

CAMPBELL COUNTY & MUNICIPAL BOARD OF ADJUSTMENTS
MINUTES OF THE
April 16, 2024
MEETING

1

MEMBERS PRESENT:

Mr. Justin Verst, Chair
Ms. Patti Dischar
Mr. John Fessler
Ms. Jessica Hurley

MEMBERS ABSENT:

Mr. Michael Williams
Mr. Hutch Johnson

STAFF PRESENT:

Mr. Matt Smith, Legal Counsel
Mr. Kirk Hunter, Principal Planner

2 Meeting was called to order by Mr. Verst at 6:31 PM. The Pledge of Allegiance was recited.
3 Mr. Hunter called the roll, and a quorum was found.

4
5 Mr. Verst asked if new member, Patti Dischar, had been sworn in and welcomed her.

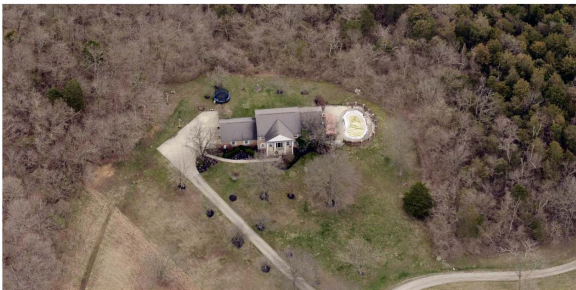
6
7 Mr. Verst asked for approval of the previous meeting minutes from March 19, 2024. Ms.
8 Hurley moved to approve the minutes which was seconded by Mr. Fessler. Mr. Hunter
9 called the roll and the minutes were approved.

10
11 There was no old business. Mr. Verst introduced the new business as file BA-24-004,
12 applied for by Frank Twehues for 3592 Eight Mile Road in unincorporated Campbell
13 County for a conditional use permit and a size variance for an accessory dwelling unit.

14
15 Mr. Hunter gave the Staff Report.

16
17 [begin staff report]

18



19
20

Figure 1: Aerial view of existing single-family house

Overview:

The area under review consists of 3.12 acres in Unincorporated Campbell County on Eight Mile Road. The property is accessed by a shared private driveway that serves two other parcels. The Applicant proposes a 1200 square-foot accessory dwelling unit (ADU) on the property.

The existing single-family house has approximately 2,400 square feet in living space.

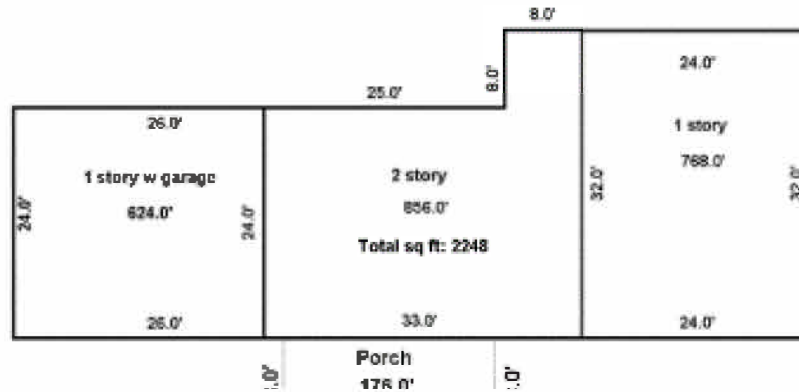


Figure 2: Floor plan from PVA. Please note that the total floor area indicated on the drawing is calculated including the garage but not the second story



Figure 3: Current property boundary highlighted in bold red

The applicant has prepared a preliminary survey showing a land addition to the property that would increase the lot size to 5 acres.

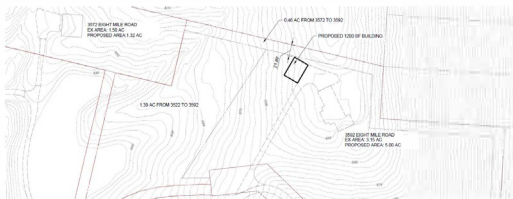


Figure 4: Proposed land addition

The applicant has provided two floor plans as part of their proposal: a 1,200 square-foot option and a 1,000 square-foot option.

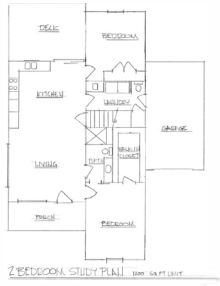


Figure 5



Figure 6

The preferred design is the larger, 1200 square foot proposal that includes a second bedroom.

Considerations of Conditional Use Permit:

1. The site is currently zoned Residential-Rural Estate (R-RE) as defined in the Zoning Ordinance, Article X, §10.2.
2. All adjacent properties are within the R-RE Zone and are large-lot residential and undeveloped land. The other side of Eight Mile Road is within an Agricultural-One (A-1) Zone with similar land uses.
3. A review of public records finds no previous Planning and Zoning Cases for the property.
4. The 2008 Campbell County Comprehensive Plan specifies the current land use in the area as Large-lot Residential/Undeveloped and Single-family Residential.



Figure 7: Existing land use from 2008 Comprehensive Plan

5. The Future Land Use Plan identifies this area as Village Mixed Use and Rural Mixed Use. An agricultural area is just to the east.



Figure 8: Future land use from 2008 Comprehensive Plan

6. Single family dwellings (detached) are a permitted use by right in the R-RE zone.
7. At the December 12, 2023 meeting of the Planning Commission, an amendment was approved adding accessory dwelling units (ADU's) to the list of conditional uses in the R-RE zone with the following conditions:
 - a. The lot shall consist a minimum of five (5) contiguous acres with a primary dwelling unit;
 - b. The ADU shall be limited to one unit and subordinate in area, extent, and purpose, to the primary dwelling unit;
 - c. The total living space of the ADU shall not exceed 1,000 square feet;
 - d. The primary dwelling unit and the ADU must share the same driveway encroachment.
 - e. Sufficient off-street parking must be provided for uses on the lot. A paved parking pad must be provided for the ADU;
 - f. The driveway apron must be paved for a minimum of 12 feet;
 - g. The unit may not be used for a home-based business; and
 - h. The unit may not be held out to the public or used as a short or long-term rental.

The text change had two readings at the Fiscal Court and was adopted on January 17 as Ordinance# O-01-24.

8. The Zoning Ordinance defines the following zone requirements for the R-RE zone (section 10.2):

<u>Zone Requirements</u>	<u>R-RE</u>
Minimum Lot Area	One (1) acre
Minimum Lot Width at Minimum Setback	One hundred (100) feet
Minimum Front Yard Depth	Fifty (50) feet
Minimum Side Yard Width	Total – Twenty-five (25) feet One Side - Ten (10) feet
Minimum Rear Yard Depth	Twenty-five (25) feet
Maximum Building Height	Thirty-five (35) feet

Considerations of Variance

1. According to Section 18.6, A., 4., the Board of Adjustment must find that:
 - a. The requirements of this section have been met by the applicant for a variance;
 - b. The reasons set forth in the application justify the granting of variance and that the variance is the minimum variance that will make possible the reasonable use of the land, building, or structure; and

- 1 c. The granting of the variance will be in harmony with the general purpose and in-
2 tent of this Ordinance as well as the Adopted Comprehensive Plan and will not be
3 injurious to the neighborhood, or otherwise, detrimental to the public welfare.

4 **Applicants Comments – (Edited by staff, full comments in appendix)**

- 5 A. *We believe that the proposed use at this location is necessary and desirable. The property*
6 *does not allow for an additional parcel to be split out due to the available road frontage*
7 *on Eight Mile. The stated goal for the use is to provide a separate dwelling unit for my*
8 *mother and step-father to age in place. We believe that this location is ideal for this use as*
9 *the primary residence and proposed ADU (if approved) will site over 700 feet from Eight*
10 *Mile and is not visible from the street due to topography and woods.*
- 11 B. *We also believe that the proposed use will not be detrimental to the health, safety or over-*
12 *all welfare of persons residing or working in the vicinity. We have communicated the pro-*
13 *posed improvements to the immediate neighbors, and all are in support. One of the neigh-*
14 *bors is willing to alter their parcel in order to work with us to obtain the necessary 5 acres,*
15 *which is a condition of the use. Additionally, as indicated above, the existing and proposed*
16 *residence are not visible to the street or the majority of adjacent landowners.*
- 17 C. *We have reviewed the conditions of the approval for ADU and will comply with the regu-*
18 *lations in the Zoning Ordinance, with the exception that we are also requesting a variance*
19 *for an additional 200 square foot of living space.*
- 20 D. *We believe that our variance request does arise from special existing circumstances. To the*
21 *best of our knowledge, we are the first to request a conditional use for an additional dwell-*
22 *ing unit. As part of the preliminary design for the ADU, we are working with the local resi-*
23 *dential architecture firm Studer Designs. As part of this process, we have been trying to*
24 *determine what the minimum space requirements will be for my mother and step-father*
25 *to age in place and make this their last residence. The reason for the additional square*
26 *footage is for the construction of a second bedroom, which stems from three primary rea-*
27 *sons:*
- 28 1. *My step-father is a Vietnam War Veteran. Almost sixty years later, he often has night-*
29 *mares and night terrors that require my mother to sleep in a separate room.*
- 30 2. *As we look at them aging in place, we realize that there is the possibility that some*
31 *time in the future, they may require full-time live-in care. This would require a second*
32 *bedroom.*
- 33 3. *Between them, they have over 20 grandchildren, aging from 4 to almost 30. The ones*
34 *that are elementary school and younger still like to sleep at grandma and grandpa's*
35 *house. A second bedroom is needed for this.*
- 36 E. *We believe that sticking to the strict application of the Zoning Ordinance is a hardship on*
37 *the landowners. We have worked with the County on a text amendment to allow for ADU's,*
38 *which is necessary in order to construct an additional dwelling on the lot due to the parcel*
39 *configurations. By not allowing the additional variance, we believe that it is a hardship be-*
40 *cause there is a possibility that the future residents of the ADU would not be able to age*
41 *in place, but would ultimately need to move out because of care needs. The additional*
42 *square footage allows for future needs.*

- 1 *F. We don't believe that a variance will alter the essential character of the neighborhood. The*
2 *finish materials of the ADU will be in line with the existing residence. We're moving to the*
3 *primary residence, we're not looking to negatively impact our investment in the property.*
4 *At the same time, we are not looking to overbuild. The completed ADU will be tasteful and*
5 *in line with the surrounding character.*
- 6 *G. Lastly, we believe that the granting of a variance will not confer on us any special privilege*
7 *that is not conferred by the ordinance to other land. We are here asking for the additional*
8 *200 square foot. We believe that we have shown sufficient information that shows a war-*
9 *rant for the additional square footage.*

10 ~Submitted February 19, 2024

11 **Summary of Applicants Request:**

12 The applicant is requesting:

- 13 1. A Conditional Use Permit for the construction of an Accessory Dwelling Unit; and
14 2. A variance of two hundred (200) square foot area variance to allow for the construction
15 of a twelve hundred (1,200) square foot ADU.

16 **Staff Comments:**

- 17 • The proposed land division will increase the lot size to five (5) contiguous acres;
18 • The total living space of the proposed ADU is 1,200 square feet, which exceeds the
19 maximum size of 1,000 square feet by 20%;
20 • Only one (1) ADU is proposed and it is subordinate in area, extent, and purpose, to the
21 primary dwelling unit. Even with the requested area variance, it will not exceed 50% of
22 the living area of the primary house;
23 • The primary dwelling unit and the ADU will share the same driveway encroachment.
24 • The floor plans include a garage, providing enclosed storage for one car. Staff feels
25 that, in addition to the garage space, the existing parking area provides sufficient
26 paved off-street parking for the ADU.
27 • The driveway on the property is paved entirely from the shared access drive all the
28 way to the house;
29 • The ADU is not proposed to be used for a home-based business or to be held out to
30 the public or used as a short or long-term rental. A Certificate of Land Use Restriction
31 (CLUR) will be filed upon BOA approval with the County Clerk and will list these uses as
32 prohibited.
33 • The use of the property is consistent with the adopted 2008 Comprehensive Plan.
34 • Because this is the first request for Conditional Use Permit *and* Variance for an ADU,
35 there is no existing precedent.
36 • The ADU is requested for two people, which requires additional space. The ordinance
37 does not specify how many people may reside in an ADU. The ordinance *does* define
38 "family" and, despite the ADU standing separately from the primary residence, the use
39 at the site would continue as "single-family residential".

FAMILY: An individual or two (2) or more persons related by blood or marriage, or group of not more than three (3) persons (excluding servants) who need not be related by blood or marriage, living together in a single housekeeping unit as their common home for the time, as distinguished from a group occupying a boarding house, lodging house, hotel, club, fraternity or sorority house.

~Article VII, §7.0 Definitions

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

Among the reasons for adding ADUs to the A-1 and R-RE zones is the trend toward allowing relatives to *age-in-place*. Some cases may not see the need for a live-in caretaker in the future or a separate bedroom for each person. Some cases may be the reverse; where the older generation remains in the main house and the adult children or caretakers live in the ADU. The idea of aging in place differs from family to family. Some relatives are healthy and active; however, some have declining health and need additional help.

- The application of the provisions of this Ordinance would create unnecessary hardship on the applicant.
- The applicant is requesting this variance subsequent to the approval of these regulations.
- The essential character of the neighborhood is lower-density single-family residential and this action is compatible with those uses.
- This variance would not be granting the applicant a special privilege.

Staff Recommendation (Conditional Use Permit):

The Campbell County & Municipal Board of Adjustments grant a Conditional Use permit for the construction of an Accessory Dwelling Unit (ADU) with the following conditions:

1. That a conveyance plat be submitted to the Planning Commissions duly authorized representative conveying the necessary acreage to bring the total area of the lot to five (5) acres.
2. A separate septic system be sited to serve the ADU.

Bases for Recommendation:

1. In compliance with SECTION 18.7 CONDITIONAL USE PERMITS of the Campbell County Zoning Ordinance, a written application for a conditional use permit and a site plan subject to the applicable requirements of Section 9.19, was submitted to the Board for review and approval;
2. Notice of public hearing was given in accordance with Section 18.2 of the Campbell County Zoning Ordinance;
3. In accordance with KRS. 100.237, the Board of Adjustment shall have the power to hear and decide applications for conditional use permits to allow the proper integration into the community of uses which are specifically named herein which may be suitable only in specific locations in the zone.

1 4. The evidence presented by the applicant and staff is such as to establish beyond any
2 reasonable doubt:

- 3 • That the proposed use at the particular location is necessary or desirable to provide
4 a service or facility which will contribute to the general well-being of the neighbor-
5 hood or the community;
- 6 • That such use will not be detrimental to the health, safety, or general welfare of per-
7 sons residing or working in the vicinity, or injurious to property or improvements in
8 the vicinity.
- 9 • That such use will comply with any regulations and conditions in the Campbell
10 County Zoning Ordinance for such use.

11 **Staff Recommendation (Variance):**

12 To approve the applicant's request for an area variance of two hundred (200) square feet for a
13 two-bedroom ADU.

14 **Basis for Recommendation**

- 15 1. In accordance with the Campbell County Zoning Ordinance, notice of public hearing
16 was given.
- 17 2. In accordance with KRS 100.241 Variances, the board shall have the power to hear and
18 decide on applications for variances. The board may impose any reasonable conditions
19 or restrictions on any variance it decides to grant.
- 20 3. The evidence presented by the applicant and staff is such as to make a finding that:
 - 21 a. The requirements for a variance have been met by the applicant for a variance
22 and the variance is the minimum variance that will make possible the reasonable
23 use of the land, building, or structure.
 - 24 b. The variance requested will not adversely affect the public health, safety, or wel-
25 fare, will not adversely alter the essential character of the general vicinity, and
26 will not cause a hazard or nuisance to the public and will not allow an unreason-
27 able circumvention of the requirements of the zoning regulations. In making
28 these findings, the board considered whether:
 - 29 i. The requested variance arises from special circumstances which do not
30 generally apply to land in the general vicinity, or in the same zone;
 - 31 ii. The strict application of the provisions of the regulation would deprive
32 the applicant of the reasonable use of the land or would create an unnec-
33 essary hardship on the applicant; and
 - 34 iii. The circumstances are the result of actions of the applicant taken subse-
35 quent to the adoption of the zoning regulation from which relief is
36 sought.
 - 37 iv. The variance will not allow unreasonable circumvention of the require-
38 ments of the zoning regulations and will not alter the essential character
39 of the neighborhood.

- 1 v. The variance requested will not confer on the applicant any special priv-
2 ilege that is not conferred by this ordinance to other lands, structures or
3 buildings in the same zone.
4

5
6 [end of Staff Report]
7

8 Mr. Verst asked for questions for staff. None were asked.
9

10 Mr. Verst invited the applicant to the microphone.
11

12 Applicant, Mr. Twehues, of 3592 Eight Mile Road explained the request for the addition is
13 so that his mother can age in place.
14

15 Mr. Verst opened the meeting for discussion among the board.
16

17 Mr. Fessler commented that perhaps the five acre minimum size wasn't needed. Mr.
18 Hunter responded that he didn't advertise a variance on the minimum size. Mr. Verst
19 stated that everything seemed to comply with what was talked about with the Planning
20 Commission when the regulations to allow accessory dwelling units was approved. Mr.
21 Verst stated he wants it to be on record that the existence of a second unit on the property
22 cannot be used as a justification for a non-conforming land division to separate the two
23 buildings from each other. That is not the intention of this regulation. The intent is to have
24 the two houses tied together for the same purpose.
25

26 Mr. Verst stated he would like a motion to address the conditional use permit first and
27 then the accessory dwelling unit.
28

29 Mr. Fessler made a motion to approve the conditional use in case BA-24-004. Ms. Hurley
30 seconded the motion.
31

32 Mr. Hunter called the roll, and all present voted in favor. Motion passed, and the variance
33 was approved.
34

35 Mr. Verst announced the variance to allow an increase in the maximum size of the acces-
36 sory dwelling unit from 1000 sq. feet to 1200 sq. feet. The staff has recommended ap-
37 proval.
38

39 Ms. Hurley made a motion to approve case BA-24-004 variance request for 200 sq. feet.
40 Mr. Fessler seconded the motion. No discussion.

41 Mr. Hunter called the roll, and all present voted in favor. Motion passed, and the variance
42 was approved.
43

44 No further new business.
45

1 Mr. Hunter announced the training session that will take place on May 21st. Mr. Hunter
2 also mentioned that he will have a variance request that he will try to present on May 14th
3 at a special BOA meeting.

4
5 Mr. Verst asked for a motion to adjourn. Ms. Dischar moved to adjourn, and Ms. Hurley
6 seconded the motion. All voted in favor, and the meeting was adjourned at approximately
7 7:10 PM.

8
9
10 Respectfully Submitted,

Approved:

11
12
13 _____
14 Kirk Hunter
15 Principal Planner

Justin Verst
Chair