

SUMNER COUNTY BOARD OF ZONING APPEALS
MINUTES
OCTOBER 14, 2021
5:00 p.m.

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

MEMBERS:

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

STAFF PRESENT:

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

Mr. Rainey called the meeting to order and asked if there were any changes to the Agenda.

Mr. Suddath stated that he would like to add an Agenda Item #4 to the regular agenda, to discuss a date change for the November meeting.

Mr. Rainey stated that all members are present and called for approval of the August Minutes.

**Ms. Webster made a motion to approve the August Minutes, seconded by Mr. Harrison.
Motion passed unanimously.**

At this time, Mr. Rainey introduced each of the Consent Agenda items, asking if anyone wished to remove an item from the Consent Agenda.

CONSENT AGENDA:

1. COY GAMMON is requesting a continuation of a Conditional Use Permit granted on October 12, 2017, to conduct a lawn care and landscaping business. Subject property is located at **1219 Willis Branch Road, Goodlettsville, TN 37072**, is on Tax Map 143, Parcel 047.00, contains .92 acres, is zoned Rural Residential (RR) and is in the 11th Voting District (Scott Langford and Jeremy Mansfield).

The adjoining property owners were notified by regular mail.

2. AAA AUTO GLASS, LLC is requesting a continuation of a Conditional Use Permit granted on September 14, 2017 to conduct an auto glass repair shop. Subject property is located at **4030 HWY 31W, Cottontown, TN 37048**, is on Tax Map 056, Parcel 053.01, contains 6.4 acres, is zoned Rural Residential (RR) and is in the 12th Voting District (Michael Guthrie and Justin Nipper).

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The adjoining property owners were notified by regular mail.

There being no one wishing to remove an item from the Consent Agenda, a motion was made by Ms. Webster, and seconded by Mr. Holt:

- 1. To approve a request for a two year continuation of a Conditional Use Permit for 1219 Willis Branch Road, Goodlettsville, authorizing the operation of a lawn care and landscaping business and**
- 2. To approve a request for a two year continuation of a Conditional Use Permit for 4030 Hwy 31W, Cottontown, authorizing the operation of an auto glass repair shop.**

The motion passed unanimously.

REGULAR AGENDA:

Next, Mr. Rainey introduced the first item on the Regular Agenda and turned the meeting over to Mr. Suddath for staff presentation.

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).

This item was deferred at the July 8, 2021 meeting.

The adjoining property owners were notified by regular mail.

Mr. Suddath provided an overview of the property, and stated that previous conditions of approval, approved in 2019, included that the restaurant must obtain a Certificate of Occupancy. This item was deferred at the July 8, 2021 BZA meeting in order to allow the applicant more time to complete improvements related to fire suppression systems for the kitchen, which is required before receiving a CO. Mr. Suddath stated that Mr. Cook is in attendance.

Mr. Rainey asked Marshall Wright if everything is fine with the property.

Mr. Wright stated that they have not been called to inspect the fire suppression system.

Mr. Ralph Cook stated that the system has not been installed, adding that it has been purchased.

Mr. Cook stated that the tenant has not left, and intends to stay until the end of the month.

Mr. Wright informed the Board that Mr. Cook currently has a Type-2 hood installed that will cover vapor and odors, which is sufficient for soups and sandwiches. Mr. Wright added that to cook with grease, a Type-1 hood is required.

Mr. Rainey asked if this location just serves soup and sandwiches.

Mr. Suddath stated that the previous condition of obtaining a Certificate of Occupancy resulted in an inspection during which it was found that the incorrect hood was in place.

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Mr. Rainey asked what kind of cooking is being done on the property.

Mr. Cook stated that most of the cooking is done out of her cook shack “Top of the Ridge Catering”.

Mr. Suddath stated that Mr. Cook has purchased the required hood system, and added that if the BZA wished to afford him more time to install it, that would be appropriate.

Mr. Cook stated that he just needs a couple of weeks to install the system.

Mr. Wright stated that he has been in communication with the manufacturer regarding the purchase and installation of the system.

Mr. Holt stated that 90 days sounds sufficient.

Mr. Rainey then suggested a minimum/maximum number of days for installation of system.

Mr. Holt made a motion defer a decision on this item for a minimum of 30 days/maximum of 90 days, with the applicant to return to the BZA for permit renewal upon obtaining a C.O. with the vent hood installed.

Mr. Harrison seconded the motion.

Motion passed unanimously.

Mr. Suddath asked Mr. Cook to let staff know when the new hood has been installed.

Mr. Cook stated that he would.

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

2. **ADAM VOGAN** is requesting a Variance 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 **612 Weeping Willow Road, Hendersonville, TN, 37075**, on Tax Map 101, Parcel 038.01 containing 35.88 acres, is zoned Rural Residential (RR) and is in the 4th Commission Voting District (Jerry Foster and Leslie Schell).
Adjoining property owners were notified by certified mail and the agenda item was advertised in The Gallatin News on Thursday, September 30, 2021.

Mr. Suddath provided an overview of the property, stating that this request is for a variance to utilize a 25 foot Ingress Egress Easement to obtain a building permit. Mr. Suddath displayed an aerial photo of the property and the printed Public Notice.

Mr. Suddath then explained a brief history of the easement, stating:

- 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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- Tract has long possessed a unique “nonexclusive” easement that was tied to individual family members and specific ownership of adjacent properties. It did not meet the County’s requirements for obtaining a building permit.
- Requests and inquiries seeking to utilize this easement have come up several times in the last few years. None have been approved due to the “nonexclusive” nature of the existing easement.
- The property owner subsequently petitioned a judge for an ingress/egress easement; request was for 50 feet, but only 25 feet was able to be obtained per a settlement, which is the easement required per statute (TCA 54-14-101 et seq).
- The 25 foot easement is recorded at RB 5690 Page 210-213.

Mr. Suddath displayed the current wording from the Zoning Resolution, regarding “structures to have access”, the June 1980 County Commission action regarding easement width and Tennessee Code Annotated 54-14-102, which granted the judge the ability to grant 25’ for ingress/egress.

Next, Mr. Suddath displayed the provided Plot Plan and a photo of the Public Notice sign, posted in the yard. Mr. Suddath then explained the eight (8) Standards for Variances that must be met and stated how this property does meet these requirements. Mr. Suddath also confirmed that a Plot Plan was submitted and, that this variance is not a Use Variance.

Mr. Suddath completed his presentation with example motions.

Mr. Rainey opened the Public Hearing.

Mr. Adam Vogan, the applicant, stated that they have obtained all the land that can be legally obtained. Mr. Vogan added that utilities have already been run to this property, containing two water taps from White House Utilities and electric from Cumberland Electric. Mr. Vogan also stated that his intent is to build a house for his personal use.

Mr. Rainey asked if there is a driveway in place.

Mr. Vogan stated there is a driveway, adding that it does need more gravel.

Mr. Rainey asked when the easement was created.

Mr. Vogan stated that he was told that it used to be an old county road before Weeping Willow Road was paved. Mr. Vogan explained that he went under contract to purchase this property in November 2019. Mr. Vogan stated that the judge gave him 25 feet easement, which was all that could be legally obtained.

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

Mr. Rainey stated that it sounds like the judge granted a prescriptive easement for the property. Mr. Rainey explained that the judge refused to condemn the property, but would not grant

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enough land to meet county standards. Mr. Rainey stated that he is inclined to believe that, due to the length of time the easement has been used, and the judge's ruling, this would meet the conditions of approval from this Board, as it is a situation that was not created recently.

Mr. Utley added that it is essentially "grandfathered in".

In addition, ratified by a judge, stated Mr. Rainey.

Mr. Harrison stated agreement regarding Prescriptive Easements and made a motion to find that all County variance standards are met and to approve a request for an easement width variance in accordance with the submitted plot plan for 612 Weeping Willow Road, Hendersonville contingent upon:

- a) All required Zoning, Building and Land Disturbance Permits must be obtained from the applicable County departments for any future construction.**

Mr. Utley seconded the motion. The motion passed unanimously.

Mr. Utley asked if there were any records of when the county abandoned this road.

Mr. Suddath stated that the status of that has never been established.

Mr. Utley asked if there was a Resolution regarding this.

Mr. Rainey stated that there never is.

Mr. Suddath added that it might never have been accepted as a county road, adding that he has found no records related to this.

There was discussion of such old roads, wagon roads, and cut-through paths on property throughout the county.

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

3. **CODY GUPTON** is requesting a Special Exception from County requirements contained at Chapter 11, Section 1101, Subsection S of the Sumner County Zoning Resolution related to Design and Occupancy Standards for a detached Accessory Dwelling Unit. This request is made pursuant to Chapter 14, Section 1411 of the County Zoning Resolution. Subject property is located at **524 Fern Valley Road, White House, TN, 37188**, is on Tax Map 078, Parcel 051.04, contains 2.02 acres, is zoned Rural Residential (RR) and is in the 12th Commission Voting District (Michael Guthrie and Justin Nipper).

Adjoining property owners were notified by certified mail and the agenda item was advertised in The Gallatin News on Thursday, September 30, 2021.

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Mr. Suddath provided an overview of the property, beginning by explaining that this request is for a Special Exception related to the Design and Occupancy Standards for Accessory Dwelling Units. Mr. Suddath noted that this Special Exception request is related to the architectural design, style, appearance and character of the Existing Accessory Dwelling as it relates to the proposed Primary Structure, further explaining that the existing ADU (built in 2019, prior to current ADU rules) has metal siding while the proposed Primary Dwelling will be white painted brick. Next, Mr. Suddath provided an aerial photo of the property, the Public Notice that was published in The Gallatin News and the purpose of the application, per the applicant.

At this time, Mr. Suddath explained the ADU administrative approval process and the Design and Occupancy Standards that must be met or granted a Special Exception from the BZA, if not in adherence.

Displaying the Plot Plan submitted by the applicant, Mr. Suddath stated that setback requirements are met. Mr. Suddath then displayed the elevation of the proposed house, stating that it will be a white painted brick house with a black shingled roof. Mr. Suddath also showed photos of the existing ADU, stating that it is white metal siding with a black metal roof. Next, Mr. Suddath stated the Four Required Findings for Special Exceptions, related to this request, as follows:

#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 proposed appearance of the Primary and Accessory Dwelling 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 the primary and accessory dwellings should be constructed in a way that they seamlessly blend together. The Board may find that what is proposed will meet this requirement since the exterior colors match for both buildings (black roofs, white walls)

However, given that the exterior walls are not the same (house is brick, ADU is metal) roof materials are not the same (house is shingle, ADU is metal) the BZA may want to have the applicant explore alternatives that will make them look more similar.

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

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- 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. All applicable permits and inspections by the County Building Codes office would be required for this project.

Mr. Suddath concluded his presentation with example motions, stated that the applicant is in attendance, and turned the meeting over to Mr. Rainey.

Mr. Rainey opened the Public Hearing and called Cody Gupton forward.

Cody Gupton stated that in 2018, when he applied for the building permit for the existing metal structure, ADUs were not established. Mr. Gupton stated that the garage doors on the ADU and the primary residence will match. Mr. Gupton added that the house would be white brick with black gutters, roof and accents.

Upon confirming that no one else wished to speak, Mr. Rainey closed the Public Hearing.

Mr. Utley asked if this is something we will encounter more often.

Mr. Suddath confirmed that there are a few more of these that may come up.

Mr. Suddath also stated that people will want to apply to do this, adding that he hopes it will be the exception, not the rule. Mr. Suddath suggested that ADU requests, containing existing structures, might need to be looked at differently than new applications coming through.

Mr. Utley stated that it is vague, with the architectural requirement. Mr. Utley asked if this is more related to the specific lot or the area and community that the house is located in.

Mr. Suddath stated that, as the county cannot do design review many circumstances, the BZA does have discretion afforded to it within the Zoning Resolution over how to look at the context of the area.

Mr. Utley asked if this specific request matches the community/area that it is located in.

Mr. Suddath confirmed that this area is rural, adding that upon driving past this property, it would not be obvious that this is an ADU.

Mr. Harrison asked if there are any architectural covenants or restrictions built into this subdivision.

Mr. Suddath stated that he is not aware of any, adding that the county cannot enforce private restrictions.

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Mr. Gupton stated that the only private restriction on the property is “no mobile homes”.

Mr. Utley made a motion, stating that, as the structures are in keeping with the surrounding area and County requirements for Special Exceptions are met, to approve a request for a Special Exception related to Design and Occupancy Standards for an Accessory Dwelling Unit at 524 Fern Valley Road, White House with the following conditions:

- a) All other applicable requirements for Attached Accessory Dwelling Units shall be met;**
- b) A new Zoning Compliance certificate shall be obtained from the Planning Director’s Office prior to obtaining a Building Permit for the primary structure;**
- c) Structures shall receive a Certificate of Occupancy from the County Building and Codes Department;**
- d) Improvements shall be installed in accordance with the submitted plot plan;**

Mr. Holt seconded the motion.

Mr. Suddath asked if it is appropriate for staff to require complete adherence to the ADU requirements, and then to bring non-conforming requests to the Board for review on a case-by-case instance.

Mr. Rainey stated that he personally believes Mr. Suddath is on the right track. Other Board members verbalized agreement.

The motion was approved unanimously.

Mr. Rainey turned the meeting over to Mr. Suddath.

4. NOVEMBER MEETING DATE CHANGE

Mr. Suddath stated that the original November 4th meeting date needs to be moved to November 18, as he has a conflict with a meeting he must attend as a County representative in Portland. Mr. Suddath confirmed that the date change will cause no conflicts with submittals or Public Notice deadlines.

Ms. Webster made a motion to change the November 4, 2021 BZA Meeting date to November 18, 2021, seconded by Mr. Harrison. Motion passed unanimously.

There being no further business before the Board, Mr. Rainey adjourned the meeting at 5:35 pm.