

ON MONDAY, JULY 9, 2018, THE BOARD OF ADJUSTMENT HELD A MEETING IN THE 2ND FLOOR COURTROOM OF THE WOODFORD COUNTY COURTHOUSE AT 6:30 P.M.

Chairman Turney called the meeting to order.

Members Present: David Prewitt, Frank Stark, Al Schooler, Tim Turney

Pledge of Allegiance

Minutes: June 4, 2018 – A motion was made by Mr. Schooler, as seconded by Mr. Prewitt to approve the minutes as submitted. Motion passed with four (4) aye votes.

OLD BUSINESS

DECISION - Application #06-014-2018 – Administrative Review – Amerco Real Estate (U-Haul) – 525 Marsailles Rd – B-4 District – Article VII, Section 716.2 (H) – Owner is requesting a similar use determination to allow the proposed use of U-Haul indoor-self storage in a Highway Business District.

Chairman Turney noted that this was not a Public Hearing but was on the agenda for the Board to make a decision on the application. Chairman Turney asked for a motion.

Mr. Stark noted that he was prepared to make a motion and read the following Findings into the record:

- The question before the Board is not one that is site specific. It is an interpretation of general applicability. It would apply to all property zoned B-4.
- As such and considering that there is a system in place to provide for changes to the zoning ordinance in particular the list of uses permitted in each zone, we as a Board must proceed carefully in determining whether or not the use as proposed is clearly “of the same general character as the permitted principal uses which will not be detrimental to the district in which they are located or to neighboring districts”.
- The Board acknowledges that the particular property giving rise to the request before the Board is part of a prominent Highway Business District (B-4) shopping center that has had significant improvements made to it since it was originally constructed in 1992, including most recently the 10,500 square foot restaurant/micro-brewery. Amerco Real Estate Company acquired the property in December 2017 with both anchor spaces being vacant and the knowledge that indoor self-storage was not a permitted use. The applicant specifically states their desire to convert a portion of the Plaza for, “the rental of indoor, climate controlled secured storage facilities”. As stated above however, the question before the Board is not one that is site specific. It is an interpretation of general applicability. It would apply to all property zoned B-4.
- The Intent of the B-4 District is: *Provide for retail and other uses which are necessary to the economic vitality of the community but may be inappropriate in other zones. Special consideration should be given to the relationship of the uses in the zone to the surrounding land uses and to the adequacy of the street system to serve the traffic needs.* (Emphasis added)

We have reviewed the evidence, information and submittals provided and find as follows:

- No compelling evidence was submitted that the proposed use was overlooked by the zoning ordinance. It was documented that there are several mini-warehouse self-storage facilities in Light Industrial Districts (I-1).
- The Intent of the I-1 District is: This zone is intended for manufacturing, industrial, and related uses not involving a potential nuisance in terms of smoke, noise, odor, vibration, heat, light, or industrial waste. A Principal use of *Warehouse* is permitted. (Emphasis added)
- No compelling evidence was submitted that this use will not be detrimental to the B-4 District or the adjacent Single Family Residential areas.
- No compelling evidence was submitted that the proposed use is of a character that clearly blends in with the range of uses otherwise allowed.
- The evidence does confirm that the term “self-service storage facility” is not specifically defined nor listed as a permitted use in any zone.

Unlike conditional uses, no conditions to approval in this case can be added to address concerns raised by those concerned as evidenced by testimony and submittals at the hearing. The Board must find that clearly the use is of the same general character as the permitted principal uses and that the use will not be detrimental to the district, in this case the B-4 district. We cannot so find. In cases such as this the community, particularly through its elected officials, must be allowed to provide substantive input into any regulation providing for the use proposed and the particular locations, zones and conditions to be applied. Based on the findings above, and since it is not the role of the Board of Adjustment to subvert the zoning process, and this determination would in fact do so, we deny the request to determine that indoor self-storage (self-service storage facilities) are of the same general character as the permitted principal uses in the B-4 District.

Motion was made by Mr. Stark, as seconded by Mr. Prewitt to deny Application #06-014-2018 – Administrative Review – Amerco Real Estate (U-Haul) – 525 Marsailles Rd – B-4 District – Article VII, Section 716.2 (H) – Owner is requesting a similar use determination to allow the proposed use of U-Haul indoor-self storage in a Highway Business District based on the Findings presented at the meeting. Motion carried with four (4) aye votes.

NEW BUSINESS

Application #07-015-2018 – Conditional Use Permit – Steven Bishop and Angela Hunter – 415 Crown Ct – R-1B District – Article VII, Section 706.4 & 705.4 (G) & Definition 226 – Applicant is seeking approval of a Conditional Use Permit for a Family Child Care in their home.

Chairman Turney opened the hearing and called upon Pattie Wilson, Planning Director for comments. Mrs. Wilson highlighted some of the aspects of the staff report. The subject property has been owned by the applicants since 2014 and contains a single family residential home in an existing established neighborhood, Hunters Ridge, which is zoned R-1B, Single Family Residential. The home was constructed in 1996. The property is on a cul-de-sac with nine other homes. There were no previous BOA activities associated with this property or any others in the immediate vicinity. Mrs. Wilson provided the Board with the Ordinance section pertaining to the request and noted that all public notices were met. Mrs. Wilson noted that when reviewing the application, staff noticed an above

ground swimming pool in the back yard and she suggested that the Board ask the applicant to address safety and security of this pool with regard to the proposed child care business.

Mrs. Wilson noted that the applicant provided conditions which were attached to the application and are as follows:

1. As per state regulations 922 KAR 2:100 a Certified Family Child Care Home: is a person who cares for a child in their home; and shall not exceed 6 unrelated children at any one time. A provider may care for four (4) related children in addition to six (6) unrelated children for a maximum child care capacity of ten (10) at any one time.
2. A provider shall have an assistant present if the provider cares for more than
 - a. Four(4) infants, including the provider's own related infants; or
 - b. Six(6) children under the age of six(6) years old, including the provider's own or related children.
3. Parent drop off times will be between 7am-8am, Monday-Friday, and the parent will be parked for no more than the maximum of 15 minutes. Parent pick up times will be between 4:30 pm-5:30 pm, Monday-Friday, and the parent will be parked for no more than the maximum of 15 minutes. There will be no more children provided after 5:30 pm on weekdays, and no childcare will be provided on Saturday's or Sunday's.
4. Parents dropping off and picking up will show the upmost respect to my neighbors at all times, and will NOT be permitted to park in, or in front of a neighbor's driveway, nor turn around in a neighbor's driveway.
5. Parents dropping off and picking up will NOT be permitted to park in front of or block any mailbox or fire hydrant and will not be permitted to double park.
6. Parents will be required to supervise their children carefully between vehicles and my home, to keep them from running into the street or across neighbors' yards. If parents park across the street, they must escort children even more carefully.
7. Parents will be required to not allow children to cross or play on neighbors' property without their permission.
8. Loud disruptive noise from outside play, horn blowing and loud vehicles will not be permitted.

Mrs. Wilson noted other conditions if the Board chose to approve the request:

1. This property is subject to all requirements of the Versailles-Midway-Woodford County Zoning Ordinance.
2. The owner/applicant shall comply with all federal state and local regulatory entities and shall provide copies to the Planning Commission office of any and all permits or approvals issued on behalf of them as a result of the approval of the CUP.
3. This CUP shall become null and void upon sale of transfer of the property.
4. The owner/applicant shall return to the Board prior to ANY changes to the approved conditions with the CUP.

5. All noted Conditions provided by the applicant's "Written Statement", specifically 1 – 8, and attached hereto, shall be adhered to.
6. This CUP shall be reviewed annually for compliance with all conditions, and then when necessary by the Board, to ensure compliance with these conditions.
7. No more than three infants.
8. Maximum number of children is ten.
9. The deck/ladder to pool shall remain key locked at all times and no swimming is allowed during business hours.

Mrs. Wilson questioned the number of children that would be kept in the home and that should be included so that there is a cap. Mrs. Wilson noted that the State regulation indicated that if there are a certain number of infants then there must be an additional caregiver and that could not be the case with local Ordinance definition because only a resident of the dwelling can work in the child care facility.

Chairman Turney called upon the applicant for comments. Angela Hunter and Steven Bishop were present. Ms. Hunter noted that the cap would be ten children under the age of four. Chairman Turney noted that because of the local regulations she could not have more than four infants. Ms. Hunter noted that they have an above ground pool with an enclosed deck with gate that stays locked. Chairman Turney asked how it was secured, how tall was the fence. Mr. Bishop noted that you can't get in the pool without going up the steps to the gate with a key lock. Chairman Turney asked if the children being cared for would be allowed to use the pool. Ms. Hunter noted that if she had two children then she would ask the parents for permission but she did not plan on that being the situation since she was applying for her licensure. Chairman Turney reviewed other conditions: maximum ten children, no more than three infants, and the pool must be secured. Chairman Turney asked if any other Board members had questions. Mr. Schooler asked if there would be kids playing in the backyard and Ms. Hunter stated yes there would be. Mr. Schooler asked how tall the fence around the pool was. Mr. Bishop noted that it was approximately eight feet. Ms. Hunter noted that the children would be under the age of four (no school age children). Mr. Stark asked if there had been any calls or letters from neighbors. Mrs. Wilson noted that staff did not receive any. Mr. Stark voiced concern about the parking and length of time for drop off and pick-up. Mr. Schooler noted that since there was a pool and children would be swimming, then wasn't it a regulation that there should be a lifeguard. Ms. Hunter stated that no one would be swimming during business hours.

Chairman Turney asked if anyone from the audience wished to speak.

Sylvia Garrett of 417 Crown Court noted that she was concerned about the parking on the street and there would be more traffic on the street and she was concerned because it was a business in a residential area. There would be increased noise and a safety issue due to cars parked on the street; it would impede sight distance getting out of the driveway safely.

Mr. Stark questioned the boat in the driveway and his concern about it interfering with parking since the spaces were already limited.

Chairman Turney asked if there were any other questions or comments, hearing none, Chairman Turney closed the hearing and asked for a motion to approve or deny the request.

Motion was made by Mr. Prewitt, as seconded by Mr. Stark to approve Application #07-015-2018 – Conditional Use Permit – Steven Bishop and Angela Hunter – 415 Crown Ct – R-1B District – Article VII, Section 706.4 & 705.4 (G) & Definition 226 – Applicant is seeking approval of a Conditional Use Permit for a Family Child Care in their home with conditions as noted with the application and in the staff report and added during the hearing. Motion carried with three (3) aye votes and one (1) nay vote (Schooler).

Chairman Turney informed Ms. Garrett that if she had concerns in the future then contact Mrs. Wilson and she would be sure the conditions were being followed. If not, it could be brought back to the Board of Adjustment.

Application #07-016-2018 – Conditional Use Permit – Rocking M, LLC (Merefield Farm) – 301 Lansing Lane – A-1 District – Article VII, Section 701.4 (I) & 701.8 (A&B) – Applicant is seeking a Conditional Use Permit for an agricultural enterprise for Agri-tourism involving horse farm and farm tours and events in horse/tobacco barn and round pen.

Chairman Turney opened the hearing and called upon Mrs. Wilson for comments. Mrs. Wilson noted that the Owners/Applicants are seeking a Permit to operate an Agri-tourism/Business Enterprise involving a horse farm, farm tours, and events in horse/tobacco barn and round pen. The subject property is on the south side of Weisenberger Mill Road, on both the east and west corners of Lansing Lane approximately 1 mile southeast of Midway. The Owners already owned approximately 55 acres on the southeast corner, 300 Lansing Lane, and recently acquired the subject property, 301 Lansing Lane, on the southwest corner, consisting of 252 acres in April of this year. They have a residence on the original farm, 300 Lansing Lane, directly across from the entrance that will access the venue. The existing barn was previously a tobacco barn then converted into a horse barn. The barn, with an adjacent round pen, is where events will be held and farm tours conducted from.

The Agricultural Advisory Review Committee (AARC) met on June 13, 2018 to review the proposal and recommended unanimously to forward the request onto the BOA for further review as a Conditional Use. The minutes of this Public Meeting were attached hereto. The agreed upon conditions have been incorporated into the staff report.

Mrs. Wilson provided Board members the Ordinance for the basis of the request. All public notices were met.

Mrs. Wilson reviewed the following conditions:

- 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 the CUP.**
3. **Owner's Conditional Use Permit shall become null and void upon the sale or transfer of the property.**
4. **Owner shall return to the Board prior to ANY changes to the approved conditions with the CUP.**
5. **Seasonal events shall be based on existing and future agriculture on the farm with events that are only allowed between April 1 and October 31 of the calendar year.**
6. **Guests to be limited to 200 for any one event.**
7. **No outside music.**
8. **Music to cease at 10:00 p.m.**
9. **Maximum of 40 events per year.**
10. **At the time of events, small direction signs shall be placed so guests will know where to enter and park.**
11. **Owner agrees to conduct events in conformance with site plan and business plan submitted with the application, as recommended by the AARC.**
12. **This CUP shall be reviewed annually for compliance with all conditions, and then when necessary by the Board, to ensure compliance with these conditions.**

Mrs. Wilson included the justification for issuing the permit in her staff report. Mrs. Wilson noted that the Owner's property appears to be of sufficient size to accommodate the proposed uses. The Site Plan shows that there is adequate space to accommodate the proposed Agri-tourism/Business Enterprise and associated parking, as permitted by Article VII, 701.8(A) and 701.4(I), as long as the Conditions proposed by the Owners and supplemented by the AARC are adhered to. All of the documents from the AARC are incorporated as part of the record for this BOA Public Hearing.

Chairman Turney asked if any members had questions for Mrs. Wilson. Hearing none, Chairman Turney called upon Rob Maclin for comments. Mr. Maclin thanked the committee for the opportunity and for their consideration of the request and introduced his wife, Missy. Chairman Turney asked if any members had questions for the applicant, hearing none, Chairman Turney asked if anyone from the public wished to speak. Hearing none, Chairman Turney closed the hearing and asked for a motion to approve or deny.

Motion was made by Mr. Schooler, as seconded by Mr. Prewitt to approve Application #07-016-2018 – Conditional Use Permit – Rocking M, LLC (Merefield Farm) – 301 Lansing Lane – A-1 District – Article VII, Section 701.4 (I) & 701.8 (A&B) – Applicant is seeking a Conditional Use Permit for an agricultural enterprise for Agri-tourism involving horse farm and farm tours and events in horse/tobacco barn and round pen with conditions as noted in the staff report and justified by the reasons 1-7. Question was raised by Mr. Prewitt to amend the motion to include downward lighting on the property as a condition. The Amended motion carried with four (4) aye votes.

Motion was made by Mr. Stark, as seconded by Mr. Schooler, to adjourn at 6:59 p.m. Motion carried with four (4) aye votes.

Chairman Tim Turney
TT/ko