

**Taylor Mill Board of Adjustments
Regular Meeting
November 1, 2018**

PLEDGE OF ALLEGIANCE & CALL TO ORDER

Chairman Osterhage led the Pledge of Allegiance and called the meeting to order at 6:59 p.m. The City Clerk called the roll.

Chairman Osterhage	Here
Mr. Bertram	Here
Mr. Smith	Here
Mr. Staubach	Here

Chairman Osterhage stated that a quorum was present.

APPROVAL OF MINUTES

Chairman Osterhage called for a motion to approve the minutes of September 11, 2018. Mr. Smith so moved, with a second from Mr. Staubach. The Board Members approved by unanimous vote.

Mr. Smith – Yes
Mr. Staubach – Yes
Mr. Bertram – Yes
Chairman Osterhage – Yes

MOTION CARRIED

PUBLIC HEARING

Chairman Osterhage stated the purpose of the meeting and reviewed the procedure process for the applicant.

CASE NO: BOA1810-0001

APPLICANT: Alice Jeanette Hodges

LOCATION: 1036 Robertson Road

REQUEST: To vary from the driveway setback regulations of the Taylor Mill Zoning Ordinance and to appeal a decision of the Zoning Administrator; the applicant proposes to construct a gravel driveway on the site. Specifically, the applicant seeks to: (1) construct an approximately 340-foot driveway within one foot of the side property line where a minimum of five feet is required; and, (2) appeal the Zoning Administrator's decision to deny a gravel driveway where asphalt or concrete is required.

CONFIRMATION OF NOTIFICATION: Ms. Jill Conniff of Planning and Development Services of Kenton County stated that all interested parties had been notified in accordance with Kentucky Revised Statutes.

Chairman Osterhage gave a brief explanation of the hearing process for everyone present.

STAFF REPORT AND REVIEW: Planning and Development Services Associate Planner Ms. Conniff reviewed the two requests and presented photos and maps of the site layout in various perspectives. The site is located at 1036 Robertson Road and is located near the intersection of Robertson Road and Lakewood Drive. There is an existing single-family house on the site. This lot, as well as the adjacent lot, are flag lots that share an access point off of Robertson Road. This access point is a gravel lot through adjacent lot's flag stem to the south. The property owners at 1032, 1036, and 1040 Robertson Road use the driveway access located at 1040 Robertson Road. The property owner at 1040 Robertson Road holds an access agreement with the other two property owners. Ms. Conniff stated the existing zoning does note that the property is part of the R-1D Zone, which is a typical residential zone. Ms. Conniff noted that there was an error on page 5 of the Staff Report in the Petition Review Section. It refers the northwestern side and it should be the northeastern. Ms. Conniff reviewed Kentucky Revised Statutes Chapter 100. (Please see PDS Staff Report handout from Planning and Development Services regarding supporting information and recommendations).

For the first request, Ms. Conniff stated the applicant is proposing to construct a driveway within one foot of the northeastern side property line. The driveway is intended to weave and curve, and will not be within one foot of the side property line the entire length of the flag stem. Section 9.10.G., states that the driveways are permitted in minimum required yards, provided that they are not closer than five (5) feet to the property line to which

they run approximately parallel to. A common driveway may abut or extend over a property line to serve two (2) or more lots.

For the second request, the applicant is proposing to construct an approximately 340-foot driveway laid with gravel. Section 11.0., M, states that all new off-street parking areas shall be paved with asphalt concrete or Portland cement concrete. Section 11.0., G., states that in residential zones where access driveways may be used for parking, that they must be designed in accordance with the requirements of the ordinance.

STAFF RECOMMENDATION 1: Favorable recommendation for the variance from the side yard setback requirements of the driveway regulation, allowing for the construction of an approximately 340-foot driveway within one foot of the side property line where a minimum of five feet is required.

SUPPORTING INFORMATION/BASES FOR STAFF RECOMMENDATION:

Ms. Conniff reviewed supporting information for staff recommendations for the two requests:

1. The variance request arises from the special circumstances which do not generally apply to land in the general vicinity or same zone. The site in question is located on a flag lot that has a flag stem width of approximately 25 feet. This is substantially less than the required 75 feet for a standard lot. An electronic transformer box is also located on the property that prevents the driveway from conforming to the required setbacks.
2. The strict application of the zoning ordinance will deprive the applicant of reasonable use of their land and create unnecessary hardship for the applicant. There are a large number of mature trees on the flag stem that creates an unnecessary economic hardship on the applicant.
3. The variance is not the result of actions of the applicant taken subsequent to the adoption of the zoning regulations from which relief is sought. The applicant became aware of the need for a variance during the permitting process and has applied for a variance.
4. The variance request will not adversely affect the public health, safety, or welfare, and will not alter the essential character of the general vicinity. The adjacent property to the southwest has a driveway on the flag stem that runs parallel to the site in question.

STAFF RECOMMENDATION 2: To uphold the zoning administrator's decision to deny a gravel driveway where asphalt or concrete is required.

SUPPORTING INFORMATION/BASES FOR STAFF RECOMMENDATION:

1. The Zoning Administrator's decision to not permit a gravel driveway is based on the strictest interpretation of the Taylor Mill Zoning Ordinance. Section 11.0, M., requires all new off-street parking areas to be paved with asphalt concrete or

Portland cement concrete. Section 11.0, G., requires access driveways that may be used for parking in residential zones to be designed in accordance with the requirements of this ordinance (i.e. paved).

The Zoning Administrator's interpretation of these two sections is that driveways in residential zones always have the ability to be used for off-street parking. Therefore, the entire driveway must be paved.

PRESENTATION/COMMENTS BY APPLICANT: Mrs. Hodges addressed the Board of Adjustment with a Power Point presentation to explain her situation and the need for her two requests to be granted. (Please see Exhibit #1). Mrs. Hodges has shared a common driveway for over twenty-two years according to a licensed agreement. In order to sell her home and it more marketable, she is needing to extend her driveway. She was requesting the board to allow a variance for an extended driveway to occasionally vary from the 5 foot allowance to the property line so that the utility pole doesn't have to be moved and some of the trees can be preserved. Additionally, the requirement for a concrete or asphalt driveway is creating an unnecessary economic hardship on her.

COMMENTS FROM PROPONENTS: Mr. Mike Wells, resident at 786 Lakewood Drive, addressed the Board. Mr. Wells expressed concern over the mature trees being removed unnecessarily. He felt that it was the City's responsibility to visually preserve the area.

Mr. Thomas Simendinger, attorney for Mrs. Hodges addressed the Board. Mr. Simendinger stated that Section 11.0(M) is in favor of Mrs. Hodges because it references a new driveway and that this is not a new driveway, but rather this an extension of a driveway that has preexisted for over twenty-two years.

Mr. Smith asked Mrs. Hodges who originally constructed the driveway? Mrs. Hodges stated the Sparks originally constructed the driveway and through the years and according to the licensed agreement that they had they shared the maintenance of the driveway equally. When the Harmelings built their house the maintenance was then split three ways. The issue is that this is a licensed agreement and it is non-transferrable. The distinction between a licensed agreement and a true easement is in the language that says that it runs with the land and this one does not.

Mr. Bertram asked Mrs. Hodges if there had been discussion between her and the Sparks as to whether or not they would be willing to turn the license into an easement? Mrs. Hodges stated that she has offered to buy an easement, that she has offered to create and have them stipulate whatever they wanted in it, but that they weren't interested.

Mr. Rod Fussinger, is the real estate agent for Mrs. Hodges, spoke to the Board. He stated that the agreement is the one thing that is making it difficult to sell the house. He further stated that it would ease her hardship if she could use gravel for her driveway instead of cement or asphalt.

Chairman Osterhage asked the audience if there was anyone who wanted to speak to the Board who were opposed to the applicants.

COMMENTS FROM OPPONENTS: George and Patricia Sparks, residents of 1040 Robertson Road came forward and spoke to the Board. Mrs. Sparks provided photographs of the property in question (Please see Exhibit #2). Mr. Sparks explained that the reason he went with the licensed agreement twenty-three years ago was because he had been involved in real estate most of his life he did not want to get involved with the lease. He stated that the Hodges had the option of going across their driveway with a licensed agreement or build a new driveway. Mr. Sparks expressed concern over the potential damage that can be caused to the root system of the trees. Mr. Sparks believes that the building of the driveway will ultimately impact the trees and cause harm to them. He stated when he built the house he never wanted an easement and that is why they went with the licensed agreement. Mr. Sparks stated the price of easement was never a concern of his because he had no interest in easements. Mr. Sparks said that he and his wife were willing to sign another licensed agreement with the new owners.

Donald Harmeling, Jr., resident at 1032 Robertson Road, addressed the Board in opposition. Mr. Harmeling submitted a letter dated October 26, 2018 (Please see Exhibit #3). Mr. Harmeling expressed concern that solving Mrs. Hodges hardships would create another hardships for him. He further explained the agreement that he shared with the Hodges and the Sparks. This agreement helped to maintain the integrity of the property, the trees, wooded feeling, etc. Mr. Harmeling stated that building of the driveway could have an opposite effect and will detract the value of the property. Losing the trees and the privacy would be lost with construction of a driveway. Should Mrs. Hodges build a driveway then he feels that they will be forced to build a driveway and the property will look like a runway with three driveways. Another concern that he has is with erosion and washout due to gravel construction of a driveway.

Mr. Bertram asked the Sparks how close their driveway went to the property line and asked if they were adhering to their five (5) foot requirement to the property line? Mr. Bertram stated that in looking at the photos it appears that that the existing driveway is closer than five (5) feet to the property line.

DECLARATION OF CONFLICTS: None.

DECLARATION OF SITE VISITS: Board Members stated familiarity with the site.

CLOSED PUBLIC HEARING: Chairman Osterhage thanked those who have shown up to voice their opinion and the public hearing portion closed at 8:02 p.m.

The Board members discussed the first request to construct an approximately 340-foot driveway within one foot of the side property line where a minimum of five feet is required.

Mr. Bertram stated that because the current driveway meanders and doesn't appear to be within five (5) feet, he doesn't feel that granting a variance to give Mrs. Hodges one foot or five foot would change the nature of it. Mr. Bertram was not opposed to granting the one foot variance. Mr. Bertram stated his motion would be based off the findings and facts from the Staff Recommendation. Mr. Staubach further stated that there is existing hardship due to the utility line and is out of her control and that would create a hardship.

Mr. Osterhage called for a motion to accept the staff recommendation and approve the variance from the side yard setback requirements of the driveway regulation, allowing for the construction of an approximately 340-foot driveway within one foot of the side property line where a minimum of five feet is required. Mr. Bertram stated his motion is based off the facts and findings from the Staff Recommendation. Mr. Staubach made a second. The Clerk called the role.

Mr. Bertram – Yes
Mr. Staubach – Yes
Chairman Osterhage – Yes
Mr. Smith – Yes

MOTION CARRIED

The Board members discussed the second request to appeal the Zoning Administrator's decision to deny a gravel driveway where asphalt or concrete is required.

Mr. Osterhage called for a motion. Mr. Smith made a motion to accept the staff recommendation and to uphold the zoning administrator's decision to deny a gravel driveway where asphalt or concrete is required. Mr. Smith stated this is in the zoning code and there is a need for consistency with zoning codes. Mr. Smith stated his motion is based off the findings and facts from the Staff Recommendation. Mr. Bertram made a second. The Clerk called the role.

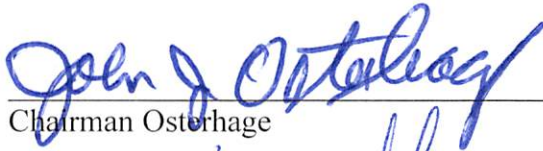
Mr. Smith – Yes
Mr. Bertram – Yes
Chairman Osterhage – Yes
Mr. Staubach – Yes

MOTION CARRIED

ADJOURNMENT:

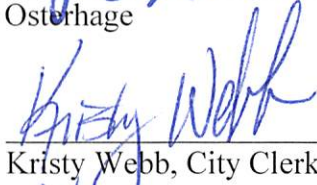
There being no further business before the Board, Mr. Osterhage called for a motion to adjourn. Mr. Smith so moved, with a second from Mr. Staubach to adjourn the meeting. The motion passed with the unanimous approval of the Board, the time being 8:17 p.m.

MOTION CARRIED



Chairman Osterhage

ATTEST:



Kristy Webb, City Clerk

DATE:

