

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

Thursday, September 15, 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 also present:

Mike Allen
Stephen Davis
Robert Houchens
David Pate

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

Board Member Davis called and read Docket OC-16-020.

Docket OC-16-020 – An application has been filed requesting a Conditional Use Permit for a Home Occupation Permit (Dog Grooming) located at 7608 Fraziertown Rd, Pewee Valley.

(1) Presentation by Staff:

Community Planner Brooke Viehmann presented the following:

- Summary of the application.
- Case History (see Staff Report dated September 15, 2016 Exhibit A).
- Notes.
- Aerial Photos of the site.
- Photos of property and accessory structure in which the dog grooming occurs.
- Photos of adjoining properties beside and across the street.

Ms. Viehmann responded to questions by the Board:

- There are standards for administrative approval, one being that an applicant may not have customers come to the property.
- She did not meet that standard because of customers dropping off their pets, however, she met all the other standards.
- Confirmed that the property is zoned R-2.

(2) Presentation by the Applicant or Legal Representative:

Wendy Schneider, 7608 Frazierstown Road, Pewee Valley, was present and sworn prior to speaking in behalf of this application.

- When she first started her business, she was not aware of the requirement to have a home occupation permit but she now wants to do the right thing so that she can be legal.

(3) Questioning of the Applicant by the Board:

Mrs. Schneider responded as follows:

- With reference to a letter dated 2008 to Eric Schneider from the Planning Commission, she originally requested to run a kennel.
- She was told she could not because they were six feet short of road frontage.
- Grooms three to four pets a day, Monday through Saturday from 10:00 a.m. until 3:00 p.m.
- There are no plans for lighting or signage and advertises only by word of mouth.
- There are no plans for expansion of the building where the grooming takes place.
- Has been operating as a groomer for ten years and does not operate any other business.
- The dogs are kept in crates inside the building.
- In 2008 she was considering approval of a kennel because customers were asking if she could board the pets as they trust her with their pets.

(4) Testimony from anyone speaking in favor of the Applicant:

Laura Bohne, 13708 Rutland Road, Goshen, was present and sworn prior to speaking in behalf of this application.

- Has known Wendy Schneider for years and can vouch for her character as a parent, a groomer and an individual and proud to call her a friend.
- Feels that Ms. Schneider will do what the Board requires of her, will do the right thing and will not create a nuisance.
- She keeps her house and yard in very good condition and at a higher standard than other neighbors in the neighborhood and would not even know that she is running a business.

(5) Questions by the Board to those speaking in favor: None

(6) Testimony of the Opposition: None

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

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

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

(10) Board Discussion and Final Decision:

Findings and Decisions

Docket OC-16-020
Conditional Use for Home Occupation
Dog Grooming

Motion was made by Board Member Houchens and seconded by Board Member Allen to approve Docket OC-16-020, home occupation for a dog grooming because:

- Granting the conditional use permit will allow the proper integration into the community of a use specifically named in the zoning regulation.
- The character and objectives of the proposed use and the potential impacts on the community and its surroundings are appropriate.

CONDITIONS OF APPROVAL

1. The conditional use permit shall only apply to the plan considered at the September 15, 2016 Oldham County Board of Adjustments public hearing.
2. The conditional use only applies to the owners of the property and if sold the conditional use is no longer active.
3. No more than six animals per day to be groomed.
4. The operation is only Monday through Saturday.
5. Hours of operation is 8:00 a.m. until 6:00 p.m.
6. Clients' animals are not to be kept overnight.
7. There shall be no additional lighting and signage in relation to the business.

The vote was as follows:

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

No: None

Abstain: None.

Absent: None

Motion carried by unanimous voice vote 5-0.

Board Member Davis called and read Docket OC-16-021.

Docket OC-16-021 – An application has been filed requesting Rear Yard Setback Variance for an existing residence on property located at 4805 Deer Creek Place, Smithfield.

For the Record: Board Member Davis informed the Board Members Mr. Schumm is his landlord and did not realize Mr. Schumm was part of this application until now. There was no opposition to allow Member Davis to continue hearing this application.

(1) Presentation by Staff:

Senior Planner Amy Alvey presented the following:

- Summary of the application.
- Case History (see Staff Report dated September 15, 2016 Staff Exhibit A).
- Notes and justification statement.
- Survey and aerial photos of the site.
- Photos of property, surrounding area of subject home and photos of adjoining properties,

Ms. Alvey responded to questions by the Board:

- Referred to Section 330.020, item 10 regarding porches and decks.
- Presented photo of house and deck.
- The lot is a corner lot and the house faces Deer Creek Place. The area behind the house, adjacent to Lot 66, would be considered the rear yard, not a side yard. When plotting the house on lot the builder considered that area the side yard and applied the 15-foot side yard setback and not the 30-foot rear yard setback.
- The variance request includes the deck which is not enclosed but does have a roof.
- The building permit was issued in error.

(2) Presentation by the Applicant or Legal Representative:

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

Robert Vinsand, Vinsand Engineering and Land Surveying, 306 West Jefferson Street, LaGrange, was present and sworn prior to speaking in behalf of this application.

- Interpreted the rear of the house to be the side of the house.
- Vinsand Engineering did not design Ballard Glen Subdivision.
- The issue they ran into is that the lot is only 105 feet deep and once all setbacks are plotted it only leaves 40 feet building width which is not wide enough for a house on the subject lot.
- The subject house is under construction and denying the variance would require the builder to remove the existing foundation and all the improvements.
- Because the garage faces Deer Creek Circle it would be difficult to modify.
- Explained the rear yard setback was interpreted to be the side yard setback.
- Presented the following Applicant exhibits:
 - **Applicant Exhibit A:** Justifications taken from Article 2:12 from Jefferson County Definitions stating that on a corner lot the shorter street would be considered the front line.
 - This is not part of the Oldham County regulations, however, may prevent future issues of this kind; explained that historically the front lot line has been considered where the front door is located.
 - In this situation if the definition were used from the Jefferson County regulations Deer Creek Circle would be considered the front lot line.

- **Applicant Exhibit B:** Presented the subject plot plan showing that the dark line represents the house which sits 15 feet from what they consider the rear property line.
- **Applicant Exhibit C:** Presented plot plan showing the lot where the subject house is being constructed in relation to the existing house on the adjoining property.
- Plot plan shows that the existing house on the adjoining property is 37.2 feet from the property line and the subject house is 18 feet from the property line, a total of 55 feet in between the houses; they feel that is adequate room in between the houses.

Walt Schumm, 6100 Breeze Hill Court, Crestwood, was present and sworn prior to speaking in behalf of this application.

- Stated that prior to coming to this meeting, he spoke with the adjoining property owner and offered a landscape berm to shield the deck which faces his garage.
- In his opinion the people that will live in the subject home will be affected more as they will be looking at the adjoining property owner's garage door.

Attorney Baxter addressed the intent of the regulations.

Mr. Vinsand confirmed as follows:

- Confirmed he has spoken Planning and Zoning under a previous administration and understood that the rear of the house in this particular scenario would have been interpreted as a side yard, not the rear yard, and the setbacks would have been different.
- When applying for a building permit, building plans are submitted and the application process would have shown the setbacks for the lot.
- If this house had been rotated 90 degrees, geometrically the house would not fit on the lot.
- The house is about 55 feet wide and the lot building area is only 40 feet.

(3) Questioning of Staff and the Applicant by the Board:

Planner Alvey responded that they learned about the need for a variance from the adjoining property owner who called the Building & Inspections office asking for interpretation and verification of the setbacks for the house.

Mr. Vinsand responded as follows:

- There is not a fence in between the properties.
- Confirmed that he had presented documentation from the Jefferson County Land Development Code definitions.
- It is his interpretation that the code is also the prior interpretation in this county.

(4) Testimony from anyone speaking in favor of the Applicant: None

(5) Questions by the Board to those speaking in favor: None

(6) Testimony of the Opposition:

Attorney Mike Maple, 123 South 7th Street, Louisville, was present to speak in behalf of adjoining property owner, Adam Kalbfleisch of 4700 Deer Creek Circle.

- Informed the Board that Mr. Kalbfleisch was unable to be present for this meeting.
- Mr. Kalbfleisch owns Lot 66 which adjoins the subject property.
- The applicant on the permit is CD LLC, the property is currently vested in 71 Land Group, LLC and therefore the Applicant is not the property owner and may not have the authority to proceed.
- Attorney Maple presented the following exhibits:
 - **Opposition Exhibit A:** Copy of Deed 1042, Page 507, the legal description and a copy showing a portion of the subdivision lots.
 - **Opposition Exhibit B:** Copy of the building permit application stating the address as 4700 Deer Creek Circle however, the attached plot plan shows that the front door faces Deer Creek Place, does not show the deck and shows the house being 18 feet from the rear property line. Therefore, feels applicant did know where the front property line was and the Planning Staff was given the wrong setback information.
 - **Opposition Exhibit C:** Plot plan showing the porch which was concluded that it was an open porch.
 - **Opposition Exhibit D:** Portion of the Oldham County Comprehensive Ordinance, Division 420 Definitions for Building Principal, Page 201. The porch is not an open porch having a roof and should be considered part of the principal structure and requires a 21 foot rear setback variance and not a 12 foot variance.
 - **Opposition Exhibit E:** Copy of the survey drawn to scale showing the roof over the porch and how much of the house sits close to the side yard.
 - **Opposition Exhibit F:** Photo showing the property line showing how close the porch sits to the adjoining property line.
 - **Opposition Exhibit G:** Photo shows his client's garage and a second story bedroom window above the garage that faces the porch. His client is very much offended as feels the porch is too close. Client is not satisfied with the suggested landscaping which would not adequately address the problem.
 - **Opposition Exhibit H:** Photo shows his client's vehicles and how close they are to the covered porch. His client feels it was the engineer's job to address the issue and it was not until his client called the Planning Office that it was addressed. Referred to the building permit application stating applicant could have built a house that fit.

Motion for Extension of Time:

Motion was made by Board Member Allen and seconded by Board Member Houchens to allow Attorney Maple an additional five minutes for testimony.

Motion carried by unanimous voice vote.

Attorney Maple continued testimony:

- The unique situation was created by the builder and the only thing unique about this application is that the applicant decided to build too big of a house on this lot where there are other lots in the subdivision that could have accommodated this house.
- The builder suggests to build a berm but there is no way a berm would fit on that lot and no way could a berm (or a fence according to the regulations) block the view from his client's second story window.

(7) Questioning of the Opposition by the Board:

Attorney Maple responded to questions by the Board:

- Confirmed that his client is offended because he can look out the second story bedroom window and see the neighbor's porch nine feet from the property line and that it will impact the value of his house.
- Does not have evidence how this will lower the value of his house.
- Suggests that because the Applicant is the landlord of Board Member Davis, that Member Davis should recuse himself from voting on the issue.

(8) Rebuttal and Final Statement by the Applicant:

Chairman Otterback stated that because they allowed the Opposition an additional five minutes that they will allow the Applicant a total of 10 minutes.

At this time, Attorney Baxter speaking in behalf of the Applicant, presented the Secretary of State's website for "71 Land Group, LLC" that contains the name of Walter C. Schumm who is a member of 71 Land Group LLC and is also a member of CD LLC and the sole member (Applicant Exhibit D). There is no question that the applicant is present today.

Applicant Schumm explained to the Board as follows:

- Typically when they get a plan, the customer picks out the lot and the plot plan is sent to the engineer to plot the house out on the lot.
- They have built many houses in the past and this is the first time they have had this issue.
- In this case, they clearly think that Deer Creek Circle is the front and that there was clearly no malice intended and they all thought this was done according to the regulations.
- He does not address the property lots of the subdivision as that is done by Planning and Zoning office.
- In the case of a corner lot there are two addresses and the home owner wanted the driveway to exit Deer Creek Circle being the reason for that address.

- He used the Deer Creek Circle address as the EMS address because that was where the mailbox and driveway would be located.
- Typically the mailbox is placed on the driveway side being the reason for the Deer Creek Circle address.
- Reiterates that there was no malice intended having used the Deer Creek Circle address.

(9) Rebuttal by the Opposition:

Attorney Maple stated as follows:

- Mr. Schumm acknowledged that this was his responsibility and did not pay attention.
- That this was not done intentionally does not matter, was pointed out to him early on and did nothing about it.
- Requests that the Board not grant the variance, needs to remove the improvements and put a house that fits on the lot.

(10) Final Statement by the Opposition: None

(11) Final Statement by the Applicant:

Walt Schumm stated as follows:

- Confirmed that he is a member of 71 Land Group LLC and is the applicant.
- Stated there was no malice intent regarding the placement of the home or porch.

Attorney Baxter made a final statement:

- The reality is that they did get a building permit and submitted the construction plans.
- It was pointed out by the engineer that if there had been a clear definition like there is in the Louisville Metro regulations this would not have happened.
- This was not done intentionally and by the time this was discovered the foundation had already been poured and construction had already taken place.
- The purpose for the Board is to give one relief when there is a problem with interpretation of regulations.
- Mr. Vinsand testified that if the house had been flipped the house would not fit because of the required 35 foot front setback being the reason they are asking for relief and requesting approval of the variance.

(12) Final Questioning by the Board of any party:

Planner Alvey responded as follows:

- If the Board were to consider the deck with a roof, they would have to grant a 21 foot rear yard setback variance.

- In the past they have always interpreted this type of structure as a deck with a roof over it and is not a porch and unaware of a definition of a deck in the current regulations.
- If a porch with a roof covered the whole front of the house it would be considered part of the principal structure and would have to meet the principal structure setbacks.
- If it were only a front porch that is roofed like an entryway that could encroach ten feet.
- Because it is a corner lot either address can be used.
- Cannot say whether the porch was originally part of the construction plans but can retrieve the construction plans to confirm.
- Presented the plot plan that was submitted earlier by the Opposition, Opposition Exhibit C, and was submitted with the building permit application; the “as-built” survey was also submitted.

Administrator Urban responded as follows:

- There is a set of building plans for this property however, they are not here. The plans submitted with the building permit application should be reviewed to see if the deck is shown with a roof.
- Requests a motion for a recess in order for staff to retrieve the building plans to present to the board.

Motion for Recess:

Motion was made by Board Member Pate and seconded by Board Member Houchens for a ten minute recess. Motion carried by unanimous voice vote.

Motion to return from recess was made by Board Member Davis and seconded by Board Member Pate. Motion carried by unanimous voice vote.

PER THE REQUEST OF CHAIRMAN OTTERBACK, BOARD MEMBER DAVIS RECUSED HIMSELF FROM PARTICIPATING IN THE REMAINDER OF THIS HEARING.

Motion was made by Board Member Pate and seconded by Board Member Houchens to open the floor and allow Administrator Jim Urban to present new evidence. Motion carried by unanimous voice vote.

Administrator Urban having been sworn, presented the following new evidence:

- Administrator Urban addressed the Applicant, the Opposition and anyone listening that he firmly believes that there is absence of malice concerning this application.
- Nobody involved in this application, whether the applicant, staff or anyone did anything intentionally to create something out of the regulations.

- Also, what happens in Jefferson County stays in Jefferson County and that regulation does not apply to Oldham County and no one can find any written regulation or policy that says that is the interpretation.
- The Planning office issues building permits and our GIS manager assigns addresses, not emergency services.
- Referred to the subdivision plat showing corner Lot 67 (Staff Exhibit A) showing the addresses as 4805 Deer Creek Place or 4700 Deer Creek which were already established.
- His opinion, which is the only one that counts having 25 years in Oldham County and Indiana, is that wherever the front door is, is where the address should be placed.
- When the applicant put together their application, they showed 4700 Deer Creek Circle, again, absence of malice.
- When staff reviewed the building plans, they felt that the appropriate address should be 4805 Deer Creek Place.
- The building permit was issued and the applicant proceeded to construct because they were give permission.
- The adjoining property owner called and questioned as to why the building was so close.
- He does not see every piece of paper that comes through the Planning Office as there are different people that handle the permits.
- Presented Ordinance KOC-87-300-320.3 from March 3, 1987, (Staff Exhibit B) signed by Wendell Moore, that establishes the address system in Oldham County.
- Referred to the subject subdivision plat showing the addresses for the subject property as 4805 and was assigned to the property.
- The address shall be placed at the front of the house as required by "Address Identification" from Central Dispatch, (Staff Exhibit C)
- The mailbox must be placed at the front of the house and as a planner has never wavered from this no matter what Jefferson County allows or previous administration.
- If they wanted to have the Deer Creek Circle address, that is where the front door should be.
- If the Board is inclined to approve this request, suggests they approve the largest variance so that interpretation is not a matter of policy and looking at the evidence in making a decision about this case.
- Presented copy of the original building permit application showing the appropriate address and the building plans (Staff Exhibit E) which were submitted with the application showing elevations.
- Pointed out the location of the post for the porch and shows the roof line and therefore did know that there was a porch planned with a roof.

Chairman Otterback opened the floor to the applicant and the opposition allowing them to make comments on what staff had submitted.

Neither wished to make any comment and therefore the floor was closed to further public comments.

(13) Board Discussion and Final Decision:

**Findings and Decisions
Docket OC-16-021
Rear Yard Setback Variance**

Motion was made by Board Member Houchens and seconded by Board Member Pate to approve a 21 foot rear yard setback variance for Docket OC-16-021 because:

- Based on the evidence presented, Applicant did provide the proper permits and the builder was going forward with the construction.
- This was an unfortunate situation however the builder was moving forward with appropriate intentions.
- The definitions of a porch or deck were addressed for the Board to better understand the regulations and have to apply the regulations from Oldham County.
- The variance will not adversely affect the public health, safety or welfare.
- Will not alter the essential character of the general vicinity.

Conditions of Approval:

The variance shall only apply to the application considered at the September 15, 2016 Oldham County Board of Adjustments public hearing.

The vote was as follows:

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

No: None

Abstain: None.

Absent: Davis

Motion carried on a vote of 4-0.

Board Member Davis called and read Docket OC-16-022.

Docket OC-16-022 – An application has been filed requesting a Variance for the location of a proposed accessory structure to be located at 7411 Shady Creek Lane, Crestwood.

(1) Presentation by Staff:

Senior Planner Alvey presented the following:

- Summary of the application.
- Case History (see Staff Report dated September 15, 2016 Exhibit A).
- Notes.

- Aerial Photos of the site.
- Photos of property, the home, the driveway, the road and the adjoining properties.

Ms. Alvey responded to questions by the Board:

- As to distance from the roadway presented the plot plan that shows the lot lines.
- Confirmed that she took the photos presented.
- Confirmed that the proposed accessory structure would not be visible from the road.
- Presented photos of Shady Creek Lane showing that it is heavily treed.

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

Applicants Barbara and Phil Tyler, 7411 Shady Creek Lane, Crestwood, were present and sworn prior to speaking in behalf of this application.

Mrs. Tyler stated the following:

- Have five acres but because the property is heavily treed the proposed location is the only possible location for construction of the pole barn.
- Have equipment which they use for maintaining their heavily treed property.
- There is not enough room in the existing garage to store all the equipment and presently are having to store some equipment outside.
- Explained the location of the laterals and electric and the proposed location is the best place to construct the barn.

(3) Questioning of the Applicant by the Board:

Mr. Tyler showed where the laterals and a ditch are located to the right of the property and stated reasons why the house had to be built closer to the existing driveway.

(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-16-022
Variance for Accessory Structure**

Motion was made by Board Member Houchens and seconded by Board Member Davis to approve Docket OC-16-022, variance for an accessory structure because:

- Evidence that the layout of the property has limitations.
- There are limitations as to placement of the accessory structure due to things such as utilities.
- There was testimony that the proposed accessory structure will not be seen from the road.

- It will not alter the essential character of the general vicinity.
- It will not cause a hazard or nuisance to the public.

Conditions of Approval:

1. There shall be no commercial activity conducted out of the accessory structure.
2. The variance shall only apply to the application considered at the September 15, 2016 Oldham County Board of Adjustments public hearing.

The vote was as follows:

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

Motion carried by unanimous voice vote 5-0.

OTHER BUSINESS

General discussion regarding setback issues and how these variance requests can be avoided in the future.

Approval of Minutes

Motion was made by Board Member Pate and seconded by Board Member Davis to approve the minutes of July 21, 2016 as submitted.

Motion carried by unanimous voice vote.

Motion was made by Board Member Allen and seconded by Board Member Pate to adjourn the meeting at 11:58 a.m. Motion carried by unanimous voice vote.

The next Regular Meeting is scheduled for Thursday, October 20, 2016, at 9:00 a.m., in the Courtroom of the Oldham County Fiscal Court Building, LaGrange, Kentucky.

Respectfully Submitted,

Ethel Foxx
Administrative Assistant

Approved:

Larry Otterback, Chairperson