



**CHEATHAM COUNTY BOARD OF ZONING APPEALS
MINUTES FOR JULY 27, 2015**

Chairman Nash called the meeting to order at 6:03 p.m.

Chairman Nash led the Pledge of Allegiance.

Roy Miles led the prayer.

Building Commissioner Franklin Wilkinson called the Roll of Members

Members Present: Larry Nash, Roy Miles, Burt Adcock

Members Absent: Mark Whitworth, Mary Sneed

Chairman Nash declared a quorum present.

Others Present: Jack Cook, Jaquelin Cook, Brad Scarbrough, Wesley Slayden, Rita Slayden, Kathi Whitley, Pete Shaw, Brennan O'Connor

Approval of Minutes and Agenda

Chairman Nash called for a motion to approve the minutes for the last meeting (i.e. June 22, 2015) and to approve the agenda for tonight's meeting. ****Motion**** made by Roy Miles to approve the minutes from the meeting from June 22, 2015 and to approve the agenda for July 27, 2015; second by Burt Adcock; Voice Vote Taken; Motion carried unanimously by all members present; Motion passed; Minutes from June 22, 2015 approved and the agenda for July 27, 2015 approved.

Agenda Items to be Heard:

ITEM#1:

Chairman Nash read the item into record as advertised. Mr. & Mrs. Jack and Jacqueline Cook, Requesting a Variance of 30 feet, to be able to use the existing 20 foot access easement for the purpose of applying for a building permit to construct a structure on subject property. This is in reference to the Cheatham County Zoning Resolution Section 3.030 (D). Property is located on Pickards Rd. (off Cedar Hill Rd.) White Bluff, TN.; map 82, parcel 13.03 consisting of 46.60 acres. Property is in the 6th voting district and is not in a flood zone. Cheatham County Commissioner, Franklin Wilkinson addressed Chairman Nash and noted that a portion of the property and the easement is in an AE Special Flood Hazard Area. The original application to the Board of Zoning Appeals did not designate a Flood Area. Chairman Nash acknowledged the correction. Mr. Cook addressed the Board and presented some supporting documents and commenced reading the documents into the record. Mr. Cook stated; Pickards Road was declared a public road November 3rd, 1989 before the change in easement width requirements. Mr. Cook presented a copy of a court declaration that gives the exact location of the road. It says it goes from Cedar Hill Rd. into the property owned by Melinda Sanders. The property is now owned by Charles Taylor. The judge said it was a public road immediately after he discovered that there was a cemetery on the Taylor property and that the public cannot be denied access to a cemetery. When I bought my property for Randel Taylor, Gilbert Taylor was the executor of the estate. The land owner, where the O'Connors now live, Russ Pickard, blocked everyone out. Gilbert and I had signed a contract, before I bought it, that he would provide me accesses to my property. When Russ Pickard blocked everyone out, Mr. Taylor took Mr. Pickard to court and the judge declared that it was a public road. In November of 1990 I was granted a building permit and sewage disposal permit, before the easement requirements changed. I started a cabin that I had planned to make into a workshop, or mother in law house, at the time of building the primary dwelling. Sine then most of it has been removed but the footings are still in place therefore, I feel like I should be granted a permit to continue. I was never informed of a

meeting involving my property and the new zoning regulations and was never able to voice my opinion at the meeting. I was not informed of the change and only found out years later. Chairman Nash clarified that the applicant was referring to the adoption of the Cheatham County Zoning Resolution. Mr. Cook continued stating; when I did decide to build again I found out that the zoning requirements had changed. I meet with the Community Planner at that time when Bob Perry was the attorney. She told me that if I had renewed the permit every year that I could get a building permit. I made critical, life changing decisions based on acquiring the building permit, with the belief that I would be able to build in the future. When that was denied, the future value of my property plummeted. I can only guess what my opponents reasons might be for denying me access but I have the documents showing it as a public road. It has to be a public road and not a drive because the addresses are addressed off Pickards Road. I have a letter from their attorney stating that their address is 119 Pickards Rd. One excuse may be is that the road is not wide enough for traffic to meet and more traffic will do some kind of harm. I had the road widened for traffic to pass 20 years ago. Gilbert Taylor has added gravel in the past. It has since been allowed by the O'Connors to grow up and dirt to fill in on the uphill side creating only one lane. The last time I was on it, there was a gully on their property that I would have had to fill in manually to get to our home if we lived there. I plan on widening it again and putting down crusher run gravel. Another reason may be that the O'Connors will not grant me, Gilbert Taylor, or Charles Taylor to cross them for power is because, per their attorney quote, "unsightly lines across their pastoral land. Those lines would not be visible from their house but that would not be an issue because I plan to acquire electricity across Mr. Meadows or Mr. Corlew first. If I succeed, I will allow Gilbert and Charles Taylor to come across my property so the O'Connors will not have to look at the power lines. A 50' easement already exist across the two properties that my easement crosses. One formally owned by Robert & Linda Sanders and the other formally owned by Ralph Taylor. Both are now owned by Charles Taylor. Mr. Cook presented the building permit from 1990 and the letter from the O'Connors attorney stating that they live at 199 Pickards Rd., and a letter granting Charles Taylor a 50' easement. There is a road going to that property and a 50' easement across the two properties to my property. I need a permit to acquire power. In a letter to Mr. Grace (O'Conner's attorney) from Mr. Smith (Dickson Electric), stated "as you are surely aware, Dickson Electric has authority to institute condemnation proceedings if it decides to do so. In another letter to Charles Taylor's attorney from Mr. Smith, on the same date, quote "The uncertain cost and expenses of the condemnation action at this point to service undeveloped property is not financially feasible. I called Mr. Smith and asked him if I need to pull a building permit for him to consider it developable. He replied "yes". Mr. Cook clarified that Mr. Smith represents Dickson Electric. Mrs. Cook read a statement that " your decision will forever impact mine and my wife's retirement. She plans to retire from the Dickson Board of Education next year. I love what I do. I want to continue recording for song writers and singers until they no longer come to me. I plan on acquiring electricity, rebuilding the cabin that I started 25 years ago and spending time there. If we like it, we will build a home to retire in and sell our current home. If we do not, we will sell it. Either way hundreds of thousands of dollars are at stake here for us. That is why I am here. To plead my case asking to grant me and my wife this variance and that this variance be transferrable to another party should one of us die and the other has to sell it. After further discussion and a review of a boundary survey presented, Brad Scarbrough addressed the Board and introduced himself as the attorney representing the Amanda and Brennan O'Conner. He stated that his clients on July 9, 2015 obtained a letter from the Cheatham County Highway Department declaring this a private drive, what everybody has been referring to as Pickards Road or Pickards Lane. His clients do live at 199 Pickard Lane. Basically, to give you a little background and history, this is not a public road. It is approximately a 10 foot wide dirt and gravel path that comes off of Cedar Hill. There was some mention earlier about a 50 foot easement already existing. I have reviewed the property records and have not seen, nor have my clients seen, granted a 50 foot easement for anyone to come across their property. To give you a point of reference, lot 6 denotes the O'Conner's property on the boundary survey presented for view. The reference to a document back in the 80's about a dispute. Mr. Taylor who owned lot no 7 and no 9, on the boundary survey, wanted to get access to his property. People had been using this drive to get to their property and somebody blocked Mr. Taylor from getting to his property. The drive way floods on an annual basis and the O'Connors sometimes have to use kayaks to get to their house. It is constantly washing away and is basically a 10 foot wide trail.

I am not sure what the letter regarding Dickson Electric has with these proceedings. What it does tell you is that Dickson Electric does not currently have an easement along this path. When I read the zoning ordinance 8.06 A regarding variances, it states that the applicant must first have a written denial of a building permit. The original building permit had expired and the law had changed. The property rights are not vested. Looking at section 3.030 of the zoning resolution, this section is what Mr. Cook referenced in his filing for the variance. No building permit or certificate of compliance may be issued nor any building or structure shall be erected on any lot within the planning region unless one of the following criteria is met: A. The lot fronts for a distance of at least fifty (50) feet on a public street, except on a permanent dead-end street (cul-de-sac) where the minimum frontage may be thirty (30) feet. It is undisputed here that Mr. Cook is approximately a mile and a half from the public street of Cedar Hill Rd. The boundary survey present shows Mr. Cook's property closer to another road on the map. We are not sure why access is not being sought at the other location. The lot does not front 50 feet of a public street. Does not front 50 feet on a street on a subdivision plat, and does not front 50 feet on a street plat approved by the regional planning commission. Mr. Cook's request is based on, the lot fronts for a distance of at least fifty (50) feet on a permanent access easement with access to an existing public highway or street which conforms to all rules, regulations and specifications applicable to the permanent access easement requirements of the planning commission or other department, division or agency of the county. Earlier when Mr. Cook was talking about his access, he is crossing eight different people's properties. When he gets to property no 7 & 8 is where he has a 20 foot access easement. The easement is on the southern boundary of my client's property. My clients believe that any type of development will cause erosion onto my clients property. Section 2.02 defines a permanent access easement as; A perpetual easement guaranteeing right of ingress and egress to and from the premises of a lot owner to a street appurtenant to the land of the owner. Any permanent access easement utilized as the sole means of providing legal access to two (2) or more parcels of land shall: (1) be so designed as to assure continuing adequate ingress and egress for emergency vehicles; and (2) be assured adequate continuing maintenance by an owners association or similar organization. The portion of the permanent access easement intended for ingress and egress shall, unless located within a Planned Unit development district, be constructed to the standards of a public street as specified in the Subdivision Regulations. In any instance where a permanent access easement is located within a PUD district or multi-family development, the design standard shall be as approved in the development plans required therefore. **(Added by Resolution 6, Dated October 16, 1995)**. The road that comes off Cedar Hill road and including the 20 access easement depicted on the map does not qualify as a permanent access easement. Also this drive will not accommodate emergency vehicle nor is Mr. Cook party to a maintenance agreement. This drive is not constructed to the standards of a public street per the subdivision regulations. Section 3.030 Provided further, that a permanent access easement which serves more than one resident or farm, or is used as access to a lot or tract of land having been separated by deed or plat from other property, be at least fifty (50) feet in width, its entire length and meet the requirements for a permanent access easement as set forth in the Cheatham County Subdivision Regulations. The easement must be a public street, maintained, and allow emergency vehicles. This request does not meet all the requirements for granting a variance per the Cheatham County Zoning Resolution. Several of the properties on Pickards Lane have not been able to get building permits. The Board should not act just to accommodate Mr. Cook. Roy Miles asked Mr. Scarbrough if Mr. Cook had land bound property. Mr. Scarbrough replied "no" because they have an easement. Mr. Scarbrough stated that this property is currently in litigation. The Cooks and the Taylors are working together to try to get a 15 foot utility easement all the way down Pickards Road. Mr. Cook does not have an easement. They have done nothing to enforce their rights to get an easement. They are arguing that the court order in 1983 declared it a public road. That was actually incorrect because the order also says it is not a County road but is a Public Road. It is either a Public Road or a Private drive. It is either maintained by the government or it is maintained by private individuals. It is our position that they don't have an easement. Mr. Taylor is now filing suit to have himself declared to have an easement. He is seeking a 15 foot easement because he thinks that the court order already gave him an undeclared size of an easement to come down that road. There is no expressed easement. These owners have not granted an easement. This has historically been an access to these properties but hasn't been the only access to these properties. It is my understanding that at

one time the Taylors and Cooks were accessing their properties at a different location that was much closer. This is not a legal easement and would not meet the zoning resolution standards for an easement. After further discussion Mr. O'Conner addressed the Board and presented some photographs for the property including flood events. Mr. O'Conner stated that road access floods several times per year. At times he has used a kayak to get from Cedar Hill Rd. to his property. The road is only wide enough to allow one car to pass. I have seen the water rise and block the road for two to three days. There are no homes beyond ours down Pickards Rd. Mr. O'Conner stated that there is no foundation of an old cabin on the Cook property. Before he was told not to access the property, he was up there and saw no evidence of any structure or foundation. The corner lot has a 50 foot easement off Cedar Hill Rd. After further discussion, Mr. Scarbrough stated that his client has a legal easement that gets them to their property from Cedar Hill Rd. The house was built before all the zoning regulations were in place. After further discussion, Rita Slayden addressed the Board and stated; I live on the corner property and have been there for 15 years. I have never met the Cooks. I don't understand why they couldn't come and speak to us. Our concern is that he is going to build on the property and then sell it in subdivisions. As far as up keeping the road, I have never heard a word of him up keeping anything. We all keep the road up. We all pay Gilbert Taylor to keep the road up. I've never seen a dollar of his money and I don't know who he is. Wesley Slayden addressed the Board and stated that it is a private road. We live back in the hollow over there, no 2 on the map. The property does flood twice a year and we have to cover up the culverts and make improvements on the road. I just pay for my cost of maintaining the road from my property to Cedar Hill Rd. Pete Story addressed the Board on behalf on Mr. Meadows, who is in the hospital. Mr. Story stated; it looks like he could come off Leatherwood Rd. a whole lot shorter than going down Pickards Rd. We farm several of the properties. If it is changed to a public road, who will maintain it? Mr. Scarbrough stated that his client did not receive a certified letter informing them of the variance request. After further discussion Michael Blight stated; You can have a public road but it does not mean it is a County road. You can have a public road, which means the public has a right to use it. It does not mean it belongs to the County and that the County maintains it. The court order does say that it is a public road for the use of all persons including adjoining property owners. When we talk about the zoning resolution, we talk about what you have to have access to, it says a street. A street is defined as a publicly maintained road. You have to have either a 50' wide access to a public street or the permanent access easement that gets you out to that street. You have to get all the way from the property out to Cedar Hill Rd. We are not talking about getting to Pickards Rd. but getting all the way out to Cedar Hill Rd. The only defendants in the court order were Russ Pickard and Trudy Pickard. It only deals with the part of the road that goes across their property, that are 5 & 6 on the map. The defendant was allowed access across 5 & 6 but it still did not deal with access across 1, 2, 3 & 4. The existence of any easement is in question. You don't have an easement of record that the applicant can point to and say, here is my easement taking me all the way out to a public street. There is an easement from his property to Pickards Rd. but after that there is the question about what the applicant does have. To the extent there is an easement, if you worked out all the other problems, you would get down to the width issue for the easement. Then what would be required is the permanent access easement that is defined in the zoning resolution. There has to be ingress and egress of emergency vehicles and some assurance of maintenance of the permanent access easement. It looks like there is a lack of an easement all the way to a public street and if there was an easement, a lack of ingress and egress for emergency vehicles. Granting the variance would only apply to the existing easement and would not get him all the way out to the road so the Building Commissioner cannot issue a building permit. The applicant does not have any vested rights based on the expired building permit. There may be other remedies available but working out the applicants rights to access are beyond the scope to the Board of Zoning Appeals.

A ****MOTION**** was made by Roy Miles and 2nd by Burt Adcock to deny the request for the variance based on the fact that the determination, location, and right to access of the easement is beyond the scope of the Board of Zoning Appeals. The motion to deny passed by roll call vote. Roy Miles - yes, Burt Adcock - yes, Larry Nash - yes.

OTHER: None

There being no further business, ****Motion**** was made to adjourn the meeting by Burt Adcock with a second by Larry Nash. Voice vote carried unanimously by all members present. Motion passed. Meeting adjourned at 7:30 PM.

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