



**CHEATHAM COUNTY BOARD OF ZONING APPEALS**

**MINUTES FOR FEBRUARY 24, 2015**

Chairman Nash called the meeting to order at 6:00 p.m..

Chairman Nash led the Pledge of Allegiance.

Mr. Miles led the Prayer.

Building Commissioner Atkins called the Roll of Members

Members Present: Larry Nash, Roy Miles, Mark Whitworth and Burt Adcock

Members Absent: Mary Sneed

Chairman Nash declared a quorum present.

**Approval of Minutes and Agenda:**

Chairman Nash asked if there was a motion to approve the minutes for the last meeting (i.e. January 27, 2015) and the agenda for tonight's meeting amended to reverse the order of the items to be heard to give Attorney Michael Bligh time to arrive to the meeting. **\*\*Motion\*\* made by Mr. Miles to approve the minutes for the January 27, 2015 meeting as presented and circulated and the agenda for tonight's meeting as amended to reverse the order of the items to be heard; second by Mr. Adcock; Voice Vote Taken; Motion carried unanimously by all members present; Motion passed; Minutes for the January 27, 2015 meeting approved as presented and circulated and the Agenda for tonight's meeting approved as amended to reverse the order of the items to be heard**

**Agenda Items to be Heard:**

2. Mr. John Dix, representing Mt. Hebron Community Church, owner/applicant, requesting approval of a Special Exception to construct a new church building. This is in reference to the Cheatham County Zoning Resolution, Sections 5.041 (D) (7), 8.050 and 8.070. Property is located on Mosley Ferry Road, Chapmansboro, TN; map 17 parcel 22.01 and is zoned Agriculture. Property consists of 5.40 acres in the 4<sup>th</sup> voting district and is not in a flood area.

1. Mr. Ralph Smith, owner/applicant, Appealing the Building Commission's Decision to require the removal of a camper trailer from the Applicant's property. Applicant wishes his camper to remain as a dwelling on an intermittent basis. This is in reference to the Cheatham County Zoning Resolution, Sections 2.010, 2.020, 5.044, 5.070 through 5.076, 7.020 and 8.050. Property is located on Chapmansboro Rd., Chapmansboro, TN; map 44I parcel 7 and is zoned R-2. Property consists of less than 1 acre in the 1<sup>st</sup> voting district and is in the AE floodplain.

**ITEM #2:**

Chairman Nash read the item into the record as advertised. Mr. Dix approached the board representing the church. He explained that the church wished to build a new building because the original church building was built in 1921 and needs to be replaced. The property upon which it will be built is next door to the current church building. Mr. Whitworth questioned if the driveway would come off of Copperhead Drive or Mosley Ferry Road. Mr. Dix stated it would probably come off Mosley Ferry Road. Mr. Whitworth stated he would probably abstain from voting because his parents live off of Copperhead Drive. Chairman Nash asked if there was a motion. **\*\*Motion\*\* made by Mr. Miles to approve the Special Exception to allow construction of a new religious building in accordance with Sections 5.041 (D) (7), 8.050 and 8.070 of the Cheatham County Zoning Resolution;**

**second by Mr. Adcock; Chairman Nash called for the question; Roll Call Vote Taken; Voting Yes – Larry Nash, Roy Miles and Burt Adcock; Voting No – None; Abstain – Mark Whitworth; Absent – Mary Sneed; Yes-3, Absent-1, Abstain-1, No-0; Motion Passed; Special Exception Approved**

Chairman Nash declared a 5 minute break in the meeting to allow Attorney Michael Bligh time to arrive to the meeting prior to the next item being considered.

**ITEM #1:**

Chairman Nash read the item into the record as advertised. Attorney Ben Dean approached and spoke to the board representing the applicant, Mr. Smith. Attorney Dean presented a letter to the board (see meeting file). Mr. Dean stated this is a similar case to one he represented last month, but there are some different circumstances and facts. He stated that Mr. Smith had not owned or used this property before the May, 2010 flood event, but he still contended that this is not an illegal use of the property based on the regulations and he should not have to remove the camper. It was contended and agreed upon that the camper is not an accessory structure, but rather an accessory use. Mr. Dean stated that the building office's position is that in absence of any primary structure or use, an accessory use cannot exist on the property. Mr. Dean responded that he disagreed with such. He continued by presenting the argument that the definition of an accessory use is very broad. Mr. Dean asserted that the permitted uses under R-2 – Section 5.044 (B) and (C) are very broad. Mr. Dean stated that it is his understanding from the building and codes office that if there was a permanent residence present on the property, the camper could be parked but no one could dwell in it. Building Commissioner Atkins interjected that without a permanent dwelling present, the camper is serving as a primary use on the property and such is not a permitted use under Section 5.044 (B). Mr. Atkins stated that with or without a permanent dwelling present, Mr. Smith cannot live in the camper even one night. Mr. Dean stated that such is a legal jump that should not be made. Mr. Dean asserted that because the use of a camper without a permanent residence present is not specifically forbidden in the Zoning Resolution, such cannot be enforced. Mr. Dean stated that if Mr. Smith was using it to live in, he would have a problem himself but since it is just for recreation purposes, it should be allowed. Mr. Atkins explained that Mr. Smith did not own the property before the May, 2010 flood event, rather purchased it afterwards in April of 2011. Mr. Dean offered testimony from Mr. Ralph Smith. Mr. Dean questioned Mr. Smith. Mr. Smith stated that he purchased the property approximately 4 years ago. Mr. Smith stated that the camper has been on the property about 3 ½ years. Mr. Smith stated that the camper is not on a permanent foundation and it is set upon jack stands and blocks and can be moved in ten minutes. Mr. Smith stated that it still has its wheels and tires on and is fully tagged and licensed. Mr. Smith stated that it is road worthy. Mr. Smith stated that he resides on Crescent Drive in Springfield, TN and does not use this subject property as a residence. He stated that he stays on the subject property on the weekends and uses a “port-o-potty” as a bathroom. Mr. Smith stated that the camper is not attached to a sewer system of any kind. Mr. Smith stated that he stays there as often as he can and enjoys the recreational use of it. Chairman Nash asked if he has electricity to the camper and Mr. Smith responded yes he did from a CEMC pole. Mr. Smith stated that Wayne Reeves maintains the “port-o-potty”. Mr. Miles asked Mr. Smith if the person he bought it from informed him of the current zoning classification. Mr. Smith stated that the deed didn't show any restrictions on it. Mr. Atkins stated that was in reference to the deed, not any information from the Building Commission. Mr. Atkins stated that this is a similar situation as existed with Mr. Dean Norwood's property. Several neighbors spoke in opposition to the camper's presence and presented evidence as shown in the meeting file. The common theme to the neighbors' opposition was that the area is a residential area and not a campground and the applicant should have done his due

diligence. Mr. Atkins spoke to say that the camper is not permitted because it is not an enumerated permitted use and Section 5.044 (E) "Uses Prohibited" states "In the R-2, Medium Density Residential District, any use not permitted by right, by accessory use, or as a Special Exception as defined above is strictly prohibited." Mr. Atkins continued by saying that a legal non-conforming condition does not apply because Mr. Smith bought the property after the flood of 2010 and brought the camper in afterwards. Mr. Atkins asked that the board affirm the Building Commission's decision and require that the applicant remove the camper. Attorney Bligh spoke to say that contrary to the applicant's presentation, it is not up to the county to show a specific prohibition; rather, it is up to the applicant to show that their use fits as a permitted use. Mr. Bligh stated that there are only two types of permitted uses: Detached Single-Family and Duplex Dwellings (excluding Mobile Homes) and Essential Services. Mr. Bligh stated that it must fit into one of those two categories in order for the use to be allowed. He continued by saying there are Special Exceptions, but such is not what has been presented here. Mr. Bligh stated that, as to the accessory use argument, you cannot have an accessory use without a legal primary use in existence. Chairman Nash asked if there was a motion. **\*\*Motion\*\* made by Mr. Whitworth to affirm the Building Commission's Decision to require the camper to be removed from the subject property since such is not permitted as a permitted use in an R-2 zoning district in accordance with Sections 5.044 and 8.050 of the Cheatham County Zoning Resolution; second by Mr. Adcock; Mr. Miles called for the question; Roll Call Vote Taken; Voting Yes – Larry Nash, Roy Miles, Mark Whitworth and Burt Adcock; Voting No – None; Absent – Mary Sneed; Yes-4, No-0, Absent-1; Motion Passed; Building Commission's Decision Affirmed; Camper Required to be Removed**

There being no further business, motion was made to adjourn the meeting by Mr. Miles with a second by Mr. Adcock. Voice vote carried unanimously by all members present. Motion passed. Meeting adjourned.

**ROY MILES III – SECRETARY  
CHEATHAM COUNTY BOARD OF ZONING APPEALS**