

**WALTON BOARD OF ADJUSTMENT
BUSINESS MEETING
MARCH 27, 2024
6:00 P.M.**

Chairman Hincks called the meeting to order at 6:00 P.M.

BOARD MEMBERS PRESENT

Mr. David Hincks
Ms. Barb Farrow
Mrs. Caitlin Fugate
Mr. Steve Turner

BOARD MEMBERS NOT PRESENT

Mr. Edward Sedor

STAFF MEMBERS PRESENT

Mr. Todd K. Morgan, AICP, Senior Planner
Mr. Robert Krebs, Zoning Enforcement Officer

LEGAL COUNSEL PRESENT

Mr. Dale T. Wilson

APPROVAL OF MINUTES

Mr. Hincks stated the Board received copies of the minutes of the Walton Board of Adjustment meeting of February 15, 2024. He asked if there were any other comments or corrections? Mrs. Farrow moved to approve the minutes and Mrs. Fugate seconded the motion. Mr. Hincks called for a vote and it carried unanimously.

ELECTION OF OFFICERS

Mr. Hincks recommended the Board hold the election tonight but that any change in officers should take effect at the next meeting. He asked if the Board wanted to have any discussion on his recommendation? If not, he asked for a motion. Mrs. Farrow made a motion to accept his recommendation and Mrs. Fugate seconded the motion. He called for the vote and it carried unanimously.

Mr. Hincks asked if there was any nomination for officers? They need a chair, vice-chair, and secretary. Mrs. Fugate said she would be secretary again if nobody else was interested. Mr. Turner said he would be willing to remain vice-chairman and Mr. Hincks said he would be willing to remain chairman. Mr. Hincks asked Mrs. Farrow if she wanted to be chair and she declined. Mr. Hincks asked if the Board was in favor of the slate of officers and they voted unanimously to approve them as announced.

ACTION ON REVIEWS

Items #1 and #2 were flipped after discussing the order with the applicant's attorney and opposition's attorney for agenda item #1. Neither attorney had any objection to flipping the agenda order.

- 2. Request of Atlantic Sign Company for a Variance. The Variance is to modify the 11/17/08 Walton Board of Adjustment conditions to allow a seventh building mounted sign on the front façade of Kroger Marketplace. The approximate 10.08 acre site is located at 635 Chestnut Drive, Walton, Kentucky and is currently zoned Commercial Two (C-2).**

Staff Member, Todd Morgan, presented the Staff Report, which included a PowerPoint presentation (see Staff Report).

Mr. William Yusko, with Atlantic Sign Company, said they are helping Kroger rebrand around the area. Staff did a good job laying the proposal out. The sign is about wayfinding since the store is big. When people pull in the parking lot, they see the tower on the building but not the pharmacy drive thru. The drive thru signage is to direct customers around the building so they can pick up their prescriptions. He believes a Kroger sign with the word pharmacy underneath it used to be located on the tower. They would like to advertise the pharmacy on this side of the building. The sign will help with traffic flow. The signs that were removed were significantly larger. They were given a significant Variance years ago. Kroger is almost like a little development in of itself. It has many brands that need advertisement on the facade. The approved variance allowed 596.25 square feet of signage in 6 sign areas and the proposal would allow 456.24 square feet of signage in 7 sign areas.

Mr. Hincks asked if anybody in the audience wanted to speak for the request? There was no response. Mr. Hincks asked if anybody in the audience wanted to speak against the request? There was no response. Mr. Wilson asked if anybody in the audience wanted to ask a question regarding the request? There was no response.

Mrs. Fugate said all the other Kroger's have multiple signs so she believes the request should be approved. Mr. Tuner said he cannot identify a hardship. He does not believe it is hard to find the pharmacy. He believes the existing signs could be reworked and the sign could be put on the higher part of the building. He doesn't believe they need two pharmacy signs. Mrs. Farrow said she agreed. The signs could be reworked. Having two pharmacy signs seems redundant.

Mr. Hincks asked what the signage on the other side of the building advertised? He asked for the photograph to be shown. A big sign advertises Kroger Marketplace. Mr. Turner said he believes it would be better to have the pharmacy sign on the higher part of the building. The current sign seems to get lost with the other signs on that end on the building. Mr. Hincks said he believes adding a sign on the higher part of the building would balance out the signs.

Mr. Hincks asked if there was any additional discussion? Mr. Morgan said the person that makes the motion should reference the Variance criteria.

Mrs. Fugate made a motion to approve the Variance as submitted and Mr. Hincks seconded the motion.

Mrs. Fugate said there should be a drive thru sign, so it's obvious the drive thru is on that side of the building.

Mr. Turner asked if there was anything to stop them from putting a drive thru sign on the actual drive thru. Mr. Morgan said code allows small directional signs to be mounted on the canopy. Mrs. Fugate asked if the bank shared the canopy with the pharmacy? Mrs. Farrow said it was shared and there were designated lanes.

Mr. Hincks asked for a vote on the motion to approve. A roll call vote found that Mr. Hincks and Mrs. Fugate were in favor and Mrs. Farrow and Mr. Turner were opposed. Mr. Wilson said with a tie vote the Board can continue to discuss the issue and possibly add conditions to see if anybody would change their vote. If that doesn't occur and the issue remains deadlocked, then the Board will need to take this request up at a future meeting. Mr. Wilson said the Board can hear from the applicant or anybody else from the audience if that will help them break the tie.

Mr. Hincks asked Mr. Yusko if he had anything to add? Mr. Yusko said having a pharmacy sign in the gable area on that side of the building will really pull people in that direction. He understands it may be a little redundant but sometimes people get confused. Mrs. Fugate said she believes the sign would be helpful for people that aren't familiar with the store. Mr. Yusko said adding a pharmacy drive thru sign in the gable area wouldn't make too much sense. Having that sign on the corner of the building will help people find the drive thru.

Mrs. Fugate asked if Kroger would be opposed to removing the word pharmacy from the sign on the corner of the building? The drive thru contains pharmacy and bank lanes.

Linda Courtney asked why the sign shouldn't be approved. Walmart and other businesses have such signs, and it is a plus for people that don't live in the area. She asked what the opposition was?

Lyndsay Arnold said she lived at 248 Edwards. Every Kroger has Kroger Marketplace on one entrance and pharmacy on the other. They have lots of hospitals in the area and parents that drive here. This a major pharmacy located a major intersection. The word pharmacy shouldn't be removed from the drive thru sign. Some people could take that to mean that there is only a bank drive thru. Mr. Morgan said they can have Kroger Marketplace and pharmacy signage if they so choose. They are currently permitted six signs on the front of the building.

Mrs. Farrow asked if all the other Kroger's in the area have a pharmacy and pharmacy drive thru sign? Ms. Anna Steckley, with Kroger, said they like to distinguish the pharmacy and pharmacy drive thru but it depends on what the jurisdiction allows. They are rebranding and are trying to direct people to the pharmacy drive thru. The Marketplace stores are huge, and some people need guidance.

Mr. Turner asked if there was a separate entrance for the Little Clinic? Mrs. Farrow responded no. Mr. Turner asked if the Little Clinic and Pharmacy signs could be combined. Mr. Morgan said the current condition would prohibit that. Six signs are permitted on the front façade, and they must be measured independently. The condition would have to be modified to allow a combined sign. He believes the Board should just allow a seventh sign if they want to approve the sign. It doesn't make sense to allow one shared sign and five single signs.

Mr. Wilson asked if the Board wanted to entertain another motion based on the discussion? Mr. Hincks asked if they could vote on the same motion for approval that was made previously by Mrs. Fugate and seconded by him. Mr. Wilson said they could since the Board has had further discussion and it might have changed someone's mind. Mr. Hincks called for the vote and the motion to approve carried unanimously.

- 1. Request of KFF Enterprises, LLC c/o Megerle Law for an Appeal. The Appeal is regarding the issuance of a Zoning Permit for a shed. The approximate 0.09 acre site is located at 5 N. Main Street, Walton, Kentucky and is currently zoned Walton Downtown District (WD).**

Staff Member, Todd Morgan, presented the Staff Report, which included a PowerPoint presentation (see Staff Report).

Mr. Hincks said the Board's purpose tonight is to rule on if there was an error by Boone County Planning Commission when they issued the Zoning Permit. They are not looking at anything more.

Mr. Steven J. Megerle said he was an attorney from Newport and is representing KFF Enterprises. He said he wanted to submit a packet of information into the record (see Exhibit 1). He said this is a KRS 100.258-100.261 appeal. They believe Boone County Planning Commission Staff made an error when they approved a Zoning Permit. Their decision was wrong and erroneous. The Board has the power to overrule and reject the permit that was issued to the bakery. He appreciates Chairman Hincks comments because this isn't about KFF or the bakery. The law says that before you build a storage building or a shed you have to get a permit first. The Kentucky Court of Appeals said this when somebody built something first and asked for a Variance later. "A Variance seeker (permit seeker) who decides to build first and ask questions later can be reasonably accused of committing a willful violation of the zoning code and has essentially admitted engaging in behavior when they state they could not wait for the process to conclude and get a permit." What the Court of Appeals held in this case was that this lady had built first and asked for a permit later and because she didn't go through the proper process she couldn't get her permit and the building had to be removed. These are almost the same exact facts here.

He said they are going to acknowledge that the building is properly on the landlord's property. They respectfully disagree with a building being located 0.7 feet from somebody else's property line. They are only asking that the Board consider the following and overrule the Planning Commission:

1. She didn't get a permit first.
2. The building was erected sometime in 2022 and sat there without a permit.

He is going to call the subject building a storage building because they drove around Walton tonight and observed many sheds located in yards. He referred to the last couple pages of his exhibit. They would argue that a shed is defined as a slight structure built for shelter or storage. A shed is not defined in the zoning code. Since it is not, he looked at the definition in a dictionary. The building Ms. Napier put up, without a permit, does not look like a shed. It's a very large storage building. Probably the only shed in the Walton Downtown District. He referred to pictures of the subject shed on cinderblocks in his exhibit. The storage building sitting on cinderblocks isn't safe. There is nothing to stop a kid from playing underneath the structure. Imagine a child

playing underneath the structure and something happening to one of those unstable cinderblocks and they get killed. This is the reason there is a regulatory scheme in place and to ask for a permit first, get it approved, and put the structure up. The issue is that Ms. Napier built the structure without permits. Only after two citations were issued and a threat of code enforcement board action did she then apply for a permit.

Another issue comes from Section 400 A. of the Zoning Regulations. It states that “no building or other structure shall be erected, moved, added to, structurally altered, nor shall any building, structure, or land be established or changed in use or character without a permit.”

Another problem is that she applied for her permit in August and waited until she got sued before she decided to get a survey. The zoning code says they have 7 days to act on a permit not 6 months. They can't let it get stale. They have to make an effort to approve or disapprove the permit in 7 days. You don't get 6 months to let something that has been built illegally sit there while you are figuring out whether you can get a survey that says this is where the structure should be or not.

The Staff Report says there were many conversations held back and forth for months. The Zoning Administrator should have either said yes or no in 7 days. The Planning Commission could not do this because there wasn't a drawing. He has witnesses here that can answer questions. One former city employee is going to testify that this building was most likely built before she ever applied for a permit, and she went to him for help, and he told her to go get a survey and get a zoning permit. He also has questions for Mr. Krebs as to why this issue wasn't cited to the Code Enforcement Board or an order to remove it. It's an unsafe structure where kids can play and get hurt. You saw what happened with the bridge in Maryland a couple of days ago.

The structure is okay where it is located but you cannot build something and ask for permission later. You ask for permission first and get approval. This is not a shed, it's a storage building. Ms. Napier, as a member of Bailey Jayne's Bakery, has had to get numerous permits. She has an occupational license, license through the Health Department, and other licenses. The one thing she didn't do was to get a permit for this storage building because she probably knew it wasn't going to be approved as it is. The Board of Adjustment is the final defender of the law and what is safe in the community. What is not safe is for people to be recklessly building things. Imagine if this was a 50' deck that was built without a permit and it collapses and people get hurt. This is why there are building codes and permitting requirements for everyone. This is not Mr. Fulmer out to get Ms. Napier or the opposite. This is about doing things in a proper way to build structures on your private property. The issue is simple, did she build the building without a permit. If she did, then the Board should reverse the Planning Commission action. They gave her 6 months after she received notices. They are compelled to find that this is a willful violation of the zoning code because she built first and sought her permit second. He has a couple people that he would still like to ask questions and he believes Ms. Napier still has things to say through her counsel. He is not sure if they are going to get through things in the next 15 minutes because he knows the City of Walton has an important meeting scheduled. He said he would be willing to continue the meeting to a future date. Mr. Hincks said he is comfortable continuing the meeting tonight because this is also an important matter to the city. He talked with the city this morning and was aware that they were having a meeting tonight. They were aware that their meeting may not be able to start until 9:00 or 10:00 P.M. He recommended they continue this meeting.

Mr. Scott Thomas asked if he could speak to the matter of the continuance? He stated he was the attorney for the property owner and tenant. He was surprised to learn tonight that KFF is conceding that the outbuilding is fully on the bakery property. The only remaining question is a legal question. Mr. Morgan has spoken to this issue and Mr. Wilson can guide the Board on it. KRS 100.243 (2) speaks to Variances. The issue is whether it also speaks to Zoning Permits. Mr. Megerle is saying it is proper to say a Variance should be treated as a Zoning Permit. That is a legal question and they do not need to hear fact witnesses tonight about a legal question. The only people competent to do that are Planning Commission Staff and the Board's legal counsel. He would urge the Board not to consider any fact testimony that would have been relevant mainly to the encroachment that is no longer an issue.

Mr. Megerle asked Mr. Thomas if he was willing to stipulate that the building was built in 2022? Mr. Thomas replied that the building was built in 2022. Mr. Megerle said based on that it's a fact that the building was built before a permit was ever applied for or in effect. It's a fact they waited six months before approving the permit which is in violation of their code.

The facts are:

1. She built the building on June 20, 2022 without a Zoning Permit. Mr. Thomas agreed and added that a Zoning Permit was obtained on February 6, 2024, as indicated in the Staff Report.
2. She applied for a Permit in 2023, she then waited 6 months to supplement her application with drawings. The Staff did not issue a decision within 7 days as required by the zoning code. They then approved it 6 months later in February 2024.

The issue is if this is a willful violation. The law says it is. You can't build first and ask for a permit later. The facts are the facts. The Board needs to find the Planning Commission was correct in issuing a Permit that was a willful violation or that they were wrong. They would ask that the Board uphold the zoning code and not let this be open season on building decks, sheds, storage buildings without permits throughout the town and revoke the permit that was issued by the Zoning Administrator. He said that he would not be calling any witnesses. He offered to answer questions. He said Mr. McDonald, the former code enforcement officer, was under subpoena, and was free to leave unless the Board objected. Mr. Hincks said that was fine with him.

Mr. Hincks said he would like to talk with the Board's attorney. He does not agree right offhand that this was a willful violation. Just like there was a fence that was put up on the neighboring property without a permit. That fence is referenced in the Staff Report. He would like to speak with the Board's attorney and see how this applies. Mr. Wilson said the citation to KRS 100.243 relates to findings necessary for granting a dimensional Variance. As Staff pointed out, there is no need for a dimensional Variance with regard to this storage shed or structure. There is no setback for a dimensional Variance to be considered in this zone. He does not think that 100.243 is the proper statute. There is mention of Section 400 "Zoning Permits Required" and that apparently was not done for 6 months. There were suggestions or even threats of having to go the Code Enforcement Board for the City of Walton. They could have imposed some kind of penalty. Perhaps the appropriate measure to take is for there to be an exploring of whether or not there should still be a reference to the Code Enforcement Board rather than relying on KRS 100.243 for willful violation that is only addressing Variances. He added that there are recorded court cases that deal with who determines willful violation and it is the Board of Adjustment under

100.243. The Board doesn't have to do that here because 100.243 deals with dimensional Variances and it is not a dimensional Variance situation. However, there is an issue if this should have gone in front of the Code Enforcement Board. He doesn't know what penalties the Walton Code Enforcement Board can impose or if they will choose to impose something like this. Mr. Hincks asked if this would be the Boone County or Walton Code Enforcement Board. Mr. Wilson responded that he thinks it would be the Walton Code Enforcement Board.

Mr. Hincks asked the other Board members their thoughts on how to proceed. Mr. Hincks said he would share his thoughts first. He believes he has enough information to have an opinion but would like to hear from the public as well. This additional information may change his mind.

Mrs. Fugate asked if the Staff recommendations were on page 6? Mr. Morgan said there really wasn't a Staff recommendation. The Staff comments were his analysis of Mr. Megerle's appeal statement. He added that Mr. Megerle made a statement about this not being a shed. The applicable regulations contain a passage about accessory structures so whether you classify this as a shed or a storage building isn't relevant because it's clearly an accessory structure that's allowed. That definition can be found in passage 14. of the applicable regulations.

Mrs. Fugate, Mr. Turner, and Mrs. Farrow all indicated they were okay with proceeding and listening to the public input. Mr. Wilson said the issues now are related to whether or not she was in violation for not getting a permit. It's really not a Variance situation and it's really not that the permit as it stands is valid. The issue boils down to the 6 months she didn't have a permit. Mr. Megerle said it is actually the date she constructed it (June 20, 2022) to the date the permit was issued in February 2024. The permit sat stale with the zoning department for 6 months, from when she applied in August 2023 until it was issued with all the proper paperwork, in 2024. The zoning code requires a thumbs up or thumbs down to be given in 7 days. The actual date is from the day it was constructed all the way until the day it was approved. It is not 6 months it is all the months the shed sat there before it was approved in 2024. An argument could be made that the date she applied for the permit was an attempt to cure the defect of building without a permit. But then it took her an additional 6 months to get the permit in a place when it should have flat out been denied within the 7 days. He said he wanted to ask some questions of Mr. Morgan regarding accessory structures. There are only certain things that can be in the Walton Downtown District as accessory structures versus the code of the entire county.

Mr. Thomas said he would like to have a short rebuttal. Mr. Hincks told him to proceed. Mr. Thomas said much of what Mr. Megerle said was repetitive but he would like to point out that when you go to court you always have to let the other side and the judge know what the issue is. Nowhere in the appeal is there an assertion that this was an unsafe structure, or a 7-day window was violated, or that it should have been referred to code enforcement. He respectfully objects to the ambush. The issues could have been presented more comprehensively for your benefit had they been given proper notice. Mr. Megerle responded that Board of Adjustments are not courts. This is an administrative hearing. The rules of procedure that apply to lawyers don't apply here. We can have hearsay, we can have evidence outside the four corners of the record come in, you can hear testimony from people in the town. If this was court most of these people because they are not a party could not come and make a decision. Because this is a relaxed adjudicatory type situation you can take evidence that was not here before. These are all things that are facts.

Mr. Wilson said the Board indicated they wanted to hear from the public. He believes they have heard enough from the lawyers.

Mrs. Farrow said right now it is at a point where either the zoning board was wrong or the zoning code enforcement board was wrong. The finger is being pointed at everyone that they did something wrong. What is the resolution to this problem. If she applied for a permit now it would be approved. Mr. Hincks said they need to decide if the approval of the permit was in error.

Mr. Turner asked if the building was built on site or moved to the site? Mr. Thomas said the building was set in place and was fully constructed elsewhere.

Mr. Hincks asked if anybody in the audience wanted to speak for the appeal. Mr. Morgan said speaking for the appeal means that somebody feels the Planning Commission acted in error. Mr. Wilson agreed and said if the Board voted for the Appeal then they would be upholding it. It would be punishment for exceeding the time limit or they want the Board to do away with the permit. He does not know what the cure would be.

Mr. Hincks said the Appeal has changed based on what they heard. Mr. Wilson replied that he believes Mr. Thomas thinks that.

Mr. Hincks said that anybody that wants to speak regarding the request can come up.

Lindsay Arnold said she called Burlington and didn't realize it had anything to do with Jayne. She spoke to the person that issued the permit and he told her he did nothing wrong because everything was legal. If you build a deck, don't have a permit, and get caught then you pay for a permit. She doesn't understand what they want her to do now. The building is there and it is not causing any issues so why is there so much controversy about a shed at the back of her building.

Mr. Jim Daut said as far as the building being unsafe and kids crawling underneath it, all that she needs to do is skirt it and she is willing to do that.

Michelle Adamson asked what happens if she is fined? Will she have to remove the building? Someone from the audience answered "no". She said she doesn't understand why they are going to fine her, slap her hand, and then what? She is trying to understand the purpose of this. Mr. Hincks clarified she is looking for options a code enforcement body would take. She replied she really doesn't understand this. It's not a Variance issue because she is not encroaching onto somebody else's property, but they want to fine her or remove the building and put another one up. Mr. Morgan said his thought on the matter is this doesn't involve a Variance. He said the Planning Commission routinely gives people more time (7 days) to finalize a permit because they try to work with them and not pull the rug out from under them and deny their permit. Mr. Krebs can correct him, but there was a communication that went on for 6 months about a survey being done so she was given ample time to get it done. The option would have been to deny her permit, let her get the survey done, and then charge her another \$45 to submit a new permit application. That is what they are speaking about – The Planning Commission tried to save her \$45. In his opinion, this is not a Variance, so if the Board overturns the permit because they didn't act within their timeline and they came in with the same permit tomorrow it would have to be approved because it meets code. Ms. Adamson replied so basically this is a waste of time.

Dan Martin, with the City of Walton, said he wanted to make two main points. Number 1 – Mr. Megerle is criticizing a cinderblock pier foundation and there are thousands of mobile and

premanufactured homes in Boone County that are on those same foundations. He believes he is doing a disservice to a lot of people if he is saying their homes aren't safe. He believes her shed and those homes are safe as long as the pier foundations are well built. Number 2 – This all started with did Mr. Krebs do something wrong? Through opening arguments he still hasn't heard what he did wrong.

Ms. Bev Roberts said she has lived here for a long time and Bailey Jayne's is the best thing that has happened to Walton in a long time. It has brought a lot of people together and it's a beautiful building. The City Council members should walk between Bailey Jayne's and the library. That whole section of street looks like a slum. It's dirty and there is lots of garbage. There are also dirty windows, peeling paint, and rusty things, leaves, and rocks sitting outside. Bailey Jayne's has brought a lot of lonely people together.

Amy Long, with the City of Walton, said Bailey and Jayne have brought a fantastic business to Walton and Main Street. They have a wonderful business and are great people. She has put something on her property and has bought a permit. She asked what they are doing here.

Ms. Lindsay Arnold said if they are concerned about doing things by the book and law, then how did they have an electrical fence put up in town on Main Street without a permit. But they are so concerned about a shed that has been put up on somebody else's property with a permit. Mr. Morgan said the fence was also a zoning enforcement case. Mr. Megerle said the fence is irrelevant to why they are here.

Mr. Megerle stated that this is an adjudicatory type hearing and he has the right to cross examination under Callan versus the City of Louisville and other cases. Mr. Wilson said there is a due process right to cross examination and he indicated that he wants to cross examine Mr. Morgan. Mr. Megerle replied "yes, at this moment." Mr. Wilson said he needed to decide. Mr. Megerle replied he doesn't know if anyone else is testifying. Mr. Wilson said the Board is ready to deliberate and there is nobody else is testifying. Mr. Megerle replied all right. Mr. Wilson said to let the record reflect that he wants to cross examine one person and it's Todd Morgan. Mr. Hincks asked if Mr. Morgan has to agree to be cross examined or not. Mr. Wilson replied that Mr. Morgan is here so he can be cross examined.

Mr. Megerle asked under Section 3153 of the Boone County Zoning Regulations what is the definition of a customary accessory building. Mr. Morgan read that accessory structures or uses, as defined in Article 40, shall be placed in the side or rear yard only. Article 40 says that they are customary accessory uses to a business. Mr. Megerle asked what customary accessory uses are permitted in the Walton Downtown District. Mr. Morgan read off Section 2402 of the Boone County Zoning Regulations.

"Accessory uses, buildings, and structures customarily incidental and subordinate to any of the permitted uses defined to be:

1. Recreation uses or spaces of integral relation to the developed portions of the district including:
 - a. Temporary exhibit spaces
 - b. Aquariums, botanical gardens and other natural exhibitions
 - c. Stages and similar assembly areas
 - d. Public parks, commons, squares and plazas

2. Accessory dwelling units
3. Family day care
4. Temporary buildings incidental to construction
5. Outside storage, display, loading, uncrating or unpacking areas which are an integral function of a permitted use and do not create outside spaces which will tend to enlarge or overpower the activities of permitted uses, and which are conducted in accordance with SECTION 3154
6. Signage (see SECTION 2405 and ARTICLE 34)
7. Parking (see SECTION 2405 and ARTICLE 33)
8. Drive-through facilities operated in conjunction with a permitted use, and which are conducted in accordance with SECTION 3155."

Mr. Megerle asked which one of those does the shed fulfill? Mr. Morgan said it is probably closest to outside storage, display, loading or unpacking areas. Mr. Megerle said but it is not that. Mr. Morgan replied that the Zoning Administrator, Mr. Schwartz, has some discretion. He concluded that it was an appropriate accessory use. Mr. Megerle said how? Mr. Morgan said by interpreting the code. By reading the definition of accessory use, which is quoted in the Staff Report, he concluded that the shed was incidental and subordinate to the business that is there. Mr. Megerle asked what his understanding of the word shall. Mr. Morgan said that you have to do it. Mr. Megerle said why then if your zoning code says you shall approve or disapprove permits within 7 days is it a customary process of your office to far extend that period? The permit sat stale for 6 months before it was issued. Mr. Morgan said he believes the Planning Commission, as a whole, tries to be compassionate to the public. The alternative would have been to deny the Permit and then 6 months later, as we continued to have open communication with her, let her submit a new application and fee and approve it. Mr. Megerle said then why do we have a zoning code if people can blatantly disregard it? Mr. Morgan replied that was a stretch. Mr. Megerle asked again what is the purpose of a zoning code if we are allowing people to build things and then apply for permits and then wait months until they are complete and then issue them? Mr. Morgan replied for violations and where people do not cooperate or work with them. Mr. Megerle asked if it would be fair to say that building a storage building and not seeking a permit for over a year, until there is a citation, is working with us as far as compliance with the zoning code. Mr. Morgan said the Planning Commission was not aware of the violation for a period of time. He referred to the timeline in the Staff Report. She was given two notices of violation and then she applied for a permit. She then told Mr. Krebs that she was going to have a survey done and the process took months. Again, the alternative would have been to deny her permit and let her apply again when the survey was done. We would have collected another \$45 and approved the permit. Mr. Megerle asked if the Planning Commission ever denies permits when people build first and then ask for permits later? Mr. Morgan said permits have been denied. Mr. Megerle asked why her Permit wasn't denied. Mr. Morgan said that question should be answered by Mr. Krebs. He may have had some discussions with the Zoning Administrator. Mr. Morgan said he did not approve the permit. Mr. Megerle said it is his testimony that there are occasions when someone builds first, applies for permit later, that you then deny the zoning permit. Mr. Morgan said let's say for example they didn't meet the setback requirement and there is no way for them to meet code and that person doesn't want to apply (for a Variance). There are different circumstances for different situations. Her situation was that she did not need a setback Variance. Mr. Megerle said but she needed a zoning permit and Mr. Morgan agreed. He added that she applied for it after there was zoning enforcement action. She now has an approved zoning permit.

Mr. Megerle asked Mr. Morgan if he was aware of 75 Alta Vista in the City of Walton. Mr. Morgan said he was not. Mr. Megerle asked if he was aware that the person constructed a porch at their home, without a permit, and was ordered to take it down by the Boone County Planning Commission, because they built it first without a permit. Mr. Morgan said that would be a better question for Mr. Krebs and not him. He typically does not deal with zoning enforcement issues. Mr. Megerle said that was all the questions he had. He added that there has been questions from the audience about the remedy. The remedy is that you don't issue the permit if somebody disregards it in the first place. You don't grant them the grace to do something after they have already flubbed their nose at your code. They basically say I'm just going to do what I want and I'm going to build this building whether it is dangerous or not. That is the issue.

Mr. Hincks asked if anybody else would like to speak. Mr. Randy Lawrence said most people here have common sense. He said for Mr. Megerle to bring in the barge incident and compare it to a shed shows his ignorance. There is not going to be a barge that comes through Walton which takes out a shed. People lost their lives and that is nonsense. They are wasting so many peoples time and they want vengeance for some reason. What is taking the shed down going to accomplish? She will put it right back up after getting a permit. It's on the property correctly. It's okay for him (Mr. Fulmer) not to have a permit. Mr. Megerle interjected that was irrelevant. Mr. Lawrence continued that he has wasted Jayne's time and money and it is vengeful for him to come after her time after time. Putting that fence up in town was an eyesore. It had high voltage signs on the fence. We have a nice business in town and Kelly (Mr. Fulmer) has buildings that should probably be condemned and he is worried about a storage shed. The City of Walton and Boone County have more problems than that. We have a guy with a very questionable past taking on a reputable business.

Mr. Hans Phillip, said he was the owner of the property. He met Bailey Jane and bought the building to help her out. He said he is from Williamstown and is remodeling the downtown. He will gladly take her in Williamstown if they get their way. That is not his point because he would like to keep her here. He bought the property and all of sudden he gets notice from the people over there that he needs to move the shed now or they will pull a crane in and lift it out. A surveyor came out with a fraudulent piece of paper. They got their own surveyor out there and confirmed the building isn't on their property. It's on his property by 0.7 feet, that's enough. He questioned if Mr. Megerle was an engineer and could say the building was unsafe. Why are they worried about kids coming to the building when he put an electric fence up. It's absolutely ridiculous what they are doing. He will pay \$100 for a permit right now to get it done and over with. If they get their way, he will build the shed right back up.

Mr. Hincks asked if anybody else wanted to speak. There was no response. Mr. Hincks said the Board would begin to deliberate. Mr. Megerle said there was some items that they would like to add to the record. Mr. Hincks said they have concluded public comments. Mr. Wilson said an opportunity has been there for everyone to speak and the Board is ready to deliberate. Mr. Megerle said he would like the papers he gave them entered into the record. Mr. Morgan said they are already part of the record and Mr. Hincks agreed. Mr. Megerle said fine.

Mr. Hincks said his thoughts when he reads the opening paragraph of the Walton Downtown District (Article 24) is "the purpose of the district is to facilitate development along Main Street where the unique circumstance of having rail roads that parallel Main Street on both sides creates a situation that inhibits growth and opportunity for Walton. The creation of a mixed-use central business district is essential to the vitality, viability, and well-being of Walton and encourages a

variety of new growth.” He believes the matter of whether the shed is within the property boundaries has been decided. As a resident of Walton, he has property and they have about nine different lots that make up his property. The property is old so sometimes it’s hard to determine boundaries. The building is within Walton Downtown District setback requirements. He does not believe, based on the location of the building, that the applicant is injuriously affected. The building is mainly out of sight but can be seen if you are really looking for it from Main Street. It can also be seen from the railroad tracks. He is not convinced that there was any willful purpose by Ms. Napier to avoid getting a permit. He does not believe the administrative decision by Mr. Krebs was in error by any means. That is his position. He believes the Board has enough facts to vote on this. He will be voting to deny the appeal because the administrative decision was valid. Mrs. Fugate said she would second.

Mr. Hincks asked if the other Board members had comments? Mr. Hincks said he would make his comments a motion since Mrs. Fugate seconded it.

Mr. Turner asked if the motion passes, does that preclude them from doing any kind of zoning code enforcement board action? Mr. Morgan replied the zoning code enforcement board would only meet if there was a violation. Ms. Napier is currently in compliance with code because she has an approved permit so there is no reason for code enforcement.

Mr. Hincks said he believes the purpose of a body, such as the Board of Adjustment, is because stuff happens. The Board needs to consider the facts, the perceptions, and feelings around this entire situation so that is how he premises his thoughts.

Mrs. Farrow said she is comfortable with that. She doesn’t believe she did anything unwillful. As far as the zoning board (Staff) not approving this within 7 days, she would like to applaud them for working with residents instead of kicking them to the curb and have them come back and spend more money. The Staff worked with Ms. Napier and approved the permit in the end. Even if the Board disapproved things tonight, she will put in another permit tomorrow and it will be approved.

Mr. Hincks said there was a motion on the table and it had been seconded to deny the appeal. This would mean that the administrative decision that was made to approve the zoning permit is valid. Mr. Hincks called for the vote and it carried unanimously.

Mr. Hincks said this is the decision of the Walton Board of Adjustment. The applicant, if they so choose, can appeal this decision to Boone County Circuit Court. He thanked everyone for attending and their input.

OTHER

Mr. Hincks asked if there was any other business to discuss. There was no response.

ADJOURNMENT

Mrs. Fugate made a motion to adjourn the meeting and Mrs. Farrow seconded the motion. Mr. Hincks called for the vote and the meeting was adjourned by unanimous consent at 7:47 P.M.

APPROVED


Mr. David Hincks

ATTEST:



Todd K. Morgan, AICP
Senior Planner

Exhibit 1 – Packet of Information Submitted by Steven J. Megerle