

**SUMNER COUNTY BOARD OF ZONING APPEALS
MINUTES
JULY 8, 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
SHAWN UTLEY
MAC HOLT

MEMBER ABSENT:

JIM HARRISON

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 with four Board Members present, there is a quorum.

Mr. Rainey called for the approval of the June Minutes.

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

Mr. Rainey then stated that the first consent agenda item will be removed from the agenda, as Mr. Ralph Cook is in communication with the Building and Codes Department regarding Codes compliance. Mr. Rainey explained that Mr. Cook will return to the BZA in 90 days.

1. **Ralph Cook** is requesting a continuation of a Conditional Use Permit granted on June 11, 2009, to operate an ice cream shop/restaurant that would include birthday parties/socials with sandwiches, soup and extra food in an existing building. Subject property is located at **186 Wilkerson Lane, Portland, TN 37148**, is on Tax Map 053, Parcel 005.00, contains 87.02 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 mail.

Mr. Utley made a motion to defer the Ralph Cook request for 90 days, seconded by Mr. Holt. Motion passed unanimously.

At this time, Mr. Rainey explained the Consent Agenda and read each request.

CONSENT AGENDA

2. **Allen D Biggs** is requesting a continuation of a Conditional Use Permit granted on June 8, 2017 to conduct an auto repair shop from a detached garage. Subject property is located at **125 Dusty Lane, Cottontown, TN 37048**. Subject property is on Tax Map

**SUMNER COUNTY BOARD OF ZONING APPEALS
MINUTES
JULY 8, 2021
5:00 P.M**

074, Parcel 089.03, contains 1 acre, 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. **Linda Denning Stout** is requesting a continuation of a Conditional Use Permit and Dust Free Parking Variance granted on April 12, 2007, to operate a catering business with nine employees. Food is prepared on site then delivered. Subject property is located at **165 West Roberts Road, Portland, TN 37148**, is on Tax Map 072, Parcel 036.00, contains approx. 29.6 acres, is zoned Rural Residential (RR), and is in the 4th Commission Voting District (Jerry Foster and Leslie Schell).

The adjoining property owners were notified by regular mail.

4. **John Birdwell will represent Belinda Birdwell** and is requesting a continuation of a Conditional Use Permit granted on July 11, 2021, to conduct an excavating company and to store construction equipment at the subject property. Subject property is located at **2121 Dobbins Pike, Portland, TN 37148**, is on Tax Map 071, Parcel 019.00, contains 65.60 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 regular mail.

There being no discussion or request to remove the items from the Consent Agenda, Ms. Webster made a motion to approve the Consent Agenda, Items #2-#4, granting a two-year continuation, seconded by Mr. Holt.
Motion passed unanimously.

REGULAR AGENDA

Mr. Rainey introduced Regular Agenda Item #1 and turned the meeting over to Mr. Suddath for staff presentation.

1. **Sumner County Staff** is requesting a Board of Zoning Appeals interpretation of the County Zoning Resolution related to a request to build a residence on property that contains an existing barn that is crossing lot lines and an additional existing structure located in a natural gas easement. Property is owned by **Nathan and Wendy Cripe** and is located at **102 Garrison Private Lane, Cottontown, TN, 37048**, on Tax Map 101, Parcel 010.05 contains 2.24 acres, is zoned Rural Residential (RR) and is in the 4th 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, June 24, 2021.**

Mr. Suddath provided an overview of the property.

After some technical issues, Mr. Suddath announced that there were technical difficulties with the presentation, and requested that the meeting temporarily adjourn and reconvene in Room 112.

SUMNER COUNTY BOARD OF ZONING APPEALS
MINUTES
JULY 8, 2021
5:00 P.M

Mr. Rainey announced a recess in order to move and reconvene in Room 112.

Now in Room 112, at approximately 5:15, Mr. Rainey called the meeting to order, and turned the meeting over to Mr. Suddath to continue the staff presentation.

Mr. Suddath stated the request for a Board determination as to whether the property meets requirements for a building permit. Mr. Suddath explained that there are several illegal non-conformities on the lot, including a barn that crosses lot lines and an encroachment into a natural gas easement. Mr. Suddath stated that this property was platted within the last two years. Next, Mr. Suddath displayed the aerial photo of the property and the Public Notice that was posted in The Gallatin News. Mr. Suddath then displayed photos of the structure in question.

Mr. Suddath displayed the Plat that was recorded in June, 2020, and stated that the existing barn is not indicated on the Plat. Mr. Suddath stated that the barn is located in the depicted gas line easement.

Mr. Suddath displayed the Boundary Survey, from April 2020, noting that the barn is not noted on this, either. Mr. Suddath explained that typically there will be a note, on the boundary survey, referencing the future removal of an existing structure, if it is located on a property boundary. Mr. Suddath added that, as there was no such note, it was probably assumed by the surveyor, that the structure would be removed from the property.

Next, Mr. Suddath displayed the Zoning Compliance Form and denial for this property. Mr. Suddath summarized that the landowners resubmitted the Zoning Compliance form, stating that the County accepted the Plat and therefore accepted the barn's location over the lot lines. Mr. Suddath stated that the second application was denied, with an explanation that this item would be referred to the BZA for interpretation and guidance.

Mr. Suddath displayed a Disclosure Agreement provided by the property owner, which states, *"The shed on the Barn on tract 1 and 2 is divided by the property line. The barn will be for the use of tract #1 and the shed portion will be removed from the barn by the purchaser of tract #2 within 3 months of purchasing the property unless the same buyer purchases tract #1 and tract #2"*.

Mr. Suddath stated that per the Zoning Resolution, accessory structures shall not be located within 5 feet of any side or rear lot lines and shall not be located within any easement. Mr. Suddath displayed additional photos of the property and concluded his presentation with example motions. Mr. Suddath stated that the property owners are in attendance.

Mr. Rainey opened the Public Hearing.

Nathan Cripe presented a Plat, stating that this was a previously created Plat that was done by the surveyor, but not released. Mr. Cripe stated that the barn in question was noted on this Plat.

SUMNER COUNTY BOARD OF ZONING APPEALS
MINUTES
JULY 8, 2021
5:00 P.M

Mr. Cripe stated that the 100-year old barn does encroach in the gas easement, and he understands that if the gas company needs to access that easement, they may do so. Mr. Cripe stated that he is willing to remove the lean-to, however, would like to preserve the barn. Mr. Cripe also stated that in the CC&R, the wording states that the owner of Plat 2 is to take down the lean-to, adding that it does not state that the entire barn must be removed.

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

Mr. Rainey asked Mr. Suddath how Sumner County staff would know the barn exists, if it is not shown on the Plat.

Mr. Suddath stated that it is the surveyor's responsibility to show all permanent features on the Plat. Mr. Suddath added that mistakes happen. Mr. Suddath stated that staff does look at the aerial of property, when reviewing a Plat. Mr. Suddath explained that comments to the surveyor, during the Plat approval process, noted existing structures. Mr. Suddath stated that the responses back from the surveyor stated that existing structures were to be removed. Mr. Suddath restated that it is the surveyor's responsibility to show all structures on the Plat, and it is staff's responsibility to review the Plat for compliance. Mr. Suddath stated that in general, if a structure is not shown on a plat, the implication is that it is to be removed.

Mr. Rainey added that it is not staff's responsibility to resurvey the property.

Mr. Rainey stated that many times, the Board has required the removal of structures that are not in compliance. Noting that mistakes can be made, Mr. Rainey stated that it is not the county's responsibility or requirement to let this non-conformity ride.

Mr. Utley stated that there appear to be two options: either remove the barn or re-plat the lot. Mr. Utley stated that this falls to the surveyor, and asked what recourse there is to the surveyor.

Mr. Rainey stated that, as a surveyor, the existence of structures on property lines are an issue that comes up from time to time. Mr. Rainey stated that mistakes do happen. Mr. Rainey stated that after seeing pictures of the barn, he sees that it could have been discussed by the seller, that the barn would be removed, based on the condition of the barn. Potentially, the agreement to remove the barn, may not have been passed on to the buyer.

Expressing an understanding of how a misunderstanding could have transpired, Mr. Rainey stated that the Board cannot condone the barn staying. Mr. Rainey added that moving the property line is an option for the property owners.

Mr. Rainey summarized issue before the Board, stating that a decision must be made whether to accept the document that has been submitted or to follow codes. Mr. Rainey stressed that if the Board rules that the request meets requirements and allows a permit to be issued, there will be issues "down the road". Mr. Rainey added that if the request is denied, the requestor still has two choices: remove the barn or re-plat the lot.

SUMNER COUNTY BOARD OF ZONING APPEALS
MINUTES
JULY 8, 2021
5:00 P.M

Mr. Utley made a motion to find that the property located at 102 Garrison Private Lane, Cottontown does not meet County Requirements for issuance of a Building Permit, and the illegal nonconforming barn must be removed in order to obtain a building permit.

Mr. Holt asked for clarification of the wording in the CC&R (Conditions, Covenants & Restrictions), regarding the shed that still exists.

Mr. Suddath stated that the BZA cannot enforce private restrictions.

Mr. Holt seconded the motion. Motion passed unanimously.

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

2. Andrew W. Horton is requesting a variance from County requirements contained at Chapter 4, Section 404 of the Sumner County Zoning Resolution related to encroachment of a 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 **1088 Edgewater Circle, Gallatin, TN, 37066**, is on Tax Map 147K, Group B, Parcel 002.00, contains .5 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, June 24, 2021.**

Mr. Suddath provided an overview of the property. Mr. Suddath stated that this is a non-conforming lot and explained that the request is to allow a 3'4" encroachment of a primary structure into a side yard setback, to accommodate an addition to the primary structure.

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

Mr. Suddath displayed wording from Chapter 4, Section 404 and Chapter 13, Section 1304, Subsection B of the County Zoning Resolution. Next, Mr. Suddath displayed the original Plat, recorded in 1964, explaining that it was created prior to Subdivision Regulations within the County. Next, Mr. Suddath displayed the Plot Plan, depicting the proposed 3'4" encroachment into the 10' side yard setback.

At this time, Mr. Suddath displayed photos of property and house, depicting extensive gutting of the existing structure. Mr. Suddath stated that he has been in communication with the Codes Department and added that he will be requesting that if this request is approved, a condition will be added, requiring that a demolition permit be obtained. Mr. Suddath asked Mr. Marshall Wright for confirmation of that requirement.

Marshall Wright stated that is correct.

SUMNER COUNTY BOARD OF ZONING APPEALS
MINUTES
JULY 8, 2021
5:00 P.M

At this time, Mr. Suddath reviewed the eight requirements that must be met in order for the BZA to grant a variance. Mr. Suddath stated that this request does meet all 8 requirements, as well as the Plot Plan requirements and the confirmation that this variance is not a Use Variance. Mr. Suddath completed his presentation with example motions and turned the meeting over to Mr. Rainey.

Mr. Rainey opened the Public Hearing. Referencing the sign-in sheet, Mr. Rainey called Preston Spark forward to speak

Preston Spark 1092 Edgewater Circle, Gallatin, stated that he is in favor of the variance request.

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

Mr. Rainey then asked the requestor if there was any way to offset the addition by 4 feet?

Andrew Horton stated they have tried to do so, but cannot reconfigure the layout due to the tight lot and the septic area.

Mr. Utley referenced the Plat and asked if the septic is in the front yard.

Mr. Suddath confirmed that the septic soil area is designated on the Plat by the hatched area located on the Plat.

Mr. Utley made a motion, that due to the constraints of the lot, including the septic area, to approve a request for a variance allowing encroachments into a side yard setback in accordance with the submitted plot plan for 1088 Edgewater Circle, Gallatin contingent upon:

a) All required Zoning, Building and Land Disturbance Permits must be obtained from the applicable County departments, seconded by Mr. Holt. Motion passed unanimously.

At this time, Mr. Rainey recused himself, as he explained that he prepared the Plot Plan for the next item.

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

3. Harold Steven Hodges is requesting a Special Exception from County requirements contained at Chapter 11, Section 1101, Subsection R of the Sumner County Zoning Resolution related to the size of a detached Accessory Dwelling Unit in relation to the primary dwelling and related to an ADU application involving a mobile home. This request is made pursuant to Chapter 14, Section 1411 of the County Zoning Resolution. Subject property is located at **368 Buttermilk Hollow Road, Bethpage, TN, 37022**, is on Tax Map 061, Parcel 043.08, contains 9.43 acres, is zoned Rural Residential (RR) and is in the 3rd Commission Voting District (Alan Driver and Steve Graves). **The adjoining property**

SUMNER COUNTY BOARD OF ZONING APPEALS
MINUTES
JULY 8, 2021
5:00 P.M

owners were notified by certified mail and this item was advertised in The Gallatin News on Thursday, June 24, 2021.

Mr. Suddath provided an overview of the property, and provided an aerial of the property, showing and existing home and barn. Mr. Suddath also displayed the Public Notice from The Gallatin News.

Mr. Suddath explained that the County Zoning Resolution provides guidelines for approval of Accessory Dwelling Units (ADUs). Mr. Suddath stated that ADUs may be approved administratively by staff, provided that all Zoning requirements are met. Mr. Suddath explained that the Resolution contains:

- General Provisions for ADUs (none may be waived by staff or BZA per the Resolution)
- Design and Occupancy Standards
- Particular Standards for By-Right ADUs

Mr. Suddath went on to explain that the Resolution provides that applications seeking to deviate from Design and Occupancy Standards or Particular Standards, and/or requesting to install a mobile home, may request a Special Exception from BZA.

Mr. Suddath displayed the Resolution wording regarding the Particular Standards for Detached ADUs, citing *iii*, “...such unit shall in no case exceed the size of the principal structure”.

Mr. Suddath also displayed the Resolution wording regarding ADUs requiring a Special Exception: “Applications for an ADU requiring a Special Exception from the Board of Zoning Appeals are listed as follows: i) The Design and Occupancy Standards and Particular Standards for By-Right ADUs contained in this Chapter cannot be met and ii) Applications for an ADU involving a mobile home”.

At this time, Mr. Suddath displayed the Plot Plan submitted by the applicant, depicting the location of the existing home, barn and proposed double wide home. Mr. Suddath also displayed photos of the property and the BZA sign, posted on the property.

Mr. Suddath then explained the 4 Key Requirements/Findings that must be made, before the BZA may grant a Special Exception:

#1: 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.

#2: A special exception shall only be granted provided the Board makes specific findings that it:

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

Staff Interpretation: The new structure should not adversely affect other property in the area.

#3: A special exception shall only be granted provided the Board makes specific findings that it:

- 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 spirit and intent of the Zoning Resolution seems to indicate that “Accessory Dwellings” should be accessory to the primary home. This would not be the case

SUMNER COUNTY BOARD OF ZONING APPEALS
MINUTES
JULY 8, 2021
5:00 P.M

in this instance, since the “Accessory Dwelling” would be a new and larger home placed on the lot.

Other alternatives would appear to be available, since the lot possesses sufficient road frontage to be subdivided.

- #4 A special exception shall only be granted provided the Board makes specific findings that it:
- Shall be located so as to be compatible with the surrounding area and provide safety to those using the facility.

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

Mr. Suddath concluded his presentation with example motions, stated that the landowner and the person requesting the accessory building are present. Mr. Suddath then turned the meeting over to Ms. Webster.

Ms. Webster opened the Public Hearing.

Ms. Webster called Harold Steven Hodges forward and asked if there were any questions.

There being no questions, Ms. Webster closed the Public Hearing.

Mr. Utley asked for confirmation that the reason this ADU request cannot be approved administratively, is that the proposed ADU is larger than the primary residence.

Mr. Suddath confirmed, adding also that the request involves a mobile home; this was another reason that the request cannot be approved administratively.

Mr. Utley asked if the ADU must be attached to the primary dwelling.

Mr. Suddath stated that and ADU may be either attached or detached.

There was discussion regarding the distance between the primary and accessory dwelling.

Mr. Holt asked if there has ever been the approval of an ADU that was larger than the primary dwelling.

There was discussion regarding previous applications.

Mr. Utley stated that the issue holding him back is that this request is essentially to place two dwellings on one lot, in which the second structure isn't really accessory to the primary dwelling. Mr. Utley added that this appears to be able to be subdivided.

There was discussion as to other options.

Mr. Hodges requested to speak.

**SUMNER COUNTY BOARD OF ZONING APPEALS
MINUTES
JULY 8, 2021
5:00 P.M**

Ms. Webster allowed him to speak.

Mr. Hodges described the 50' easement along the property line.

Mr. Utley asked how that effects the potential subdivision of the property.

There was discussion of how to subdivide the property and other possible alternatives. Mr. Suddath explained that these requestors are not related.

Mr. Holt made a motion to deny a request for a Special Exception related to a proposed Accessory Dwelling Unit for 368 Buttermilk Hollow Road, Bethpage seconded by Mr. Utley. Motion passed unanimously.

There being no further business before the Board, Mr. Holt made a motion to adjourn, Seconded by Mr. Utley.
Meeting adjourned at 6:02 pm.