

**CAMPBELL COUNTY & MUNICIPAL BOARD OF ADJUSTMENT
MINUTES OF THE APRIL 19, 2011 MEETING**

MEMBERS PRESENT:

Mr. Scott Bachmann
Mr. Paul Johnson
Mr. Roger Mason, TPO
Mr. Dave Schaber, Vice Chairman
Mr. Justin Verst, Chairman

MEMBERS ABSENT:

Ms. Fran Reitman
Ms. Connie Schweitzer

STAFF PRESENT:

Mr. Michael Duncan, Legal Counsel
Mr. Peter Klear, AICP, Director
Mr. Ryan Hutchinson, Planner
Ms. Stephanie Turner, Recording Secretary

Mr. Verst called the meeting to order at 7:04 PM. Mr. Verst asked for a roll call. Following roll call, a quorum was found to be present. Mr. Verst asked if everyone had read the March 15, 2011 meeting minutes and if there were any questions or corrections. There being none, Mr. Verst called for a motion. Mr. Johnson made a motion to approve the minutes as submitted. Mr. Schaber seconded the motion. A roll call vote found Mr. Bachmann, Mr. Johnson, Mr. Mason, and Mr. Schaber in favor. Mr. Verst abstained. Motion passed.

Mr. Verst introduced case #BA-07-10, Rusty Smart/Jerry Noran, who are asking for an expansion of a conditional use to allow for the construction of a 27' x 60' foot picnic shelter and 24' x 24' storage building. Mr. Hutchinson presented the Staff Report as follows.

CASE:	BA-07-10
APPLICANT:	Rusty Smart / Jerry Noran
LOCATION:	4867 Stone House Road, Unincorporated Campbell County.
REQUEST:	Expansion of a conditional use to allow for the construction of a 27' x 60' foot picnic shelter and 24' x 24' storage building.

Staff has reviewed the request and finds as follows:

Description of Request:

The applicant is asking to expand an existing conditional use (Oakland Methodist Church) by constructing a 27' x 60' foot picnic shelter and 24' x 24' storage building on a lot adjacent to the side of the church.

Considerations:

1. The site in question is currently occupied by a church. Surrounding land uses are single-family residential and vacant land.
2. The Recommended Land Use Map of the 2008 Campbell County Comprehensive Plan identifies the site and surrounding areas for Agricultural.

3. The zoning classification for the site is Rural-Residential Estate (R-RE) and Agricultural-One (A-1). The building is proposed to be constructed within the R-RE Zone. Churches and other accessory buildings for the purpose of recognized religious worship are permitted as a conditional use in both the A-1 and R-RE Zones. In the A-1 zone, conditional uses require a minimum lot area of three acres.
4. The submitted development plan indicates the following:
 - a. The plan shows a proposed picnic shelter 27' x 60' and a storage building 24' x 24' on an adjacent lot.
 - b. The plan shows an existing playground 40' x 60' *that was constructed without approval*. The playground is also crossing a property line.
 - c. The plan shows additional parking to be constructed around the perimeter of the church.
 - d. The plan shows parking being placed on adjacent property *not owned by the church*.
 - e. The zoning code requires 64 parking spaces.
 - f. The site plan shows 71 parking spaces provided.
 - g. The plan does not indicate the size of any of the existing lots or adjacent lots are that are owned by the church.
 - h. The plan does not show the bearing and distance of the lots.
 - i. The plan does not show the deed book and page and name of the adjacent land owners.
 - j. The plan is missing width of street.
 - k. The plan is missing building height for the proposed structure.
 - l. The plan is missing the utilities on the property.
5. A review of the public records indicates there was a previous conditional use and variances granted by the Board of Adjustment for this site.

Case BA-02-86 presented on 6/26/1986, for expansion of Oakland Church and operation within the A-1 Zone. The case was approved with two conditions that have been met.

Case CUP-03-UCC-01-07 presented on March 20, 2007, to construct a 4,700 sq. ft. extension to the existing church and provide additional parking. The case was approved with nine (9) conditions. *To date those conditions have not been met.*
6. The church has a history of not completing previously approved projects and moving forward to new projects without obtaining the proper permits / approvals.
 - a. In 2007, the applicant was issued a stop work order for not having all the proper approvals to grade the site.
 - b. The applicant demolished a house without a demolition permit in 2010/2011.
 - c. The applicant expanded the conditional use of the church by constructing accessory structures across property lines on adjacent parcels without a permit.
 - d. The applicant poured a concrete pad for the proposed shelter without approvals or inspections on an adjacent parcel.
 - e. The proposal to construct this shelter was placed on hold because the applicant started work on this project without a permit and have not finished previously approved projects.

All Requests:

1. The applicant shall submit and/or present factual evidence demonstrating:

- 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 church is in an A-1 Zone and has been at this location for many years. The proposed buildings are necessary due to the church growth. These proposed buildings will allow the church to continue to grow and implement church programs.”

- 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 pavilion and storage proposed is to be located on the foundation of the house that existed previously. The property to the east is a steep hillside that is pasture land and it is too steep for development. The north side of the proposed building is the existing church and asphalt drive, to the west side is Stonehouse Road, and to the south is a residential home approximately 1,500 feet away.”

- c. That such use will comply with any regulations and conditions in this ordinance for such use.

“The existing church is in compliance with the Conditional Use Permit granted previously by the Board of Adjustments. The proposed pavilion and storage building will comply with the site plan submitted.”

2. 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.

Staff Recommendation:

To approve the expansion of the conditional use by allowing the church to construct a 27' x 60' foot picnic shelter and 24' x 24' storage building on a lot adjacent to the church, subject to the following conditions:

1. That the applicant fulfills all prior conditions associated with previously approved BOA cases and receive final inspections prior to constructing the picnic shelter. The previous plans include paving the parking lot across the street and the addition to the church.
2. If the applicant chooses not to use the parking lot across the street, they must remove all gravel and restore the site to pre-construction condition. This must be done prior to applying for a building permit for the shelter.
3. That the applicant not construct any other projects or expand its conditional use without receiving the necessary permits / approvals *or the conditional use permit to operate a church in a residential zone will be revoked.*
4. That the applicant combines all lots via land additions prior to constructing the picnic shelter. The land additions must be submitted to staff for review and approval.
5. That the applicant submits plans to the building department for the picnic shelter and receive a final letter of approval after all other work on previously approved plans have been completed.
6. That the applicant complies with the Campbell County Zoning Ordinance and building codes.

Supporting Information/Bases for Staff Recommendation:

1. 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.

2. 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.
3. That such use will comply with any regulations and conditions in this Ordinance for such use. *At this time the applicant has not been in compliance with Campbell County regulations, if they continue to expand without proper approvals they are subject to losing their conditional use.*
4. CAMPBELL COUNTY ZONING ORDINANCE SECTION 10.2 R-RE A.1., states: Permitted use is single family dwelling, detached.
5. CAMPBELL COUNTY ZONING ORDINANCE SECTION 7.0 d.1., states: “A customary accessory building or use is one which: D. Is located on the same lot as the principal building or principal use served...”
6. CAMPBELL COUNTY ZONING ORDINANCE SECTION 9.14 B.1., states: “CONDITIONAL USE PERMITS: 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 only if certain conditions are met:
 1. 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. Any such conditions shall be recorded in the Board's minutes and on the conditional use permit, along with a reference to the specific section in the zoning regulation listing the conditional use under consideration. In addition, said conditional use permit shall be recorded in the office of the County clerk and one copy of said permit attached to the deed for the property for which it is issued. 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.”

Mr. Hutchinson asked the Board if they had any questions that he could answer for them. Mr. Johnson asked Mr. Hutchinson to clarify the wording of Staff Recommendation #1. It reads: “1. That the applicant fulfills all prior conditions associated with previously approved BOA cases and receive final inspections prior to constructing the picnic shelter. The previous plans include **paving** the parking lot across the street **and** the addition to the church.” Mr. Johnson stated that he assumes this to mean paving of the parking lot and **construction** of the addition to the church and not **paving** of the addition to the church which is what it reads like. Mr. Hutchinson answered that was correct. It is construction of the addition to the church. Mr. Mason asked if the 4,700 sq. ft. addition to this church actually happened. Mr. Hutchinson stated that it was currently under construction. Mr. Mason asked how far out was completion of the addition. Mr. Hutchinson advised Mr. Mason that it had been under construction for some time and that the anticipated completion date would be a question to ask the applicant. Mr. Verst asked Mr. Hutchinson to confirm that the “future” addition listed on the site plan is the 4,700 sq. ft. addition that is being discussed and not a second addition to be added at a later date. Mr. Hutchinson confirmed that this was correct. There is only one addition planned for this church and it is the 4,700 sq. ft. addition listed as “future” addition on the site plan. Mr. Hutchinson pointed out the addition on the site plan for the Board.

Mr. Schaber asked Mr. Hutchinson if the additional parking spaces being added to the right side of the plan are above and beyond what is being required for the church. Mr. Hutchinson stated the church is required to have 64 spaces and they will have 71. Mr. Schaber stated that the elimination of those two lots encroaching on their neighbor's land would not affect their parking requirements. Mr. Hutchinson confirmed it would not. Mr. Verst stated he was a little confused as to which portions of the parking lots were paved. He asked for clarification as to what portion of the parking situation, as well as what portion of the retaining wall, is in existence today. Mr. Hutchinson replied that the retaining wall at the top of the plan is in existence. It was necessary to keep the grading from coming down. This wall and some parking were approved in 2007. Where the darker, bold line reflects the newer parking spaces the church is asking for at this time.

Mr. Schaber asked, if the Board approves the applicant's request, are they also approving the site plan or will the applicant have to come back before the Board with a site development plan for approval. Mr. Hutchinson stated he believed they would be approving the site plan as presented, but asked Mr. Klear to clarify. Mr. Klear stated that the Board is approving the expansion of the conditional use permit only. The Board does not have the authority to review or approve a site development plan. The Planning and Zoning Commission would approve site development plans. If the Board felt it was necessary for a site development plan to be reviewed and approved, they could make that a condition of their approval that one be submitted to the Commission for review. Mr. Hutchinson found a better picture reflecting the retaining wall Mr. Verst had asked about previously, but advised Mr. Verst to ask the applicant for clarification on their intentions with the retaining wall.

Mr. Hutchinson asked if the Board had any other questions of Staff. Mr. Bachmann asked Mr. Hutchinson what conditions specifically from 2007 had not been completed. Mr. Hutchinson stated he did not have the case file with him tonight, but the two items that immediately come to mind are that expansion of the church had not been completed and the applicant did not pave the parking area across the street. Mr. Hutchinson stated they even put in the detention/retention area, but never put in the concrete. Mr. Hutchinson asked if the Board had any other questions of Staff.

Mr. Verst asked the Board if they had any additional questions for Mr. Hutchinson. There being none, Mr. Verst asked the applicant to come forward, state his name and address for the record. Mr. Joe Kramer, Cardinal Engineering, 1 Mooock Road, Wilder, KY came forward. Mr. Kramer advised the Board he was acting on behalf of the applicant. Mr. Kramer stated that Staff based their approval with six conditions. The applicant agrees with conditions # 3 through 6 of the staff report and has already begun processes to comply with those conditions. The applicant disagrees with conditions # 1 and 2. Condition 1 was to fulfill all the conditions of the previous case from 2007. Mr. Kramer stated he had a copy of the 9 conditions from the 2007 ruling and he read them off for the Board. For accuracy, the conditions have been entered below as they were issued in the original action letter to the applicant. Mr. Kramer's comments are in bold, italics:

1. That the lot size be clarified, the ID plat shows the lot as being 1.32 acres and the development plan shows 1.41 acres. ***This issue was addressed at the time of the previous case in 2007.***
2. That the parking facilities and driveway be designed and constructed in accordance with the Campbell County Zoning Ordinance. ***This issue has not been completely resolved. The parking lot has gravel, but has not been paved. Condition 2 has not been fulfilled.***
3. That the church be granted a variance to operate below the required 3-acres within an A-1 Zone. ***In 1980 when they originally applied for their conditional use permit, they had less than 1-acre. Since that time and even continuing since the 2007 case, they have been purchasing small portions of property as they have become available and as the church has grown so that***

they are slowly coming closer to being in compliance with this regulation. If you include acreage on both sides of Stonehouse, they now meet the 3-acre minimum.

4. That the existing driveway be reduced to a maximum curb cut width of 48 feet wide. *They originally had one continuous large curb cut. They have two separate curb cuts – each less than 48 feet in width.*
5. That the entrance to both parking lots be across from each other. *From the photos, you can tell that we have in fact lined up the entrances to be directly across from one another.*
6. That a revised development plan be submitted to staff showing its compliance with the Campbell County Zoning Ordinance. *Mr. Kramer stated he is assuming that this revised development plan was submitted to staff as requested.*
7. That the applicant complies with the parking requirements of the Campbell County Zoning Ordinance, and provide staff with the number of parking spaces required for this facility. *At the time, it was unclear if the church had met the adequate number of parking spaces required based upon the seats occupied calculations. As we discussed today though, we have actually exceeded the required number of spaces required.*
8. That pedestrian crossing signs and a cross-walk be added on Stonehouse Road between the parking lot and the church. *This cross-walk has been constructed.*
9. That no direct access from parking spaces and Stonehouse Road be made. *There used to be parking spaces that backed out directly onto Stonehouse Road. This was seen as a safety issue so those spots were eliminated and now all parking spaces are either within the parking lot across the street or within the church parking lot.*

Mr. Kramer stated that, of those nine conditions, the only ones not completed pertain to the gravel parking lot across Stonehouse Road and the actual completion of the construction of the addition. In respect to today's staff report and condition #1 requiring all previous conditions be met, the applicant is requesting this condition not be required. The church has resolved as many items as they can except for these two specific items. The actual construction of the church began last year. As you know when you rely on volunteer workers with people donating their time it doesn't happen overnight. It takes a little time. In regards to the gravel parking lot across Stonehouse, we know that gravel parking lots are not permitted in Campbell County. It was initially used as a staging area for the contractors as they installed a new water main on Stonehouse. Since then, it has been used very sparingly as parking for church services and as a staging area for the construction going on right now for their addition. Considering this, we would like to propose to the Board a time limit of 5 years from today to complete the church and parking lot. This would allow them to complete the shelter that they are proposing. Mr. Kramer is aware there is a lot of concern that they are taking on new projects when other projects have not yet been completed, but the members of the church will speak about how they got to this point and why they are doing this. Condition #2 of staff's report states the church should remove all the gravel or pave it. It just doesn't make any sense to do any of that before completion of the addition to the church. The church has invested a lot of funds into the gravel and placement of the retention/detention basins. Mr. Kramer wanted to clarify that the church did own all the adjoining properties with the exception of the small corner where the two parking spaces overlapped onto a neighbor's lot. That concluded Mr. Kramer's presentation. Mr. Kramer asked the Board if they had any questions he could answer for them.

Mr. Verst asked Mr. Kramer to confirm that the applicant did intend to pave the parking lot across Stonehouse Road and not tear it out once the completion of the construction was done and they no longer

needed a “staging area.” Mr. Kramer stated that the applicant had invested a lot of funds into the maintenance and development of the parking lot with the gravel and detention/retention basins. Their intention has been to pave it all along, but not until after the completion of the addition. They just need more time. Mr. Verst asked if the parking spaces from that parking lot were included in the calculations of spaces required based upon seats occupied. Mr. Kramer stated he did not believe those spaces were included in the calculations. Mr. Schaber asked for clarification of the applicant’s request for a five year extension. Does the five year extension include the completion of the addition and the parking lot and the playground...everything...or just the addition? Mr. Kramer stated the five year extension would allow the church to complete all outstanding items: the addition, the paving of the gravel lot, the storage shed, the pavilion and the playground/shelter area.

Mr. Verst asked the Board if they had any additional questions for Mr. Kramer. There being none, Mr. Verst asked the applicant to come forward, state his name and address for the record. Mr. Jeremy Gosney, Oakland United Methodist Church, 7867 Stonehouse Road, Melbourne, KY came forward. Mr. Gosney began by giving the Board a brief history of the church. The church is made up completely of volunteers with countless number of hours donated. These gentlemen have a passion to serve to expand the church. They want to work with Board to resolve the issues, but are working with an ignorance of the process of the County requirements. In the beginning, they started with a survey from Cardinal Engineering of what they wanted as their “master plan.” The church is a living and growing thing and as they have grown their directions have changed a little. The property where you currently see the playground and shelter wasn’t even an option available to us at the time we made our original site plan submission to you. We had asked several times if Ms. Patricia Nelson was interested in selling the property (where the pavilion is proposed), but the answer had always been no. After we got our approval and we started moving dirt, she came forward and offered to sell us her property and within a weeks time we acquired that property. We discussed different ways to use that property. We used it temporarily as classrooms and for youth events. We had intentions to use it as a half-way house as a ministry, but after further considerations, it presented several legal issues that could have been more than the church was prepared for so we determined that was not a good fit. The house then developed some mold issues and had water damage underneath so the decision was made to demolish the home. The church committee was not aware that a demolition permit was necessary so one was not obtained at that time. For the past 2-3 years, money within the church was being donated and earmarked especially for playground equipment for the children. It was our intention to honor their request to upgrade the equipment and provide a safer environment for the children and not to in any way disrespect or blatantly disregard procedure. We were unaware a permit was necessary for the playground. The building inspector issued a stop work order on the work they had done on the shelter/playground area. They complied by applying for the demolition permit and paid for the penalty fee associated with it. Their goal tonight is to do whatever is necessary to get the go ahead to complete the picnic shelter/ playground area. Cardinal Engineering has the drawing ready to go and can add any additional requirements that the Board sees fit to add. The church is willing to work with the Board to reach a compromise and do whatever they can to get the ball rolling again on this project.

Mr. Gosney informed the Board of the land acquisitions made from Mr. Edwin Schultz were very open. Mr. Schultz basically allowed the church to move the fence to cut out the parcel of land the church needed. The church paid the survey cost and Mr. Schultz approved the sale to the church for a reasonable price. It was a mutually agreeable relationship.

Mr. Gosney advised the Board that the church solicited bids last year for the construction of the addition. With the current state of the economy, the bids all came in around the same market price, but the market price was higher than they had anticipated. They presented the bids to the church and stated the amount they would have to borrow to complete the construction. The construction would be completed within approximately a one year timeframe, but they would be required to borrow for the funds for

approximately 25-30 year loan with a steeper interest than they had wanted to pay. A couple from the church asked if they had to borrow the funds or if they could build the addition in phases, paying as they went along. The committee took that under advisement and developed a five year plan that allows the church to use completely volunteer workers to complete the work, paying as they go along. They will own the church in full without causing any further debt. They have funds that have been earmarked specifically for the picnic shelter and playground area which is why they want to proceed with that project now. They have not forgotten or given up on the addition, it is just covered under the five year plan and their congregation is aware of that.

Mr. Gosney continued to explain that the current building permit is for the 4,700 sq ft addition. The 1st floor of that addition is classrooms and kitchen. Their church is mission minded and they like to eat. It is a big part of their socialization. Right now, they have classes meeting in fellowship halls where it can get quite noisy and disruptive. The “sanctuary” is upstairs on the 2nd floor. The completion of the 1st floor, when they go for occupancy, will mean that they get updated all restrooms to be ADA compliant, will provide the church with a larger fellowship hall, they will have classrooms and a full prep kitchen. The 2nd floor will remain a shell for now. The outside will be completed to where it is pleasing to the people that go up and down the road. The gravel parking lot across the street will still be used as a staging area for the continued construction. Mr. Gosney stated the 2nd floor is on a 3-5 year plan as it is not as vitally necessary as the 1st floor. They do not have this “double in size” growth going on so the gravel parking lot is not needed right away, but they want to have it available for they growth they do expect when the addition is complete. Mr. Gosney confirmed that the church fully intends to pave the gravel parking lot, but they are requesting to not be required to do so until after the addition is completed. The church started turning dirt on the addition in June 2010. They had 90% of the materials and work acquired by contractors/suppliers in Campbell County. The church acknowledges they have crossed the line a few times and they are willing to pay whatever fines are assessed, but it has been a learning experience for them. They had to pay a \$5,000 bond with the Kentucky Department of Transportation for the curb cuts which has been satisfied and are awaiting their refund at this time.

Mr. Gosney asked the Board if they had any questions he could answer. Mr. Schaber asked if the playground is completed. Mr. Gosney replied that the only outstanding item is that there is a load of mulch needed to complete the playground itself. Mr. Schaber asked if the picnic shelter or storage shed had been built. Mr. Gosney replied they had not been built yet. Mr. Schaber asked when the church predicted those being built. Mr. Gosney replied that they were seeing the picnic shelter completed this year. The storage shed is so they can have lockable storage and may be built this year. Mr. Schaber asked for clarification for the time table of the parking, 1st floor and 2nd floor and if Mr. Gosney had any specific dates for the completion of those items. Mr. Gosney stated they are now in the middle of the 2nd Phase which is setting the trusses and trying to get her dried in. They have the materials for the interior walls and would venture to say within the next 10-12 months that the 1st floor would be complete. They have to tear up some existing stuff to fix the restrooms and that is going to take some time. Mr. Schaber asked for confirmation the parking would be completed in five years. Mr. Gosney stated that was correct.

Mr. Verst asked what would be the trigger for completing the gravel parking lot. Mr. Gosney stated that when they completed the “sanctuary” they would no longer need the staging area and that would be when they would pave the gravel parking lot. Mr. Verst asked about the structure represented on the drawings as being located either on or near the gravel parking lot. Mr. Gosney explained that was originally going to be the picnic shelter. After discussion with Staff and others, the church wants to move it next to the playground due to safety concerns of children playing and then running across the road to rest. It was strongly advised to have them on the same side of the road. Mr. Verst asked if they demolished the structure. Mr. Kramer advised the Board the structure was never built; it was just placed on the overall conception drawing. Mr. Mason asked what the estimated cost for paving the gravel lot was. Mr. Gosney stated they estimated it would be \$25,000. Mr. Verst wanted confirmation that the gravel parking lot was

used as a staging area only and not as a parking lot. Mr. Gosney stated that someone may park there just to be parking there, but mostly it is used as the staging area for the construction team. Mr. Verst stated it makes a difference to him with the lot being in non-compliance. Mr. Schaber stated he agreed there should be no parking there since it was not paved. He doesn't mind it being used as a construction staging area, but definitely no parking there. Mr. Mason asked Mr. Schaber and Mr. Verst what happens in five years when the construction and parking lot still are not completed. Mr. Schaber stated that the Board would revoke it. Mr. Mason asked for clarification that the Board would revoke the conditional use permit for the church to operate. Mr. Schaber stated no, the Board would revoke the conditional use approval for the church to have parking across Stonehouse Road and they would be required to return the gravel lot to its original state. Then it goes away. Mr. Mason asked for clarification again if Mr. Schaber was speaking of the church's conditional use permit. Mr. Schaber confirmed again that he was speaking only of the parking lot. Mr. Schaber also stated the applicant could come before the Board again in five years and ask for another extension. Mr. Mason asked if there was a need for a performance bond in this instance. Mr. Schaber stated no bond was necessary. Mr. Gosney stated that the church is not just jumping willy-nilly from one project to another. They have monies donated that are earmarked for a specific project and as they reach their donation goals of those specific projects they want to get construction started and completed as quickly as possible. Mr. Verst had a question for legal counsel. If the Board revoked the conditional use allowing parking on the gravel parking lot, would that legally invalidate the conditional use permit to operate the church since it was listed as a condition on their originally approval. Mr. Duncan stated that, since they have adequate parking around their church that exceeds the parking requirement, the loss of the gravel parking lot would not affect their conditional use permit.

Mr. Johnson asked the Board if the applicant should be required to submit some type of supporting documentation outlining time frames, expenditures, etc. since in essence we are revisiting a previous submission from several years ago. Mr. Johnson explained that he is having a difficult time following the changes from their previous submission and it would be easier to follow if there were information submitted clearly outlining what was previously committed and allowed and what is being requested to be approved by the Board so it would be easier to evaluate. Mr. Verst stated that this sounded like a question for discussion among the Board and not necessarily a question for the applicant to answer. Mr. Verst asked if anyone else had any questions for Mr. Gosney. Mr. Duncan asked for clarification of the address of the church for the record because the staff report and application reflect 4867, but the applicant stated and referred to 7867. Mr. Gosney replied the church is located at 7867 Stonehouse Road. Mr. Duncan stated so then Dave Whittaker made an error completing the application. Mr. Bachmann asked for clarification of the timeframe for what could be completed within one year. Mr. Gosney replied the 1st floor and exterior finish. Mr. Bachmann asked about the remainder of the addition. Mr. Gosney stated the sanctuary and the parking lot would be completed by the end of five years. Mr. Bachmann stated that meant the church would be able to make use of those portions of the church. Mr. Gosney stated they were meeting their needs for the time being with being able to use the classrooms and the kitchen located on the 1st floor.

Mr. Verst asked if there were any other questions for Mr. Gosney. There being none, Mr. Verst reminded the Board that they were considering before them tonight the expansion of a conditional use permit to build a picnic shelter and storage shed. Everything else was on a previous plan. They are performing maintenance work on a previous decision by determining if the previous conditions have been met or if they must be met prior to either approving or denying the request before the Board tonight. Mr. Verst wanted to narrow the Board's focus down to the real issue before them before asking if anyone else in the audience wished to speak. Mr. Gosney confirmed that was the church's goal for the Board to see where the church's goals were headed and to be directed on how they could get there. Mr. Hutchinson advised Mr. Johnson that within each zone there are permitted uses and conditional uses. Within the A-1 zone, a church is considered a conditional use that has to operate with 3 acres. Any time they want to expand the

services or ministry to the public they have to come back before the Board and ask your approval to expand since it is not normally allowed within this zone. The church in this instance started expanding without your approval, causing staff to be concerned that they would start projects without finishing them and without following the procedures in place to obtain the proper permits. Mr. Johnson stated that he still felt a written time table reflecting their commitment to complete these projects is necessary. Mr. Johnson does not understand why their refusal to obtain the proper permits is germane to the issue of building the picnic shelter, storage shed and the parking lot? He feels like two separate issues are going on, but he doesn't want to bog down the discussion of this case to pursue this line of thought. Mr. Verst and Mr. Schaber advised Mr. Johnson that it is the Board's responsibility to correct any oversights or inaccuracies that may have resulted from previously issued decisions by the Board. It is kind of like "housekeeping" or "policing" their previous decisions. If a previous decision needs to be amended, and it is connected to a current case, it just makes good sense to do it while you're revisiting the situation.

Mr. Verst asked if there were any audience members that wish to speak to please come forward, state your name and address for the record. Mr. Earl Schmidt, 1599 Grandview Road, Alexandria, KY came forward and identified himself as the chairman of the board for Oakland United Methodist Church. Mr. Schmidt stated he felt he had to clarify why the church did not take out the loan to complete the construction of the addition. It would have been completed within the timeframe expected by Staff, but it would have resulted in a debt that would affect the church and not just Mr. Schmidt, but his children and grandchildren. This was not a legacy the church wanted to leave to future generations of the church. They determined that it may take five years to build, but it would be owned debt free with no burden to their future church members. The decision was made to perform the work using volunteer work. They are bidding out everything that needs to be done. Mr. Verst asked if there were any questions for Mr. Schmidt. There were none. Mr. Verst asked if there were any other audience members that wished to speak. There being none, Mr. Verst opened the floor for discussion among the Board.

Mr. Verst stated anytime he reads a report where previous conditions were not met and permits were not obtained prior to starting construction it makes him a little grumpy. Mr. Verst stated he remembers the 2007 case presentation and has some sympathy for the project relying upon volunteer workers. Whenever you rely on volunteer workers, your timeframe is somewhat extended. Mr. Verst appreciates that the church took money out of their coffers to purchase land surrounding their building to grow to be closer to the three acre requirement. Mr. Verst believes we are all on the same page in regards to how a conditional use operates and that it was approved in the past and how this property it going to be functioning and any changes have different consequences and needs to be brought before us.

Mr. Verst asked the Board if there was any discussion about the timeframe. Staff has recommended the parking lot be completed before the approval of the picnic shelter is granted, but the applicant is asking for a five year extension to complete the addition and parking lot and for approval to begin the picnic shelter and storage building immediately. Mr. Verst asked if the extension a good idea and if so is five years a good limit or is it too much. Mr. Mason stated he personally had an issue with the extension of five years. He agrees with the way staff has recommended in the report. Mr. Mason stated he feels this original approval was granted in 2007 and now they wanted another five years. He feels five years is way too much time. If the Board is really in favor of granting an extension, then a firm timeline needs to be set in stone and then we need to police. Who is going to police it? We need to make certain it gets done. Mr. Verst stated he shares Mr. Mason's concern, but the facility has adequate parking. Mr. Verst stated that if we offer them five years and they don't meet their deadline and staff goes out there in five years and the parking lot is not complete then we can take action to enforce that. Mr. Schaber added that is that their 1st floor will be completed within 1 year, but the 2nd floor will not be completed until the end of the five years. They will make it "eye" acceptable and the church will likely ask for a temporary CO (certificate of occupancy) upon completion of the 1st floor so that they could immediately begin using the classrooms and kitchen. Mr. Schaber asked Mr. Klear for confirmation that a final CO will need to be

obtained by the church upon completion of the church. Mr. Klear replied yes, they are supposed to obtain a final CO; however, they likely will not. Mr. Schaber asked for clarification. Mr. Klear suggested the Board should either approve the case as staff recommended or approve based on applicant's request. The applicant is before the Board not because they want to do the right thing, but because they got caught doing the wrong thing. Five years from now, they will not be done. We wouldn't issue a building permit to a business without the parking lot being completed. They are already using the gravel parking lot. It's not paved. It's understandable that they might want to use it for the construction staging area. Mr. Klear suggested looking ahead five years, seeing that the parking lot is not going to be paved, not all of the construction will be completed on the addition, but they will still be operating the church in this facility and there will be no way to stop them. Mr. Verst asked Mr. Klear when the Board approved the conditional use in 2007 what the timeline was set by the Board. Mr. Klear stated that there was no timeline established by the Board.

Mr. Johnson stated he was back to where he was previously. He strongly feels that a timeline showing what the church's intentions were in 2007, what they are asking for at this time, so that a clear decision can be made as to how far off track is the church and how likely is it that they will reach their goal. This is the only way the Board can evaluate whether or not a further extension should be granted. This request is tied up so tight into their original request that you cannot make a decision without a timeline. Mr. Schaber asked Mr. Johnson if staff recommendation meets that timeline requirement. Mr. Johnson replied that in some ways it does, but without the timeline, he does not feel he can give a proper rendering on this case. A piece is missing that leads to the final completion of this project. Is that an acceptable procedure to ask the applicant to go back and create a timeline so that it paints a picture that we can all understand? Mr. Verst stated that staff has set a timeline and the timeline is zero. The applicant cannot begin on the shelter or storage building until such time as the construction of the addition and the paving of the parking lot. Mr. Klear added that there is no time limit set on how long it takes them to complete the addition and the parking lot. They can take as long as they like to complete it. All we're saying is complete that project first. Mr. Hutchinson added that by allowing a five year extension there was no way for staff to track that extension. There was no guarantee that would be in place in terms of personnel, what computer system would be used to track the benchmarks and if memory would hold up to go dust off that old file and go out to confirm that the work is complete. Mr. Duncan stated a time line would be a reasonable condition to place on this approval. He recommended that, if the Board so chose to do so, the conditions could be stated in such a way so they were very specific to include that the picnic shelter is to be completed within six months and to be inspected and approved by staff; the 1st floor is to be completed within twelve months and to be inspected and approved by staff; the 2nd floor is to be completed within a certain amount of months and to be inspected and approved by staff. This makes it clear that there is a time restriction and that the church is required to meet the required building inspections. This would lead to what Mr. Johnson was talking about with requiring the applicant to submit a written commitment and it means the case would have to be tabled tonight until next month or your next meeting depending on how long it takes the applicant to submit the time line to staff. This would be lawful for you to do tonight. The benchmarks have to be attainable, but whether this would be a burden for staff to follow would be another matter itself for the Board to discuss. Mr. Schaber stated he does agree with staff in this instance that it would be difficult to police.

Mr. Schaber asked how long a normal building permit was good for before it expired. Ms. Turner replied that building permits were issued for six months at which time the applicant could contact the building inspector and request it be extended for a second six months if work was still ongoing. However, at the end of that timeframe, the permit expired and the applicant would need to submit for a new permit. Mr. Schaber replied this means the applicant would be applying for numerous permits over the five year period. He also has an issue with the five year extension request. Mr. Schaber is not averse to offering an extension, but five years is excessive in his opinion. Mr. Schaber has sympathy for a church wanting to expand and grow, but it has already been five years, and another five years puts them at 2016. You have

to finish first things first. Mr. Mason asked if this means there is consensus on the Board to agree with staff's recommendation. Mr. Schaber stated he isn't saying that in any way. He knows in past with certain warehouse businesses, there have been conditional user permits that were revoked due to failure to meet conditions placed upon their approvals including paving their parking lots. If there was a residence that came before us asking for a five year extension, would the Board entertain such a request? Absolutely not! Mr. Schaber stated he had mixed emotions because it is a church. There is history available on this site that says it has been five years already and the site is not done.

The applicant's representative, Mr. Kramer, approached the podium and offered to answer as many of those question as he could to assist them in reaching a decision. Mr. Verst asked the Board if they had questions they wanted to address to Mr. Kramer. Mr. Kramer stated that it goes back to what legal counsel said. Mr. Kramer stated he understands Mr. Klear's concern that once the church obtains their temporary CO that they will not abide by regulations to obtain future permits and inspections to get the final CO. The entire concept of a conditional use is that if the regulations and rules are not followed that the conditional use permit can be revoked. This request is not an unusual request to come from a church. Five years may be lengthy, so let's discuss a timeframe the Board is more comfortable with. The building permit can be extended up to one year and at the end of one year the building inspectors have the right to deny any further extensions. The church will have to renew their building permit and get an extension. We're talking about building permit issues and we also have Board of Adjustment issues. Is it right to combine this issues? Is it a hardship to require these conditions? I think it is. Given the economy we are in and the market we are facing. Look at our own jobs and what we are dealing with. Again, five years may be too much, but let's talk about something that is more reasonable. All we're saying is with the permits is that this is all they are capable of doing.

Mr. Schaber asked if we were being in a position of placing blind faith in the church to come get the permits each time they reached a new point or phase. How are we supposed to know when they need one? How are we supposed to drive every back road or front road or side road in the county and say "oh, look, he's throwing a hammer...he must need a permit". Do we have the personnel to do that in the county? No, we do not. Our Board is charged with the responsibility to act on behalf and in the benefit of all of the people in the county. We can't have people putting up buildings in county without permits. Therein lays the problem. Mr. Schaber stated he was looking at this case specifically and this applicant has been caught previous other times, multiple times, doing construction without permits. Then they apply for the permits, then they do this, then they do that. Mr. Kramer began to reply to Mr. Schaber's comment when Mr. Schmidt interrupted denying Mr. Schaber's charges. Mr. Verst asked Mr. Schmidt to hold his comments as he had not been recognized by the Board. Mr. Schaber stated he wants to trust the applicant to adhere to the rules, but there is just a past history here with this one particular one. Mr. Schaber added that he assumed in 2007 when the approval was given that the construction would begin immediately and be completed within a one or two year time frame and had no idea they were still building on it. Mr. Kramer stated that in 2007 they did install their retaining wall. They waited a couple years to raise some money and in 2010 applied for their building permit. They started their sanctuary. It's not fair to say they have been working on this since 2007 like the building process has been going on the entire time. The actual building time has been less than a year. There were no comments from the Board.

Mr. Kramer repeated the time frame for the Board. He stated in 2007 the church came before the Board, moved their dirt and built the wall. Mr. Klear corrected Mr. Kramer to state that the church moved the dirt, started building the wall, got caught and was issued a stop work order. Then the church came before the Board and got their permit. Mr. Schmidt again interrupted denying Mr. Klear's comments. Mr. Verst again requested Mr. Schmidt to hold his comments as he had not been recognized by the Board. Mr. Kramer stated it didn't really matter how the church got from point A to point B as long as we know where we are right now. Mr. Kramer continued that the church then stopped construction work until they raised additional funds. The church then started construction on the addition in 2010. They are now

requesting the extension so that they can complete the construction of the addition on a five year time frame. They don't want to be perceived as having half-finished projects all over the place. Mr. Schaber asked what the extension time that Mr. Kramer was asking for and what he saw as the trigger for the paving of the parking lot. Mr. Kramer stated his client is asking for five years or whatever the Board is comfortable with and that the parking lot would be paved upon completion of the addition. Mr. Kramer stated that if five years doesn't work for the Board then this is something the church and the Board can discuss and resolve, but to deny them a picnic shelter when they have the playground area already in is like holding the picnic shelter hostage until other items are completed. Putting up a picnic shelter is one of the easiest things to put up. We're just asking you to let us put up the picnic shelter right away. To be honest, Mr. Kramer admitted not even he realized in his official capacity as an engineer that a permit was needed to install a playground. Now the demolition, he did realize a permit was needed. They are asking to building the picnic shelter right away while continuing to work on the addition based upon the time frame schedule over a number of years. Mr. Verst thanked Mr. Kramer for his additional comments and input.

Mr. Verst stated the Board seems a little on the concerned side. The issues Mr. Verst stated he heard being of significance to the Board are being able to trust the applicant, what would be an acceptable time frame commitment and the ability of the Board to enforce conditions. At this point, Mr. Schaber stated he is concerned with the burden on manpower. Mr. Bachman added that there is a burden to oversee any timeline and benchmarks to which Mr. Schaber agreed. Mr. Schaber stated if this was a one or two year extension would be a consideration, but he has a real issue with the fact that there are other conditions on site that have not been met. Mr. Schaber continued that he truly believes that the Board is charged with a duty to see that previously assigned conditions must be met. Mr. Verst asked Mr. Schaber if he felt the conditions have actually been violated or if it is just not been met because time wise this is taking longer than he had expected. Mr. Schaber replied that, in all due fairness, the Board did not specify a time line for the applicant and not that he felt they should have. Mr. Verst continued his question with, if the Board was not looking at the picnic shelter, would this case still concern him. Mr. Schaber stated that once an approval has been issued with a site plan, looking at the construction side of things, you only have one year to start unless you have a huge cubic metric feet of dirt to move and need one year to do this or two years to do that and the applicant comes in with their own time line. There was no time line presented to us and obviously this has changed some because parking was across the street and now it is around the church. It was set up that way because they didn't have this land and they had to have parking off the parent track. Mr. Schaber reminded Mr. Verst that they were both part of that 2007 Board that issued that approval. Mr. Schaber stated the Board would have a very difficult time policing this case with a time line on it especially one going out five years.

Mr. Mason stated he thinks the Board should approve this as staff has recommended. Staff has pretty much spelled it out in their report as they have written it. Mr. Mason stated this gives the Board the mechanisms to keep track of what is going on there. He reminded the Board that they would not be considering this type of request for someone trying to build a home. Mr. Verst stated, if the Board were to go with staff's recommendations, the burden would be pushed off to the building department because we are basically saying they have to finish the structure first before they can get a building permit to do the shelter. The only mechanism we have to police it other than to have staff check and say they haven't finished it and then we would revoke their conditional use permit, but, as Mr. Schaber said, it would be extremely difficult to revoke the conditional use permit for a church. Mr. Verst continued that even if we all were on the same page and agreed to give those five years, they can come in before the Board at the end of the five years and who's to say who would be on the Board at that time and remember the commitment the church made.

Mr. Bachmann stated the obvious solution would be to wait for it to be done before coming to the Board to apply for the expansion of the conditional use of the church even without the picnic shelter and

playground, this is not undue hardship. Mr. Bachmann stated he believed the priority of the church would be the expansion of the church itself. To his mind, logically, it would make more sense to finish what you started and if you want the other stuff, come back in twelve months to get it. We have the option to approve it as recommended or we have the option to not approve anything until this is done and that way we don't need anybody to police it.

Mr. Verst stated he can see from the church's viewpoint that the Board did not set a time line for them to start construction and they might believe they had all the time in the world to get started. Mr. Verst can also understand from a fund raising view that they would benefit from a shelter to offer comfort from the weather. Mr. Verst stated that he can understand that the Board is not willing to concede to a five year extension and that this may be a little extreme for this applicant to request one. Mr. Bachmann stated he is not unsympathetic, but they have been down this road before and tried to help them. This information is what we have to work with and we have to make the best decision we can with the information before us. Mr. Verst asked if the Board was in agreement to approve the case as staff recommended. Mr. Johnson stated this Board is not in a position to know or decide for the church what this church does or does not need. He realizes there is some consternation about their method to reaching their goals and some history regarding permits. Mr. Johnson believes people should be able to look at each others problems and work out a solution that works for both sides and would rather there not be any "sides". Mr. Johnson strongly feels that the answer to this issue is a time line and puts the onus on the church to demonstrate when those time lines have been met by providing either photographic or other evidence that they've been met so that the Board doesn't have to do anything, staff doesn't have to do anything except review and if there's a problem with any of those time lines then we'd proceed. Mr. Johnson concluded that if he was overstepping the Board's authority, then, please tell him, but that is how he would proceed. Mr. Verst asked the Board if they are completely against a time line or just against five years because they could always ask the applicant to table their case and submit a time line for review. After some general discussion among the Board, the consensus was that there is support for a time line, but not five years. Mr. Johnson stated he felt that the decision is basically down to should the case be tabled for submission of a time line from the applicant or approved as staff recommended it. Mr. Verst answered yes, the Board could choose to table the case and have the applicant submit additional information if the applicant is agreeable to working with the Board to reach a more amicable time line. Mr. Mason asked how the church will be affected and will they cooperate with the Board to reach a resolution. Mr. Mason added that he cannot support a time line unless it is very clearly spelled out. Mr. Verst asked Mr. Gosney for input from the church on their willingness to table their case and submit a time line. Mr. Gosney asked the Board to table their case so they may provide additional information to staff to assist in reaching a time line acceptable to the Board.

Mr. Verst called for a motion. Mr. Johnson made a motion to table case #BA-07-10 Rusty Smart/Jerry Noran, who are asking for an expansion of a conditional use to allow for the construction of a 27' x 60' foot picnic shelter and 24' x 24' storage building. Mr. Klear asked Mr. Johnson to clarify that the motion would be to table the case until such time as a time line to complete the addition on the church, the playground structure, the pavilion, the storage building and the parking on both sides of Stonehouse Road had been submitted to the Board. Mr. Johnson stated that was correct and amended his motion as such. Mr. Klear added that it should reflect all parts of the previous conditions. Mr. Verst stated it should be changed to state all previously incomplete conditions. Mr. Johnson amended his motion as such. Mr. Schaber seconded the motion. A roll call vote found Mr. Bachmann, Mr. Johnson, Mr. Mason and Mr. Schaber in favor. Mr. Verst abstained. Motion passed. Mr. Klear advised the Board that there were no active cases for May so if the applicant was capable of submitting the time line information quickly we would be able to discuss this case in May. If not, the case may have to wait. Mr. Klear will keep the Board advised as to the when this item will next appear on the agenda.

Mr. Verst introduced case #BA-03-11, Sam Patel, who is appealing the decision of the zoning administrator to permit a change to a sign that is currently non-conforming. Mr. Hutchinson presented the Staff Report as follows.

CASE: BA-03-11
APPLICANT: Sam Patel
LOCATION: 11530 Alexandria Pike, Unincorporated Campbell County.
REQUEST: Appeal the decision of the zoning administrator to permit a change to a sign that is currently non-conforming.

Staff has reviewed the request and finds as follows:

Description of Request:

The applicant, Sam Patel, is requesting an appeal of the decision of the zoning administrator. The existing sign is non-conforming because it exceeds the maximum size of 60 sq. ft. for a class 7 sign. According to Section 9.12., E.1 Continuance: "Any lawful nonconforming sign existing at the time of adoption of this ordinance, may be continued provide however, that no such sign shall be changed in any manner unless it is changed in compliance with all provisions of this ordinance."

Considerations:

1. The site in question is currently occupied by a gas station and three other retail users. Surrounding land uses are single-family residential to the south, multifamily to the west and retail to the north.
2. The Recommended Land Use Map of the 2008 Campbell County Comprehensive Plan identifies the site and surrounding areas for rural mixed use.
3. The property is currently zoned Rural Commercial (RC).
4. A review of the public records indicates there was a previous conditional use and variances granted by the Board of Adjustment for this site:

March 1996, the Board of Adjustment approved the variance request BD-04-96. The BOA granted approval with one condition to increase the size of the sign to 121.4 sq. ft. The one condition was that the applicant remove all illegal signs and keep them removed. The plea made by the applicant at that time was they were making the sign smaller as an improvement to the community.

January, 1988, Bernie Koerner applied for a Text Amendment to allow a Car Wash in the Rural Commercial (RC) Zone because not all RC Zones have sewer lines. Planning and Zoning felt that to have it be a permitted use would allow Car Washes in all RC Zones. The Text Amendment was modified to allow car washes as a conditional use in a RC Zone.

March 17, 1988: The Board of Adjustments held a public hearing for a conditional use permit for Golfview and U.S. 27. The Board of Adjustments approved the conditional use permit for Mr. Koerner contingent to meeting all criteria for sewer line.

Bernie Koerner in trying to meet all the criteria decided to move the car wash next to his existing business (J&K One Stop) on U.S. 27, two (2) lots from Hillview.

August, 1988: Mr. Koerner applied for a conditional use permit on lot where his existing business is located. The notice appeared in Campbell County Recorder August 10 for August 18th meeting. Motion was made at the Board of Adjustments meeting 08/18/88 to table the request until Mr. Koerner received his approval to tap-in to the sewer system.

September, 1988: At the Board of Adjustments September 27th, 1988 meeting Bernie Koerner submitted his approval to tap into the sewer system. A conditional use permit was approved. At this date, no building permit has been issued to Mr. Koerner.

5. The specifications for a Class 7 sign shall be only business and identification signs, as defined herein.
 - (1) Structure Type: Pole sign or ground sign, single or double faced.
 - (2) Maximum size of single sign: 60 sq. ft.
 - (3) Maximum height above grade at top of sign – Twenty 20' feet
 - (4) Limitations on the number of signs – one (1) sign may be erected for each street frontage of the lot or building site on which the primary permitted use is located.
 - (5) Other limitations
 - a. Such a sign may be animated providing that the sign is constructed in such a manner as to prevent endangering pedestrians or vehicle traffic by moving parts.
 - b. No part of any ground or pole sign shall be set back closer than five (5) feet from any property line.
 - c. No pole sign shall be, at its lowest point, less than ten (10) feet from the ground.
6. The submitted drawings indicate the following:
 - a. The applicant has already switched out the Hawk gas sign for a Marathon sign; this is permitted as general maintenance. The existing Marathon sign is 6' x 10' feet or 60 sq. ft.
 - b. The applicant proposes to replace the existing manual reader board with a digital board to display the gas prices and car wash.
 - c. The proposed reader board and car wash sign is 6.65' x 6.64' feet or 44 sq. ft. This is 44 sq. ft. larger than the maximum size permitted, as noted above the maximum size of a class 7 sign is 60 sq. ft. not 104 sq. ft.

All Requests:

1. The applicant shall submit and/or present factual evidence demonstrating:
 - 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 proposed LED price sign is desired by the property owner to give the property, neighborhood and, overall community, a clean, crisp, and modern image. Marathon has a strict imaging program the dealers must abide by and LED Lighting is a part of that image.”
 - 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 proposed LED price sign will have no health, safety, or general welfare issues for residents in the area. All in one unit (face change) will have no changeable external parts (as existing does now). The employee will no longer have to change the price numbers with a changer pole lowering chances of falling numbers in the process.”

- c. That such use will comply with any regulations and conditions in this ordinance for such use.

“The proposed LED price sign does not comply with the existing ordinance. We are asking for a variance for the LED face replacement into the existing sign cabinet. The owner has agreed to remove an approximate 54.4 sq. ft. of other signage to bring the size down closer to the required size.”

- 2. Per Section 18.6 Variances: Change from one nonconforming use to another, conditions governing applications: procedures.

DIMENSIONAL VARIANCES: Before any dimensional variance is granted, the Board of Adjustment must find all of the following, which shall be recorded along with any imposed conditions or restrictions in its minutes and records and issued in written form to the applicant to constitute proof of the dimensional variance. Such dimensional 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 special circumstances for this variance request we feel are that the existing c-store / gas station signage has existed for many years. This particular property has many different businesses within the strip center which have no space on any existing street sign. With gasoline sales a big part of this property’s business, we would like to concentrate on the best possible avenue to post the gasoline prices in a competitive nature.”

- 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 “it would be more competitive with the other gas stations along US 27 and the surrounding areas since the majority of them have the LED pricing already. Allows one employee to work the cash register and the store while changing the gas prices without having to wait till a shift change. The visibility from new US 27 is more important than ever since the business sits back further from the roadway. Led lighting gives that visibility that is needed. With the removal of the existing 54.4 sq ft of signage, we feel this will bring the existing structure more toward the image the county is looking for since the signage has been removed. The total sign square footage is going from 168.65 down to 114.25.”

- 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 existing street signage is the same street signage when the property was purchased. Therefore the signage we are trying to use is what we have to

attempt to make work in this situation. We have removed the requested amount of signage from the existing structure as requested by the County.”

- 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 installation of the LED price sign we feel is a reasonable request due to the location of the existing street sign on the property with regards to the new street location. Readability of the price digits is key for traffic and should cause no real problems with appearance to the surrounding neighborhood.”

- e. That granting the variance requested will not confer on the applicant any special privilege that is not conferred by this ordinance to other lands, structures or buildings in the same zone. 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 “we feel with removing our existing signage for our other businesses on the property, we have not accepted any special treatment but in fact provided to the county that we are willing to work with them in finding a happy median with this request which we feel we have accomplished.”

- 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 “we feel the requested variance will not alter the public health, safety, or welfare. We are not changing the size of anything that is existing. The non moving parts will not cause any diversions to traffic or any other person.”

- 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 “We feel the variance will be in harmony with the gas business now and in the future. We are basically asking for a manually changing price sign to an electronically changing price sign.”

- 3. 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.
- 4. 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.

Staff Recommendations:

- 1. To rescind the prior BOA decision, in case BA-04-96, that allowed for a total sign area of 121.4 sq. ft. for a class 7 sign.
- 2. To **approve** the appeal of the size of the total sign area subject to the following conditions:
 - a. The total sign area for the class 7 sign shall not exceed 104 sq. ft.

- b. The addition of any additional signage without prior approval from the Campbell County Planning & Zoning Department will result in the immediate revocation of this approval. The sign will have to be brought into conformance with the sign regulations which limits the total sign area of a class 7 sign to 60 sq. ft.
3. To **deny** the request to replace a manual reader board with a digital reader board.

Basis for Staff Recommendation:

1. According to Section 14.1., M. General Rules, Regulations and Limitations: “No sign shall be erected, maintained or continued displaying flashing or intermittent lights, or lights, or lights of changing degrees or intensity except a sign indicating time or temperature...”

Additional Information:

The site has a history of placing signs on the property without proper approval. As stated above the previous case from 1996 mentioned that signs were placed without permits. The applicant has removed several signs in the past month at our request because they were placed on the pole sign without permits. There are currently several yard signs that were placed without permits.

Mr. Hutchinson asked if the Board had any questions he could answer for them. Mr. Verst asked if he understood correctly that the property was approved in 1996 for a 121 sq. ft. sign, but the applicant has agreed to bring it down to 104 sq. ft. which staff is recommended we approve. Mr. Hutchinson replied it was correct. Mr. Verst continued that was still more than was allowed per the Zoning Ordinance, but less than was previously approved by the Board. Mr. Hutchinson stated that was also correct. Mr. Verst continued that the portion of the recommendation that was for denial is the part that has to do with the LED because staff's interpretation of “No sign shall be erected, maintained or continued displaying flashing or intermittent lights, or lights, or lights of changing degrees or intensity except a sign indicating time or temperature...” means very strictly time or temperature and not gas prices. Mr. Hutchinson stated that was correct because they stated very specifically what the signs could be used for they excluded all other possibilities. Mr. Schaber asked if the Marathon sign was a back lighted sign. Mr. Hutchinson replied that it was. Mr. Bachmann asked if we were overturning the zoning administrator's decision or if this was a variance. Mr. Hutchinson replied both. Mr. Bachmann asked for a clarification of what is being appealed. Mr. Hutchinson stated the appeal is of the zoning administrator's decision to disallow the sign because the LED was disallowed as it was not of the time or temperature. The variance is because of the difference in the sign size in relation to the allowed size per the Zoning Ordinance. Mr. Bachmann confirmed that it was originally granted in 1996, but is changing again today to differ from the amount originally granted. Mr. Hutchinson confirmed that it was.

Mr. Verst stated it was approved as a non-conforming sign in 1996. Is the applicant allowed to do general maintenance to the sign? Mr. Klear replied that they could. Mr. Verst asked if they could change out to add the digital reader. Mr. Klear replied no. Mr. Verst stated so they are not really addressing the sign issue just the LED. Mr. Klear stated there are two components to their request. They are appealing the zoning administrator's decision because he said the digital component is not allowed. We have had some issues where they have added additional sign elements which took it above the permitted 121 sq ft. What we are saying is we want to take it off the table, we want to amend what was previously granted and we want to reduce it down now to 104 sq ft so technically it is still a variance of the size requirement. Mr. Verst stated if it wasn't for the LED board, the Board would not be seeing this case and it would stay at 121 sq.ft. Mr. Klear confirmed that was correct. Mr. Verst stated he doesn't understand why we are even addressing a dimensional issue at all. Mr. Klear explained because we are placing a new limitation on the size. We are reducing it down permanently to the 104 sq ft. Mr. Klear asked legal counsel to help him

explain because staff's interpretation is that the applicant can't even ask for a variance to the size of the sign. Mr. Duncan explained that the product of length and width and size of the sign were not the issue. It is his interpretation that all the applicant had to do was to get rid of any signs that were above and beyond that sq ft total. A variance is allowed. Mr. Klear stated an additional item for consideration which was not mentioned in the staff report is that you are only allowed a class 7 sign if you are in a shopping complex which is defined as a strip of three or more businesses. This was an oversight on staff's part to consider this a shopping complex and then on the Board's part for not questioning them. They have exactly three businesses, but in no way is this a shopping complex. Mr. Klear stated he thinks we're stretching it to make this case even eligible for a class 7 sign. Mr. Verst asked but why address the sq ft when it seems that in exchange for giving them one thing we are taking something else. Mr. Verst stated he assumes the applicant is requesting the LED, but he's not sure they requested the sign size change. Mr. Klear stated they submitted new drawings showing the reduction in signs, but they also have photographs showing an excess of 121 sq ft of signage. Mr. Schaber stated strictly for bookkeeping purposes it makes sense to amend that and make it closer to meeting that figure. Mr. Klear stated that was correct and reminded the Board that staff's interpretation is that the LED is not permissible because it is not for time or temperature. Mr. Schaber asked Mr. Klear if he remember when the LED text was written and approved. Mr. Klear did not know. Mr. Schaber stated he remembered the signs that had the arm that moved and as long as the arm didn't beat you in the head it was approved. Mr. Verst stated that leaves a lot of room for interpretation for the Board to make as to the degree of "flashing", "intermittent", or "lights of changing degree" as to what would be acceptable to today's standards. Mr. Schaber agreed.

Mr. Verst asked the Board if they had any additional questions for staff. There being none, Mr. Verst asked the applicant to come forward, state his name and address for the record. Mr. Steve Cupido, C & B Sign Service, 4152 Brandenmore, Cincinnati, OH came forward. Mr. Cupido stated this process started when they applied for a sign permit for a sign face change out with the proposed digital reader and car wash sign in the cabinet. This particular owner purchased the lot in 2006, and to his knowledge, all the signage was present at that time. Since talking with staff, the sign has gone from this (applicant pointed out a photo showing the site with signage abuse) to this (applicant showed photo of site with proposed signage minus excess signs). Mr. Cupido stated that he runs into this issue all the time with the gas reader boards and zoning ordinances. The reader board has no animation and does not move other than the blink of an eye when they change the price. There is no flashing or scrolling of that nature. The sign is back lighted with illuminated fluorescent bulbs. This is a remote control system that can be changed by one person at the cash register just like a car starter system on your key chain. Mr. Cupido asked if there were any questions he could answer for the Board. He concluded with the comment that if this were a time and temperature sign, it would change and scroll more frequently than this gas price reader board.

Mr. Verst asked if there were any audience members that wish to speak to please come forward, state your name and address for the record. Mr. Ed Kramer, Racetrack Road, Alexandria, KY came forward and stated he believed the reader board would look cleaner and be easier to read.

Mr. Verst asked if there were any other audience members that wish to speak to please come forward, state your name and address for the record. Mr. Terry Jolly, A J Jolly Golf Course, Alexandria, KY came forward and stated that there is not a lot of metropolises near Sun Valley, but they are always looking for improvement. With US 27 widening through here, he believes businesses should look for ways to improve their properties. This is an obvious improvement to property values.

Mr. Verst asked if there were any other audience members that wish to speak to please come forward, state your name and address for the record. Mr. Randy Killinghouse, Hillview Road, Alexandria, KY came forward and stated there used to be a flashing light on the store that used to shine on for at least a mile. If that light isn't going to be on, that's the reason he's here, this should be an improvement. He doesn't want any type of flashing light.

Mr. Verst asked if there were any other audience members that wish to speak to please come forward, state your name and address for the record. Mr. Sam Patel, 11530 Alexandria Pike, Alexandria, KY came forward and stated the signs were there when he bought the property. He hired Mr. Cupido to change out the signs and has removed the extra signs to meet the zoning requirements. The gas price signs will be solid and will not be a flashing light.

Mr. Verst asked if there were any other audience members that wish to speak to please come forward, state your name and address for the record. Mrs. Lois Killinghouse, 989 Hillview Road, Alexandria, KY came forward. Mrs. Killinghouse stated she liked the idea of the size of sign being brought down. She likes the fact they got rid of the flashing light, but she does not like the idea of the sign having the back lighting. Her house already shines like it has a night light on all night long when the store puts their parking lot light on, but with a back lighted sign and LED gas prices she is afraid her house is going to look like a Christmas tree all year long. Mrs. Killinghouse stated they promised to put up a green wall of trees to stop the irritation it causes her, but some of the trees died and they didn't replace them. She moved to this home because it was rural and had a county setting. With the relocation of US 27 and the removal of some of the trees, it is losing some of that feeling. During the summer, they have kids hanging over there all night and she does not like the atmosphere, but she acknowledges there is little they can do about that. Mr. Verst asked if the tree agreement was a private agreement there is nothing the Board can do to assist her; however, if it was a condition of a previous Board decision, she should contact staff and they can assist her in getting the green screening replaced.

Mr. Verst asked if there were any other audience members that wish to speak. There being none, Mr. Verst opened the floor for discussion among the Board. Mr. Verst stated the real issue becomes what is the Board's interpretation on the degree of "flashing", "intermittent", or "lights of changing degree." What do you consider acceptable? LED signs? Do you agree with staff that it is permitted only for time and temperature? If we agree with staff, then we would need to deny. Mr. Bachmann stated if you strictly interpret this section that states "or lights" [*"No sign shall be erected, maintained or continued displaying flashing or intermittent lights, or lights, or lights of changing degrees or intensity except a sign indicating time or temperature..."*] that would exclude the back lighted signs. Mr. Klear clarified that there are other areas of the Zoning Ordinance that specifies that the sign may be illuminated but only from a "concealed source" which would qualify this back light. Mr. Bachmann stated his interpretation would be that you could not have a strobe light or something that would be distractive to be an attention getter, but a gas price is not disruptive. Mr. Mason agreed, to him the gas price is no different than the time or temperature. Mr. Verst stated other jurisdictions used different judgment factors such as how much of a distraction each specific sign will cause rather than listing specific sign types that can be allowed. Mr. Schaber stated the ordinance has not kept pace with technological methods of advertising. He does not personally find this intrusive or distracting. Mr. Bachmann asked Mr. Cupido if the Marathon sign is back lighted. Mr. Cupido replied it was. Mr. Mason stated that since the sign was not changing intensity, flashing, or scrolling, he did not find it intrusive. Mr. Bachmann added that it was also less sq ft. Mr. Mason asked Mr. Duncan if the Board would be permitted to add a condition, if they were to approve the request, to state that the LED to be non-flashing, no scrolling, etc. Mr. Duncan replied they should so that it would be very clear to the applicant what would be allowed.

Mr. Verst called for any further discussion among the Board. There being none, Mr. Verst called for a motion. Mr. Mason made a motion on case #BA-03-11, Sam Patel, who is appealing the decision of the zoning administrator to permit a change to a sign that is currently non-conforming. Mr. Mason's motion was to rescind the prior decision in case BA-04-96 that allowed for a total sign area of 121.4 sq. ft. and instead approve a total sign area of 104 sq. ft. Mr. Mason also included the addition of any additional signage without prior approval from the Campbell County Planning & Zoning Department will result in the immediate revocation of this approval. The sign will have to be brought into conformance

with the sign regulations which limits the total sign area of a class 7 sign to 60 sq. ft. Mr. Mason continued to approve the appeal to allow an LED sign as proposed with no flashing or intermittent light or changing degrees of intensity of that light. Mr. Mason stated his finding of fact was that he found 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. Mr. Verst asked if there were any questions or discussion on that motion of if anyone wanted to second the motion. Mr. Johnson seconded the motion. A roll call vote found Mr. Bachmann, Mr. Johnson, Mr. Mason and Mr. Schaber in favor. Mr. Verst abstained. Motion passed.

Mr. Verst introduced case #BA-04-11, Saint Joseph Catholic Church, who is requesting an expansion of a conditional use to allow for the construction of a 30' x 60' foot picnic shelter. Mr. Hutchinson presented the Staff Report as follows.

CASE: BA-04-11
APPLICANT: Saint Joseph Catholic Church
LOCATION: 6833 Four Mile Road, Unincorporated Campbell County.
REQUEST: Expansion of a conditional use to allow for the construction of a 30' x 60' foot picnic shelter.

Staff has reviewed the request and finds as follows:

Description of Request:

The applicant is asking to expand an existing conditional use by constructing a 30' x 60' foot picnic shelter on a lot adjacent to the church.

Considerations:

1. The site is occupied by St. Joseph Church, there are 3 structures on site that deal with the primary use of church and school. There is one accessory structure off the back gravel parking area.
2. The Recommended Land Use Map of the 2008 Campbell County Comprehensive Plan identifies the site and surrounding areas for rural mixed use.
3. The zoning classification for the site is Agricultural-One (A-1). Within the A-1 Zone, churches and other accessory buildings for the purpose of recognized religious worship are permitted as a conditional use with a minimum lot area of three acres, provided they are located adjacent to an arterial or collector or local street.
4. The submitted development plan indicates the following:
 - a. The plan shows the existing 3 buildings and the proposed shelter.
 - b. The plan shows the proposed 30' x 60' foot shelter is located 196' feet from the nearest property line.
 - c. The plan shows 142 paved and 168 gravel parking spots. Per the Campbell County Zoning Ordinance the facilities need a minimum of 82 parking spaces.
 - d. The plan does not indicate steep slopes of 20% percent or greater; however County data indicates there are slopes on site that exceed 20% percent. If grading is going to be done on this site with slopes of 20% or greater, the applicant will have to submit a plan for review and approval by the Planning Commission.

- e. The plan shows the existing driveway accessing the property is 22' feet wide.
- f. The applicant verbally stated that no parking is permitted along this drive.

All Requests:

1. The applicant shall submit and/or present factual evidence demonstrating:
 - 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 proposed structure will provide outdoor accommodations not currently available for persons attending the parish annual summer festival and other similar events held on the parish grounds."
 - 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.

"This structure will not be located in close proximity to any adjoining property or be easily visible from other nearby properties, consequently it will have no effect on the health, safety or general welfare of persons residing in the vicinity, nor will it affect property or improvements nearby."
 - c. That such use will comply with any regulations and conditions in this ordinance for such use.

"It is the intention of St. Joseph Parish to be in full compliance with any regulations and conditions placed on the use of this structure by this Ordinance."
2. 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.

Staff Recommendation:

To approve the expansion of the conditional use by allowing the church to construct a 30' x 60' foot picnic shelter subject to the following conditions:

1. That the applicant complies with the Campbell County Zoning Ordinance and building codes.
2. That the applicant must submit a plan for review and approval to the Planning Commission if they are doing grading work on 20% slopes or greater.

Supporting Information/Bases for Staff Recommendation:

1. 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.
2. 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.
3. That such use will comply with any regulations and conditions in this Ordinance for such use.
4. CAMPBELL COUNTY ZONING ORDINANCE SECTION 9.23 HILLSIDE DEVELOPMENT CONTROLS states: "All land areas located within the County and identified on the Comprehensive Plan as "Physically Restrictive Development Areas" and any other areas, which have slopes of 20 percent, or greater shall require approval before development may occur."

Mr. Hutchinson asked if the Board had any questions he could answer for them. Mr. Verst asked the Board if they had any additional questions for staff. There being none, Mr. Verst asked the applicant to come forward, state his name and address for the record. Mr. John Gubser, 6980 Reitman Road, Alexandria, KY came forward. Mr. Gubser stated he was the parish president for the fund raising efforts for the shelter. They believe the shelter was a great opportunity for their overflow crowds for their fish fries and their October festivals. It seemed like a great idea and they are excited about the opportunity it presents. Mr. Gubser concluded his presentation by thanking the Board for their consideration. Mr. Schaber asked Mr. Gubser what their time line was for installation of the shelter. Mr. Gubser stated they hoped to have it installed yesterday.

Mr. Verst asked if there were any other audience members that wish to speak. There being none, Mr. Verst opening the floor for discussion among the Board. Mr. Schaber stated this was pretty straight forward and wanted to make a motion unless there was other discussion or questions to be had. Mr. Verst asked if the Board had any question or comments. Since none were forthcoming, Mr. Verst called for a motion. Mr. Schaber made a motion on case #BA-04-11, Saint Joseph Catholic Church, who is requesting an expansion of a conditional use to allow for the construction of a 30' x 60' foot picnic shelter. Mr. Schaber stated as his finding of facts that the proposed use is necessary and desirable; the services of the facility and the church benefit the general well being of the neighborhood and that it will not detrimental nor adversely affect the public health, safety or welfare of people residing or working in the general vicinity. Mr. Schaber continued that there would be two conditions added to his approval. Those being that the applicant must comply with the Campbell County Zoning Ordinance and building codes and that the applicant must submit a plan for review and approval to the Planning Commission if they are doing grading work on 20% slopes or greater. Mr. Verst asked if there were any questions or discussion on that motion of if anyone wanted to second the motion. Mr. Johnson seconded the motion. A roll call vote found Mr. Bachmann, Mr. Johnson, Mr. Mason and Mr. Schaber in favor. Mr. Verst abstained. Motion passed.

There being no other items of action before the Board, Mr. Verst recognized Mr. Klear to present the Director's Report.

DIRECTOR'S REPORT

Mr. Klear had previously advised the Board that the Planning & Zoning Commission (the Commission) was considering moving the location of their meetings to the new County Administration Building. After input from Fiscal Court, it was determined that Staff should locate facilities more centralized to the southern portion of the county. Staff has located and suggested the Southern Campbell County Fire Department located on Racetrack Road. Staff will keep the Board updated as to the actual relocation of the Commission meeting location.

Mr. Johnson asked when did it become necessary to recuse yourself from a case. He knew several members in the audience tonight. He was not a member of either church or owner of the store, but he knew people who spoke on behalf of these cases. Mr. Duncan and Mr. Klear explained it was necessary when you either directly or indirectly benefit from the outcome of the decision. It was necessary if any applicant approached you with information regarding the situation to be heard prior to the meeting. It was necessary any time you felt that you could not render a fair decision. Mr. Johnson stated he knew the people, but he did not feel he was in any way violating the process. He just wanted to be certain for if such an occasion occurred.

Mr. Johnson asked what constituted a quorum for the Board. Mr. Klear stated we needed four Board members actively able to vote on a case. A majority of the Board must be available to render a decision on a given situation. We are a seven member Board so four members must be able to vote.

Mr. Verst asked if the Board had any other matters to discuss. There being none, Mr. Verst called for a motion to adjourn. Mr. Mason made a motion to adjourn the meeting. Mr. Schaber seconded the motion. An oral vote found all in favor and none opposed. Motion passed. Meeting adjourned at 10:25 PM.

Prepared by:

Approved:

Peter J. Klear, AICP
Director

David Schaber
Vice Chair