

**BOONE COUNTY BOARD OF ADJUSTMENT  
BOONE COUNTY ADMINISTRATION BUILDING  
BOONE COUNTY FISCAL COURTROOM  
BUSINESS MEETING  
SEPTEMBER 12, 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. Chris Vaught  
Mrs. Sherry Hempfling  
Mr. Richard Miller, Vice-Chairman  
Mr. William Weltzer

**BOARD MEMBERS NOT PRESENT:**

Mr. George Whitton

**STAFF MEMBERS PRESENT:**

Mr. Todd K. Morgan, AICP, Senior Planner  
Mr. Michael Schwartz

**LEGAL COUNSEL PRESENT:**

Mr. Dale T. Wilson

**APPROVAL OF MINUTES**

Mr. Miller stated the Board members received copies of the minutes of the Boone County Board of Adjustment meeting of June 13, 2018. He asked if there were any comments or corrections? Mrs. Hempfling moved to approve the minutes and Mr. Vaught seconded the motion. Mr. Miller called for the vote and it carried unanimously.

**ACTION ON REVIEWS**

1. Request of Toby J. Frohlich for a Conditional Use Permit to allow an event center, off-street parking area, and small cabins/treehouses on an approximate 143 acre property located at 12226 Kite Lane, Boone County, Kentucky, which is currently zoned Agricultural Estate (A-2).

Staff Member, Michael Schwartz, presented the Staff Report which included a Powerpoint presentation (see Staff Report). He noted that several agencies submitted comments for the Board's consideration. He also noted that a letter was received from Elizabeth S. Frye, dated September 6, 2018, indicating that she was opposed to the proposed application (see Exhibit 1).

Ms. Jennifer Frohlich stated that she and her husband, Mr. Toby Frohlich, originally purchased the property for their home. She stated that they wanted to have a couples

retreat, but that would not be enough to pay for the cost of construction. They decided to supplement the couples retreat with an events center and short term rental cottages. They envision the facility for seniors day, proms, or weddings. They plan to live on the property so as to keep an eye on the activities.

Mr. Toby Frohlich stated that the ground has been tested for a septic tank. However, he does not have the results of those tests with him. He has talked to the road department and is aware that he would be responsible for the costs associated with any required road widening. The event center would have two bathrooms and a kitchen sink. The shower house will be on a septic system and a cistern. He stated that there would be no outside music and any indoor music would be stopped by 11:30 pm.

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

Mr. Miller asked if anybody in the audience wanted to speak against the request.

Ms. Barbara Hamilton stated that it was her understanding that the property was to be used for a home and personal recreation. She stated that her concerns were regarding access, sewage, and the proximity of the flood plain to the site. She asked if the property owner was going to have a liquor license. She also stated that the fire hydrants in the area do not provide sufficient water flow for fire protection.

Ms. Trisha Hamilton stated that the ground tests were performed over a year ago and asked if there were any recent tests. She had concerns regarding the ability of first responders to get access to the proposed development. She stated that she is concerned about people trespassing onto adjacent properties. She stated that there is a lot of noise from ATVs currently using the property. She asked about the safety of people using the proposed treehouses. She asked if the property owner was going to provide security to the adjoining property owners.

Mr. John Sharp stated that there is a lot of off road four wheel drive vehicle noise coming from the property. He asked if there will be lights shining onto his property. He stated that he believes that the proposed development will disrupt the peaceful nature of his property.

Mr. Todd Hamilton stated that he has lived on his property his entire life and that the area is very peaceful. He is concerned of the amount of traffic that will be on Kite Lane. He asked where the leach lines will be located and the potential for runoff onto his property.

Mr. Joe Potts stated that he has lived on his property for twenty-one years and that it is quiet and he can hear various animals. He asked what the immediate impact of the development will be on his property and what the impact will be on his future property value. He stated that the area has limited utilities and access. He stated that there is a forty minute response time for fire protection. He asked what the days and hours of operation will be for the proposed development. He stated that ATVs are running on the property until 2:00 a.m. He asked if there will be any restrictions on entertainment. He asked if the cottages will be seasonal rental or all year rental. He asked if there will be any hunting allowed on the property. He stated that he is concerned about noise since they are in a valley and the noise travels far. He asked if there are any current or future plans for tents or RVs.

Mr. Miller read a letter from Ms. Elizabeth Frye stating that she was opposed to the application.

Mr. Dwight Workman stated that he had moved to the area to be off the beaten path and that ATVs have chased off wildlife for hunting.

Mr. Ron Cornelius stated that the ATVs are dangerous for hunters in the area.

Ms. Judy Krey stated that her concern is for fire safety.

Mr. Greg Staggs stated that the ATVs are very loud and that there are currently parties that last until 2:00 - 3:00 a.m. He stated that he believes that this is the first step in a series of changes for the property. He stated that there are a lot of hunters in the area and the proposed development will be dangerous. He is also concerned about his future property value.

Ms. Kacy Hamilton stated that she has a three year old child and they walk on Kite Lane with no current worries about traffic. She stated that she is concerned that with the additional traffic, and that there are no sidewalks on Kite Lane, that there is a safety issue.

Mr. Miller asked if there was anyone else that wanted to speak.

Mr. Frohlich provided the Board with pictures showing the conceptual design of the event barn (see Exhibit 2). Mr. Frohlich stated that the proposed development would limit the current ATV and hunting use of the property.

Mr. Miller asked if any Board members had any questions or comments.

Ms. Hempfling stated that there appears to be too many unresolved issues.

Mr. Weltzer stated that he may have a conflict of interest. Mr. Wilson described how a conflict of interest is determined. Mr. Wilson stated that it is up to the individual Board member to determine if a conflict of interest exists. He further stated that if a Board member states that he or she has a conflict of interest, that member must leave the room and not be present for any discussion, deliberation, or action. Mr. Weltzer declared that he may have a possible financial conflict of interest. Mr. Weltzer left the room.

The Board had a discussion regarding tabling any action, asking the applicant to withdraw the application, or taking final action on the application.

Mr. Miller made a motion to deny the application based on insufficient information being submitted to determine compliance with Sections 262 and 623 of the Boone County Zoning Regulations.

Mr. Vaught seconded the motion. Mr. Miller asked if there was any further discussion. There was no response. He called for the vote and it carried unanimously.

Mr. Weltzer returned to the room.

2. Request of Jon Scott for a Variance to allow the installation of a six (6) foot high fence within the corner side yard of property located at 4800 Dartmouth Drive, Boone County, Kentucky, which is currently zoned Suburban Residential One (SR-1).

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

Mr. Miller asked if the applicant was present and wanted to address the Board.

Mr. Jon Scott stated that he has dogs and that a four foot high fence was not tall enough to contain them. He stated that given the closeness of his property to Conrad Lane, a six foot high fence was necessary.

Mr. Miller asked if there was anyone in the audience that wanted to speak for or against this application. There was none.

Mr. Miller made a motion to approve the variance as requested. Ms. Hempfling seconded the motion. Mr. Miller asked if there was any further discussion. There was no response. He called for the vote and it carried unanimously.

3. Request of Jonathan P. Marley for a Conditional Use Permit to allow the sale of used motor vehicles on an approximate 1.35 acre property located at 5744 Commercial Drive, Boone County, Kentucky, which is currently zoned Industrial One (I-1).

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

Mr. Miller asked if the applicant was present and wanted to address the Board.

Mr. Jonathan Marley stated that they had run out of space at their current location. He stated that the paved area is currently striped and will be restriped.

Mr. Miller asked if the applicant was agreeable to the same condition that was placed on his previous application. Mr. Marley stated that he would accept the condition.

Mr. Miller asked if there was anyone in the audience that wanted to speak for or against this application. There was none.

Ms. Hempfling made a motion to approve the conditional use as requested, with the condition that the business shall be operated per the applicant's description. Mr. Vaught seconded the motion. Mr. Miller asked if there was any further discussion. There was no response. He called for the vote and it carried unanimously.

4. Request of Phillip Roe for a Conditional Use Permit to allow a dog kennel with daycare, boarding, training, indoor swimming and grooming. The approximate 2.25 acre site is located at 10248 Dixie Highway, Boone County, Kentucky and is zoned Industrial One (I-1) and Industrial Two (I-2).

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

Mr. Phillip Roe said he was present. Mr. Miller asked if he could answer the questions found in the Staff Report?

A. What are the proposed hours of operation?

Mr. Roe said they operate from 7:00 A.M. to 7:00 P.M. every day. They also have a Staff person that stays on-site overnight.

B. Is the operation limited to dogs or could other animals be boarded on site?

Mr. Roe said they are planning on having a small cat boarding room on the back side of the building. It will probably be limited to 10 cats. They have a few dog owners that also own cats.

C. Approximately how many dogs could be on site at any given time (boarding, daycare, training, swimming, grooming, etc.).

Mr. Roe said they could have 40 dogs in daycare. They also have 15 single dog suites and 2 double dog suites. As a result, he would approximate that they could have 80 dogs on site if they were maxed out on grooming and boarding. Most of those dogs would be inside. The outdoor play yards would be used to let the dog use the bathroom and for exercise.

D. Approximately how many Staff members will work on site at any given time?

Mr. Roe said the plan is to have between 6 and 8 employees. They currently have 5 to 6 employees at their Constitution Drive facility.

E. The plan seems to show kennels inside and outside the building. Could dogs be left in outside kennels overnight?

Mr. Roe said Dogs would not be left outside overnight. That would be a big liability issue.

F. Will the outdoor play areas behind the building be fenced? If so, what type of fencing is proposed?

Mr. Roe said they will be fenced. He plans on doing 5' tall white vinyl fencing with a 1' tall trellis section on top. This would limit the dogs visibility and allow employees to see each other.

G. Is any exterior lighting being proposed in the parking lot or play yards?

Mr. Roe said he would like to have some lighting in the parking lot but they are already way over budget. He may do a couple of spot lights on the building that illuminate the parking lot. They would be motion activated.

- H. Are the existing trees shown in the front and rear yard proposed to remain?

Originally, he planned on thinning some of them out so he had more exposure. However, his employees like the trees because they make the property more secluded. He is now leaning towards keeping the majority of the trees because he will be able to advertise from a sign that's located near the road. He said a couple of trees will need to go in order to construct the parking lot.

- I. Is the existing chainlink fencing along the front, side, and rear property lines going to be removed? Note - The site is being redeveloped and the chainlink fence does not meet the fencing and/or buffer yard requirements. The fencing will need to be removed along the front and side property lines. The Zoning Administrator has indicated he will approve a Waiver to allow the chainlink fence to remain on the rear property line so the deciduous tree line can remain intact.

Mr. Roe said he plans on removing it. He doesn't think it looks good and parts of it have been torn down. He might want to keep the one section along the rear property line so he doesn't have to disturb the tree line along the rear property line. If possible in the future he may want to add a secondary chain fence in the rear yard as an extra safety precaution in case a dog gets out. He visualizes doing a 6' tall black vinyl coated chainlink fence.

- J. Can any masonry be added to the front facade of the building?

Mr. Roe said they are already way over budget but he did get some pricing on adding a 4' section of masonry to the front of the building. It would be a \$20,000 option. He would like to do it in the future because he thinks it would look great.

- K. Has a decision been made regarding the speculative tenant space? Will it be used as part of the kennel operation or well another business lease it.

Mr. Roe said he was hoping to be all in one center for pets. He has talked with a couple of vets but they need more space than he can offer. He is now leaning to keeping the space as part of his business.

Mr. Vaught asked if he was good with the Staff recommendations? Mr. Roe said he would add the masonry knee wall if it was needed to get approval. He would certainly be willing to do it later. He thinks the stone would look nice and break up the front of the building. He is fine with the rest of the recommendations. Mr. Morgan said the masonry knee wall condition could be difficult to enforce if he still doesn't have the funds to construct it in 12 months. He would rather the condition require it from the start or not require it at all.

Mr. Miller asked if anyone in the audience wanted to speak in favor of or against the request? There was no response.

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

1. The approval is based on the preliminary plan. Existing tree lines shown as being preserved shall be required vegetation. Minor changes to the plan can be approved by the Zoning Administrator.

2. No exterior lighting shall be oriented towards the adjoining household to the north.
3. All animals staying on-site overnight shall be kept indoors.
4. All fencing and landscaping shall comply with the Boone County Zoning Regulations unless a Waiver is issued by the Zoning Administrator.

Mr. Weltzer seconded the motion. Mr. Miller called for a vote and it carried unanimously.

5. Request of M&A Schmidt Investments, LLC for a Variance to allow a barn to encroach into the required 30' corner side yard setback near the terminus of Rosensteil Road. The 124.7724 acre site is located on the northeast corner of the Verona Mudlick Road/Rosensteil Road intersection and directly across from Verona Mudlick Road/Porter Road intersection, Boone County, Kentucky and is zoned Agricultural Estate (A-2).

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

Mr. Tony Schmidt said he and his wife own the property. He has known Beth Long for a long time and she operates New Day Ranch. She needed a place to operate and Steve Cauthen was selling his property. He and his wife decided to buy the property and lease it to New Day Ranch for \$100 a month. This is a non profit business. He has set up a small office for her on the property and it has a bathroom. There is currently no meeting room and it can be extremely cold down there in the winter. The proposed building is a pavilion with some storage space. He submitted the proposed building elevations into the record (see Exhibit 3). Beth deals with a lot of handicapped children and they want to build the structure as close to the road as possible.

Mr. Miller asked if anyone in the audience wanted to speak in favor of or against the request?

Mr. Vaught made a motion to approve the request and Mrs. Hempfling seconded the motion. Mr. Miller called for a vote and it carried unanimously.

**OTHER**

No other business was discussed.

**ADJOURNMENT**

Mr. Miller asked for a motion to adjourn the meeting. Mr. Vaught made a motion to adjourn and Mrs. Hempfling seconded the motion. Mr. Miller called for the vote and the meeting was adjourned by unanimous consent at 7:47 p.m.

**APPROVED**

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**Mr. Richard Miller**

**ATTEST:**

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

Exhibits

1. Letter from Elizabeth S. Frye
2. Pictures submitted by Toby Frohlich
3. Building elevations submitted by Tony Schmidt.