

ON MONDAY, APRIL 2, 2018, THE BOARD OF ADJUSTMENT HELD A MEETING IN THE 2ND FLOOR COURTROOM OF THE WOODFORD COUNTY COURTHOUSE AT 6:30 P.M.

PLEDGE OF ALLEGIANCE

MEMBERS PRESENT: Al Schooler, David Prewitt, Tim Turney, Fred Powers

MINUTES: A motion was made by Mr. Schooler, as seconded by Mr. Prewitt, to approve the March 5, 2018 minutes, as submitted. The motion carried with four (4) aye votes.

Application #04-010-2018 - Conditional Use Permit – John B. Shoemaker, Trustee and Brian Charry, Applicant – 4125 W. Leestown Rd – A-1 District – Article VII, Section 701.4(H) - Owner and Applicant are seeking a Conditional Use Permit to operate a kennel for “Premier K9 Training”.

Chairman Turney called upon Pattie Wilson, Planning Director for comments. Mrs. Wilson noted that the request from Mr. Charry was for a kennel facility on Leestown Road; Mr. Charry has a contract to purchase the property from the Shoemaker Trust and would like to operate a dog training facility/kennel business. The property is zoned A-1 (Agriculture) and consists of 35.446 acres. In Article VII, Section 701.4 (H) is the conditional use acknowledgement for a kennel being allowed in this zone.

All the public notices were met and letters were mailed to adjacent property owners and notice in the Woodford Sun.

Mrs. Wilson noted that attached to the application in the Board’s packet was a description from Mr. Charry about his business plan and there were ten items identified and Mrs. Wilson noted five areas that may need to be addressed by Mr. Charry:

- #5 –Open fields on the remainder of the property will be utilized for tracking purposes. What impact will this have on adjacent agricultural properties? May need to establish a setback zone for no activities for any unleashed K9s.
- #6-Hosting events, competitions, trials, matches or seminars with varying public hours. How many of these will be held? Maximum number of guests? Outside lighting? Will amplified sound system be used? Will varying hours need to be changed to set hours?
- #7-Potty breaks. Will staff be present at all times?
- #8-Public hours subject to change. Applicant should have to come back to the Board for changes.
- #9-Business sign. Need more information such as: size, placement, internally or externally illuminated?
- #10- Additional structure. Needs to be shown on the site plan with a maximum size. If not, then it should come back to the Board for amendment in the future.

Mrs. Wilson recommended the following conditions if the Board chose to approve the variance:

1. **This property is subject to all requirements of the Versailles-Midway-Woodford County Zoning Ordinance.**

2. **The applicant shall comply with all other federal, state and local regulatory entities and shall provide copies to the Planning Commission office of any and all permits issued on behalf of the Owner as a result of the approval of the CUP.**
3. **The applicant shall obtain all necessary permits, if any, from the Versailles-Midway-Woodford County Building Inspector and the Woodford County Health Department prior to operation of the dog training/kennel.**
4. **The Conditional Use Permit shall be personal with Brian Charry and shall become null and void upon the sale, rent or lease of the property to any other party.**
5. **The applicant shall return to the Board prior to ANY changes to the approved conditions.**
6. **Site Plan showing 6 elements as attached to the application will be adhered to.**
7. **Items 1-10 as attached to application will be adhered to as Conditions of this permit, as amended.**
8. **The buildings and training areas shall be kept clean so there is no odor and shall be managed so any barking or nuisance dogs are removed from outside runs/exercise pens to inside buildings.**
9. **This conditional use permit shall be reviewed annually for compliance with all conditions, and then when necessary by the Board, to ensure compliance with these conditions.**
10. **Hours of operation shall be 7 a.m. – 9 p.m.**
11. **No exterior lighting in outdoor facilities (i.e. fields); lighting on building shall be shielded and downward.**
12. **No amplified sound or music.**
13. **Staff member shall be onsite at all times when canines are present.**
14. **Dogs must be restrained on leash or inside of fence area at all times.**
15. **No more than two events in a year for the first year and cannot be held in the same month.**
16. **Any future additional buildings would need to be approved by BOA.**
17. **Signage would need to follow the zoning ordinance; no lit signs.**

Chairman Turney asked if there were any questions for Mrs. Wilson. Hearing none, Chairman Turney called upon the applicant for comment.

Brian Charry was present and noted that he was willing to answer any questions. Chairman Turney asked what type of events would be hosted. Mr. Charry noted that it would be 1-2 events per year with 10-20 competitors; types would be like a confirmation show in front of judges and another one would be an IPO competition (three phase sport for obedience, protection and tracking) and all dogs would always be on a leash. Mr. Schooler asked if all of the facilities would be put in place prior to training. Mr. Charry stated that the building would be built prior to any dogs on the property. Chairman Turney asked what buildings were going to be built. Mr. Charry noted that the 40x70 building is the main building but doesn't know which way it will be placed on the property; it would be up to the builder. Mr. Charry noted that the structure will be 80' from the fence line. Mr. Schooler asked how much area was on this property. Mr. Charry noted there was 35.44 acres. Mr. Powers asked what the closest

residence to the proposed structure was. Mr. Charry noted that there was a trailer on Mr. Horn's property on the second entrance and it is probably 400 feet back and one across the road on Mr. Phillip's property that is about 1000-1200 feet back. Chairman Turney asked for clarification on which entrance would be used. Mr. Charry said it would be the same one that Mr. Horn has access through as well. Mr. Charry noted that the reason he listed the hours on his business plan the way he did was to include holiday hours and have flexibility with Monday hours. Chairman Turney noted that the biggest issue would be the opening and closing hours. Mr. Charry noted that in the winter the closing hours would be earlier because it is dark out at 6 p.m. Chairman Turney asked if staff was present during potty breaks. Mr. Charry said staff would be coming in and out and the dogs are in individual runs. Mr. Powers asked if the dog would be able to get out past 10 p.m. Mr. Charry noted that they would not. Chairman Turney asked if any board members had other questions. Hearing none, Chairman Turney called for public input.

David Phillips of Leestown Road noted that he had cows and calves in the field directly across the road where the proposed kennel is going and he was not sure how cows and calves would get along with forty barking dogs. He was opposed to the dog kennel and noted that it was not consistent with agricultural zoning and doesn't think a dog kennel or training facility for dogs is considered agricultural. Mr. Phillips noted that on Hwy. 421 from the Scott County line to the Franklin County line it is all farmland; tobacco barns, horse barns, cattle barns, farm houses. These are farms for agriculture use, not other business. Mr. Phillips noted that for safety, he and his girlfriend have two dogs and they let them out of the truck about 500 feet from the road and then they will run up to the barn and he felt that if there was a kennel across the road and they hear the dogs barking then they will want to go across the road and could possibly get hit on the road. Mr. Phillips noted that he was also concerned about his property values and if he was looking at buying a farm he would think twice about one next to a dog kennel. Mr. Phillips hoped that Planning and Zoning would not approve the conditional use permit so things can remain the way they are, agricultural.

Mr. Charry noted that they also plan to operate and have cattle on their farm and that area will be fenced in. Currently, Mr. Charry noted that he lives and operates his business on a cattle and horse farm and has never had an issue. Mr. Charry noted that there are measurements that Mr. Phillips can take to ensure that his dogs are secured on his property. Mr. Charry noted that there will be a living quarters for staff and that there will not be a nuisance of excessive barking. Mr. Charry felt that the kennel was good for the community and will be putting up a nice facility.

Tom Greathouse spoke and noted that without seeing the map or plat of being 80 feet off of Hwy. 421 he was concerned with the amount of water that would gather in that area. Mr. Greathouse noted that he was familiar with the farm and does not believe that it is a very good building site. Chairman Turney noted that 80 feet is the minimum setback and could go farther back.

Chairman Turney closed the hearing and asked for a motion to approve or deny the Conditional Use Permit application.

Mr. Schooler noted that under agriculture – A-1 it says “Sportsmen farms and kennels” so he believed that the applicant had met all the requirements.

Additional conditions were added, 11-17, as noted on page 2 herein.

A motion was made by Mr. Schooler, as seconded by Mr. Powers, to approve Application #04-010-2018 - Conditional Use Permit – John B. Shoemaker, Trustee and Brian Charry, Applicant – 4125 W. Leestown Rd – A-1 District – Article VII, Section 701.4(H) - Owner and Applicant are seeking a Conditional Use Permit to operate a kennel for “Premier K9 Training”, with conditions as amended and listed above. The motion carried with four (4) aye votes.

Application #01-002-2017 – Conditional Use Permit Review – Michael and Deborah L. Duckworth – 661 Shannon Run Road – A-1 District – Applicants are seeking a review of their existing Conditional Use Permit for Agri-tourism Enterprise as required by Board of Adjustment on January 9, 2017.

Chairman Turney called the hearing open and called upon Mrs. Wilson for comments. Mrs. Wilson noted that she provided the board members copies of the minutes from the January 2017 meeting when the board reviewed the permit. The board had questions regarding existing vs. future agricultural activities, number of events and types of conditions that the board placed on the permit. The board also added that they wanted a review in April of 2018. Mrs. Wilson noted that she and Isaac Hughes, Building Inspector went to the property and spoke with Mr. Duckworth about the activities that he had held and conditions that were to be complied with and it was her conclusion that he had complied with the conditions. The trees were planted and they had three wedding events and a farm to table event that was associated with the County Extension office. Chairman Turney asked if there had been any comments or complaints within the year. Mrs. Wilson noted that she was not aware of any comments or complaints received in the office.

Mr. Duckworth noted that they did have the events that Mrs. Wilson eluded too and did comply with the conditions. Mr. Duckworth noted that they monitored things very closely and especially the lighting. Mr. Duckworth noted that he walked the property during music playing and noted that it could be heard but stopped when it was supposed to. Mr. Duckworth noted that they had purchased twelve more acres.

Chairman Turney asked if any Board members had questions. Chairman Turney thanked Mr. Duckworth for coming and was glad it was working out.

Application #04-007-2018 – Dimensional Variance Permit – Curtis and Rebecca Lowe – 397 Gleneagles Way - R-1B District – Article V, Section 504.2 & 504.5(B); Article VII, Section 706.6 – Owners are seeking that the fence at its present location (28’ dimensional variance) along Hanover Drive, and modified to a 48” tall (6” height variance) Plank and Wire design be approved.

Chairman Turney called the hearing open and called upon Mrs. Wilson for comments. Mrs. Wilson noted that the Lowes were before the Board last month and have reapplied since that request was denied and are now seeking a 28’ front yard variance and a 6” variance above the maximum height

allowed of 42 inches, to place a 48 inch plank and wire fence two feet from the back of the sidewalk along Hanover Drive. This plank and wire fence will replace the existing non-compliant six foot wood privacy fence in this same location if the variance is approved. Mrs. Wilson noted that background information was provided to the Board members. Mrs. Wilson noted Article VII, Section 706.6 states that the minimum front yard setback in this zone is 30 feet. Article V, Section 504.2 – Fences, Walls and Hedges addresses placement and height of fences. Section 504.5 (B) – Regulations for Lots and Yards, specifically address that the minimum front yard is required on both street frontages. All referenced ordinances are attached to the application.

Mrs. Wilson reviewed the following criteria:

- A. Applicant's driveway access is from the side street, Hanover Drive. Previous owners widened the driveway to include additional parking spaces but did not allow this added area to access the street. The apron of the driveway was not widened. This makes this unique as compared to other side driveways in that area. This added paved area keeps the fence from being closer to Gleneagles Way. In addition, this intersection is only a two way stop. The applicant believes that this area is a rear portion of the side yard and without allowing the variance they would not have the right to use this portion of the lot as a back yard at all.**
- B. If the variance isn't granted the owner would only be able to fence about two-thirds of what they consider is their rear yard. By not approving the variance they would lose 29%. They need the 48 inch tall fence for safety and security of their child, pet and home.**
- C. The owner purchased the home in 2017 and hired a fence contractor to install a six foot tall wood privacy fence, relying on the contractor to install it properly. The applicant did not willfully violate the ordinances and has now done everything possible to rectify the over cite.**
- D. Had the applicant's desired to construct a 48" chain link fence no variance would have been required. They are proposing a more aesthetically pleasing option of a 3 board plank fencing lined with woven wire. This will not alter the essential character of the neighborhood while providing their desired safety. It will not affect the public health, safety or welfare. They also compared it to the allowed 48" chain link fence that the ordinance addresses.**

All public notices were met and all the neighbors were re-notified. The amended request for this variance does generally appear to meet the four necessary criteria listed above. Mrs. Wilson noted the last condition that if the variance is granted that it is only for the 48 inch tall plank and wire fence as depicted in the photograph attached to the application. Once the six foot wood privacy fence is removed the plank and wire fence will be placed in the same location also as depicted in photographs attached to the application, after a local building permit is obtained. Any future structures or additions would have to comply with other variances.

Mrs. Wilson recommended the following conditions be attached to the Variance if the Board approved the application:

1. **This property is subject to all requirements of the Versailles-Midway-Woodford County Zoning Ordinance.**
2. **The owner shall comply with all other federal, state and local regulatory entities and shall provide copies to the Planning Commission office of any and all business license and permits issued on behalf of the owner as a result of the approval of the Variance.**
3. **The approved variance is granted only for the 48 inch tall plank and wire fence as depicted in the photograph attached to the application. Once the six foot wood privacy fence is removed the plank and wire fence will be placed in the same location also as depicted in photographs attached to the application, after a local building permit is obtained. Any future structures or additions shall conform to the standards of the Zoning Ordinance.**

Chairman Turney asked if any board members had questions for Mrs. Wilson. Hearing none, Chairman Turney called upon the applicant.

Curtis and Rebecca Lowe were present. Mr. Lowe noted that the reapplication included the detail that the board was looking for and was hoping that it would meet their approval. Mr. Powers asked if the fence would be painted or stained. Mrs. Lowe noted that they had no intention to do anything to it and leave it natural. If it does start to age they may paint it black to make it look better. Mrs. Wilson noted that there was a public document submitted to the Planning office from a concerned neighbor.

Chairman Turney asked if anyone from the audience would like to speak.

Don Aters of 400 Gleneagles Way questioned the purpose of having guidelines if everyone could come in and ask for a change. Chairman Turney noted that every case is individual and has to meet the criteria; it's not what is good for one is good for all. There are special circumstances. Mr. Aters noted that if everyone wanted to get closer than 30' then why is the rule in there.

Sharon Aters of 400 Gleneagles Way was concerned about the driveway behind the subject property and they should have the ability to back up without anything in its view. Who is going to be liable if something happens?

Mrs. Lowe noted the proposed fence would fall within the same guidelines as a chain link fence which you can put anywhere on the property. Mrs. Lowe felt like they are improving visibility with this type of fence and are trying to keep everyone safe.

Paul Johnson, father of Mrs. Lowe, noted that he had heard the comments and read the zoning ordinance associated with the fence and setbacks and felt that the ordinance applies to the builder and the permanent structure. Chairman Turney noted that the interpretation of the zoning ordinance is up to Mrs. Wilson and was not up for debate. Mr. Lowe noted that if someone reads the regulations it is kind of confusing because the section titled fences, hedges and trees to say the same thing should apply to the structure that applies to the fence. He noted that there was confusion if a fence was a permanent structure.

Chairman Turney asked if anyone else had comments, hearing none, Chairman Turney closed the hearing and asked for a motion to approve or deny the Dimensional Variance application.

A motion was made by Mr. Powers, as seconded by Mr. Prewitt, to approve Application #04-007-2018 – Dimensional Variance Permit – Curtis and Rebecca Lowe – 397 Gleneagles Way - R-1B District – Article V, Section 504.2 & 504.5(B); Article VII, Section 706.6 – Owners are seeking that the fence at its present location (28’ dimensional variance) along Hanover Drive, and modified to a 48” tall (6” height variance) Plank and Wire design be approved with conditions as noted. The motion carried with four (4) aye votes.

Application #04-008-2018 – Dimensional Variance – LK Real Estate LLC and Wooldridge Versailles LLC – Wooldridge Garden Phase II, Unit 3A – 128, 132, 136, 140, 180, 192 McCowans Ferry Alley - R-1C/PUD District - New Urban Code, Chapters IV and V - Owners are requesting a dimensional variance from the New Urban Code of twelve (12”) inches to six (6”) inches of the requirement that the front porch elevation shall be no less than eighteen (18”) inches above the fronting sidewalk elevation.

Chairman Turney called the hearing open and called upon Mrs. Wilson for comments. Mrs. Wilson noted that the applicants reapplied after getting denied in March. The application was narrowed down to six pieces of properties that are currently under construction; four are owned by Wooldridge Versailles, LLC and two are owned by LK Real Estate. They are seeking a 12” variance from 18” to 6” of the requirement that the Front Porch elevation shall be no less than 18” above the fronting sidewalk elevation for with respect to this NUC requirement. Mrs. Wilson noted that the background information was in the packet and was repetitive from March 2018 meeting. Mrs. Wilson noted that in April of 2017 LK Real-Estate was verbally notified that various aspects of the Architectural Standards and the Building Placement Standards were not being adhered to. At the time this variance application was submitted virtually all are being complied with. The exception was the height of the front porches relative to the front sidewalk. The owner was recently reminded by Mr. Hughes that no other inspections would take place until the porch elevation violations were properly addressed. In February 2018 an application was filed by LK Real-Estate for numerous “blanket” variances for 42 pieces of property, all of which were denied. (See Application #03-004-2018 – Minutes of March 5, 2018)

Mrs. Wilson reviewed the criteria and noted that all of the houses were required to face High Street:

- 1. The properties that are the subject of this request are all required to face High Street. The alley that was built by the original developer did not take into consideration the topographical change between High Street and the alley, now known as McCowans Ferry Alley. In addition the garages have to access the alley, not High Street. This creates a difficult condition with implementation of the NUC with regard to elevation of the home relative to High Street.**
- 2. If the front porches are required to be a minimum of 18 inches above the fronting sidewalk along High Street, these homes would be out of character with other homes in the neighborhood. It would also cause these homes to be more expensive as compared to comparable homes in the area.**
- 3. The NUC, as amended, was in place when the Owners purchased these lots. They did not realize the difficulty in the change in elevation between High Street and the alley in**

conjunction trying to build homes similar in style and price to those already being constructed and sold.

- 4. The variance to allow the lower porches to remain (and therefore the homes) will improve the public safety and welfare by allowing homes that will accommodate the elderly. They also fit into the character of the area.**

The request for this variance does appear to generally meet the necessary criteria. All public notices were met. Mrs. Wilson noted there were four recommended conditions and highlighted the following: **The 12" front porch height variance is granted only for the 6 lots denoted herein. Any future structures or additions shall conform to the standards of the Zoning Ordinance and The New Urban Code.**

Chairman Turney asked if any board members had questions for Mrs. Wilson. Hearing none, Chairman Turney called upon the applicant.

Preston Cecil, Legal representative for the applicants was present. Mr. Cecil noted that they agreed with the determination of the staff report and their findings.

Chairman Turney asked if anyone had any comments and if anyone from the audience would like to speak, hearing none, Chairman Turney closed the hearing and asked for a motion to approve or deny the Dimensional Variance application.

A motion was made by Mr. Schooler, as seconded by Mr. Prewitt, to approve Application #04-008-2018 – Dimensional Variance – LK Real Estate LLC and Wooldridge Versailles LLC – Wooldridge Garden Phase II, Unit 3A – 128, 132, 136, 140, 180, 192 McCowans Ferry Alley - R-1C/PUD District - New Urban Code, Chapters IV and V - Owners are requesting a dimensional variance from the New Urban Code of twelve (12") inches to six (6") inches of the requirement that the front porch elevation shall be no less than eighteen (18") inches above the fronting sidewalk elevation with conditions as noted. The motion carried with four (4) aye votes.

Application #04-009-2018 – Conditional Use Permit – Elke Kirkpatrick – 2203 Cummins Ferry Road – A-1 District – Article VII, Section 701.4(A) – Owner is seeking a Conditional Use Permit for a family cemetery; 24 feet by 24 feet.

Chairman Turney called the hearing open and called upon Mrs. Wilson for comments. Mrs. Wilson noted that Mrs. Kirkpatrick and her husband bought 94.5 acres in 1988, a farm located near the small community of Nonesuch. Mrs. Kirkpatrick was proposing to have a 24'x24' area for a family cemetery and would be off the edge of the road approximately 25 feet and 165 feet east of Firegate #26 and permanently fenced. There have been no prior variances granted for this property. 701.4(A) in the zoning ordinance is what allows cemeteries as a Conditional Use in the Agricultural District.

Public notices were mailed to adjacent property owners and a Public Notice was published in The Woodford Sun.

The Owner's property is of sufficient size to accommodate the proposed use and can be approved if the conditions proposed herein area adhered to. Mrs. Wilson noted the conditions and noted that Mrs. Kirkpatrick had already taken care of some of them:

1. **This property is subject to all requirements of the Versailles-Midway-Woodford County Zoning Ordinance.**
2. **Owner shall comply with all federal, state and local regulatory entities and shall provide copies to the Planning Commission office of any and all permits issued on behalf of the Applicant as a result of the approval of this cemetery as a Conditional Use.**
3. **Entrance will be paved with sufficient gravel to allow two or three vehicles and/or trailers to clear the entry gate.**
4. **Cemetery must be permanently fenced and contain a gate sufficiently large enough to allow digging and mowing equipment to have access.**
5. **Cemetery boundaries must be surveyed and be permanently amended to the deed.**
6. **Owner shall return to the Board prior to ANY changes to the approved conditions for this Conditional Use Permit.**

Mrs. Wilson noted that Mr. Smith, County Road Engineer had been out to look at the entrance and that had been approved. Mrs. Kirkpatrick has obtained a surveyor to do the location that has been marked to do the cemetery easement.

Chairman Turney asked if any board members had questions for Mrs. Wilson. Mr. Powers asked if there was a setback requirement. Mrs. Wilson noted that there was not for a cemetery.

Elke Kirkpatrick was present and noted that she was doing this because her husband had stated that he would like to be buried on the farm with a shade tree over him. Her older son would like to buy the farm if she ever sells it to keep it in the family. Mr. Schooler cautioned the location of the cemetery because in the future it may be hard for the family to get to it. Mrs. Kirkpatrick noted that the undertaker had advised her to keep it close to the road where there is a driveway.

Chairman Turney asked if anyone had any comments and if anyone from the audience would like to speak, hearing none, Chairman Turney closed the hearing and asked for a motion to approve or deny the Conditional Permit application.

A motion was made by Mr. Prewitt, as seconded by Mr. Powers, Application #04-009-2018 – Conditional Use Permit – Elke Kirkpatrick – 2203 Cummins Ferry Road – A-1 District – Article VII, Section 701.4(A) – Owner is seeking a Conditional Use Permit for a family cemetery; 24 feet by 24 feet with conditions as listed. The motion carried with four (4) aye votes.

A motion was made by Mr. Schooler, so moved by Chairman Turney, to adjourn at 7:29 p.m. The motion carried with four (4) aye votes.

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Tim Turney, Chairman

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