CAMPBELL COUNTY & MUNICIPAL BOARD OF ADJUSTMENT

AUGUST 16, 2016
7:00 PM

AGENDA

1. Meeting called to order.
2. Pledge of Allegiance
3. Roll call and determination of quorum.
4. Approval of the June 21, 2016 minutes.

Public Hearing

5. **Number:** BA-05-16
   Applicant: Becky Downton
   Location: Approximately 1 acre located at 7431 Tollgate Road, Unincorporated Campbell County.
   Request: A front yard setback variance of approximately 15 feet.

Close Public Hearing

7. Director's Report
8. Adjournment

IF YOU CANNOT ATTEND THE MEETING, PLEASE CALL THE P&Z OFFICE AT 859-292-3880.

The Commission will make every reasonable accommodation to assist qualified persons attending the meeting, if there is a need for the Commission to be aware of, contact the office seven (7) days prior to the meeting.

Calendar Notes

Tuesday, September 20th 7:00 PM	Monthly Public Hearing / Business Meeting The deadline to submit applications for this agenda is 4:30 PM on August 16th, 2016.

CAMPBELL COUNTY & MUNICIPAL BOARD OF ADJUSTMENT
MINUTES OF THE AUGUST 16, 2016 MEETING

MEMBERS PRESENT:
Mr. John Fessler
Mr. Justin Verst
Mr. Michael Williams
Ms. Sharon Haynes, TPO
Mr. Scott Bachmann, Chair

STAFF PRESENT:
Ms. Cynthia Minter, Director
Mr. Kirk Hunter, Principal Planner
Mr. Michael Duncan, Legal Counsel
Ms. Stephanie Turner, Recording Secretary

MEMBERS ABSENT:
Mr. Joseph Williams
Mr. Roger Mason, Vice Chair

STAFF ABSENT:
None.

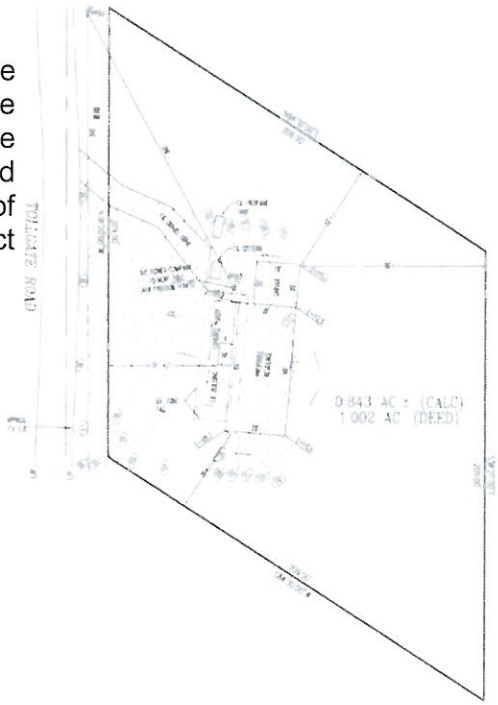
Mr. Bachmann called the meeting to order at 7:02 PM and asked everyone to stand and face the flag for the Pledge of Allegiance. Following roll call, a quorum was found to be present. Mr. Bachmann asked if everyone had read the June 21, 2016 meeting minutes and if there were any questions or corrections. There being no comments or corrections, Mr. Bachmann called for a motion. Mr. M. Williams made a motion to approve the minutes as submitted. Mr. Verst seconded the motion. Mr. Bachmann called for a roll call vote. A roll call vote found Mr. Fessler, Mr. Verst, Mr. M. Williams and Mr. Bachmann in favor. Ms. Haynes abstained. Motion passed.

There being no old business to discuss, Mr. Bachmann introduced the first case on the agenda for a public hearing as Case #BA-05-16 by applicant Ms. Becky Downton requesting a front yard setback variance of approximately 15 feet. Mr. Bachmann called for the staff report to be given. Mr. Hunter presented the staff report as follows:

CASE NUMBER:	BA-05-16
APPLICANT:	Becky Downton
LOCATION:	Approximately 1 acre located at 7434 Tollgate Road, Unincorporated Campbell County.
REQUEST:	A front yard setback variance of approximately 15 feet.

Considerations:

1. The applicant is requesting a dimensional variance. The intention is to replace the existing vacant mobile home with a modular home. Because of the topography of the lot, a house built to the legal front yard setback would require extensive grading. The additional expense of digging in to the side of the hill would make the project prohibitively expensive.



2. The site, containing 1 acre, is located in Unincorporated Campbell County on the east side of Tollgate Road. Tollgate Road is a State-maintained road. This site is located in the R-RE Residential Rural Estate Zone. The Recommended Land Use Map of the 2008 Campbell County Comprehensive Plan identifies the site and surrounding areas as large lot residential. Currently, the surrounding land is zoned R-RE and is comprised primarily of single family residential land uses.

3. The Campbell County Zoning Ordinance Article X, Section 10.2 classifies the area within the R-RE Residential Rural Estate Zone. Permitted uses within this zone include:

    1. Single family dwellings, detached.
    2. Horse related uses, including riding and boarding stables for personal use with minimum lot area of 4 acres provided that the location for a detached single-family dwelling has been sited meeting all applicable area and height regulations for all structures.
    3. Greenhouse, nurseries or gazebo for personal use with minimum lot area of 4 acres provided that the location for a detached single-family dwelling has been sited meeting all applicable area and height regulations for all structures.

4. The minimum setbacks for the R-RE zone are:

	R-RE Zone	
Description:	**Regulations Require:**	**Applicant's Request:**
Minimum Lot Area:	One (1) acre	
Minimum Lot Width:	One hundred (100) feet	
Minimum Front Yard Depth:	Fifty (50) feet	Thirty-five (35) feet
Minimum Side Yard Width:	Total - Twenty-five (25) feet	
	One side – ten (10) feet	
Minimum Rear Yard Depth:	Thirty five (35) feet	
Maximum Building Height:	Thirty five (35) feet	

5. A review of public records indicates the following:
    a. No previous requests for a variance have been submitted for this site.
    b. Charles and Joyce Downton own 7434 Tollgate Road.
    c. The applicant, Becky Downton, is their daughter.
    d. The existing mobile home has been in place for more than twenty-five (25) years.
    e. The existing mobile home is vacant and in poor condition.

6. A site plan submitted by the applicant and field visit by staff reflects the following:
    a. Tollgate Road is a State-maintained road.
    b. The plan shows an existing lot with a single family home.
    c. The plan also shows the placement of the proposed 28-foot by 60-foot single family home and 20-foot by 20-foot garage.

7. Per Section 18.6, A., 2., Notice: Notice of public hearing was given in accordance with Section 18.2 of the Campbell County Zoning Ordinance. ***A legal notice appeared in the August***

4th, 2016 edition of the Campbell County Recorder advertising applicant's request and the hearing to be held on August 16th, 2016. This legal notice was also mailed to ten (10) neighboring properties.

8. According to Section 18.6, A., 4., the Board of Adjustment must find that the granting of the variance will be in harmony with the general purpose and intent of the Ordinance as well as the adopted Comprehensive Plan, and will not be injurious to the neighborhood, or otherwise, detrimental to the public welfare. **The use of the property is consistent with the adopted 2008 Comprehensive Plan.**

Supporting Information

VARIANCES: Before any variance is granted, the Board of Adjustment must find that the granting of the variance will not adversely affect the public health, safety, or welfare, will not alter the essential character of the general vicinity, will not cause a hazard or nuisance to the public. Such variance shall not be granted by the Board of Adjustment unless and until:

a. That the requested variance arises from special existing circumstances which do not generally apply to land in the general vicinity.

b. That the manner in which the strict application of the provisions of the Zoning Ordinance would deprive the applicant of a reasonable use of the land or would create an unnecessary hardship on the applicant

c. That the circumstances are the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought.

d. Reasons that the variance will not allow unreasonable circumstance of the requirements of the zoning regulations and will not alter the essential character of the neighborhood.

e. That granting the variance requested will not confer on the applicant any special privilege that is not conferred by this ordinance to other lands, structures or buildings in the same zone.

Applicant's Comments:

a. That the requested variance arises from special existing circumstances which do not generally apply to land in the general vicinity.

"Existing home is 10' closer to the road. Home is abandoned (single wide trailer) new home is 25' deeper."

b. That the manner in which the strict application of the provisions of the Zoning Ordinance would deprive the applicant of a reasonable use of the land or would create an unnecessary hardship on the applicant.

"Hillside behind this home is too steep and too high to remove"

c. That the circumstances are the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought.

"Improve the property and tax base"

d. Reasons that the variance will not allow unreasonable circumstance of the requirements of the zoning regulations and will not alter the essential character of the neighborhood.

"Neighbors on either side & view from the road would not change"

e. That granting the variance requested will not confer on the applicant any special privilege that is not conferred by this ordinance to other lands, structures or buildings in the same zone.

"Understood."

Staff Comments:

The requested variance does arise from special circumstances, related to topography, which exist and do not generally apply to land in the general vicinity or in the same zone.

The application of the provisions of this Ordinance would create unnecessary hardship on the applicant by requiring extensive excavation.

The applicant is requesting this variance subsequent to the approval of these regulations.

The essential character of the neighborhood is agricultural and this action is compatible with agricultural use.

This variance would not be granting the applicant a special privilege.

Summary of Applicants Request:

The applicant is requesting a seventeen (15) foot front yard variance for the construction of a single family dwelling including a porch and reducing the fifty (50) foot setback to approximately thirty-five (35) feet.

Staff Recommendation:

To approve the applicant's request for a front yard variance of fifteen (15) feet for a single-family dwelling and garage with the following conditions:

1. That a survey be prepared for the eastern tract.
2. That the applicant applies and receives approval for a land division separating the tract on the east side of Tollgate Road from the tract on the west side.

Basis for Recommendation

1. In accordance with Section 18.2 of the Campbell county Zoning Ordinance, notice of public hearing was given in the June 9, 2016 edition of the Campbell County Recorder.

2. In accordance with KRS 100.241 Variances, the board shall have the power to hear and decide on applications for variances. The board may impose any reasonable conditions or restrictions on any variance it decides to grant.

3. The evidence presented by the applicant and staff is such as to make a finding that:

a. The requirements for a variance have been met by the applicant for a variance and the variance is the minimum variance that will make possible the reasonable use of the land, building, or structure.

b. The variance requested will not adversely affect the public health, safety, or welfare, will not adversely alter the essential character of the general vicinity, and will not cause a hazard or nuisance to the public and will not allow an unreasonable circumvention of the requirements of the zoning regulations. In making these findings, the board considered whether:

    i. The requested variance arises from special circumstances which do not generally apply to land in the general vicinity, or in the same zone;

    ii. The strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land or would create an unnecessary hardship on the applicant; and

    iii. The circumstances are the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought.

    iv. The variance will not allow unreasonable circumstance of the requirements of the zoning regulations and will not alter the essential character of the neighborhood.

    v. The variance requested will not confer on the applicant any special privilege that is not conferred by this ordinance to other lands, structures or buildings in the same zone.

Mr. Hunter concluded the staff report by asking if the Board had any questions that he could address. Mr. Bachmann asked if anyone had any questions of staff. Mr. Verst asked if the need for a survey was because the one (1) acre portion where the home was being proposed was joined to the lot to the west side and on the same deed. Mr. Hunter replied that it was. Mr. Verst stated his concern was that if this was approved by the Board and the new survey showed the property was actually less than one (1) acre then it would not meet the zoning ordinance requirements for a new lot. Mr. Kirk agreed that may be a problem. Mr. Verst asked if the fact that the lot was severed by the road make it a separate pre-existing non-conforming lot already.

Ms. Haynes asked if the survey ended up being less than one (1) acre would they be required to come back before the Board again. Ms. Minter deferred to Legal Counsel to answer that question. Mr. Duncan stated he was of the opinion that the road does in fact separate the parcel. The only reason to ask them to do the land division is because you cannot have two (2) primary structures on the same lot. I think the pre-existing nonconforming use and lot is already there. They are just doing paperwork to confirm that. If the Board wanted to note for the record that the lot may be too small and that you don't have a problem with it, this would be appropriate in this situation. I don't think we can make them come back and I don't think we can deny them the use of the property if we even wanted to.

Ms. Becky Downton, the applicant, approached Mr. Hunter and showed him a drawing stating that the 1.02 acre lot is on a separate deed. Mr. Fessler stated that the drawing he received with his meeting packet already showed a copy of a survey reflecting 1.02 acres as completed by Mr.

Kenneth Combs, Surveyor. Mr. Verst stated that, if you look closely at the drawing submitted, there is a disclaimer that the drawing is a representation and not an official survey. Mr. Verst stated that a real survey may determine that the lot may be less than one (1) acre which is why he brought up the issue. Mr. Fessler asked if a survey is required to separate the parcels if you already have a separate deed. Mr. Verst stated he believes the staff can address that issue. Mr. Fessler stated that the additional cost associated with a survey just to get the property separated could be avoided. We could save them a little unnecessary expense there. Mr. Bachmann stated that this was one of the conditions of the approval recommended by staff.

Ms. Minter stated that staff would need to review the information submitted by the applicant and determine if the lot was indeed separate from the parcel on the west side and/or on a separate deed. If it is, staff does not have an issue with accepting that deed without the requirement for a land division. However, if it turns out that they are indeed one (1) parcel, then a land division is required and a land division necessitates the need for a new survey. Mr. Bachmann asked if anyone else had any questions.

An audience member stepped forward to speak. Mr. Bachmann advised her that, as soon as they are done questioning staff, the Board would be happy to hear her comments. Mr. Bachmann stated that he was curious why the dimensions were reflected as two (2) different measurements. Mr. Hunter commented that was another reason for the survey. Mr. Hunter's research did not match with the site plan. He did not understand why they weren't lining up. The deed says one thing, but when you go to look at the drawing it winds up being something else. I just really don't know. Mr. Verst stated that a new survey would clear it all up once and for all. Mr. Hunter agreed.

Mr. Bachmann asked who would be speaking for the applicant. Ms. Becky Downton stepped forward and conferred with Mr. Hunter for a moment. At the conclusion of their discussion, Mr. Hunter announced that the applicant had just handed him a survey drawing from 1969 that reflects the tract on the eastern side as a separate lot. Mr. Duncan stated that, after the Board concludes their meeting tonight, staff would have adequate time to analyze that paperwork. If there is indeed a separate deed for that parcel, that will resolve the issue. Or if there is a deed that describes two (2) separate parcels that will also resolve the issue.

Mr. Bachmann asked if the applicant would like to come forward with any additional information. Ms. Becky Downton, 1 S. Bellewood Ct, Alexandria, KY identified herself as the applicant. Ms. Downton explained that the property being discussed this evening is the property gifted to her parents by her maternal grandparents. It is definitely a different lot. They received this as a gift in 1969; and then they bought the acreage across the road from a different party later on. These were never one (1) lot. The mobile home that sits there now is their original home. I just want to be able to remove their trailer and put my house there. The variance is because of the creek on one (1) side that comes over farther with the right of way on my side now. I got everything together for starting this home and this is the only thing holding me up now. I'm not going to be able to keep going with this project if I have to push further back into the hill.

Mr. Bachmann asked Ms. Downton if the house itself would be encroaching into the setback or is it the porch. Ms. Downton answered the porch would be in the setback. Mr. Bachmann asked Ms. Downton to confirm that the porch is setting at thirty-five (35) feet back or the house. Ms. Downton replied that the porch would be at thirty-five (35) feet and the house would sit further back.

Mr. Bachmann asked if anyone had any questions of the applicant. There being none, Mr. Bachmann asked if Ms. Downton's mother, the audience member who spoke up earlier but had to walk out with the children, still wanted to speak. Ms. Downton replied that her mother only

wanted to clarify that the one (1) acre lot is on a separate deed and was a gift from her father to her upon her marriage. She did not have any other comments to add. Mr. Bachmann stated he didn't want to cut her off, but he just wanted to maintain the order of the meeting.

Mr. Bachmann asked if anyone else wished to speak on this request. Mr. John Firth, Freedom Homes, 1252 State Route 28 (Goshen Pike), Milford, OH stepped forward. Mr. Firth thanked the Board for their time this evening. Mr. Firth stated that the presentation tonight by Mr. Hunter clearly demonstrated the topographical conditions that exist on the lot. If they were forced to dig further back into the hill, Freedom Homes would not be able to build this home and the applicant would not be able to afford it. Mr. Firth asked if the Board had any questions that he could answer for them.

There being none, Mr. Bachmann asked staff if there had been any phone calls, email or statements from the public regarding this request. Ms. Turner confirmed there had been no response to the legal notice in the paper or the copy mailed to the adjoining property owners.

Mr. Bachmann opened the floor for discussion among the Board. Mr. Fessler stated that his only question is if (since the property could be a little under one (1) acre) we have to add that into the variance. Mr. Bachmann and Mr. Verst commented they did not think it was necessary. Mr. Duncan stated that if you want to make a part of your motion that you recognize the lot may be less than one (1) acre and the Board is still acceptable to this variance, you can do that. My legal opinion is that the road separates this property and therefore makes this a pre-existing nonconforming lot. Mr. Bachmann asked if there really is two (2) separate lots would this impact their motion. Mr. Duncan stated that it would not really affect any motion because if it were definitely two separate lots it just becomes a nonconforming lot of record.

Mr. Firth commented that this property does have an approved septic system. Mr. Bachmann asked if he was commenting because the Health Department requires at least one (1) acre lots for septic systems. Mr. Firth agreed that was why he mentioned it. Ms. Haynes asked if Mr. Firth was stating he was adding a new septic across the road. Mr. Firth stated that no, the septic system is existing on this lot and approved for the size of home they are building.

Mr. Bachmann asked if there were any other questions or comments. Mr. Hunter advised the Board that he would like to enter into the record the 1969 survey given to him tonight by Ms. Downton. Mr. Fessler added that he himself has three (3) lots, but there is only one (1) tax bill. Mr. Verst asked to see the survey.
Ms. Minter assured the Board that staff would pull the records. We don't want to require a survey if it is not really necessary. Mr. Duncan added that if the 1969 survey went with the deed then the applicant would not need a new survey to be performed.

Mr. Bachmann asked if there were any other questions or comments. There being none, Mr. Bachmann called for a motion. Mr. Verst made a motion on Case #BA-05-16 by applicant Ms. Becky Downton requesting a front yard setback variance for the placement of a modular home to approve the front yard variance requested of fifteen (15) feet. Mr. Verst would like to strike the conditions recommended in the staff report and instead combine them into the following condition:

1. That either the applicant provide a separate recorded deed for the parcel OR that a survey be prepared for the eastern tract and that the applicant applies and receives approval for a land division separating the tract on the eastern side of Tollgate Road from the tract on the west side.

To clarify his condition, Mr. Verst stated that if the applicant can produce a recorded deed for the lot identifying is as a separate lot of record from the tract on the western side of Tollgate Road, they are fine and no additional survey is required. However, if they cannot determine it is a separate lot, then the applicant needs to obtain a survey and apply for a land division.

Mr. Verst also added a point of information to note for the record that based on the information provided tonight that the parcel on the east side may be a pre-existing nonconforming lot and that Mr. Verst does not find an issue with that.

The basis for his motion is the information contained with the staff report, particularly that the requirements of the variance have been met by the applicant, that it is a reasonable use requested by the applicant to allow them to build a structure and that the request will not adversely affect the public health, safety, or well-fare of the community or the essential character of the general vicinity.

Mr. Bachmann asked if there were any questions or comments on the motion. There being none, Mr. Bachmann called for a second. Mr. Fessler seconded the motion. Mr. Bachmann asked if there were any other questions or comments. There being none, Mr. Bachmann called for a roll call vote. A roll call vote found Mr. Fessler, Mr. Verst, Mr. M. Williams and Ms. Haynes in favor. Mr. Bachmann abstained. Motion passed.

There being no other cases to present to the Board tonight, Mr. Bachmann called for the Director's Report.

DIRECTOR'S REPORT

Ms. Minter deferred to Mr. Duncan to provide the Board with an update on Case #BA-05-12, C & B Marine, a request for a conditional use permit. Mr. Duncan stated that it was possible that not everyone on the Board tonight was on this Board in 2012. At that time, C & B Marine made an application for a conditional use permit for a dockage facility. It was heard by this board in March 2013. This Board had an extensive hearing and a lot of evidence both written and testimony. At the conclusion of the meeting, the Board voted to deny the conditional use permit on various grounds, but mainly because what they were applying for wasn't really what was provided for as a conditional use in the zoning ordinance. The owners appealed that decision to the Campbell Circuit Court who in turn upheld the Board's action. In a very thorough opinion that stated the Board was very fair and everything they did was appropriate, the Circuit Court ruled in the Board's favor.

The Circuit Court decision was then appealed to the Court of Appeals. In what turned out to be a long time (typically the Court of Appeals rules within 12 to 18 months), it took the Court of Appeals about 24 months to issue their ruling. Earlier this year, they ruled in a very thoughtful opinion and upheld the Circuit Court's decision and therefore upholding the Board's action of denial. If you remember, in the meantime, C & B Marine came back while the Court of Appeals case was pending and requested what I would call a milder version of conditional use permit which this Board did approve which was to allow for just basically a landing for the employees to come there to get on the barge to get to the tug boats. I haven't heard if there has been any problems. Ms. Minter stated she would provide an update on that.

Mr. Duncan concluded that the Court of Appeals, in a very thorough and thoughtful decision, as I previously indicated upheld the Circuit Court's ruling which upheld this Board's decision. It went through all the points of Kentucky law that said you followed due process, did your job at interpreting the zoning ordinance and unanimously upheld the decision you made. This was done

about one (1) to two (2) months ago. They had a certain amount time to file a motion called an alter mender vacate - in other words they ask for reconsideration by the Court of Appeals. Those are very rarely granted. The other option they had was to ask the Supreme Court to hear the case on a discretionary review. They didn't do that either. The opinion of the decision by the Court of Appeals is now final. You are to be congratulated. The court was very effusive about how the Board conducted themselves even though the other side complained about everything you did. The Court point by point went through each item and said you did a good job. Congratulations.

Ms. Haynes asked about their involvement with the U.S. Army Corps of Engineers. Ms. Minter stated that U.S. Army Corps of Engineers did follow through with the case and did deny their request originally on construction activity that was down there. After the revised conditional use permit was approved, the applicant went back to the U.S. Army Corps of Engineers. On August 12th, 2016, the U.S. Army Corps of Engineers did forward us a copy of their revised conditional use permit from the U.S. Army Corps of Engineers. It directly quotes the conditions that this Board put on their conditional use permit in the U.S. Army Corps of Engineers' permit. All the language that you worked diligently on to put into your decision is actually is their permit themselves. The U.S. Army Corps of Engineers then took that dockage facility, which they considered to be very limited on its ability, and basically defined the size of the barge that would meet those needs. The barge limitation for a dockage facility is one (1) landing barge forty-five (45) feet wide by one hundred-fifty (150) feet length. This is not a very big barge if you think in terms of barges. The landing barge attached to it would be two (2) thirty-six (36) inch by thirty-six (36) inch by forty (40) feet steel spuds. The landing barge can also be secured by a ten (10) feet by ten (10) feet dead man with a two (2) inch diameter rope. This may sound very specific on their allowances, but for U.S. Army Corps of Engineers to take your recommendations and then right sized their facility that is very limited to what your recommendations were – I just have to repeat what Mr. Duncan said and really commend you for how you followed through on this case. The property owners seem to be content with what they have down there.

Mr. Fessler asked where this was located. Ms. Minter stated it was on the end of Anderson Lane in Melbourne. Mr. Fessler asked if this was Harrison's Harbor. Ms. Minter agreed that was the same location.

Ms. Minter advised the Board that they did not have any cases for September at this point. Staff will keep you advised if we will be meeting in September or not. Ms. Minter also advised the Board that the training that was originally scheduled to follow this meeting has been cancelled. Staff needs additional time to prepare for the training.

Mr. Bachmann asked if there were any other items for discussion tonight. There being none, Mr. Bachmann called for a motion to adjourn. Ms. Haynes made a motion to adjourn. Mr. Bachmann called for a second. Mr. Fessler seconded the motion. Mr. Bachmann called for an oral vote. An oral vote found everyone in favor, none opposed. Motion passed. Meeting adjourned at 7:38 PM.

Prepared by:

Cynthia Minter
Director

Approved:

Scott Bachmann
Chair