

Board of Zoning Appeals Meeting Minutes

The Shelbyville Board of Zoning Appeals met in Regular Meeting on May 20, 2021, at City Hall Annex Courtroom. Chairman Jamie Williams called the meeting to Order at 6:00 PM. City Recorder Lisa Smith called the roll, and the following were present: Member Randy Carroll, Chairman Jamie Williams, Councilmember Stephanie Isaacs, Member John Davis, and Member Gary Calvert. Also, present were Acting City Planner Kevin Chastine, City Recorder Lisa Smith, and City Attorney Ginger Bobo Shofner. A quorum was declared and the meeting began.

Approval of Agenda: Chairman Williams called for a motion to approve the Agenda as written, Councilmember Isaacs made the motion to approve, Member Carroll seconded, and the motion carried by unanimous oral vote.

Approval of Minutes: The minutes from the January 21, 2021 & February 25, 2021, were then up for approval. Member Davis made a motion to approve both sets of minutes as submitted, Member Carroll seconded, and the motion carried unanimously upon oral vote.

New Business:

Special Exception Request for Self-Storage/Mini-Warehouse Use at Tax Map 69, Parcel 61.02: Acting Planner Chastine advised this request is for a Special Exception to construct a Self-Storage/Mini Warehouse on the property. This property was annexed in January and was requested to be zoned C-2 which was passed by City Council in April. The Self-Storage/Mini Warehouse use is a Special Exception that can be requested under the C-2 Zoning. There are 14 specific requirements that must be met for approval of the Special Exception and 7 general requirements. All 21 requirements have been answered indicating how this request satisfies each requirement and Planner Chastine then reviewed each exception. As this request meets all Special Exception requirement found in Section 7.4(A) and Section 7.5(H) of the Shelbyville Zoning Ordinance, Staff recommends approval of the Special Exception for RT 437 Global Storage Solutions to be located on the northside of Highway 437 By-Pass, east of Fairfield Pike with one condition of approval: (1) Applicant shall submit a site plan for review and consideration by the Shelbyville Planning Commission. There was then conversation concerning the residential development going up close to this property and the required buffer zone. Developer John Stefanski advised he had met with TDOT concerning the egress/ingress and they were good with the access point. Member Davis questioned the fence requirement in relation to the natural tree line buffer. Stefanski advised the fence would go in front of the trees, no trees will be removed. Member Davis made a motion to approve based on compliance with the 7 general exceptions and 14 special exceptions requirements, Member Calvert seconded, and the motion passed unanimously upon oral vote.

Administrative Review of Acting Planning Director Decision, Pursuant to Zoning Ordinance Section 7.2(A), for 751 North Main Street (Tax Map 78P, Group D, Parcel 8.00) Zoning Ordinance Compliance: Acting Planner Chastine advised Mr. Lee Roy Cunningham had submitted an application asking the Board to review the Acting Planner's decision concerning the property located at 751 North Main Street. Chastine stated the Board has the authority to review his decision based on Section 7.2(A) of the Shelbyville Zoning Ordinance which reads, *"The first enumerated power is to hear and decide appeals where it is alleged by the appellant that there is error in any order, requirement, permit, decision, or refusal made by a City Official in the carrying out or enforcement of any provision of the zoning ordinance. This power concerns the Board's authority to review the actions of the building official in relation to the specifics of the zoning ordinance. In all cases falling under this power, the burden of proof*

is on the applicant to prove that the administrative official actions are not in conformance with the provisions within the zoning text.

In this case, Chastine in his position as Acting Planning Director sent a Violation letter dated March 15, 2021, to the property owner Lee Roy Cunningham. The letter advised there were two (2) violations:

- 1) The owner placed a mobile home on the property and residential uses are not permitted in the Commercial-2 (C-2) zone district.
- 2) Section 3.9 Building Requirements in Commercial or Industrial Zones of the Zoning Ordinance requires buildings in a commercial or industrial zone have to be site-built, "or if prefabricated, be originally designed and constructed for commercial purposes."

The letter ordered the Mobile Home to be removed from the property. Member Carroll questioned if the City codes considered mobile homes and manufactured homes the same. Chastine advised in this regard that is not really the issue, the issue is the property is zoned Commercial-2 (C-2) and has been for years and this is a residential structure. Carroll questioned if the reason it was allowed before was because Mrs. Cunningham operated a flower shop. Chastine advised there was a Commercial Business in the bottom floor of a two-story structure which was a non-conforming residential use. The structure was destroyed by fire in January of 2010. At that time according to the Zoning Ordinance if a non-conforming residential use is destroyed more than 50% it can be reconstructed with the non-conforming use but must be done so within 12 months. Chastine advise there is no indication the owners contacted the City during the 12 months after the fire to request to rebuild.

Chairman Williams then recognized Edward L. Hiland, Attorney for Lee Roy and Elizabeth Cunningham, property owners. Mr. Hiland began his discussing by handing out a timeline (attached) of the Cunningham's property beginning with the purchase in 1971 through present day. He then advised the subject structure is not a mobile home. He handed out case law (attached) and a MTAS (attached) document and noted they all speak to the fact there is a difference between a mobile home and manufactured home. He stated this is a prefabricated not site-built home which is a nice-looking structure. Taking that into consideration the only issue is what it is to be used for. He advised it was designed as a house, but it can be used for any purpose. Mr. Hiland advised after the fire the Cunninghams relocated next door to 755 North Main Street, where Mr. Cunningham operates a business. He noted there are several businesses along North Main where a residence it also located. Hiland noted the structure can be used as a business and the only thing that is keeping this structure from getting a building permit is to prevent them from putting the structure "on block" which goes back to the "mobile home" description. Hiland then advised Mr. Cunningham purchased this house after coming to City Hall and speaking to Mr. Reed Hilland and asking if there was any problem putting a building back on the lot. Mr. Hiland advised he has contacted Mr. Reed Hilland, and Mr. Hilland stated he does not remember this conversation. According to Mr. Cunningham Hilland advised yes, he could do this as long as he was aware of the setbacks. After this assurance Mr. Cunningham purchased the home and had it moved to 751 North Main. At which time Mr. Bryan Stevens of the City of Shelbyville Building Codes came by and requested the Building Permit, which Mr. Cunningham did not have. Cunningham then applied for a Building Permit which was denied. Hiland then presented a letter he had written to City Attorney Ginger Shofner on November 12, 2020 (Attached). He advised that no one has inspected the property only denied the Building Permit. At one time the Cunninghams met with Acting Planner Chastine and after the meeting according to the Cunninghams they were told by Chastine that

he would tell Mr. Stevens to issue the Building Permit. The use of this property was the same for 48 years. Mr. Hiland stated that the Cunninghams have experience financial strain due to this and he notes if we go any further, he submits the City may very well have some financial difficulties.

Chairman Williams questioned the tax cards of the property stating Residential pays 25% and Commercial pays 40%. Hiland stated the tax card showed zoned Commercial – residence on the second floor. He further noted after he pointed this out to Attorney Shofner. The tax card changed to Commercial – Mobile home on property does not conform. Member Calvert questioned if the building was on a permanent foundation and Hiland stated it would be as it would be on the original foundation of the home that burnt. Chairman Williams stated he was unaware of the Zoning Requirements in 1971, but there are certain rules and requirements for putting a residence in Commercial Zones. Williams read from the Zoning Ordinance for the City of Shelbyville, *“any building in a Commercial or Industrial Zone shall be site built or if prefabricated be originally designed or constructed for commercial purposes.”* Additionally, he added and installed on a permanent foundation. He questioned if the building in question was designed for commercial purposes. Hiland advised it was designed as a building that has a kitchen and bathrooms and other rooms that can be used as anything. Acting Planner Chastine brought attention to the Building Permit Application (attached) that was submitted by Mr. Cunningham along with a Floorplan signed by Mr. Cunningham. The Floorplan shows the building was clearly constructed as a residence, not an empty structure with rooms that can be used for any purposes. Chastine advised that Building Codes Director Stevens was not able to attend the meeting tonight due to illness but would be available by phone. He then read a statement from Mr. Stevens, *“The manufactured structure is not suitable for use as a commercial building, it may be converted but it would require inspections by the manufacture as well as inspection by the electrical inspector for the County prior to occupancy and there are no ADA Compliance features installed.”* Chastine reminded there are two key points that are for review before the Board – 1) Chastine’s application that the zoning for this property is C-2 and the structure whether called a mobile home or a manufactured home is still for residential use, and 2) Section 3.9 a building in a commercial zone must be site built or prefabricated for commercial use. Mr. Chastine advised he spoke with the Cunninghams in October he does not deny making the statement to them concerning allowing the structure however, during the discussion he looked at both 751 and 755 North Main and Chastine pointed out that 755 North Main did have a space that may allow for this building as there was an existing use of residential there and that is what he was talking about. Chastine then addressed the legal non-conforming use. The use existing in 2010 when the building was destroyed by fire. The use can be re-established if done so within 12 months of the fire. There was no attempt to do this until the structure was moved on the property in 2019. Also, photos from Google Map show cars from the car sale business being parked on 755 North Main which would show the intent to use the property for commercial use. Attorney Richard Duggar requested to speak. He advised he did not represent Mr. Cunningham but ask to speak for other citizens in the City. Attorney Ginger Shofner advised that normally Public Comments are not allowed in this forum. She noted that Chairman Williams could make a determination to allow Mr. Duggar to speak if he felt he would provide information pertaining to what is before the Board tonight. Mr. Duggar then made a statement concerning other citizens living in their building and then left the room.

Chairman Williams advised we are only here to discuss the two points stated and not what was said and who said what. City Attorney Shofner addressed a couple of points, noting there had been a lot of statements tonight that had no bearing on the decision to be made. The Board will be looking if there is

any error in the decision made by Planner Chastine. The tax card mentioned by Mr. Hiland is controlled by the State and County and not dictated by the City. There was a legal non-conforming use or grandfathered use at one time and Mr. Chastine made the decision that use was lost after the fire. The Board's purpose is to address the error if any that was committed by Acting Planner Chastine in his determination. Shofner further advised the case law provided by Mr. Hiland did not apply as it is related to preventing manufactured homes in residential areas. Those can be permitted but they must meet certain requirements.

Chairman Williams stated there were two findings and the job of this Board is to determine if the two findings were consistent with the Zoning Ordinance. The first finding was the property at 751 North Main is currently zoned C-2 and according to the Zoning Ordinance as stated in Appendix 1 -Table of Uses does not permit any type of residential use to be established on property zoned C-2. He further noted according to the Zoning Ordinance if that established use is lost you have 12 months to renew it. Attorney Hiland stated he would argue how the use was lost. He advised it was established thorough 2010 at least. Attorney Shofner advised it had been established they had a non-conforming use which was address in Section 6.E. Williams read the Section into the record, *"If a non-conforming use is destroyed or partial destroyed through no intention of the owner to the extent of more than 50% of the replacement cost the structure may be rebuilt, however, the new structure shall comply with all applicable provisions of this Ordinance and shall be no longer than 125% of the original structures floor area. If the use is residential and is not rebuilt within 12 months than the use shall not be rebuilt, restored, or reoccupied for any purpose except for reasonable cause as determined by the Planning Director. If the use is industrial or commercial and not rebuilt within 30 months, the use shall not be restored or reoccupied for any purpose except for reasonable cause as determined by the Planning Director. Non-conforming use structures must be rebuilt in accordance with the regulation of this Ordinance. No reconstruction of damaged or a destroyed facility utilized by a non-conforming use shall increase the extent of any infringement on any open space required by this Ordinance. The provision of this Ordinance shall apply to the reconstruction of all buildings and structures associated with any non-conforming use located in a flood way district. Reconstruction of all buildings and structures shall be in accordance with the City of Shelbyville Municipal Flood Plane Regulations."* The property is zoned Commercial with the non-conforming use being residential so there would be 12 months allowed for rebuild. Attorney Shofner stated she Item G maybe informative. Chairman read the following *"A non-conforming residential use which has ceased for 12 months or greater shall be assumed to be abandoned regardless of the intent to resume or not to abandon the use and shall be completely terminated. A non-conforming non- residential use which has ceased for 30 months or greater shall be assumed to be abandoned regardless of the intent to resume or not to abandon the use and shall be completely terminated."* Chairman Williams stated on Item #1 the property is zoned C-2 and does not permit residential use. **Member Davis then made a motion to confirm Acting Planning Director Kevin Chastine's decision that residential use is not permitted in Commercial C-2, Councilmember Isaacs seconded, and the motion carried unanimously upon roll call vote.**

Chairman Williams then stated Item #2 the building requirements, any building in a commercial or industrial zone shall be site built or prefabricated and the original design constructed for commercial purposes installed on permanent concrete or masonry foundations designed for permanent connections to municipal sewer and water and comply with all adopted Building Codes. The decision of the Planning Director was that it did not meet the requirements. Attorney Shofner advised based on this part of the

statue Cunningham cannot convert the manufactured building for commercial use. Member Davis stated there are commercial building that are manufactured for commercial use, but this building is not. It is built for use as a residential house. Member Davis made a motion in agreement with the Acting Planning Director Kevin Chastine's interpretation of this portion of the Zoning Ordinance as it applies to this item, Councilmember Isaacs seconded, and the motion carried unanimously upon roll call vote.

Reports from Staff: Planner Chastine advised next month's meeting will be on June 17th at 6:00 PM and we will try to have a training opportunity.

There being no further business, Member Carroll made a motion to adjourn and Chairman Williams second and the meeting adjourned at 7:50 PM.

Respectfully submitted,



Lisa Smith
City Recorder

Approved by Board: 6/17/2021


Chairman

The following memorandum is designed as an attempt to delineate factually the events leading up to this administrative review. It is also designed to respond to the "FINAL COMMENT SHEET" provided to the Commission and received by Counsel for Lee Roy and Elizabeth Cunningham on May 18, 2021.

CUNNINGHAM TIMELINE AND ARGUMENT

Date	Description Of Activity
Jan. 28, 1971	Purchased 751 N. Main / used 751 as residence on second floor and wife, Elizabeth, used the ground floor of structure as a beauty salon. Tax records confirm this.
Jan. 4, 2010	Structure destroyed by fire. Cunninghams transferred residence to 755 N. Main which was also owned by Cunninghams. That mixed use continues until present. Cunninghams' intention was to replace the structure, which had been destroyed, upon the foundation of the original building and once again use the structure for both commercial and residential purposes.
Apr. 15, 2015	New zoning ordinance passed limiting time for rebuilding but left final determination to Director for "reasonable exceptions". Ordinance unavailable on website. Allegedly it was amended x2 but has not yet been approved by MTAS. Cunninghams were never made aware of the adoption much less the amendments and continued to use the property as mixed use and pay their taxes accordingly.
May 2019	Mr. Cunningham went to codes to check on requirements for replacing destroyed house and was informed by Reid Hillen(sic) that the only requirement was that he "watch the setbacks". No mention was made of the necessity of a building permit. Based upon this information the Cunninghams went house shopping.
July 11, 2019	Cunninghams purchased a prefabricated building and contracted for it to be delivered on site at 751.
Oct. 9, 2019	Building arrived on site and was placed over the foundation of the destroyed home. It appears, from the statement of counsel for the city, that an anonymous complaint was made regarding a "mobile home" being placed on 751. Pursuant to the complaint, a representative of the City, Bryan Stevens, approached the client and several other individuals, with a demand to know what client was doing. When it was explained Hillen curtly replied that he could do nothing until he obtained a permit. No mention was made regarding any change in the zoning which would preclude client from replacing the destroyed structure which had been delivered on site. Emphasis was placed upon the fact that the new structure was a "mobile home" which the structure was not.
Oct. 9, 2019	After the confrontation with Stevens, the Cunninghams went to the city offices and applied for a building permit. When several days had passed and nothing had been heard from the City, the Cunninghams contacted the City offices and were advised that the application for a building permit had been lost. Mr. Cunningham directed the office staff to the drawer of a desk where the application had been placed in a green folder.

The application was found in short order. According to the staff the application was then placed on the desk of the same Mr. Stevens involved in the confrontation at 751. Only a few days later the Cunninghams were informed that the building permit had been denied. When pressed for a reason for the denial, no explanation was forthcoming.

Nov. 2019

The Cunninghams attempted to speak with the City Manager, and was advised that they were busy and were directed to speak to Lisa Smith. The Cunninghams spoke with Ms. Smith and she promised to check into the matter. A few days later the Cunninghams received a letter which included a reference to the 2015 enactment. The Cunninghams then returned to the Codes Department and inquired as to what needed to be done for them to use the property as mixed use conforming to the way it had always been used. Mr. Stevens advised that the property would need to be rezoned from commercial, back to residential. The Cunninghams responded that the property had always been classified as mixed use. Mr. Stevens asserted that it made no difference.

The Cunninghams met with Kevin Chastine for approximately two hour going over zoning maps and drawings. After the meeting Mr. Chastine advised the Cunninghams that they were "okay" and that we would tell Mr. Stevens that the Cunninghams should be permitted to finish setting up the structure. The Cunninghams began preparing to finish the placement of the structure and were called back to the Zoning Office where, once again, the request was denied.

The Cunninghams have requested and paid for every step that they had been advised to take. They have been before the zoning commission, the city council and have even met with the Mayor. They still have not been granted a building permit.

LEGAL ANALYSIS

The controlling case law with regard to the use of the term "mobile home" interchangeably with "manufactured home" is discussed in *Tennessee Manufactured Housing Ass'n v Metropolitan Government of Nashville* 798 S.W. 2d 254. The relevant portion of the decision is attached hereto. Further, statutory authority is contained in T.C.A 68-126-202. Still further, MTAS has issued two opinions on this topic both of which are provided with this memorandum.

The Cunninghams would rely upon a plain reading of the Shelbyville Municipal Zoning Ordinance Section 6.3 (E) which requires that the Planning Director shall, **for reasonable cause**, allow variance from rebuilding within 30 months.

With regard to the fact that the ordinance in question appears to have been enacted without notice to the Cunninghams this would in effect "grandfather" their ability to rebuild on the remains of the original structure.

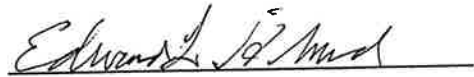
ARGUMENT

Based upon the facts as presented above it can be argued that the Cunninghams have been the subject to rather egregious actions by the City of Shelbyville. What began as an anonymous complaint regarding the alleged attempt by the Cunninghams to place a "mobile home" on the site denominated as 751 N Main Street has evolved into a complaint which attempts to use an alleged zoning violation to refuse the granting of a building permit for a structure to be permanently erected on their own property.

The City began this process using and continuing to use the term "mobile home", even though it is not a mobile home, as a buzz word to attempt to convey some less than suitable construction techniques to the structure proposed by the Cunninghams. It must be understood that this **structure is not a mobile home** but rather a "**prefabricated building**". Whatever negative connotation to the term designed to be evoked by the city in referring to the structure as a "mobile home" must be rejected it is actually a **Prefabricated building**. This matter has caused Mr. Cunningham great economic losses and if not remedied now it will cost both Mr. Cunningham and the City of Shelbyville more money in the long run.

Whatever artifice attempted by the City to arrive at a solution which supports the "staff's" stance in this matter should be ignored and a building permit be awarded to the Cunninghams.

Respectfully Submitted,

A handwritten signature in dark ink, appearing to read "Edward L. Hiland", written over a horizontal line.

EDWARD L. HILAND 05778
20 Academy Place
Nashville, Tennessee 37210
615-251-6968

Tenn. Code Ann. § 68-126-202

Current through the 2021 First Extraordinary Session and Chapter 154 (excluding Ch. 64) of the 2021 Regular Session. The commission may make editorial changes to this version and may relocate or redesignate text. Those changes will appear on Lexis Advance after the publication of the certified volumes and supplements. Pursuant to TCA sections 1-1-110, 1-1-111, and 1-2-114, the Tennessee Code Commission certifies the final, official version of the Tennessee Code. Until the annual issuance of the certified volumes and supplements, references to the updates made by the most recent legislative session should be to the Public Chapter and not TCA.

TN - Tennessee Code Annotated > Title 68 Health, Safety and Environmental Protection > Safety > Chapter 126 Manufactured Homes > Part 2 Uniform Standards Code for Manufactured Homes Act

68-126-202. Part definitions.

As used in this part, unless the context otherwise requires:

(1) "Commissioner" means the commissioner of commerce and insurance or the commissioner's designee;

(2) "Manufactured home" means a structure, transportable in one (1) or more sections, which, in the traveling mode, is eight (8) body feet or more in width, or forty (40) body feet or more in length, or, when erected on site, is three hundred twenty (320) or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air conditioning, and electrical systems contained in the structure; except that "manufactured home" includes any structure that meets all the requirements of this subdivision (2), except the size requirements and with respect to which the manufacturer voluntarily files a certification required by the secretary and complies with the standards established under this title;

(3) "Manufacturer" means any person engaged in manufacturing or assembling new manufactured homes;

(4) "Mobile home" means a structure manufactured before June 15, 1976, that is not constructed in accordance with the National Manufactured Home Construction and Safety Standards Act of 1974, compiled in 42 U.S.C. § 5401 et seq. It is a structure that is transportable in one (1) or more sections that in the traveling mode is eight (8) body-feet or more in width and forty (40) body-feet or more in length, or, when erected on site, is three hundred twenty (320) or more square feet and that is built on a chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities and includes any plumbing, heating, air conditioning and electrical systems contained in the structure;

(5) "Personal use" means use of property by a person or entity not for business purposes and the use of which is not substantially connected with a trade or business or an activity for the production or collection of income;

(6)

(A) "Retailer" means any person:

(i) Engaged in the sale, leasing, or distribution of new manufactured homes primarily to persons who in good faith purchase or lease a manufactured home for purposes other than resale; or

(ii) Engaged in the sale, leasing, or distribution of used manufactured homes;

Tenn. Code Ann. § 68-126-202

(B) "Retailer" does not include any person who sells or leases a manufactured home, if such manufactured home was owned for such person's personal use prior to such sale or lease; any person or persons owning manufactured homes for the purpose of renting or leasing only; or any financial institution that is engaged in the sale, leasing, or distribution of new and used manufactured homes;

(7) "Secretary" means the secretary of the United States department of housing and urban development; and

(8) "Set up" means installation of the manufactured home according to the manufacturer's installation instructions or those provided in § 68-126-403(c)(2), (3), and (4) for new manufactured homes and in § 68-126-403(d)(2), (3), and (4) for used manufactured homes, and includes, but is not limited to: site preparation; support structures, including footings, piers, caps, and shims; anchoring systems; ground moisture barriers; connection, fastening, moisture barrier installation between sections, and roofing dry-in of multi-sections; HVAC duct connections; plumbing and electrical crossover connections; completion of exterior siding; installation of heating application ventilation systems or fireplace chimney systems; and completion of hinged-roof sections.

History

Acts 1979, ch. 310, § 2; 1981, ch. 301, §§ 1, 3-5; 1982, ch. 732, §§ 1-3; T.C.A., § 68-4822; Acts 1987, ch. 120, §§ 3-6; T.C.A., § 68-36-202; Acts 2002, ch. 793, §§ 1-4; 2003, ch. 80, §§ 1, 5; 2005, ch. 379, §§ 2-4; 2015, ch. 483, §§ 1, 2.

Annotations

Notes

Compiler's Notes.

Former title 68, ch. 36, parts 1-4 were transferred to title 68, ch. 126, parts 1-4 in 1992. See the parallel reference table in § 68-126-101 for the former and new section locations.

Amendments.

The 2015 amendment inserted "new" preceding "manufactured homes" in the definition of "Manufacturer" and added the definition of "Personal use".

**Tennessee Manufactured Housing Ass'n v. Metropolitan Government of
Nashville**

Court of Appeals of Tennessee, Middle Section, At Nashville

August 24, 1990, Filed

Appeal No. 01-A-01-9001-CH-00018

Reporter

798 S.W.2d 254 *: 1990 Tenn. App. LEXIS 605 **

THE TENNESSEE MANUFACTURED HOUSING ASSOCIATION and BILLY PARKER, Plaintiffs/Appellants, v.
THE METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY, Defendant/Appellee

Prior History: [**1] Appealed from the Chancery Court for Davidson County at Nashville, Tennessee; The Honorable Irvin H. Kilcrease, Jr., Chancellor.

Case Summary

Procedural Posture

Plaintiffs, a landowner and an advocacy group, sought review of an order of the Chancery Court for Davidson County (Tennessee) that found in favor of defendant city in an action challenging Nashville, Tenn., zoning ordinance § 22.10, which prohibited placing manufactured housing in residential districts. The trial court held that Tenn. Code Ann. §13-24-201 (1987) did not protect the landowner's double-wide manufactured home.

Overview

The landowner sought to place a double-wide manufactured home on property zoned for single-family residences. When the city refused his permit and refused to rezone his property to allow the manufactured home, he and an advocacy group filed an action against the city. On appeal, the court held that the trial court erred in its interpretation of § 13-24-201. Because the statute could be interpreted two ways, the court looked to legislative intent to determine whether the statute excluded all structures coming within the definition of a manufactured home under § 68-36-202(4), as well as mobile homes constructed as a single, self-contained unit. The court found that the legislators intended to exempt structures that were manufactured and transported in at least two sections and then joined together at the site. The completed structure had to have the same general appearance as a site built home. Although the landowner's double-wide came within the city zoning ordinance's definition of mobile home, the court held that to construe the ordinance that way would have violated the statute; therefore, the landowner's home was not prohibited by the zoning ordinance.

Outcome

The court reversed the trial court's judgment that the city could refuse to allow the landowner to locate a double-wide manufactured home on his property. The court remanded the case to the trial court to enter a decision in accordance with the court's opinion. The court taxed the costs of the appeal to the city.

End of Document



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Dear Reader:

The following document was created from the MTAS website (www.mtas.tennessee.edu). This website is maintained daily by MTAS staff and seeks to represent the most current information regarding issues relative to Tennessee municipal government.

We hope this information will be useful to you; reference to it will assist you with many of the questions that will arise in your tenure with municipal government. However, the *Tennessee Code Annotated* and other relevant laws or regulations should always be consulted before any action is taken based upon the contents of this document.

Please feel free to contact us if you have questions or comments regarding this information or any other MTAS website material.

Sincerely,

The University of Tennessee
Municipal Technical Advisory Service
1610 University Avenue
Knoxville, TN 37921-6741
865-974-0411 phone
865-974-0423 fax
www.mtas.tennessee.edu

Manufactured/Modular Homes

Manufactured/Modular Homes

Summary:

HILAND, MATHES & URQUHART

AN ASSOCIATION OF ATTORNEYS
20 ACADEMY PLACE
NASHVILLE, TENNESSEE 37210

EDWARD L. HILAND

PEGGY D. MATHES

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FACSIMILE (615) 251-6975

November 12, 2020

Ginger Bobo Shofner
Bobo, Hunt and White
111N. Spring Street, Suite 202
P.O.BOX 169
Shelbyville, Tennessee 37162-0169

Re: Lee Roy Cunningham and Elizabeth Cunningham
751 and 755 N. Main Street
City of Shelbyville Zoning and Building Codes

Dear Ms. Shofner:

I have received and reviewed your letter of October 27, 2020 and would take this opportunity to address certain elements of that document.

I would agree that this matter has taken an inordinate amount of time to resolve. I would respectfully deny that the passage of time was caused by any action or failure to act upon the part of my client. Basically, after you requested a meeting to "resolve" the situation, I requested from the city that they provide to me all documentation regarding the denial. After my request was denied because of the alleged time it would take to fulfill my request you contacted me and informed me that you would work with the city to provide the documents requested. Approximately two months later I received a voluminous email which attached copies of virtually all city ordinances which you determined would apply to my request.

After reviewing the documents provided, I was left with the conclusion that very little addressed the dispute with which we are faced. In point of fact, my client has never been afforded any written explanation of his denial. Further, I explained that if you would agree that all of the information supplied was the sole reason for the denial, I would be happy to meet with you and the city officials. You responded that I could request other documents if necessary. This led me to believe that you are aware that all pertinent documents requested were not delivered. This conclusion was supported by the allusion you made to "minutes from meetings". I am sure that you would agree that any meetings involving the denial itself would be covered in my request.

You have stated on several occasions and have repeated in your correspondence that you will agree to nothing less than my client removing the building from his premises. If that is still your stance we would proffer that a meeting would be pointless. However, if that is not your stance we will be more than happy to schedule a meeting with you and the city officials can meet with us and attempt a settlement.

In any case I stand ready to represent my client with whatever action necessary to protect his interest.

If you have any questions or comments please feel free to call.

Very Truly Yours,



Edward L. Hiland

Cc: Clients



CITY OF SHELBYVILLE

Department of Building & Codes
201 North Spring Street, Shelbyville, TN 37160
Phone: (931) 684-9001 Fax: (931) 680-7492

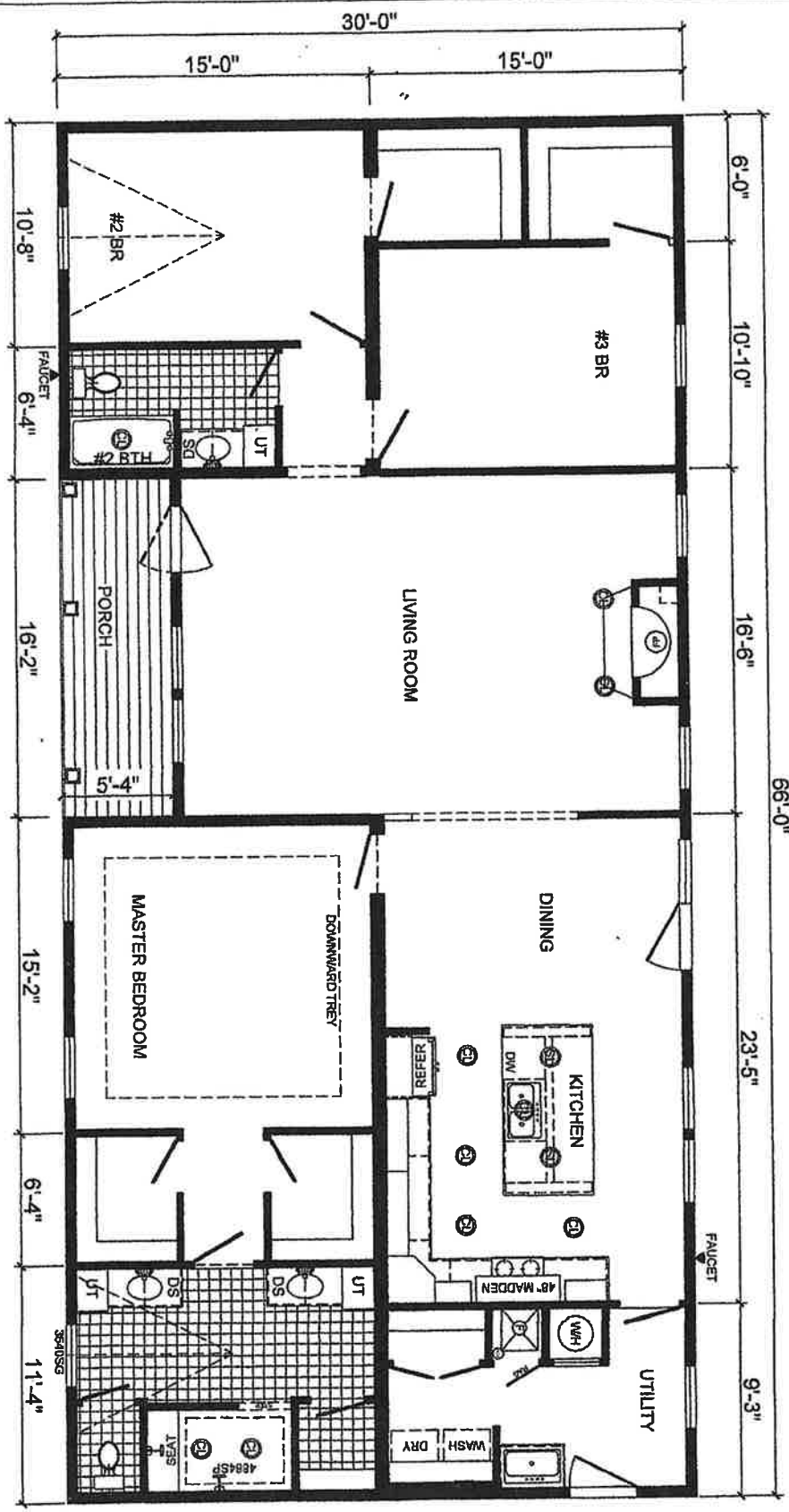
- ☐ RESIDENTIAL
- ☐ COMMERCIAL
- ☐ PLUMBING
- ☐ MECHANICAL
- ☐ OTHER _____

PERMIT APPLICATION

This permit becomes null and void if work or construction authorized is not commenced within six (6) months, or if construction or work is suspended or abandoned for a period of six (6) months at any time after work is started. The applicant agrees to the following: 1) Keep a copy of the approved construction drawings on site during construction. 2) Contact the Building & Codes Department at least 24 hours in advance of required inspection. 3) Have a Certificate of Occupancy issued (if applicable) prior to the usage or occupancy of the structure or building constructed.

1	JOB ADDRESS: <u>151 North Main</u>		MAP & PARCEL ID: <u>7-02320 628P</u>	
2	Zoning: _____ Approval: _____	SUBDIVISION: _____ LOT# _____	IS PROPERTY IN A SPECIAL FLOOD HAZARD AREA? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO If so, Flood Map ID: _____	
3	OWNER <u>Lee Roy Cunningham</u>	MAILING ADDRESS <u>755 N Main</u>	PHONE <u>931-703 4134</u>	
4	APPLICANT <u>Same</u>	MAILING ADDRESS <u>Same</u>	PHONE <u>Same</u>	
5	GENERAL CONTRACTOR <u>Deer Valley Home Builders</u>	MAILING ADDRESS <u>205 Crisp St</u>	PHONE <u>205-468-8400</u>	LICENSE <u>Same</u>
6	PLUMBING CONTRACTOR <u>Same</u>	MAILING ADDRESS <u>Guin Rd</u>	PHONE <u>Same</u>	LICENSE <u>Same</u>
7	MECHANICAL CONTRACTOR <u>Same</u>	MAILING ADDRESS <u>Same</u>	PHONE <u>Same</u>	LICENSE <u>Same</u>
8	TYPE OF CONSTRUCTION: <input checked="" type="checkbox"/> NEW <input type="checkbox"/> REMODEL <input type="checkbox"/> ADDITION <input type="checkbox"/> INTERIOR ONLY <input checked="" type="checkbox"/> PLACEMENT		FOUNDATION TYPE: <input checked="" type="checkbox"/> SLAB <input type="checkbox"/> CRAWL SPACE <u>mod h</u>	
9	PROPOSED USE: <input type="checkbox"/> RESIDENTIAL <input checked="" type="checkbox"/> COMMERCIAL <input type="checkbox"/> DUPLEX <input type="checkbox"/> TOWNHOUSE <input type="checkbox"/> HOUSE RELOCATE <input type="checkbox"/> GARAGE/STORAGE <input type="checkbox"/> OTHER <u>Home</u>			
10	Heated Square Feet: <u>1980</u> Unheated Square Feet: _____ Porches _____ Garage _____ Deck _____ Patio _____ OTHER _____		OCCUPANCY CLASSIFICATION: <u>Office and Warehouse</u>	
11	# of bedrooms: <u>2</u> # of stories: <u>1</u>	# of bathrooms: _____ TOTAL SQ. FT.: <u>1980</u>	CONSTRUCTION TYPE: <u>wood</u>	
12	COST OF PROJECT: **BASED ON ICC BUILDING VALUATION** <u>\$124,000.00</u>		SETBACKS: _____ Front _____ Side _____ Rear	
13	BUILDING PERMIT \$ _____		NOTES / DRAWINGS	
14	PLUMBING PERMIT \$ _____			
15	MECHANICAL PERMIT \$ _____			
16	SPWS: <input type="checkbox"/> WATER <input type="checkbox"/> SEWER <input type="checkbox"/> BACKFLOW DEVICE \$ _____			
17	OTHER FEES \$ _____			
18	\$ _____			
19	\$ _____			
20	\$ _____			
TOTAL FEES DUE \$0.00		APPROVAL		
21	I hereby certify that information given herein is correct and true. Permit above will comply with all Adopted Codes of the City of Shelbyville. I have reviewed and confirmed that any and all subcontractors are properly licensed and insured in accordance with adopted rules, regulations, and any other mandated requirements. _____ (Initial as read) <u>Lee Roy Cunningham</u> <u>10-7-19</u> SIGNATURE OF CONTRACTOR / APPLICANT DATE		BUILDING OFFICIAL DATE	

Johny Miller



SERIAL: RODNEY551
MODEL: WL-3270-SPC
3-BEDROOM / 2-BATH
32 x 70 - Approx. 1980 Sq. Ft.



DEER VALLEY HOMEBUILDERS, INC.
 Woodland Homes Series
"CUNNINGHAM"
 For more information visit us at
www.deervalleyhb.com

DATE: 07/11/2019
Drawn By: JM
 *All rooms dimensions include closets and square footage are approximate. Drawing layout subject to change if required by engineering review.