

**SUMNER COUNTY BOARD OF ZONING APPEALS
MINUTES
AUGUST 12, 2021
5:00 P.M**

SUMNER COUNTY ADMINISTRATION BUILDING
ROOM 112
355 N. BELVEDERE DRIVE
GALLATIN, TN. 37066

MEMBERS PRESENT:

BRUCE RAINEY, CHAIRMAN
SANDY WEBSTER, VICE-CHAIRMAN
SHAWN UTLEY
MAC HOLT
JIM HARRISON

STAFF PRESENT:

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

Mr. Rainey called the meeting to order and stated that there is a quorum present.

Mr. Rainey asked for approval of the July Minutes.

**Ms. Webster made a motion to approve the July Minutes, seconded by Mr. Holt.
The minutes were approved unanimously.**

Confirming that there are no changes to the Agenda, Mr. Rainey introduced the first item and turned the meeting over to Mr. Suddath for staff presentation.

1. **Kenneth Maxwell** was requesting a continuation of a Hardship Variance granted on August 10, 2017 for a relative to live in a detached structure due to medical issues. Subject property located at **1121 Windsor Drive, Gallatin, TN 37066**. Subject property is on Tax Map 147M, Group A, Parcel 006.00, contains 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 mail.

Mr. Suddath began his presentation with a brief history of the property, stating that this is a continuation of a Hardship Variance. Mr. Suddath stated that currently, if an ongoing Hardship Variance might meet the requirements for an ADU (Accessory Dwelling Unit), the landowner is directed to get the structure permitted as an ADU. In doing so, stated Mr. Suddath, the property does not have to return to the BZA every two years. If the ADU requirements cannot be met, explained Mr. Suddath, then the applicant may continue with the Hardship Variance. Regarding this property, Mr. Suddath explained that there are various issues with the septic system and the way this was permitted by Codes, which make this property unable to meet the current ADU requirements at this time.

Mr. Suddath displayed an aerial photo of the property and stated that at .7 acres, this is a legal, non-conforming lot.

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Mr. Suddath displayed the wording from Chapter 11 of the County Zoning Resolution, regarding existing Hardship Variances that states that *“Legally created accessory dwelling units established prior to the enactment of these regulations may continue to exist and will be regulated by the conditions under which they were approved”*.

Mr. Suddath then displayed photos of the property and structures.

Mr. Suddath concluded his presentation with example motions and turned the meeting over to Mr. Rainey.

Mr. Rainey opened the Public Hearing and called forward, the first person signed up to speak.

Mr. Kenneth Maxwell, 1121 Windsor Drive, stated that after speaking with Mr. Suddath, Marshall Wright called him to tell him that there may be a path for this structure to pursue the ADU. Mr. Maxwell stated that he might submit that request before the next renewal date.

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

Mr. Holt made a motion to approve a request for a two-year continuation of a Hardship Variance for 1121 Windsor Drive, Gallatin, Tennessee, seconded by Ms. Webster. Motion passed unanimously.

Mr. Rainey introduced the next item and turned the meeting over to Mr. Suddath for staff presentation.

2. **Molly Townsend** was requesting an Administrative Appeal of Staff decision regarding County requirements contained at Chapter 11, Section 1101, Subsection H of the Sumner County Zoning Resolution related to easements. Request is made pursuant to Chapter 14, Section 1404, Subsection D. Property is located at **1244B Goshentown Road, Hendersonville, TN, 37075**, on Tax Map 144, Parcel 044.00 containing 37.86 acres, and is zoned Rural Residential (RR) and is in the 11th Commission Voting District (Scott Langford and Jeremy Mansfield).

Adjoining property owners were notified by certified mail and the agenda item was advertised in The Gallatin News on Thursday, July 29, 2021.

Mr. Suddath provided an overview of the property, explaining that this is an administrative appeal related to an easement question. Mr. Suddath stated that the appellant is requesting to utilize an existing 20-foot Ingress Egress Easement to obtain a building permit for a 37.86-acre tract.

Mr. Suddath displayed an aerial photo of the property, pointing out the unmapped flood zone.

Mr. Suddath stated that the two easements on the property are not located in the flood zone. Mr. Suddath also displayed a copy of the Public Notice.

Next, Mr. Suddath provided a brief history of easements within the county, stating that county regulations in place, since June of 1980, require a standalone easement 50 feet in width or 50 feet of road frontage, in order to obtain a building permit.

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Mr. Suddath explained that this tract has two separate easements; neither of which meets width requirements. Mr. Suddath stated that one Easement (20 foot) was created in 1950, adding that the other easement (30 foot) was created in 1990.

Mr. Suddath stated that the applicant maintains that the property's access is Legal Nonconforming (or "Grandfathered") since one of the easements was created prior to implementation of road access requirements by the County. Mr. Suddath added that this older easement (Created in 1950) is not proposed to be used to provide driveway access.

At this time, Mr. Suddath displayed the Plot Plan, pointing out the location of the two easements. Mr. Suddath explained that the 30' easement was created after the effective date of the rules regarding road access requirements. Mr. Suddath summarized that the applicant is seeking to actually use the easement created in 1990 and seeking an exemption for the easement created in 1950.

Next, Mr. Suddath displayed the current wording from Zoning Resolution, Chapter 11, Section 1101, Subsection H, which states, "*...when a permanent easement to a public street is used as access to a lot or tract...may not be less than fifty feet wide...*" Mr. Suddath also displayed wording from an amendment to the County Zoning Resolution approved by the County Commission on June 16, 1980, stating the same easement requirement.

Mr. Suddath then displayed photos of the property easements.

Mr. Suddath concluded his presentation with example motions and turned the meeting over to Mr. Rainey.

Mr. Rainey opened the Public Hearing, referred to the sign-in sheet, and called Crystal Donegan forward.

Crystal Donegan, 1250 Goshentown Road, asked for clarification as to how this request would affect her property.

Mr. Rainey stated that it is not in his purview to answer the question; stating that the Board is here to decide if the requestor may obtain a building permit via an existing easement.

Mr. Rainey called Paul Kirkpatrick forward.

Paul Kirkpatrick, 1099 Goshentown Road, asked for confirmation that the easement would only allow a single family dwelling, and not a subdivision of property.

In response, Mr. Suddath provided a brief history of the property, stating that the owner of the property came to the county a year or two ago, requesting permission to erect an agricultural barn. Upon review, added Mr. Suddath, it was found that the barn was exempt from all County Zoning Regulations, and they were issued the permit for the Agricultural building. Mr. Suddath noted that the landowners were informed that there would be obstacles to overcome, if seeking to

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obtain a residential building permit. Mr. Suddath added that this property may not be subdivided unless additional road frontage is obtained.

Mr. Rainey called the next name on the sign-in sheet, James Kosky.

James Kosky stated that he has nothing to add.

Mr. Rainey asked if anyone else wished to speak to this request.

Molly Townsend, property owner, stated that her intent is to build one home on property that has been in the family for many years. Ms. Townsend added the intent to live on the property and to use the property for agricultural purposes.

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

Mr. Utley asked to view the aerial view of the property, and have the 20' and 30' easements identified.

Mr. Suddath displayed the aerial and pointed out the two parallel easements.

Mr. Utley asked for confirmation that the 20' easement created in the 1950's is "grandfathered".

Mr. Suddath stated that the BZA has, in the past, interpreted that easements created prior to 1980 are considered "grandfathered".

Mr. Utley asked if they want to use the 20' easement.

Mr. Suddath stated that they proposing to use the 30' easement.

Mr. Utley asked for clarification that they are requesting to use the easement that is not the "grandfathered" easement.

Mr. Suddath stated that that is correct.

Mr. Rainey stated that upon reading the deeds, one understands that the Kirkpatrick's divided the land in 1950 with the 20' easement. Mr. Rainey added that in 1990, the property was resurveyed by Howard George, who, at the time was sitting on the County Commission. Mr. Rainey stated that a few months later, Mr. George added the 30' easement.

Mr. Rainey stated that he feels the property could be grandfathered in, based on this Board's history of interpretation. Mr. Rainey stated that the 20' easement "grandfathers" this property. Mr. Rainey stated that they have legal rights to two easements; one grandfathers the property,

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and one is a practical easement. The decision the Board must make, stated Mr. Rainey, is to determine whether we approve building on a lot that contains an easement that predates zoning by 22 years.

Mr. Utley asked if the 50' easement requirement must be continuous.

Mr. Suddath explained that the Zoning Resolution states that an easement may not be reduced to less than 50 feet in order to obtain a building permit.

Mr. Holt asked if staff is focused on the 30' easement, as that is the requested usage.

Mr. Suddath stated any legal, non-conforming item might always potentially be referred to the BZA for a formal determination. Mr. Suddath added that it is beneficial to all parties to have the BZA make such determinations upon the record.

Mr. Holt asked if this could be approved on the basis of the "grandfathered" 20-foot easement.

Mr. Rainey stated that a reason for approval or denial must be stated in the motion.

Mr. Harrison added that the Board may need to weigh the sight distance, in determining the access location, adding that this request should be approved.

Mr. Rainey asked to see the Tax Map.

There was discussion that the 30' access appears to provide an easier access.

Mr. Suddath displayed the photos of the 30-foot easement, stating that the 20-foot easement is not usable.

Mr. Rainey granted the requestor permission to speak again.

Molly Townsend stated that 30-foot easement is being requested for use of larger farming equipment. Ms. Townsend added that if the 20-foot easement is used, that would be a shared driveway, which she would not mind clearing and using, if the Board decided that should be used.

Mr. Utley asked if the County bears any responsibility by adding the 30-foot easement in 1990.

Mr. Rainey stated that he does not think so, adding that is was deeded.

Mr. Utley asked if it would have had to have been approved by the Planning Commission.

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Mr. Rainey stated no, because all the tracts are in excess of 5 acres, the County would have never seen or reviewed them.

There was discussion regarding how to word the motion.

A motion was made by Mr. Holt, to find that the easements of record for the property located at 1244B Goshentown Rd, Hendersonville meet County Requirements, based on the existence of the “grandfathered” 20-foot easement, for issuance of a Building Permit, seconded by Mr. Harrison. Motion passed unanimously.

Discussion ensued regarding the valid usage of either easement.

Mr. Rainey introduced the next item and turned the meeting over to Mr. Suddath for staff presentation.

3. **Stephen and Betty Brown** 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 **2704 Pleasant Grove Road, Westmoreland, TN, 37186**, is on Tax Map 008, Parcel 008.02, contains 5.1 acres and is zoned Rural Residential (RR) and is in the 1st Commission Voting District (Terry Wright and Moe Taylor). **Adjoining property owners were notified by certified mail and the agenda item was advertised in The Gallatin News on Thursday, July 29, 2021.**

Mr. Suddath provided an overview of the property, stating that the request is to add onto an existing accessory structure, which will cause it to be in front of the primary structure. Mr. Suddath provided an aerial photo of the property and the Public Notice from The Gallatin News.

Next, Mr. Suddath displayed wording from Chapter 11, Section 1101, Subsection D of the County Zoning Resolution, which states that “...*accessory buildings and structures shall not be erected between the front lot line and the front wall of the principal building, unless the principal structure is setback more the 500 feet from the front lot line, however, no accessory building will be within the minimum required front yard of the district.*”

Mr. Suddath then displayed the Plot Plan, depicting the addition onto the existing structure. Mr. Suddath also showed the reason for the variance request, which the applicant stated was because of a hill off the back of the structure.

Next, Mr. Suddath displayed a photo of the BZA sign posted in the requestor’s front yard, a photo of the existing structures and the construction that had been started on this project, prior to applying for permits.

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Mr. Suddath explained that there are eight Standards for Variances that must be met in order for the BZA to grant a Variance. Mr. Suddath stated each of these Standards and explained that this request appears to address all of these Standards. Mr. Suddath also confirmed the fulfilled requirement of a Plot Plan and acknowledged that this is not a use variance.

Mr. Suddath concluded his presentation with example motions and turned the meeting over to Mr. Rainey.

Mr. Rainey opened the Public Hearing and called Mr. Stephen T. Brown forward.

Stephen Brown stated that he needs to get this building done for personal reasons, adding that he made a promise to his dad, when he passed.

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

Mr. Utley made a motion to approve a request for a variance allowing an accessory structure between the front lot line and the front wall of the primary structure, in accordance with the submitted plot plan for 2704 Pleasant Gove Road, Westmoreland contingent upon:

- a) All required Zoning, Building and Land Disturbance Permits must be obtained from the applicable County departments**
- b) Any business that is proposed to be conducted out of the shop will have to obtain additional permits,**

based on the hardship of the existing shed behind the building and the topo of the land. Mr. Harrison seconded the motion.

Motion passed unanimously.

There being no further business, Ms. Webster made a motion to adjourn, seconded by Mr. Holt. The meeting adjourned at 5:39 PM.