

3570 Houston Antioch Rd
Paris, KY 40361

6/16/2023

Bourbon County Planning Commission
525 High Street
Paris, KY 40361

Members of the Commission:

I am writing today as a concerned citizen regarding what I consider to be outdated and overly broad provisions in our Unincorporated Bourbon County zoning ordinances. Based on a recent opinion issued by Planning Administrator Andrea Pompei, someone who owns over 10 acres of land zoned A-1 could theoretically build as many homes as the land could hold (based on the five-acre density rule, easement, and septic tank allowance) with very little permitting and oversight from Planning and Zoning.

We believe this is an unforeseen, specific loophole in the ordinance, as it will allow a multi-home development within a property zoned A-1, which is not an allowed use under KRS 100.111(2)(a). We had hoped, however, that the spirit of the zoning ordinance would have prevented such a development from occurring, but as written it does not seem to be able to prevent bad actors.

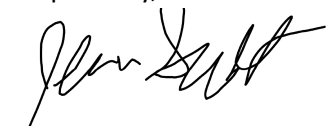
The current ordinance also allows for unmitigated short-term rental leasing of any and all of the homes on a property. For example, a property owner's single-family dwelling on nine acres zoned A-1 off Stewart Road, a county road, is now being rented out for more than \$800/night on Air BnB right across the street from a large horse farm, without any oversight from the county. With such a huge return on investment, what is to keep any of these new "unnecessary" homes from being built and rented out for the same purpose, potentially shorting the county of revenue while capitalizing on tax breaks and agricultural exemptions and jeopardizing surrounding agricultural operations?

In the attached packet, I have addressed the need for an amendment to the zoning ordinance and a new conditional use permit proposal in the following sections:

1. The issue: A-1 residential allowances ripe for abuse
2. The current zoning ordinance contradicts the Comprehensive Plan
3. Conditional permitting new additional dwellings in A-1 zoning complies and assists with the implementation of the Comprehensive Plan and protection of ag communities
4. Suggestions for A-1 housing conditional use permit agricultural requirements
5. The solution: Suggested language to clarify the A-1 ordinance

This is not a major change to the ordinance; it only ensures the ordinance can actually do what everyone already thought it could: prevent unmitigated development of agricultural land. Therefore, I am writing today to ask the Planning Commission to consider a zoning text amendment to strengthen the A-1 single family dwelling zoning ordinance language that will enable it to act to its original intent. I appreciate your consideration of this matter.

Respectfully,



Jena Scott

1. THE ISSUE: A-1 RESIDENTIAL ALLOWANCES RIPE FOR ABUSE

Currently, A-1 zoning allows for additional homes to be built to help house agricultural workers. See below.

3.2 AGRICULTURAL ZONE (A-1)

3.21 Uses Permitted

- A. Production of agricultural, horticultural, floricultural or viticultural crops or livestock commodities, and incidental retail sales by the producer of those commodities raised on site.
- B. Single-Family dwellings occupied by the owner or operator of the farm and such additional single-family dwellings as are necessary for occupancy by the employees of the farm operation. Additional single-family dwellings erected for this purpose and afterward found to be unnecessary for such purposes may be rented for residential use.

However, there is no limit on the number of homes that can be built as long as the five acre per home density rule is followed, nor is there any burden of proof required of the property owner to show their intention is to actually house workers that will contribute to Bourbon County's agricultural economy. Additionally, the current ordinance allows for these homes to be rented out to the general public if "found to be unnecessary for such purposes."

Now that an official opinion has been issued in Bourbon County, any person owning such a piece of land could build 30 houses on 150 acres, claim they are for agricultural workers because no proof is required, and as soon as the homes are complete, they could find them "unnecessary" for agricultural purposes and immediately rent them out to the general public, essentially creating a rural subdivision.

This decision allowing for unmitigated homebuilding contradicts the spirit of the A-1 zoning and KRS 100.111(2)(a), which were meant to protect our globally renowned agricultural landscape. However, because of the broad way the ordinance is currently written, a well-funded developer could essentially create a very expensive A-1 subdivision that would erase useable agricultural land while also circumventing any sort of responsible planning and development due to the broad exemptions allowed for new builds in the A-1 ordinance.

This loophole also allows developers to circumvent the Bourbon County Subdivision Regulations, which "provide a procedure and minimum standards of design and construction by which the Bourbon County Joint Planning Commission can equitably appraise all proposed plats for land subdivision plat preparation, review, and approval requirements," and were put in place to "promote the orderly development of Bourbon County, Kentucky; To improve the present health, safety, convenience and welfare of its citizens and to plan for the future development of the area to the end that highway systems be carefully planned, that new community centers grow only with adequate highway, utility, health, educational, and recreational facilities; that the needs of agriculture, industry, and businesses be recognized in future growth; that residential areas provide healthy surroundings for family life; and that the growth of the community is commensurate with and promotive of the efficient and economical use of public funds."

Additionally, while the A-1 zoning in Bourbon County allows for houses found no longer necessary for agricultural workers to be rented to the general public, state law does not. KRS 100.111 defines “agricultural use” to include “provision for dwellings for persons and their families who are engaged in the agricultural use on the tract, but not including residential building development for sale or lease to the public.”

KRS 100.203(4)(c), pertaining to the content of zoning regulations, also allows for local bodies to regulate agricultural dwellings via means “such as zoning, building, and certificates of occupancy.”

There is no specific allowance in state law for residences built on land set aside for agricultural use to be leased or sold to individuals not engaged in the agricultural use of the same property. Any new residential buildings on A-1 land should be strictly for individuals and their families engaged in agricultural use of the tract on which the residence sits and nothing else.

Once these new homes are built and, if built strategically to avoid the spirit of the zoning law and KRS 100.111(2)(a), what is to keep them from being subdivided immediately and eventually sold off one by one, defeating the purpose of the A-1 zoning ordinance and any exemptions that follow it?

Bourbon County should clarify the A-1 residential ordinance to ensure compliance with state law to restrict construction of residential homes only for individuals and families engaged in the active agricultural use of the tract.

2. THE CURRENT ZONING ORDINANCE CONTRADICTS THE COMPREHENSIVE PLAN

As noted above, the breadth of the A-1 residential zoning rules can be interpreted to allow for nearly unchecked residential development of A-1 land, provided the developer merely claims that any new homes will be used for agricultural worker houses.

The 2017 Comprehensive Plan addresses the need for a strategy that considers responsible land use. It specifically notes on page 68 that “...Unchecked development erases the unique character of the community and fragments the area’s open space. Selective development could generate resources to permanently protect the prime agricultural ground...” These goals are also addressed in the plan’s Cultural Resource Goal 1 and Growth and Development Goals 1 and 2.

That particular section also notes the importance of having specific residential and commercial centers within the county: “The rural land use plan recognizes that incorporated areas are the commercial and residential centers of the county, and should remain so.”

The loophole in the current A-1 zone subverts the comprehensive plan because it allows developers to build residential lots on agricultural tracts with little to no oversight so long as they can claim an “agricultural use.” These random population densities will likely not be focused on the residential centers of Bourbon County but will instead be on the outskirts in rural areas where people will likely be drawn to areas of Lexington and Georgetown for commerce and schools, instead of engaging in Bourbon County’s economy.

Additionally, these residences—whether rented out to the public or sold off in lots—are unlikely to be affordable for many. The housing market for 5-10 acre lots with new homes is outside of the budget of many Kentuckians and, as we have seen in the past few years, will likely be bought in the cash market or rented for very high rates based on their new build status and the semi-rural lifestyle they would offer. **Again, this contradicts the Comprehensive Plan’s multiple calls for affordable, diverse, and responsible housing options that do not erase the character of our open agricultural spaces.**

3. CONDITIONAL PERMITTING FOR NEW ADDITIONAL DWELLINGS IN A-1 ZONING COMPLIES AND ASSISTS WITH THE IMPLEMENTATION OF THE COMPREHENSIVE PLAN AND PROTECTION OF AG COMMUNITIES

Creating a conditional use permit for an additional residence on an A-1 zoned property would create an extra layer of protection for agricultural land while still giving property owners the right to build additional, needed agricultural worker housing on their property. **This change would not affect or apply to additional housing that has already been built, only future development.**

Conditional use permitting as outlined in KRS 100.237 allows for “the proper integration into the community of uses which are specifically named in the zoning regulations which may be suitable only in specific locations in the zone only if certain conditions are met.”

This would also ensure these homes are permitted appropriately, as the importance of which is noted on Page 71 of the Comprehensive Plan: “More importantly, the codes ensure that new construction satisfies established minimum standards of safety and design and that these conditions of safety will prevail for a reasonable period of time.”

A conditional use permit through the Joint Board of Zoning Adjustment would help ensure that additional housing in A-1 zoned land would not only be safe, but also would be considered an asset, not a threat, to the farming operation and surrounding agricultural community.

4. SUGGESTIONS FOR A-1 HOUSING CONDITIONAL USE PERMIT AGRICULTURAL REQUIREMENTS

There are several possible ways to require proof of an agricultural operation for additional housing on an A-1 zoned operation.

The Joint Board of Adjustment could require A-1 property owners to provide any or all the following as proof of an agricultural operation:

1. W-2s, 1099s, or other proof of employment for current agricultural workers to prove the need for additional housing.
2. Payroll tax returns, which would allow for individual data to be kept private
3. Business and tax documents for an agricultural-based business filed with the Kentucky Secretary of State & Department of Revenue, including a list of products sold for monetary profit.
4. A written summary that explains the need for additional housing justifying the employment of additional agricultural workers outside of family
5. An agricultural tax exemption number

6. Current proof of participation in a Kentucky Department of Agriculture or USDA program
7. A water quality plan pursuant to the Kentucky Agricultural Water Quality Act, KRS 224.71-100 through 224.71-140, if applicable.

Any or all of these items, as required by the Joint Board of Adjustment, could also be accompanied by a sworn affidavit customized to the conditional use permit. A similar affidavit is already required by Bourbon County's [Agricultural Land Division Application](#) for agricultural land division, which currently requires the Affiant to swear the following:

1. He (she) is the owner of one of the parcels of land shown in the attached application.
2. An agricultural use is now and will be made of the property as set out in K.R.S. 100.111 (2).
3. Any residence on the premises or hereafter constructed on the premises will be occupied by a person, and their family, who is engaged in this agricultural use.
4. This is not a division so as to allow for residential building development for sale or lease to the public.

A violation of the conditional use affidavit could follow the same enforcement process as that used for the Agricultural Land Division Application. **This affidavit could also be utilized for property owners looking to rent out new homes built for "family members" that are no longer needed for those family members to prevent the family allowance in state law from being exploited as an additional loophole** (although if following KRS 100.111, new homes for family members of land owners do not fall under an allowable use unless those family members will be participating in the agricultural business.)

An exemption from the conditional use permit could also be obtained for new construction to replace an existing structure that has been deemed uninhabitable which will be removed from the property, as long as a sworn statement is made stating that the project is a replacement. This would ease the burden on property owners who may have suffered damage from a natural disaster, fire, or the necessary demolition of a residence due to age or deterioration.

The second line in 3.21 (B), "Additional single-family dwellings erected for this purpose and afterward found to be unnecessary for such purposes may be rented for residential use," should be addressed under the conditional use explanation so that landowners still may utilize their additional housing if it is truly no longer needed for agricultural workers.

Creating a conditional use permit for additional residences on agricultural land would allow property owners who truly need the residences to be able to build them while weeding out developers who are looking to contradict KRS 100.111 and exploit the broad rental residence policy as currently outlined in the A-1 zoning ordinance.

5. THE SOLUTION: SUGGESTED LANGUAGE TO CLARIFY THE A-1 ORDINANCE

Under Section 3.21(B) of the Bourbon County Zoning Ordinance, the language should be amended to read (new text in bold):

- B. One** single-family dwelling occupied by the owner or operator of the farm and such additional single-family dwellings as are necessary for occupancy by the employees of the farm operation,

but not including residential building development for sale or lease to the public. ~~Additional single-family dwellings erected for this purpose and afterward found to be unnecessary for such purposes may be rented for residential use.~~ Additional single-family dwellings erected for employees of the farm operation on or before (insert amendment effective date) found to be unnecessary for such purposes may be rented for residential use. Any additional, single-family dwelling necessary for occupancy by the employees of the farm operation erected on or after (insert amendment effective date) must submit an application for a conditional use permit as outlined in Section 3.22(Z).

Section 3.22 should be amended to add a subsection Z, which could include the following:

- Z. Additional single-family dwellings as are necessary for occupancy by the employees of the farm operation, that the following conditions are addressed to the satisfaction of the Board of Adjustment.**
- 1. The property owner must provide two or more pieces of the following documentation:**
 - a. Payroll tax returns, W-2s, 1099s, or other proof of employment for current agricultural workers to prove the need for additional housing.**
 - b. Business and tax documents for an agricultural-based business filed with the Kentucky Secretary of State & Department of Revenue**
 - c. An agricultural tax exemption number through the KY Department of Revenue**
 - d. Current proof of participation in a Kentucky Department of Agriculture or USDA program**
 - e. A water quality plan pursuant to the Kentucky Agricultural Water Quality Act, KRS 224.71-100 through 224.71-140, if applicable.**
 - 2. A written summary that explains the need for additional housing justifying the employment of additional agricultural workers that will be living in the housing.**
 - 3. A signed affidavit from the property owner that acknowledges that by applying for a conditional use permit for additional single-dwelling housing for agricultural workers, the property owner acknowledges and agrees to the following:**
 - a. The applicant is the owner of the property that is the subject of the conditional use permit application.**
 - b. An agricultural use is now and will be made of the property as set out in KRS 100.111 (2).**
 - c. Any residence currently on the premises or hereafter constructed on the premises will be occupied by a person, and their family, who is engaged in the agricultural use.**
 - 4. Additional single-family dwellings erected for this purpose on or after (insert amendment effective date) and afterward found to be unnecessary for such purposes may be rented for residential use after five years of agricultural worker habitation as required in this section.**

It is important to note that nothing in these suggestions or potential changes would prohibit an A-1 landowner from applying for a zoning change to legally develop their land, if they so choose.

These amendments and additions will also not affect landowners who currently are renting out homes to non-agricultural workers and they will not prevent the future building of additional homes for agricultural workers, nor the future leasing to the public of these homes if found unnecessary for their intended agricultural use. It will simply ensure compliance with the spirit of KRS 100.111 and Bourbon County Zoning Ordinance 3.21.