

BOARD OF ADJUSTMENT **MINUTES**

September 27, 2010

The Russellville Board of Adjustment met in a Regular Meeting, Monday, September 27, 2010, at 5:00 p.m. in the City Council Chambers at City Hall.

Members Present was Chairman Blake Tarpley, Secretary Aldona Standridge, Vice Chairman Jimmy Sims, Dusty Bonds, and Jim Davenport.

Visitors and Officials present included: City Attorney Trey Smith, Building Official Brian Holstein, City Planner David Harris, Planning Assistant Lequitta Jones, Diana Niemann, Sam Niemann, Brent Preddy, Steve Gardner, Marla Gardner, and Brad Niemann.

WELCOME VISITORS

The First Order of Business was to review and approve the minutes of the August 23, 2010 Regular Meeting.

Member Davenport made the motion to approve the minutes as written. The motion was seconded by Member Sims and approved unanimously.

The Third Order of Business was a Public Hearing requesting approval for a variance of 10 feet from the required 10 feet street property line setback to add to an existing freestanding sign at 1512 West Main in an R-0, submitted by Brad Neimann. (BOA.10.08.3578)

Steve Gardner stated under the Powers and Duties where it is alleged there is error or determination made by the administrative official the board may affirm or reverse in whole or in part.

- 1) A variance from the terms of this Zoning Code shall not be granted by the Board unless and until The applicant demonstrates that special conditions and circumstances exist which are peculiar to the land, structure, or building involved and which are not applicable to other lands, structures, or building in the same district, that literal interpretation of the provisions of

this Code would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of this Zoning Code; that special conditions and circumstances do not result from the actions of the applicant; and that granting the variance request will not confer on the applicant any special privilege that is denied by this Zoning Code to other lands, structures, or buildings in the same district.

- 2) No non-conforming use of neighboring lands, structures, or buildings in the same district, and no permitted or non-conforming use of lands, structures, or buildings in other districts shall be considered grounds for the issuance of a variance.
- 3) The Board of Adjustment shall further make a finding that the reasons set forth in the application justify the granting of the variance and that the variance is the minimum variance that will made possible the reasonable use of land, building, or structure.
- 4) The Board of Adjustment shall further make a finding that the granting of the variance will be in harmony with the general purpose and intent of this Zoning Code, and will not be injurious to the neighborhood or otherwise detrimental to the public welfare.
- 5) In granting any variance, the Board of Adjustment may prescribe appropriate conditions and safeguards in conformity with the Zoning Code. Violations of such conditions and safeguards, when made a part of the terms under which the variance is granted, shall be deemed a violation of this Zoning Code.

Mr. Petty quoted from the US Department of Administration Federal Highway Administration on Guidance on Off-Premise Changeable Message Signs that changeable Electronic Variable Message Signs proposed laws, regulations, and procedures that would allow permitting CEVMS subject to acceptable criteria do not violate a prohibition against intermittent or flashing or moving lights as those terms are used in the various FSAs that have been entered into during the 1960's and 1970's. In 1996, the Kentucky Supreme Court struck down a state statute that prohibited sign near highways it they contained or included flashing, moving or intermittent lights except those displaying time, date, temperature or weather. See Flying J Travel Plaza v Commonwealth. 928SW2d344 (Ky.1996).

Adjourned.

Blake Tarpley, Chairman