

**BOONE COUNTY BOARD OF ADJUSTMENT  
BOONE COUNTY ADMINISTRATION BUILDING  
BOONE COUNTY FISCAL COURTROOM  
BUSINESS MEETING  
APRIL 11, 2018  
6:00 P.M.**

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

**BOARD MEMBERS PRESENT:**

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

**STAFF MEMBERS PRESENT:**

Mr. Todd Morgan, AICP, Senior Planner

**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 March 14, 2018. He asked if there were any comments or corrections? Mr. Vaught moved to approve the minutes and Mr. Miller seconded the motion. Mr. Whitton called for the vote and it carried unanimously.

**ACTION ON REVIEWS**

1. Request of **Duke Realty** for a Variance to increase the maximum permitted fence height from 12 feet to 20 feet. The proposed fence would be located near the southern and western property lines and would be 2,070 linear feet in length. The approximate 47.7 acre site is located at 2305 Litton Lane, Boone County, Kentucky. The property is currently zoned Industrial One (I-1) and Industrial Two (I-2).

Staff Member, Todd K. Morgan, presented the Staff Report which included a PowerPoint presentation (see Staff Report). He indicated that he received a letter today from the applicant's sound engineer and it's part of the record (see Exhibit 1). The letter addresses why a 20' wall/fence (used interchangeably throughout these Minutes) is needed and how it will reduce the decibel levels and noise complaints.

Mr. Miller asked if a fence currently existed near the subject property lines? Mr. Morgan said a chainlink currently exists and it's visible in the PowerPoint presentation.

Mr. Scott Palma said he was a construction manager with Amazon. He indicated he had nothing to add to the Staff presentation.

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

Mr. Dan Colletto said he was the Vice President of Leasing & Development for Duke Realty. Duke Realty owns the property and they are working with Amazon to construct the wall.

Mr. Miller asked if the existing retaining wall has been analyzed to verify it can handle the load from the new wall? He also asked if the walls would be connected or if the new wall would be freestanding? Mr. David Wright, with the Kleingers Group, said they were the civil engineers for the project. They have hired a structural consultant for the project. He will design piers for the wall and verify it doesn't bear on the segmental block wall. The new wall will be supported by the piers and not the segmental block wall.

Mr. Miller asked if Amazon has taken noise levels to verify what type of wall needs to be designed? Mr. Palma referred to the letter that was written by the sound engineer. Mr. Miller responded the letter only indicates that a thick (5 to 6 inches) and heavy (at least 7 pounds per square foot) wall should be installed and that it will substantially reduce sound emissions. The letter does not mention the existing decibel levels or what they would be reduced to. Mr. Palma replied the 20' wall will be a robust solution and will mitigate the sound as much as possible. Mr. Miller said that still doesn't answer the question.

Mr. Whitton asked if anybody else in the audience wanted to speak for the request? There was no response.

Mr. Whitton asked if anybody in the audience wanted more information or wanted to speak in opposition to the request?

Mr. Randy Green said he lives near the end of the cul-de-sac, at 2533 Bethlehem Lane. He said one thing that has not been mentioned is the vibration problem. The noise problem is one issue and the vibration problem is another. There are vibrations issues when the trucks back into the docks. These vibrations cause nearby houses to shake all night long. He doesn't believe the wall will solve the vibration problem because the vibrations travel through the ground. The neighbors are concerned about the vibrations because there could be long term impacts to their foundations.

Mr. Whitton asked Mr. Wilson his thought if the vibration issue is related to the request? Mr. Wilson said the Chair can refer the question to the applicant and see if they have anything to offer on the vibration issue. Mr. Whitton asked Mr. Palma if they could address that issue? Mr. Palma said they cannot address if the wall will reduce the vibration issue.

Mr. Greg Donegan said he lived at 2593 Bethlehem Lane. He asked for the sheet 9 sight line drawing to be displayed again. He said the sight lines are taken from different vantage points from ground level and not the upper levels of the homes. A sight line from the second floor of a home would totally change the view point. His home is where the retaining wall is located and the proposed 20' wall will help his view a lot. However, he still believes he will be able to see Amazon's lights from the back of his deck. He believes the two-story houses to the north of him will have bigger issues because they are located at a much higher elevation. He concurs that vibrations are a big problem and doubts the wall will fix the problem. He would like to see the wall constructed because he believes it will

go a long way in alleviating some of the noise and visual problems that they have. There are constant trucks and people walking in the parking lot. They have lost their privacy. Mr. Miller asked the residents if they see the lights or if they shine onto their properties? Many residents responded the light was strong. Mr. Donegan replied that he could go onto his rear deck at night and read a magazine. He added the light is so bright that he can see the shadows across the street from his house and that it is blinding to look at.

Mr. Whitton said Mr. Morgan commented earlier that Staff would be following up on the lighting. Mr. Morgan said he shares Mr. Donegan's concerns about the sight lines. He is concerned about views from second floor windows and views through trees in winter months. Amazon is claiming the wall will fix the lighting problems. Staff will have to go out in the field after the wall is constructed to see if the lighting issue has been addressed. They will have to use light meters and see if Amazon is in compliance with their approved plans. It would also be helpful if the residents would allow Planning Commission Staff in their rear yards.

Mr. Donegan said he would like to see the wall built to help with the visuals and the sound. It is not ideal but he believes it is the only solution for the issues that they have. He would like to know more about the construction and acoustic capabilities of the wall. How much is it projected to reduce the noise level? He added that the wall should work if millions of dollars are going to be spent on it.

Mrs. Sylvia Gayle Courtney said she lived at 2587 Bethlehem Lane. She said the retaining wall that exists now is approximately 35' from her rear property line. The Amazon property sits higher than hers. When she looks up, it looks like the slow lane on I-75. The trucks are constantly going back and forth and they also back up and brake to drop trailers. The trailer drops create huge thuds. She and her husband feel like their happiness with their property has been invaded. They are pleased that Amazon is considering a 20' wall that will also act as a sound barrier. She is still concerned about the lighting. It is like sitting at a football game. The light also comes into their windows and is very intrusive. She also feels the vibrations. They have been dealing with these issues for months. She acknowledged that the retaining wall and landscaping that have been installed are very nice.

Mr. David Courtney said he lives at 2587 Bethlehem Lane. He indicated that there used to be a lot of trees and a gradual slope that went up to where the parking lot addition was constructed. They came in with huge track hoes and worked for weeks to dig the parking lot area out. All of the dirt was used to level out the parking lot. Now there is nothing behind his house. He is closer to the retaining wall than anyone on Bethlehem Lane. He stepped it off and it's 35' from where his grandchildren play. He deals with the noise and people gawking down at him 24-7. One of his neighbors has vintage cars he heard people up above commenting on them. They have no privacy. He said it bothers him that Amazon doesn't have answers to the Staff questions. They have no specific figures on the sound levels. He indicated that he is retired and a good part of his life's work is in his home. He questioned what the value of his home is now versus two years ago.

Mr. James Poe said he lived at 2554 Bethlehem Lane. He asked how long it will take to construct the wall if it's approved tonight? He is very frustrated and upset that Amazon was permitted to do this without putting up the wall first. He doesn't believe any common sense was used in developing the property.

Mr. Mark Lavigne said he lived at 2868 Damascus Road. He imagines the decibel levels would be highest when Amazon gets busy right before Christmas. He realizes that the Board of Adjustment is not dealing with the lighting issue but he asked if Amazon could redirect the lighting away from the residents? Mr. Whitton stated that Staff will be doing another evaluation of the lighting once the wall is completed.

Mr. Whitton asked the applicant to address when they anticipate having the wall completed? Mr. Palma said they have started the design and should be a week or two out on submitting the plans to the County, if the Variance is approved tonight. Mr. Miller asked if the wall was actually going to be a noise attenuation barrier? Mr. Palma said it would be 5" thick and concrete. Mr. Miller highly recommended that Amazon perform a noise study that indicates the current noise levels and design the wall to reduce the decibels as indicated in the sound engineer's letter. Mr. Palma said the wall will be robust and follow the sound engineer's recommendations to mitigate as much noise as possible.

Mr. Bailey asked if they were assuming the sound engineer took the existing decibel levels readings before determining what type of wall should be used? Mr. Palma said they did review the site. Mr. Miller asked if a noise study was completed? Mr. Palma said the sound engineer reviewed the site and the proposed wall is their recommendation. Mr. Bailey asked if they have the existing decibel levels or anticipated decibel level information with them tonight? Mr. Palma said he did not.

Mr. Miller said he will assume that the sound engineer has existing decibel level readings. He asked if they would be willing to make revisions to the wall if it doesn't work per the anticipated noise level reduction? Mr. Palma said they are looking at the sound engineer's proposal to mitigate the noise levels. Mr. Miller asked if they would be willing to reevaluate the wall and look at additional ways to reduce the noise if the wall doesn't achieve the anticipated noise level reduction per the design? Mr. Palma said they would be willing to do that.

Mrs. Peggy Ast said she lived at 2608 Bethlehem Lane. She said a small group of residents from Mars Hill Subdivision met with representatives from Amazon Corporate after the Judge Executive's office arranged it. They were told at this meeting that a decibel study was done and that the readings were extremely high. She asked for a copy of the Study but didn't get one. However, the Study does exist and she feels that it is important to know what those levels are now and what the anticipated reduction will be. The Staff questions have not been addressed. She is in support of the wall because the current condition isn't livable. She doesn't believe the wall will fix the lighting issues because they are extreme. She doesn't now if the lights comply with code. If not, she doesn't understand why the residents would have to wait for the lighting problem to be fixed. Mr. Morgan said Amazon is claiming that the proposed wall will fix the lighting problems. He is skeptical of that but believes that Amazon should be permitted to build it and see if it fixes the problem. Planning Commission Staff will reevaluate the lighting once the wall is constructed.

Mrs. Ast asked how long ago Staff made Amazon aware that they wanted the existing and anticipated decibel level readings? Mr. Morgan responded that he made the applicant's engineer aware of his questions well before the meeting. He was hoping the answers to the questions would be provided tonight.

Mr. Tony Droz said he lived at 2569 Bethlehem Lane. The storm water drainage flows have changed since the parking lot was constructed. He cannot walk in his back yard or mow

his grass when it rains. The truck drivers recently started blowing their air horns at 12:00 A.M. He asked why this was occurring? He said the noise from the trucks hooking up with the trailers is unbelievable. There is a truck going by every 10 seconds and there are 760 truck spaces back there. He asked why they can't move the parking further away from the property line after the wall is constructed? The lighting should be a simple fix. The fixtures should be oriented towards the parking lot and away from the residents. He knows they are trying to fix things but the issues are terrible. Mr. Whitton asked Mr. Morgan if drainage and water flow would have been analyzed with the Site Plan? Mr. Morgan said it would have been covered with the Site Plan. Mr. Morgan said he was not the Staff reviewer. He asked Mr. Droz if he had contacted the Planning Commission regarding the drainage issue? Mr. Droz said he had made Kevin Wall aware of the issue. Mr. Morgan said he recommended that he follow up with Wall regarding that issue.

Mrs. Betty Gordon said she lived at 2628 Bethlehem Lane. She agreed with a statement that was made earlier that there is no reason for truck drivers to be blowing their horns all hours of the night. They could also close the doors on the trailers when the trucks hook up. The open door creates the sonic boom noise all night long. She realizes they probably can't do anything about the backup beeper noise when the trucks are in reverse but they can certainly do something with the doors and horns. There is no need for it.

Mrs. Laurie Donegan said she lived at 2593 Bethlehem Lane. She indicated that there are 760 trailer spaces in the rear lot. She wanted to thank Amazon for their efforts. This is a huge deal because the facility affects their daily lives. They do have some distrust of Amazon. They are wondering how this ever happened between zoning and Amazon. The lights have never been in compliance with code and everyone acknowledges that. However, they are still there. There was initially no plan to have a wall. The residents complained and pressure was applied. The original solution was a small plastic wall that was never constructed and now has been reanalyzed. She thinks the proposed wall is the appropriate acoustic solution. However, the distrust issue remains and that is why they are asking for the sound study and the exact specifications of the wall. This study will tell them how much of the sound issue will be attenuated and make them feel more comfortable.

Mr. Miller asked if the four Staff questions found in the Staff Report were given to Amazon before the meeting? Mr. Morgan replied that the questions were given to the project engineer and an attorney.

Mr. Lee Foley said he was with Amazon. He manages their government relations in the Midwest. He wanted to thank the Planning Commission Staff and Board for organizing and hearing the Variance request. Amazon realizes this is a quality of life issue for the residents. They have heard the residents concerns and are here tonight because of them. He would like to offer himself as a resource to the Planning Commission and the residents. If the Variance is approved, they will continue to work with the community to mitigate as many concerns as possible. They are continuing to grow in Boone County and the region and want to be good neighbors. He distributed business cards to the residents that wanted them.

Mr. Lenny Burch said he has lived at 2560 Bethlehem Lane since 1992. He said the noise and light are unbearable. The seismic booms coming from the parking lot shake his house and he lives on the other side of Bethlehem Lane. He doesn't know why the activities that create the noises can't be stopped versus putting up a wall. Sometimes it sounds like trailers are being drug across the ground and other times it sounds like doors are

slamming. He would recommend that someone should analyze how the trucks get in and out of there. Mr. Whitton recommended that Mr. Burch should get Mr. Foley's business card and discuss these issues in depth with him.

Mr. Charlie Cantrall said he lived at 2701 Fister Place Boulevard. His home is located in the center of the cul-de-sac and was shown in a slide earlier. He knows the lighting issue is not be acted on by the Board tonight. He would like to get notice when further meetings are arranged. He is in support of the proposed wall. He would welcome the Planning Commission in his back yard. The existing conditions are terrible. The description of sonic booms coming from the parking lot is accurate. He is upset because he didn't get notice when construction was planned. He doesn't want to move but he realizes that his property isn't worth what it was two years ago. He doesn't want Amazon to buy them out but he would like to ask if they could install sound insulation or good windows on their homes. Mr. Whitton said that is beyond the purview of this Board.

Mrs. Cara Lavigne said she lived at 2868 Damascus Road. She is two streets removed from the facility and feels the sonic booms. She asked when they can discuss this issue if it is not being heard by the Board tonight? Mr. Whitton said she should discuss that issue with Mr. Foley. She said so that means that Boone County's public officials do not want to hear from them? Mr. Morgan said what this Board is specifically acting on tonight is a Variance request to increase the permitted fence height from 12' to 20'. She asked who they could speak to from the County regarding their other issues? Mr. Whitton and Mr. Bailey said the residents could speak with the Planning Commission or County Commissioners regarding their issues.

Mr. Adam Huff said he lived 2705 Fister Place Boulevard. He said the sight lines studies that were shown tonight do not address views from Fister Place. He is all for the wall but does not believe it will solve the lighting problem. The residents on Fister Place do not have the elevation difference or retaining wall.

Mr. Wilson said he would like to make the public aware that this Board is not a legislative body. It's a Board of Adjustment, which addresses dimension standards and whether or not relief should be granted for a dimensional standard, such as height or building setbacks. The Board doesn't have any authority other than that. He noted that the meeting is being recorded and minutes will be prepared. These minutes can be shared with the full Planning Commission and Boone County Fiscal Court. This Board does not have the authority to address many of the things that the residents are discussing tonight. All they can do is decide if the 12' height limit should be increased to 20'.

Mrs. Victoria Cantrall said she lived at 2701 Fister Place Boulevard. She asked if Amazon was proposing the wall on their own or if it's something they have to do? Mr. Morgan replied they are doing it on their own. She asked what happens if the Variance doesn't get approved? Mr. Whitton replied that they would have to comply with the current regulations, which would allow up to a 12' tall fence. Mr. Miller added that would be up to Amazon because the fence is not required. Mr. Morgan agreed.

Mrs. Cantrall said she heard the lighting will be analyzed more after the wall is built. She asked why they can't look into the lighting issue before the wall is built? Mr. Palma said the sight lines were put together by the Kleingers Group to give them a better perspective of what is going on from the neighbors yards. Initially they looked at doing a 12' fence and lowering the height of the lights. They will be fully committed to lowering the height of the

lights if the wall doesn't rectify the lighting problems. Installing the wall will give them a chance to analyze what impacts remain and adjust accordingly. Mrs. Cantrall asked what could be done to the lighting post wall construction? Mr. Morgan replied they could lower the fixtures, reorient them, or install cutoff fixtures. Mrs. Cantrall said the Planning Commission is welcome on her property when the lighting analysis is performed.

A gentleman from the audience asked who makes the rules and regulations that a wall isn't required? Mr. Morgan said the Boone County Zoning Regulations are updated approximately every 5 years. The Planning Commission drafts them with public input and they are reviewed and adopted by the four legislative bodies. The gentleman said they should have been made aware before any construction took place. Mr. Morgan said public notice isn't given when a property is appropriately zoned. The subject parcel has been zoned Industrial One (I-1) and Industrial Two (I-2) since 1980. The public would have been notified if a zone change was being proposed.

The gentleman asked how does the public know that meetings are taking place? Mr. Morgan said the Planning Commission puts meeting notices in "What's Happening" when the Boone County Comprehensive Plan and Boone County Zoning Regulations are being updated. Mr. Wilson added that public agencies, like the Planning Commission and Boone County Fiscal Court, establish the nights of their regular Business Meetings each year and these dates are published. The public is welcome to attend all meetings. Mr. Vaught added that meetings are also advertised on the Planning Commission and County websites. Mr. Miller said the public can also sign up to receive the County newsletter. It advertises upcoming meetings and events.

Mr. Bailey asked for a show of hands of those people in the audience that were in support of the proposed wall. All or nearly all of the people in the audience raised their hands.

Mr. Whitton asked for a motion.

**Mr. Miler made a motion to approve the request with the following conditions:**

- 1. The applicant shall submit a noise study with the Site Plan application which documents the highest decibel levels that have been recorded at the southern and western property lines of the subject site.**
- 2. The applicant's fence/wall design and sound study shall document how much noise will be attenuated at the southern and western property lines after the structure is constructed.**
- 3. The applicant shall record the decibel levels along the western and southern property lines after the fence/wall is constructed and provide the information to Boone County Planning Commission Staff.**
- 4. The applicant agrees that the post construction decibel levels along the southern and western property lines shall comply with their design and noise study documentation or additional noise mitigation will be performed.**

**Mr. Vaught seconded the motion.**

Mr. Whitton indicated that Amazon isn't required to do anything. Mr. Miller responded they indicated the wall would be designed correctly and these conditions would guarantee that. Mr. Whitton said he would not vote for approval with those conditions.

Mr. Palma asked for a clarification on the proposed conditions. Mr. Miller said the wall design will have to be submitted to the Planning Commission and Building Department for approval. The conditions require the following additional information to be submitted when the plans are submitted for review: (1) the noise study that recorded the existing decibel levels at the property lines, (2) the attenuation level (decibel reduction) that will be achieved by the wall design, and (3) a noise study after the wall is constructed to verify it achieves the designed attenuation levels. In addition, they would agree to perform additional noise mitigation if the wall does not reduce the noise levels per their design.

Mr. Palma asked for another clarification. He asked who would be setting the noise reduction standard? Mr. Miller said the Board is not setting the standard. The noise reduction conditions are based on a sound study that was already conducted by Amazon and the anticipated attenuation levels that will be achieved from the wall design. The conditions verify the 20' wall that is being put in will achieve the noise levels reductions that the applicant's team says it will. If the wall does not achieve the noise level reductions that it's designed for then the applicant will look at further noise mitigation.

**Mr. Whitton asked for a roll call vote on the motion. Mr. Whitton - "no", Mr. Bailey - "no", Mrs. Hempfling - "yes", Mr. Miller - "yes", and Mr. Vaught - "yes". The motion carried 3-2.**

### **OTHER**

Mr. Morgan said the Board needs to elect officers. Mr. Whitton is currently the Chairman, Mr. Miller is Vice-Chairman, and Mrs. Sparks was the Secretary/Treasurer before she resigned. Mr. Morgan asked if Mr. Whitton and Mr. Miller wanted to remain in their positions? They both indicated they did. He asked for additional nominations and there was no response. Mr. Morgan asked if anybody would like to be Secretary/Treasurer? Mr. Vaught said he would run for that position. Mr. Morgan asked if anybody else was interested? There was no response. Mr. Miller said he would make a motion to nominate the slate as proposed. Mrs. Hempfling seconded the motion. Mr. Whitton called for the vote and it carried unanimously.

### **ADJOURNMENT**

Mr. Whitton asked for a motion to adjourn the meeting. Mr. Vaught made a motion to adjourn and Mr. Miller seconded the motion. Mr. Whitton called for the vote and the meeting was adjourned by unanimous consent at 7:13 p.m.

**APPROVED**

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**Mr. George Whitton**

**ATTEST:**

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

Exhibit

1. 4/11/18 Letter From Benjamin C. Mueller, P.E.