

**BOONE COUNTY BOARD OF ADJUSTMENT  
BOONE COUNTY ADMINISTRATION BUILDING  
BOONE COUNTY FISCAL COURTROOM  
BUSINESS MEETING  
JUNE 8, 2022  
6:00 P.M.**

Chairman Whitton called the meeting to order at 6:15 P.M.

**BOARD MEMBERS PRESENT:**

Mr. George Whitton, Chairman  
Mr. Richard Miller, Vice-Chairman  
Mr. Chris Vaught-Hall  
Mrs. Sherry Hempfling

**BOARD MEMBERS NOT PRESENT:**

Mr. Bill Weltzer

**STAFF MEMBERS PRESENT:**

Mr. Michael Schwartz, Director, Zoning Services  
Ms. Alaina Hagenseker, 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 May 11, 2022. He asked if there were any other comments or corrections. There were none. Vice-Chairman Miller moved to approve the minutes. Mr. Vaught-Hall seconded the motion. Chairman Whitton called for the vote and it carried unanimously.

**ACTION ON REVIEWS**

1. Request of Jacob and Brittany Smith for an Appeal of the Zoning Administrator's decision to prohibit the keeping of chickens within the SR-1 district, specifically at 6772 Hillock Lane, as either a principally permitted, accessory, or conditional use. The approximate 0.5 acre parcel is located at 6772 Hillock Lane, Boone County, Kentucky and is zoned Suburban Residential One/Planned Development (SR-1/PD).

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. Vaught-Hall asked what is the significance with the date of January 3, 2022.

Mr. Schwartz replied that that is the date that the initial violation letter was sent.

Vice-Chairman Miller asked about the differences between the statutes indicated in the staff report and the documents indicated in the Mr. Voelker's supplemental submission regarding the 5 acre requirement.

Mr. Schwartz replied that the 5 acre requirement is how, in part, KRS 100 defines an agricultural use.

Chairman Whitton asked if the applicant wanted to address the Board.

Mr. Brandon Voelker stated that he is an attorney representing the Smiths. He asked if the Board members had the supplemental information that he previously sent to staff. The Board members each replied that they had a copy of that information. Mr. Voelker stated that he specializes in zoning law. He stated that regardless of opinions, decisions made by the courts must be followed. He stated that there is a case on point relative to the issue at hand. He summarized the case and the finding of the Court, relating to how it should be applied to this issue. He stated that since the definition of pets includes animals, the application of that term must be used broadly. Mr. Voelker submitted a petition which included 84 signatures supporting the Smiths. He stated that there are 13 other properties within the neighborhood that also keep chickens.

Chairman Whitton asked if the argument lies with the phrase "and other animals".

Mr. Voelker restated the definition and again stated that the issue has been resolved by the Court.

Vice-Chairman Miller asked if all of the facts in the Court case are the same or similar to the facts in this case.

Mr. Voelker replied that many issues are the same, but there are differences in the number of chickens being kept and the size of the property.

Mrs. Hempfling asked if the attorney could speak to the part of the definition referencing domesticated animals.

Mr. Voelker replied that the Court spoke to this issue and determined that chickens are a domesticated animal.

Chairman Whitton asked if the Board's attorney wanted to provide any information.

Mr. Dale Wilson stated that the Hangold case is different than the one before the Board because the City of Florence did not consider accessory uses. The City made a blanket statement that chickens were not allowed in the SR-1 zone. He stated that the case also

did not get into the criteria regarding the keeping of chickens. He stated that the staff analysis did consider permitted, conditional, and accessory uses and that accessory uses have limitations.

Vice-Chairman Miller asked how many chickens are being kept on the property.

Mr. Voelker replied that there are 7 chickens on the property.

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

Mr. Chet Hand stated that even if the property owner used the eggs from the chickens, that would not constitute an agricultural use. He stated that the Board should not interpret the intent of case law or the intent of the property owner.

Ms. Molly Joe McVicar stated that she is a resident of Kenton County and that the City of Covington allows each property owner to keep a maximum of 8 chickens, regardless of the size of their property. She stated that there is no such thing as a wild chicken. She stated that chickens are domesticated birds.

Ms. Amy Minard stated that she lives in the neighborhood and questioned whether the Board should determine what is or is not a pet. She stated that she sees no problem with the Smith's keeping their chickens.

Mr. Robert Fox stated that he lives in the neighborhood and that he also has chickens as pets. He stated that the Board should not consider the keeping of chickens as an agricultural use.

Mr. Bob Bolton stated that he is a next door neighbor to the Smiths and that no one in the area submitted a complaint about the chickens.

Ms. Susan Nelslager stated that she also has chickens as pets and that she believes that the County is trying to weed out farmers and people who have chickens as pets.

Ms. Brittany Smith stated that their chickens are kept in a coop as well as being in a penned area. She stated that their chickens have been kept in their house.

Vice-Chairman Miller asked if staff could clarify their position and rationale.

Mr. Schwartz replied that the issue focuses on three parts being whether the Board agrees or disagrees that chickens can be pets, whether the Board agrees or disagrees that the keeping of chickens is a customary function of a detached single-family residential use, and what weight the Board wants to place on the applicant's statement that they initially got the chickens to teach animal husbandry to their children.

Mr. Vaught-Hall asked what is the definition of animal and is their one in the zoning regulations.

Mr. Schwartz replied that the only issue before the Zoning Administrator was whether or not chickens could be kept on property in the SR-1 district. He also replied that there is no definition of animal in the zoning regulations.

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 override the decision of the Zoning Administrator on the basis that there is no definition for animal and that the chickens are considered as pets by the property owner and the residents of the surrounding community. Chairman Whitton seconded the motion.

A roll call vote found Chairman Whitton, Vice-Chairman Miller, and Mr. Vaught-Hall voting in favor of the motion and Mrs. Hempfling voting against the motion.

The motion passed by a vote of 3 to 1.

2. Request of East Bend Baptist Church, for a Conditional Use Permit to allow a storage building/ministry building. The approximate 2.17 acre parcel is located at 12246 Lower River Road, Boone County, Kentucky and is zoned Agricultural One (A-1).

Staff Member, Alaina Hagenseker, 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 what the proposed building would be used for.

Mr. Schwartz replied that the proposed building would be used as storage and distribution of donated goods.

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

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 Conditional Use permit on the basis that the proposal would further the mission of the church. Vice-Chairman Miller 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 Vice-Chairman Miller seconded the motion.

Chairman Whitton called for the vote and the meeting was adjourned by unanimous consent at 7:00 p.m.

**APPROVED**

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**Chairman George Whitton**

**ATTEST:**

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**Michael D. Schwartz**  
**Director, Zoning Services**