

**BOONE COUNTY BOARD OF ADJUSTMENT  
BOONE COUNTY ADMINISTRATION BUILDING  
BOONE COUNTY FISCAL COURTROOM  
BUSINESS MEETING  
APRIL 14, 2021  
6:00 P.M.**

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

Mr. Schwartz stated that the meeting was being held via video teleconference pursuant to KRS 61.826, SB 150 and OAG 20-05. He stated that the public hearing format has been necessitated due to the state of emergency regarding the threats to public health presented by the novel Coronavirus (COVID-19) pandemic.

Mr. Schwartz confirmed that all those in attendance could see and hear the proceedings. All those in attendance stated that they could see and hear the proceedings.

**BOARD MEMBERS PRESENT:**

Mr. George Whitton, Chairman  
Mr. Richard Miller, Vice-Chairman  
Mr. Chris Vaught-Hall (arrived at 6:02.pm)  
Mrs. Sherry Hempfling  
Mr. Bill Weltzer (arrived at 6:10 pm)

**BOARD MEMBERS NOT PRESENT:**

None

**STAFF MEMBERS PRESENT:**

Mr. Michael Schwartz, Planner

**LEGAL COUNSEL PRESENT:**

Mr. Dale T. Wilson

**APPROVAL OF MINUTES**

Chairman Whitton stated the Board members received copies of the minutes of the Boone County Board of Adjustment meeting of March 10, 2021. He asked if there were any other comments or corrections. Vice-Chairman Miller moved to approve the minutes and Mrs. Hempfling seconded the motion. Chairman Whitton called for the vote and it carried unanimously, 3 to 0.

**ACTION ON REVIEWS**

1. Request of John Haas, on behalf of Triple Crown Developers, LLC, per Toning Berling for a Variance to reduce the minimum required rear yard setback from thirty (30) feet to 22.5 feet in order to build a deck. The approximate 0.2 acre parcel is located at 1855 Woodward Court, Boone County, Kentucky and is zoned Suburban Residential One (SR-1).

Staff Member, Michael Schwartz, presented the Staff Report which included a Powerpoint presentation (see Staff Report).

Chairman Whitton asked the Board if they had any questions for staff. There were none.

Chairman Whitton asked the applicant if they would like to provide the Board with any other information.

Mr. John Haas stated that the topography of the site will change once the house is set on the lot. He stated that the house will set 3.5 feet above the curb and the rear of the house will be 6 feet above the existing grade. Due to the change of topography, the house will not have a rear walk out and a deck is necessary. He stated that Fischer Homes is the builder and the house that will be placed on the lot is called the Wyatt and it is the shallowest home that they build.

Chairman Whitton asked if there was anyone else present that wanted to address the Board.

Mr. Matt Seal stated that the proposed deck will be at the level of the second floor of the houses behind the site. Mr. Seal asked if there was any consideration by the builder or developer to install landscaping to provide a visual buffer. Mr. Haas replied no, since this condition is the same as other homes on the same side of the street.

Vice-Chairman Miller asked if the deck could be built without the variance, would the elevation situation still be present. Mr. Haas replied yes.

Vice-Chairman Miller asked if there was any situation in the past to provide buffering. Mr. Haas replied no.

Mrs. Seal stated that with the variance, it will appear as though the deck will be in their back yard.

Mr. Seal stated that when they bought into the community, they knew the size of the lots, but they did not expect the variance procedure to allow an additional encroachment into the rear yard.

Mr. Brad Lytle stated that the zoning regulations are there for the reason that the lots were tight to begin with. He stated that a few feet may not seem like a big deal on paper, but in the real world, a few feet makes a big difference.

Mr. Vaught-Hall asked if the original design is the cause of the situation or is it that the size of the home is too large for the lot. Mr. Haas replied that from the builders perspective, the proposed house is the smallest footprint house they have in their collection.

Vice-Chairman Miller asked if the applicant would be willing install a buffer of trees in the back yard. Mr. Haas replied landscaping cannot be placed along the rear property line to block the view, but they would be willing to install landscaping in the rear yard, closer to the house at a higher elevation.

Mr. Tony Berling stated this section of the subdivision has 156 lots and this is only the second time that a variance has been requested.

Mr. Seal asked what the square footage of the house will be and how does that relate to the value of the home and adjacent homes. Mr. Haas replied that the Wyatt has been built on other lots in the area but did not know the exact size of the home.

Mrs. Seal stated that she is concerned that the value of their home will be decreased.

Mr. Lytle asked if the proposed landscaping would be at a height to block the visual sight line from the proposed deck to the adjoining houses. Mr. Haas replied that the landscaping would have to be installed closer to the house in order to achieve that visual buffer. Mr. Haas suggested that evergreen trees could be planted in the rear yard, approximately 10 feet away from the deck.

Chairman Whitton asked if there was any further discussion. There was none. Chairman Whitton asked if the Board wanted to make a motion.

Vice-Chairman Miller made a motion to approve the Variance, subject to the condition that appropriate landscaping be installed to serve as a buffer for the sight line of the deck to the adjoining properties and that the landscaping be included as part of the zoning permit for the house. Mrs. Hempfling seconded the motion.

Chairman Whitton called for the vote and it carried unanimously.

2. Request of James E. Hubert, Jr. for a Variance to reduce the minimum required front yard setback from forty (40) feet to thirty-four (34) feet in order to build a detached single family dwelling. The approximate 0.92 acre parcel is located at 10024 Tayman Drive, Boone County, Kentucky and is zoned Rural Suburban Estates (RSE).

Staff Member, Michael Schwartz, presented the Staff Report which included a Powerpoint presentation (see Staff Report).

Chairman Whitton asked the Board if they had any questions for staff.

Mr. Weltzer asked if there have been any other variance requests along Tayman Drive. Mr. Schwartz replied no.

Vice-Chairman Miller asked if any of the other lots along Tayman Drive have the same conditions as the site under review. Mr. Schwartz replied yes, but not to the extent as the site in question.

Chairman Whitton asked the applicant if they would like to provide the Board with any other information.

Mr. James Hubert stated that their lot is one of the steepest and they have been working with a builder to come up with a floor plan that provides for a shallower house depth.

Chairman Whitton asked if there was no slope issue would he build to the required setback line. Mr. Hubert replied yes. He stated that the first two builders that they contacted informed them that the cost to fill in the rear of the property would be greater than the cost to build the house.

Chairman Whitton asked if there was anyone in attendance that wanted to speak to this issue.

Ms. Jennifer Pope asked what visual impact this will have on the neighborhood having a house so far forward than the other houses along the street. Mr. Hubert replied that the house plan they are looking at has the primary front building wall at the required 40 foot front yard setback. However they will have a 15 wide by 10 foot deep porch that will encroach into the required front yard setback.

Vice-Chairman Miller asked that only the porch will be in the required front yard setback and the remainder of the house will meet the front yard setback. Mr.

Hubert replied yes.

Chairman Whitton asked if there was any further discussion. There was none.

Chairman Whitton asked if the Board wanted to make a motion.

Mr. Weltzer made a motion to approve the Variance as submitted. Vice-Chairman Miller seconded the motion.

Chairman Whitton called for the vote and it carried unanimously.

3. Request of Revisions Redevelopment, LLC, per Robert Fohl for Variances: (1) to reduce the front yard setback from forty-eight (48) feet to twenty (20) feet; (2) reduce the driveway aisle width from twenty (20) feet to fifteen (15) feet; and (3) reduce the minimum Buffer Yard A width from ten (10) feet to five (5) feet in order to develop two duplex dwelling units. The approximate 0.538 acre parcel is located at 3059 Torrid Street, Boone County, Kentucky and is zoned Suburban Residential Two/Small Community Overlay (SR-2/SC).

Staff Member, Michael Schwartz, presented the Staff Report which included a Powerpoint presentation (see Staff Report).

Chairman Whitton asked the Board if they had any questions for staff.

Mrs. Hempfling asked to see the photograph of the site and the relationship to the adjacent properties. Mr. Schwartz showed one of the aerial photos and described the site and the adjacent structures.

Chairman Whitton asked the applicant if they would like to provide the Board with any other information.

Mr. Robert Fohl stated that he is trying to keep the existing garage and the variances are needed due to the placement of the garage on the site.

Vice-Chairman Miller stated that he felt the plan lacked specificity, given the staff comments regarding issues of noncompliance, for the Board to act on the request.

Vice-Chairman Miller asked if each unit had to have a garage. Mr. Schwartz replied yes. Mr. Fohl stated that each dwelling unit will be provided with two parking spaces, one space in a garage and the other on a driveway behind the garage door.

Chairman Whitton asked if the applicant had a timeline as to when additional plans

could be developed. Mr. Fohl replied he did not have a timeline since it depends on if the variances would be approved or if the garage would have to be razed from the site.

Vice-Chairman Miller stated that he felt that if the garage were removed, the site could be developed without the need for the variances. Mr. Fohl replied that the more that he looks at it, he agrees that the variances will not be necessary, except for the variance reducing the width of the driveway.

Chairman Whitton asked if there was anyone in attendance that wanted to speak to this issue.

Mr. Jim Rudicill stated that he is concerned with water runoff and that the density is too high. Mr. Schwartz stated that the technical design of the stormwater retention system would be evaluated as part of a Site Plan submittal and is not required for this application. Mr. Schwartz stated that the proposal meets the intensity requirement of the SC Overlay district.

Ms. Rosemary Morton stated that the building is too close to the property line and she is also concerned with the applicant cutting off her water line. Mr. Fohl replied that they will mark all utility lines and no lines will be cut.

Ms. Taffie Conner stated that she would like clarification on the driveway and easement. Mr. Schwartz replied that access to the site is currently provided by a 9 foot wide driveway that is partially located within a 15 foot wide ingress/egress easement. Mr. Schwartz stated that the applicant wants to increase the width of the driveway from 9 feet to 15 feet and that he cannot meet the 20 foot wide requirement since the access easement is only 15 feet wide. He cannot construct a driveway beyond the limits of the easement.

Following a discussion on process, Chairman Whitton asked if the applicant was withdrawing the requests: (1) to reduce the front yard setback from forty-eight (48) feet to twenty (20) feet; and (2) reduce the minimum Buffer Yard A width from ten (10) feet to five (5) feet. Mr. Fohl replied yes, he is withdrawing those two requests and wants the Board to only act on the request to reduce the driveway aisle width from twenty (20) feet to fifteen (15) feet.

Chairman Whitton asked if there was any further discussion. There was none.

Chairman Whitton asked if the Board wanted to make a motion.

Mr. Vaught-Hall made a motion to approve the Variance reducing the driveway aisle width from twenty (20) feet to fifteen (15) feet, subject to the following

conditions: (1) Prior to construction, a Major Site Plan shall be submitted to the Boone County Planning Commission for review and approval; and (2) The proposed access driveway, having a minimum width of fifteen (15) feet, shall be entirely located within the existing ingress/egress easement. Mr. Weltzer seconded the motion.

Chairman Whitton called for the vote and it carried unanimously.

4. Request of Tim and Tracy Sparks, per Tracy Sparks, for a Variance to reduce the front yard setback from forty (40) feet to thirty (30) feet in order to build a single family dwelling and deck. The approximate 0.46 acre parcel is located at 3351 Wildrose Lane, Boone County, Kentucky and is zoned Rural Suburban (RS).

Staff Member, Michael Schwartz, presented the Staff Report which included a Powerpoint presentation (see Staff Report).

Chairman Whitton asked the Board if they had any questions for staff.

Vice-Chairman Miller asked if the previous variance requests were due to the same issue as tonight's application. Mr. Schwartz replied that the other requests were for lots further in the subdivision and were not due to the same conditions as the site under review.

Chairman Whitton asked the applicant if they would like to provide the Board with any other information.

Mr. Tim Sparks stated that they need to be out of the lake easement and that the front line of their house will only affect the one neighbor to the right.

Vice-Chairman Miller asked if the house could be turned 90 degrees so that it is oriented differently on the lot. Mr. Sparks replied that given the lot dimensions and the lake location, the proposed orientation makes the most sense.

Chairman Whitton asked if there was anyone in attendance that wanted to speak to this issue. There was none.

Chairman Whitton asked if there was any further discussion. There was none.

Chairman Whitton asked if the Board wanted to make a motion.

Mrs. Hempfling made a motion to approve the Variance as submitted. Mr. Vaught-Hall seconded the motion.

Chairman Whitton called for the vote and it carried unanimously.

5. Request of Cameron and Tina Berens for a Variance to reduce the minimum required rear yard setback from thirty (30) feet to twenty-four (24) feet in order to build a deck. The approximate 0.2 acre parcel is located at 14098 Bridlegate Drive, Boone County, Kentucky and is zoned Suburban Residential One (SR-1).

Staff Member, Michael Schwartz, presented the Staff Report which included a Powerpoint presentation (see Staff Report).

Chairman Whitton asked the Board if they had any questions for staff. There were none.

Chairman Whitton asked the applicant if they would like to provide the Board with any other information.

Mr. Cameron Berens stated that their deck will be looking into the rear yard of the adjoining neighbor and not into the house.

Chairman Whitton asked if there was anyone in attendance that wanted to speak to this issue. There was none.

Chairman Whitton asked if there was any further discussion. There was none.

Chairman Whitton asked if the Board wanted to make a motion.

Vice Chairman Miller made a motion to approve the Variance as submitted. Mr. Vaught-Hall seconded the motion.

Chairman Whitton called for the vote and it carried unanimously.

6. Request of Atlantic Sign Company, per Brooke Alini, on behalf of Pilot Travel Center, per Kristi Snyder, for a Change in Nonconforming Use, Conditional Use Permit, and a Variance: (1) to allow changes to an existing nonconforming free standing sign; (2) installation of a 136.5 square foot electronic message board/screen on an existing nonconforming free standing sign; and (3) reduce the minimum spacing distance requirement between electronic message boards/screens from 660 feet to 42 feet. The approximate 3.8 acre parcel is located at 11229 Frontage Road, Boone County, Kentucky and is zoned Commercial Services (C-3).

Staff Member, Michael Schwartz, presented the Staff Report which included a Powerpoint presentation (see Staff Report).

Chairman Whitton asked the Board if they had any questions for staff. Mr. Weltzer



asked how the sign was nonconforming. Mr. Schwartz replied that it was nonconforming due to the number of free standing signs, due to its height, and due to its size. Mr. Weltzer asked for clarification that the submitted request would make the sign small, bringing it into more conformity with the regulations. Mr. Schwartz replied yes.

Mrs. Hempfling asked if the height will remain the same at 104 feet. Mr. Schwartz replied that this issue needs to be confirmed by the applicant. Ms. Brooke Alini stated that the height of the sign will remain at 104 feet and will not be increased from what is existing.

Chairman Whitton asked the applicant if they would like to provide the Board with any other information.

Ms. Alini stated that the sign area will be reduced slightly from what currently exists.

Vice-Chairman Miller asked if the purpose of the electronic gas price panels was to advertise that information to motorists on I-71/75 rather than those on Richwood Road. Ms. Alini replied yes, that is correct.

Chairman Whitton asked if there was anyone in attendance that wanted to speak to this issue. There was none.

Chairman Whitton asked if there was any further discussion. There was none.

Chairman Whitton asked if the Board wanted to make a motion.

Vice Chairman Miller made a motion to approve the Change of Nonconforming Use, Conditional Use, and Variance, subject to the following conditions:

1. The height of the sign shall not exceed its current height of 104 feet.
2. The electronic message board/screen shall be used solely to advertise fuel prices.
3. The electronic message board/screen shall not have the illusion of moving objects, moving patterns or boards of light, expanding contracting, or rotating shapes or other similar animation effects, or "scrolling" or "running" messages.
4. The message on the electronic board/screen shall only change when the fuel price changes.

5. The electronic message board/screen shall be equipped with a photocell or dimmer and the displayed messages shall dim as the sky gets darker or brighten as the sky gets brighter.

Mr. Weltzer seconded the motion.

Chairman Whitton asked the applicant if they were clear on the conditions. Ms. Alini replied that the conditions were reviewed by her and her client and that they agreed to comply with the conditions.

Chairman Whitton called for the vote and it carried unanimously.

7. Request of Tony Berling, on behalf of Triple Crown Developers, LLC, per James W. Berling, for an Appeal of the Boone County Planning Commission staff decision that the name of a new street must be changed to Count Fleet Drive rather than Justify Drive, as proposed (Section 305.A of the Boone County Subdivision Regulations). The approximate 35 acre parcel is located at the intersection of Count Fleet Drive with Man O War Boulevard, Boone County, Kentucky and is zoned Suburban Residential One (SR-1).

Staff Member, Michael Schwartz, presented the Staff Report which included a Powerpoint presentation (see Staff Report).

Chairman Whitton asked the Board if they had any questions for staff.

Vice-Chairman Miller asked if the Board is to evaluate the request based upon the finding that staff erred in the application of the regulation. Mr. Dale Wilson replied yes, that the Board does not have the authority to amend the regulation and the Board is to decide if the decision of staff was correct.

Vice-Chairman Miller asked that if something was improperly applied in the past, that does not set a precedent for the Board's decision tonight. Mr. Wilson replied yes, that is correct.

Chairman Whitton asked the applicant if they would like to provide the Board with any other information.

Mr. Tony Berling stated the street was named Justify after a Triple Crown winner and that they have done this 9 other times in the subdivision. In every other instance, they have entry walls with signage and the street name follows that pattern. He stated that this new section will have its own identity and it makes no sense to have the street name different than the entry signage.

Vice-Chairman Miller asked what the process is for changing the subdivision

regulations. Mr. Schwartz replied that only the planning commission can be the applicant to change the subdivision regulations.

Chairman Whitton asked how the other street names were allowed. Mr. Schwartz replied that the staff person who reviewed those applications made an error in allowing those street names.

Mr. Berling stated that the previous times the street name has changed has not caused any harm.

Mr. Vaught-Hall asked what is the reason for the regulation. Mr. Schwartz replied that it is to provide consistency for drivers along roadways and to assist emergency services who need to get to a certain location.

Mr. John Haas stated that Fischer Homes will be the builder in this community and they are in agreement that the street name should be Justify.

Vice-Chairman Miller asked staff to clarify how they came to the conclusion that the street name did not meet the regulation. Mr. Schwartz replied that the fire district boundary is not located at the new 4-way intersection. The boundary is located north of that intersection.

There was a discussion as to how fire district boundaries can be amended. Following a discussion on this issue, it was suggested that the issue be deferred so that the applicant can approach the two fire districts and have the boundary revised.

Chairman Whitton asked if the applicant would agree to defer the issue so that he can discuss the boundary with the two fire districts. Mr. Berling replied that he was agreeable to this.

Chairman Whitton asked if there was anyone in attendance that wanted to speak to this issue. There was none.

Chairman Whitton asked if there was any further discussion. There was none.

Chairman Whitton asked if the Board wanted to make a motion.

Vice-Chairman Miller made a motion to defer action on the request until the Board's regular meeting on Wednesday, May 12, 2021 at 6:00 pm. Mrs. Hempfling seconded the motion.

Chairman Whitton called for the vote and it carried unanimously.

8. Request of Justin Snow, on behalf of Mary (Wainscott) Snow, for a Change of Nonconforming Use/Structure to allow the construction of a 3,120 square foot accessory structure to replace a nonconforming 232 square foot accessory structure. The approximate 1.7 acre parcel is located at 3396 Ashby Fork Road, Boone County, Kentucky and is zoned Agricultural Estate (A-2).

Staff Member, Michael Schwartz, presented the Staff Report which included a Powerpoint presentation (see Staff Report).

Chairman Whitton asked the Board if they had any questions for staff.

Vice-Chairman Miller stated that they normally look at whether the new nonconforming use is more objectionable than the previous nonconforming use and the staff report includes a provision that prohibits a new nonconforming use from being expanded. Mr. Schwartz replied that this wording has been included in previous staff reports. Mr. Dale Wilson stated that the Board can take into consideration the total area of the previous nonconforming use, including the area that was under roof and not under roof, and whether the current request places that same area totally under roof.

Chairman Whitton asked the applicant if they would like to provide the Board with any other information.

Ms. Elly Snow stated that the previous structures were relatively small and they would like a larger structure to house and protect work vehicles, equipment, and tools.

Chairman Whitton asked if there was anyone in attendance that wanted to speak to this issue. There was none.

Chairman Whitton asked if there was any further discussion. There was none.

Chairman Whitton asked if the Board wanted to make a motion.

Vice-Chairman Miller made a motion to approve the Change of Nonconforming Use, as submitted. Mr. Vaught-Hall seconded the motion.

Chairman Whitton called for the vote and it carried unanimously.

**OTHER**

None.

**ADJOURNMENT**

Chairman Whitton asked for a motion to adjourn the meeting. Mr. Vaught-Hall made a motion to adjourn and Mrs. Hempfling seconded the motion.

Chairman Whitton called for the vote and the meeting was adjourned by unanimous consent at 8:10 p.m.

**APPROVED**

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**Chairman George Whitton**

**ATTEST:**

\_\_\_\_\_  
**Michael D. Schwartz**  
**Planner**