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: Variance

Decision by: □ BZA □ Other: __________________________

Jurisdiction: □ City  1st Councilman District  □ County  _______ Commission District

Original Applicant Name: Robert Cox

Name of Owner of Subject Property: Same

Description of Subject Property (Include city block and parcel number or lot number): 710 N. Cherry Street, Knoxville, TN

Parcel # (See KGIS.org) 082GG005;

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

DECISION BEING APPEALED

Grant of Variances for reducing 25' parking setback to .75 feet for driveway/parking lot. Article V, Section 2d; Article V, Section 7-D - Table 1.

REASON FOR THE APPEAL

Attach additional pages, if necessary. No hardship exists justifying the Variances. Not getting Variances will not deprive owner of reasonable use of his land. Property is not exceptionally irregular, narrow, shallow or steep, no exceptional physical condition exist (Property has a building on it currently). (see Exhibits 1 and 2)

PETITIONER INFORMATION

Name of Petitioner: Tennessee Right to Life, Education Fund, Inc.

Petitioner's Interest in the Matter (Include a description of affected property owned by Petitioner): Petitioner owns property at 2605 Jefferson Avenue, Knoxville, TN which adjoins property of original applicant, Robert Cox. Petitioners and other signatory opponents live in the area and some are within the same block as Applicant property, along Jefferson and Washington Avenues. (see Exhibits 1 and 2 and attachments)

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

Signature: __________________________

All correspondence should be sent to: Name (Print): John K. King, Attorney for Petitioner

620 Market Street, Fifth Floor

Knoxville

TN

37902

Street Address

City

State

Zip

Phone: (865) 546-4646  Fax: (865) 523-5529  E-mail: jking@lewisthomason.com

Application Accepted by Staff Member: __________________________  Date Appeal Received: 1/31/2020

Appeal Fee Amount: $130.00

For Staff Use Only

BRYAN BERRY

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

City Council - 6 p.m.

2/25/2020

Month • Date • Year

March 2019
DECISION BEING APPEALED AND REASONS FOR THE APPEAL

1. The grant of any variance for the reduction of a parking lot setback from a required 25 feet from Applicant’s lot line.

2. The grant of any variance from such setback noted above and/or pursuant to Article V Section 7.A.2.d requiring a setback line twenty-five (25) feet from the street lot line.

3. The grant of any variance which has the effect of reducing the required minimum width of drive aisles.

4. The grant of any variance which has the effect of granting the use of an “existing driveway overlay” as being in violation of the twenty-five (25) foot setback.

5. There is no hardship permitting a variance under provisions of the Zoning Ordinance.

Article VII Section 2 – Variances.
“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…”

Article VII Section C. Standards for Variances.
“In granting a variance the board (Board of Zoning Appeals) shall ascertain that the following criteria are met:
1. Variances shall be granted only where the special circumstances or conditions (such as exceptional narrowness, or sitting) fully defined in the findings of the board, do not apply generally in the district.
[Underlining supplied]
2. Variances shall 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 ordinance would deprive the applicant of any reasonable use of his land. Mere loss in value shall not justify a variance; there must be a deprivation of the beneficial use of land.
The Petitioner would note that there are no exceptional circumstances in the use of this property except for those which applicant proposes to create. This property is currently used and has been used for years for Applicant’s commercial purposes. The only reason for requesting the variance and/or variances is the result of Applicant’s proposed doubling the size of his building, which he says that his continued use involves a hardship, which is otherwise unexplained. The other attempt at asserting a hardship is the statement that his proposed further development of the site does in some way constitute a hardship.

Not giving a variance, as requested, will not deprive the Applicant of the use of his land. In fact, Applicant is currently using the property and has been for years. The property is not exceptionally irregular; it is a straightforward rectangular piece of property. The property is not exceptionally narrow, shallow or steep; the property is not the subject of some exceptional physical condition so as to preclude use of the property. As noted above, the property is currently occupied and has been for years. The property has been used for its current commercial purposes for many years.

6. The proposed use is for a medical clinic which is not a permitted use in the C-1 zone.

7. There is no variance or provision shown for the requirement for a buffer strip and associated plantings as required by Article V, Section 7.A.2.h.

8. There is no showing of a plan to deal with surface/storm water.
January 13, 2020

Board of Zoning Appeals  
City of Knoxville  
400 Main Street  
Knoxville, TN 37902

Re: File # 1-I-20-VA  
710 N. Cherry Street

REQUEST FOR POSTPONEMENT AND OBJECTIONS TO REQUESTED VIARIANCES

Dear Board Members:

I have been requested on behalf of interested residents and owners ("Residents/Owners") of property adjacent to and in close proximity to property owned by Planned Parenthood Greater Memphis Region, Inc., 2430 Poplar Avenue, Suite 100, Memphis, Tennessee 38112-3246, located at 710 N. Cherry Street, Knoxville, Tennessee, also identified in Instrument No. 201806010071099 in the Register of Deeds Office for Knox County, Tennessee ("Owner"), to file this Request For Postponement and Objections To Requested Variances to variances requested and filed by Robert Cox, Agent for the aforesaid Owner. The Request and Objections are filed because the applicant, Robert Cox, failed to timely submit his application to be heard at the upcoming Board meeting before the third Monday of the preceding month, as required by Rule 8, BZA Administrative Rules and Procedures, and because Mr. Cox’s fifteen-day tardiness in signing and submitting his application has prejudiced the ability of the Residents/Owners to be able to adequately and fully respond to Mr. Cox’s application. Accordingly, we respectfully request that the Board postpone the application until a later monthly Board meeting.

December 16, 2019 was the third Monday of the month preceding the upcoming January 16 Board meeting. Mr. Cox did not sign and submit his application until fifteen days after the December 16 submission deadline.

Moreover, the not-fully-legible quality of the copy of the applicant’s C2.1 medical office existing layout drawing and C2.2 medical office proposed layout drawing posted online at the BZA website makes it difficult to accurately read dimensions and other details in order to enable a full understanding of the expansion’s impact upon nearby Residents/Owners, and upon the neighborhood at large, in time for the upcoming January 16 meeting.

Due to the untimely filing of the application for the variances, the Residents/Owners have not had sufficient time to be able to discuss the requested variances with other owners and residents in the area, or to be able to adequately and fully seek legal and other professional advice, and to fully respond to the variance application.

Some of the objections to the requested variances are as follows:
January 13, 2020
Page 2

1. The application does not specifically address the fact that the applicant’s property is in close proximity to the Magnolia Corridor Revitalization Project.

2. Upon information and belief, the Magnolia Corridor Revitalization Project envisions substantial alterations to traffic patterns using right of ways by vehicles, bicycles, and pedestrians. These right of ways also include sidewalks, alleys, and roads.

3. The applicant has not established any “legal” hardship that would support the granting of any variances.

4. The applicant has not explained why the existing medical building needs to double in size or whether or not there will be an expansion of business days and hours or other changes in its current business model; and he has not stated how and to what extent the doubling of the number of patients visiting the property will not significantly increase the number of vehicles coming to the property thereby jeopardizing the traffic patterns, both now and in the future, for vehicles, bicycles, and pedestrians.

5. Of particular interest to the Residents/Owners is why a proposed large expansion of the medical office building on the same-sized lot will require fewer parking spaces than the parking spaces that are already in existence. On its face, such a request appears to be absurd. Clearly, fewer parking spaces will virtually guarantee overflow parking onto Washington Avenue will occur. Additionally, ingress and egress will most assuredly occur on the alleyway adjacent to the applicant’s property, which ingress and egress was never contemplated in the use of the alley. Such use of the alley is likely to cause traffic hazards at the intersection of the alley with Cherry Street, which hazards would include jeopardizing modes of traffic by vehicle, bicycle, or pedestrian.

6. Setbacks required by the Code for parking, retaining walls, or other fencing, will most assuredly be abused and be detrimental to the community at large.

7. The proposed new parking area will most assuredly result in the inappropriate use of the alley as set forth in Paragraph 5 above.

Accordingly, the undertaking of a hearing at this time by the Board of Zoning Appeals is clearly premature and should be postponed to a later monthly Board meeting.

If you have any questions, please call me at your convenience. With kindest regards, I am

Respectfully,

Kenneth W. Holbert

KWH: pjn
January 16, 2020

Board of Zoning Appeals
City of Knoxville
400 Main Street
Knoxville, TN 37902

Re: File # 1-I-20-VA
710 N. Cherry Street

FOLLOW-UP TO
REQUEST FOR POSTPONEMENT AND
OBJECTIONS TO REQUESTED VIARIANCES

Dear Board Members:

I previously filed a letter dated January 13, 2020 with your office. The purpose of this letter is to provide a follow-up to the objections stated therein. The additional objections are as follows and are numbered as a continuation of the previously filed objections:

8. The granting of the variance to the side yard setbacks would have a direct impact on the utility of the adjacent residential lot fronting on Washington Avenue. Specifically, it would substantially and adversely affect the very reasons for side yard setbacks. Side yard setbacks avoid encroachment upon properties that are adjacent to one another; that is, the setbacks require the desired spacing between improvements on residential lots consistent with the commercially reasonable practices for maintaining the integrity of residential neighborhoods. Thus, in this case, having cars parked adjacent to the boundary line of the adjacent residential property, and entering and exiting throughout the day, would not be a commercially reasonable practice for the occupants of the adjacent residential lot. In fact, it would constitute a nuisance.

9. The conversion of a grass area into a paved area will obviously alter surface water flow, particularly when coupled with increased and channeled water runoff from the roof surfaces. Has this been addressed anywhere by the applicant in its applications to MPC for a variance as it relates to storm water control by the City?

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[Signature]
Kenneth W. Holbert

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Respectfully,

Kenneth W. Holbert

KWH:pn
BOARD OF ZONING APPEALS APPLICATION

APPLICANT INFORMATION

Name ROBERT COX
Street Address 26 N 2ND STREET
City, State, Zip MEMPHIS, TN 38103
Phone Number 901-482-9266
Email rcox@gwclaw.com

APPLICANT IS:

Owner ✓
Contractor ❑
Tenant ❑
Other ❑

THIS PROPOSAL PERTAINS TO:

New Structure ❑
Modification of Existing Structure ❑
Off Street Parking ✓
Signage ❑
Other Driveway Setbacks ✓

THIS IS A REQUEST FOR:

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

PROPERTY INFORMATION

Street Address 710 N. CHERRY STREET
City, State, Zip KNOXVILLE, TN 37914
Parcel # (see KGIS.org) 082GG005
Zoning District (see KGIS.org) C-1

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.

The subject parcel, zoned C-1, is located at the southern corner of the intersection of N. Cherry Street and Washington Avenue. An existing office building is located on the parcel with parking and access from N. Cherry Street and Washington Avenue. This building and driveway have been in existence for thirty years. N Cherry Street is a boulevard section with no median cut at the parcel which limits access from N. Cherry Street to vehicles traveling northwest. Vehicles traveling southeast on N. Cherry Street cannot access the site from N. Cherry Street and vehicles exiting onto N. Cherry Street from the parcel cannot travel southeast. A signalized intersection at N. Cherry Street and Washington Avenue allows all vehicles to safely access the site via an existing curb cut on Washington Avenue and a two-way driveway leading to parking. Because the parcel abuts a residential district, a 25' setback is required to any driveway/parking area per COK Zoning Ordinance Sec. 7(C)(2). The existing driveway overlaps this 25' setback requirement.

REVISED

Describe hardship conditions that apply to this variance.

Due to the unique location of the C-1 parcel along a boulevard with no median cut, proximity to a residential district establishing a 25' setback for driveway/parking areas and an existing building on site, a hardship for continued use and further development of the site exists.

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 Robert Cox

Digitally signed by Robert Cox
Date: 2019.12.31 12:02:12 -08'00'

DATE 12/31/2019
1. Reduce the required number of parking spaces from 15 to 6 (Article V Section 7.D.1 Table 1).

2. Reduce the minimum parking setback for parking lots with a common frontage on the same block with residentially zoned property from 25 feet to 0.75 feet (Article V Section 7.C.2).

**PROJECT INFORMATION**

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<thead>
<tr>
<th>Date Filed</th>
<th>12/17/19</th>
<th>Fee Amount</th>
<th>$500</th>
</tr>
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<tr>
<td>Council District</td>
<td></td>
<td>BZA Meeting Date</td>
<td>1/16/20</td>
</tr>
<tr>
<td>PLANS REVIEWER</td>
<td>Joshua Frerichs</td>
<td>DATE Revised</td>
<td>12/26/2019 JL</td>
</tr>
</tbody>
</table>
January 10, 2020

Mr. Scott Elder
Board of Zoning Appeals
Room 475, City-County Building
P. O. Box 1631
Knoxville, Tennessee 37901

Dear Mr. Elder:


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,

[Signature]

Christian Wiberley, P.E.
Engineering

CGW
Please find the following responses from District 18 Operations to the January’s BZA applications:

1A20VA: No comments.
1C20VA: No comments.
1D20VA: No comments.
1E20VA: No comments.
1F20VA: No comments.
1H20VA: No comments.
1I20VA: No comments.

---

From: Juliana LeClair <JLeClair@knoxvilletn.gov>
Sent: Thursday, January 2, 2020 10:54 AM
To: Steve Borden <Steve.Borden@tn.gov>
Subject: [EXTERNAL] BZA January Applications

*** This is an EXTERNAL email. Please exercise caution. DO NOT open attachments or click links from unknown senders or unexpected email - STS-Security. ***

Hello,

Please see the attached BZA January applications and provide your team’s response by Monday, 1/13/2020.

Thank you,

Juliana LeClair - Principal Secretary
Plans Review & Building Inspections Department
January 16, 2020

Board of Zoning Appeals
City of Knoxville
400 Main Street
Knoxville, TN 37902

Re: File # 1-I-20-VA
710 N. Cherry Street

FOLLOW-UP TO
REQUEST FOR POSTPONEMENT AND
OBJECTIONS TO REQUESTED VIARIANCES

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KWH:pnj
January 13, 2020
Page 2

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If you have any questions, please call me at your convenience. With kindest regards, I am

Respectfully,

Kenneth W. Holben

KWH:pnj
January 15th, 2020

To the Knoxville Board of Zoning Appeals:

We, the undersigned, live in the residential district which would be directly impacted by the Board of Zoning Appeals decision regarding the requested variance at 710 N Cherry Street, and we would like to express our support for the variance which would continue to allow the current configuration of the property’s driveway on Washington Avenue.

As residents whose families live, bike, walk, and play in this area, we believe the current configuration of the driveway is necessary for the traffic safety of our community as it allows access to the property in a safe, practical way. Without this driveway, those traveling southeast on Cherry Street must make a U-turn on Cherry Street, a busy four-lane street, in order to enter the property. An increase in U-turns on a busy street adjacent to a residential area is a safety concern for any neighborhood.

Thank you for your time and consideration of the impacts of this variance on our neighborhood.

Sincerely,

Carrie Balent and Heather Finney
2514 Jefferson Avenue

Morgan Wilson and George Butler
2534 Jefferson Avenue

Nikki Gray and Shannon Elliott
2517 Jefferson Avenue

Keith Richardson
2526 Jefferson Avenue

Noah Nordstrom
1605 Jefferson Avenue

Nathan McKinney
523 N Bertrand Street, Unit 314
William E. Foster
1608 E Glenwood Avenue

Chelsie Nunn
2511 Woodbine Avenue

Steve Greene and Nicole Bold
2505 Woodbine Avenue

Tricia Bateman
2405 Washington Avenue

Adeem and Hannah Bingham
1249 Boruff Street

Korrie Xavier and Jenifer Fennell
1905 Washington Avenue, Apt. A

Sandy Greek Lanzoni
1701 Washington Avenue

Charlotte Tolley
2540 Jefferson Avenue

Rebecca and Grace Loy
1701 Jefferson Avenue

Amber Crouse and Steve Blackburn
2105 Jefferson Avenue

Bethann Smith
1710 Jefferson Avenue

Tiffany and Matt Foster
2525 Jefferson Avenue

Maggie and Kevin Shober
2511 E 5th Avenue
Adam Pernell Deal and Eleanor Scott
2101 Woodbine Avenue

Kati Elgammal
2351 E 5th Avenue

Lauren and Matthew Shears
2104 Jefferson Avenue

Jessica Dean
2030 E 5th Avenue

Alden and Scott Larrick
E 5th Avenue
Juliana & Christina--Please remove Item No. 1, "Reduce the required number of parking spaces from 15 to 6 (Article V Section 7.D.1 Table 1)" from BZA Application 1-I-20-VA as currently set for a hearing on Thursday, January 16. We intend to pursue the variance request listed as Item No. 2 regarding minimum parking setback. We do not intend to address parking as a part of this Application.

If you have any questions, please call or email back. My telephone number is 824-1900.

Thank you for your help,

Mark Jendrek
Counsel to the Applicant

CONFIDENTIALITY NOTICE

Confidentiality notice: This electronic mail transmission may contain confidential information which is legally privileged. The information contained herein is intended only for the use of the individual or entity named above. If you are not the intended recipient, you are hereby notified that any review, dissemination, distribution, archiving, or copying of this communication is strictly prohibited. If you received this communication in error, please reply to this message immediately and delete the original message and the associated reply. You may also notify the sender by calling Mark Jendrek, PC at 865-824-1900, so that our address records can be corrected.

Additionally, notwithstanding that email correspondence may contain legal advice, analysis, or opinion, no attorney-client relationship is formed, no agreement to provide legal representation is established, and sender has no obligation to provide legal services unless and until a formal, written engagement agreement is provided which is signed by Mark Jendrek on behalf of Mark Jendrek, PC.

Without a formal, written engagement agreement, neither Mark Jendrek, nor Mark Jendrek, PC is liable or responsible for the running of any statute of limitations or the expiration of any limitations period.

This email shall not be deemed to constitute or create a contract or to contain an electronic signature of the sender.

********************************************************************************************************

IRS Circular 230 disclosure: To ensure compliance with requirements imposed by
Dear Mr. Holbert,

The Department of Plans Review and Building Inspections (the “Department”) received your letter yesterday afternoon. I wanted to address your concerns regarding the timeliness of Application 1-I-20-VA.

In your letter, you stated that this application is untimely based on the attached application deadline schedule. The application deadline schedule is a guide to ensure that Department staff has sufficient time to review each application for completeness. As you can see from the chart and the note immediately above it, the schedule contains two deadlines each month: the first deadline is for filing an application for a $250 fee, and the second deadline one week later which requires an application fee of $500. In this case, the applicant submitted an application on December 17, 2019 and paid the $500 filing fee.

The application deadline schedule also helps ensure that Department staff has enough time to publish notice of the BZA hearing as required by our Code. In order for the BZA to hear each matter, the Zoning Code requires that the City publish notice of the hearing in a newspaper of general circulation ten (10) days beforehand. In the case of Application 1-I-20-VA, notice of the January 16, 2020 hearing was published in the Knoxville News Sentinel on January 4, 2020. Therefore, the Code requirement regarding public notice has been met in this case.

I understand that your clients have other concerns about the variance request itself. The BZA will allow time for opposition to speak during the hearing on Thursday, January 16, 2020 in the Small Assembly Room in the City County Building at 4:00 p.m.

I have copied City staff members to this email and Mark Jendrek, who is the attorney working with Robert Cox on Application 1-I-20-VA. Copies of your letter and this response will be provided to the BZA members as well.

Thank you,

Christina Magrans
Staff Attorney
Law Department
(865) 215-2050

City of Knoxville

IMPORTANT DISCLAIMERS
PRIVILEGED AND CONFIDENTIAL INFORMATION:
This e-mail may contain PRIVILEGED and CONFIDENTIAL information and is intended only for the use of the specific individual(s) to which it is addressed. Review by any individual other than the intended recipient shall not constitute waiver of the attorney-client privilege, the attorney work-product doctrine, any evidentiary privilege, or any proprietary rights in the information. If you are not an intended recipient of this e-mail, please delete it and immediately notify the person named above by telephone or reply e-mail. Thank you.
INTENT NOT TO BE BOUND:
January 13, 2020

Board of Zoning Appeals
City of Knoxville
400 Main Street
Knoxville, TN 37902

Re: File # 1-I-20-VA
710 N. Cherry Street

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3. The applicant has not established any “legal” hardship that would support the granting of any variances.

4. The applicant has not explained why the existing medical building needs to double in size or whether or not there will be an expansion of business days and hours or other changes in its current business model; and he has not stated how and to what extent the doubling of the number of patients visiting the property will not significantly increase the number of vehicles coming to the property thereby jeopardizing the traffic patterns, both now and in the future, for vehicles, bicycles, and pedestrians.

5. Of particular interest to the Residents/Owners is why a proposed large expansion of the medical office building on the same-sized lot will require fewer parking spaces than the parking spaces that are already in existence. On its face, such a request appears to be absurd. Clearly, fewer parking spaces will virtually guarantee overflow parking onto Washington Avenue will occur. Additionally, ingress and egress will most assuredly occur on the alleyway adjacent to the applicant’s property, which ingress and egress was never contemplated in the use of the alley. Such use of the alley is likely to cause traffic hazards at the intersection of the alley with Cherry Street, which hazards would include jeopardizing modes of traffic by vehicle, bicycle, or pedestrian.

6. Setbacks required by the Code for parking, retaining walls, or other fencing, will most assuredly be abused and be detrimental to the community at large.

7. The proposed new parking area will most assuredly result in the inappropriate use of the alley as set forth in Paragraph 5 above.

Accordingly, the undertaking of a hearing at this time by the Board of Zoning Appeals is clearly premature and should be postponed to a later monthly Board meeting.

If you have any questions, please call me at your convenience. With kindest regards, I am

Respectfully,

Kenneth W. Holbert

KWH:pn
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 01/16/2020 at 4:00 PM, in the Small Assembly Room of the City/County Building, 400 Main Street, Knoxville.

BZ01120VA  ROBERT COX  (710 N CHERRY ST KNOX)

1) Reduce the required number of parking spaces from 15 to 6 (Article V Section 7.D.1 Table 1)
   DESCRIPTION: VARIANCE #1 WAS WITHDRAWN BY THE APPLICANT AND WAS NOT HEARD AT THE MEETING.
   01/16/2020: BZA Withdrawn

2) Reduce the minimum parking setback for parking lots with a common frontage on the same block with residentially zoned property from 25 feet to 0.75 feet (Article V Section 7.C.2)
   DESCRIPTION: BOARD VOTED 3-2 TO APPROVE.
   01/16/2020: BZA Approved

Appeal to City Council:
Date of Council Hearing:
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 02/03/2020, if no appeal is filed with MPC within fifteen (15) days after the BZA meeting.
File: 01-I-20-VA  
Applicant: Robert Cox  
Address: 710 N. Cherry St.  
Zoning: C-1 (Neighborhood Commercial) District

Parcel ID: 082GG005  
6th Council District

Variance Request:
1) Reduce the required number of parking spaces from 15 to 6 (Article V Section 7.D.1 Table 1)

2) Reduce the minimum parking setback for parking lots with a common frontage on the same block with residentially zoned property from 25 feet to 0.75 feet (Article V Section 7.C.2)

As per plan submitted for an office expansion in the C-1 (Neighborhood Commercial) District.

Applicant representative Mark Jendrek was present. Christina Magrans noted for the record that Mr. Jendrek acting as the attorney for the applicant and Mr. Holbert acting as the attorney for the opposition, both included additional handouts at the Pre-Agenda meeting that would be incorporated into the record. Christina Magrans asked that her email to both of them from January 14, 2020 be included in the record as well.

Peter Ahrens advised the first variance was being eliminated. The applicant advised City staff that variance #1 was no longer needed. The second variance request was to legalize an existing condition. The project met the threshold of redevelopment in Article 5, Section 7 which meant that all parking needed to comply with the current code but the variance that was being heard was a pre-existing, non-conforming legal condition.

Mr. Jendrek advised the driveway on Washington Ave. was built in 1988 as a means of ingress and egress for the site. The property fronted on N. Cherry St. which was the primary entrance. Cherry St. at that point was a four lane road with a boulevard dividing the northbound and southbound travel lanes. It also had a left turn lane cut into the boulevard allowing northbound vehicles on Cherry street to turn west onto Washington Ave. Mr. Jendrek clarified that when he referred to northbound he was talking about the lanes immediately adjacent to the property. Mr. Jendrek advised the special circumstance with the site was that people leaving the property could not travel southbound on Cherry St. other than to pull out, cut across two northbound lanes to get into the left turn lane, then make a U-turn onto southbound Cherry St. Mr. Jendrek advised not only was that unsafe, but that drivers couldn’t see the southbound traffic because of the crest of the hill and drivers couldn’t make a safe U-turn. The solution to that problem in
1988 was to put the driveway in, let people exit onto Washington Ave., go down to the traffic light and turn left. That solution was legal at the time and worked for 30 years but because of a redevelopment of the site the applicant was told they had to get approval and also a variance for a setback to continue to use what had been in place and used for 30 years.

Kevin Murphy was present and spoke on behalf of Scenic Knoxville. Mr. Murphy asked if the variance applied to the lot line that abutted the residential property on the northeast side. Comments were made away from the microphone. Mr. Murphy asked if the variance request for the reduction of the required parking setback to .75 ft. also applied to the northeast lot line. Peter Ahrens advised that it did not.

Glenn Wyatt was present to speak in opposition. Mr. Wyatt advised that he lived across the alley from the property in question and that the neighborhood has made a lot of progress throughout the years. If the re-development of the property in question was approved, it would change the neighborhood. Mr. Wyatt stated that there really wasn’t an issue with getting out of the parking lot. Patrons come in on the Washington Ave. side, Magnolia, Cherry St. and they go up and turn left at the turn signal. Mr. Wyatt expressed concern about increased traffic in the alley and the proposed installation of an 8 ft. privacy fence and felt that it was a bad plan.

Ken Hobert was present and advised that he had provided the Board with two separate transmittals in writing which were submitted as part of the record. Mr. Hobert advised that the proposed site plan would take away all of the grassy area on the northeast side and a border wall would be established. That border wall would block the vision of anyone in that residential area and probably, by expanding the property, would generate several problems in the area and send the message that the applicant didn’t care about the local residents or the neighborhood. This would compound an already controversial issue of a business that was in the business of taking the lives of the unborn. Mr. Hobert stated that he wouldn’t characterize it as a business or a provider of health. Mr. Hobert stated that, what was already a public nuisance, would be compounded and would create an opportunity for activities to take place, perhaps criminal nuisance.

Member David Dupree made a motion to allow a third speaker to speak in opposition since the first speaker really only had a question that just took a minute. It was seconded by Chairman Daniel Odle. The Board voted 5-0 to allow a third speaker.

Pastor Cecil Clark was present representing the Baptist church on Washington Ave. Pastor Clark stated he had been there for 10 years and that Planned Parenthood had devalued their property and their community. If the building was to be made bigger there would be bigger, more chaotic problems. Pastor Clark stated they were trying to make the area a better place and that it was disrespectful that it came from another part of the town and they put it in East Knoxville. Pastor Clark asked staff and Board members if they would want it in their community and stated that it was disrespectful and a dangerous place set in between two churches.

Mr. Jendrek spoke in rebuttal and noted that the border wall was something that the City had asked the applicant to incorporate in the northeast corner. Mr. Jendrek stated that number of parking spaces and using the alley was not in front of the Board as a practical legal matter. What was in front of the Board was the proximity of the driveway to Washington Ave. The applicant was asking for a variance to continue using that driveway so people could safely come and go from the property.
Member David Dupree asked for clarification on the applicant’s request and confirmed that they were not trying to widen or narrow the entrance. Mr. Jendrek stated that was correct. Member David Dupree stated the problem was that because it was built the way it was in 1988 and because there were some other things they wanted to do to the property, if they were to do those things to the property they would have to have the current setback basically adopted as legal, even though technically it’s legal for the way the building is now. Mr. Jendrek advised that was correct.

Christina Magrans advised that as the driveway was currently, it was a pre-existing legal non-conformity. The reason for the variance request was because of the threshold of development that was being hit. They would not have to remove the driveway if the variance wasn’t granted.

Member Grant Rosenberg noted that the variance request didn’t say anything about the driveway.

Peter Ahrens advised that it was part of the vehicular use area. The updates to the parking section of the Zoning Code were adopted in 2017 and that’s when setbacks came into effect. All of the paving is considered the parking lot. Once we start dissecting the parking lot we understand there are drive aisles, parking stalls and terminal islands, lots of pieces that make up what we call the parking lot. Because the applicant hit the threshold of Article 5, Section 7, part a.2.a, when the redevelopment of an existing structure exceeds 50% of the value of the property, then parking needs to comply with the entire Article. Once they hit that threshold of 50%, the City re-evaluated the entire parking lot and recognized that the area did not meet the setbacks for right of way and that was the reason why the Board was hearing the variance. Mr. Ahrens advised it was constructed legally, it was legal present day as is and if for some reason the applicant had value-engineered their project so that the value of their work was 49%, the request would not be before the Board.

Member Grant Rosenberg confirmed that the applicant could expand the parking lot without seeking a variance. Mr. Ahrens advised that was a true statement.

Member Don Horton confirmed that the applicant could minimize the amount of the expansion to fall within the threshold. Mr. Ahrens advised that was correct and that there were probably several ways they could reduce the value of the project.

Mr. Jendrek advised that none of those ways would change the location of the driveway. Whether they would exceed the 50% threshold or fall just below, they wanted to exceed that because they had services to provide and clients to take care of and if they could go beyond that 50% and keep that driveway, that’s why they needed the variance. Mr. Jendrek advised there was disparity as to how a parking lot was defined. Parking lot was defined in the Code as off-street facility consisting of 4 or more parking spaces typically including drive aisles, terminal islands and indoor islands. A drive aisle is defined as vehicular driving surface directly adjacent to parking spaces. Mr. Jendrek stated there were no parking spaces right there were the driveway is and they didn’t think it was a drive aisle because it wasn’t directly adjacent to parking spaces. Mr. Jendrek stated that was a semantic, legal argument that was not before the Board.

Chairman Daniel Odle addressed the room and stated that the Board of Zoning Appeals was charged with taking care of issues with the land and not with the use of the property. Chairman Daniel Odle stated that some of the comments that were made were not comments that the
Board of Zoning Appeals had the authority to deal with. The Board’s authority lies with the land itself, not its use and the Board was there to determine only the location of a driveway.

Chairman Daniel Odle approved a question from Mr. Hobert who asked about the setback from 25 ft. to .75 ft. Mr. Hobert asked if they were asking for a setback off the northeast line between the common boundary line between their property and the residential property.

Peter Ahrens advised it was the existing pavement from the parking lot setback to the right of way at the pinch point. Mr. Hobert confirmed that they were not asking for a setback on the north side on the common boundary line between the residential property and the applicant’s property. Peter Ahrens advised they were not. Mr. Hobert stated that was completely misrepresented on the agenda.

Member Christina Bouler stated that as written, the variance request seemed as though it would apply to the entire northern property line so it would affect future development and permit parking to be closer in other areas. As it was worded, it was not specifically for the existing drive aisle only. Peter Ahrens advised the variance request was worded in that manner because the subject property shares a common frontage with the adjacent residential. There are different languages and different setbacks if the property is adjacent. Mr. Ahrens stated the language was verbatim with the Code “parking lots with a common frontage on the same block with residentially zoned property”. So the language was to identify that there was a common frontage on the same block as the residentially zoned properties.

Christina Magrans clarified that it was not that the setback was between the property and the residentially zoned area.

Joshua Frerichs stated the reference of that variance was specifically talking about a parking lot setback from the right of way line.

Peter Ahrens advised it was basically recognizing that you have houses on the block so the intent was to push the parking lot back 25 ft. and recognize that there are front yards on the same block.

Member Christina Bouler stated she was saying that to address the current non-conforming aisle and that alone, they would specify that the variance applied only to the portion of Washington Ave. property line where the aisle currently is.

Christina Magrans advised that Member Christina Bouler could certainly make a motion that was specifically that narrow and tailored to what she had just mentioned.

Mr. Jendrek advised that there was a drawing in the last page of the packet that showed exactly where the area was for which the variance was being requested.

Member Don Horton made a motion to approve the variance. It was seconded by Member Daniel Odle. Member Grant Rosenberg asked for clarification before voting.

Peter Ahrens referred to the site plan and noted a portion that was legal as of present day. Mr. Ahrens advised if the building was expanded they would have to increase parking and the only area for that would be on the left side of the property.
Bryan Berry advised the setback shown from the parking that was provided was 15 ft. which met what Code required for setback next to a residential neighborhood.

Peter Ahrens advised there was the setback from the adjacent residential property. The way the variance was worded was reducing from 25 ft. down to the most restrictive which was the pinch point. If they address the pinch point, it would approve the parking basically along that line as it runs parallel to the right of way.

Member Christina Bouler asked if by adding in the new parking, would that trigger the need to alter the other aisle and why would the request for variance not be whatever amount is needed on the left hand side.

Peter Ahrens advised it was because they hit the 50% threshold which said the City had to evaluate all of the parking.

Member Don Horton, Daniel Odle and Grant Rosenberg voted to approve. Members Christina Bouler and David Dupree were opposed. The Board voted 3-2 to APPROVE.
February 11, 2020

John K. King
620 Market St., Fifth Floor
Knoxville, TN. 37902

Via Certified Mail

RE: 710 N. Cherry St. — Appeal

Appeal by John K. King on behalf of Tennessee Right to Life, Education Fund, Inc. of the approval to 1) Reduce the minimum parking setback for parking lots with a common frontage on the same block with residentially zoned property from 25 feet to 0.75 feet (Article V Section 7.C.2) at 710 N. Cherry St. in the C-1 (Neighborhood Commercial) District, 6th Council District, (082GG005) BZA File No. 1-I-20-VA.

Dear Mr. King:

This is to advise you that the attached appeal will be heard by City Council on February 25, 2020, at 6:00p.m. in the Main Assembly Room of the City County Building, 400 Main St., Knoxville, TN. You or your representative should be present.

If you have any questions, please let us know.

Sincerely,

Bryan Berry
Plans Review and Building Inspections Deputy Director
February 11, 2020

Robert Cox
26 N. 2nd St.
Memphis, TN. 38103

Via Certified Mail

RE: 710 N. Cherry St. – Appeal

Appeal by John K. King on behalf of Tennessee Right to Life, Education Fund, Inc. of the approval to 1) Reduce the minimum parking setback for parking lots with a common frontage on the same block with residentially zoned property from 25 feet to 0.75 feet (Article V Section 7.C.2) at 710 N. Cherry St. in the C-1 (Neighborhood Commercial) District, 6th Council District, (082GG005) BZA File No. 1-I-20-VA.

Dear Mr. Cox:

This is to advise you that the attached appeal will be heard by City Council on February 25, 2020, at 6:00p.m. in the Main Assembly Room of the City County Building, 400 Main St., Knoxville, TN. You or your representative should be present.

If you have any questions, please let us know.

Sincerely,

Bryan Berry
Plans Review and Building Inspections Deputy Director
February 11, 2020

Mark Jendrek
800 South Gay St., Suite 1900
Knoxville, TN. 37929

RE: 710 N. Cherry St. – Appeal

Appeal by John K. King on behalf of Tennessee Right to Life, Education Fund, Inc. of the approval to 1) Reduce the minimum parking setback for parking lots with a common frontage on the same block with residentially zoned property from 25 feet to 0.75 feet (Article V Section 7.C.2) at 710 N. Cherry St. in the C-1 (Neighborhood Commercial) District, 6th Council District, (082GG005) BZA File No. 1-I-20-VA.

Dear Mr. Jendrek:

This is to advise you that the attached appeal will be heard by City Council on February 25, 2020, at 6:00p.m. in the Main Assembly Room of the City County Building, 400 Main St., Knoxville, TN. You or your representative should be present.

If you have any questions, please let us know.

Sincerely,

Bryan Bérry
Plans Review and Building Inspections Deputy Director
February 11, 2020

Glenn Wyatt
2611 Jefferson Ave.
Knoxville, TN. 37914

RE: 710 N. Cherry St. – Appeal

Appeal by John K. King on behalf of Tennessee Right to Life, Education Fund, Inc. of the approval to 1) Reduce the minimum parking setback for parking lots with a common frontage on the same block with residentially zoned property from 25 feet to 0.75 feet (Article V Section 7.C.2) at 710 N. Cherry St. in the C-1 (Neighborhood Commercial) District, 6th Council District, (082GG005) BZA File No. 1-I-20-VA.

Dear Mr. Wyatt:

This is to advise you that the attached appeal will be heard by City Council on February 25, 2020, at 6:00 p.m. in the Main Assembly Room of the City County Building, 400 Main St., Knoxville, TN. You or your representative should be present.

If you have any questions, please let us know.

Sincerely,

Bryan Berry
Plans Review and Building Inspections Deputy Director
February 11, 2020

Kenneth W. Holbert
1810 Airlor Ave.
Knoxville, TN. 37921

RE: 710 N. Cherry St. – Appeal

Appeal by John K. King on behalf of Tennessee Right to Life, Education Fund, Inc. of the approval to 1) Reduce the minimum parking setback for parking lots with a common frontage on the same block with residentially zoned property from 25 feet to 0.75 feet (Article V Section 7.C.2) at 710 N. Cherry St. in the C-1 (Neighborhood Commercial) District, 6th Council District, (082GG005) BZA File No. 1-I-20-VA.

Dear Mr. Holbert:

This is to advise you that the attached appeal will be heard by City Council on February 25, 2020, at 6:00p.m. in the Main Assembly Room of the City County Building, 400 Main St., Knoxville, TN. You or your representative should be present.

If you have any questions, please let us know.

Sincerely,

Bryan Berry
Plans Review and Building Inspections Deputy Director
February 11, 2020

Kevin Murphy
4508 Murphy Rd.
Knoxville, TN. 37918

RE: 710 N. Cherry St. – Appeal

Appeal by John K. King on behalf of Tennessee Right to Life, Education Fund, Inc. of the approval to 1) Reduce the minimum parking setback for parking lots with a common frontage on the same block with residentially zoned property from 25 feet to 0.75 feet (Article V Section 7.C.2) at 710 N. Cherry St. in the C-1 (Neighborhood Commercial) District, 6th Council District, (082GG005) BZA File No. 1-I-20-VA.

Dear Mr. Murphy:

This is to advise you that the attached appeal will be heard by City Council on February 25, 2020, at 6:00p.m. in the Main Assembly Room of the City County Building, 400 Main St., Knoxville, TN. You or your representative should be present.

If you have any questions, please let us know.

Sincerely,

Bryan Berry
Plans Review and Building Inspections Deputy Director
February 11, 2020

Cecil Clark  
8625 Springfield Dr.  
Knoxville, TN. 37923

RE: 710 N. Cherry St. – Appeal

Appeal by John K. King on behalf of Tennessee Right to Life, Education Fund, Inc. of the approval to 1) Reduce the minimum parking setback for parking lots with a common frontage on the same block with residentially zoned property from 25 feet to 0.75 feet (Article V Section 7.C.2) at 710 N. Cherry St. in the C-1 (Neighborhood Commercial) District, 6th Council District, (082GG005) BZA File No. 1-I-20-VA.

Dear Mr. Clark:

This is to advise you that the attached appeal will be heard by City Council on February 25, 2020, at 6:00p.m. in the Main Assembly Room of the City County Building, 400 Main St., Knoxville, TN. You or your representative should be present.

If you have any questions, please let us know.

Sincerely,

Bryan Berry  
Plans Review and Building Inspections Deputy Director
PLANS REVIEW INSPECTIONS
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):

January 4, 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 January 4 2020

Notary Public

My commission expires August 6, 2021

Publication Cost: $276.48
Ad No: 0003979803
Customer No: 1317904
PO #: 1-16-20

This is not an invoice
PUBLIC NOTICE

The City of Knoxville, through its Director of Planning, and the Knoxville Housing Authority, will conduct a public hearing on the following subject for the purpose of providing a hearing for the City of Knoxville Zoning Ordinance at their January 14, 2020, meeting at 6:00 PM in the Council Chambers, 3rd Floor, 501 Summit Avenue, Knoxville, TN. The public hearing will be conducted in accordance with the provisions of the Code of Ordinances of the City of Knoxville, and the Department of Planning and Development. The purpose of the meeting is to hear comments and suggestions from the public regarding the amendment of the Zoning Ordinance to allow for the development of a new housing facility on the site located on Summit Avenue between the intersection of Summit Avenue and Howard Avenue.

An agenda meeting will be held at 3:00 PM in the City Council Chambers, 3rd Floor, 501 Summit Avenue, Knoxville, TN. The agenda meeting will consist of the presentation of the proposed amendment to the Zoning Ordinance and an opportunity for public input. The public is encouraged to attend the meeting and provide their comments and suggestions.

THOMAS CALDWELL, Zoning Administrator, City of Knoxville, will conduct the meeting.

John Holm, Mayor, City of Knoxville, will chair the meeting.

Rebecca Montgomery, Planning Director, will provide an update on the proposed project.

Wesley Andrews, City Attorney, will provide legal advice on the proposed project.

If you have any questions or concerns, please contact the City of Knoxville Planning and Development Department at 865-245-2000.
PLANS REVIEW INSPECTIONS
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):

February 8, 2020

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

\[Signature\]

Legal Clerk

Subscribed and sworn to before me this February 8 2020

\[Signature\]

Notary Public

\[Signature\]

Notary Public

My commission expires August 6, 2021

PUBLIC NOTICE
The following item will be considered by the Knoxville City Council on February 24, 2020, at 6:30 p.m. in the Main Assembly Room, City County Bldg., 400 Main St., Knoxville, TN. This item may be seen in the Planning and Building Inspection Office, Fourth Fl, of the City County Bldg., 400 Main St., Knoxville, TN. If you need assistance or accommodations for a disability, please contact the City ADA Coordinator at 215-5104.

APPEAL OF DECISION
Appeal by John R. King on behalf of Tennessee Right to Life, Education Fund, Inc., of the approved in:
1) Reduce the minimum parking setback for parking lots with a maximum frontage on the same block with predominantly zoned property from 25 feet to 17.6 feet. Article V, Section 7(b) of the Zoning Code at 199 N. Cherry St., in the 1-1 (Neighborhood Commercial) District. File No. 1-1-20-1

Publication Cost: $60.48
Ad No: 0004044151
Customer No: 1317904
PO #: 221858B

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