

SUMNER COUNTY BOARD OF ZONING APPEALS
MINUTES
February 11, 2021
5:00 p.m.

SUMNER COUNTY ADMINISTRATION BUILDING
BETHEL BROWN COMMISSION CHAMBERS
355 N. BELVEDERE DRIVE
GALLATIN, TN. 37066

MEMBERS PRESENT:

BRUCE RAINEY, CHAIRMAN
SANDY WEBSTER, VICE-CHAIRMAN
MAC HOLT
SHAWN UTLEY

MEMBER ABSENT:

MATT STAMPER

STAFF PRESENT:

JOSH SUDDATH, DIRECTOR OF DEVELOPMENT SERVICES
KATHY YOUNG, ASSISTANT TO THE DIRECTOR OF DEVELOPMENT SERVICES
RICHARD JONES, COUNTY ENGINEER
TODD HUBBARD, PROPERTY MAINTENANCE INSPECTOR

Mr. Rainey called the meeting to order, announcing that Mr. Suddath is working from home and will be presenting remotely via Zoom.

Mr. Rainey then called for a motion on the January Minutes.

**Ms. Webster made a motion to approve the January, 2021 Minutes as presented, seconded by Mr. Utley.
Motion passed unanimously,**

Mr. Rainey asked if there were any changes to the agenda.

Mr. Suddath stated that Regular Agenda item #3, Ricky Bobby Properties, has been withdrawn by the applicant.

Mr. Rainey stated that it would be appropriate to act on this item, asking for a motion to accept the withdrawal.

Ms. Webster made a motion to remove Regular Item #3, Ricky Bobby Properties, from the Agenda, seconded by Mr. Holt. Motion passed unanimously.

At this time, Mr. Rainey explained the Consent Agenda; stating that if any Board Member wishes to remove an item and place it on the Regular Agenda, they may do so.

Mr. Utley asked if anyone had signed up to speak to any items on the Consent Agenda.

Upon confirming that only requestors had signed up to speak, Mr. Rainey informed the requestors that they may request that their item be moved to the Regular Agenda, if desired. Mr. Rainey then read each of the items listed on the Consent Agenda.

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CONSENT AGENDA:

1. **Karen and Tony Privitera** were requesting a continuation of a Conditional Use Permit originally granted on January 10, 2019, to conduct a horse motel for horses and owners. Subject property is located at **443 Ben Albert Road, Cottontown, TN 37048**, is on Tax Map100, Parcel 007.04, contains 7.5 acres, is zoned Rural Residential (RR) and is in the 12th Commission Voting District (Michael Guthrie and Justin Nipper). **The adjoining property owners were notified by regular mail.**

2. **Jeremy Lane** was requesting a continuation of a Conditional Use Permit originally granted on February 9, 2017, to conduct a small business from a detached garage making home decorating items. Subject property is located at **3454 Highway 76, Cottontown, TN 37048**, is on Tax Map 057, Parcel 058.01, contains 2 acres, is zoned Rural Residential (RR) and is in the 12th Commission Voting District (Michael Guthrie and Justin Nipper). **The adjoining property owners were notified by regular mail.**

3. **John Bowman** was requesting a continuation of a Conditional Use Permit originally granted on February 9, 2017, to operate an internet based gun and ammunition shop. Subject property is located at **1025 Mount Olivet Road, Hendersonville, TN**, is on Tax Map 116, Parcel 030.01, contains 5.04 acres, is zoned Rural Residential (RR) and is in the 11th Commission Voting District (Scott Langford and Jeremy Mansfield). **The adjoining property owners were notified by regular mail.**

4. **Peter and Hope Thern** were requesting a continuation of a Conditional Use Permit originally granted on November 8, 2018, to operate an internet based business for firearms and sporting goods. Subject property is located at **1215 Lake Rise Overlook, Gallatin, TN**, is on Tax Map 158M, Group B, Parcel 042.00, contains 0.7 acres, is zoned Suburban Residential (SR) and is in the 6th Commission Voting District (Deanne DeWitt and Luke Tinsley). **The adjoining property owners were notified by regular mail.**

5. **Thomas Brown** was requesting a continuation of a Conditional Use Permit originally granted on February 14, 2019, to operate a fabrication shop. Subject property is located at **3339 Highway 259, Portland, TN 37148**, is on Tax Map 031, Parcel 008.06, contains 5.28 acres, is zoned Rural Residential (RR) and is in the 1st Commission Voting District (Terry Wright and Moe Taylor). **The adjoining property owners were notified by regular mail.**

Seeing that no one wished to move an item, Mr. Rainey entertained a motion.

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Mr. Utley made a motion to approve the requests of the Consent Agenda Items, seconded by Ms. Webster. Motion passed unanimously.

REGULAR AGENDA:

Mr. Rainey turned the meeting over to Mr. Suddath for staff presentation.

- 1. Jackie Ray Gambrell** was requesting a continuation of a Conditional Use Permit originally granted on August 14, 2003, to conduct an automobile repair and dismantling shop. Subject property is located at **3706 HWY 76, Cottontown, TN 37048**, is on Tax Map 074, Parcel 031.00, contains 1.10 acres, is zoned Rural Residential (RR) and is in the 12th Commission Voting District (Michael Guthrie and Justin Nipper). **The adjoining property owners were notified by regular mail.**

This is a continuation from the September 10, 2020 and January 14, 2021 BZA Meeting.

Mr. Suddath provided an overview of the property. Mr. Suddath provided a copy of the original motion to approve in August 14, 2003, and reviewed the conditions placed on the approval, which included:

- 1) That there be zero dismantled vehicles on site at any time, not even for a minute or for an hour*
- 2) That there be no posed of car parts, he can have a dumpster delivered to put the car parts in, but these parts cannot be outside*
- 3) And he will have to prepare a site plan to be approved by the Sumner County Regional Planning Commission as to his parking, etc. let them (Planning Commission) look at his site plan and let them control this*
- 4) That this use on appeal will cease within twenty four hours of the time that anybody that is an official that works for Sumner County sees a dismantled vehicle on site*
- 5) And that this body at least have an annual report from the Codes Department on the status of Mr. Gambrell's property.*

Mr. Suddath then displayed an aerial of the property and current photos of the property, showing car parts, tires, junk cars, etc.

Mr. Suddath stated that Mr. Todd Hubbard from the Codes Department, took the property photos and is in attendance.

Mr. Suddath concluded his presentation with example motions.

Mr. Rainey stated that the Board Members have received a letter from Mr. Gambrell, regarding his Conditional Use Permit.

Next, Mr. Rainey opened the Public Hearing.

Mr. Rainey asked Mr. Gambrell if he wished to add anything.

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Mr. Gambrell stated that he had nothing to add.

Mr. Rainey closed the Public Hearing.

Mr. Utley made a motion to deny a request for a two year continuation of a Conditional Use Permit for 3706 Highway 76, Cottontown, TN 37048, and to refer this item to the County Law Office, seconded by Mr. Holt.
Motion passed unanimously.

Mr. Rainey turned the meeting over to Mr. Suddath for staff presentation.

2. Mid America Distributors is requesting an interpretation of the County Zoning Resolution related to the “grandfather” status of a seasonal fireworks stand. Request is made pursuant to Chapter 14, Section 1404, Subsection D.4., property is located at **Highway 25E, Gallatin, TN, 37066**, on Tax Map 112NA, Parcel 001.00, containing 1.15 acres, is zoned Rural Residential (RR) and is in the 3rd Commission Voting District (Alan Driver and Steve Graves). **The adjoining property owners were notified by certified mail and this item was advertised in The Gallatin News on Thursday, January 28, 2021.**

Mr. Suddath provided an overview of the property. Mr. Suddath explained that while this location has been used in previous years, for this fireworks stand, the new Zoning Resolution and Zoning Maps moved this location (previously in the Planning Region) from the jurisdiction of the city of Gallatin, to the County. Mr. Suddath displayed an aerial photo of the property, the Public Notice and photos of the property.

Next, Mr. Suddath stated that under the Previous Zoning Resolution, no provisions were made for the BZA to consider applications for nonpermanent or “Temporary” type applications. Mr. Suddath explained that under the Current Zoning Resolution, provisions provided at Chapter 11, Section 1101 make allowance for these types of events, which must go to the BZA for a Special Exception. Mr. Suddath stated that Fireworks Sales Tents are one of several categories of temporary uses listed in the Zoning Resolution.

Mr. Suddath stated that the Zoning Resolution clearly states that *a temporary use permit for fireworks sales tents and stands may be issued in any commercial or industrial district for up to two (2) weeks prior to July 4th and January 1st. Said tent or stand must be removed no later than seven (7) days after July 4th or January 1st.*

Mr. Suddath explained that, as this property is in the Rural Residential (RR) Zone, it is not technically eligible for the temporary use permit. Mr. Suddath added that this use, on this property, is a long-standing, seasonal use for many years.

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In summary, Mr. Suddath stated that the applicant has requested that since the use predated the adoption of county zoning for this area, the use should be deemed legal nonconforming or “grandfathered” and should be allowed to continue in its previous configuration. Mr. Suddath stated that given the ambiguity of applying nonconforming status to a temporary use, staff has referred this item to the County Board of Zoning Appeals for an interpretation. Mr. Suddath requested that if the BZA determines that a grandfathered use exists at this location, no additional zoning entitlements will be required, but the item will need to renew a temporary use permit annually to confirm that nothing has changed.

Mr. Suddath concluded his presentation with example motions and stated that the applicant’s representative is in attendance.

Mr. Rainey opened the Public Hearing.

Mr. Robert (Bob) Johnson, 1406 Hartsville Pike, stated that Mr. Nelson Richardson, the property owner, had no knowledge of this request by Mid-America Distributors. Mr. Johnson spoke in opposition to this request.

Mr. Nate Musfield, Mid-America Distributors, stated that he spoke with Mr. Richardson, explaining the request. Mr. Musfield presented a copy of a multi-year lease agreement between Mid-America Distributors and Mr. Richardson for the property located at Highway 25E, Gallatin. Mr. Musfield stated that fireworks have been sold from this location since 1982. Mr. Musfield stated that the lease was entered into last year.

Mr. Rainey stated that the copy of the lease should be presented to the Board and entered into the record.

Mr. Musfield presented the lease agreement to the Board.

Mr. Rainey stated that the applicant has provided a copy of the Lease, dated February 6, 2020, running consecutively from June 12, 2020 through July 12, 2023. Mr. Rainey submitted the lease for review by Board members.

Mr. Musfield then referenced TN Code 13-7-208 B1, reading: *in the event that a zoning change occurs in any land area where such land area was not previously covered by any zoning restrictions of any governmental agency of this state or its political subdivision or where such land area is covered by zoning restrictions of a governmental agency of this state or its political subdivisions and such zoning restrictions differ from zoning restrictions imposed after the zoning change, then any industrial, commercial or business establishment, in operation, permitted to operate under zoning restrictions or exceptions thereto prior to the zoning change shall be*

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allowed to continue in operation and be permitted providing that no change in the use of the land is undertaken by such industry or business.

Mr. Musfield stated that in his company's 40-year history, there have been many similar situations arise, and added that they have never been refused permission to continue operations, under this State Code. Mr. Musfield requested the grandfathered use to continue on subject property.

There being no one else wishing to speak, Mr. Rainey closed the Public Hearing.

Mr. Rainey noted that the lease pre-dates the County taking over zoning for this property by 18 days. Mr. Rainey stated that this is worth taking into consideration when making a decision.

Mr. Rainey added that if the requestor wishes to operate on the property after 2023, the County may revisit this.

Mr. Holt asked Mr. Musfield about the operations schedule for this year.

Mr. Musfield stated that they will operate during the legal sales dates from June 20, 2021 to July 5, 2021 and during the winter, if agreed upon with the landowner, from December 10 to January 2, 2022. Mr. Musfield added that there are currently no winter sales planned.

Mr. Holt asked about safety precautions.

Mr. Musfield stated that they acquire all permits, are required to be inspected by the Fire Marshall, and have on-site fire extinguishers.

Mr. Holt asked to see the allowed sales timeline per the Zoning Resolution.

Mr. Rainey commented that the lease has fewer operating days than the Zoning Resolution guidelines would allow.

Mr. Utley asked how this was allowed prior to the Zoning Resolution.

Mr. Suddath stated that the County did not have any active fireworks stands prior to assuming zoning for the Municipal Planning Regions. Mr. Suddath stated that this property was previously under the City of Gallatin's jurisdiction, adding that the requestor followed their temporary use permit process requirements. Mr. Suddath stated that the property came under our jurisdiction July 1, 2020.

Mr. Rainey asked if this fireworks sales location was in operation before July 4 of last year.

Mr. Suddath confirmed that they were in operation last year

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Mr. Rainey stated that Ms. Webster also has personal knowledge of it being in operation.

Mr. Utley asked if the State Law, quoted by Mr. Musfield, coincides with temporary uses.

Mr. Suddath stated that he is unaware of such, adding that this is one of the reasons he has brought this item to the BZA, for zoning guidance.

Mr. Suddath stated that the Zoning Code refers to Nonconforming uses.

There was discussion regarding clarification of the Board's duty to concur or reject with the requestor's assertion that the seasonal fireworks stand is a "Grandfathered" use. There was discussion that, if Grandfathered, the conditions place on the use would have to be based on the lease, that predates the County's zoning, implying that the use could not extend beyond the current lease and could not be extended.

Mr. Suddath referred to Chapter 13, Section 1301 of the Zoning Resolution, Nonconforming (Legal and Illegal) Lots and Structures, addressing a use that was legally permitted at the time of the Zoning change:

A. Upon adoption of this Resolution, there will exist certain uses of land, structures, parcels of record, and signs that were lawfully existing but will hereafter no longer conform to this Resolution's terms and requirements. The purpose and intent of this Article is to regulate the continued existence of those uses, structures, parcels of record, and signs that do not conform to the provisions of this Resolution, or any amendments thereto.

B. Any lawful use of land or structure existing on the effective date of this Resolution, or subsequent amendment thereto that is located in a zoning district in which it would not be permitted as a new use, or where the structure or lot does not comply with the applicable dimensional standards, is declared to be a legal nonconformity.

Mr. Suddath added that the burden of proof is upon the applicant.

Mr. Suddath stated that it does not address permanent vs. temporary uses.

Mr. Utley made a motion to concur with the requestor's assertion that a seasonal fireworks stand conducted at Tax Map 112N, Group A, Parcel 001.00 is a Legal Nonconforming or "Grandfathered" use, until the end of the lease, seconded by July 12, 2023, at such time the requestor would have to come back before this Board,

Mr. Rainey stated that Mr. Suddath said that they would have to come before this Board every year.

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There was discussion regarding the motion and conditions that could be placed on the Grandfathered use.

Mr. Holt made a motion to concur with the requestor's assertion that a seasonal fireworks stand conducted at Tax Map 112N, Group A, Parcel 001.00 is a Legal Nonconforming or "Grandfathered" use, with the following conditions:

- a) The requestor return to this Board annually, until the end of the lease, dated July 12, 2023**
- b) At the end of the lease, July 12, 2023, the Grandfathered use is Void, Seconded by Mr. Utley.**

Mr. Suddath suggested adding a condition that the applicant provide a Site Plan to the Planning Department

Mr. Rainey asked if 2020 photographs would suffice.

Mr. Suddath clarified that rather than a fully engineered Site Plan, a Lot Layout, showing tents, storage area, sales stands, parking would be sufficient.

Mr. Utley moved to amend the motion to add:

- c) require that the requestor provide a rough sketch layout of the site, to maintain a similar layout since 1982**

Mr. Holt accepted the amendment.
Motion passed unanimously.

3. Ricky Bobby Properties, LLC, Represented by GreenLID Design, are requesting a Special Exception to construct a Volunteer Fire Department Facility. This request is made pursuant to Chapter 14, Section 1411F of the County Zoning Resolution. Subject property is located at Highway 76, Cottontown, TN, 37048, is on Tax Map 057, Parcel 034.05, contains 5.64 acres, is zoned Rural Residential (RR) and is in the 12th Commission Voting District (Michael Guthrie and Justin Nipper). **The adjoining property owners were notified by certified mail and this item was advertised in The Gallatin News on Thursday, January 28, 2021. (APPLICANT HAS REQUESTED THAT THIS ITEM BE WITHDRAWN)**

4. Scott M. Crafton was requesting to appeal a staff determination related to County height requirements for amateur radio towers, on the grounds that the County's requirements are superseded by State and Federal Regulations. Appeal is requested pursuant to Chapter 14,

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Section 1404, Subsection D.1. Approval of the appeal would authorize construction of a 100-foot tall Amateur (HAM) Radio Tower in accordance with plans submitted by the property owner. Subject property is located at **1114 Dickerson Bay Drive, Gallatin, TN, 37066**, is on Tax Map 147N A, Parcel 001.03, contains 3.56 acres, is zoned Rural Residential (RR) and is in the 6th Commission Voting District (Deanne Dewitt and Luke Tinsley). **The adjoining property owners were notified by certified mail and this item was advertised in The Gallatin News on Thursday, January 28, 2021. This item was deferred at the January BZA meeting.**

At this point, Mr. Rainey recused himself and turned the meeting over to Vice-Chair, Ms. Webster.

With Mr. Rainey's absence, there were three board members in attendance, which is a quorum.

Ms. Webster turned the meeting over to Mr. Suddath for staff presentation.

Mr. Suddath provided an overview of the property by explaining that the property owner is requesting to appeal a staff determination related to height requirements for amateur radio towers, on the grounds that the County's requirements are preempted by State and Federal Regulations. Mr. Suddath stated that Chapter 4, Section 404 of County Zoning Resolution requires that structures may not be taller than 35 feet. Mr. Suddath stated that the proposed tower is 100 feet tall

Next, Mr. Suddath stated that an attorney, representing the applicant, filed an Administrative Appeal, citing state law, FCC rulings and Code of Federal Regulations as they apply to Amateur Radio Towers, stating that the County's regulations are overly broad, and since they impose a blanket height requirement, are without effect with regard to Amateur Radio Towers.

Mr. Suddath provided an aerial photo of the property and the Public Notice that was placed in The Gallatin News.

Next, Mr. Suddath displayed the section of the previous zoning resolution addressing amateur radio towers, stating that the applicant completed their application with this zoning code in mind, adding however, that the application was not submitted until after the new zoning resolution had been adopted. Mr. Suddath explained that the application met the requirements of the previous zoning resolution, however does not meet the requirements of the current zoning resolution.

Mr. Suddath then displayed Chapter 11, Section 1105, Subsection C.2 of the Sumner County Zoning Resolution, pointing out that it does not apply to amateur HAM radio facilities or antenna that are less than 35 feet. Mr. Suddath stated that there is no exception for any HAM antennae to be taller than 35 feet.

Mr. Suddath displayed the application submitted on 12/18/2020 by the requestor's attorney.

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Mr. Suddath then displayed the Tennessee Code Annotated 6-54-130(b) which reads that: *If a municipality adopts an ordinance involving the placement , screening or height of an amateur antenna based on health, safety, or aesthetic conditions, the ordinance shall:*

- (1) Reasonably accommodate amateur radio communications, and*
- (2) Represent the minimal practicable regulation to accomplish the municipality's or county's purpose.*

Therefore, Mr. Suddath explained, the applicant's representative states that a fixed height requirement is not the minimal practical application.

Mr. Suddath also displayed the Code of Federal Regulations, Title 47, Chapter 1, Subchapter D, Subpart A, annotated 97.15, which reads: *(b) Except as otherwise provided herein, a station antenna structure may be erected at heights and dimensions sufficient to accommodate amateur service communication. (State and local regulation of a station antenna structure must not preclude amateur service communication. Rather, it must reasonably accommodate such communication and must constitute the minimum practicable regulation to accomplish the state or local authority's legitimate purpose.*

Next, Mr. Suddath displayed the submitted Plot Plan, showing the entire fall radius contained on the subject property. Mr. Suddath also displayed photos of the Public Notice sign posted on the property, the existing antenna and the property.

Mr. Suddath concluded his presentation with example motions and stated that the applicant's representative, Mr. Phillips is in attendance.

Mr. Suddath announced that there are four documents that have been submitted to each Board member and have been entered into the record: 1) Letter from Josh Phillips, attorney, 2) Letter of support from Fred Hopengarten, President of a National HAM Radio Organization, 3) Propagation Study by Dennis G. Eagen, and 4) PRB1, Memorandum of Opinion from the FCC.

Ms. Webster opened the Public Hearing.

Mr. Charles Lipscomb, stated opposition to the antenna tower, referencing hazard, traffic and eyesore.

Mr. John Philips, attorney for Scott Crafton, stated that Mr. Crafton was unable to be here, as his job has him in Alaska at this time. Mr. Phillips stated that there are State and Federal laws that govern this subject, calling for this tower request to be approved.

A woman from the audience stated opposition to the tower as it will be an eyesore. She asked, if approved, that there be two conditions on the approval: 1) Evergreen trees, at least 30 feet in

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height, be planted around the tower and 2) Let this approval be only for an amateur tower, not a radio or cell phone tower.

Mr. Utley asked the woman if they experience any interference from the existing HAM Radio tower.

The woman stated that it may be a coincidence, but they have had an electrical problem recently, affecting the Wi-Fi, garage door, security system and half the house's power.

Mr. Gary Philips stated that during the past several years that Mr. Crafton has operated the HAM Radio, he has experienced no interference. Mr. Philips spoke in favor of the HAM Radio tower, as it will provide an alternative form of communication. Mr. Philips stated that there are 219 HAM Radio operators in this zip code.

There being no one else to speak, Ms. Webster closed the Public Hearing.

Mr. Holt asked Mr. John Philips if there were plans to add plant screening.

Mr. Philips stated that he was unsure, however added that he believes Mr. Crafton will do what is necessary to be a good neighbor.

Mr. Holt asked for confirmation that this tower will only be used for a HAM Radio.

Mr. Philips stated that Mr. Crafton has two motivations, as a hobby and for his work in Alaska.

Mr. Holt asked Mr. Suddath if this would need to be renewed every two years.

Mr. Suddath stated that, as this is a request to appeal staff decision, it is not required to be renewed.

Mr. Holt asked if it would be appropriate to require a two-year renewal.

Mr. Suddath stated that could be tricky, adding that the Board could be justified in asking Mr. Philips to make a commitment to plant an evergreen screen around the tower.

Mr. Utley stated that the 35-foot requirement is the determination to be made.

Mr. Suddath stated that although this is not a permit request, a condition of screening is not unreasonable.

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Mr. Holt made a motion to overturn the staff determination, and to concur with the applicant's assertion that the 35 foot maximum height requirement in the Rural Residential District does not apply to Amateur "Ham" radio towers on the grounds that:

- a) The County's fixed maximum height restriction contradicts relevant state and federal law related to "minimum practicable regulations" which preempt the County's building height requirements in this regard,**

Seconded by Mr. Utley who stated a desire to amend the motion to include:

- b) That all FAA and FCC regulations be adhered to.**

Mr. Holt concurred.

Motion passed unanimously.

There being no further business,

Mr. Utley made a motion to adjourn, seconded by Mr. Holt.

Meeting adjourned at 6:32 PM.