

**BOARD OF ZONING APPEALS
MINUTES
AUGUST 13, 2015**

The Board of Zoning Appeals met on Thursday, August 13, 2015, at 5:15 p.m. in the Council Chambers, 45 E. Broad Street, Cookeville, Tennessee.

MEMBERS PRESENT: James Dial, Elwood Ervin, Sid Gilbreath, and Jon Ward.

MEMBER ABSENT: Jane Flatt.

STAFF PRESENT: James Mills and Jayne Barns.

STAFF ABSENT: Ken Young.

OTHERS PRESENT: Waymon Broyles, Bob Wheatley, Joe Wilson, Boyd Kline, and Laura Militana.

CONSIDER FOR APPROVAL THE AGENDA AS SUBMITTED. Elwood Ervin made the motion to approve the minutes of July 14, 2015. James Dial seconded the motion and the motion carried unanimously. **APPROVED.**

CONSIDER FOR APPROVAL THE MINUTES OF JULY 14, 2015. Jon Ward made the motion to approve the minutes of July 14, 2015. James Dial seconded the motion and the motion carried unanimously. **APPROVED.**

CONSIDER A REQUEST FOR AN ADMINISTRATIVE REVIEW CONCERNING INTERPRETATION OF THE DEFINITION OF FAMILY IN ZONING DISTRICTS PERMITTING ONLY SINGLE-FAMILY RESIDENTIAL DWELLING UNITS. REQUEST SUBMITTED BY MR. & MRS. WAYMON C. BROYLES. James Mills stated that Mr. and Mrs. Waymon Broyles have filed a request for the Board of Zoning Appeals to review and interpret the Cookeville Zoning Code definition of “family”.

The Broyles reside in the Mount Vernon Estates Subdivision. The subdivision is zoned as RS-15, Single Family Residential. Recently Mr. Broyles filed a complaint with the Cookeville Codes Department regarding one of the dwellings in the subdivision being occupied by four (4) young males. The Codes Enforcement Officer visited the property and was informed by the occupants that they were cousins. The Codes Officer determined that the occupancy was not a violation of the Zoning Code.

The Zoning Code definition of “family” is provided in Section 202.2 and reads as follows:

FAMILY. *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 definition is divided into two (2) components with one portion for properties zoned for single family residential dwellings and the other for properties zoned for two-family or multi-family residential dwellings. For single family zoning districts, family is basically defined as no more than two (2) people in a dwelling not related by blood, marriage, legal adoption, or legal guardianship. There is no limit on the number of occupants allowed in a dwelling if they are related by blood, marriage, legal adoption, or legal guardianship.

Mr. Broyles is of the opinion that “cousins” should not be interpreted under the definition of family for properties zoned for single family residential use. He is specifically requesting that the Board determine whether the current definition of family in the Zoning Code includes cousins as related by blood. He has also proposed the following definition for a single family unit:

“A single person or, (2) A single person with children or, (3) One married couple or, (4) One married couple with children or, (5) Verifiable siblings 21 years of age or older or, (6) Verifiable grandchildren of persons in category 1-5 above or (7) Persons in a legal guardianship of persons in category 1-6 above”

In addition, Mr. Broyles is proposing that the Zoning Code specify that the City of Cookeville shall have the responsibility to verify the residence status of all properties that are zoned single family. He has not suggested what would be an acceptable form of verification. The Cookeville Codes Enforcement Officer typically asks if the occupants of a dwelling are related and accepts the response.

The Planning Department has discussed the issue with the City Attorney. The City Attorney is of the opinion that first cousins are blood related. He is also of the opinion that, as a means of verifying relatedness, the Codes Department would be limited to obtaining a signed affidavit from the occupants.

For legal issues, such as inheritance and marriage, many states use degrees of consanguinity to determine whether someone is related by blood. Immediate family members generally extend to the 4th degree of consanguinity, which includes first cousins. The Planning Department concurs with the City Attorney that first cousins are blood related.

There have been several state and federal court cases regarding the definition of family and the enforcement of local zoning ordinances. Some of the constitutional issues relate to the equal protection clause, due process, and rights of privacy. Definitions of family which prohibit certain types of families have been stricken by the courts. The United States Supreme Court in Moore v. City of East Cleveland, 431 U.S. 494 (1977) held that, in keeping with due process, a zoning code may not differentiate between relatives of varying degrees of kinship.

In the opinion of the Planning Department Mr. Broyles suggested definition of “family” would not comply with accepted legal standards. Furthermore, approving Mr. Broyles’ request to interpret related by blood to not include cousins would also appear to contradict the findings of the U. S. Supreme Court.

Staff recommended that the definition of “family” as currently specified in the Zoning Code be determined appropriate and that “related by blood” includes cousins. Additionally, that the extent of the verification of the relatedness of occupants in a dwelling be limited to obtaining signed affidavits from the occupants.

Waymon Broyles stated that in their neighborhood they had 4 men living in a house in their neighborhood. A few weeks ago, there was a safety issue when they were having a party from 12:30 to 3:30 a.m. and 15 cars were blocking the road. If there had been an emergency, response vehicles would not have been able to get thru. Single Family neighborhoods are designed for families.

James Mills stated that the definition of a traditional single family has changed over the years. According to our Zoning Code, only 1 unrelated person can live in zoning districts permitting only single family dwelling units. If the neighbors are creating a nuisance, then you have the right to call the police.

Boyd Kline stated that the City needs to bring to the attention of the realtors that write up the lease and require them to specify the names of all the residents living in the house.

Bob Wheatley stated that he went over to talk to the residents of the house in question and he found out that they were football players at Tennessee Tech. Mr. Wheatley then went to Putnam Properties, who rented the house to the students, and he told them that they could not rent to multiple students in a residential area. Putnam Properties was then able to get the students out. The man that owns the property lives in California and he only bought the house as an investment.

Mr. Wheatley asked if there was any way that we can put some meat to the Zoning Code to keep this from happening again.

Mr. Mills replied that since we live in a college town the issue of students living in residential areas has been happening for a long time. It is going to continue to be an issue and the City is going to do what they legally can.

Joe Wilson lived across the house in question and he is looking into amended the bylaws for the Subdivision.

Mr. Mills stated that the covenants would be legally binding.

Elwood Ervin made the motion to staff’s recommendation that the definition of “family” as currently specified in the Zoning Code be determined appropriate and that “related by blood” includes cousins. Additionally, that the extent of the verification of the relatedness of occupants in a dwelling be limited to obtaining signed affidavits from the occupants. Jon Ward seconded the motion and the motion carried unanimously. **APPROVED RECOMMENDATION BY STAFF.**

ADJOURNMENT: 5:45 P.M.

SUBMITTED FOR APPROVAL

SUBMITTED FOR RECORDING

**JAYNE BARNS CPS
PLANNING ASSISTANT**

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