

November 14, 2014

Mr. Shannon Copas
Community Planner
Upper Cumberland Development District
1225 South Willow Avenue
Cookeville, Tennessee 38506

Dear Mr. Copas:

In response to your question on behalf of the Town of Woodbury regarding the continuation of a nonconforming commercial use in a residential zoning district, the following is provided. In formulating this reply, the following facts are understood to apply in this specific situation:

1. The commercial building was constructed prior to the advent of zoning in the town, with the zoning ordinance first enacted in September 1988;
2. The building has historically been used for commercial purposes, with its last use being an auto body shop;
3. The auto body shop closed approximately 16 years ago;
4. The proposed commercial use is a used car lot; and
5. The present zoning is R-1, which does not allow commercial uses, including a used car lot.

Tennessee Code Annotated § 13-7-208(g) is controlling in this situation and provides as follows:

(g) Except as provided in subsection (l), subsections (b)-(d) shall not apply if an industrial, commercial, or other business establishment ceases to operate for a period of thirty (30) continuous months and the industrial, commercial, or other business use of the property did not conform with the land use classification as denoted in the existing zoning regulations for the zoning district in which it is located. Anytime after the thirty-month cessation, any use proposed to be established on the site, including any existing or proposed on-site sign, must conform to the provisions of the existing zoning regulations. For the purposes of this subsection (g), the thirty-month period of continuous ceased operation shall be tolled by:

(1) The period in which an industrial, commercial, or other business establishment is party to any action in a court of competent jurisdiction regarding the use of the property until such time that a final settlement, order, decree, or judgment has been rendered;

(2) Any period in which a facility is being constructed, reconstructed, renovated, or refurbished, provided that all necessary building permits were obtained within thirty (30) months of cessation of continuous use;

(3) The filing of an application for a building permit for the alteration, renovation or reconstruction of a structure which is non-conforming or of a structure in which or out of which a non-conforming industrial, commercial or other business use operates or is located; or

(4) The reactivation of the non-conforming use any time prior to the end of the thirty-month period; provided, however, that the restrictions of this subsection (g) and subsection (i) shall only apply if the property owner intentionally and voluntarily abandons the nonconforming use of the property. In any contested matter on the use of such property, the government has the burden of proving an overt act of abandonment in such matter.

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Based upon the information you provided and the language cited above, the protection afforded by statute for a nonconforming commercial use at this location has lapsed and any future use of the building for a commercial purpose, including the proposed used car lot, will violate zoning.

Please be advised that Article III, Section 2.E. of the Woodbury zoning ordinance is inconsistent with the referenced statute as it applies to nonconforming industrial, commercial, or other business establishments

E. DISCONTINUANCE

When a nonconforming use is discontinued for a period of one (1) year, then the land or building or other structure shall thereafter be used only for a conforming use. Intent to resume active operations shall not affect the foregoing provision.

The amendment of this code provision should be undertaken to comport with T.C.A. § 13-7-208 and properly provide nonconforming industrial, commercial, or other business establishments with the rights and protections afforded by law.

T.C.A. § 13-7-208 is enclosed for ease of reference.

Please be mindful that the statutory interpretation above is fact specific. If the facts are different than presented above, a different determination could result.

Please let me know if you require further assistance regarding this matter.

Very truly yours,



Jeffrey J. Broughton
Municipal Management Consultant

West's Tennessee Code Annotated

Title 13. Public Planning and Housing

Chapter 7. Zoning (Refs & Annos)

Part 2. Municipal Zoning (Refs & Annos)

T. C. A. § 13-7-208

§ 13-7-208. Ordinances; enforcement; penalty for violation; remedies

Effective: August 5, 2011

Currentness

(a)(1) The chief legislative body may provide for the enforcement of any ordinance enacted under this part and part 3 of this chapter. A violation of any such ordinance is a Class C misdemeanor.

(2) In case any building or structure is or is proposed to be erected, constructed, reconstructed, altered, converted or maintained, or any building, structure or land is or is proposed to be used in violation of any ordinance enacted under this part and part 3 of this chapter, the building commissioner, municipal counsel or other appropriate authority of the municipality, or any adjacent or neighboring property owner who would be specially damaged by such violation, may, in addition to other remedies, institute injunction, mandamus or other appropriate action or proceeding to prevent such unlawful erection, construction, reconstruction, alteration, conversion, maintenance or use, or to correct or abate such violation, or to prevent the occupancy of the building, structure or land.

(b)(1) In the event that a zoning change occurs in any land area where such land area was not previously covered by any zoning restrictions of any governmental agency of this state or its political subdivisions, or where such land area is covered by zoning restrictions of a governmental agency of this state or its political subdivisions, and such zoning restrictions differ from zoning restrictions imposed after the zoning change, then any industrial, commercial or business establishment in operation, permitted to operate under zoning regulations or exceptions thereto prior to the zoning change shall be allowed to continue in operation and be permitted; provided, that no change in the use of the land is undertaken by such industry or business.

(2) When the use permitted to continue to expand, or to be rebuilt pursuant to any subsection of this section is an off-premises sign, such use shall not preclude any new or additional conforming use or structure on the property on which the sign structure is located or on any adjacent property under the same ownership; provided, however, that any such new or additional use or structure does not result in any violations of the applicable zoning restrictions other than those nonconformities associated with the off- premises sign as allowed under this subdivision (b)(2).

(c) Industrial, commercial or other business establishments in operation and permitted to operate under zoning regulations or exceptions thereto in effect immediately preceding a change in zoning shall be allowed to expand operations and construct additional facilities which involve an actual continuance and expansion of the activities of the industry or business which were permitted and being conducted prior to the change in zoning; provided, that there is a reasonable amount of space for such expansion on the property owned by such industry or business situated within the area which is affected by the change in zoning, so as to avoid nuisances to adjoining landowners. No building permit or like permission for construction or landscaping shall be denied to an industry or business seeking to expand and continue activities conducted by that industry or business

which were permitted prior to the change in zoning; provided, that there is a reasonable amount of space for such expansion on the property owned by such industry or business situated within the area which is affected by the change in zoning, so as to avoid nuisances to adjoining landowners.

(d)(1) Industrial, commercial, or other business establishments in operation and permitted to operate under zoning regulations or exceptions thereto immediately preceding a change in zoning shall be allowed to destroy present facilities and reconstruct new facilities necessary to the conduct of such industry or business subsequent to the zoning change; provided, that no destruction and rebuilding shall occur which shall act to change the use classification of the land as classified under any zoning regulations or exceptions thereto in effect immediately prior to or subsequent to a change in the zoning of the land area on which such industry or business is located. No building permit or like permission for demolition, construction or landscaping shall be denied to an industry or business seeking to destroy and reconstruct facilities necessary to the continued conduct of the activities of that industry or business, where such conduct was permitted prior to a change in zoning; provided, that there is a reasonable amount of space for such expansion on the property owned by such industry or business situated within the area which is affected by the change in zoning, so as to avoid nuisances to adjoining landowners.

(2)(A) Multifamily residential establishments, whether used as owner-occupied property or rental property, which were permitted to operate under zoning regulations or exceptions thereto immediately preceding a change in zoning shall be allowed to reconstruct new facilities necessary to the conduct of such multifamily residential establishment subsequent to the zoning change, in the event of damage, whether partial or complete, by involuntary fire or wind damage or other natural disaster.

(B) If any such new facilities exceed the original height, density, setback, or square-footage of the original facilities in existence immediately prior to the damage, then the new facilities shall constitute a change in the use of the land, and any protections provided hereunder shall be forfeited.

(C) If any such new facilities do not exceed the original height, density, setback, or square-footage of the original facilities in existence immediately prior to the damage, then the new facilities shall constitute a continuation of the use of the land immediately prior to the damage, and any protections provided hereunder shall not be forfeited.

(D) Whenever any ordinance enacted under authority of this chapter establishes stricter terms regarding the amount of partial damage that may be allowed without forfeiture of these protections, then the provisions of any such ordinance shall govern.

(E) New facilities shall comply with all architectural design standards required under current zoning regulations and be consistent with the architectural context of the immediate and adjacent block faces.

(e) Subsections (b)-(d) apply only to land owned and in use by such affected business, and do not operate to permit expansion of an existing industry or business through the acquisition of additional land.

(f) Subsections (b)-(e) do not apply to any municipality defined as a premiere type tourist resort according to [§ 67-6-103\(a\)\(3\)\(B\)](#).

(g) Except as provided in subsection (1), subsections (b)-(d) shall not apply if an industrial, commercial, or other business establishment ceases to operate for a period of thirty (30) continuous months and the industrial, commercial, or other business use of the property did not conform with the land use classification as denoted in the existing zoning regulations for the zoning district in which it is located. Anytime after the thirty-month cessation, any use proposed to be established on the site, including any existing or proposed on-site sign, must conform to the provisions of the existing zoning regulations. For the purposes of this

subsection (g), the thirty-month period of continuous ceased operation shall be tolled by:

(1) The period in which an industrial, commercial, or other business establishment is party to any action in a court of competent jurisdiction regarding the use of the property until such time that a final settlement, order, decree, or judgment has been rendered;

(2) Any period in which a facility is being constructed, reconstructed, renovated, or refurbished, provided that all necessary building permits were obtained within thirty (30) months of cessation of continuous use;

(3) The filing of an application for a building permit for the alteration, renovation or reconstruction of a structure which is non-conforming or of a structure in which or out of which a non-conforming industrial, commercial or other business use operates or is located; or

(4) The reactivation of the non-conforming use any time prior to the end of the thirty- month period; provided, however, that the restrictions of this subsection (g) and subsection (i) shall only apply if the property owner intentionally and voluntarily abandons the nonconforming use of the property. In any contested matter on the use of such property, the government has the burden of proving an overt act of abandonment in such matter.

(h) Subsections (b)-(d) shall apply to an off-site sign which, for the purposes of this subsection (h), means any sign that advertises or gives direction to any business, product, service, attraction, or any other purpose or interest, other than the industrial, commercial or other business establishment located on the site where the sign is located; provided, however, that any expansion shall be limited as follows:

(1) Any off-site sign smaller than a standard 8-sheet poster which, for the purposes of this subsection (h), means an off-site sign with overall dimensions of at least five feet four inches (5' 4") to six feet two inches (6' 2") in height and eleven feet four inches (11' 4") to twelve feet two inches (12' 2") in width shall not be expanded to a size greater than a standard 8-sheet poster;

(2) Any standard 8-sheet poster shall not be expanded to a size greater than a 30-sheet poster which, for the purposes of this subsection (h), means an off-site sign with overall dimensions of twelve feet three inches (12' 3") in height and twenty-four feet six inches (24' 6") in width;

(3) Any standard 30-sheet poster shall not be expanded to a size greater than any standard bulletin which, for the purposes of this subsection (h), means any off-site sign with overall dimensions of ten feet (10') to fourteen feet (14') in height and thirty-six feet (36') to forty-eight feet (48') in width;

(4) Any standard bulletin shall not be expanded to a size greater than any super bulletin which, for the purposes of this subsection (h), means any off-site sign with overall dimensions of sixteen feet (16') to twenty feet (20') in height and sixty feet (60') in width;

(5) Any super bulletin shall not be expanded; or

(6) Any off-site sign with a height larger than standard 8-sheet poster height or width larger than standard 8-sheet poster width but not meeting the definition of a standard 8-sheet poster, a standard 30-sheet poster, a standard bulletin, or a standard super bulletin shall not be expanded by more than one hundred percent (100%) of its surface area.

(i) Notwithstanding subsection (d), any structure rebuilt on the site must conform to the provisions of the existing zoning regulations as to setbacks, height, bulk, or requirements as to the physical location of a structure upon the site, provided that this subsection (i) shall not apply to off-site signs.

(j) Subsections (g), (h) and (i) do not apply to any home rule municipality; provided, however, that subject to the approval of the local legislative body, a home rule municipality may opt into these subsections.

(k) Notwithstanding subsections (a)-(i), subsection (g) shall not apply to any industrial establishment location where twenty-five percent (25%) or more of the gross annual sales from such location are derived from sales to or contracts with Local, state or federal governments or as a subcontractor to contracts with local, state or federal governments, or to any industrial establishment location where seventy-five percent (75%) or more of the gross annual sales from the location are made to agriculture or construction businesses.

(l)(1) As used in this subsection (l):

(A) “Block” means a unit of land bounded by streets or by a combination of streets and public land, railroad rights-of-way, waterways or any other barrier to the continuity of development; and

(B) “Motor vehicle business establishment” means a business establishment that sells operable motor vehicles and all the motor vehicles have been previously titled, excluding any franchised retail motor vehicle dealership located on property that is principally used for the marketing and display of new motor vehicles, whether by sale, rental, lease or other commercial or financial means that is primarily housed in a structure and characterized by a mixture of the following secondary supporting uses:

(i) An inventory of new or used motor vehicles in operating condition for sale or lease either on the same parcel or at a location affiliated with a franchised retail motor vehicle dealership; and

(ii) On-site facilities for the repair and service of motor vehicles previously sold, rented or leased by the retail motor vehicle dealership.

(2) In any municipality having a metropolitan form of government and a population of over five hundred thousand (500,000), according to the 2000 federal census or any subsequent federal census, any nonconforming motor vehicle business establishment may be terminated after notice and a hearing before the board of zoning appeals upon a finding that all of the following have been established in the record before the board of zoning appeals:

(A) Another motor vehicle business establishment is located within the one thousand feet (1,000') of the nonconforming motor vehicle business establishment, in the same block as the nonconforming motor vehicle business establishment, or in the block across a public street or road from the block in which the nonconforming motor vehicle business establishment is located;

(B) The parcel on which the nonconforming motor vehicle business establishment is located has less than two hundred fifty feet (250') of frontage on any public street or road, excluding any portion of the frontage not owned or leased by the licensed

operator of the nonconforming motor vehicle business establishment; and

(C) At least ten percent (10%) of the inventory of the nonconforming motor vehicle business establishment at any point in time consists of motor vehicles titled pursuant to title 55, chapter 3, part 2, including, but not limited to, vehicles with salvage titles, flood titles, rebuilt titles, or nonrepairable vehicle certificates. The operator of the nonconforming motor vehicle business establishment shall make the titles for all of the vehicles located on the premises of the nonconforming motor vehicle business establishment immediately available upon request of a local zoning inspection official, or produce the original titles at the office of the local zoning inspection official within three (3) business days of the request by the local zoning inspection official. The failure of the nonconforming motor vehicle business establishment to make the titles for the vehicles located on the premises of the nonconforming motor vehicle business establishment available to the local zoning inspection official in accordance with this subsection (l) shall create a rebuttable presumption that at least ten percent (10%) of the inventory of the nonconforming motor vehicle business establishment consists of the motor vehicles titled pursuant to title 55, chapter 3, part 2.

(3) All other industrial, commercial or other business establishments in any municipality with a metropolitan form of government and a population of over five hundred thousand (500,000), according to the 2000 federal census or any subsequent federal census, shall be entitled to operate pursuant to subsection (g).

Credits

1935 Pub.Acts, c. 44, § 6; 1973 Pub.Acts, c. 279, § 1; 1988 Pub.Acts, c. 539, § 1; 1989 Pub.Acts, c. 591, § 113; 2004 Pub.Acts, c. 730, § 1, eff. May 24, 2004; 2004 Pub.Acts, c. 775, § 1, eff. May 28, 2004; 2007 Pub.Acts, c. 141, §§ 1, 2, eff. July 1, 2007; 2008 Pub.Acts, c. 1091, § 1, eff. June 3, 2008; 2010 Pub.Acts, c. 936, § 1, eff. May 26, 2010.

Formerly 1950 Code Supp., § 3407.6; § 13-708.

[Notes of Decisions \(70\)](#)

T. C. A. § 13-7-208, TN ST § 13-7-208

Current through end of the 2014 Second Reg. Sess.
