

**MINUTES FOR REGULAR MEETING
OLDHAM COUNTY
BOARD OF ADJUSTMENTS AND APPEALS**

Thursday, May 19, 2016

At 9:00 a.m., local time, on the above date, this meeting of the Oldham County Board of Adjustments and Appeals, hereinafter, called the Board, was called to order in the Courtroom of the Oldham County Fiscal Court, LaGrange, Kentucky, by Chairperson Larry Otterback.

The following members were present:

Stephen Davis
Robert Houchens
Larry Otterback
David Pate
Mike Allen

Director Jim Urban, Senior Planner Amy Alvey and Community Planner Brooke Viehmann of Oldham County Planning and Development Services were present and sworn in. County Attorney John Carter was also present.

Board Member Davis called and read Docket OC-16-007.

Docket OC-16-007 – An application has been filed requesting a Conditional Use Permit for a second accessory structure located at 14425 River Glades Lane, Prospect.(Deferred from April 21, 2016 meeting)

(1) Presentation by Staff:

Senior Planner Amy Alvey presented the following:

- Summary of the application.
- Case History (see Staff Report dated April 21, 2016, Exhibit A).
- Notes.
- Aerial and site photos of the site.
- Photos of proposed sign.
- Photos of property.

Planner Alvey responded to questions from the Board:

- The County requires that accessory structures in residential districts be five feet from the property line. The approved record plat for River Glades has a 100 foot

no building line at the rear of the property and the proposed structures meet that requirement.

- Referred to the application submitted: The applicant is requesting a conditional use permit for a second accessory structure.

(2) Presentation by the Applicant in support of the application:

Michael Cadden, Contractor, 100 Weist Place, Louisville, was present to speak on behalf of the applicant

- There will be a one-story garage with fitness center on the property and the applicant is proposing an additional accessory structure to serve as a one story pool house.

(3) Questioning of the Applicant or representative and others in support of the application by the Board:

Mr. Cadden responded:

- The accessory structure will be located behind the primary structure and is one-story, not exceeding the height of the primary structure.
- There will be no commercial activity conducted in the accessory structure.
- The construction materials will be similar to the house – limestone stucco and roofing material similar to the house.

(4) Testimony of the Opposition: None

(5) Questioning of the Opposition by the Board: None

(6) Rebuttal and Final Statement by the Applicant: None

(7) Rebuttal and Final Statement by the Opposition: None

(8) Board Discussion and Final Decision:

**Findings and Decisions
Docket OC-16-007
Conditional Use Permit – Second Accessory Structure**

Motion was made by Board Member Houchens and seconded by Board Member Allen to approve Docket OC-16-007, allowing the approval of a second accessory structure because the evidence presented states that:

- The accessory structure will be located behind the primary structure.
- It will fit into the existing character of the surrounding area.
- The proposed building will remain virtually unseen from the main road.

Conditions of Approval:

- There shall be no commercial activity conducted out of the accessory structure.
- The accessory structure shall not be occupied as living space.
- The conditional use approval shall only apply to the plan considered at the May 19, 2016 Oldham County Board of Adjustments public hearing.

Yes: Board Members Pate, Houchens, Allen, Otterback and Davis.

No: None

Abstain: None.

Motion carried on a vote of 5-0.

Board Member Davis called and read Docket OC-16-012.

Docket OC-16-012 – An application has been filed requesting a Road Frontage Variance for a proposed tract located at the 3200 Block of English Way, Prospect.

(1) Presentation by Staff:

Planner Alvey presented the following:

- Summary of the application.
- Case History (see Staff Report dated May 18, 2016, Exhibit A).
- Notes.
- Aerial and site photos of the site.
- Photos of proposed sign.
- Photos of property.

Planner Alvey responded to questions from the Board:

- The proposed tract will be located and accessed off of an existing private access easement extending from English Way. If the property was accessible from the public roadway, English Way, they would have adequate road frontage.
- The public road, English Way, stops at the edge of Thomas and Denise Pope’s property.
- The tract being discussed today was part of the tract that was conveyed back into the original farm. At this point, the proposed tract is entirely from the original farm.
- The house is on the north side of the proposed lot. The septic system will be on the south side of the lot. The access easement divides the lot.
- The access easement currently serves two properties, it will serve three properties total if this application is approved.
- A private access easement is only allowed to serve three properties. A waiver can be sought from the Planning Commission to waive this requirement.

- The farm does not use the access easement to enter the property. The applicant uses the farm's entrance to enter their property.
- English Way is a dead end.
- There is no setback requirement from an easement.
- Normally an access easement runs along the edge of a property, but there is no regulation that says that an easement cannot run through a property.
- If this application is approved and the minor plat is recorded, the applicant must provide an access and maintenance agreement so that any future buyers will be subject to the same requirements.
- The requirement which states that a residential property (in AG-1 and CO-1) must have frontage on a public roadway is in the subdivision regulations.
- There was a 9 acre tract, which contained Mr. Tolbert's house (3124 English Way) which has since been decreased to a 4.268-acre tract. The applicant filed a minor plat for a property line shift to decrease the 9 acre tract to a 4.268 acre tract and the residual acreage (about 4.7 acres) went back to the original farm. The 4.268 acre tract (3124 English Way) does not include the tract in question.
- The tract in question is being divided from the original 135-acre farm.

(2) Presentation by the Applicant in support of the application:

Morris Talbott, Land Surveyor, 319 Tucker Station Road, Louisville, was present to speak on behalf of the applicant:

- There is an access easement agreement that has been filed for the existing easement that goes through this property.
- The owner of 3124 English Way, which is currently served by the access agreement, Mr. Tolbert, is present and supports the creation of this lot.
- This lot has all utilities available.
- Health department completed a preliminary site investigation for the later field on April 6th and found that it was suitable (Exhibit B).
- Deed restrictions will be filed with the property and they will be the same as the deed restrictions as Nevel Meade Estates. Nevel Meade Estates is the subdivision that you drive through when traveling English Way. The end of the public road is the end of Nevel Meade Estates (referred to Exhibit C).
- Mr. English's son built and lived at the house at 3124 English Way. His daughter lived at the other house served by the access easement, at 3123 English Way. They no longer live there and both of the owners of those properties are at the hearing.

(3) Questioning of the Applicant or representative and others in support of the application by the Board:

Herbert T. English, 3129 Nevel Meade Drive, was present and sworn in prior to speaking on behalf of this application:

- Is the owner of the 135 acre farm and they intend that this land remain farmland, at least while they still own it.
- The intent for the proposed one-acre lot is to sell it to his son so that he can sell it to someone to build a house on it.

(4) Testimony of the Opposition:

Tom Pope - 3200 English Way, Prospect, was present and sworn in prior to speaking in opposition of this application:

- Had questions about the variance.
 - Amy Alvey responded: The 'variance of 150 feet' will not attach anywhere. This tract does not have frontage on a public road, so the applicant is asking for a variance of the requirement of 150 feet of road frontage on a public roadway. If English Way was extended as a public road past the proposed tract, and the proposed tract's property line abutted the public road directly, they would not need a variance.
 - Half of Tom's property is on the public portion of English Way and the other half is on the private portion; but his driveway comes off of the public part of English Way.
- Had questions about how many people can access off of a private road.
 - Amy Alvey responded: Only three tracts can have access on a private road. Tom's driveway is off of the public part of English Way. There are two existing tracts that currently access the private access easement and one proposed. Mr. Tolbert at 3124 English Way and the Noltes at 3123 English Way currently use the private portion of English Way. The applicants have stated that they do not use the private access easement to access the farm, they use a different entrance on the other side of the farm.
 - If Tom wanted to connect to or use the private access easement, he would have to obtain permission from the other users of the access easement.
- As a partial owner of the lake, has concerns about its vitality. Concerned that the septic system and the construction and gravel road would negatively affect the pond.
- Would like to see the applicant's preliminary septic system drawing. Doesn't think that 0.6 acres is adequate for a septic system.
- Had questions about what the previous planning cases were, BOZA docket 2730.
- Had questions about the zoning of the property, particularly CO-1.
 - Board Member Houchens responded: CO-1 is Conservation, and residential is a permitted use in this district.
- Has concerns about where the utilities will be located.
- There are ten homes on English Way that enjoy a dead end street. Has concerns about the future development of the farmland. Concerned about the terms that may be associated with the continuation of English Way as a public street.
 - Board Member Houchens responded: The future development of the farmland is irrelevant to what is being discussed today.

- Chairman Otterback responded: we can only take into account/consider what is being presented today.

Motion made my Board Member Allen and seconded by Board Member Davis to take a short recess at 9:59am. Motion carried.

Motion made by Board Member Davis and seconded by Board Member Allen to reconvene at 10:06am. Motion carried.

(5) Questioning of the Opposition by the Board: None

(6) Rebuttal and Final Statement by the Applicant:

Morris Talbott responded:

- Mr. Pope has access off of the public portion of English Way.
- Mr. and Mrs. English's family have owned the remaining property, currently farmland, since the 1890s. They have stated that they have no plans at this time for further development. There are a lot of hypotheticals that could be discussed and some point in time it may be developed, but that is not what they are asking for today.
- Presented the soil evaluation (Applicant's Exhibit B). All nine categories were suitable or provisionally suitable. The word provisional is on there because there is no plan for the house yet, so they don't know how many bedrooms there will be.
- Would be comfortable with adding a restriction stating that nothing can be developed in the lower portion of the lot, where the septic system is proposed.
- Presented proposed deed restrictions for the tract (Applicant's Exhibit E), which are the same restrictions as Nevel Meade Estates.
 - Board member Allen asked if it was common to build a lateral field with drainage under a roadway.
 - Mr. Talbott responded: Yes, you drive across sewers all the time.
 - Board member Allen asked why there were restrictions on privately owned property.
 - Mr. Talbott responded: There are nice houses in this area and the applicants want to ensure that any additional development is of similar style and size.

Motion was made by Board Member Houchens and seconded by Board Member Davis for extended rebuttal time for the applicant. Motion carried.

- Presented easement agreement (Applicant's Exhibit F).
- Nevel Meade Estates was developed my Mr. and Mrs. English, they want the same look and feel of this lot.

(7) Rebuttal and Final Statement by the Opposition:

Tom Pope responded:

- Had questions about the septic requirement. According to the septic evaluation (Exhibit E), the requirement for a 6 bedroom house is 680 feet. That would require five lines, which would extend it in the direction of the pond.
- Concerned about the peaceful character of this area. This parcel may have conditions with the pond that might hurt the pond and the nature around it.

(8) Board Discussion and Final Decision:

Board Member Allen asked what the direction of the lateral lines are and if the other side of the road is lower than the area where the house is being proposed.

- Mr. Talbott responded using Applicant's Exhibit D: The area below the road is downhill from where the house will be located. It depends on the configuration of the lateral lines and how the installer wants to put it in how many lines there are – the lines run parallel to the contours.
- Mr. Davis asked who the agency or person is that reviews septic systems and installation.
 - Mr. Talbott responded: The Oldham County Health Department and they are following the Natural Resources Cabinet's requirements for location of lateral lines. There are setback requirements for the pond. All of this is administered by the Health Department.
 - Amy Alvey responded: When a building permit is applied for, the applicant must provide a letter from the Health Department stating that the septic system is adequate. A building permit cannot be issued without a signed approval from the Health Department.

Chairman Otterback recognized that the applicant has stated that there are no plans for future development and those hypotheticals are out of this Board's purview. The septic system development is covered by the Oldham County Health Department.

Board Member Davis acknowledged that the opposition's concerns are valid and the applicant has taken steps to mitigate those concerns with proposed deed restrictions and information about the proposed septic system.

Board Member Houchens recognized that while the Board cannot take into account deed restrictions, the applicant has used them to mitigate the concerns of the opposition and the intent of the restrictions are to make sure that the proposed lot fits in with the character of the area.

Findings and Decisions Docket OC-16-012 Road Frontage Variance

Motion was made by Board Member Houchens and seconded by Board Member Pate to approve Docket OC-16-012, requesting a Road Frontage Variance for a proposed tract located at the 3200 Block of English Way, Prospect:

- The owner has provided evidence and testimony that the proposal will fit the character of the area, so it will not alter the character of the general vicinity or cause a hazard or nuisance.

Conditions of Approval:

- The approval shall only apply to the plan considered at the May 19, 2016 Oldham County Board of Adjustments public hearing.

Yes: Board Members Pate, Houchens, Otterback and Davis.

No: Board Member Allen

Abstain: None.

Motion carried on a vote of 4-1.

Other Business

Motion made by Board Member Davis and seconded by Board Member Allen to approve the minutes as amended. Motion carried.

Mr. Riley was acting secretary and he has left the Board. Motion made by Board Member Houchens and seconded by Board Member Allen to nominate Board Member Davis as Board Secretary. Board Member Davis accepts the nomination. Motion carried.

Motion is made by Board Member Allen and seconded by Board Member Houchens to adjourn the meeting at 10:30 a.m. Motion carried by unanimous voice vote.

The next Regular Meeting is scheduled for Thursday, June 16, 2016, at 9:00 a.m., in the Courtroom of the Oldham County Fiscal Court Building, LaGrange, Kentucky.

Respectfully Submitted,

Brooke Viehmann
Community Planner

Approved:

Larry Otterback, Chairperson