

APPLICATION FOR ZONING ACTION

TO:

- Boone County Planning Commission
- City of Florence Board of Adjustment
- Boone County Board of Adjustment
- City of Union Board of Adjustment
- City of Walton Board of Adjustment
- Zoning Enforcement Officer

FOR:

- Zoning Text Amendment
- Comprehensive Plan Change
- Preliminary Plat Review
- Conditional Use Permit
- Concept Development Plan Change
- Preliminary Development Plan
- Change of Non-Conforming Use
- Design Review Board and Certificate of Appropriateness
- Zoning Map Amendment
- Planned Development Overlay Change
- Improvement Plat Review
- Final or Deed Plat Review
- Site Plan Review
- Historic District Overlay
- Appeal or Variance
- Sign or Zoning Permit

Applicant: GLADYS MANN WAGNER Owner

Address: 3455 Idlewild Road Agent

Burlington, Ky. 41005 Telephone: 586-8109

Location: 3455 Idlewild Road

Name of Property Owner: GRACE + AUSTIN MANN

Address of Property Owner: 3457 Idlewild Road

Zoning District: _____ Area in Acres: .9 AC.

Deed Book: CAN NOT RECORD Page Number: parent tracts listed below Group Number: _____

Description of Request: WISH to transfer to our Daughter & her Family .9 AC. D.W. Home - state Approved Sewerage disposal plant, Cistern, Boone County Building Permit

Applicant's Signature: _____

Property Owner's Signature: Austin Mann

Application Fee: 7115 FOR PLANNING COMMISSION USE ONLY Date Received: 4-22-88 By: TWB

Referred To: TWB Meeting Date: _____

Action Taken: _____ Date of Action: _____

DB/PJ
185/140
224/521
245/303
224/324

STAFF REPORT

APPLICANT: Gladys Mann Wagner
TYPE OF ACTION: Appeal
LOCATION: 3455 Idlewild Road
ZONE: Agricultural Estates (A-2)
DATE: May 11, 1988

REMARKS:

The applicant is requesting an Appeal of the Zoning Administrator's decision regarding the subdivision of property. Specifically, the applicant wishes to divide a 0.9 acre buildable lot in a zoning district which requires buildable lots of 1.84 acres. The subject property, located at 3457 Idlewild Road, is zoned Agricultural Estates (A-2), and is owned by Austin Mann.

The applicant has supplied staff with no information, documentation, or supportive evidence for this Appeal. Therefore, the application form, which very briefly describes the request, is attached.

A memo from the Zoning Administrator/Director to the Zoning Enforcement Officer is also attached. In it, the basis for his decision regarding the subdivision of property is explained. The memo, as well as other attachments, clearly states that the minimum lot size in A-2 property is 80,000 square feet. Boards of Adjustment and Zoning Appeals have the authority to grant dimensional Variances; however, only the legislative bodies, through Zoning Map or Text Amendments, can vary density requirements.



Thomas W. Breidenstein
Zoning Enforcement Officer

TWB:kam

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FOR PLANNING COMMISSION USE ONLY

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185/140

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BOONE COUNTY PLANNING COMMISSION

BOONE COUNTY ADMINISTRATION BUILDING

P.O. BOX 697 — 2950 WASHINGTON STREET

BURLINGTON, KENTUCKY 41005

334-2196

MR. WILLIAM R. VIOX
CHAIRMAN

MR. LARRY BARNETT
VICE CHAIRMAN

MRS. CAROL SMITH
SECRETARY-TREASURER

MR. GERALD A. NEWTON
DIRECTOR

MR. D. T. WILSON
ATTORNEY

MEMORANDUM

TO: Tom Breidenstein
Zoning Enforcement Officer

FROM: Gerald A. Newton *GAN/jan*
Director

DATE: April 29, 1988

RE: Gladys Mann Wagner Appeal

Tom, here ~~is~~^{are} some initial comments that could be used in the Zoning Administrative decision involving the Gladys Mann Wagner appeal.

An appeal is being heard tonight claiming that the zoning administrative interpretation of the Boone County Zoning Regulations is incorrect and that said decision injuriously affects the applicant. The property in question is zoned Agricultural Estate (A-2). Article 6 of the 1986 Boone County Zoning Regulations describes the agricultural zoning districts of Agriculture (A-1) and Agricultural Estate (A-2). Section 624 clearly states the intensity of the Agricultural Estate (A-2) zone shall not be greater than one lot per two acres of land. A lot is defined in Article 20 of the Boone County Zoning Regulations as "Lot - For the purposes of this order, a lot is a parcel of land of sufficient size to meet minimum zoning requirements for use, coverage, and area, and to provide such setbacks and other open spaces as are herein required. Such lot shall have frontage on an improved public street, or on an approved private street, and may consist of: 1. A single lot of record; 2. A portion of a lot of record; 3. A combination of complete lots of record, of complete lots of record and portions of lots of record, or of portions of lots of records." Further Table 1 of the Zoning Regulations indicates that the minimum lot size in the Agricultural Estate (A-2) zone is 80,000 square feet (i.e. 1.8365472 acres).

An inquiry was made to the Planning Commission office as to whether or not a one acre parcel of land could be sold off of a parent tract and be used as a buildable lot in the A-2 zone.

Memorandum
Mr. Tom Breidenstein
April 29, 1988
Page Two

Based on the information presented in the above paragraph, specifically the 1986 Boone County Zoning Regulations, the answer was no. From all of the evidence mentioned, it seems obvious that this is an administratively correct decision in that no descretion has been used to reach a conclusion that a one acre lot cannot be used as a buildable lot in the Agricultural Estate (A-2) zone.

This property was similarly zoned in 1980 as Agricultural Estate (A-2). The same conditions applied at that time as now exist on that site. It is our opinion that this property has been zoned the same for nearly nine (9) years without the property owner contesting it and if he felt injuriously affected by that zone, that should have been stated back in 1980 or during the update of 1986.

Tom, there is a little bit for you.

GAN:jdh

Section 620

AGRICULTURAL ESTATE (A-2)

The purpose of this district is to provide for low density residential development in the context of a rural environment.

Section 621

Principal Permitted Uses

Permitted uses in the A-1 district numbered 1-10, inclusive, are permitted in the A-2 district.

Section 622

Accessory Uses

All accessory uses permitted in the A-1 district are permitted in the A-2 district.

Section 623

Conditional Uses and Criteria

The following uses and appropriate accessories subject to the approval and qualifications of the Board of Adjustment and Zoning Appeals provided: a) the activity is an integral part of the agricultural or residential use of the land, and the activity is not of scale, nature or other character which will detract or conflict with the principal purposes of the district; or b) the activity is necessary to provide the specified public service for the residents of the district so long as the service area, use, scale or other character of the activity does not overpower, transcent or conflict with the principal purpose of the district; and c) provided the arrangement of use, building or structure is mutually compatible with the organization of permitted and accessory uses to be protected in the district.

1. Roadside stands, farmers mart and similar sales uses of agricultural and related products produced on the premises;
2. Garden store, nursery and similar landscape sales of products produced on the premises;
3. Garden plots and other similar forms of communal or organization farming practices;
4. Churches, synagogues, temples and other places of religious assembly for worship;
5. Cemeteries and mausoleums if adjacent to or in extension of an existing cemetery.
6. Public and commercial outdoor recreation;
7. Duplex dwelling units.
8. Commercial kennels and boarding stables including grooming and veterinary services (minimum 5 acres);

~~X~~ Section 624 ~~X~~

Intensity

The maximum intensity of use shall not be greater than one (1) lot per two (2) acres of land.

Section 625

Minimum Size

The minimum size and extent of an A-2 district shall not be less than twenty (20) acres of land.

Section 626

Minimum Standards

The following standards shall apply to any permitted, accessory or conditional use and structure in this district:

1. No use shall include the feeding or sheltering of animals or poultry or the storage of refuse, compost, products, supplies or equipment within one hundred (100) feet of any residence, when a nuisance is created.
2. No use shall include the operation or maintenance of a commercial stockyard or feedyard.
3. See Table 1 for dimensional standards.

Section 540

Compliance with Regulations

The regulations for each district set forth by this order shall be minimum regulations and shall apply uniformly to each class or kind of structure or land, except as hereinafter provided;

1. No building, structure, or land shall be used or occupied and no building or structure or part thereof shall be erected, constructed, reconstructed, moved, or structurally altered except in conformity with all of the regulations herein specified for the district in which it is located;

2. No building or other structure shall be erected or altered;

a. To provide for greater height or bulk;

b. To accommodate or house a greater number of families;

c. To have narrower or smaller rear yards, front yards, side yards, or other open spaces;

than herein required, or in any other manner be contrary to the provisions of this order;

3. No yard or lot existing at the time of passage of this order shall be reduced in dimension or area below the minimum requirements set forth herein. Yards or lots created after the effective date of this order shall meet at least the minimum requirements set forth herein, except in the case of subdivisions as specified in Section 287 of this order.



TABLE 1
DIMENSIONAL STANDARDS

District	Maximum Intensity	Minimum Size of District	Area (Sq. Ft.)	Min. Lot Size Frontage (Ft.)	Maximum Height (Ft.)	Front (Ft.)	Min. Yard Dimensions Rear (Ft.)	Side (Ft.)
A-1	1 d.u. or farmstead per five (5) acres	30 ac	217,800	150	45	80	25	10
A-2	1 d.u. per two (2) acres	20 ac	80,000	150	45	60	25	10
*** R	n.a.	n.a.	n.a.	n.a.	45	30	10	10
*** RSE	1 d.u. per acre	5 ac	40,000	100	45	40	40	10
*** RS	2 d.u. per acre	5 ac	20,000	80	45	40	40	10
*** RIF	4 d.u. per acre	5 ac	10,000	70	45	30	30	7 min-15 total
*** SR-1	4 d.u. per acre	5 ac	8,000	65	45	30	30	5 min-15 total
*** SR-2	8 d.u. per acre	5 ac	16,000	75	45	30	30	5 min-15 total
			6,500	50	45	30	30	5 min-15 total
			8,000	60	45	30	30	5 min-15 total
*** UR-1	12 d.u. per acre	n.a.	n.a.	n.a.	See Section 1780	1780		
*** UR-2	20 d.u. per acre	n.a.	6,500	50	45	30	30	5 min-15 total
*** UR-3	30 d.u. per acre	n.a.	8,000	60	45	30	30	5 min-15 total
			n.a.	n.a.	See Section 1780	1780		
			n.a.	n.a.	See Section 1780	1780		
HHP	7 d.u. per acre	10 ac	5,000	40	20	30	10	10
*** C-1	12,000-15,000 sq.ft. GFA/acre (see Sec. 916)	n.a.	5,000	50	45	30	20	5 (20)*
C-2	15,000-18,000 sq.ft. GFA/acre (see Sec. 924)	2 ac	5,000	50	50	75	20 (50)*	10 (50)*
C-3	18,000-20,000 sq.ft. GFA/acre	3 ac	20,000	100	50	50	20 (50)*	10 (50)*
C-4	15,000-18,000 sq.ft. GFA/acre	3 ac	10,000	100	50	75	20 (50)*	10 (50)*
*** O-1	20,000 sq.ft. GFA/acre	n.a.	6,500	40	45	30	20	5 (20)*
*** O-2	30,000 sq.ft. GFA/acre	3 ac	12,000	40	70	30	15	10 (20)*
I-1	25,000 sq.ft. GFA/acre	5 ac	20,000	150	50	50**	30 (50)*	10 (50)*
I-2	22,000 sq.ft.	10 ac	120,000	250	100	100	30 (100)*	20 (100)*
I-3	n.a.	50 ac	n.a.	n.a.	100	50	50 (100)*	50 (100)*
*** PF	n.a.	n.a.	n.a.	n.a.	70	30	10 (50)*	10 (50)*
*** A	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.

Abbreviations: n.a., not applicable; d.u., dwelling unit; ac, acre; s-f, single-family; GFA, Gross Floor Area; (*), when adjoining any of the following zone districts: A-1, A-2, R, RSE, RS, SR-1, SR-2, UR-1, UR-2, UR-3, HHP; (**), when parking is located in the front yard area, a minimum fifteen (15) foot buffer, suitably planted, shall be maintained between the right-of-way and the parking area.

Table 1 Dimensional Standards will be adjusted with three asterisks behind frontyard setbacks for zones R, RS, RSE, SR-1, SR-2, UR-1, UR-2, UR-3, RIF, C-1, O-1, O-2, and A. *** will mean 50 feet if adjacent to collector roads.

BOONE COUNTY
BOARD OF ADJUSTMENT

May 11, 1988 - 6:30 P.M.

BOARD MEMBERS PRESENT:

Mr. I. A. Archambault
Mr. Dan Houston
Mr. Walt Ryan
Mr. George Whitton, Chairman

BOARD MEMBERS NOT PRESENT:

Mr. Fred Nevel

LEGAL COUNSEL PRESENT:

Mr. Dale Wilson

Chairman Whitton called the meeting to order at 6:30 P.M. and noted that each member had received a copy of the Minutes of the Boone County Board of Adjustment Meeting of April 13, 1988 and asked if there were any comments or corrections.

Chairman Whitton advised that under Item #3, Tack and Dirr Properties should be Tacket Durr Properties.

Mr. Ryan moved that the Minutes be approved as amended. Mr. Archambault seconded the motion and it carried unanimously.

AGENDA ITEMS;

1. The request of Russell K. Hays for Florence First Church of God for a Variance in the location of a sign or bulletin board of a church. The 4.2-acre site, which is located on the west side of Hopeful Road approximately one mile south of KY 18, is zoned Suburban Residential One (SR-1) and is owned by the Florence First Church of God. (Deferred from the last meeting.)

Chairman Whitton advised that the Staff Report indicates that the sign has been dimmed.

Rev. Hays stated that they were not able to get a dimmer for the sign as the lights are fluorescent. However, they have dimmed the lighting by at least fifty percent by decreasing the wattage or the number of bulbs.

In response to a question from Chairman Whitton, Mr. Breidenstein advised that he had not seen the sign since it was dimmed, but no further complaints have been received.

There being no further discussion, Mr. Archambault moved that the request now be granted based on the dimming of the sign. Mr. Houston seconded the motion and it carried unanimously.

2. The request of Gary Neal for a front yard Variance of 10 feet in order to place a mobile home 70 feet from the roadway. The 36.25-acre site, located just north of 11511 Big Bone Church Road, is zoned Agriculture (A-1) and is owned by Gary Neal.

Staff Member, Tom Breidenstein, presented the Staff Report which included a slide presentation (see Staff Report).

Chairman Whitton asked Mr. Neal for his comments.

Mr. Neal stated that all the information he wished to submit was contained in his letter attached to the Staff Report.

Chairman Whitton asked if there was anyone present who wished to speak for or against this request or if there were any questions. There being no response, he asked if there were any comments from the Board.

Mr. Ryan asked if Mr. Neal owned the house indicated in the slide presentation. Mr. Neal advised that he did not own the house. He stated that it was on a tenure until the residents leave or until their death. He stated that the land is on a land contract.

In response to a question from Mr. Ryan, Mr. Neal advised that the mobile home will be set back further than the house.

There being no further discussion, Mr. Ryan moved that the request be granted based on the Staff Report and the topography of the property. Mr. Archambault seconded the motion and it carried unanimously.

3. The request of David Trapp for a front yard Variance of 40 feet to allow the construction of a single-family house 40 feet from the road. The 1.736-acre tract, located just west of 10717 East Bend Road, is zoned Agriculture (A-1) and is owned by August and Marion Trapp.

Staff Member, Tom Breidenstein, presented the Staff Report which included a slide presentation.

Chairman Whitton asked if the applicant wished to comment.

Mr. Trapp stated that he had nothing to add.

Chairman Whitton asked if there was anyone else present who wished to speak in regard to this request. There being no one, he asked if there were any comments from the Board.

In response to a question from Mr. Ryan, Mr. Breidenstein advised that this house would be approximately even with the adjacent house.

There being no further discussion, Mr. Ryan moved that the request be granted based on the Staff Report and the Special Circumstances of the topography and the power line. Mr. Houston seconded the motion and it carried unanimously.

4. The request of Raymond Erpenbeck (agent for IPM, Inc.) for a Conditional Use Permit and Site Plan Review to allow the construction of a two-story office building. The 0.49-acre site, located on the eastern side of Rogers Lane, across from Torrid Street, is zoned Suburban Residential Two with a Small Community Overlay (SR-2/SC). The property is owned by IPM, Inc. (by option).

Staff Member, Tom Breidenstein, presented the Staff Report which included a slide presentation (see Staff Report). He noted that Staff had requested revisions to the Site Plan and with those revisions, Staff would be able to recommend approval of the Site Plan if the Conditional Use Permit is approved by the Board.

Mr. Ray Erpenbeck presented a copy of the basic plans for the proposed building. He noted that the first floor will be brick and the upper story will be frame. The building will be in keeping with the residential appearance of the neighborhood. There will be 2,400 square feet per floor.

Following review of the parking, Staff advised that a four-foot buffer would be the minimum requirement. Mr. Erpenbeck advised that the buffer will be a combination of the plantings and the berm.

Mr. Erpenbeck advised that they are in the process of leasing the building, pending financing. Their prospective tenants are primarily lawyers.

Following review of the revised Site Plan, Staff advised that their concern regarding sidewalks has been addressed on the Plan. Staff was also concerned about the landscaping, but advised that a detailed landscaping plan will be submitted to the Staff for approval.

Mr. Erpenbeck stated that they are agreeable to the condition that the Staff approve the landscaping plan.

Chairman Whitton asked if there was anyone else present who wished to speak in regard to this request.

Elizabeth Curtley, who resides at the corner of Torrid & Rogers Lane, stated that she is concerned about the drainage. She asked if the drain under Rogers Lane was adequate. She questioned how the sewage would be handled.

Mr. Erpenbeck stated that the drainage under Rogers Lane goes into this site. They will pick up that drainage and pipe it down into the ravine. He noted that in regard to sewage, manholes would be installed and the sewage would be disposed of in the creek at the rear of the property line.

Chairman Whitton advised that these concerns will be addressed by the Staff's engineer.

Mr. Roy Cantrell, an adjoining property owner, questioned what type of septic system will be used.

Mr. Erpenbeck advised that they are working with the Health Department in this regard and the system will be in accordance with the regulations.

There being no further discussion, Mr. Houston moved that the request be approved subject to the Staff completing its review of the Site Plan, the Staff's approval of the landscaping plan, and approval by the necessary governmental agency of the sanitary sewer system. Mr. Ryan seconded the motion and it carried unanimously.

5. The request of Gladys Mann Wagner for an Appeal of the Zoning Administrator's decision regarding the subdivision of property. The applicant wishes to divide a 0.9-acre buildable lot in a zoning district which requires buildable lots of 1.84 acres. The subject property, located at 3457 Idlewild Road, is zoned Agriculture Estates (A-2), and is owned by Austin Mann.

Counselor Wilson advised that under state statute, the Board has sixty days from this evening to make a decision on this matter.

Mr. Gerald Newton, Director, stated that his decision is not in error and that the Staff Report, with its attachments, is a compilation of the available information (see Staff Report). He stated that the property in question is less than one acre and if it had been sold prior to 1980, it may have been a lot of record and been pre-existing, non-conforming. However, under current regulations and the regulations in place since 1980, he cannot allow a Convenience Plat to be reviewed and approved for this to be a buildable lot. He suggested that a possible solution may be to change the zoning of a larger area, or a text amendment -- which would affect all properties zoned A-2. He stated that he does not believe the appeal to be a viable option as he has not exercised any discretion in his decision.

Mr. Mann stated that they had erred through lack of knowledge. He noted that the double-wide was erected in 1985. He stated that they have adjacent acreage, but it would be injurious to the parent tract to transfer a larger parcel. He stated that they had subdivided lots for two of their other children and they were not aware that this tract could not be subdivided.

Chairman Whitton stated that the Board cannot grant a density variance.

Counselor Wilson stated that this was correct and quoted the statute. He noted that the participants have each outlined their position and there is a dispute as to what the regulations say. He noted that the request does not meet the requirements and stated that he believes the only way the Board can find against the Zoning Administrator is to determine that this is a lot of record and a pre-existing situation.

In response to questions from Chairman Whitton, Mr. Mann advised that the trailer has been occupied since 1985. He presented a drawing of the parent tract and indicated those parcels transferred to his children.

Chairman Whitton noted that the other parcels were transferred prior to the rezoning in 1980.

Mr. Mann stated that this parcel was inadvertently left out in 1980 and would have been transferred from the parent tract at that time.

Mr. Archambault noted that the land was subdivided before 1980, but was not described properly. Mr. Mann agreed and added that a deed was not drawn up until recently which is when the problems began.

Mr. Newton questioned why the plot plan was prepared and Mr. Mann stated that it was prepared in connection with financing. He stated that all the property was used as collateral for the double-wide.

Mr. Newton stated that he did not believe that an error or omission had occurred. He stated that there was no information to prove that the one-acre parcel was a lot of record prior to the current zoning regulations or the 1980 regulations.

Chairman Whitton noted that a lot of people come to the Board to be granted relief from distress situations and the Board has granted such relief after determining that the request was reasonable. He stated that this request is reasonable, but the Board does not have the legal authority to overturn the Zoning Administrator's decision in this case.

In response to questions from Mr. Archambault, Mr. Mann stated that taking an additional acre from the parent tract would ruin the sale of the parent tract.

Mr. Archambault advised Mr. Mann that the Board cannot increase the density. He questioned the possibility of Mr. Mann purchasing additional adjacent acreage.

Mr. Mann stated that there was no additional property available. He questioned why the Health Department or the Building Department did not stop them in 1985 from erecting the double-wide.

Chairman Whitton stated that at that time, they had a combined tract of land. Mr. Mann agreed, but stated that there was an imaginary line which was pointed out to the Health Department and the Building Department.

Mr. Newton stated that Mr. Taberke was the Zoning Administrator and the Building Inspector at that time. He stated that if there was an imaginary line but the allowable density for the two sites could be preserved, then the situation was possible, but not wise in terms of marketability. He noted that at that time, the applicant was the owner of the home and the parcel for the double-wide.


In response to questions from Mr. Ryan, Mr. Mann advised that at this time, the parcel cannot be deeded to his daughter, but she can continue to live in it. He stated that it is very important to him to be able to transfer the parcel to his daughter.

Mr. Newton advised that an option would be to make application to rezone his property and adjacent property to create a five-acre parcel.

Counselor Wilson noted that prior to 1980, the parcel would have met the requirements.

There being no further discussion, Mr. Ryan moved that the Board uphold the Zoning Administrator's decision. Mr. Archambault seconded the motion and it carried unanimously.

APPROVED:



George D. Whitton, Chairman

ATTEST:



Jan Hancock, Recording Secretary