

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

**Thursday, July 19, 2012**

At 9:03 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:

Larry Otterback  
Robert Houchens  
Ken Hodge  
Roger Wampler  
Ann Riley

Director Jim Urban, Assistant Director Brian Davis, Planner Tara Dickerson and Administrative Services Coordinator Amy Alvey of Oldham County Planning and Development Services were present and sworn in. County Attorney John Carter was present.

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Board Member Wampler called and read Docket OC-12-011.

**Docket OC-12-011** – An application has been filed requesting a front yard setback variance for a proposed addition on property located at 1305 Old Taylor Trail, Goshen.

A brief recess was held to allow time for staff and applicant to prepare for their presentations.

**(1) Presentation by Staff:**

Planner Tara Dickerson presented the following:

- Summary of the application.
- Case History (see Staff Report dated 07/19/2012).
- Notes.
- Photos of the site.

Ms. Dickerson responded to questions from the Board:

- The required front setback for the R-1 district is typically 35 feet; however this lot was recorded with a 30 foot front building line.
- The 5 foot variance was applied for and approved at the time the development was approved.
- The garage addition will be added to the side of the home.

**(2) Presentation by the Applicant:**

Benjamin Lewellen, 11452 Hwy 62, Suite 194, Charlestown, Indiana, after being sworn, presented the following:

- Photos of current home.
- Construction drawings of proposed addition and remodel of exterior of home.

The following were present and sworn in to speak in support of the applicant:

Gary Duechle, 1305 Old Taylor Trail, Goshen, after being sworn presented the following:

- Shifting the design to fit in the current setback will affect the functionality of entering the garage.
- Esthetically it is important to continue the Craftsman design from the front of the home around to the side because the house is on a corner lot and fronts two major streets in the subdivision.

**(3) Questioning of the Applicant by the Board:**

Mr. Lewellen responded to questions from the Board:

- Moving the garage back to stay within the building setback limits would create issues with the existing entrance door.
- Current garage is a single door, two bay garage.
- Proposed garage depth is 32 feet to allow vehicles to be parked two deep, bumper to bumper.
- The setback issue was found after design was complete.
- The garage would need a 2.1 foot variance without the columns.

Mr. Duechle responded to questions from the Board:

- The columns will add support to the roof as well as tie in the Craftsman style to the rest of the home with the stone and cedar features and balances the design.

**(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-12-011– Front Yard Setback Variance**

Motion made by Board Member Hodge and seconded by Board Member Riley to table the application requesting a Front Yard Setback Variance for the property located at 1305 Old Taylor Trail, Goshen, to allow the applicant time to review plans and explore design alternatives to try to eliminate the need for a variance.

The vote was as follows:

Yes: Board Members Hodge, Houchens, Otterback, Riley and Wampler.

No: None.

Abstain: None.

Absent: None.

Motion carries on a vote of 5 to 0.

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Board Member Wampler called and read Docket OC-12-008.

**Docket OC-12-008** – An application has been filed requesting an appeal of an administrative decision concerning 2900 Barrickman Lane, Goshen.

Attorney Carter stated that he has reviewed all the documents filed by all parties and their attorneys. There are no appealable issues that are not time barred and could be considered by the Board.

Chairman Otterback asked if the Board has no appealable actions should the case be dismissed.

Attorney Carter advised that the Board could hear testimony and evidence but could not take any action on the testimony that would have any effect because the issues on the appeal are either time barred or not an appealable action. A criminal action was brought against the property owner in District Court and was dismissed because it was time barred. Misdemeanor complaints must be filed within one year of the action and anything to be appealed by this Board must be filed within 30 days of the action being complained of.

Board Member Hodge requested staff to provide the action date of the items being appealed and the appeal filing date.

Motion made by Board Wampler and seconded by Board Member Hodge to take a brief recess to allow staff to prepare the information requested at 9:45 a.m.

Motion carried by unanimous voice vote.

The meeting was reconvened at 9:56 a.m.

Assistant Director, Brian Davis, after being sworn presented the following:

- Case History.
- Items being appealed:
  - Site-work occurred using a 5 foot setback for removal of parking surface that attracts nuisance vehicles inside the AG-1 setback---April 5, 2012.
  - “Revised” Building Permit Application states an 18 foot rear setback without indication of official approval of variance for the existing duplex structure built using a Barn Permit requiring a 40 foot setback--- April 3, 2012.
  - Restrictive Covenant filed by property owner in the Oldham County Clerks Office---April 16, 2012.
- Appeal was filed on April 25, 2012.
- Board will have to decide if items are appealable or if they are time barred from the original permit date of September 15, 2009.

Mr. Davis responded to Board questions:

- No variance was needed for the 5 foot setback based off staff interpretation of the regulation for accessory structures.
- Appellant disagrees with staff interpretation of the regulation and the 40 foot AG-1 zoning setback requirement should be enforced.
- The property owner supplemented the file to better reflect what was actually constructed.

- No new permit was issued based off the information submitted by the property owner on April 3, 2012 and no action was taken as a result of the submittal.
- The restrictive Covenant is similar to a deed restriction which Planning and Development does not enforce.

Motion made by Board Member Houchens and seconded by Board Member Hodge to dismiss the case based off advice from Counsel and evidence presented as to the dates of the requested appeal items because:

- The actions are beyond the 30 day time limit to be appealed and are considered to be time barred as outlined in KRS 100.261.

The vote was as follows:

Yes: Board Members Hodge, Houchens, Otterback, Riley and Wampler.

No: None.

Abstain: None.

Absent: None.

Motion carries on a vote of 5 to 0.

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Board Member Wampler called and read Docket OC-12-009.

**Docket OC-12-009** – An application has been filed requesting an appeal of an administrative decision concerning 6002 Centerwood Drive, Crestwood.

A brief recess was held to allow time for staff and applicant to prepare for their presentations.

Attorney Carter stated that items related to the construction of the accessory building and issues related to the permit would be time barred. The other actions requested appear to fall within the purview of a different body other than the Planning & Development office and Mr. Urban. Whether those other bodies did not take proper action is not a decision for the Board of Adjustments to make or take action on and consider. After reviewing the information it appears that any action required by Mr. Urban was taken or the action met Planning & Development regulations. The Board may hear evidence under oath by both sides and make a decision if the actions taken by Mr. Urban were proper.

**(1) Presentation by Staff:**

Assistant Director, Brian Davis presented the following:

- Summary of the appeal.
- Case History (see Staff Report dated 07/19/2012).
- Notes.

Mr. Davis responded to questions from the Board:

- The applicant is appealing that Mr. Urban did not take action or allow his subordinate respondents to take action on the 73 alleged violations in a complaint dated March 19, 2012.

**(2) Presentation by the Applicant:**

Judy Ponder, 5930 Centerwood Court, Crestwood, after being sworn, presented the following:

- Summary of 11 major violations including photos, building permits and other supporting documentation (Ponder Exhibit A).
- Area map of property located at 6200 Centerwood Drive (Ponder Exhibit B).
- Summary of why Mr. Urban's refusal to investigate and document investigation is wrong.
- Requested board action on the following:
  - Declare as Arbitrary the Administrators zoning ordinance interpretations & refusal to investigate March 19, 2012 complaint.
  - Determine the Lutes pool, deck and detached garage permits invalid and void and structures are non-conforming.
  - Injunction to restrain owners from use of pool, garage, added parking and further construction and upgrades.
  - Table docket for a separate public hearing for the Board to agree or disagree with Mr. Urban's unauthorized interpretations/definitions.
  - Order standard code enforcement procedures.
  - Owner acknowledged primary responsibility for compliance on permit application.
  - Precedent case law requiring removal of structures.
- Provided printed copy of presentation (Ponder Exhibit C).

Motion made by Board Member Hodge and second by Board Member Wampler to allow Ms. Ponder an additional five minutes. Motion carried by unanimous voice vote.

Josh Clubb, Brammell & Clubb, PSC, 18 Berry Street, New Castle, Attorney for the Opposition, stated that under KRS 100 that objections or comments from the public are not admissible in an Administrative Appeal hearing and would like the record to reflect his objection to any public comment to be taken.

Attorney Carter stated that Ms. Carlson and anyone else can testify to any facts that will support the appeal.

The following were present and sworn in to speak in support of the applicant:

- Doreen Carlson, 2824 Barrickman Lane, Goshen.
  - Property owners should have a right to address the Administrator and receive a written response that shows a clear conclusion of the decision.
- Sam Dunkle, 5924 Centerwood Drive, Crestwood.
  - Building in question appears to be 20% larger than the primary structure.
  - Building height is very tall and unattractive.
  - Building permit process is flawed.

### **(3) Questioning of the Applicant by the Board:**

Ms. Ponder responded to questions from the Board:

- Did receive Mr. Urban's March 23, 2012 letter but feels it does not meet the due process requirements that Kentucky requires.
- Mr. Urban should have replied to the letter because it is his duty and job to enforce allegations before him and determine their validity.
- Only the Board has the ability to interpret the ordinance, not the Administrator.

Motion made by Board Member Hodge and seconded by Board Member Wampler to take a brief recess at 11:00 a.m. to review the applicant's exhibits. Motion carried by unanimous voice vote.

The meeting reconvened at 11:13 a.m.

Chairman Otterback requested staff to prepare copies of Ms. Ponder's presentation (Exhibit C) for the Board to review.

Motion made by Board Member Hodge and seconded by Board Member Wampler to recess the meeting until 12:15 p.m. for lunch. Motion carried by unanimous voice vote.

Motion made by Board Member Hodge and seconded by Board Member Riley to reconvene the meeting at 12:24 p.m. Motion carried by unanimous voice vote.

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

Josh Clubb, Brammell & Clubb, PSC, 18 Berry Street, New Castle, Attorney for the Opposition, presented the following:

- Motion To Remove Appeal from Docket of Oldham County Board of Adjustments (Urban Exhibit A).
- Summary of KRS 100.257.

Jim Urban, Director, Oldham County Planning & Development, 100 West Jefferson Street, LaGrange, after being sworn presented the following:

- Email to Ponder addressing issue of "scale" dated August 26, 2011.
- Plot plan that was submitted with the Building Permit Application showing the Lutes' garage side yard setback of 20 feet, which is in compliance.
- Copy of 2006 pool permit.
- Open records request from Ms. Ponder dated May 11, 2012 explaining the why no landscape plan is required.
- No requirement for a parking plan or parking permit for a single family home.
- No drainage plan or permit required for a single family home or accessory structure.
- Copy of Victor Peak's training certificate.
- Letter showing dates Mr. Peak inspected the Lutes' property for drainage issues and or complaints.
- Copy of email from Ms. Ponder showing the Lutes daughter's listed as junior dragsters drivers. Activity was considered a hobby, not a business and does not require a home occupation permit.
- No drainage easement where the accessory structure was built.

Mr. Urban responded to questions from Attorney Club:

- Swimming pool permit was issued May 16, 2006.
- Was not his decision to issue the pool permit and was not employed by Oldham County at that time.
- Building permit for garage was issued in April 2011.
- Garage is visible from the street and construction began very soon after the building permit was issued.
- The Stormwater Ordinance, which Ms. Ponder included in her exhibits, is not part of the Zoning Ordinance and was passed by Fiscal Court.

Mark Lutes, 6002 Centerwood Drive, Crestwood, after being sworn presented the following:

- Excessive inspections have occurred because of the complaints by Ms. Ponder and her abuse of the system and taxpayer's money.
- The court case listed on the appeal application is related to the homeowners association not Planning & Development.
- Ms. Ponder received a copy of the building permit from Planning & Development as requested and notification from the homeowners association of the approval of the structure.
- No business is being operated out the home or garage.

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

Mr. Clubb responded to questions by the Board:

- KRS 100.261 states action shall be taken within thirty (30) days after the appellant or his agent receives notice of the action of the official and Ms. Ponder was well aware of the pool being on the property since 2006 and the garage being constructed by January 2012, well beyond the 30 days from Ms. Ponder's appeal.

Mr. Urban responded to questions by the Board:

- No deck permit could be located in the file.
- Complaints are handled based off of the type and severity of the complaint.
- The Code Enforcement Officer tracks complaints in detail of all communications with both parties.
- Building Inspectors track their inspections through the permitting software.
- Unaware of any policy that requires a written response.

Mr. Lutes responded to questions by the Board:

- Construction began within two weeks of the building permit issuance.
- Ms. Ponder was aware of the structure before and during construction through emails and conversations with the homeowners association.
- Deck around pool was constructed at the time the above ground pool was installed but was not part of the pool package.

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

Ms. Ponder stated that she has never received proper notice therefore the 30 day appeal period has not started. Section 300-030, Paragraph 2B, is applicable because the area for vehicular use increased by 2,560 square feet, which is more than 20%. Provided example from another state of an Administrator's response that is not arbitrary and how an interpretation should be documented. Excessive inspections were not the result of her complaints. A short video was played showing the location of the structure to the creek.

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

Mr. Clubb stated the items that are being appealed are either time barred or they are not properly reviewable. The zoning allegations are time barred because Ms. Ponder was well aware of the construction of the building since May 2011. The other allegations of building code violations and drainage issues are not reviewable under the statute. Mr. Urban has gone to great lengths and time to answer Ms. Ponder's allegations on numerous occasions and asks the Board to dismiss the appeal.

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

**Findings and Decisions  
Docket OC-12-009– Administrative Appeal**

Assistant Director Brian Davis stated that the Zoning Ordinance was overhauled in 2007 and the regulation may have been different in 2006 when the pool permit was issued regarding accessory structures and deck permitting requirements.

Motion made by Board Member Hodge and seconded by Board Member Wampler to take a brief recess at 2:02 p.m. Motion carried by unanimous voice vote.

Motion made by Board Wampler and seconded by Board Hodge to reconvene the meeting at 2:09 p.m. Motion carried by unanimous voice vote.

Motion made by Board Member Houchens and seconded my Board Member Wampler to dismiss the Administrative Appeal because:

- Any and all issues concerning the garage, pool and deck built on the subject property are all subject to the time barring issue.
- Jim Urban, Planning & Zoning Administrator, contrary to the allegations of the appeal did appear based on evidence to timely and properly address and investigate the violations alleged by the appellant over which he has jurisdiction.

The vote was as follows:

Yes: Board Members Houchens, Otterback, Riley and Wampler.

No: Hodge.

Abstain: None.

Absent: None.

Motion carries on a vote of 4 to 1.

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**Approval of Minutes – June 21, 2012**

Motion was made by Board Member Hodge and seconded by Board Member Riley to approve the minutes as submitted and corrected. The motion carried on a unanimous voice vote.

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**Other Business**

Chairman Otterback stated that he and other members had reviewed the DVD presented at the last meeting of the two Louisville Board of Zoning Adjustment public hearings.

Motion made by Wampler and seconded by Hodge to accept the DVD as two hours training for Board Members Wampler, Hodge, Otterback and Riley. The motion carried on a unanimous voice vote.

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Motion was made by Board Member Hodge and seconded by Board Member Wampler to adjourn the meeting at 2:27 p.m. The motion carried on a unanimous voice vote.

The next Regular Meeting is scheduled for Thursday, August 16, 2012, at 9:00 a.m., in the Courtroom of the Oldham County Fiscal Court Building, LaGrange, Kentucky.

Respectfully Submitted,

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Amy Alvey  
Administrative Services Coordinator

Approved:

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Larry Otterback, Chairperson