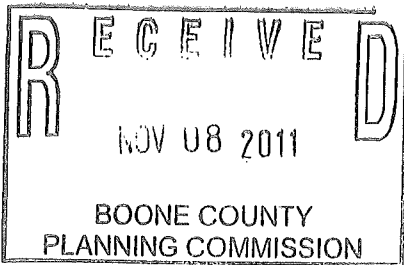


APPLICATION FORM



BOARD OF ADJUSTMENT AND ZONING APPEALS ACTION BOONE COUNTY PLANNING COMMISSION

FIVE (5) SCALED COPIES AND ONE (1) 11X17 REDUCTION OF SUBMITTED DRAWINGS ARE REQUIRED

See Boone County Zoning Regulations

SECTION A (To be completed by applicant)

(Check One)

1.  Boone \_\_\_\_\_ Florence \_\_\_\_\_ Walton \_\_\_\_\_ Union \_\_\_\_\_

(Check One)

2.  Conditional Use Permit \_\_\_\_\_ Variance \_\_\_\_\_ Appeal \_\_\_\_\_

Change in Non-Conforming Use

3. Applicant's Name Michael + Jacqueline Fobbe

Phone Number 859 727-4086 Fax No. \_\_\_\_\_

Applicant's Address 204 Park Ave

Elsmere KY 41018

City State Zip

4. Description of Request: Replace 5x5 shed with 10x10

5. Name of Development \_\_\_\_\_

6. Location of Development 13196 Ryle Road

7. Acreage Under Review \_\_\_\_\_

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

13196 Ryle Road Union KY

9. Owner of Property Michael + Jacqueline Fobbe

Address of Property Owner 13196 Ryle Road Phone No. 859 727-4086

10. Union KY

City State Zip

11. Proposed Use(s) on Site 10x10 shed

12. Total Square Footage of Existing and/or Proposed Buildings 100 sq Feet

13. Current Zoning on Property RSE

14. Deed Book 838 Page No. 388 Group No. 2066B

15. Is the site subject to a zone change? NO

If yes, give date of approval \_\_\_\_\_

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

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

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: Michael A Fobbe  
(Faxed, Photocopied or Scanned Signatures will NOT be Accepted)

ORIGINAL Applicant's Signature: Michael A Fobbe  
(Faxed, Photocopied or Scanned Signatures will NOT be Accepted)

**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 11-8-11 Fee Received 632.00 Receipt # 103891
2. Is application complete?  Yes  No
3. Staff Reviewer TKM
4. Scheduled Board Action Date 12/14/11
5. Board Action:  
 **Approved**  
 **Approved with Conditions (See #6)**  
 **Denial (See #7)**
6. Conditions of Approval: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
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](http://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

APPLICANTS: Michael & Jacqueline Fobbe

LOCATION: Approximate 0.1 Acre Tract located to the West of 13196 Ryle Road, Boone County, Kentucky

ZONING: Rural Suburban Estates (RSE)

DATE: December 14, 2011

### PROPOSAL

The property owners have submitted a Change in Non-Conforming Use application to allow a 100 square foot shed to replace a 25 square foot shed. The subject property is approximately 0.1 acres in area and is located to the west of 13196 Ryle Road, Boone County, Kentucky.

The 25 square foot shed has pre-existing, non-conforming status because it was the principal use on the property for many years. The 25 square foot shed was removed from the property in 2007 when Boone County Public Works started a substantial road project. The property owners replaced the 25 square foot shed with a 100 square foot this summer without zoning approval. The Zoning Administrator determined that the 25 square foot shed continues to have pre-existing, non-conforming status because the property owners showed no intent to abandon the structure (see 10/4/11 letter from Kevin Wall to Jackie Fobbe).

### APPLICABLE REGULATIONS

Section 220 of the Boone County Zoning Regulations states that one of the duties of the Board of Adjustment and Zoning Appeals is to act on Change in Non-Conforming Use applications.

Section 270 of the Boone County Zoning Regulations states that it is the intent of the regulations to keep non-conforming lots, uses or structures from being "enlarged or extended beyond the scope and area of its operation at the time it became a legal non-conforming use, nor shall other uses or structures which are prohibited elsewhere in the same district be permitted on lots of non-conforming uses or structures."

Section 272 of the Boone County Zoning Regulations states "where, at the time of the adoption of this order, legally established, uses of land exist which would not be permitted by regulations imposed by this order, the uses may be continued so long as they remain otherwise lawful, provided the Board shall not allow the enlargement or extension of a non-conforming use beyond the scope and area of its operation at the time these regulations were adopted." KRS 100.253 allows:

1. The lawful use of a building or premises, existing at the time of the adoption of any zoning regulations affecting it, may be continued, although such use does not conform to the provisions of such regulations, except as otherwise provided herein.

2. The board of adjustment shall not allow the enlargement or extension of a non-conforming use beyond the scope and area of its operation at the time the regulation which makes its use non-conforming was adopted, nor shall the board permit a change from one (1) non-conforming use to another unless the new non-conforming use is in the same or a more restrictive classification, provided, however, the board of adjustment may grant approval, effective to maintain non-conforming use status, for enlargements or extensions, made or to be made, of the facilities of a non-conforming use, where the use consists of the presenting of a major public attraction or attractions, such as a sports event or events, which has been presented at the same site over such period of years and has such attributes and public acceptance as to have attained international prestige and to have achieved the status of a public tradition, contributing substantially to the economy of the community and state, of which prestige and status the site is an essential element, and where the enlargement or extension was or is designed to maintain the prestige and status by meeting the increasing demands of participants and patrons.
3. Any use which has existed illegally and does not conform to the provisions of the zoning regulations, and has been in continuous existence for a period of ten (10) years, and which has not been the subject of any adverse order or other adverse action by the administrative official during said period, shall be deemed a non-conforming use. Thereafter, such use shall be governed by the provisions of subsection (2) of this section.

Section 274 of the Boone County Zoning Regulations states "where a lawful structure exists at the effective date of adoption or amendment of this order that could not be built under the terms of this order by reason of restrictions on intensity or size or lot coverage or height or bulk or setback, or other requirements concerning the structure, such structure may be continued so long as it remains otherwise lawful, subject to the following provisions:

1. No such non-conforming structure may be enlarged or altered in a way which increases its non-conformity, but any structure or portion thereof may be altered to decrease its non-conformity;
2. Should such structure be moved for any reason for any distance, it shall thereafter conform to the regulations for the district in which it is located after it is moved as otherwise provided in Kentucky Revised Statutes, Section 100.253(2).

Section 911 of the Boone County Zoning Regulations does not allow a shed as a principally permitted use in the RSE zoning district.

Section 3153 of the Boone County Zoning Regulations states that accessory structures or uses, as defined in Article 40 of this order (ordinance), shall be placed in the side or rear yard only, but not the corner side yard, and shall be no closer than five (5) feet to any property line in all zoning districts (refer to Section 3122 for setbacks along freeway, expressway, arterial, or collector roads). Accessory structures or uses may be located in the front yard area or corner side yard area in Agricultural zones or for agricultural uses located in other zones provided the respective front yard or corner side yard setback is met. For the purposes of this section, fences are considered accessory structures and may not be located in the front yard or corner side yard (except as otherwise permitted under Section 3655 ). However, the five (5) foot setback requirement does not apply to fences located in the side or rear yards (refer to Section 3655 for fencing requirements). Retaining walls which are an integral part of a grade may be located in any yard and are not subject to setback requirements. Gas pumps, automatic teller machines, guard

shacks, and photo service facilities are permitted in the front yard, but shall be located at a sufficient distance from the property line in order to have safe internal traffic flow as per the requirements of Articles 32 and 33 and shall not be located in required landscape areas. For lots in residential zones that are less than 20,000 square feet in area, except for land used for agricultural purposes, the combined area of all accessory structures on a lot, not including open, outdoor swimming pools or other non-roofed structures, shall not exceed fifty percent (50%) of the gross floor area of the principal structure or 750 square feet, whichever is larger, and accessory structures shall not exceed the height of the principal structure.

Article 40 of the Boone County Zoning Regulations defines an accessory use or structure as a use or structure on the same lot as the principal use or structure and is subordinate in area, extent and purpose to the principal use or structure in which it serves. An accessory use or structure contributes to the comfort, convenience, and/or necessity for the occupants of the principal use or structure.

#### SITE CHARACTERISTICS

The approximate 0.1 acre site fronts on the west Ryle Road and backs up to the Ohio River. The shed is the only structure on the property and is located 5 feet from the northern property line. The topography of the property falls toward the Ohio River and more settling is expected to occur because of the pier wall that was recently constructed in the Ryle Road right-of-way.

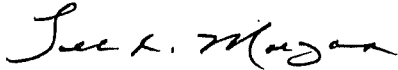
#### STAFF COMMENTS

1. The property owners can apply for a Change in Non-Conforming Use because they had a non-conforming shed on their property before county road construction caused the structure to be removed. The Zoning Administrator determined that the property owners did not intend to abandon the 25 square foot structure but were waiting for the ground to settle. (See attached letter).
2. Staff contacted the County Engineer regarding the application because the new shed appears to be located in the Ryle Road claimed right-of-way. The County Engineer has no objections to the encroachment because the shed is located below the pier wall. (See 9/20/11 e-mail from Greg Sketch to Kevin Wall).
3. Staff doesn't believe that the shed is unsightly or will change the character of the area. The adjoining property owner to the south has a large boat house that is located between Ryle Road and the Ohio River.
4. The Change in Non-Conforming Use application can be viewed in the following fashions:
  - a. The new shed will enlarge the size of the non-conforming use (100 square feet versus 25 square feet).
  - b. The new shed will not enlarge the scope of the non-conformity. The 100 square foot shed will be no more objectionable than the 25 square foot shed.

CONCLUSION

KRS 100.253 and Section 220 of the Boone County Zoning Regulations gives the Boone County Board of Adjustment and Zoning Appeals the authority to act on the request.

Respectfully submitted,



Todd K. Morgan, AICP  
Senior Planner, Zoning Services

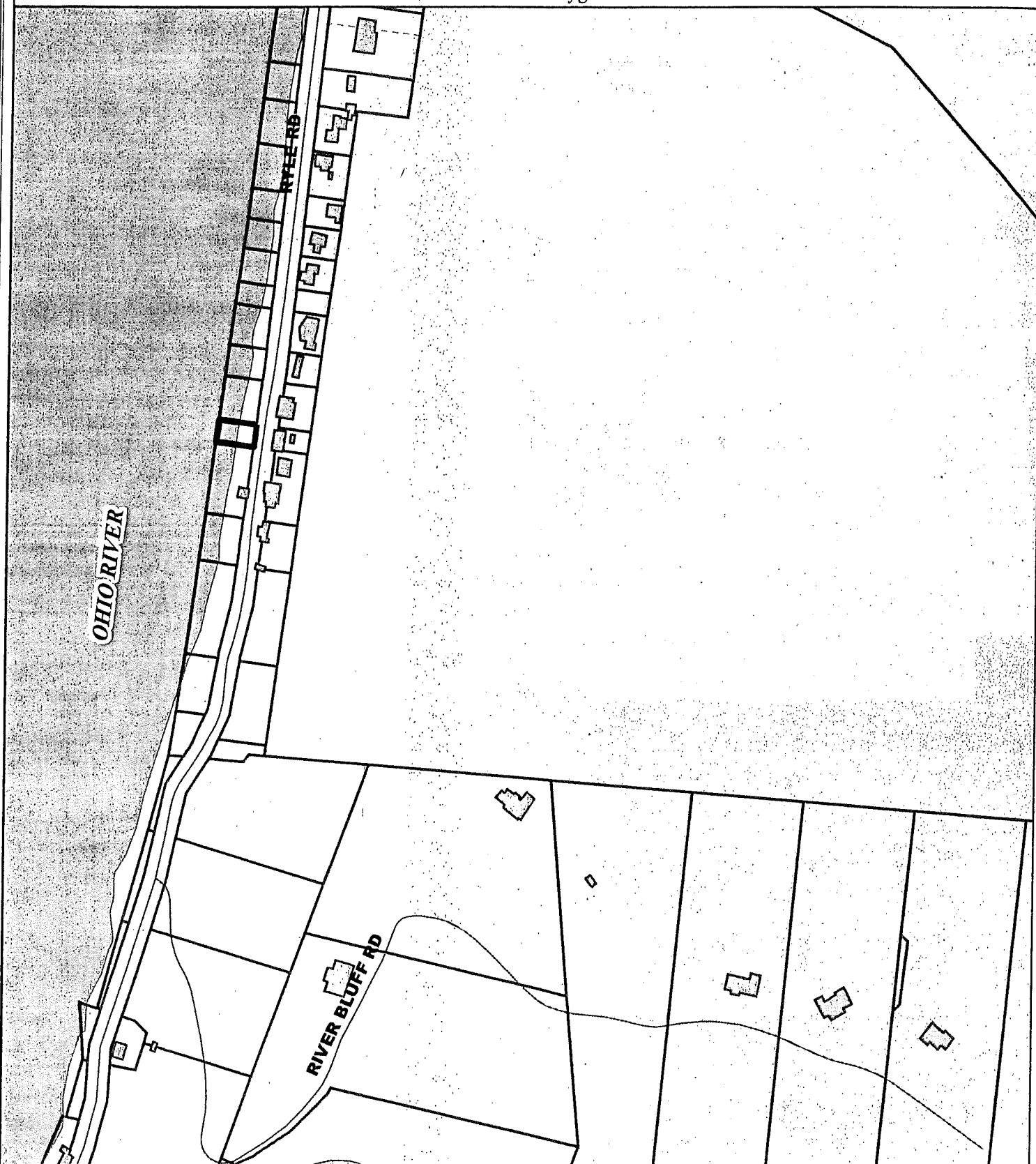
TKM/dw

Attachments

- \*Site Vicinity Map
- \*2007 Aerial Map with Proposed Shed
- \*2004 Aerial Map
- \*10/4/11 Letter From Kevin Wall to Jackie Fobbe
- \*9/20/11 E-Mail From Greg Sketch
- \*Zoning Map
- \*Application

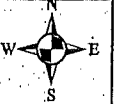
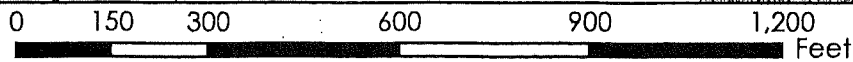
# SITE VICINITY MAP

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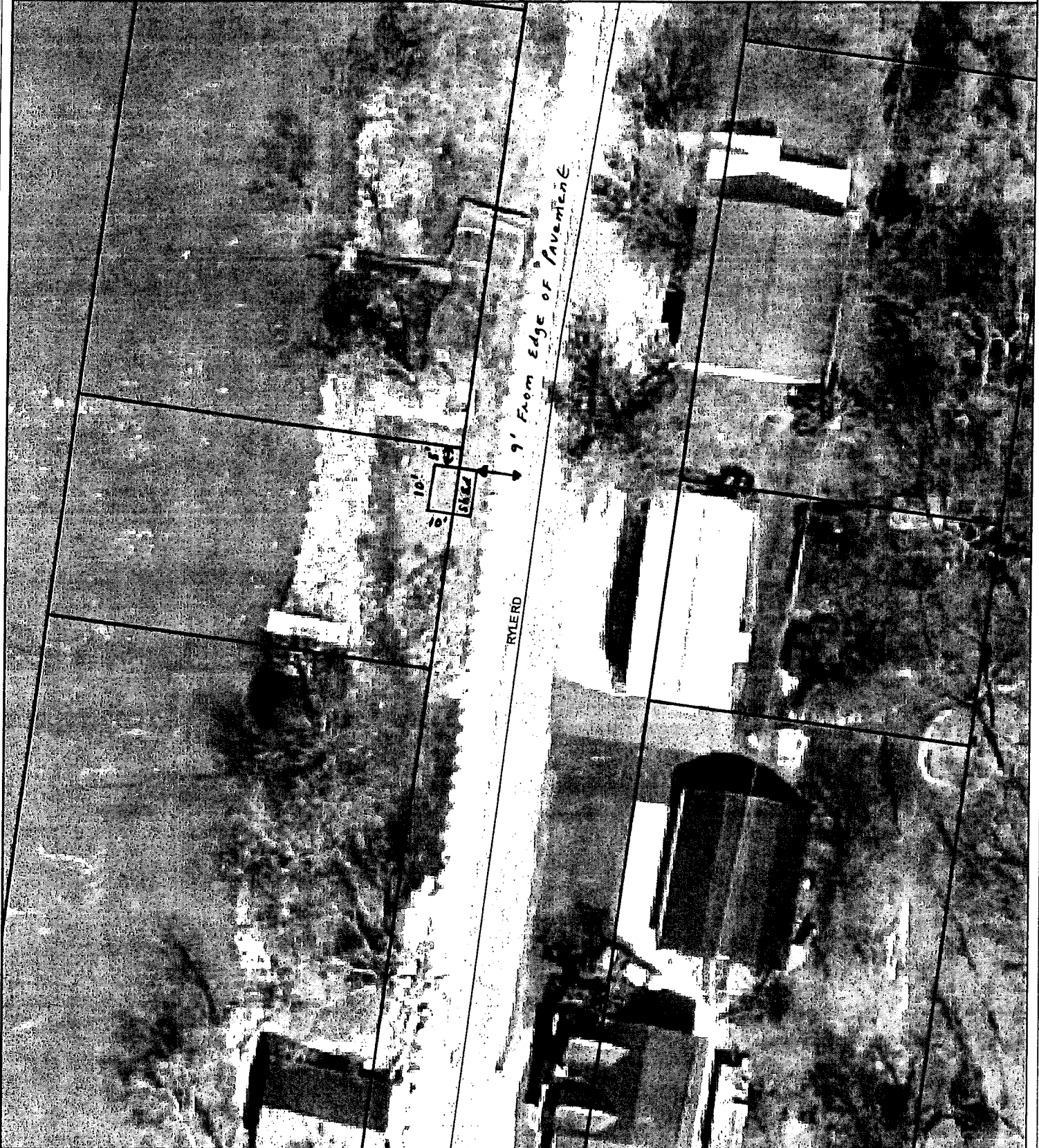
**Boone County GIS - Putting Northern Kentucky on the Map**

Map Created: 01/01/2008

Map Document: \*.mxd

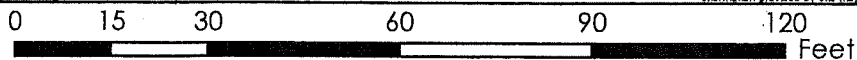
# 2007 AERIAL MAP WITH PROPOSED SHED

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1 inch = 30 feet



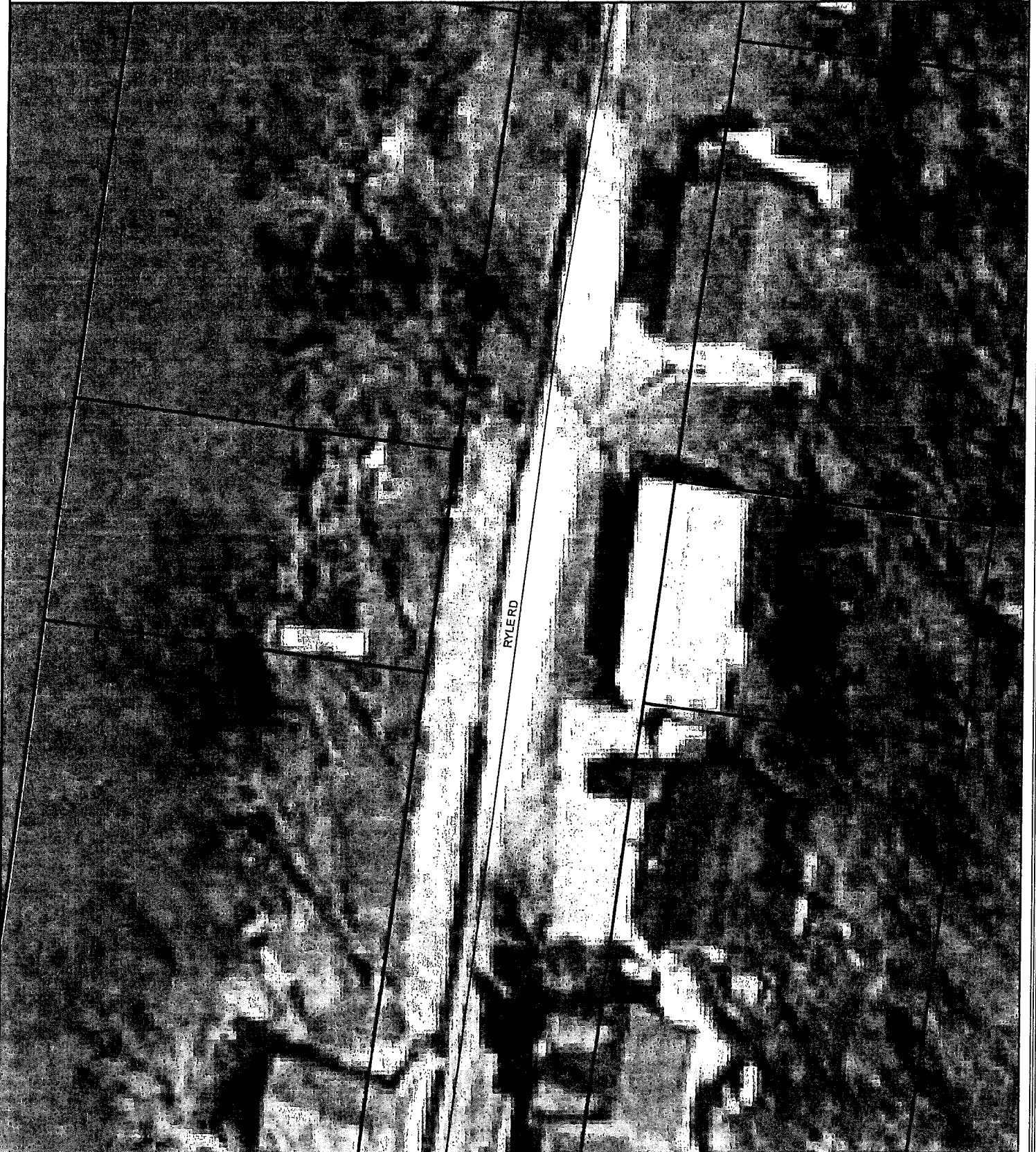
**Boone County GIS - Putting Northern Kentucky on the Map**

Map Created: 01/01/2008

Map File: boone\_county\_gis.mxd  
AppMap Document: 1.mxd

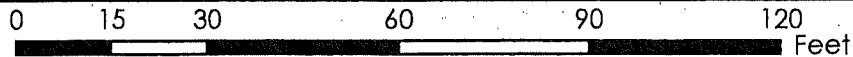
# 2004 AERIAL MAP

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1 inch = 30 feet



**Boone County GIS - Putting Northern Kentucky on the Map**



# BOONE COUNTY PLANNING COMMISSION

[www.boonecountyky.org/pc](http://www.boonecountyky.org/pc)  
[www.boonecountygis.com](http://www.boonecountygis.com)

Boone County Administration Building  
2950 Washington Street, Room 317  
P.O. Box 958  
Burlington, KY 41005

Phone (859) 334-2196; Fax (859) 334-2264  
[plancom@boonecountyky.org](mailto:plancom@boonecountyky.org)

October 4, 2011

Mrs. Jackie Fobbe  
204 Park Avenue  
Elsmere, KY 41018

RE: 10' X 10' Storage Shed at 13196 Ryle Road, Boone County, Kentucky; Rural Suburban Estates (RSE) Zone

Dear Mrs. Fobbe:

As you are aware, this office denied a Zoning Permit application on 8/26/11 for a 10 foot by 10 foot shed on your lot along the Ohio River across the road from the property at 13196 Ryle Road. You have since informed me that before the 10' X 10' shed was constructed, an approximate 4' X 5' shed occupied the same location but was removed when substantial repair work was conducted on Ryle Road approximately 4 years ago. Based on your statements, there was no intent to "abandon" the pre-existing shed use as you were waiting for the ground to settle before it was reinstalled. The shed was apparently moved and kept at the rear of the house on the opposite side of the road for several years. Although you didn't provide any documentation regarding the previous shed (photos, insurance statements, etc), personnel from the Boone County Public Works Department verified the existence of the shed on the river side of Ryle Road at the time the road work was started.

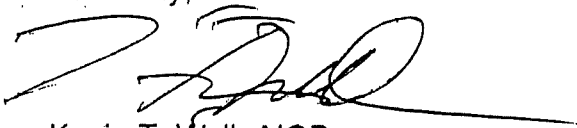
Based on these facts, I have concluded that the original 4' X 5' shed has pre-existing, nonconforming status and can be maintained. What are now known to be the nonconforming characteristics of the shed are described in Bob Jonas's 8/26/11 letter as the reasons for denial of the Zoning Permit. As staff we are not authorized to administratively permit a larger shed, as this would change the nature of the nonconforming condition. However, a Change in Nonconforming Use application can be considered by the Board of Adjustment (BOA) through a public hearing. The BOA is the same board which hears requests for variances from the zoning regulations.

A formal application, supplemental materials, and fee would need to be submitted in order for the request to be placed on the BOA's agenda. It would be a good idea to discuss the project and the necessary application materials with Todd Morgan in our office who handles BOA requests.

Mrs. Jackie Fobbe  
October 4, 2011  
Page 2

Because this letter outlines a determination of the Zoning Administrator (i.e., previous 4' X 5' shed still has pre-existing, nonconforming status), it may be appealed to the Board of Adjustment by the property owner or other aggrieved party, such as a neighboring property owner, within 30 days. In order for an appeal to be granted, it must be demonstrated that the decision is in error.

Sincerely,

A handwritten signature in black ink, appearing to read 'Kevin T. Wall', written over a horizontal line.

Kevin T. Wall, AICP  
Zoning Administrator  
Boone County Fiscal Court

KTW/vlm

cc: Todd Morgan, AICP, Senior Planner  
Dale Wilson, BCPC Legal Counsel

bcc: Tom Lonnemann  
935 Dudley  
Edgewood, KY 41017

## Kevin Wall

---

**From:** Greg Sketch  
**Sent:** Tuesday, September 20, 2011 11:14 AM  
**To:** Kevin Wall  
**Subject:** RE: Emailing: Michael and Jacqueline Fobbe

I really don't care in this case, as I have no concern below the wall.

-----Original Message-----

**From:** Kevin Wall  
**Sent:** Tuesday, September 20, 2011 11:06 AM  
**To:** Greg Sketch  
**Subject:** RE: Emailing: Michael and Jacqueline Fobbe

Don't know if it's in the claimed right-of-way.

-----Original Message-----

**From:** Greg Sketch  
**Sent:** Tuesday, September 20, 2011 11:05 AM  
**To:** Kevin Wall; Connie Becker  
**Subject:** RE: Emailing: Michael and Jacqueline Fobbe

Kevin

I spoke with Gary Tucker (short, chunky guy in his fifties that wears a ball cap) and he said that he likely told the resident to move the 4X5 shed as it would have been damaged with the installation of the pier wall. However, he did not state to that or any resident adjoining the road to wait for 4-5 years before putting the shed back for all settling to occur. His message was that anything below the wall would likely slide into the river in time.

As for the 10X10 replacement shed, if it is not in the claimed right-of-way, the Public Works Department has no position on it, however it will not adversely affect the road.

Thanks

Greg

-----Original Message-----

**From:** Kevin Wall  
**Sent:** Tuesday, September 20, 2011 8:43 AM  
**To:** Connie Becker; Greg Sketch  
**Subject:** FW: Emailing: Michael and Jacqueline Fobbe

FYI.

-----Original Message-----

**From:** Jackie Fobbe [<mailto:JFobbe@omnitechologies.com>]  
**Sent:** Tuesday, September 20, 2011 8:40 AM  
**To:** Kevin Wall  
**Cc:** Robert Jonas  
**Subject:** RE: Emailing: Michael and Jacqueline Fobbe

Good Morning Mr. Wall-

All we can remember about the guy from the County is, he is on the shorter side, a little chunky and always wore a ball cap-he looked like maybe he was in his fifty's, we don't remember his name and we even asked our neighbors on Ryle road but they don't remember either.

At the building inspectors, I called on the phone and it sounded like a younger gal that I talked to but I didn't even think to ask her name, sorry!

Like I said in the letter, we have been there for 38 years and didn't think at the time that any of this would be a issue, so we really didn't even think about any of this stuff at the time or we would have done things differently.

We are planning on building a new house on this property within the next 2 years, can you tell me what kind of permits we will need for a new house or who I can contact?

Kind Regards,

Jackie Fobbe  
Omni Technologies  
Sales Coordinator  
812 260-2195 direct  
513 884-2579 cell  
[jfobbe@omnitechologies.com](mailto:jfobbe@omnitechologies.com)

-----Original Message-----

From: Kevin Wall [<mailto:KWall@boonecountyky.org>]  
Sent: Monday, September 19, 2011 1:26 PM  
To: Jackie Fobbe  
Cc: Robert Jonas  
Subject: RE: Emailing: Michael and Jacqueline Fobbe

Ms. Fobbe:

Do you have the names of anyone that you dealt with from either the Boone County Public Works Department or Boone County Building Department?

Thanks for any info you can provide.

kw

-----Original Message-----

From: Jackie Fobbe [<mailto:JFobbe@omnitechologies.com>]  
Sent: Monday, September 19, 2011 11:40 AM  
To: Kevin Wall  
Cc: Robert Jonas  
Subject: Emailing: Michael and Jacqueline Fobbe

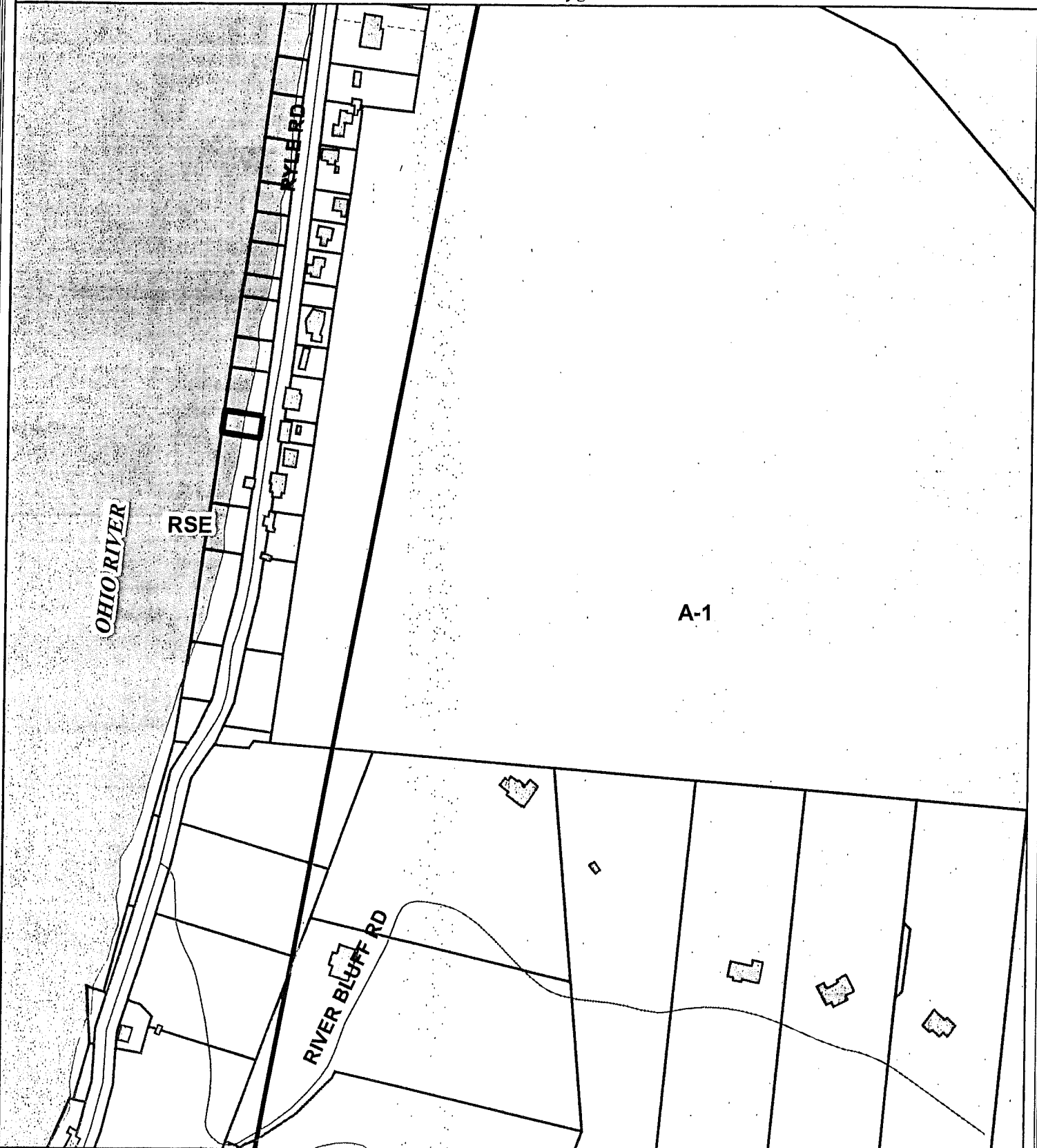
Hello-

Mr. Wall and Mr. Jonas,

I have talked to both of you on the phone concerning the shed on our property at 13196 Ryle Road. Please see the attached appeal letter concerning this issue. If you have any questions please let us know.

# ZONING MAP

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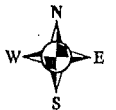
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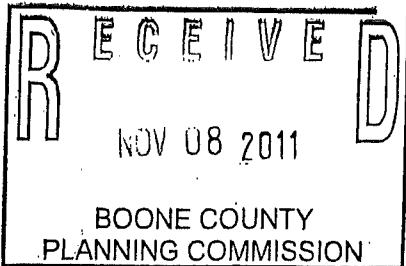
Feet

1 inch = 83,333 feet



**Boone County GIS - Putting Northern Kentucky on the Map**





APPLICATION FORM

BOARD OF ADJUSTMENT AND ZONING APPEALS ACTION BOONE COUNTY PLANNING COMMISSION

FIVE (5) SCALED COPIES AND ONE (1) 11X17 REDUCTION OF SUBMITTED DRAWINGS ARE REQUIRED

See Boone County Zoning Regulations

SECTION A (To be completed by applicant)

(Check One)

- 1. Boone Florence Walton Union

(Check One)

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

3. Applicant's Name Michael + Jacqueline Fobbe Phone Number 859 727-4086 Fax No. Applicant's Address 204 Park Ave Elsmere KY 41018

4. Description of Request: Replace 5x5 shed with 10x10

5. Name of Development

6. Location of Development 13196 Ryle Road

7. Acreage Under Review

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

13196 Ryle Road UNION KY

9. Owner of Property Michael + Jacqueline Fobbe

Address of Property Owner 13196 Ryle Road Phone No. 859 727-4086

10. UNION KY City State Zip

11. Proposed Use(s) on Site 10x10 shed

12. Total Square Footage of Existing and/or Proposed Buildings 100 sq feet

13. Current Zoning on Property RSE

14. Deed Book 838 Page No. 388 Group No. 2066B

15. Is the site subject to a zone change? NO

If yes, give date of approval

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

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

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: Michael A Fobbe (Faxed, Photocopied or Scanned Signatures will NOT be Accepted)

ORIGINAL Applicant's Signature: Michael A Fobbe (Faxed, Photocopied or Scanned Signatures will NOT be Accepted)

Copy

CLUR #11-BCBOA-015-A

CERTIFICATE OF LAND USE RESTRICTION

1. NAME AND ADDRESS OF PROPERTY OWNER(S)

Michael and Jacqueline Fobbe  
13196 Ryle Road  
Union, Kentucky

2. ADDRESS OF PROPERTY

204 Park Ave  
Elsmere, Kentucky

3. NAME OF SUBDIVISION OR DEVELOPMENT (if applicable)

Michael and Jacqueline Fobbe

4. DEED BOOK 838

PAGE NO. 388

GROUP NO. 2066B

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: Change in Non-Conforming Use

Variance

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

  
\_\_\_\_\_  
SIGNATURE OF COMPLETING OFFICIAL

Mitchell A. Light, Assistant Zoning Administrator  
Name and Title of Completing Official

COMMONWEALTH OF KENTUCKY

COUNTY OF BOONE

Subscribed, sworn to, and acknowledged before me by Mitchell A. Light

on behalf of the Boone County Planning Commission this 16th day of December, 2011.



Vicki L. Myers

Notary ID 438411

NOTARY PUBLIC, State at Large

My commission Expires:

April 17, 2015

This instrument was prepared for recording purposes only by:



Elizabeth McGrath

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 Change in Non-Conforming Use approved by the Boone County Board of Adjustments and in accordance with the current zoning in effect as of December 16, 2011 Certificate of Land Use Restriction (#11-BCBOA-015-A), for Michael and Jacqueline Fobbe, Property Owner(s).

The following conditions will apply:

No Conditions

The approved Change in Non-Conforming Use as well as the preceding conditions apply to the property described in:

DEED BOOK 838

PAGE NO. 388 GROUP NO. 2066B.