

**BOARD OF ZONING APPEALS
MINUTES
APRIL 10, 2014**

The Board of Zoning Appeals met on Thursday, April 10, 2014, at 5:15 p.m. in the Council Chambers, 45 E. Broad Street, Cookeville, Tennessee.

MEMBERS PRESENT: Paul Bonner, Kay Detwiler, Sid Gilbreath, and James Dial.

MEMBER ABSENT: Jane Flatt.

STAFF PRESENT: James Mills, Jayne Barns and Dan Rader.

STAFF ABSENT: Ken Young.

OTHERS PRESENT: See attached record of attendance.

CONSIDER FOR APPROVAL THE MINUTES OF MARCH 13, 2014. Paul Bonner made the motion to approve the minutes of March 13, 2014. James Dial seconded the motion and the motion carried unanimously. **APPROVED.**

CONSIDER A REQUEST FOR A VARIANCE TO REDUCE THE FRONT YARD SETBACK REQUIREMENTS FROM 50' TO 44' FOR A TOTAL VARIANCE OF 6' TO ALLOW ADDITION TO EXISTING DENTIST OFFICE LOCATED AT 738 EAST SPRING STREET. REQUEST SUBMITTED BY JEREMY ROBINSON. James Mills stated that Dr. Jeremy Robinson has submitted a request for a variance to reduce the minimum front yard setback requirement for his property located at 738 East Spring Street and zoned as CL, Local Commercial.

The subject property is further identified as Parcel 16.03 on Tax Map 53L, Group C. East Spring Street is classified as a major street and the minimum setback requirement off a major street in the CL zoning district is 50 feet. Dr. Robinson is requesting that the setback requirement be reduced by six (6) feet to 44 feet for two additions to his dental office.

In 2007 the Board of Zoning Appeals approved a reduction of the front yard setback requirement from 50 to 40 feet for the original construction of the dental office. The approval was limited to the building footprint depicted on the submitted site plan and involved one corner of the new structure. It was noted in 2007 that the parcel was triangular in shape, narrowing away from East Spring Street which significantly affected the building envelope and provided justification for the reduction of the setback requirement.

In the current request the same unique property characteristics exist. The request is for two small areas of encroachment, not for the entire length of the property. According to the submitted site plan, the proposed encroachment would be no greater than previously approved by the Board. In the Planning Department's opinion the requested variance is minimal and would have no impact on nearby properties.

Staff recommended approval of the request as submitted and as depicted on the submitted site plan.

Paul Bonner made the motion to approve reducing the front yard setback requirements from 50' to 44' for a total variance of 6' on the property located at 738 East Spring Street as depicted on submitted site plan. Kay Detwiler seconded the motion and the motion carried unanimously. **APPROVED 6' VARIANCE IN THE FRONT YARD SETBACK AS DEPICTED ON SUBMITTED SITE PLAN.**

CONSIDER A REQUEST FOR A VARIANCE TO REDUCE THE SIDE YARD SETBACK REQUIREMENTS ON TRACT #1 FROM 10' TO 8' FOR A TOTAL VARIANCE OF 2' TO ALLOW FOR THE SUBDIVISION OF PROPERTY LOCATED AT 200 MILL DRIVE. REQUEST SUBMITTED BY WHITTENBURG LAND SURVEYING ON BEHALF OF LOWELL EBERSOL. James Mills stated that Whittenburg Land Surveying, on behalf of property owner Lowell Ebersol, has submitted a request for a variance to reduce the minimum side yard setback requirement for property located at 200 Mill Drive.

The subject property is identified as Parcel 20.00 on Tax Map 54 and it is zoned as LM, Light Manufacturing. The minimum side yard setback requirement in the LM district is ten (10) feet. The submitted request is to reduce the requirement by two (2) feet to eight (8) feet.

The purpose of the request is to allow for the subdivision of the subject property. Located on the property are four (4) commercial/industrial structures. A submitted subdivision plat would divide the property into three tracts so that one (1) structure would be located on tract 1, two (2) structures on tract 2 and one (1) structure on tract 3.

The structures on proposed tracts 1 and 2 are, at their closest points, separated by a distance of approximately 18.8 feet. A minimum of 20 feet separation between the structures would be necessary to subdivide the property with the structures on individual tracts. These structures are not parallel with each other separated by approximately 18.8 feet to the south and widening to about 50 feet to the north. The area of encroachment within the side setback would be for a width of less than an estimated 10 feet.

An inspection of the site indicates that, in addition to the principal structure, a storage building may be located within the required side yard setback area on the proposed tract 1. The accessory structure is not depicted on the proposed preliminary plat.

In the opinion of the Planning Department the requested variance is minimal and would not be detrimental to the public welfare or injurious to other property or improvements in the area.

Staff recommended approval of the request as submitted subject to removal of the accessory structure on proposed tract 1 from the required setback area.

Mike Corbett agreed to move the accessory structure that is located outside the setback area on tract 1.

Kay Detwiler made the motion to approve reducing the side yard setback requirements on Tract #1 from 10' to 8' for a total Variance of 2' to allow for the subdivision of property located at 200 Mill Drive, subject to the removal of the accessory structure on tract 1 from the required setback area. Paul Bonner seconded the motion and the motion carried unanimously. **APPROVED VARIANCE, SUBJECT TO THE REMOVAL OF ACCESSORY STRUCTURE ON TRACT #1 FROM THE REQUIRED SETBACK AREA.**

CONSIDER A REQUEST FOR A "SPECIAL EXCEPTION" TO ALLOW AN ELECTRONIC MESSAGE CENTER TO BE ATTACHED TO A FREESTANDING SIGN LOCATED IN THE CN (NEIGHBORHOOD COMMERCIAL DISTRICT) AT 950 NORTH WASHINGTON AVENUE. REQUEST SUBMITTED BY KEISEY DEARMON ON BEHALF OF HOOD RIVER CENTER LLC & WALGREENS.

James Mills stated that Ms. Kelsey Dearmon, on behalf of Hood River LLC/Walgreens, has submitted a request for a special exception (use permitted on appeal) to allow an electronic message center to be attached to a freestanding sign located in the CN, Neighborhood Commercial district at 950 North Washington Avenue.

A Walgreens Pharmacy is located on the subject property. The pharmacy currently has one freestanding sign and would like to add an electronic message center to the sign. Within the CN zoning district an electronic message center or changeable copy sign may be attached to a freestanding sign only upon appeal to the Board of Zoning Appeal and subject to compliance with the following conditions:

- The freestanding sign on which the electronic message center or reader board is to be attached is located on a street of at least minor collector status.
- The freestanding sign on which the electronic message center or reader board is to be attached shall not be located closer than fifty (50) feet from any single or two-family residential structure located on contiguous property. The distance shall be measured from the edge of the sign face closest to a wall of the residential structure.
- The total sign face area of the freestanding sign and the attached electronic message center/reader board shall not exceed fifty (50) square feet.
- Each message displayed on an electronic message center shall be static or depicted for a minimum of six (6) seconds. The continuous scrolling of messages is prohibited.
- The hours of operation for electronic message centers shall be limited to between 6:00 a.m. and 11:00 p.m.

The subject property is a corner lot with frontage on both North Washington Avenue and East 10th Street. Both of these streets are of at least minor collector status.

It is the Planning Department's understanding that the electronic message center will be located at the same location at the existing freestanding sign which is located more than 50 feet from any single or two-family structure located on contiguous property.

According to the submitted plans the total sign face area of the freestanding sign and the electronic message center will not exceed 50 square feet.

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

Mike McCullum, Manager of Walgreens located on North Washington Avenue, stated that the message center would help them advertise community events, severe weather alerts, and amber alerts.

Paul Bonner made the motion to approve allowing an electronic message center to be attached to the freestanding sign located in the CN District at 950 North Washington Avenue, subject to compliance with all applicable provisions of the Zoning Code. James Dial seconded the motion and the motion carried unanimously. **APPROVED SPECIAL EXCEPTION, SUBJECT TO COMPLAINE WITH ALL APPLICABLE PROVISIONS OF THE ZONING CODE.**

CONSIDER A REQUEST FOR A VARIANCE TO REDUCE THE PARKING/DRIVING LANE WIDTHS FROM 30' TO 26' FOR A TOTAL VARIANCE OF 4' FOR EACH LANE AT A PROPOSED SELF-STORAGE FACILITY TO BE LOCATED AT 71 WESLEY DRIVE. REQUEST SUBMTTED BY LAUREN ENGINEERING ON BEHALF OF KEITH SIMMONS. James Mills stated that Lauren Engineering, on behalf of property owner Keith Simmons, has submitted a request for a reduction in the minimum driving lane width requirement for a proposed self-service storage facility located 71 Wesley Drive.

At the February 2014 meeting of the Board of Zoning Appeals a special exception request was approved to allow Mr. Simmons to construct a self-service storage facility (mini-warehouse) on his property at 71 Wesley Drive. The submitted site plan depicts the construction of three (3) storage buildings with multiple cubicles accessed by two interior drives between the buildings. The center building is to have cubicles on both sides and the two outer buildings are to have interior facing cubicles only. Upon submittal for a building permit it was determined that the western boundary line of the parcel was subject to a rear yard setback requirement of ten (10) feet according to the Zoning Code and a recorded subdivision plat. Application of the setback requirement would prohibit the development as proposed, possibly requiring the removal of one set of the proposed storage units.

In lieu of a variance request to waive or reduce the setback requirement, which would require not only the approval of the Board of Zoning Appeal but also the approval of an amended subdivision plat, the developer is requesting a variance to reduce the minimum parking/driving lane width requirement between storage buildings. Section 206.13 of the Zoning Code stipulates as follows: "Parking shall be provided in parking/driving lanes adjacent to the storage buildings. These lanes shall be at least twenty-six (26) feet wide

when storage cubicles open onto one side of the lane only and at least thirty (30) feet wide when cubicles open onto both sides of the lane.” Mr. Simmons is proposing to have storage cubicles that would open onto both sides of the parking/driving lanes. The request before the Board is to reduce the width of the parking/driving lanes from 30 feet to 26 feet. The petitioner indicates in the submitted application that the frequency of visitors to the storage units will be minimal and that 26 feet would be a sufficient amount to back in, turn around, and pass. The petitioner also indicates that larger trucks would be encouraged to back out of the lot rather than turn around. Neither of the two (2) driving lanes exceeds 250 feet in length which would not be a significant distance to back out if necessary.

In the opinion of the Planning Department the requested variance is minimal and would not be detrimental to the public welfare or injurious to other property or improvements in the area.

Staff recommended approval of the request.

Keith Simmons stated that due to the small numbers of vehicles that will be at the storage facility at the same time, he felt that 26’ should be wide enough for people to back in, turn around and pass.

Lauren Shibakov, of Lauren Engineering, stated that there is an area on the site plan that both lanes could use if someone needed to back out of the lanes in order to turn around.

Kay Detwiler made the motion to approve a Variance to reduce the parking/driving lane widths from 30’ to 26’ for a total Variance of 4’ for each lane at a proposed self-storage facility to be located at 71 Wesley Drive. Paul Bonner seconded the motion and the motion carried unanimously. **APPROVED VARIANCE OF 4’ FOR EACH DRIVING LANE.**

CONSIDER AN ADMINISTRATIVE REVIEW TO DETERMINE WHETHER A RESIDENTIAL CARE HOME LOCATED AT 885 FIRESIDE DRIVE MEETS THE DEFINITION OF SINGLE FAMILY AND WHETHER THE USE IS A PERMITTED USE IN THE RS10 (SINGLE FAMILY RESIDENTIAL) DISTRICT. REQUEST SUBMITTED BY GAIL BUCKNER ON BEHALF OF THE PROPERTY OWNERS IN BILBREY PARK AND LAUREL PARK SUBDIVISIONS. James Mills stated that Ms. Gail Buckner, on behalf of numerous property owners in the Bilbrey Park and Laurel Park Subdivisions, has submitted a request for an administrative review to determine whether a residential care home located at 885 Fireside Drive complies with the Zoning Code definition of single family and whether the use is a permitted use in the RS-10, Single Family Residential District.

On Sunday, March 9, 2014 an article was published in the Herald Citizen regarding the opening of a new residential care home at 885 Fireside Drive. The article described the use as an “economic alternative to a nursing home” and indicated that the facility would have room for three residents at a time, which would be accepted on a first come first serve basis. It further stated that caregivers for the residents would be provided.

On Monday, March 10, 2014 the Planning Department contacted the Codes Department regarding the residential care home in a single family residential zoning district. Mr. Jeff Littrell, Director of the Codes Department, informed the Planning Department that no building permits or business license had been issued or applied for 885 Fireside Drive. Representatives from the Codes Department contacted the business owner and informed them that the proposed use was considered a business and was not permitted in a single family zone. On March 13, 2014 inspectors from the Codes Department met with the owners, Chris Garrett and Eric Young, and informed them that one family or two non-related people were all that could occupy the house according to the Zoning Code. Mr. Jerry Jackson, Plans Examiner with the Codes Department, informed the Planning Department that Mr. Garrett was told that the two nonrelated persons could only consist of one resident/client and one care giver.

On March 14, 2014 a petition, signed by numerous residents in the Bilbrey Park and Laurel Park Subdivisions, was filed with the Codes Department expressing their opposition to the residential care facility. The petition specified the following concerns:

- The address is zoned for single family residential
- The Residential Care Home, known as Hudson Terrace, will be a business in a residential neighborhood
- If this assisted living home is allowed, other things can come into neighborhoods that should not be allowed
- This will lower our property values on each of our homes and property
- We are also concerned about traffic flow and strangers in our neighborhood that could increase the crime rate, since the residents will be allowed visitors

The petition included a flyer apparently being distributed by Cardinal Care Homes, the operators of the proposed facility.

On March 18, 2014, Mr. Littrell, in response to the submitted petition, sent correspondence to Mrs. Gail Buckner, spokesperson for the petitioners, indicating what actions had been taken by the Codes Department. The correspondence included information on how the petitioners could appeal his decision. On March 20, 2014 an application for an administrative review was filed with the Planning Department by Mrs. Buckner on behalf of the property owners signing the submitted petition. The application requested that the Board of Zoning Appeals make a determination as to whether the Residential Care Home (Hudson Terrace) located at 885 Fireside Drive meets the definition of single family and whether the use is a permitted use in the RS-10 Single Family Residential District.

Zoning Code Section 202.2, Definitions, defines family as follows:

“In zoning districts permitting only single-family residential dwelling units a family is defined as one (1) or more persons mutually related by blood, marriage, legal adoption, or

legal guardianship occupying a single-dwelling unit and living as a single housekeeping unit, together with incidental domestic servants, temporary non-paying guests and with no more than one (1) additional person who is mutually unrelated by blood, marriage, legal adoption, or legal guardianship.

In zoning districts permitting two-family and/or multi-family residential dwelling units a family is defined as one (1) or more persons mutually related by blood, marriage, legal adoption, or legal guardianship occupying a single-dwelling unit and living as a single housekeeping unit, together with incidental domestic servants, temporary non-paying guests and with no more than three (3) additional persons who are mutually unrelated by blood, marriage, legal adoption, or legal guardianship. A family is further distinguished as not consisting of a group occupying a boarding house, rooming house, lodging house, club, fraternity, sorority, or hotel.”

The subject property is zoned as RS-10, Single Family Residential which is a zoning district permitting only single-family residential dwelling units. In the opinion of the Planning Department the Codes Department’s interpretation is correct in that no more than two non-related persons could reside at 885 Fireside Drive.

The newspaper article published on March 9, 2014 described the proposed use as a “residential care home”. The Cardinal Care Homes flyer submitted with the petition also identifies the use as a “residential care home”. This use is not specified in the Zoning Code as a permitted use or use permitted on appeal in the RS-10 zoning district.

While the use is not specifically listed in the Zoning Code as permitted in the RS-10 zoning district, certain uses are exempted from local zoning codes by state statutes. Sections 13-24-101 thru 104 of the Tennessee Code exempt from local zoning codes residences of persons with disabilities. Generally, (Section 13-24-102) any home in which eight (8) or less unrelated persons with disabilities reside, in addition to up to three (3) additional staff, must be classified as a single family residence. Section 13-24-104, however, provides that the operation of residences for persons with disabilities on a commercial basis is not exempt from local zoning codes. A review of the Cardinal Care Homes’ Facebook page on March 28, 2014 appears to indicate that the company believes the use is exempt from the city’s zoning code.

In the opinion of the Planning Department, as it relates to the applicability of TCA Sections 13-24-101 thru 104, there are two determinations that must be made. The first is whether elderly meets the definition of a person with disabilities. The second determination would be whether the residence is being operated on a commercial basis. The burden of proof regarding exemption under TCA Sections 13-24-101 thru 104 would be on the operators of the proposed facility.

Both Mr. Garrett and Mr. Young were notified of the submitted request for an administrative review regarding the use of the property at 885 Fireside Drive. Upon receipt of the notification of the administrative review Mr. Garrett contacted the Planning Department and requested that the Board of Zoning Appeals postpone consideration of the matter until its May 2014 meeting due to the fact that both he and Mr. Young would be out of town on the date of the April meeting. Mr. Garrett also informed the Planning Department that no one had moved into the dwelling and that he would agree to not use it as proposed until the Board had rendered a decision.

Staff recommended that if the dwelling is occupied by no more than two non-related persons as specified by the Codes Department, then the Planning Department recommends that the Board of Zoning Appeals find that use complies with the Zoning Code definition of single family.

If it cannot be satisfactorily determined that the proposed “residential care home” would be a residence for persons with disabilities and is not being operated on a commercial basis as stipulated in TCA Sections 13-24-101 thru 104, then the Planning Department recommends that the Board of Zoning Appeals find that the use is not a permitted use in the RS-10 Single Family Residential District.

Dan Rader, City Attorney, stated that there is no question that this property is a single family dwelling and they have to comply with the zoning unless they get an exemption through the state statute. Mr. Rader added that the state statute did allow certain exceptions, but the burden of proof is upon any institution who wants to prove they’re entitled to that exception.

Dan Rader cited Tennessee Code Annotated (TCA) Sections 13-24-101 through 104, where there are two determinations that must be made. The first is whether elderly meets the definition of a person with disabilities. The second would be whether the residence is being operated on a commercial basis.

Dan Rader handed out copies of the Tennessee Code Annotated (TCA) Sections 13-24-101 through 104 to the residents in attendance.

Mr. Rader also said that this facility has been advertised as a commercial enterprise. He added that you cannot buy a house and then turn it into a mini-nursing home. This looks like a business, a commercial enterprise and it would not be permitted in a residential zoning district. The City has every right to strictly scrutinize their finances to make sure that it is not a commercial enterprise.

Mr. Rader stated that the property owners need to understand that state statutes take precedence and they must abide by them.

Dan Rader suggested that the following motion be made “To not allow the operation of a commercial residential care home providing support staff or guardians for residents in Bilbrey Park, Laurel Park, or any property zoned RS in the City of Cookeville. Additionally I move to require any person or entity seeking to establish such a facility in any RS location in Cookeville to prove to the City by clear and convincing evidence that the facility meets the requirements of TCA § 13-24-101 – 104 in that it serves disabled individuals as defined and is not operated on a commercial basis.”

Rudolph Mittermeier, property owner at 890 Fireside, stated that he lived across the street from 885 Fireside Drive. He was told that the house was only going to be used as a rental property and then they advertised that a business was going in there.

Mr. Mittermeier was also concerned when he found out that Eric Young, administrator for the residential care home group, also bought the house next to 885 Fireside, and heard that they were going to connect both houses and make a duplex out of the houses.

Dan Rader replied that a duplex is not allowed in a single family neighborhood.

Tina Frances, property owner at 495 Laurel Park Circle, stated that she was asked to speak on behalf of Mrs. Buckner. She wanted to thank the Planning Staff for covering all the issues that the neighbors had put in their petition and for Dan Rader for explaining the law. She also wanted to thank the Board for their consideration, and thank their neighbors for attending the meeting to show support.

Cheryl Paige, House Manager for the residential care home that was proposed to be located at 885 Fireside Drive, stated the neighborhood would be perfect for 2-3 elderly ladies and a caregiver. Ms. Paige added that they had an open house and invited the neighbors to see the improvements that they had made to the house.

Kay Detwiler stated that she was concerned that they did not get any building permits prior to construction and that she did not see any handicap accessibility to meet ADA requirements.

Jerry Jackson, Plans Examiner with the Codes Department, stated that they were not required to get a building permit, but they were required to get plumbing and electrical permits, which they did get after they had completed the work.

Kay Detwiler made the motion to not allow the operation of a commercial residential care home providing support staff or guardians for residents in Bilbrey Park, Laurel Park, or any property zoned RS in the City of Cookeville, and to require any person or entity seeking to establish such a facility in any RS location in Cookeville to prove to the City by clear and convincing evidence that the facility meets the requirements of TCA § 13-24-101 – 104 in that it serves disabled individuals as defined and is not operated on a commercial basis. Paul Bonner seconded the motion and the motion carried unanimously.
APPROVED A MOTION TO NOT ALLOW THE OPERATION OF A COMMERCIAL RESIDENTIAL CARE HOME PROVIDING SUPPORT STAFF OR GUARDIANS FOR ANY PROPERTY ZONED RS IN THE CITY OF COOKEVILLE, AND REQUIRING PROOF THAT THE FACILITY MEETS THE REQUIREMENTS OF TCA #13-204-101 THRU 104.

ADJOURNMENT: 6:15 P.M.

SUBMITTED FOR APPROVAL

SUBMITTED FOR RECORDING

**JAYNE BARNS CPS
PLANNING ASSISTANT**

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