

MINUTES
CITY-COUNTY BOARD OF ADJUSTMENTS
August 11, 2011 @ 5:00 p.m.
City Commission Chambers
1001 College Street

MEMBERS PRESENT:

Mike Davenport
Courtlan Atkinson
Charles Adams

David Coverdale
Al Kaelin

Dr. John Fitts
Jim Lockwood

The City-County Board of Adjustments of Warren County was called to order by the Chairman Mike Davenport. Chairman Davenport requested Sandy Clark, Zoning Administrator, call the roll and determine a quorum. It was determined that a quorum was present with seven (7) of seven (7) members present at the time of roll call.

Chairman Davenport asked if there were any questions or comments about the Summary Minutes of the previous meeting of July 14, 2011. There were no questions or comments. The Motion was made by Mr. Coverdale, seconded by Dr. Fitts, and the Board of Adjustments' members (7 yeas) unanimously approved the Summary Minutes of July 14, 2011 meeting as written.

Hon. Hoy Hodges requested the Chairman order that the Joint Zoning Ordinance of Warren County, Kentucky; the applicable Subdivision Regulations; and the Comprehensive Plan with all of its elements effective as of this date (August 11, 2011) be introduced as exhibits for tonight's hearing. He further requested the Chairman order that the Staff report with all attachments, together with the Board's file for the application, be likewise introduced as exhibits. He also asked that the Oath be administered to Marshall Robinson, Planner; Rachel Hetzler, Planner and Jonathan Britt, Planner, and asked that they be sworn as witnesses before the Board of Adjustments and their oath and qualifications be reflected in the record for tonight's hearing. Chairman Davenport so ordered and swore in the witnesses.

Hon. Hoy Hodges, the attorney for the Board of Adjustments, then stated tonight there is a request for a couple of Variances on a couple of pieces of property. In regard to a Variance, the findings that the Board must make are set forth under KRS 100.243, wherein the Board must find the following in order to prevail: the requested Variance will not adversely affect the public health, safety, or welfare; will not alter the essential character of the general vicinity; will not cause a hazard or a nuisance to the public; and will not cause an unreasonable circumvention of the requirements of the zoning regulations. In order to prevail on the request for a Variance, the Board needs to receive four (4) affirmative votes. A "pass" vote has no force or affect, so the application would need to receive four (4) affirmative votes. If in the event any party disagrees with the Board's decision, they would have thirty (30) days to file an appeal directly to Warren Circuit Court.

Hon. Hoy Hodges then stated tonight there is also a request for a Conditional Use Permit. Mr. Hodges explained that there must be five (5) affirmative votes and the Board must make certain findings as set forth under KRS 100.111 based upon the testimony presented which are: that the use is not detrimental to the public health, safety or welfare in the zone in which it is proposed; that the use will not contribute toward an overburdening of municipal services; that the use will not result in

increased traffic congestion; additional parking problems; a substantial increase in population density; environmental problems; or otherwise constitute a nuisance; and that the use otherwise meets the requirements of this Zoning Ordinance. In order to prevail on the CUP, you would need five (5) affirmative votes and a “pass” vote is of no force or effect. If, in the event any party disagrees with the Board’s decision, they would have (30) days to file an appeal to the Warren Circuit Court.

PUBLIC HEARING:

Chairman Davenport announced the first item on the agenda is a request for Variances which are described as follows: **2011-V-17 - Dr. John N. Breiwa, O.D. and BWJ Holdings, LLC** have filed an application for Variances at 335 New Towne Drive (Lot 9-1 of Mt. Victor Olde Towne Subdivision) and 200 Natchez Trace Avenue (Lot 9-2 of Mt. Victor Olde Towne Subdivision) in order to construct two office buildings. The requests are for a change of 10% in lot coverage from the required 70% lot coverage in order to have lot coverage of 80% on Lots 9-1 and 9-2; and a Variance of 10 feet from the required 20 foot rear set back on Lot 9-2, permitted within the Lovers Lane Overlay District. This property is zoned PUD (Planned Unit Development) with Binding Elements.

Marshall Robinson, Planner presented the staff report and stated the applicants met with staff during a pre-application conference on June 14th, 2011 and that the applicants are requesting three (3) Variances for the property. The first Variance is for a change of ten percent (10%) from the required seventy percent (70%) lot coverage (Lot 9-1) in the Lovers Lane Overlay District. The second Variance is for a change of ten percent (10%) from the required seventy percent (70%) lot coverage (Lot 9-2) in the Lovers Lane Overlay District. The third Variance is for a ten (10) foot Variance from the required twenty (20) foot side set back line (Lot 9-2)

Mr. Robinson indicated that this property is located in Focal Point 114-4A – Lovers Lane which has Characteristics of: Urban Growth Focal Point; presently single family residential, agricultural and industrial uses with Focal Point Plan and Future Land Use Plan adopted. The property has frontage on New Towne Drive – fifty (50) feet of right-of-way and twenty-four (24) feet of pavement width and Natchez Trace Avenue which has sixty (60) feet of right-of-way and thirty (30) feet of pavement width. Both are City maintained local roadways.

The provision of the Zoning Ordinance from which this Variance is requested is referenced in Articles 4.9.2.F.1.j(2) and 4.9.2.F.1.d. - **4.9.2.F.1.j(2)** For all uses permitted within this overlay district, no more than 70% of the total surface land area of the lot shall be improved with buildings, structures, parking and loading areas, streets, driveways or roadways; and **4.9.2.F.1.d** Minimum required side building set back (not on a corner lot) shall be 20 feet. Mr. Robinson also said that these lots will go before the Design Review Board next week and in staff’s review of the overlay development plan is a condition of approval of the Board of Adjustments of the Variances being requested. Another condition for the Design Review Board would be re-platting process of the two lots by moving the lot lines.

One Board member asked about procedures and about this particular area having brought a third Variance before this Board. Another Board member asked who and what sets the 70% lot coverage specifications which Mr. Robinson explained is the Zoning Ordinance.

Mr. Coverdale said he is concerned about this being the third Variance in this same area and also that the drainage system is set up for 70% lot coverage and now this is the third lot to ask to have 80% lot coverage. Also, with this being a medical facility, there would need to be additional parking for one (1) space every 200 square feet. If another type of office, the parking would have been one (1) space for every 300 square feet. The Board members had concerns about the layout of these lots which do not seem to be working out at all. Mr. Robinson said it was his understanding that when this conceptual plan went through the PUD zone change, it was recommended for approval and met with the policies of the Comprehensive Plan, but now at the lots development and new owners come in, it would be up to each project to be reviewed and allowed, whether it need a Variance, change in lot lines, etc.

Jonathan Britt, Planner, said he believes the only issue is for Lot #9 which has been drawn up and cut up for an odd configuration. The entire project came in as a large PUD development, but now as it takes shape in smaller lots as different owners come in to build things. Today we are talking about Lots 9-1 and 9-2 and cannot really address any future lots as we do not know what will go there and what the lot configuration will be in the future. Staff really do not like to giving Variances in overlay districts, but in this particular situation, it would be the only way to lay out the buildings on these two lots. There are still building permits that will need to be pulled, drainage plans that have to be submitted and approved, as well as landscape plans that have to be submitted and approved. There are additional reviews that have been submitted and approved before any construction can begin. There would not be any reason to submit any plans until they know if the Variances are allowed in order for them to proceed with designing the basin; designing the buildings and where they can be located.

The Board then asked for a representative of the applicants to come forward. Therein, Brian Shirley with ACES of 1136 South Park Drive, Bowling Green, KY, stepped to the podium and was sworn in by Chairman Davenport to testify before this Board. When asked how tall the building will be, it was told that the building itself has not been designed yet.

In addition, David Elliott of 1733 Campus Plaza Court, Suite 2, Bowling Green, KY, stepped to the podium and was sworn in by Chairman Davenport to testify before this Board. Mr. Elliott stated that building design is being discussed as a two-story medical office spec building. The two lots were intertwined and it just seemed to be a good idea to bring both lots here tonight with Variance requests, even though it has not yet been determined if and when the building would get built. There are discussions about interest and desire of building these buildings at this time. There are discussions of a two-story building with approximately 4,000 square feet on each floor, for approximately 8,000 square feet with adequate parking met by the parking agreement made between both lots. A majority of the parking will be for the first building and the additional parking being shared will be for the second building when constructed.

When asked about landscape buffering, Mr. Shirley explained there is 10 feet for each lot, for a total of 20 feet, which will have ornamental trees; shrubs; pines; viburnums; etc., which will help to soften the transition between the buildings. He noted that Dr. Compton's property has the same 10 foot landscape and there is now a 0.3 acre lot beside him which will probably never be built on at this time. It seems to be a subdivision platting issue more than anything else.

Chairman Davenport asked if there any other questions for staff. Chairman Davenport then asked if there were any other questions or comments from the Board for Mr. Robinson. Chairman Davenport asked if there is opposition to this request. Being no other questions or comments for staff or the applicants, and being no questions or comments from the audience, Chairman Davenport asked for a Motion.

ACTION: Dr. Fitts made the Motion, seconded by Ms. Atkinson, to approve the request for three (3) Variances for the property located at 335 New Towne Drive. The first is for a change of ten percent (10%) from the required 70% lot coverage for Lot 9-1; second, a change of ten percent (10%) from the required 70% lot coverage for Lot 9-2 in the Lovers Lane Overlay District and third, a ten (10) foot Variance from the required 20 foot side set back line for Lot 9-2. The testimony presented in this public hearing has shown that the granting of these Variances will not adversely affect the public health, safety or welfare; will not alter the essential character of the general vicinity; will not cause a hazard or a nuisance to the public; and will not allow an unreasonable circumvention of the requirements of the zoning regulations. The request for the Variances was approved by a vote of (7 yeas).

Chairman Davenport announced the second item on the agenda is a request for a Variance which is described as follows: 2011-V-18 -Darrien and Lana McDonald have filed an application for a Variance of 10 feet from the 25 foot side street set back in order to construct a detached garage at 222 Cynthia Lynn Drive. This property is zoned PUD (Planned Unit Development).

Rachel Hetzler, Planner, presented the staff report and stated the applicants met with staff during a pre-application conference on July 13th, 2011 and that the applicants are requesting a Variance of ten (10) feet from the required twenty-five (25) foot set back from the side street required for a corner lot in order to construct a detached garage.

Ms. Hetzler indicated that this property is located in Focal Point 114-4 – Cumberland Trace which has Characteristics of: Agriculture/Open Space; area mainly Agriculture, but undergoing long term gradual transition to low density residential. The property has frontage on Cynthia Lynn Drive and Rayanne Drive, both are City maintained local roadways with fifty (50) feet of right-of-way and twenty-four (24) feet of pavement width. This Variance is being requested because the property is a corner lot and is zoned PUD, following the RS1B development standards.

The provisions of the Zoning Ordinance from which this Variance is requested is referenced in Articles 4.4.6.B and 4.4.6.E.2. - **4.4.6.B** *The front set back in the RS-1B zoning district is twenty-five (25) feet. 4.4.6.E.2* *When a corner lot adjoins another lot in the rear which is used for residential purposes, no accessory building or structure shall extend beyond the front of the principle structure or be nearer to the side street than the depth of any required front yard for a dwelling along such side street.*

The Board then asked for a representative of the applicants to come forward. Therein, Darien McDonald of 222 Cynthia Lynn Drive, Bowling Green, KY, stepped to the podium and was sworn in by Chairman Davenport to testify before this Board.

When asked if there were any other detached garages in the neighborhood, Mr. McDonald said there a couple of other residences that have detached storage buildings that are bricked to look like the residences and used for storage for motorcycles, lawn mowers, etc. Mr. McDonald also said that pines trees and landscaping has already been planted to shelter the property and shield the back yard.

Chairman Davenport asked if there any other questions for staff. Chairman Davenport then asked if there were any other questions or comments from the Board for Ms. Hetzler. Chairman Davenport asked if there is opposition to this request. Being no other questions or comments for staff or the applicants, and being no questions or comments from the audience, Chairman Davenport asked for a Motion.

ACTION: Dr. Fitts made the Motion, seconded by Ms. Atkinson, to approve the request for a Variance for the property located at 222 Cynthia Lynn Drive. The Variance is for a ten (10) foot Variance from the required 25 foot set back line for a proposed detached garage located on a corner lot. The testimony presented in this public hearing has shown that the granting of these Variances will not adversely affect the public health, safety or welfare; will not alter the essential character of the general vicinity; will not cause a hazard or a nuisance to the public; and will not allow an unreasonable circumvention of the requirements of the zoning regulations. The request for the Variance was approved by a vote of (7 yeas).

Chairman Davenport announced the final item on the agenda as a request for a Conditional Use Permit which is described as follows: ***2011-C-02 - Nelson and Vickie Hill*** have filed an application for a Conditional Use Permit in order to have a (home occupation) – lawn care service within their residence located at 2132 Larmon Mill Road, which is located approximately 0.99 mile from Dye Ford Road. This property is zoned AG (Agricultural).

Jonathan Britt presented the staff report and stated the applicants are requesting a Conditional Use Permit for a lawn care service. The staff held a Pre-Application conference with applicants on June 21, 2011. This situation started out as a Code Enforcement issue because a business cannot be conducted from the home without a Conditional Use Permit. The applicants have self-imposed conditions on themselves to set the hours of operation for the proposed lawn care service (Home Occupation) to be 7:30 a.m. to 5:30 p.m., Monday through Friday. The applicants have also committed that there will be no signage on the property, as well as not allowing any retail or wholesale sales may be conducted from the site.

Mr. Britt said that the property is zoned RM-2 (Multi-family Residential); contains 4.161 acres and applicants are buying additional property beside them in order to have five (5) acres; and has frontage on Larmon Mill Road, a County maintained roadway with fifty (50) feet of right-of-way and pavement widths that vary. Under ***5.2.2.A.4.b.(7) A Conditional Use Permit is required in order to operate a lawn care service (home occupation) in the AG (Agriculture) District where the subject property is at least five (5) acres in size.***

Mr. Britt then said that the applicants will gain control of the acreage and have five (5) acres in order to meet the standards for having a Conditional Use Permit. He said that applicants have suggested certain conditions for approval and staff recommends them to the Board, being:

1. *The lawn care service will be operated from 7:30 a.m. to 5:30 p.m., Monday through Friday;*
2. *There will be no signage on the property; and*
3. *No retail or wholesale sales may be conducted from the site.*

One of the Board members asked if the applicants sell the property if the Board could set a condition that the CUP would be void. When asked if he would agree to the condition that if he and his wife sell the property, then the Conditional Use Permit would be void. Mr. Hill said he agrees to have that condition placed in the Motion.

Chairman Davenport asked if there were any additional questions from the Board. Being none, he asked if there were any other questions or comments from the audience. Being no other questions or comments from the Board or the audience and being no questions or comments for staff, or the applicants, Chairman Davenport asked for a Motion.

ACTION: **Dr. Fitts made the Motion seconded by Mr. Lockwood to approve the Conditional Use Permit, Docket # 2011-C-02, for a lawn care service located at 2132 Larmon Mill Rd, with the following conditions:**

1. *The lawn care service will be operated from 7:30 a.m. to 5:30 p.m., Monday through Friday;*
2. *There will be no signage on the property;*
3. *No retail or wholesale sales may be conducted from the site; and*
4. *Conditional Use Permit will be void if applicant sells the property or vacates the premise.*

The testimony presented in this public hearing has shown that the use:

- **Is not detrimental to the public health, safety or welfare in the zone in which it is proposed;**
- **Will not contribute toward an overburdening of municipal services;**
- **Will not result in increased traffic congestion, additional parking problems, substantial increase in population density, environmental problems or constitute a nuisance; and**
- **Otherwise meets the requirements of the Zoning Ordinance.**

The vote was seven (7) yeas, so approved without opposition.

OLD BUSINESS:

Chairman Davenport asked for any old business. Being none, Chairman Davenport moved on to New Business.

NEW BUSINESS:

Chairman Davenport asked for New Business. Being no other new business, and with no other business to conduct, the meeting was adjourned. All members agreed.

MIKE DAVENPORT, CHAIRMAN

Sandy M. Clark, Zoning Administrator