



TOWN OF SMYRNA BOARD OF ZONING APPEALS

MEETING MINUTES

August 15, 2024

5:00 p.m.

Smyrna Town Hall

Chairman Steve Sullivan called the regular session of the Smyrna Board of Zoning Appeals to order on August 15, 2024 at 5:00 p.m. The invocation was given by Vanessa Haley and the Pledge of Allegiance was led by Vice-Chairman Jay Michaelson.

The following Board of Zoning Appeals members/staff were present/absent:

Present: Steve Sullivan, Councilman; Jay Michaelson; Scott Demonbreun; Vanessa Haley

Absent: Phil Wilson

Staff Jeff Peach, Town Attorney; Benjamin Groce, Attorney; Kevin Rigsby, Town Planner; Kathryn

Present: Bobbitt, Office Coordinator; Charles King, Engineer

1. Citizens' Comments:

"The Town's Public Comment Period shall be reserved for those citizens that have signed up to address a Board or Committee, at least twenty-four (24) hours in advance of the meeting, pursuant to the Town's Public Comment Policy. Speakers are limited to three (3) minutes. Additional comments may be submitted in writing".

Mark Corrigan

114 Lakewood Circle

Smyrna, TN 37167

In opposition

Project: 890 Old Jefferson Pike

Comment: Large noisy construction business in our neighborhood.

MaryAnn Corrigan

114 Lakewood Circle

Smyrna, TN 37167

In opposition

Project: 890 Old Jefferson Pike

Comment: This will take away our neighborhoods' charm and appeal and devalue our homes. I have lived here 46 years and I do not want to be or deserve to be bothered by the noise which we will clearly be able to hear.

Michael Hardison
612 Virginia Belle Drive
Smyrna, TN 37167
In opposition
Project: 890 Old Jefferson Pike

George Kilgore
1021 Old Jefferson Pike
Smyrna, TN 37167
In opposition
Project: 890 Old Jefferson Pike

Dan Pope
1027 Old Jefferson Pike
Smyrna, TN 37167
In opposition
Project: 890 Old Jefferson Pike

Jana A. Pope
1027 Old Jefferson Pike
Smyrna, TN 37167
In opposition
Project: 890 Old Jefferson Pike

Melinda Potts
1020 Old Jefferson Pike
Smyrna, TN 37167
In opposition
Project: 890 Old Jefferson Pike

Mark Wells
105 Young Drive
Smyrna, TN 37167
In opposition
Project: 890 Old Jefferson Pike

2. Approval of Minutes of the June 13, 2024 meeting

Motion by Vanessa Haley, seconded by Jay Michaelson to approve the Minutes of the June 13, 2024 meeting.

Vote: 4 - 0 Passed - Unanimously

3. New Business:

a. Special Exceptions:

1. William Shackelford
890 Old Jefferson Pike

Location: 890 Old Jefferson Pike	Property Owner: William Shackelford
Tax Map/Parcel: 27/20.01	Zoning/Use Classification: R-1/Single Family Residential

Request: For a special exception to allow an in-home occupation.



Staff Analysis

The applicant has requested a special exception to allow an in-home occupation at 890 Old Jefferson Pike. The applicant operates a roll off dumpster business and is the sole employee. As part of the business, the applicant has six (6) 14' x 7.5' x 5' and two (2) 14' x 7.5' x 1.5' construction, junk and fill dirt dumpsters, currently on order, that, when not at job sites, would be located on a gravel pad on the applicant's property behind a barn. After operation of the business for several months, the applicant would like to purchase two additional 14' x 7.5' x 1.5' dumpsters, bringing the total dumpsters for the business to ten. It is expected that an average of 5 dumpsters may be located on the property at any time, but that number could fluctuate depending on how many dumpsters are being utilized at a given construction site.

Per the applicant, deliveries to and from the residence would only occur twice per day, once in the morning and evening while the applicant goes to and from work. To deliver dumpsters to and from locations, the applicant utilizes his own vehicle. Due to the applicant working for the Air National Guard, periods of leave may last a week or two at a time during which the applicant wishes to have his father operate the business. His father resides several doors down from the applicant and wouldn't create any additional traffic to and from the residence since the applicant wouldn't be home at the same time.

The property at 890 Old Jefferson Pike is approximately 9.41 acres with a majority of the land located within the 500-year and 100-year floodplain. This site is located on the corner of Old Jefferson Pike and Florence Road. There is abundant vegetation on the property, which aids in preventing the dumpsters, when on site, to not be as visible from the roadway. The applicant has noted that they would be willing to install a 6' privacy fence to screen the dumpsters from view.

Section 7.060 B of the Zoning Ordinance details the requirements for authorizing special exceptions. These are detailed below.

Special Exception Requirements

Section 7.060 of the Municipal Zoning Ordinance lists general requirements for a zoning variance request. Those requirements and staff's findings are as follows:

Section 7.060 Procedure for authorizing special exceptions

The following procedure is established to provide procedures for review of a proposed use as a conditional use or special exception by the Board of Zoning Appeals. The procedure shall be the same whether review is required under Section 13-7-206 of the Tennessee Code Annotated, by this ordinance, or whether a review is requested by the Building Official to determine whether a proposed use is potentially noxious, dangerous or offensive.

B. General Requirements:

A conditional use permit (a special exception) shall be provided the Board finds that it:

1. Is so designed, located, and proposed to be operated so that the public health, safety, and welfare will be protected.
 1. Staff finds the proposed use of a roll off dumpster delivery company should not negatively affect the health, safety, and welfare of the public due to the size of the lot and the property not being located within a traditional subdivision.
2. Will not adversely affect other property in the area in which it is located.
 1. Staff finds that the proposed use may not adversely affect other properties in the surrounding area due to the location already experiencing dump truck traffic on a daily basis as well as other residential traffic.
3. Is within the provisions of "Special Exceptions" as set forth in this ordinance.
 1. Customary incidental home occupations are a permitted right within the Municipal Zoning Ordinance within all residential districts. In the event questions arise regarding the legality of specific home occupations, the Board of Zoning Appeals determines the legality.
4. Conforms to all applicable provisions of this ordinance for the district in which it is to be located as well as the provisions cited in Sections 7.060 and 7.061, and is necessary for public convenience in the location planned.
 1. Staff finds that this site may be able to conform to all provisions of the Municipal Zoning Ordinance as listed in Criteria Review Section 7.060 C.

C. Criteria for Review:

Prior to the issuance of a special exception, the Board shall make written findings certifying compliance with the specific rules governing individual special exceptions (Section 7.061), and that satisfactory provisions and arrangement has been made concerning all the following where applicable:

1. Ingress and egress to property and proposed structures thereon with particular reference to automotive and pedestrian safety and convenience, traffic flow and control, and access in case of fire or catastrophe.
 1. Access to the site would utilize the existing driveway off of Old Jefferson Pike and Florence Road. The applicant has also contacted Public Works and received approval for a new driveway location on Old Jefferson Pike, which would be utilized for the business.
2. Off-street parking and loading areas where required, with particular attention to the items in item 1. above, and the economic, noise, vibrations, glare, or odor effects of the special exception on or by adjoining properties and properties generally in or near the district.
 1. Staff finds that the lot provides sufficient space for off-street parking as the applicant's property has two driveways and the dumpsters are located off the driveway elsewhere on the 9.4 acre property.
3. Refuse and service areas, with particular reference to the items in 1. and 2. above.
 1. Refuse collection would proceed in the same manner as currently. Applicant will need to coordinate the removal of waste from dumpsters.

4. Utilities, with reference to locations, availability, and compatibility.
 1. This location has access to gas and water, however, the property is serviced by a septic system.
5. Screening and buffering with reference to type, dimensions and character.
 1. Not applicable.
6. Signs, if any, and proposed exterior lighting with reference to glare, traffic, safety, economic effect, and compatibility and harmony with properties in the district.
 1. Staff finds that this proposed business should fit the compatibility with properties in the same district in reference to the above effects.
7. Required yard and other open space.
 1. Staff finds that this yard has the necessary yard and open space to meet setback requirements as the lot is 9.40 acres in size.
8. General compatibility with adjacent properties and other property in the district.
 1. Staff finds that the use may not be compatible with adjacent properties due to other lots in the area not having a business operating out of the household previously approved by the BZA.
9. The following additional rules apply for upper story residential development proposals:
 1. All upper story residential development proposals shall require a certified statement demonstrating a firm agreement for parking reserved exclusively for the use of the upper story residential development.
10. All upper story residential development proposals shall be in compliance with all Building, Utility, and Housing Codes within the Smyrna Municipal Code.
 1. Not applicable.

Conclusion

Staff finds that this lot provides sufficient space for the operation of the applicant's business. There is natural vegetation on the property, which aids in preventing the dumpsters from being visible from the public roadway. The applicant is the only employee of the company, so there would not be any additional employees coming to and from the residence for operation of this business.

Staff would make the following recommendations:

- Installation of a fence, in accordance with Town ordinances, around the area where dumpsters are to be stored on the property
- Dumpsters shall only be stored behind a fence, away from view from the public right-of-way
- Applicant to have waste removed from dumpsters prior to arriving back at the residence
- The applicant's father may operate the business while the applicant is on work leave. No other employees, other than those who reside at the residence, may be employed to operate the business.
- If there's a certain number of dumpsters the Board wishes to limit the applicant to having on their property at one time.

At this time, Councilman Steve Sullivan opened a public hearing. The following people spoke:

Fran Jones
608 Virginia Belle Drive
Smyrna, TN 37167
In opposition

William Shackelford
890 Old Jefferson Pike
Smyrna, TN 37167
In Favor

Malcom Fergerson
615 Virginia Belle Drive

Smyrna, TN 37167
In opposition

Mark Corrigan
114 Lakewood Circle
Smyrna, TN 37167
In opposition

Richard Warren
129 Young Drive
Smyrna, TN 37167
In opposition

Heather Wilson
115 Lakewood Circle
Smyrna, TN 37167
In opposition

Leonard Cole
10165 Florence Road
Smyrna, TN 37167

At this time, Councilman Steve Sullivan acknowledged applicant William Shackelford to speak regarding this request.

Motion by Vanessa Haley, seconded by Scott Demonbreun to deny the special exception request to allow an in-home occupation located at 890 Old Jefferson Pike due to the nature of the business.

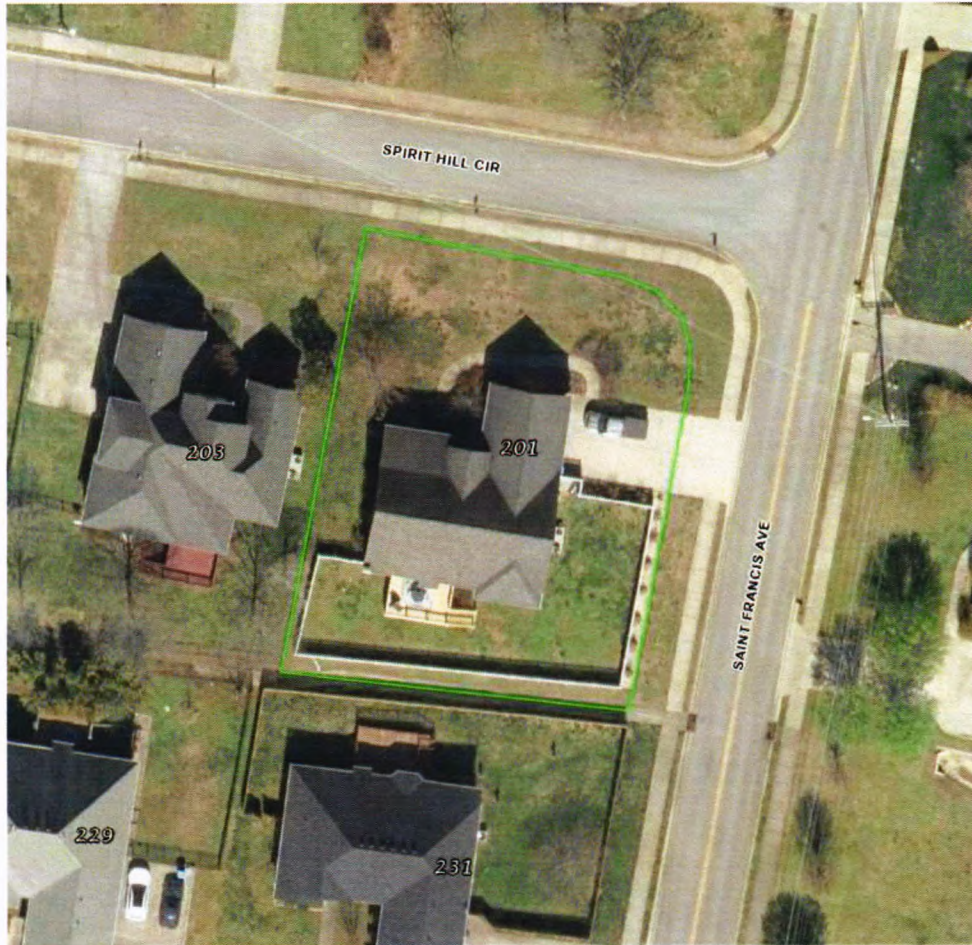
Vote: 4 - 0 Passed - Unanimously

b. Setback Variance:

1. Gail Escue
201 Spirit Hill Circle

Location: 201 Spirit Hill Circle	Property Owner(s): Mary G. Escue
Tax Map/Group/Parcel #: 33C/E/17.00	Zoning/Use Classification: R-3/Single-Family Residential

Request: A front setback variance of 11' 6" along Saint Francis Avenue for a pool.



Staff Analysis

The applicant has requested a 11' 6" front setback variance on Saint Francis Avenue for a pool. The property is zoned R-3, Medium Density Residential, and is 0.30 acres in size and has two front setbacks to meet on Spirit Hill Circle and Saint Francis Avenue. Minimum front yard setback requirement in the R-3 district is 35' for accessory structures. There is a 10' public utility and drainage easement on the rear property line, which is not proposed to be encroached upon. The applicant is requesting to place the pool behind an existing fence so as to be out of sight from the public right-of-way.

There was a 0.9' front setback variance on Saint Francis Avenue approved in 2006 during initial construction of the dwelling.

Section 7.080 D of the Zoning Ordinance details the requirements for variances not involving special flood hazard areas. These are detailed below.

Zoning Variance Requirements

Section 7.080 of the Municipal Zoning Ordinance lists general requirements for a zoning variance request. Those requirements and staff's findings are as follows:

Section 7.080 Procedure for authorizing zoning variances

The purpose of a variance is to modify the strict application of the specific requirements of this ordinance in the case of exceptionally irregular, narrow, shallow, or steep lots, or other exceptional physical conditions, whereby such strict application would result in practical difficulty or unnecessary hardship which would deprive an owner of the reasonable use of his land. The variance

shall be used only where necessary to overcome some obstacle which is preventing an owner from using his property under this ordinance.

B. Standards for Variances not Involving Special Flood Hazard Areas:

The board shall not grant a variance unless it makes finding based upon evidence presented to it as follows:

1. The particular physical surroundings, shape, topographic conditions of the specific property involved that would result in a particular hardship upon the owner as distinguished from a mere inconvenience, if the strict application of this ordinance were carried out must be stated.
 1. Staff finds that the property does not have any unique circumstances in regards to physical surroundings, shape or topographic conditions.
2. The conditions upon which the petition for a variance is based would not be applicable, generally, to other property within the same district.
 1. The property is a corner lot and has two front setbacks to meet for any structure. The two front setbacks create a constricted area for any structures to be placed in the rear yard. In addition, there's a 10' PUDE along the rear lot line further constricting the rear yard.
3. The variance will not authorize activities in a zone district other than those permitted by this ordinance.
 1. Pools are allowed within the R-3 district, but are to adhere to all setback requirements.
4. Financial returns only shall not be considered as a basis for granting a variance.
 1. The property owner has not identified financial returns as a reason for requesting this variance.
5. The alleged difficulty or hardship has not been created by any person having an interest in the property after the effective date of this ordinance.
 1. The applicant is the homeowner, but was not involved with the creation of the lot, nor the construction of the residence.
6. That granting the variance requested will not confer on the applicant any special privilege that is denied by this ordinance to other lands, structures, or buildings in the same districts.
 1. Staff finds that the variance requested could provide the applicant with special privileges denied by the ordinance to other lands, structures, or buildings in the R-3 district due to a structure encroaching upon a front setback. However, other properties in the same zoning district have requested variances from the BZA in previous years in similar situations and have received approval.
7. The variance is the minimum that will make possible the reasonable use of the land, building, or structure.
 1. Staff finds that the requested setback variance may be the minimum to make reasonable use of this structure for the proposed use to keep adequate distances between the pool and the fence, deck and house.
8. The granting of the variance will not be detrimental to the public welfare or injurious to other property or improvements in the area in which the property is located.
 1. Staff finds that the variance should not be detrimental to the public welfare or injurious to other property or improvements in the area.
9. The proposed variance will not impair an adequate supply of light and air to adjacent property, substantially increase the congestion in the public streets, increase the danger of fire, endanger the public safety, or substantially diminish or impair property values within the area.
 1. Staff finds that the variance may not have any of the above effects.
10. Variances may be issued for the reconstruction rehabilitation or restoration of structures listed on the National Register of Historic Places or the State Inventory of Historic Places upon a determination that the variance is the minimum necessary so as not to destroy the historic character and design of the building, and provide the proposed reconstruction, rehabilitation or restoration will not result in the structure losing its historic designation.
 1. Not applicable.

Conclusion

Staff finds that this property is a corner lot in which two front setbacks are required to be met for any

structure. There is an existing fence which the structure would be located behind and no encroachment upon the drainage easement is shown.

At this time, Councilman Steve Sullivan opened a public hearing where applicant Gail Escue spoke.

Motion by Councilman Steve Sullivan, seconded by Jay Michaelson to approve the front setback variance of 11'6" along Saint Francis Avenue located at 201 Spring Hill Circle with the above listed staff recommendations.

Vote: 4 - 0 Passed - Unanimously

4. Staff comments and/or other business
5. Adjournment

Respectfully submitted:



Kevin Rigsby
Secretary

Certified by:



Councilman Steve Sullivan
Chairman