

Board of Zoning Appeals
Minutes
July 13th, 2023

The Board of Zoning Appeals met on Thursday, July 13th, 2023, at 5:15 p.m. in the Council Chambers located at 45 E. Broad Street, Cookeville, Tennessee.

Members Present: Nancy Bohannon, Michael Detwiler, James Dial & Elwood Ervin.

Members Absent: Connie McCormick.

Staff Present: Haley Dickson, Christopher Phillips, & Jon Ward.

Staff Absent: Ken Young & James Mills.

Others Present: Lindsay Pride, David Clouse, Kacy Minnear, Lee Williams, Johnny & Carol Maddux, Pearl Smith, Chuck Wilson, Jimmie Simpson, Andrea Simpson, Thurman Bilbrey, Craig Davis, and Karen & Ed Smith.

Consider for Approval the Agenda as Submitted. Michael Detwiler made the motion to approve the agenda as submitted. Elwood Ervin seconded the motion, and the motion was carried unanimously. **Approved.**

Consider for Approval the Minutes of June 8th, 2023. Elwood Ervin made the motion to approve the minutes of June 8th, 2023 as submitted. Michael Detwiler seconded the motion, and the motion was carried unanimously. **Approved.**

Consider a request for a variance to reduce the rear yard setback from 20 feet to 19 feet for a total variance of one (1) foot for the property located at 267 East 7th Street (Tax Map 053-C, Group B, Parcel 013.01). Request submitted by Patrick Shea Callahan. Mr. Jon Ward stated that Mr. Patrick Shea Callahan has submitted a request for a variance to reduce the rear yard setback from 20 feet to 19 feet for a total variance of one (1) foot for his property located at 267 East 7th Street. The request was submitted to allow for an existing nonconforming structure within the rear setback.

Analysis: The subject property is identified as Parcel 013.01 on Tax Map 053C, Group B and contains approximately 0.40 acres. The property is zoned RS-10, "Single-Family Residential" as are all adjacent properties.

Mr. Callahan submitted a Lot Line Revision plat for Planning Commission review at the May 22, 2023 meeting. The lot line revision involves three (3) lots located at 267 East 7th Street (053C, B 013.01), 253 East 7th Street (053C, B, 014.00) and 615 North Jefferson Avenue (053C, B, 001.00). The plat depicts a shift of the southern lot boundary of the properties at 253 and 267 East 7th Street to accommodate an existing driveway located at 615 North Jefferson Avenue. The initial survey depicted an existing nonconforming accessory structure located at 267 East 7th Street over the property line of 253 East 7th Street. According to the submitted survey, the existing cabin footprint is 500 square feet (20-feet by 25-feet). Accessory structures over 400 square feet must meet the required setbacks for the zoning district. The plat was revised to include the accessory structure entirely on the property at 267 East 7th Street but remaining within the ten (10) foot side yard requirement. The shift of the property line to the north creates a rear setback encroachment of one (1) foot that does not exist prior to the proposed lot line adjustment.

The Planning Division recognizes the accessory structure as a legal nonconforming structure. The structure was previously situated over the property line and the plat does adjust the lot line boundary to include the structure entirely on the subject lot. The structure does encroach over the side yard setback requirement, but this encroachment was in existence prior to the proposed plat. The shift of the southern boundary to accommodate the driveway does create a rear setback encroachment of one (1) foot that did not exist prior to the proposed lot line revisions subdivision plat.

The variance is necessary to allow the lot line to be shifted to accommodate an existing driveway. The plat must still be considered by the Planning Commission. In the opinion of the Planning Division, the requested variance for the nonconforming accessory structure would not be detrimental to the public welfare or injurious to other property in the area.

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Recommendation: Approval of the request to reduce the rear yard setback from 20 feet to 19 feet as depicted on the submitted plat.

Mr. Elwood Ervin asked for clarification if the southern boundary line and dividing boundary line was moved.

Mr. Jon Ward stated yes, the lot lines were adjusted to accommodate the structure that was over the property line.

Elwood Ervin made the motion to approve the variance request as recommended by staff. Michael Detwiler seconded the motion, and the motion was carried unanimously. **Approved.**

Consider a request for a variance to reduce the fence location requirements from no closer than five (5) feet to any street to zero (0) feet from an alley for the property located at 427 Laurel Avenue (Tax Map 053-B, Group A, Parcel 022.00). Request submitted by Jimmie Simpson on behalf of West View Baptist Church. Mr. Jon Ward stated that Pastor Jimmie Simpson, on behalf of West View Baptist Church, has submitted a request for a variance to reduce the fence location requirements from no closer than five (5) feet to any street to zero (0) feet from an alley for the property located at 427 Laurel Avenue. The request was submitted to allow for a new fence to be constructed on the church's property boundary.

Analysis: The subject property is identified as Parcel 022.00 on Tax Map 053B, Group A and contains approximately 1.66 acres. The property is zoned RD, "Single-Family and Duplex Residential" as are the adjacent properties to the north, east and south. The property is bordered by CL, "Local Commercial" to the south and east.

Section 204 Supplemental Regulations, Section 204.9 Fences and Walls, 204.9C.2 states:

No fence or wall shall be placed on any street right-of-way or public easement, unless determined by the City Manager that excessive right-of-way exists that would allow the fence or wall to be located in the right-of-way and not create a traffic hazard. Such determinations shall include a duly executed agreement between the property owner and the city indicating that should it be determined by the city that the fence or wall needs to be removed from the right-of-way that it will be done so in a timely fashion by the property owner and at the property owner's expense. In no case shall any fence be closer than five (5) feet from any public street or closer than two (2) feet from any sidewalk.

Pastor Simpson has submitted a request to construct a fence along the eastern property boundary of West View Baptist Church. The property is bordered by an existing public alley. The southern portion of the alley is approximately 20 feet in width and the northern portion narrows to approximately 16 feet at the rear of the property at 418 North Willow Avenue. The church has concerns with the patrons of the adjacent commercial businesses using the church parking lot. The fence would provide physical separation from the church parking lot and the existing businesses. The variance request is to allow the church to construct the fence on the property line with the public alley.

The alley is currently used by some of the existing businesses for access and for solid waste disposal. The Zoning Code requires that a fence be located no closer than five (5) feet from a public street. A public alley is similar to a public street in that both provide a means of public ingress/egress to property, although alley access is predominately secondary access, with a public street providing primary access. The area of the alley and church parking lot is currently all paved with no apparent boundary. The Planning Division does have concerns that installation of a fence directly on the boundary could involve fence footers or hole areas to be within the alley. The fence should be sited in a manner that would not require any holes or other modification within the public alley. Also, fence installation should be sited no further than the property corners with West 4th Street and West 5th Street and all requirements of the Zoning Code should be met at these points to ensure no obstruction of visibility. The Planning Division recognizes aspects of the variance request are interpretation of an alley versus a street.

In the opinion of the Planning Division, the requested variance would not be detrimental to the public welfare or injurious to other property in the area.

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Recommendation: Approval of the request to reduce the fence location requirements from five (5) feet to any street to zero (0) feet from an alley subject to no digging or modifications permitted within the alley to install the fence.

Mr. Ervin asked if the Board of Zoning Appeals has approved a variance for the property located near the church recently.

Mr. Ward stated that the Board has approved a parking variance for the property located at 404 North Willow Avenue, and the church could terminate the parking agreement held between the church and the business at any time.

Mr. Ervin asked if the current fence variance request was approved, would it nullify the previous variance.

Mr. Ward stated that the parking agreement was between the church and the business, and the city would have no say in it.

Pastor Jimmie Simpson, petitioner, stated that the intent of his request is to establish the property boundary lines. He stated that over the years, there has been significant issues the business on Willow Avenue encroaching into the alley. The alley is useless as far as anyone navigating it from 4th Street to 7th Street. He stated that this has caused concerns especially for when Willow Avenue is widened that the parking situation is going to get worse. Pastor Simpson stated that the church can't use the parking lot for ministry services because of traffic concerns. He stated that he has a business agreement with the doctors office located at 404 North Willow Avenue where the business will pay for the portion of gate behind their building and in return the church will install a gate for the employees.

Ms. Carol Maddux, of 447 Laurel Avenue, stated that she owns the property located behind the church. She stated that the city has let people build with no parking and is concerned that they will do the same near her property.

Mr. Jon Ward stated that the parking issues stem from old legal nonconforming businesses from years ago. His only concern with the variance is that anything needs to happen completely out of the alley right-of-way.

Mr. Elwood Ervin made a motion to approve the request with the condition that the petitioner install the fence with no encroachment of the alley.

Elwood Ervin made the motion to approve the variance request as recommended by staff. Nancy Bohannon seconded the motion, and the motion was carried unanimously. **Approved.**

Consider a request for a variance to reduce the fence height requirements from 60 inches to 56.5 inches for a total variance of 3.5 inches and an administrative review of the Chief Building Official's determination that an existing perimeter fence does not meet the requirements for a swimming pool fence established in the Zoning Code Section 206, Additional Standards, Section 206.25 Swimming Pools, 206.25B, for the property located at 328 South Dry Vally Road (Tax Map 052, Parcel 027.00). Request submitted by Lee Williams.

Mr. Jon Ward stated that Mr. Lee Williams has submitted a request for a variance to reduce the fence height requirements from 60 inches to 56.5 inches for a total variance of 3.5 inches and an administrative review of the Chief Building Official's determination that an existing perimeter fence does not meet the requirements for a swimming pool fence as established in the Zoning Code Section 206, Additional Standards, Section 206.25 Swimming Pools, 206.25B, for his property located at 328 South Dry Valley Road. The request was submitted to allow the existing perimeter fence to function as the required fence around a swimming pool area.

Analysis: The subject property is identified as Parcel 027.00 on Tax Map 052 and contains approximately 19.57 acres. The property is zoned RS-20, "Single-Family Residential" as are the adjacent properties to the north, west, and south. The property is bordered by the corporate city limits to the east.

During inspection of the new house construction on the subject property, the Codes Division notified Mr. Williams that a fence would be required around the newly constructed pool. Mr. Williams has submitted a

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request to allow the existing perimeter fence located on the subject property to meet the requirements of a swimming pool fence established in the Zoning Code.

Section 206, Additional Standards, Section 206.25 Swimming Pools, 206.25B states:

The swimming pool area shall be walled or fenced so as to prevent uncontrolled access by children and pets from the street or from adjacent properties. Said fence or wall shall be not less than five (5) feet in height and maintained in good condition. All gates shall be self-closing.

The petitioner has provided an exhibit depicting fencing along the perimeter of the property. The existing fence is 56.5 inches tall and consists of five (5) strands of high tensile wire. The Codes Division verified the fence height but was unable to verify existing fencing along the northeastern, eastern and southeastern areas of the property. The Codes Division determined that the existing fencing does not meet the requirements established in Section 206.25B. The International Building Code requires a swimming pool to have a fence four (4) feet in height, but further requires that openings in a barrier around a swimming pool shall not allow passage of a four (4) inch sphere. No gates are present as required by code. The petitioner has stated that a gate could be installed on the driveway to satisfy this requirement.

The property consists of approximately 20 acres. The nearest residence is approximately 450 feet from the swimming pool. The request to reduce the fence height requirement from 60 inches to 56.5 inches represents a 5.8 percent variance from the required height. In the opinion of the Planning Division, the variance to the height requirements would not be detrimental to the public welfare or injurious to other property in the area as the 56.5-inch height is greater than the Building Code requires, however, the property does not appear to be entirely fenced, and the existing fencing does not appear to meet the requirements of the Zoning or Building Codes.

Recommendation: Denial of the request

Mr. Lee Williams, petitioner, showed where portion of fence was ripped out during construction. He stated that the rest of property is fenced. He has a security system and alarm pool for any disturbances in the water.

Mr. Elwood Ervin asked what the reason is for not installing a perimeter fence.

Mr. Williams stated that the entire property is fenced so he doesn't see the need for a fence around the pool also doesn't want one for aesthetics and the view.

Mr. Ervin asked Mr. Ward what would bring the perimeter fence up to code.

Mr. Ward stated that the zoning code doesn't stipulate and that it is part of the building code.

Mr. Michael Detwiler made a motion to postpone this request for 60 days to allow the Codes Division and the Williams to work out a solution. Elwood Ervin seconded the motion, and the motion was carried unanimously. **Postponed 60-Days.**

Adjournment: 5:52 P.M.

Submitted for Approval

Submitted for Recording

Haley Dickson
Planning Assistant

James Dial, Chairman
Board of Zoning Appeals