

**BOARD OF ZONING APPEALS
MINUTES
DECEMBER 13, 2012**

The Board of Zoning Appeals met on Thursday, December 13, 2012, 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: Jason Clopton, Matt Allen, Lincoln Young, Mike Williams, Cindy Schueman, Martin Foutch, Marjorie Bonner and Amye Wright.

CONSIDER FOR APPROVAL THE MINUTES OF DECEMBER 13, 2012. Paul Bonner made the motion to approve the minutes of December 13, 2012. Sid Gilbreath seconded the motion and the motion carried unanimously. **APPROVED.**

CONSIDER A REQUEST FOR A “SPECIAL EXCEPTION” TO ALLOW A USED CAR LOT ON THE PROPERTY LOCATED AT 1498 WEST BROAD STREET. REQUEST SUBMITTED BY MIKE WILLIAMS ON BEHALF OF CASON DICKINSON. James Mills stated that Mr. Michael Williams, on behalf of property owner Cason Dickinson, has submitted a request for a special exception to allow the location of a used auto sales establishment on property located in the CL, Local Commercial District at 1498 West Broad Street.

Under the provisions of CL zoning, auto sales establishments may be allowed as special exceptions subject to compliance with the provisions of Section 221.4E of the Zoning Code. The conditions specified in Section 221.4E are as follows:

- Shall not be located adjacent to any district zoned RS-20, RS-15, RS-10, RS-5 or RD unless separated by a public street as shown on the Official Street Map. The subject property is not located adjacent to any of the specified zoning districts.
- Shall be located on streets of at least Major Collector status. West Broad Street is classified a Major Collector.
- Shall conform with requirements of Section 206.15 of the Zoning Code.

Additionally, all parking areas, including those for auto sales, must be surfaced as specified in Section 205.7C of the Zoning Code.

Staff recommended approval of request subject to compliance with applicable provisions of the Zoning Code.

Sid Gilbreath made the motion to approve the Special Exception to allow a used car lot on the property located at 1498 West Broad Street, subject to compliance with applicable provisions of the Zoning Code. Dr. Paul Bonner seconded the motion and the motion carried unanimously. **APPROVED SPECIAL EXCEPTION FOR USED CAR LOT.**

CONSIDER A REQUEST FOR AN ADMINISTRATIVE REVIEW TO DETERMINE WHETHER THE CONVERSION OF A NONCONFORMING USE (ALLEN'S EXTERIORS) TO A MEDICAL OFFICE (OPTOMETRIST/OCCUPATIONAL THERAPY) IS A CONVERSION OF THE SAME USE CLASSIFICATION ON THE PROPERTY LOCATED AT 1445 EAST 10TH STREET. REQUEST SUBMITTED BY MATT ALLEN OF ALLEN'S EXTERIORS INC. James Mills stated that Mr. Matt Allen has submitted a request for an administrative review to determine whether the conversion of an existing nonconforming use located at 1445 East 10th Street (construction company office) to another nonconforming use (optometry office) is a conversion of the same use classification and is in compliance with conditions established by the Board of Zoning Appeals in 2010 for the use of the property.

The property located at 1445 East 10th Street is zoned as RS-10 Single Family Residential and is currently the location of Allen's Exterior, Inc., a construction company, which is a nonconforming use. Dr. Jason Clopton is in the process of purchasing the property for the purpose of locating his optometry practice, which would also be a nonconforming use.

A 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.

In April of 2010, the Board of Zoning Appeals approved the conversion of a previous nonconforming use of the subject property, a communication business, to the current use as construction company office. This approval was based on the determination that the uses were of the same use classification, that being general office, and was subject to the following conditions:

- 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 feet tall with brick columns spaced 10-15 feet 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 the future must conform to current applicable zoning setbacks.

In the request before the Board, the conditions established in 2010 for the previous conversion would have to be met to approve any future conversion. Several of the conditions were relative to improvements to the existing structure and to the Planning Department's knowledge have been satisfactorily completed. If it is determined that the proposed conversion is within the same use classification, then in the opinion of the Planning Department, the following conditions would continue to apply:

- 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).
- No pole mounted security lighting permitted.
- 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 the future must conform to current applicable zoning setbacks.

In considering this request a determination must be made that the proposed nonconforming use is within the same use classification, general office, as is the current use. In the opinion of the Planning Department an optometry practice would fall under the general office classification. There is some concern relative to the condition established by the Board in 2010 prohibiting of retail sales. It is the understanding of the Planning Department the proposed use would involve the retail sale of optical related products including eye glasses and contacts. However, the retail sales portion of the proposed business would be a minor accessory use to the primary use of the optometry practice.

Staff recommended approval of conversion as change to another nonconforming use of the same classification, general office, subject to the following conditions:

- Site limited to general office uses operating normal business hours. (i.e. attorney, accountant, insurance, real estate, optometry practice, etc.) Building cannot be used for retail sales (other than as an accessory use), 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).
- No pole mounted security lighting permitted.
- 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.

Dr. Jason Clopton stated that the business would be quieter and nicer than what is currently there. Their retail sales are only about 10% of their business and he currently has 2 staff and 2-4 therapists with 10-20 patients a day.

Sid Gilbreath stated that the neighbors were concerned about storing items that could not be seen, which was something that Mr. Allen did not always adhere to. Mr. Gilbreath reiterated to Dr. Clopton that he could not store anything that would be seen above the fence, for example, like a RV, boat, or any other large items.

Tracy Cody commended Matt Allen on the look of the building compared to what it previously looked like before he renovated the building. The other Board members agreed.

Sid Gilbreath made the motion to approve the conversion as change to another nonconforming use of the same classification, general office, subject to staff's recommendation. Tracy Cody seconded the motion and the motion carried unanimously.

APPROVED CONVERSION TO ANOTHER NONCONFORMING USE OF THE SAME CLASSIFICATION, GENERAL OFFICE, SUBJECT TO CONDITIONS.

ADJOURNMENT: 5:30 P.M.

SUBMITTED FOR APPROVAL

SUBMITTED FOR RECORDING

**JAYNE BARNS CPS
PLANNING ASSISTANT**

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