

MINUTES
CITY-COUNTY BOARD OF ADJUSTMENTS
November 10, 2011 @ 5:00 p.m.
City Commission Chambers
1001 College Street

MEMBERS PRESENT:

Mike Davenport
Al Kaelin

David Coverdale
Charles Adams

Dr. John Fitts

Absent: Courtlann Atkinson 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 five (5) 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 October 13, 2011. There were no questions or comments. The Motion was made by Mr. Coverdale, seconded by Mr. Kaelin, and the Board of Adjustments' members (5 years) unanimously approved the Summary Minutes of October 13, 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 (November 10, 2011) be introduced as exhibits for each of tonight's hearings. He further requested the Chairman order that the Staff reports with all attachments, together with the Board's file for the applications, be likewise introduced as exhibits. He also asked that the Oath be administered to Jonathan Britt, Planner; 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 three 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 three (3) Variances which are described as follows: ***2011-V-25 - Charles E. and Barbara English*** have filed an application for three (3) Variances on the property at 300 Seymour Drive, which is located at the intersection of Audley Avenue and Seymore Drive. The requests are for a Variance of five (5) feet from the 28 foot lot width; and a Variance of five (5) feet from the side set back on each of two proposed townhome lots to be created on the property. Also requested, is a Variance of three (3) feet from the 15 foot front set back along Audley Avenue and along Seymour Drive for all of the sixteen townhome lots to be created on the property. This property is zoned RM-4 (Multi Family Residential) with a general development plan.

Jonathan Britt, Planner, presented the staff report and stated the applicants met with staff during a pre-application conference on October 13th, 2011 and that the applicants are requesting three (3) Variances for the property listed at 300 Seymour Drive. The first Variance is for a Variance of three (3) feet from the required fifteen (15) foot front set back for a townhome. The second Variance is for five (5) feet from the required ten (10) foot side set back for a townhome. The third Variance is for five (5) feet from the required twenty-eight (28) foot lot width on a townhome lot.

Mr. Britt indicated that this property is located in Focal Point 110 – 4 - Jennings Creek which has Characteristics of: Residential; medium density apartments, attached and detached single family housing; substantial undeveloped land with much potential; weak market must be overcome. Mr. Britt called attention to the zoning history for this property as being: **AG** (Agriculture) is the original zoning. This portion of property was re-zoned from **RM-4** (Multi-Family Residential) to **HB** (Highway Business) in 1996. The property was re-zoned from **HB** (Highway Business) to **RM-4** (Multi-Family Residential) in 2011. The property is located on the corner of Seymour Drive and Audley Avenue. Both are City maintained local roadways with sixty (60) feet of right-of-way and thirty (30) feet of pavement width.

The provisions of the Zoning Ordinance from which these Variance are requested are referenced as: **4.5.5.B.2.b** - *Minimum lot width shall be 18 feet for an interior unit and 28 feet for an end unit;* **4.5.5.B.3.a** - *Front Yard. Minimum 30 feet with no garage on a public street, 15 feet with no garage on a private street, 18 feet with a garage on a public or private street, 15 feet with designated off-site or private parking;* and **4.5.5.B.3.b** - *Side Yards. End units shall maintain a minimum 10-foot side yard set back. Interior units are not required to provide set backs.*

Chairman Davenport asked if there were any questions of staff for these Variance requests. Being none, Chairman Davenport asked if there was opposition to this request. Being no 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 Mr. Coverdale, to approve the request for Variances on property located at 300 Seymour Drive, Docket #2011-V-25: 1) a Variance of five (5) feet from the required twenty-eight (28) foot lot width for a Townhome lot; 2) a three (3) foot Variance from the required fifteen (15) foot front set back for a townhome; and 3) a five (5) foot Variance from the required ten (10) foot side set back for a townhome. 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 Variances was approved by a vote of five (5) yeas.

Chairman Davenport announced the second item on the agenda is also a request for a Variance which is described as follows: *2011-V-26 - Lee and Mildred Thompson have filed an application for a Variance of 5.0 feet from the 10 foot rear set back in order to construct an addition to the residence at 2701 Baker Place, located at the corner of Baker Place and Walnut Way. This property is zoned RS-1A (Single Family Residential)*

Jonathan Britt, Planner, again presented the staff report and stated the applicants met with staff during a pre-application conference on October 10th, 2011 and that the applicants are requesting a requesting a Variance of five (5) feet from the required (ten) 10 foot rear set back for the proposed addition to the principle structure.

Mr. Britt indicated that this property is located in Focal Point 107-2 Cave Mill - which has Characteristics of: Residential; low density single family residential and agricultural uses. The property has frontage on Walnut Way – a county maintained local street with a 50 feet of right-of-way and a pavement width of 26 feet and Baker Place – a county maintained local street with a 50 foot right-of-way and pavement width of twenty-four (24) feet.

The provisions of the Zoning Ordinance from which this Variance is requested is referenced in Article **4.4.6.B - 4.4.6.B** *Rear set back in the RS-1A (Single Family Residential) district is 10 feet for a principle structure.*

This Variance was requested because a Building Permit was issued for this structure. If a breezeway was not done, then a Variance would not have been needed. A detached garage would not have required Variance, but since attaching to the principle structure, would need a Variance.

Chairman Davenport asked if there any other questions for staff. Being none, Chairman Davenport then asked if there is opposition to this request. A couple of people raised their hands.

When asked if any questions, Aaron Smith, Attorney at Law, with English, Lucas, Priest and Owsley, stepped to the podium and stated he represented the neighbors, Kuprions, who do not wish this Variance be allowed or granted. He stated that the applicants and the neighbor had discussions about the garage prior to beginning the building. Mr. Smith said he believed the applicants blatantly and willfully disregarded the rules and regulations in the Ordinance in regard to set backs.

Chairman Davenport asked for the neighbor to come forward. Therein, Angela Kuprion of 1325 Walnut Way, Bowling Green, Kentucky, stepped to the podium and was sworn in by Chairman Davenport to testify before the Board. Ms. Kuprion stated that there had been a thick shrubbery between the two lots that had been cut back when the construction began. There was viburnum planted which was thick and about 15 years old. She also stated that she opened an art studio in her home/garage and the new garage would be right next to her studio at her home. Ms. Kuprion said she contacted the Planning Commission when Mr. Thompson began to dig the ditch and she felt he did it without regard to her and being so close to her studio and beside her studio. She wants him to move the garage back behind her studio or closer to his house.

Attorney Smith entered a picture of the construction site as Opposition Exhibit "1". Also, a picture of the landscape buffer shrubbery as Opposition Exhibit "2" was entered.

Staff said a Building Permit was issued. There was a misunderstanding from the Building Permit and a **stop work order** was issued by the Building Inspector. The applicants presented a plan when they applied for the Permit and received a Building Permit. They believed that they were okay with the construction until the **stop work order** was issued from the Warren County Building Permit inspector due to the miscommunication between the applicants and the inspector.

For the Applicants, Lee Thompson of 2701 Baker Place, Bowling Green, Kentucky, stepped to the podium and was sworn in by Chairman Davenport to testify before the Board. Mr. Thompson assured the Board that at no time did he willfully disregard rules, regulations of the Ordinance or the law. He said he presented a plan to the Warren County Building Permit office and received a Building Permit, copies of which were entered as Applicants' Exhibit "1", along with photographs. Mr. Thompson said that during construction he was told to stop construction as the roof and patio were going to attach to the new garage. He said he is now going to ask for Variance based on the plan presented. At the time of the concept plan, there was 6 foot 6 inches between he and the property line. Because the breezeway is attached by a roof, then 10 foot would be needed between the building and property line, therein now a Variance is being requested. If the breezeway were not attached, then the foundation would be fine and no Variance would be needed. Either way the building is going to be where it is right now, whether attached or detached.

When asked if the landscaping could be replaced, Mr. Thompson said he would be willing to place some shrubbery when the construction was completed. Some trees had to be taken out due to termite and trees being damaged. He was told if the bushes were topped off and cut back, then the bottoms will bush out and make the shrubbery fuller.

Also, when asked if there were any other houses in the neighborhood with the same sort of garage, Mr. Thompson said there are at least two houses in the neighborhood that have the same sort of garages. He said he plans to brick the garage to match the house and the structure will not be taller than the house itself.

The next person from the neighborhood to come forward was Suzanne Bush of 2635 Hayford Place, Bowling Green, Kentucky, who stepped to the podium and was sworn in by Chairman Davenport to testify before the Board. Ms. Bush said she was not in favor of this request and that something needs to be taken into consideration as this is only a third of an acre size lot. She said that the lot is not large enough to place a garage as you would not be able to see through the lot.

The next person from the neighborhood to come forward was Travis Armstrong of 1330 Walnut Way, Bowling Green, Kentucky, who stepped to the podium and was sworn in by Chairman Davenport to testify before the Board. Mr. Armstrong said he was in favor of this request as there are structures in the neighborhood similar to this and this garage to be built would not take away from character of the neighborhood.

Chairman Davenport asked if there any other questions for staff. Attorney Smith said he feels that Mr. Thompson should not be allowed to proceed according to KRS 100.243 He said that his client presented testimony that Mr. Thompson was aware of the 10 foot set back. Attorney Hoy Hodges said that other testimony has been presented that refutes the testimony for disregard.

Mr. Thompson came back to the podium and was asked if he planned to attach structure and a building permit was obtained. He said he was told after he dug the footer that he could not attached the garage to house unless a Variance was obtained. If the Variance is not allowed, then the building would not be attached. There was certainly a miscommunication is reviewing the Permit and giving the application approval and then issuing a permit. The garage will be built whether a Variance is allowed or not, since the obstacle would be attaching a roof or not.

Being no other questions or comments for staff or the applicants, and being no other questions or comments from the audience, Chairman Davenport asked for a Motion.

ACTION: **Dr. Fitts made the Motion, seconded by Mr. Kaelin, to approve the request for a Variance for the property located at 2701 Baker Place, Docket # 2011-V-26, a Variance of five (5) feet from the ten (10) foot rear set back in the RS-1A residential district for a principle structure. 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 vote was five (5) yeas so the request is approved.**

Chairman Davenport announced the third item on the agenda as a request for a Variance which are described as follows: *2011-V-27 - Kohl's Department Store, Inc. and KY Bowling Green Westpark, LLC* have filed an application for a Variance of 15 feet from the 25 foot set back along Westpark Drive in order to construct an addition to the existing Kohl's Department Store located at 2321 Gary Farms Boulevard. This property is zoned PUD (Planned Unit Development) with a general development plan.

Rachel Hetzer, Planner, presented the staff report and stated the applicants met with staff during a pre-application conference on October 12th, 2011 and that the applicants are requesting a Variance of fifteen (15) feet from the required 25 foot set back for construction of a retail store.

Ms. Hetzler indicated that this property is located in Focal Point 106-4D - Auburndale - which has Characteristics of: Dominant use area; Planned Shopping Center with office and professional and multi-family residential under development. The property has frontage on Westpark Drive – a city maintained roadway with a 60 feet of right-of-way and a pavement width of 40.6 feet. Staff reviewed this application under the Highway Business zoning classification.

The provisions of the Zoning Ordinance from which this Variance is requested is referenced in Article **4.6.8.B - 4.6.8.B** *Front set back for Highway Business zoning district is 25 feet.*

Chairman Davenport asked if there any other questions for staff. One Board member asked about the utility easement. Documentation has been received that the utility companies have agreed to reduce the set backs from 25 feet to 10 feet. Jonathan Britt said this will be a platting issue and will handle with a re-platting being submitted and approved and recorded.

Therein, Mike Ewton of Realty Link Land Company of 14 South Main Street, Greenville, South Carolina, stepped to the podium and was sworn in by Chairman Davenport to testify before the Board. Mr. Ewton said that he has worked out the utility easement question and also that this building will not be attached to the Kohl's Department Store, as it will be a stand-alone building.

Being no other questions or comments, Chairman Davenport then asked if there is opposition to this request. Being none, he asked for a Motion

ACTION: **Dr. Fitts made the Motion, seconded by Mr. Adams, to approve the request for a Variance for the property located at 2321 Gary Farms Blvd., Docket # 2011-V-27 - a Variance of fifteen (15) feet from the required 25 foot set back for construction of a retail store. 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 five (5) yeas.**

Chairman Davenport announced the next item on the agenda as a request for a Conditional Use Permit which is described as follows: **2011-C-06 - George Hampton; Eddie Johnson and C & H Rental, LLC** *have filed an application for a Conditional Use Permit in order to have a group living facility at 1031 Kentucky Street, which is located approximately 126.6 feet from Eleventh Street. This property is zoned RM-4 (Multi-Family Residential)*

Marshall Robinson presented the staff report and stated the applicants are requesting a Conditional Use Permit in order to operate a group living facility. The existing residence will be used as temporary housing for up to eight (8) men, which includes two (2) full-time staff members that are the Director and Assistant Director. The applicants are proposing six (6) paved parking spaces to the rear of the residence. The applicants have also submitted a list of house rules that each resident must abide.

The staff held a Pre-Application conference with applicants on October 12, 2011. The applicants have placed self-imposed conditions on themselves to set a maximum of eight (8) men who shall reside on the premises, which includes two (2) full-time staff members that are the Director and Assistant Director.

Mr. Robinson said that the property is located at 1031 Kentucky Street and zoned RM-4 (Multi-Family Residential); which contains 0.21 acres; and has frontage on Kentucky Street, a State maintained urban minor arterial street with forty-six (46) feet of right-of-way and pavement width of twenty-nine (29) feet. The property is located in Focal Point: 101 Downtown Bowling Green; with Characteristics of: Dominant Use Area; traditional Central Business District, including Fountain Square and several government administrative buildings with associated office and professional uses; residential, including College Hill Historic District and several large early 20th century single family dwellings, some in transition to mixed density housing and offices; some areas warrant clearance and re-development.

Under Zoning Ordinance Article 5.1 – Group Living requirement - A Conditional Use Permit is required for residential occupancy of a structure by a group of people who do not meet the definition of “Household Living”.

5.2.2.B Group Living

1. **Characteristics:** Group Living is characterized by the residential occupancy of a structure by a group of people who do not meet the definition of Household Living. The size of the group may be larger than the average size of a household. Tenancy is arranged on a monthly or longer basis. Generally, Group Living structures have a common eating area for residents. The residents may receive care, training or treatment, as long as the care givers also reside at the site.
2. **Accessory Uses:** Accessory uses commonly associated with Group Living are recreational facilities and parking of vehicles for occupants and staff.
3. **Examples:** Examples of Group Living include dormitories; fraternities and sororities; monasteries and convents; nursing and convalescent homes; group homes for the physically or mentally disabled; some residential programs for drug and alcohol treatment; and alternative or post-incarceration facilities; and rooming/boarding houses

Under 5.2.2.B.5.a, - Specific Use Standards: One (1) parking space (in addition to the parking requirements in each residential district) must be provided for every two (2) rooms available for boarding.

8.2 Defined Terms - Group Living: The residential occupancy of a structure by a group of people who do not meet the definition of Household or Family, but which share a common eating area, such as a rooming or boarding house

Staff noted two items of concern with this application, being:

- Total number of residents; and
- Sufficient parking for the residents of the property.

Attorney Hoy Hodges explained the difference between a recovery home and a group living facility. He also explained that a group living facility is covered under the Fair Housing Act and the Americans with Disabilities Act and this Board does not consider who lives in the house.

Mr. Robinson explained that and noted that multi-family zoning allows for group living use with a Conditional Use Permit. On this block of Kentucky Street has the police department, WC Regional Jail, attorneys offices, rental properties and a business.

When asked if the property is located on sewer, staff indicated they were not sure, but noted that there is an eight (8) inch sewer line available along Kentucky Street. The applicants can address this when they come forward.

Chairman Davenport asked if there were any questions or comments for staff. Being none, Chairman Davenport asked for the applicant to come forward. Therein, Eddie Johnson of 414 Richpond Road, Bowling Green, Kentucky, stepped to the podium and was sworn in by Chairman Davenport to testify before the Board. Mr. Johnson said that he has owned this property for about eight (8) years and said he does receive a sewer bill for this property so there is sewer on the property. He said he would be glad to answer any questions that the Board might have for him.

Chairman Davenport then asked if there was any opposition to this CUP request. Therein, one person came forward, being Nancy Oliver Roberts of 1023 Kentucky Street, Bowling Green, Kentucky, and stepped to the podium and stated that she is the attorney who is an adjacent property owner next door to the property. She stated that she has two concerns about this application: 1) being parking along the street and have even parked in her driveway where she could not even leave her office. Ms. Roberts said that the alley and lot are narrow and there are six (6) parking spaces in the back, so she feels there would be concern about parking as she feels there is just not enough parking.

Ms. Roberts said the second concern is there is already a halfway house located behind her office and stated she had to close off the drive to the rear of her property because of safety reasons for her and her staff and her clients. She said several people were crossing her lot so she had to close the alley and back parking off to the public.

Mr. Robinson responded and noted that the Caffee House located behind Ms. Roberts' office is also a group living facility with restrictions which is similar to the application being presented tonight. Mr. Robinson said the staff required and asked for five (5) parking spaces of Mr. Johnson and the concept plan shows six spaces which is one more than was required by the Zoning Ordinance. The lot would be required to be paved.

Another gentleman came forward from the audience, being Terry Caffee of 102 East 12th Street, Bowling Green, Kentucky, and stepped to the podium to be was sworn in by Chairman Davenport to testify before the Board. Mr. Caffee said he owns the property to the rear of the lot being presented tonight. He said he has owned as many as eight (8) group homes and in the 15 years he has been in business, he said he has concerns about two facilities being back to back. He said he believes this would create problems between the two groups.

One of the Board members asked if there were regulatory standards, licensing, etc., in order to have a group living facility. Mr. Caffee said they run a background check on each person who wants to come and live at the facility, so that no felons are allowed in and no sexual perverts or deviants come in to the facility.

Chairman Davenport then said that a Conditional Use Permit can be granted, but it could also be revoked if any improper rules and/or regulations were not being observed.

For the applicants, George Hampton of 1706 North Campbell Road, Bowling Green, Kentucky, stepped to the podium and was sworn in by Chairman Davenport. Mr. Hampton said he would make sure that there is no communication between the two homes. The men have to go to night meetings at AA or NA – 90 meetings in 90 days. There was discussion about the parking places that will be available at the facility – one for the director, one for the assistant and three for the senior tenants who live at the facility, have a legal driver's license and have earned the privilege of having an automobile and the final parking space is for Mr. Hampton who said he would be at the facility.

Another Board member asked if the ownership of the facility changes, would the applicants agree to void the Conditional Use Permit and the new owner would have come to this Board for a new Conditional Use Permit. They agreed to the condition being placed on the Motion.

Chairman Davenport asked one more if there were any additional questions from the Board. Being none, he asked if there were any 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. Coverdale to approve the Conditional Use Permit, Docket # 2011-C-06, for a group living facility located at 1031 Kentucky Street with the following conditions:

1) Maximum of eight (8) men shall reside on the premises, which includes two (2) full-time staff members that are the Director and Assistant Director; and 2) The CUP would be void if change in ownership of property.

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 five (5) yeas, so approved without opposition.

NEW BUSINESS:

Chairman Davenport asked for any additional new business. Being none, Chairman Davenport moved on to Old Business.

OLD BUSINESS:

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

MIKE DAVENPORT, CHAIRMAN

Sandy M. Clark, Zoning Administrator