

Taylor Mill Board of Adjustment Meeting
Thursday, May 29, 2014
7:00 p.m.

Agenda

1. Roll Call
2. Confirmation of Quorum
3. Adoption of Minutes
4. Public Hearing BOA1405-0002
 - a. Confirmation of Notification
 - b. Declaration of Conflicts
 - c. Declaration of Site Visit
 - d. NKAPC Staff Report
 - e. Comments from Applicant
 - f. Comments from Proponents
 - g. Comments from Opponents
 - h. Discussion by Board Members
 - i. Motion/Second Regarding Findings of Facts
 - j. Vote
5. Public Hearing BOA1404-0001
 - a. Confirmation of Notification
 - b. Declaration of Conflicts
 - c. Declaration of Site Visit
 - d. NKAPC Staff Report
 - e. Comments from Applicant
 - f. Comments from Proponents
 - g. Comments from Opponents
 - h. Discussion by Board Members
 - i. Motion/Second Regarding Findings of Facts
 - j. Vote
6. Public Hearing BOA1405-0003
 - a. Confirmation of Notification
 - b. Declaration of Conflicts
 - c. Declaration of Site Visit
 - d. NKAPC Staff Report
 - e. Comments from Applicant
 - f. Comments from Proponents
 - g. Comments from Opponents
 - h. Discussion by Board Members
 - i. Motion/Second Regarding Findings of Facts
 - j. Vote
7. Adjournment

**Taylor Mill Board of Adjustments
Regular Meeting
May 29, 2014**

Chairman Lucas called the meeting to order at 7:00 p.m. The City Clerk called the roll.

Mr. Fuller	Here
Chairman Lucas	Here
Mr. Meyer	Here
Mr. Osterhage	Here
Mr. Singleton	Here

Chairman Lucas stated that a quorum was present.

Mr. Singleton made a motion to accept the minutes from the November 29, 2012, Board of Adjustment meeting as submitted. Mr. Fuller made a second. The City Clerk called the roll.

Mr. Fuller	Yes
Chairman Lucas	Yes
Mr. Meyer	Yes
Mr. Osterhage	Yes
Mr. Singleton	Yes

MOTION CARRIED

PUBLIC HEARING

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

APPLICANT: ALE-ARI, LLC per Kevin Novesl
LOCATION: 5468 Taylor Mill Road
Taylor Mill, KY 41015

REQUEST: To appeal the Zoning Administrator's decision denying the applicant's request to expand a nonconforming use; and, to seek a variance from the front yard setback requirement of the R-1C (Single-Family Residential) Zone; the applicant proposes to construct a patio for outdoor dining to be used in connection with the

nonconforming restaurant; the patio would be located 23 feet from the front property line where 35 feet is required

CONFIRMATION OF NOTIFICATION: Mr. Ionna stated that all interested parties had been notified of the meeting; legal advertisement published, and packets sent out.

DECLARATION OF CONFLICTS: None

DECLARATION OF SITE VISITS: No specific site visit but Mr. Fuller and Mr. Meyer stated they were familiar with the site.

PRESENT AT THE HEARING: Zoning Administrator Mike Ionna, Asst. City Clerk Michelle Frisch, Kevin Novesl and other guests.

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

OLD BUSINESS: Mike Ionna made a point of order that the Board needs to elect new officers for the new fiscal year. Mr. Osterhage made a motion for Chairman Lucas to continue as Chairman. Mr. Meyer made a second. The City Clerk called the roll.

Mr. Fuller	Yes
Chairman Lucas	Abstain
Mr. Meyer	Yes
Mr. Osterhage	Yes
Mr. Singleton	Yes

MOTION CARRIED

STAFF REPORT AND REVIEW: Mike Ionna presented and read aloud the professional staff report, which had been previously distributed to all board members. He went over in depth the site description and zoning requirements. (see attached report)

STAFF RECOMMENDATION: To uphold the decision of the zoning administrator to deny the applicants permit to construct an outdoor patio and dining area used in connection with a nonconforming restaurant as well as disapproval of the corresponding variance.

Jack Osterhage asked about Ordinance 9.12., B.,1. speak to us about unless and until the use is brought into conformance with all provisions of the ordinance – what would that take

Mike Ionna stated that with a non-conforming use it would be a map amendment or text amendment to bring it into conformity. You would need a map amendment to add it as a conditional use or a text amendment to make it a commercial zone.

Jack Osterhage: in order to do that they would need to go to the NKAPC. Can we even hear the request?

Mike Ionna – you cannot entertain a map or text amendment but the appeal before you tonight is that we are saying this constitutes an expansion and the applicant does not believe it constitutes an expansion and does not fall under the Ordinance.

Rich Meyer: Is this putting the cart before the horse?

Mike Ionna – It could be done either way but the issue before you tonight is whether this is an expansion. If it is an enlargement you uphold the zoning administrator's decision. If not, then you would not uphold the decision of the zoning administrator. If you do uphold the decision of the zoning administrator then the recourse would be an appeal to the Circuit Court within thirty (30) days of the final decision tonight. The other recourse would be a map or text amendment and that would go to the NKAPC and then to the city for a final reading by the city and back to the BOA for a variance request.

Mr. Fuller: So what is before us tonight is whether this is an enlargement of the size, scope and scale of the existing building.

Mike Ionna – an expansion of the non-conforming use. Mr. Ionna explained the definition of the non-conforming use and the ordinance.

Doug Singleton: We are talking about a map zoning change possibility if he is denied tonight. You also said he had thirty (30) days to appeal to the Circuit Court if denied. If he did the map zoning change and was denied there is the possibility that the thirty (30) days from this date will expire.

Mike Ionna – But if he does the map zoning change and is denied there is an appeal and other recourse. He can file with the Circuit Court at the same time.

PRESENTATION/COMMENTS BY APPLICANT: Mr. Novesl thanked the NKAPC for all of their help and information and he might be able to be a zoning hobbyist now. I have a differing opinion of section 9.12., B., 1. of the Taylor Mill Zoning Ordinance no non-conforming use or structure may be enlarged or extended beyond its area of use at the time it becomes a legal nonconforming use. This to me is the most important because that is what it says to me when we started pouring this patio. We did not go out and egregiously try to break a zone and get away with it. It reads to me after I received some advice and reread it it appears to me that since this Ordinance was adopted in 1995 the law of the land is the most important in 1995. What is the law of the land in 1995 the PVA statement says it was a restaurant and tavern in 1974 restaurant and tavern. The deed from 1947 described as a restaurant and tavern on .83 acres. You are allowed to use entire property. Only the zoning ordinance does not allow to sell on the entire property. The current variance was there long before the ordinance. What I am doing is not expanding the use the use is already there. In contention with the variance if you look at the current variance or the current front yard off the set back line of the business that was

there long before. It is no different all across the building. I will say that with the curve in the road it is slightly smaller with the patio but it is minimal. If you look all up and down Taylor Mill Road KY 16 in the City of Taylor Mill of all the other business properties NC zone properties none of them have the required front yard footage yet they continue to operate. They all fall short. We violated nothing since the ordinance does not account for us. We are a legal nonconforming use as a restaurant and tavern on the entire .83 acres. It is no different if I wanted to set up tables and tents in the parking lot every weekend. We could serve our in the parking lot. We can utilize the entire property per use since this was adopted. As for the set back there is no loss of visibility that doesn't already occur with the natural foliage. We have taken any possible angle to ensure this is not a nuisance. The noise level is no louder than a car or truck going up or down the street. There is no added noise or nuisance. Mr. Novesl discussed different noise levels and measurements in the area. In regards to parking you can still pull around the building. You only lose the spots perpendicular and lose three spots. It still allows emergency service access to the building.

The entire property is being used as a restaurant or tavern. What we are proposing to do is add two doors one for public use and one for staff, railing around the patio and demarcation for ABC Kentucky which allows us to operate on the entire property. We are taxed on the entire property not just the structure. The definition of a structure through the PVA as an improvement the building is known as an improvement not a structure. I want to add that the definitions through NKAPC and the Taylor Mill Zoning Ordinance nowhere does it say roof or wall. The definition of structure per the Article 7 in the zoning ordinance anything constructed or erected the use of which requires the use of a permanent location in or on the ground or attachment to something having a permanent location in or on the ground including buildings, mobile homes, signs and fences but not including earthworks, ditches, canals, dams, reservoirs, pipelines, telephones, telegraph or electric power lines, driveways or curbs. Now one could argue that a driveway is not a structure therefore all I did was repave a driveway. It is on the ground a permanent structure. We are not enlarging or expanding anything. Mr. Novesl explained the improvements that are going to be made to the area. We would apply for the proper permits to add a roof. The only other thing I can do to plead our case. If you look at the other businesses there are questions as to whether they are conducting their businesses in accordance to the ordinance. We like being here and we are the oldest existing business in the city.

Chairman Lucas: Is it your position that this is a structure improvement?

Kevin Novesl: My position is that the .83 acres that are either paved or non-organic is the structure since walls and roof are not in the definition and since it is permanent and I have no plans to and in fact due to the ordinance I cannot change the parking lot without permit or expand it. We did not buy anymore property. We are not expanding onto something we do not already own. We are not trying to operate on anything we do not already have the rights to.

Further discussion was held between the board and Mr. Novesl regarding rezoning the property, text amendments, outdoor dining, the nuisance/noise ordinance, outside lighting, and entertainment at the site.

COMMENTS FROM PROPONENTS: Jenny Englehart, 3 Sanders Drive, Florence, KY41042 expressed her support of the outdoor area, addressed concerns about noise, by adding the additional seating they will benefit the city and they pay their taxes. Ms. Englehart is an employee of the Barleycorn's in Lakeside Park, KY and discussed the opposition to additional outdoor seating at her location and that they fought the city and won the right to have it.

COMMENTS FROM OPPONENTS: Mark Kreimborg, 684 Ridgeway Drive, Taylor Mill, KY is FOR and AGAINST the additional outdoor area. He discussed the one time drive in that they held there but the music was loud. He stated they have the best wings in the world and the best black and blue burger but he is in favor of the outdoor seating but is against the outdoor entertainment.

Patrick Haney, 741 Janet Drive, Taylor Mill, KY stated that he is opposed and that the noise does exist on the site especially since the smoking ban when people go out to smoke and traffic is bad in the area. He is not in opposition of him operating a business but not at his expense.

Mr. Lucas read two letters into the record that oppose the outside area, Karen Griffith, 721 Janet Drive, Taylor Mill, KY and Helen Kremer, 706 Janet Drive, Taylor Mill, KY and entered them into the record.

Mr. Novesl stated that there were positive letters for the area but apologizes that they were sent to the commission and not to the Board of Adjustments.

CLOSED PUBLIC HEARING: Chairman Lucas thanked those who have shown up to voice their opinion and the public hearing portion is now closed at 8:49 p.m.

The board members discussed the request.

Mr. Fuller commented that he is not denying what he wants to do is a good idea but it is a structure and cannot be done in this avenue.

Mr. Osterhage made a motion affirm the zoning administrator's decision to deny the application for the expansion of the nonconforming use and for also the variance of the set-back issue on the basis that it is an expansion of a structure and it is not permitted under a nonconforming use.

Chairman Lucas made the comment that it is important to include just what you said to include it is a structure because that is the point of the issue. Chairman Lucas made a second to the motion.

Mr. Fuller commented that it is based solely on the verbiage in the zoning and that we are not denying what he wants to do. No one here wants to deny him outdoor seating but it has to be done in a different avenue.

The City Clerk called the roll.

Mr. Osterhage	Yes
Chairman Lucas	Yes
Mr. Fuller	Yes
Mr. Meyer	Yes
Mr. Singleton	Yes

MOTION CARRIED

Appeal is denied for the applicants request to expand a nonconforming use and to seek a variance to the setback requirement on the RC1 single family residence.

Chairman Lucas appreciated your time and appreciate your presentation. Chairman Lucas asked for a five minute break.

Chairman Lucas Public hearing called back to order at 9:10 pm.

APPLICANT: Kerry and Jennifer Sullivan
LOCATION: 3668 Wolf Road
Taylor Mill, KY 41015

REQUEST: To seek a variance from the maximum allowable size requirement for an accessory structure located within an R-1C (Single-Family Residential) Zone; the applicant proposes to construct a detached garage with an area of 960 square feet where 800 square feet is the maximum allowable area.

This is the first time this request has been before the BOA.

CONFIRMATION OF NOTIFICATION: Mr. Ionna stated that all interested parties had been notified of the meeting; legal advertisement published, and packets sent out.

DECLARATION OF CONFLICTS: None

DECLARATION OF SITE VISITS: No specific site visit.

PRESENT AT THE HEARING: Zoning Administrator Mike Ionna, Asst. City Clerk Michelle Frisch, Kerry and Jennifer Sullivan.

STAFF REPORT AND REVIEW: Mike Ionna presented and read aloud the professional staff report, which had been previously distributed to all board members. He went over in depth the site description and zoning requirements. (see attached report)

STAFF RECOMMENDATION: Approval of the proposed variance to allow the construction of a detached garage with an area of 960 square feet

PRESENTATION/COMMENTS BY APPLICANT: This is Kerry's barn. My daughter just turned 16 so we will need room for her car too. Our driveway is in a blind spot but the new drive is in a better location. I need a garage.

COMMENTS FROM PROPONENTS: None. Petition was signed by neighbors that they have no objections to the request and is in the NKAPC report.

COMMENTS FROM OPPONENTS: None

CLOSED PUBLIC HEARING: Chairman Lucas thanked those who have shown up to voice their opinion and the public hearing portion is now closed at 9:29 p.m.

The board members discussed the request.

Mr. Fuller made a motion to accept the recommendation of the NKAPC to approve the variance from the allowable size to build a detached garage with an area of 960 square feet.

Mr. Osterhage made a motion to amend the motion to include the findings of fact from the NKAPC staff report:

The proposed variance is reasonable and appropriate for the following reasons:

1. The strict application of the provisions of the zoning regulations would deprive the applicant of the reasonable use of their land and would create an unnecessary hardship.

The applicant is requesting the variance to allow for the construction of a detached garage to be used in connection with the storage of tools and other equipment used for property maintenance, an automobile, and a boat. All of these items are customary as accessories functions and uses of a lot located within a detached single-family residential zoning district. Restricting the size of the garage to only 800 square feet would force the applicant to store some of the aforementioned items in an approved outdoor location which would subject them to increased wear and depreciation of value. It would also increase the amount of outdoor storage on the site and within the surrounding areas which can accumulate and detract from the aesthetics of an area if not properly controlled.

2. The proposed variance would not allow for too great of a circumvention of the zoning ordinance. The site in question is a larger residential lot (3.12 acres) that is located within a low-density residential area featuring a slightly rural character containing a great deal of open space and a hilly topography. The construction of the proposed detached garage of this size would not be inconsistent with the existing built-up character and form of the surrounding areas which currently contain an existing accessory structures equal to or greater in size than what is being requested by the applicant.
3. The applicant has submitted a petition signed by the property owners surrounding property owners in support of the proposed variance to allow the applicant to construct the detached garage, as proposed.
4. The proposed variance would allow the applicant to utilize the property to what they feel is its highest and best use.
5. The proposed variances 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 a nuisance to the public
6. The circumstances are not the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought.

Mr. Fuller made a second to the amendment to the motion. Mr. Meyer made a second to the original motion with amendment.

The City Clerk called the roll.

Mr. Osterhage	Yes
Mr. Fuller	Yes
Chairman Lucas	Yes
Mr. Meyer	Yes
Mr. Singleton	Yes

MOTION CARRIED

Chairman Lucas asked for a five minute break.

Chairman Lucas Public hearing called back to order at 9:37 pm. Applicant Number BOA1405-0003.

APPLICANT: Districts of Taylor Mill, LLC per John Paselsky
LOCATION: 674 Walnut
Taylor Mill, KY 41015

REQUEST: The applicant is seeking the following from the requirements of the DTM-3 (Downtown Taylor Mill-Three) Zone: (a) seeking a variance from the landscape requirements; the applicant proposes to provide a landscape buffer area of 16 feet where 30 feet is required; (b) appealing a decision of the zoning administrator to deny three wall signs where one wall sign is permitted; (c) seeking variances from the maximum allowable signage area, minimum sign bottom height, maximum sign top height, and maximum projection from face of building; the applicant proposes to construct a projection sign with a total signage area of 140 square feet where 36 square feet is permitted, a bottom of sign height of 21 feet where nine feet is permitted, a top of sign height of 41 feet where 16 feet is permitted, and a projection from face of building of seven feet where six feet is permitted, and; (d) appealing a decision of the zoning administrator to deny two additional wall signs on buildings that are taller than 50 feet.

CONFIRMATION OF NOTIFICATION: Mr. Ionna stated that all interested parties had been notified of the meeting; legal advertisement published, and packets sent out.

DECLARATION OF CONFLICTS: None

DECLARATION OF SITE VISITS: No specific site visit.

PRESENT AT THE HEARING: Zoning Administrator Mike Ionna, Asst. City Clerk Michelle Frisch, John Paselsky, Jill Bailey and Mr. Brown.

STAFF REPORT AND REVIEW: Mike Ionna presented and read aloud the professional staff report, which had been previously distributed to all board members. He went over in depth the site description and zoning requirements. (see attached report)

STAFF RECOMMENDATION: Request One Approval of the variance from the landscape requirements to provide a landscape buffer area of 16 feet where 30 feet is required. Request Two Approval of the requested appeal to allow for the construction of three wall signs where one is permitted. Request Three Approval of the variances for the construction of a projection sign with a total signage area of 140 square feet where 36 square feet is permitted, a bottom of sign height of 21 feet where nine feet is permitted, a top of sign height of 41 feet where 16 feet is permitted, and a projection from face of building of seven feet where six feet is permitted, subject to the following condition:

1. That no additional projection signs be permitted for the any of the tenants located within the building.

Request Four Approval of the appeal the decision of the zoning administrator to deny two additional wall signs on buildings that are taller than 50 feet.

PRESENTATION/COMMENTS BY APPLICANT: John Paselsky, 740 Industrial Road, Florence, KY 41042. We are excited about our development and are committed to completing an attractive and economically viable development in Taylor Mill for years to come. I do not have any comments to add to what you have received. I would like to address the 4th item. We did not include materials in a timely manner in the materials. What we have here is the current code allows for one 150 ft. sign we are requesting flexibility to have two (2) 75 ft. signs. Mr. Paselsky and the board members discussed their request and the benefits and disadvantages to having the flexibility. This is not on the Walnut side of the building. We are committed to creating an attractive building.

COMMENTS FROM PROPONENTS: Jill Bailey, CAO, City of Taylor Mill stated that the design of the DTM zone was created by a consultant in 2006 from a vision stand point this development is exactly what we are looking for. We are very comfortable with what they are proposing. They have met all the parking requirements, they are building Holland Drive, buffer zones are not a concern, we would like to work with them on the signage issue and the commissioners are unanimous in approving all four issues.

Mr. Brown, 5132 Taylor Mill Road, Taylor Mill, KY stated he does not have a problem with the signage.

COMMENTS FROM OPPONENTS: None

CLOSED PUBLIC HEARING: Chairman Lucas thanked those who have shown up to voice their opinion and the public hearing portion is now closed at 10:44 p.m.

The board members discussed the request.

The meeting opened back up at 10:45 pm.

Chairman Lucas made a motion to approve Request One for to seek a variance from the landscape requirements of the zoning ordinance. The applicant proposes to provide a landscape buffer area of 16 feet where 30 feet is required and subject of findings of fact in section L of the NKAPC staff report. Furthermore approve Request Two an appeal of the decision of the zoning administrator to deny the applicant three wall signs where one wall sign is permitted and grant that appeal of the zoning administrator subject to the findings of fact in section O of the NKAPC staff report. Furthermore approve Request Three to seek variances from the maximum allowable signage area, minimum sign bottom height, maximum sign top height, and maximum projection from face of building. The applicant proposes to construct a projection sign with a total signage area of 140 square feet where 36 square feet is permitted, a bottom of sign height of 21 feet where nine feet is permitted, a top of sign height of 41 feet where 16 feet is permitted, and a projection from face of building of seven feet where six feet is permitted subject to the findings of fact in section R of the NKAPC staff report. Finally approve Request Four to

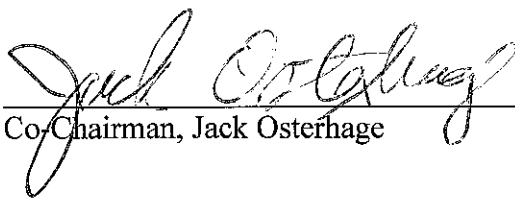
appeal the decision of the zoning administrator to deny two additional wall signs on buildings that are taller than 50 feet subject to the findings of fact in section U of the NKAPC staff report as well as testimony as provided by staff and comments made.

Mr. Meyer made a second.

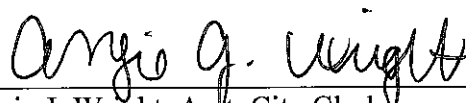
City Clerk called roll:

Chairman Lucas	Yes
Mr. Meyer	Yes
Mr. Fuller	Yes
Mr. Osterhage	Yes
Mr. Singleton	Yes

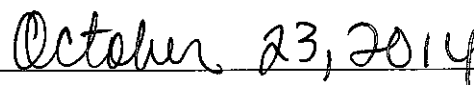
There being no further business to come before the Board, Mr. Singleton made a motion to adjourn 10:51 p.m. Second by Mr. Osterhage. The meeting is now adjourned.



Co-Chairman, Jack Osterhage

ATTEST: 

Angie J. Wright, Asst. City Clerk

DATE: 

Certification

The undersigned, Angie J. Wright, Assistant City Clerk/Treasurer of City of Taylor Mill, in Kenton County, Kentucky, hereby certified as follows:

1. The foregoing Taylor Mill Board of Adjustment Minutes were read on the 23rd day of October , 2014, at which a quorum was present; and said Minutes were approved by the Taylor Mill Board of Adjustments upon the affirmative vote of at least a majority of a quorum thereof, at the meeting thereof on the 23th day of October 2014, with the vote of each member of the Board entered upon the official record of such meeting; and
2. After the adoption of the Minutes by the Board of Adjustments of the City of Taylor Mill, it was submitted to the Co-Chairman of the Board of Adjustments for the City of Taylor Mill who approved said Minutes by affixing his signature thereto within ten (10) days after the submission thereof to him.



Angie J. Wright, Assistant City Clerk/Treasurer