

**BOARD OF ZONING APPEALS
MINUTES
JULY 11, 2013**

The Board of Zoning Appeals met on Thursday, July 11, 2013, at 5:15 p.m. in the Community Meeting Room, 45 E. Broad Street, Cookeville, Tennessee.

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

MEMBER ABSENT: Kay Detwiler and Jane Flatt.

STAFF PRESENT: James Mills and Jayne Barns.

STAFF ABSENT: Ken Young.

OTHERS PRESENT: Virginia Brown, Harold Carter, Phyllis Carter, Clifton Mayberry, Peggy Jenkins, Jerry Allison, Ernestine Allison, Donnie Key, Gene Thompson, Pamela Miller, Paul Miller, Marjorie Bonner, Martha Thompson, David Gurley, Dianna Collins, Brian Horn, and Brittany Stovall.

CONSIDER FOR APPROVAL THE MINUTES OF JUNE 13, 2013. Paul Bonner made the motion to approve the minutes of June 13, 2013. Tracy Cody seconded the motion and the motion carried unanimously. **APPROVED.**

CONSIDER A REQUEST FOR A VARIANCE TO REDUCE THE MINIMUM LOT SIZE REQUIREMENTS OF RS-10 FROM 10,000 SQ. FT. TO 8,774 SQ. FT. FOR A TOTAL VARIANCE OF 1,226 SQ. FT. TO ALLOW 2 LOT SUBDIVISION ON THE PROPERTY LOCATED AT 825 BUFFALO VALLEY ROAD. REQUEST SUBMITTED BY JOHN MABRY JR. ON BEHALF OF STEVE GARRETT. JOHN MABRY JR. HAS REQUESTED THAT THIS ITEM BE WITHDRAWN FROM THE AGENDA. James Mills stated that Mr. John Mabry, on behalf of property owner Steve Garrett, has submitted a request for a variance from the minimum lot size requirement for property zoned as RS-10, Single Family Residential and located at 825 Buffalo Valley Road.

The purpose of the request is reduce the minimum lot size requirement for one (1) lot in a proposed two (2) lot subdivision of Tract 2 of the Buffalo Camp Division. Tract 2 is identified as Parcel 5.00 on Tax Map 54L, Group A and consists of approximately 18,881 square feet. It is a corner lot with frontage on both Buffalo Valley Road and C. C. Camp Road. The proposed division would create one parcel (2A) consisting of 10,107 square feet and a second parcel (2B) consisting of 8,774 square feet. The minimum lot size requirement of the RS-10 district is 10,000 square feet. The creation of the second parcel (2B) requires a reduction of the minimum lot size requirement of 1,226 square feet or approximately 12 percent.

The minimum setback requirements of the RS-10 district are 25 feet for the front yard, 20 feet for the rear yard and 10 feet for the side yard. The proposed Tract 2B would be corner lot with front yard setbacks on the two (2) street frontages. Applying the setbacks of the RS-10 district to the proposed parcel would provide a building area with a width of approximately 44 feet and depth of approximately 66 feet for a total buildable area of approximately 2,900 square feet. A single family dwelling is located on the proposed Tract 2A and, as depicted on the proposed plat, would conform with the required side yard setback requirement from the proposed Tract 2B.

The Planning Department has been contacted by a number of nearby property owners opposed to the variance and to the division of the property. Mr. Clifton Mayberry, who lives on C.C. Camp Road, indicated that the subject property is bound by deed restrictions requiring setbacks of 50 feet from both C.C. Camp Road and Buffalo Valley Road. A copy of the original deed to the subject property, which does specify setbacks of 50 feet, and a copy of the current deed to the property, which does not reference the setback restriction, has been distributed to each Board member. If the subject property is bound by deed restrictions requiring setbacks of 50 feet, then the proposed Tract 2B would not, in the opinion of the Planning Department, have a suitable building area.

No particular hardships to justify the variance have been submitted by the petitioner. Further, if the aforementioned setback restrictions are applicable to the subject property, then the approval of the requested variance could be considered as detrimental to other properties in the area.

Staff recommended denial of the request.

Clifton Mayberry, property owner at 367 CC Camp Road, shared his concerns about the lots not meeting the 50' setbacks as stated in the original deeds. He bought the first lot on CC Camp Road from Mr. Henry V. Lewis in 1965. Mr. Lewis told the people that bought lots from him that the reason for the 50 ft. setback was so that all the houses would be the same distance from the road. When Steve Garrett sold the lot to Ted Roberts, Mr. Mayberry stated that he thought that Ted would do the right thing, so he took the original deed and showed it to him and Ted said "I don't care what the deed said, I am going by what is recorded in the deed's office." Mr. Mayberry added that he has been diagnosed with lung cancer and had been taking radiation and chemo treatments and was unable to go to the courthouse to see what the new deed said.

Mr. Mayberry continued by stating that most of his neighbors have lived in this neighborhood for 45-50 years with no problems, except for the lots in question. Mr. Mayberry would like for the Board to deny allowing an additional house on this lot, which could devalue their existing property values.

Mr. Mills stated that if Mr. Mabry could establish that the deed was void that the issue might come up again.

Phyllis Carter, property owner at 364 CC Camp Road, wanted to verify that if the issue came up again that the residents would be notified.

Mr. Mills replied that if the request was brought back to the Board that a letter would be sent to the adjoining property owners and that a sign would be posted.

Mr. Mills emphasized to the residents that the City does not enforce deed restrictions. Deed restrictions are a contractual agreement with the property owners and it is the responsibility of the property owners to enforce the deed restrictions. When someone subdivides property, the City requires that the property owner sign a statement on the plat that they will meet all City Regulations and Deed Restrictions. When a property owner applies for a building permit, the Codes Departments tells them that they have to go by whichever setback is stricter and the property owner has to sign an affidavit stating that they know where their setbacks are located.

There were some questions by the residents pertaining to why the covenants in the older deeds were not included in the newer ones. Mr. Mills replied that he did not know what happened, but it might have been due to the mistake of either an attorney or someone who prepared the deed.

Tracy Cody made the motion to deny the variance request instead of withdrawing the request. Paul Bonner seconded the motion and the motion carried unanimously. **DENIED SQUARE FT. VARIANCE.**

ADJOURNMENT: 5:55 P.M.

SUBMITTED FOR APPROVAL

SUBMITTED FOR RECORDING

**JAYNE BARNS CPS
PLANNING ASSISTANT**

**SID GILBREATH
ACTING CHAIRMAN
BOARD OF ZONING APPEALS**