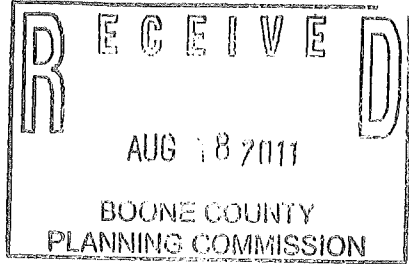


APPLICATION FORM



BOARD OF ADJUSTMENT AND ZONING APPEALS ACTION BOONE COUNTY PLANNING COMMISSION

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

- 1. (Check One) Boone _____ Florence _____ Walton _____ Union [checked]
2. (Check One) _____ Conditional Use Permit _____ Variance _____ Appeal
[checked] Change in Non-Conforming Use
3. Applicant's Name [Raymond & Bettye Hensley]
Phone Number [859-384-0544] Fax No. [NA]
Applicant's Address [1284 Mt. Zion Rd]
City [Union, KY] State [KY] Zip [41091]
4. Description of Request: [To allow an Above Ground Pool in the Front Yard]
5. Name of Development _____
6. Location of Development [1284 Mt. Zion Rd. Union, KY 41091]
7. Acreage Under Review [1.815]
8. Lot Number and Name of Subdivision (if part of a subdivision) _____
9. Owner of Property [Raymond & Bettye Hensley]
Address of Property Owner [1284 Mt. Zion Rd] Phone No. [859-384-0544]
10. City [Union, KY] State [KY] Zip [41091]
11. Proposed Use(s) on Site [Above Ground Swimming Pool]
12. Total Square Footage of Existing and/or Proposed Buildings _____
13. Current Zoning on Property [SR-1]
14. Deed Book [847] Page No. [328] Group No. [2047]
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? [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: [Raymond Hensley] [Bettye Hensley]
(Faxed, Photocopied or Scanned Signatures will NOT be Accepted)
ORIGINAL Applicant's Signature: [Raymond Hensley] [Bettye Hensley]
(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 8-18-11 Fee Received \$6320 R#63419
- 2. Is application complete? Yes No
- 3. Staff Reviewer _____
- 4. Scheduled Board Action Date _____
- 5. Board Action:
9/12/11 **Approved**
 Approved with Conditions (See #6)
 Denial (See #7)
- 6. Conditions of Approval: NONE

- 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: Raymond and Bettye Hensley
LOCATION: 1284 Mt. Zion Road, Union, Kentucky
ZONING: Suburban Residential One (SR-1)
DATE: September 12, 2011

PROPOSAL

The applicants are requesting a Change in Non-Conforming Use so they can construct an above ground swimming pool in their front yard. The proposed pool will be located immediately to the east of a pre-existing non-conforming gazebo that has been located in the front yard for more than 10 years. The submitted plan shows that the pool will be a maximum of 21 feet in diameter and will not break the front building line that has been established by the gazebo.

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 Changes 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 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.

SITE CHARACTERISTICS

The 1.815 acre site fronts on Mt. Zion Road and contains a single-family residence, detached garage, shed, and gazebo. The house, garage, and shed are all located in close proximity to the rear property line. Access to the property is provided from a shared gravel driveway on Mt. Zion Road. According to Boone County G.I.S., the front of the house and gazebo are located 338 and 282 feet from the front property line respectively. The topography of the parcel falls from approximately 870 feet above sea level at the rear property line to 850 feet above sea level at the front property line. The front and rear property lines are heavily wooded with deciduous trees.

SURROUNDING LAND USES & ZONING

North: Single-Family Residences Fronting on Manassas Drive (SR-1)

South: Mt. Zion Road and Open Space Parcel Adjoining Hampshire Subdivision (SR-1)

East: Single-Family Residence Fronting on Mt. Zion Road (SR-1)

West: Single-Family Residence Fronting on Mt. Zion Road (SR-1)

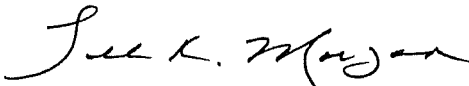
STAFF COMMENTS

1. The property owners can apply for a Change in Non-Conforming Use because they already have a non-conforming gazebo in their front yard. Aerial photographs show that the gazebo has existed in the front yard since at least 1997.
2. Mrs. Hensley informed Staff that her septic system is located to the east of her house. She claims that she cannot locate a pool in her side or rear yards because her driveway, garage, shed, and septic system are taking up the entire area.
3. Staff talked with Carol Callan-Ramler, with the Kentucky Transportation Cabinet, regarding the KY 536 Project. The preliminary plans show that the portion of Mt. Zion Road in front of the Hensley residence will become the old road and will terminate in a cul-de-sac (see attachments). Mrs. Callan-Ramler indicated that the Kentucky legislature is looking to fund the project. Once the project is funded it will take at least 2½ years to buy the right-of-way and at least another 2 years to construct the road.
4. The Change in Non-Conforming Use application can be viewed in the following fashions:
 - a. The proposed above ground pool will enlarge the non-conforming use of land because it will place a second accessory structure in the front yard; or
 - b. The proposed pool will not enlarge the scope of the non-conformity. The proposed above ground pool will be no more objectionable than what already exists on site.

CONCLUSION

KRS 100.253 and Section 220 of the Boone County Zoning Regulations gives the Union 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
- *Proposal
- *July 22, 2011 E-Mails between Nancy Hensley and Kevin Wall
- *2009 Aerial Map
- *Zoning Map
- *Topographical Map
- *Preliminary KY 536 Plan
- *Application

SITE VICINITY MAP

www.boonecountygis.com



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Data used to create this map were compiled from sources that comply with National Map Accuracy Standards. Boone County GIS extends no warranty with respect to the accuracy or content of the information provided by this map. This map should be used for general planning purposes only.

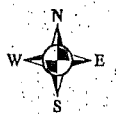
0 8,750 17,500 35,000 52,500 70,000

Feet

1 inch = 83,333 feet



Boone County GIS - Putting Northern Kentucky on the Map



PROPOSAL

www.boonecountygis.com



21'
diameter
max.

21' $\frac{1}{2}$

**The above ground pool
will not cross the front yard
building line established
by the gazebo.**

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0 8,750 17,500 26,250 35,000 43,750 52,500 61,250 70,000

Feet

1 inch = 30'



Boone County GIS - Putting Northern Kentucky on the Map



Todd Morgan

From: Kevin Wall
Sent: Friday, July 22, 2011 1:59 PM
To: NANCYHENSLEY68@FUSE.NET
Cc: Todd Morgan; Robert Jonas
Subject: above ground pool in front yard area - 1284 Mt. Zion Road

Ms. Hensley:

I checked over the air photos in our database and confirmed that the gazebo has been in existence in the front yard area since at least 1997. Under state law, a condition which does not meet zoning requirements is considered legally nonconforming after 10 years without any adverse orders, even if it was not legally constructed. As previously discussed, the local zoning regulations do not permit accessory structures such as pools, sheds, and gazebos in front yard areas in residential zones. Because of the legal nonconforming condition on your lot, you can apply for a Change in Nonconforming Use in order to allow the pool in the front yard area in addition to the existing gazebo. The application would be heard by the Board of Adjustment (BOA) at a public hearing. Because an additional accessory structure in the front yard area does not conform to the literal terms of the regulations, it can not be approved through just an administrative permit. Todd Morgan in our office can help you with the BOA application requirements and materials (334-2196).

Sincerely,

Kevin T. Wall
Zoning Administrator

From: NANCYHENSLEY68@FUSE.NET [mailto:NANCYHENSLEY68@FUSE.NET]
Sent: Friday, July 22, 2011 1:23 PM
To: Kevin Wall
Subject: Fw: Permit for an above ground pool to an non-conforming line of a gazebo
Importance: High

having email issue's you may get this twice

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

From: NANCYHENSLEY68@FUSE.NET
To: kwall@boonecountyky.org
Sent: Friday, July 22, 2011 1:21 PM
Subject: Permit for an above ground pool to an non-conforming line of a gazebo

Good afternoon Mr. Wall,

I'm emailing you today , per Todd Morgan. We are trying to get a permit to install an above ground pool at 1284 MT. Zion Rd. Union, KY 41091.

When we purchased this property in early 2000 the gazebo was already built and setting 13-14 foot in front of the house off to the left side of the property that adjoins Dan & Ann Fox.

The house sets back at the end of the property almost the whole 1.8 acre with no back yard to put in a pool. Property is all in the front leaving us no were to Install a pool in the rear of the property. The only choice we have is to attach it to the pre-existing gazebo.

Permit # 63120

Gazebo dimension's are 16X16

If any question's or further info. is required, please call the number's below and we will try to assist.

Thank you, and your staff for your help and direction of this matter.

Regards, Nancy Hensley

(859)-384-0544 Home

(859)-835-4302 Nancy's cell

(859)-468-4471 Ray's cell

2009 AERIAL MAP

www.boonecountygis.com



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0 8,750 17,500 35,000 52,500 70,000

Feet
1 inch = 83,333 feet



Boone County GIS - Putting Northern Kentucky on the Map



ZONING MAP

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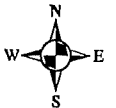
0 8,750 17,500 35,000 52,500 70,000

Feet

1 Inch = 83,333 feet



Boone County GIS - Putting Northern Kentucky on the Map



TOPOGRAPHICAL MAP

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Feet

1 inch = 83,333 feet



Boone County GIS - Putting Northern Kentucky on the Map



APPLICATION FORM

RECEIVED
AUG 18 2011
BOONE COUNTY
PLANNING COMMISSION

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
 2. Conditional Use Permit Variance Appeal
 Change in Non-Conforming Use
 3. Applicant's Name Raymond & Betty Hensley
Phone Number 859-384-0544 Fax No. NA
Applicant's Address 1284 Mt. Zion Rd
Union KY 41091
City State Zip
 4. Description of Request: To allow an Above Ground Pool in the
Front Yard
 5. Name of Development _____
 6. Location of Development 1284 Mt. Zion Rd. Union, KY 41091
 7. Acreage Under Review 1.815
 8. Lot Number and Name of Subdivision (if part of a subdivision) _____
 9. Owner of Property Raymond & Betty Hensley
Address of Property Owner 1284 Mt. Zion Rd Phone No. 859-384-0544
Union KY 41091
City State Zip
 10. Proposed Use(s) on Site Above Ground Swimming Pool
 11. Total Square Footage of Existing and/or Proposed Buildings _____
 12. Current Zoning on Property SR-1
 13. Deed Book 847 Page No. 328 Group No. 2047
 14. Is the site subject to a zone change? _____
If yes, give date of approval _____
 15. Have you submitted a Site Plan with this request? _____
 16. Have you submitted a list of adjoining property owners with this request? yes
 17. 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: Raymond Hensley Betty Hensley
(Faxed, Photocopied or Scanned Signatures will NOT be Accepted)
ORIGINAL Applicant's Signature: Raymond Hensley Betty Hensley
(Faxed, Photocopied or Scanned Signatures will NOT be Accepted)

COPY

CLUR #11-UBOA-001-A

CERTIFICATE OF LAND USE RESTRICTION

1. NAME AND ADDRESS OF PROPERTY OWNER(S)

Raymond and Bettye Hensley
1284 Mt. Zion Road
Union, KY 41091

2. ADDRESS OF PROPERTY

1284 Mt. Zion Road
Union, KY 41091

3. NAME OF SUBDIVISION OR
DEVELOPMENT (if applicable)

4. DEED BOOK 847

PAGE NO. 328

GROUP NO. 2047

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
2950 WASHINGTON STREET, ROOM 317
P.O. BOX 958
BURLINGTON, KENTUCKY 41005

Todd K. Morgan
SIGNATURE OF COMPLETING OFFICIAL

Todd K. Morgan, AICP, Senior Planner
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 13 day of September, 2011.



Vicki L. Myers

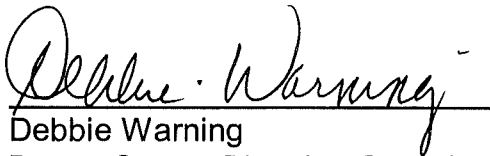
Notary ID 438411

NOTARY PUBLIC, State at Large

My commission Expires:

April 17, 2015

This instrument was prepared for recording purposes only by:



Debbie 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 Change in Non-Conforming Use approved by the Union Board of Adjustments and in accordance with the current zoning in effect as of September 12, 2011 Certificate of Land Use Restriction (#11-UBOA-001-A), for Raymond and Bettye Hensley, 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 847 PAGE NO. 328 GROUP NO. 2047