

**FLORENCE BOARD OF ADJUSTMENT  
FLORENCE GOVERNMENT CENTER  
BUSINESS MEETING  
MARCH 13, 2019  
7:30 P.M.**

---

Mr. Pieper called the meeting to order at 7:36 P.M.

**BOARD MEMBERS PRESENT**

Ms. Dee Begley  
Ms. Lois Evans, Vice-Chairwoman  
Mr. Timothy Pieper, Chairman  
Mrs. Linda Schaffer

**BOARD MEMBERS NOT PRESENT:**

Mr. Charlie Reynolds

**LEGAL COUNSEL PRESENT**

Mr. Dale Wilson

**APPROVAL OF THE MINUTES**

Mr. Pieper stated the Board members received copies of the minutes of the Florence Board of Adjustment meeting of February 13, 2019. He asked if there were any comments or corrections? Ms. Evans made a motion to approve the minutes as written and Ms. Begley seconded the motion. Mrs. Schaffer said she would abstain because she didn't have a chance to review them. Mr. Wilson said her abstention would be treated like a passed vote and would be counted towards the majority. Mr. Pieper called for a vote and it carried unanimously.

**AGENDA ITEMS**

1. Request of VME Properties, LLC for a Conditional Use Permit. The Conditional Use Permit is to allow a townhouse development, at a maximum intensity of 8 dwelling units per acre, with an accessory swimming pool, clubhouse and parking. The approximate 7.8 acre site is located on the east side of Hopeful Church Road and the west side of Hopeful Road and is immediately to the north of 7015 Hopeful Road, south of 6767 Hopeful Road, and west of 6795, 6809, 6829, 6855 and 6897 Hopeful Road, Florence, KY and is zoned Suburban Residential Two (SR-2).

Mr. Pieper said the application was tabled last month. He asked for a motion and a second to bring the application from the table. Ms. Evans so moved and Ms. Begley seconded the motion. Mr. Pieper called for the vote and it carried unanimously.

Mr. Morgan said he has prepared a list of potential conditions and key discussion points from the last meeting (see Exhibit 1). Mr. Wilson asked if the applicant and citizens in the audience were given the exhibit? Mr. Morgan replied that they were given a copy.

Mr. Jeff Flaherty, with Cardinal Engineering, said he was the project engineer. He was joined by Matt Bogen, with Cardinal Engineering, Dan Knecht, legal counsel, and Pete Kontopos, the property owner. They went back to the drawing board after the last meeting and are now proposing to put the three bedroom units on the end of the buildings. This allows each three bedroom unit to have an additional parking stall. The revised plan shows

the parking in the development has increased from 193 stalls to 225 stalls (see Exhibit 2).

Ms. Begley asked if all the buildings had 2 and 3 bedroom units? Mr. Flaherty responded that was correct. The two bedroom units are in the middle of the buildings and the three bedroom units are on the ends. He added that there are 9 buildings. The 9 buildings contain a total of 18 three bedrooms and 42 two bedrooms. Each 3 bedroom unit has an extra parking stall and additional surface parking has been added across from the pocket park and between buildings 2 and 3.

Mr. Flaherty said he would review the key points from the last meeting. They have prepared a full Traffic Study and he will have Mr. Bogen go over that with them. They have also updated the plan to show one pocket park and the amenities that will be placed in it. They have actually reduced the total number of dwelling units from 61 to 60 and increased the parking by 32 stalls.

Ms. Begley asked what the note in the pocket park says? She has a reduced copy of the plan and cannot read the note. Mr. Morgan said "park/recreation area - equipment with seating and playground".

Mr. Bogen, with Cardinal Engineering, said they have completed a Traffic Study for the development using the parameters that were outlined at the last meeting (see Exhibit 3). They approached this the same as if Kentucky Transportation Cabinet asked for a Traffic Study for a new development. Traffic counts were taken at the Hopeful Road/Cayton Road intersection and the proposed intersection. They also did trip generation rates for the new development and did level of service analysis at both the Hopeful/Cayton intersection and the proposed intersection. The traffic counts supported what they projected. With it being a residential area, there is a heavy skew of exiting traffic in the morning and entering traffic in the afternoon. The trip generation numbers have improved because the proposed development lost some units. There would be 30 trips total in the morning and 38 in the evening. These numbers were ran when it was still is a 61 unit development. The Level of Service (LOS) analysis can be found on page 8. He indicated that LOS A is a minimal delay and LOS E is failing. LOS analysis looks at before the development is constructed and the built condition. In the morning, there is an approximate 0.5 second delay added to the Hopeful Road/Cayton Road intersection if the development is constructed. In the afternoon, there is an approximate 1 second delay added to the same intersection if the development is constructed. As a result, this development will add very little delay to what already exists. They also did some turn lane warrants in Appendix C. It shows a right hand turn lane is not warranted at the proposed access drive. He offered to answer questions.

Ms. Begley asked if the Study was done during a weekday? She also asked if it matters what weekday a Study is done? Mr. Bogen said they prefer to do a Study on Tuesday, Wednesday, or Thursday because Mondays and Fridays can be atypical. He thinks the Study was done on a Wednesday or Thursday.

Ms. Begley asked if people could leave earlier or later than the Study because of the congestion? Mr. Bogen said they did the Study between 6-9 AM and 3-6 PM to catch all the traffic. Sometimes people will leave for work earlier to avoid congestion.

Mr. Flaherty said the last issue they were asked to address was the HOA document. Mr. Dan Knecht said he was filling in for Loren Wolff. He submitted a draft document into the record (see Exhibit 4). This declaration would cover both owner occupied and rentals because it is anticipated that there will be both. One of the issues raised was disabled vehicles and Article 8.1.8 addresses that. Another issue raised was who is responsible for HOA fees? The answer is the owner and that is addressed in Article 5.1. Another issue raised was trash and that is addresses in Article 8.1.5. Parking was one of the biggest issues discussed at the last meeting. It is not addressed in the HOA declaration but is something that Board will address through bylaws. The declaration will call out the parking area as common areas and that will give the Board the authority to implement the necessary bylaws. Article 8.1.11 calls out the rules for an owner to lease their unit. Ms. Begley asked if that provision calls out how many lessees will be allowed? Mr. Knecht said there is no set ownership versus lessee provision. She said if it is more than 20% leases than the entire development may not be FHA approved. Mr. Knecht said that isn't addressed in the HOA document.

Mr. Wilson said at the first meeting the owner was not present but the engineer (Mr. Flaherty) and the architect (Mr. Papadimas) were. The question was posed if the project was going to be owner occupied or rentals. The representatives indicated the units were going to be owner occupied and this room was full with a lot of people. If that position has changed the people in the audience should be able to address that change if they want. Mr. Wilson asked the applicant's team to clearly address if there was a change? Mr. Knecht said his understanding was that the project was going to be market driven and that it could be a mix of owners and renters. They also cannot stop an owner from leasing out their unit once they buy it. Mr. Wilson said he is asking the question because what the owner's representative said at the first meeting. Mr. Knecht said he was not present at the first meeting but the meeting minutes from the second meeting indicate the development would have a mix of owners and renters.

Mr. Flaherty said these will be deeded properties. He added that apartments are not allowed. Mr. Morgan said the zoning code would allow a townhouse style rental development in this zone. Mr. Flaherty said this property will be recorded with a condominium plat.

Ms. Begley said there is a condo development in Florence that prohibits rentals. Mr. Flaherty said that is typically an HOA restriction. He owns property in Florida which has rental restrictions.

Ms. Evans said she lives in a condo community and owns her home. She feels like the applicant intends on selling the units and for the units to be owner occupied. However, there could be a point and time where an owner wants to lease their property. Mr. Flaherty said the owner intends on selling the units. However, he might need to lease them if he builds them and they are sitting empty too long.

Ms. Begley she just wants the record to be clear because during the first meeting it was stated that the units would all be owner occupied and at the second meeting it was stated there could be a mix of owners and renters. Mr. Flaherty said it will be mixed use.

Mrs. Schaffer said she has concerns because the number of units to be rented is market driven. She indicated that she hasn't had a chance to thoroughly review the draft HOA

document because they just received it. However, it says a “declarant shall mean and refer to \_\_\_\_, a(n) \_\_\_\_, its successors and assigns, if such successors or assigns should acquire all unsold Lots and/or unplatted real property which adjoins any property already developed and which is intended to be developed into Lots.” This document can be amended by 66⅔% of the lot owners. The owner/developer can change the document if he owns all the lots. There have been cases where a development has been presented as owner occupied and the owner/developer retains all the units/lots.

Mrs. Schaffer said another concern she has is regarding the 2 and 3 bedroom units. At the last meeting, it was discussed that the two bedroom units have the same footprint as the three bedrooms. The only difference is the 2 bedroom have a loft, den, or storage area instead of a third bedroom. The architect indicated that this area couldn't be made into a bedroom because there are no doors, smoke detectors, or egress windows. The plans that were submitted show windows and doors and a smoke detector could be easily added. She asked what would keep them or future owners from converting the two bedroom units into three bedroom units? There is no way for this Board to police that. This would cause additional traffic and the need for more parking.

Mr. Flaherty said the architect isn't present this evening. He believes the architect said that he could take away the windows in those units. Mr. Morgan said he didn't remember any discussion about windows being removed but there was a discussion about a wall being removed and making the bedrooms larger in the two bedroom units. That is something he could review with Boone County Building Department if the Board imposes it as a condition. Mrs. Schaffer said they could easily show something as a den with a window and use it as a bedroom if they add a smoke detector.

Ms. Evans said the applicant has worked diligently on addressing concerns. She is concerned that something will eventually develop on the property as long it meets the requirements of the zoning district. Mrs. Schaffer said she agrees but feels that there are still too many unknowns. The units were originally going to be all owner occupied and the HOA rules can change. There are a lot of rental properties that have developed in the Hopeful Church Road area since the previous Site Plan was approved in 2001.

Mr. Knecht said the zoning code make a distinction between single-family homes and apartments. It does not make a distinction between owner occupied and rental properties. These units will be individually deeded but someone could rent them out. Mr. Pete Kontopos, said he was the property owner and developer. The plan shows 60 units and they will all be for sale. However, it's possible that he may need to lease some of them if they do not sell quickly. He will need to generate revenue. He added that he will not have control to stop an owner from converting a den into a bedroom but he would have control to stop a renter from doing the same thing because he will have the legal right to enter the unit and enforce rules.

Mr. Flaherty said the owner of a single-family home can live in it or rent out it out. Mr. Kontopos plans on selling all the units as quickly as possible. Mrs. Schaffer said she feels like she isn't getting the full story because of the two and three bedrooms. The two bedroom units can be built as such and someone could make improvements and sell it as a three bedroom unit down the road. How would the Board know? Mr. Morgan said there are minimum building code requirements that have to be in place for a room to be classified as a bedroom. Mr. Flaherty said this is no different than what occurs in houses. Some

people do not obtain permits, make improvements, and do not comply with building code. Mrs. Schaffer said her concern is that the two and three bedroom units have the same dimensions and windows and doors. Mr. Flaherty said they could make another floor plan if it's necessary. Mr. Wilson said subsequent owners and renters would be held to all Board conditions if the Board approves the project and conditions are imposed. Mrs. Schaffer said it was originally presented as owner occupied. Mr. Wilson said they have presented tonight that everything would be for sale but the units could be rented if the owner can't sell them quickly and needs revenue. Mr. Morgan said he believes the Board could require a condominium plat to be submitted with a condition. This would show that purchasers would own their units and that the grounds would be community open space. This would not prevent the owner/developer from renting out units if they didn't sell quickly. Mrs. Schaffer says she knows projects where the project was approved as a condominium development and the developer decided to keep all the units and rent them out. Mr. Morgan agreed and said that is possible. Mrs. Schaffer said she would like the building plans to properly identify the bedrooms if the application is approved. The conversion of two bedroom units into three bedroom units also concerns her because of the tandem driveways and increased traffic.

Ms. Begley said she would like to hear from the neighbors because during the first meeting the units were presented as owner occupied and during the last two they have been presented as mixed use. Mr. Wilson said the residents can speak if that is okay with the Board. Mr. Pieper asked if anybody in the audience wanted to address that issue?

Mr. David Espejo said he lived at 254 Suzanne Way. He is in the real estate business and understands rentals. He owns a condominium at the Wynds and they have a rental percentage. That keeps up home ownership and keeps everything looking nice. His concern is values in his neighborhood. He understands that they want to sell what they can and have the option to rent. His only concern with rentals is the percentage of units that could be rented and Section 8.

Ms. Cheryl Dawson said she lives at 6897 Hopeful Road. She would like to see a layout of the units and the bedrooms. Small units with small bedrooms will not sell for that much money. She asked if the projected sales price could be disclosed? Mrs. Schaffer asked where her property was? She replied that it was located right beside the proposed driveway. Mr. Flaherty said they got some estimates from some builders and the two bedrooms will start at \$195,000 and things will go up from there. He added that this is an estimate and that construction costs are going up. Mr. Morgan asked Mr. Flaherty if the floor plans, elevations, renderings, and building material samples shown at the first meeting are still accurate and up to date? Mr. Flaherty responded that was correct.

Mr. Flaherty thanked the Board for their time. He added that they have tried to make this the best development they can. There are uses that can be put on this property by right. However, he doesn't feel that those developments would have the amenities or landscaping that this development will have. This is the best use of the property.

Ms. Begley said she was going to make a motion with some modifications. The statement that was just made makes it seem like the applicant's team feels that the Board is going to turn the request down. They need clarifications as a Board and also need to protect the home owners that already live in the area. This isn't an attack and they appreciate everything the applicant's team has done and provided. Mrs. Schaffer said she also

appreciates their efforts. She would like to see the 2 and 3 bedroom condition that was discussed earlier added to the condition list if the project is approved.

Mrs. Schaffer indicated that the project was originally presented as owner occupied and a good point was brought up earlier tonight regarding mortgages. People are having a hard time getting a mortgage and cannot get the 20% down to go conventional. As a result, these may not be owner occupied units. She feels an owner occupied condition is reasonable because that is how the project was originally presented. She also has concerns about the HOA and the traffic the development will generate. She is just one person on the Board. She would like to see some of the conditions modified if the Board approves the application. Mr. Pieper and Ms. Evans asked which ones? Mrs. Schaffer said she would like to see conditions added that the number of two and three bedroom units will be as presented. The current floor plans shows the units are identical in terms of the number of windows, doors, and closets. Mr. Morgan said he would have to show the final floor plans to Boone County Building Department and they would have him to tell him if the extra room in the 2 bedroom units could be called a bedroom as designed. Ms. Begley said the applicant has said the extra space could be a study or storage area in the two bedroom units. She knows the Columns of Wetherington have a two bedroom with a Study and there is no way to make it into a bedroom. Those rooms have bookcases and a fireplace. Mrs. Schaffer said it seems that they could advertise these as two or three bedroom units because the floor plans are the same. This Board will never know.

Ms. Begley asked what modifications Mrs. Schaffer wanted to see to the draft conditions? Mrs. Schaffer said she would like to see the language added that the two and three bedroom units must meet building code and the extra space in the two bedroom units cannot be classified as a third bedroom.

Ms. Begley said they seemed to have covered all the other concerns. They have moved the three bedroom units to the ends of the buildings, provided extra parking, and provided a draft HOA document.

Mr. Pieper asked Mrs. Schaffer if she has any other concerns? She replied the project was first described as an owner occupied development and there is no condition regarding this. Ms. Begley said there have been a lot of changes made to the plan. The applicant started at 65 units and are down to 60. They have also added 32 additional parking stalls. Mrs. Schaffer said she feels like they are trying to make the plan fit. The Board shouldn't feel like they have to approve a plan because the developer has to make money. The Board's purpose is to make sure it complies with the regulations and meets the Conditional Use Permit criteria.

Mr. Wilson said the applicant indicated earlier that the plan is to have all the units for sale but they might have to rent some to generate revenue until they all sell. Mr. Morgan brought up earlier that a condominium plat could be required as a condition. This plat would be reviewed by the Planning Commission and be recorded at the Clerk's office. This would effectively make the units owner occupied units but would give the owner/developer the flexibility to lease them until they sell. He asked if that would address the Board's concern?

Ms. Evans asked if there would be a time limitation on that condition? Mr. Morgan said the condominium regime plat would need to be in place for each building before they could sell any units. Ms. Evans asked if the owner/developer could rent the units for an indefinite period? Mr. Morgan replied he could if he still owned them.

Ms. Evans asked if the buildings would be developed in phases? Mr. Flaherty said that is something Mr. Kontopos will need to determine.

**Mr. Pieper made a motion to approve the application with the following conditions:**

1. **The approval is based on the following:**
  - A. **The updated 3/13/19 Concept Plan unless it is modified by other conditions. The plan shows forty-two (42) two-bedroom units and eighteen (18) three-bedroom units. Boone County Building Department shall verify the extra room in the two bedroom units cannot be classified as a bedroom under the Kentucky Building Code.**
  - B. **The building elevation drawings and renderings included in the 1/9/19 Staff Report.**
  - C. **The building material samples, photometric plan, and pool/ detention fencing exhibits that were submitted into the record at the 1/9/19 Florence Board of Adjustment meeting.**
2. **The clubhouse building shall be constructed with the same brick, stone, hardi plank siding, and roofing that is being used in the townhouse buildings. The amount of masonry used in the clubhouse building shall correlate to the amount of masonry used in the townhouse buildings.**
3. **All pool and detention basin fencing shall be limited to 6' in height.**
4. **The following lighting conditions shall apply to the development:**
  - A. **All light poles shall be limited to 12' in height.**
  - B. **All light pole fixtures shall be downcast oriented.**
  - C. **The light pole locations shall be generally consistent with the photometric plan that was submitted into the record at the 1/9/19 Florence Board of Adjustment meeting.**
  - D. **Spot lights or wall packs shall not be permitted on the townhouse buildings. Low wattage fixtures can be mounted to buildings to illuminate porches, patios, or driveways.**
5. **The following landscaping conditions:**
  - A. **The street frontage buffers along Hopeful Church Road and Hopeful Road shall be enhanced and comply with Section 308 B. of the Boone County Subdivision Regulations.**
  - B. **All other perimeter buffers shall comply with Article 36 of the Boone County Zoning Regulations.**
6. **The permitted monument sign for the development shall be limited to 4'-6" in height and 24 square feet in area. The base of the sign shall use masonry materials that match the clubhouse and townhouse buildings. The sign shall not be internally illuminated.**

7. A Condominium Regime Plat(s) shall be required for the proposed development to verify that the individual townhouse style units will be legitimate condominium units. The Plat(s) shall be approved by Boone County Planning Commission and recorded at the Boone County Clerk's Office before any units can be sold or rented.

Ms. Evans seconded the motion. Mr. Pieper called for a roll call vote and Mr. Pieper, Ms. Evans, and Ms. Begley were in favor and Mrs. Schaffer was opposed. The motion carried 3-1.

**OTHER**

No other matters were discussed.

**ADJOURNMENT**

Mr. Pieper asked for a motion to adjourn. Ms. Evans so moved and Ms. Begley seconded the motion. Mr. Pieper called for a vote and the meeting adjourned by unanimous consent at 8:41 P.M.

**APPROVED**

---

**Mr. Timothy Pieper, Chairman**

**ATTEST:**

---

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

**Exhibits**

1. Potential Conditions and Key Discussion Points from the 2/13/19 FBOA Meeting
2. Revised Plans Submitted by Applicant's Team
3. Traffic Study Submitted by Applicant's Team
4. Draft H.O.A. Document Submitted by Applicant's Team