

**BOARD OF ZONING APPEALS
MINUTES
SPECIAL CALLED MEETING
APRIL 22, 2010**

The Board of Zoning Appeals met on Thursday, April 22, 2010, at 5:15 p.m. in the Council Chambers, 45 E. Broad Street, Cookeville, Tennessee.

MEMBERS PRESENT: Paul Bonner, Tracy Cody, Kay Detwiler, Jane Flatt, and Sid Gilbreath.

STAFF PRESENT: James Mills, Jayne Barns, and Ken Young.

OTHERS PRESENT: Mr. & Mrs. James Seay Brown, Matt Allen, Paula Roberts, Marjorie Bonner, Evon Hicks, Clyde Ramsey, and LaVerne Floyd.

CONSIDER FOR APPROVAL THE MINUTES OF APRIL 8, 2010. Sid Gilbreath made the motion to approve the minutes of April 8, 2010. Tracy Cody seconded the motion and the motion carried unanimously. **APPROVED.**

CONSIDER A REQUEST FOR AN ADMINISTRATIVE REVIEW APPEALING THE BUILDING OFFICIALS DECISION THAT THE PROPOSED USE (OFFICE) IS NOT OF THE SAME CLASSIFICATION AS THE CURRENT NON-CONFORMING USE LOCATED AT 1445 E. 10TH STREET (COMMUNICATION SALES & SERVICE). REQUEST SUBMITTED BY MATT ALLEN. (THIS ITEM WAS POSTPONED AT THE APRIL 8, 2010 MEETING.) James Mills stated that consideration of Mr. Matt Allen's request for an administrative review of the Building Official's decision that a proposed change in use of a nonconforming use located at 1445 East 10th Street is not of the same classification as the existing nonconforming use was postponed at the April 8, 2010 meeting of the Board.

The property located at 1445 East 10th Street is zoned as RS-10, Single-family Residential. It is currently used as a communication sales and service establishment, which is not a permitted use in the RS-10 district. The current use is considered as a legal nonconforming use. A legal nonconforming use is a use that legally existed prior to the adoption or amendment of a zoning regulation to which the use does not conform. Such uses are allowed to remain in perpetuity; however, changes in the use are restricted.

Nonconformities are addressed in Section 201.8 of the Cookeville Zoning Code. While existing nonconforming uses are considered "grandfathered", there are two alternatives for changing the use. First the use can be changed to a conforming use, a use permitted in the particular zone. Under RS-10 zoning the potential conforming uses are very limited, consisting of single family residential, public recreational facility, or church.

The second possibility is a change to another nonconforming use of the same classification. Section 201.8C (3) of the Zoning Code provides that the establishment of another nonconforming use of the same classification shall be subject to the written

approval of the BZA and subject to the conditions as the BZA may require to protect the area.

Mr. Allen is proposing to change the existing use of the property to an office for his construction business. The Building Official has made a determination that a construction business is not of the same use classification as a communication business. Mr. Allen has appealed this decision on the basis that the use classification would remain the same. The use classification proposed by Mr. Allen is general office.

As noted at the April 8th meeting, the Planning Department concurs with the finding of the Building Official. If it is determined that the change is to another use of the same classification, then several conditions should be established to protect the surrounding residential area. Based on discussions with individual Board members since the April 8th meeting, consideration of the following conditions is recommended:

- Site limited to general office uses operating normal business hours. (i.e. attorney, accountant, insurance, real estate, etc.) Building cannot be used as retail sales, bar, restaurant, etc.
- Future changes of ownership or proposed uses come back before BZA.
- Hours of operation limited to usual/normal office business hours (i.e. 7 AM to 7 PM).
- Building exterior upgrade per Design Plan submitted to BZA by owner/developer at 4/8 & 4/22 meetings for bricking the exterior, changing the windows and making roof line consistent.
- Low-level lighting around the perimeter of top of building and along the fence as depicted on renderings submitted by owner/developer at 4/8 & 4/22 BZA meetings. No pole mounted security lighting permitted.
- Fence 8 ft tall with brick columns spaced 10-15 ft apart with wood fencing between columns as proposed by owner/developer at 4/8 & 4/22 BZA meeting, surrounding rear yard and side yard and attached to building.
- Allow overflow equipment or material storage within the brick-fenced area but nothing can be visible above fencing. If brick fence is removed in future, then no outside storage of equipment or materials is allowed.
- Business signs on face of building limited as described by owner/developer at 4/8 & 4/22 meetings. No freestanding sign permitted.
- Any additions onto the existing building now or in future must conform to current applicable zoning setbacks.

Staff also recommended that the conditions for use of the property be recorded by the owner as a restriction on the property.

Matt Allen submitted a petition of 38 names in favor of the improvements to the property. Mr. Allen added that he did not have any problems with the conditions as outlined by the Planning Staff.

James Seay Brown, 1496 Barnes Drive, submitted a petition of 20 property owners from Darwin Park who were in favor of Mr. Allen's request.

Clyde Ramsey, 1490 E. 10th Street, submitted an additional petition of 10 property owners on 10th Street that could see Mr. Allen's property and they were also in favor of the request.

Paula Robert, 1271 E. 10th Street, was concerned if Mr. Allen would be storing large equipment.

Mr. Allen responded that he would not be storing any large equipment.

Sid Gilbreath commended Kay Detwiler and Tracy Cody for working on the restrictions in order to protect the neighborhood. Mr. Gilbreath also wanted to thank the citizens in the surrounding neighborhoods for their participation.

Paul Bonner stated that at the last meeting, he felt that this was a different use and should be denied, but he felt better about it after seeing the response from the surrounding residents who were in favor of the request and after seeing the design of the building in more detail.

Kay Detwiler made the motion that the proposed use (office) is of the same classification, and that the approval be subject to the conditions listed in staff's recommendation with the additional requirement that construction be completed in one year. Sid Gilbreath seconded the motion and the motion carried unanimously. **APPROVED OFFICE AS SAME CLASSIFICATION, SUBJECT TO CONDITIONS.**

ADJOURNMENT: 5:48 P.M.

SUBMITTED FOR APPROVAL

SUBMITTED FOR RECORDING

**JAYNE BARNS CPS
PLANNING ASSISTANT**

**JANE FLATT, CHAIRMAN
BOARD OF ZONING APPEALS**