

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

**Thursday, June 16, 2016**

At 9:05 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 also present:

Mike Allen  
Stephen Davis  
David Pate

Board Member Houchens was absent.

Director Jim Urban, Senior Planner Amy Alvey and Community Planner Brooke Viehmann of Oldham County Planning and Development Services were present and sworn in. Administrative Assistant Ethel Foxx and Attorney Travis Combs was also present.

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**Board Member Davis called and read Docket OC-16-013.**

**Docket OC-16-013** – An application has been filed requesting a Conditional Use Permit for the location of a proposed accessory structure located at 3101 Jericho Road, LaGrange.

**(1) Presentation by Staff:**

Senior Planner Amy Alvey presented the following:

- Summary of the application.
- Case History (see Staff Report dated June 16, 2016 Exhibit A).
- Notes.
- Aerial Photos of the site.
- Photos of property and surrounding property.

Ms. Alvey responded to questions by the Board:

- Presented photo showing where the accessory structure is to be located in the front yard.

- Explained that the front yard is usually where the front door of the house is facing.
- Presented site plan showing the location of the septic system and repair area.
- Oldham County Health Department requires space for the repair area for the septic system and lateral lines being the reason the Applicant is requesting to place the building at the front of the house.
- Showed location of the propane tank, the overhead utility lines and also location of the underground utilities.

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

Attorney Berry Baxter, 117 West Main Street, LaGrange, was present to speak on behalf of this application.

- Referred to the photo of the property which includes almost two acres (Exhibit A).
- Because of the lake, most of the property is considered liquid and not buildable, being the reason for this request.
- Although the Board does not address deed restrictions there is a deed restriction attached to Mr. Kunz's property stating that a building shall be erected no closer than 50 feet from the shoreline of the lake.
- Because of the location of the septic system, lateral lines and repair area, this limits where Mr. Kunz can place the proposed building.
- There will be no impact to the surrounding area if the building is constructed.
- Letters from two adjoining property owners were presented, Applicant Exhibits B and C, stating they are not opposed to the construction of the building.

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

James Kunz, 3101 Jericho Road, LaGrange, was present and sworn prior to responding to questions by the Board.

- The building will be a stick built metal building with a concrete floor and the colors will match the house which is light taupe color with green trim.
- Showed where the doors will be off-set to the right front of the building and will also be a door at the rear of the building so that he can drive through the building and onto the driveway.
- The property is treed all along the driveway.
- The proposed building will be located about 200 feet from Jericho Road.
- There are some metal accessory buildings in the area that adjoin his property located in the Clearview Acres Subdivision.
- Plans to store his vehicle, a fishing boat, a four-wheeler and a utility trailer inside the accessory building.

- Presently the four-wheeler is stored in the basement, the boat is at another location and the utility trailer and another car are sitting outside.

At this time, Chairman Otterback confirmed that the Board cannot address or enforce deed restrictions.

#### **(4) Testimony of the Opposition:**

Gilbert Kerby, 2005 Massie School Road, LaGrange, was present and sworn prior to speaking in opposition to this application.

- Is an adjoining property owner.
- He built the lake before he built the house which he lived in prior to Mr. Kunz purchasing it.
- Gave reasons for having deed restrictions for the property.
- Owns property to the right of the subject driveway on which he has a minor subdivision plat of four lots which back up to the lake.
- Feels that Mr. Kunz is running a construction business out of his home as there is scaffolding, a dumpster and debris on the property.
- There is a 15 foot drop from the driveway to the lake's water edge and concerned that a tremendous amount of fill will affect the lake.
- Concerned that the building will be constructed closer than 50 feet to the lake and that the metal building will hurt the looks of the property when he tries to sell off the lots.
- Pointed out on the aerial (Exhibit A) where he feels that there is plenty of room to construct the building.
- He requests Mr. Kunz move the dumpster, debris, etc. to improve the looks of the property and look appealing to a potential buyer of the property he wishes to sell.

#### **(5) Questioning of the Opposition by the Board:**

Mr. Kerby responded that he does not know how he can enforce his deed restrictions.

#### **(6) Rebuttal and Final Statement by the Applicant:**

Attorney Baxter stated the following:

- According to Planning and Zoning, the property that Mr. Kerby is referring to has not been platted, there has not been a minor subdivision created and the lots do not exist.
- Feels that Mr. Kerby's concern is not an issue.
- There has been testimony by the applicant and staff that the proposed location for this structure is the only part of the property on which the building can be constructed.

- The neighbor that would be most affected by this proposal, Mr. Constance, has stated in writing that he is not opposed to this application.
- Applicant is confident that he will not be in violation of Mr. Kerby's deed restrictions and will not build any closer than 50 feet from the edge of the lake.
- The only issue the Board is considering is whether Mr. Kunz will be allowed to place the building to the front of the principal structure.

**(7) Rebuttal and Final Statement by the Opposition:**

Mr. Kerby stated the following:

- Had good intentions of getting the plat recorded but has not yet had the opportunity to do so.
- The plat is ready as the lateral fields, road encroachment and electric have all been approved.

**(8) Final Questioning by the Board to any party:**

Ms. Alvey responded to questions from the Board:

- Confirmed to the Board that the proposed site meets all County regulations except for the placement of the structure in front of the primary structure.
- Explained the purpose of "repair area" for septic systems.
- Deed restrictions regarding the lake is between property owners and not under the purview of this board.
- Reviewed the aerial photo that was presented and confirmed that the dotted line represents the front yard.

Mr. Kunz responded to questions by the Board:

- Does not have a home occupation permit.
- Is not running a business out of the home.
- Is a general contractor and stores a 16-foot white box trailer on the property; has six ladders and stones that he has used to build a wall for the garden and also used for the fireplace and extra bricks.
- Does have a dumpster that he uses for his personal garbage and has at times used for construction debris.
- Plans to put the trailer and other items in the proposed building.
- Does not have scaffolding, but has four ladder jacks and he would like to store all those materials in the proposed building.
- Referred to the dark lines in the aerial photo which is actually a telephone pole and has underground utilities that goes into the side of the house and connects about where the numbers "3101" is shown.

- There are underground utilities and a propane tank and the main water on the site.
- About 80-90% of the garage will be for personal use.

**(9) Board Discussion and Final Decision:**

Board Member Davis stated the following:

- Feels that there are commercial uses in place that would require a home occupation permit but that is a separate matter.
- Mr. Kerby who is opposed, would feel better from his perspective if the commercial materials were stored inside.
- Otherwise seems a reasonable request but would stress that there be no commercial activity until an application is made for a home occupation permit.
- As to the dumpster, he does not know of many people that would use a dumpster for personal use but can see where it would be used for dual purposes.

**Findings and Decisions  
Docket OC-16-013  
Conditional Use Permit – Accessory Structure**

Motion is made by Board Member Davis and seconded by Board Member Pate, to approve Docket OC-16-013, Conditional use allowing an accessory structure to be constructed in front of the primary structure because:

- The proposed use is essential or desirable to the community and not in conflict with the elements, objectives and policies of the Comprehensive Plan.
- The proposed use is compatible with surrounding uses and the general character of the area.

**Conditions of Approval:**

1. The conditional use permit shall only apply to the plan considered at the June 16, 2016 Oldham County Board of Adjustments public hearing.
2. There shall be no commercial activity conducted out of the accessory structure until a home occupation permit has been granted.
3. The accessory structure shall not be occupied as living space.

**Yes: Board Members Pate, Otterback, Allen and Davis**

**No: None**

**Abstain: None.**

**Absent: Houchens**

**Motion carried on a vote of 4-0.**

**MOTION FOR BRIEF RECESS**

Motion for a brief recess was called at 9:49 a.m. by Board Member Allen and seconded by Board Member Pate. Motion carried by unanimous voice vote.

Motion was made by Board Member Allen and seconded by Board Member Davis to come back into session at 9:54 a.m. Motion carried by unanimous voice vote.

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**APPROVAL OF MINUTES**

Motion was made by Board Member Davis and seconded by Board Member Pate to approve the minutes of May 19, 2016 as submitted.

Vote was taken and motion carried 4-0.

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**Request to Recuse from Docket OC-16-014:**

Member Allen informed the Board that he is requesting he be recused from participating in Docket OC-16-014.

Member Allen confirmed to Attorney Combs that his reason is because of the way he is compensated by the Applicant.

Motion was made by Board Member Davis and seconded by Board Member Pate to allow Board Member Allen to recuse himself. Vote taken and motion carried 3-0.

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**Board Member Davis called and read Docket OC-16-014:**

**Docket OC-16-014** – An application has been filed requesting a Conditional Use Permit for an off-premises sign to be located at 4734 West Highway 146.

**(1) Presentation by Staff:**

Community Planner, Brooke Viehmann presented the following:

- Summary of the application.
- Case History (see Staff Report dated June 16, 2016 Exhibit A).
- Notes.
- Aerial Photos of the site.
- Photos of property and surrounding area.

Ms. Viehmann responded to questions by the Board:

- The Planning Commission established that the existing sign is a legal non-conforming use; non-conforming meaning the use had been grandfathered.
- At the time the sign was installed it was in compliance with the sign regulations at that time.
- Recently the Planning Commission approved its continued use as a legal non-conforming sign.
- The height regulations in place today are not applicable to the existing sign; they would only be applicable to a new sign.
- The property is owned by Southern Petroleum; Subway is the lessee of the property.
- Southern Petroleum's attorney signed the application but is not present today.

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

Drew Zazofsky, Thorntons, Inc., was present and responded to questions by Attorney Travis Combs as follows:

- Confirmed that he is here representing Thorntons, Inc.
- He is not an attorney; he is an engineer.
- It was mentioned to him that Thorntons may need an attorney, and thought that would have been specified in the Planning and Zoning regulations.
- He has been here in the past representing Thorntons; he has represented Thorntons many times in other municipalities.

Attorney Combs stated the following:

- Informed Mr. Zazofsky that the Planning Commission and Board of Adjustments will not allow any corporation to appear on an application without the presence of an attorney.
- If the applicant is an individual property owner, that individual is allowed to represent himself.
- This is a Board of Appeals, testimony is transcribed and is considered a practice of law.

Attorney Combs is asked the Board to honor that position and hopefully table, keep the application of record and allow the applicant to come back so that the evidence can be presented appropriately. Attorney Combs stated that he remembered when Mr. Zazofsky testified and gave evidence in a previous application before the Planning Commission. He was later advised after that proceeding that Mr. Zazofsky is not an attorney. It was a mistake, he later discussed this issue with the Planning Staff and informed them that he would not allow this to happen again.

**Motion to Table  
Docket OC-16-014  
Conditional Use for Off-Premises Sign**

Motion was made by Board Member Davis and seconded by Board Member Pate, to table Docket OC-16-014 until Applicant can come forward with legal counsel.

Administrator Urban stated at this time that Mr. Allen will also have to recuse himself at that meeting. He suggests an amendment to the motion that the application should start at the beginning for the benefit of Board Member Houchens who is not here today.

**Motion to Amend Motion to Table  
Docket OC-16-014  
Conditional Use for Off-Premises Sign**

Amended Motion was made by Board Member Davis and seconded by Board Member Pate, to table Docket OC-16-014 until Applicant can come forward with legal counsel. The hearing will start from the beginning for the benefit of those that are not present at today's hearing.

Motion was stated, vote taken and motion carried 4-0.

**Yes: Board Members Pate, Otterback and Davis**  
**No: None**  
**Abstain: None.**  
**Absent: Houchens and Allen.**  
**Motion carried on a vote of 3-0.**

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Motion was made by Board Member Davis and seconded by Board Member Pate to adjourn the meeting at 10:14 a.m. Motion carried by unanimous voice vote.

The next Regular Meeting is scheduled for Thursday, July 21, 2016, at 9:00 a.m., in the Courtroom of the Oldham County Fiscal Court Building, LaGrange, Kentucky.

Respectfully Submitted,

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Ethel Foxx  
Administrative Assistant

Approved:

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Larry Otterback, Chairperson