

**BOARD OF ZONING APPEALS
MINUTES
AUGUST 11, 2011**

The Board of Zoning Appeals met on Thursday, August 11, 2011, at 5:15 p.m. in the Council Chambers, 45 E. Broad Street, Cookeville, Tennessee.

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

MEMBER ABSENT: Kay Detwiler.

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

OTHERS PRESENT: Mike Callahan, Roger Julian, and Manubhui Patel.

CONSIDER FOR APPROVAL THE MINUTES OF MAY 12, 2011. Sid Gilbreath made the motion to approve the minutes of May 12, 2011. Tracy Cody seconded the motion. Votes: Tracy Cody-aye, Sid Gilbreath-aye, and Jane Flatt-aye. Paul Bonner was absent during voting. Motion carried. **APPROVED.**

CONSIDER A REQUEST FOR A “SPECIAL EXCEPTION” TO ALLOW ACCESSORY DWELLING UNIT WITH COMMERCIAL USE IN A CG (GENERAL COMMERCIAL) ZONE ON THE PROPERTY LOCATED AT 1644 SOUTH JEFFERSON AVENUE. REQUEST SUBMITTED BY SATYA CHAKRABARTY AND MIKE PATEL ON BEHALF OF BRAD EICHOLTZ OF BK HOMES. James Mills stated that Mr. Satya Chakrabarty and Mr. Mike Patel, with the permission of property owner Brad Eicholtz, have submitted a request for a special exception to allow an accessory dwelling unit with a commercial use on property located in the CG, General Commercial District at 1644 South Jefferson Avenue.

Mr. Eicholtz is the president of BK Homes, Inc. which has constructed a model home on the subject property. Mr. Patel wishes to purchase the home and convert a portion of it to commercial use while residing in the remaining portion. Accessory dwelling units on the same premises and in connection with permitted principal uses and structures may be permitted in the CG District subject to specific requirements provided in Section 222.4A of the Zoning Code.

Mr. Patel has submitted a floor plan and elevation depicting the proposed use of the structure. He has indicated that his family will reside in the residential portion of the structure and will operate the principal commercial use. Adequate off-street parking is available and the minimum square footage requirements would be met.

Staff recommended approval of request subject to compliance with the provisions of Section 222.4A of the Zoning Code.

Roger Julian asked what type of commercial use could be located there and who would be allowed to live in the other side.

Mr. Mills replied that any of the commercial uses allowed in the CG (General Commercial) Zone could be located in the building now. The Board is only reviewing the accessory dwelling unit of the building and according to the Zoning Code the dwelling unit has to be occupied by the owner or employee of the principal use.

Mr. Julian asked Mike Patel if he would be living in the dwelling unit and he stated that he would not be living there.

Tracy Cody made the motion to approve the "Special Exception" to allow accessory dwelling unit with commercial use in a CG (General Commercial) Zone on the property located at 1644 South Jefferson Avenue. Sid Gilbreath seconded the motion. Votes: Tracy Cody-aye, Sid Gilbreath-aye, and Jane Flatt-aye. Paul Bonner was absent during voting. Motion carried.
APPROVED "SPECIAL EXCEPTION" TO ALLOW ACCESSORY DWELLING UNIT WITH COMMERCIAL USE IN A CG ZONE.

CONSIDER A REQUEST FOR A VARIANCE TO REDUCE THE FRONT YARD SETBACK REQUIREMENTS ON GOULD DRIVE FROM 30' TO 7' FOR A TOTAL VARIANCE OF 23' ON THE PROPERTY LOCATED AT 1221 SOUTH WILLOW AVENUE. REQUEST SUBMITTED BY BARRY CLOUSE & MIKE CALLAHAN.

James Mills stated that Mr. Barry Clouse and Mr. Mike Callahan have submitted a request for a variance to reduce the street side setback requirement for their property located at 1221 South Willow Avenue. The purpose of the request is to allow for the addition of a storage building.

The subject property is identified as Parcel 102.11 on Tax Map 65 and is zoned as CI, Commercial-Industrial Mixed Use. It is a corner lot with frontage and access on both South Willow Avenue and Gould Drive. Located on the property is an office building occupied by the Tennessee Department of Environment and Conservation.

The minimum setback requirement off local streets in the CI district is 30 feet. The existing building is setback approximately 34 feet from Gould Drive at its closest point. The request is for a reduction of the setback to allow the construction of a separate storage building, 22 feet in width and 38 feet in length, between the principal structure and Gould Drive. The specific requested reduction is for 23 feet, resulting in a setback of seven (7) feet off the Gould Drive right-of-way at its closest point.

A submitted survey indicates that Gould Drive, where it is contiguous with the subject property, has a right-of-way width of 100 feet and that the existing structure is located over 60 feet from the edge of the street pavement. The edge of pavement is also approximately 25 feet from the property line at the closest point to the structure. Approval of the variance as submitted would place the addition between 36 and 39 feet from the edge of pavement of Gould Drive.

Gould Drive is classified as a minor collector street and provides access to an industrial park. The street primarily consists of two (2) lanes with the exception of near the intersection with South Willow Avenue where it widens to provide a turning lane. The pavement width of Gould Drive adjacent to the subject property is approximately 36 feet. There is a possibility that the street would need to be widened in the future; however, any necessary widening adjacent to the subject property could be accommodated within the existing right-of-way.

The requested setback reduction is substantial, representing a variance of approximately 77 percent. Based on the submitted survey, the storage building would be separated by five (5) feet from the principal structure. If the storage building was attached to the principal structure, a setback of between 12 and 14 feet from the Gould Drive right-of-way could be maintained and a distance of between 41 and 44 feet from the edge of pavement would be provided. Even with locating the proposed addition contiguous with the principal structure a variance of approximately 60 percent is still necessary.

The survey indicates that the signage and a portion of the site's parking are located in the right-of-way of South Willow Avenue. It also indicates that a dumpster is located in the right-of-way of Gould Drive between the street pavement and the proposed addition. It would appear, based on the survey and an inspection of the site, that there are alternative locations for the proposed addition that would not require a reduction in the setback. The petitioners indicate; however, that the addition needs to be at the proposed location to serve the tenants. The possibility of reducing the width of the storage building to reduce the amount of variance needed was not discussed with the petitioners.

The Planning Department has some concern regarding the impact on the parking visibility on the adjacent property to the west if the requested variance is approved. The visibility issue is compounded with the lower elevation of the adjacent property and with the location of a dumpster for the subject property within the right-of-way. Visibility to back out of the parking area on the adjacent property could become a more significant issue if Gould Drive is ever widened.

In the opinion of the Planning Department the quantity of unused right-of-way of Gould Drive potentially justifies some reduction in the setback; however the requested variance is excessive. Additionally there is some question whether the general standards for variances as specified in Section 233.9D (3) (d) of the Zoning Code can be met. Should the Board elect to approve the variance the Planning Department recommends that the reduction be limited to a maximum of 18 feet for the proposed addition (which would require that the addition be attached to the principal structure if the proposed dimensions are maintained) and that the approval be subject to the following conditions:

- The existing dumpster must be removed from the right-of-way and the new dumpster location must meet the setback, screening and design requirements of the City of Cookeville.
- A deed restriction/amendment must be submitted and recorded specifying that if Gould Drive is widened to a width where the edge of pavement is closer than 30 feet from the addition, the addition will be removed at the owners expense within one (1) year after the completion of the widening.

Mike Callahan agreed to move the dumpster, but he stated that the storage building needed to be a separate building because it will be storing hazardous materials. Mr Callahan added that the Fire Marshall had already approved the existing plan and that it would be inconvenient to resubmit and that it would cost them up to 40% more to add the storage building to the existing building. The storage building is approximately 20 x 42 and will be brick with a flat roof and there will be a 10' door to store a boat on the side of the building that would be accessed from Gould Drive.

Jane Flatt stated that the request is a significant variance request and that she was concerned about setting a precedent. Ms. Flatt added that it is the Board's job to help, but to also be fair to the public, city and other commercial businesses. The Board looks for a hardship and higher building costs to the property owner is not grounds for a hardship.

Paul Bonner stated that this is one of the greatest variances requests that he has seen since he has been on the board and he also did not want to set a precedent.

James Mills reiterated that the variance currently is a 77% reduction and if the building is attached than it a 60% reduction in the setback; however he thought there was justification for some reduction in the setback due to the excessive right-of-way for Gould Drive.

Tracy Cody stated that the degree of variance granted is up to the Board to decide.

Jane Flatt stated that even if it was a 60% reduction that it would still be too much of a variance to ask for.

There were also some concerns about visibility from Gould Drive.

James Mills stated that there were no immediate plans to expand Gould Drive at this time.

Sid Gilbreath stated that he was a neighbor to Barry Clouse and would be abstaining from voting on this issue.

Tracy Cody made the motion to deny the variance to reduce the front yard setback requirements on Gould Drive from 30' to 7' for a total Variance of 23' on the property located at 1221 South Willow Avenue. Paul Bonner seconded the motion. Votes: Paul Bonner-aye, Tracy Cody-aye, Jane Flatt-aye, and Sid Gilbreath-abstain. Motion carried. **VARIANCE DENIED.**

ADJOURNMENT: 5:58 P.M.

SUBMITTED FOR APPROVAL

SUBMITTED FOR RECORDING

**JAYNE BARNES CPS
PLANNING ASSISTANT**

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