

**BOARD OF ZONING APPEALS
MINUTES
FEBRUARY 12, 2015**

The Board of Zoning Appeals met on Thursday, February 12, 2015, at 5:15 p.m. in the Council Chambers, 45 E. Broad Street, Cookeville, Tennessee.

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

MEMBER ABSENT: Jane Flatt.

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

OTHERS PRESENT: Chris Westmoreland, Becky Westmoreland, Ken Mitcham, Seth Hudson, Eric Cherry, Brad Bender, Steve Austin, Sandy Austin, Mark Kriskovich, Jeff Littrell, Jerry Jackson, Sam Sandlin, Michael Petrello, David Murrell, Noel Cherry, and Laura Militana.

WELCOME NEW MEMBERS – ELWOOD ERVIN & JOHN WARD.

ELECTION OF CHAIRMAN AND VICE CHAIRMAN. Sid Gilbreath opened up the floor for nominations for Chairman and Vice Chairman.

James Dial made the motion to elect Jane Flatt as Chairman, but there was no second to the motion.

Jon Ward made the motion to elect Sid Gilbreath as Chairman. Elwood Ervin seconded the motion and the motion carried unanimously. **SID GILBREATH ELECTED AS CHAIRMAN.**

Elwood Ervin made the motion to elect Jane Flatt as Vice-Chairman. Jon Ward seconded the motion and the motion carried unanimously. **JANE FLATT ELECTED AS VICE-CHAIRMAN.**

CONSIDER FOR APPROVAL THE MINUTES OF DECEMBER 11, 2014. James Dial made the motion to approve the minutes of December 11, 2014. Elwood Ervin seconded the motion and the motion carried unanimously. **APPROVED.**

CONSIDER A REQUEST FOR A VARIANCE TO REDUCE THE LOT WIDTH AT THE RIGHT-OF-WAY FROM 50' TO 48.10' FOR A TOTAL VARIANCE OF 1.90' ON THE PROPERTY LOCATED AT 118 SHIPLEY STREET. REQUEST SUBMITTED BY DAVID & RETA JO MURRELL. James Mills stated that David and Reta Jo Murrell have submitted a request for a variance to reduce the minimum lot width at right-of-way and minimum lot width at setback line requirements for their property located at 118 Shipley Street.

The subject property is identified as Parcel 31.00 on Tax Map 53J, Group B and is zoned as RD, Single Family and Duplex Residential. The RD District requires a minimum lot

area of 5,000 square feet per dwelling unit, a minimum lot width of 50 feet at right-of-way and a minimum lot width of 50 feet at setback line for single-family dwellings. The minimum setback requirements are 20 feet for the front yard, 15 feet for the rear yard, and 7.5 feet for interior side yards for single family dwellings.

According to a submitted survey the parcel consists of approximately 11,536 square feet and is approximately 100 feet wide at the right-of-way and the building setback line. An existing single family detached dwelling is located on a portion of the property at 120 Shipley Street. A second single family, which burned down in 2012, was previously located on the parcel at 118 Shipley Street.

The purpose of the request is to allow for a two (2) lot subdivision of the parcel. To construct a second detached dwelling on the parcel it must be subdivided. The submitted survey indicates that, due to the location of the existing dwelling, a variance of approximately two (2) feet from the minimum lot width at right-of-way and setback line requirements is necessary for the second lot. The survey indicates that all other lot requirements, including setbacks and minimum lot area, would be met.

In the opinion of the Planning Department the submitted request is the minimum necessary to allow a reasonable use of the property and approval of the request will not be detrimental to the public welfare or injurious to other property in the area.

Staff recommended approval of the variance as requested and as depicted on the survey.

James Dial made the motion to approve a variance to reduce the lot width at the right-of-way and minimum lot width at the setback line from 50' to 48.10' for a total of 1.90, as depicted on the survey, on the property located at 118 Shipley Street. Jon Ward seconded the motion and the motion carried unanimously. **APPROVED VARIANCE REQUEST.**

CONSIDER A REQUEST FOR AN ADMINISTRATIVE REVIEW TO DETERMINE IF THE BUILDING OFFICIAL ERRED IN THE ISSUANCE OF A BUILDING PERMIT FOR THE CONSTRUCTION OF AN ACCESSORY BUILDING WITH METAL SIDING IN THE RS-20 DISTRICT AT 150 SOUTHERN WOODS COURT. REQUEST SUBMITTED BY BRAD BENDER. James Mills stated that Mr. Brad Bender has submitted an appeal of the Building Official's decision to issue a building permit for the construction of an accessory building with metal siding at 150 Southern Woods Court.

The subject property is identified as Parcel 7.01 on Tax Map 96 and is zoned as RS-20, Single Family Residential. According to the Property Assessor's records the parcel consists of approximately 5.03 acres. It is owned by Dr. Kenneth Mitcham. Although the property is located on Southern Woods Court it was not developed as a parcel within the Southern Woods Subdivision and is not subject to the deed restrictions or covenants for that subdivision.

On October 6, 2014 a building permit was issued by the Cookeville Codes Department to Dr. Mitcham for the construction of a 40 foot by 50 foot barn at 150 Southern Woods

Court. The permit indicates that the structure was considered as an accessory structure. On October 9, 2014 a building permit was issued for the construction of a 5,572 square foot dwelling at 150 Southern Woods Court.

In December of 2014, Mr. Bender contacted the Codes Department and then the Planning Department with concerns regarding the construction of the accessory building. He is a property owner in the Southern Woods Subdivision and resides at 165 Southern Woods Court. Mr. Bender's primary concern was the Building Official's decision to allow the use of metal siding for the accessory building. After discussing his options with the Planning Department, Mr. Bender filed the appeal before the Board. He indicates in his appeal that the residents of the Southern Woods Subdivision believe the metal sided accessory structure will have a detrimental effect on their properties.

Provisions regulating accessory structures are found in Section 204.8 of the Zoning Code. Section 204.8H provides as follows: "In the RS-20, RS-15, RS-10, RS-5, and RD Districts accessory structures four hundred (400) square feet or larger in size shall be constructed of a material compatible with the principal structure as determined by the Building Official." Mr. Bender asserts that the Building Official erred in determining the metal siding used on the accessory structure was compatible with the principal structure.

In correspondence to Mr. Bender, Cookeville Building Official Jeff Littrell indicated that the accessory structure was permitted as a barn. He noted that the Municipal Code allows for animals or fowls to be located on properties of 5 acres or more which the subject property met. He also stated that historically the city has allowed barns to have metal siding and not have to match the house with similar materials.

Tennessee Code Section 6-54-126 (see attached) prohibits municipalities from using their zoning power to interfere in any way with the use of land for agricultural purposes. While the Zoning Code makes no specific reference to TCA 6-54-126, it has been the Codes Department's policy to exempt structures used for agricultural or farming purposes from the architectural compatibility standards in Section 204.8. In the opinion of the Planning Department, the applicability of material compatibility standards specified in Section 204.8H of the Zoning Code are dependent upon the use of the accessory structure. If it can be determined that the accessory structure is intended for agricultural purposes then, in the opinion of the Planning Department, the material standards would not apply.

The elevation plans submitted with the building permit application depict a barn like structure of approximately 2,000 square feet. However, what was actually constructed does not match what was indicated in the plans. The accessory structure appears to be intended more as a garage and/or storage building. Additionally, there is no indication that the property at 150 Southern Woods Court is or will be used for agricultural or farming purposes.

In discussions with the Planning Department, Dr. Mitcham indicated that when he had applied for a permit for the accessory structure he had been informed by the Codes Department that because his property was over 5 acres in size the material compatibility standards did not apply. Dr. Mitcham also indicated that he did not, at the time he applied

for a permit, represent the use of the accessory structure as being for agricultural or farming purposes. He also noted that while the completed accessory structure does not match the plans submitted for the building permit, it is actually smaller than depicted and therefore has less impact on the neighborhood than it could have had.

Based on the available information, in the opinion of the Planning Department, the accessory structure is not a barn used for agricultural purposes and should have been constructed with a siding material compatible with the principal structure. Further, the Planning Department is also of the opinion that metal siding is not a compatible siding with the principal structure. While it does not appear that there was any intent to violate the provisions of the Zoning Code, the structure for which a building permit was issued was not what was constructed. It should also be noted that Section 233.3B of the Zoning Code provides, in part, as follows: "The issuance of a building permit shall, in no case, be construed as waiving any provisions of this Zoning Code."

Dr. Mitcham, after being notified of the appeal before the Board, discussed with the Planning Department the possibility of placing livestock on his property which would be construed as an agricultural use. As previously noted, the city has consistently interpreted the provisions Section 204.8H as not applying to accessory structures used for agricultural purposes due to the protection afforded such uses under TCA 6-54-126. Based on the available evidence, however, the use of the subject accessory structure does not appear to have originally been for agricultural purposes.

Dr. Mitcham has also discussed with the Planning Department the possibility of screening and/or adding siding to the accessory structure with a material compatible with the principal structure. It should be noted that compatible material does not necessarily mean the same material. If the principal structure includes wood or vinyl trim, then this material could be acceptable as a siding material for the accessory structure.

Staff recommended that the Board find as follows:

1. That the accessory structure was not intended for agricultural purposes and should have been constructed with materials compatible with the principal structure.
2. That the metal siding used on the accessory structure is not compatible with the principal structure.
3. That the accessory structure shall be brought into compliance with the material compatibility standards of Section 204.8 within six (6) months.
4. That the Certificate of Occupancy for the accessory structure shall not be issued until such time as the material compatibility requirements established by the Board are met.
5. That the Planning Department shall be directed to prepare amendments to the Zoning Code clarifying that only accessory structures utilized in an active agricultural or farming use are exempt from the provisions of Section 204.8 and to provide a definition of agricultural or farming use.

Brad Bender, property owner at 165 Southern Woods Court, wanted to thank all the neighbors for attending the meeting. Mr. Bender stated that he submitted the request for administrative review because he was concerned that the accessory structure was not built in compliance with the Zoning Code Section 204.8H that states “In the RS-20, RS-15, RS-10, RS-5, and RD Districts accessory structures four hundred (400) square feet or larger in size shall be constructed of a material compatible with the principal structure as determined by the building official.” Mr. Bender added that while the accessory structure was permitted as a barn, its function is clearly that of a garage or workshop.

Ken Mitcham, property owner at 150 Southern Woods Court, stated that if the Board determines that the current materials are not compatible, then he will comply with a reasonable alternative.

Michael Petrello, property owner at 170 Southern Woods, stated that he thought that the accessory structure should be all brick, since the house is all brick. Mr. Petrello added that requiring additional landscaping to block the visibility of the accessory structure with giant trees would be very costly for Mr. Mitcham.

Seth Hudson of H. D. Homes stated that it would cost \$15,000 to add brick to the accessory structure. The remainder of the building materials will consist of vinyl under the soffit and wood trim on the exterior of the house.

James Mills stated that the Codes Department has never made anyone put all brick on an accessory structure. The Codes Department allows the property owner to match other materials on the exterior of the house for compatible materials for the accessory structure.

Jeff Littrell, Director of Codes, was present and confirmed what Mr. Mills stated.

James Mills reiterated that the compatible materials for the Mr. Mitcham’s property will have to meet current provisions in the Zoning Code and that since the other building materials are wood trim, then wood would be a compatible material.

Brad Bender stated that there needs to be a clear definition of compatible materials. For example, if a house has 99% of one material and 1% of another material, then the compatible materials needs to match the larger percentage of the material.

James Mills amended his recommendations to include that Dr. Mitcham shall submit elevation plans and a materials list to the Codes Department for approval prior to making modifications to ensure compatibility and that the Planning Department shall be directed to prepare amendments to the Zoning Code to provide a definition of compatible material and to provide parameters for determining compatibility in Section 204.8.

Elwood Erwin made the motion to approve staff’s amended recommendations which include the following:

1. That the accessory structure was not intended for agricultural purposes and should have been constructed with materials compatible with the principal structure.
2. That the metal siding used on the accessory structure is not compatible with the principal structure.
3. That the accessory structure shall be brought into compliance with the material compatibility standards of Section 204.8 within six (6) months.
4. That Dr. Mitcham shall submit elevation plans and a materials list to the Codes Department for approval prior to making modifications to ensure compatibility.
5. That the Certificate of Occupancy for the accessory structure shall not be issued until such time as the material compatibility requirements established by the Board are met.
6. That the Planning Department shall be directed to prepare amendments to the Zoning Code clarifying that only accessory structures utilized in an active agricultural or farming use are exempt from the provisions of Section 204.8 and to provide a definition of agricultural or farming use.
7. That the Planning Department shall be directed to prepare amendments to the Zoning Code to provide a definition of compatible material and to provide parameters for determining compatibility in Section 204.8.

James Dial seconded the motion and the motion carried unanimously. **APPROVED
ACCORDING TO STAFF'S AMENDED RECOMMENDATIONS.**

ADJOURNMENT: 5:55 P.M.

SUBMITTED FOR APPROVAL

SUBMITTED FOR RECORDING

**JAYNE BARNS CPS
PLANNING ASSISTANT**

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