03-FBOA-001-A

RECEIVED
JAN 21 2003
BOONE COUNTY
PLANNING COMMISSION

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. ___ Boone ✓ Florence ___ Walton ___ Union

(Check One)

2. ___ Conditional Use Permit ___ Variance ___ Appeal
   ✓ Change in Non-Conforming Use
3. Applicant's Name JOSEPH & SUE KATE BERKSHIRE
   Phone Number 371-5653 Fax No. ___
   Applicant's Address 7414 HWY 42
   FLORENCE KY 41042
   City State Zip
4. Description of Request: ADDITION OF 3 SEASON PORCH TO CONNECT HOUSE AND GARAGE
5. Name of Development ___
6. Location of Development ___
7. Acreage Under Review 1.4114 TOTAL .95 .51
8. Lot Number and Name of Subdivision (if part of a subdivision)
9. Owner of Property ___
   Phone Number of Owner ___
10. Address of Property Owner SAME
    City State Zip
11. Proposed Use(s) on Site RES.
12. Total Square Footage of Existing and/or Proposed Buildings 3448 EXIST. 1425 PROP. — 2170 HOUSE, 1248 GARAGE, 3418
13. Current Zoning on Property O-1 & SR-2
14. Deed Book 901 Page No. 244 Group No. 2041B
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.

Applicant's Signature: X [signature] Jan 20 2003

Property Owner's Signature: X Sue Kate Berkshire

(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 1-21-03 Fee Received #677.00
2. Is application complete? ✓ Yes _____ No
3. Staff Reviewer _____
4. Scheduled Board Action Date _____
5. Board Action:

✓ **Approved**
2/12/03 ✓ **Approved with Conditions** (See #6)
_____ **Denial** (See #7)

6. Conditions of Approval: SEE 2/12/03 FLORENCE B.O.A. MEETING MINUTES

7. Reasons for Denial: _____

Boone County Planning Commission
2995 Washington Street
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: Joseph Berkshire & Sue Kate Berkshire

LOCATION: 7414 U.S. Highway 42, Florence, Kentucky

ZONING: Office One (O-1) & Suburban Residential Two (SR-2)

DATE: February 12, 2003

PROPOSAL

The applicants are requesting a Change in Non-Conforming Use so they construct an addition onto their single-family dwelling. The property is located at 7414 U.S. Highway 42 and is zoned Office One (O-1) and Suburban Residential Two (SR-2). The existing dwelling and proposed addition are located on the part of the property that is zoned O-1 (see attachments).

The submitted application and Concept Development Plan (see attachments) indicate that the approximate 2,175 square foot addition would connect to the rear of the single-family dwelling and southwest corner of the detached garage. The applicants explained to Staff that the addition would expand and beautify the rear entrance, provide access to the garage from the house, add a family room and bathroom to the first floor, expand the basement, and allow construction of a screened porch.

SITE CHARACTERISTICS

The 1.4114 site contains an approximate single-family residence, swimming pool, two garages, and a garden shed. Access to the site is provided from U.S. Highway 42. The topography of the site is level.

APPLICABLE REGULATIONS

Article 2, 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 applications for changes in non-conforming use.

Article 2, 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."

Article 2, 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."

K.R.S. 100.253 allows the following:

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 nonconforming was adopted, nor shall the board permit a change from one (1) nonconforming use to another unless the new nonconforming use is in the same or a more restrictive classification, provided, however, the board of adjustment may grant approval, effective to maintain nonconforming-use status, for enlargements of extensions, made or to be made, of the facilities of a nonconforming 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 nonconforming use. Thereafter, such use shall be governed by the provisions of subsection (2) of this section.

Article 2, Section 276 of the Boone County Zoning Regulations states that repairs and maintenance may be made on any non-conforming structure or portion of a structure containing a nonconforming use. Such work may include ordinary repairs, or repair or replacement of non-bearing walls, fixtures, wiring, or plumbing, provided that the cubic content existing when it became non-conforming shall not be increased. Nothing in this section shall be deemed to prevent the strengthening or restoring to a safe condition of any building or part thereof declared to be unsafe by any official charged with protecting the public safety, upon order of such official.

Article 11, Sections 1111 and 1113 of the Boone County Zoning Regulations do not list detached single-family residences as a principally permitted use or conditional use in the Office One (O-1) zone.

SURROUNDING LAND USES & ZONING

North: Single-Family Residential Dwellings Fronting on Liberty Court (SR-2)

South: U.S. Hwy. 42, Alan Schmidt Construction, and Single-Family Dwelling (O-1)

East: Office Building (O-1)

West: Michel Insurance Agency (O-1 & SR-2)

STAFF COMMENTS

1. The house is non-conforming because it is located in an Office One (O-1) zoning district. Detached single-family dwellings are not listed as a principally permitted use or conditional use in the O-1 zone.

2. Staff consulted legal counsel in regard to this request. It is Staff's understanding that the proposal for a change in non-conforming use can be viewed in the following fashions:

   a. The proposed addition will enlarge the existing non-conforming use in terms of gross square footage;

   b. The proposed addition will not enlarge the scope of the non-conformity. The overall structure will still serve as a single-family residential dwelling.

3. The dwelling was constructed in 1927 and is listed in the National Register of Historic Places. If the Board approves the request, Staff recommends a condition that would require the applicants to furnish building plans of the addition to the Boone County Historic Preservation Review Board before applying for their zoning and building permits. The Historic Preservation Review Board shall determine if the addition and structural alterations will be in conformance with the Secretary of Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Structures.

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 grant the applicant's request for a Change-in-Non-Conforming Use.

Respectfully submitted,

Todd K. Morgan

Todd K. Morgan, AICP
Planner, Zoning Services

TKM/pr

Attachments
Exhibit A – Site Vicinity Map
Exhibit B – Letter From Applicants
Exhibit C – Concept Plan
Exhibit D – Aerial Map
Exhibit E – Zoning Map
Exhibit F – Application

7414 U.S. Hwy. 42
Site Vicinity Map

200 0 200 Feet

1 inch equals 200 feet

Produced by the
Boone County Planning Commission
GIS Services Division
January 21, 2003

N
W E
S

January 15, 2003

Boone County Planning Commission

Re: Remodeling and Improvement
7414 U.S. Highway 42
Florence, KY 41042

Dear Commissioners:

My wife and I are owners of the above-referenced property. The current home is over 70 years old and was originally inhabited by my mother. Unfortunately, the home is in desperate need of repair and improvements.

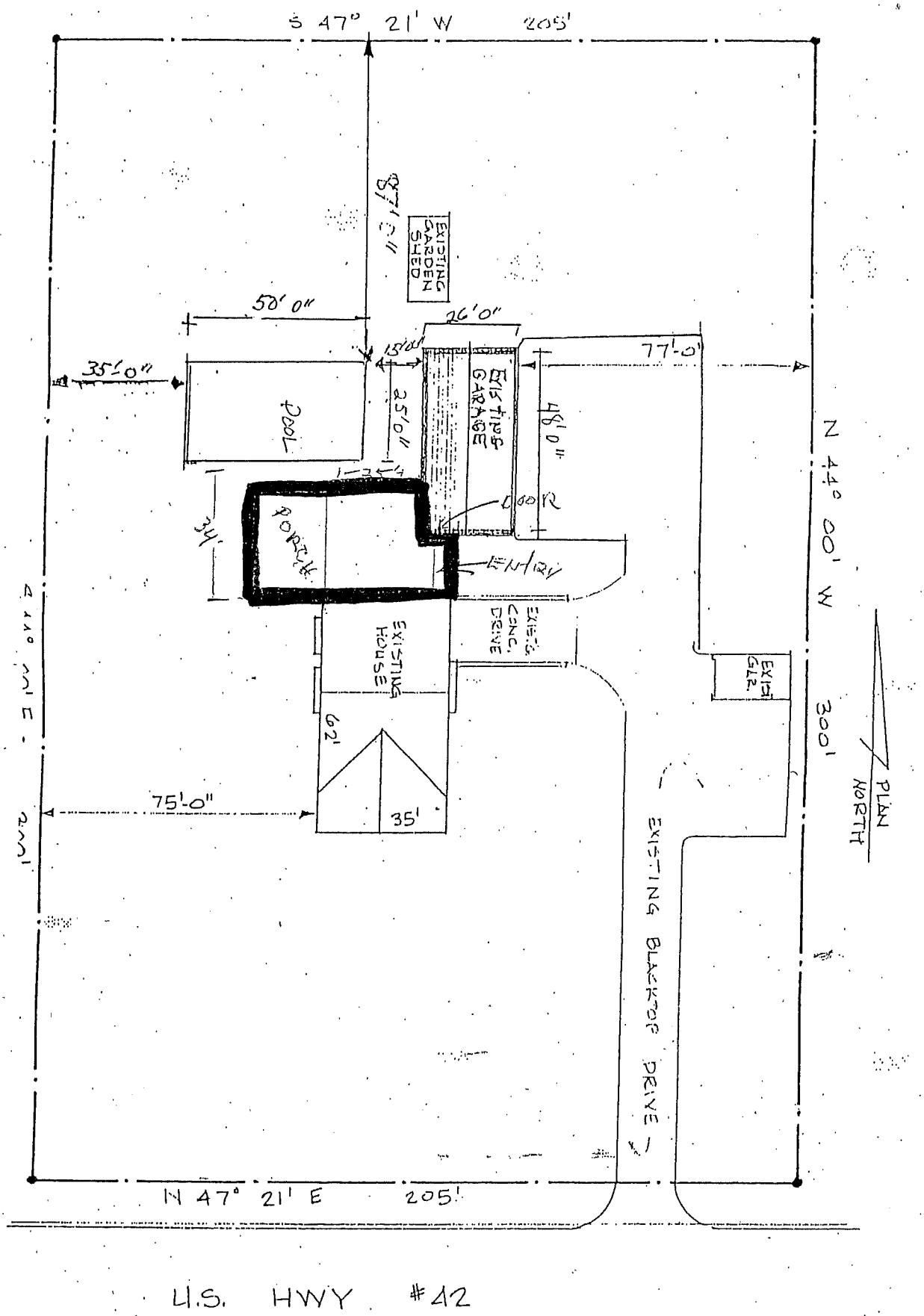
Situated on the property is our primary residence with a small rear porch. Located behind the home is an inground swimming pool and detached garage. My wife and I are in our 60s and as we age we are finding it more difficult to ambulate between the house and garage during inclement weather. The existing clay tile roof on the residence must be replaced. At the time of the roof replacement, we would like to remodel the current porch and add a three-season room that will connect our home to the existing garage. It is very important to us to maintain the historical aesthetics of our home, while also making it more safe and functional.

As you can see on the attached Site Plan, our lot is dual zoned [redacted] O-1 and [redacted] SR-2. The existing residence is in the area zoned [redacted] O-1 and the current garage is located fifty percent in each zone. In order to effectuate the redesign and permit us to enjoy our home to its' fullest during our senior years, we request [redacted] an enlargement of the non-conforming use. [redacted]. Attached please find the proposed Site Plan for your review and consideration. Please feel free to contact us if you have any questions or concerns.

Sincerely,

Joseph C. Berkshire
Sue Kate Berkshire

Joseph C. Berkshire
Sue Kate Berkshire
(859) 371-5653



U.S. HWY #42

SITE PLAN

Scale 1" = 30'

7414 U.S. Hwy. 42
Aerial Map

80 0 80 Feet

1 inch equals 80 feet

Produced by the
Boone County Planning Commission
GIS Services Division
January 21, 2003

N
W E
S

7414 U.S. Hwy. 42
Zoning Map

150 0 150 Feet

1 inch equals 150 feet

Produced by the
Boone County Planning Commission
GIS Services Division
January 21, 2003

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BOONE COUNTY PLANNING COMMISSION

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 Joseph & SUE KATE BERKSHIRE
   Phone Number 371-5653 Fax No. ___
   Applicant's Address 7414 HWY 42
   FLORENCE (City) KY (State) 41042 (Zip)

4. Description of Request: ADDITION OF 3 SEASON PORCH TO CONECT HOUSE AND GARAGE

5. Name of Development ___

6. Location of Development ___

7. Acreage Under Review 1.4114 TOTAL .95 .51

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

9. Owner of Property ___
   Phone Number of Owner ___

10. Address of Property Owner SAME
    City State Zip

11. Proposed Use(s) on Site RES.

12. Total Square Footage of Existing and/or Proposed Buildings 3418 EXIST. 1625 PROP. 750 — 2170 HOUS, 1248 GARA, 3418

13. Current Zoning on Property O-1 & SR-2

14. Deed Book 401 Page No. 244 Group No. 2041 B

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.

Applicant's Signature: X Joseph Walter Berkshire Jan 20 2003

Property Owner's Signature: X Sue Kate Berkshire

(over)

COPY

CLUR #03-FBOA-001-A

CERTIFICATE OF LAND USE RESTRICTION

1. NAME AND ADDRESS OF PROPERTY OWNER(S)
   Joseph & Sue Kate Berkshire
   7414 U.S. 42
   Florence, KY 41042

2. ADDRESS OF PROPERTY
   7414 U.S. 42
   Florence, KY 41042

3. NAME OF SUBDIVISION OR DEVELOPMENT (if applicable)
   _____

4. DEED BOOK 401 PAGE NO. 244 GROUP NO. 2041B

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)

   _X_ 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
2995 WASHINGTON STREET
BURLINGTON, KENTUCKY 41005

Todd K. Morgan

SIGNATURE OF COMPLETING OFFICIAL

Todd K. Morgan, 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 24 day of February, 2003.

Vicki L. Myers
NOTARY PUBLIC, State at Large

My commission Expires:
April 17, 2003

This instrument was prepared for recording purposes only by:

Debbie A. Warning
Boone County Planning Commission
2995 Washington Street
Burlington, Kentucky 41005

NO TITLE EXAMINATION

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

CLUR #03-FBOA-001-A

CONDITIONS OF APPROVAL

The following Conditions of Approval apply to the Change in Non-Conforming Use approved by the Florence Board of Adjustments and in accordance with the current zoning in effect as of February 12, 2003 Certificate of Land Use Restriction (#03-FBOA-001-A), for Joseph & Sue Kate Berkshire, Property Owner(s).

The following conditions will apply:

1) The Applicant must furnish building plans to the Boone County Historic Preservation Review Board and maintain the historic and existing architecture.

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

DEED BOOK 401 PAGE NO. 244 GROUP NO. 2041B