

**BOONE COUNTY BOARD OF ADJUSTMENT
BOONE COUNTY ADMINISTRATION BUILDING
BOONE COUNTY FISCAL COURTROOM
BUSINESS MEETING
AUGUST 10, 2022
6:00 P.M.**

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

BOARD MEMBERS PRESENT:

Mr. George Whitton, Chairman
Mr. Chris Vaught-Hall
Mrs. Sherry Hempfling
Mr. Bill Weltzer

BOARD MEMBERS NOT PRESENT:

Mr. Richard Miller, Vice-Chairman

STAFF MEMBERS PRESENT:

Mr. Michael Schwartz, Director, Zoning Services
Todd Morgan, AICP
Alaina Hagenseker

LEGAL COUNSEL PRESENT:

Mr. Dale T. Wilson

APPROVAL OF MINUTES

Chairman Whitton stated the Board members received copies of the minutes of the Boone County Board of Adjustment meeting of July 13, 2022. He asked if there were any other comments or corrections. There were none. Mrs. Hempfling moved to approve the minutes. Mr. Vaught-Hall seconded the motion. Chairman Whitton called for the vote and it carried unanimously.

Chairman Whitton stated that the agenda was being modified and that the last item on the agenda would be heard first.

ACTION ON REVIEWS

4. Request of Mohamed Falls for a Conditional Use Permit to allow the existing single-family residential dwelling to be used as a short term rental. The approximate 0.29 acre area is located at 1867 Grovepointe Drive, Boone County, Kentucky and is zoned Suburban Residential One/Planned Development (SR-1/PD).

Mr. Dale Wilson stated that the Boone Circuit Court issued an order sending the issue

back to the Board to make findings of fact, based upon the record, to support their original decision to deny the application. Mr. Wilson stated that this is not a public hearing and the Court already has the record of the November 10, 2021 meeting. Mr. Wilson stated that it is up to the Board to make the appropriate findings of fact.

Chairman Whitton asked if there was any further discussion. There was none. Chairman Whitton asked if the Board wanted to make a motion.

Mr. Vaught-Hall made a motion to deny the request, based on the record of the public hearing meeting, and based on the following findings of fact.

1. Mr. Fall's property proposed for a Short-Term Rental is a detached single-family dwelling at 1867 Grovepointe Drive, within a section of Oakbrook Development located in unincorporated Boone County, Kentucky. This property is a two-story, detached single family residential dwelling of approximate 0.26 acres that has surrounding land uses in all directions of abutting detached single-family residential dwellings, all of which are zoned SR-1/PD. Boone County's current Comprehensive Plan (Our Boone County Plan 2040) designates this community for future land uses of Suburban Density Residential, having no more than four units per acre. Section 930 of Boone County's Zoning text describes this Zoning District as providing a low-density residential environment typical of a suburban character with limited or passive and active recreational uses appropriate for detached single-family dwellings, patio homes, or detached single-family landominiums. (Staff Report, AR at BC000053). During the November 10, 2021 hearing, Applicant's counsel urged, among other things, that his client complied with all regulations, and there is no difference between a Short-Term Renter and a Long-Term Resident, and that Applicant maintains the property in a professional manner, complying with all restrictions (Minutes, AR at BC000024). The record, however, disputes these assertions.
2. Neighbors of Mr. Fall's subject property spoke at the November 10, 2021 hearing that the Applicant's property had been used as a Short-Term Rental for two years, resulting in multiple parties, trash, and fights, excessive noise, increased traffic, parties going into the night and early morning. Results from this activity for the neighbors has been excessive trash and neighbors stating that they were unable to enjoy their property because of the noise. During this time frame, Applicant has not maintained his property and neighbors provided pictures of the property's condition supporting that testimony. (Minutes, AR at BC00019-000031). Another neighbor, Scott Knox, submitted as part of the record an email stating that while the Short-Term Rentals were occurring, groups of different people would show up leaving trash that he had to pick-up that included beer cans out in the street and from his own yard. Further, he witnessed a fight one evening and the Sheriff's deputies were called. Mr. Knox also reported that the legal notice sign of the Board of Adjustment meeting was removed from Mr. Fall's yard by someone. (AR at BC 000032-000034).
3. Mr. Fall addressed the Board through his legal counsel noting that his on-line

reviews on his Short-Term Rental arrangements were very good on average and that, moving forward, he was going to manage the property in a better, more professional manner, and that the conditional use process allows for better monitoring of the property in the future. (AR at BC 000025). This rebuttal does not refute that neighbor's testimony, nor does it offer how he as an absentee owner is going to monitor his Short-Term Rental arrangements. Instead, he is going to leave the monitoring tasks to neighbors, county administrative employees, and local police. No other arrangements or methods were included in the Applicant's Application or his presentation at the November 10, 2021 Hearing. These actual disruptions to the residential community caused by Short-Term Rental usage of Applicant's property clearly show a significant difference between a Short-Term Renter and a Long-Term Resident. The former is not engaged or integrated as part of the residential community and it is the responsibility of the absentee owner to make arrangements for proper management and monitoring of his or her Short-Term Renters to avoid such disruptions. Here, Applicant fails to address that obligation to protect the Long-Term Residents and their properties.

4. Recognizing distinctions between Short-Term Renters and Long-Term Residents, Boone County's Zoning text for properties zoned SR-1 lists detached single-family dwelling units as permitted uses, but Short-Term Rentals are conditional uses within that same zoning classification. (Section 931 and Section 933). The Boone Fiscal Court in authorizing licensing for Short-Term Rentals passed Ordinance No. 2021-31 to satisfy a need for regulating Short-Term Rentals, but only in a manner which would not negatively impact the property of others.
5. Mr. Fall's Application fails to satisfy general standards applicable to all conditional uses set forth in Section 262 of Boone County's Zoning text. That section directs this Board to consider, among other things, whether the proposed use at the particular location will be harmonious and in accordance with general objectives of the County Comprehensive Plan. That Plan (Our Boone County Plan 2040) contains Goals and Objectives applicable to this Application, one of which provides that mixing of residential and other land uses shall be encouraged where appropriate. Further, land uses and zoning decisions are to strive to balance the rights of land owners, with the rights of neighbors, and the community. (Overall Goal A, Objective II & Objective IV). Other Goals and Objectives state that "Tourist Oriented Commercial Facilities" should be encouraged provided that the impacts on other land uses are minimal. (Natural & Cultural Resources Goal A, Objective 4) and, further, mixing of Commercial and Non-Commercial uses shall occur in areas where consideration has been given to insure compatibility with surrounding land uses and natural systems. (Economic Goal B). Applicant fails to meet this standard.
6. Another standard of Section 262 is that the proposed use at the particular location is designed, constructed, operated, and maintained to be harmonious and appropriate in appearance with the existing or intended character of the general vicinity and shall not change the essential character of the same area. The record shows that this standard is not met by the Applicant.

7. Another standard of Section 262 requires that the proposed use at the particular location should not involve uses, activities, process, materials, and equipment of operation that would be detrimental to any persons, property, or the general welfare by reason of excessive production of traffic, noise, smoke, dust, fumes, glare, or odors. Here, the record supports the finding that this Application does not meet this standard.

Mr. Vaught-Hall concluded his motion by entering the document titled “Findings Upon Remand From Boone Circuit Court Division III Case No. 21-CI-01425” into the record (attached to the Minutes).

Mr. Weltzer seconded the motion.

Chairman Whitton called for the vote and it carried unanimously.

1. Request of Kentucky Riverfront Retreat LLC, per Travis and Kellie Arnold, for a Conditional Use Permit to allow the existing single-family dwelling to be used as a short term rental. The approximate 0.5 acre area is located at 6893 Vantage Court, Boone County, Kentucky and is zoned Suburban Residential One/Planned Development (SR-1/PD).

Staff Member, Alaina Hagenseker, presented the Staff Report which included a Powerpoint presentation (see Staff Report).

Chairman Whitton asked the Board if they had any questions for staff.

There were none.

Chairman Whitton asked if the applicant wanted to address the Board.

Mr. Travis Arnold read a letter into the record (attached to the Minutes).

Mr. Arnold stated that he has received a violation letter from the County and due to a misunderstanding, the County has made a determination that no violation exists (attached to the Minutes).

Mr. Arnold stated that he currently has a renter in the house and that the renter will be there for at least 30 days.

Chairman Whitton asked the applicant to clarify the 30-day limitation on this property.

Mr. Arnold replied that he is currently renting the property with a minimum 30 day stay until the Board approves his Conditional Use Permit.

Chairman Whitton asked if the Board had any questions of the applicant.

Mrs. Hempfling asked how long has the property been rented.

Mr. Arnold replied that the renter moved in on July 29, 2022.

Mrs. Hempfling asked if that was the only renter he has had.

Mr. Arnold replied yes. He stated that he purchased the house on May 5, 2022 and that they did some renovations and put the house on the rental market in late July.

Mr. Weltzer asked if it his intention to keep a 30 day rental.

Mr. Weltzer replied that the current renter will be leaving on August 29, 2022 and that he has another renter beginning on September 12, 2022. He stated that he would like to conduct short term rentals in between so as to continue to earn rent.

Mrs. Hempfling asked how the renters are vetted.

Mr. Arnold replied that he asked potential renters various questions, such as what brings them to the area, do they smoke, do they have any pets, how many guests would be there and their ages, etc.

Mr. Arnold stated that at his other short term rental, he has had only two groups that were not coming to the area to visit the Ark Encounter and the Creation Museum.

Mr. Vaught-Hall asked if he has had any contact with any of the neighbors.

Mr. Arnold replied that he has spoken to Mr. Bundy and that he has tried to reach other neighbors by sending out a card with his contact information.

Mr. Arnold summarized his conversation with Mr. Bundy.

Mr. Vaught-Hall asked if the property would be rented as an individual or through a corporate entity.

Mr. Arnold replied that he is/will rent through a business entity to reduce personal liability exposure.

Mr. Weltzer asked the applicant to summarize his vetting process.

Mr. Arnold replied that a potential renter must send a booking request and then they must answer a series of questions.

Mr. Arnold stated that he has a security company on call to address any violations of the house rules.

Mr. Weltzer asked how he monitors the property.

Mr. Arnold replied that he has outdoor cameras that are linked to his phone and that he gets messages if the camera picks up movement or noise.

Mr. Weltzer asked how he keeps in contact with the neighbors.

Mr. Arnold replied that he has sent the neighbors his contact information and they can contact him if there are any problems.

Mrs. Hempfling asked how this property is different from his other property.

Mr. Arnold replied that this property has more land, is more private than his other property, and has fewer adjoining property owners.

Chairman Whitton asked if there was anyone present that wanted to speak to this issue.

Ms. Melinda McGriffin asked how long is the certificate good for.

Mr. Schwartz replied that the Conditional Use Permit runs with the land and that the County permit must be renewed each year.

Ms. McGriffin asked if any inspections are made once approval is given.

Chairman Whitton stated that the planning office would respond to any complaints or violations, but does not conduct an inspection.

Ms. McGriffin stated that the process places an undue burden on the neighbors to police the activity of the short term rental. She stated that it is inappropriate to place a business in a residential area, especially in a cul-de-sac. She asked if the approval of the permit can be based on the neighbors agreement to have a short term rental next to them.

Chairman Whitton replied that the Board makes its decision based on the law and not whether there is consensus among the neighbors.

Ms. McGriffin stated that she believes that it is a burden on the neighbors to watch the property for violations and that the yearly permit renewal is too much time.

Mr. Wilson stated that if a violation occurs, the County can determine if the violation is valid and can revoke their permit for noncompliance. He also stated that the County has monetary fines for non-compliance.

Mr. Cliff Wartman stated that he has real estate experience and that he has met with several neighbors. He stated that they thought that the property was going to a bed and breakfast which is an owner occupied rental. He stated that once they realized that it was going to be a short term rental, they felt that this would be a macro hotel in their neighborhood. He stated that there is no need for short term rentals based on a discussion he had with the Convention and Visitors Bureau. He stated that there are 33 hotels in the area and they have an average 70% occupancy rate. He stated that the Oakbrook

Subdivision is a no outlet subdivision, meaning that all of the cul-de-sac streets go out to other streets. He stated that a lot of kids play in the street and that all of the neighbors are aware of this situation. He stated that a short term renter would not necessarily know this situation.

Mr. Robert Bundy stated that he is the immediate neighbor to this property. He stated that when he first spoke to Mr. Arnold, Mr. Arnold told him that it was his intention to rent the house to an Executive with Amazon. During the renovation of the house, he stated that Mr. Arnold told him that their intentions had changed and that they would like to have a short term rental. He stated that he believes that the short term rental will be detrimental to his health due to various disruptions. He provided a history of the property and stated that the property had been condemned. He stated that Mr. Arnold did not have any inspections prior to his taking ownership of the property. He stated that Mr. Arnold does not currently abide by neighborhood policies and norms.

Mr. Mohamed Fall stated that he is in favor of this application. He asked if the Board's decision is based on the community's desire or certain criteria.

Mr. Wilson replied that there is a staff report and that they follow the regulations in making their decision and based on the facts of the case.

Mr. Fall asked if the Board asks for evidence to back up the accusations of the public.

Mr. Wilson asked Mr. Fall if he has a position on the current issue.

Mr. Fall stated that he was curious if there is any evidence to substantiate a speaker's claim.

Mr. Wilson stated that the Board listens to all speakers.

Mr. Fall asked if the Board asks speakers to provide anything that supports their statements.

Mr. Wilson stated that the Board listens to the evidence that is provided. Mr. Wilson asked Mr. Fall if he had any evidence relative to this issue that he wanted to present to the Board.

Mr. Fall replied no that he was speaking in general.

Chairman Whitton stated that they are here to discuss this issue and not generalities.

Mr. Fall asked if an application is denied, can it still be marketed as a short term rental.

Mr. Wilson stated that those type of questions should be directed to staff and that the Board is conducting a public hearing relative to this specific request.

Ms. Heather Tenney stated there are deed restriction stating that no business can be conducted on the property (attached to the Minutes). She stated that the applicant did

have an online posting advertising the property for less than 30 days and for up to 16 people.

Mr. Wilson stated that deed restrictions are not public laws and are separate from zoning regulations. He stated that the government does not have the right to enforce deed restrictions.

Ms. Denise Newbolt stated that background checks should be part of the vetting process. She referenced the definition of a short term rental. She asked how is a short term rental different than the exceptions listed in the definition.

At 7:08 pm, Chairman Whitton called a recess to the meeting.

At 7:12 pm, Chairman Whitton called the meeting back to order.

Chairman Whitton asked the applicant if he wanted to address the concerns brought up by the public.

Mr. Arnold stated that there is a need for short term rentals. He stated that his clientele is families who would otherwise have to get more than one hotel room. He stated that a short term rental and a hotel are two different products because with a short term rental you get a kitchen, yard, and sometimes a garage. He stated that he purchased the property from the owner and that he had inspections conducted which found no mold. He stated that he does do background checks, nor are they required.

Chairman Whitton asked if there was any further discussion. There was none. Chairman Whitton asked if the Board wanted to make a motion.

Mr. Vaught-Hall made a motion to deny the Conditional Use Permit based on the following finding of fact.

1. The proposed short term rental can cause excessive noise and additional traffic.
2. The proposed short term rental will be hazardous to existing and future uses within the vicinity of the site.
3. The proposed short term rental is at the end of a cul-de-sac and with people that might not be familiar with the area could get lost, which would create additionally safety hazards.
4. The proposed short term rental was advertised before the Conditional Use was permitted at this address.
5. The applicant did not adequately address the conditional use request.
6. The applicant is not prohibited from using the property for long term rentals or other permitted uses as permitted in the zoning regulations.

Mrs. Hempfling seconded the motion.

Chairman Whitton called for a voice vote which found Chairman Whitton, Mr. Vaught-Hall, Mrs. Hempfling, and Mr. Weltzer voting in the affirmative. The motion to deny the application passed unanimously.

2. Request of Raymond Hughes for a Variance reducing the road frontage requirement from one hundred fifty (150) feet to one hundred (100) feet and 125.53 feet, in order to subdivide the property into two (2) lots. The approximate 28 acre parcel is located along the north side of Petersburg Road, east of 5080 Petersburg Road and west of 5100 and 5110 Petersburg Road, Boone County, Kentucky and is zoned Agricultural Estate (A-2).

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

Chairman Whitton asked the Board if they had any questions for staff.

There were none.

Chairman Whitton asked if the applicant wanted to address the Board.

Mr. Raymond Hughes stated that he intends to have his child occupy one of the lots. He stated that the other homes to the east are relatives.

Chairman Whitton asked if there was anyone present that wanted to speak to this issue. There were none.

Chairman Whitton asked if there was any further discussion. There was none. Chairman Whitton asked if the Board wanted to make a motion.

Mr. Vaught-Hall made a motion to approve the Variance. Mr. Bill Weltzer seconded the motion.

Chairman Whitton called for the vote and it carried unanimously.

3. Request of Mr. Fuel for a Variance increasing the height of a directional sign from five (5) feet to ten (10) feet and increasing the sign area of a directional sign from six (6) square feet to ten (10) square feet. The approximate 4.5 acre parcel is located at 118 Richwood Road, Boone County, Kentucky and is zoned Commercial Services (C-3).

Staff Member, Alaina Hagenseker, presented the Staff Report which included a Powerpoint presentation (see Staff Report).

Chairman Whitton asked the Board if they had any questions for staff.

There were none.

Chairman Whitton asked if the applicant wanted to address the Board.

Ms. Brooke Alini stated that a sign under the regulations would not be visible due to the construction that is taking place on Richwood Road. She stated that permanent signage will be placed once the construction is completed.

Chairman Whitton asked if there was anyone present that wanted to speak to this issue.

Mr. Tim Johnson stated that some of their signage is in the right-of-way as well as being on his property.

Ms. Alini stated that she will look into the sign that is on his property and will have it either moved or removed.

Chairman Whitton asked if there was any further discussion. There was none. Chairman Whitton asked if the Board wanted to make a motion.

Mr. Weltzer made a motion to approve the Variances. Mr. Vaught-Hall seconded the motion.

Chairman Whitton called for the vote and it carried unanimously.

OTHER

None

ADJOURNMENT

Chairman Whitton asked for a motion to adjourn the meeting. Mr. Vaught-Hall made a motion to adjourn and Mr. Weltzer seconded the motion.

Chairman Whitton called for the vote and the meeting was adjourned by unanimous consent at 7:30 p.m.

APPROVED

Chairman George Whitton

ATTEST:

Michael D. Schwartz
Director, Zoning Services