MINUTES OF THE GOODLETSVILLE
BOARD OF ZONING APPEALS

Date: May 12, 2003
Time: 5:00 PM
Place: City Hall Conference Room
Members Present: Tom Mosier, Owen Sanders, Ed Lowe, Glen Garrett
Absent: Mike Cunningham
Staff Present: Bill Terry, Bennie Lane, Vicky Ignatz
Others Present: James Peay, Barbara Peay, Jon Norton, Jim Bale, Steve Johnson, Lorene Anderson, Mike Isenbraun and others

The meeting was called to order by Tom Mosier. The approval of the minutes of the April 14, 2003 Board of Zoning and Sign Appeals Board was deferred.

CASE NO. 2003-04-440 Consider the request of James A. Peay, 198 Memorial Drive, Davidson County Tax Map 25, Parcel 25 for a conditional use permit to establish an entertainment and amusement business on the premises.

Analysis – Staff reviewed. Terry reported this request was considered at the April 14, 2003 meeting of this Board. The request was deferred to permit staff to investigate the sporting activity, determine the proper zoning classification for the proposed paintball course and secure a ruling from the Metro Health Department regarding restroom regulations for this type activity. As noted in the previous meeting, the first problem is access. The property has no frontage on a public road, but gets its driveway access across the city's park property via a portion of the Delmas Long Community Center parking lot. Mr. Peay was asked to provide official documentation as to proof of the access easement to Memorial Drive. After last month's deferral, the applicant submitted a deed dated 1951 which purports to identify the required easement. However, staff is unable to determine exactly where the easement is located. The distances are not in agreement after a comparison of the survey to the tax maps. The applicant's survey does depict a driveway across the city park property but no easement.

However, the first issue to be decided is whether or not the proposed use of the property is recreational or commercial in nature. Staff believes this to be a commercial activity and therefore, prohibited in this zone. Terry reiterated the board has the authority to determine if the proposed use is cultural/recreational or amusement/entertainment based. The board has no authority to grant a "use variance" to transfer a specified use from one zoning district to another zoning district.

Discussion – Terry displayed a video depicting the driveway access to Memorial Drive to the Peay property across the city's park property. Peay identified a stone monument at the corner of the Peay property which includes a driveway access to the east of the city's property which extends several hundred feet deep and provides an entrance for NES access. Terry stated he was not aware of a second access from Memorial Drive.

Mosier asked what constitutes a cultural/recreational and an amusement/entertainment activities. Terry read from the Goodlettsville Zoning Ordinance that cultural and recreational services include activities of a nature which are either owned by, or operated for the use and enjoyment of the general public. (Refer to Section 14-406(d). This does not embrace facilities which are privately owned and operated for profit. Amusement and entertainment services provide cultural, entertainment, educational and athletic services, other than those classified as Community Facility Activities, to assembled groups of spectators or participants. (Refer to Section 14-406(i). Mosier, Lowe, Sanders and Garrett agreed that the paintball activity more closely related to an outdoor commercial venture.

Terry offered the applicant two (2) recommendations to permit paintball activities on the property. First, the applicant could request an amendment to the Goodlettsville Zoning Ordinance. The process would be to make application to the Goodlettsville Planning Board to consider amending the ordinance to include paintball activities in the terminology for cultural and recreational activities permitted in an agricultural zoning district. Should the Board agree with the request, a recommendation would be made to the City Commission to consider the amendment to the ordinance. Second, the applicant could request a zoning amendment to rezone a portion of the property for commercial use which would comply with the current zoning regulations regarding amusement/entertainment activities in a commercial district.

Action of the Board - Motion by Garrett to reject the request of James A. Peay, 198 Memorial Drive, Davidson County Tax Map 25, Parcel 25 for a conditional use permit to establish an entertainment and amusement business on the premises based on the fact that the proposed paintball course is a commercial activity which is prohibited in agricultural zoning. Motion seconded by Sanders. Motion passed unanimously.

OFFICIAL ORDER OF THE BOARD

WHEREAS; the public and adjoining property owners have been adequately notified, and

WHEREAS; the Board has determined that the requirements of Section 14-1409(c) have been met, and

WHEREAS; the Board has determined that adverse impact will occur;

NOW, THEREFORE, BE IT ORDERED, that a conditional use permit to establish an entertainment and amusement business on the premises of James A. Peay, 198 Memorial Drive, Davidson County Tax Map 25, Parcel 25 is denied based on the fact that the proposed paintball course is a commercial activity which is prohibited in the current agricultural zoning district.

CASE NO. 2003-05-442 Consider the request of Steve Johnson, 103 Justin Court, Sumner County Tax Map 143B, Parcel 8 for a zoning ordinance variance regarding maximum accessory building height. The applicant is Jim Bale Construction.

Analysis - Staff reviewed. Terry reported the applicant is requesting a variance in the maximum accessory building height for a garage at 103 Justin Court. The purpose of the variance is to build a roof pitch at 10/12 that would bring the overall height of the roof to twenty-one (21) feet. The maximum height permitted is eighteen feet for an accessory building. The Board has approved such variances in the past if the purpose of the request is to bring the garage architecturally compatible with the house and the creation of the storage space is incidental.

Another factor is that the ordinance requires an accessory building to be located behind the primary structure. In this case the current building plan indicates the garage will be extended approximately seven (7) feet in front of the main structure due to the excessive slope on the side of the property.

Discussion – Steve Johnson, owner, confirmed the reason for the variance request was for architecturally compatible with the existing house. The Wynlands Homeowners Association has voted to approve the addition. Garrett recognized that due to the slope of the lot, a seven (7) feet variance in the zoning regulation requiring an accessory building to be located behind the residence should be considered.

Action of the Board - Motion by Sanders to grant the request of Steve Johnson, 103 Justin Court, Sumner County Tax Map 143B, Parcel 8 for a zoning ordinance variance to 1) increase the maximum accessory building height by three (3) feet to a maximum of twenty-one (21) feet in height; 2) no living quarters are to be utilized in the accessory building; and 3) to grant a seven (7) feet variance in the zoning regulation requiring an accessory building be built behind the primary building based on the excessive slope of the property. This will permit the garage to be built as depicted on the submitted building plans. Motion seconded by Lowe. Motion passed unanimously.

OFFICIAL ORDER OF THE BOARD

WHEREAS; the public and adjoining property owners have been adequately notified, and

WHEREAS; the Board has determined that the requirements of Section 14-307(f) have been met, and

WHEREAS; the Board has determined that no adverse impact will occur;

NOW, THEREFORE, BE IT ORDERED, that a three (3) feet variance in the maximum height of an accessory building be granted at 103 Justin Court, Sumner County Tax Map 143B, Parcel 8 based on the fact that the additional height is necessary for the continuity of the existing and proposed structures and that the following conditions be observed: 1) the height of the accessory building is not to exceed the height of the existing residence; 2) no living quarters are to be utilized in the accessory building; 3) to grant a seven (7) feet variance in the zoning regulation requiring an accessory building be built behind the primary building based on the excessive slope of the property. This will permit the garage to be built as depicted on the submitted building plans

CASE NO. 2003-05-445 Consider the request of Lorene Anderson for a temporary use permit for a retail sales site at Long Hollow Pike and Caldwell Road, Sumner County Tax Map 143, Parcel 69.

Analysis – Staff reviewed. Terry reported the applicant wants to set up a temporary sales site to take donations for Avon products to be delivered to the military personnel currently serving in the Middle East. This site is currently utilized by Phillip Upchurch for flower and landscape sales. The ordinance permits the board to consider temporary use permits for "certain necessary or seasonal uses" that are non-permanent in nature such as fireworks and Christmas tree. It would appear to staff that Avon products are available in a variety of ways on a permanent basis and are not a seasonal product. It should be noted that two (2) temporary use permits have been issued for farm produce and fireworks sales on this property which will extend into the month of August, 2003.

Discussion – Lorene Anderson stated the purpose of the temporary sales site is to take donations for distribution of four (4) types of skin products to military personnel currently serving in Iraq. The people making donations will provide their name, address and a short message to the military personnel. This information will be mailed with the product to military outposts and distributed to the personnel.

The sales site would consist of a vehicle with Avon logo and flags and card table to display products and take donation information. A sign will be posted on the roadway regarding the donations. The site would be used on Fridays, Saturdays and Sundays until June 20, 2003.

Mosier stated the temporary use permits were directed to businesses that are seasonal in nature. Garrett shared his concern that multiple sales sites on this lot would exhibit fleamarket type sales and that previous requests to locate more than one business on the property simultaneously has been discouraged. Lowe acknowledged that he had no problem with the marketing idea; however, the Board has established guidelines for temporary use permits and rules should be abided by.

Action of the Board – Motion by Lowe to reject the request of Lorene Anderson for a temporary use permit for a donation site for Avon Products at Long Hollow Pike and Caldwell Road, Sumner County Tax Map 143, Parcel 69 based on the interpretation that this is not a seasonal sales business and is not covered by the temporary use permit regulations and that multiple sales on one site is discouraged.

OFFICIAL ORDER OF THE BOARD

WHEREAS, the public has been adequately notified, and

WHEREAS, the Board has determined that the requirements of Section 11-901(n) have been met, and

WHEREAS, the Board has determined that adverse impact will occur;

NOW, THEREFORE, BE IT ORDERED that the request of Lorene Anderson for a temporary use permit for a retail sales site at Long Hollow Pike and Caldwell Road, Sumner County Tax Map 143, Parcel 69 be denied based on the interpretation of the Board that the sale and/or acceptance of donations for Avon Products is not a seasonal sales business, thereby, the request is not permitted by the temporary use permit regulations and that multiple sales on one site is discouraged by this Board.

CASE NO. 2003-05-446 Consider the request of Goodwill Industries of Middle Tennessee, Inc., Rivergate Plaza, Davidson County Tax Map 26-14 for a zoning ordinance variance regarding exterior storage. The applicant is Mike Eisenbraun.

Analysis – Staff reviewed. Terry reported the Goodwill retail store at Rivergate was notified that the use of a trailer for outside storage purposes is not permitted in the CSL zoning district by the zoning ordinance. The company called to request an interpretation by the Appeals Board. Documentation supporting their position has been provided to the board members for review.

A drop-off area would be permitted on site, however, a trailer is not permissible. The city attempts to limit the use of these type trailers for storage to zones where outside storage is permitted; therefore, the request introduces the possibility of this type use. It is also true that Goodwill is a unique type of operation and that drop-off donations enable them to perform their mission. It is noted that many drop-off sites turn out to be problems. When access is available twenty-four (24) hours per day, as is the case here, the public has open access which results in junk and trash being left along with the usable materials. One unique aspect of this site is that the homeless have developed some type of camps in the wooded area behind the Waffle House and the back wall of the Rivergate Plaza building. It is suspected that the homeless supplement their camp with materials from the drop-off site.

The property management company for Rivergate Plaza has confirmed that Goodwill has tentative approval for use of the building and site as long as the area is kept clean, free of litter and it causes no problems for other tenants. They have reserved the right to cancel their approval if required.

Terry exhibited a video depicting the trailer and drop-off site on May 12, 2003.

Discussion - Mike Eisenbraun, Goodwill Industries representative, described the attended donation center as a twenty-eight feet trailer with uniformed attendants on premises during the hours of store operations, seven (7) days per week. At this particular site, the trailers are removed and transported to the downtown location for processing approximately five (5) to six (6) days per week. An empty trailer is then returned to this site for reloading. The store has been in operation for approximately seven (7) years, but Isenbraun was not aware how long the exterior donation center has been on site.

The Rivergate site is the second most productive site in Middle Tennessee. In 2002, twenty-one thousand, five hundred and fifteen (21,515) people made donations to the site creating $630,000 in revenue for the non-profit organization. If this site cannot be maintained, it would impact the mission of the organization.

Mosier questioned what brought the donation center to the attention of the Codes Department. Lane responded that there have been no complaints regarding the donation center directed to the Codes Department. The outside storage issue was identified by the Codes Director in a routine visit to the area. The donation trailer has been in operation approximately one year when it was noticed a second trailer was located along side the first trailer. A search of the building permit did not indicate an exemption for exterior storage.

Lane indicate that routine inspections do not exhibit excessive donations outside of the trailer and that the dumpster is fairly regularly. There is evidence of homeless persons pilfering donations.

Mosier asked if parking space requirements are currently impacted and would approval of a variance request violation the parking space requirements listed in the zoning ordinance. Terry responded that approximately five (5) to six (6) spaces are affected by the trailer; however, this area of Rivergate Plaza is under utilized and has created no parking problems on a day to day basis. The holiday season generates maximum usage of the parking area. There is not information to confirm the site has produced a negative impact to available parking. A traffic study would have to be conducted to determine if the donation trailer is violating the parking space requirements established by the zoning ordinance.

Lowe questioned how the removal of the donation trailer would impact the business. Eisenbraun indicated the donations would be placed in the interior storage area in the rear of the building; however, the available square footage would not be able to maintain the current level of donations and would negatively impact revenue. Sanders asked if the operation could be maintained with a smaller trailer. Eisenbraun responded that due to the large volume of donations, this size trailer is required.

Lowe suggested that the trailer is transported daily to the downtown location, an empty trailer is returned to the site for new donations and eliminate the interpretation that the use is outside storage. Eisenbraun agreed that if this is the determination of the Board, that the trailer would be removed from the premises each morning at 7:30 AM for transport to Nashville and an empty trailer returned for new donations. Garrett acknowledged that the use of the trailer is the issue. If the Board approves this variance, we are setting a precedent. Specific on-going conditions for this type industry will need to be determined.

Motion by Lowe that a variance to the Goodlettsville Zoning Ordinance regarding outside storage be granted to Goodwill Industries of Middle Tennessee, Inc., Rivergate Plaza, Davidson County Tax Map 26-14 based on the following conditions:

1) the variance is granted based on the non-profit operation of the existing business for re-use of donated/recycled materials for the support of the business;
2) the on-site donation trailer must be removed daily from the premises at 7:30 AM;
3) the on-site donation trailer can measure no more than twenty-eight (28) feet;
4) should complaints be received by staff from adjoining businesses or property owners, the Board will reconsider the status of the variance;
5) the donation trailer site complies with all regulations of the property management company for Rivergate Plaza;

OFFICIAL ORDER OF THE BOARD

WHEREAS, the public has been adequately notified, and

WHEREAS, the Board has determined that the requirements of Section 14-1408 (c)(2),(f) have been met, and

WHEREAS, the Board has determined that no adverse impact will occur;

NOW, THEREFORE, BE IT ORDERED that a variance to the Goodlettsville Zoning Ordinance regarding outside storage be granted to Goodwill Industries of Middle Tennessee, Inc., Rivergate Plaza, Davidson County Tax Map 26-14 based on the following conditions:

1) variance is granted based on the non-profit operation of the existing business for re-use of donated/recycled materials for the support of the specified business;
2) on-site donation trailer must be removed daily from the premises at 7:30 AM;
3) on-site donation trailer can measure no more than twenty-eight (28) feet;
4) should complaints be received by staff from adjoining businesses or property owners, the Board will reconsider the status of the variance;
5) on-site donation trailer must comply with all regulations set forth by the property management company for Rivergate Plaza;

Tom Mosier

Tom Mosier, Chairperson

Vicky Ignatz

Vicky Ignatz, Recording Secretary