

ON MONDAY, JULY 10, 2017, 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, Frank Stark, Tim Turney, Fred Powers, David Prewitt

MINUTES: A motion was made by Mr. Stark, as seconded by Mr. Powers, to approve the June 5, 2017 minutes, as submitted. The motion carried with five (5) aye votes.

Application #06-011-2017 – Conditional Use Permit – Brandi T. Jones – 153 Elm Street – R-1A District – Article VII, Section 705.4 (A) & Article II, Section 260 (1-9). Owner is seeking a Conditional Use Permit for a Home Occupation to operate a Single Physician Chiropractic Office.

Chairman Turney noted that this hearing was a continuance from the June 5, 2017 hearing and that only new information will be accepted and heard. Chairman Turney noted that each person will have approximately three minutes to speak.

Jim Hume of 117 Old Hickory Lane noted that for the last thirty years he had represented Lexington-Fayette-Urban County Government in some form of zoning enforcement, specifically Board of Adjustment and had done many Conditional Use inspections and was well versed. Mr. Hume noted that this application on surface looked like a typical Conditional Use but if you look at it, it seems to be more of a down-zoning of a property. The definition of a home occupation does say that it has to include professional services but it also mentions handicraft, upholstery, tailoring and instruction for music; those are hardly on the same professional level as a physician or dentist. If you look in the P-1 zone, that's the first time that clinics and hospitals and medical facilities are mentioned; there is a clear distinction because it uses the word professionals in the same stroke as the medical. Mr. Hume believed that what was trying to take place was a zone change which he noted was totally inappropriate. Mr. Hume talked about parking in front of the house and if you look down the streetscape, it is the old highway right-of-way. Mr. Hume noted that it is a legal non-conforming use. They need to have a reasonable ingress and egress. Mr. Hume noted that it states in the R-1A that a driveway cannot be shared. Mr. Hume noted that under the parking regulations it states that one or two family dwellings, which this is supposed to remain, off street should be on the same lot with the building that they are required to serve on. That includes access that is part of the drive on to the required parking. So it doesn't even qualify to use the street for parking. Mr. Hume noted that if this was P-1 zone then it would require specifics for parking and possibly landscaped. Putting a business in a residential zone is clearly separated in the ordinance. Mr. Hume noted that if this were to be approved, that within a year, the zoning office can go out and do their annual inspection and the applicant can say that they want to be considered a permanent principle permitted use and it can be granted if it is found to be in compliance. To set the precedent to set like offices up in the future to be nice and clean the first then be deemed by law as permitted uses is an incredible mistake in this body and should be heard by Planning Commission.

Betty Rehm of 175 Elm Street spoke to the application which refers to the current zoning that allows Home Occupation as the use of single physician. Ms. Rehm noted that the term "physician" does not include, by law, the term chiropractor as noted in the Kentucky Revised Statutes 311.550 which states

what a physician is; doctor of medicine or osteopathy. In section 5, the practice of chiropractic shall not include the practice of medicine or osteopathy as defined in KRS 311.550. Ms. Rehm referred to the back of a phonebook that doctors have initials that follow their name and in fact a physician cannot be a chiropractor and should not be included.

John Miller distributed copies of a Power Point presentation. Mr. Miller noted that he was a licensed professional engineer for over 25 years doing roadway design in multiple states. One of the key issues about roadway design, especially on an urban roadway, is sight distance. This is the distance that somebody needs to be able to see to stop safely and it is critical intersection design for people entering and exiting intersections to be able to see so far, but also for traffic to be able to see them. Mr. Miller reviewed obstructions in sight distance. The standard for sight distance is above 3 ½ feet off the ground. For Elm Street the stopping sight distance is 250 feet and intersection sight distance is 390 feet. The Kentucky Transportation Cabinet permitting manual states for any encroachment on a right-of-way, a permit shall be obtained from the district office responsible for the county where the work is proposed. This includes entrance and access permits, private, commercial or school; any grading of the right-of-way. The required sight distance for a private entrance is the stopping sight distance which is 250 feet on Elm Street. If the sight distance is not met, then state law requires a traffic engineering study by a licensed engineer before to show that it is a safe intersection. For a commercial entrance it depends on whether it is considered a high volume or low volume intersection. If it is a low volume intersection, the required sight distance is the stopping sight distance which is 250 feet and if it is high volume then it is considered the intersection sight distance which is 390 feet. To calculate if it is a low or high volume intersection, you need a traffic impact study; you have to know the traffic count to actually get there. Mr. Miller described the sight distance by sitting in the driveway at 153 Elm Street and line of sight. Mr. Miller noted that there was not adequate sight distance at this location. Other safety issues that are directly impacted by the line of sight is there are the sidewalks on the north side of Elm Street and on the south side all the way up to Old Hickory. Where vehicles would be entering and exiting at 153 Elm Street, there are pedestrians that cross from the south side to the north side in front of Old Hickory and the subject driveway and pedestrians crossing in front of the driveway. Mr. Miller noted that when pulling out of Old Hickory you have to pull out into Elm Street to see oncoming traffic. Adding twenty one entrances and exits per day would double traffic movement on Elm Street.

Bill Moore, attorney representing Read Miller, distributed copies of the BOA meeting minutes from April 3, 2017. Mr. Moore noted that they were emphasizing the point that this is a residential area and the people in the area are opposed to it and did not want commercial intrusion into the residential zone. Mr. Moore noted that when the meeting broke last time the question was is this something that the Board has to do and meet the criteria for a home office; what is the duty of the Board in that situation. Mr. Moore referenced a previous case that the Board heard for a Bed & Breakfast at 241 South Winter Street where the neighbors came in and opposed it. They said they did not want a commercial business intruding into their residential neighborhood. At the end of that meeting there was a motion made to deny that application due to operating a business in a residential area would intrude upon the integrity of the neighborhood and those are the same issues that are being raised in this case. Presented tonight was a more detailed traffic study because at the time when they were looking at the application they did

not know the proposed amount of traffic to be generated by this use as the applicant indicated. Mr. Moore requested that the application be denied.

Brandi Jones noted that her case was made last time and should not have been continued. Dr. Jones presented some photos of non-existent bushes that supposedly make it a dangerous intersection. Dr. Jones noted that there are some junky looking properties on Elm Street and that when she started looking for homes she would rather have been on Rose Hill because it has a better aesthetic appeal. Dr. Jones noted that Chiropractic Physician is a legal term in Kentucky. Dr. Jones that she was told that someone on Elm Street runs a salon out of their home which is not causing any problems because nobody is complaining about it. Dr. Jones noted that there are not twenty homes on Elm Street registered as a Historic home; there is only one, Margaret Hall. Dr. Jones felt that it was ironic that someone brought up that professional office such as dentist, lawyers and physicians is a different category when their actual attorney looked at property before she did and considered putting in his law office there.

Chairman Turney closed the hearing and asked for a motion to approve or deny.

Mr. Schooler questioned that during the last meeting did the Board say that there would be no parking in front of the house. Chairman Turney stated that per the Conditional Use Permit there is no on street parking, all parking has to be off the street. Chairman Turney noted that the Board was able to make any additional conditions as well.

A motion was made by Mr. Stark, as seconded by Mr. Schooler, to approve Application #06-011-2017 – Conditional Use Permit – Brandi T. Jones – 153 Elm Street – R-1A District – Article VII, Section 705.4 (A) & Article II, Section 260 (1-9). Owner is seeking a Conditional Use Permit for a Home Occupation to operate a Single Physician Chiropractic Office with the eight noted conditions and #9 – Must schedule clients with gaps between appointments to prevent overlapping of patients to minimize the impact flow of traffic. The motion failed with two (2) aye (Stark and Schooler) and three (3) nays (Prewitt, Powers and Turney).

A motion was made by Mr. Prewitt, as seconded by Mr. Powers, to deny Application #06-011-2017 – Conditional Use Permit – Brandi T. Jones – 153 Elm Street – R-1A District – Article VII, Section 705.4 (A) & Article II, Section 260 (1-9). Owner is seeking a Conditional Use Permit for a Home Occupation to operate a Single Physician Chiropractic Office, due to traffic impact and the number that egresses and ingresses. The motion carried with three (3) aye (Prewitt, Powers and Turney) and two (2) nays (Stark and Schooler).

PUBLIC HEARING - Application #07-012-2017 – Dimensional Variance Permit – BMAT Investments LLC – 117 Ashmore Ave - R-2 District – Article VIII, Section 803 and Article VII, Section 708.6 – Owner/Applicant is seeking a 35 foot variance from the required 35 foot minimum rear yard setback in order to rebuild a home on a legal nonconforming lot of record.

Chairman Turney opened the hearing and called upon Isaac Hughes, Building Inspector for comments. Mr. Hughes summarized his staff report and noted that the applicant is seeking a 35 foot variance from

the required 35 foot minimum rear yard setback in order to rebuild a home on a legal non-conforming lot at 117 Ashmore Avenue. It is zoned R-2, residential, corner lot. In April 2017 the applicant applied for a building permit to add on to and remodel an existing residence located on the property. He was advised that it could not be enlarged toward Highview, due to the front setback line. In May 2017 a building permit was issued to remodel the existing footprint with a second story addition. During construction it was determined that a majority of the structure had to be demolished and a Stop Work Order was issued. The existing house is located on a legal non-conforming lot. During the construction it was determined that the majority of the structure had to be demolished, a stop work order was issued because it was on a non-conforming lot and more than fifty percent of the house was removed and had to be replaced. According to Ordinance 803 (B) – Non-conforming Structure, it must be built according to today’s Ordinance. In 708.6, it specifies the minimum Rear Yard Setback is 35 feet. There are no records of any prior variances to the subject property. The applicant appeared to meet the four criteria needed to grant a variance. Letters were mailed to adjoining property owners and the notice was published in the Woodford Sun. Mr. Hughes noted that there were four conditions listed in the staff report and should be added if the variance is approved. Conditions are as follows:

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 permits issued on behalf of the owners as a result of the approval of the Variance.**
3. **The approved Variance is granted only for the construction of one single family dwelling in the location shown on attached site plan.**
4. **The owner shall obtain all necessary permits from the Versailles-Midway-Woodford County Building Inspector for the construction of the single family residence. The dwelling shall conform to all other required setbacks for the R-2 zoning district.**

Chairman Turney asked if the applicant had any comments, hearing none the hearing was closed.

Chairman Turney asked for a motion to approve or deny the dimensional variance.

A motion was made by Mr. Schooler, as seconded by Mr. Powers, to approve Application #07-012-2017 – Dimensional Variance Permit – BMAT Investments LLC – 117 Ashmore Ave - R-2 District – Article VIII, Section 803 and Article VII, Section 708.6 – Owner/Applicant is seeking a 35 foot variance from the required 35 foot minimum rear yard setback in order to rebuild a home on a legal nonconforming lot of record with the noted conditions. The motion carried with five (5) aye votes.

A motion was made by Mr. Stark, seconded by Mr. Schooler, to adjourn at 7:00 p.m. The motion carried with five (5) aye votes.

Tim Turney, Chairman

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