

**BOARD OF ZONING APPEALS
MINUTES
DECEMBER 14, 2006**

The Board of Zoning Appeals met on Thursday, December 14, 2006, at 5:15 p.m. in the Council Chambers, 45 E. Broad Street, Cookeville, Tennessee.

MEMBERS PRESENT: Tracy Cody, Kay Detwiler, and Jane Flatt.

MEMBER ABSENT: Larry Burgess and Sid Gilbreath.

STAFF PRESENT: James Mills and Jayne Barns.

OTHERS PRESENT: Jess Anesi, Martin Foutch, John Gentry, Martin Ing, Joseph Robertson, and Dave Roland.

CONSIDER FOR APPROVAL THE MINUTES OF NOVEMBER 9, 2006. Tracy Cody made the motion to approve the minutes of November 9, 2006. Kay seconded the motion and the motion carried unanimously. **APPROVED.**

CONSIDER A REQUEST FOR AN ADMINISTRATIVE REVIEW CONCERNING DENIAL OF PERMIT FOR AN OFF-PREMISE SIGN LOCATED AT 961 SOUTH WILLOW AVENUE. REQUEST SUBMITTED BY DAVID DAY ON BEHALF OF LAMAR ADVERTISING. James Mills stated that Mike O'Mara, City Attorney, had informed him that Mr. Day had requested that this matter be withdrawn from consideration due to the fact that the Board had already acted on the matter on August 10, 2000.

Mt. Mills distributed a letter from Mike O'Mara, City Attorney, to David Day dated December 13, 2006, regarding the request. The letter stated the following:

The purpose of my writing is to advise you that in preparing for the hearing on December 14, it was discovered that this matter has been previously appealed to the Board of Zoning Appeals. Enclosed is copy of the minutes of the August 10, 2000, meeting of the Board of Zoning Appeals in which the matter of the issuance of a building permit for this location was considered and rejected by the Board of Zoning Appeals. As a result, the Board of Zoning Appeals does not have jurisdiction to hear this matter again because it was finally resolved by the Board of Zoning Appeals on August 10, 2000.

Although the Board could have rejected the appeal because it was not timely filed, the Board considered the appeal, found it was not timely filed and further found that there was no error on behalf of the building official in denying the issuance of the permit. It appears that the action on August 10, 2000, of the Board of Zoning Appeals was a final decision and no appeal was taken to Chancery Court from this decision.

Part two of your application makes it clear that this is the same relief requested from the Board of Zoning Appeals on August 10, 2000. If for any reason you feel that my interpretation of the prior action of the Board of Zoning Appeals was incorrect please let me know. It is my intention to advise the Board of Zoning Appeals to not hear any proof in this matter but merely take into consider your application and the prior action of the Board of Zoning Appeals.

Staff recommended that the request for withdrawal be approved.

Kay Detwiler made the motion to approve withdrawal of the request since the Board had already heard and denied the appeal on August 10, 2000. Tracy Cody seconded the motion and the motion carried unanimously. **WITHDRAWN.**

CONSIDER A REQUEST FOR A VARIANCE IN THE MINIMUM LOT SIZE REQUIREMENT AT 810 SOUTH WALNUT AVENUE. REQUEST SUBMITTED BY PUTNAM PROPERTIES. Mr. Chad Gilbert of Putnam Properties has submitted a request for a variance to reduce the minimum lot size requirement of the RS-10 Single Family Residential District for one lot of a proposed two lot subdivision of his property located at 810 South Walnut Avenue and identified as Parcel 12.12 on Map 66B, Group C.

The minimum lot size requirement of the RS-10 District is 10,000 square feet. The subject parcel consists of approximately 19,558 square feet. Mr. Gilbert would like to subdivide the property into two lots, with one lot consisting of 10,000 square feet and the other approximately 9,558 square feet. This is a reduction of approximately 442 square feet or less than five percent of the required lot size.

Staff recommended conditional approval subject to compliance with all other requirements of the Zoning Code.

Tracy Cody made the motion to grant conditional approval of the 442 sq. ft. variance subject to compliance with all other requirements of the Zoning Code. Kay Detwiler seconded the motion and the motion carried unanimously. **CONDITIONAL APPROVAL.**

CONSIDER A REQUEST FOR A FRONT SETBACK VARIANCE ON LOWE AVENUE ON THE PROPERTY LOCATED AT 442 SOUTH JEFFERSON AVENUE. REQUEST SUBMITTED BY JESSE ANESI OF ALDI INCORPORATED ON BEHALF OF MARK PIRTLE. James Mills stated that Mr. Jesse Anesi of ALDI, Inc., on behalf of property owner Mark Pirtle, has submitted a request for variance from the minimum street setback for property zoned as CG, General Commercial and located at 442 South Jefferson Avenue. The property is further identified as Parcel 9.00 on Map 53K, Group K.

ALDI, Inc. intends to purchase the subject property for the purpose of constructing a food store. The parcel is a double frontage lot with frontage on both South Jefferson and South Lowe Avenues. Both of these streets are classified as major streets requiring setbacks of 50 feet.

The submitted request is for a reduction in the setback requirement along South Lowe Avenue and includes two proposals. The first proposal would require a reduction in the setback of approximately 29 feet (resulting in a setback of 21 feet) for a distance of about 196 feet along South Lowe Avenue. The second proposal would require a maximum

reduction in the setback of approximately 23 feet with the reduction decreasing for a distance of about 120 feet. The second proposal is contingent upon the purchase of a right-of-way remnant from the city along South Lowe Avenue. The City Council approved declaring this right-of-way remnant as surplus property at its December 7, 2006 meeting.

The southeast corner of the subject property adjacent to the right-of-way proposed for purchase is significantly sloped, limiting its use. As stated earlier, required setbacks occupy 100 feet of the property. It should also be noted that the building previously located on this property did not comply with required setbacks encroaching approximately 25 feet along South Jefferson Avenue. As there are particular hardships with this property it appears that some form of variance would be justified to allow a reasonable use of the property.

Staff recommended conditional approval subject to the acquisition of unused right-of-way as approved by the City Council and subject to compliance with all other provisions of the Zoning Code.

Kay Detwiler made the motion to grant conditional approval of the Variance request according to Exhibit #1 and subject to staff's recommendation. Tracy Cody seconded the motion and the motion carried unanimously. **CONDITIONAL APPROVAL.**

CONSIDER A REQUEST FOR A VARIANCE IN THE BUFFER REQUIREMENT AT 2990 MINE LICK CREEK ROAD. REQUEST SUBMITTED BY JOHN GENTRY ON BEHALF OF THE FRIENDSHIP CHURCH OF GOD. James Mills stated that Mr. John Gentry, on behalf of Friendship Church of God, has submitted a request for a variance to waive the landscape screening requirements for a portion of their property zoned as RS-20 and located at 2990 Mine Lick Creek Road.

The Friendship Church of God has constructed a church on the subject property. Section 206.4 of the Zoning Code requires that churches provide a Type 2 Screen and Buffer Yard along all lot lines shared with lots zoned or used for single or two-family residential purposes. All properties adjoining the church property are zoned for single family purposes. The church is requesting that the screening requirement be waived along its western property line shared with property located at 3000 Mine Lick Creek Road and identified as Parcel 40 on Map 65H, Group C and owned by Glenn Hamilton.

Mr. Gentry indicates that the owner of the property at 3000 Mine Lick Creek Road does not want the screening installed. Mr. Gentry also indicates that the church will commit to installing the required screening if requested by any future owners of the property located at 3000 Mine Lick Creek Road.

Staff recommended conditional approval subject to the submittal of documentation that the owner of the property at 3000 Mine Lick Creek Road is opposed to the installation of the required screening, and to the submittal of a formal commitment from the church that

it will install the required screening if any future owners of the property at 3000 Mine Lick Creek Road should request it, and subject to compliance with all other provisions of the Zoning Code.

John Gentry submitted a site plan and a letter from Glenn Hamilton opposing the buffering requirement between the two properties.

Tracy Cody made the motion grant conditional approval subject to the preparation and recordation of legally binding attachments to the deeds of the properties owned by Mr. Hamilton (Parcel 40 on Map 65H, Group C) and Friendship Church of God (Parcel 88.10 on Map 65) indicating that should Mr. Hamilton or any future owner of said Parcel 40 desire that the required landscaping be installed the owner of said Parcel 88.10 will do so. The wording of the attachments to be approved by the City of Cookeville. The preparation and recordation of the attachments to be incurred by the petitioner with proof of recordation provided to the city. The Friendship Church of God must also comply with all other provisions of the Zoning Code. Kay Detwiler seconded the motion and the motion carried unanimously. **CONDITIONAL APPROVAL.**

ADJOURNMENT: 6:00 P.M.

SUBMITTED FOR APPROVAL

SUBMITTED FOR RECORDING

**JAYNE BARNS CPS
PLANNING ASSISTANT**

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