

**SUMNER COUNTY BOARD OF ZONING APPEALS
MINUTES
FEBRUARY 14, 2019
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
DON DICKERSON
MAC HOLT
MATT STAMPER

MEMBERS ABSENT:

STAFF PRESENT:

JOSH SUDDATH, DIRECTOR OF PLANNING & STORMWATER
LINDA MCCULLOUGH, ASSISTANT TO THE DIRECTOR
MARSHALL WRIGHT, BUILDING & CODES DIRECTOR

Motion for approval of the January minutes by Ms. Webster, seconded by Mr. Dickerson.
Motion passed unanimously. Mr. Holt and Mr. Stamper abstained from voting.

Motion for approval of the February Agenda. Mr. Rainey stated that without objection he would like to move item #7 to item #1 and to add discussion at the end of the meeting with Codes Director Marshall Wright. Mr. Rainey stated that without objection, the changes to the agenda have been made.

Due to a conflict, Chairman Rainey recused himself from the next item and turned the meeting over to Vice-Chairman Webster.

1. **Larry & Cindy Gillihan** are requesting a Hardship Variance for a relative to live in a proposed structure on the subject property due to medical circumstances. Subject property is located at **250 Keytown Road, Portland, TN 37148** is on Tax Map 071 Parcel 028.01, contains 5.09 acres, is zoned Agricultural, and is in the 3rd Commission Voting District (Alan Driver and Steve Graves).
This item was deferred at the January meeting in order to get septic approval.

Mr. Suddath stated that this item was deferred at the January meeting in order to get approval for a septic area. Mr. Suddath stated that the septic area has been approved and applicant is ready to move forward. Mr. Suddath stated that at the January meeting there was some questions about the placement of the proposed structure but stated that with the current septic area approved, the proposed structure will be going behind the current dwelling.

Ms. Cindy Gillihan came forward to explain and represent this request.

Ms. Webster opened the floor for the public hearing.

Jean Donoho, 220 Keytown Road, came forward to ask about the placement of the proposed structure and if the structure would be removed after the hardship is no longer needed.

Ms. Gillihan stated that it is her understanding that the structure would have to be removed when the hardship is no longer needed, so Ms. Gillihan stated that yes it would be removed.

After confirming that no one else in the audience wished to speak, Ms. Webster closed the public hearing

Motion to approve the Hardship Variance by Mr. Dickerson, seconded by Mr. Stamper. Motion passed unanimously.

Chairman Rainey returned to the meeting and Vice-Chairman Webster turned the meeting back over to Chairman Rainey.

- 2. John Robert Bowman** is requesting a continuation of a Conditional Use Permit granted on February 9, 2017 to conduct a small gun and ammunition shop. Subject property is located at **1025 Mount Olivet Road, Hendersonville, TN 37075**, is on Tax Map 116, Parcel 030.01, contains 5.04 acres, is zoned Agricultural and Residential-1A, and is in the 11th Commission Voting District (Scott Langford and Jeremy Mansfield). **The adjoining property owners were notified by mail.**

Mr. Suddath presented an overview of this item stating that this is a continuation of a Conditional Use Permit granted in 2017 and that the Planning office has not received any comments from the neighbors concerning this item.

Mr. John Robert Bowman came forward to explain and represent this request.

Mr. Rainey opened the floor for the public hearing.

After confirming that no one in the audience wished to speak, Mr. Rainey closed the public hearing.

Mr. Rainey asked Mr. Bowman if there was anything he wanted to add.

Mr. Bowman stated that he would like to request from the Board the ability to ship and receive from his house. Mr. Bowman stated that it's hard for him to have to take

everything to the post office or the UPS store and pick up too. Mr. Bowman stated that there would be no public coming to his house, he only sells online and at trade shows.

Mr. Rainey asked Mr. Bowman did he ship by UPS/Fed EX.

Mr. Bowman stated that is was by UPS, Fed EX, and postal service.

Mr. Rainey asked Mr. Suddath if allowing this would cause the applicant to have to re-advertise the use.

Mr. Suddath stated that he did not think he would. Mr. Suddath stated that there have been a couple of the same type business that requested the same type of shipping and receiving and the Board has allowed them to do it.

Mr. Holt asked Mr. Bowman what was the frequency of the shipping and receiving.

Mr. Bowman stated that the frequency is about five to six guns a month.

Mr. Bowman also presented a copy for the record of his Federal Firearm License, which he did not have at his first meeting.

Motion to approve a two (2) year continuation of a Conditional Use Permit allowing Mr. Bowman to ship and receive from property by Mr. Dickerson, seconded by Ms. Webster. Motion passed unanimously.

- 3. Jeremy Samuel Lane** is requesting a continuation of a Conditional Use Permit granted on February 9, 2017 to conduct a small business from detached garage to make home decorating items. Subject property is located at **3454 HWY 76, Cottontown, TN 37048**, is on Tax Map 057, Parcel 058.01, contains 2 acres, is zoned Agricultural, and is in the 12th Commission Voting District (Michael Guthrie and Justin Nipper).
The adjoining property owners were notified by mail.

Mr. Suddath presented an overview of this item stating that this is a continuation of a Conditional Use Permit granted in 2017 and that the Planning office has not received any comments from the neighbors concerning this item.

Mr. Rainey opened the floor for the public hearing.

After confirming that no one in the audience wished to speak, Mr. Rainey closed the public hearing.

Mr. Jeremy Samuel Lane came forward to explain and represent this request.

Mr. Rainey asked Mr. Lane if everything was going well with his business.

Mr. Lane stated that it was and that he would appreciate the Board to allow him to continue with his business.

Motion to approve a two (2) year continuation of a Conditional Use Permit by Ms. Webster, seconded by Mr. Dickerson. Motion passed unanimously.

4. **Lynn & Ed Sekula** are asking for a continuation of a Conditional Use Permit granted December 11, 2008, to conduct an auto paint and body shop. Subject property is located at **390 Rock Bridge Road, Gallatin, TN 37066**, is on Tax Map 083, Parcel 040.01, contains 15.00 acres, is zoned Agricultural, and is in the 3rd Commission Voting District (Alan Driver and Steve Graves).

The adjoining property owners were notified by mail.

This item was deferred at the January meeting at the request of the applicant.

Mr. Suddath presented an overview of this item stating that this is a continuation of a Conditional Use Permit granted in 2008 and that the Planning office has not received any comments from the neighbors concerning this item.

Mr. Rainey opened the floor for the public hearing.

After confirming that no one in the audience wished to speak, Mr. Rainey closed the public hearing.

Mr. Ed Sekula came forward to explain and represent this request.

Mr. Rainey asked Mr. Sekula if there were any changes with the business.

Mr. Sekula stated that nothing has changed.

Motion to approve a two (2) year continuation of a Conditional Use Permit by Mr. Dickerson, seconded by Mr. Stamper. Motion passed unanimously.

5. **Thomas F Brown** is requesting a Conditional Use Permit to conduct a manufacturing fabrication shop in an existing building at the subject property. This shop will service the farming and light commercial communities in the repair and fabrication of working components and will fabricate goods for home decorating. Mr. Brown is also requesting placement for a sign. Subject property is located at **3339 Highway 259, Portland, TN 37148**, is on Tax Map 031, Parcel 008.06, contains 5.28 acres, is zoned Agricultural, and is in the 1st Commission Voting District (Moe Taylor and Terry Wright).

Adjoining property owners were notified by certified mail and the agenda item was advertised in The Gallatin News on Thursday, January 31, 2019.

Mr. Suddath presented an overview of this item stating that this is a new request for a Conditional Use Permit and that the Planning office has not received any comments from the neighbors concerning this item.

Mr. Rainey opened the floor for the public hearing.

After confirming that no one in the audience wished to speak, Mr. Rainey closed the public hearing.

Mr. Marshall Wright stated that if this request is approved, he would like the structure to be inspected and issued a Certificate of Occupancy.

Mr. Thomas Brown came forward to explain and represent this request.

Mr. Rainey asked Mr. Brown if this would be sheet metal.

Mr. Brown stated that the products would be sheet metal and wood.

Mr. Stamper asked Mr. Brown how much traffic would be coming and going.

Mr. Brown stated that at this time he does not know but most of his custom furniture would be made on site and he would take the furniture to the customer. Mr. Brown also stated that other item would be shipped via UPS or Fed Ex.

Mr. Rainey stated that with this zoning be agricultural, the Board can approve a commercial business needed in the area and it is still in keeping with the Zoning Resolution.

Mr. Holt asked Mr. Brown where he would be storing the material.

Mr. Brown stated that the material would be stored in a building on the property. Mr. Brown stated that there would be no material stored in the open.

Mr. Dickerson asked Mr. Brown if the equipment repair would be cutting and welding.

Mr. Brown stated that yes, it would be.

Mr. Rainey told Mr. Brown that if this is approved, it would be for a period of two years and at that time he would need to come back before the Board.

Mr. Brown stated that he understood.

Mr. Suddath stated that the purpose of returning to the Board every two years is to protect the public. Mr. Suddath stated that sometimes these businesses take off and become bigger than expected. Mr. Suddath stated that at that time, the property owner may want to seek commercial property.

Mr. Brown stated that he would also like to request a small sign.

Mr. Suddath stated that the sign was part of the request.

Motion to approve a two (2) year Conditional Use Permit by Mr. Holt, seconded by Ms. Webster. Motion passed unanimously.

6. **Goldie Upchurch** is requesting a variance from County requirements contained in the County Zoning Resolution at Article IV 2.2 related to multiple dwellings on property. Subject property is located at **2790 Highway 31E, Bethpage, TN 37022**, is on Tax Map 083, Parcel 031.00, contains 3.61 acres, is zoned Agricultural, and is in the 3rd Commission Voting District (Alan Driver and Steve Graves). **Adjoining property owners were notified by certified mail and the agenda item was advertised in The Gallatin News on Thursday, January 31, 2019.**

Mr. Suddath presented an overview of this item stating that the applicant is requesting the Board to allow multiple dwellings on the property. The Planning office has not received any comments from the neighbors concerning this item, however this property was brought to the attention of the Planning office by a citizen. Mr. Suddath stated that his office does not go out looking for these situations but has to respond if a citizen contacts his office. Mr. Suddath stated that there was a hardship variance issued many years ago and the single wide structure was to be removed but never was. Mr. Suddath stated that this property has been sold over the years after the hardship was no longer needed, but this was the first time it was brought to the Planning office attention. Mr. Suddath stated that his office reached out to the property owner to see if the property could be subdivided but could not due to septic issues. Mr. Suddath stated that he and Mr. Wright see these things a lot and this is why it is being brought to the Board.

Mr. Rainey opened the floor for the public hearing.

Ms. Angela Henley, came forward in favor of this item being passed.

Ms. Goldie Upchurch, property owner, came forward to explain and represent this request. Ms. Upchurch stated that she bought the property in 1992 and was not aware that the additional structure was not supposed to be there. Ms. Upchurch stated that she has mainly used the structure as a guesthouse and for her daughter to live in. Ms. Upchurch stated that she has made improvements to the structure since purchasing it.

Mr. Rainey asked Ms. Upchurch when the property was purchased.

Ms. Upchurch stated that it was purchased in 1992.

Mr. Jacob Adcock, (Ms. Upchurch's real estate agent), came forward to state that he listed the property as a home and a rental in order to get Ms. Upchurch more out of her investment. Mr. Adcock stated that Ms. Upchurch tried to have the property subdivided but because of the new septic regulations requiring a back-up septic area, they were not able to subdivide. Mr. Adcock stated that each structure has its own septic area, separate address, and separate driveways. Mr. Adcock stated that since Ms. Upchurch was informed of the situation, the listing has been removed, however Mr. Adcock stated that he is still getting inquiries about the property and 99% of the calls are wanting family to live in the second dwelling, not as rental property. Mr. Adcock stated that if Ms. Upchurch has to remove the dwelling, it would depreciate the value of her property and also stated that this property has changed hands three times and nothing was ever brought up until now.

After confirming that no one else in the audience wished to speak, Mr. Rainey closed the public hearing.

Mr. Rainey stated that this situation is an example that was discussed in the work study before the meeting. Mr. Rainey stated that this would be a financial hardship on the property owner, it was not meant to be when the hardship was in place, and that's why the two year rule was implemented so these types of situations did not happen. Mr. Rainey stated that the Board tries to treat every citizen fairly no matter how long you have lived in the county. Mr. Rainey stated that unfortunately this situation has not met any requirements in the Zoning Resolution that can be approved. Mr. Rainey stated that by allowing the second dwelling to remain on this property would not be fair for past residents who have been made to move the dwelling or for not allowing future residents the same right.

Mr. Rainey asked Mr. Wright if there was a way for that structure to become a non-residential structure.

Mr. Wright stated that he did not see a way.

Mr. Rainey asked Mr. Wright if there was anything that could be removed in order to make this a non-residential structure.

Mr. Wright stated that there could be a bathroom, a kitchenette with a microwave and a crockpot, but no stove. Mr. Wright stated that it could be an office if the closet was removed from the bedroom.

Mr. Rainey stated that he has a detached structure on his property that he uses as an office. Mr. Rainey stated that he brought this up because it could give Ms. Upchurch an option to leave the structure on the property but remove anything that the Building Codes would consider it as a separate dwelling. Mr. Rainey stated that if someone should buy the property and needed the structure as a hardship, that property owner would have to appear before the Board.

Ms. Webster asked Mr. Rainey what would need to be removed.

Mr. Rainey stated that the closet in the bedroom would need to be removed and the stove. A microwave and a crockpot would be allowed. Mr. Rainey stated that the motion should be to deny the request for a second dwelling based on the Zoning Resolution and that the applicant should talk with Mr. Wright as to what they need to do.

Mr. Stamper stated that since he was new to the Board, he was wondering if the Board does not have a choice to approve or deny, why it is before the Board.

Mr. Rainey stated that anyone has the right to request.

Mr. Suddath stated that Boards of Zoning Appeals are established in States Statue. Mr. Suddath stated that you cannot define the world through a zoning code and Staff has to interrupt as best and they can to let them know if it meets the zoning codes or not. If the Staff denies the request, the property owner has the right to appeal Staff's decision to the Board of Zoning Appeal. This Board is set up by the State of Tennessee and the Sumner County Commission and it is their decision to see if Staff was correct in the interpretation of the zoning codes or if they want to overturn Staff.

There was discussion.

Motion to deny the request to allow multiple dwellings on the property by Mr. Holt, seconded by Ms. Webster. Motion passed unanimously.

Mr. Suddath stated that he is willing to work with the applicant to find a way to meet the requirements of the building codes. Mr. Suddath stated that this item will be revisited in 30 days to see what the status of the item is.

7. **Michael Wayne Wilson** is requesting a Hardship Variance for a relative to live in an existing structure on subject property due to medical circumstances. Subject **property is located at 2323 Highway 76, Portland, TN 37148** is on Tax Map 053 Parcel 034.04, contains .92 acres, is zoned Agricultural, and is in the 12th Commission Voting District (Michael Guthrie and Justin Nipper).

This item was deferred at the January meeting since there are still no conclusive results back from the County Environmentalist.

Mr. Suddath stated that this item has come before the Board over the past few months. Mr. Suddath gave a brief overview of this item stating that the septic issue is still unresolved. Mr. Suddath stated that the applicant has been notified and was told that the BZA will not hear the hardship request until they complete a soil study to see if additional field lines can be added to accommodate an additional bedroom.

Motion to defer item until a soil study has been completed by the applicant by Mr. Dickerson, seconded by Mr. Stamper. Motion passed unanimously.

Discussion Item: Attached Dwellings

Mr. Suddath stated that he and Mr. Wright are requesting some advice from the Board with a situation that comes before them quite often. Mr. Suddath stated that the Legislative body made a rule that only one house per lot was allowed so codes and zoning have to adhere to that rule. Mr. Suddath stated that the majority of building permits are normal but occasionally you have some that come through that are different. Mr. Suddath stated that the departments have had situations where there is a house and a shed, which is inhabitable, that someone is living in to the million dollar houses with a mother-in-law suite. Mr. Suddath stated that the departments are now seeing situations where the property owner is wanting to put two dwellings on the property and connect them with a breezeway or connecting it somehow. Mr. Suddath stated that if it's a new build or a million dollar house the connection does not look bad but when you have a house wanting to attach it with an inhabitable shed, it does not look good. Mr. Suddath stated that the zoning resolution states that two dwellings can be in the agricultural zoning with 20 acres and structures are 100 feet apart. A duplex is allowed in most zonings but the zoning resolution does not define what constitutes as a duplex other than a building where two families live. Mr. Suddath stated that if there is a house and the property owner wants to connect the house to the garage, does that make it a duplex. Mr. Suddath stated that generally a duplex is a single building that shares a wall, but is not defined in the zoning codes. Mr. Suddath stated that since a duplex is not defined in the zoning codes other than a two-family dwelling, a house connected to another dwelling by a breezeway could constitute as a duplex. Mr. Suddath showed an example of what he is referring to on Rouges Fork Road.

Mr. Wright explained the concept of the property on Rouges Fork Road showing a breezeway of the two structures. Mr. Wright stated that a duplex usually had separate addresses, utilities, and driveways. Mr. Wright stated that the example shown will have one address, driveway, and will be on one utility, so it would not meet the definition of a duplex. Mr. Wright stated that he and Josh anticipate more of these types of structures being built with breezeways as long as 50 feet and call it a single family dwelling. Mr. Wright stated that if these keep happening that property owners will keep pushing the envelope to get as many feet apart as they can. Mr. Wright stated that in the past, the codes department required the breezeways to be enclosed but now some are being an.

open breezeway. Mr. Wright stated that they are just wanting some guidelines on what to do in the future. Mr. Suddath asked the Board members how the departments should look at these when they come through. Mr. Suddath stated that the reasoning for the structures to be 100 feet apart is so that the property can be subdivided.

Mr. Rainey asked Mr. Wright if the two houses used in the example share an electric meter.

Mr. Wright stated that to the best of his knowledge, its one meter and they definitely share one address.

Mr. Rainey stated that in his opinion, the example presented could never be subdivided. Mr. Rainey stated that this example reminded him of house plans with a dog trot. Mr. Rainey stated that he did not see this one as being an issue with the footage of the breezeway. Mr. Rainey stated that he didn't see an issue with the breezeway being up to 25 feet.

Mr. Wright stated that property owners could get creative and make the breezeways work but Mr. Wright asked the Board if they should cap the footage off at 25 feet or whatever the Board agrees on.

Mr. Rainey stated that the cap should be 20 to 25 feet and that would allow a drive thru. Mr. Rainey stated that the cap should not be more than 25 feet because if that is allowed, another 5 feet, you can meet the setbacks.

Mr. Suddath that the Board has given so good advice on what direction with no more than 25 feet of the breezeway. If the applicant is requesting more than that, they will need to go before the BZA for a variance r.

Mr. Rainey asked Mr. Holt and Mr. Stamper what was their feeling on this subject.

Mr. Holt stated that Mr. Rainey brought up an excellent point about the utilities.

Mr. Dickerson stated that there is one place to look that defines a duplex and that is the National Fire Protection.

Mr. Suddath stated that the example he used if a real property that has been connected by a breezeway. Mr. Suddath asked the Board if this property would be good or would it need to come before the BZA.

Mr. Rainey asked if that breezeway met the fire code.

Mr. Dickerson asked how a duplex is described in the fire code.

Mr. Holt asked what the preferred separation for buildings was.

Mr. Wright stated that it is normally 5 feet.

There was discussion about the distance of the buildings per the fire codes.

Mr. Rainey asked Mr. Wright if we have adopted a fire code.

Mr. Wright stated that we had not, but may be able to pull a definition out of it.

There was more discussion.

Mr. Holt asked how this situation is looked at in other zoning codes.

Mr. Suddath stated that Sumner County's zoning code is very restrictive on this matter. Mr. Suddath stated that some of the surrounding counties are strict on having an accessory structure and a living area. Mr. Suddath stated that multi generation living is popular now where it wasn't a few years ago, which is not envisioned in our current zoning codes. Mr. Suddath stated that Rutherford County and Williamson County have updated their zoning codes to allow these types of dwellings.

Mr. Rainey stated that if you look at current development, it's a circle of generations that happened 70 years ago where everyone lived in the same house. Mr. Rainey stated that Sumner County is behind the curve on these situations.

Mr. Suddath stated that by amending our codes, it will put us in with the surrounding counties. Mr. Suddath stated that if you make it allowable, you will see property owners doing it the correct way.

Ms. Webster stated that this is no different than houses in the Plantation where the servants live on the same property, just in a different house.

Mr. Rainey stated that the Plantation is in the city and they have different codes.

Ms. Webster stated that she was aware of that but the county will get to that point.

Mr. Suddath stated that if these types of houses come before the BZA for review, we will need some real criteria to how you can say no to some of these things. Mr. Suddath stated that these type of homes are not allowed, so if it comes to the BZA and we get into the design reviews, Sumner County is not allowed to do that by State Statue like cities can. Mr. Suddath stated that any criteria that we have has to be the footage of the breezeway, not how nice it looks.

Mr. Wright stated that duplexes are allow in most of the zonings and what was shown as the example is very similar. Mr. Wright stated that his department went out to look at this property and for them to consider it a duplex, it should have two address, separate utilities, and a wall dividing them with an exterior way to get out of the building. Mr. Wright stated that the zoning and codes offices have no way to address the example shown.

Mr. Rainey stated that our zoning codes does not go to the extreme that the codes does.

Mr. Suddath stated to the Board that they are only charged with what the Zoning Resolution states.

Mr. Rainey stated that the way he reads the zoning code, if the two dwellings are connected in any way, it's a duplex. Mr. Rainey stated that the zoning code does not talk about the utilities or a wall. Mr. Rainey stated that the zoning code only talks about the square footage of a duplex.

Mr. Suddath asked if the example shown is connected by a breezeway, does the breezeway need to be covered or not.

Mr. Wright stated that their policy has been in the past that the breezeway be covered.

Mr. Wright asked the Board if they had any problems with making a department policy that if two dwellings are connected by a breezeway, no longer than 20 feet apart, the dwelling does not have to go before the BZA.

Mr. Rainey stated that he does not see that the Board has any choice but to let the codes department approve that type of situation since it is not defined in the zoning code.

Motion to adjourn by Mr. Dickerson, seconded by Ms. Webster. Motion passed unanimously.

Meeting Adjourned at 6:16 p.m.

