

CAMPBELL COUNTY & MUNICIPAL BOARD OF ADJUSTMENT

AUGUST 18, 2014

7:00 PM

AGENDA

1. Meeting called to order.
2. Roll call and determination of quorum.
3. Approval of the November 18, 2014 minutes.

Public Hearing

4. **Number:** BA-03-15
Applicant: C & B Marina LLC
Location: 25 and 70 Harrison Court, City of Melbourne.
Request: Requesting a conditional use permit to dock boats for crew changes.
5. **Number:** BA-04-15
Applicant: Scott & Stephanie Horton
Location: 11955 Pond Creek Road, Unincorporated Campbell County.
Request: To request a front and side yard variance for placement of a mobile home.

Close Public Hearing

6. Director's Report
 - A. Election of Officers
 - B. Update on Status of Comprehensive Plan
 - C. Staffing Changes
 - D. Status of HB 55 Training Requirements
 - E. Comments, Questions and Concerns
7. 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.

**CAMPBELL COUNTY & MUNICIPAL BOARD OF ADJUSTMENT
MINUTES OF THE AUGUST 18, 2015 MEETING**

MEMBERS PRESENT:

Mr. Roger Mason
Mr. Justin Verst
Mr. Joseph Williams
Ms. Sharon Haynes, TPO
Mr. Scott Bachmann, Vice Chair
Mr. Dave Schaber, Chair

MEMBERS ABSENT:

Mr. Michael Williams

STAFF PRESENT:

Ms. Cynthia Minter, Director
Mr. Michael Duncan, Legal Counsel
Ms. Stephanie Turner, Recording Secretary

STAFF PRESENT:

Mr. Ryan Hutchinson, Planner

Mr. Schaber called the meeting to order at 7:00 PM and asked for a roll call. Following roll call, a quorum was found to be present. Mr. Schaber asked if everyone had read the November 18, 2014 meeting minutes and if there were any questions or corrections. There being none, Mr. Schaber called for a motion. Mr. Mason made a motion to approve the minutes as submitted. Ms. Haynes seconded the motion. Mr. Schaber called for a roll call vote. A roll call vote found Mr. Mason, Mr. Verst, Mr. J. Williams, Ms. Haynes, and Mr. Bachmann in favor. Mr. Schaber abstained. Motion passed.

Mr. Schaber introduced case #BA-03-15 by applicant C & B Marine LLC with a request for a conditional use permit to dock boats for crew changes and asked for the staff report. Ms. Minter presented the case report as follows:

CASE NUMBER: BA-03-15
APPLICANT: C & B Marine LLC
LOCATION: 25 and 70 Harrison Court, City of Melbourne.
REQUEST: Requesting a conditional use permit to dock boats for crew changes

Considerations:

1. The site consists of three (3) parcels [PIDN #'s: 999-99-27-707.00, 999-99-27-708.00, and 999-99-27-404.00] encompassing 10.583 acres as defined by the applicant. The survey plat indicates that the parcels encompass 9.4116 acres. The parcels are located within the City of Melbourne in the River Recreation/Conservation (R/CO) Zone. The parcels border the Ohio River and are located approximately 2,750 feet from the intersection of Mary Ingles Highway and Anderson Lane. The land uses surrounding the property to the east and west consist of both residential and vacant parcels. The land use to the south consists of conservation and vacant parcels. The Future Land Use Map of the 2008 Campbell County Comprehensive Plan identifies the site and surrounding areas for Ohio River Corridor with Passive Recreation Facilities.
2. Article X, Section 10.0 River Recreation/Conservation (R/CO) Zone of the City of Melbourne Zoning Ordinance list the permitted uses as agricultural uses; publicly owned and/or operated parks and/or recreation areas; and private recreational uses other than those publicly owned and/or operated such as golf courses, country clubs, and camping areas. The R/CO Zone lists conditional uses as follows:
 1. *Riding academies and stables;*

2. The following uses are permitted in connection with streams, rivers, lakes, or other bodies of water, providing that the development of all permitted facilities adjacent to navigable waters shall be approved by the Corps of Engineers, Department of the Army, and the Division of Water, Kentucky Department for Natural Resources and Environmental Protection, and such statements of approval or denial shall be submitted to the Board of Adjustment at the time of submittal for a conditional zoning certificate:

a. Boat harbors and marines;

The following uses shall be permitted as accessory uses in connection with any boat harbor or marina and primarily intended to serve only persons using the boat harbor or marina:

- (1) Boat fueling, service and repairs.
- (2) Sale of boat supplies.
- (3) Grocery store.
- (4) Restaurant.
- (5) Club house and lockers, if afloat.
- (6) Single-Family dwelling units including cabins.

b. Public boat landing and launching facilities.

c. **Dockage facilities.**

d. Off-street parking facilities and temporary parking of boat trailers including spaces large enough to accommodate automobiles pulling boats.

3. Article X, Section 10.0 River Recreation/Conservation (R/CO) Zone of the City of Melbourne Zoning Ordinance also regulates setbacks for the R/CO Zone as follows:

<u>Description:</u>	<u>R/CO Zone Regulations Require:</u>
Minimum Lot Area:	One (1) acre
Minimum Lot Width:	One hundred fifty (150) feet
Minimum Front Yard Depth:	Fifty (50) feet
Minimum Side Yard Depth:	Twenty-five (25) feet
Minimum Rear Yard Depth:	Fifty (50) feet
Maximum Building Height:	Twenty-five (25) feet

4. Article X, Section 10.0 River Recreation/Conservation (R/CO) Zone of the City of Melbourne Zoning Ordinance requires compliance with Other Development Controls as follows:

- 1. **All "Uses Permitted and Conditional Uses" permitted in this zone shall require a certificate of approval from the County Engineer, certifying his approval of the type of and manner of construction to be built (insuring that such construction shall not cause flood hazards, soil erosion, adverse changes in the natural drainage courses or unnecessary destruction of natural features)'. It shall be submitted to the Planning and Zoning Commission along with the description and/or site plan or the proposed use, at time of request.**
- 2. Temporary camping units, tents, and recreational vehicles--as defined in KRS 219.320 (8) shall be permitted; however, no such units shall be used for year round habitation and not more than two (2) units may occupy any lot at one time.
- 3. **Off-street parking shall be provided for any use within this zone, according to the provisions of Section XI of this ordinance.**
- 4. **No outdoor storage of any material (usable or waste) shall be permitted in this zone, except within enclosed containers.**

5. *No motor vehicle which is inoperable, mobile home, or trailer which is usable or unusable, shall be stored or used for storage of any items therein on any lot or parcel in this zone.*
 6. **No use producing objectionable odors, noise, or dust, shall be permitted within five hundred (500) feet from the boundary of any residential zone.**
5. Article IX, Section 9.14 Conditional Uses of the City of Melbourne Zoning Ordinance continues to specify the following points of interest to the Board:
- A. *The Board of Adjustments may approve, modify, or deny any application for a conditional use permit. If it approves such permit, it may attach necessary conditions such as time limitations; requirements that one or more things be done before the request can be initiated, or conditions of a continuing nature.....The Board shall have power to revoke conditional use permits, or variance for noncompliance with the condition thereof. Furthermore, the Board shall have a right of action to compel offending structures or uses removed at the cost of the violator and may have judgment in persona for such cost.*
 - B. *Granting of a conditional use permit does not exempt the applicant from complying with all of the requirements of this ordinance, the building code, housing code, and other regulations of the city.*
 - C. *In any case where a conditional use permit has not been exercised within the time limit set by the board or within twelve (12) consecutive calendar months from date of issuance, such conditional use permit shall not revert to its original designation unless there has been a public hearing.*
 - D. *If the landowner is not complying with all of the conditions listed on the conditional use permit, the Zoning Administrator shall report the fact in writing to the Chairman of the Board of Adjustments. The report shall state specifically the manner in which the landowner is not complying with the conditions on the conditional use permit, and a copy of the report shall be furnished to the landowner at the same time it is furnished to the chairman of the Board of Adjustments. The Board shall hold a hearing on the report within thirty (30) days, and notice of the time and place of the hearing shall be furnished to the landowner at least one week prior to the hearing. If the Board of Adjustments finds that the facts alleged in the report of the Zoning Administrator are true and that the landowner has taken no steps to comply within the time between the date of the report and the date of the hearing, the Board of Adjustments may authorize the Zoning Administrator, to revoke the conditional use permit and take the necessary legal action to cause the termination of the activity on the land which the conditional use permit authorizes.*
6. Campbell County Ordinance O-17-13, A Flood Damage Prevention Ordinance, contains regulations under its' Article 5, Provisions For Flood Hazard Reduction for non-residential construction. This site is in the Floodway. Items of interest to this Board would be:
- A. *Floodways: Since the floodway is extremely hazardous area due to the velocity of flood waters which carry debris, potential projectiles, and has erosion potential, the following provisions shall apply:*
 - 1) *Prohibits encroachments, including fill, new construction, substantial improvements, and other developments unless certification (with supporting technical data) by a registered professional engineer is provided demonstrating that encroachments shall not result in any increase in the base flood elevation levels during occurrence of flood discharge.*

2) *If Article 5, Section B (5) [1) above] is satisfied, all new construction and substantial improvements and other proposed new development shall comply with all applicable flood hazard reduction provisions of Article 5.*

7. A review of public records indicates the following:

- A. The Property Valuation Administrator (PVA) records indicate that ownership of this site transferred to Harrison Silvergrove LLC on August 10, 2012.
- B. A single-family resident existing on one of the parcels. A boat ramp/dock and several out buildings are located on the remaining two parcels.
- C. Historically, photos indicate that this site has been used as a variety of river related businesses for several decades.
- D. A review of the planning and zoning records identified the following records for the property:
 - 1) In 1988, an application was accepted for a conditional use for continuation of a business. The application (BA-10-88) was deemed incomplete and not processed.
 - 2) On August 17, 1993, a zoning permit (#3116, case #112-93) was approved for the site. On May 17, 1994 a building permit was issued for a repair of a marina with a restaurant at this location.
 - 3) On November 12, 2012, Carlisle & Bray Enterprises completed an application for a conditional use permit to bring the site into compliance with zoning.
 - 4) On March 19, 2013, a Board of Adjustments (BOA) case was heard requesting a conditional use to operate a dockage facility within a River Recreation / Conservation zone. The request (BA-05-12) was denied by the BOA. The basis for the denial is as follows: "The activity occurring on the site and requested for approval as a conditional use is not a "dockage facility" per the City of Melbourne Zoning Ordinance River Recreation/Conservation (R/CO) Zone. It is our interpretation that the dockage facility listed in the R/CO Zone is one for recreational use, not heavy industrial use. The applicant's proposed use is a heavy industrial type of dockage facility which is not consistent with the intent of this R/CO Zone. Further, the activity does not meet any of the activities listed as permitted, accessory or conditional uses within the R/CO Zone."
 - i. An appeal was filed by the applicant. The status of the appeal is undetermined at the time of this report.
- E. C&B Marina, LLC had also made a request to the US Army Corps of Engineers (ACOE), Louisville District for an after-the-fact authorization to operate a mooring facility at the site known as the former Harrison Boat Dock. On August 19, 2014, the ACOE denied the request without prejudice with the right to reinstate processing if subsequent approval is received from the local planning and zoning board. The request also included instructions to remove the unauthorized facility.
- F. The property owner has removed the non-compliant equipment which they had installed as well as additional debris and storage that was left by the previous occupants. The intent was to restore the property to be in compliance with a River / Conservation use.
- G. C&B Marina continues to provide tugboat service to several businesses in the vicinity and desires to be able to change work crews at the site.

- H. Representatives of C&B Marina have met multiple times with Melbourne City Council to address issues with the facility. These meetings were open to the public and frequently attended by concerned citizens.
- I. Representatives of C&B Marina have also met neighborhood residents to address issues with the facility.
- J. Mr. Dan Burns, 700 Burns Avenue, has provide the following written statement to Planning and Zoning.

On behalf of the entire neighborhood, the following is a list of our issues and concerns.

- 1. We would like to see the gray barge and walkways removed. It is an eye sore and would make the property more aesthetically pleasing and less commercial looking. The lights shining on adjacent property would also be eliminated.*
- 2. A low profile flat similar to the one that is currently connected to the big barge would be acceptable to park a small tow. When the towboat is parked there, it would be plugged in and not running. The tow could be used for crew changes.*
- 3. When the big barge is gone and a small flat is in place, we would be agreeable and supportive of your application for a conditional use permit. The verbiage in the application would be, to park a small towboat on the flat for crew changes. No equipment would be brought in or transported. No fueling or any other activities would take place at the site.*

8. The site plan submitted by the applicant reflects the following:

A. The submitted drawings indicate the following:

- 1) The site plan shows the property consists of three parcels.
- 2) The site plan shows the existing docking facility located on two separate parcels.
- 3) The site plan identifies a future training center to be located at the site of an existing single-family house.
- 4) The site plan indicates the location for a dock area with a USGS approved fueling system.
- 5) The site plan shows a portion of Harrison Court being a public road and the other portion is private drive within a 20 foot access easement.
- 6) The site plan shows several storage trailers and salt bays on the west side of Harrison Court.
- 7) There is also an existing shop and storage building on the west side of the road.
- 8) The site plan has a notation that the property is located within the 100-year floodplain.

B. Aerial photography included in the site plan is outdated. Many of these structures depicted have been removed from the site as part of the restorations and cleanup.

C. A lighting plan was not included in the submittal.

D. The site plan does not depict parking area.

E. The site plan does not show signage.

9. Article IX, Section 9.14 Conditional Uses of the City of Melbourne Zoning Ordinance governs the rights of the Board of Adjustment when granting a Conditional Use Permit; the determination that must be made; as well as actions to be taken if the applicant fails to comply with any conditions to an approval of the use. To grant a Conditional Use Permit, the Board must make the following determination:

- A. That the proposed use at the particular location is necessary or desirable to provide a service or facility which will contribute to the general well-being of the neighborhood or the community;

The applicant states: "The proposed use of the location is a boat dockage and transfer of goods facility. This facility helps assist in the transportation of goods for other businesses located in the area including Continental's wallboard facility and AMD's grain loading facility."

- B. That such use will not be detrimental to the health, safety, or general welfare of persons residing or working in the vicinity, or injurious to property or improvements in the vicinity;

The applicant states: "The activities at this facility will not affect the health, safety or general welfare of people in the vicinity of the property or the community as a whole. Carlisle & Bray enterprises is committed to providing the safest working conditions possible while making its facilities something that it's employees as well as the communities it works in can be proud of. We have spent time and money to make our property in Melbourne look like a first rate operation. We also have a working relationship with the Coast Guard to ensure that we meet the highest standards of the industries we serve."

- C. That such use will comply with any regulations and conditions in this Ordinance for such use.

The applicant states: "We have been and continue to work with Planning & Zoning, the Coast Guard, the Army Core of Engineers, the EPA, local and state governments to make sure our facilities adhere to all rules and regulations."

10. Per Section 18.2., Procedures For All Appeals To Board, a legal notice of this public hearing was given in accordance with the City of Melbourne Zoning Ordinance. **A legal notice appeared in the August 6, 2015 edition of the Campbell County Recorder advertising applicant's request and the hearing to be held on August 18, 2015.**

Summary of Applicants Request:

The applicant is requesting a conditional use for a Dockage Facility. It is the intent of the applicant to use the facility to park a small towboat at the flat for crew changes within the River Recreation/Conservation Zone.

The applicant specifically adds the following statements to his request:

1. No equipment would be brought in or transported.
2. No fueling or any other activities would take place at the site.

Staff Recommendation – Melbourne Zoning Ordinance:

To approve the conditional use permit for the operation of a docking facility subject to the following conditions:

1. That the Dockage Facility be used only to facilitate a small towboat at the flat for crew changes within the River Recreation/Conservation zone.
2. That the Dockage Facility shall not be used to house or transport equipment not directly related to the operation of a small tugboat or change of crew.
3. That no fueling or any other activities would take place at the site unless approved under a future conditional use permit.
4. That the conversion of use of any structure, including but not limited to the single-family resident to a training facility, be subject to an additional conditional use permit.

5. That the site plan be modified and submitted to staff for review and approval reflecting the following items:
 - a) Only currently existing structures shall be depicted
 - b) Existing signage and exterior lighting shall be depicted
 - c) Notation of deed book and page for the three parcels
 - d) Existing parking
 - e) Notation that the site is within the floodway and that all outdoor storage items must be securely anchored
6. If additional lighting is required, a lighting plan must be submitted for review and approval by staff.
7. That the three parcels comprising the site combined into one tract with one address that has been reviewed and approved by staff.
8. That the owner provide an approval from the Division of Water and Army Corps of Engineers confirming that they are permitted to operate this type of facility in this location.
9. That a building permit be submitted and approved for any modifications to the dockage facility.

In addition, due to its location with the floodway, staff is recommending that the applicant be granted a waiver from the requirement that the parking spaces be paved with asphalt or concrete. Instead, the applicant shall be permitted to use compacted gravel for the parking spaces.

Bases for Staff Recommendation:

1. In compliance with Melbourne Zoning Ordinance SECTION 18.7 CONDITIONAL USE PERMITS of the Melbourne City Zoning Ordinance, a written application for a conditional use permit and a site plan subject to the applicable requirements of Section 9.19, was submitted to the Board for review and approval;
2. Notice of public hearing was given in accordance with Section 18.2 of the Melbourne Zoning Ordinance;
3. In accordance with KRS. 100.237, the Board of Adjustment shall have the power to hear and decide applications for conditional use permits to allow the proper integration into the community of uses which are specifically named herein which may be suitable only in specific locations in the zone.
4. The evidence presented by the applicant and staff is such as to establish beyond any reasonable doubt:
 - a. That the proposed use at the particular location is necessary or desirable to provide a service or facility which will contribute to the general well-being of the neighborhood or the community;
 - b. That such use will not be detrimental to the health, safety, or general welfare of persons residing or working in the vicinity, or injurious to property or improvements in the vicinity.
 - c. That such use will comply with any regulations and conditions in the Melbourne City Zoning Ordinance for such use.
5. Granting of a conditional use permit does not exempt the applicant from complying with all of the requirements of this ordinance, the building code, housing code, and other regulations of the City.

Mr. Schaber asked if there were any additional questions or comments for staff. Ms. Haynes asked for clarification of the timeframe for when applicant discussed their requests with nearby residents and the City of Melbourne. Ms. Minter stated she knew they had been have open and publicized meetings with the residents of Melbourne for the past few months, but had no exact dates of those meetings. Ms. Minter advised Ms. Haynes to ask that question of the applicant. Ms. Haynes asked Ms. Minter for an update on the status of the project with the US Army Corps of Engineers (ACOE). Ms. Minter commented

that the applicant made a request for a conditional use permit in 2012 which was denied by this Board. Based upon that ruling, and the subsequent court cases for the appeal, the ACOE issued a denial of a permit to operate at this location to the applicant on August 19, 2014. The ACOE denied the request without prejudice with the right to reinstate processing if subsequent approval is received from the local planning and zoning board which is why the applicant is before the Board again. Once this Board renders a decision, the applicant will re-apply with the ACOE for a permit.

Mr. Verst asked Ms. Minter about her interpretation of the activity proposed in regards to the River Recreation/Conservation (R/CO) Zone. Their previous request contained obvious elements of industrial activity which this Board did not feel was compatible with the R/CO Zone. Does staff feel this application demonstrates an activity that would be in harmony with the R/CO Zone? Ms. Minter stated that staff has reviewed this application carefully and feel this activity is minimally invasive and would be compatible for the current R/CO Zone.

Mr. Schaber asked if there were any additional questions or comments for staff. There being none, Mr. Schaber thanked staff for the report and called the applicant forward. Mr. Robert Carlisle, President of C & B Enterprises approached the podium. Mr. Schaber asked Mr. Carlisle if he had anything to add to the staff report. Mr. Carlisle that that he has been meeting with city officials and residents since February 2015 to discuss a resolution to the issues on this site. C & B Marine is asking for a conditional use permit for crew changes only at this location.

Mr. Carlisle stated there would not be any overhead lights, but they do need some LED lights so that crews can get safely back and forth from the boat. The boat will be plugged in while it is docked to reduce some of the noise complaints they heard. There is storage in the metal building of just general items like ropes for tying off boats. There is a fence around the storage building which allows enough land for parking for the crews so there is no separate parking lot.

The plans for the home to be turned into a training center is just a thought they have had. There are no definite plans to do so at this time. The home is used by Mrs. Harrison and their deal included that she would have use of that property until her death without any type of tenant agreement. Once this conditional use permit is approved, Mr. Carlisle stated they would move in a new flat barge and are willing to take any interested residents or Board members to look at a similar product before they move it in.

Mr. Schaber asked if there were any questions for the applicant. Ms. Haynes asked Mr. Carlisle to confirm there would be no industrial uses at this property. Mr. Carlisle replied there would be no industrial uses; not even refueling. C & B Enterprises has spent over \$1 million to improve the property and want to be good neighbors to the residents of this area. Mr. Carlisle apologized for disturbing the public when they first began services at this location. Mr. Schaber asked Mr. Carlisle if he received a copy of the staff report and had an opportunity to read through the conditions staff has recommended. Mr. Carlisle stated he had received the report. Mr. Schaber asked if Mr. Carlisle had any issues with the conditions recommended. Mr. Carlisle replied that he had no issues with the conditions stated in the staff report.

Mr. Duncan asked Mr. Carlisle to clarify his statements on page 4 of the staff report. Mr. Carlisle indicated the use was to transport crews for crew changes and "transfer of goods". Mr. Duncan asked Mr. Carlisle to explain what "transfer of goods" included since he was testifying tonight that the crew changes were all that use was for. Mr. Carlisle explained he did not know how to express that the crews would be bringing their lunches, phones, radios or other personal property with them when they came on board. There is intention to transport goods for sale. Mr. Duncan thanked Mr. Carlisle for his clarification.

Ms. Haynes asked Mr. Carlisle if the agreement the business had with Continental and ADM were new temporary agreements or a continuous relationship. Ms. Haynes asked for an explanation of how he assist those industries. Mr. Carlisle explained that, from the beginning of Continental (when it was La Farge) and ADM (when it was Countrymark), they have had a business relationship with them. Ms. Haynes asked Mr. Carlisle to explain what that meant exactly. Mr. Carlisle stated that they staged a barge underneath their grain conveyors so that when a truck dumped the grain it goes into a chute directly onto the barge. The barge gets put into a "parking lot" of sorts. Ms. Haynes asked if Mr. Carlisle was the "parking lot" business of things. Mr. Carlisle agreed that he was; however, that portion of the

business is located within the city of Silver Grove not Melbourne. Ms. Haynes asked what services Mr. Carlisle and his company have provided to these neighboring business – just the “parking lot”. Ms. Minter stepped in to help identify the exact nature of their business. Ms. Minter explained that a larger barge comes into the area. It needs to be broken down into smaller segments that can be pulled up to each of the facilities on the river to do the loading and unloading that they need. These tug boats work to break down the larger barges to get them into the correct size and shape that can then pull up to the different facilities. There are about five (5) different businesses that they serve in this area. Once loaded (or unloaded), they then return the barges back to the size needed to continue their transport up and down the river. Mr. Carlisle agreed that was correct.

Mr. Mason asked what size of boat we were talking about here. Mr. Carlisle replied that the boat will be sixty (60) feet long and twenty-five (25) feet wide. It sounds like a large boat but when you consider boats in this classification and use it really isn't all that big. Other boats in this use may be one hundred twenty (120) feet in length and fifty (50) feet in width. It has two (2) to three (3) people on it. Mr. Mason asked Mr. Carlisle to confirm they are only looking to dock one (1) boat. Mr. Carlisle replied that was correct. Mr. Carlisle further explained that they may have two (2) boats in the area, but only one (1) would be docked at any specific time. One boat would pull off as the second boat was coming in to dock. Mr. Verst asked Mr. Carlisle to describe what the typical work flat boat would look like. Mr. Carlisle stated that they look exactly like they sound. They are typically sitting about four (4) to five (5) feet above the water level. It is a barge that would have a spud in it so that it could not move and it would just slide up and down on the bar so that it could move up and down as the water rises and lowers. It would be a large flat rectangle and it's called a work flat. The ramp would sit on top of it. The old one we had was like fourteen (14) feet out of the water. It is exactly what you think it is. It is a rectangular piece of flat metal that floats on the water with poles sticking out of it. Mr. Schaber commented that it would have to be built to Coast Guard standards. Mr. Carlisle agreed that they are and the one they are looking at is a used barge and it has been on the river for some time.

Mr. Schaber asked if there were any other questions of the applicant. Ms. Minter wanted to ask the applicant in terms of the having one boat in at a time. She knows that may not always be the case for example when we had flooding going on this past spring they were not so much Mr. Carlisle's boat, but other boats that got stuck on the river that occasionally does happen. Ms. Minter recognizes that this does happen and that there may be instances where both boats may have to pull up to the dockage facility when there are unusual conditions going on. Ms. Minter asked Mr. Carlisle to confirm this possibility. Mr. Carlisle replied that it is feasible that if there were an emergency, but it would not be planned nor would it be anything other than an emergency. The river is a changing environment that can cause issues for some reason. In the 1997 flood, there were reasons boats came in to help people out or whatever. The intent would be that there would only be one (1) boat there, but he is more than willing to help others out so if there were an emergency there could be additional boats there. Mr. Carlisle added that on the river there can always be possibility when the large tow boats they do things that are out of Mr. Carlisle's control. There would not be a dock there for them to come against, but if they can lay up on a bank like if there is heavy fog captains of tug boats there are federal regulations that state that if the captain or pilot are responsible for the safety of the crew and vessel. If they come into an unsafe condition, they have the right to land in an area wherever they choose. It would not be anything that Mr. Carlisle did. They may have lights, etc. and there is nothing that he can do about. Mr. Schaber commented that is maritime law and this Board has no conflict with those regulations.

Mr. Schaber asked if there were any questions or comments for the applicant. There being none, Mr. Schaber asked if there were any audience members to speak in favor of this application. There being none, Mr. Schaber asked if anyone else wanted to speak. Mr. Dan Burns, resident of 700 Burns Avenue, stepped up to the podium. Mr. Burns stated that he did not get warm fuzzy feelings about boats. He doesn't want a boat just sitting there running and disturbing the peaceful nature of the area. Mr. Burns stated that the residents in this area are not concerned with the activities that occur on the river once the boat leaves this dockage facility. We are not trying to interfere with their commercial activities. We just don't want to have boats sitting around making noise, with bright lights at night, with noise from their activities.

Mr. Burns asked staff if the residents had to be concerned with this house being a training center. Ms. Minter replied that staff's recommendation is that, at such time as they are interested in converting the home to a training center, a new conditional use permit would need to be applied for and considered by the Board. There is no action this evening regarding this use. Mr. Duncan assured Mr. Burns that any work on this house or change in use of this home not part of this application would be a violation and in direct conflict with this conditional use permit. Ms. Minter stated that condition #4 covers this issue specifically: *4. That the conversion of use of any structure, including but not limited to the single-family resident to a training facility, be subject to an additional conditional use permit.*

Mr. Burns stated that he assumes that the flat would be brought in if the Board approves this request. They will bring in the flat and have reasonable lighting that is not shining onto neighboring properties. Mr. Burns stated that as long as they do this the residents shouldn't have any other issues. Mr. Burns asked if any of the other neighbors wanted to address the Board. Mr. Steve Burns had signed in to speak, but stated that his concerns have been addressed and he has nothing to add.

Mr. Burns asked Mr. Ronnie Walton, Mayor of Melbourne, if he was satisfied with this request. Mr. Walton stated that the city's concern was with the noise and lighting that was occurring on the site. Mr. Walton stated that the applicant has been talking to the residents and correcting issues that were expressed. Mr. Walton commented that there had been speeding issues in that vicinity and the city spoke with police and that issue appears to be under control. Mr. Walton stated that this sounds like a win – win situation for everyone involved. He is pretty certain the City would approve of any decision by the Board. Mr. Schaber asked if anyone had a question for Mr. Walton. There being none, Mr. Schaber asked if anyone else wanted to speak at all. Their being none, Mr. Schaber asked Ms. Minter if she wanted to make a closing statement.

Ms. Minter reviewed the summary of the request before the board, staff's recommendation to approve the request, the conditions associated with that recommendation, and the bases for the recommendation. Ms. Minter emphasized that the granting of this conditional use permit does not exempt the applicant from complying with all of the requirements of this ordinance, the building code, housing code, and other regulations of the City. If the Board were to approve the request, the finding of facts would be the information contained in the staff report and the testimony heard tonight.

Ms. Minter also noted that she added an item to the recommendation. Due to its location within the floodway, staff is recommending that the applicant be granted a waiver from the requirement that the parking spaces be paved with asphalt or concrete. Instead, the applicant shall be permitted to use compacted gravel for the parking spaces. Mr. Mason asked Ms. Minter if the Board had ever approved a waiver of the pavement in the past. Ms. Minter replied that the Board has and, since this area was in the floodway, it's just easier to manage. In the floodway, we get severe erosion around any kind of concrete/asphalt pads. This is easier to repair. This site goes under water fairly regularly. Mr. Verst asked Mr. Duncan if this Board had the authority to grant that type of waiver or would it need to go before the Planning & Zoning Commission. Mr. Duncan stated that, since this is part of their application and part of the site plan, as long as you make it part of the motion, it can be approved by this Board.

Mr. Schaber asked if there were any other questions or comments. Mr. Verst stated he wanted to make a motion on case #BA-03-15 by applicant C & B Marine LLC with a request for a conditional use permit to dock boats for crew changes to approve their request with the following conditions as listed in the staff report including the additional condition for a waiver as recommended by staff:

1. That the Dockage Facility be used only to facilitate a small towboat at the flat for crew changes within the River Recreation/Conservation zone.
2. That the Dockage Facility shall not be used to house or transport equipment not directly related to the operation of a small tugboat or change of crew.
3. That no fueling or any other activities would take place at the site unless approved under a future conditional use permit.

4. That the conversion of use of any structure, including but not limited to the single-family resident to a training facility, be subject to an additional conditional use permit.
5. That the site plan be modified and submitted to staff for review and approval reflecting the following items:
 - a) Only currently existing structures shall be depicted
 - b) Existing signage and exterior lighting shall be depicted
 - c) Notation of deed book and page for the three parcels
 - d) Existing parking
 - e) Notation that the site is within the floodway and that all outdoor storage items must be securely anchored
6. If additional lighting is required, a lighting plan must be submitted for review and approval by staff.
7. That the three parcels comprising the site combined into one tract with one address that has been reviewed and approved by staff.
8. That the owner provide an approval from the Division of Water and Army Corps of Engineers confirming that they are permitted to operate this type of facility in this location.
9. That a building permit be submitted and approved for any modifications to the dockage facility.

In addition, due to its location with the floodway, the applicant is granted a waiver from the requirement that the parking spaces be paved with asphalt or concrete. Instead, the applicant shall be permitted to use compacted gravel for the parking spaces.

The bases of his motion is:

1. In compliance with Melbourne Zoning Ordinance SECTION 18.7 CONDITIONAL USE PERMITS of the Melbourne City Zoning Ordinance, a written application for a conditional use permit and a site plan subject to the applicable requirements of Section 9.19, was submitted to the Board for review and approval;
2. Notice of public hearing was given in accordance with Section 18.2 of the Melbourne Zoning Ordinance;
3. In accordance with KRS. 100.237, the Board of Adjustment shall have the power to hear and decide applications for conditional use permits to allow the proper integration into the community of uses which are specifically named herein which may be suitable only in specific locations in the zone.
4. The evidence presented by the applicant and staff is such as to establish beyond any reasonable doubt:
 - a. That the proposed use at the particular location is necessary or desirable to provide a service or facility which will contribute to the general well-being of the neighborhood or the community;
 - b. That such use will not be detrimental to the health, safety, or general welfare of persons residing or working in the vicinity, or injurious to property or improvements in the vicinity.
 - c. That such use will comply with any regulations and conditions in the Melbourne City Zoning Ordinance for such use.
5. Granting of a conditional use permit does not exempt the applicant from complying with all of the requirements of this ordinance, the building code, housing code, and other regulations of the City.

The finding of fact for his motion is the information contained within the staff report, the information provided by the applicant and the testimony of the audience. Mr. Schaber called for a second to the motion. Mr. Bachmann seconded the motion. Mr. Schaber asked if there were any discussion on the motion. Mr. Bachmann asked if the condition regarding consolidating the lots into one (1) would need to change since staff has said there is really only two (2) lots. Ms. Minter replied it would. Mr. Bachmann identified that would be condition #5. Ms. Minter agreed. Mr. Verst amended his motion to modify condition #5 to state "all parcels" instead of "three (3) parcels". Mr. Bachmann amended his second to accept the modification. Mr. Schaber asked if there were any other questions or comments on the motion. There being none, Mr. Schaber called for a roll call vote. A roll call vote found Mr. Mason, Mr. Verst, Mr. J. Williams, Ms. Haynes, and Mr. Bachmann in favor. Mr. Schaber abstained. Motion passed.

The Board took a five (5) minute break to allow members of the public to exit the meeting room.

Mr. Schaber introduced case #BA-04-15 by applicant Scott & Stephanie Horton with a request for a front yard and side yard variance for the placement of their mobile home and asked for the staff report. Ms. Minter presented the case report as follows:

CASE NUMBER: BA-04-15
APPLICANT: Scott & Stephanie Horton
LOCATION: 11955 Pond Creek Road, Unincorporated Campbell County.
REQUEST: To request a front and side yard variance for placement of a mobile home.

Considerations:

1. The site in question, containing approximately 1.515 acres, is located in the Unincorporated Campbell County on the east side of Pond Creek Road approximately 0.75 miles north of Kenton Station Road. The Recommended Land Use Map of the 2008 Campbell County Comprehensive Plan identifies the site in question and surrounding areas for agricultural and rural. Currently, the surrounding land is either vacant or residential.
2. Article X, Section 10.1 A-1 Agriculture Zone of the Campbell County Zoning Ordinance list mobile homes as a permitted use subject to the requirements of Article IX, Section 9.28 of our zoning ordinance and KRS 100.203 (4). This section also regulates setbacks for the A-1 Zone as follows:

<u>Description:</u>	<u>A-1 Zone Regulations Require:</u>	<u>Mobile Home Regulations Require:</u>
Minimum Lot Area:	One (1) acre	One (1) acre
Minimum Lot Width:	One hundred (100) feet	One hundred-fifty (150) feet
Minimum Front Yard Depth:	Fifty (50) feet	One hundred (100) feet
Minimum Side Yard Depth:		
	Total: Twenty-five (25) feet	One hundred (100) feet
	One Side: Ten (10) feet	Fifty (50) feet
Minimum Rear Yard Depth:	Thirty-five (35) feet	Thirty-five (35) feet
Maximum Building Height:	Thirty-five (35) feet	Thirty-five (35) feet

3. Article IX, Section 9.28 Individual Mobile Home Sites requires:
 - a. No other dwelling or business conventional or mobile shall exist within a radius of one hundred twenty-five (125) feet of the mobile home. **The nearest home is approximately 338 feet to the south of the mobile home location.**
 - b. Site shall be a minimum of one (1) acre with a minimum road frontage of one hundred fifty (150) feet. **The lot is approximately one and one-half (1.515) acres and has two hundred (200) feet of road frontage.**
 - c. Mobile home shall be owned by the person or persons owning and occupying the mobile home and a legally recorded lot and/or plat shall be recorded in the Campbell County Clerk's

office. ***The property is owned by Scott and Stephanie Horton as of a Deed recorded in Deed Book 314, Pages 856-858 recorded on June 23, 2015. Mr. & Mrs. Horton and their immediate family are the residents of the mobile home.***

- d. The mobile home shall be set back at least one hundred (100) feet from the front property line and fifty (50) feet from the side property lines. ***The mobile home currently sits approximately sixty-five (65) feet from the front right of way line and approximately four (4) feet from the side property line. [The front right of way line is twenty-five (25) feet from the front property line.]***
 - e. The mobile home shall be the only principle building on the lot except as provided for in KRS 100.203 (4). ***The mobile home is the only principle building on the lot. There is an accessory structure (garage) located on the property that sits approximately one hundred eleven (111) feet from the front right of way line and approximately sixteen (16) feet from the side property line. There are no other structures reflected on the site plan submitted by the applicant. See Item #4 of this report for specific information regarding KRS 100.203 (4).***
 - f. All mobile homes placed in the A-1 Zone shall also conform to all portions of Article IX, Section 9.27 of this ordinance. ***See item #5 of this staff report.***
4. Per KRS 100.203, cities and counties may enact zoning regulations and how these regulations pertain to the use of land used for agricultural purposes. Specifically, KRS 100.203 (4) states that text provisions pertaining to land used for agricultural purposes shall have no regulations except that:
- a. Setback line may be required for the protection of existing and proposed streets and highway; ***Setbacks are defined in Article X, Section 10.1 as reflected above.***
 - b. All buildings or structures in a designated floodway or flood plain or which tend to increase flood heights or obstruct the flow of flood waters may be fully regulated; ***The site in question is located above the 100-Year Flood Hazard Zone.***
 - c. Mobile home and other dwellings may be permitted but shall have regulations imposed which are applicable, such as zoning, building, and certificates of occupancy; and ***Regulations are defined in Article IX, Section 9.28 as reflected above and in Section 9.27 as reflected in item #5 of this staff report.***
5. Article IX, Section 9.27 General Mobile home Regulations establishes what is required before a mobile home can be placed on a site:
- a. All health, sanitation and safety requirements applicable to a conventional dwelling. ***The applicant has submitted a letter from the Northern Kentucky Health District dated May 23, 2014 certifying that the current septic system was adequate for the use of the new mobile home being placed on the site.***
 - b. Off street parking required. ***The site plan reflects a driveway and a twenty-four by twenty-four (24 X 24) feet garage for off-street parking.***
 - c. In mobile home parks, outdoor storage of boats, trailers, trucks over ¾ ton, inoperable vehicles or other large items are permitted on if in an enclosed building or in a screened location designated for these items. ***This site is not located within a mobile home park.***
 - d. All mobile homes, mobile home sites and mobile home parks shall conform to the "Kentucky Home and Recreational Vehicle Park Law and Mobile Home Park Regulations. ***An application for the purpose of zoning/building permits has not been submitted at this time as they are awaiting the decision of this Board.***

- e. The mobile home shall be set and adequately anchored on a concrete or hard surfaced slab in accordance with the "Kentucky Mobile Home and Recreational Vehicle Park Regulations" and the open space between the ground and the floor of the mobile home shall be enclosed with some material such as concrete block corrugated metal, or other durable and suitable material. **The contractor has stated in conversations with staff that the mobile home was placed in a manner that would meet all installation requirements.**
 - f. Any person, firm or corporation desiring to install a mobile home in the County shall apply for a zoning/building permit, and an occupancy permit from the County. **The applicant became aware in late April 2015 that property zoning/building permits were not obtained by the contractor in July 2014 when the home was installed. The applicant immediately began to compile the necessary information to comply with this requirement.**
 - g. Any mobile home placed in Campbell County shall display the Housing and Urban Development Seal or NFPA 501B Seal. Additionally, a mobile home shall be fitted to use propane, natural gas and/or electric for energy. Fuel oil and other liquid petroleum products shall not be stored or used in the mobile home site. **The application has not been submitted at this time as they are awaiting the decision of this Board.**
6. Campbell County Ordinance O-17-13, A Flood Damage Prevention Ordinance, contains regulations under its' Article 5, Provisions For Flood Hazard Reduction for mobile homes. Items of interest to this Board would be:
- a. Section A, General Construction Standards, 2) states that all manufactured homes shall be anchored to prevent flotation, collapse, or lateral movement.
 - b. Section A, General Construction Standards, 5) adds that all electrical, heating, ventilation, plumbing, air condition equipment, and other service facilities shall be designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding,
 - c. Section B, Specific Standards, 1) Residential Construction requires that any new construction or substantial improvement of any residential structure (including manufactured home) shall have the lowest floor, including basement, mechanical equipment, and ductwork elevated no lower than one foot above the base flood elevation.
 - d. Section B, Specific Standards, 1) Residential Construction, c) specifies that in all other Zones (in our case the AE Zone), the mobile home should be elevated one foot above the base flood elevation.

The applicant has submitted to staff an Elevation Certificate prepared and signed by Patrick A. McLafferty, a Kentucky licensed professional land surveyor. The Base Flood Elevation is listed as five hundred eighteen and eight-tenths (518.80) feet above sea level. Mr. McLafferty has certified that the mobile home sits at five hundred nineteen and eight-tenths (519.80) feet exactly one (1) foot above the base flood elevation.

7. A review of public records indicates the following:
- a. No previous requests for a conditional use permit or variance have been submitted for this site.
 - b. Building permits have been issued for this site:
 - 1) Building Permit #2709 was submitted on June 5, 1991 by Dwight & Patricia Sears. The permit was for placement of a one thousand four hundred (1,400) square foot mobile home and a four hundred twenty (420) square foot addition to the mobile

home to be located approximately one hundred (100) feet from the front right of way and approximately fifteen (15) feet from the side property line. The permit was approved on June 5, 1991 by Owen Caldwell. There were no inspection reports or notations to indicate that the mobile home was placed in an alternate location.

- 2) Building Permit #3027 was submitted on February 18, 1993 by Dwight & Patricia Sears. The permit was for placement of a five hundred seventy-six (576) square foot detached garage approximately one hundred (100) feet from the front right of way and approximately thirty (30) feet from the side property line. The permit was approved on February 18, 1993 by Wayne Mains. There were no inspection reports or notations to indicate that the mobile home was placed in an alternate location.
- 3) Building Permit #9328 was submitted on July 1, 2014 by Epperson and Son Electric. The permit was for electrical connection of a newly placed mobile home for electric service. The electrical contractor was advised by staff that no zoning permit application had been received and no electrical permit would be issued until the zoning permit was submitted. With a few days of this conversation, a representative of Clayton Homes contacted staff to discuss a permit for the placement of a one thousand nine hundred-four (1,904) square foot mobile home. Upon verbal notification that a variance would be required, the Clayton Homes representative, stated they would submit an application. No variance application was received.

The Electrical Permit was voided on March 17, 2015 for failure to obtain a zoning permit. Subsequently, when the applicant submitted their application for a variance, staff did confirm with Northern Kentucky Electric Inspections Inc. that an electrical inspection did occur on July 1, 2014 by their inspector, Michael Johnson, who approved the electric work completed. [Certificate #C-507211]. Electric service was provided to the home and the owners moved into the home at that time.

- c. No demolition permit was received for the demolition of the room additions or other accessory structures. [See attached demolition photos.]
8. The site plan submitted by the applicant reflects the following:
- a. The proposed mobile home is shown to be sixty-five (65) feet from the edge of right-of-way encroaching approximately thirty-five (35) feet into the front yard setback.
 - b. The proposed mobile home is shown to be four (4) feet from the side property line encroaching approximately forty-six (46) feet into the side yard setback.
 - c. The applicant is stating that this is the most economical place for the proposed mobile home due to the topography of the site, drainage and other structures already located on the lot.
 - d. The mobile home has been placed directly outside the flood zone covering the front of the property to negate as much flooding concerns as possible.
 - e. The mobile home will reuse the existing septic system and concrete pad.
 - f. The site plan does not show the location of the septic tank.
 - g. The site plan does not show the previous size or exact location of the old mobile home.
9. Per Article 18, Section 18.6 Variances: Change From One Nonconforming Use To Another, Conditions Governing Applications: Procedures.

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; and 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 circumstances exist which do not generally apply to land in the general vicinity, or in the same zone.

The applicant stated "the old mobile home had been located in the same area."

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

The applicant stated "The manner in which the strict application of the provisions of this ordinance would deprive us of reasonable use of land and cause unnecessary hardship. If we had to move our home we would have to install a new cistern and septic system, which is out of our financial reach at this point. If we moved our home into the provisions of the ordinance it would put our home in the middle of a hill and natural irrigation and drainage from water on the hill. It would disrupt the natural flow of the land and natural drainage."

- 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.

The applicant states "The circumstances are the results of actions taken subsequent to the adoption of the zoning regulations from which relief is sought. The original home was placed in this location before the new zoning regulations were applied. The original home was grandfathered in when the new regulations were put into effect; so all plumbing, electricity, road access and drainage was setup for this location."

- 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.

The applicant states "The variance in no way alters the character of the neighborhood, due to the original house was in the same location. We lived on a road where the houses are very spread out or neighbor's just use their land for hunting and farming. The variance would not cause unreasonable circumstances."

- 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. No nonconforming use of neighboring lands and structures in the same zone shall be considered grounds for the issuance of a variance.

The applicant states "The variance would not confer on us any special privileges and we are not using any other nonconforming land or structures just to issue the variance. The variance would allow a family of four to continue to grow and strengthen the community, not to gain any special privileges."

- f. That 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.

The applicant states "The variance would in no way adversely affect the public health, safety or welfare or adversely affect the character of the neighborhood and will not cause a hazard or nuisance, The new house is where the old house was, so it in no way adversely changes the character, yet make the character better by having a brand new home. This will not cause a hazard or nuisance to the

neighborhood, yet help the neighborhood by allowing us to stay in our home and keep the land in good condition and raise our children in the community.”

- g. That the variance will be in harmony with the general purpose and intent of the Zoning Ordinance as well as the Adopted Comprehensive Plan for the County.

The applicant states “The variance will be in harmony with the general purpose and intent of the zoning ordinance and with the county. We in no way hurt or change the community. We love our home and where we live. We want to continue to be where we are and help strengthen the community. We don’t want to take something away from the community but to adapt to our surroundings and make our community stronger anyway than we can.”

- 10. 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 6, 2015 edition of the Campbell County Recorder advertising applicant’s request and the hearing to be held on August 18, 2015.***
- 11. 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.

Summary of Applicants Request:

The applicant has a mobile home placed on their site without the issuance of a building/zoning permit. The replacement mobile home was placed on the previous pad set for a mobile home placed in 1991. The applicant is reusing the previously installed septic system with the approval of the Northern Kentucky Health Department. The applicant is requesting a thirty-five (35) feet front yard variance and a forty-six (46) feet side yard variance to account for the current location of the mobile home.

Description:	Mobile Home Regulations Require:	Applicant’s Request:
Minimum Lot Area:	One (1) acre	One and one-half (1.515) acres
Minimum Lot Width:	One hundred-fifty (150) feet	Two hundred (200) feet
Minimum Front Yard Depth:	One hundred (100) feet	Sixty-five (65) feet <i>[Variance of thirty-five (35) feet]</i>
Minimum Side Yard Depth:		
	Total: One hundred (100) feet	Twenty (20) feet <i>[Variance of eighty (80) feet]</i>
	One Side: Fifty (50) feet	Four (4) feet <i>[Variance of forty-six (46) feet]</i>
Minimum Rear Yard Depth:	Thirty-five (35) feet	Thirty-five (35) feet
Maximum Building Height:	Thirty-five (35) feet	Thirty-five (35) feet

Staff Recommendation – Campbell County Zoning Ordinance:

To approve the applicant’s request for a front yard variance of thirty-five (35) feet; a side yard variance of forty-six (46) feet; and a total side yard variance of eighty (80) feet subject to the following conditions:

- 1) That the applicant be permitted to encroach no further than thirty-five (35) feet in the front yard and no further than four (4) feet on one side to allow for all currently existing structures.
- 2) That the applicant complies with all Campbell County ordinances, regulations and building codes.
- 3) That the applicant submits the applications for a demolition, zoning and electrical permits to

the Campbell County Building Inspection Department for review and approval. Applicants who proceed with their project without all approved applicable permits are subject to a double fee penalty.

- 4) That these variances apply to existing structures only. Any new structures will be sited to meet all current setback requirements, ordinances, regulations and building codes.

Supporting Information / Basis for Recommendation

1. 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; and will not cause a hazard or nuisance to the public. These findings shall be recorded in the minutes and records and issued in written form to the applicant to constitute proof of the variance. Such variance shall not be granted by the Board of Adjustment unless and until:

- a. That the requested variance arises from special circumstances exist which do not generally apply to land in the general vicinity, or in the same zone.

The requested variance does arise from special circumstances which exist and do not generally apply to land in the general vicinity or in the same zone. The location of the flood plain to the front and side of the mobile home and hillside to the rear limits the amount of space available for placement of a residence.

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

The application of the provisions of this Ordinance would deprive the applicant of a reasonable use of the land and would create an unnecessary hardship on the applicant. The septic system was previously placed in a location approved by the Northern Kentucky Health Department and the applicant reused the pad used for the previous home as required in Article IX, Section 9.27 General Mobile home Regulations. Relocating the mobile home, would require grading work to cut into the hillside potentially requiring the applicant to meet the Hillside Development Controls as well as relocating the septic system and utilities previously installed.

- 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.

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

- 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.

The essential character of the neighborhood is agricultural. The nearest home is over three hundred (300) feet from the location of the mobile home. There are topographical restrictions forcing the mobile home to be placed within the front yard setbacks. The flood plain also restricts the location of the home.

- 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. No nonconforming use of neighboring lands and structures in the same zone shall be considered grounds for the issuance of a variance.

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

- f. That 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.

This variance would not adversely affect the essential character of the general vicinity of the neighborhood.

- g. That the variance will be in harmony with the general purpose and intent of the Zoning Ordinance as well as the Adopted Comprehensive Plan for the County.

The requested variance is in harmony with the general purpose and intent of the Zoning Ordinance or Adopted Comprehensive Plan for the County.

Mr. Schaber thanked Ms. Minter for the staff report and asked if there were any questions for staff. Mr. Bachmann asked if permits should have been applied for by Clayton Homes. Is that normally their responsibility? Ms. Minter replied that the contractor can apply for the permit because information pertinent to the contractor is required to be attached to the application. In this case, the contractor made inquiries about permits and we flagged it at that time and told them they needed a variance. Ms. Minter also had the "floodplain" discussion with the contractor. The never came back and applied for anything. The owner came in for deed issues and found out they never had a permit to place the mobile home.

Mr. Bachmann asked Ms. Minter to confirm that the electric permit was applied for but denied by staff. Ms. Minter confirmed the electric permit was denied because they didn't have the correct zoning permit. Mr. Bachmann stated that the only permit that was not applied for was the demolition. Ms. Minter stated that the contractor should have gotten a variance for the setbacks because they are doing more than a fifty (50) percent repair of a trailer and they were moving in a new trailer. They would have had to apply for a variance at that point in time. There was a lack of a variance; lack of a demolition permit; and lack of a zoning permit. The electrical permit they applied for, but it was denied due to lack of a zoning permit.

Mr. Verst brought to everyone's attention an error in the staff report in condition #1. It reads:

- 1) *That the applicant be permitted to encroach no further than thirty-five (35) feet in the front yard and no further than **four (4)** feet on one side to allow for all currently existing structures.*

Mr. Verst stated that needs to be corrected to "no further than forty-six (46) feet in the side yard" in order to reflect the true site conditions. Ms. Minter apologized for not catching the error. Everyone agreed with this change. The next question Mr. Verst had pertained to the total side variance amount of eighty (80) feet came from. Ms. Minter replied that there is four (4) feet between the mobile home and the side property line. There is approximately sixteen (16) feet between the garage and the other side property line. Thus, totaling twenty (20) feet where the regulations call for fifty (50) feet for each side for a total of one hundred (100) feet. There is an eighty (80) foot difference between what the regulations state should be on site and what is truly existing there on site. Staff wanted to clearly define what exists for future considerations for this site.

Mr. Verst had another comment and he didn't know if staff would be able to address it or not. Mr. Verst has been told before that an exterior door exiting a building must have a platform or stoop if you would to allow for safe accessing of the structure. He doesn't know if it is really a building code requirement or not, but he believes this is a building permit issue. Mr. Verst stated that it is his opinion that if it is a building code requirement he has no issue with the applicant encroaching further into the front so that they won't be in violation of a building code requirement. Mr. Verst asked for legal counsel input on this topic. Mr. Duncan recommended that he did not feel this would be an issue as some items are permitted within the front yard setback according to the building code. Mr. Duncan advised that if Mr. Verst were to make a motion, he could make a side notation for the record that he did not consider the building code requirement to be a violation of the variance requested.

Mr. Schaber asked if there were any other questions. There being none, Mr. Schaber called the applicant forward. Mr. & Mrs. Scott & Stephanie Horton approached the podium. Mrs. Horton advised the Board

that she came tonight because she was the primary contact for dealing with Clayton Homes. When they purchased the property, the back addition had settled funny and there was a leak and insects getting in. They had hoped to extend the use of the existing home longer, but it was not feasible.

Mrs. Horton stated she contacted Clayton Homes and they purchased the new mobile home. She stated that Clayton Homes advised they didn't really need to get permits, but Mrs. Horton insisted that she wanted the home placed properly with any applicable permits because she did not own the land, just the mobile home, and the land was in her grandfather's name. Clayton Homes advised her to contact the Health Department regarding the septic system so they could move forward with permitting. Mrs. Horton scheduled the appointment with the Health Department and obtained the letter that stated they could use the existing septic system.

When Clayton Homes started placing the home, they knocked down the electrical pole. That is when the trouble started. They just stopped. Mrs. Horton believes they intended to place the new home using the old electrical connections. When she asked them why they stopped, she was advised they had not applied for any of the permits. Mrs. Horton advised them at that time that she wanted them to apply for the necessary permits. Approximately, one to one and one-half (1 – 1 ½) weeks later, Clayton Homes resumed work. She asked if everything was ok with the permits. Mrs. Horton stated they told her that they were moving forward to finish the home because they had received all the necessary approvals. When Mrs. Horton was doing the paperwork to purchase the property from her grandfather in April, she found out Clayton Homes had not applied for the zoning permit or the variance and that the electrical permit had been denied as a result.

Mrs. Horton assured the Board that the awning that was from the old porch was not going to be in use at their new home. The deck was moved to a neighbor down the street and they will be moving the awning down there shortly. The land that surrounds there is owned by Harold Shaw and they hope to purchase it from them someday, but he is not ready to sell yet. Mrs. Horton told the Board that, the day after she confronted Clayton Homes this past April, the woman from their office who had been assisting her was fired and she had to start the process all over again with a new employee of Clayton Homes. Mrs. Horton was so upset with the contractor that she refused to deal with him again. Mrs. Horton told Clayton Homes that her contract was with them; not the independent contractor they hired. If they have to move the mobile home, they would need to move the septic system and the cistern. They would also have to do massive regrading of the site because next to the driveway there is this huge drainage down the hill so they would need to fix it.

Mr. Schaber asked if there were any questions of the applicant. There being none, Mr. Schaber thanked the Horton's for their testimony and opened the floor for discussion among the Board since the entire audience left after the first case was concluded. There being no discussion, Mr. Verst made a motion to approve the variances requested in case #BA-04-15 by applicant Scott & Stephanie Horton with a request for a front yard variance of thirty-five (35); side yard variance of forty-six (46) feet and a total side yard variance of eighty (80) feet for the placement of their mobile home. Mr. Verst included the four conditions stated in the staff report with the correction to condition #1 as discussed. Those pertinent conditions being:

- 1) That the applicant be permitted to encroach no further than thirty-five (35) feet in the front yard and no further than **forty-six (46) feet** on one side to allow for all currently existing structures.
- 2) That the applicant complies with all Campbell County ordinances, regulations and building codes.
- 3) That the applicant submits the applications for a demolition, zoning and electrical permits to the Campbell County Building Inspection Department for review and approval. Applicants who proceed with their project without all approved applicable permits are subject to a double fee penalty.
- 4) That these variances apply to existing structures only. Any new structures will be sited to meet all current setback requirements, ordinances, regulations and building codes.

Mr. Verst added that his motion for approval is with the intent that, should the building code require a stoop or platform to exit the home, the stoop or platform would not be in violation of this variance. Mr. Verst stated that the bases for his motion is that:

1. 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; and will not cause a hazard or nuisance to the public. These findings shall be recorded in the minutes and records and issued in written form to the applicant to constitute proof of the variance. Such variance shall not be granted by the Board of Adjustment unless and until:

a. That the requested variance arises from special circumstances exist which do not generally apply to land in the general vicinity, or in the same zone.

The requested variance does arise from special circumstances which exist and do not generally apply to land in the general vicinity or in the same zone. The location of the flood plain to the front and side of the mobile home and hillside to the rear limits the amount of space available for placement of a residence.

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

The application of the provisions of this Ordinance would deprive the applicant of a reasonable use of the land and would create an unnecessary hardship on the applicant. The septic system was previously placed in a location approved by the Northern Kentucky Health Department and the applicant reused the pad used for the previous home as required in Article IX, Section 9.27 General Mobile home Regulations. Relocating the mobile home, would require grading work to cut into the hillside potentially requiring the applicant to meet the Hillside Development Controls as well as relocating the septic system and utilities previously installed.

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.

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

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.

The essential character of the neighborhood is agricultural. The nearest home is over three hundred (300) feet from the location of the mobile home. There are topographical restrictions forcing the mobile home to be placed within the front yard setbacks. The flood plain also restricts the location of the home.

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. No nonconforming use of neighboring lands and structures in the same zone shall be considered grounds for the issuance of a variance.

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

f. That 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.

This variance would not adversely affect the essential character of the general vicinity of the neighborhood.

- g. That the variance will be in harmony with the general purpose and intent of the Zoning Ordinance as well as the Adopted Comprehensive Plan for the County.

The requested variance is in harmony with the general purpose and intent of the Zoning Ordinance or Adopted Comprehensive Plan for the County.

The finding of fact for his motion is the information provided within the staff report and the testimony heard tonight by staff and the applicant. Mr. Verst concluded that the granting of this variance request would be in harmony with the general purpose and intent of the Ordinance, as well as the adopted Comprehensive Plan, and would not be injurious to the neighborhood or otherwise detrimental to public welfare and that the use of the property is consistent with the use of the adopted Comprehensive Plan.

Mr. Duncan posed a question before a second to the motion could be made. Mr. Duncan commented that Mr. Verst's motion included the conditions as stated in the staff report with the one correction. Mr. Verst confirmed that was his motion. Mr. Duncan asked Ms. Minter about condition #3. The condition states that "*Applicants who proceed with their project without all approved applicable permits are subject to a double fee penalty.*" Mr. Duncan asked if that statement was in the Zoning Ordinance or is that just more staff policy. Ms. Minter stated that traditionally they are subject to that. However, as Director, Ms. Minter stated she does have some discretion with the penalty. Mr. Duncan stated that in view of the testimony heard tonight it seems like a penalty to someone who did not have control over the application process. If the Board approves the condition as stated, it removes staff's ability to waive a portion or all of the penalty. Ms. Minter agreed that would be true.

Mr. Verst corrected his motion to revise condition #3 to say: "*Applicants who proceed with their project without all approved applicable permits may be subject to a double fee penalty at the discretion of the Zoning Administrator.*" Mr. Schaber called for a second. Mr. J. Williams seconded the motion as amended. Mr. Schaber called for a roll call vote. . A roll call vote found Mr. Mason, Mr. Verst, Mr. J. Williams, Ms. Haynes, and Mr. Bachmann in favor. Mr. Schaber abstained. Motion passed.

There being no cases to come before the Board of Adjustment, Mr. Schaber called for the Director's Report.

DIRECTOR'S REPORT

Ms. Minter advised the Board that the Board's by-laws state that the election of officers are to be conducted at the first meeting of the Board each year. This is the first meeting of 2015 for the Board. There was general discussion among the Board concerning who was interested in serving in an officer position. There was a concurrence that Mr. Bachmann was nominated to serve as Chair; Mr. Mason was nominated to serve as Vice Chair; and Ms. Haynes was nominated to serve as Temporary Presiding Officer. Mr. Schaber asked Mr. Bachmann, Mr. Mason and Ms. Haynes if they accepted their nominations. All replied that they accepted the nominations. Mr. Schaber called for a roll call vote. . A roll call vote found Mr. Mason, Mr. Verst, Mr. J. Williams, Ms. Haynes, and Mr. Bachmann in favor. Mr. Schaber abstained. Motion passed.

Mr. Schaber announced that this was his last meeting on the Board of Adjustment. After decades of service (almost thirty (30) years), Mr. Schaber was resigning from the Board. Mr. Schaber will be presenting his retirement to the City of Crestview City Council at their first meeting in September. Mr. Verst thanked Mr. Schaber not only for his service, but for the mentoring he performed for other members of the Board. Mr. Schaber has been a stable and guiding force for not only the Board of Adjustment but for the Planning & Zoning Commission which he also served a great number of years.

Ms. Minter advised the Board that the Planning & Zoning Commission had approved a recommendation to the Fiscal Court and the City Councils of our member cities to adopt the proposed revision to the Vision, Goals and Objectives. Ms. Minter will be attending meetings for the first reading of those actions

and will keep the Board advised of any issues or challenges. Ms. Minter encouraged the Board to attend those meetings to learn more.

There have been several staffing changes in the Planning & Zoning & Building Inspection Department. One building inspector retired launching a search for a new building inspector. A second building inspector resigned to move to another municipality. As a result, staff has hired three (3) new building inspectors. Mr. Mark Brant worked for the county for several years and left in 2013. He has returned to Campbell County as the Chief Building Official. Mr. David Rodgers worked in the City of Cold Spring and has been hired as an entry level building inspector/housing inspector. Mr. Rodgers has already taken the tests and achieved the status as a certified one and two family dwelling inspector. Mr. Greg Cole has quite a bit of commercial building experience and also joined our team as an entry level building inspector. He is hoping to follow in obtaining his certifications fairly quickly. Our office is now fully staff and able to provide quality assistance to all our customers.

Ms. Minter advised the Board that there was a handout advising them each of their status for receiving training to meeting the HB 55 requirements. If you have any questions on how to obtain additional training, please contact our office. Ms. Haynes asked for additional training on Robert's Rules of Conduct. Ms. Minter advised they may be able to have training after the September meeting.

Ms. Minter had no other items for discussion, but advised the Board they would be meeting in September to approve the minutes of this meeting. Mr. Schaber asked if there were any other items the Board wished to discuss tonight. There being none, Mr. Schaber asked for a motion to adjourn. Mr. Mason made a motion to adjourn. Ms. Haynes seconded the motion. An oral vote found everyone in favor, none opposed. Motion passed. Meeting adjourned at 8.34 PM.

Prepared by:



Cynthia Minter
Director

Approved:



Scott Bachmann
Vice Chair