

**SUMNER COUNTY BOARD OF ZONING APPEALS
MINUTES
JULY 9, 2020
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
MATT STAMPER
SHAWN UTLEY

STAFF PRESENT:

JOSH SUDDATH, DIRECTOR OF DEVELOPMENT SERVICES
KATHY YOUNG, ASSISTANT TO THE DIRECTOR OF DEVELOPMENT SERVICES
MARSHALL WRIGHT, CODES DIRECTOR

Mr. Rainey called the meeting to order announced that this Agenda includes a Consent Agenda. At this time, Mr. Rainey explained how the consent agenda would be conducted, stating that as each item is read, any staff member, board member or audience member will have the right to request that the item be removed from the Consent Agenda and placed on the Regular Agenda for discussion. Then, Mr. Rainey stated, the remaining Consent Items will be voted on at the same time.

MR. SUDDATH CONFIRMED THAT THERE WERE NO CHANGES TO THE AGENDA, MR. RAINEY STATED THAT THE JULY AGENDA IS ACCEPTED AS PRESENTED.

Mr. Rainey read the Consent Agenda items as follows:

CONSENT AGENDA:

- 1. Holly Meyer, representing Providence Baptist Church is requesting a continuation of a Conditional Use Permit in order to operate a daycare center at the church. Subject property is located at 1100 Keen Hollow Road, Westmoreland, TN 37186, is on Tax Map 024, Parcel 060.00, contains 4.10 acres, is zoned Rural Residential (RR) and is in the 1st Voting District (Terry Wright and Moe Taylor). **The adjoining property owners were notified by regular mail.****

- 2. Doyle Glasgow is requesting a continuation of a Hardship Variance granted on June 10, 2010, to keep a mobile home on their property in order to facilitate elder care. Subject property is located at 189 Vantrease Lane, Gallatin, TN 37066, is on Tap Map 102, Parcel 008.00, and is zoned Rural Residential (RR), and is in the 4th Commission Voting District (Jerry Foster and Leslie Schell).**

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The adjoining property owners were notified by regular mail.

- 3. Chris Brown** and is requesting a continuation of a Conditional Use Permit in order to operate Highway 259 Auto Garage. Subject property is located at **1911 Highway 259, Portland, TN, 37148**, is on Tax Map 014, Parcel 054.00, contains 1.05 acres, is zoned Rural Residential (RR) and is in the 2nd Voting District (Larry Hinton and Billy Geminden). **The adjoining property owners were notified by regular mail.**

- 4. Katherine Cox** is a requesting a continuation of a Conditional Use Permit granted on July 14, 2016, to conduct a business making jewelry and metal armor for film and theater. Subject property is located at **1998 Pleasant Grove Road, Westmoreland, TN, 37186**, is on Tax Map 026, Parcel 031.01, contains 66.18 acres, is zoned Rural Residential (RR) and is in the 1st Voting District (Terry Wright and Moe Taylor). **The adjoining property owners were notified by regular mail.**

- 5. Frank and Donna Kirkbride** are requesting a continuation of a Conditional Use Permit granted on July 14, 2011, to conduct a small winery. Subject property is located at **318 Corinth Road, Portland, TN, 37148**, is on Tax Map 031, Parcel 079.00, contains 92.45 acres, is zoned Rural Residential (RR) and is in the 1st Voting District (Terry Wright and Moe Taylor). **The adjoining property owners were notified by regular mail.**

Next, Mr. Rainey asked if anyone wished to remove any of the items from the Consent Agenda.

Upon confirming that no one wished to remove any consent agenda items, Mr. Utley made a motion to approve a two-year continuation of the above listed Conditional Use Permits, seconded by Ms. Webster. Motion passed unanimously.

REGULAR BUSINESS ITEMS:

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

- 1. Revocation of a Conditional Use Permit at 1893 Highway 25W, Gallatin, TN**, A Conditional Use Permit was granted in August, 2017 to conduct small outdoor weddings (up to 25 people) at the subject property. Subject property is located at **1893 Highway 25W, Gallatin, TN, 37066**, is on Tax Map 103, Parcel 028.00, contains 5.6 acres, is zoned Rural Residential (RR) and is in the 4th Voting District (Jerry Foster and Leslie Schell). A renewal not been completed as required. The property owner was notified via certified mail and other methods and has not responded.

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Mr. Suddath provided an overview of the property, beginning with a brief history, stating that a Conditional Use Permit was issued in August 2017 in order to conduct small outdoor weddings (up to 25 people) on the subject property, adding that it was due to be renewed in August, 2019. Mr. Suddath stated that the property owner apparently moved, and no longer owns subject property. Mr. Suddath added that the current property owner has not indicated a desire to continue the CUP.

Explaining that the Courts have held that CUP runs with the land, Mr. Suddath stated that in order to for it to be closed out by staff, an action is requested from the BZA.

Mr. Suddath stated that the property owner was notified by Certified Mail and other methods and has not responded. Mr. Suddath stated that there have been no comments related to this item.

Next, Mr. Suddath displayed aerial and street view photos of the property and concluded his presentation with example motions.

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

Mr. Holt made a motion to revoke a Conditional Use Permit originally issued in August, 2017 for the property located at 1893 Highway 25W, Gallatin, TN, seconded by Mr. Stamper. Motion passed unanimously.

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

- 2. Ralph Reed is requesting a Hardship Variance for a relative to live in a proposed structure on subject property, due to medical circumstances. Subject property is located at 676 Hogback Ridge Road, Bethpage, TN, 37022, is on Tax Map 048, Parcel 027.00, contains 4.3 acres, is zoned Rural Residential (RR) and is in the 1st Voting District (Terry Wright and Moe Taylor). **The adjoining property owners were notified by certified mail and was advertised in The Gallatin News on Thursday, June 25, 2020.****

Mr. Suddath provided an overview of the property, stating that the request is to allow location of a mobile home on the subject property to facilitate care of a relative.

Mr. Suddath displayed the public notice from The Gallatin News and confirmed that no comments have been received related to this item. Mr. Suddath then displayed an aerial photo of the property.

Next, Mr. Suddath explained the differences between the old and new zoning resolutions, with regards to number of residences on a lot, stating that under the previous Zoning Resolution, this request is for the Board of Zoning Appeals to grant a variance from requirements contained at Article IV, Section 2.2 of the County Zoning Code related to principal structures allowed on a

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lot. However, under the current Zoning Resolution, the request is for permission to locate a single wide mobile home on the subject property as an accessory dwelling unit.

Mr. Suddath stated that due to the fact that this application was submitted and advertised while the previous zoning resolution was in effect, staff recommends, upon receiving legal counsel, that this application be reviewed under previous regulations, adding, however, that the Board of Zoning Appeals may instead interpret the application under the newly adopted zoning regulations.

Mr. Suddath clarified that, if under the previous zoning resolution, this would be treated as a Hardship Variance Request, but if under the current zoning resolution, this would be treated as a Special Exception from Accessory Dwelling Unit requirements.

Mr. Suddath then provided an image of the Plot Plan provided by the applicant, noting that the front yard setback will need to be adjusted to 40 feet on the Plot Plan, by the surveyor. Mr. Suddath then displayed the septic permit and photos of the property.

Mr. Suddath concluded his presentation with example motions, stating that he would like a 4th condition added to the approval motion as follows: *d) A revised Plot Plan be provided showing the corrected front yard setback as 40 feet*, added to the approval example.

Mr. Rainey asked Mr. Marshall Wright if he had anything to add.

Mr. Wright stated that he had nothing to add.

At this point, Mr. Rainey opened the Public Hearing and called Mr. Timothy Reed forward.

Mr. Timothy Reed, 676 Hogback Ridge Road, stated he was available for questions.

There being no questions. Mr. Rainey closed the public hearing.

Mr. Stamper asked for clarification of the differences in how this request would be stated under the previous and the current zoning resolution.

Mr. Suddath stated that this request could be granted under the new zoning resolution, but would be worded as an approval for a Special Exception allowing a mobile home as an Accessory Dwelling Unit, with approval from the BZA.

Mr. Suddath stated the desire, by the County Commission, to get away from allowing the BZA to consider “use variances”, instead framing them as “special exceptions”.

Mr. Stamper asked if there is a term limit for the special exception.

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Mr. Suddath confirmed that there is a two-year term, upon which the applicant must return for a continuation.

Mr. Rainey asked for confirmation of the two year term for the Special Exceptions.

Mr. Suddath confirmed the two year term, adding that the new Zoning Resolution specifically allows the BZA to put terms on Special Exceptions. Mr. Suddath added that training for the BZA, of the new Zoning Resolution, is forthcoming soon.

Mr. Utley referred to the request, commenting that is states that the existing house is “not fit to live in”. Mr. Utley then asked if the applicant plans to or will be required to tear down the existing house.

Mr. Suddath explained that the statement refers to the applicant writing on the application that he resides in said house on another property.

There being no further discussion, **Mr. Stamper made a motion approve a Special Exception for 676 Hogback Ridge Road, Bethpage for term of two years allowing the placement of a mobile home to be utilized as an Accessory Dwelling Unit subject to the following requirements:**

- a. All proposed structures must meet all County Setback Requirements**
- b. All necessary permits related to septic disposal must be obtained**
- c. A Building Permit and Certificate of Occupancy must be obtained from the County Building and Codes Department**
- d. An amended Plot Plan be submitted, showing the corrected front yard setback as 40 feet,**

seconded by Ms. Webster. Motion passed unanimously.

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

- 3. Mildred Seaton is requesting a variance from County requirements contained in the County Zoning Resolution at Chapter 4, Section 404, related to required minimum lot size. Subject property is located at 1551 Dobbins Pike, Gallatin, TN, 37066, is on Tax Map 081, Parcel 039.02, contains .85 acres, is zoned Rural Residential (RR) and is in the 3rd Voting District (Alan Driver and Steve Graves). **The adjoining property owners were notified by certified mail and was advertised in The Gallatin News on Thursday, June 25, 2020.****

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Mr. Suddath provided an overview of the property, stating that this variance would allow this lot to be platted and would allow it to be recorded as a legal building lot.

Mr. Suddath stated that staff has received several comments regarding this request, including one letter written in opposition to the request. Mr. Suddath added that the BZA members have been provided a copy of said letter.

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

Next, Mr. Suddath provided a history of this property, including the following information:

- Sumner County Originally Adopted Zoning on July 9, 1973
- State Law and County Regulations have long required that lots less than 5 acres be platted
- County's practice has been to require that lots improperly created after adoption of Zoning to be platted
- Lot was originally created by deed on August 21, 1973
- After adoption of zoning, so surveyor began work on a plat
- Upon reviewing the property, the Surveyor noted that the lot only contained 39,423 square feet, which is less than the 40,000 square foot minimum lot size for this zone.
- Staff researched the matter, and it appears that there was no minimum lot size for the Agricultural Zone until several years after the adoption of zoning
- Actual effective date of that zoning resolution is somewhat in doubt as well.

Mr. Suddath then displayed a copy of the original zoning code as it was published in the newspaper on July 30, 1973, noting that, it appears that the Agricultural Zone had no minimum lot size requirement. Mr. Suddath stated that presumably, the effective date of the Zoning Resolution was July 31, 1973.

Next, Mr. Suddath displayed the Subdivision Plat provided by the applicant, adding that this variance request is applicable with both the current and previous zoning code. Mr. Suddath then displayed a photo of the property and concluded his presentation with example motions.

At this time, Mr. Rainey opened the Public Hearing, calling forward the first person signed up to speak.

Mr. Donald Reese Carter, Jr., stated opposition to this request, as he has and wishes to continue keeping animals, such as horses, chicken and pigs on the property.

Mr. Rainey stated that subdivision regulations on the subject property will not affect his property, adding that whatever use is allowable on his property now, will be allowed to continue.

Mr. Suddath explained that, under state legislation, the county cannot create or maintain restrictions on livestock and farming products in this zoning, as long as there is no public health hazard being created.

Mr. Rainey called forward the next person wishing to speak.

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Mr. Donald Carter, 1581 Dobbins Pike, stated that he is against this request because the curve of the road at this location is dangerous. Mr. Carter also stated that he wants to have animals on his property.

Ms. Carol Carter, 1581 Dobbins Pike, stated that she wants the country to remain country, not city.

Mr. Rainey asked Mr. Dewayne Caldwell, property surveyor, if he had anything to add.

Mr. Caldwell stated that he is available to answer questions.

Mr. Utley asked Mr. Caldwell if he felt there was malintent in creation of this lot, or did the surveyor just miss this.

Mr. Caldwell stated he that the landowner's intent was to divide his land into three lots for his three children, adding that this was the middle lot.

Mr. Utley asked if this was a clearly deeded lot.

Mr. Caldwell answered yes.

At this point, Mr. Rainey closed the Public Hearing and stated that he would like to make a statement, as Chairman of the BZA and as a surveyor. Mr. Rainey stated that what Mr. Caldwell has stated is accurate, explaining that between 1973-1975, around the time that the Zoning code was changed and being implemented, several lots were created that were smaller than the minimum required 40,000 square feet. Mr. Rainey added that the BZA has granted variances to many of these, finding that the landowner maintains a property right, as they were deeded the property around the time of the Zoning Code was changed. Mr. Rainey added that this type of lot will continue to come before the Board.

Mr. Utley made a motion to approve a Lot Size Variance for the property located at 1551 Dobbins Pike, Gallatin TN, subject to the following requirements:

- a) A Subdivision Plat meeting the requirements of the Sumner County Subdivision Regulations must be approved by Staff and recorded for this subject property;**
 - b) All necessary Building, Stormwater and Septic permits must be obtained for any structures to be erected upon the lot, which must meet all applicable setback and bulk requirements of the current Sumner County Zoning Resolution,**
- Seconded by Mr. Stamper.**

Mr. Stamper asked for an explanation of what a denial of this request would mean.

Mr. Suddath stated that without this variance, a plat cannot be recorded and filed to make this a buildable lot, meaning no building permit could be issued, resulting in this remaining as a vacant lot.

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Mr. Utley asked if a variance can be denied on a deeded lot.

Mr. Suddath stated that historically, as the Zoning Code has been changed over the years, there was a time when an illegal lot may have been recorded, especially in the late 1990's, adding that this was done by surveyors on one and two lot subdivisions. Mr. Suddath added that this would not be done today, as the Register of Deeds would catch it, and not record it. Mr. Suddath added that when a non-platted lot comes through for a permit, the lot is required to be platted, prior to obtaining a permit. Mr. Suddath added that lots created prior to the adoption of the Zoning Code in 1973, are considered "lots of record" and are granted allowances for setbacks.

Mr. Utley stated that such lots are what he is referencing, adding that because these lots were deeded, it is illegal to deny a building permit.

Mr. Suddath stated that the legality of a lot is not determined solely by having been deeded. Mr. Suddath added that one of the biggest hurdles of obtaining a permit on these smaller lots, is the ability to obtain a septic permit. Mr. Suddath added that if a lot cannot obtain a septic permit, it cannot obtain a building permit.

Mr. Rainey added that this property was a division for an estate, adding that anyone can divide their property anyway they wish, but that doesn't mean they can be guaranteed a permit.

At this time, the vote was taken on the motion to approve a Lot Size Variance for the property located at 1551 Dobbins Pike, Gallatin TN, subject to the following requirements:

- a) A Subdivision Plat meeting the requirements of the Sumner County Subdivision Regulations must be approved by Staff and recorded for this subject property;**
 - b) All necessary Building, Stormwater and Septic permits must be obtained for any structures to be erected upon the lot, which must meet all applicable setback and bulk requirements of the current Sumner County Zoning Resolution**
- and passed unanimously.**

At this time, Mr. Rainey asked for a motion to approve the June Minutes.

MS. WEBSTER MADE A MOTION TO APPROVE THE JUNE MINUTES, SECONDED BY MR. UTLEY. MOTION PASSED UNANIMOUSLY.

MR. STAMPER MADE A MOTION TO ADJOURN, SECONDED BY MS. WEBSTER. MEETING ADJOURNED AT 5:41 PM.