



Board of Zoning Appeals

Kingston Springs, Tennessee

January 4, 2023
Meeting Packet



**Kingston Springs Board of Zoning Appeals
Meeting Agenda
January 4, 2023**

The meeting was called to order by _____ at _____ pm.

1. Roll Call of Voting Members:

Bob Sanders	_____
Ginger Hockenberger	_____
Bridget Wilson	_____
Jane Polansky	_____
Joanna Gupta	_____

2. Non-Voting Staff:

Sharon Armstrong, City Planner	_____
John Lawless, City Manager	_____
Martha Brooke Perry, City Attorney	_____

3. Declaration of Quorum by Chairperson:

4. Motion to approve the December 6, 2022 Board of Zoning Appeals meeting minutes.

5. Motion to approve the January 4, 2023 Board of Zoning Appeals meeting agenda.

6. Community Input and Concerns

7. Old Business

A. Andy Sullivan - Variance Request. Reconvene the 6 December BZA Hearing for 608 Mt. Pleasant Rd.

8. New Business

A. 279 E. Kingston Springs Rd. - Variance, Exception, Waiver Request.
1. KS Regional Planning Commission Advisory Report to the KS Board of Zoning Appeals

9. Annual Training - Grandfathering, Lot of Record, Nonconforming Use

10. The meeting was adjourned by _____ at _____ pm.

Jane Polansky
Chair, Board of Zoning Appeals

Jamie Dupré
City Recorder



**Kingston Springs Board of Zoning Appeals
Meeting Agenda
December 6, 2022**

The meeting was called to order by Vice-Chair Sanders at 5:30 pm.

1. Roll Call of Voting Members:

Bob Sanders	Present
Ginger Hockenberger	Present
Bridget Wilson	Absent
Jane Polansky	Absent
Joanna Gupta	Present

2. Non-Voting Staff:

Sharon Armstrong, City Planner	Present
John Lawless, City Manager	Present
Martha Brooke Perry, City Attorney	Absent

3. Declaration of Quorum by Chairperson:

Vice-Chair Bob Sanders declared there was a quorum present.

4. Motion to approve the September 27, 2022 Board of Zoning Appeals meeting minutes.

Motion to approve the September 27, 2022 Board of Zoning Appeals meeting minutes made by Hockenberger, seconded by Gupta and approved unanimously.

5. Motion to approve the December 6, 2022 Board of Zoning Appeals meeting agenda.

Motion to approve the December 6, 2022 Board of Zoning Appeals meeting agenda made by Gupta, seconded by Hockenberger, and approved unanimously.

6. Community Input and Concerns

None

7. Old Business

A. None

8. New Business

A. Andy Sullivan - Variance to the side setback of 20' for a concrete parking pad poured without a permit.

City Planner Armstrong explained that Mr. Sullivan was appearing before the Board by way of a Municipal Court case concerning other items on the property. The item before the Board of Zoning Appeals is Mr. Sullivan's request for a variance on the side setbacks of his property to accommodate a concrete slab that intrudes into the side setback and was poured without a permit from the Town. Planner Armstrong then showed the Board a boundary survey Mr. Sullivan had supplied, and the Board asked questions of both Mr. Sullivan and Planner Armstrong. Armstrong stated that as Mr. Sullivan owns the adjoining property a possible solution to the slab intruding into the setback would be to adjust the property line separating the two parcels in a way that accommodates the setback issue with the concrete slab while still assuring the lots meet the requirements of their current zoning. If this solution is adopted, then Mr. Sullivan would need only to receive a permit for the concrete slab and pay the fine for installing the slab without a permit. Armstrong stated that with the applicant's permission the Board could defer this item until the applicant could obtain an updated survey. Mr. Sullivan gave permission to defer the item to the next Board of Zoning Appeals meeting and also gave Planner Armstrong permission to speak with his surveyor to discuss this potential solution. Motion to defer this agenda item to the next Board of Zoning Appeals meeting made by Hockenberger and seconded by Gupta. Voice vote held with Hockenberger, Sanders, and Gupta all voting yes. Motion passed.

B. 269 Harpeth View Trail - Basement finished without permit by previous owner - Appeal to waive the permit fine.

Planner Armstrong stated the applicant had recently purchased the home at this address and then discovered the basement had been listed as finished livable space but had been finished without a permit. Armstrong stated this is a staff request to the Board of Zoning Appeals to make a recommendation to the Kingston Springs

Board of Commissioners to waive the permit fine for this applicant regarding the unfinished basement. Motion to recommend to the Kingston Springs Board of Commissioners to waive the permit fine for this applicant regarding the unfinished basement made by Hockenberger and seconded by Gupta. Voice vote held with Hockenberger, Sanders, and Gupta all voting yes. Motion passed.

9. Other (For Discussion Only)

None

10. _The meeting was adjourned by Vice-Chair Sanders at 6:05pm.

Bob Sanders
Vice-Chair, Board of Zoning Appeals

Jamie Dupré
City Recorder

7.A.



Town of Kingston Springs
Building and Codes Department
PO Box 256
396 Spring Street
Kingston Springs, TN 37082
615-952-2110

KINGSTON SPRINGS APPLICATION FOR REVIEW

Board of Zoning Appeals, Board of Construction/Sign Appeals

- Board of Zoning Appeals Residential (\$150.00) (34125)
- Board of Zoning Appeals Commercial (\$200.00) (34125)
- Board of Construction Appeals (\$150.00) (34125)**
- Board of Sign Appeals (\$175.00) (34125)

Date of Application: 10-19-2022

Property Address/Location: 608 Mt Pleasant Rd Kingston Springs, TN 37082

Property Owner's Name: Andy C. Sullivan

Property Owner's Address: 608 Mt Pleasant Rd Kingston Springs, TN 37082

Property Owner's Primary Phone #: 615-378-1052 Secondary #: 615-642-9706 Cel

Property Owner's Email: KARNUT57@gmail.com

Section for Appeal: _____ Page Number: _____

Description of Appeal Request: _____

Reason: _____

Attachments? Describe: _____

Signature of Applicant: Andy P. Sullivan Date: 10-19-2022

BACK OF THIS FORM IS FOR OFFICE USE ONLY

OFFICE USE ONLY: APPLICANT DO NOT WRITE BELOW THIS LINE

Staff Review Information: Concrete slab poured without a permit. Slab may be in violation of setback line of 20'.

Mr. Sullivan poured a slab on the side of a detached garage located in the side yard of his parcel without a permit. He called City Hall and asked if he needed a permit in the early morning. Staff assigned to permit review was in training and did not return the call until early afternoon. Mr. Sullivan informed the Planner the slab had already been poured in violation of the Zoning Ordinance requirement for a site plan and permit. Staff recommendation: Denial of variance. Basis of recommendation: KS Zoning Ordinance, Article VIII, Section 8.030, McClurkan v. BOARD OF ZONING APPEALS, ETC., 565 SW 2d 495 - Tenn: Court of Appeals, Middle Section 1977 (attached).

The Zoning Ordinance does not allow a variance for a violation of the requirement for a building permit in an action caused by the property owner. Mr. Sullivan caused a slab to be formed and poured without obtaining a permit. 8.030. Building permits. It shall be unlawful to commence the excavation for or the construction of any building or other structure, including accessory structures, to commence the moving, alteration, or repair of any structure, including accessory structures, to use a building or structure, or to change the use of a building or structure, or to commence the filling of land without a permit thereof, issued by the Building Inspector. If said excavation or construction is begun without a proper building permit, the building permit fee shall be double or twice the original cost of the permit if legal compliance has been obtained as is required.

No Building Permit shall be issued by the Building Inspector except in conformity with the provisions of this ordinance, unless there is received a written order from the Board of Zoning Appeals in the form of an administrative review, special exception, or variance as provided for by this ordinance.

In granting a variance, the Board shall ascertain that the following criteria are met:

1. Variances shall be granted only where special circumstances or conditions, fully described in the finding of the Board, do not apply generally in the district.
2. Variances shall not be granted to allow a use otherwise excluded from the particular district in which requested.
3. For reasons fully set forth in the findings of the Board, the aforesaid circumstances or conditions are such that the strict application of the provisions of this ordinance would deprive the applicant of any reasonable use of his land. Mere loss in value shall not justify a variance. There must be a deprivation of beneficial use of land.
4. The granting of any variance shall be in harmony with the general purposes and intent of this ordinance and shall not be injurious to the neighborhood, detrimental to the public welfare, or in conflict with the comprehensive plan for development.
5. In reviewing an application for a variance, the burden of showing that the variance should be

Appeal Board Fee: \$ _____

Amount Paid: \$ _____ Date Paid: _____

Receipt Number: _____

Board Performing Review: _____

Date of Review: _____

Approved

Denied

Withdrawn

565 S.W.2d 495 (1977)

Milton McCLURKAN, Plaintiff-Appellant,

v.

**BOARD OF ZONING APPEALS FOR the METROPOLITAN GOVERNMENT OF NASHVILLE AND
DAVIDSON COUNTY, Tennessee, Defendant-Appellee.**

Court of Appeals of Tennessee, Middle Section.

April 1, 1977.

Certiorari Denied June 13, 1977.

496 *496 John L. Chambers, Chambers & Wiseman, Nashville, for plaintiff-appellant.

Robert Rutherford, Metro Dept. of Law, Nashville, for defendant-appellee.

Certiorari Denied by Supreme Court June 13, 1977.

OPINION

DROWOTA, Judge.

This is an appeal by an owner of property in Nashville from a decree of the Chancery Court of Davidson County, which affirmed the denial of appellant's application for a variance by the Metropolitan Board of Zoning Appeals.

The property in question is located at 1713 Beechwood Avenue in an area zoned for one and two family dwellings. It contains a house that is divided into four separate living units, none of which is accessible except by its own outside entrance. The record is unclear as to how long the house has been divided into four apartments, but appellant contends that it has been so structured at least since 1952. In 1973, after having been informed that the residence did not conform to zoning regulations, Mrs. Nora Smith, the previous owner, applied for and was granted a use and occupancy permit to continue its use as a four-family dwelling for so long as she owned and resided on the property. This permit expressly stated that when Mrs. Smith ceased to own and reside on the premises, the property should revert to a "lawful use". The permit was recorded in the office of the Register of Deeds in February of 1974. Appellant purchased the property in September of 1974 and, when notified that he was in violation of zoning regulations, applied to the Board of Zoning Appeals for a variance, which was denied. He then took his case on certiorari to the Chancery Court, from whose affirmance of the Board he now appeals.

As a preliminary matter, appellee Board of Zoning Appeals has moved to dismiss the appeal for appellant's failure to comply with Rule 12 of this Court, which requires an appellant to file his assignments of error and brief within twenty-five days of the filing of the transcript. Appellant was admittedly six days late in filing his assignments of error and brief in the case at bar. Appellant's counsel, however, avers in reply to appellee's motion that prior to expiration of the twenty-five days he arranged for a short extension with the Clerk of this Court, who informed him that an extension had been granted but evidently failed to make an entry to that effect in the record. Counsel then relied on having this extra time and filed his assignments within
497 what he believed was the extension period, *497 though this was six days after the deadline prescribed by Rule 12. Since appellant filed only a few days late, and since counsel has satisfied us that this was done in good faith for the reason stated above, we overrule appellee's motion to dismiss.

In his first assignment of error, appellant contends that the use and occupancy permit issued by the Board of Zoning Appeals to the previous owner runs with the land and so inures to his benefit and that the condition that the permit should expire when Mrs. Smith ceased to own the property and reside on it is void. Appellant first argues that, as a general proposition, it is the property itself and not the person who owns it that is to be considered by a zoning board in acting on an application for a variance. He then asserts that, since the condition attached to the permit granted Mrs. Smith dealt only with her continued ownership of and residence on the property, the condition is void and appellant is left with an unconditional permit to use the property for a four-family residence. While we are largely in agreement with the premise of this argument, we cannot concur in the result that appellant insists is mandated by it in this case.

The statute authorizing municipal boards of zoning appeals to grant variances allows them to take such action

[w]here, by reason of exceptional narrowness, shallowness, or shape of a specific piece of property at the time of enactment of the zoning regulation, or by reason of exceptional topographic conditions or other extraordinary and exceptional situation or condition of such piece of property,

the applicable zoning regulations would impose "peculiar and exceptional practical difficulties ... or undue hardship upon the owner..." Tennessee Code Annotated § 13-707(3). Similarly, § 101.27(b) of the Zoning Ordinance for Metropolitan Nashville empowers the Board to grant variances "to alleviate hardships by virtue of the inability of the landowner to comply strictly with the provisions of this Ordinance by reasons of unique shape, topography, or physical features of the zone lot." These provisions, along with the standards for variances set out in § 102.20 of the Ordinance, clearly contemplate that a variance is not a "personal license given to a landowner," as appellant rightly says. See *Hickerson v. Flannery*, 42 Tenn. App. 329, 302 S.W.2d 508 (1956). But they also contemplate that it is the peculiar circumstances of the *land* that must be the primary consideration, rather than any hardship personal to or created by an owner of it. See 82 Am.Jur.2d, *Zoning and Planning*, §§ 274-76 (1976). While the Board is vested with broad discretion in the variance area, we do not believe that it is authorized to grant a variance when the only hardship to the owner in complying with the zoning regulations is the result of a condition existing not in the land itself but in a structure which was created or altered by an owner of the property in violation of the zoning ordinance. Also, the case for a variance here is made even weaker by a lack of any evidence of hardship other than pecuniary loss, which has been held insufficient by itself to justify a variance. See *Houston v. Memphis and Shelby County Board of Adjustment*, 488 S.W.2d 387 (Tenn. App. 1972). Thus, although we do not have before us the record of the proceedings in which Mrs. Smith was granted her conditional permit to use the premises as a four-family residence, we are forced to conclude from the facts presented that the award of this permit itself, and not merely the personal condition attached to it, was beyond the jurisdiction of the Board under its governing statute and ordinance.

In so concluding, we wish to point out that we do not hold that improvements constructed on the property or even the personal ownership of an applicant may never be considered in deciding whether or not to grant a variance. We do say, however, that both the statute and ordinance controlling here make characteristics of the *land itself* the overriding criteria by which the Board is to decide the issue of hardship to an owner. It may be that in some cases other factors presented by a variance applicant would be closely related to these criteria, and that the Board would be justified in considering them. In the instant case, however, *498 unique features of the land itself were entirely lacking, and any hardship concerned only the condition of the house, which was brought about by an owner of the property in violation of the zoning ordinance, so that the Board exceeded its authority in granting the variance to Mrs. Smith. The first assignment of error is therefore overruled.

Appellant contends in his second assignment of error that the Board's failure to grant him a variance in the present case deprives him of the beneficial use of his property and so constitutes a taking of it without due process of law. Of course it is true that zoning regulations may go so far as to constitute a taking of property, and that in such a case the attempted "regulation" will be held unlawful. *Bayside Warehouse Co. v. City of Memphis*, 63 Tenn. App. 268, 470 S.W.2d 375 (1971). In *Bayside*, the zoning provision was found to deprive the owner of any beneficial use of the property and therefore held invalid as to that property. Far from so penalizing appellant in the instant case, the ordinance to which he is subjected by denial of his request for a variance imposes a simple restriction universally upheld as one within the zoning power: that the premises be used as a residence for no more than two families. This is not such a substantial deprivation of beneficial use of the property as to constitute a taking. Further, any loss to which appellant may be subjected here evidently is directly attributable not to any change in zoning that deprives him of the use of his property but to the erection or alteration of this building for use as a four-family residence by a previous owner in violation of the zoning ordinance. In any case, neither the two-family zoning provision nor the denial of the variance application that subjects appellant to it rises to the level of a taking of property, and the second assignment of error is overruled.

In his third and final assignment of error, appellant maintains that the Board discriminated against him and arbitrarily denied his requested variance. There is no merit in this contention. While appellant argues that others in the neighborhood are allowed "to use their homes as three and four-family dwellings," there is no evidence in the record to support this, and we are therefore unable to consider it. Appellant's claim of discrimination by the Board in awarding a variance to Mrs. Smith while denying one to him is also groundless, for we have already shown that the permit granted Mrs. Smith was beyond the Board's authority and therefore void. Finally, denial of the variance to appellant can hardly be termed arbitrary. On the contrary, just as the Board exceeded its authority in granting a permit to Mrs. Smith on the facts presented here, as explained above, so it would have exceeded its authority had it granted one to appellant for the same reasons. Denial of the

variance to appellant thus was not arbitrary, but was required by the governing statute and ordinance on the facts here presented. The third assignment of error is overruled, and the decree below is affirmed.

Affirmed.

SHRIVER, P.J., and TODD, J., concur.

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Case #: 200137

Case Date: 04/22/21

Type: Resident/Other Complainant

Violation Address: 608 AND 604 Mt. Pleasant Rd

Description of Possible Violation: junk cars

Re-Inspection Date: 04/29/2021

Complainant Name (If Available): Duane Tabor

Complainant Phone (if Available): 615-310-3158

Complainant E-Mail (If Available):

Status: Court Scheduled

Assigned To: Mike Armstrong

Property

Parcel #	Address	Legal Description	Owner Name	Owner Phone	Zoning
0961 A 00300 000	608 MT PLEASANT RD		SULLIVAN ANDY C		

Violations

Date	Violation	Description	Notes	Status
08/10/2021	108.1.4 Unlawful Structure	An unlawful structure is one found in whole or in part to be occupied by more persons than permitted under this code, or was erected, altered or occupied contrary to law.	Construction of a slab without a building permit in violation of Zoning Ordinance Article VIII and potentially in the required 20' setback line.	Open
08/10/2021	302.1 Sanitation	Exterior property and premises shall be maintained in a clean, safe and sanitary condition. The occupant shall keep that part of the exterior property that such occupant	Car parts, inoperable vehicles, and equipment are	Open

occupies or controls in a clean and sanitary condition.

scattered across the yard at 608 and 604 Mt. Pleasant Rd.

Mr. Sullivan placed numerous inoperable vehicles on the property located at 604 Mt. Pleasant Rd. in violation of the court order issued by the circuit court on 19 September 2014. Location of the vehicles is a violation of the zoning ordinance for use within the R-1A district and city code regarding storage of inoperable vehicles.

08/10/2021 302.8 Motor vehicles.

Except as provided for in other regulations, no inoperative or unlicensed motor vehicle shall be parked, kept or stored on any premises, and no vehicle shall at any time be in a state of major disassembly, disrepair, or in the process of being stripped or dismantled. Painting of vehicles is prohibited unless conducted inside an approved spray booth.

Open

Notes

Date	Note	Created By:
2022-10-18	<p>Inspected property and took photos for court. Note continued progress on debris, but it appears that they may be moving debris into the woods behind the 694 address.</p> <p>In court the judge continued the case until the 13 Dec 22 court date. The judge has ruled that the court order that Mr. Sullivan presented allows Mr. Sullivan to continue to his non conforming use on this property. The City Attorney is to write something for the judge for that portion of the charges. The City will have the decision, upon the Judge's signature to appeal the decision or not. The Judge held over the portion of the case with regard to the slab beside the garage encroaching into the setback of the property.</p> <p>The City Manager provided Mr. Sullivan an application to the BZA to request a variance to the setback requirement.</p>	Alan (Mike) Armstrong
2022-08-09	<p>Conducted follow-up inspection this date to document the status of the property for court this date. Note that there has been several vehicles moved on the lot and it appears that there are now vehicles that were not there before. I did notice what appears to be surveyor's flags on the property but Mr. Sullivan has not provided a copy of any replat to the City as requested. There continues to be an excessive number of junk vehicles, I counted 63, 8 trailers, and a considerable number of old bikes. I took photos to document the condition of the property this date.</p>	Alan (Mike) Armstrong
2022-07-20	<p>Conducted windshield inspection of property. Note several vehicles and equipment appear to have been moved to the rear of the property.</p>	Alan (Mike) Armstrong
2022-07-05	<p>Conducted windshield inspection of the property this date. No significant progress made. Junk Vehicles remain on the 604 property as well. Mr. Sullivan has not submitted a new plat to cure the slab being across the property line.</p>	Alan (Mike) Armstrong
2022-06-09	<p>Conducted follow-up at this property and 604 Mt. Pleasant Rd to document the status of the property for next week's court appearance. Took photos of the inoperable vehicles to document the appearance of the properties.</p>	Alan (Mike) Armstrong
2022-05-19	<p>Conducted windshield inspection of the property. Note that a lot of the vehicles have been moved, but dosen't appear that Mr. Sullivan is in compliance with the court order. It appears that some effort is being made, but not sufficient effort to clear the violations.</p>	Alan (Mike) Armstrong
2022-05-06	<p>Received a phone message from Britney of Mr. Sullivan asking that someone from Codes call him.</p> <p>I received a call from Mr. Sullivan asking a question about the setback for his property. I told him that I could not answer his question but that I would ask the Planner to call him when she returned. The Planner returned Mr. Sullivan's call late morning or early afternoon and answered his questions.</p>	Alan (Mike) Armstrong
2022-04-12	<p>This case brought to court 12 April 2022. The case was continued to 14 June 2022.</p>	Alan (Mike) Armstrong
2022-04-12	<p>This case was heard at City Court this date. The case was continued until 14 June 2022.</p>	Alan (Mike) Armstrong

2022-04-08	Called (615) 3781052 Left a message for Mr. Sullivan reminding him of court 12 April 2022 in the Beck Building at 4:30 PM	Alan (Mike) Armstrong
2021-09-30	Sent a text to A.J. Sullivan reminding him that we left the meeting on 21 Sep with an understanding that they would provide us with their remediation plans to again gain compliance with the court order awarded to Mr. Andy Sullivan.	Alan (Mike) Armstrong
2021-09-30	Spoke to Andy Sullivan regarding his plan of action to come into compliance. He states he has talked to a surveyor and that he did not know when the surveyor was planning to do the work but that he would contact him again and try to find out. I asked him to put his plan for remediation in writing and get it to us.	Alan (Mike) Armstrong
2021-09-23	Met with Mr. Andy Sullivan and his son A.J. Sullivan to discuss the violations existing at 608 and 604 Mt. Pleasant Rd. The Sullivans acknowledged the following: 1. The number of collected cars exceeds those allowed by the court order. 2. The number of collectable cars is limited to 31. All activity associated with the car collection is defined as an accessory use and cannot occur in the front or side yard of the property. 3. The expansion of the collectable cars cannot occur on the adjacent property. 4. The concrete slab poured in the side yard at 608 Mt. Pleasant road encroaches on the adjacent parcel in violation of the KS Zoning Ordinance and must be brought into compliance with a lawfully issued permit. 5. The car collection and activities are not permitted in the R-1A Zoning District. 6. Violation of the court order will result in enforcement action if not addressed. The Sullivans agreed to submit a remediation plan in the very near future.	Sharon Armstrong
2021-09-21	Met with Andy and A.J. Sullivan at Beck Hall in Kingston Springs at 5:00 PM to discuss the violations on their properties at 608 and 604 Mt. Pleasant Road. The City Planner explained all violations to the Sullivans to include their violation of building without a permit across the property line and storage of vehicles. We left the meeting asking the Sullivan's to take the information we had provided and think about it and get back to us with their plan to come into compliance with the KS regulations or the Judge's ruling. They acknowledged that they understood and agreed to get back with us in a few days.	Alan (Mike) Armstrong
2021-09-16	Received a call from A. J. Sullivan advising that he would like to reschedule the meeting for Tuesday 21 Sept vise today as his father could not attend today. I told him that was fine and that we would see them on Tuesday.	Alan (Mike) Armstrong
2021-09-13	Called Mr. A. J. Sullivan (615) 478-4998 and rescheduled the meeting for 14 Sep to 16 Sep. at 5:00 PM Beck Hall.	Alan (Mike) Armstrong
2021-09-01	Called A.J. Sullivan regarding scheduling a meeting he had requested in a previous conversation with me to go over all the violations on his and his father's property and come to a clear understanding of the requirements to remedy the violations. We scheduled the meeting for 5:00PM 14 Sep 2021 at Beck Hall.	Alan (Mike) Armstrong
2021-08-14	Received a telephone call from Mr. A. J. Sullivan at 7:49PM. He states that he is the owner of the property at 604 Mt. Pleasant Rd and that all the vehicles on his property were operable vehicles and further stated that any issue at this property with regard to junk cars was adjudicated some years ago and was not a problem. I tried to explain that records indicate his father is the owner of the property; which, when pressed he admitted, and that his father did have several issues on his property and that he had told me when I tried to discuss the issues with him, that he wanted a letter, so I obliged him and sent the letter. Mr. Sullivan then stated that I had trespassed on their property, I explained that I had not and that he was misinformed. Then he told me that he had spoken with a couple of commissioners who told him that their property was grandfathered in and they could have their junk cars. I asked who told him that and he declined to answer. The call was somewhat contentious.	Alan (Mike) Armstrong
2021-08-10	Mr. Sullivan expanded the inoperable junk cars to the adjacent lot at 604 Mt. Pleasant Rd, poured a building slab across the property lines at 608 Mt. Pleasant Rd. and 604 Mt. Pleasant Rd. in violation of the court order issued by the Circuit Court in 19 September 2014.	Sharon Armstrong
2021-08-04	Received a call from Mr. Sullivan. When I advised him that the purpose of my visit was to discuss with him the Codes Violations on his property he became angry telling me that he didn't have any and that he had been to court and had won. He stated that Commissioner Remick and Gary Corlew had told him that the City had changed it's laws after his court case. I advised him that it was my understanding that he was in violation of the court's order. He wanted to know why I just walked up on his property without sending him a letter. I explained that I always tried to talk to property owners before initiating a formal letter. He said he didn't like it and then I told him that was fine, that I believed he was in violation of the court order and that I would be happy to send him a letter.	Alan (Mike) Armstrong
2021-08-03	Property visit attempting to make contact with Mr. Sullivan. A young lady answered the door and advised that she was Ms. Sullivan and stated that her father was not home. I left my telephone number with her and asked her to ask her father to contact me.	Alan (Mike) Armstrong
2021-07-09	Property Visit 8 July 2021 - Attempted contact at property with the City Planner to work the zoning violations. No one answered the door at the home. City Planner advises that she will have to send a notice of violation to Mr. Sullivan.	Alan (Mike) Armstrong

Uploaded Files

Date	File Name
09/13/2022	12800956-NOTIFICATION OF COURT DATE CHANGE FOR SULLIVAN.pdf
08/09/2022	12497520-608 & 604 MT PLEASANT RD - SULLIVAN PROPERTY PHOTOS 8 AUGUST 2022.pdf
06/14/2022	11979604-608 & 604 MT PLEASANT RD - CONDITION OF PROPERTY 14 JUNE 2022.pdf
04/08/2022	11260225-COURT CITATION 2 MARCH 2022 SULLIVAN.pdf
08/10/2021	9434146-604 MT PLEASANT RD - ADJACENT LOT NOT SUBJECT TO COURT ORDER.JPG
08/10/2021	9434147-608 MT PLEASANT RD - LOT SUBJECT TO COURT ORDER.JPG
08/10/2021	9434148-TN PROPERTY DATA - EXPANSION TO 604 MT PLEASANT RD.pdf
08/10/2021	9433949-KS v Sullivan Filed Order.pdf



S.A.

Town of Kingston Springs
Building and Codes Department
PO Box 256
396 Spring Street
Kingston Springs, TN 37082
615-952-2110

ADDENDUM to Application for Review submitted on 11/10/22

KINGSTON SPRINGS APPLICATION FOR REVIEW

Board of Zoning Appeals, Board of Construction/Sign Appeals

- Already paid**
- Board of Zoning Appeals Residential **(\$150.00)** (34125)
 - Board of Zoning Appeals Commercial **(\$200.00)** (34125)
 - Board of Construction Appeals **(\$150.00)** (34125)
 - Board of Sign Appeals **(\$175.00)** (34125)

Date of Application: December 1, 2022

Property Address/Location: 279 E. Kingston Springs Rd.

Property Owner's Name Albert Palathingal and Merina Albert

Property Owner's Address: 279 E. Kingston Springs Rd.

Property Owner's Primary Phone #: (630) 596-3292 Secondary #: 630-340-1010

Property Owner's Email pappo@sbcglobal.net and merina@fml.gov

Section for Appeal: _____ Page Number: _____

Description of Appeal Request: See Attached

Reason: See Attached

Attachments? Describe: Addendum Reasons, Requests for Exceptions/Waiver, Questions, Request for Information/Documents, supporting declarations.

Signature of Applicant: Albert Palathingal / Merina Albert Date: 12-1-22

BACK OF THIS FORM IS FOR OFFICE USE ONLY

OFFICE USE ONLY: APPLICANT DO NOT WRITE BELOW THIS LINE

Staff Review Information: _____

Appeal Board Fee: \$ _____

Amount Paid: \$ _____ Date Paid: _____

Receipt Number: _____

Board Performing Review: _____

Date of Review: _____

Approved

Denied

Withdrawn

The board of appeals has the power 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 the municipal building commissioner or any other administrative official in the carrying out or enforcement of any provision of any ordinance enacted pursuant to this part and part 3 of this chapter;

Hear and decide, in accordance with any such ordinance, *requests for special exceptions* or for interpretation of the map or for decisions upon other special questions upon which such board is authorized by any such ordinance to pass; and

Where, by reason of exceptional narrowness, shallowness or shape of a specific piece of property at the time of the enactment of the zoning regulation, or by reason of exceptional topographic conditions or other extraordinary and exceptional situation or condition of such piece of property, the strict application of any regulation enacted under this part and part 3 of this chapter would result in peculiar and exceptional practical difficulties to or exception or undue hardship upon the owner of such property, authorize, *upon an appeal relating to the property, a variance from such strict application so as to relieve such difficulties or hardship; provided, that such relief may be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of the zone plan and zoning ordinance.*

Addendum – Exception/Waiver of Request for Residential Permit Application: 279 E. Kingston Springs Rd.

There was never an administrative warrant presented to enter and inspect our home by Town Official(s). Neither was there an invitation nor verbal permission granted for Town official(s) to enter our home and inspect it. After having done so, however, the Town set forth a demand that that we complete a residential permit application in order for us to complete our driveway. This requirement should be nullified as the initial inspection by the City Planner as well as the unannounced entrance into the home by the Codes Official may be determined to represent a civil rights violation which renders the search illegal and findings inadmissible for further action.

Addendum – Request for Grandfather the Existing Property at 279 E. Kingston Springs Rd.

Black's Law Dictionary defines "grandfather clause" as "an exception to a restriction that allows all those already doing something to continue doing it even if they would be stopped by the new restriction."

- The residence in question was built in 1973.
- Kingston Springs implemented their Zoning Ordinances in March 1985.
- The residence had a utility building, a driveway, patio slab and deck, the existence of which pre-dated the referenced zoning ordinances.
 - See Property Home Data page
 - See previously submitted Declaration of Robert Winters who purchased the residence next door in 1986 and has attested to this fact
- These accessory uses were legal when they were established/built and have continued to exist since that time.
- We have made a substantial investment in this community and could not have anticipated that the Town would attempt to retroactively apply zoning ordinances after we purchased our home.
- This process has been unfair and unreasonably delayed. To have had the repair of our driveway halted since October 13 has imposed a real and undue hardship on us as the new and existing property owners.
- Further, it has been a cause of undue duress to have had the Town official enter our home and conduct an inspection/search without permission, order a handyman to leave, and ultimately request that we obtain a residential permit application.
- Additionally, we were ordered to remove "all portions of the driveway and slab that do not comply with the requirements" (10 ft from side, 25 ft from back). See 10/21 email. The distance from the rear property line is well over 75 feet and the variance/special exception being sought for the side property is only around 2 feet to which the adjacent homeowner has consented.

Addendum – Exception/Waiver Driveway Permit

In addition to the reasons provided on the previous appeal submitted regarding the waiver of any driveway permit fee and associated penalties based on the fact that the work performed does not meet the descriptive standards on the application for which a permit would be necessary, it bears noting that when the preparations were made for replacement of the deteriorating concrete on the driveway, the width of the driveway was reduced by a total of 8 feet thus reducing its overall square footage.

Questions still unanswered

- Please advise as to the identity of the person who allegedly called the City Planner and lodged a complaint against the property the day after a permit for a metal garage structure was sought?
- When were the measurements of the accessory structures obtained and who made such measurements?

See 11/09 email.

We would request a copy(ies) of any official written and computer software reports made by the zoning and codes enforcement official(s) as it concerns this property.



Albert Palathingal and/or Merina Albert

State of Tennessee  Comptroller of the Treasury
Real Estate Assessment Data

County Number: 011

County Name: CHEATHAM

Tax Year: 2022

Property Owner and Mailing Address

Jan 1 Owner:
 LONG JOEL W. SHARON LONG GOAD &
 JEFFREY W LONG % SHARON LONG GOAD
 523 RIDGEMONT DRIVE
 DICKSON, TN 37055

Current Owner:
 ALBERT MERINA
 279 EAST KINGSTON SPRINGS RD
 KINGSTON SPRINGS, TN 37082

Property Location

Address: E KINGSTON SPRINGS RD 279

Map: 095A **Grp:** A **Ctrl Map:** 096D **Parcel:** 015.00 **Pl:** S/I: 000

Value Information

Reappraisal Year: 2019

Land Mkt Value: \$32,500
Improvement Value: \$255,000
Total Market Appraisal: \$287,500
Assessment %: 25
Assessment: \$71,875

General Information

Class: 00 - RESIDENTIAL
City #: 384 **City:** KINGSTON SPRINGS
SSD1: 000 **SSD2:** 000
District: 11 **Mkt Area:** K05
Bldgs: 1 **# Mobile Homes:** 0
Utilities - Water / Sewer: 03 - PUBLIC / INDIVIDUAL **Utilities - Electricity:** 01 - PUBLIC
Utilities - Gas / Gas Type: 00 - NONE **Zoning:**

Subdivision Data

Subdivision: WOODLANDS OF THE
 HARPETH

Plat Bk: 1 **Plat Pg:** 100 **Block:** **Lot:** 116

Additional Description

Building Information

Building # 1
Improvement Type: 01 - SINGLE FAMILY **Stories:** 1
Living/Business Sq. Ft.: 1,514
Heat and A/C: 07 - HEAT & COOLING SPLIT **Plumbing Fixtures:** 8
Exterior Wall: 11 - COMMON BRICK **Quality:** 01 - AVERAGE
Act Yr Built: 1973 **Condition:** A - AVERAGE
Building Areas:
Area: BAS **Sq Ft:** 1,514
Area: BMF **Sq Ft:** 1,475
Area: OPF **Sq Ft:** 18

Extra Features

Bldg/Card#	Type	Description	Units
1	UTILITY BUILDING	12X16	192
1	DRIVEWAY	ALL	1,000
1	PATIO	20X20	400
1	WOOD DECK	30X20	600

28 x 56 ?

Sale Information

Sale Date	Price	Book	Page	Vac/Imp	Type Instrument	Qualification
03/07/2022	\$395,500	600	1293	IMPROVED	WD	J
11/11/2021		594	1284		ED	
11/16/1973	\$0	169	40			

Land Information

Deed Acres: 0.00 Calc Acres: 0.00 Total Land Units: 1.00
Land Type: 01 - RESIDENTIAL Soil Class: Units: 1.00

----- Forwarded Message -----

From: City Planner <cityplanner@kingstonsprings-tn.gov>

To: pappo@sbcglobal.net <pappo@sbcglobal.net>

Cc: Jamie Dupre <jdupre@kingstonsprings-tn.gov>

Sent: Friday, October 21, 2022 at 08:31:05 AM CDT

Subject: Residential Building Permit, Driveway Permit, Accessory Permit

Mr. Albert,

Thank you for meeting with me yesterday afternoon. We discussed the three projects on your property underway without permits. I shared with you the issues for each project and am providing next steps with this email.

Driveway and Garage Slab, Concrete Pad, storage buildings, and decks:

1. The building slab for the proposed detached garage must be a minimum of 10 ft. from the side property line and 25 ft. from the rear property line. Please remove all portions of the driveway and slab that do not comply with the requirements.
2. The back patio slab, detached garage, decks, and all other accessories cannot exceed half of the 1514 sq. ft. or 757 sq. ft. in total, or 1514 sq. ft. if the basement is permitted, completed, and passes inspection for 2015 Building Code.
3. Repair of the deck requires a permit and inspections.

Residential Structure:

1. An inspection of the residential structure and an approved building permit must be completed before any work can resume.
2. Please complete the attached Residential Building Permit. Select Remodel as the scope of work. Include the entire 3028 sq. ft. of the residential structure on the permit.
3. You must use a TN licensed, insured contractor for the work.
4. Submit a drawing with measurements of all the spaces including the basement for the permit and describe the work proposed inside and outside the structure.
5. All work must be compliant with 2015 Residential Building Code, Energy Code, Plumbing Code, Electrical Code, and HVAC Code.
6. A Residential Sprinkler system must be installed if more than 25% of the residence requires structural, plumbing, HVAC, or electrical work.

I have attached a Residential Building Permit to this email. Please complete and return to City Hall for review.

Sincerely,
Sharon Armstrong, City Planner

From: Albert Palathingal <pappo@sbcglobal.net>
Sent: Wednesday, November 9, 2022 1:37 PM
To: Merina Albert <merina@fnal.gov>
Subject: Fw: Permits for 279 E. Kingston Springs, Rd.

Sent from AT&T Yahoo Mail for iPhone

Mr. Albert,

We have not received your Residential Permit Application for the work on your recently acquired property. The following information explains why the permits for the driveway, garage, patio/turnaround and deck cannot be issued until the residential permit is received and approved:

The following information is relevant to the permitting issues at 279 E. Kingston Springs Rd.:

The Garage Slab, Deck, and Patio location, square footage and lack of permits cannot be resolved until the basement is inspected and it is determined the square footage of the structure is sufficient to allow the accessory uses requested.

The Zoning Ordinance limits all accessory uses to 50% of the square footage of the primary structure: 1514 Sq. Ft. X 50% = 752 Sq. Ft.

The Zoning Ordinance also limits lot coverage to 30%. The patio slab is now 483 sq. ft., the garage slab is 550 sq. ft., there are 2 storage buildings with a total square footage of approximately 370 sq. ft., and a deck with 600 sq. ft. for a total accessory square footage of 1983 sq. ft. which is larger than the entire permitted square footage of the primary structure without including the driveway, proposed to be increased by 200 sq. ft. from the original driveway square footage of 1200 sq. ft. that was removed and restructured without a permit. This brings the total square footage of requested square footage to 3,183 sq. ft. Accessory uses requested or begun other than the expanded driveway without permit total 1983 Sq. Ft. and exceed square footages allowed.

Sincerely,
Sharon Armstrong, City Planner

DECLARATION

My name is Robert D. Winters. I am over eighteen (18) years of age and am a resident of Kingston Springs, Cheatham County, Tennessee.

- I make this Declaration in support of my neighbor Albert Palathingal who resides at 279 E. Kingston Springs Rd. as it concerns both his driveway and concrete pad at the end thereof.
- I currently live at 275 E. Kingston Springs Rd., having lived there since 1986.
- To the best of my recollection, there has always been a concrete driveway in existence at the property/residence immediately adjacent to me at 279 E. Kingston Springs Rd. which the current owner is currently seeking to resurface. (See attached TN Property Data Maps). This repair/resurfacing does not represent a new driveway, an alteration to the scope of the driveway, nor is it being relocated in any manner. There is also no additional access being sought.
- The current owner has also caused a pad/slab of concrete to be poured at the end of his driveway which abuts my property and falls closer than the requisite 10 feet from the adjoining property line as prescribed by Town Zoning ordinance.
- I have no issue with and no objection to a dimensional variance being granted to the current owners of 279 E. Kingston Springs Rd. as it concerns this concrete pad.
- The granting of the variance will not be injurious to property or improvements on my property or in the neighboring area or substantially diminish or impair property values within the area.
- I have personal knowledge of the facts contained in this declaration, and if called upon to testify I could and would testify competently as to the truth of the facts stated herein.

I declare under penalty of perjury under the laws of the State of Tennessee that the foregoing is true and correct.

Executed this ____ day of _____ 2022, at Kingston Springs, TN.

5/

Robert D. Winters

**KS REGIONAL PLANNING COMMISSION ADVISORY REPORT TO
THE KINGSTON SPRINGS BOARD OF ZONING APPEALS**

20 DECEMBER 2022

**RE: BOARD OF ZONING APPEALS APPLICATION
ADDRESS: 279 E. KINGSTON SPRING RD.**

RELIEF REQUESTED BY APPLICANT

BACKGROUND: The owner/applicant of 279 E. Kingston Springs Rd. inquired at City Hall whether a permit was required for a driveway and accessory structure at the residence. Staff provided three permit applications: 1. Driveway Permit, 2. Accessory Use Permit 3. Residential Building Permit.

1. WAIVER OF PERMIT FEE FOR DRIVEWAY PERMIT

- a. Permit Fees are required by KS Municipal Code Title 12, Section 12-103. Permit fees.
- b. Permit fees are adopted by the City Commission and can only be waived by the City Commission if no violation exists

2. VARIANCE TO ALLOW CONCRETE SLAB POURED WITHOUT PERMIT

- a. Slab violates minimum side setback line, 50% limitation on accessory uses, and was poured without a permit
- b. Granting a variance for a violation caused solely by the applicant sets a precedent within an R-1 Low Density Residential District and is a violation of the minimum setback of the KS Zoning District Article III, Section 3.100, E. and F. and Article VIII, Section 8.010, and 8.020 below:
- c. Granting of an exception/waiver of the Building Permit Requirements and interference with the right of the Building Inspector or Planner to conduct inspections and require permits authorized by the KS Zoning Ordinance and Building Code for work begun without a permit violates the ordinances and codes adopted by the Town of Kingston Springs and affords an exception to a violation knowingly committed by the applicant.

KS ZONING ORDINANCE, Article III, Section 3.100, Sections E. and F.

(E.) Total accessory uses in residential areas shall be limited in their size. An accessory use on any lot shall be limited to no more than one-half the size of its principal use on such lot.

(F.) No accessory building or structure shall be located closer than ten (10) feet from any adjoining property line. See Sections 3.040 and 3.050, for other related setback requirements.

3. EXCEPTION/WAIVER of Residential Building Permit – Claim of applicant that the Planner had no right entry into the residence and that entry for the purposes of inspection requires an Administrative Warrant (Applicant asked the Planner to enter the residence to see the incomplete permits provided by City Hall).

- a. Building Permits are required by the KS Zoning Ordinance in Article VIII, Sections 8.010 and 8.020, KS Municipal Code, Chapter 1, Building Code, Section 12-101 below:**

8.010. Administration of the ordinance. Except as otherwise provided, no structure or land shall after the effective date of this ordinance be used and no structure or part thereof shall be erected, altered, or moved unless in conformity with the regulations herein specified for the district in which it is located. In their interpretation and application, the provisions of this ordinance shall be considered minimum requirements adopted for the promotion of public health, safety, morals, convenience, order, prosperity, and general welfare of the community. Where other public ordinances, resolutions, or regulations heretofore adopted or which may be adopted hereafter impose greater restrictions than those specified herein, compliance with such other ordinances, resolutions, or regulations is mandatory.

8.020. The enforcement officer. The provisions of this ordinance shall be administered and enforced by the Town Building Inspector in concert with the Kingston Springs Regional Planning Commission (or its designee). The Building Inspector shall also have all applications reviewed by the Town Planner for approval as to compliance with the requirements of this Ordinance.

F. Conduct inspections as required in this Ordinance and such other inspections as are necessary to insure compliance with the various other general provisions of this ordinance. The Building Inspector and or his/her designee shall possess the right to enter upon any premises for the purpose of making inspections of said buildings or premises as are necessary to carry out his or her authorized duties. If the project involves any state or federal permits in conjunction with the local permit, the Building Inspector shall work with the Town Planner to ensure that all inspections are done and that the applicant has applied for necessary state and federal permits.

In conjunction with the Building Inspector, the Town Planner shall:

K. Review all applications to ensure compliance with the applicable zoning regulations for all setbacks and other requirements. The Town Planner shall also review all applications to ensure the proposed project does not violate the Town's flood ordinance or any regulations as set out by FEMA. The Town Planner shall also review the applications in conjunction with the Building Inspector and ensure that all technical and necessary information is included and shall request further documentation of the applicant if necessary.

- b. Upon entry staff noted work inside without a permit and advised applicant of the requirement for an inspection of the work by the on the first floor (work in progress without a**

permit) and inspection basement by the Building Inspector (basement completed without permit by previous owner) as required by city municipal code and the KS Zoning Ordinance

4. Request for Grandfather the existing property located at 279 E. Kingston Springs Rd.

- a. The driveway expansion, concrete slab and interior work conducted without a permit violate the 2015 Building Code, KS Zoning Ordinance Article VII, Sections 7.020, 7.022, 7.023, 7.025, 7.026, and 7.027, Article VIII, 8.020, and the requirements of KS Municipal Code, Title 12, Chapter 1.
- b. The driveway was completely removed, reformed and extended to align with the concrete slab poured without a permit.
- c. The finished basement is reflected on the TN Property Data Sheet but is not listed nor taxed as living square footage. No permits were found in staff research for the finishing of the basement.

Article VII, Section 7.020: The districts established in this ordinance (as set forth in district regulations in ARTICLE V) are designed to guide the future use of land in Kingston Springs, Tennessee, by encouraging the development of desirable residential, commercial, and industrial areas with appropriate groupings of compatible, and related uses and thus promote and protect the public health, safety, and general welfare.

As a necessary corollary, in order to carry out such purposes, nonconforming uses which adversely affect the development of such areas must be subject to certain limitations. The provisions governing nonconforming uses set forth in this Article are therefore established to contain the existing undesirable conditions resulting from such incompatible nonconforming uses, which are detrimental to the achievement of such purposes. While such uses are generally permitted to continue, this ordinance is designed to restrict any expansion of such uses beyond the site which the use occupied upon the effective date of this ordinance.

In the case of buildings or other structures not complying with the bulk regulations of this ordinance, the provisions governing noncomplying buildings or other structures set forth in this article are established in order to permit the continued use of such buildings or other structures, but to limit the creation of additional noncompliance or increase in the degree of noncompliance.

These provisions are thus designed to preserve the character of the districts established in this ordinance in light of their suitability to particular uses, and thus to promote the public health, safety, and general welfare.

7.021. Provisions Governing Nonconforming Uses.

Applicability. The provisions of this article are applicable to all uses which are not permitted within the districts in which they are located. Additionally, buildings and

other structures located within the floodplain are considered within the regulations of nonconforming uses.

7.022. Construction or Use Permit Approved Prior to Ordinance Adoption. Nothing contained herein shall require any change in the overall layout, plans, construction, site or designated use of any development, building, structure, or part thereof where official approvals and required building permits have been granted before the enactment of this ordinance, or any amendment thereto, the construction of which, conforming with such plans, shall have been started prior to the effective date of this ordinance and completion thereof carried on in a normal manner within the subsequent six (6) months period, and not discontinued until completion except for reasons beyond the builder's control. In the event that the activity or construction of such building or other structures is not substantially underway and being diligently pursued within the six (6) month period following the issuance of a building permit, then such permit shall automatically lapse and the provisions of this ordinance shall apply.

7.023. Repairs and Alterations Nothing in this Article shall prevent the strengthening or restoring to a safe condition of any part of any building or structure declared unsafe by proper authority.

7.024. Zone Lot Containing Nonconforming Use. A zone lot containing a nonconforming use shall not be reduced in area except to comply with Section 7.023.

7.025. Continuation of Nonconforming Use. Any nonconforming use which shall become nonconforming upon enactment of this ordinance, or any subsequent amendments thereto, may be allowed to continue in operation and be permitted provided that no change in use (See Section 7.026) is undertaken.

7.026. Change of Nonconforming Use.

7.026.1. General Provisions. For the purpose of this article, a change in use is a change to another use either under the same activity type or any other activity type or major class of activity; however, a change in occupancy or ownership shall not, by itself, constitute a change of use.

A nonconforming use may be changed to any conforming use, and the applicable bulk regulations and accessory off-street parking requirements shall apply to such change of use or to alterations made in order to accommodate such conforming use.

7.027. Expansion of Nonconforming Uses

STAFF COMMENT: Expansion of Nonconforming uses is only applicable to Industrial, commercial or business uses.

7.027.1. General Provisions. Pursuant to T.C.A. §§13-7-208, and amendments thereto, any nonconforming industrial, commercial, or business use which shall

become nonconforming upon enactment of this ordinance, or any subsequent amendments thereto, may be allowed to expand operations and construct additional facilities which involve an actual continuance and expansion of the nonconforming industrial, commercial or business use provided that any such expansion shall not violate the provisions as set out below and shall not violate any other applicable building code or regulatory requirements.

7.040. Bulk and Lot Size Noncompliance.

7.040.1. General Provisions. The provisions of this article shall control buildings and other structures which do not meet the bulk or any other provisions applicable in the districts in which they are located except those provisions which pertain to activity or use.

7.040.2. Continuation of Use. The use of a noncomplying building or other structure or parcel may be continued, except as otherwise provided by this article.

7.040.3. Repairs and Alterations. Repairs, incidental alterations, or structural alterations may be made in noncomplying buildings or other structures subject to the provisions of Section 7.040.4 through 7.040.6.

7.040.4. Enlargements or Conversions. A noncomplying building or other structure may be enlarged or converted, provided that no enlargement or conversion may be made which would either create a new noncompliance or increase the degree of noncompliance of any portion of a building or other structure or parcel.

7.040.6. Damage or Destruction of Noncomplying Uses. A noncomplying building which is damaged or destroyed may be reconstructed, provided that the reconstruction will not either create a new noncompliance or increase the degree of noncompliance of a building or structure or parcel or portion thereof.

STAFF COMMENTS - REQUESTS FOR VARIANCES/WAIVERS/EXCEPTIONS:

The variance/waiver/exception request contained in the in the application and addendum violates the KS Municipal Code, Title 12 and the KS Regional Planning Commission Zoning Ordinance Requirements for development within the town and the regulations governing the KS Board of Zoning Appeals.

The applicant was advised by city hall staff of the requirement for permits and he was furnished with permit applications. The applicant willfully began construction without permits in violations of city and planning commission codes and ordinances.

Staff met with the applicant and the concrete contractor after an anonymous complaint call from a neighbor, conducted the required inspection of the property and advised the applicant that three permits, an inspection of the basement by the Building Inspector would be required,

along with Adequate Facilities Tax and Building Permit fees to bring the basement into compliance. This process is utilized each time this violation occurs. The contractor relayed during the meeting the property owner told him he had permits for the work.

Staff discussed the basement finished without a permit (done by previous owner) with the Planning Commission at the October 13 Meeting and discussed requesting a waiver for the building permit fine for the basement required by the Zoning Ordinance because the violation was not committed by the new owner.

KS REGIONAL PLANNING COMMISSION & STAFF RECOMMENDATION:

- 1. Deny all requests by the applicant for Variances, Waivers, or Exceptions.**

Respectfully submitted,

**SHARON
ARMSTRONG**

Digitally signed by SHARON ARMSTRONG
DN: cn=SHARON ARMSTRONG, o=Town of
Kingston Springs, TN, ou=PLANNING,
email=cityplanner@kingstonsprings-
tn.gov, c=US
Date: 2022.12.20 12:45:12 -06'00'

Sharon Armstrong, Planner
KS Regional Planner Commission



APPLICATION
 AMENDED / UPDATED
 BY APPLICANT
 12/11/22

Town of Kingston Springs
 Building and Codes Department
 PO Box 256
 396 Spring Street
 Kingston Springs, TN 37082
 615-952-2110

KINGSTON SPRINGS APPLICATION FOR REVIEW
Board of Zoning Appeals, Board of Construction/Sign Appeals

- Board of Zoning Appeals Residential (\$150.00) (34125)
- Board of Zoning Appeals Commercial (\$200.00) (34125)
- Board of Construction Appeals (\$150.00) (34125)
- Board of Sign Appeals (\$175.00) (34125)

Date of Application: 11/10/22
 Property Address/Location: 279 E. Kingston Springs Rd.
 Property Owner's Name: Albert Palathingal / Merina
 Property Owner's Address: Same
 Property Owner's Primary Phone #: 630-596-3292 Secondary #: _____
 Property Owner's Email: pappo@sbcglobal.net

Section for Appeal: - Page Number: -

Description of Appeal Request: _____

Reason: ① Waiver of Driveway Permit Fee ② Variance for concrete slab

see Attached

Attachments? Describe: Outline of Reason
Declaration of Robt. Winters

Signature of Applicant: Merina Albert Date: 11/10/2022

BACK OF THIS FORM IS FOR OFFICE USE ONLY

DECLARATION

My name is Robert D. Winters. I am over eighteen (18) years of age and am a resident of Kingston Springs, Cheatham County, Tennessee.

- I make this Declaration in support of my neighbor Albert Palathingal who resides at 279 E. Kingston Springs Rd. as it concerns both his driveway and concrete pad at the end thereof.
- I currently live at 275 E. Kingston Springs Rd., having lived there since 1986.
- To the best of my recollection, there has always been a concrete driveway in existence at the property/residence immediately adjacent to me at 279 E. Kingston Springs Rd. which the current owner is currently seeking to resurface. (See attached TN Property Data Maps). This repair/resurfacing does not represent a new driveway, an alteration to the scope of the driveway, nor is it being relocated in any manner. There is also no additional access being sought.
- The current owner has also caused a pad/slab of concrete to be poured at the end of his driveway which abuts my property and falls closer than the requisite 10 feet from the adjoining property line as prescribed by Town Zoning ordinance.
- I have no issue with and no objection to a dimensional variance being granted to the current owners of 279 E. Kingston Springs Rd. as it concerns this concrete pad.
- The granting of the variance will not be injurious to property or improvements on my property or in the neighboring area or substantially diminish or impair property values within the area.
- I have personal knowledge of the facts contained in this declaration, and if called upon to testify I could and would testify competently as to the truth of the facts stated herein.

I declare under penalty of perjury under the laws of the State of Tennessee that the foregoing is true and correct.

Executed this 2 day of November 2022, at Kingston Springs, TN.


Robert D. Winters

Hide Parcel Highlight(s) : Clear

County: Cheatham
 Owner: ELKINS GORI
 Owner 2:
 Address: HARPETH VI 091W A.033.
 Deeded Acreage: 0
 Calculated Acreage: 0
 Subdivision: WOODLAND:
 Subdivision Lot: 173
 Date of TDOT Imagery: 2017
 Date of Vessel Imagery: 2021

Click [here](#) for the most up-to-date owl

[Click here](#) to view a larger version of this map

Export PDF of this map [View Image](#)
 PDF will be unavailable after 5 minute

The largest satellite imagery available for this location is from 2021. The most recent imagery is from 2021. The most recent imagery is from 2021. The most recent imagery is from 2021.



Wexel | Esri Community Maps Contributors, © OpenStreetMap contributors, © OpenStreetMap contributors, Esri, HERE, Garmin, SwireG...

2021

279



Street Map



TDOT Imagery

Vexcel Imagery

Property Lines

FEHA Flood Map



Zoom In

Measure

Search

Search Results

Property Detail

Hide Parcel Highlight(s) Clear

County: Cheatham
 Owner: ELKINS GORI
 Owner 2:
 Address: HARPETH VI
 Parcel Number: 091M A 033.
 Decded Acreage: 0
 Calculated Acreage: 0
 Subdivision: WOODLANDS:
 Subdivision Lot: 173
 Date of TDOT Imagery: 2017
 Date of Vexcel Imagery: 2021

Click [here](#) for the most up-to-date own

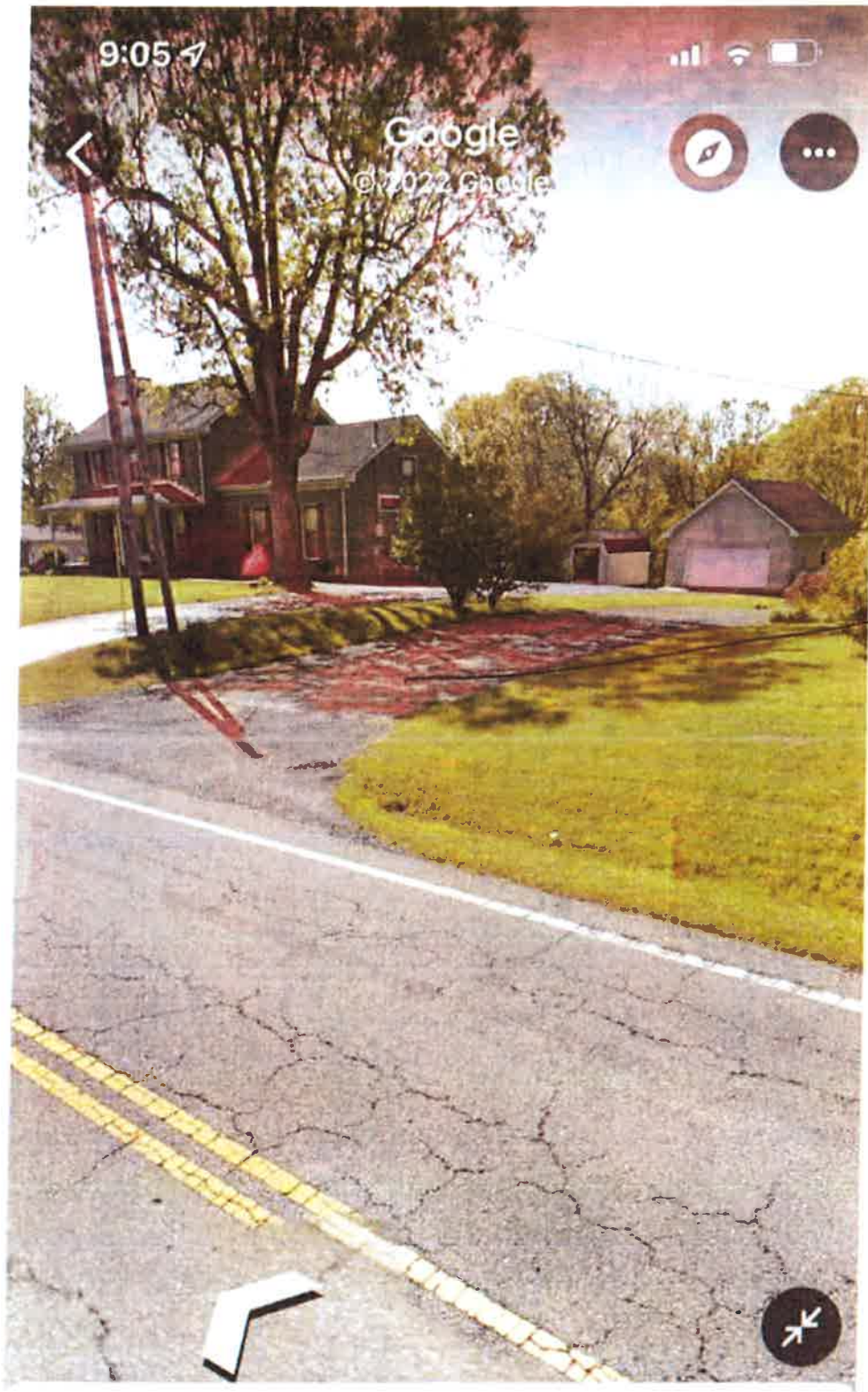
[Link to the map](#)

Export PDF of this map [\(Requires PDF will be unavailable after 5 minute](#)

The property information displayed on this page is derived from the public records of the county. The information is provided as a service to the public and is not intended to be used for legal purposes. The information is provided as a service to the public and is not intended to be used for legal purposes. The information is provided as a service to the public and is not intended to be used for legal purposes.

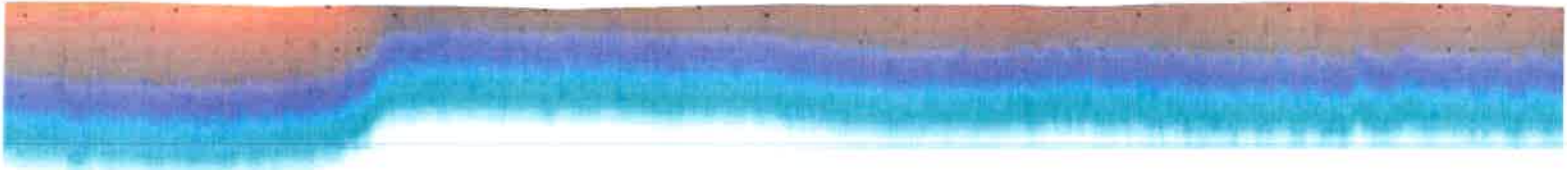
2017

279



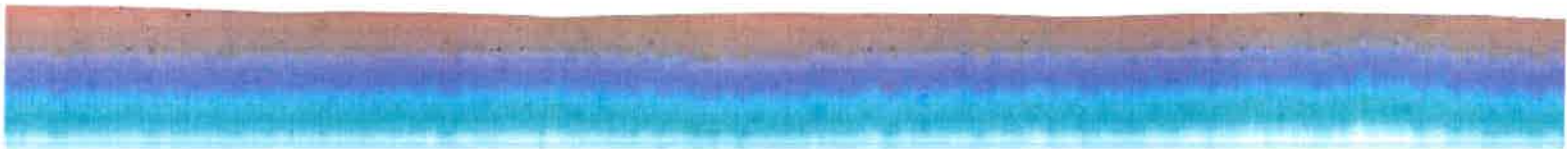
→ OLD DRYWAY
20 FEET WIDE

282 TN-249





282 TN-249



OLD DRYWAY

OLD CONCRETE PATIO



249

249

View Trail



Town of Kingston Springs
 Building and Codes Department
 PO Box 256
 396 Spring Street
 Kingston Springs, TN 37082
 615-952-2110

ADDENDUM to Application for Review submitted on 11/10/22

KINGSTON SPRINGS APPLICATION FOR REVIEW

Board of Zoning Appeals, Board of Construction/Sign Appeals

- Already paid** Board of Zoning Appeals Residential **(\$150.00)** (34125)
 Board of Zoning Appeals Commercial **(\$200.00)** (34125)
 Board of Construction Appeals **(\$150.00)** (34125)
 Board of Sign Appeals **(\$175.00)** (34125)

Date of Application: December 1, 2022

Property Address/Location: 279 E. Kingston Springs Rd.

Property Owner's Name Albert Palathingal and Merina Albert

Property Owner's Address: 279 E. Kingston Springs Rd.

Property Owner's Primary Phone #: (630) 596-3292 Secondary #: 630-340-1010

Property Owner's Email pappo@sbcglobal.net and merina@fnal.gov

Section for Appeal: _____ Page Number: _____

Description of Appeal Request: See Attached

Reason: See Attached

Attachments? Describe: Addendum Reasons, Requests for Exceptions/Waiver, Questions, Request for Information/Documents, supporting declarations.

Signature of Applicant: Albert Palathingal

Date: 12-1-22

BACK OF THIS FORM IS FOR OFFICE USE ONLY

OFFICE USE ONLY: APPLICANT DO NOT WRITE BELOW THIS LINE

Staff Review Information: The facts of the appeals are below:

1. Mr. Albert contacted KS City Hall and inquired if a permit was required to remove and repair his existing driveway and to install a detached garage. City staff informed the applicant that permits were required and provided him with a Driveway and Accessory Building Application. The permits were not completed or returned to City Hall.
2. The KS Regional Planning Commission staff received an anonymous call regarding work on the property and visited the location on 13 October 2022. The planner observed work in progress as follows: a. The existing driveway was removed and concrete forms were installed to lengthen the driveway to a slab poured at the rear of the property without a permit. Staff contacted Mr. Albert at the rear of the property and advised that all work must cease until a permit was secured.
3. Staff observed a worker in the rear yard with drywall tools in hand and asked the property owner if work was being conducted within the residence. He replied that it was. Staff advised the property owner that all interior work must cease until a permit was secured for the work being done. He advised the worker to stop.
4. Mr. Albert advised that he had permits for the driveway and concrete slab in the house but they were incomplete. He asked staff to look at the permits. Staff agreed and followed him into the residence. Once inside staff noted work was underway in the living room and kitchen and advised that a Residential Building Permit would be required for the work. Mr. Albert advised that no work was being done in the basement only on the first floor. Staff asked to see the basement. Mr. Albert agreed.
5. Staff advised Mr. Albert that he needed three permits: a. Driveway Permit. b. Accessory Permit. c. Residential Building Permit.
6. Staff advised Mr, Albert that she would be available to meet at City Hall with him and his contractor to discuss the activity that had occurred without a permit. Staff met with the owner and contractor on 20 October to relay in the meeting and by email the following day next steps. The contractor advised during the meeting he was told the property owner had a permit.
7. Staff reviewed the property records and discovered the finished basement was never permitted by the city as reflected on the TN Property Data Records. The basement is not listed as living square footage on the property records.

CONTINUED ON NEXT PAGE

Appeal Board Fee: \$ _____

Amount Paid: \$ _____ Date Paid: _____

Receipt Number: _____

Board Performing Review: _____

Date of Review: _____

Approved

Denied

Withdrawn

CONTINUED FROM PREVIOUS PAGE

8. Staff asked city staff to research if a permit was issued for the finished basement. There is no permit on file with the town for the finished basement as reflected on the TN Property Data information (attached).

9. The property owner was advised of next steps on 21 October 2022 by email (attached):

Mr. Albert,

Thank you for meeting with me yesterday afternoon. We discussed the three projects on your property underway without permits. I shared with you the issues for each project and am providing next steps with this email.

Driveway and Garage Slab, Concrete Pad, storage buildings, and decks:

The building slab for the proposed detached garage must be a minimum of 10 ft. from the side property line and 25 ft. from the rear property line. Please remove all portions of the driveway and slab that do not comply with the requirements.

The back patio slab, detached garage, decks, and all other accessories cannot exceed half of the 1514 sq. ft. or 757 sq. ft. in total, or 1514 sq. ft. if the basement is permitted, completed, and passes inspection for 2015 Building Code.

Repair of the deck requires a permit and inspections.

Residential Structure:

An inspection of the residential structure and an approved building permit must be completed before any work can resume.

Please complete the attached Residential Building Permit. Select Remodel as the scope of work. Include the entire 3028 sq. ft. of the residential structure on the permit.

You must use a TN licensed, insured contractor for the work.

Submit a drawing with measurements of all the spaces including the basement for the permit and describe the work proposed inside and outside the structure.

All work must be compliant with 2015 Residential Building Code, Energy Code, Plumbing Code, Electrical Code, and HVAC Code. A Residential Sprinkler system must be installed if more than 25% of the residence requires structural, plumbing, HVAC, or electrical work.

I have attached a Residential Building Permit to this email. Please complete and return to City Hall for review.

Sincerely,

Sharon Armstrong, City Planner

10. Subsequently to the meeting with Mr. Albert and the Contractor and the provision of next steps, Mr. Albert came to city hall and stated that I had approved his permits. The permit clerk called to check as a permit review and approval of a permit were not in the city permit database. I asked to speak with Mr. Albert to inform him again that no permits could be issued until he filed the Residential Building Permit for the basement as the square footage of the living area limited the square footage of accessory uses. He advised Commissioner Carolyn Clark said he could get a permit. I advised that Commissioner Clark had no authority to issue permits and permits would be issued when all of the items necessary to secure a permit were completed. An email to further explain the permitting issues was relayed to Mr. Albert and the City Manager on 9 November 2022 (attached). as follows:

Mr. Albert,

We have not received your Residential Permit Application for the work on your recently acquired property. The following information explains why the permits for the driveway, garage, patio/turnaround and deck cannot be issued until the residential permit is received and approved:

The following information is relevant to the permitting issues at 279 E. Kingston Springs Rd.:

The Garage Slab, Deck, and Patio location, square footage and lack of permits cannot be resolved until the basement is inspected and it is determined the square footage of the structure is sufficient to allow the accessory uses requested.

The Zoning Ordinance limits all accessory uses to 50% of the square footage of the primary structure: 1514 Sq. Ft. X 50% = 752 Sq. Ft.

The Zoning Ordinance also limits lot coverage to 30%. The patio slab is now 483 sq. ft., the garage slab is 550 sq. ft., there are 2 storage buildings with a total square footage of approximately 370 sq. ft., and a deck with 600 sq. ft. for a total accessory square footage of 1983 sq. ft. which is larger than the entire permitted square footage of the primary structure without including the driveway, proposed to be increased by 200 sq. ft. from the original driveway square footage of 1200 sq. ft. that was removed and restructured without a permit. This brings the total square footage of requested square footage to 3,183 sq. ft. Accessory uses requested or begun other than the expanded driveway without permit total 1983 Sq. Ft. and exceed square footages allowed.

Sincerely,
Sharon Armstrong, City Planner

The board of appeals has the power 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 the municipal building commissioner or any other administrative official in the carrying out or enforcement of any provision of any ordinance enacted pursuant to this part and part 3 of this chapter;

Hear and decide, in accordance with any such ordinance, *requests for special exceptions* or for interpretation of the map or for decisions upon other special questions upon which such board is authorized by any such ordinance to pass; and

Where, by reason of exceptional narrowness, shallowness or shape of a specific piece of property at the time of the enactment of the zoning regulation, or by reason of exceptional topographic conditions or other extraordinary and exceptional situation or condition of such piece of property, the strict application of any regulation enacted under this part and part 3 of this chapter would result in peculiar and exceptional practical difficulties to or exception or undue hardship upon the owner of such property, authorize, *upon an appeal relating to the property, a variance from such strict application so as to relieve such difficulties or hardship; provided, that such relief may be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of the zone plan and zoning ordinance.*

Addendum – Exception/Waiver of Request for Residential Permit Application: 279 E. Kingston Springs Rd.

There was never an administrative warrant presented to enter and inspect our home by Town Official(s). Neither was there an invitation nor verbal permission granted for Town official(s) to enter our home and inspect it. After having done so, however, the Town set forth a demand that that we complete a residential permit application in order for us to complete our driveway. This requirement should be nullified as the initial inspection by the City Planner as well as the unannounced entrance into the home by the Codes Official may be determined to represent a civil rights violation which renders the search illegal and findings inadmissible for further action.

Addendum – Request for Grandfather the Existing Property at 279 E. Kingston Springs Rd.

Black's Law Dictionary defines "grandfather clause" as "an exception to a restriction that allows all those already doing something to continue doing it even if they would be stopped by the new restriction."

- The residence in question was built in 1973.
- Kingston Springs implemented their Zoning Ordinances in March 1985.
- The residence had a utility building, a driveway, patio slab and deck, the existence of which pre-dated the referenced zoning ordinances.
 - See Property Home Data page
 - See previously submitted Declaration of Robert Winters who purchased the residence next door in 1986 and has attested to this fact
- These accessory uses were legal when they were established/built and have continued to exist since that time.
- We have made a substantial investment in this community and could not have anticipated that the Town would attempt to retroactively apply zoning ordinances after we purchased our home.
- This process has been unfair and unreasonably delayed. To have had the repair of our driveway halted since October 13 has imposed a real and undue hardship on us as the new and existing property owners.
- Further, it has been a cause of undue duress to have had the Town official enter our home and conduct an inspection/search without permission, order a handyman to leave, and ultimately request that we obtain a residential permit application.
- Additionally, we were ordered to remove "all portions of the driveway and slab that do not comply with the requirements" (10 ft from side, 25 ft from back). See 10/21 email. The distance from the rear property line is well over 75 feet and the variance/special exception being sought for the side property is only around 2 feet to which the adjacent homeowner has consented.

Addendum – Exception/Waiver Driveway Permit

In addition to the reasons provided on the previous appeal submitted regarding the waiver of any driveway permit fee and associated penalties based on the fact that the work performed does not meet the descriptive standards on the application for which a permit would be necessary, it bears noting that when the preparations were made for replacement of the deteriorating concrete on the driveway, the width of the driveway was reduced by a total of 8 feet thus reducing its overall square footage.

Questions still unanswered

- Please advise as to the identity of the person who allegedly called the City Planner and lodged a complaint against the property the day after a permit for a metal garage structure was sought?
- When were the measurements of the accessory structures obtained and who made such measurements?

See 11/09 email.

We would request a cop(ies) of any official written and computer software reports made by the zoning and codes enforcement official(s) as it concerns this property.



Albert Palathingal and/or Merina Albert

279 E. KINGSTON SPRINGS RD – ALBERT & MERINA PATHINGAL
APPEALS REQUESTED – STAFF RESPONSE

1. Waiver of Driveway Permit Fee

STAFF RESPONSE: The Board of Zoning Appeals does not have the authority to waive permit fees. The KS Regional Planning Commission recommended Zoning Ordinance Required Fees to the City Commission for permitting. The City Commission adopted the fees. In the instance of illegal construction of the Driveway Permit the City Commission cannot waive a permit fee for an applicant who did not secure a required permit before work began. In these instances the original permit fee is doubled as a fine.

2. Variances for Driveway and Concrete Slab

STAFF RESPONSE: The variance submitted to the city contains the following language, "Outline of Reason Declaration of Robt. Winters." Contained in the application for appeal is a document titled Declaration, purportedly signed by Robert D. Winters under penalty of perjury.

The Declaration contains multiple inaccuracies or misstatements as follows:

"To the best of my recollection, there has always been a concrete driveway in existence at the property/residence immediately adjacent to me at 279 E. Kingston Springs Rd. which the current owner is currently seeking to resurface. (See attached TN Property Data Maps). This repair/resurfacing does not represent a new driveway, an alteration to the scope of the driveway, nor is it being relocated in any manner. There is also no additional access being sought."

STAFF RESPONSE:

1. The Declarant has no knowledge of the existence of the Driveway prior to 10/21/1986. Research conducted by the city finds no permits for the driveway beyond the original permit issued for the construction of the primary residence and driveway.
2. The existing driveway was removed. The forms installed in the driveway area extended the length of the driveway to include the slab poured at the end of the expanded driveway for the purpose of installing a detached metal garage. The work was done without a permit after being informed that a permit was required.

"The current owner has also caused a pad/slab of concrete to be poured at the end of his driveway which abuts my property and falls closer than the requisite 10 feet from the adjoining property line as prescribed by Town Zoning ordinance."

STAFF RESPONSE:

- 1. The concrete slab was poured without a permit in violation of the Zoning Ordinance and the requirement for a building permit contained within the ordinance and after staff at city hall conveyed the permit requirement. There are no provisions in the Zoning Ordinance to permit a variance to allow an illegal use.**
- 2. The concrete slab was poured to serve as the foundation for a detached garage. The proposed attached garage exceeds the allowed square footage for accessory structures and violates the minimum side setback required by the Zoning Ordinance. There are no provisions in the Zoning Ordinance to permit a variance to allow an illegal use.**

"I have no issue with and no objection to a dimensional variance being granted to the current owners of 279 E. Kingston Springs Rd. as it concerns this concrete pad."

STAFF RESPONSE:

- 1. Citizen input is always welcome but does not negate the requirements of the Zoning Ordinance or Building Code to secure a permit, comply with zoning restrictions, and pay the fees for review and inspection to the town. There are no provisions in the Zoning Ordinance for the Board of Zoning Appeals to meet the TN State Statutes to grant a variance as it violates the minimum requirement for setbacks and the restrictions on the square footage of accessory uses and violates the intent of the ordinance.**

"The granting of the variance will not be injurious to property or improvements on my property or in the neighboring area or substantially diminish or impair property values within the area."

STAFF RESPONSE:

- 1. Property values, consideration of whether the request for a variance is injurious to the adjacent property are not within the regulatory provisions of the Zoning Ordinance and are a moot point. There are no provisions in the Zoning Ordinance to approve a variance to allow an illegal use.**

"Addendum - Exception/Waiver of Request for Residential Permit Application: 279 E. Kingston Springs Rd. There was never an administrative warrant presented to enter and inspect our home by Town Official(s). Neither was there an invitation nor verbal permission granted for Town official(s) to enter our home and inspect it. After having done so, however, the Town set forth a demand that that we complete a residential permit application in order for us to complete our driveway. This requirement should be nullified as the initial inspection by the City Planner as well as the unannounced entrance into the home by the Codes Official

may be determined to represent a civil rights violation which renders the search illegal and findings inadmissible for further action.

STAFF RESPONSE:

- 1. There is no exception or waiver of the requirement for a Building Permit within the Zoning Ordinance or Building Code. The requirement for permits was conveyed to the applicant on a site visit when Staff observed work being conducted without a permit. The property owner did not advise staff not to enter the residence; rather staff followed the property owner into the residence when requested and when the property owner wanted to discuss the incomplete permit applications for work on the exterior of the property. There are no provisions in the Zoning Ordinance to approve a variance to allow an illegal use.**

As to the remaining allegations and misstatements in the Addendum Document of the Application filed by the applicant to appear before the Board of Zoning Appeals grandfathering only occurs when an action is permitted. It is irrelevant whether the storage buildings, patio, storage buildings or a deck were constructed prior to or after the Zoning Ordinance was adopted.

"Black's Law Dictionary defines "grandfather clause" as "an exception to a restriction that allows all those already doing something to continue doing it even if they would be stopped by the new restriction."

- The residence in question was built in 1973.
- Kingston Springs implemented their Zoning Ordinances in March 1985.
- The residence had a utility building, a driveway, patio slab and deck, the existence of which pre-dated the referenced zoning ordinances.

STAFF RESPONSE:

KS Regional Planning Commission Zoning Ordinance:

Article VII, Section 7.020. Nonconforming uses.

The districts established in this ordinance (as set forth in district regulations in ARTICLE V) are designed to guide the future use of land in Kingston Springs, Tennessee, by encouraging the development of desirable residential, commercial, and industrial areas with appropriate groupings of compatible, and related uses and thus promote and protect the public health, safety, and general welfare.

As a necessary corollary, in order to carry out such purposes, nonconforming uses which adversely affect the development of such areas must be subject to certain limitations. The provisions governing nonconforming uses set forth in this Article are therefore established to contain the existing undesirable conditions resulting from such

incompatible nonconforming uses, which are detrimental to the achievement of such purposes. While such uses are generally permitted to continue, this ordinance is designed to restrict any expansion of such uses beyond the site which the use occupied upon the effective date of this ordinance.

In the case of buildings or other structures not complying with the bulk regulations of this ordinance, the provisions governing noncomplying buildings or other structures set forth in this article are established in order to permit the continued use of such buildings or other structures, but to limit the creation of additional noncompliance or increase in the degree of noncompliance.

These provisions are thus designed to preserve the character of the districts established in this ordinance in light of their suitability to particular uses, and thus to promote the public health, safety, and general welfare.

7.021. Provisions Governing Nonconforming Uses. Applicability. The provisions of this article are applicable to all uses which are not permitted within the districts in which they are located. Additionally, buildings and other structures located within the floodplain are considered within the regulations of nonconforming uses.

7.022. Construction or Use Permit Approved Prior to Ordinance Adoption. Nothing contained herein shall require any change in the overall layout, plans, construction, site or designated use of any development, building, structure, or part thereof where official approvals and required building permits have been granted before the enactment of this ordinance, or any amendment thereto, the construction of which, conforming with such plans, shall have been started prior to the effective date of this ordinance and completion thereof carried on in a normal manner within the subsequent six (6) months period, and not discontinued until completion except for reasons beyond the builder's control.

In the event that the activity or construction of such building or other structures is not substantially underway and being diligently pursued within the six (6) month period following the issuance of a building permit, then such permit shall automatically lapse and the provisions of this ordinance shall apply.

7.023. Repairs and Alterations Nothing in this Article shall prevent the strengthening or restoring to a safe condition of any part of any building or structure declared unsafe by proper authority.

7.024. Zone Lot Containing Nonconforming Use. A zone lot containing a nonconforming use shall not be reduced in area except to comply with Section 7.023.

7.025. Continuation of Nonconforming Use. Any nonconforming use which shall become nonconforming upon enactment of this ordinance, or any subsequent amendments thereto, may be allowed to continue in operation and be permitted provided that no change in use (See Section 7.026) is undertaken.

7.026. Change of Nonconforming Use.

7.026.1. General Provisions. For the purpose of this article, a change in use is a change to another use either under the same activity type or any other activity type or major class of activity; however, a change in occupancy or ownership shall not, by itself, constitute a change of use.

A nonconforming use may be changed to any conforming use, and the applicable bulk regulations and accessory off-street parking requirements shall apply to such change of use or to alterations made in order to accommodate such conforming use.

7.026.2. Land with Incidental Improvements. In all districts a nonconforming use of land, not involving a building or structure, or in connection with which any building or structure thereon is incidental or accessory to the principal use of the land, shall be changed only to a conforming use.

7.026.3. Nonconforming to Conforming Use. Whenever a nonconforming use is changed to a conforming use, such use shall not thereafter be changed to a nonconforming use.

7.027. Expansion of Nonconforming Uses

STAFF COMMENT: Expansion of Nonconforming uses is only applicable to Industrial, commercial or business uses.

7.027.1. General Provisions. Pursuant to T.C.A. §§13-7-208, and amendments thereto, any nonconforming industrial, commercial, or business use which shall become nonconforming upon enactment of this ordinance, or any subsequent amendments thereto, may be allowed to expand operations and construct additional facilities which involve an actual continuance and expansion of the nonconforming industrial, commercial or business use provided that any such expansion shall not violate the provisions as set out below and shall not violate any other applicable building code or regulatory requirements.

7.040. Bulk and Lot Size Noncompliance.

7.040.1. General Provisions. The provisions of this article shall control buildings and other structures which do not meet the bulk or any other provisions applicable in the districts in which they are located except those provisions which pertain to activity or use.

7.040.2. Continuation of Use. The use of a noncomplying building or other structure or parcel may be continued, except as otherwise provided by this article.

7.040.3. Repairs and Alterations. Repairs, incidental alterations, or structural alterations may be made in noncomplying buildings or other structures subject to the provisions of Section 7.040.4 through 7.040.6.

7.040.4. Enlargements or Conversions. A noncomplying building or other structure may be enlarged or converted, provided that no enlargement or conversion may be made which would either create a new noncompliance or increase the degree of noncompliance of any portion of a building or other structure or parcel.

7.040.5. Buildings Noncomplying as to Lot Area. If a building does not comply with the applicable district regulations on lot area per dwelling unit (lot area being smaller than required for the number of dwelling units on such zone lot) such building may be converted (except when in the floodway district), provided that the deficiency in the required lot area is not thereby increased (for example, a noncomplying building on a lot of 3,500 square feet, which before conversion required a lot area of 5,000 square feet and was, therefore, deficient by 1,500 square feet, can be converted into any combination of dwelling units allowed in the zoning district in question requiring a lot area of no more than 5,000 square feet).

7.040.6. Damage or Destruction of Noncomplying Uses. A noncomplying building which is damaged or destroyed may be reconstructed, provided that the reconstruction will not either create a new noncompliance or increase the degree of noncompliance of a building or structure or parcel or portion thereof.

STAFF COMMENTS:

There are no provisions in the Zoning Ordinance to approve a variance to allow an illegal use or to vary the requirement to obtain a permit.

The following language from the Zoning Ordinance contains the enforcement process of the Kingston Springs Regional Planning Commission:

8.020. The enforcement officer. The provisions of this ordinance shall be administered and enforced by the Town Building Inspector in concert with the Kingston Springs Regional Planning Commission (or its designee).

F. Conduct inspections as required in this Ordinance and such other inspections as are necessary to insure compliance with the various other general provisions of this ordinance. The Building Inspector and or his/her designee shall possess the right to enter upon any premises for the purpose of making inspections of said buildings or premises as are necessary to carry out his or her authorized duties. If the project involves any state or federal permits in conjunction with the local permit, the Building Inspector shall work with the Town Planner to ensure that all inspections are done and that the applicant has applied for necessary state and federal permits.

The Planner is the enforcement designee of the Kingston Springs Regional Planning Commission.

Again, the assertions contained in the document concerning the inspection conducted by the KS Regional Planning Commission staff planner filed by the applicant are irrelevant given the enforcement regulations contained in the Zoning Ordinance. However, staff entered the residence at the request of the owner.

STAFF RECOMMENDATIONS: Staff recommends all requests for waivers, exceptions be denied as required by the Zoning Ordinance and TN Statutes regulating the authority of the Board of Zoning Appeals (see the following document).



12/01/2022

Published on MTAS (<https://www.mtas.tennessee.edu>)

Board of Zoning Appeals Grants Variances for Mobile Homes That It Does Not Have Authority to Grant

Dear Reader

The following document was created from the Municipal Technical Advisory Services website (mtas.tennessee.edu). This website shares information relative to Tennessee municipal government. We hope this information will be useful to you and that it will assist you with questions that arise in your tenure in 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.

The Municipal Technical Advisory Service (MTAS) was created in 1949 to provide technical assistance to elected and appointed municipal officials in Tennessee. We are a resource for Tennessee municipal officials in areas of municipal government, human resources, finance, fire, legal, police, public works, water, and wastewater. We provide personal and professional knowledge growth opportunities on current issues within municipal government.

The University of Tennessee
Municipal Technical Advisory Service
1610 University Avenue
Knoxville, TN 37921-6741
www.mtas.tennessee.edu

[Board of Zoning Appeals Grants Variances for Mobile Homes That It Does Not Have Authority to Grant](#)

Original Author: Hemsley, Sid
Date of Material: 05/29/1995

Subjects(s):

Board of Zoning Appeals Grants Variances for Mobile Homes That It Does Not Have Authority to Grant

Reviewed Date: 04/28/2021

Summary:

MTAS was asked what recourse the city has when the board of zoning appeals grants variances for mobile homes that it does not have authority to grant.

May 29, 1995

Your question is, what recourse does the city have when the board of zoning appeals grants variances for mobile homes that it does not have authority to grant? As I understand it, you know that the city has no authority to prohibit in residential areas double-wide mobile homes that meet certain standards, and your question does not apply to such mobile homes.

In my opinion, the city's proper recourse is to refuse to issue a certificate of occupancy under section 14-804 of the Municipal Code (Proposed). Where a BZA exceeds its authority its acts are apparently ultra vires and void. If the property owner threatens to locate the mobile home in a prohibited zone after being denied a certificate of occupancy, or actually locates the mobile home in a prohibited zone, the city can impose penalties under section 14-805, and/or exercise its other legal remedies under section 14-806, of the Municipal Code (Proposed).

Jurisdiction and Powers of BZAs.

Tennessee Code Annotated, §13-7-207 provides BZAs with two basic general powers:

- (1) Make special exceptions to the terms of the zoning regulations in harmony with their general purpose and intent.
- (2) The chief legislative body may also authorize BZA to interpret zoning maps and pass on disputed questions of lot lines or district boundary lines as they arise in the zoning regulation context.

The same statute provides BZAs several specific powers:

- (1) Hear and decide appeals claiming error in any order, requirement, permit, decision, or refusal by any zoning enforcement official.
- (2) Hear and decide (in accordance with the zoning or other ordinance) requests for:
 - (a) special exceptions
 - (b) interpretation of the zoning map
 - (c) decisions on other questions

- (3) Hear and decide appeals for variances from the strict application of the zoning ordinance on the grounds that the strict application would by reason of
- (a) Exceptional narrowness, shallowness or shape of a specific piece of property at the time of the enactment of the zoning regulation, or
 - (b) other extraordinary and exceptional situation or condition of such piece of property, the strict application of the zoning regulation would result in
 - (1) Peculiar and exceptional practical difficulties, or
 - (2) Exception[al?] or undue hardship, upon the owner of the property.

- (4) Such relief must be given without substantial detriment to the public good and without substantially impairing the intent and purpose of the zoning plan and zoning ordinance.

Limitations on the Power and Authority of BZAs.

The chief legislative body cannot give BZA more power than it is given under the enabling statute governing the BZA. In **Father Ryan High School v. Oak Hill**, 774 S.W.2d 184 (Tenn. App. 1988), the City of Oak Hill's BZA denied Father Ryan High School a permit to build a high school. It relied on a provision of the Oak Hill zoning ordinance that gave the BZA the power to make a "determination that the establishment or operation of such school is consistent with the general welfare, safety, morals and health to the community, after taking into consideration the letter and spirit of this ordinance." [the zoning ordinance]. That provision was void, declared the Tennessee Court of Appeals because a municipality cannot give a BZA more power than it has under its enabling statute. In this case the high school otherwise met all the requirements of the zoning ordinance.

The BZA has no authority to review planning commission site plan decisions. In **Whittmore v. Brentwood Planning Commission**, 835 S.W.2d 11 (Tenn. App. 1992), the Tennessee Court of Appeals rejected the claim of a citizen's group that a BZA had such authority with respect to a shopping center development approved by the planning commission.

The BZA cannot act "arbitrarily or capriciously." In **Hunter v. City of Gallatin Board of Zoning Appeals**, 1991 WL 20383 (Tenn. App.), the Gallatin zoning ordinance permitted mobile home parks in a certain district as a conditional use. The BZA denied Hunter a conditional use permit for that purpose. The chancery court overturned the BZA and the Tennessee Court of Appeals upheld the chancery court. Said the Court,

A 'conditional use' is a permitted use which a zoning ordinance authorizes under certain conditions... [Citation omitted]. The granting of a conditional use is a duty imposed upon the Board of Appeals provided that the proposed use complies with all the conditions set forth in the ordinance.

In **Gregory v. Metro. Board of Zoning Appeals of the Metro. Govt. of Nashville and Davidson County**, 1991 WL 17174(Tenn. App.), it was held that

If an applicant satisfies all of the conditions of a zoning ordinance, his application for a conditional use must be issued. [Citation omitted] Speculations, expressions of fears and considerations of esthetic or political nature do not form a basis for a decision.

However, with particular respect to the question of granting variances for single-wide mobile homes, it was held in **McClurkan v. Board of Zoning Appeals**, 565 S.W.2d 495 (1977) that the BZA is not entitled to grant a variance when

... the only hardship to the owner in complying the zoning regulations is the result of a condition existing not in the land itself but in a structure which was created or altered by an owner of the property in violation of the zoning ordinance. Also the case for a variance here is made even weaker by a lack of any evidence of a hardship other than pecuniary loss, which has been held insufficient by itself to justify a variance.

There the plaintiff bought a four dwelling apartment located in an area zoned for one and two family dwellings. He applied for, and was denied a variance by, the BZA. Citing the statute governing the conditions under which a BZA can grant a variance, the Tennessee Court of Appeals upheld the denial of the variance. In so concluding, the Court declared,

[W]e wish to point out that we do not hold that improvements constructed on the property or even the personal ownership of an applicant may never be considered in deciding whether or not to grant a variance. We do say, however, that both the statute and the ordinance controlling here make characteristics of the **land itself** [the court's emphasis] the overriding criteria by which the Board is to decide the issue of hardship to an owner. It may be that in some cases other factors presented by a variance applicant would be closely related to these criteria, and that the Board would be justified in considering them. In the instant case, however, unique features of the land itself were entirely lacking, and any hardship concerned only the conditions of the house which was bought about by an owner of the property in violation of the zoning ordinance, so that the Board exceeded its authority in granting the variance...
[**McClurkan**]

Section 14-905 of the Municipal Code (Proposed) contains the powers of the BZA. It likewise makes the characteristics of the **land** itself the overriding criteria by which the BZA is to decide the issue of hardship to an owner of property. In fact, it generally tracks **Tennessee Code Annotated**, section 13-7-207 on that point.

It also seems to me that the practical effect of many illegal variances is often spot zoning, which itself is generally illegal. [See **Fallin v. Knox County board of Commissioners**, 656 S.W.2d 338 (1983), **Grant v. McCullough**, 270 S.W.2d 317 (1954), **Crown Colony Homeowners v. Ramsey**, 1991 WL 148058 (Tenn. App., 1991.)] The courts will not lightly interfere with either the legislative act of zoning property or the administrative decisions implementing a zoning ordinance. [See **Whittmore**, above.] However, spot zoning is a product of an actual amendment to the zoning ordinance or zoning map, a **legislative act** on the part of the municipal governing body. Illegal "spot zoning" done by variance is the product of a BZA, an **administrative act** which has the practical effect of amending the zoning ordinance or zoning map, action clearly beyond the authority of a BZA. That distinction seems to me important in concluding that the courts are more likely to question the action of a BZA that has the effect of amending the zoning ordinance or zoning map than they . As **McClurkan** makes clear, the primary focus of the BZA should be on the "unique" features of the land in question.

In any case the BZA grants a variance for a mobile homes (or for any other structure or land use) and the variance does not rely upon the above law, the act of the BZA is apparently ultra vires. In **McClurkan**, the Court answered McClurkan's claim of discrimination based on the fact that the BZA had granted the previous property owner a variance by saying, "

... we have already shown that the permit granted Ms. Smith was beyond the Board's authority and therefore **void**. Finally, denial of the variance to appellant can hardly be termed arbitrary. On the contrary, just as the Board exceeded its authority in granting a permit

to Ms. Smith on the facts presented here, as explained above, so it would have exceeded its authority had it granted one to appellant for the same reason. Denial of the variance to appellant thus was not arbitrary, but **was required** by the governing statute and ordinance on the facts here presented. [Emphasis is mine.]

Whittmore, citing **Father Ryan High School**, also said, "The board of zoning appeals authority extends only so far as state law permits...It cannot be extended by the city commission or by implication."

Needless to say, in cases in which it decides to challenge the BZA and the property owner who had obtained a variance, the city would need to have a solid case that the grant of the variance exceeds the BZA's authority.

Sincerely,

Sidney D. Hemsley
Senior Law Consultant

SDH/

Source URL: <https://www.mtas.tennessee.edu/knowledgebase/board-zoning-appeals-grants-variances-mobile-homes-it-does-not-have-authority-grant>

State of Tennessee  Comptroller of the Treasury
Real Estate Assessment Data

County Number: 011

County Name: CHEATHAM

Tax Year: 2022

Property Owner and Mailing Address

Jan 1 Owner:
 LONG JOEL W, SHARON LONG GOAD &
 JEFFREY W LONG % SHARON LONG GOAD
 523 RIDGEMONT DRIVE
 DICKSON, TN 37055

Current Owner:
 ALBERT MERINA
 279 EAST KINGSTON SPRINGS RD
 KINGSTON SPRINGS, TN 37082

Property Location

Address: E KINGSTON SPRINGS RD 279

Map: 095A **Grp:** A **Ctrl Map:** 096D **Parcel:** 015.00 **PI:** S/I: 000

Value Information

Reappraisal Year: 2019

Land Mkt Value: \$32,500
Improvement Value: \$255,000
Total Market Appraisal: \$287,500
Assessment %: 25
Assessment: \$71,875

General Information

Class: 00 - RESIDENTIAL
City #: 384 **City:** KINGSTON SPRINGS
SSD1: 000 **SSD2:** 000
District: 11 **Mkt Area:** K05
Bldgs: 1 **# Mobile Homes:** 0
Utilities - Water / Sewer: 03 - PUBLIC / INDIVIDUAL **Utilities - Electricity:** 01 - PUBLIC
Utilities - Gas / Gas Type: 00 - NONE **Zoning:**

Subdivision Data

Subdivision: WOODLANDS OF THE HARPETH

Plat Bk: 1 **Plat Pg:** 100 **Block:** **Lot:** 116

Additional Description

Building Information

Building # 1

Improvement Type: 01 - SINGLE FAMILY **Stories:** 1
Living/Business Sq. Ft.: 1,514
Heat and A/C: 07 - HEAT & COOLING SPLIT **Plumbing Fixtures:** 6
Exterior Wall: 11 - COMMON BRICK **Quality:** 01 - AVERAGE
Act Yr Built: 1973 **Condition:** A - AVERAGE

Building Areas:

Area: BAS **Sq Ft:** 1,514
Area: BMF **Sq Ft:** 1,475
Area: OFF **Sq Ft:** 18

Extra Features

Bldg/Card#	Type	Description	Units
1	UTILITY BUILDING	12X16	192
1	DRIVEWAY	ALL	1,000
1	PATIO	20X20	400
1	WOOD DECK	30X20	600

28 x 56 ?

Sale Information

Sale Date	Price	Book	Page	Vac/Imp	Type Instrument	Qualification
03/07/2022	\$395,500	600	1293	IMPROVED	WD	#
11/11/2021		594	1284		ED	
11/16/1973	\$0	169	40			

Land Information

Deed Acres: 0.00 Calc Acres: 0.00 Total Land Units: 1.00
Land Type: 01 - RESIDENTIAL Soil Class: Units: 1.00

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----- Forwarded Message -----

From: City Planner <cityplanner@kingstonsprings-tn.gov>

To: pappo@sbcglobal.net <pappo@sbcglobal.net>

Cc: Jamie Dupre <jdupre@kingstonsprings-tn.gov>

Sent: Friday, October 21, 2022 at 08:31:05 AM CDT

Subject: Residential Building Permit, Driveway Permit, Accessory Permit

Mr. Albert,

Thank you for meeting with me yesterday afternoon. We discussed the three projects on your property underway without permits. I shared with you the issues for each project and am providing next steps with this email.

Driveway and Garage Slab, Concrete Pad, storage buildings, and decks:

1. The building slab for the proposed detached garage must be a minimum of 10 ft. from the side property line and 25 ft. from the rear property line. Please remove all portions of the driveway and slab that do not comply with the requirements.
2. The back patio slab, detached garage, decks, and all other accessories cannot exceed half of the 1514 sq. ft. or 757 sq. ft. in total, or 1514 sq. ft. if the basement is permitted, completed, and passes inspection for 2015 Building Code.
3. Repair of the deck requires a permit and inspections.

Residential Structure:

1. An inspection of the residential structure and an approved building permit must be completed before any work can resume.
2. Please complete the attached Residential Building Permit. Select Remodel as the scope of work. Include the entire 3028 sq. ft. of the residential structure on the permit.
3. You must use a TN licensed, insured contractor for the work.
4. Submit a drawing with measurements of all the spaces including the basement for the permit and describe the work proposed inside and outside the structure.
5. All work must be compliant with 2015 Residential Building Code, Energy Code, Plumbing Code, Electrical Code, and HVAC Code.
6. A Residential Sprinkler system must be installed if more than 25% of the residence requires structural, plumbing, HVAC, or electrical work.

I have attached a Residential Building Permit to this email. Please complete and return to City Hall for review.

Sincerely,

Sharon Armstrong, City Planner

From: Albert Palathingal <pappo@sbcglobal.net>
Sent: Wednesday, November 9, 2022 1:37 PM
To: Merina Albert <merina@fnal.gov>
Subject: Fw: Permits for 279 E. Kingston Springs, Rd.

Sent from AT&T Yahoo Mail for iPhone

Mr. Albert,

We have not received your Residential Permit Application for the work on your recently acquired property. The following information explains why the permits for the driveway, garage, patio/turnaround and deck cannot be issued until the residential permit is received and approved:

The following information is relevant to the permitting issues at 279 E. Kingston Springs Rd.:

The Garage Slab, Deck, and Patio location, square footage and lack of permits cannot be resolved until the basement is inspected and it is determined the square footage of the structure is sufficient to allow the accessory uses requested.

The Zoning Ordinance limits all accessory uses to 50% of the square footage of the primary structure: 1514 Sq. Ft. X 50% = 752 Sq. Ft.

The Zoning Ordinance also limits lot coverage to 30%. The patio slab is now 483 sq. ft., the garage slab is 550 sq. ft., there are 2 storage buildings with a total square footage of approximately 370 sq. ft., and a deck with 600 sq. ft. for a total accessory square footage of 1983 sq. ft. which is larger than the entire permitted square footage of the primary structure without including the driveway, proposed to be increased by 200 sq. ft. from the original driveway square footage of 1200 sq. ft. that was removed and restructured without a permit. This brings the total square footage of requested square footage to 3,183 sq. ft. Accessory uses requested or begun other than the expanded driveway without permit total 1983 Sq. Ft. and exceed square footages allowed.

Sincerely,
Sharon Armstrong, City Planner

DECLARATION

My name is Robert D. Winters. I am over eighteen (18) years of age and am a resident of Kingston Springs, Cheatham County, Tennessee.

- I make this Declaration in support of my neighbor Albert Palathingal who resides at 279 E. Kingston Springs Rd. as it concerns both his driveway and concrete pad at the end thereof.
- I currently live at 275 E. Kingston Springs Rd., having lived there since 1986.
- To the best of my recollection, there has always been a concrete driveway in existence at the property/residence immediately adjacent to me at 279 E. Kingston Springs Rd. which the current owner is currently seeking to resurface. (See attached TN Property Data Maps). This repair/resurfacing does not represent a new driveway, an alteration to the scope of the driveway, nor is it being relocated in any manner. There is also no additional access being sought.
- The current owner has also caused a pad/slab of concrete to be poured at the end of his driveway which abuts my property and falls closer than the requisite 10 feet from the adjoining property line as prescribed by Town Zoning ordinance.
- I have no issue with and no objection to a dimensional variance being granted to the current owners of 279 E. Kingston Springs Rd. as it concerns this concrete pad.
- The granting of the variance will not be injurious to property or improvements on my property or in the neighboring area or substantially diminish or impair property values within the area.
- I have personal knowledge of the facts contained in this declaration, and if called upon to testify I could and would testify competently as to the truth of the facts stated herein.

I declare under penalty of perjury under the laws of the State of Tennessee that the foregoing is true and correct.

Executed this ____ day of _____ 2022, at Kingston Springs, TN.

5/

Robert D. Winters