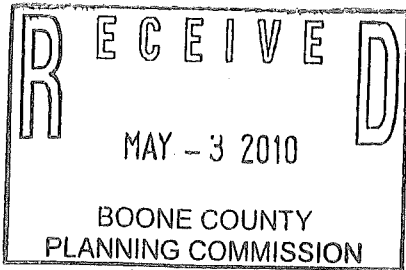


APPLICATION FORM

10-BCBOA-002-A



BOARD OF ADJUSTMENT AND ZONING APPEALS ACTION BOONE COUNTY PLANNING COMMISSION

See Boone County Zoning Regulations SECTION A (To be completed by applicant)

- 1. (Check One) Boone [X] Florence _____ Walton _____ Union _____
2. (Check One) Conditional Use Permit [X] Variance _____ Appeal _____ Change in Non-Conforming Use _____
3. Applicant's Name Phil Freihofer - Freihofer + Wolfpeck, LLC
Phone Number 859 743-3490 Fax No. 859-344-0861
Applicant's Address P.O. Box 176068
Covington KY 41017-6068
4. Description of Request: We are requesting a 5' front set back variance and a 5' rear variance.
5. Name of Development Cornerstone Estates
6. Location of Development Off Bullitsville Road
7. Acreage Under Review .46
8. Lot Number and Name of Subdivision (if part of a subdivision) Lot 27 Cornerstone Estates
9. Owner of Property Mary Catherine Douglass / Nancy J. Emmrich
Address of Property Owner 3381 Apple Tree Lane Erlanger KY 41018 Phone No. 859-727-8722
10. City State Zip
11. Proposed Use(s) on Site Single Family House - Ranch
12. Total Square Footage of Existing and/or Proposed Buildings 2,400 SQFT
13. Current Zoning on Property RS
14. Deed Book [redacted] Page No. 913 [redacted] Group No. [redacted] 2007
15. Is the site subject to a zone change?
If yes, give date of approval
16. Have you submitted a Site Plan with this request? Yes
17. Have you submitted a list of adjoining property owners with this request? Yes
18. I, or we, understand and agree that this application and drawing(s) are being filed in accordance with the Boone County Zoning Regulations.

ORIGINAL Property Owner's Signature: Nancy J. Emmrich, Mary Catherine Douglass (Faxed, Photocopied or Scanned Signatures will NOT be Accepted)

ORIGINAL Applicant's Signature: [Signature] (Faxed, Photocopied or Scanned Signatures will NOT be Accepted)

(over)

**BOARD OF ADJUSTMENT AND
ZONING APPEALS ACTION
APPLICATION
PAGE 2**

SECTION B (To be completed by the Boone County Planning Commission Staff)

1. Date Received 5-3-10 Fee Received \$982.⁰⁰ - R 60670
2. Is application complete? Yes No
3. Staff Reviewer _____
4. Scheduled Board Action Date _____
5. Board Action:
 Approved
6/9/10 **Approved with Conditions** (See #6)
 Denial (See #7)
6. Conditions of Approval: SEE 6/9/10 BCBOA Meeting
MINUTES + C.C.U.R.
7. Reasons for Denial: _____

**Boone County Planning Commission
Boone County Administration Building
2950 Washington Street, Room 317
P.O. Box 958
Burlington, Kentucky 41005
(859) 334-2196 - Phone
(859) 334-2264 - Fax
plancom@boonecountyky.org - E-mail
www.boonecountyky.org - Web Page**

NOTE: See Boone County Planning Commission Fee Schedule for Board of Adjustment Fees.

Site Plan Review is not granted by the appropriate Board of Adjustment.

An application consists of all fees paid in full, submitted drawings and a completed application form.

STAFF REPORT

APPLICANT: Phil Freihofer

LOCATION: Lot 27, Cornerstone Estates Subdivision
(3273 Cornerstone Drive, Boone County, Kentucky)

ZONING: Rural Suburban (RS)

DATE: June 9, 2010

PROPOSAL

The applicant is requesting two (2) Variances to reduce the 40 foot front and rear yard setbacks for a single-family residential dwelling. The submitted plan shows that the structure is proposed 35 feet from the front and rear property lines (see attachments).

RELEVANT SUBDIVISION HISTORY

On September 28, 2004, Boone County Fiscal Court approved a Zoning Map Amendment from Rural Suburban Estates (RSE) to Rural Suburban (RS) for 18.77 acres of an overall 24.24 acre tract to allow a single-family residential subdivision.

APPLICABLE REGULATIONS

Article 2, Section 250 of the Boone County Zoning Regulations states that the Board of Adjustment shall have the power to hear and decide on applications for variances. A variance is defined as a departure from the dimensional terms of the zoning regulation pertaining to the height, width, or location of structures, and the size of yards and open spaces where such departure meets the requirements of KRS 100.241 to 100.247.

The Board should evaluate the applicant's request as it relates to the criteria necessary for granting a variance as stated in Section 251 of the Boone County Zoning Regulations:

1. Before any variance is granted, the Board must find that the granting of the variance will not adversely affect the public health, safety or welfare, will not alter the essential character of the general vicinity, will not cause a hazard or nuisance to the public, and will not allow an unreasonable circumvention of the requirements contained in the zoning regulations.
 - A. The requested variance arises from special circumstances which do not generally apply to land in the general vicinity, or in the same zone;
 - B. The strict application of the provisions contained in the regulations would deprive the applicant of the reasonable use of the land or would create an unnecessary hardship on the applicant;
 - C. The circumstances are the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought.

2. The Board shall deny any request for a variance arising from circumstances that are the result of willful violations of the zoning regulation by the applicant subsequent to the adoption of the zoning regulation from which relief is sought.

Table 31.1 of the Boone County Zoning Regulations lists the setback requirements in a Rural Suburban (RS) zone as 40 foot front, 40 foot rear, and 10 foot sides.

Section 3619 of the Boone County Zoning Regulations requires street trees to be installed when new dwelling units are constructed in a residential zone. One large tree from Plant List A is required per 40 linear feet of lot width.

SITE CHARACTERISTICS

The approximate 0.45 acre site is located on the south side of Cornerstone Drive and is currently undeveloped. There is no mature vegetation on the site.

SURROUNDING LAND USES & ZONING

North: Cornerstone Drive, Single-Family Residential Dwellings, and Vacant lot in Cornerstone Estates (RS)

South: Single-Family Residential Dwelling and Vacant lots in Cornerstone Estates (RS)

East: Vacant lot in Cornerstone Estates (RS)

West: Vacant lot in Cornerstone Estates (RS)

STAFF COMMENTS

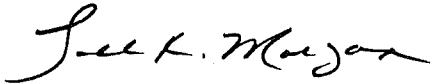
1. Restrictive Covenants were recorded for Section Two of Cornerstone Estates on June 17, 2009 (MC1129, PG 105). These Covenants have created some confusion because they list the front yard setback requirement as 35 feet. The Boone County Zoning Regulations require a 40 foot front yard setback when a house is proposed in a RS zone. Private Covenants cannot lessen the county requirements.
2. Nancy Emmrich and Mary Catherine Douglass submitted a letter indicating that they have purchased the subject lot and were misled by the private covenants. Their letter indicates that they are trying to keep equal front and rear yards.
3. Staff has the following questions for the applicant and property owners:
 - A. What is the proposed square footage of the house?
 - B. Could a smaller house be constructed on the lot which better meets the setback requirements?
 - C. The Restrictive Covenants list the rear yard setback requirement as 50 feet. Has this setback requirement been waived by Cornerstone Property Development, LLC?

4. The Board needs to analyze the Variance criteria before acting on the requests.
5. Staff recommends that four (4) large trees from Plant List A shall be evenly dispersed along the rear property line if the requests are approved.

CONCLUSION

KRS 100.241 and Section 250 of the Boone County Zoning Regulations gives the Boone County Board of Adjustment and Zoning Appeals the authority to act on the requests.

Respectfully submitted,



Todd K. Morgan, AICP
Planner, Zoning Services

TKM/pr

Attachments

- *Site Vicinity Map
- *Letter From Owners
- *Plot Plan
- *2009 Aerial Map
- *Zoning Map
- *Setback Chart From Restrictive Covenants
- *Application

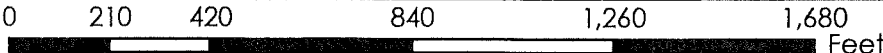
SITE VICINITY MAP

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1 inch = 400 feet



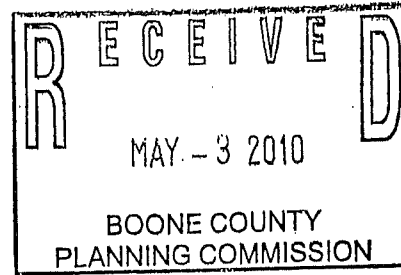
Boone County GIS - Putting Northern Kentucky on the Map

Map Created: 01/01/2008

File Path: \\mch\gis\work\2008\GIS 2008
Archive Document: *.mxd

May 3, 2010

Boone County Planning Administration
Board of Adjustment & Zoning Appeals
2950 Washington Street
P.O. Box 958
Burlington, KY 41005



Subject: Variance Request to allow a 35' front and rear setback on the property located at
3273 Cornerstone Dr. (Cornerstone Estates), Burlington, KY

To Whom It May Concern:

On February 1, 2010, after a long period of searching for a home in Boone County, we purchased lot 27 in Cornerstone Estates with the intention of building a primary residence. Currently we live in Kenton County. At the time of the purchase, we were told the setback was 35'. Based on that information, we contracted an architect to provide drawings for a home that would conform to the established covenant and preserve the character of the Residential Suburban (RS) subdivision. Upon submission of the drawings to secure permits for construction, we were informed that the setbacks are actually 40'. Because of those findings, the home we took such pride in designing, does not conform to the zoning regulations set for the by the Boone County Planning Commission. We are requesting that you grant a variance for a front and rear setback of 35' that would allow us to build our home in the manner that it was designed, and to maintain a somewhat equal space for both front and rear of the property.

The established covenant does not allow for any outbuildings except for a detached garage, pool house or similar structure that is consistent with the main dwelling. There are no trees currently in the subdivision that would offer any shade, and our home will be built as such that it will be in direct sunlight from morning until evening. In order accommodate the established covenant, it was our intention that building an oversized garage would allow for storage of any items we would normally store in an outside shed such as a lawn mower, garden tools, outside furniture etc. We felt that by avoiding the construction of a third garage, it would still keep a good side distance between the properties, thus keeping with the consistency of the other homes that have already been constructed. In addition, since there are no trees, we included a covered porch to offer shade while still being able to enjoy the outdoors. It appears now that those two particulars are the items in question.

Our lot is somewhat irregular in dimension compared to the others in the subdivision. The frontage is 127'. The rear is rear is 159.88'. The depth of the lot on the left side of the house is 135' The right side is 148' which is 13' more than the left. Constructing the home as planned would only affect one side of the lot with regard to the setback. It is our belief that we are building a beautiful home that will in no way alter the esthetics or character of the neighborhood. Since finding out that a variance would be required to build the home we planned for, we measured the setbacks of the other homes in the subdivision and determined there are four that currently do not conform to the zoning laws set forth in the requirements for the RS district. It's difficult to tell unless you measure, and all of the homes are just as nice as we feel ours will be.

We've spent countless hours and thousands of dollars planning this home. We plan to put trees in the back yard... and flowers..... and a nice little fence as well! It is not our intention to alter the character of this subdivision. This is the home of our dreams! This is the place we will take pride in calling our home. If you would kindly consider this and grant our variance, we would be very grateful.

Sincerely,

Nancy Emmrich
Mary Catherine Douglass

125.00'

125.00'

N 73°55'47" W 128.44'

N 73°55'47" W 159.86'

26



FLOW OF SURFACE WATER
APPROX. 1/2" FALL FROM GARAGE TO CURB
30' MINIMUM SETBACK

This is not a property survey and does not meet the minimum standards as required for property surveys in the Commonwealth of Kentucky.

The purpose of this drawing is to show the location of proposed house on the proposed lot.

Soil erosion control measures will be implemented by builders.

S 23°47'32" W 148.55'

S 10°33'27" W 135.32'

27

65'
0.00'
14'05"
N=34.57'
S 72°49'30" E
.40'
STA. 13+19.21
STA. 14+15.44

31.5'

33.58'

A=40.42'

87.36'

25'

14+00

13+00

A=28.87'

17+00

89.03'

16+00

RIVE



SITE PLAN

BOONE COUNTY, KENTUCKY

LOT 27

CORNERSTONE ESTATES

FREIHOFFER & WULFECK, LLC

P.O. BOX 170068

COVINGTON, KENTUCKY 41017-0068



Civil Engineers
Land Surveyors
Planners

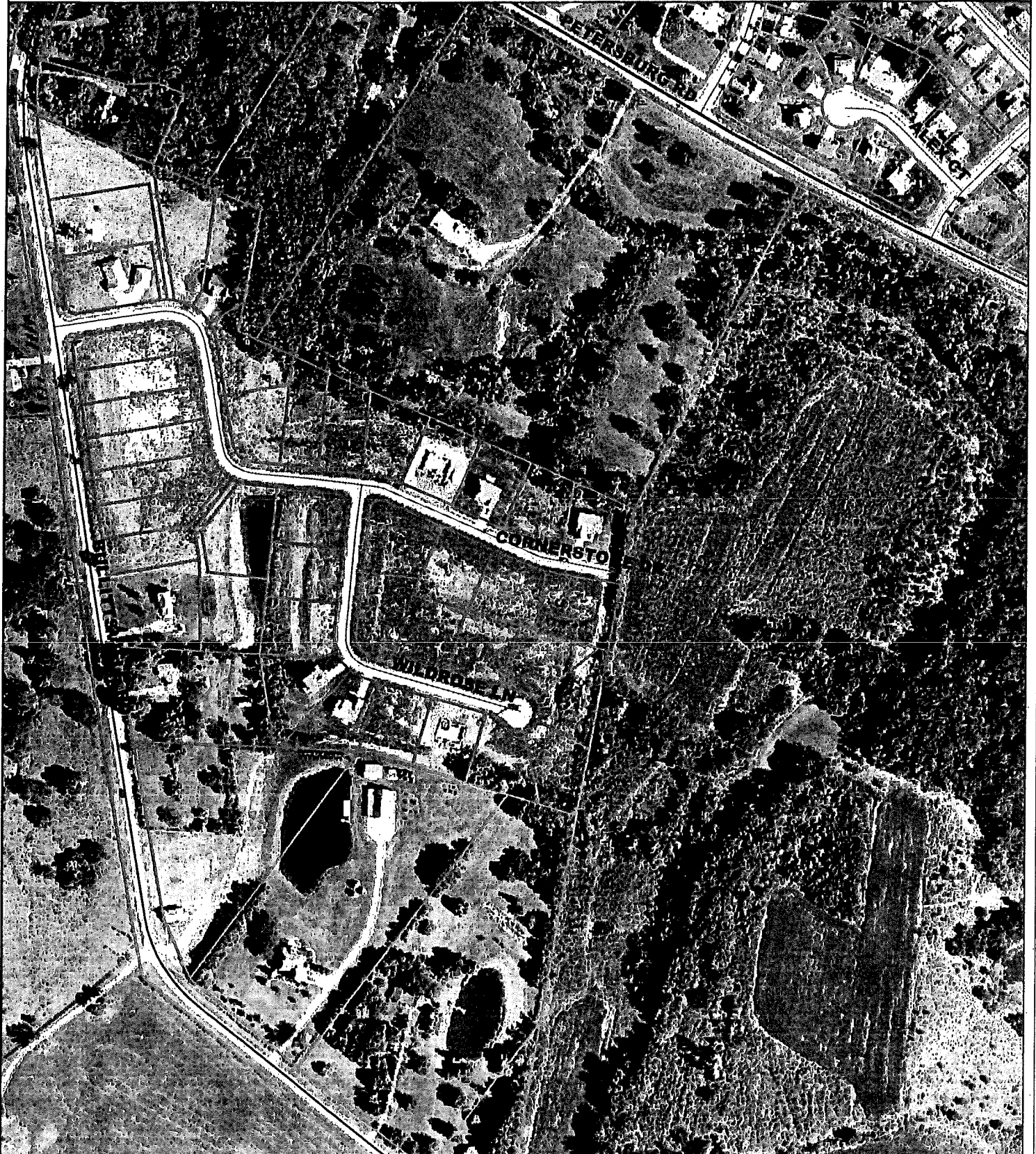
Erpenbeck
Consulting
Engineers, Inc.
www.eoc-inc.net

4205 Dble Highway
Elsmere, Kentucky 41018
859.727.4200 fax 859.342.5652

APRIL 2010 SCALE 1" = 30' S5052

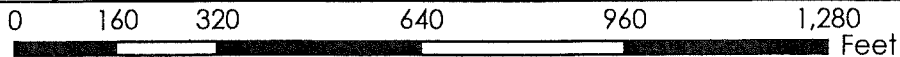
2009 AERIAL MAP

www.boonecountygis.com



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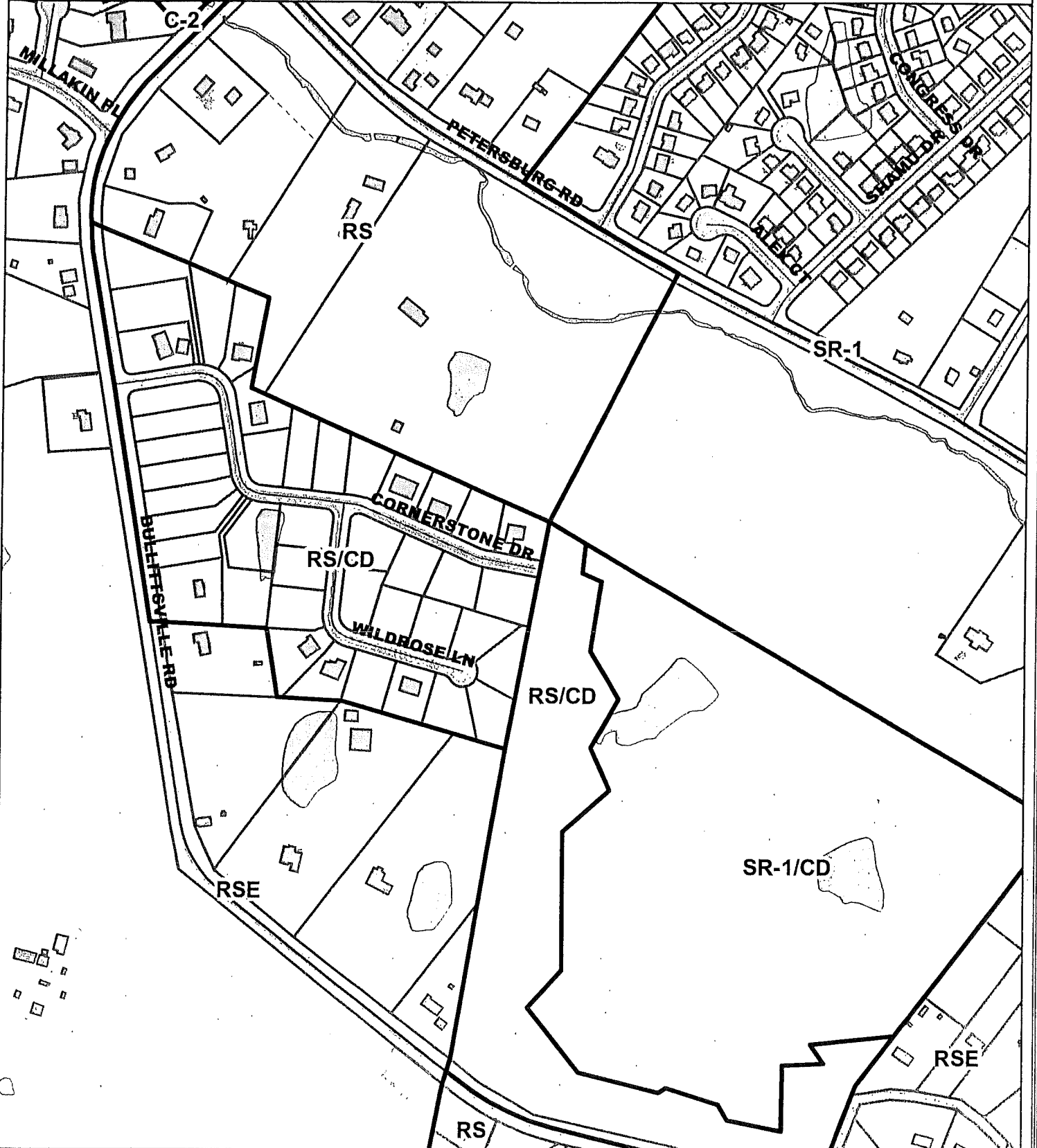
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Boone County GIS - Putting Northern Kentucky on the Map

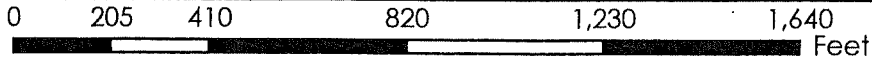
ZONING MAP

www.boonecountygis.com



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Boone County GIS - Putting Northern Kentucky on the Map

Exhibit 1

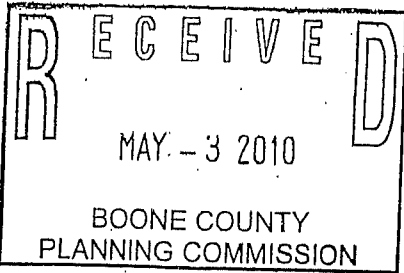
Lot Number	Approximate Size			Front Setback	Rear Setback	Side Setbacks
	Acres	Frontage	Depth			
1*	0.46	388.4	275	100'	75'	10'
2	0.47	150	275	100'	75'	10'
3	0.47	150	275	100'	75'	10'
4	0.47	148.2	275	100'	75'	10'
5	0.46	117.75	281(avg.)	100'	75'	10'
6	0.50	115.6	267(avg.)	100'	75'	10'
7**	0.46	15.4	213.34	100'	75'	10'
9**	0.57	16	173(avg.)	35'	50'	10'
10	0.58	71.4	208(avg.)	35'	50'	10'
11*	0.46	276.5	165	35'	50'	10'
12	0.46	121.2	165	35'	50'	10'
13	0.49	109.2	170(avg.)	35'	50'	10'
14	0.54	52.35	187(avg.)	35'	50'	10'
15	0.51	70.8	201(avg.)	35'	50'	10'
16	0.46	125	160	35'	50'	10'
17	0.46	125	160	35'	50'	10'
18	0.46	101.2	150(avg.)	35'	50'	10'
19	0.46	38.8	150(avg.)	35'	50'	10'
20	0.46	52.4	161(avg.)	35'	50'	10'
21	0.46	89.1	171(avg.)	35'	50'	10'
22	0.46	125	160	35'	50'	10'
23	0.46	125	160	35'	50'	10'
24*	0.46	256.9	110(avg.)	35'	50'	10'
25*	0.50	327.4	170(avg.)	35'	50'	10'
26	0.46	127.3	157(avg.)	35'	50'	10'
27	0.46	127.8	142(avg.)	35'	50'	10'
28	0.56	171.3	144(avg.)	35'	50'	10'
29	0.46	145.5	138(avg.)	35'	50'	10'
30	0.46	144	157(avg.)	35'	50'	10'
31	0.46	125	160	35'	50'	10'
32	0.46	125	160	35'	50'	10'
33	0.46	92.6	173(avg.)	35'	50'	10'
34	0.46	99.4	201(avg.)	35'	50'	10'
35	0.46	86.4	231(avg.)	35'	50'	10'
36*	0.46	239.9	164(avg.)	35'	50'	10'
37	0.48	164.9	127(avg.)	35'	50'	10'
38	0.61	55.8	272(avg.)	35'	50'	10'
39	0.63	43.4	286(avg.)	35'	50'	10'
40**	0.70	178.8	178(avg.)	100'	50'	10'
41**	0.74	146.15	230	100'	50'	10'
42*	0.69	344.2	215	100'	50'	10'

- Corner Lot
- ** Flag Lot

BOONE COUNTY
MC1129 PG 110

DOCUMENT NO: 502468
RECORDED ON: JUNE 17, 2009 02:17:27PM
TOTAL FEES: \$22.00
GROUP : 4929
COUNTY CLERK: BENA' PING
COUNTY: BOONE COUNTY CLERK
DEPUTY CLERK: DONNA COLLINS
BOOK MC1129 PAGES 105 - 110

APPLICATION FORM



BOARD OF ADJUSTMENT AND ZONING APPEALS ACTION BOONE COUNTY PLANNING COMMISSION

See Boone County Zoning Regulations SECTION A (To be completed by applicant).

(Check One)

1. [X] Boone [] Florence [] Walton [] Union

(Check One)

2. [] Conditional Use Permit [X] Variance [] Appeal [] Change in Non-Conforming Use

3. Applicant's Name Phil Freihofer - Freihofer + Wolfbeck, LLC

Phone Number 859 743-3490 Fax No. 859-344-0861

Applicant's Address P.O. Box 176068

Covington City

KY

41017-6068

State

Zip

4. Description of Request: We are requesting a 5' front set back

Variance and a 5' rear variance.

5. Name of Development Cornerstone Estates

6. Location of Development Off Bullitsville Road

7. Acreage Under Review .46

8. Lot Number and Name of Subdivision (if part of a subdivision)

Lot 27 Cornerstone Estates

9. Owner of Property Mary Catherine Douglass / Nancy J. Emmrich

Address of Property Owner 3381 Apple Tree Lane Phone No. 859-727-8722

10. Erlanger KY 41018

City

State

Zip

11. Proposed Use(s) on Site Single Family House - Ranch

12. Total Square Footage of Existing and/or Proposed Buildings 2,400 SQFT

13. Current Zoning on Property RS

14. Deed Book 975 Page No. 913 Group No. 2007

15. Is the site subject to a zone change?

If yes, give date of approval

16. Have you submitted a Site Plan with this request? Yes

17. Have you submitted a list of adjoining property owners with this request? Yes

18. I, or we, understand and agree that this application and drawing(s) are being filed in accordance with the Boone County Zoning Regulations.

ORIGINAL Property Owner's Signature:

Nancy J. Emmrich, Mary Catherine Douglass

(Faxed, Photocopied or Scanned Signatures will NOT be Accepted)

ORIGINAL Applicant's Signature:

Phil Freihofer

(Faxed, Photocopied or Scanned Signatures will NOT be Accepted)

(over)

COPY

CLUR #10-BCBOA-007-A

CERTIFICATE OF LAND USE RESTRICTION

1. NAME AND ADDRESS OF PROPERTY OWNER(S)

Mary Catherine Douglass
Nancy J. Emmrich
3381 Apple Tree Lane
Erlanger, KY 41018

2. ADDRESS OF PROPERTY

Cornerstone Drive
Burlington, KY 41005

3. NAME OF SUBDIVISION OR DEVELOPMENT (if applicable)

Cornerstone Estates, Lot 27

4. DEED BOOK 975

PAGE NO. 913

GROUP NO. 2007

5. TYPE OF RESTRICTION(S) (Check all that apply)

Zoning Map Amendment:
From To

Conditional Use Permit

Development Plan

Conditional Zoning

Subdivision Plat
(Not Recorded)

Other:

Variances (2)

6. NAME AND ADDRESS OF PLANNING COMMISSION, BOARD OF ADJUSTMENT, LEGISLATIVE BODY OR FISCAL COURT WHICH MAINTAINS THE ORIGINAL RECORDS CONTAINING THE RESTRICTION

BOONE COUNTY PLANNING COMMISSION
2950 WASHINGTON STREET, ROOM 317
P.O. BOX 958
BURLINGTON, KENTUCKY 41005

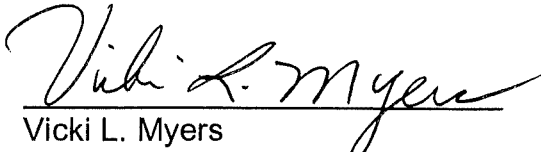
Todd K. Morgan
SIGNATURE OF COMPLETING OFFICIAL

Todd K. Morgan, Senior Planner, Zoning Services
Name and Title of Completing Official

COMMONWEALTH OF KENTUCKY

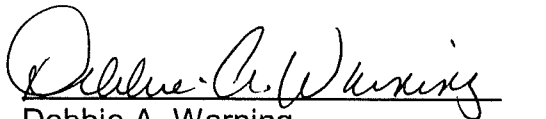
COUNTY OF BOONE

Subscribed, sworn to, and acknowledged before me by Todd K. Morgan on behalf of the
Boone County Planning Commission this 25 day of June, 2010.


Vicki L. Myers
NOTARY PUBLIC, State at Large

My commission Expires:
April 17, 2011

This instrument was prepared for recording purposes only by:


Debbie A. Warning
Boone County Planning Commission
2950 Washington Street, Room 317
P.O. Box 958
Burlington, Kentucky 41005

NO TITLE EXAMINATION

(Legal Description and source of Title and Group Number furnished by the applicant.)

CONDITIONS OF APPROVAL

The following Conditions of Approval apply to the Variances (2) approved by the Boone County Board of Adjustments and in accordance with the current zoning in effect as of June 9, 2010 Certificate of Land Use Restriction (#10-BCBOA-007-A), for Mary Catherine Douglass and Nancy J. Emmrich, Property Owner(s).

The following conditions will apply:

- 1) Four (4) large trees from Plant List A shall be evenly dispersed along the rear property line.

The approved Variances (2) as well as the preceding conditions apply to the property described in:

DEED BOOK 975 PAGE NO. 913 GROUP NO. 2007