

**BOONE COUNTY BOARD OF ADJUSTMENT
BOONE COUNTY ADMINISTRATION BUILDING
BOONE COUNTY FISCAL COURTROOM
BUSINESS MEETING
JULY 13, 2016
6:00 P.M.**

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

BOARD MEMBERS PRESENT:

Mr. George Whitton, Chairman
Mrs. Sherry Hempfling
Mr. Bradley Shipe

BOARD MEMBERS ABSENT:

Mr. Frank Bednar
Mr. Richard Miller

LEGAL COUNSEL PRESENT:

Mr. Dale T. Wilson

APPROVAL OF MINUTES

Mr. Whitton stated the Board members received copies of the minutes of the Boone County Board of Adjustment meeting of June 8, 2016. He asked if there were any comments or corrections? There being no changes, Mr. Shipe moved that they be approved as written and Mrs. Hempfling seconded the motion. Mr. Whitton called for the vote and it carried unanimously.

ACTION ON REVIEWS

- 1. Request of James W. Berling for (1) a Conditional Use Permit to allow the construction of a ferry boat ramp and (2) a Variance to reduce the landscaping buffer yard requirements along the northeast property line in a Recreation ® zoning district. The approximate 1.29 acre site is located on the northwest side of Lower River Road and is northeast of 8637 Lower River Road, northwest of 8542 Lower River Road, and southeast of the Ohio River, Boone County, Kentucky.**

Mr. Whitton said the request was tabled at last month's meeting. He asked for a motion to bring it off the table. Mr. Shipe made a motion to bring the request off the table to allow the Board to begin discussing it again. Mrs. Hempfling seconded the motion. Mr. Whitton called for the vote and it carried unanimously.

Mr. Whitton said the request was heard last month and there was a lot of testimony presented. Ultimately, the Board tabled the request to this meeting. The Board will not be hearing any new testimony tonight. The Board members reviewed the minutes and the stacks of materials that were submitted. Mr. Whitton asked if the Board members had any observations or opinions they wanted to put into the record after visiting the site?

Mr. Shipe said he visited the site. He stated that he didn't have anything additional to add to what he already knew.

Mrs. Hempfling said she also visited the site and confirmed what was submitted.

Mr. Whitton said he visited the site and it's a very rural setting. He observed a very narrow two-lane road. He was there for quite awhile and didn't observe much traffic. He thinks one car came by the entire time he was there.

Mr. Whitton asked if the Board had any questions for Staff? There was no response.

Mr. Whitton asked for a motion.

Mr. Shipe made a motion to approve the Conditional Use Permit based on the record from the June 8, 2016 Public Hearing. This is based on the following findings:

1. The applicant's proposal is in accordance with the Boone County Comprehensive Plan for the following reasons:

- A. The 2035 Future Land Use Map forecasts the site for recreational uses.**
- B. The Land Use Element text states that "any potential ferry location should occur to the north of Rabbit Hash, possibly at a reclaimed gravel pit site".**

The subject site is to the north of Rabbit Hash and the Comprehensive Plan does not require a ferry to be located specifically at a reclaimed gravel site.

2. The proposed land use won't be detrimental to any person, property, or the general welfare by reason of excessive production of traffic, noise, smoke, dust, fumes, glares, or odors.

This conclusion was reached after reviewing the applicant's proposal, traffic impact study, noise study, photometric plan, and the entire record.

3. With the attached conditions, the proposed land use is subservient to, and not of scale, nature, or other character, which would compete, detract, or conflict with the principal purpose of the recreation district.

Conditions

- 1. The approval is based on the plans and studies as submitted by the applicant.**
- 2. Operation of the ferry service shall be limited to one (1), ten (10) vehicle capacity ferry boat.**
- 3. All Staff parking for the ferry shall occur in Indiana.**

- 4. All ferry boat repairs shall occur in Indiana.**
- 5. The parking lot shall be secured/locked during non-business hours.**
- 6. Parking lot lighting, while normally off during non-business hours shall be operated by motion sensors during non-business hours to deter loitering on the premises.**

He added the second part of his motion was to deny the Variance request because a hardship does not exist. A 6' tall wall, berm, or fence can be installed in the buffer and does not deprive the owner of the reasonable use of the land.

Mr. Whitton asked if there was a second to the motion? Mrs. Hempfling said she would second it. Mr. Whitton asked if there was any further discussion? There was no response. Mr. Whitton called for the vote. Mr. Shipe and Mrs. Hempfling voted in favor and Mr. Whitton was opposed. The motion carried 2 to 1.

- 2. Request of William C. Nona for a Variance to allow a deck to encroach into the 30 foot front yard setback in an Urban Residential One (UR-1) zoning district. The approximate 0.179 acre site is located at 2596 Berwood Lane, Boone County, Kentucky.**

Staff Intern, Paul Yoder, presented the Staff Report which included a PowerPoint presentation (see Staff Report).

Mr. William Nona said Staff explained the request very well. He has spoken to his neighbors about building this deck for the past 2 to 3 years. They didn't believe he needed permits so he went ahead and built the deck.

Mr. Shipe asked what the feedback has been from his neighbors since he built the deck? Mr. Nona said the guy across the street likes the deck. He talked with one of the adjoining neighbors after he received the meeting notice. He doesn't have any issues. The neighbor on the other side could care less. Other neighbors have stopped by and asked for the phone number of the person that built the deck.

Mr. Whitton asked if anybody else in the audience wanted to speak for or against the request?

Mr. Don Leisl asked if the property next door with the tiered steps had a permit? He said they should look into how that structure was allowed and if a Variance should have been required. Mr. Morgan said he would call that structure more of a stoop than a deck. However, it has characteristics of both because the middle section has a small landing with some chairs on it.

Mr. Whitton said the only matter before them is the subject application. Mr. Leisl said he is only bringing the point up because Staff didn't believe the request would alter the essential character of the area. He disagrees with that comment. His fear is that someone can build a deck without permits because they don't know the rules. He asked if the applicant could add onto the deck? Mr. Whitton said they couldn't because it isn't part of their proposal. Mr. Leisl said they were allowed to go past the 30' front yard setback

line. Mr. Morgan said the applicant has applied for a Variance to try to resolve that issue. Mr. Leisl said his concern is that the whole subdivision will have the right to do this if this request is approved. Mr. Wilson said an approval on this property would not be binding on other properties. The Board evaluates each request on its own merits. An approval on this request would not set any type of precedent.

Mr. Leisl said he doesn't have a problem with a deck in the rear yard. He does have a problem with a deck in the front yard because someone could enclose it in the future. He asked if this could be sought in the future? Mr. Whitton said someone could ask to modify the Variance in the future. Mr. Leisl said the 30 foot front yard setback should be followed to keep the integrity of the subdivision intact.

Mr. Whitton asked Mr. Leisl where his house was located? He replied that it was located in Tree Tops. He indicated that he was speaking for a family member that lives in the neighborhood.

Mr. Morgan stated the Board could impose a condition which would prohibit the deck from being covered or enclosed if the request is approved.

Mr. Whitton asked if anybody else in the audience wanted to speak?

Ms. Nancy Leisl said her concern is property values in the subdivision. She believes the subdivision looks beautiful right now. A lot of people have replaced their roofs and siding because of a recent hail storm. She believes this deck will cause property values to go down because it's located in the front yard.

Mr. Shipe asked Staff how many other properties in the neighborhood had similar decks or stoops in the front yard? Mr. Yoder said there are similar stoops to the property next door. Mr. Morgan said he and Mr. Yoder went out to the site together to take pictures. The property next door has a combination of a deck and stoop. It has a middle landing with some chairs on it. Mrs. Hempfling asked for pictures of the subject property and adjoining property to be shown again.

Mr. Shipe asked how many other houses in the subdivision had stoops? Mr. Morgan said he believes the minority of houses in the subdivision have stoops. However, he believes the stoop next door is the most grand because it has the middle landing and the chairs.

Mrs. Hempfling asked if the Building Department is okay with the deck as constructed? Mr. Morgan said he told Mr. Nona to talk with the Building Department before he filed the Variance. Mr. Nona said he talked with them and they have no issue from a building code perspective.

Mr. Whitton asked for a motion. Mr. Shipe made a motion to approve the request with the following condition:

- 1. The deck shall not be covered or enclosed.**

Mr. Whitton seconded the motion.

Mr. Whitton called for a vote. Mr. Shipe and Mr. Whitton voted in favor and Mrs. Hempfling was opposed. The motion carried 2 to 1.

ADJOURNMENT

Mr. Whitton asked for motion to adjourn the meeting. Mr. Shipe made a motion to adjourn and Mrs. Hempfling seconded the motion. Mr. Whitton called for the vote and the meeting was adjourned by unanimous consent at 6:29 p. m.

APPROVED

Mr. George Whitton, Chairman

ATTEST:

**Todd K. Morgan, AICP
Senior Planner**