

MINUTES
CITY-COUNTY BOARD OF ADJUSTMENTS
September 8, 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 August 11, 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 August 11, 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 (September 8, 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 and Rachel Hetzler, 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 each of tonight's hearings. Chairman Davenport so ordered and swore in the two 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.

PUBLIC HEARING:

Chairman Davenport announced the first item on the agenda is a request for two (2) Variances which are described as follows: **2011-V-19 - Teri and John Cox and David and Lathell Dymacek** have applied for two Variances on property located at 1404 Melrose Street, at the intersection of Melrose Street and Karen Avenue. The requests are for a Variance of 14 feet from the 25 foot set back from Karen Avenue for the existing residence and for a Variance of two (2) feet from the four (4) foot height limit for a six (6) foot tall fence within the set back from Karen Avenue. This property is zoned RM-2 (Two Family Residential).

Rachel Hetzler, Planner, presented the staff report and stated the applicants met with staff during a pre-application conference on August 4th, 2011 and that the applicants are requesting two Variances. The property is on a corner lot with two road frontages that gives the property a set back of 25 feet along each street. The first request is for a Variance of 14 feet from the set back from Karen Avenue for the existing house and the second request is for a Variance of two (2) feet from the maximum height of four (4) feet for a fence to extend beyond the set back on Karen Avenue (the side street).

Ms. Hetzler indicated that this property is located in Focal Point 106-3 – Smallhouse which has Characteristics of: Residential, mid 1960's stable residential, but with some deterioration. The property has frontage on Melrose Street - fifty (50) feet of right-of-way and twenty-nine (29) feet of pavement width and Karen Avenue which has fifty (50) feet of right-of-way and twenty-nine (29) feet of pavement width. Both are City maintained local roadways.

The provisions of the Zoning Ordinance from which these Variance are requested is referenced is Article 4.5.4.B; 4.5.4.C and 4.5.4.F.2.

4.5.4.B *Front set back in the RM-2 zone is twenty five (25) feet.*

4.5.4.C *Corner lots shall be required to provide a front yard along any lot line abutting a street.*

4.5.4.f.2 *No accessory building or structure shall be nearer to the side street than the depth of any required front yard for a dwelling along such side street, excluding fences four (4) feet or less in height.*

Chairman Davenport asked if there were any questions of staff for these Variances requests. One Board member asked if the fence had already been placed and if this were an afterthought. Ms. Hetzler explained that this was a Code Enforcement complaint that the fence was too high and does not meet the Zoning Ordinance requirements. It was noted that a fence around the corner has done the same thing and built a fence too tall also.

Chairman Davenport asked if there was opposition. Therein, from the audience, Yvonne Cowles, of 1403 Westen Street, Bowling Green, Kentucky, stepped to the podium and was sworn in by Chairman Davenport to testify before the Board. Ms. Cowles stated that she is the adjacent property owner and she feels that if the Variances are allowed there would be a safety risk and reduce property values. There is a visibility problem because the neighbor park cars along the outside of the fence and you cannot see around them. There is trash placed outside of the fence which causes a hazard.

Also, this is a school zone area with teens going through there going over to Bowling Green High School. Ms. Cowles said that a short fence would not be such a hazard and if the cars were not parked on the street would also help. She introduced a group of pictures as Opposition Exhibit "1".

One Board member asked about the set back for any fence. Ms. Hetzler explained that as long as the fence does not extend past the plane of the house. The fence could go to the plane of the house, as long as it does not extend past.

Marshall Robinson came up and explained that the fence may go to the plane of the house, but not extend past. This is a corner lot and the fence cannot be higher than four (4) feet, but the applicants have placed a higher fence and when this Code Enforcement action came about, it was also found that a portion of the house is actually in the set back, which will also need to be corrected also. There was discussion about cars being parked on the street which is a City parking matter that needs to be looked into. It was determined that the fence is legal, except for the height of the fence, which is too high according to the Zoning Ordinance.

Therein, on behalf of the applicants, Teri Cox, of 1404 Melrose Street, Bowling Green, Kentucky, stepped to the podium and was sworn in by Chairman Davenport to testify before this Board. Ms. Cox said she did not see how the fence could be a sight problem as there is a pole and evergreen pine tree that has been there. She agreed to park the car inside the fence instead of on the street. Board members said they would not place a restriction on the Variance, but Ms. Cox said she would move the car and not park cars on the street.

When asked who built the fence, Ms. Cox noted that Lowe's was contracted and placed the fence. It was determined that the fence was not built with a permit as the City does not require a building permit for placing a fence.

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 or Ms. Hetzler. Chairman Davenport asked if there is any other 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 two (2) Variances for the property located at 1404 Melrose Street, Docket # 2011-V-19 - a 14 foot Variance from the 25 foot set back from Karen Avenue for the existing house and a two (2) foot Variance from the four (4) foot maximum height permitted for a fence to extend beyond the 25 foot set back from Karen Avenue. 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-20 - Alma's Pita & Café, Inc. and Chou Daksan and Mailin Vong** have applied for a Variance of 140 feet from the 250 foot set back from a residential district in order to have an outdoor seating area at 850 Morgantown Road, at the intersection of Morgantown Road and Old Morgantown Road. This property is zoned HB (Highway Business)

Marshall Robinson, Planner, presented the staff report and stated the applicants met with staff during a pre-application conference on August 15th, 2011 and that the applicants are requesting a Variance of 140 feet from the 250 feet set back in order to have a restaurant outdoor seating area 110 feet away from a residential district.

Mr. Robinson indicated that this property is located in Focal Point 103-5A US 231 Strip - which has Characteristics of: Dominant use area; highway commercial area adjacent to blue collar residential. The property has frontage on Morgantown Road (U. S. 231) a state maintained arterial with a right-of-way which varies and a pavement width which varies and Old Morgantown Road – a city collector street with sixty (60) feet of right-of-way and varying pavement widths.

The provisions of the Zoning Ordinance from which this Variance is requested is referenced in Article **5.2.4.A.5.a** - *For any bar or restaurant providing outdoor activities such as an outdoor dining area, such area shall be separated by a minimum of 250 feet from any residential district.*

One Board member asked if it made any difference that there was a convenience store between the patio and the apartment building. It looks as though there would be a lot more noise at the convenience store than there would be for the 20 or more people on the outdoor patio. The Variance has to be done as there is no way to know for sure if the convenience store will be there forever.

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 a Variance for the property located at 850 Morgantown Road, Docket # 2011-V-20, a 140 foot Variance from the 250 foot set back to have a restaurant outdoor seating area 110 feet away from a residential district. The testimony presented in this public hearing has shown that the granting of this 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 allow an unreasonable circumvention of the requirements of the zoning regulations. The request for the Variance was approved by a vote of (7 yeas).

OLD BUSINESS:

Chairman Davenport asked for any old business. One Board member asked about a case from last month and wanted to know if another group could overrule us. Mr. Robinson explained that no one overruled this Board and what really happened is that only one building on one lot was brought before the Design Review Board. The DRB had questions about both buildings and both lots and how the coverage would be done. There were questions about Variances in Overlay Districts and the hearing was postponed and will be brought back in a couple of weeks with additional elevations, designs and lot coverage information.

Being none, Chairman Davenport moved on to New Business.

NEW BUSINESS:

Chairman Davenport asked for New Business. Another Board member asked about who to address questions regarding Building Permits in the City. The City Commission and City Manager handle the decisions of Building Permits and Codes in the City of Bowling Green. The Board said they were glad that the Code Enforcement acted on the complaint of the fence too high. Board members said they would like staff to draft a letter to City officials concerning building permits and fencing within the City Limits of Bowling Green.

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