

APPLICATION FORM

14.5 Row

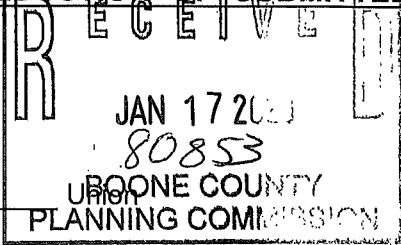
**BOARD OF ADJUSTMENT
AND
ZONING APPEALS ACTION
BOONE COUNTY PLANNING COMMISSION**

By Jan 21

Feb 12 Meeting

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 _____
(Check One)
- 2. _____ Conditional Use Permit Variance _____ Appeal _____
_____ Change in Non-Conforming Use
- 3. Applicant's Name Rebecca Miller
Applicant's Address 659 Maryland Ct
Burlington NC 41005
City N.C. 515-170-3601 State Zip
- 4. Phone Number 512-3668 Fax No. _____ E-Mail bharper0878@hotmail.com
Description of Request: Fence Height Variance
- 5. Name of Development _____
- 6. Location of Development _____
- 7. Acreage Under Review .31
- 8. Lot Number and Name of Subdivision (if part of a subdivision)
LOT 266 Gunpowder Trails
- 9. Owner of Property Rebecca Miller
Address of Property Owner 659 Maryland
Burlington NC 41005
City State Zip
- 10. Phone Number 854-512-3668 Fax No. _____ E-Mail bharper0878@hotmail.com
- 11. Proposed Use(s) on Site _____
- 12. Total Square Footage of Existing and/or Proposed Buildings _____
- 13. Current Zoning on Property SR-1/CO
- 14. Deed Book 976 Page No. 727 Group No. 2038A
- 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? _____
- 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: Rebecca Miller
(Faxed, Photocopied or Scanned Signatures will NOT be Accepted)

ORIGINAL Applicant's Signature: Rebecca Miller
(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 1-17-20 Fee Received \$1006.00 Receipt # 808 53
2. Is application complete? Yes No
3. Staff Reviewer M. Schwartz
4. Scheduled Board Action Date 2/12/2020
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 - 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

#3

APPLICANT: Rebecca Miller

LOCATION: 659 Makayla Court, Boone County, Kentucky

ZONING: Suburban Residential One/Concept Development Plan (SR-1/CD)

DATE: February 12, 2020

PROPOSAL

The applicant is requesting a Variance to increase the maximum height of a fence within the corner side yard from four (4) feet to six (6) feet.

SITE HISTORY

- 2004 The zoning of the site in question and the surrounding area was changed from A-2 to SR-1 (R-04-017A).
- 2007 A final plat was approved for Gunpowder Trails Subdivision, Section 12, creating the lot in question (Lot 226).
- 2009 On September 22, 2009, a zoning permit was approved for the construction of the existing house.
- 2016 On March 24, 2016, a zoning permit was approved for the construction of the existing deck.
- 2018 On July 3, 2018, a zoning permit was approved for the installation of the existing pool.

APPLICABLE REGULATIONS

- A. Section 250 of the Boone County Zoning Regulations states that one of the duties of the Board of Adjustment is to hear and decide on applications for variances.
- B. Section 250 of the Boone County Zoning Regulations defines a variance as a departure from 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.
- C. The Board should evaluate the request as it relates to the criteria necessary for granting a Variance as stated in Section 251 of the Boone County Zoning Regulations.
1. Findings listed in Section 251:
 - a. 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 a nuisance to the public, and will not allow an unreasonable circumvention of the requirements of the zoning regulations. In making

these findings, the board shall consider whether:

- (1) The requested variance arises from special circumstances which do not generally apply to land in the general vicinity, or in the same zone;
- (2) The strict application of the provisions of the regulations would deprive the applicant of the reasonable use of the land or would create an unnecessary hardship on the applicant;
- (3) The circumstances are the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought.

b. 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.

- D. Section 4000 of the Boone County Zoning Regulations defines a corner side yard as a side yard which adjoins a street or road and which extends between the side of the principal building to the right-of-way line at the side of the lot, and between the front building line and rear property line.
- E. Section 3655.2 of the Boone County Zoning Regulations states that fences shall be permitted within all districts. This section also states that the maximum height for fences within residential zones is six (6) feet and that the fence is required to be located within the side or rear yard.
- F. Section 3655.4 of the Boone County Zoning Regulations states that fences shall be permitted within the front and corner side yard according to the following standards: (a) No fence can be taller than four (4) feet; (b) Fences shall be of a decorative design (chain link, barbed wire, stock wire and similar type fences are not permitted) and shall be designed to have an opacity of fifty (50) percent or less; and (c) no fence can be located within a public right-of-way nor can it be located in an area which will obstruct the sight triangle for any motorist or pedestrian.
- G. Section 930 of the Boone County Zoning Regulations states that “the purpose of the Suburban Residential One district is to provide a low density, residential environment whose dwelling types and densities are typical of a suburban character. It is also to provide limited or passive and active recreational uses that are appropriate to the permitted uses in the district. Suburban Residential One districts will be located on lands within established urban areas where adequate infrastructure facilities and services are available or proposed.”
- H. The Kentucky Building Code requires that a barrier, or fence, around a private swimming

pool be designed: (a) with a minimum height of four (4) feet; (b) so that it is non-climbable; (c) with an out-swinging, self-closing and self-latching gate; and (d) so that a four inch (4") sphere cannot pass through it.

RELATIONSHIP TO THE COMPREHENSIVE PLAN

A. The Our Boone County Plan 2040 Future Land Use Plan designates the site in question for "Suburban Density Residential" uses. This designation is defined as Single family housing of up to four units per acre.

B. The following Our Boone County Plan 2040 Goals and Objectives apply to this application:

Land uses and zoning decisions shall strive to balance the rights of landowners with the rights of neighbors and the community (Overall Goal A, Objective 4).

Promote quality of life amenities to retain current residents and attract new residents in order to have a stable and diversified population (Demographics Goal A, Objective 3).

Home ownership shall be encouraged and incentivized as well as redevelopment and renovation of deteriorating housing stock (Demographics Goal B, Objective 3).

C. Makayla Court is identified as a local cul-de-sac street, with sidewalks on both sides of the street.

SITE CHARACTERISTICS

A. The approximate 0.3 acre property is located at the southeast corner of the intersection of Makayla Court with Gordon Boulevard. The site is currently occupied by a detached single-family residential dwelling, a swimming pool and a six (6) foot high privacy fence.

SURROUNDING LAND USES AND ZONING

North: Single family (SR-1/CD)

South: Single family (SR-1/CD)

East: Single family (SR-1/CD)

West: Single family (SR-1/CD)

PROPOSED DEVELOPMENT

A. The applicant has constructed a six (6) foot high privacy fence within their side yard, rear yard, and corner side yard.

STAFF COMMENTS

- A. While the Board may approve the requested variance to increase the height of the fence, the Board does not have the authority to modify the opacity requirement. The applicant should address how they intend to meet this requirement given the fact that the fence is existing.
- B. Should the Board grant the requested variance, the Board may want to consider a condition that the fence be modified so that any portion of the fence that is located within the corner side yard shall be reconstructed to provide for an opacity of fifty (50) percent or less.

CONCLUSION

- A. KRS 100.241 and Section 220 of the Boone County Zoning Regulations give the Boone County Board of Adjustment and Zoning Appeals the authority to act on the request.
- B. Section 251 of the Boone County Zoning Regulations identifies criteria necessary for granting a Variance. The applicant needs to provide information as to how their application meets this criteria.

Respectfully submitted,



Michael D. Schwartz
Planner

MDS/ss

Attachments

- *Vicinity Map
- *Aerial Map
- *Topographical Map
- *Zoning Map
- *2040 Future Land Use Map
- *Application
- *Development Plan

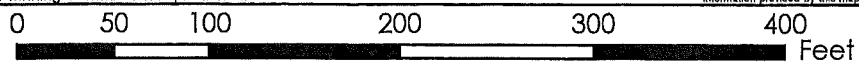
Vicinity Map

www.boonecountygis.com



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1 Inch = 100 feet



Boone County GIS - Putting Northern Kentucky on the Map



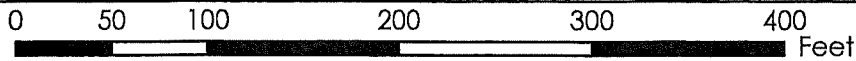
Topographical Map

www.boonecountygis.com

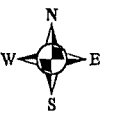


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Boone County GIS - Putting Northern Kentucky on the Map



Zoning Map

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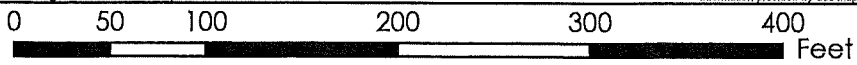
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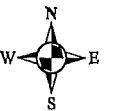


Map Created: 01/01/2018

Boone



1 Inch = 100 feet



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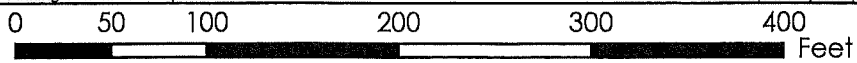
2040 Future Land Use Map

www.boonecountygis.com



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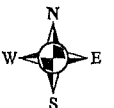


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Boone County GIS

Map Created: 01/01/2018



Boone County GIS
ArcMap Document: *.mxd

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14.5 row

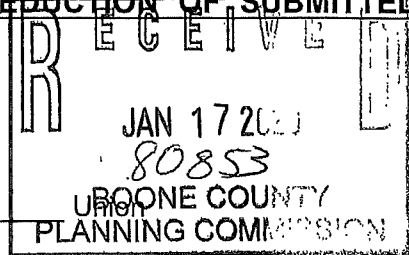
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ORIGINAL Applicant's Signature: Rebecca Miller (Faxed, Photocopied or Scanned Signatures will NOT be Accepted)

Attn: Boone County Board of Adjustment and Zoning Appeals

We contacted the fence company and the fence company explained to us there was not a 4ft option in the white vinyl fencing. After receiving our first official notice, we contacted Robert Krebs on Friday August 16, at 0801am and we spoke for approximately 23 minutes. At the completion of our phone call, we were informed that he was going to get with his boss, and see what kind (if any) of variances we may be able to file and/or what we would need to do to be in compliance. We asked about bringing the fence in an additional 8 feet from the property line as a compromise, but he did not know if that would suffice. We do not have the option of bringing it off the plane of the house, because the fence would then go through the deep end of our pool. We spoke in depth about calling the county prior to getting the fence installed to check on the permit process. We were informed that the fence could not be greater than six feet in a residential area and that we needed to follow our HOA (homeowner's association) rules, which we do not have one. We were never advised by the county on the 4ft restriction on a corner lot; and therefore, we spoke about the county enforcing a fence permit process, to prevent others from future occurrences that we are currently facing. We spoke about the financial burdens to having the fence taken down and/or modified. We admit that we never budgeted for the fence but beings we have had 2 drownings in our area in the last 2 summers, and there are quite a few little kids that were looking through our fence, when the pool was being filled, that we felt it was in the best interest of ourselves and other's safety to have the privacy fence installed. We also talked about the other privacy fences on corner lots in our neighborhood and why the 2 were compliant and ours was not. We also discussed one on the corner of Summertime and Gordon (which is not off the plane of the house and that they have an above ground pool).

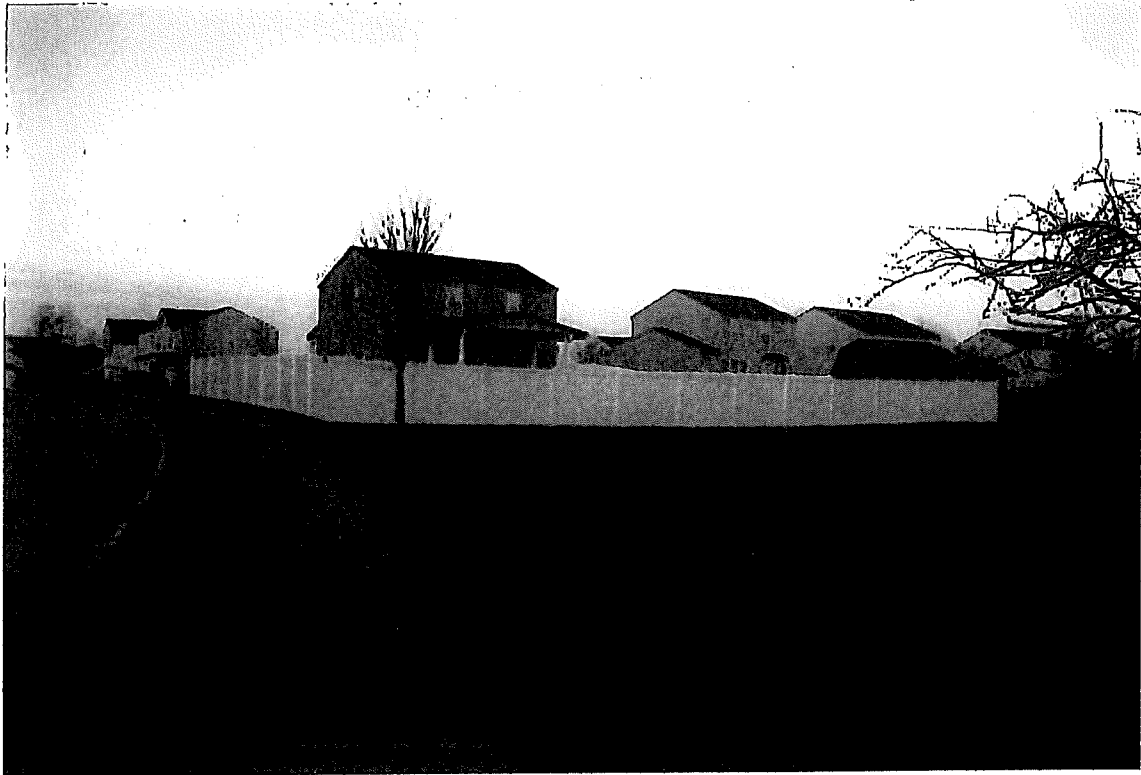
We explained our frustrations and that we truly did not care about privacy (if that was the case, we could have kept our previous fence and planted bushes and shrubs but that would not have prevented kids from hopping the fence), our number one priority is safety. On top of all that, (1) the pool plans were submitted and approved by the county and there were was nothing stated in the terms of limitations or restrictions beyond the regular fence height; and (2) the need for the privacy fence as-is in its current state is necessary to avoid an attractive nuisance.

This has caused a significant amount of stress on us as homeowners. We are law abiding citizens and would never want to do anything to purposefully violate any city or county ordinances. Thank you in advance for any assistance you can provide us in resolving this matter.

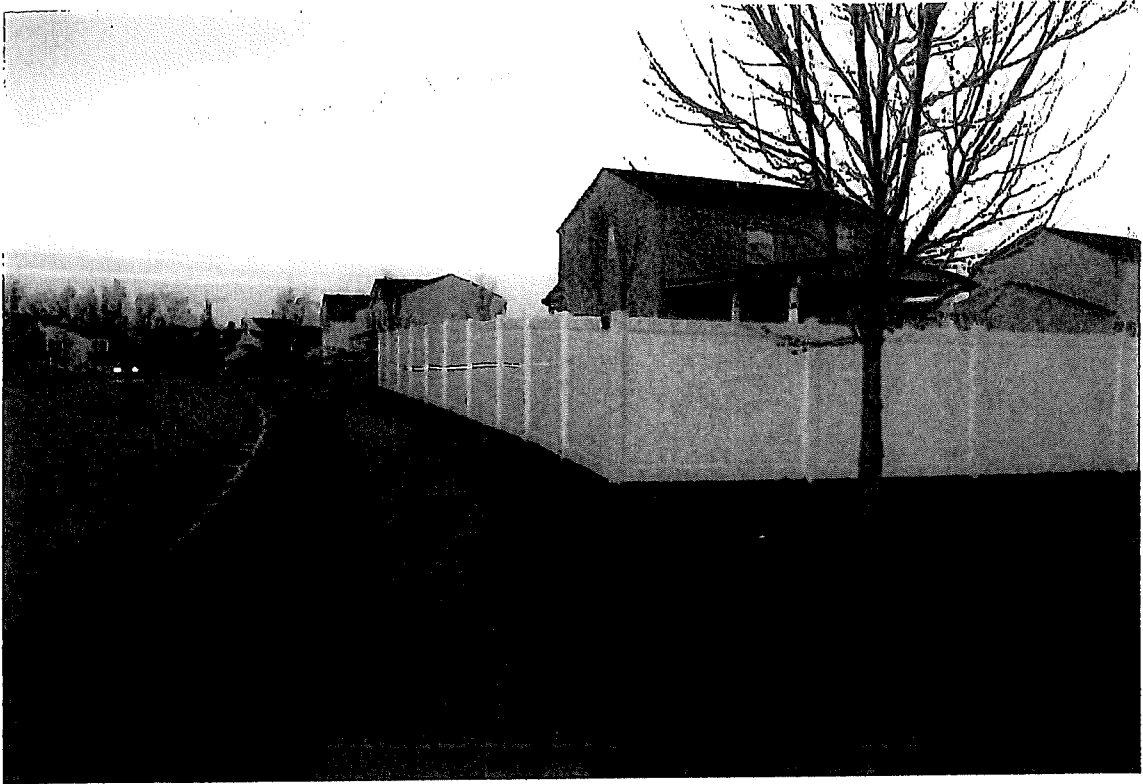
Respectfully

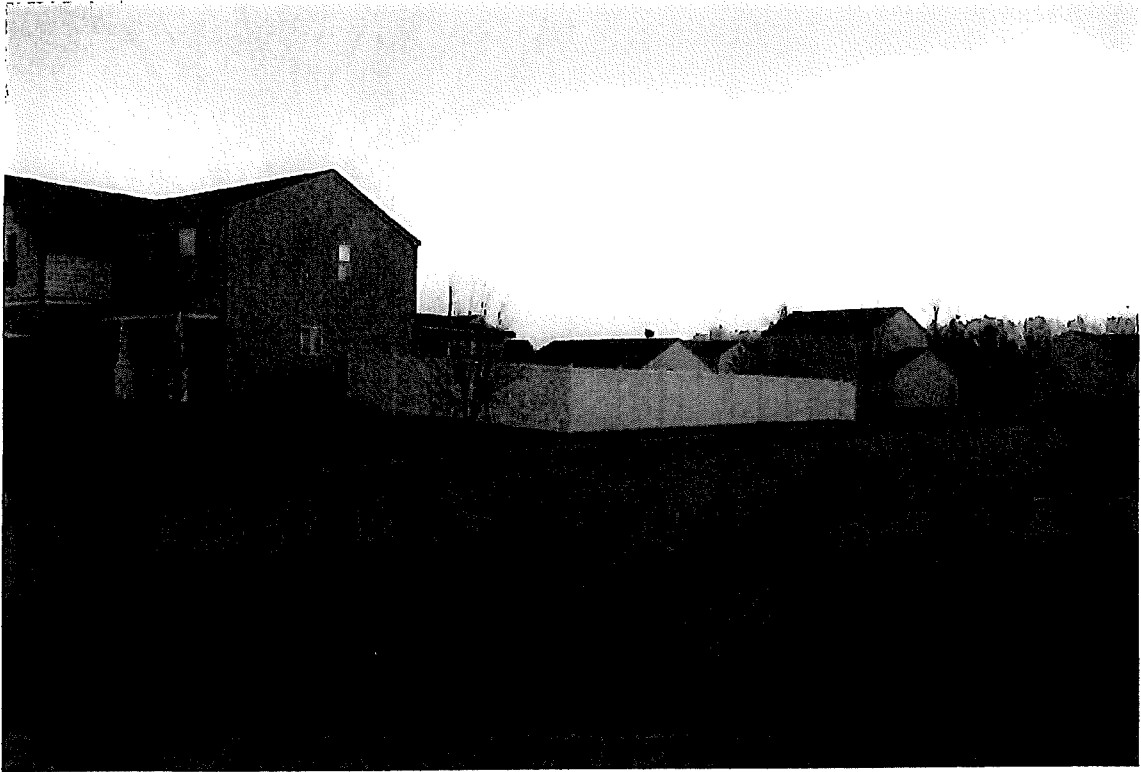
Rebecca and Nick Miller

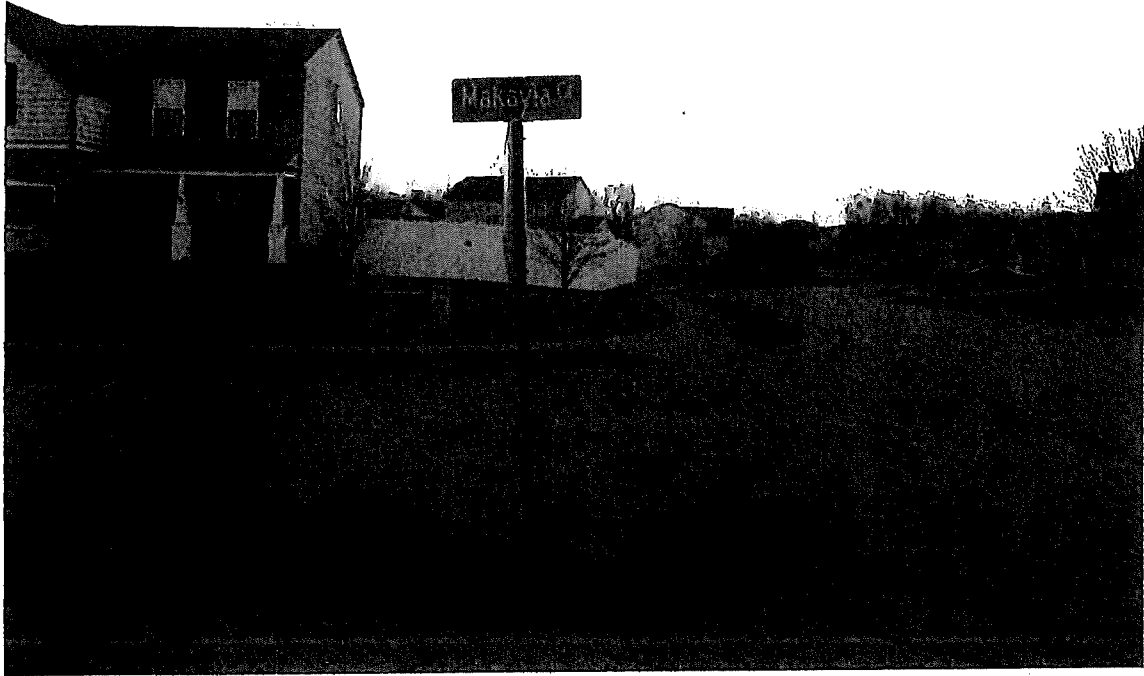












6798 Gordon Blvd

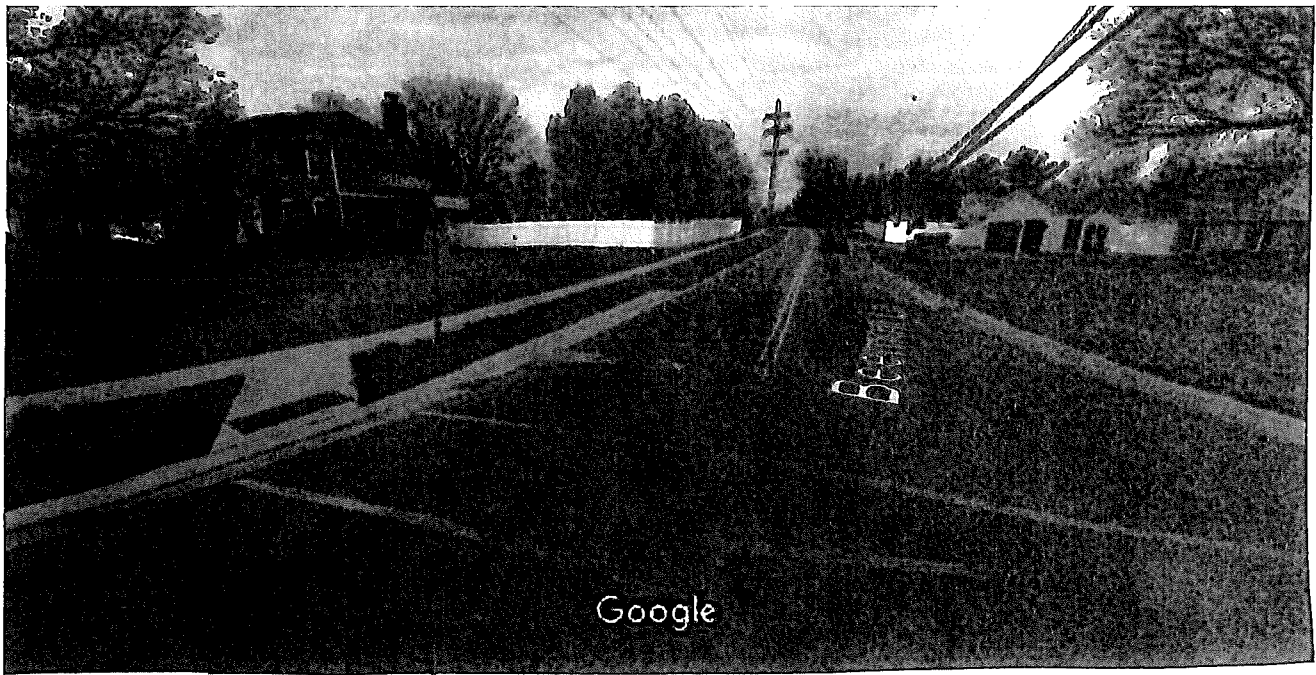


7037 Running Fox Ct



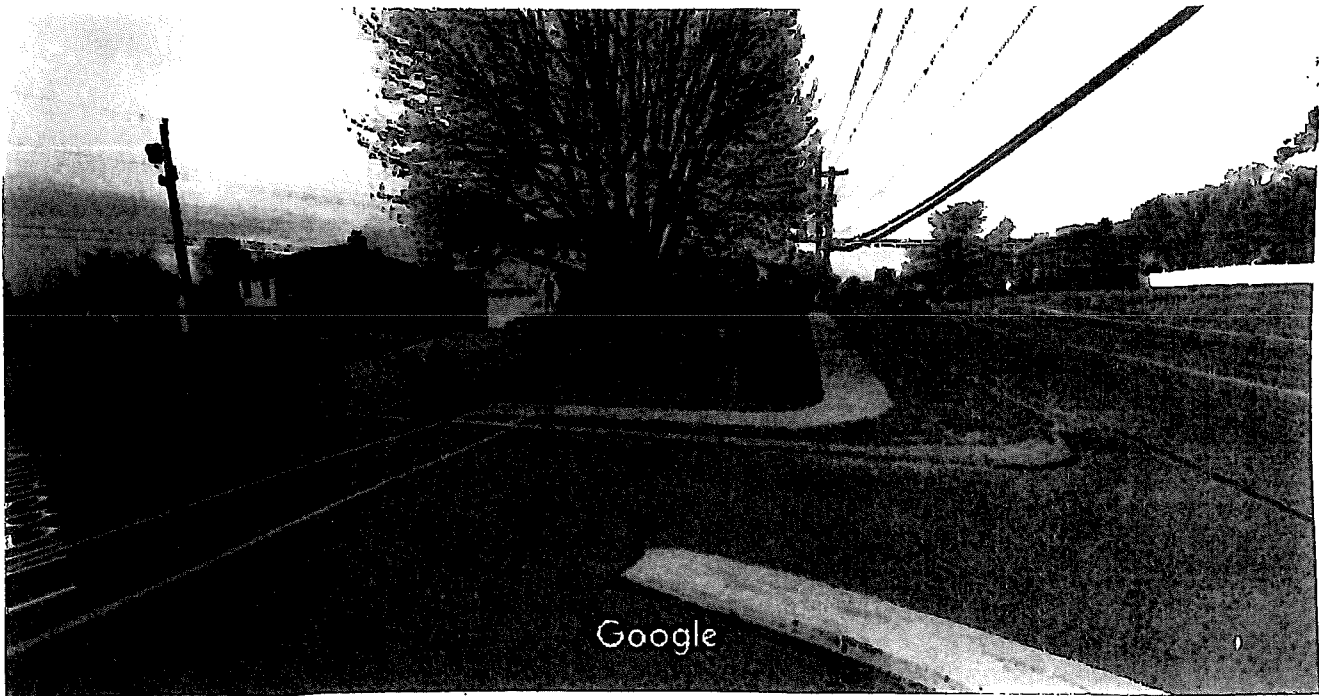
6938 Gordon Blvd





1218 Cayton Rd

1200 Bickman Ln



8535 Pleasant Dr



CERTIFICATE OF LAND USE RESTRICTION

1. NAME AND ADDRESS OF PROPERTY OWNER(S)

Rebecca Miller
659 Makayla Court
Burlington, KY 41005

2. ADDRESS OF PROPERTY

659 Makayla Court
Burlington, KY 41005

3. NAME OF SUBDIVISION OR DEVELOPMENT (if applicable)

Rebecca Miller

4. DEED BOOK 976

PAGE NO. 727

GROUP NO. 2038A

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:

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


Michael D. Schwartz, Planner
Name and Title of Completing Official

COMMONWEALTH OF KENTUCKY

COUNTY OF BOONE

Subscribed, sworn to, and acknowledged before me by Michael D. Schwartz

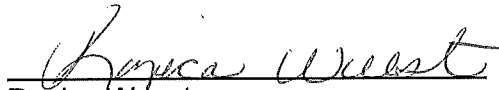
on behalf of the Boone County Planning Commission this 13 day of February, 2020.



Treva L. Beagle
Notary ID 588897
NOTARY PUBLIC, State at Large

My commission Expires:
November 12, 2021

This instrument was prepared for recording purposes only by:



Ronica Wuest
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.)