

**BOARD OF ZONING APPEALS
MINUTES
JULY 13, 2006**

The Board of Zoning Appeals met on Thursday, July 13, 2006, at 5:15 p.m. in the Council Chambers, 45 E. Broad Street, Cookeville, Tennessee.

MEMBERS PRESENT: Larry Burgess, Tracy Cody, Kay Detwiler, Jane Flatt, and Sid Gilbreath.

STAFF PRESENT: James Mills and Jayne Barns.

OTHERS PRESENT: See attached Record of Attendance.

CONSIDER FOR APPROVAL THE MINUTES OF JUNE 8, 2006. Tracy Cody made the motion to approve the minutes of June 8, 2006. Larry Burgess seconded the motion and the motion carried unanimously. **APPROVED.**

CONSIDER A REQUEST FOR AN ADMINISTRATIVE REVIEW CONCERNING DENIAL OF RELOCATION OF NON-CONFORMING OFF-PREMISE SIGN (BILLBOARD) ON THE PROPERTY LOCATED AT 1200 INTERSTATE DRIVE. REQUEST SUBMITTED BY FLYNN OUTDOOR ON BEHALF OF JIMMY WRIGHT. (FLYNN OUTDOOR REQUESTED THAT THIS ITEM BE POSTPONED.) James Mills stated that the Cookeville Planning Commission has approved an amendment to the General Sign Regulations which would allow for the relocation of existing nonconforming signs on the same parcel provided certain conditions are met. If the proposed amendment is adopted by the Council, Flynn Outdoor would be allowed to relocate the subject sign as so desired. The proposed amendment is to be considered by the Council in August.

The Planning Department has received a letter from Flynn Signs requesting that this item be postponed until a decision has been made the City Council. If the City Council does not approve the amendment then Mr. Flynn would like to reserve the right to have the appeal heard at a later date.

Staff recommended that this item be postponed until said amendment has either been adopted or rejected by the Council.

Sid Gilbreath made the motion to postpone this item until after the amendment is either approved or denied by the City Council. Kay Detwiler seconded the motion and the motion carried unanimously. **POSTPONED.**

CONSIDER A REQUEST FOR A SPECIAL EXCEPTION TO ALLOW USE AUTO SALES ON THE PROPERTY LOCATED AT 1025 NORTH WASHINGTON AVENUE AND A VARIANCE REQUEST TO WAIVE THE REQUIREMENT THAT AUTO SALES SHALL NOT BE LOCATED ADJACENT

TO A SINGLE FAMILY ZONE. REQUEST SUBMITTED BY JERRY BUSH ON BEHALF OF MIKE MEDLEY. (PROPERTY OWNER REQUESTED THAT THIS ITEM BE WITHDRAWN FROM THE AGENDA.) James Mills stated that Mike Medley submitted a letter requesting that this item be withdrawn from consideration.

Staff recommended approval of withdrawal of the request.

Kay Detwiler made the motion to approve the withdrawal of the request for a Special Exception. Sid Gilbreath seconded the motion and the motion carried unanimously. **WITHDRAWN.**

CONSIDER A REQUEST FOR A REDUCTION IN THE SETBACK REQUIREMENTS ON A CORNER LOT FROM 30' TO 15' ON THE PROPERTY LOCATED AT 105 CHERRY AVENUE. REQUEST SUBMITTED BY BOB VICK ON BEHALF OF PACESETTERS. James Mills stated that Mr. Bob Vick, on behalf of Pacesetters, Inc., has submitted for approval a variance request to reduce the front setback requirement for property zoned as CN, Commercial Neighborhood and located at 105 Cherry Avenue.

The subject property is located at the corner of Cherry Avenue and East 1st Street. It is currently used by Pacesetters as a childcare facility. The purpose of the request is to allow a 20 ft. by 40 ft. 2 story addition on the south side of the existing structure.

The building setback requirement on all street frontages in the CN District is 30 feet. The proposed request is for a 50 percent reduction to a setback of 15 feet. Based on the submitted site plan there would appear to be other alternatives for the proposed addition, such as to the east of the existing structure. No unique hardship is indicated in the application other than the assumption that the lot is not large enough to accommodate the proposed use. There are nearby existing structures on East 1st Street that encroach within the required setback; however, none appear closer than 20 to 25 feet of the right-of-way.

In the original proposal the location of two additional parking spaces required vehicles to back out onto East 1st Street. The site plan has been altered so that a vehicle does not have to back out onto the street; however, the safety of the proposed parking location remains questionable. There do not appear to be any other locations to provide the required additional parking. Although a variance from the parking requirements has not been requested it would appear to be appropriate given the unsafe potential locations and due to the fact there is public parking nearby (Dogwood Park).

Mr. Mills added that the property owner across the street was concerned about the safety issues concerning the parking spaces on First Street.

Staff recommended denial of the request as submitted, and approval of reduction of setback to 20 feet and of waving requirement for the provision of additional parking subject to the addition being no larger than 1,600 square feet.

Ruth Mitchell's mother owns the property adjacent to the request at 118 East 1st Street. She was concerned about the parking on First Street and encroachment of the building in the setback and the effects it would have on her mother's property.

Bob Vick stated that they could meet the setbacks if redesigned, but a reduced setback would be more functional to the design, and he wanted to hear comments from the Board before he made changes to the site plan.

There was a lot of discussion concerning redesigning the site plan for the addition with a reduced setback and submitting it back to the Board at next month's meeting, justification of hardships and that outgrowing a business or use does not constitute a hardship, and strong concerns about setting a precedent for the Board and for the City.

Larry Burgess made the motion to grant the 15' front yard setback variance for the 20 ft. x 40 ft. 2 story addition as shown on the submitted site plan and waive the additional 2 parking spaces, subject to the addition not exceeding 1,600 sq. ft. and compliance with the building codes and other applicable codes and regulations of the City. Kay Detwiler seconded the motion. Votes: Jane Flatt—nay, Sid Gilbreath—nay, Kay Detwiler—aye, Tracy Cody—aye, and Larry Burgess—aye. **APPROVED.**

CONSIDER A REQUEST FOR A SPECIAL EXCEPTION TO ALLOW USED AUTO SALES IN A CL ZONE ON THE PROPERTY LOCATED AT 1644 EAST SPRING STREET, AND A VARIANCE REQUEST TO WAIVE THE REQUIREMENT THAT AUTO SALES SHALL NOT BE LOCATED ADJACENT TO A SINGLE FAMILY ZONE. REQUEST SUBMITTED BY ANDY GUNN.

James Mills stated that Mr. Andy Gunn has submitted for approval a request for a special exception to allow the location of a used auto sales establishment on property zoned as CL, Local Commercial, and located at 1644 East Spring Street.

New and used automobile sales may be permitted as special exceptions in the CL District when meeting the conditions of Section 221.4E of the Zoning Code. The conditions specified in Section 221.4E are as follows:

- Shall not be located adjacent to any district zoned RS-20, RS-15, RS-10, RS-5 or RD unless separated by a public street as shown on the Official Street Map. The subject property is adjacent to property zoned as RS-20 to the north.
- Shall be located on streets of at least Major Collector status. East Spring Street is a Major Collector.
- Shall conform with the requirements of Section 206.15 of the Zoning Code.

Mr. Gunn has submitted a request for a variance from the condition that the property not be adjacent to property zoned for single-family residential purposes. There appears to be sufficient existing vegetation that would limit the impact the proposed use would have on the adjacent residential property if the location of vehicles for sale was limited to the front and side of the existing structure.

Staff recommended approval of the variance request subject to the vegetative screen on the northern property line being maintained and to the prohibition of any vehicles for sale being parked or stored to the rear of the existing structure and approval of special exception subject to compliance with all other requirements of the Zoning Code.

Brent Minnear stated that he lives behind the location for the proposed used auto sales and he doesn't have any objections as long as the screening remains.

Tracy Cody made the motion to approve the Special Exception subject to staff's recommendation. Sid Gilbreath seconded the motion and the motion carried unanimously. **APPROVED.**

CONSIDER A REQUEST FOR A SPECIAL EXCEPTION TO ALLOW PET GROOMING ON THE PROPERTY LOCATED AT 738A EAST SPRING STREET. REQUEST SUBMITTED BY DEBORAH WADE ON BEHALF OF DEBBIE MCCLOUD. James Mills stated that Ms. Deborah Wade, on behalf of property owner Debbie McCloud, has submitted a request for special exception to allow the location of a pet grooming establishment on property zoned as CL, Local Commercial and located at 738A East Spring Street.

Pet-grooming establishments may be allowed as special exceptions in the CL district. No special requirements for pet grooming establishments are specified in the Zoning Code. Kennels, however, are not permitted adjacent to single-family residential properties. The subject property is not adjacent to property zoned for single-family residential purposes.

Staff recommended approval of the request.

Sid Gilbreath made the motion to approve the Special Exception. Tracy Cody seconded the motion and the motion carried unanimously. **APPROVED.**

CONSIDER A REQUEST FOR A REDUCTION IN THE FRONT YARD SETBACK REQUIREMENTS FROM 15' TO 6' ON THE PROPERTY LOCATED AT 1065 EAST 10TH STREET. REQUEST SUBMITTED BY TROY WILLIAMS ON BEHALF OF COMMUNITY BANK. James Mills stated that Mr. Troy Williams of Williams Signworks, on behalf of property owner Community Bank, has submitted for approval a variance request to reduce the required setback for an on-premise freestanding sign located at 1065 East 10th Street.

Sometime in late May or early June of 2006 Williams Signworks installed an on-premise freestanding monument style sign for Community Bank at 1065 East 10th Street. The minimum setback requirement for monument type signs (those without a clearance of at least eight (8) feet from the bottom of the sign above ground level) is 15 feet from the property line/street right-of-way. On June 14, 2006 an inspection of the sign revealed that it had been installed so that it encroached within the required setback by approximately nine (9) feet, or six (6) feet from the right-of-way. Mr. Williams is requesting a variance to allow the sign to remain where it is.

A permit, Permit No. 1064, was issued to Williams Signworks on March 16, 2006 for the construction of a freestanding sign at 1065 East 10th Street. The permit application indicates that the sign would comply with the required setback of 15 feet. The site plan submitted with the permit application also indicates that the sign would comply with all setback requirements. At the June 14, 2006 inspection of the sign it was determined that not only did the installed sign encroach within the setback it also had not been installed at the location indicated on the submitted site plan. An "Affidavit of Responsibility for Compliance with the General Sign Regulations" for Williams Signworks is on file with Codes Department.

Mr. Williams asserts that he discussed moving the sign to a location different than indicated on the submitted site plan with the City's Sign Inspector in March of 2006. He indicates that the Sign Inspector verbally approved the location of the sign where it is currently located. He also claims that a revised site plan was submitted to the Sign Inspector. The City is unable to locate such a revised site plan and Mr. Williams is unable to provide a copy. The Sign Inspector alleged to have approved the illegal location of the sign left employment with the city on April 7, 2006. The sign was not installed until late May or early June, several weeks after the employment of the Sign Inspector ended.

Williams Signworks has installed numerous signs in the city and is aware of the setback requirements for signs. The Sign Inspector is not authorized to waive or alter the requirements of the General Sign Regulations. As noted previously, the company has an affidavit of compliance on file, signed by Mr. Williams, which specifies in part "that if any portion of the sign or signs violates the setback requirements or any other requirements of the General Sign Regulations, I will be required to complete appropriate measures, including removal or relocation, to correct the violation".

Staff recommended denial of the request.

The Board commented on the fact that Mr. Williams signed the affidavit and that all the submitted material showed that he would meet the setbacks as required by the City. The affidavit further states that if any portion of the sign violates the setback requirements that he will be required to remove or relocate the sign to correct the violation.

Jane Flatt reiterated that the Board of Zoning Appeals was instrumental in getting the Affidavit for Compliance approved by the City in order to prevent violations of setbacks.

Tracy Cody stated that he did not want anymore requests from Williams Signworks brought back to the Board concerning setback violations.

Mr. Mills added that the City would be improving 10th Street in the near future and recommended that the Board add the stipulation that if there is ever a need for additional right-of-way, that the City will not compensate the current or future property owners for the moving or removal of their sign at 1065 E. 10th Street.

Sid Gilbreath made the motion to approve the variance for only the existing sign subject to the property owner moving or removing the same at their own cost if there is ever a need for additional right-of-way and that the property owner, current or future, shall not receive any compensation or damages from the City of Cookeville for said sign. Tracy Cody seconded the motion. Votes: Larry Burgess--aye, Tracy Cody--aye, Kay Detwiler--aye, Jane Flatt--passed, and Sid Gilbreath-aye. **APPROVED.**

ADJOURNMENT: 6:28 P.M.

SUBMITTED FOR APPROVAL

SUBMITTED FOR RECORDING

**JAYNE BARNS CPS
PLANNING ASSISTANT**

**JANE FLATT, CHAIRMAN
BOARD OF ZONING APPEALS**