

SUMNER COUNTY BOARD OF ZONING APPEALS
MINUTES
January 14, 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
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.

Mr. Rainey stated that the first item on the agenda, Jackie Ray Gambrell, would be deferred, without objection, until the February meeting.

Next, Mr. Rainey asked Mr. Suddath for an update on the McCurdy Road application from the December, 2020 meeting.

Mr. Suddath stated that the BZA decision was made to continue the item in order to allow the applicant to gather information regarding soil area and other issues. Mr. Suddath explained that the continuation keeps that application active until this month. However, Mr. Suddath stated that he has spoken with the applicant, and as they have not been able to determine soil area, he believes they will need to reapply.

Next, Ms. Webster made a motion to approve the December 2020 Minutes, seconded by Mr. Holt. Motion passed unanimously.

Ms. Webster made a motion to approve the Agenda as submitted, with Item #1, Jackie Ray Gambrell deferred until February, seconded by Mr. Holt. Motion passed unanimously.

At this time, Mr. Rainey stated that he would recuse himself from Items #5 and #6.

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

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031.00, contains 1.10 acres, is zoned Rural Residential (RR) and is in the 12th 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 BZA Meeting.

Deferred until February 11, 2021.

2. Kenneth Carver was requesting a variance from County requirements contained at Chapter 11, Section 1101, Subsection D.1 of the Sumner County Zoning Resolution related to placement of an accessory structure on the property. Variance is being requested in accordance with Chapter 14, Section 1410 of the County Zoning Resolution. Subject property is located at **296 Hurt Road, Hendersonville, TN, 37075**, is on Tax Map 139, Parcel P/O 080.00, contains 5.736 acres, is zoned Rural Residential (RR) and is in the 11th Voting District (Scott Langford and Jeremy Mansfield). **The adjoining property owners were notified by certified mail and this item was advertised in The Gallatin News on Thursday, December 24, 2020.**

Mr. Suddath provided an overview of the property, displaying an aerial photo of the property and the Public Notice. Mr. Suddath stated that the applicant cited topographical issues as the reason for the variance. Next, Mr. Suddath displayed the Plot Plan and photos of the property, depicting a hillside as being the topographical issue. Mr. Suddath then explained the standards for variances, stating that this property meets these.

Mr. Suddath concluded his presentation with example motions and stated that Mr. Carver is in attendance.

Mr. Rainey opened the Public Hearing. There being no one wishing to speak, Mr. Rainey closed the Public Hearing and called Mr. Carver forward.

At this time, Mr. Rainey stated that Mr. Gambrell was in attendance. Mr. Rainey explained to Mr. Gambrell that his request has been deferred for 30 days.

Mr. Carver stated that Mr. Suddath made a thorough presentation and restated the topographical issue as reason for requesting the variance.

Mr. Stamper made a motion to approve a request for a variance for an existing structure placed in the required front yard at 296 Hurt Road, Hendersonville contingent upon:

- a) All required Building and Land Disturbance Permits must be obtained from the Sumner County Building Codes Office**
- b) Structure shall not be used for living quarters or for the operation of a business unless the appropriate zoning permits are obtained,**

Seconded by Mr. Holt.

Motion passed unanimously.

Mr. Utley asked if there had been any comments received by staff.

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Mr. Suddath stated that no comments had been received, regarding this request.

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

3. Thomas and Linda Zoeller were requesting a variance from County requirements contained at Chapter 4, Section 404 of the Sumner County Zoning Resolution related to encroachment of an accessory structure within a rear yard and side yard setback. Variance is being requested in accordance with Chapter 14, Section 1410 of the County Zoning Resolution. Subject property is located at **119 Sugar Tree Lane, Gallatin, TN, 37066**, is on Tax Map 157O A, Parcel 016.00, contains approximately 1 acre, 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, December 24, 2020.**

Mr. Suddath provided an overview of the property. Mr. Suddath then displayed an aerial photo of the property, the Public Notice, and the application, stating the reason for the variance was to construct a pool and deck. Mr. Suddath explained that due to the lot size, this property abides by the setbacks for the Suburban Residential Zoning, which are a 20 ft. rear yard setback and a 10 ft. side yard setback.

Next, Mr. Suddath displayed the submitted Plot Plan, explaining the requested encroachment being up to less than a foot of the rear property line and up to 2.6 feet of the side property line. Mr. Suddath then displayed photos of the property and the standards for variances, explaining how this request meets those standards.

Mr. Suddath concluded his presentation with example motions.

Mr. Rainey opened the Public Hearing.

Mr. Kevin Adams, the pool contractor, stated that this will be an in-ground pool. Mr. Adams stated that there are no neighbors to the back, and the neighbor to the west has submitted a letter in approval of the pool. Mr. Adams stated that they will not encroach into the 5-foot utility easement, to the west.

Mr. Utley asked for clarification of the requested encroachment, based on the differences in the two images of the Plot Plan.

Mr. Adams stated that the retaining wall is shown on one Plot Plan.

Mr. Suddath stated that the County Zoning Resolution does not count the retaining wall as an encroachment.

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Mr. Adams clarified that the encroachment will be 2'3" from the property line.

Ms. Linda Zoeller stated that the desire for the pool for health reasons, adding that it will be aesthetically pleasing.

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

Mr. Rainey stated that this subdivision pre-dates Zoning Regulations.

Mr. Stamper made a motion to approve a request for a variance allowing an encroachment into a rear and side yard setback in accordance with the submitted plot plan for 119 Sugar Tree Lane, Gallatin contingent upon:

- a) All required Building and Land Disturbance Permits must be obtained from the Sumner County Building Codes Office,**

Seconded by Mr. Utley.

Discussion ensued regarding the Public Utility Easement.

Motion passed unanimously.

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

4. Cynthia S. Evans and Michael K. Hester were requesting a Special Exception to create a family cemetery. This request is made pursuant to Chapter 11, Section 1103B of the County Zoning Resolution. Subject property is located at **350 South Road, Cottontown, TN, 37048**, is on Tax Map 055, Parcel 028.00, contains 24.5 acres, is zoned Rural Residential (RR)) and is in the 12th Commission Voting District (Michael Guthrie & Justin Nipper). **The adjoining property owners were notified by certified mail and this item was advertised in The Gallatin News on Thursday, December 31, 2020.**

Mr. Suddath provided an overview of the property, stating that private cemeteries in Sumner County are regulated by applicable private acts of the State Legislature and are regulated by the County Zoning Resolution. Mr. Suddath displayed an aerial photo of the property, the Public Notice and the Boundary Survey. Mr. Suddath explained that the cemetery has a 25' ingress/egress easement that is over 1000 feet in length.

Mr. Suddath explained that per the County Zoning Resolution, a family cemetery is considered to be a minimal impact facility, which classifies it as a Community Facility Activity, and thus is allowed by a Special Exception from the BZA, within the RR Zoning.

Next, Mr. Suddath displayed the Zoning Resolution specific requirements for cemeteries. Mr. Suddath explained that these include:

- 1) Must not be within 3 miles of any city limit (if it is, the city must also approve)*
- 2) Must conform to the County's Comprehensive Plan*

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- 3) *That it: "...will not injure, affect or interfere with the public peace, health, safety, comfort and general welfare, consideration being given to the character of the district where such cemetery is to be located, or enlarged, the peculiar suitability of such location for cemetery uses, the conservation of property values, the direction of building improvement, the congestion on public highways, and further extensions of public streets, highways, sewers, water mains and instrumentalities of public service companies"*

In addition, Mr. Suddath stated that forms promulgated by County Law Office require a 25 foot easement in order to secure future access to the cemetery, and require zoning approval from all relevant jurisdictions.

Due to the number of requirements, and the ambiguity related to securing zoning approval, Mr. Suddath explained, Staff elected to bring this item to the BZA for consideration.

Mr. Suddath stated that the only issue seems to be that the cemetery appears to be only 2.48 miles from the city of White House. Mr. Suddath stated, therefore, that the City of White House may need to grant approval for this cemetery, since it is within the required 3 miles distance from the city. Mr. Suddath stated a willingness to help coordinate the approval with the city of White House.

Next, Mr. Suddath displayed photos of the property, stating that the cemetery area is well buffered. Mr. Suddath then explained the 4 key requirements and required findings, stating that a special exception shall only be granted provided the Board makes specific findings that it:

- Is so designed, located, and proposed to be operated so that the public health, safety and welfare will be protected;

Staff Interpretation: No impacts to the public's health and safety due to traffic, pollutant or other concerns are anticipated as a result of cemetery construction. Any state permits related to on-site burials must be obtained. It does not appear to obstruct any proposed roadways, or to impede any future extension of public utilities.

- Will not adversely affect other property in the area in which it is located;

Staff Interpretation: The proposed cemetery will meet established requirements for cemeteries generally across the county, and will be private. The property it will be contained upon is approximately 24.5 acres, and the proposed plot will be over 100 feet from the south property line. The cemetery will be buffered from the property to the south by existing tree cover. Adverse impacts are not anticipated

- Conforms to all applicable provisions of this Resolution for the district in which it is to be located and is necessary for public convenience in that location and if applicable, meets the specific standards below.

Staff Interpretation: The use appears to conform to all applicable provisions of the County Zoning Resolution. Approval from the County Commission is required, in accordance with

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Private Acts adopted by the State Legislature for Sumner County. Since the property is within 3 miles of the City of White House, approval from them is also required.

- Shall be located so as to be compatible with the surrounding area and provide safety to those using the facility.

Staff Interpretation: Proposed cemetery will be of 25'X 25' dimensions. Similar private cemeteries both of a historic and non-historic nature exist throughout Sumner County. No safety impacts anticipated.

Mr. Suddath completed his presentation with example motions.

Mr. Rainey asked Mr. Suddath if the Board is to vote on making a recommendation to the County Commission or on approving a Special Exception.

Mr. Suddath stated that by approving a Special Exception, it would be stating approval and passing recommendation to the County Commission.

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

Mr. Utley made a motion to approve a request for a Special Exception allowing a creation of a private family cemetery in accordance with the submitted plot plan for 350 South Road, Cottontown contingent upon:

- a) All applicable approvals must be obtained from the County Commission, City of White House and from any applicable state agencies.**

Mr. Utley asked if the cemetery will be deeded as a separate property from the parent tract.

Discussion ensued. Mr. Suddath stated that there would be a recorded instrument for the cemetery and the ingress/egress easement. Mr. Rainey stated that the cemetery itself would be tax exempt.

Mr. Utley amended the motion to include the following condition:

- b) Cemetery legal description with Boundary Survey must be recorded with the Deed, Seconded by Ms. Webster. Motion passed unanimously.**

At this time, Mr. Rainey recused himself from the meeting.

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

- 5. Kristi and Joshua Robey were requesting a variance from County requirements contained at Chapter 4, Section 404 of the Sumner County Zoning Resolution related to encroachment of a**

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primary structure within a side yard setback. Variance is being requested in accordance with Chapter 14, Section 1410 of the County Zoning Resolution. Subject property is located at **120 Sugar Tree Lane, Gallatin, TN, 37066**, is on Tax Map 157O, Group A, Parcel 020.00, contains .3 acre, is zoned Rural Residential (RR) and is in the 6th Commission Voting District (Deanne DeWitt & Luke Tinsley). **The adjoining property owners were notified by certified mail and this item was advertised in The Gallatin News on Thursday, December 24, 2020.**

Mr. Suddath provided an overview of the property, stating the request to encroach 2.9 feet into the side yard setback. Mr. Suddath displayed an aerial photo of the property and the Public Notice, pointing out a mistake, being that the highlighted property on the notice is the wrong property. Mr. Suddath requested guidance as to whether the BZA would consider accepting this to be constructive notice or would like to have this item re-advertised.

Mr. Utley made a motion to accept the Public Notice, seconded by Mr. Holt. Motion passed unanimously, with Mr. Stamper abstaining.

Mr. Suddath went on to explain that as this lot has less than 40,000 square feet, the setbacks are the same as the SR zoning. Mr. Suddath displayed the Plot Plan, explaining the request to build an attached garage at the front of the residence, which will encroach 2.9 feet into the 10-foot side yard setback. Mr. Suddath displayed photos of the property and then explained how the request meets the standards for variances found in Chapter 14, Section 1410, Subsection C of the County Zoning Resolution.

Mr. Suddath concluded his presentation with example motions.

Ms. Webster opened the Public Hearing.

Kristi Robey stated that the residence encroaches into the setback the same amount as the requested variance.

Mr. Suddath confirmed that there is an existing non-conformity with the residence and explained that this encroachment would match the existing non-conformity.

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

Mr. Utley made a motion to approve a request for a variance allowing an encroachment into a side yard setback in accordance with the submitted plot plan for 120 Sugar Tree Lane, Gallatin contingent upon:

- a) All required Building and Land Disturbance Permits must be obtained from the Sumner County Building Codes Office,
Seconded by Mr. Stamper. Motion passed unanimously.**

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

- 6. Scott M. Crafton** was requesting a variance from County requirements contained at Chapter 4, Section 404 of the Sumner County Zoning Resolution related to maximum height requirements within the Rural Residential District in order to construct a 100 foot tall Amateur (HAM) Radio Tower. Variance is being requested in accordance with Chapter 14, Section 1410 of the County Zoning Resolution. 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, December 24, 2020.**

Mr. Suddath began his presentation by stating that the original request was to obtain a variance from County requirements related to maximum building height requirements for a proposed 100 foot tall Amateur Radio Tower, seeking to vary from Chapter 4, Section 404 of County Zoning Resolution, which requires that structures may not be taller than 35 feet.

Mr. Suddath stated that per the County Zoning Resolution, amateur towers are not considered under the same provisions as wireless towers, explaining that the Zoning Code treats them as accessory structures. Mr. Suddath explained that structures may not be any taller than 35' per the Zoning Resolution.

Mr. Suddath explained that on December 12, 2020, an attorney representing the applicant, filed an amendment to the variance request, in the form of an Administrative Appeal, citing state law, FCC rulings and Code of Federal Regulations as they apply to Amateur Radio Towers.

Next, Mr. Suddath displayed an aerial photo of the property and the Public Notice.

Mr. Suddath stated that this request was discussed with staff several years ago, prior to the adoption of the current Zoning Resolution, explaining that the previous Resolution did allow these amateur radio towers. Therefore, Mr. Suddath explained, the application was crafted around the old Zoning Resolution and would have been approved under such.

Mr. Suddath then stated that the application, however, has come in under the new Zoning Resolution, which places this amateur radio tower in the same category as accessory structures.

Next, Mr. Suddath displayed the applicant's reason for the variance request written on the original application dated October 29, 2020. Mr. Suddath then displayed the reason for the administrative appeal, stated on the application addendum, submitted on December 18, 2020, explaining that it is an amendment to, and combined with, the variance application, stating that *a firm, fixed absolute maximum height restriction conflicts with Communication Act of 1934, 47 U.S.C.s. 151, and the regulations thereunder 47CER.s 97 15, and FCC Declaratory Ruling*

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known as PRB-1, and are therefore preempted. The reason provided goes on to state that the fixed maximum height is illegal under Tennessee law, TN Code Annotated 6-54-130.

Mr. Suddath stated that he received a copy of the TN Code Annotated 6-54-130 on January 13, and then displayed the section of the document that states that *“b) If a municipality adopts an ordinance involving the placement, screening or height of an amateur antenna based on health, safety of 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.*

Mr. Suddath stated that the documents provided declare that County rules are preempted by Federal Law and are not valid, then stated that they support the height requested for the tower, in order to conduct intercontinental communications.

Mr. Suddath went on to explain that the Code of Federal Regulations, Title 47, Chapter 1, Subchapter D, Subpart A, Annotated 97.15, regarding Station antenna structures, supports the same information.

At this point, Mr. Suddath displayed the submitted Plot Plan, depicting the tower and the fall radius completely contained on the property. Mr. Suddath displayed photos of the property, showing the presence of an existing tower.

Mr. Suddath stated that staff received quite a few inquiries and letters of concern from adjoining property owners, regarding this request. Mr. Suddath stated that copies of those letters have been distributed to the members of the BZA. Mr. Suddath went on to state that most of the letters were in opposition to the request, confirming that there were nine against the request and one in favor. Stating that the property owner is in attendance, Mr. Suddath concluded his presentation with two sets of example motions; one for the Variance request and one for the Administrative Appeal.

Ms. Webster opened the Public Hearing.

Mr. Josh Phillips, attorney for the landowner, thanked Mr. Suddath for his thorough presentation. Mr. Phillips clarified that this is not a variance request, but is an Administrative Appeal to the denial of the building permit, which was based on height restrictions. Mr. Phillips stated that the aforementioned Tennessee State Statute rules that any ordinance must provide reasonable accommodation for Amateur Radio Towers. Mr. Phillips stated that the fixed height restriction makes no such accommodation, adding that there is no grounds for the denial.

Mr. Charles Lipscomb, 1032 Bradley Road, stated opposition, concerned with property value, unknown type of communication and traffic.

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Ms. Gwen Schaffer, 1029 Bradley, stated opposition, concerned of an eyesore and property devaluation, blinking lights and confusion between county codes and state law.

Mr. Gary Phillips, stated support of this request in light of recent communication disruptions, expressing opinion that the HAM Radio may serve as a way to communicate locally and worldwide, if needed. Mr. Phillips added that the antennae is not a solid object and can be seen through.

Mr. Colby Phillips, 1106 Dickerson Bay Drive, stated that he has no objection to the tower.

Mr. Scott Crafton stated that he invites all neighbors to come and talk to him. Mr. Crafton stated the desire to provide a service to the community and added that the existing HAM Radio has been on his property since 2013.

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

Mr. Utley asked the attorney representing the applicant if the appeal is that the staff made the wrong decision or that the regulations are illegal.

Mr. Josh Phillips stated that the appealing the staff decision because they relied on a height restriction that does not apply.

Mr. Utley stated that the height restriction clearly states 35 feet.

Mr. Phillips responded that according to Tennessee law, if you have an ordinance, it must reasonably accommodate the amateur radio operators.

Mr. Utley stated that with that being the case, the County Regulation is in violation of the law. Therefore, Mr. Utley asked; if staff made a determination based on our Regulation, then how does this Board have the ability to change the law; and if it doesn't meet state law, how is this the Board to appeal to? Mr. Utley added that our Regulation may be in violation of state law, and cannot grant a variance or change a law.

There was discussion and Mr. Suddath stated that supplemental information was received last night and has not yet been thoroughly reviewed by the legal department.

Mr. Holt made a motion to defer for 30 days.

Mr. Utley amended the motion to defer for 30 days, allowing time for review and guidance from the County Attorney.

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Mr. Holt agreed to the amendment.

Mr. Utley seconded.

Motion to defer until the February 2021 BZA meeting, allowing time for review and guidance from the County Attorney, passed 3-1 with the following votes:

Mr. Utley – aye, Mr. Holt –aye, Ms. Webster – aye and Mr. Stamper – no.

Mr. Suddath stated that this item will be re-advertised as an Administrative Appeal. Mr. Suddath also confirmed that he would discuss with the County Attorney.

There was discussion regarding the desire to act within the law.

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

Meeting adjourned at 6:26 pm.