

**BOONE COUNTY BOARD OF ADJUSTMENT
BOONE COUNTY ADMINISTRATION BUILDING
BOONE COUNTY FISCAL COURTROOM
BUSINESS MEETING
NOVEMBER 30, 2022
6:30 P.M.**

Chairman Whitton called the meeting to order at 6:30 P.M.

BOARD MEMBERS PRESENT:

Mr. George Whitton, Chairman
Mr. Richard Miller, Vice-Chairman
Mr. Chris Vaught-Hall (arrived at 6:29 pm)
Mrs. Sherry Hempfling
Mr. Bill Weltzer

BOARD MEMBERS NOT PRESENT:

None

STAFF MEMBERS PRESENT:

Mr. Michael Schwartz, Director, Zoning Services

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 October 12, 2022. Vice-Chairman Miller stated that he had given some minor revisions to staff prior to the meeting. He asked if there were any other comments or corrections. There were none. Mr. Vaught-Hall moved to approve the minutes as corrected. Vice-Chairman Miller seconded the motion. Chairman Whitton called for the vote and it carried unanimously.

ACTION ON REVIEWS

1. Request of Gerald Wilson for an Appeal of the Zoning Administrator's decision. The approximate 15.7 acre area is located at 6650 River Road, Boone County, Kentucky and is zoned Agricultural Estate (A-2). The applicant is appealing the Zoning Administrator's decision as to whether the activity on property located at 6650 River Road is exempt as an agricultural use.

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

Mr. Schwartz stated that Staff received an email earlier in the day and that a copy of that email has been provided to each of the Board members.

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

Vice-Chairman Miller asked if the email was included in the original packet of information.

Mr. Schwartz replied no.

Vice-Chairman Miller asked for clarification on the definition of agriculture as it relates to the five (5) contiguous acre requirement.

Mr. Schwartz provided that explanation.

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

Mr. Cory Gamm, counsel for Mr. J. Wilson, introduced Mr. Jerry Wilson. He stated that the issue is that the property is being used for agricultural purposes and the presence of trucks does not diminish that agricultural use. He stated that the violation letter only gave the property owner thirty (30) days to bring the property into compliance and that since the property owner(s) work full time, the thirty (30) day limitation could not be met. He stated that Mr. J. Wilson has owned the property since 2003. He stated that the property owner(s) purchased the property as a retirement project. He stated that the property owner(s) are employed full time elsewhere. He stated that the property was purchased with the intent of operating a small farm. He stated that many of the items on the property are actually being used for the creation and operation of the farm activity. He stated that all of the offending vehicles have been removed and will not be brought back to the property in the future.

Mr. Jerry Wilson, using a Powerpoint presentation, stated that the existing building is 40' x 60'. He stated that they have since constructed a 10' lean-to onto the building. He stated that they have graded the site around the building so the area would not flood. He stated that they have removed the green screen fence. He stated that they have gardens near the buildings where they have planted trees. He stated that one of the trailers contains fence material that is to be used to pen chickens. He stated that another of the trailers contains lumber that is to be used for a horse stable. He stated that the remaining camper trailer will be sold. He stated that the trucks and equipment that were on the property were his fathers and were brought to the property from another location. He stated that that he is not running a storage business. He stated that they have trails on the property that will be used for horse trails. He stated that they have planted wildflowers on the site. He stated that they tilled an approximate 1.5 acre area for plantings. He stated that they have an area designated for chickens and ducks. He stated that the property experiences flooding, so they had to use fill material to raise the land. He stated that a significant amount of money has been invested in the property. He stated that a grading plan has been prepared that shows the graded area of the site.

Mr. Gamm reviewed a KRS statute regarding the right to farm and its implication to zoning and zoning violations. He stated that the property owner(s) represent that the storage of the offending vehicles was a temporary situation and that they will never be brought to the property again. He stated that the property owner(s) attempted to comply within the thirty (30) daytime frame.

Mr. Vaught-Hall asked if the offending vehicles were present when the property was purchased. Mr. J. Wilson replied no.

Mr. Vaught-Hall asked if it is their interpretation that a billboard could be placed on the property because it has an agricultural use or status. Mr. Gamm replied no, non-agricultural activities must still comply with the zoning regulations.

Chairman Whitton asked what agricultural activities are on the property. Mr. Gamm replied that they have plowed an area for crops, they have planted several meadows of wildflowers, and they have planted sapling pines.

Chairman Whitton asked what is the significant date that is at issue. Mr. Schwartz replied that it is September 13, 2022, the date upon which the property owner received the violation letter.

Vice-Chairman Miller asked for clarification on what the Board is to rule on. Mr. Dale Wilson stated that he is not related to Mr. Jerry Wilson and that the Board is to make a determination as to whether or not the offending vehicles that were present on August 31, 2022 are agriculturally related.

Chairman Whitton asked if any improvements made to the property since September 13, 2022 are relevant to their decision. Mr. D. Wilson replied that those actions show that the property owner(s) is attempting to comply with the order of the Zoning Administrator.

Mr. Gamm stated that the determination of the Zoning Administrator, as included in the Staff report, states that the activity and use of the property is non-agricultural. He stated that the Board's action to uphold the decision of the Zoning Administrator would remove any potential agricultural exemption on the property.

Chairman Whitton asked Staff to clarify the agricultural exemption status. Mr. Schwartz stated that the only violation that is being heard is the presence of offending vehicles and if those vehicles are removed, the violation issue is closed and the property can continue with its agricultural exemption status.

Mrs. Hempfling asked who makes the determination of whether the property is being used as agriculturally exempt. Mr. Schwartz replied that it would be him as the Zoning Administrator.

Mr. Vaught-Hall asked if the attempt to clean up the property shows that a violation existed on the site. Mr. Gamm replied that compliance with a violation letter does not indicate that the property owner is guilty of a violation.

Mr. D. Wilson stated that the Board could limit their decision to only include the offending vehicles.

Vice-Chairman Miller stated that in his reading of the Staff report, the violation and determination is only referring to the offending vehicles.

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

Mr. Rick Warwick submitted several pictures that were taken today. Mr. Warwick stated that he works from home and can see the entire property. He stated that there is 6' to 10' of fill in some areas. He stated that 5 to 7 acres of trees have been removed. He stated that there was no erosion/sediment control during the grading. He stated that 6 to 8 cars would arrive in the morning, there was no activity in the fields, and the cars would leave in the evening. He stated that this represented a business rather than a farm activity. He stated that they filled in a ditch on his property. He stated that one of the trucks has been moved to the woods.

Mr. Howard Geiser stated that he believes they are making an improvement to the property.

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 deny the appeal and uphold the determination of the Zoning Administrator that the offending vehicles do not fall within the definition of agricultural use and are therefore not exempt from the zoning regulations. The basis for the motion is the specific issues identified in the Staff report and the evidence and testimony of the public hearing.

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 Vice-Chairman Miller seconded the motion.

Chairman Whitton called for the vote and the meeting was adjourned by unanimous consent at 7:29 p.m.

APPROVED

Chairman George Whitton

ATTEST:

Michael D. Schwartz
Director, Zoning Services