

**SUMNER COUNTY BOARD OF ZONING APPEALS
MINUTES
JUNE 11, 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

Mr. Rainey called the meeting to order.

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

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

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

1. **David C. and Kecia M. Wright** are requesting variances from County requirements contained in the County Zoning Resolution at Article IX, Section 1.9, related to placement of an accessory structure within a required front yard and side yard setback. Subject property is located at **205 County House Road, Cottontown, TN, 37048**, is on Tax Map 079, Parcel 069.00, contains 5.01 acres and is zoned Agricultural (A). **This is a public hearing and was advertised in the Gallatin News on May 28, 2020. The adjoining property owners were notified by certified mail.**

Mr. Suddath provided an overview of the property, stating that the applicant is requesting that the accessory structure be placed in front of the house, and also encroach 10 feet into the required 20 foot side yard setback. Mr. Suddath confirmed that there have been no comments received regarding this request.

Mr. Suddath explained the property's close proximity to a flood zone, adding that it will not be an impact on these properties.

Next, Mr. Suddath displayed an aerial photo of the property, the Public Notice, Plot Plan and the Septic Permit information. Mr. Suddath displayed the wording from the County Zoning Code and a setback diagram for Agricultural Zoning.

Concluding his presentation, Mr. Suddath displayed a photo of the proposed building site and provided example motions.

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Mr. Rainey called the applicant forward and asked him to explain the request, stating that he could understand the reason for the front yard variance request, but not the side yard variance request.

Mr. David Wright, 205 County House Road, stated that a drainage area is close to the driveway, and he wished to stay out of that drainage area.

Mr. Rainey asked for the distance from the driveway to the property line, at the location of the proposed building site.

Mr. Wright stated that it may be 20 feet.

Mr. Rainey asked for the size of the proposed structure.

Mr. Wright stated that it is 30'x40' with a 10' open shed.

Mr. Rainey asked if it could be moved back.

Mr. Wright stated that the topographical challenge would be the drainage coming off the back hill.

Mr. Rainey asked for clarification regarding why the proposed structure can't be moved closer to the driveway, nor any farther back.

Mr. Wright stated that there may be room to move it forward, but added that he doesn't wish to impede the drainage area.

There being no further questions, Mr. Rainey opened the Public Hearing.

There being no one to speak, Mr. Rainey closed that Public Hearing.

Mr. Rainey asked if Codes had anything to add to this.

Mr. Terry Haynes stated that he had nothing to add.

Mr. Rainey stated that the board must determine if the requestor has provided adequate information to justify the variance.

Mr. Holt made a motion to approve placement of an accessory structure within a required front yard, but outside the depicted side yard setback, with the following condition:

a) The accessory structure must obtain any applicable zoning and/or building permits from the Sumner County Building and Codes Department, seconded by Ms. Webster. Motion approved unanimously.

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

2. **David and Rita Leath** are requesting a Conditional Use Permit to operate an event venue. Subject property is located at **5595 Coleytown Road, Westmoreland, TN, 37186**, is on Tax Map 044, Parcel 050.01, contains 47.4 acres, is zoned Agricultural (A). **This is a public hearing and was advertised in the Gallatin News on May 28, 2020. The adjoining property owners were notified by certified mail.**

Mr. Suddath began his presentation by stating that the subject property, as well as the property surrounding it, is owned by the same people, Mr. and Mrs. David Leath.

Mr. Suddath provided an overview of the property, by giving a brief history of this request, including that this item was heard by the Westmoreland Planning Commission on February 27, 2020, which resulted in a letter being provided by City Fire Chief, indicating that the city of Westmoreland is agreeable to the facility gaining access via a city street. Mr. Suddath added that, per Zoning Resolution, the Sumner County Regional Planning Commission approved a Site Plan for this item on April 28, 2020.

Mr. Suddath noted that the only public comment received was from a County Commissioner, requesting that the public notice be placed in the Westmoreland paper as well. Mr. Suddath stated that we have satisfied the state requirements with regards to public notices.

Next, Mr. Suddath displayed an aerial photo of the property, the public notice, the Site Plan and photo of the event venue, including the gravel parking area.

Mr. Suddath then referenced the Zoning Code, stating that “Private Recreational Facilities “or similar uses are permitted upon appeal, in the Agricultural District. Stating that this is the best category for an event venue, Mr. Suddath explained the requirements that must be met for that use to be permitted.

Additionally, Mr. Suddath stated that the submittal doesn’t meet the requirement that “no parking may be closer than 50 feet from any exterior boundary line.” Mr. Suddath explained that the parking encroaches up to 20 feet from the boundary line, adding that the same people own both adjoining properties.

Mr. Suddath then stated that the eight required findings for all CUP Application has been responded to by the applicant. Mr. Suddath also explained the following information regarding this application:

- Roads: No required improvements; street in jurisdiction of the City of Westmoreland
- Drainage: Applicant states that since this project involves the conversion of an existing agricultural use, no stormwater improvements should be required.
 - Calculations provided by applicant
- Existing landscaping and tree cover to be preserved.
- Parking as indicated appears to meet requirements
 - Parking area to be treated with a spray application in order to make it “dust free”
 - 124 parking spots proposed; 52 of them located in grassed overflow parking area depicted on site plan.

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Mr. Suddath stated that the septic system was permitted and inspected on June 5, 2020, going on to explain the next steps, if the request is approved, as follows:

- Applicant will need to obtain any applicable building permits from the County.
- Building plans will need to be submitted to County Building Codes office for review and approval.

Mr. Suddath completed his presentation with example motions.

Mr. Rainey called the representative forward.

Mr. Andy Leath, GreenLID Designs, stated that Mr. Suddath provided a very good presentation. Mr. Leath stated that he and his father own this property and all surrounding property, adding that he was available for questions.

Mr. Rainey asked about the requirement that no parking be within 50 feet of the property boundary, asking if a buffer easement could be granted.

Mr. Leath stated that he preferred to relocate the parking out of the 50 feet of the property boundary.

Mr. Rainey asked Mr. Suddath if other requirements had been met.

Mr. Suddath stated that it would appear that they have met the other requirements, adding that the BZA can influence the parking surface. Mr. Suddath also noted that if any signage were to be erected, it would probably be in the city of Westmoreland.

Mr. Stamper also expressed concern of the parking encroaching into the 50 foot area between property boundaries.

Mr. Leath stated that parking can easily be relocated, adding that the fire marshal and the County Codes Department has the plans under review.

Mr. Rainey asked if the building inspector, Mr. Terry Haynes had anything to add.

Mr. Haynes stated that because this is an existing building, engineers will be asked to help review the plans to insure that the structure is up to codes with the 2015 plumbing, fuel gas, 2009 energy and 2017 electric, adding that those compliances should be stated along with the 2015 IBC. Mr. Haynes also added that with an occupancy like this, they can get a “No review letter” from the Fire Marshal that exempts some requirements, such as sprinklers, based on the occupancy.

At this point, Mr. Rainey opened the Public Hearing.

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

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Mr. Utley stated that the driveway is outside the easement and asked if that is an issue.

Mr. Suddath stated that this property has multiple access points, and referred to the Plat, stating that there are two access points.

Mr. Utley asked if there are two driveways.

Mr. Leath stated that one graveled drive is an access to the farm, adding that the other point of ingress is a concrete drive.

Mr. Utley expressed concern that the drive crosses lot lines.

Mr. Suddath stated that he would hope that if the center property was sold, an easement arrangement would be created.

Mr. Leath added that all the tracts have legal access and easements.

Mr. Rainey emphasized the fact that, if approved, the CUP must return to the BZA every two years, at which time, if there is a problem, it will be addressed then.

Mr. Stamper made a motion to approve a Conditional Use Permit 5595 Coleytown Road, authorizing the operation of a wedding and event venue with the following conditions:

- a) Prior to any public use of the structures on site, applicant shall obtain any and all required building and zoning permits from the County Building Codes office.**
 - b) Prior to any public use of the structures on site, structures to be utilized pursuant to this permit shall conform to any and all fire safety standards which may be applied by the State Fire Marshall and/or the County Building Codes Office.**
 - c) Prior to any public use of the structures on site, applicant shall obtain any required State and/or County permits related to Stormwater Management**
 - d) Applicant shall move parking out of the required 50 foot buffer along the eastern side of the property,**
- seconded by Mr. Utley. Motion passed unanimously.**

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

3. **Rebecca and Blaine Franklin** are requesting a Conditional Use Permit to continue an existing commercial use (store) in order to pursue subdivision of property. Subject property is located at **145 Sideview Road, Gallatin, TN, 37066**, is on Tax Map 090, Parcels 022.01 and 022.03, contains 1.73 acres, and is zoned Agricultural (A). **This is a public hearing and was advertised in the Gallatin News on May 28, 2020. The adjoining property owners were notified by certified mail.**

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Mr. Suddath began his presentation by stating that the existing grandfathered business has been in existence since before County Zoning Regulations were adopted in 1973, adding that it has not been operational since October, 2019. Mr. Suddath explained that this is coming to the BZA because these two lots, totaling 1.73 acres, are planned to be combined with adjacent property and then re-subdivided into 9 lots to be sold at auction, adding that the Planning Commission will hear the Sketch Plat subdivision request at their June 23, 2020 meeting. Mr. Suddath further explained that because this commercial business is a non-conforming use, situated on a non-conforming lot, and the Zoning Code states that “a zoned lot containing a non-conforming use shall not be reduced in area,” therefore, if the lot lines are changed, the grandfathered status is lost.

Thus, Mr. Suddath stated, that the options for this property were to either pursue a rezoning of the commercial property or to obtain a Conditional Use Permit.

Mr. Suddath displayed an aerial photo of the property, the public notice, the Plot Plan, and photos of the property. Mr. Suddath confirmed that there had been no calls regarding the request. Next, Mr. Suddath explained that the Plot Plan shows the desire to create a new lot of record for the business.

Next, Mr. Suddath pointed out the existing structures which include the store, a house and a canopy area. Mr. Suddath stated that the store encroaches into the Public Right of Way on Old State Route US 31 roadbed, now known as Sideview Drive.

Mr. Suddath noted that there are numerous nonconformities which exist on site, including:

- Use is contained on two lots, both of which are nonconforming
- A residential dwelling is contained on one of the lots
- Status of septic permits on site are not clear
- Store and fuel canopy would encroach into the required public right of way, so right of way will have to be obtained across the street, or a variance obtained from the Planning Commission when the plat is brought forward
- On site parking may not be adequate to meet requirements available.

Mr. Suddath stated that the applicant has provided answers to the eight required findings for all CUP applications, adding that the parking and loading will need to be discussed. Mr. Suddath stated that the application doesn't meet the setback requirements.

Mr. Suddath concluded his presentation with example motions.

Mr. Rainey asked Mr. Haynes if he had anything to add.

Mr. Haynes stated that the Codes Department had done a walk-through when the previous owner obtained his permit.

At this point, Mr. Rainey called Mr. Carman, the applicant's representative, forward.

Mr. Jim Carman stated that he is available for questions, adding that the intent of this request is to move a lot line, in order to eliminate odd shaped boundaries, to enable the subdivision of the rest of the property.

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Mr. Rainey asked Mr. Carman what would prevent him from utilizing the existing lot line that is in front of the mobile home and utilizing the existing lot line that goes behind Shiloh - Phase 1, keeping those two parcels, as deeded, and allowing the grandfathered use to continue.

Mr. Carman stated that the option has been previously discussed, and added that, pending the decision of the Board, that may be an option. However, doing so, stated Mr. Carman, will cost a building lot.

Mr. Rainey stated that, by law, the BZA cannot consider financial loss or gain when making their ruling.

There was discussion to clarify that the porch, not the building is in the Right-Of-Way and the front porch will have to be reconstructed to obtain the Road Superintendent's signature on the plat.

Mr. Utley asked if this was the Old Highway 31, and asked how the ROW got there.

Mr. Carman stated that the only document that could be found is the 1964 road plans for the new Highway 31, and stated that the plans show that the Old Highway 31 is 50 feet wide.

Mr. Utley asked if the deed mentioned the ROW.

Mr. Carman stated that the deed for those properties covers the road.

Mr. Utley asked how the county obtained the ROW and asked if, indeed, the county does have the ROW.

Mr. Rainey stated that the county has the ROW, by use.

Mr. Stamper inquired about the mobile homes.

Mr. Carman stated that the subdivision will take in the mobile homes, a barn and the 10 acres.

Mr. Suddath stated that the mobile homes and barn will not be allowed to remain in this subdivision. Then, Mr. Suddath asked if the house next to the store was occupied.

Mr. Carman stated that he did not know.

Mr. Rainey opened the Public Hearing.

Ms. Ruth Franczyk, 1010 Double Tree Lane, Gallatin, TN, stated her opposition to this request. Ms. Franczk stated that her property abuts this land, adding that she is opposed to this proposal for various reasons, the first being that this commercial use is not viable. Ms.

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Franczyk stated that the store dates back to 1798 and added that the sales floor of the store is between 150-200 square feet.

Mr. Rainey stated that this board does not rezone property.

Ms. Franczk stated that the continued use as a business should not be allowed.

Mr. Rainey clarified that because this is a grandfathered use, this Board has no say about the existing use as a store, adding that this Board does have say over the property lines.

Ms. Franczk stated that this is not a viable commercial use, stating it has been used 1 out of the past 5 years, and also expressed concern of maintenance problems and public safety.

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

Mr. Stamper stated that he sees no valid reason to move the lot line, other than economic consideration, which the Board cannot factor into their decision.

Mr. Rainey stated that it is up to the applicant, why, due to topography, etc...this Conditional Use Permit should be granted. Mr. Rainey added that the reason supplied by the applicant has been economic, which this Board, by law, has no right to consider.

Mr. Suddath stated that financial interests cannot be taken into account for a variance request, adding that this is a Conditional Use Permit request, and financial interests are often taken into consideration when operating a business. Mr. Suddath emphasized the complication of this request, stating that the BZA is tasked with authorizing the Conditional Use, not the subdividing.

Mr. Rainey asked, if someone wished to open this store, what would be the steps to do so.

Mr. Suddath stated that even though the store has many non-conforming issues, it is an existing, legally-permitted use and other than a potential walk-through by the Codes Department, it should be able to be opened.

Mr. Rainey asked about the timeline of a grandfathered status.

Mr. Suddath stated that state law is clear, that there is a 30 month period for which a business can remain vacant, before it loses its grandfathered status, and then must comply with any existing regulations.

Mr. Rainey asked how long the business has been closed.

Mr. Suddath stated that he is unsure of the date, but knows that it was operable during the last two years.

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Mr. Stamper stated that he doesn't know of a reason why the CUP should not be issued, if the store can be opened.

Mr. Suddath stated that this is a chicken and egg situation, clarifying that if the Planning Commission does not approve this subdivision plat, this action of the BZA tonight will have no impact. If approved, there will be a decision by the BZA to approve this use.

Mr. Utley asked for clarification.

Mr. Rainey stated that the request is to subdivide the property, by changing lot lines. If the lot lines are changed, the grandfathered status goes away immediately without BZA CUP approval.

Mr. Utley asked for clarification of the existing lot line.

Mr. Suddath referenced the GIS, showing that the existing business occupies two lots that encompass 1.7 acres.

Mr. Utley made a motion to deny the moving of the lot lines, and allow a grandfathered Conditional Use Permit for 142 Sideview Road.

Mr. Suddath stated that a motion to deny this CUP request would allow them to continue this as it is.

Mr. Stamper asked for clarification, seeing no reason to deny the CUP, adding that he understood the overall intent.

Discussion ensued over the understanding of the motion.

Mr. Rainey read the request "to continue an existing commercial use (store) in order to pursue subdivision of property".

Mr. Holt stated that if the lot line is moved, the grandfathered status is lost, adding that if the CUP is denied, then the property lines may not be moved.

Mr. Rainey stated that that CUP denial does not take anything away from the grandfathered clause.

**Mr. Rainey clarified a motion to deny the CUP, seconded by Mr. Holt
Motion passed unanimously.**

**There being no further business, there was a motion to adjourn made by Mr. Stamper,
seconded by Mr. Holt. Meeting adjourned at 6:16pm**

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