

**BOARD OF ZONING APPEALS  
MINUTES  
APRIL 9, 2015**

The Board of Zoning Appeals met on Thursday, April 9, 2015, at 5:15 p.m. in the Council Chambers, 45 E. Broad Street, Cookeville, Tennessee.

**MEMBERS PRESENT:** James Dial, Elwood Ervin, Jane Flatt, and Sid Gilbreath.

**MEMBER ABSENT:** Jon Ward.

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

**OTHERS PRESENT:** Lauren Shibakov, Will Roberson, Jerry & Connie Cass, Mike Tayes, and Laura Militana.

**CONSIDER FOR APPROVAL THE MINUTES OF MARCH 12, 2015.** Elwood Ervin made the motion to approve the minutes of March 12, 2015. James Dial seconded the motion and the motion carried unanimously. **APPROVED.**

**CONSIDER A REQUEST FOR A VARIANCE TO REDUCE THE LANDSCAPE BUFFER YARD REQUIREMENT ALONG THE EASTERN PROPERTY LINE FROM 20' TO 0' FOR A TOTAL VARIANCE OF 20' ON THE PROPERTY LOCATED AT 440 EAST BROAD STREET. REQUEST SUBMITTED BY LAUREN SHIBAKOV OF LAUREN ENGINEERING SERVICES ON BEHALF OF WILLIAM ROBERSON OF ROBERSON PARTNERSHIP L. P.** James Mills stated that Ms. Lauren Shibakov, of Lauren Engineering, on behalf of property owner William Roberson, has submitted a request for a variance to reduce the minimum landscape buffer yard width requirement along the eastern boundary of property located at 440 East Broad Street.

The subject property is identified as Parcel 7.00 on Tax Map 53F and is zoned as CL, Local Commercial. The parcel was rezoned from RS-10 to CL in January of 2014. It is contiguous with properties zoned as RS-10 to the north and east, as CL to the west, and as CBD to the south. The subject property and the properties to the east and north are also located within the East Broad-Freeze Street Historic District.

A submitted site plan indicates that the property is approximately 78 feet wide and 169 feet deep consisting of approximately 13,939 square feet or 0.32 acre. The site plan depicts the proposed construction of a 6,000 square feet office building. It also depicts the provision of parking to the front and rear of the proposed structure. The parking to the rear would be accessed from the adjoining parcel to the west which is also owned by Mr. Roberson.

Within the CL zoning district the minimum side yard setback requirement is zero unless it adjoins a residential district or any parcel with a single family residential structure. Where side or rear property lines are adjacent to properties zoned or used for residential purposes the screening and buffer yard requirements of Section 208.6 of the Zoning Code must be met. For the subject property a Type 2 Screen and Buffer Yard are required

along the eastern and northern property lines. A Type 2 Screen and Buffer Yard must have a minimum width of 20 feet with opaque screening to the height of three (3) feet and intermittent screening above the three (3) feet to the height of ten (10). The petitioner is requesting a variance to reduce the buffer yard width requirement from 20 feet to zero (0) feet along the eastern property line.

Provisions for the modification of screening and buffer yard requirements are specified in Section 208.6F of the Zoning Code. Reductions of the width of the buffer yard may be approved by the Building Official provided the owner of the adjacent residential property has given written and notarized approval of the reduction. A Type 3 screen must be provided for any reduction in buffer yard width requirement of a Type 2 Screen and Buffer Yard. The maximum the buffer yard width can be reduced to is one (1) foot.

The screen and buffer yard requirements were established to minimize the impact of non-residential developments on adjacent residential developments. Specific provisions were developed to authorize adjoining residential property owners to agree to reductions of the buffer yard width requirements. The requirements and provisions were in affect well before the subject property was rezoned from RS-10 to CL.

The owner of the adjacent residential property has not approved, and in fact opposes, a reduction of the buffer yard width requirement. Should the owner approve a reduction the approval of a variance would not be necessary. In the opinion of the Planning Department, the petitioner has not indicated any particular hardship or unique circumstance that would warrant a complete waiver of the buffer yard width requirement. Furthermore there does not appear to be any justification for disregarding the provisions established in the Zoning Code for reducing buffer yard width requirements.

Staff recommended denial of the request.

Lauren Shibakov asked Mr. Mills if she could see a copy of the letter that was submitted by Kelly Tayes.

Mr. Mills showed Ms. Shibakov the letter and told her that he would give her a copy after the meeting. (Note: During the meeting, Ken Young provided two copies of the letter from Kelly Tayes to Lauren Shibakov and Will Roberson.)

Lauren Shibakov stated that they did not have a specific site plan for what they were going to build, and that she was trying to get the largest building footprint possible on the lot. Ms. Shibakov stated that the building has to be a certain size in order to make money.

Will Roberson stated that he was disappointed in the letter from Mrs. Tayes. He sold Mrs. Tayes a small strip of land a few years ago so that she would put in a driveway. Mr. Roberson added that he was hoping to build a professional office on this property.

Mr. Mills inquired as to whether Mr. Roberson sold the strip prior to or after the rezoning of his property. Mr. Roberson stated that he thought it was after the rezoning.

Mr. Young pulled the subdivision plat where Mr. Roberson sold the property to Kelly Tayes and it was subdivided on February 21, 2012.

Mr. Mills stated that the rezoning from RS10 to CL was approved on January 31, 2014, so Mr. Roberson should have known when he asked for the rezoning that the property had already been subdivided.

Connie Cass stated that she lives on Freeze Street and that they are having drainage problems from water coming from Mr. Roberson's property.

Sid Gilbreath stated that the drainage was not an issue that the Board of Zoning Appeals could address.

Mr. Mills added that at this time the City doesn't know if Mr. Roberson is going to build anything on this property or not. When they decide to build, then they will have to get a building permit thru the Codes Department and submit drainage plans for the Public Works Department to review.

Sid Gilbreath stated that the Board cannot grant a 100% variance.

Mr. Mills stated that this was a self-induced hardship and since it was self-induced, there were no grounds for approving a variance.

Elwood Ervin made the motion to deny the request for a 20' variance in the landscape buffer yard requirement along the eastern property line on the property located at 440 East Broad Street. James Dial seconded the motion. Votes: Elwood Erwin – aye, James Dial – aye, Jane Flatt – pass, Sid Gilbreath – aye. Motion carried. **VARIANCE DENIED.**

**ADJOURNMENT: 5:45 P.M.**

**SUBMITTED FOR APPROVAL**

**SUBMITTED FOR RECORDING**

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**JAYNE BARNS CPS  
PLANNING ASSISTANT**

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