

**BOONE COUNTY BOARD OF ADJUSTMENT
BOONE COUNTY ADMINISTRATION BUILDING
FIRST FLOOR FISCAL COURTROOM
BUSINESS MEETING**

**June 9, 2010
6:00 P.M.**

Mrs. Shirley Millar called the meeting to order at 6:00 P.M.

BOARD MEMBERS PRESENT:

Mrs. Shirley Millar
Mr. Terry Edwards
Mrs. Jennifer McConnell

BOARD MEMBERS NOT PRESENT:

Mr. George Whitton, Chairman
Mr. Richard Miller

LEGAL COUNSEL PRESENT:

Mr. Dale Wilson

Mrs. Millar stated that the Board members received copies of the Minutes of the Boone County Board of Adjustment Meeting of May 12, 2010. She asked if there were any comments or corrections.

There being no changes to the minutes, Mr. Edwards moved that they be approved as mailed and Mrs. McConnell seconded the motion. Mrs. Millar asked for a vote and it carried unanimously.

- 1. Request of Jeremy Glass for a Variance to allow a covered porch to encroach into the 30 foot front yard setback on property located at 704 Peach Tree Lane, Boone County, Kentucky. The property is currently zoned Suburban Residential Two (SR-2).**

Staff Member, Todd Morgan, AICP, presented the Staff Report which included a PowerPoint presentation (see Staff Report).

Mr. Jeremy Glass indicated that he was present to answer questions. Mrs. Millar asked if he would address the proposed building materials. Mr. Glass said he was proposing a porch like the neighbor behind him. Mr. Morgan asked if the shingles would match the rest of the house. Mr. Glass said if the covered porch was approved he planned on re-roofing the entire house and everything would match. Mr. Glass asked that the slide be shown of his neighbor's house (adjoining property to southeast) because his proposal is very similar. Mr. Morgan asked if the gable face would be constructed with brick as shown in the picture. Mr. Glass responded that the gable face would probably be constructed with vinyl siding. Mrs. McConnell asked if there would be a wood railing. Mr. Glass said a wood railing would go around the deck just like the picture.

Mrs. Millar asked if anybody else in the audience wanted to speak regarding the application. There was no response. She asked for a motion.

Mr. Edwards moved to approve the application based on the following findings: (1) The request will not alter the essential character of the neighborhood; and (2) The strict application of the provisions contained in the regulations would deprive the applicant of the reasonable use of his land.

Mrs. McConnell asked for clarification regarding the overhang of the covered porch. Mr. Morgan responded that Section 3123 of the Boone County Zoning Regulations allows an overhang to encroach 2.5 feet into the required setback. In this case the overhang could be 15.5 feet from the front property line if the Board approves the 18 foot setback.

Mrs. McConnell seconded the motion. Mrs. Millar asked for a vote and it carried unanimously.

2. Request of Adam Miller for two (2) Variances to allow a single-family residential dwelling to encroach into the 40 foot front and rear yard setbacks on property located on Lot 20, Cornerstone Estates (property fronts on Wildrose Lane), Boone County, Kentucky. The property is currently zoned Rural Suburban (RS).

Staff Member, Todd Morgan, AICP, presented the Staff Report which included a PowerPoint presentation (see Staff Report).

Mrs. Millar asked Mr. Morgan to clarify the 15 foot undisturbed area that was supposed to be maintained as part of the 2004 Zoning Map Amendment request. Mr. Morgan said the 15 foot wide area is shown on the applicant's plot plan. He indicated that no tree clearing should have occurred in the area. He reviewed a PowerPoint slide of the rear yard and it showed that the area had been cleared and there was no vegetation along the rear property line. Mr. Morgan said Staff should have reviewed the condition when the Grading Plan was submitted. They probably determined that there was no significant vegetation worth preserving.

Mrs. McConnell asked if the house would be located 14.5 feet from the undisturbed easement. Mr. Morgan responded that was correct.

Mr. Edwards asked about the Staff Comment regarding the possibility of a smaller house. He asked if Staff had made the applicant aware of that comment. Mr. Morgan said he made the applicant aware that the question would come up at this meeting.

Mr. Adam Miller said the covenants have language regarding the minimum square footage of the households. The house that is being proposed is approximately 1,998 square feet and the minimum square footage per the covenants is 1,800 square feet. If he were to build an 1,800 square foot ranch he may pick up two or three feet in the back and one or two feet in the front. He said it would be difficult to build a two-story house on this lot and meet all the required setbacks. He indicated the subject house is only 44 feet deep and is designed for shallow lots. He stated that there were no trees in the undisturbed easement. They did clear weeds, briars, and tall grass.

Mr. Morgan asked if the covenants were still in effect? Mr. Miller responded that he got a letter from the county indicating that the covenants were still in effect. Mr. Morgan asked if he was speaking about the zone change conditions because the county doesn't enforce private covenants. Mr. Miller said he bought the property at auction and the only document he saw pertained to the 35 foot front yard setback. He received another letter from Boone County saying the covenants were still in effect. Mr. Morgan said Staff did send out a letter but he believes it only pertained to the zone change conditions.

Mr. Wilson said Planning Commission Staff could have written a letter explaining that private covenants exist but they do not enforce them. A property owner has to comply with the county regulations and the private covenants.

Mr. Miller said he wasn't sure who was in charge of the private conditions because this was a foreclosed property. Mr. Wilson stated there have been occasions when property owners want to get rid of the private deed restrictions that pertain to them. In some cases, it takes more than getting consent from the other affected property owners to make changes. He noted that Planning Commission Staff or the Board of Adjustment couldn't change or grant relief from the private covenants.

Mr. Miller indicated that he spoke with East Kentucky Power Cooperative regarding a future transmission line that would go through the adjoining lots on Sawgrass II Subdivision. He submitted an exhibit which gave an overview of the project (see Exhibit 1). The towers located in the easement will be single-pole structures and will be 75 to 80 feet tall. He believes the 75 to 100 foot wide easement will help with the separation between the houses. Mrs. McConnell asked if the power poles and easement would be located right behind the fence on the rear property line. Mr. Miller agreed.

Mrs. McConnell asked if the lot has been sold? Mr. Miller indicated that it had been sold.

Mr. Edwards asked Mr. Miller if he had any objections to planting the trees in the rear yard as Staff has recommended. Mr. Miller stated that he planned on putting 6' tall evergreens in the rear yard. Mr. Edwards asked if he had any problem agreeing to Staff Comment 5. Mr. Miller said he was agreeable to the condition. Mr. Morgan added that the trees could be located anywhere between the house and rear property line as long as they were evenly dispersed.

Mrs. Millar asked if there was anybody else in the audience that would like to speak regarding the request.

Mr. Ben Shaffer said he was the owner of lots 16 and 28 of Cornerstone Estates. He said he was trying to understand the 50 foot rear yard setback requirement in the covenants and the proposal to reduce the requirement to 29.5 feet. Mr. Wilson stated that the Board couldn't change the private covenants. The Board is considering granting relief of the 40' front and rear yard setback requirements found in the Boone County Zoning Regulations.

Mr. Shaffer said he reviewed the East Kentucky Power Cooperative exhibit Mr. Miller submitted and it does not show the exact location of the easement. Mr. Edwards asked if the power line easement would be located in Cornerstone Estates or Sawgrass II Subdivision. Mr. Miller stated that he spoke with the individual from East Kentucky Power that was in charge of the project and he informed him the easement and power lines would be located in the future section of Sawgrass Subdivision.

Mrs. Millar asked for a motion. Mr. Edwards moved to grant the requests with the condition that six (6) large trees from Plant List A shall be evenly dispersed along the rear property line. Mrs. McConnell seconded the motion.

Mrs. Millar asked if there was any discussion. Mr. Morgan said he wanted to remind the applicant that they should verify if the private covenants are valid before they construct the house.

Mrs. Millar asked for a vote on the motion and it carried unanimously.

3. **Request of Phil Freihofer for two (2) Variances to reduce the front and rear yard setback requirements from 40 feet to 35 feet so a single-family dwelling can be constructed on property located on Lot 27, Cornerstone Estates (property fronts on Cornerstone Drive), Boone County, Kentucky. The property is currently zoned Rural Suburban (RS).**

Staff Member, Todd Morgan, AICP, presented the Staff Report which included a PowerPoint presentation (see Staff Report).

Mr. Phil Freihofer passed out a packet which included building elevations, floor plans, and a plot plan of the subject household (see Exhibit 2). He indicated that the covered patio on the back of the house was causing the setback issues. They decided to apply for two Variances so they would have equal front and rear yards.

Mrs. Millar asked Mr. Freihofer if could address the restrictive covenants setback chart because the chart indicates that the rear yard setback requirement is 50 feet. Mr. Morgan asked if the private covenants were still in effect or had they been waived. Mr. Phil Freihofer said he did not know. He said he bought the lot with the understanding that there was a 35 foot front yard setback and they became aware of the issue when they submitted for permits.

Mr. Morgan said the private covenants were recorded on June 17, 2009.

Mrs. McConnell asked if Cornerstone Property Development waived the setbacks. Mr. Freihofer said they have no information regarding Cornerstone Property Development. He doesn't know if they dissolved when the property was auctioned off. Mrs. McConnell asked if there was a Home Owners Association. Mr. Freihofer said there was not.

Mr. Freihofer stated the proposed house is very nice and will increase values in the community. He stated that with all the confusion, he measured setbacks and found that four of the eleven houses in the community were built with 35 foot front yard setback. He stated that you cannot tell the difference between a 35 or 40 foot front yard setback as you drive up and down the street.

Mr. Edwards asked how the houses could have been constructed with 35 foot front yard setbacks. He asked if the Board of Adjustment should have approved Variances. Mr. Morgan said he did research on some of the adjoining lots. He did find one case where Staff mistakenly approved a 35 foot front yard setback. He reviewed other Zoning Permits and they showed the houses were meeting the 40 foot front yard setback. He indicated that a mortgage inspection survey would normally find if a house has been constructed into a required setback. Staff would require a Variance application to be submitted if this was the case.

Ms. McConnell asked if the adjoining property to the rear had been built on. Mr. Morgan responded that a two-story house is currently being constructed on one of the adjoining properties to the south. He reviewed a PowerPoint slide which showed the Plot Plan for the adjoining house. The plan showed that the house would meet the 40 foot front and rear yard setback requirements when it was constructed.

Mr. Freihofer said a lot of the adjoining lots are 160 feet deep. The subject lot is 135 feet deep on the eastern side and 148 deep on the western side.

Ms. Nancy Emmrich said she was one of the property owners. She said the covenants, if valid, require all out buildings to match the house. Due to this restriction, they decided to build a bigger garage. They decided on a side entry garage so it would not be

offensive when it was opened and people were driving up and down the street. They also want to construct a covered porch because there are no trees on the lots that will provide shade. They hope the Board will grant the Variances so they can construct their house.

Mrs. Millar asked if anybody else in the audience wanted to speak regarding the request.

Mr. Ben Shaffer said he was the owner of lot 28, which is located immediately to the east. He submitted the information that was distributed at the lot auction (see Exhibit 3). He stated the Private Covenants were part of the packet. He said members of Cornerstone Development signed the covenants. He indicated that maybe they could be contacted to see if the covenants were still valid. He was informed that the covenants were still valid when he purchased his other property. He said he has no concerns with the layout of the proposed house.

Mrs. McConnell asked if the owners bought the lot at auction. Ms. Emmrich responded that they bought the property from somebody that bought the land at auction.

Mrs. Millar asked for a motion. Mr. Edwards moved to grant the requests with the condition that four (4) large trees from Plant List A shall be evenly dispersed along the rear property line.

He advised the applicant and property owners that they should verify if the restrictive covenants are still valid. Mr. Wilson added that Planning Commission and Board of Adjustment do not get involved because it is a private matter and they have no power to enforce the rules. The covenants should be read to determine who has enforcement rights.

Mrs. McConnell seconded the motion. Mrs. Millar asked for a vote and it carried unanimously.

Mrs. Millar asked for a motion to adjourn. Mrs. McConnell so moved and Mr. Edwards seconded the motion. Mrs. Millar asked for a vote and the meeting was adjourned by unanimous consent at 6:50 P.M.

APPROVED

Shirley Millar

Attest:

Todd K. Morgan, AICP
Senior Planner, Zoning Services

Exhibit 1 - Hebron - Bullittsville transmission line project packet
Exhibit 2 - House elevations, floor plan, plot plan for lot 27 of Cornerstone Estates
Exhibit 3 - Cornerstone Estates lot auction packet