

**MINUTES**  
**CITY-COUNTY BOARD OF ADJUSTMENTS**  
**December 08, 2011 @ 5:00 p.m.**  
**City Commission Chambers**  
**1001 College Street**

**MEMBERS PRESENT:**

**Courtlan Atkinson**  
**Al Kaelin**

**David Coverdale**

**Dr. John Fitts**

**Absent:      Mike Davenport      Jim Lockwood      Charles Adams**

The City-County Board of Adjustments of Warren County was called to order by the Vice-Chairman John Fitts. Vice-Chairman Fitts requested Sandy Clark, Zoning Administrator, call the roll and determine a quorum. It was determined that a quorum was present with four (4) of seven (7) members present at the time of roll call.

Vice-Chairman Fitts asked if there were any questions or comments about the Summary Minutes of the previous meeting of November 10, 2011. There were no questions or comments. The Motion was made by Mr. Coverdale, seconded by Mr. Kaelin, and the Board of Adjustments' members (4 yeas) unanimously approved the Summary Minutes of November 10, 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 (December 8, 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 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. Vice-Chairman Fitts so ordered and swore in the two witnesses.

Attorney Hodges called attention to the fact that tonight's agenda has a couple of changes to the agenda and a Revised Agenda was presented indicating that one case was withdrawn, being 2011-C-07, of B2R, LLC., located at the corner of Graham Avenue and Plum Springs Loop.

Hon. Hoy Hodges then stated tonight there is 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. In order to prevail on the CUP, you would need five (5) affirmative votes and a "pass" vote is of no force or affect. It was explained that there could not be a hearing because there are not five members here in attendance. He then asked Jonathan Britt from the staff to come forward and address the Board, applicants and crowd in attendance.

Jonathan Britt stepped to the podium and first apologized to the applicants for not being able to have the hearing this evening and explained that due to the Zoning Ordinance requirements there must be five affirmative votes and in light of the fact that there are only four (4) members in attendance, it would be physically impossible to have the hearing on the case for the group housing Conditional Use Permit request being made here tonight. Mr. Britt request Vice-Chairman Fitts to call the applicants forward to request a postponement of the hearing for the group living facility – # 2011-C-08 until the January, 2012 meeting of this Board.

Vice-Chairman Fitts asked a representative for the applicants to come forward. Therein, Lisa Winsett stepped to the podium and requested that this hearing for her Conditional Use Permit for the group living facility be postponed until the January 12, 2012 Board of Adjustments meeting. She extended to the neighborhood that she would be happy to explain what she and her son would like to do on the property and her plans for the property. Mr. Britt explained that the staff will be placing new signs on the property and staff will advertise the Conditional Use Permit request, as well as send out letters for notice of the hearing to adjacent property owners.

Hon. Hoy Hodges, the attorney for the Board of Adjustments, then stated tonight there are also requests for 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:**

Vice-Chairman Fitts announced the first item on the agenda is a request for a Variance which is described as follows: **2011-V-28 - Robert L. Holderfield and Vista Enterprises of Bowling Green, LLC.**, have filed an application for a Variance of 86 feet from the 250 foot set back from a residential zone in order to have an outdoor seating area for a restaurant at 1035 Chestnut Street (corner of Chestnut Street and 11<sup>th</sup> Avenue). This property is zoned CB (Central Business).

Marshall Robinson, Planner, presented the staff report and stated the applicants met with staff during a pre-application conference on October 25<sup>th</sup>, 2011 and that the applicants are requesting a Variance of eighty-six (86) feet from the required two hundred fifty (250) foot set back in order to have an outdoor seating area for a restaurant that will be one hundred sixty-four (164) feet from a residential district (RM-4).

Mr. Robinson indicated that this property is located in Focal Point 101 - Downtown Bowling Green which has 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 redevelopment.

Mr. Robinson said that the property is located at 1035 Chestnut Street, on the corner of 11<sup>th</sup> and Chestnut. Both are City maintained roadways with 11<sup>th</sup> Avenue having forty-five (45) feet of right-of-way and twenty-five (25) feet of pavement width and Chestnut Street having pavement widths and rights-of-way that vary.

The provision of the Zoning Ordinance from which the Variance is requested is referenced as: **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*

Vice-Chairman Fitts asked if there were any questions of staff for this Variance request. Being none, Vice-Chairman Fitts 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, Vice-Chairman Fitts asked for a Motion.

**ACTION:** **Mr. Kaelin made the Motion, seconded by Ms. Atkinson, to approve the request for a Variance on property located at 1035 Chestnut St, Docket # 2011-V-28, of an eighty-six (86) foot Variance from the required two hundred fifty (250) foot set back to have a restaurant outdoor seating area one hundred sixty-four (164) feet away from a residential district (RM-4). 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 four (4) yeas.**

Vice-Chairman Fitts announced the final item on the agenda is also a request for a Variance which is described as follows: **2011-V-29 - WAKY Signs, Inc., Phil Warren, Jr. and Greenwood Plaza, LLC.** *have filed an application for a Variance of 9 square feet from the maximum of 6 square feet for a proposed menu preview board at 1770 Campbell Lane. This property is zoned PUD (Planned Unit Development) with Binding Elements.*

Rachel Hetzer, Planner, presented the staff report and stated the applicants met with staff during a pre-application conference on November 7<sup>th</sup>, 2011 and that the applicants are requesting a Variance of nine (9) square feet from the six (6) square feet allowed for a menu preview board in order to have a preview board of fifteen (15) square feet for a restaurant drive-through

Ms. Hetzler indicated that this property is located in Focal Point 106-4B – Campbell Lane - which has Characteristics of: Dominant use area; highway and general business. The property has frontage on Campbell Lane – a State maintained roadway with 100 feet of right-of-way and varying pavement width and Gary Farms Blvd., a City maintained roadway with varying right-of-way and varying pavement width.

The provisions of the Zoning Ordinance from which this Variance is requested is referenced in *Article 5.2.4.A.5.b.(3) No preview board shall exceed six (6) square feet.*

Vice-Chairman Fitts asked if there any other questions for staff. Being no questions or comments, Vice-Chairman Fitts then asked if there is opposition to this request. Being none, he asked for a Motion

**ACTION:** Mr. Kaelin made the Motion, seconded by Ms. Atkinson, to approve the request for a Variance for the property located at 1770 Campbell Lane, Docket #2011-V-29, of a Variance of nine (9) square feet from the allowed six (6) square foot for a preview board within a drive-through. 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 four (4) yeas.

**NEW BUSINESS:**

Vice-Chairman Fitts asked for any additional new business. Sandy Clark, Zoning Administrator stated that the new schedules for the 2012 Board of Adjustment meeting has been passed out and are at the Board members seats here tonight. She asked the Board members to take a look at the schedule and indicate if there were any problems or concerns to contact her.

There was discussion about the Zoning Ordinance and the need for five (5) affirmative votes for a Conditional Use Permit, when a majority of the Board to be present is four (4) of seven (7) members. Staff will be working on a possible change in the Zoning Ordinance. Vice-Chairman Fitts and other Board members acknowledged that the Zoning Administrator makes every effort to get as many Board members at the meetings as possible and send packets and makes calls to get everyone at the meeting. Tonight was an unfortunate evening for the applicants to not have at least five (5) members in attendance.

Being no other new business, Vice-Chairman Fitts moved on to Old Business.

**OLD BUSINESS:**

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

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JOHN FITTS, VICE-CHAIRMAN

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Sandy M. Clark, Zoning Administrator