

**CAMPBELL COUNTY & MUNICIPAL BOARD OF ADJUSTMENT
MINUTES OF THE SEPTEMBER 18, 2018 MEETING**

MEMBERS PRESENT:

Ms. Susan Meyers
Mr. Joseph Williams
Mr. Michael Williams
Mr. Roger Mason, Vice Chair
Mr. Scott Bachmann, Chair

STAFF PRESENT:

Mr. Kirk Hunter, Principal Planner
Mr. Michael Duncan, Legal Counsel
Ms. Stephanie Turner, Recording Secretary

MEMBERS ABSENT:

Mr. Justin Verst
Mr. John Fessler, TPO

STAFF ABSENT:

Ms. Cynthia Minter, Director

Mr. Bachmann called the meeting to order at 7:02 PM with the Pledge of Allegiance. Following roll call, a quorum was found to be present. Mr. Williams interrupted the Chair to ask if they should put it on the record that the meeting did not start until 7:02 PM which was previously stated, but that there is nobody here but us. Mr. Duncan stated it will be made part of the record at the time the staff report is to be given and the applicant would be offered an opportunity to address the Board.

Mr. Bachmann continued the meeting by asking if everyone had read the August 21, 2018 meeting minutes and if there were any questions or corrections. After a brief discussion concerning the accuracy of the motion to elect officers, Mr. Bachmann wanted to confirm Mr. Fessler was aware that he had been elected TPO. Ms. Turner advised the Board she did have a conversation with Mr. Fessler the very next day. Mr. Fessler was honored that he had been nominated and accepted the position as TPO. Mr. Duncan stated that the minutes did accurately match his recollection of the meeting. There being no other comments or corrections, Mr. Bachmann called for a motion to approve the minutes. Mr. Mason made a motion to approve the minutes as submitted. Ms. Meyers seconded the motion. Mr. Bachmann called for a roll call vote. A roll call vote found Ms. Meyers, Mr. Mason and Mr. Bachmann in favor. Mr. J. Williams and Mr. M. Williams abstained. Motion passed.

Mr. Duncan noted for the record that there were no audience members. The applicant, Golden Rule Signs, was not present nor were there anyone representing the Plum Creek Christian Church present. Property legal notice of this meeting was made. Mr. Duncan recommended that his legal opinion that the Board continue with the case by hearing the staff report and make a ruling based on the information presented.

With that recommendation, Mr. Bachmann introduced case #BA-18-012 by applicant Golden Rule Signs on behalf of Plum Creek Christian Church located at 961 Nagel Road in the Unincorporated Campbell County requesting a sign variance. Mr. Hunter presented the staff report as follows:

Case: BA-18-012
Applicant: Golden Rule Signs on behalf of Plum Creek Christian Church
Location: 961 Nagel Road, Unincorporated Campbell County, KY.
Request: Sign Variance

Overview:

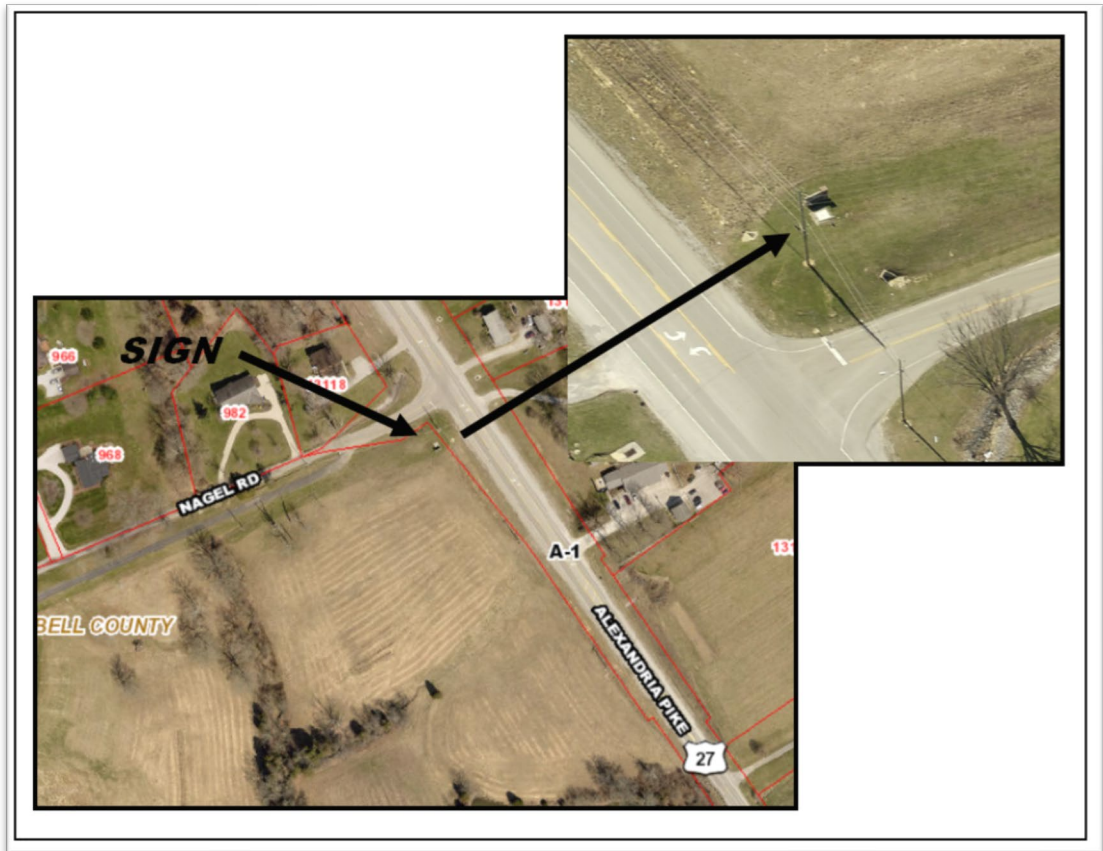
Plum Creek Christian Church is located at 961 Nagel Road in Unincorporated Campbell County. The site is approximately 128 acres in size and sits at the corner of Alexandria Pike (US27) and

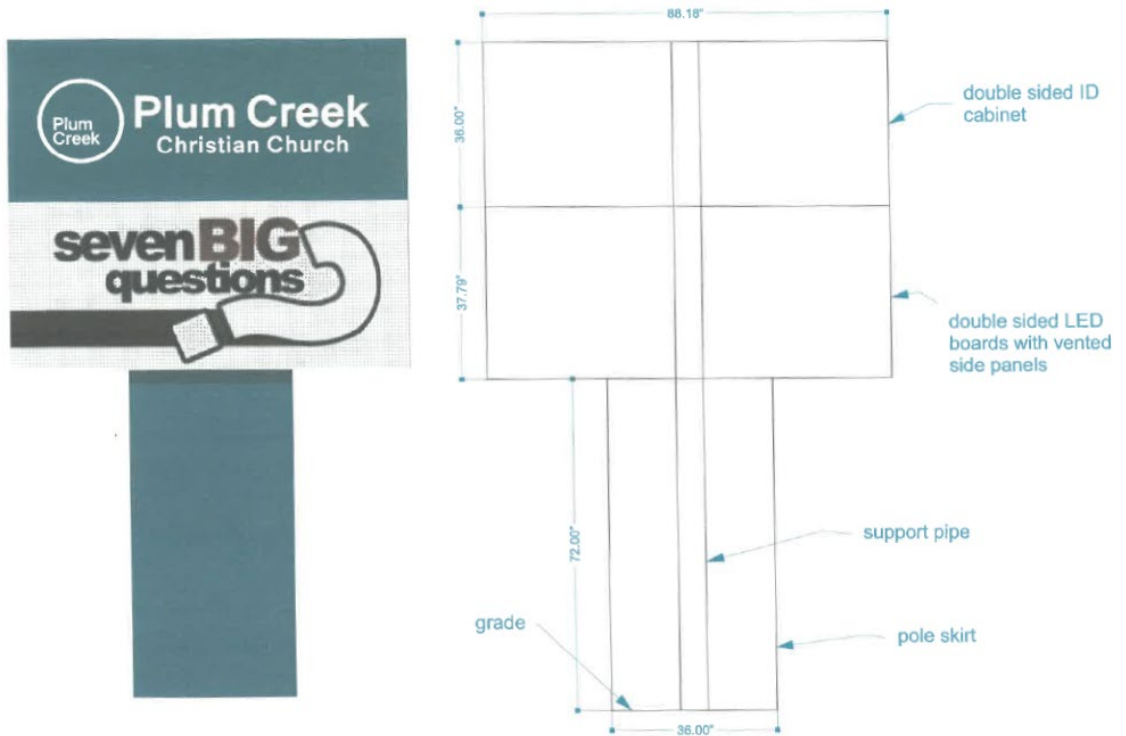
Nagel Road approximately two miles north of the Pendleton County border. The site is located within the Agricultural-one (A-1) zone. A church is a conditional use within the A-1 Zone.

The applicant is seeking a dimensional variance to install a new pole sign that is approximately forty-five (45) square feet in area and approximately twelve (12) feet in height.



The site currently has one (1) class 8 monument sign located at the Northeast corner of property. It is approximately sixteen (16) square feet in area and four (4) feet in height.





Considerations:

1. The Campbell County Zoning Ordinance, Section 7.0, Definitions defines a Variance as:

A departure from dimensional terms of the zoning ordinance, pertaining to height, width, or location of structures and size of yards and open spaces (but not population density) where such departure meets the requirements of KRS 100.241 to 100.247.

2. Kentucky Revised Statutes (KRS), Chapter 100.247 states:

A Variance cannot contradict zoning regulation. The board shall not possess the power to grant a variance to permit a use of any land, building, or structure which is not permitted by the zoning regulation in the zone in question, or to alter density requirements in the zone in question.

Zoning Ordinance, Section 18.6, B. abides by this statute and states that a variance cannot contradict zoning regulation.

The board of adjustment shall not possess the power to grant a variance to permit a use of any land, building, or structure which is not permitted by this ordinance in the zone in question, or to alter the density of dwelling unit requirements in the zone in question.

3. Zoning Ordinance Section 18.6 A., 4. defines that prior to granting a variance the board of adjustments shall consider and make findings that the variance:
 - a. The Board of Adjustment shall make findings that the requirements of this section have been met by the applicant for a variance.
 - b. The Board of Adjustment shall further make a finding that 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.
 - c. 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 Ordinance as well as the Adopted Comprehensive Plan for the County and will not be injurious to the neighborhood, or otherwise, detrimental to the public welfare.

In addition, the board may consider whether:

- *the variance arises from special circumstances which do not generally apply to land in the general vicinity, or in the same zone,*
 - *strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land or would create an unnecessary hardship on the applicant, and*
 - *Circumstances are the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought.*
4. The Zoning Ordinance has specific definitions regarding sign types. Here are two excerpts from Article VI Definitions relevant to this case:
 - SIGN, GROUND: Any sign erected, constructed, or maintained directly upon the ground or upon uprights or braces placed in the ground, with a maximum permitted ground clearance of three (3) feet.
 - SIGN, POLE: Any sign affixed to a freestanding supporting pole or poles, embedded in, and extending upward from the ground with a ground clearance exceeding three (3) feet.
 5. A Class 8 (ground or monument) sign is permitted at this site. Zoning Ordinance, Section 14.7 provides the following details on permitted signs in the Agricultural-One (A-1) Zone:

[The remainder of this page intentionally left blank. Chart continues on next page.]

- RC-O & A-1
1. Any use permitted in this.....1, 2, and 4
 2. In addition to sign classes permitted in (1):
 - a. off-street parking areas.....3
(excluding 3 parking garages)
 - b. All the following uses permitted in this zone (including parking garages):
 - (1) Public owned and/or.....5 and 8 or
operated parks, and/or 6 and 8*
5 and 8 or recreation areas
including swimming pools
 - (2) Recreational uses other than.....5 and 7 or
those publicly owned and/or 6 and 7*
operated such as golf courses,
country clubs, and semi public
swimming pools
 - (3) Conditionally permitted areas.....5 and 8 or
6 and 8*

* A combination of classes 5 and 6 signs may be used provided that the combined total number of square feet of sign area used shall not exceed one (1) square foot of area for each horizontal linear foot of building wall upon which the sign of signs are to be located

6. Zoning Ordinance, Section 14.6, paragraph H., provides the following details on a Class 8 sign:

Class 8: The following signs meeting the following specifications shall constitute Class 8 and shall be only business or identification signs, as defined herein:

1. Structural Type - Ground sign; single or double faced
2. Maximum Size Of Individual Sign - Twenty-five (25) square feet
3. Maximum Height Above Grade At Top Of Sign - Ten (10) feet
4. Limitations
 - a. One (1) sign may be erected for each street frontage of the lot or building site on which the primary permitted use is located.
 - b. One (1) sign may be erected for identification purposes of a residential subdivision.
7. In reference to variance consideration, the applicant has submitted the following evidence for consideration:
 - a. *“The requested variance arises from special existing circumstances because the location of the needed signage is in an embankment that will render the sign useless if it is not granted. This embankment is specific to the piece of property.”*

Staff Comment: See figure 5 to illustrate the aforementioned embankment. The topography of the property limits the view when approaching the sign from the South on Alexandria Pike (US 27) however; there is no obstruction of view when approaching from the north on Alexandria Pike.



Figure 1: View of sign approaching the intersection of Nagel Road and US 27 from the South



Figure 2: View of sign approaching from the North taken approximately 750 feet away from the sign



Figure 3: View of the sign from just north of Nagel and US 27 looking south

- b. *“If there is a strict application, then the property owner will not be able to property[sic] advertise the services that their church offers to the society. Their current sign is archaic and stone, as well as virtually impossible to see while driving on any road nearby. The sign designed is specifically made to be viewable by the people on the road, while not a distraction or danger to drivers. Anything smaller and it would be useless.”*
- c. *“These circumstances are a result of actions taken subsequent to the adoption the zoning regulations from which relief is sought.”*
- d. *“We are simply asking for an extra 20sf on the sign face, so the sign can be seen from the road due to the location, as well as an extra 2 feet in height, due to the lowered location of the site. If these are not allowed, then the sign will not be visible from the location. This will not only benefit the neighborhood but keep the local owners and businesses informed in record time.”*
- e. *“Granting this variance 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.”*

~Submitted August 9, 2018

Staff Comment:

The proposed sign is substantially different enough that alters the sign classification, contradicting zoning.

The proposed sign is not a permitted sign type in the A-1 zone. By definition, it is a class 7 sign type. The Zoning Ordinance defines a class 7 sign as a pole sign or ground sign, single or double faced, up to sixty (60) square feet in area and up to twenty (20) feet in height. ~Article XIV, Section 14.6, paragraph G.

Conditional uses in the A-1 zone are only permitted a class 8 sign for each road frontage in addition to a class 5 or class 6 sign. A class 7 sign is not permitted for a conditional use. Approval of the proposed sign cannot be granted through the variance process.

Summary of applicant’s requests:

1. Dimensional variance of twenty (20) square feet in area.
2. Height variance of two (2) feet.

Staff Recommendation:

1. To deny the request of dimensional (size) variance of twenty (20) square feet for each side of a Class 8 sign. The applicant proposed a pole sign of forty-five (45) square feet. This is, in effect, not a variance request rather it is a change of use.
2. To deny the request of dimensional (height) variance of two (2) feet for a Class 8 sign. This is, in effect, not a variance request rather it is a change of use.

Bases for Recommendation:

1. Notice of public hearing was given in accordance with Section 18 of the Campbell County Zoning Ordinance;

2. In accordance with KRS 100.241 Variances, the board shall have the power to hear and decide on applications for variances. The board may impose any reasonable conditions or restrictions on any variance it decides to grant.
3. Zoning Ordinance Section 18.5 Powers of the Board of Adjustment defines that the Board of Adjustment has the powers to hear and decide on applications for variances, and to hear and decide, in accordance with the provisions of this ordinance and the adopted comprehensive plan, requests for the change from one nonconforming use to another.
4. The board has reviewed the evidence presented by the applicant and staff as compared to the Campbell County Zoning Ordinance including but not limited to those referenced with the staff report under Articles II, VII, XIV and XVIII.

Mr. Hunter advised the Board that not only was property legal notice posted in the paper, but he applicant and all adjoining property owners were mailed a copy of the legal notice. Neither staff nor the Board have the authority to grant a variance that would oppose the Zoning Ordinance. The request is so extreme that it would in effect change a Class 8 sign into a Class 7 sign. Mr. Hunter stated that if the County at some point in time wanted to permit Class 7 signs in this circumstance they can add that to the Zoning Ordinance.

Mr. Hunter asked the Board if they had any questions for staff. Mr. M. Williams asked for a clarification of what staff is calling a "change of use". Mr. Hunter explained that the property is located within the A-1 Zone in which a church is considered a Conditional Use not a Permitted Use. The Zoning Ordinance continues to identify that Conditional Uses in the A-1 Zone are only permitted to have a Class 5 and Class 8 signs OR Class 6 and Class 8 signs. A Class 7 sign is not an option. The applicant is request a Class 8 sign to have both a size (in square feet) variance and a height variance to be equal to a Class 7 sign. If a Class 7 sign is not permitted, then you cannot approve variances to a Class 8 sign to make it equal to a Class 7. Mr. Duncan clarified that only a ground sign or monument sign is permitted. A pole sign is not permitted. They are in effect trying to circumvent the Zoning Ordinance's disallowance of a Class 7 sign in the A-1 Zone.

Mr. Bachmann asked if there was a reason that for recreational use a Class 7 is allowed, but a conditional use is not permitted to have a Class 7 sign. Mr. Hunter stated he is unaware of why recreational uses were permitted that type of sign. Mr. Hunter stated the request is not outrageous. It's not unreasonable or blight. It would not affect property values, but because the Zoning Ordinance says they cannot have that type of sign, we cannot approve their request. We may see this changed in the future, but as it stands right now it just isn't allowed.

Mr. Bachmann asked if the Board had the authority to make a determination since the request is asking for something contradictory to the Zoning Ordinance. Mr. Duncan stated he feels they may have gotten themselves into a mess because they did not consult staff prior to submitting their application for a variance. However, the applicant deserves an answer to their request. Mr. Duncan stated that the Board can make their determination and attach conditions. If the Board were so inclined, they can state that they do not approve the Class 7 sign, but approve a Class 8 sign that is a little larger. Mr. M. Williams stated that he believes if they were present and we could discuss their intentions and would they agree to a larger Class 8 sign. But they are not here, so I am not inclined to approve any variation of size of sign. If there were sincere about getting a bigger sign to advertise their services, we would have needed their input to assist them in reaching their goal.

Mr. Bachmann asked if there were any other questions or comments. There being none, Mr. Bachmann noted that this would be the time that the applicant would normally come forward and address the Board. There were still no audience members or representatives from the applicant or the property owners. Mr. Bachmann opened the floor for the Board to discuss the request.

Mr. Bachmann asked if any other questions or comments. There being none, Mr. Bachmann called for a motion. Mr. Mason made a motion on Case #BA-18-012 by applicant Golden Rule Signs on behalf of Plum Creek Christian Church located at 961 Nagel Road in the Unincorporated Campbell County requesting a sign variance to deny their request for a dimensional variance of twenty (20) square feet in area and to deny the request for a height variance of two (2) feet. The basis for Mr. Mason's motion is that notice of public hearing was given in accordance with Section 18 of the Campbell County Zoning Ordinance; that in accordance with KRS 100.241 Variances, the board shall have the power to hear and decide on applications for variances. The board may impose any reasonable conditions or restrictions on any variance it decides to grant; that in the Zoning Ordinance Section 18.5 Powers of the Board of Adjustment defines that the Board of Adjustment has the powers to hear and decide on applications for variances, and to hear and decide, in accordance with the provisions of this ordinance and the adopted comprehensive plan, requests for the change from one nonconforming use to another; and that the board has reviewed the evidence presented by the applicant and staff as compared to the Campbell County Zoning Ordinance including but not limited to those referenced with the staff report under Articles II, VII, XIV and XVIII. Mr. Mason stated his decision is based on the information reflected in the staff report and in KRS Chapter 100.247 which states a variance cannot contradict the zoning regulation and the Board shall not possess the power to grant a variance to permit a use of any land building or structure that is not permitted by the zoning regulations in the zone and question or to alter density requirements in the zone in question.

Mr. Bachmann asked if there were any questions about this motion. There being none, Mr. Bachmann called for a second. Mr. M. Williams seconded the motion. Mr. Bachmann asked if there were any questions or comments about the motion before the Board. There being none, Mr. Bachmann called for a roll call vote. A roll call vote found Ms. Meyers, Mr. J. Williams, Mr. M. Williams, Mr. Mason and Mr. Bachmann in favor of the motion. No one opposed the motion. No one abstained. Motion passed.

Director's Report:

Mr. Bachmann asked if there was a Director's Report for this evening. Mr. Hunter stated there was no Director's Report.

Mr. Bachmann asked if there were any other comments, questions or points for discussion among the Board. There being none, Mr. Bachmann called for a motion to adjourn. Mr. Mason made a motion to adjourn. Mr. M. Williams seconded the motion. Mr. Bachmann called for an oral vote. An oral vote found all in favor of the motion. No one abstained. Motion passed.

The meeting adjourned at 7:24 PM.

Prepared by:

Approved:

Kirk Hunter
Planner

Scott Bachmann
Chair