

ON MONDAY, JUNE 3, 2019, THE BOARD OF ADJUSTMENT HELD A MEETING IN THE 2<sup>ND</sup> FLOOR COURTROOM OF THE WOODFORD COUNTY COURTHOUSE AT 6:30 P.M.

#### **PLEDGE OF ALLEGIANCE**

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

**MINUTES:** A motion was made by Mr. Schooler, as seconded by Mr. Powers, to approve the May 6, 2019 minutes, as submitted. The motion carried with four (4) aye votes.

Application #06-008-2019 – Conditional Use Permit – Dan Sparrow and Living Grace Church – 128 E. Green St – OHB-2 District – Article IV, Section 401(B)(1)(F); Def. #227 – Owner and applicant are seeking a Conditional Use Permit for a Church to be located at 128 East Green Street.

Chairman Turney opened the hearing and called upon Pattie Wilson, Planning Director for comments. Mrs. Wilson noted that the owner, Dan Sparrow, and Jo Lauderdale, the pastor of Living Grace Church were applying for the Conditional Use Permit that would occur in the rear portion of the building and would have frontage and access to East Green Street. Parking is located on the property at the rear of the building. On street parking is also permitted in the Central Business District. The subject property is zoned OHB-2, Old Historic Central Business District and is located at the southeast corner of North Main Street and East Green Street in a building known as the old YMCA Building. The owner purchased this building in 1991 and it has been used for a variety of retail, offices, and apartments (upper floors). In August 1991 the owner requested a CUP for a church but the application was withdrawn. Numerous building permits have been issued over the years for remodeling the building as well as signage.

Mrs. Wilson cited the applicable Zoning Ordinances that pertained to the request in the staff report. All public notices were satisfied. The property/structure appeared to be of sufficient size to accommodate the proposed use of a church. Mrs. Wilson provided the Board with a site map that showed the location of the building and associated parking. The request for the CUP appeared to meet all of the necessary criteria as required in the Zoning Ordinances.

Mrs. Wilson highlighted four through eight of the eight proposed conditions to be attached to the Permit:

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 church.**
4. **The Conditional Use Permit shall be personal with Living Grace Church 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. **Sunday service times shall be after 1 p.m.**

7. **Once membership reached more than 50 people then they must relocate to another facility.**
8. **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.**

Chairman Turney asked if any members had questions for Mrs. Wilson. Mr. Powers asked how much parking was located behind the building. Mrs. Wilson noted that in the aerial photograph it showed that there may be ten spaces, but Pastor Lauderdale could answer that.

Jo Lauderdale, Pastor of Living Grace Church was present and noted that they suggested the 1 p.m. time because they were excited about the opportunity but would like to keep it at 11:00 a.m. because that is what everyone was used to. Ms. Lauderdale noted that they do have a parking lot that could fit 10-11 vehicles. Their membership runs less than twenty people.

Chairman Turney asked if any members had questions for Ms. Lauderdale. Mr. Schooler asked if there would be evening or mid-week services. Ms. Lauderdale noted that they have service on Tuesday's at 6:30.

Chairman Turney asked if anyone from the public would like to comment.

Keith Benze, Pastor of Versailles Presbyterian Church noted that they were not opposing the request but had concerns regarding the parking and had a survey that depicted the parking lot belonged to Versailles Presbyterian Church and had no issue with Living Grace Church using the small lot. Mr. Benze noted that parking is a mess on Sunday morning because there are four churches in the area but since Ms. Lauderdale agreed to have their service at 1:00 he did not see an issue with it and submitted written comments for the record.

Mrs. Wilson noted that onsite parking was not required in the Central Business District.

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

**A motion was made by Mr. Schooler, as seconded by Mr. Powers to change condition #7, that Sunday service could not start earlier than 11:00 a.m. The motion failed 2-2; voting aye: Schooler, Powers and voting nay: Prewitt and Turney.**

**A motion was made by Mr. Prewitt, as seconded by Mr. Powers, to approve Application #06-008-2019 – Conditional Use Permit – Dan Sparrow and Living Grace Church – 128 E. Green St – OHB-2 District – Article IV, Section 401(B)(1)(F); Def. #227 – Owner and applicant are seeking a Conditional Use Permit for a Church to be located at 128 East Green Street with the attached eight (8) conditions as noted in the staff report. The motion carried with four (4) aye votes.**

Application #06-009-2019 – Dimensional Variance – DAP Real Estate, LLC – 124, 126, 128, 130, 132 and

134 Abbey Road – R-1C/PUD District – NUC, Chapter IV, “Building Placement Standards for Neighborhood Houses”, “Elements” – Owner/Applicant is seeking a Dimensional Variance of differing heights from the eighteen (18”) inches required for finished floor elevation to be above the “Street Grade” elevation.

Chairman Turney opened the hearing and called upon Mrs. Wilson for comments. Mrs. Wilson noted that the applicant was originally seeking variances for six properties and then later determined that two were not necessary. They were seeking a 14 inch, 9 inch, 6 inch and 4 inch variance from the required 18 inches above street grade.

Mrs. Wilson noted that in May of 2006 the City of Versailles approved a zone change, as recommended by the Planning Commission, for “The Wooldridge” consisting of 129.89 acres from A-1 & CO-1 to R-1C (PUD) for a mixed use neighborhood for 519 residential units and 51,900 sq. ft. of non-residential uses. At this time the developers presented and agreed to follow architectural design standards and building placement standards known as The New Urban Code (NUC) with some modifications. These were conditions of the rezoning of the property. The property has developed in four separate phases and the one before the Board pertained to the Townhouse area. In June of 2012 the Woodford County Board of Education purchased 61.23 acres from Farmers National Bank for a future high school campus with athletic facilities. Based on allowable density this eliminated 245 units out of the possible 519 residential units of the area. In March of 2015 LK Real Estate, LLC purchased all of the remaining undeveloped property from Citizens Commerce National Bank. This consisted primarily of the patio home lot area, and the townhouse area. In December 2016 Anderson Wooldridge requested that the 80 lot neighborhood as well as 5.5 acres purchased from LK be rezoned from R-1C/PUC to R-4/PUD, High Density Residential/Planned Unit Development in order to construct apartments. Previous reviews have been approved by the Board of Architectural Review with regard to architectural interpretations of the NUC in 2008. In 2010 the NUC was amended by the Planning Commission and Versailles City Council to address numerous details including the distance of windows to corners, etc. In April of 2017 the BOA approved several variances for Anderson Wooldridge area one of which was a 6” variance on the elevation of the front porches from a minimum of 18” down to 12” above the fronting sidewalk. This was for about 30% of the 80 lots in that phase. 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 on homes they were building in patio homes area. The owner was later reminded that no other inspections would take place until the porch elevation violations were properly addressed. In March of 2018 an application was filed by LK Real-Estate for 3 variances for 42 pieces of property, all of which were denied. One of the specified variances was to vary the height of porch from the elevation above the sidewalk from 18” to 6”. This included the subject property. Mrs. Wilson provided the Board with the minutes from that hearing. In April 2018 LK Real Estate LLC and Wooldridge Versailles LLC requested twelve inch variances from 18” to 6” for six patio homes that had been constructed to low and these were the units that he was notified about in April 2017 and those variances were approved.

In October 2018 LK Real Estate LLC sold the six subject lots to DAP Real Estate LLC. In November 2018 Linsey Mosley, Quality Plus Homes LLC, contractor for DAP Real Estate LLC applied for 12 building permits, for 2 sets of six townhomes, six of which are the subject of this application. Building plans were submitted and reviewed by Isaac Hughes, Building Inspector at that time. He noted specific required revisions to the building plans including the required 18” above the sidewalk (Plans were provided to the Board). Footing

and slab inspections were requested and passed by Mr. Hughes. In April 2019, acting Building Inspector, Elizabeth Arrington was requested to inspect the building for a framing inspection. It was noticed at that time that the buildings appeared to be too low because a portion of the public sidewalk along Abbey Road had been constructed by the contractor. There was a step down to the sidewalk leading up to the front porch (Photo was provided). A meeting was scheduled with Mr. Mosley shortly thereafter to discuss this violation of the approved construction plans and it was decided then that variances would be requested.

Mrs. Wilson noted that in the 2013 Residential Building Code, Section R113.4 that it was a violation to construct in conflict from the approved construction documents and it appeared that the contractor did not construct the townhouses according to the approved construction documents. Also, in the 2013 Kentucky Residential Code, Section R109.1. Approval as a result of an inspection shall not be construed to be an approval of a violation of the provisions of this code or of other ordinances of the jurisdiction. Inspections presuming to give authority to violate or cancel the provisions of this code or of other ordinances of the jurisdiction shall not be valid.

Mrs. Wilson addressed the four criteria as listed:

1. **There are no specific conditions that make this land unique that do not exist on other land in this same zone.**
2. **Had the units been elevated to the proper height the applicant would not have been deprived of reasonable use of the land in the manner equivalent to the use permitted other landowners in the same zone.**
3. **The NUC, as amended, was in place when the Owners purchased these lots. The contractor had previously owned these lots and had applied to the BOA for variances for the elevations and was denied. Contractor was well aware of the elevation requirements.**
4. **The variance to allow the lower porches/building elevations to remain (and therefore the townhomes) could create drainage problems for the units.**

All public notice requirements were met and it did not appear to meet all four of the necessary criteria for approval. Mrs. Wilson noted that if the Board chose to approve the variance, she encouraged the Board to include the following four conditions:

1. **This property is subject to all requirements of the Versailles-Midway-Woodford County Zoning Ordinance.**
2. **The owners 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 front porch height variance is granted only for the 4 address denoted in the applicants document: 124, 126, 128 and 130 Abbey Road. Any future structures or additions shall conform to all of the standards of the Zoning Ordinance and The New Urban Code, as amended by adopted conditions of rezoning.**

**4. The owner shall obtain all necessary permits and inspections from the Versailles-Midway-Woodford County Building Inspector for the completion of these townhouses.**

Chairman Turney asked if any members had questions for Mrs. Wilson. Chairman Turney called upon the applicant for comments.

Preston Cecil, Attorney representing DAP Real Estate, provided a Powerpoint presentation. Mr. Cecil noted that the NUC was amended in 2006 to change the requirement of Finished Floor Elevation Minimum 18" above street grade. Mr. Cecil reviewed the history of Wooldridge Subdivision and other variances that had been approved and denied. Mr. Cecil noted that DAP Real Estate purchased six lots in October 2018 and in November 2018 Building permits were sought for two sets of six townhomes. Plans were submitted to Building Inspector with a note regarding the height requirement for lots subject to this variance request. Mr. Cecil noted that the building plan note by the Building Inspector referred to the porch height versus the sidewalk of 18" and noted that was not the correct standard per the modified requirement; it is now 18" from the finished floor elevation to the street grade. Based upon the approval by the inspector of the slab and footers, construction was completed on the six lots. The permits that were issued referred to final floor elevation as opposed to the porch or sidewalk grade. Mr. Cecil noted that in April 2019 a new Building Inspector determined that height requirement had not been met and that is why the variance was being sought for four units. Mr. Cecil reviewed the four criteria as noted in the presentation. Mr. Cecil noted that the application met all four criteria requirements and met all factual conditions set forth in the Anderson variance which was approved. The request was limited in scope to the four lots. Mr. Cecil noted that DAP did not plan on being back before the Board and will work closely with Building and Planning staff to avoid any further issues. They requested that the variance be granted.

Jarrod Arrasmith of DAP Real Estate, reiterated what Mr. Cecil stated and noted that the cost to tear down the units would be significant and estimate that it would be between \$1 million to 1.2 million.

Chairman Turney asked if any board members had questions.

Mr. Powers questioned the grade of the building to the street and was concerned about water entering the building. Linsey Mosley, Contractor for DAP Real Estate, noted that the elevation to the finished floor, which the engineer shot, was about 4" above the street grade. Mr. Mosley noted that they can install French drains and there was not a lot of water that comes back. Chairman Turney asked if the homes would meet the criteria based on the old standard. Mr. Mosley stated that he didn't think so. Chairman Turney was concerned that Mr. Mosley was aware, because the variance was denied earlier in March 2018, that the height was wrong. Mr. Cecil noted that when the variance was requested, the lots were empty, and the plans were put in place and the Building Inspector reviewed the requirements and approved the slab and foundations and the builder at that time thought they were correct.

Chairman Turney asked if there were any other comments from the public. Mr. Mosley addressed the timeline of the previous variance request. Mr. Arrasmith noted that with the foundation approval, they were under the impression that it was okay to move forward with framing and if it had been brought up

at that time they would have addressed it and corrected it. Mrs. Wilson asked Mr. Arrasmith if he was aware of the New Urban Code when he purchased the property and he stated that he was not.

Mr. Powers suggested adding a condition making the homeowner responsible for any water damage due to the elevation. Chairman Turney did not think that was the role of the Board and deferred to Jacob Walbourn, Attorney for the Board of Adjustment, for comment. Mr. Walbourn noted that the Board could condition a number of things, but conditioning liability in a potential civil action probably is outside of the Board's jurisdiction and asked the Board not to consider that type of condition.

Mrs. Wilson noted that when the final inspection is completed it will have to meet the grade/slope criteria and would not receive a Certificate of Occupancy until it is met or an engineer's letter is received.

Chairman Turney closed the hearing and asked for a motion to approve or deny the request. Mr. Schooler noted that buildings have been constructed and have not followed the rules of planning. Mr. Schooler noted that he understood no one wants to tear a building down because of the money involved but the same issue was before the Board in March 2018 and it was the third time that this had happened since the project was started. Mr. Schooler suggested that the builder get with Planning in the future before any concrete is laid to make sure everything was in order.

Mr. Prewitt asked if another condition could be added stating that under any other circumstances, if any other property constructed in this area are thoroughly reviewed related to the elevation. Chairman Turney noted that would be reviewed by the Building Inspector and scrutinized at a higher level moving forward. Mrs. Wilson noted that she was going to speak with the Planning Commission about adopting a Policy for anything else that was built in this area they would need a letter certifying they meet the conditions before certain inspections are allowed.

Chairman Turney asked for a motion to approve or deny the Dimensional Variance request.

**A motion was made by Mr. Prewitt, as seconded by Mr. Powers, to approve Application #06-009-2019 – Dimensional Variance – DAP Real Estate, LLC – 124, 126, 128 and 130 Abbey Road – R-1C/PUD District – NUC, Chapter IV, “Building Placement Standards for Neighborhood Houses”, “Elements” – Owner/Applicant is seeking a Dimensional Variance of differing heights from the eighteen (18”) inches required for finished floor elevation to be above the “Street Grade” elevation with the attached four (4) conditions as noted in the staff report because the property had gone through footing and foundation inspections and due to the findings as presented. The motion carried with four (4) aye votes.**

Application #06-010-2019 – Conditional Use Permit – Woodford County Economic Development Authority and The Journey Ministries, Inc. – 500 McKinney Ave – P-1 & R-3 Districts – Article IV, Section 401(B)(1)(F); Article VII, Section 718.4; Def. #227 – Owner and applicant are seeking a Conditional Use Permit for a Church with a child care center and coffee/donut/retail space within a 35,000 +/- square foot building to be located at 500 McKinney Avenue.

Chairman Turney opened the hearing and called upon Mrs. Wilson for comments. Mrs. Wilson highlighted a few items in the staff report and noted that the Owner/Applicant was requesting the Conditional Use

Permit for a church, consisting of approximately 35,000 square feet including childcare and coffee/donut/retail space. The subject property is located in Midway Station north of I-64 and consists of Lot 21, 22 and a POA and is located at the southeast corner of McKinney Avenue and Sharon Street. The lots are being consolidated to create one undivided tract. Midway Station is within the City Limits of Midway and public water and sewer are available on the subject property. The property is being rezoned to I-1 (Light Industrial) by Midway City Council. Churches can be conditional uses in all zones the status of the rezoning will not interfere with the review. The applicant is under contract with the EDA to purchase the property. The property is currently vacant. A Final Development Plan will be submitted to the Planning Commission for review and Site Construction Plans will go to Technical Review Committee if the CUP is approved. Mrs. Wilson provided the Board with the appropriate Zoning Ordinances. All public notices were met. The property appeared to be of sufficient size to accommodate the proposed use of a church. A site plan prepared by MLH Civil Engineers dated May 15, 2019 was attached to the application which shows the proposed location of the building and the associated onsite parking. The request for the CUP appears to meet all of the necessary criteria listed above and within the associated Ordinances.

Mrs. Wilson highlighted #4 of the six listed conditions:

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 church.**
4. **The Conditional Use Permit shall be personal with The Journey Central Church 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. **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.**

Chairman Turney asked if any Board member had questions for Mrs. Wilson. Mr. Powers asked if the Zone Change was approved. Mrs. Wilson noted that it was.

Chairman Turney asked if the applicant would like to make comments. John Soper, Chairman of the Economic Development Authority, noted that representative from Journey Church were also present. Mr. Soper noted that they see it as part of the vision of revitalizing the park and see it as a positive.

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

**A motion was made by Mr. Schooler, as seconded by Mr. Prewitt, to approve Application #06-010-2019 – Conditional Use Permit – Woodford County Economic Development Authority and The Journey Ministries, Inc. – 500 McKinney Ave – P-1 & R-3 Districts – Article IV, Section 401(B)(1)(F); Article VII, Section 718.4; Def. #227 – Owner and applicant are seeking a Conditional Use Permit for a Church with a child care center and coffee/donut/retail space within a 35,000 +/- square foot building to be located at 500 McKinney Avenue with the attached six (6) conditions as noted in the staff report. The motion carried with four (4) aye votes.**

**A motion was made by Mr. Powers, so moved by Chairman Turney, to adjourn at 7:30 p.m. The motion carried with four (4) aye votes.**

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Tim Turney, Chairman

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