

**SUMNER COUNTY BOARD OF ZONING APPEALS**  
**MINUTES**  
**May 25, 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

**MEMBERS ABSENT:**

**STAFF PRESENT:**

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

Mr. Rainey called the meeting to order, stating that three members are present, adding that Mr. Holt has notified the Board that he will be late.

Mr. Rainey then called for a motion on the April 2021 Minutes.

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

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

Mr. Suddath stated that there were no changes.

Mr. Rainey stated that the Agenda stands as presented.

Mr. Rainey then introduced the Consent Agenda:

**1. Phillip Bradshaw** is requesting a continuation of a conditional use permit granted on May 14, 2015 to operate an annual cattle sale, weddings, events, and community gatherings, etc. in an existing barn and for a dust free parking variance. Subject property is located at **395 N. Happy Hollow Road, Portland, TN, 37148**, is on Tax Map 038, Parcel 045.00, contains 188 acres is zoned Rural Residential (RR) and is in the 12<sup>th</sup> Commission Voting District (Michael Guthrie and Justin Nipper).

**The adjoining property owners were notified by mail.**

**2. Mark Farr** is requesting a continuation of a Conditional Use Permit granted on March 9, 2017 to conduct an event venue. Subject property is located at **1249 Willis Branch Road, Goodlettsville, TN 37072**, is on Tax Map 143, Parcel 045.01, contains 7.18 acres, is zoned Rural Residential (RR) and is in the 11<sup>th</sup> Commission Voting District (Scott Langford and Jeremy Mansfield).

**The adjoining property owners were notified by mail.**

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Mr. Rainey asked if anyone from the public wished to speak to these items.

Mr. Suddath noted that the Septic Completion Certificate for the Phillip Bradshaw property was distributed to the Board members, prior to this meeting. Mr. Suddath explained that this certificate requirement was an outstanding condition of approval, placed on the previous granting of this Conditional Use Permit. Mr. Suddath stated that the certificate verifies that the septic system was installed in January 2021. Mr. Suddath added that the system was inspected by Bo Fox.

Mr. Rainey asked if the requestor is in full compliance of the prior approval.

Mr. Suddath stated that he is in compliance.

Mr. Rainey asked if any Board Member wished to discuss either property.

There being no one wishing to comment,

**A motion was made to approve the Consent Agenda:**

- 1) Approving a request for a two (2) year continuation of a Conditional Use Permit for 136 N. Happy Hollow Road, Portland to conduct weddings, events, community gatherings and other events.**
- 2) Approving a request for a two (2) year continuation of a Conditional Use Permit authorizing the operation of an event venue at 1249 Willis Branch Road, Goodlettsville**

**by Ms. Webster, seconded by Mr. Utley. Motion passed unanimously.**

At this time, Mr. Rainey turned the meeting over to Mr. Suddath for staff presentation of the Regular Agenda

- 1. Benjamin Hardesty is 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 side yard setback. Variance is being requested in accordance with Chapter 14, Section 1410 of the County Zoning Resolution. Subject property is located at 369 Neals Lane, Gallatin, TN, 37066, is on Tax Map 115, Parcel 034.00 contains 3.75 acres, is zoned Rural Residential (RR) and is in the 4<sup>th</sup> Commission Voting District (Jerry Foster and Leslie Schell). **The adjoining property owners were notified by certified mail and this item was advertised in The Gallatin News on Thursday, April 29, 2021.****

Mr. Suddath provided an overview of the property and displayed an aerial photo of the property. Mr. Suddath pointed out the current placement of the existing accessory structure, noting that it is on the lot line. Mr. Suddath then displayed the Public Notice that was published in the newspaper.

Next, Mr. Suddath displayed the Zoning Compliance form for this structure, noting that the applicant is seeking to replace the rotting posts, roof, trusses, and rotted decking, using the existing concrete pad. Mr. Suddath explained that it was determined that this constitutes a rebuild

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of the structure. Mr. Suddath added that this lot was recently platted, to obtain a building permit for a residence.

At this time, Mr. Suddath reviewed the Eight (8) Standards that must be met for a Variance and the Staff Interpretation of those Eight Findings.

At this time, Mr. Mac Holt arrived.

Mr. Suddath then displayed the Subdivision Plat, showing the existing structure located 2.2 feet from the property line, stating that this is an illegal non-conforming structure that was built without a permit some years ago. Mr. Suddath then explained that per Chapter 13, Section 1303 of the Zoning Resolution, non-conforming structures may not be rebuilt. Mr. Suddath added that there is a standard note on the Plat, stating that non-conforming structures may not be replaced. At this point, Mr. Suddath displayed photos of the house that is under construction, the accessory structure, and the BZA sign posted in the yard.

Mr. Suddath concluded his presentation with example motions.

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

Benjamin Hardesty, 369 Neals Lane, stepped forward.

Mr. Rainey asked Mr. Hardesty if he had anything he wished to add.

Mr. Hardesty stated that he would like to make the requested changes to make the building structurally sound and add aesthetic value.

Mr. Rainey asked if the Board Members had any questions.

Mr. Utley asked what he intended to replace this structure with.

Mr. Hardesty stated that he wants to utilize the existing concrete pad to build a new carport with storage in the back, similar to what is there now.

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

Mr. Rainey stated that one thing that encumbers the Board is that the only real reason for this request is the one thing the Board cannot consider; financial hardship. Mr. Rainey stated that there are other alternatives, including relocating the structure or adding to the concrete pad. Mr. Rainey added that he has not heard a reason to vote in the affirmative to this request.

Mr. Utley stated that he could debate that point, as the existing building is non-conforming to the Building and Codes standards, and presents a safety issue. Mr. Utley added that the existing structure was not permitted.

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Mr. Utley made a motion to approve the variance, because it would upgrade the safety of the structure.

Mr. Rainey asked for a second to the motion. Hearing none, Mr. Rainey stated that the motion to approve died for lack of a second.

There being no other motion, Mr. Rainey seconded the motion for discussion.

Mr. Utley stated that to deny the variance, and allow the existing structure to remain, would create a safety hazard. Mr. Utley then asked what liability the county would have.

Mr. Suddath stated that this was an illegally built structure, adding that in some jurisdictions, it might be ordered to be torn down; as opposed to allowing it to remain. Mr. Suddath stated that the county has no risk with allowing an illegal structure to remain on-site, since the County never permitted it to be built in the first place.

Mr. Rainey asked if the county has the authority to ask that a structure be removed.

Mr. Suddath stated that he does not believe so, if it is not being lived in. Mr. Suddath deferred to Mr. Wright.

Mr. Wright concurred, stating that Codes would be willing to do an inspection, if required.

Mr. Holt asked if the request can be approved on the reason of safety.

Mr. Suddath referred back to the 8 required standards/findings for Variances. Mr. Suddath explained that all 8 standards must be met in order to grant the variance. Mr. Suddath then reviewed the standards/findings as they pertain to this request:

1. *The particular physical surroundings, shape, topographic conditions of the specific property involved that would result in a particular hardship upon the owner as distinguished from a mere inconvenience, if the strict application of this Resolution were carried out must be stated;*

Staff Interpretation: The particular physical surroundings of the lot do not preclude the placement of the building in a location that meets Zoning requirements;

2. *The conditions upon which the petition for a variance is based would not be applicable, generally, to other property within the same district;*

Staff Interpretation: These conditions would apply generally, and are not unique to this property;

3. *The variance will not authorize activities in a zone district other than those permitted by this Resolution;*

Staff Interpretation: No unpermitted uses are proposed;

4. *Financial returns only shall not be considered as a basis for granting a variance.*

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Staff Interpretation: Financial considerations and convenience appear to be the primary basis for the variance request; no other reasons such as those related to shape and topography of the lot have been provided by the applicant;

*5. The alleged difficulty or hardship has not been created by any person having an interest in the property after the effective date of this Resolution*

Staff Interpretation: The previous accessory structure was never permitted with the County. Nonconforming provisions do not apply;

*6. The variance is the minimum variance that will make possible the reasonable use of the land, building, or structure*

Staff Interpretation: The requested variance is the not the minimum that will allow the property to be utilized. Other alternatives are available, such as relocating the structure elsewhere on the lot;

*7. The granting of the variance will not be detrimental to the public welfare or injurious to other property of improvements in the area in which the property is located; and*

Staff Interpretation: No evidence has been provided indicating that the granting of this variance will be detrimental to the public or injurious to other property in the area;

*8. The proposed variance will not impair an adequate supply of light and air to adjacent property, substantially increase the congestion in the public streets, increase the danger of fire, endanger the public safety, or substantially diminish or impair property values within the area.*

Staff Interpretation: No evidence has been provided indicating that the granting of the variance will impair supply of light or air, increase congestion, increase danger of fire, endanger public safety, or diminish property values.

Mr. Suddath noted that Standards 1, 4, 5 and 6 have not been met.

Mr. Holt stated that Standard 7 and 8 relate to newly created and not existing structures.

Mr. Suddath stated that is correct.

Mr. Holt stated that the safety concern is not a valid reason to grant this request.

Mr. Rainey stated observation that a similar case was denied in the past, because the only consideration for the request was financial. Mr. Rainey added that although it did not involve a safety issue, it was an illegally built structure. Mr. Rainey stated that the Board required that the structure be removed, adding that the property owner had the option to move the structure. Mr. Rainey stated that he referenced this previous request out of concern for fairness to all applicants.

Mr. Utley stated that while he sees that the request does not meet all Eight Standards, he feels the County would be negligent if it did not address the safety of the structure.

Mr. Rainey called for a vote on the motion on the floor.

For the motion to approve the variance request – 0 votes in favor, 3 votes opposed. The motion failed.

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**Mr. Utey made a motion, to find that all County requirements for a variance are not met, and to deny a request for a variance for the property located at 369 Neals Lane, Gallatin. Mr. Utey added that the County should look into requiring the removal of the existing structure.**  
**Motion seconded by Mr. Holt.**

Mr. Suddath stated that we could approach the law office about the possibility of withholding the Certificate of Occupancy for the house currently under construction, on the property, until the structure is removed, if it is deemed unsafe.

Ms. Webster added that the safety concerns of the structure were not known until this meeting.

**The vote was taken and the motion passed unanimously.**

At this time, Mr. Rainey recused himself from the next item, as he created the Plot Plan for the applicant.

Ms. Webster took the floor and introduced the next item. Ms. Webster then turned the meeting over to Mr. Suddath for staff presentation.

- 2. Heather and Liberty Duncan** are requesting a Special Exception from County requirements contained at Chapter 11, Section 1101, Subsection R.3.b.i of the Sumner County Zoning Resolution related to encroachment of an Accessory Dwelling Unit within a rear and side yard setback for the purpose of modifying an existing detached garage to an Accessory Dwelling Unit. This request is made pursuant to Chapter 14, Section 1411 of the County Zoning Resolution. Subject property is located at **1117 Dickerson Bay Drive, Gallatin, TN, 37066**, is on Tax Map 147K, Group D, Parcel 020.00, contains .92 acres and is zoned Rural Residential (RR) and is in the 6<sup>th</sup> Commission Voting District (Deanne DeWitt and Luke Tinsley). **The adjoining property owners were notified by certified mail and this item.**

Mr. Suddath provided an overview of the property. Mr. Suddath displayed an aerial photo of the property, pointing out the existing accessory structure, that has been on the property since the mid-1980's. Mr. Suddath stated that the purpose for the variance request is to convert the accessory structure to an Accessory Dwelling Unit (ADU).

Mr. Suddath displayed the Public Notice that was published in *The Gallatin News* and *The Hendersonville Standard*.

Next, Mr. Suddath stated that the County Zoning Resolution provides guidelines for approval of ADUs. Mr. Suddath explained that an ADU may be approved administratively, by staff, provided that all Zoning requirements are met. In addition, Mr. Suddath stated that the Resolution provides that applications seeking to deviate from Design and Occupancy Standards or Particular Standards may request a Special Exception from the BZA.

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Mr. Suddath explained that one of the Particular Standards for detached ADUs states that *“Detached ADUs shall be considered attached for the purposes of setbacks if the accessory structure is within five feet (5’) of the principal structure, Otherwise, detached ADUs must meet setback requirements of the underlying zoning district for principal structures.”*

Mr. Suddath stated that this is the Standard that the applicant is seeking a Special Exception from.

Next, Mr. Suddath displayed the Plot Plan, submitted by the applicant. Mr. Suddath zoomed in on the portion containing the existing structure that is the subject of the request, explaining that the structure is .01” from the side property line and 12.8’ from the rear property line. Mr. Suddath pointed out Note 7 on the Plat that states, *“Gravel driveway, split rail fence, and septic system that serves the existing garage being renovated, are subject to a court ordered easement of record in R.B. 4874, Pg. 448-450, R.O.S.C.”*

Mr. Suddath stated that this structure was legally permitted in September 1985, and a copy of the permit is on file with the County. Mr. Suddath stated that all Board members were provided a copy of the permit, prior to the meeting. Mr. Suddath stated that the Building Commissioner, at that time, stated that it complied with zoning laws upon the application.

Mr. Suddath displayed the old subdivision plat from 1978, and explained that lot lines have been changed since then.

Next, Mr. Suddath displayed photos of the property, including the BZA sign posted at the road, the driveway, accessory structure and fence. Mr. Suddath stated that the RV in the photo may need to be addressed by the applicant.

Mr. Suddath then explained the four (4) Key Requirements/Required Findings for Special Exceptions, 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 this project. Septic system is located across the property line, and an easement for maintenance exists per a court order noted on the Plot Plan.

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

Staff Interpretation: The structure is existing, and will only be utilized for residential purposes. Structure backs up to golf course to the west, and adjoining property owner to the north.

- *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 existing location of the building is contrary to County Zoning setback requirements, but disputes related to various property boundary issues are understood to have been settled in the Courts. Other zoning requirements appear to be met.

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

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Staff Interpretation: Proposed use is residential, and the area surrounding it is also residential. A certificate of occupancy will be required for the building in order for anyone to live in it.

Mr. Suddath concluded his presentation with example motions, stated that the applicant's representative is present and turned the meeting over to Ms. Webster.

Ms. Webster opened the Public Hearing.

Mr. Shane Maxwell, the applicant's representative, stated that this request is for a veteran to live in the ADU. Mr. Maxwell added that another issue is that the structure cannot be moved, due to the location of the septic system. Mr. Maxwell added that the neighbors are on board with this request.

Mr. Suddath called the next speaker forward.

Mr. Liberty Duncan, 1117 Dickerson Bay Drive, stated that he is the property owner. Mr. Duncan stated that his father was granted a Veteran Disability Loan, which will be used to modify the structure to a handicap accessible unit.

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

Mr. Utley asked Mr. Suddath about the differences between this item and the previous item.

Mr. Suddath stated the following differences:

The previous structure was illegal, while this structure was permitted by the County.

The previous structure is proposed to be replaced...this structure is a remodel.

Mr. Suddath added that the current request is for a specific use as an ADU.

Mr. Utley asked for clarification that this structure, at 1117 Dickerson Bay Drive, was permitted and the structure at 369 Neals Lane was never permitted, and therefore appears to be illegal.

Mr. Suddath stated that is correct.

**A motion was made by Mr. Utley to find that County requirements for Special Exceptions are met, and to approve a request for a Special Exception for an Accessory Dwelling Unit permit application for 1117 Dickerson Bay Drive, Gallatin which seeks to deviate from Design and Occupancy Standards established at Chapter 11, Section 1101, R of the County Zoning Resolution, with the following conditions:**

**a) All other applicable requirements for Accessory Dwelling Units shall be met;**

**b) A Zoning Compliance Form shall be obtained from the Planning Director's Office prior to obtaining a Building Permit;**

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**c) The structure shall meet all requirements for dwellings contained in the International Building Code and shall receive a Certificate of Occupancy from the County Building and Codes Department;**

**d) Work on the structure shall be completed in accordance with a submitted plot plan, seconded by Mr. Holt. Motion passed unanimously.**

**There being no further business before the Board, Mr. Utley made a motion to adjourn, seconded by Mr. Holt. Meeting adjourned unanimously at 5:49 pm.**