

**BOONE COUNTY PLANNING COMMISSION
BOONE COUNTY ADMINISTRATION BUILDING
BOONE COUNTY FISCAL COURTROOM
PUBLIC HEARINGS
FEBRUARY 15, 2023
7:30 P.M.**

Chairman Charlie Rolfsen opened the Public Hearing at 7:47 p.m. and welcomed the audience to the Planning Commission's February 15, 2023 Public Hearings.

COMMISSION MEMBERS PRESENT:

Mr. Randy Bessler
Mrs. Pamela Goetting
Ms. Corrin Gulick, Vice Chairwoman
Mr. Steve Harper, Temporary Presiding Officer
Mr. David Hincks
Mrs. Janet Kegley
Mr. Rick Lunnemann
Mr. Eric Richardson
Mr. Charlie Rolfsen, Chairman
Mr. Bob Schwenke
Mrs. Jackie Steele, Secretary/Treasurer
Mr. Tom Szurlinski
Mr. Steve Turner

COMMISSION MEMBERS NOT PRESENT:

Mrs. Kathy Clark
Mr. Kenny Vaught

LEGAL COUNSEL PRESENT:

Mr. Dale Wilson

STAFF MEMBERS PRESENT:

Mr. Kevin P. Costello, AICP, Executive Director
Mr. Todd Morgan, AICP, Senior Planner

Chairman Rolfsen introduced the first item on the Agenda.

ZONING MAP AMENDMENT, Todd Morgan, Staff

1. Request of **Answers In Genesis, per LeRoy LaMontagne (applicant/owner)** for a Zoning Map Amendment from Rural Suburban Estates (RSE) to Public Facilities (PF) for the southern approximate 2.5 acre area of the property located at 2960 Bullittsburg Church Road, Boone County, Kentucky. The request is to utilize the existing dwelling for housing of volunteers and/or employees of the Creation Museum.

Staff member, Todd Morgan, referred to his PowerPoint presentation. The request is to rezone a 2.5 acre site from RSE to PF to allow an existing dwelling unit to house up to 15 museum volunteers or employees. He reviewed the site history dating back to 2016. The subject site was not part of the 2016 zoning request. The site has a berm in the rear yard. Mr. Morgan described the subject site and adjoining properties in terms of land use and zoning and showed photographs. The applicant mentioned that the existing drive will be improved with gravel. Access to the Creation Museum will be via golf carts from the parking lot to the house. No more than 5 vehicles will be parked at the house. No more than 15 people will reside in the house at one time. The Building Department notified the Planning Commission of the housing activity. Gravel has been added to the driveway as well as 14 wheel blocks have been installed. A fence has also been installed. The 2040 Future Land Use Map designates this site for Rural Density Residential (RD) land uses up to 1 dwelling unit per acre. The Zoning Administrator determined that the proposed use does not meet the "Family" definition. Therefore, a zone change to PF is required so it would be an accessory use to the Creation Museum. Staff Comments are noted on Page 5 of the Staff Report. References to the Comprehensive Plan are mentioned in the Staff Report. Staff believes that a critical part of the request is for the exterior of the property to retain its single-family residential character. Staff would like the applicant to address the following: A. How will they monitor and enforce that no more than 5 vehicles will be parked on site? B. A camper currently exists on site. How many campers would be permitted? Would anyone be permitted to reside in a camper or other recreational vehicle? C. Is the 100' fence that was constructed immediately to the northeast of the parking area necessary? What about the additional gravel parking area? Staff doesn't believe it fits into the area. Staff would like to hear from the adjoining property owners and get their opinion. Buffer Yard D would normally be required around the perimeter of the site if the property is rezoned to PF. The Zoning Administrator said he would consider a landscaping waiver to waive a portion of all of the required landscaping but would like input from the Planning Commission and the Boone County Fiscal Court. Sight distance on Bullittsburg Church Road from the subject driveway is not ideal. Staff would like to note that AIG is also planning to house employees and/or volunteers in the house at 2754 Deck Lane. The Zoning Administrator determined this could be permitted as a minor change to the 2016 application since the property has already been rezoned to PF. Staff sent an agency email to Boone County Public Works, Boone County Building Department and Hebron Fire Protection District regarding the application. Their comments are attached to the Staff Report. Staff received an email from Laura Dorsey and James Smith in opposition to the request. The email is attached to the Staff Report. Another email has been received from Richard and Anna Stark and James and Deborah Cummings. This email has been distributed to the Board members. (See Exhibit 1)

Chairman Rolfsen asked if the applicant was present and wanted to proceed with his presentation?

Mr. LeRoy LaMontagne, applicant, was present and available to answer any questions.

Chairman Rolfsen asked if anyone in the audience had any comments or questions?

Ms. Deborah Cummings, 4062 Petersburg Road, stated that she is also representing the Starks, her next door neighbors. She submitted some pictures of surrounding houses (see Exhibit 2). She read her testimony. (Exhibit 1) AIG continues to add to their Public Facility zoning. In the past, she was told there would be no further zone changes for AIG. She is opposed to the request. The subject site has been a buffer between her house and the Creation Museum. For the past 7 years AIG has been using this house for volunteers and employees. Numerous cars have parked in the driveway, as well as 1-2 RVs. Currently, there is an RV in the driveway that has not moved. She has tolerated the use because AIG promised that the zoning of the property would be retained as RSE. If it has been illegal, why should AIG be rewarded? The driveway to the house has been doubled in width. Concrete wheel stops have been installed. Ms. Cummings submitted another photograph of the driveway (see Exhibit 3). AIG is planning more traffic and headlights. The PF zoning will allow AIG other opportunities to extend the PF zoning in the future. PF zoning would allow a mental health or substance abuse facility if sold by AIG. Those are not compatible with the residential uses. Access to the site should be through the AIG parking lot and not along the gravel road. If permitted, they should also build a buffer like one on the northern part of the site. AIG has received PF zoning for 71 acres over the years. The County should listen to the neighbors.

Ms. Mary Brady, 2947 Bullittsburg Church Road, asked if AIG was compliant or not? The house in question was built for 5 people. Is their adequate sanitary sewer for more people?

Chairman Rolfsen asked if AIG was compliant? Mr. Morgan replied they were not, if large numbers of people were staying there. He was informed by the Building Department that it is was boarding or lodging house.

Chairman Rolfsen asked if any Commissioners had any questions or comments?

Mr. Lunnemann asked how many bedrooms and bathrooms are in the house? How many people currently are residing in the house? What is the capacity?

Mr. LaMontagne replied that he was informed by the Building Department and the Fire Department that they were not in compliance. He has contacted an architect. There are 2 bathrooms and 4 bedrooms along with an unfinished basement (walk-out). Normally, they have about 10 people staying there but the building code allows up to 15 people. It is busy from May to September. Mr. Costello mentioned that the Planning Commission never anticipated residential activity for employees on the site. Mr. LaMontagne responded that they wanted the property to maintain a residential appearance.

Chairman Rolfsen questioned how 15 people could live in a 4 bedroom house with 2 bathrooms? Mr. LaMontagne replied that it is more like 9-10 people with many of them being couples.

Ms. Gulick inquired about the berm. Mr. LaMontagne responded that if they installed a berm on the entire site, it would look more commercial. Ms. Gulick expressed a concern about sight distance. What about additional traffic? Wouldn't that increase potential conflicts? Ms. Gulick inquired about sight distance measurements for the existing access point. The location of the curb cut was approved for a single-family residence only. Mr. LaMontagne stated the existing RV belongs to a speaker who lives up north but is sick.

Mrs. Kegley stated that she would also like it to look like a residence. If 15 people are staying at the house, will the septic tank work properly? Will it need to be enlarged? Normally, the formula is 2 people per bedroom. Will you need to add another bathroom? What about using your basement? Does the outside of the house need to be improved? It needs to be planned. Will you add on? Perhaps 8 people is a good number? What about landscaping to screen the RV? Is the RV parking necessary? A few trees would also help.

Mr. Wilson asked if the proposed use is a joint living (dormitory) facility? Mr. Morgan responded yes. Mr. Wilson explained that is the reason why there are problems meeting the building code.

Chairman Rolfsen advised the applicant to meet with the neighbors to discuss berms and landscaping to effectively screen the use. The RV should go.

Seeing no further questions or comments, Chairman Rolfsen announced that the Committee Meeting for this item will be on March 1, 2023 at 5:00 P.M. This item will be on the Agenda for the Business Meeting on March 15, 2023 at 7:00 p.m. in the Fiscal Courtroom. Chairman Rolfsen closed the Public Hearing at 8:32 p.m.

APPROVED:

Charlie Rolfsen
Chairman

Attest:

Kevin P. Costello, AICP
Executive Director

Exhibit 1 – Email from Richard & Anna Stark/James & Deborah Cummings

Exhibit 2 – Photographs of Neighboring Houses

Exhibit 3 – Photography of Existing Driveway

COMMISSION MEMBERS PRESENT:

Mr. Randy Bessler
Mrs. Pamela Goetting
Ms. Corrin Gulick, Vice Chairwoman
Mr. Steve Harper, Temporary Presiding Officer
Mr. David Hincks
Mrs. Janet Kegley
Mr. Rick Lunnemann
Mr. Eric Richardson
Mr. Charlie Rolfsen, Chairman
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COMMISSION MEMBERS NOT PRESENT:

Mrs. Kathy Clark
Mr. Kenny Vaught

LEGAL COUNSEL PRESENT:

Mr. Dale Wilson

STAFF MEMBERS PRESENT:

Mr. Kevin P. Costello, AICP, Executive Director
Mr. Todd K. Morgan, AICP, Senior Planner

Chairman Rolfsen introduced the second item on the Agenda at 8:33 p.m.

ZONING MAP AMENDMENT, Todd Morgan, Staff

2. Request of **DMG Rentals 14 LLC, per Dan Greene (applicant/owner)** for a Zoning Map Amendment from Office One (O-1) to Urban Residential One (UR-1) for an approximate 1.44 acre area located along the north side of Boone Aire Road, between Burlington Pike and Glen Arbor Drive, approximately 550 feet west of Burlington Pike, between 1130 and 1166 Boone Aire Road, and being part of the property with a Parcel Identification Number (PIDN) of 061.00-00-039.01. The request is for the development of a 150 unit multi-family residential development on an overall 12.5 acre area located along the north side of Boone Aire Road, across from Glen Arbor Drive.

Staff Member, Todd Morgan, referred to his PowerPoint presentation (See Staff Report). The property has frontage on Burlington Pike, Boone Aire Road and S. Zig Zag Road. The overall site is 12.5 acres in size, of which 11.06 acres is already zoned UR-1 and the remaining 1.44 acres is currently zoned Office One (O-1). The applicant's request is to rezone the 1.44 acres only from O-1 to UR-1. The plan is to develop the overall site for 150 apartments with 75 being one bedroom units and 75 being two bedroom apartments. The building density is 12 dwelling units per acre. Building #1 also contains clubhouse and an outdoor pool. The site will have 263 parking spaces. Access to the site is from Boone Aire Road. It would align with the existing church across the street. There is also a proposed access to a sanitary sewer lift station. Underground detention is proposed on the plan. If the proposed uses on the 1.44 acres parcel were relocated, the use would automatically be permitted under the existing zoning of UR-1. The colored plan shows the tree preservation limits. He showed building elevations and materials. They will be 3 story buildings.

Mr. Morgan reviewed the site history. The site has been zoned UR-1, in some form, since 1980. It is a bit confusing as Staff feels there was a map error at some point. In 1992, the Zoning Map showed the subject 1.44 acre site to be O-1 though the 1991 Zoning Update process. In 1994, the O-1 zone was applied to 2 sites (current office buildings) across from each other on Boone Aire Road. At that time, the subject site was shown as UR-1. The 1996 Zoning Map should have followed the O-1 zone change and office buildings requests but it didn't. Staff discussed this with legal counsel and since the Zoning Map has been adopted and readopted many times by the Fiscal Court in 1996, 2002, 2008, 2014 and 2023, the zoning stands as O-1. Mr. Morgan showed a map of surrounding zoning and land uses as well as photographs of the site and adjoining properties. The topography of the site falls towards KY 18 and Gunpowder Creek. The site is located within the 60 and 55 DNL noise contours. Two existing houses on the site will be demolished. No access is proposed off KY 18. The 2040 Comprehensive Plan designates the site for Urban Density Residential (UD) – single family attached housing of over 8 dwelling units per acre. The proposed density of the project is 12 dwelling units per acre. References to the Comprehensive Plan are outlined on pages 4-8 of the Staff Report.

In terms of Staff Comments, Staff would like to point out the development could be constructed without Zoning Map Amendment approval if all the apartment buildings and parking lots were located outside the Office One (O-1) zone. Site access would be permitted in the O-1 zone. The subject area of Boone Aire Road is two lanes and does not contain any turn lanes. The site access point is located between two curves in the road and sight distance to the west is limited. The applicant submitted a Traffic Memo with the request and it shows the development would generate 48 trips (13 enter and 35 exit) during the weekday AM peak hours and 61 trips (37 enter and 24 exit) during the weekday PM peak hours. Staff is concerned that only one means of ingress and egress is proposed to serve the apartment buildings. Staff asked the applicant to analyze whether a gated emergency access point was feasible with the grades of the site. The Concept Development Plan did show that an underground detention system is proposed and storm water would outlet in the northwestern part of the site (towards Gunpowder Creek). Can the applicant

address potential storm water impacts from the development? The apartments will be highly visible because the site sits high in relation to adjoining properties and three-story buildings are proposed. Site lighting should be addressed to mitigate any potential impacts. The only site amenity that is shown is a pool. Could a tot lot be added for children that reside at the complex? The site is located within the airport's noise contours. Will the buildings be constructed with sound insulation? Sidewalks should be addressed by the Planning Commission and Fiscal Court to determine where they are appropriate. Walking on Boone Aire Road is not safe because of the existing road conditions (2 lanes, curves, limited shoulders, topography, no existing sidewalks.) Staff's understanding is that a pedestrian/bicycle lane will be constructed on the north side of KY 18 with the proposed improvements to KY 18. At a minimum, Staff would recommend sidewalks be constructed from the proposed access point and extend to the southeast property line. It would be ideal if the sidewalks would extend all the way to S. Zig Zag Road so residents could safely walk to the Links, Whitestone Links, or S. Zig Zag Road. Any required sidewalks should connect to the apartment buildings. Staff sent out an agency memo and received comments back from Florence Fire/EMS, Sanitation District No. 1, Boone County Water District, Kentucky Transportation Cabinet, and Boone County Public Works. These comments are attached to the Staff Report as well as one from Mr. Mike Ford from Boone County Schools (Exhibit 1). At the time the Staff Report was finalized, Staff received six emails in opposition to the request. The emails are attached to the Staff Report. More emails have been received from Don & Karen Alexander, Ashley Durig, Michael & Joyce Lyman, Sheila Cunningham, and Lance & Christi Payne. Those are exhibits (Exhibit 2).

Mr. Morgan described the plans for road improvements on KY 18 from the Kentucky Transportation Cabinet – specifically the KY 18/Boone Aire Road intersection. Right-of-way is being purchased in 2023 and construction will occur in 2024. Left turns will still be allowed onto Boone Aire Road. But drivers leaving the industrial building across the street would not be able to make a left turn but would have to turn right and then left using a separate turn lane on KY 18. The Boone Aire Road and KY 18 intersection would then be a right in and right out.

Mr. Costello asked if the Airport commented on the proposed project since there was a sound proofing project in Oakbrook Subdivision years ago? Mr. Morgan replied that he would follow up with the Airport. Chairman Rolfsen asked how many units are proposed on the 1.44 acre parcel? Mr. Morgan responded 36 dwelling units. If the proposed application is denied, then no residential building or parking area can be built on the 1.44 acre site based on the current O-1 zoning. Mr. Rolfsen stated that the review tonight is for the 1.44 acre tract. The Board can't change the remaining land.

Chairman Rolfsen asked if the applicant was present and wanted to proceed with their presentation?

Mr. Dan Greene, applicant, gave an overview of DMG Companies. His company builds and manages apartment communities throughout Cincinnati and Northern Kentucky. They own over 2,000 apartments and are a family owned company. Currently, they have 6 projects in Northern Kentucky and the proposed site would be the seventh. They are Class A apartments with brick

and hardi plank siding. The objective is to clean up the zoning of the property in order to have one zoning district. The rezoned parcel will allow them to spread out the buildings. It would make it better for the community. A playground would be added as an amenity along with walking trails when possible.

Chairman Rolfsen asked if anyone in the audience had any comments or questions?

Mr. Randy Bookman, 1537 Trophy Court, stated that the developer can only construct 133 dwelling units if the rezoning is not approved. The submitted traffic study was doubted by the County Engineer. There should be an independent study. The traffic study only addresses Boone Aire Road. It doesn't address KY 18 or Houston Road. Apartments have been added to KY 18, Aero Parkway and Houston Road as well as Amazon trucks. Turning left from KY 18 to Boone Aire Road is overwhelming every single night. Trucks will use Boone Aire Road. Additionally, there are storm water concerns. Zig Zag Road has washed out many times. If KY 18 is washed out, people will drive on Boone Aire Road. There was a mistake in 1980. It should have never been UR-1. The area should not experience an influx of multi-family housing according to the Comprehensive Plan. For thousands and thousands of acres, there is only single-family residential zoning. The proposed project is not in character of the neighborhood. What about phasing the development until there is adequate infrastructure? Apartments have been added without this in mind.

Mr. Bob Storer, 1613 Caddie Circle, stated that Boone Aire Road has not had improvements. There is a lot of erosion on S. Zig Zag Road and the proposed project won't help it. A fence should be installed around the retention pond. Boone Aire Road is about the same width as Glen Arbor Drive. He suggested to connect S. Zig Zag Road and then to KY 18 since there is a traffic signal.

Mr. Gary Eith, 1283 Boone Aire Road, stated that the AM midpoint for 150 units times 0.36 is 54 vehicles and the PM midpoint for 150 units times 0.44 is 66 trips. The total is over 100 trips. A traffic study must be done. There will be a severe back up on KY 18 turning left onto Boone Aire Road. The creek floods during heavy rainfall – white rapids look.

Mr. David Lester, 6079 Zig Zag Road, stated that he likes the quietness of Zig Zag Road and animals. He is worried about deer, turkeys and owls. He isn't worried about the water coming close to the residences. He has never seen it.

Mr. Shaun Chapman, 1399 Boone Aire Road, stated that if you can't make a left turn onto KY 18, it will force traffic to take Boone Aire Road in the opposite direction towards the traffic signal. There is a child care center along the way. If the project is approved, perhaps access could be from KY 18 instead of Boone Aire Road?

Ms. Christi Payne, 1634 St. Anne's Court, stated that she is opposed to the zoning change. There is a lot of speeding on Boone Aire Road. It can't handle more cars. It is used as an alternate route for emergency vehicles. The church has a back-up from their food pantry. How many of the acres

would not be used for housing if the rezoning was not approved? There will be a lot of transitional residents living in the apartments. What about security? People in rental units don't always care about their surroundings. Is this Section 8 housing? What about diminishing home values? There is only one way in and out of the development. She submitted an email of her concerns previously. The infrastructure and resources are not available to support these new residents. Projects like this don't make her want to stay in Boone County. Will the company do any blasting at the site?

Mr. Mike Walsh, 7036 Glen Arbor Drive, explained that in 2021, his sanitary sewer overflowed for 15 hours. There was a clog and it went into the creek. Where will the pump station be located and how will it operate?

Mr. Nick Hunt, 6952 Glen Arbor Drive, stated that he is confused. Based upon all the comments tonight, it doesn't make any sense. No improvements have been made on Boone Aire Road for decades. He asked the Board to shut things down.

Ms. Melanie Mitchell, 1419 Flintridge Road, expressed her concern about the narrowness of Boone Aire Road. The church driveway has had numerous trucks turn around in the parking lot. It is located across the street from the project's entrance. Because of the businesses near the proposed apartment entrance, there may be stacking or flow problems.

Mr. William Moran, 6957 Glen Arbor Drive, stated that about 50% of the traffic turning left onto Boone Aire Road is going to Glen Arbor Drive. It is a route to Oakbrook Subdivision. The project is a mistake unless the exit is on KY 18.

Mr. Michael Crocker, 6992 Glen Arbor Drive, stated that SD1 was at his place to unclog a blockage on his property. The speed limit on Glen Arbor is 20 mph and people speed.

Mr. Paul Williams, 1447 Boone Aire Road, stated that the road is only 17 feet wide and he has fixed his mailbox about half a dozen times.

Mr. Chris Davis, 7100 Glen Arbor Drive, asked why are they adding 200 more cars onto Boone Aire Road? Why not access the property from KY 18? Mr. Costello replied that question should be directed to the applicant. KY 18 is a limited access road and curb cuts were determined when the road was rebuilt. Mr. Costello referenced the Oakbrook plans were originally approved in the 1970s. Residents didn't like Glen Arbor Drive to connect with Boone Aire Road but it did for circulation purposes.

Mr. Andrew Vance, 1469 Burlington Pike, stated that KY 18 sometimes gets backed up to Zig Zag Road. The new apartments on KY 18 sometimes are a problem as residents try to make a left turn from a right turn in entrance/exit only. With the truck traffic in the area, it has become a mess and the proposed project isn't in the best interest of the residents.

Seeing no further comments, Chairman Rolfsen asked if any Commissioners had any questions

or comments?

Ms. Gulick stated that she thought a Traffic Impact Study should be done unless the applicant has some solid evidence against it.

Mr. Josh McIntosh, Cardinal Engineering, responded that he is not a traffic engineer. He thought it was under the threshold for a Traffic Impact Study. The applicant stated that they are willing to do one if needed or required even if the peak AM (44) and the peak PM (66) is under 100 trips per hour.

Ms. Gulick asked what was it based on? She expressed the view that if a Traffic Impact Study is not done, she would have a hard time voting favorably for the request.

Chairman Rolfsen, felt that the peak numbers used in the traffic memo were low. Mr. McIntosh responded that they were from the Traffic Engineers Manual. Ms. Gulick asked what category was used?

Mr. Costello asked the applicant if they did a title search on the property to determine if they have access to KY 18? Mr. McIntosh replied that he didn't but from a topographical standpoint, it would be very tough. The site would have to be cleared to match the grade of KY 18.

Ms. Gulick asked to obtain some cross sections of the site to see what the neighbors will be looking at. What about blasting?

Mr. Greene responded that they will not blast and it won't be Section 8 housing. They build market rate housing. Ms. Gulick asked if the applicant would look into the sanitary sewer problems in the area?

Chairman Rolfsen suggested using the 1.44 acre site for green space and not building as many units in order to have more amenities like a dog park, etc. It will help with density and traffic. The office zone could be used for office related uses like the rental office. It would have to be reviewed by the Zoning Administrator.

Mr. Szurlinski asked if there could be a deceleration lane added to Boone Aire Road to allow people to get into the complex easier? It would be a safety feature to allow traffic to flow better. The applicant replied he would look at starting it at the second office to their entrance.

Mr. Costello inquired whether the added lane on KY 18 could help with a potential access to the site? Mr. McIntosh responded that KY 18 is at 822' elevation and their finished grade will be at an 855' elevation.

Mr. Hincks asked the applicant to address the school impact at the Zone Change Committee Meeting.

Mr. Lunnemann inquired about the stormwater detention? Is it really underground? Mr. McIntosh responded that they are looking at several options due to the cost of underground detention. It will be a dry detention basin. Mr. Lunnemann asked how it will be maintained?

Seeing no further questions or comments, Chairman Rolfsen announced that the Committee Meeting for this item will be on March 1, 2023 at 5:00 P.M. This item will be on the Agenda for the Business Meeting on March 15, 2023 at 7:00 p.m. in the Fiscal Courtroom. Chairman Rolfsen closed the Public Hearing at 9:53 p.m.

APPROVED:

Charlie Rolfsen
Chairman

Attest:

Kevin P. Costello, AICP
Executive Director

Exhibit 1 – Email from Mike Ford

Exhibit 2 – Letter/Emails from Don & Karen Alexander, Ashley Durig, Michael & Joyce Lyman, Sheila Cunningham & Lance & Christi Payne