

File #

9-G-22-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):

PROJECT INFORMATION

Date Filed

Fee Amount

BZA Meeting Date

PLANS REVIEWER

DATE

UPDATED: BZA File Number 9-G-22-VA Additional Documentation and Narrative

Filed by Janice Tocher
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Knoxville, TN 37920
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This is an appeal of the decision by the City of Knoxville’s Form Code Administrator to conduct a Level II Development Plan Review rather than a Level III Alternative Compliance Review for the proposed development at 451 W. Blount Avenue in the SW4 District of the South Waterfront (see BZA May 2022 agenda item 5-K-22-VA for details of the proposed development). This is NOT an appeal of BZA’s decision regarding requested variances. It is an appeal of an administrative decision for which appealing to BZA is the appropriate appeal process.

Level III Alternative Compliance Review is “intended to allow innovative, high quality developments that would not otherwise be allowed under a strict interpretation of the Form District regulations” (Zoning Code 7.0.2.G.1). The developer’s submitted development plan requires extraordinary deviations from the Form District Regulations. It does not adhere to “a strict interpretation of the Form District Regulations.” The Administrator should have required a Level III Alternative Compliance Review instead of a Level II Development Plan Review.

A Level III review requires review and approval by Knoxville-Knox County Planning Commission; a Level II review does not. Level II reviews are conducted by City staff; they are not transparent to the public. A Level III review is intended to put “more eyes” on the project, including the opportunity for public review.

The plans submitted for this development are significantly misaligned with the South Waterfront Vision Plan and deviate from the South Waterfront Form Code in multiple and substantial ways.

Area	SW4 Standards from 7.3.1.E	Deviation Requested and Approved	Percentage Deviation
Block Size perimeter	1,400 linear	1,922	37.3% increase
Lot size	3 acres	5.5 acres	83.3% increase
Front Setback	10 ft	37.5 ft on northwestern portion	275% increase
Building height	50 ft	64.5 ft	29% increase
Building footprint	30,000 sq ft	68,087 sq ft	127% increase
Ground level transparency	Minimum of 70%	38.5% for building A, 48% for building B	45% decrease for building A, 31% decrease for building B

These provisions of the Form Code are not arbitrary. Each piece of the code is designed to implement the goals and objectives of the South Waterfront Vision Plan.

Block size and lot size. The block size and lot size maximums are to prevent the development of “super-blocks.” The South Waterfront is intended to have an urban, grided form rather than a suburban one. Large lot sizes and block sizes lend themselves to super-blocks which are suburban, not urban. In addition, the code (7.1.3.E.1) specifically says that view corridors and public access to public spaces (e.g. Riverwalk) are to be maintained. Large lot and block sizes, by allowing super-blocks, reduce opportunities for view corridors and the public access to the river. Also, allowing block and lot sizes as large as the ones requested has the effect of making this development incompatible with others that may be built in the SW4 district. Block and lot size requirements are important enough that the City required at least one South Waterfront developer to build new streets to meet them.

Front setback. The plan and code emphasize that development should be pedestrian friendly. Large front setbacks, like those in this plan, are not pedestrian friendly. The plan and code envision opportunities for pedestrians to interact with development, which requires smaller setbacks. Large front setbacks are also characteristic of suburban, not urban development.

Building footprint. Note that the plan calls for a building over twice the size of the maximum allowed building size. Like block size and lot size, the maximum allowable building footprint is intended to prevent super-blocks which block view and access to the river. In addition, form code is primarily concerned with how buildings address the street and neighboring buildings. Building mass in each district should be consistent with that of other buildings in the district. Allowing a building twice the mass of the code maximum would make this incompatible with others in the district that are built according to code.

Building height. The code allows a five-story building in the SW4 district, as long as the fifth story is set back 10 feet (7.1.3.E.4). The top story setback is to preserve pedestrian friendliness by preventing the building from towering over the street. It also helps keep building form and mass compatible with other buildings in the district.

Transparency. The transparency requirement is intended to enhance pedestrian friendliness. Blank walls at ground level are not pedestrian friendly. In addition, transparency on the ground floor encourages commercial uses on that floor. Mixed use is one of the specific, key objectives of the plan and code.

Finally, allowing the numerous and substantial deviations from the code without the additional consideration of a Level III review is a problem not only for this proposed development, but also for the future in that it establishes an undesirable precedent.

The developer's submitted development plan requires extraordinary deviations from the Form District Regulations. It does not adhere to "a strict interpretation of the Form District Regulations." The Administrator should have required a Level III Alternative Compliance Review instead of a Level II Development Plan Review. We request you uphold this appeal.

From: [Steve Borden](#)
To: [Jennifer Scobee](#)
Subject: RE: October 2022 BZA application packets
Date: Friday, October 7, 2022 11:49:21 AM
Attachments: [image002.png](#)

Jennifer,

Please see our responses below.

9-C-22-VA 7727 Kingston Pk: It appears that this application does not include any encroachments on State owned ROW. The Department would like to emphasize that no encroachments are permitted – including, but not limited to, overhead signs or building awnings. Additionally, any proposed work that requires construction on ROW or impacting ROW will require an approved grading on ROW application.

9-D-22-VA 451 W. Blount Ave: Operations has no comment

10-A-22-VA 3934 Alma Ave: Operations has no comment

10-B-22-VA 5858 Lucerne Ln: Operations has no comment

10-C-22-VA 2323 E. Glenwood Ave: Operations has no comment

10-D-22-VA 2113 Sunny Ln: Operations has no comment

10-E-22-VA 4208 Garden Dr: Operations has no comment

Steve,



Steven M. Borden, P.E. | Director/Assistant Chief Engineer
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Steve.Borden@tn.gov
tn.gov/tdot



October 10, 2022

Mr. Bryan Berry, Deputy Director
Board of Zoning Appeals
Room 475, City-County Building
P. O. Box 1631
Knoxville, Tennessee 37901

Dear Mr. Berry:

**Re: Variance Requests 9-G-22-VA, 10-A-22-VA, 10-B-22-VA, 10-C-22-VA, 10-D-22-VA,
and 10-E-22-VA**

We have reviewed our records and, as far as we have been able to determine, KUB has no existing utility facilities located within the variance areas and we have no objection to the requested variances. However, KUB does not release and hereby retains all easements and rights for existing facilities, whether or not identified in our research.

If you have any questions regarding this matter, please call me at (865) 558-2483.

Sincerely,

A handwritten signature in black ink, appearing to read "C. Wiberley".

Christian Wiberley, P.E.
Engineering

CGW

Board of Zoning Appeals – City Staff Comments

Tuesday, October 18, 2022

Variance Findings (Article 16.3.E):

The Board of Zoning Appeals may authorize a variance from the strict application of this Code so as to relieve such difficulties or hardship only in accordance with all of the following criteria:

- 1. Variances will be granted only where special circumstances or conditions (such as exceptional narrowness, topography or siting) fully described in the findings of the Board, do not apply generally in the district.*
- 2. Variances will not be granted to allow a use otherwise excluded from the particular district in which requested.*
- 3. For reasons fully set forth in the findings of the Board, the aforesaid circumstances or conditions are such that the strict application of the provisions of this Code would deprive the applicant of any reasonable use of his/her land. Mere loss in value does not justify a variance; there must be a deprivation of beneficial use of land.*
- 4. Any variance granted under the provisions of this section must be the minimum adjustment necessary for the reasonable use of the land.*
- 5. The granting of any variance is in harmony with the general purposes and intent of this Code and will not be injurious to the neighborhood, detrimental to the public welfare, or in conflict with the General Plan for development*

Meeting Agenda

9-C-22-VA

Location: 7727 Kingston Pike

Staff Comments: The applicant is proposing to construct a five-story, 330-unit multi-family apartment complex with parking garage. The parcel is zoned C-H-2 and has a minimum front setback of 20 feet along Kingston Pike.

The most recent development configuration was of three outbuildings as shown in the 2015 aerial from KGIS in the packet. Two of the three buildings were demolished in 2016.

The proposed size and footprint of the building creates the hardship on the parcel. Moving the building back an additional 10 feet to meet the minimum front setback along Kingston Pike does not deprive the applicant of beneficial use of the land. The parcel has no topographical issues.

KUB also noted an overhead electric utility easement of 25 feet on each side of the centerline of the electric line, 50 feet total width.

The variance request is:

Decrease the minimum front setback from 20 feet to 10 feet for a multi-family dwelling in the C-H-2 district. Per Article 5.3.A; Table 5-1.

9-G-22-VA

Location: 451 West Blount Avenue

Staff Comments: This is an appeal of the zoning administrator's determination to utilize the Level II Development Plan Review compliance path for projects if six variances are required. The applicant asserts that Article 7, Section 7.0.2.F.8.c "Unlisted Standards" - Any request for relief from a required standard, other than those listed above, must be reviewed by the City of Knoxville Board of Zoning Appeals does not apply if a proposed project requires 6 or more variances, and must follow the Level III Alternative Compliance Review path.

The following is an overview for determining what level of review is required for form based code projects. There are three possible levels that apply. They are as follows:

- Level 1 application (Zoning Clearance Review) applies to all houses and duplexes within the Form Districts and requires approval from the Zoning Administrator only.
- Level 2 application (Development Plan Review) is for all multi-dwelling, mixed use and nonresidential structures within the Form Districts. This requires a recommendation from the Administrative Review Committee and approval from the Zoning Administrator.
- Level 3 application (Alternative Compliance Review) is for innovative, high quality developments that would not otherwise be allowed under a strict interpretation of the Form District regulations but nevertheless comply with the intent of the applicable Form District and Plan. The Alternative Compliance Review mechanism is also intended to provide a process for requests by applicants for reconstruction or expansion of nonconforming structures in which nonconforming uses operate. This requires a recommendation from the Administrative Review Committee and the Zoning Administrator with approval from the Knoxville Knox County Planning Commission.

A Level 3 Alternative Compliance Review applies to any development that does not meet the requirements of Level I Zoning Clearance Review, Level II Development Plan Review, or Variances per Article 7.0.2.G.3.

10-A-22-VA

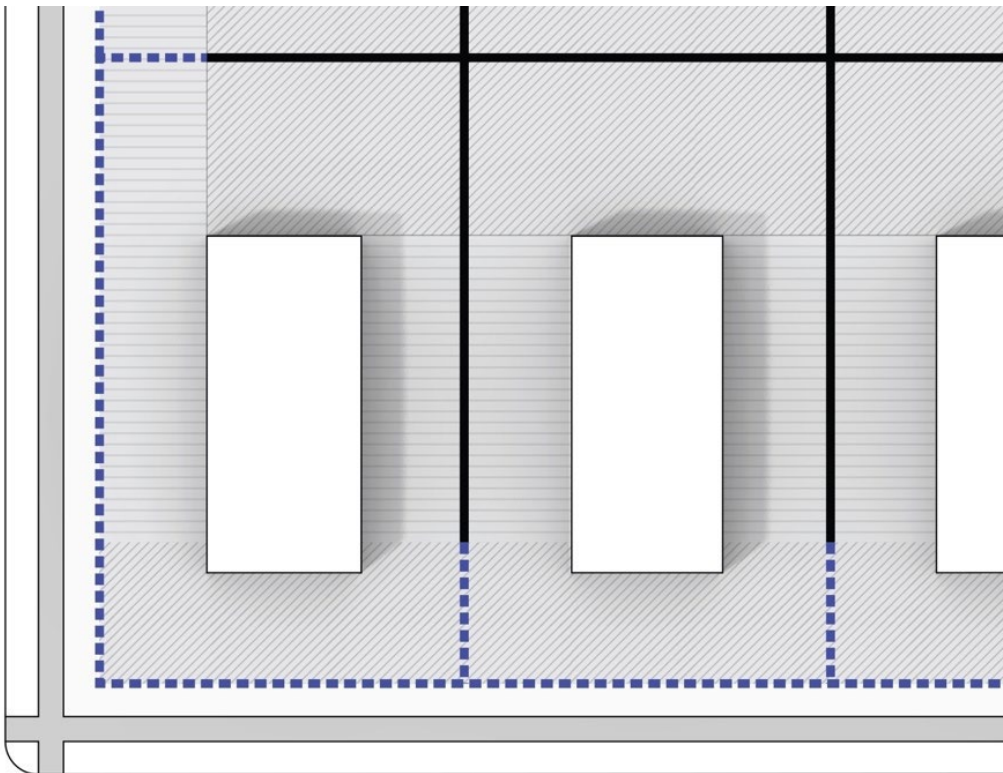
Location: 3934 Alma Avenue

Staff Comments: The applicant installed a six foot high privacy fence along the driveway to shield the property from viewing her neighbor's property. A 42 inch high solid fence is permitted, starting five feet back from the front building line forward to the front property line. The height of the fence must be reduced to 42 inches.

Possible alternatives in the front yard would be landscaping along property line/driveway or a solid fence up to 42 inches and then on top fencing with more than 50% regularly distributed openings as seen in the illustrative image provided in the packet.

The variance requests is:

Increase the permitted height of a solid fence from five feet behind the front building line forward to the front lot line from 42 inches to 72 inches. Per Article 10.3.L.1.a.



Residential Districts

■ ■ ■ ■ ■ 42" maximum fence/wall height restriction

10-B-22-VA

Location: 5858 Lucerne Lane

Staff Comments: The parcel is located in an RN-1 zoning district and the minimum front setback is +/- 10' of the average blockface (average setback of the houses along the same side of street). The average setback of houses along Lucerne Lane is 66' (less 10' would be a minimum of 56' front setback).

The variance request is:

Decrease the average blockface front setback from 56.4 feet to 32 feet for a new single-family dwelling in the RN-1 district. Per Article 4.3; Table 4-1.

10-C-22-VA

Location: 2323 E. Glenwood Avenue

Staff Comments:

The parcel needs to be platted and recorded as a legal lot of record. The parcel is zoned RN-2 and requires a minimum lot width of 50 feet. The existing lot width is only 40 feet.

Pending further context (asked for original deed) from applicant, the following was found in our records.

1. The property owner deeded land to neighboring properties sometime around 1972 when he died.
2. There was a house on this lot prior to 2003 in the same lot configuration.

The variance request is:

Decrease the minimum lot width from 50 feet to 40 feet on an existing lot for a new single-family dwelling in the RN-2 district. Per Article 4.3; Table 4-1.

10-D-22-VA

Location: 2113 Sunny Lane

Staff Comments:

Applicant subdivided lot 3 into lots 3R and 3R1 and is proposing to build a house upon 3R1. The rear setback in an RN-1 zoning district should be 25' and applicant has requested 21.1'. Minimum front setback is 38.8' based on the average blockface and the applicant has requested a 25' setback.

The variance request is:

Variance 1: Decrease the rear setback from 25' to 21.1' for a new single-family residence in an RN-1 zoning district. Per Article 4.3; Table 4-1.

Variance 2: Decrease the front setback from a minimum of 38.8' to 25' for a new single-family residence in a RN-1 zoning district. Per Article 4.3; Table 4-1 .

10-E-22-VA

Location: 4208 Garden Drive

Staff Comments:

The setback requirements for a carport are 5 feet from interior side lot line. The column supports for the carport would be located on the driveway and obstruct parking vehicles. The applicant is requesting to reduce the interior side setback to 0 feet and place structures on the lot line.

The variance requests is:

Decrease the interior side setback for an accessory structure from five feet to zero feet to permit an attached carport. Per Article 10.3.A.5.