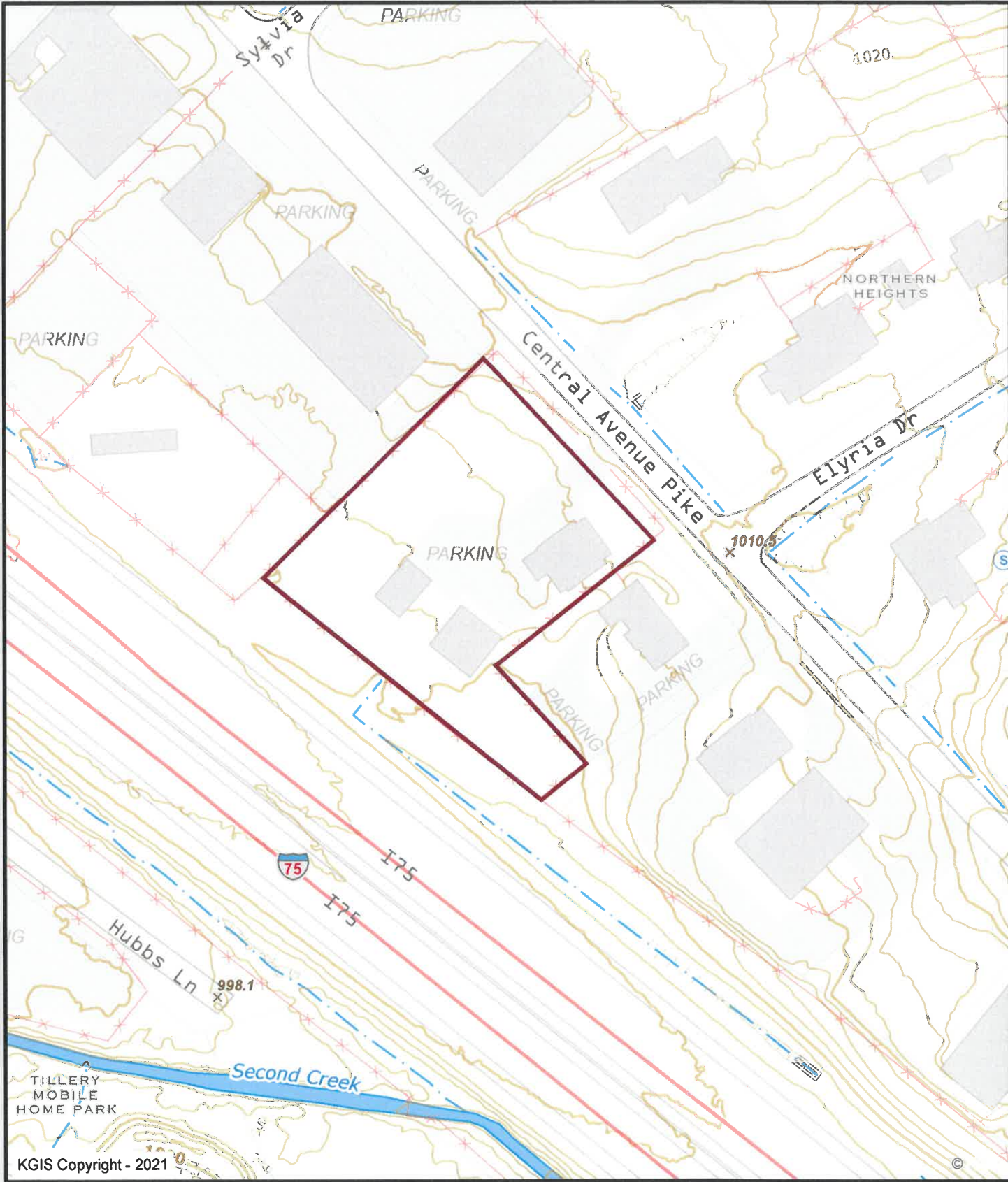
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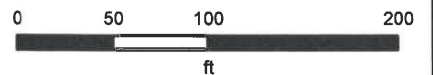
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March 24, 2021

To: Knoxville Board of Zoning Appeals  
From: Christina Magráns, Assistant City Attorney  
Re: Notes on the Religious Land Use and Institutionalized Persons Act (“RLUIPA”),  
the Tennessee Preservation of Religious Freedom Act (“PRFA”),<sup>1</sup> and 4-E-21-VA

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1. Neither the PRFA nor the RLUIPA gives a religious entity a blanket exemption from zoning laws.<sup>2</sup>
2. Courts have held that religious entities do not have “free reign” to install structures of whatever size they choose or wherever they choose, regardless of limitations imposed by zoning ordinances.<sup>3</sup>
3. In a PRFA or RLUIPA action challenging a zoning regulation, a Plaintiff must *first* prove that the regulation poses a *substantial* burden on the exercise of a sincerely-held religious belief.<sup>4</sup>
4. Not all burdens are substantial. Sixth Circuit courts have stated that proving a substantial burden is a “high hurdle” and a “difficult threshold” to meet; likewise, a substantial burden does not exist because of “mere inconvenience,” minor delays, difficulties, or expenses.<sup>5</sup>
5. In land use cases, the Sixth Circuit has the following factors to determine whether a burden is substantial: whether the Plaintiff has a feasible alternative location from which it can carry on its mission;<sup>6</sup> whether the Plaintiff will suffer substantial delay, uncertainty, and expense due to the imposition of the regulation;<sup>7</sup> whether the burden is self-imposed<sup>8</sup> or the Plaintiff’s expectation is unreasonable;<sup>9</sup> whether the government puts substantial pressure on the Plaintiff to violate his/her religious beliefs, which rarely happen in the land use context;<sup>10</sup> and whether the government effectively bars a Plaintiff from using his/her property in the exercise of his/her religion.<sup>11</sup>
6. Plaintiffs often try to rely on case law where the facts involve institutionalized persons. The Sixth Circuit has stated that these cases are quite different from land use cases because institutions such as prisons have absolute control over the inmates while this is not true in the land use context.<sup>12</sup>
7. When a structure is proposed, the City must determine whether it qualifies as a *Principal Building* or an *Accessory Structure*. *Principal Buildings* can be up to forty-five feet (45’) tall in the Office zone where Backflow Specialty Company, 4605 Central Avenue Pike, Knoxville, Tennessee, 37912 (the “Property”), is located. Based on the Applicant’s current proposal, the structure cannot qualify as a *Principal Building* because it does not meet the definition for a *Building*, which requires a roof and an enclosing wall for at least half of the perimeter, and because a use cannot be conducted *in it*.<sup>13</sup>
8. Please reference Exhibit 1. The City has worked with the Applicant over a period of almost a year in hopes of finding a way for the Applicant to install a forty-five foot (45’) structure at the Property in a manner which complies with the Zoning Code.
9. As shown in Exhibit 1, the City has provided no less than three (3) options which would allow the Applicant to be able to build a forty-five foot (45’) tall structure on the Property in a Zoning Code compliant manner. The Applicant has rejected all three options.

4-E-21-VA

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<sup>1</sup> Note that the City does not agree that these laws apply to the facts at issue regarding this Property.

<sup>2</sup> See, e.g., *Livingston Christian Sch. v. Genoa Charter Twp.*, 858 F.3d 996, 1003 (6th Cir. 2017); *World Outreach Conference Ctr. V. City of Chicago*, 591 F.3d 531, 539 (7th Cir. 2008); *Living Water Church of God v. Charter Twp. of Meridian*, 258 F. App'x 729, 736 (6th Cir. 2007); *Westchester Day Sch. v. Vill. of Mamaroneck*, 417 F. Supp. 2d 477, 544 (S.D.N.Y. 2006), *aff'd*, 504 F.3d 338 (2d Cir. 2007); *C.L. for Urb. Believers v. City of Chicago*, 342 F.3d 752, 762 (7th Cir. 2003); see also 146 Cong. Rec. S7776; see also *Statement of the Department of Justice on the Land Use Provisions of RLUIPA with Questions and Answers* (June 13, 2018); *Letter from Department of Justice, Office of the Assistant Attorney General, Vanita Gupta* at p. 3 (December 15, 2016).

<sup>3</sup> See, e.g., *Andon, LLC v. City of Newport News, Va.*, 813 F.3d 510, 515 (4th Cir. 2016); *Living Water Church of God*, 258 F. App'x at 739; *Episcopal Student Found. v. City of Ann Arbor*, 341 F. Supp. 2d 691, 704 (E.D. Mich. 2004); *Midrash Sephardi, Inc. v. Town of Surfside*, 366 F.3d 1214, 1235 (11th Cir. 2004) n.17; *Prater v. City of Burnside, Ky.*, 289 F.3d 417, 422 (6th Cir. 2002).

<sup>4</sup> See, e.g., *Living Water Church of God*, 258 F. App'x at 733; *Petra Presbyterian Church v. Vill. of Northbrook*, 489 F.3d 846, 851 (7th Cir. 2007); *Prater*, 289 F.3d at 433.

<sup>5</sup> See, e.g., *Livingston Christian Sch.*, 858 F.3d at 1002; *Layman Lessons, Inc. v. City of Millersville, Tenn.*, 636 F. Supp. 2d 620, 647 (M.D. Tenn. 2008); *Living Water Church of God*, 258 F. App'x at 734; *Midrash Sephardi, Inc.*, 366 F.3d at 1227; see also *Letter from Department of Justice, Office of the Assistant Attorney General, Vanita Gupta* at p. 3 (December 15, 2016).

<sup>6</sup> *Adam Cmty. Ctr. v. City of Troy*, 381 F. Supp. 3d 887, 902 (E.D. Mich. 2019) (*Livingston Christian Sch.*, 858 F.3d at 1004 (citing *Westchester Day Sch.*, 504 F.3d at 352)).

<sup>7</sup> *Adam Cmty. Ctr.*, 381 F. Supp. 3d at 902 (citing *Livingston Christian Sch.*, 858 F.3d at 1004 (quoting *Saints Constantine & Helen Greek Orthodox Church, Inc. v. City of New Berlin*, 396 F.3d 895, 901 (7th Cir. 2005))).

<sup>8</sup> *Adam Cmty. Ctr.*, 381 F. Supp. 3d at 902 (citing *Livingston Christian Sch.*, 858 F.3d at 1004 (citing *Andon*, 813 F.3d at 515)).

<sup>9</sup> *Adam Cmty. Ctr.*, 381 F. Supp. 3d at 902 (citing *Livingston Christian Sch.*, 858 F.3d at 1004 (citing *Petra Presbyterian Church*, 489 F.3d at 851)).

<sup>10</sup> *Livingston Christian Sch.*, 858 F.3d at 1002 (citing *Bethel World Outreach Ministries v. Montgomery Cty. Council*, 706 F.3d 548, 555–57 (4th Cir. 2013)).

<sup>11</sup> *Adam Cmty. Ctr.*, 381 F. Supp. 3d at 902 (E.D. Mich. 2019) (citing *Livingston Christian Sch.*, 858 F.3d at 1004).

<sup>12</sup> *Livingston Christian Sch.*, 858 F.3d at 1002 (6th Cir. 2017) (citing *Bethel World Outreach Ministries*, 706 F.3d at 555–57).

<sup>13</sup> City Zoning Code, App'x B, Zoning Code, Art. 2.3.



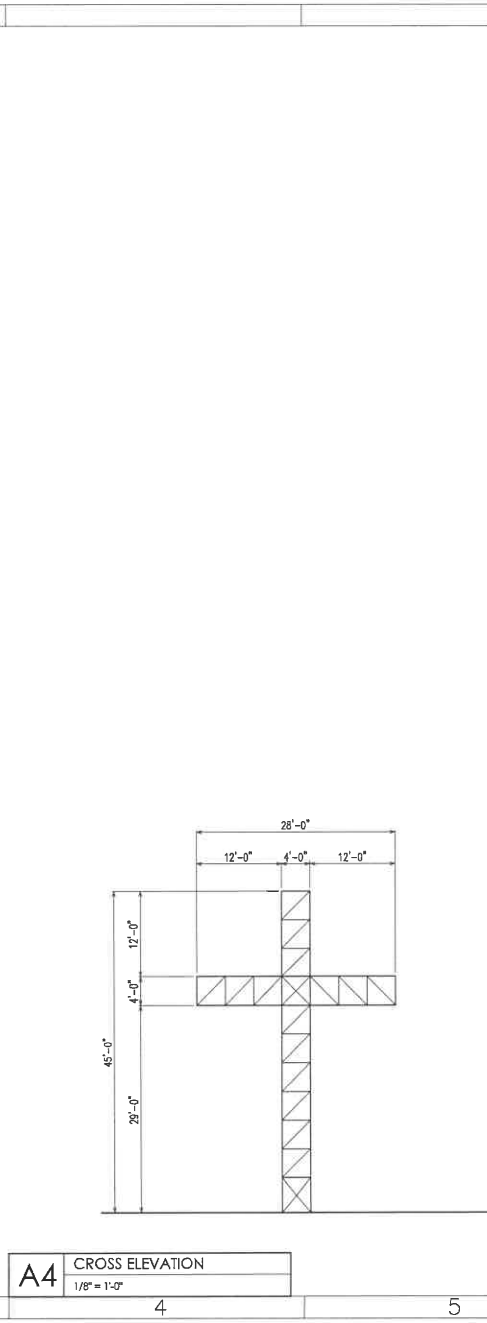
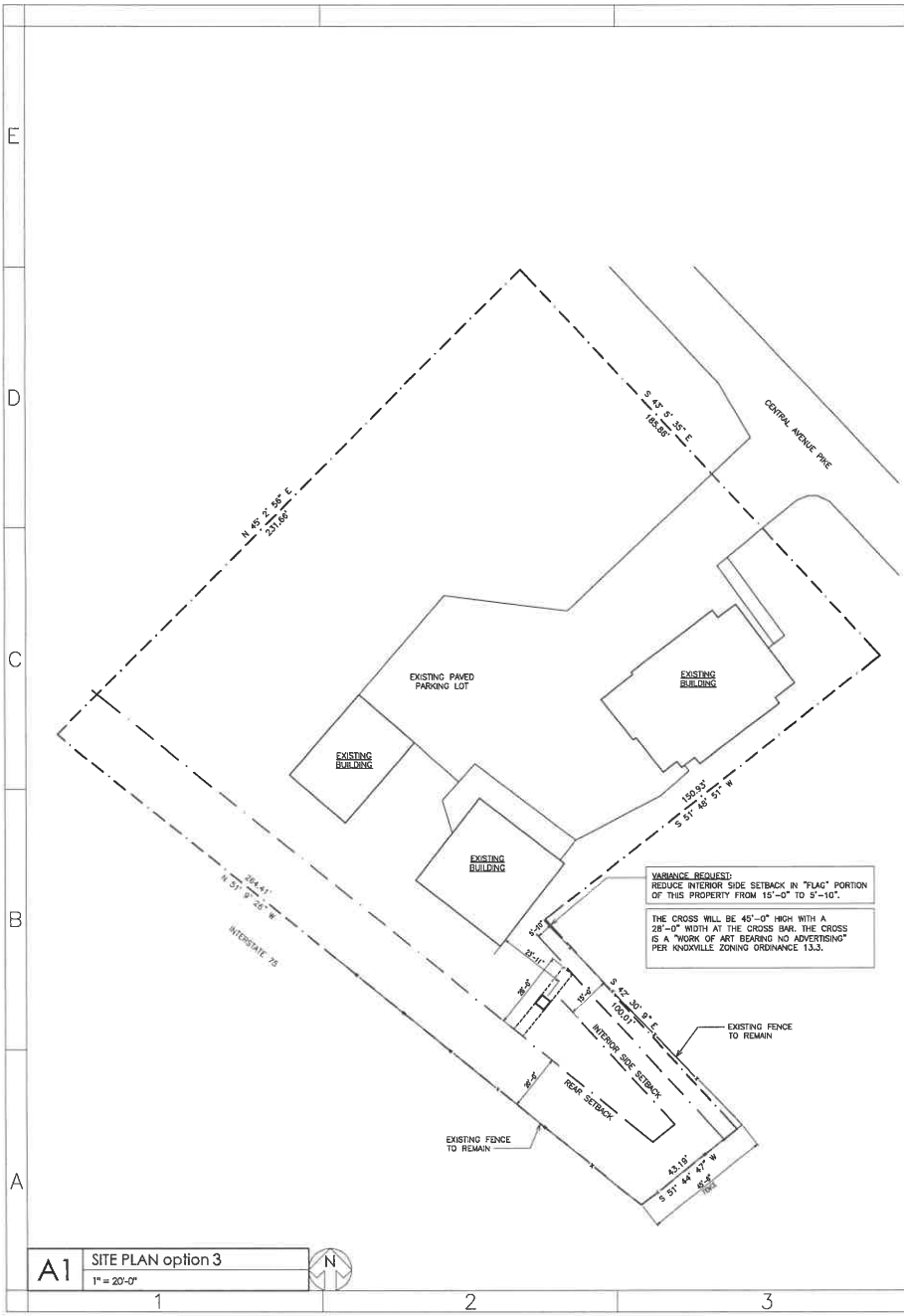
**Exhibit 1**

The following table summarizes the timeline for the City’s and the Applicant’s interactions.

| <b>Time</b>                 | <b>City Discussions/Potential Solutions</b>   | <b>Applicant Response</b>  |
|-----------------------------|---|--|
| May 2020<br>-<br>Dec. 2020  | The Applicant could install the structure as an accessory use. <i>Accessory Structures</i> can be up to 18’ tall in any zoning district under Art. 10.3.A.4.  | Applicant’s designer Damon Falconnier filed a variance request with a site plan on November 9, 2020. The request was to increase the height of an <i>Accessory Structure</i> from 18’ to 45’ tall. The BZA denied the request on December 17, 2020 due to a lack of hardship.  |
| June 2020<br>-<br>Mar. 2021 | The Applicant could attach the structure to the <i>Principal Building</i> Backflow Specialty Co. uses for its office, which would allow it to be up to 45’ tall in the Office zone under Table 5-1 in Art. 5.3.   | Rejected.<br><br>Applicant’s cited reason included the desire to install the structure closer to I-640 so that travelers could easily see it then pull over to go pray at the base of the structure.   |
| June 2020<br>-<br>Mar. 2021 | The Applicant could attach the structure to the second <i>Principal Building</i> used for storage, which would allow it to be up to 45’ tall in the Office zone under Table 5-1 in Art. 5.3. This would also allow the structure to be moved closer to I-640 per Applicant’s stated wishes.   | Rejected/option not pursued.   |
| Jan. 2021<br>-<br>Mar. 2021 | The Applicant could install a small <i>Principal Building</i> at the base of the structure, and the City would consider this a <i>Principal Building</i> . This would allow the structure to be up to 45’ tall under Table 5-1 in Art. 5.3.<br><br>Options the Applicant and designer Damon Falconnier brought up for this small <i>Principal Building</i> included a small worship room for people to sit and worship, an ADA-accessible restroom for drivers traveling at night, etc. | Rejected.<br><br>Applicant’s cited reasons included increased costs and the decision that an attached worship room or ADA-accessible restroom would detract from the message.<br><br>Applicant’s attorney Ben Mullins filed a variance request and an appeal of the Zoning Administrator’s decision regarding the categorization of this structure as an <i>Accessory Structure</i> . The BZA will consider this item on April 20, 2021. |
| Mar. 2021<br>-<br>Present   | City Law Department reached out to Applicant’s attorney inquiring about other design options which would allow the Applicant to reduce costs for the <i>Principal Building</i> and whether another meeting with Plans Review staff is needed.   | No action taken to date.   |

Exhibit 1

U-E-21-VA



**A1** SITE PLAN option 3  
 1" = 20'-0"

**A4** CROSS ELEVATION  
 1/8" = 1'-0"

**FALCONNIER**  
 DESIGN COMPANY  
 4622 Chambliss Avenue  
 Knoxville, TN 37919  
 Phone 865-584-7868  
 Fax 865-584-3137  
 falconco@gmail.com  
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PRELIMINARY  
 NOT FOR CONSTRUCTION  
 03/08/21

**CROSS ARTWORK**

BLACK OAK HEIGHTS  
 BAPTIST CHURCH  
 4605 CENTRAL AVENUE PIKE  
 KNOXVILLE, TN 37912

**SITE PLAN & ELEVATION**

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| CHECKED BY:  | DAF      |
| ISSUED:      | ~        |
| REVISION(S): | ~        |
| FILE:        | 2020-071 |

**C-1**

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ARTHUR G. SEYMOUR, JR.  
(1945 - 2019)

*of counsel*  
JASON T. MURPHY

March 11, 2021

City of Knoxville  
**Board of Zoning Appeals**  
City-County Building  
400 Main Street, Suite 505  
Knoxville, TN 37902

Re: Proposed Cross at 4605 Central Ave. Pike.

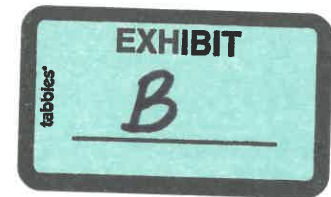
Dear Knoxville Board of Zoning Appeals:

The applicant is seeking to construct a stand-alone 45-foot cross on excess property owned by his family. This cross is a "stand-alone work of art bearing no advertising" pursuant to Sec. 13.3 of the zoning ordinance. See Site Plan Cross Elevation attached as to Variance Application as Exhibit A. While the applicant was initially told that the cross qualified as a second principal building on the lot, and could be constructed to the maximum of 45', that interpretation was changed it would only be an accessory structure with a height limit of 18'. This interpretation, that a stand-alone work of art cannot be a principal use and building (without meeting a minimum occupancy requirement), is being appealed.<sup>1</sup> Alternately, if the interpretation is upheld, then a variance for height of an accessory structure is required to match the allowed height of a principal structure. Additionally, a setback for the interior side setback from 15' to 5'-10" is required. For more particular factual background concerning the history and purpose of this project, please see the document attached hereto<sup>2</sup> titled "The Cross Project."

**A. The placement of a cross qualifies as the exercise of religion under Tenn. Code Ann. § 4-1-407.**

<sup>1</sup> A height variance for an accessory use was denied by this Board on December 17, 2020 (See BZA No. 12-A-20-VA) and that denial was timely appealed to City Council. At that time, the undersigned became involved in the appeal and began conversations with both Codes and the City Legal Department about the issues raised in the original application and additional issues raised by the undersigned. It was the opinion of the City Law Department that all issues sought to be raised on appeal to City Council had not been raised before BZA. Therefore, to ensure that all matters are properly considered and preserved, the applicant withdrew its appeal to City Council and refiled this variance application. However, it reserves the argument that additional matters on appeal to City Council from the BZA can be raised at a *de novo* hearing and arguments that matters involving the interpretation of state statute may be raised during an appeal.

<sup>2</sup> All prior materials submitted in support of 12-A-20-VA, and its withdrawn appeal to City Council are attached to the application as Exhibit C.



This Board's role in approving or denying this request for a variance is governed by Tennessee's Preservation of Religious Freedom Act ("PRFA"), Tenn. Code Ann. § 4-1-407. The PRFA "prohibit[s] the imposition of a law or regulation that substantially burdens the exercise of religion, including zoning regulations." *Ward v. Metro. Gov't of Nashville & Davidson Cty.*, No. M2018-00633-COA-R3-CV, 2019 Tenn. App. LEXIS 186, at \*19 (Ct. App. Apr. 17, 2019). Any denial of a variance or interpretation would qualify as a substantial burden on the applicant's free exercise of religion (especially since the applicant is willing to limit the height of the cross to the same height allowed by a principal building in the Office zone). The stated purpose of the Cross-Project is to demonstrate a "timeless symbol of hope" and to convey the message that "[t]here is hope because Jesus died for you." Denying this application will necessarily curtail my clients' ability to display and engage in religiously motivated conduct. The PRFA relevantly provides the following:

(b) Except as provided in subsection (c), no government entity shall substantially burden a person's free exercise of religion even if the burden results from a rule of general applicability.<sup>3</sup>

(c) No government entity shall substantially burden a person's free exercise of religion unless it demonstrates that application of the burden to the person is:

- (1) Essential to further a compelling governmental interest; and
- (2) The least restrictive means of furthering that compelling governmental interest.

Tenn. Code Ann. § 4-1-407. As defined in the act, "substantially burden" means to inhibit or curtail religiously motivated practice. Tenn. Code Ann. § 4-1-407(a)(7). Although this act was modelled after and is substantially similar to its federal equivalent, the Religious Freedom Restoration Act, 42 U.S.C.S. § 2000, the Tennessee PRFA confers more substantial protection of the right to free exercise of religion in two ways: the government bears a higher standard of proof to justify its action in curtailing religious practice, and the action must be *essential* to the government's compelling interest. The PRFA is clear that the government bears the burden of demonstrating those factors listed in subsection (c) when an individual challenges a government act restricting religious exercise. The government must demonstrate each element, as such term is defined in the PRFA, by meeting "the burdens of going forward with the evidence and of persuasion under the standard of clear and convincing evidence[.]" Tenn. Code Ann. § 4-1-407(a)(1). The Tennessee Court of Appeals identified and described these differences in *Johnson v. Levy*, No. M2009-02596-COA-R3-CV, 2010 Tenn. App. LEXIS 14, at \*1 (Tenn Ct. App. Jan. 14, 2010):

To satisfy Tennessee's clear and convincing standard the evidence must establish that the truth of the facts asserted is highly probable, *In re Audrey S.*, 182 S.W.3d 838, 861 (Tenn. Ct. App. 2005), and that it eliminates any serious or substantial

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<sup>3</sup> Because a neutral application of the zoning ordinance or building code is a "rule of general applicability" the City or its administrative agencies do not have to have any intent or malice in restricting or burdening a religiously motivated purpose to meet the definition of "substantial burden."

doubt about the correctness of the conclusions drawn from that evidence. *In re Valentine*, 79 S.W.3d 539, 546 (Tenn. 2002); *In re J.J.C.*, 148 S.W.3d 919, 925 (Tenn. Ct. App. 2004). To constitute clear and convincing evidence, it must produce in the fact-finder's mind a firm belief or conviction regarding the truth of the facts sought to be established. *Ray v. Ray*, 83 S.W.3d 726, 733 (Tenn. 2001); *In re A.D.A.*, 84 S.W.3d 592, 596 (Tenn. Ct. App. 2002). Therefore, Tennessee's religious freedom statute places a significantly heightened burden of proof on the governmental entity.

The second difference is that in order to satisfy strict scrutiny under RFRA, the federal government must demonstrate that the proposed action is "in furtherance of a compelling governmental interest." 42 U.S.C. § 2000bb-1(b)(1) (emphasis added). By contrast, in Tennessee the governmental agency must prove that its proposed course of action is "essential to further a compelling governmental interest." Tenn. Code Ann. § 4-1-407(c)(1) (emphasis added). The distinction between "in furtherance" and "essential" is more than semantics; it reveals that the Tennessee General Assembly intended to provide greater protection of religious freedom than that afforded by the federal RFRA. Under Tennessee's religious freedom statute, the governmental agency has to prove by clear and convincing evidence that the action it seeks to take is essential to furthering that compelling governmental interest. See Tenn. Code Ann. § 4-1-407(c)(1).

*Id.*

If this Board denies the variance application, this will create a substantial burden on my client's sincerely held religious beliefs because the placement of a cross is display of dedication and a method of evangelism, both fundamental tenets of the Christian faith. If this matter were ultimately challenged in litigation,<sup>4</sup> the burden of proof would be on the City to prove beyond any serious or substantial doubt that the decision was essential to promote a compelling government interest, and that the decision was the least restrictive means of doing so. Although the City of Knoxville has an interest in enforcing the zoning code to preserve the health and safety of the public, denying my clients' application for the variance is neither essential to this interest nor the least restrictive means.

Regardless, the City bears the burden of demonstrating by a significantly heightened standard of proof that the ordinance prohibiting the placement of the cross at 45-feet is the least restrictive means of furthering the City's interest. See *Ward v. Metro. Gov't of Nashville & Davidson Cty.*, No. M2018-00633-COA-R3-CV, 2019 Tenn. App. LEXIS 186, \*\*23-24 (Ct. App.

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<sup>4</sup> The PRFA also provides the following: A person whose religious exercise has been burdened by government in violation of this section may assert that violation as a claim or defense in any judicial or administrative proceeding and may obtain such declaratory relief, monetary damages as may properly be awarded by a court of competent jurisdiction, or both declaratory relief and monetary damages. A person who prevails in any proceeding to enforce this section against a government entity may recover the person's reasonable costs and attorney's fees. Tenn. Code Ann. § 4-1-407(e).

Apr. 17, 2019) (holding that the construction of a micro-home village for the homeless constituted the exercise of religion under Tenn. Code Ann. § 4-1-407, and explaining that although the government had a compelling interest, “in the unique procedural posture of this case, the [government had] the burden of showing that imposing the RS 10 zoning requirements on this project would be the least restrictive means of furthering that interest.”) In the *Ward* case, the Tennessee Court of Appeals upheld the BZA’s decision to grant accommodation for the exercise of religiously motivated conduct.

My clients have acquired consent from the neighbors adjacent to the parcel that will bear the cross, negating the argument that the denial is essential to protect the health and safety of those who will be most impacted. Specifically, with respect to the height restrictions, there are virtually endless other means of serving the governments’ interest in protecting the public through the zoning code. Imposing the 18-foot height restriction is not the least restrictive means. A structure of 45-feet is allowable in the Office-O Zone for principal buildings. Merely a tenuous designation that this cross is an accessory structure cannot support the argument that the 18 feet restriction is the least restrictive means of furthering a government interest. For example, my clients could have applied to build a freestanding church topped with a cross at 45 feet and would have been in complete compliance with the zoning code. The City of Knoxville’s I designation of the type of structure cannot meet the government’s burden of proof that 18-feet is the least restrictive means of furthering its interest.

Given the heightened burden that the City must satisfy in upholding the denial of my clients’ application, the PRFA gives a type of super-priority to religious land uses. The City of Knoxville cannot curtail religiously motivated practice through its zoning ordinances. Based on all the foregoing considerations, the BZA must grant my clients’ application for a variance.

**B. The cross qualifies as a principal building, subject to a 45 feet height restriction, because the Office Zone allows for dual principal uses, and the cross is wholly unrelated to the existing use of the property.**

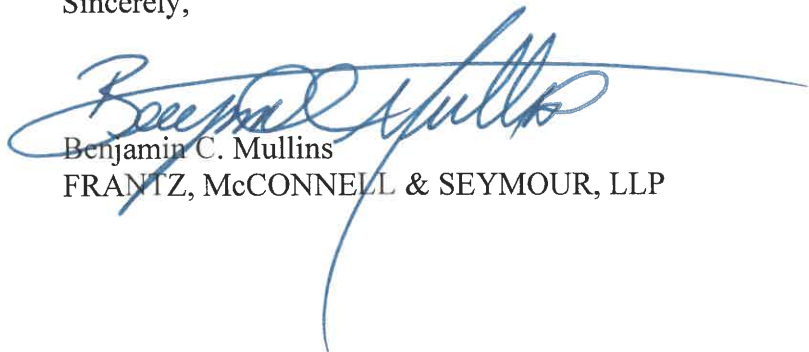
Currently, the property at 4605 Central Avenue Pike, Knoxville Tennessee 37912 serves a commercial use. It is the primary business address for Backflow Specialty Co., Inc., a Knoxville based for-profit business. The owners and applicant are religiously motivated to place the cross on the property; however, the religious use of the cross is not connected to the commercial use of the other principal building on the property.

“A lot may contain more than one principal use, so long as each principal use is allowed in the district. Each principal use is approved separately. In certain cases, uses are defined to include accessory uses that provide necessary support or are functionally integrated into the principal use. Multiple principal uses are not permitted in the EN, RN-1, and RN-2 Districts.” City of Knoxville Municipal Code, Appx. B Art. 9.1(D). Therefore, this lot may serve both as the principal use of a commercial office and as the location of a religiously motivated stand-alone work of art bearing no advertisement.

The Zoning Code defines a principal building as follows: “Principal Building. A non-accessory *structure* in which a principal use of the lot on which it is located is conducted.” City of Knoxville Municipal Code, Appx. B Art. 2.3 (*emphasis added*). Moreover, “Structure” is defined as “[a] combination of materials to form a construction for *use or occupancy*, whether installed on, above, or below, the surface of land or water.” With the conjunction “or” being used instead of “and”, the ordinance does not mandate that every structure be a building that is capable of occupancy in order to have a use, and this definition conclusively demonstrates that a structure may qualify as a principal building. Conversely, the Code defines an accessory structure as follows: “Accessory Structure. A minor structure which is subordinate in area, extent, and purpose to a principal building, the use of which is customarily incidental to that of a main building and located on the same lot therewith.” City of Knoxville Municipal Code, Appx. B Art. 2.3. If the zoning ordinance wanted to be clear that every principal building contain a structure that is capable of occupancy, it could have easily replaced the “or” with an “and” to eliminate any doubt as to the ordinance’s intent.

The designation of the cross as an accessory structure is incorrect. The cross is neither subordinate to the purpose of the current sole principal building, nor is the cross incidental to the commercial use of the lot. The placement of the cross would create a second principal use on the lot, as allowable under City of Knoxville Municipal Code, Appx. B Art. 9.1(D). A neutral evaluation of the mandates of the zoning code indicates that the cross is a principal building, and its current proposed height complies with all applicable law. Therefore, the variance application for the placement of the 45-foot cross was completely unnecessary to effectuate compliance with the applicable zoning laws. Simply put, this Board must rule in my clients’ favor, allow my clients to proceed forward with the placement of the cross, and grant their application.

Sincerely,



Benjamin C. Mullins  
FRANTZ, McCONNELL & SEYMOUR, LLP

BCM:rph  
Enc.

 CITY OF KNOXVILLE **APPEAL OF BZA DECISION**

(Please Note: Original application is made a part of this application.)

Type : New Structure Modification of Existing Structure Off Street Parking Signage Other: Accessory

Decision by:  BZA  Other: \_\_\_\_\_ Date of Decision: 12/17/20  
Jurisdiction:  City \_\_\_\_\_ Councilman District  County \_\_\_\_\_ Commission District

Original Applicant Name: Damon A. Falconnier Original File Number: 12-A-20-VA  
Name of Owner of Subject Property: Ginny Stinnett - Backflow Specialty Company  
Description of Subject Property (Include city block and parcel number or lot number): Parcel #068LC01801

Zoning map of all property within 300 feet of the subject property is attached.

**DECISION BEING APPEALED**

We are appealing the decision to deny the variance of the cross height from 18 to 45 feet. We also appeal the decision that the cross is an accessory structure rather than a principal structure as originally indicated by the City.

**REASON FOR THE APPEAL**

Attach additional pages, if necessary. See "The Cross Project" submitted by Dr. Todd Stinnett and all attachments

**PETITIONER INFORMATION**

Name of Petitioner: Dr. Todd Stinnett  
Petitioner's Interest in the Matter (Include a description of affected property owned by Petitioner): Son of the owner, Ginny Stinnett, and Senior Pastor of Black Oak Heights Baptist Church, Knoxville, TN

Application Authorization: *I hereby certify that I am the applicant/authorized representative for the above named petitioner.*

Signature:  1/4/21

All correspondence should be sent to: Name (Print): Dr. Todd Stinnett

8115 Canter Lane Powell TN 37849  
Street Address City State Zip

Phone: 423-273-0488 Fax: \_\_\_\_\_ E-mail: revtodd1977@gmail.com

**For Staff Use Only**

Application Accepted by Staff Member: Juliana Leclair

Appeal Fee Amount: \$130.00 - paid Date Appeal Received: 1/4/2021

**BODY WHO WILL HEAR THE APPEAL & MEETING DATE OF THE APPEAL**

City Council - 6 p.m.

01 • 26 • 2021  
Month • Date • Year

*- Appeal deadline was extended due to holiday on 01/01/2021.  
per Bryan Berry.*

March 2019

**EXHIBIT**

tabbles

C



**The Cross Project**  
**Prepared by Dr. Todd Stinnett**  
**Submitted to Knoxville City Council**  
**1/4/21**

Larry and Ginny Stinnett founded Backflow Specialty Company (BSC) in 1995. Prior to that, Larry worked at Knoxville Utilities Board for 29 years, and Ginny was a bookkeeper for the Athletic House and Rocky Top Materials. The company began on the back porch of their home, and the first company vehicle was a Subaru hatchback. Today, BSC is East Tennessee's leader in cross connection – a million-dollar company employing 10 people who provide backflow sales, testing, repair, and installation.

BSC moved to its current location – 4605 Central Ave. Pike, Knoxville, TN 37912 – in May 2005. Upon moving into the property, the owners went through the process to have it successfully rezoned "Office" from "Residential." For the past 15 years, BSC has been generating thousands of dollars of revenue for the City of Knoxville and for Knox County. They are a true American success story.

Larry was diagnosed with terminal prostate cancer in 2006. Being a born-again believer in Jesus Christ, he wanted to do all he could during his remaining days to see people won to faith in Jesus. For that reason, he constructed a Unistrut cross, filled it with lights, and placed it atop the back porch of BSC. If you drive by BSC from I-75 North, you can see the cross anytime, day or night (see Attachment 1).

Larry passed away in November 2012. Since then, Ginny and her son Brad have kept the cross in place and even changed the interior lighting to LED to try and make it more visible at night.

Larry and Ginny's other son, Todd, is the Senior Pastor at Black Oak Heights Baptist Church (BOHBC) in Knoxville – only about 1 mile from the BSC location. In early 2020, he made contact with Jim Potter – the founder of Cross Ministries – responsible for the construction of many crosses along interstates and highways across the nation. He inquired about the possibility of a cross at the BSC site on I-75.

Jim gave Todd a set of plans for a 60-foot tall, 40-foot wide cross, and those plans were submitted to Bryan Berry, Deputy Director of Zoning & Development Services in May 2020. Bryan informed Todd (via email and phone conversation) that the cross would not be permitted at 60 feet, but would be permitted at 45 feet because "more than one principal building is permitted on a lot" zoned Office, "provided that all structures comply with the dimensional standards of the district." In this case, Bryan said that "the max building/structure height is 45 feet in the Office zone." (see Attachment 2)

That being the case, Todd began working on a site plan reflecting a 45-foot height. In doing so, he led BOHBC to secure the services of Falconnier Design Company on October 8<sup>th</sup>, 2020. Their agreement cost the church \$2,500 plus all costs for submission fees. (see Attachment 3)

Once Damon Falconnier began to work with Bryan Berry, he was also told that the max height of the cross would be 45 feet, but that a variance on setbacks for a principal structure would have to be obtained from the BZA. For that reason, Damon set a meeting with the owners of Handley Insurance Resources (BSC's neighbor) and secured their permission to allow the cross to fall within their setbacks. (see Attachment 4 – Original BZA App & Original Letter From Handley Insurance – prior to revisions)

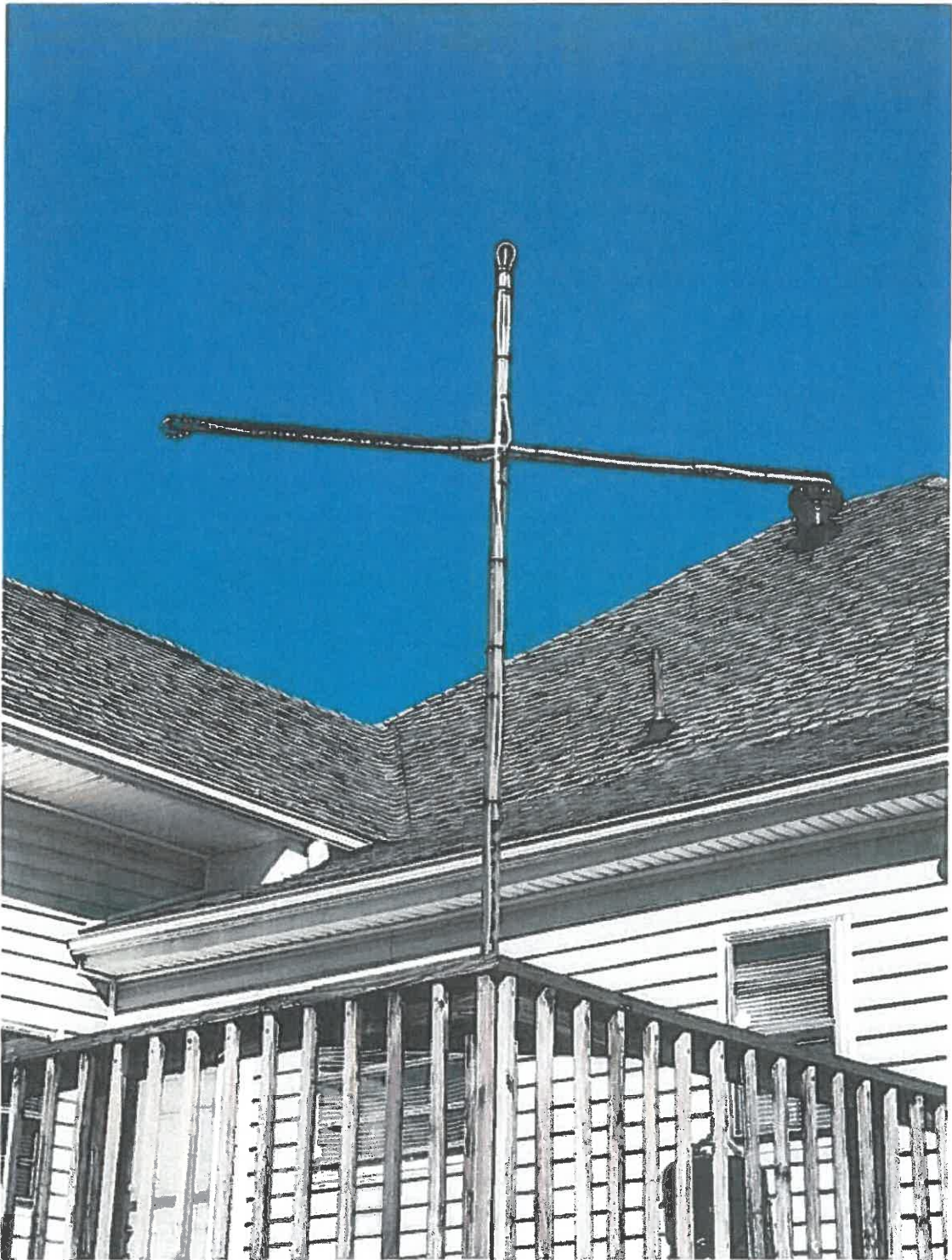
After filing the Board of Zoning Appeals Application on behalf of BSC on 11/9/20, Damon was contacted by Bryan Berry (via phone on 11/24/20) and told that city officials no longer consider the cross a principal structure, but now consider it an accessory structure, meaning that the height could not be more than 18 feet. Though that was quite different from the City's original judgment, the application and letter were revised.

To summarize, **BSC and BOHBC are asking City Council to permit the variance on height to 45 feet for the following reasons:**

- All parties were originally told that the cross height could be 45 feet and spent money to secure a site plan reflecting that height. **We believe the City should stand by their original word that was given in print/in person/over the phone.**
- A property zoned Office is **permitted to have more than one principal structure**, so there is no reason the cross could not be permitted up to 45 feet.
- Handley Insurance Resources – neighbor to BSC – has **granted their written approval** of BSC constructing a cross up to 45 feet and within their setbacks.
- A cross of 18 feet would create a **hardship for BSC** as it would create visual conflict with the company's main advertising sign.
- The Senior Director for Knox County Engineering and Public Works has indicated to Todd (in writing) that the cross **would be permitted in the county as designed** and would be treated as a sign rather than an accessory structure, with a max height of 50 feet.
- A 45-foot tall cross at BSC along I-75 would certainly **not be inconsistent with many other billboards and signs** around the Merchant Drive exit, as some signs in that area reach heights of 100 feet plus, and the Wallace Memorial cross just down the street reaches a height of 180 feet. There is a 45-foot tall billboard right next to the BSC property. (see Attachment 5)
- Permitting the cross on the BSC location would honor the **first-amendment rights of the owner** because it would not prohibit the free exercise of religion, nor would it infringe upon her freedom of speech.
- We are currently in the midst of the **worst mental health crisis in our community's history**. For instance, on December 28<sup>th</sup>, 2020, the Knoxville News-Sentinel reported that COVID-19 is hurting kids' mental health in "disastrous proportions." It's no secret that suicide attempts and successful suicides are rising dramatically. **Now is a time for hope**, and the cross is a timeless symbol of hope that needs no additional message attached. The cross says to the world, "There is hope because Jesus died for you."

For these many reasons, BSC and BOHBC are respectfully asking City Council to **overturn the BZA decision and permit the variance on the cross height to 45 feet.**

**Attachment 1**



## Attachment 2

12/23/2020

Gmail - BZA application for 4605 Central Avenue Pike



revtodd1977 <revtodd1977@gmail.com>

### BZA application for 4605 Central Avenue Pike

9 messages

Bryan Berry <BBerry@knoxville.gov>  
To: revtodd1977 <revtodd1977@gmail.com>

Wed, Jun 17, 2020 at 3:25 PM

Todd,

The BZA application submitted to construct a 60 foot tall cross on the property at **4605 Central Avenue Pike** is claiming a cross should be considered a sign exempt from sign regulations because it is a *work of art bearing no advertising* according to Article 13.3.N. The language in Article 13.3 states, *these signs are exempt from the regulations in this Article, but may be subject to other applicable laws and regulations.*

A sign by definition is still considered a structure according to the City zoning ordinance (Article 2.3). If a work of art bearing no advertising is exempt from sign regulations, it is still subject to other applicable regulations in the zoning ordinance as a structure. The property at **4605 Central Avenue Pike** is zoned Office and more than one principal building is permitted on a lot; provided that all structures comply with the dimensional standards of the district (Article 10.1.A). The max building/structure height is 45 feet in the Office zone.

Sincerely,

Bryan

Bryan Berry <BBerry@knoxville.gov>  
To: revtodd1977 <revtodd1977@gmail.com>

Wed, Jun 24, 2020 at 9:47 AM

Todd,

<https://mail.google.com/mail/u/0/?ui=b1de2de3b7&view=pt&search=835permthid=thread-763A1689775413365833021&asqj=1&siml=msg-763A1689775413365833021> 4/24

12/23/2020

Gmail - BZA application for 4605 Central Avenue Pike

Just a reminder, the City will need a site plan and the \$250 application fee before noon this Friday if the application is to be on the July BZA agenda. If you would like to postpone in order to decide what is the best option moving forward we can hold on to the application. Depending upon your decision we can incorporate the site plan with the existing application if you choose to move forward. Again; you will be looking at variances to construct a 60' tall structure instead of 45'. In addition to variances to reduce the setbacks based on how the arms of the cross are positioned in relation to the existing property lines. I see two options at this point:

1. Determine the size of the cross you want to construct and the number of variances you will need to request based on the location of it as well. Provide a site plan showing the location of the cross arms in relation to the property line. Do before noon this Friday and be on the July BZA agenda, or provide the site plan at a later date and be on the August BZA agenda.
2. Revise the drawings to construct a cross that can meet the height and setback requirements in relation to where you would like to place it on the property. Then proceed forward without needing variances.

If I do not hear from you before noon this Friday the application will automatically default to August BZA agenda.

Bryan

### Attachment 3



Architecture • Interior Design • Master Planning • Consulting  
4622 Chambers Avenue • Knoxville Tennessee 37919 • p 865.584.7868 • 865.584.3139 www.falconnier.net

October 2, 2020

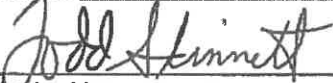
Pastor Todd Stennett  
Black Oak Heights Baptist Church  
405 Black Oak Drive  
Knoxville, TN 37912  
revtodd1977@gmail.com

#### CROSS SUBMISSION

This proposal is for assisting the church with approval for construction a cross next to interstate. The following is our suggested scope of services:

##### I. Scope of Services

- a. We will meet with the adjacent owner and discuss options
- b. We will prepare the Preliminary Site Plan for submission to BZA
- c. We will prepare the elevations of the cross for the BZA
- d. We will represent the owner before the Board of Zoning Appeals
- e. We will meet with the City of Knoxville representatives as required
- f. Hourly proposal with a maximum of \$2,500 + submission fees
- g. We will perform the scope of services on an hourly basis not to exceed \$2,500 + submission fees

  
\_\_\_\_\_  
Authorized by

10/8/20  
\_\_\_\_\_  
Date

##### II. Additional Services, not included in the not to exceed fee above

- a. Construction Drawings and details for the Cross structure
- b. Foundation Design and details
- c. Civil Engineering Site Plan
- d. Electrical Design and drawings for cross lighting
- e. Color Renderings

## Attachment 4

|   |   |  |   |   |   |                    |                          |         |                                     |                                    |                                     |
|---|---|--|---|---|---|--------------------|--------------------------|---------|-------------------------------------|------------------------------------|-------------------------------------|
| <b>File #</b>   |   |  |   |   |   |                    |                          |         |                                     |                                    |                                     |
| <b style="font-size: 1.2em; margin-left: 20px;">BOARD OF ZONING APPEALS APPLICATION</b>   |   |  |   |   |   |                    |                          |         |                                     |                                    |                                     |
| Click on <a href="#">Meeting Schedule</a> , <a href="#">Deadlines</a> and <a href="#">Fees</a> for information on submitting an application to be heard at a monthly Board meeting.   |   |  |   |   |   |                    |                          |         |                                     |                                    |                                     |
| <b>APPLICANT INFORMATION</b>  | <b>APPLICANT IS:</b>  |  |   |   |   |                    |                          |         |                                     |                                    |                                     |
| Name: <b>Damon A. Falconnier, NCARB</b><br>Street Address: <b>4822 Chambliss Avenue</b><br>City, State, Zip: <b>Knoxville, TN 37919</b><br>Phone Number: <b>865-584-7868</b><br>Email: <b>faldesco@gmail.com</b>  | <table style="width: 100%; border-collapse: collapse;"> <tr> <td style="padding: 2px;">Owner</td> <td style="text-align: center; padding: 2px;"><input type="checkbox"/></td> </tr> <tr> <td style="padding: 2px;">Contractor</td> <td style="text-align: center; padding: 2px;"><input type="checkbox"/></td> </tr> <tr> <td style="padding: 2px;">Tenant</td> <td style="text-align: center; padding: 2px;"><input type="checkbox"/></td> </tr> <tr> <td style="padding: 2px;">Other</td> <td style="text-align: center; padding: 2px;"><input checked="" type="checkbox"/></td> </tr> </table> | Owner  | <input type="checkbox"/>  | Contractor  | <input type="checkbox"/>                    | Tenant             | <input type="checkbox"/> | Other   | <input checked="" type="checkbox"/> |                                    |                                     |
| Owner   | <input type="checkbox"/>  |  |   |   |   |                    |                          |         |                                     |                                    |                                     |
| Contractor  | <input type="checkbox"/>  |  |   |   |   |                    |                          |         |                                     |                                    |                                     |
| Tenant  | <input type="checkbox"/>  |  |   |   |   |                    |                          |         |                                     |                                    |                                     |
| Other   | <input checked="" type="checkbox"/>   |  |   |   |   |                    |                          |         |                                     |                                    |                                     |
| <b>THIS PROPOSAL PERTAINS TO</b>  |   |  |   |   |   |                    |                          |         |                                     |                                    |                                     |
| <table style="width: 100%; border-collapse: collapse;"> <tr> <td style="padding: 2px;">New Structure</td> <td style="text-align: center; padding: 2px;"><input type="checkbox"/></td> </tr> <tr> <td style="padding: 2px;">Modification of Existing Structure</td> <td style="text-align: center; padding: 2px;"><input type="checkbox"/></td> </tr> <tr> <td style="padding: 2px;">Off Street Parking</td> <td style="text-align: center; padding: 2px;"><input type="checkbox"/></td> </tr> <tr> <td style="padding: 2px;">Signage</td> <td style="text-align: center; padding: 2px;"><input type="checkbox"/></td> </tr> <tr> <td style="padding: 2px;">Other: <b>Freestanding Artwork</b></td> <td style="text-align: center; padding: 2px;"><input checked="" type="checkbox"/></td> </tr> </table>  |   | New Structure  | <input type="checkbox"/>  | Modification of Existing Structure                                    | <input type="checkbox"/>                    | Off Street Parking | <input type="checkbox"/> | Signage | <input type="checkbox"/>            | Other: <b>Freestanding Artwork</b> | <input checked="" type="checkbox"/> |
| New Structure   | <input type="checkbox"/>  |  |   |   |   |                    |                          |         |                                     |                                    |                                     |
| Modification of Existing Structure  | <input type="checkbox"/>  |  |   |   |   |                    |                          |         |                                     |                                    |                                     |
| Off Street Parking  | <input type="checkbox"/>  |  |   |   |   |                    |                          |         |                                     |                                    |                                     |
| Signage   | <input type="checkbox"/>  |  |   |   |   |                    |                          |         |                                     |                                    |                                     |
| Other: <b>Freestanding Artwork</b>  | <input checked="" type="checkbox"/>   |  |   |   |   |                    |                          |         |                                     |                                    |                                     |
| <b>THIS IS A REQUEST FOR</b>  |   |  |   |   |   |                    |                          |         |                                     |                                    |                                     |
| <table style="width: 100%; border-collapse: collapse;"> <tr> <td style="padding: 2px;"><input checked="" type="checkbox"/> Zoning Variance (Building Permit Denied)</td> <td style="padding: 2px;"><input type="checkbox"/> Extension of Non-Conforming Use/or Structure</td> </tr> <tr> <td style="padding: 2px;"><input type="checkbox"/> Appeal of Administrative Official's Decision</td> <td style="padding: 2px;"><input type="checkbox"/> Map Interpretation</td> </tr> </table>   |   | <input checked="" type="checkbox"/> Zoning Variance (Building Permit Denied) | <input type="checkbox"/> Extension of Non-Conforming Use/or Structure | <input type="checkbox"/> Appeal of Administrative Official's Decision | <input type="checkbox"/> Map Interpretation |                    |                          |         |                                     |                                    |                                     |
| <input checked="" type="checkbox"/> Zoning Variance (Building Permit Denied)  | <input type="checkbox"/> Extension of Non-Conforming Use/or Structure   |  |   |   |   |                    |                          |         |                                     |                                    |                                     |
| <input type="checkbox"/> Appeal of Administrative Official's Decision   | <input type="checkbox"/> Map Interpretation   |  |   |   |   |                    |                          |         |                                     |                                    |                                     |
| <b>PROPERTY INFORMATION</b>   |   |  |   |   |   |                    |                          |         |                                     |                                    |                                     |
| Street Address : <b>4605 Central Avenue Pike</b> City, State, Zip: <b>Knoxville, TN 37912</b><br>See XGIS.org for Parcel #: <b>068LC01801</b> and Zoning District: <b>"O"</b>   |   |  |   |   |   |                    |                          |         |                                     |                                    |                                     |
| <b>VARIANCE REQUIREMENTS</b>  |   |  |   |   |   |                    |                          |         |                                     |                                    |                                     |
| <p><b>City of Knoxville Zoning Ordinance Article 16.3</b><br/>         The City of Knoxville Board of Zoning Appeals shall have the power and authority to grant variances from terms of this ordinance according to the procedure and under the restrictions set out in this section.<br/>         The purpose of the variance is to modify the strict application of the specific requirements of this ordinance in the case of exceptionally irregular, narrow, shallow or steep lots, or other exceptional physical conditions, whereby such strict application would result in practical difficulty or unnecessary hardship which would deprive an owner of the reasonable use of his land. The variance shall be used only where necessary to overcome some obstacle which is preventing an owner from using his property as the zoning ordinance intended.</p> |   |  |   |   |   |                    |                          |         |                                     |                                    |                                     |
| <b>DESCRIPTION OF APPEAL</b>  |   |  |   |   |   |                    |                          |         |                                     |                                    |                                     |
| <p><b>Describe your project and why you need variances.</b></p> <p>The owner of the property at 4605 Central Avenue Pike, Backflow Specialty Co., would like to construct a free-standing cross art work on the "flag-shape" section of the property (see attached site plan). Due to the narrow width of the parcel, we request that the "Front" setback along the "flag shape" portion of the property be reduced from 15'-0" to 5'-10".<br/>         Knoxville zoning ordinance Section 13.3 defines the free-standing cross as a "work of art bearing no advertising".</p>  |   |  |   |   |   |                    |                          |         |                                     |                                    |                                     |
| <p><b>Describe hardship conditions that apply to this variance.</b></p> <p>The location of the cross artwork within the setbacks is intended to: 1) avoid visual conflict with existing bill boards and business signage and, 2) to not impede future buildings on the site. The owner of the adjacent property is in agreement with this request.</p>  |   |  |   |   |   |                    |                          |         |                                     |                                    |                                     |
| <b>APPLICANT AUTHORIZATION</b>  |   |  |   |   |   |                    |                          |         |                                     |                                    |                                     |
| <p><b>I hereby certify that I am the authorized applicant, representing ALL property owners involved in this request and that all owners have been notified of this request in writing.</b></p>   |   |  |   |   |   |                    |                          |         |                                     |                                    |                                     |
| <b>APPLICANT'S SIGNATURE</b>  |   |  |   |   |   |                    |                          |         |                                     |                                    |                                     |
| <b>DATE</b> <u>11/09/20</u>   |   |  |   |   |   |                    |                          |         |                                     |                                    |                                     |



4601 CENTRAL AVE. PIKE • P.O. BOX 12540 • KNOXVILLE, TENNESSEE 37912 • PHONE (865) 689-7770 • FAX (865) 688-5620 • www.handleyira.com

November 3, 2020

Mr. Scott Elder  
City of Knoxville Plans Review and Inspections  
400 Main Street  
City County Suite 475  
Knoxville, TN 37902

Re: 4601 Central Avenue Pike

Dear Mr. Elder,

We, the undersigned, owners of the property located at 4601 Central Avenue Pike (Parcel ID 068LC017) are in support of the zoning variance request for the adjacent property to the immediate west (4605 Central Avenue Pike) to reduce the side yard setback from 15'-0" to 5'-10". We are in support of this with the following caveat:

We understand the variance applies to the cross bar at a height of 36'-5" to the bottom from the existing grade. The distance from the property line to the base of the cross is 16'-10" which fits within the 15'-0" setback.

Please contact us if there are any questions.

Thank you.

Sincerely,

  
Chris E. Handley

  
Patricia M. Handley

Attachment 5





**CITY OF KNOXVILLE, TENNESSEE**  
**BOARD OF ZONING APPEALS**  
**DECISION**

Application filed for variance of requirements of the City of Knoxville Zoning Ordinance was considered by the Board of Zoning Appeals at the public hearing on 12/17/2020 at 4:00PM , in the Small Assembly Room of the City/CountBuilding, 400 Main Street, Knoxville.

BZ12A20VA      DAMON A. FALCONNIER,      (4605 CENTRAL AVENUE PIKE KNOX)  
NCARB

- 1 Increase the maximum height for a detached accessory structure from 18 feet to 45 feet for a freestanding work of art in the shape of a cross bearing no advertising (Article 10.3.A.4)  
DESCRIPTION: BOARD VOTED 5-0 TO DENY. JL  
12/17/2020: BZA Denied

Appeal to City Council: 01/04/2021  
Date of Council Hearing: 01/26/2021  
Council Action:  
Resolution Number, if approved:

Appeal to Chancery Court:  
Docket Number:  
Court Action:

**\*CONDITIONS OF APPROVAL**

1. Approved variances are limited to the variance request(s) as shown on the site plan submitted to the Board of Zoning Appeals.
2. A building permit may be issued on \_\_\_\_\_, if no appeal is filed with MPC within fifteen (15) days after the BZA meeting.

File #

12-A-20-VA



**BOARD OF ZONING APPEALS APPLICATION**

Click on Meeting Schedule, Deadlines and Fees for information on submitting an application to be heard at a monthly Board meeting.

| APPLICANT INFORMATION                 | APPLICANT IS:                             | THIS PROPOSAL PERTAINS TO:                                     |
|---------------------------------------|---|--|
| Name: Damon A. Falconnier, NCARB      | Owner <input type="checkbox"/>            | New Structure <input type="checkbox"/>                         |
| Street Address: 4622 Chambliss Avenue | Contractor <input type="checkbox"/>       | Modification of Existing Structure <input type="checkbox"/>    |
| City, State, Zip: Knoxville, TN 37919 | Tenant <input type="checkbox"/>           | Off Street Parking <input type="checkbox"/>                    |
| Phone Number: 865-584-7868            | Other <input checked="" type="checkbox"/> | Signage <input type="checkbox"/>                               |
| Email: faldesco@gmail.com             |   | Other: Accessory Structure <input checked="" type="checkbox"/> |

**THIS IS A REQUEST FOR:**

- Zoning Variance (Building Permit Denied)
- Extension of Non-Conforming Use/or Structure
- Appeal of Administrative Official's Decision
- Map Interpretation

**PROPERTY INFORMATION**

Street Address : 4605 Central Avenue Pike City, State, Zip: Knoxville, TN 37912  
 See KGIS.org for Parcel #: 068LC01801 and Zoning District: "O"

**VARIANCE REQUIREMENTS**

**City of Knoxville Zoning Ordinance Article 16.3**

The City of Knoxville Board of Zoning Appeals shall have the power and authority to grant variances from terms of this ordinance according to the procedure and under the restrictions set out in this section.

The purpose of the variance is to modify the strict application of the specific requirements of this ordinance in the case of exceptionally irregular, narrow, shallow or steep lots, or other exceptional physical conditions, whereby such strict application would result in practical difficulty or unnecessary hardship which would deprive an owner of the reasonable use of his land. The variance shall be used only where necessary to overcome some obstacle which is preventing an owner from using his property as the zoning ordinance intended.

**DESCRIPTION OF APPEAL**

Describe your project and why you need variances.

We are requesting a wavier from the Board of Zoning Appeals to increase the maximum height of an accessory structure located on this property adjacent to the interstate from 18 feet to 45 feet to match the allowable height of a principal structure on the property with the same zoning. The accessory structure and the overhead structure will be wholly located within the 5 foot setbacks on all sides of the accessory structure. This request would only apply to (1) accessory structure on this property.

REVISED

Describe hardship conditions that apply to this variance.

The location of the accessory structure within the setbacks is intended to: 1) avoid visual conflict with existing bill boards and business signage and, 2) to not impede future buildings on the site. The owner of the adjacent property is in agreement with this request.

**APPLICANT AUTHORIZATION**

I hereby certify that I am the authorized applicant, representing all property owners involved in this request and that all owners have been notified of this request in writing.

APPLICANT'S SIGNATURE

DATE 11/9/20

File #12-A-20-VA



CITY OF KNOXVILLE

**BOARD OF ZONING APPEALS APPLICATION**

**\*\*\*\*\*OFFICE USE ONLY\*\*\*\*\***

Is a plat required? Yes  No

Small Lot of record?

**VARIANCE REQUEST(S) WITH ORDINANCE CITATION(S):**

Increase the maximum height for a detached accessory structure from 18 feet to 45 feet for a freestanding work of art in the shape of a cross bearing no advertising (Article 10.3.A.4).

REVISED

**PROJECT INFORMATION**

Date Filed 11-18-2020

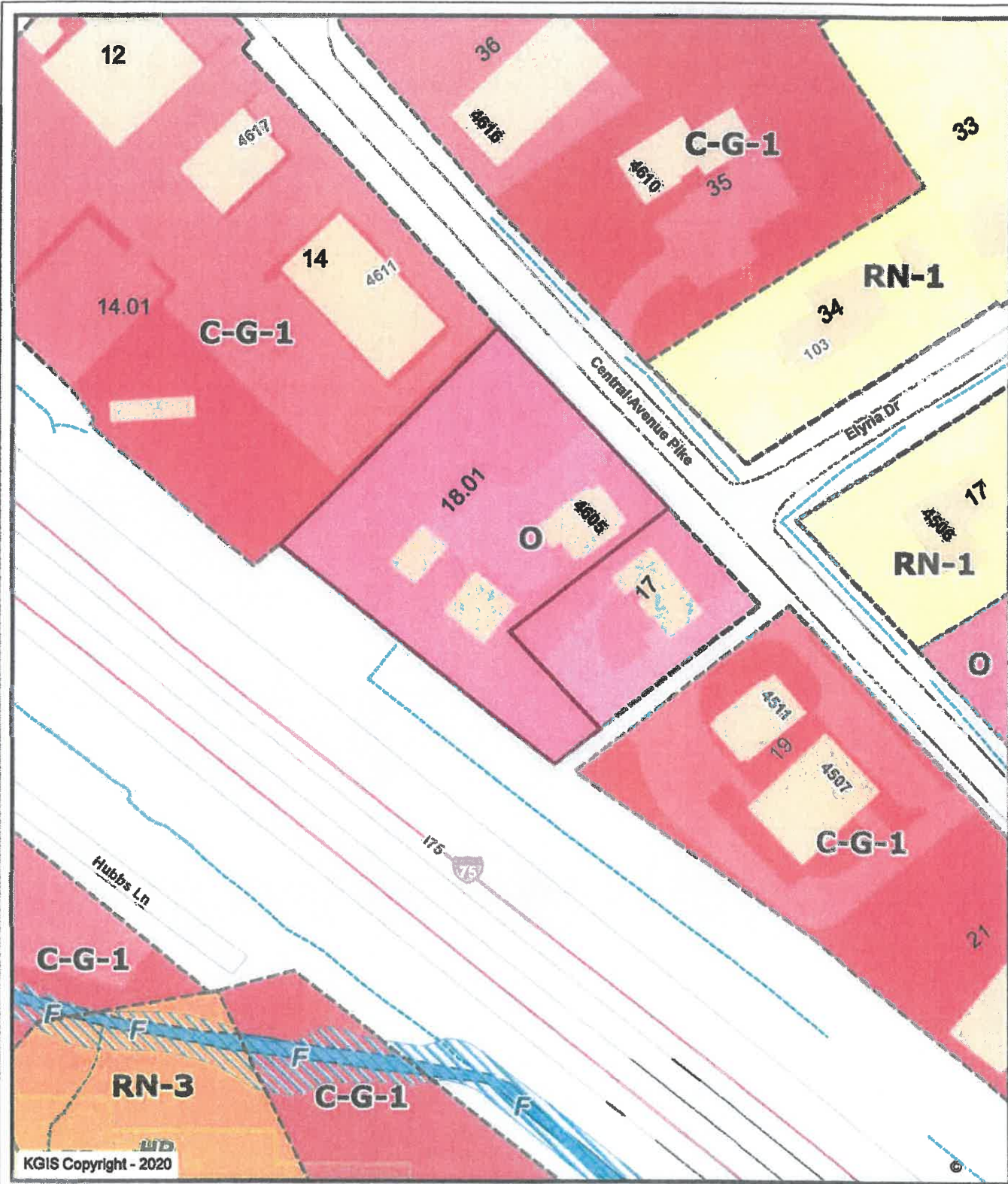
Fee Amount \$250

Council District 5

BZA Meeting Date 12-17-2020

PLANS REVIEWER Bryan Berry

DATE 11-19-2020



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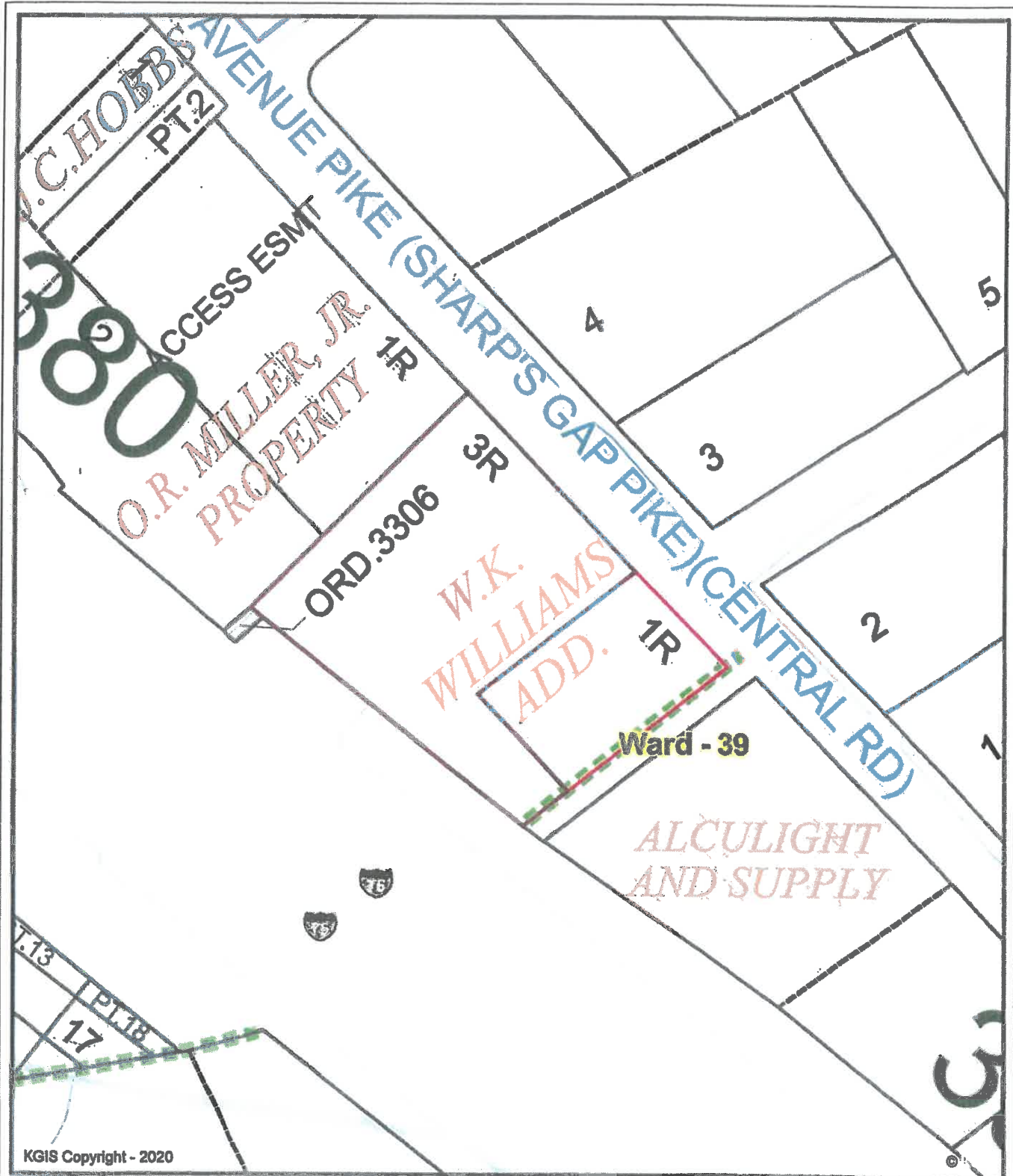
**4605 Central Ave. Pike**  
 12-A-20-VA  
 Damon A. Falconnier, NCARB

Printed: 11/12/2020 at 11:20:52 AM

0 50 100 200  
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**Knoxville - Knox County - KUB Geographic Information System**

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KGIS Copyright - 2020

4605 Central Ave. Pike  
12-A-20-VA

Damon A. Falconnier, NCARB

Knoxville - Knox County - KUB Geographic Information System

Printed: 11/12/2020 at 11:21:17 AM

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**4605 Central Ave. Pike**

12-A-20-VA

Damon A. Falconnier, NCARB

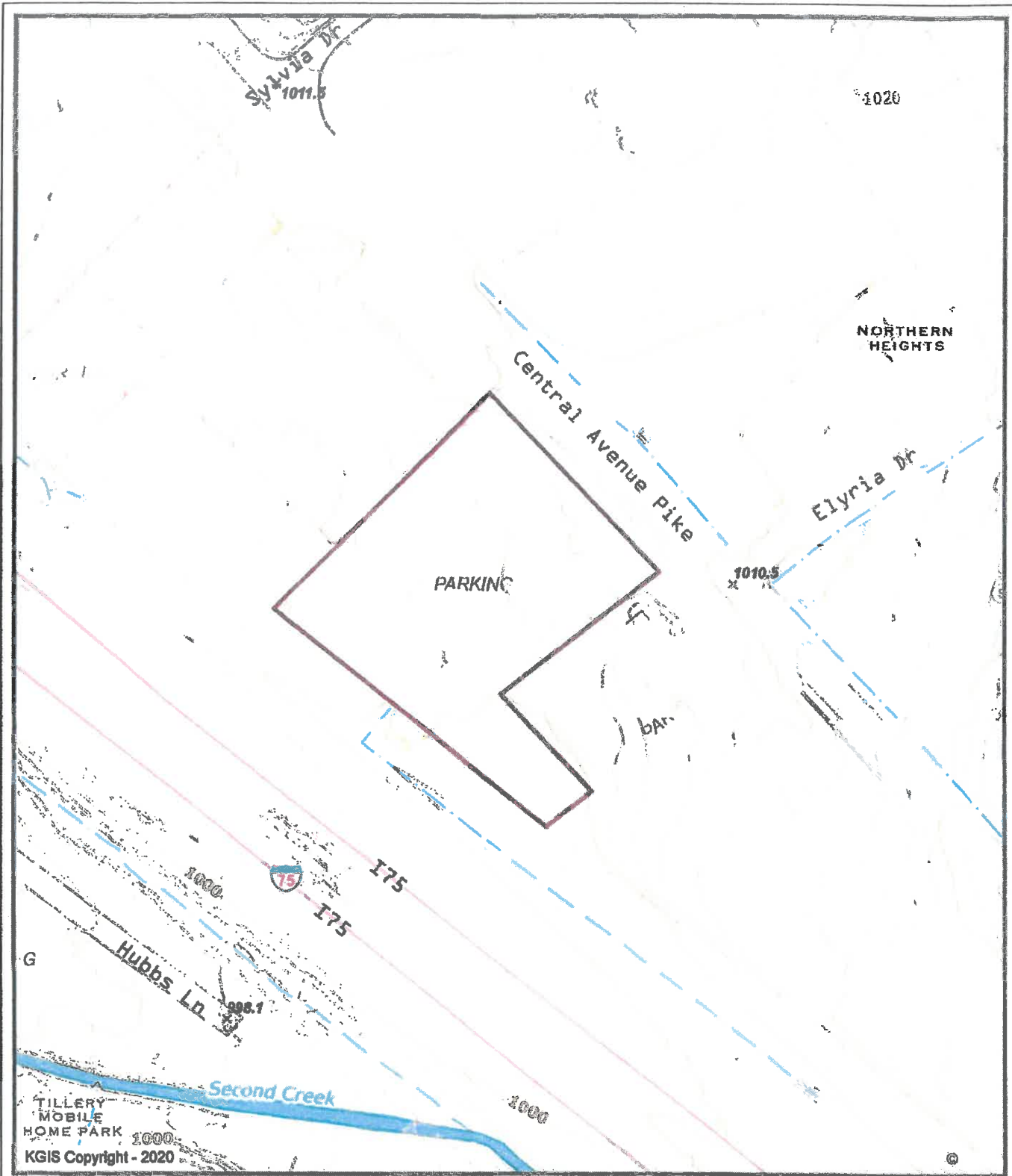
**Knoxville - Knox County - KUB Geographic Information System**



Printed: 11/12/2020 at 11:21:49 AM



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**4605 Central Ave. Pike**

12-A-20-VA

Damon A. Falconnier, NCARB

**Knoxville - Knox County - KUB Geographic Information System**



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**4605 Central Avenue Pike – Street view**





12-A-20-VA



4601 CENTRAL AVE. PIKE • P.O. BOX 12540 • KNOXVILLE, TENNESSEE 37912 • PHONE (865) 689-7770 • FAX (865) 688-5620 • [www.handleyins.com](http://www.handleyins.com)

November 25, 2020

Scott Elder  
City of Knoxville Plans Review and Inspections  
400 Main Street  
City County Suite 475  
Knoxville, TN 37902

Dear Mr. Elder,

We, the undersigned, owners of the property located at 4601 Central Avenue Pike (Parcel ID 068LC017) are in support of the zoning variance request for the adjacent property to the immediate west (4605 Central Avenue Pike) to increase the height of an accessory structure from 18' to 45' to match the allowable height of a principal structure on the property. We are in support of this with the following caveat:

We understand the variance applies to only (1) accessory structure with the cross bar at a height of 36'-5" to the bottom from the existing grade. The distance from the property line to the base of the cross is 16'-10" which puts the horizontal cross member within the 5'-0" setback.

Please contact us if there are any questions.

Sincerely,

  
Chris E. Handley  
Handley Insurance Resources, Inc.

  
Patricia Handley  
Handley Insurance Resources, Inc.

REVISED



**FALCONNIER**  
DESIGN COMPANY

4625 Chambers Avenue  
Knoxville, TN 37919  
Phone 865.594.7868  
Fax 865.594.3339  
falconnier@gmail.com  
© copyright 2007



**CROSS ARTWORK**

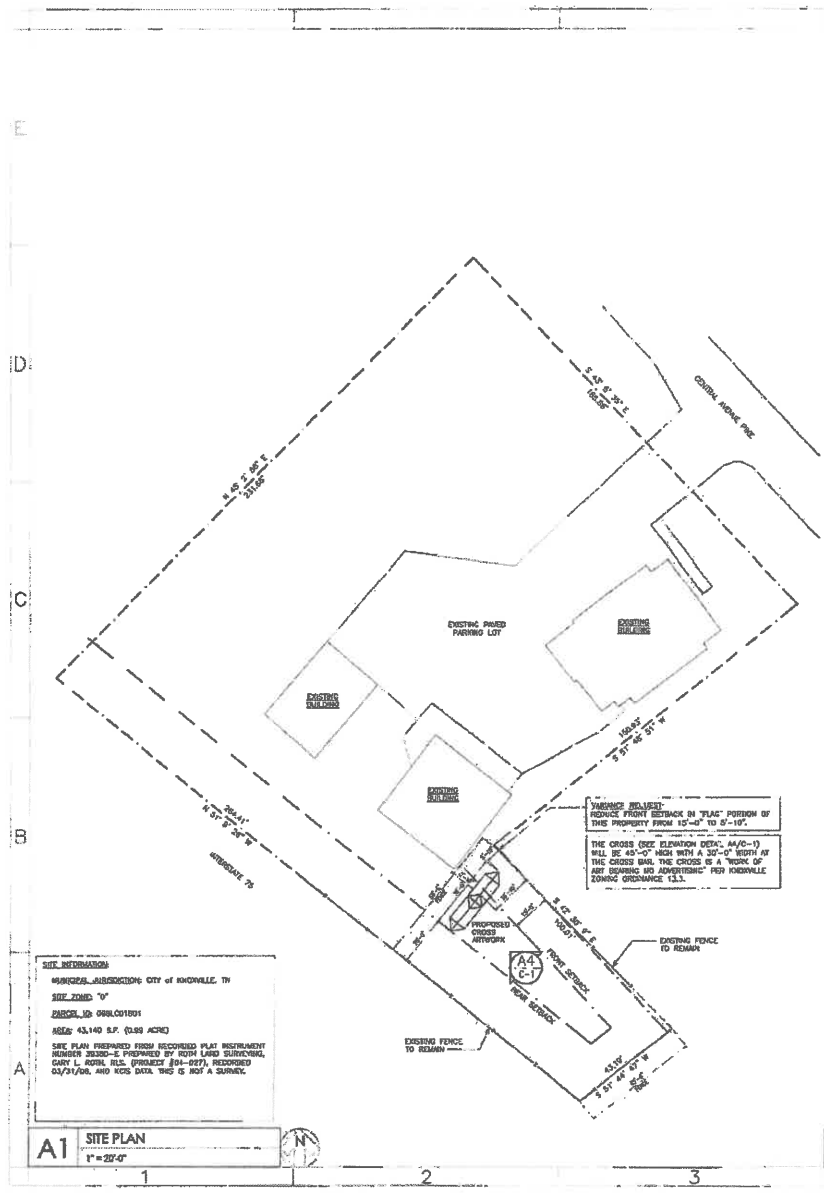
**BLACK OAK HEIGHTS**  
BAPTIST CHURCH  
4805 CENTRAL AVENUE FIVE  
KNOXVILLE TN 37912

**SITE PLAN & ELEVATION**

AS REPRESENTED BY SERVICE, THESE DIMENSIONS AND THE CROSS REPRESENTED ON THIS ARE THE PROPERTY OF GUYTON A. FALCONNIER AND HE HEREBY AGREES TO BE BOUND BY STATE AND FEDERAL COPYRIGHT LAWS. REPRODUCTION OR USE OF THESE DIMENSIONS OTHER THAN FOR THE PROJECT INDICATED WITHOUT WRITTEN CONSENT FROM GUYTON A. FALCONNIER IS PROHIBITED. UNAUTHORIZED USE WILL BE SUBJECT TO LEGAL ACTION.

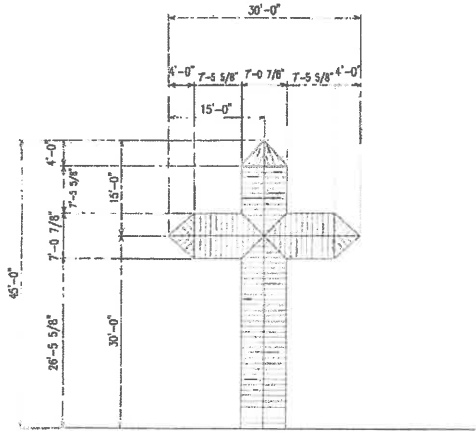
|             |          |
|-------------|----------|
| DRAWN BY:   | CHP      |
| CHECKED BY: | DAF      |
| ISSUED:     | 11/08/20 |
| REVISIONS:  |          |
| FILE:       | 2020-071 |

**C-1**



**SITE INFORMATION**  
 JURISDICTION: JURISDICTION: CITY OF KNOXVILLE, TN  
 SITE: ZONED "O"  
 ZONING: ZONING: 048L(O)1501  
 AREA: 43,140 S.F. (0.99 ACRES)  
 SITE PLAN PREPARED FROM RECORDED PLAT INSTRUMENT NUMBER 2330-E PREPARED BY ROTH LERO SURVEYORS, GARY L. ROTH, REG. (PROJECT #04-027), RECORDED 03/17/04, AND KGS DATA. THIS IS NOT A SURVEY.

**A1 SITE PLAN**  
1"=25'-0"



**A4 CROSS ELEVATION**  
1/8"=1'-0"

12-A-20-YA



January 08, 2021

Damon A. Falconnier  
4622 Chambliss Ave.  
Knoxville, TN. 37919

Via Certified Mail

RE: 4605 Central Avenue Pike – Appeal

**Appeal by Dr. Todd Stinnett of the denial to increase the maximum height for a detached accessory structure from 18 feet to 45 feet for a freestanding work of art in the shape of a cross bearing no advertising (Article 10.3.A.4) at 4605 Central Avenue Pike in the O (Office) Zoning District, 5<sup>th</sup> Council District (068LC01801) BZA File No. 12-A-20-VA.**

Dear Mr. Falconnier:

This is to advise you that the attached appeal will be heard by City Council on January 26, 2021, at 6:00p.m. Please contact the City Recorder's office for meeting details and location: T: 865-215-2075 E: [wjohnson@knoxvilletn.gov](mailto:wjohnson@knoxvilletn.gov). You or your representative should be present at the meeting.

Sincerely,

Bryan Berry  
Plans Review and Building Inspections Deputy Director



January 08, 2021

Dr. Todd Stinnett  
8115 Canter Lane  
Powell, TN. 37849

Via Certified Mail

RE: 4605 Central Avenue Pike – Appeal

**Appeal by Dr. Todd Stinnett of the denial to increase the maximum height for a detached accessory structure from 18 feet to 45 feet for a freestanding work of art in the shape of a cross bearing no advertising (Article 10.3.A.4) at 4605 Central Avenue Pike in the O (Office) Zoning District, 5<sup>th</sup> Council District (068LC01801) BZA File No. 12-A-20-VA.**

Dear Dr. Stinnett:

This is to advise you that the attached appeal will be heard by City Council on January 26, 2021, at 6:00p.m. Please contact the City Recorder's office for meeting details and location: T: 865-215-2075 E: [wjohnson@knoxvilletn.gov](mailto:wjohnson@knoxvilletn.gov). You or your representative should be present at the meeting.

Sincerely,

Bryan Berry  
Plans Review and Building Inspections Deputy Director



January 08, 2021

Joyce Feld  
1540 Agawela Ave.  
Knoxville, TN. 37919

Via Certified Mail

RE: 4605 Central Avenue Pike – Appeal

**Appeal by Dr. Todd Stinnett of the denial to increase the maximum height for a detached accessory structure from 18 feet to 45 feet for a freestanding work of art in the shape of a cross bearing no advertising (Article 10.3.A.4) at 4605 Central Avenue Pike in the O (Office) Zoning District, 5<sup>th</sup> Council District (068LC01801) BZA File No. 12-A-20-VA.**

Dear Ms. Feld:

This is to advise you that the attached appeal will be heard by City Council on January 26, 2021, at 6:00p.m. Please contact the City Recorder's office for meeting details and location: T: 865-215-2075 E: [wjohnson@knoxvilletn.gov](mailto:wjohnson@knoxvilletn.gov). You or your representative should be present at the meeting.

Sincerely,

A handwritten signature in black ink that reads "Bryan Berry".

Bryan Berry  
Plans Review and Building Inspections Deputy Director

# Knoxville NEWS SENTINEL

PART OF THE USA TODAY NETWORK

PLANS REVIEW INSPECT  
ATTN KRISTI T  
400 MAIN ST RM 475  
KNOXVILLE, TN 37902

State of Wisconsin)

County of Brown)

Before me, the undersigned, a Notary Public in and for said county, this day personally came said legal clerk first duly sworn, according to law, says that he/she is a duly authorized representative of *The Knoxville News-Sentinel*, a daily newspaper published at Knoxville, in said county and state, and that the advertisement of

CITY BOARD OF ZONING APPEALS

of which the annexed is a copy, was published in said paper on the following date(s):

12/05/2020

and that the statement of account herewith is correct to the best of his/her knowledge, information, and belief

  
Legal Clerk

Subscribed and sworn to before me this December 7 2020



Notary Public, State of Wisconsin, County of Brown

TARA MONDLOCH  
Notary Public  
State of Wisconsin

August 6, 2021  
My commission expires

Publication Cost: \$550.80  
Ad No: 0004496480  
Customer No: 1317904



an accessory dwelling unit (Article 10.3.B.9). Gross floor area of the proposed accessory dwelling is 474 square feet and gross floor area of the primary dwelling is 948 square feet. Per plan submitted to convert a detached garage to an ADU in the RN-2 (Single-Family Residential Neighborhood) Zoning District, 6th Council District (094CN018)

**AMY SHERRILL - BENEFILED RICHTERS** (411 E. Depot Ave.) 12-E-20-VA 1) Increase the maximum number of driveways for a lot frontage less than 150 feet from one to two (Article 11.7.A.1; Table 11-7) and 2) Decrease the minimum number of required parking spaces for an eating and drinking establishment from 24 to 7 (Article 11.4.A.4; Table 11-2) and 3) Decrease the minimum distance between a driveway and intersecting street from 50 feet to 29 feet (Article 11.7.B; Table 11-8) per plan submitted to redevelop an existing building as a restaurant in the I-MU (Industrial Mixed-Use) Zoning District, 6th Council District (095AM008)

**ANA BARRIENTOS** (2300 E. Fifth Ave.) 12-G-20-VA 1) Reduce the minimum distance a detached accessory dwelling unit must be setback from a rear property line of 10 feet to 5 feet 5 inches (Article 10.3.B.7) and 2) Reduce the required number of off-street parking spaces required for an accessory dwelling unit from one to zero (Article 10.3.B.11) and 3) Increase the maximum percentage an accessory dwelling unit can be of the primary dwelling floor area from 40% to 67% for the conversion of an existing detached accessory structure into an accessory dwelling unit (Article 10.3.B.9) per plan submitted to turn an existing building into an ADU in the RN-2 (Single-Family Residential Neighborhood) Zoning District, 6th Council District (0820D004)

**MCCARTY HOLSAPLE**  
**MCCARTY** (1650 Huron St.) 12-H-20-VA Reduce the minimum drive aisle width for two-way access from 26 feet to 25 feet 6 inches in an existing parking garage for plans submitted under the old City of Knoxville Zoning Ordinance (Article 5.7.E; Table 3) per plan submitted to renovate a parking garage that is part of an existing facility in the INST (Institutional) Zoning District, 5th Council District (081EH01601, 081EH01602)

**LAUREN RIDER** (227 E. Oklahoma Ave.) 12-I-20-VA Reduce the minimum interior side setbacks combined from a minimum of 15 feet to 10 feet for placement of a single-family dwelling on a lot in the RN-2 district (Article 4.3.A; Table 4-1) per plan submitted to move a single family residence in the RN-2 (Single-Family Residential Neighborhood) Zoning District, 4th Council District (081L3016)

**KEN PADGETT** (1109 White Ave.) 12-J-20-VA Increase the maximum sign area of an individual wall sign in a O zone from 24 square feet in area to 117.67 square feet in area (Article 13.9.E.2.c) per plan submitted to add a blade sign to the side of a building in the O (Office) Zoning District, 1st Council District (094MG021)

**SETH D. SCHWEITZER** (2600/2620 Middlebrook Pike) 12-K-20-VA Permit the erection of an additional building for an existing, non-conforming use of Vehicle Repair/Service in the I-H district



(Article 17.1.A) per plan submitted to expand the square footage of a building in the I-H (Heavy Industrial) Zoning District, 3rd Council District (094F02001)

**R. BENTLEY MARLOW** (1802 Boyd St.) 12-L-20-VA 1) Decrease the minimum front setback from 20 feet to 8.5 feet to enclose an existing front porch of a single family residence in an RN-2 district (Article 4.3.A, Table 4-1) and 2) Decrease the minimum interior side setback from 5 feet to 0 feet for a porch addition to the southeastern side of a single family residence in an RN-2 district (Article 4.3.A, Table 4-1) and 3) Decrease the minimum interior side setbacks from 15 feet combined to 5 feet combined for a single family residence in an RN-2 district (Article 4.3.A, Table 4-1) and 4) Increase the maximum building coverage from 30% to 42% for a single family residence in an RN-2 district (Article 4.3.A, Table 4-1) and 5) Increase the maximum impervious coverage from 40% to 44% for a single family residence in an RN-2 district (Article 4.3.A, Table 4-1) per plan submitted to enlarge a single family residence in the RN-2 (Single-Family Residential Neighborhood) Zoning District, 6th Council District (094FB014)

**HUDSON MATERIALS COMPANY** (405 West Odham Avenue) 12-M-20-VA Permit an existing nonconforming Industrial - Heavy use (liquid asphalt emulsification) to alter existing structures by removing seven storage tanks and add two new storage tanks in an Industrial Mixed Use district (Article 17.1.A) per plan submitted to upgrade an industrial facility in the I-MU (Industrial Mixed-Use) Zoning District, 5th Council District (081NB034)

**MICHAEL DAVID RASNAKE** (2203 Sevier Ave.) 12-N-20-VA Increase the limited height for a privacy fence in the front build to line of 42 inches to six foot along Valley Avenue and Dover Street for a single-family residential building in a RN-2 district (Article 10.3.L.1 a) per plan submitted to construct a privacy fence on a residence in the RN-2 (Single-Family Neighborhood) Zoning District, 1st Council District (095OG01401)

# Knoxville NEWS SENTINEL

PART OF THE USA TODAY NETWORK

PLANS REVIEW INSPECT IONS  
400 MAIN ST. ROOM 475 KRISTI T

KNOXVILLE, TN 37902

State of Wisconsin

County of Brown

Before me, the undersigned, a Notary Public in and for said county, this day personally came said legal clerk first duly sworn, according to law, says that he/she is a duly authorized representative of *The Knoxville News-Sentinel*, a daily newspaper published at Knoxville, in said county and state, and that the advertisement of

(The Above-Referenced)

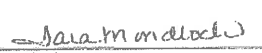
of which the annexed is a copy, was published in said paper on the following date(s):

01/08/2021

and that the statement of account herewith is correct to the best of his/her knowledge, information, and belief

  
Legal Clerk

Subscribed and sworn to before me this January 8 2021

  
Notary Public

TARA MONDLOCI  
Notary Public  
State of Wisconsin

My commission expires August 6, 2021

Publication Cost: \$62.64  
Ad No: 0004542987  
Customer No: 1317904

# of Affidavits 1  
This is not an invoice

**PUBLIC NOTICE**  
The following item will be considered by the Knoxville City Council on January 26, 2021 at 6:00p.m. The location of the City Council meeting is TBA. Meeting details can be obtained by contacting the City Recorder's Office T: 865-215-2075 E: wjohnson@knoxvilletn.gov. This item may be seen in the Plans Review and Building Inspections Office, Fourth Fl. of the City County Bldg., 400 Main St., Knoxville, TN. If you need assistance or accommodation for a disability, please contact the City ADA coordinator at 215-2034.

**APPEAL OF DECISION**  
Appeal by Dr. Todd Stinnett of the denial to increase the maximum height for a detached accessory structure from 18 feet to 45 feet for a freestanding work of art in the shape of a cross bearing no advertising (Article 10.3.A.4) at 4605 Central Avenue Pike in the Office Zoning District, 5th Council District (066LC01801) BZA File No. 12-A-20-VA.

---

DATE: January 26, 2021

TO: City Council

FROM: Plans Review and Inspections Department

RE: Appeal of BZA decision regarding 12-A-20-VA (4605 Central Avenue Pike)

---

The following memorandum is an outline and summary of correspondence with Dr. Todd Stinnett regarding a BZA application for the construction of a work of art bearing no advertising (freestanding cross) on the property of 4605 Central Avenue Pike.

**May 14, 2020:**

The email below highlights correspondence to Dr. Stinnett that construction of a freestanding cross is considered a detached accessory structure with a maximum height of 18 feet.

From: [Bryan Berry](#)  
To: [revtodd1977](#)  
Cc: [Ivan Harmon](#)  
Subject: RE: Reaching Out  
Date: Thursday, May 14, 2020 5:07:00 PM

---

Todd,

It was nice meeting with you gentleman today. I am going to go ahead and send you the Board of Zoning Appeals application (see attachment) and additional information. The next BZA meeting will be held Thursday, June 18<sup>th</sup>. The application for this meeting is due Monday, May 18<sup>th</sup> by noon. At this point I am going to talk further with the Plans Review and Inspections Director as well as the City Law Department about making application.

The following is a link to the [City of Knoxville Zoning Ordinance](#).

**The construction of a freestanding cross would be considered a detached accessory structure and fall under Article 10 Section 10.3.A General Regulations for Accessory Structures. Unless an accessory structure is defined specifically in this Article, it falls under the requirements for general accessory structures found in 10.3.A. Under the general regulations for accessory structures it states in 10.3.A.4 that, *the maximum height of any detached accessory structure is 18 feet, unless otherwise permitted or restricted by this Code. An accessory structure cannot exceed the height of the principal structure.* This is where use of the term 'cannot' is prohibiting according to Article 2.1.E.**

The Variance process is outlined in Article 16.3.

If you have specific questions about state legislation regarding billboard please contact Christina Magrans is with the City Law Department. Her email is [cmagrans@knoxvilletn.gov](mailto:cmagrans@knoxvilletn.gov)

If you have any additional questions please let me know.

Thank you,

Bryan

Bryan Berry, AICP

**May 19, 2020:**

The email below is from Dr. Stinnett requesting the construction of a freestanding cross be considered under Article 13.3.N as a work of art bearing no advertising and exempt from sign regulations. Article 13.3 states that even though the following signs and items are exempt from the regulations of this Article; they may be subject to other applicable laws and regulations. However, even if the item is not subject to the sign regulations, it is still a structure. It is accessory in nature because the primary structure is the office for Backflow Specialty Company and construction of a freestanding cross as a work of art would be viewed as accessory and limited to the maximum height of 18 feet.

**From:** revtodd1977 <revtodd1977@gmail.com>  
**Sent:** Tuesday, May 19, 2020 9:03 AM  
**To:** Bryan Berry <BBerry@knoxvilletn.gov>  
**Subject:** Question

Good morning Bryan. I'm reading over the code and as I do I may pose some questions if that is OK.

I know your office has told me you'd like to consider this an attached structure, but I've been reading the sign ordinance. Section 13.3 deals with "Signs Exempt from Sign Regulations." Among the exemptions are "N. Works of art bearing no advertising." I think the cross could certainly fall under that category.

I'd also like to know how the billboard about 50 yards down the road was permitted on private property. I estimate its height to be about 40-50 feet. Also, the Cracker Barrel sign just a little further down the road on private property. I would say it is at least that tall if not taller.

I don't think we're asking to do something that is not already common among signs in that area. The only difference is that our sign will project an unwritten message rather than a written one.

One more thing - can you send me a copy of an application? We'd like to make application before the dead line next month. Thank you!

--  
In Christ,  
Dr. Todd Stinnett

**May 21, 2020:**

The email below is to Dr. Stinnett regarding the submittal of the Board of Zoning Appeals application. The highlighted portion of the email explained how he could appeal the administrative official's decision. Specifically, staff anticipated that the applicant would appeal that the construction of a 60 foot cross is not a structure, that it should instead be interpreted as a work of art bearing no advertising, and that as a result, the cross would be exempt from regulation.

---

**From:** revtodd1977 <revtodd1977@gmail.com>  
**Sent:** Thursday, May 21, 2020 10:42 AM  
**To:** Bryan Berry <BBerry@knoxvilletn.gov>  
**Subject:** Re: Question

Thanks. I don't think the aerial photo is attached. Can you please reply with the attachment?

Also, I'm good with submitting everything electronically, but can you tell me where to make payment?

On Thu, May 21, 2020 at 10:35 AM Bryan Berry <BBerry@knoxvilletn.gov> wrote:

Todd,

Moving forward here are the things you need to complete and submit for the Board of Zoning Appeals.

Regarding the application:

- Please fill out the BZA application I provided in a prior email.
- **Check the box that it is an appeal of Administrative Official's Decision.**
- **In the description provide information about how you are appealing the Plans Review and Inspection Departments interpretation that the construction of a 60 foot cross is a structure and should instead be interpreted as a work of art bearing no advertising and be exempt from sign regulations according to Article 13.3.N of the City of Knoxville's Zoning Ordinance.**

**May 26, 2020:**

The email below from Dr. Stinnett shows a decision to not file an application to the Board of Zoning Appeals in order to give his adviser a chance to look over all the material.

**From:** revtodd1977 <revtodd1977@gmail.com>  
**Sent:** Tuesday, May 26, 2020 5:26 PM  
**To:** Bryan Berry <BBerry@knoxvilletn.gov>  
**Cc:** Jerald Jenkins <jerebjenkins@yahoo.com>  
**Subject:** Question

Hey Bryan. Thanks for the information you provided me last week. As you may know, **we elected not to file an appeal before the 25th.** I wanted to give my adviser a chance to look over all the pertinent materials before I filed an appeal.

**June 15, 2020:**

The email below from Dr. Stinnett is an appeal submittal to be heard before the July 2020 Board of Zoning Appeals.

**From:** revtodd1977 [mailto:revtodd1977@gmail.com]  
**Sent:** Monday, June 15, 2020 2:45 PM  
**To:** Juliana LeClair  
**Cc:** Bryan Berry; Brad Stinnett  
**Subject:** Board of Zoning Appeals Application

Good afternoon Juliana. Bryan Berry directed me to submit the attached documents to you if I and the owner of Backflow Specialty Company desired to make an appeal. You will find the documents requested - the application (signed by the owner & myself), an aerial photo showing requested placement, and plan for the cross.

The BZA application from June 15, 2020 is shown below. The highlighted portion shows an appeal of the administrative official's decision to view the cross not as a detached accessory structure (see original email to applicant from May 14, 2020), but as a work of art bearing no advertising.

File # 7-C-70-VA

| CITY OF KNOXVILLE BOARD OF ZONING APPEALS APPLICATION  |   |   |
|--|---|---|
| Click on Mapping, Search, or Description and File for information on submitting an application to be heard at a monthly Board meeting.   |   |   |
| APPLICANT INFORMATION  | APPLICANT IS  | THIS PROPOSAL PERTAINS TO                                   |
| Name: <u>Ginny Stinnett &amp; Todd Stinnett</u>  | Owner <input checked="" type="checkbox"/>                             | New Structure <input type="checkbox"/>                      |
| Street Address: <u>4605 Central Ave. Pike</u>  | Contractor <input type="checkbox"/>                                   | Modification of Existing Structure <input type="checkbox"/> |
| City, State, Zip: <u>Knoxville, TN 37912</u>   | Tenant <input type="checkbox"/>                                       | Off Street Parking <input type="checkbox"/>                 |
| Phone Number: <u>423-273-0486</u>  | Other <input checked="" type="checkbox"/>                             | Signage <input checked="" type="checkbox"/>                 |
| Email: <u>revtodd1977@gmail.com</u>  |   | Other <input type="checkbox"/>                              |
| THIS IS A REQUEST FOR  |   |   |
| <input type="checkbox"/> Zoning Variance (Building Permit Denied)  | <input type="checkbox"/> Extension of Non-Conforming Use/or Structure |   |
| <input checked="" type="checkbox"/> Appeal of Administrative Official's Decision   | <input type="checkbox"/> Map Interpretation                           |   |
| PROPERTY INFORMATION   |   |   |
| Street Address: <u>4605 Central Ave. Pike</u>  | City, State, Zip: <u>Knoxville, TN 37912</u>                          |   |
| See GIS.org for Parcel #: <u>068LC01801</u>  | and Zoning District: <u>Political District 5</u>                      |   |
| VARIANCE REQUIREMENTS  |   |   |
| <p>City of Knoxville Zoning Ordinance Article 7, Section 2<br/>           The City of Knoxville Board of Zoning Appeals shall have the power and authority to grant variances from terms of this ordinance according to the procedure and under the restrictions set out in this section.<br/>           The purpose of the variance is to modify the strict application of the specific requirements of this ordinance in the case of exceptionally irregular, narrow, shallow or steep lots, or other exceptional physical conditions, whereby such strict application would result in practical difficulty or unnecessary hardship which would deprive an owner of the reasonable use of his land. The variance shall be used only where necessary to overcome some obstacle which is preventing an owner from using his property as the zoning ordinance intended.</p>   |   |   |
| DESCRIPTION OF APPEAL  |   |   |
| <p>Describe your project and why you need variances.</p> <p>It is the desire of the owner of Backflow Specialty Co. to construct a 60-foot cross on the portion of her property that runs along the interstate. It would be just like some of the "interstate crosses" that can be seen along portions of I-75, I-40, and other places. We deem the cross to fall under Section 13.3 of the City of Knoxville Zoning Ordinance - "works of art bearing no advertising." That being the case, the cross would be exempt from restrictions outlined in Article 13 which states a goal of preserving the right of free speech and expression. City leadership has told us they deem the cross to be a structure rather than a sign. That being the case, the cross would be limited to somewhere between 18-45 feet, and it would have to be "attached and affixed" to the Backflow Specialty garage in order to reach a max height of 45 feet. We are asking the Board to consider the cross "a work of art bearing no advertising." There should be no question that the cross is one of the great works of art in the history of humanity.</p> |   |   |
| <p>Describe hardship conditions that apply to this variance.</p> <p>If the cross is considered a structure rather than a sign, the owners will be forced to "attach and affix" the cross to their building. That would create a significant hardship as it would displace their main form of advertising (garage wall) and it would make future expansions to the garage much more difficult.</p>  |   |   |
| APPLICANT AUTHORIZATION  |   |   |
| I hereby certify that I am the authorized applicant, representing ALL property owners involved in this request and that all owners have been notified of this request in writing.  |   |   |
| APPLICANT'S SIGNATURE  | <u>Bryan Stinnett</u><br><u>Todd Stinnett</u>                         | DATE <u>6/15/2020</u><br><u>6/15/20</u>                     |

**June 17, 2020:**

No site plan was submitted with the BZA application on June 15, 2020. There were only construction drawings for a 60-foot freestanding cross. Bryan Berry spoke with Dr. Stinnett over the phone and explained that a sign by definition is still considered a structure according to the City zoning ordinance (Article 2.3) and stated a site plan would be required to determine setbacks from property line based on where the freestanding cross would be constructed. Bryan further explained the appeal should be on the determination that the work of art bearing no advertising (freestanding cross) should be considered a “principal structure” and not as a detached accessory structure based on the administrator’s official decision. It was explained to Dr. Stinnett that:

1. If BZA overturns the administrator’s decision and permits the free standing work of art of be viewed as a principal structure, and
2. If the freestanding work of art meets setback and height requirements on a site plan for a principal structure, then
3. No additional variances are needed.

The email below from Bryan Berry that is referred to by Dr. Stinnett in his appeal application outlines this. It does **not** state the City would permit a 45-foot tall cross, or view it as a principal structure.

On Wed, Jun 17, 2020 at 3:25 PM Bryan Berry <[BBerry@knoxvillemn.gov](mailto:BBerry@knoxvillemn.gov)> wrote:

Todd,

The BZA application submitted to construct a 60 foot tall cross on the property at 4605 Central Avenue Pike is claiming a cross should be considered a sign exempt from sign regulations because it is *a work of art bearing no advertising* according to Article 13.3.N. The language in Article 13.3 states, *these signs are exempt from the regulations in this Article, but may be subject to other applicable laws and regulations.*

A sign by definition is still considered a structure according to the City zoning ordinance (Article 2.3). If a work of art bearing no advertising is exempt from sign regulations, it is still subject to other applicable regulations in the zoning ordinance as a structure. The property at 4605 Central Avenue Pike is zoned Office and more than one principal building is permitted on a lot, provided that all **structures** comply with the dimensional standards of the district (Article 10.1.A). The max building/structure height is 45 feet in the Office zone.

Sincerely,

Bryan

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**June 24, 2020:**

The email below from Bryan Berry to Dr. Stinnett was a reminder about what would be needed to make the July BZA agenda. This is another email used in Dr. Stinnett's appeal application. The context of this is based on the same conversation above. **The two options outlined below are contingent on the BZA overturning the accessory structure determination and permitting the freestanding cross as a principal structure.** In light of this, item one below would be additional variances based on the height and/or setback not meeting the dimensional requirements of a principal structure, while item two is if the height and setbacks meet the principal structure dimensional requirements then no variances are needed.

On Wed, Jun 24, 2020 at 9:47 AM Bryan Berry <[BBerry@knoxvillemn.gov](mailto:BBerry@knoxvillemn.gov)> wrote:

Todd,

Just a reminder, the City will need a site plan and the \$250 application fee before noon this Friday if the application is to be on the July BZA agenda. If you would like to postpone in order to decide what is the best option moving forward we can hold on to the application. Depending upon your decision we can incorporate the site plan with the existing application if you choose to move forward. Again, you will be looking at variances to construct a 60' tall structure instead of 45' in addition to variances to reduce the setbacks based on how the arms of the cross are positioned in relation to the existing property lines. I see two options at this point:

1. Determine the size of the cross you want to construct and the number of variances you will need to request based on the location of it as well. Provide a site plan showing the location of the cross arms in relation to the property line. Do before noon this Friday and be on the July BZA agenda, or provide the site plan at a later date and be on the August BZA agenda.
2. Revise the drawings to construct a cross that can meet the height and setback requirements in relation to where you would like to place it on the property. Then proceed forward without needing variances.

If I do not hear from you before noon this Friday the application will automatically default to August BZA agenda.

Bryan

**June 25, 2020:**

The email below from Dr. Stinnett is to remove the application until a site plan could be completed.

**From:** [revtodd1977](mailto:revtodd1977)  
**To:** [Juliana LeClair](mailto:JLeClair@knoxvillemn.gov)  
**Cc:** [Bryan Berry](mailto:BBerry@knoxvillemn.gov)  
**Subject:** Re: FW: Board of Zoning Appeals Application  
**Date:** Thursday, June 25, 2020 4:28:53 PM  
**Attachments:** [image001.png](#)

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Thanks for reaching out. I have talked to Bryan and he has informed me that we have to have a new site plan before we can move forward with the appeal. For that reason, we will not be moving forward in July, but we hope to move forward with the appeal in August. It will probably depend on the engineer's schedule. I will continue to remain in contact. Bryan told me he would keep my appeals application on hand until we can secure the needed site plan.

On Thu, Jun 25, 2020 at 1:14 PM Juliana LeClair <[JLeClair@knoxvillemn.gov](mailto:JLeClair@knoxvillemn.gov)> wrote: