

BOARD OF ZONING APPEALS MINUTES

Tuesday, January 13, 2009

7:00 P.M.

A. ROLL CALL

Members Present:

Mike Hall – Vice-chairman
Jim Deaton
Nicole Daily
Ken Nelson
Vacant position

Arnold McGill – Attorney
Katie Rademacher – Enforcement Officer

Members Absent:

None

B. ELECTION OF OFFICERS

Mr. Deaton made a motion to table the election of officers until next month to allow for adequate board member appointments. Mr. Nelson seconded. All in favor. None opposed. Motion carried.

C. APPOINTMENT OF ATTORNEY

Mr. Nelson made a motion to table the appointment of attorney until next month. Mrs. Daily seconded. All in favor. None opposed. Motion carried.

D. ACTION ON MINUTES

October 9, 2007 - Mr. Nelson made a motion to approve the October 9, 2007 minutes, as corrected. Mr. Deaton seconded. All in favor. None opposed. Motion carried.

November 10, 2008- Mr. Nelson made a motion to approve the November 10, 2008 minutes, as corrected. Mrs. Daily seconded. All in favor. None opposed. Motion carried.

December 9, 2008- Mr. Deaton made a motion to approve the December 9, 2008 minutes, as written. Mrs. Daily seconded. All in favor. None opposed. Motion carried.

E. OLD BUSINESS SCHEDULED TO BE RE-OPENED

There was no old business.

F. OLD BUSINESS TO REMAIN TABLED

There was no old business.

G. NEW BUSINESS

- 1. Request:** **Front Yard Dimensional Variance for a garage.**
- Applicant/Owner:** **Carl Dewberry**
- Site Location:** **Woodland Hills Drive**
- Legal:** **Sec. 34, T6, R3, Map #09-34, Parcel #011**
- Township:** **Sparta** **Size: 6.2033 Acres**
- Zoning:** **Agricultural (A)**

Ms. Rademacher states that the applicant is proposing to construct a 720 sq. ft. garage on this 6.2-acre property, which contains a single-family residence and a pond. She states that the garage would be situated 65 feet from the centerline of Woodland Hills Drive – a location that would place the structure 15 feet closer to the road than what is currently permitted by Section 2516 of the Dearborn County Zoning Ordinance. She further states that upon recent site inspection, it was apparent that the western portion of the site is not suitable for the placement of the garage due to topographical constraints. The “buildable” area on this property is limited to either the site that the applicant has opted for in his request, or other land sites that would require significant grading work. Ms. Rademacher presents the staff report and shows slides.

Mr. Carl Dewberry, Applicant, states he just moved here from Tulsa, Oklahoma and would like to build a garage to house his automobiles from the weather. He states that there will be no utilities to the building, and that Gosman Builders will be handling the construction.

Mrs. Daily asks if a new driveway is being proposed for this building?

Mr. Dewberry states that he will be using his existing driveway to access the new building.

No public to comment.

Mr. Nelson made a motion to approve a 15ft. variance for the property located on the west side of Woodland Hills Drive in Sparta Township, Section 34, Township 6, Range 3, Parcel 011, so he may construct an accessory building. The 15ft. variance is necessary due to the topography of land and will not be injurious, nor have an adverse effect on the community. Mr. Deaton seconded. All in favor. None opposed. Motion carried.

- 2. Request:** Conditional Use to allow an electronic message board sign.
- Applicant:** Kevin McCord / Owner: HOCO Development
- Site Location:** Stateline Road
- Legal:** Sec. 25, T6, R1, Map #06-25, Parcel #005
- Township:** Lawrenceburg Size: 5.699 Acres
- Zoning:** Planned Unit Development (PUD)

Ms. Rademacher states that the applicant is seeking the approval of a Conditional Use permit to locate a 1.5' x 10' electronically changeable message board on this 5.7 acre property. The multi-tenant sign containing the message board currently exists on the property and is located 5' off the right-of-way line of Stateline Road. She reviews the site's case history, stating that the major site plan for the Sugar Ridge Commercial Center was approved in September of 2005. The original plan indicated the placement of one multi-tenant (permanent) sign on the property. She states that a sign was never erected and as a result, prohibited and temporary signage was placed on the site. In November of 2008 (as a result of ongoing site plan compliance issues), revised (as-built) plans for the Sugar Ridge Commercial Center were submitted and approved. Once again, this revised set of plans included one multi-tenant sign for the property. The plan did not indicate that an electronically changeable message board was to be a component of the proposed sign. In late November of 2008, all prohibited and temporary signage was removed from the site and a multi-tenant sign with an electronically changeable message board was erected on the property. Ms. Rademacher reviews the staff report and shows slides.

Mr. Kevin McCord, of Sign-a-rama, states that they thought they had permits for this and later found out the message board sign was not a part of the original permit process. He states the sign is in place, but has not been turned on. He asks that the Board allow for the scrolling message board, and states that they are willing to comply with what the County requirements are—including the no flashing requirement.

Open public comment.

Mrs. Connie Sizemore, adjoiner, states that her house is directly beside the parking lot, and she is concerned with the lighting from the sign. She states that buffers and screening were required at the time the development went through primary approval and have never been completed. Some trees have been planted; however in the past couple of years those have died and never been replaced. She would like to see the buffer requirements completed before any new requests are granted. She feels that no one is concerned about the neighboring properties.

Mr. McCord states that the sign is internally lit and will not give off anymore light than what is there now.

Mrs. Daily asks if there are any other violations on this property?

Ms. Rademacher states that there were a series of violations that were addressed with the submission of the as-built plans.

Mr. Nelson suggests placing a condition for the screening to be in place before the sign can be approved.

Mr. Deaton is concerned that if a violation is still pending, then the conditional use request can not be approved in accordance with the Ordinance.

Mr. Dave House, of HOCO Development, states that there are no violations regarding this particular property. He states that the violations are with the Macke Development as a whole and he feels that he shouldn't be held up due to Mr. Macke's problems. He is upset with the developer also, because there are no sidewalks or various amenities that were promised, and that affects his complex too. He further states that he still needs to complete some of the buffering around the sign and he plans to do that.

Close public comment.

Mrs. Daily clarifies that this is a conditional use for a message board on the bottom of a sign. She states that she understands the concerns regarding buffering; however, this particular request wouldn't affect the Sizemore property. She doesn't see a problem with this request.

Mr. Deaton feels that there are 2 issues being discussed: 1) should this sign be allowed; 2) whether or not there is a violation in process. He feels that there doesn't seem to be a violation regarding this particular property.

Mr. Nelson states that he recognizes that Sugar Ridge has been a problem from day one. He suggests we ameliorate the situation to make it right by allowing the sign and lessening the impact to the hillside. He asks what types of businesses are located at the site?

Ms. Rademacher states that there is a restaurant / bar, a tanning salon, and a child care center. She states that all of the required landscaping items have been addressed in terms of the acceptance of the revised plans; the remaining landscaping will be completed by next May.

Mr. Sizemore asks how a revised design got approval and they were never notified of it. He disagrees with the fact that something reviewed and promised in a meeting can be changed without any public knowledge.

Mr. Deaton made a motion to approve a Conditional Use to allow a message board sign in accordance with the site plan submitted tonight, with the condition that the Enforcement Officer is directed to inspect and enforce all buffer requirements for both properties in question. Motion dies for lack of second.

Mr. Deaton asks what can be done regarding the buffer for the adjoining property owned by Mr. Macke?

Mr. Nelson states that the Staff and counsel are already working with this development and that issue is being handled.

Mr. Nelson made a motion to approve the Conditional Use for the message sign with the conditions that all the buffering and landscaping requirements are in compliance before the sign may be lit. Mrs. Daily seconded. All in favor. None opposed. Motion carried.

3. Request:	Conditional Use for the location of a 60 unit assisted living retirement facility.
Applicant/Owner:	Daniel Fugate
Site Location:	State Road 48
Legal:	Sec. 5, T5, R1, Map #07-05, Parcel #016/026
Township:	Lawrenceburg Size: 10.7 Acres
Zoning:	Residential (R)

Mr. Deaton states that he has a conflict of interest and steps down and leaves the room.

Ms. Rademacher states that the applicant is seeking the approval of a Conditional Use permit to locate a 60-unit assisted living retirement residence on this proposed 10.7 acre parcel. The 10.7 acre tract would be split out of two (existing) larger parent parcel tracts totaling 87 acres. The applicant has stated that the project would provide assisted living units as well as an Alzheimer's Care wing. Ms. Rademacher states that the proposed access point for the site would be located directly across from Kelly Bird Drive. One 18 sq. ft. monument sign is proposed for the site. She reviews the history stating that these properties (parcels 016 & 026) have received prior BZA approval. In April of 1997, the Plan Commission forwarded a favorable recommendation to the BZA for a site plan involving the establishment of twenty-one twelve-unit apartment buildings (252 total units) on the site. The application was discussed and tabled at the May and June BZA meetings before receiving final approval in July of that year. The approved multi-family apartment project was never started. Ms. Rademacher reviews the staff report and shows slides.

Mr. Hall asks if the required setbacks can be achieved?

Ms. Rademacher states that the focus of tonight is if this Use is appropriate for this site. She states during the Technical Review process, the building and site plan designs will be reviewed.

Mr. Dan Fugate, Owner/ Developer, states that years ago he and Mr. Maxwell received approval for multi-family zoning. Since then he has bought-out Mr. Maxwell and has wanted to build this type of project for several years. He states that he would like to have an assisted living center with an Alzheimer's facility; at a later point in time he would like to do some patio homes.

Mr. Bill Fitzpatrick, development partner, states that they are proposing a 60-unit assisted living building on a nice, large lot. He states that Mr. Fugate owns the surrounding property so there would be some flexibility with the development regarding setbacks and greenspace.

Mr. Nelson states that the original rezone contained 252 multi units that were approved. He would like to know what the full scope of this development is? He states that consideration must be given to the amount of employees needed to accommodate this facility.

Mr. Fitzpatrick states that at this time, that has not been discussed.

Ms. Rademacher states that the multi-family zoning approval has expired. She mentioned the history of the property to provide some background information relevant to the site. She reviews the permitted uses under a Residential Zoning District and states that this request can now be approved under a Conditional Use and no longer requires a Zone Map Amendment.

Mrs. Chris Mueller states that the past approval was granted for 252 units by the Board; it was contested in a lawsuit were the developer prevailed.

Mr. Hall clarifies that the request is to see if this proposal is suitable for the 10 acres, which is serviced by public sewer, is in close proximity to the hospital, and has been mentioned to be a part of a bigger plan. He states that the future larger plan would require additional approvals at the time it is presented.

Mrs. Daily states that this is within the characteristics of the area and she doesn't see any problems with it. She asks what the process is for a conditional use in regards to the Plan Commission and its requirements.

Ms. Rademacher states that the Plan Commission approval is required due to proposed public roads within the development.

Mrs. Daily states that she would like to see a density number placed on this proposal.

Mr. Fitzpatrick states that the proposed 60 units is not a solid number, only a target number. He states that they will have a definite number after the architectural design has been completed.

Mr. Nelson states that the advertisement for this review stated 60 units and he feels it needs to stay within what was advertised.

Mr. Fugate asks if a condition could be placed of not more than 20 additional units be allowed and that he can return to this Board and request those if needed.

Mr. Nelson made a motion to approve a Conditional Use for a 60 unit assisted living facility for Dan Fugate on State Road 48 in Section 5 of Lawrenceburg Township, Zoned Residential that is part of a 10.7 acre split out of 2 parcels totaling 87 acres, with the following conditions: 1) 60 units may be built, including the Alzheimer space; 2) Any future development will require additional board review and approval; 3) The 252 units that were approved in 1997 have expired and are not a part of this decision. Mrs. Daily seconded. All in favor. None opposed. Motion carried.

Mr. Deaton rejoins the Board.

H. ADMINISTRATIVE

Ms. Rademacher presents the enforcement report.

Meeting adjourned at 8:57 P.M.

Mike Hall, Vice-chairman

Katie Rademacher, Enforcement Officer