

00-027

00 BCBOA-027-A

APPLICATION FORM

BOARD OF ADJUSTMENT AND ZONING APPEALS ACTION BOONE COUNTY PLANNING COMMISSION

REC'D

JUL 17 2000

BOONE COUNTY PLANNING COMMISSION

See Boone County Zoning Regulations

SECTION A (To be completed by applicant)

- 1. (Check One) Boone Florence Walton Union
2. (Check One) Conditional Use Permit Variance Appeal
3. Applicant's Name RAYMON W. SMITH II & RAYMOND W. SMITH II, TRUSTEE
4. Description of Request: MODIFICATION OF THE CUP ISSUED JUNE 28, 1996
5. Name of Development
6. Location of Development 2791 BURLINGTON PIKE
7. Acreage Under Review THE ORIGINAL 1.294 ACRE SITE AND THE PROPOSED 0.7008 A. PARCEL
8. Lot Number and Name of Subdivision
9. Owner of Property RAYMON W. SMITH II & RAYMON W. SMITH II, TRUSTEE
10. Phone Number of Owner 586-8999
11. Proposed Use(s) on Site AUTOMOBILE REPAIR FACILITY
12. Total Square Footage of Existing and/or Proposed Buildings 6,000 SQ. FT. (EXISTING)
13. Current Zoning on Property C-2
14. Deed Book 624 Page No. 212 Group No. 2030
15. Is the site subject to a zone change? NO
16. Have you submitted a Site Plan with this request? YES, SEE ALSO CLUR #99-SP-040A
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: Raymon W. Smith II

Property Owner's Signature: Raymon W. Smith II Trustee

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

1. Date Received 7-17-00 Fee Received \$ 7500 RA 24892
2. Is application complete? _____ Yes _____ No
3. Staff Reviewer _____
4. Scheduled Board Action Date _____
5. Board Action:

 Approved
 Approved with Conditions (See #6) 9-9-00

 Denial (See #7)
6. Conditions of Approval: ① 6' Fence Required around Parking Area
② No Car Recycling or Salvaging ③ Comply with Paving and Striping
Requirements ④ Comply with Landscaping Reqs. ⑤ Future Expansion.
7. ~~Denial~~ must come back to the BCBOA
⑥ ALL Tow Trucks must be parked on hard surface
And NOT ON Grass

Boone County Planning Commission
2995 Washington Street
Burlington, Kentucky 41005
(606) 334-2196 Phone
(606) 334-2264 Fax

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: Raymon W. Smith II & Raymond W. Smith II, Trustee
 Smith's High Tech Automotive

LOCATION: 2791 Burlington Pike, Boone County, Kentucky

ZONING: Commercial Two (C-2)

DATE: August 9, 2000

Proposal

The applicants are requesting a modification of their Conditional Use Permit issued on June 28, 1996 (CLUR#96-BCBOA-006-A) in order to enlarge the existing automotive repair facility by 0.7008 acres (for a total site area of 1.99 acres) and increase their parking/vehicle storage area by 70 spaces in a gravel expansion lot. The proposed plan depicts a chain link fence (with black vinyl vertical slats), landscape buffers, detention basin, and an additional storage building (not included in this request). In addition, the applicant also proposes to construct two additional houses on adjacent properties to serve as buffers for South Orient Street. Rough grading for the enlargement of the parking area has been completed in accordance with a grading plan approved on May 3, 1999. The applicant submitted Exhibits A, B, C, and D as part of the application.

- Exhibit A - Written description of the applicant's Conditional Use Permit request.
- Exhibit B - Plat showing the location of the additional 0.7008 acres of property to be added to the existing site.
- Exhibit C - Conceptual Landscape Buffer Plan.
- Exhibit D - Profile Sheet showing views of the property from adjacent areas.

The request for the original Conditional Use Permit was approved by the Boone County Board of Adjustment and Zoning Appeals, subject to the conditions listed in the May 8, 1996 minutes of the meeting. The minutes indicate that the Conditional Use Permit was approved subject to the following conditions – (1) staff concerns would be addressed at Site Plan Review; (2) a limit of 25 cars parked outside; (3) a monument sign would be permitted, not to exceed 100 square feet; (4) hours of operation would be 8 a.m. – 6 p.m. and closed on Sunday; (5) the metal building would be constructed with a brick and glass front; and (6) landscaping and screening for the adjacent property owners. See attached minutes.

In July 1999, the applicant submitted a request to construct an additional 97 parking spaces. This request was initially heard on July 14, 1999 and deferred to the September 2, 1999 meeting of the Boone County Board of Adjustment and Zoning Appeals. The

request was denied at the September 2, 1999 meeting because the proposal “overwhelmed the character for the area and was not consistent with the intended character of the area”. See attached minutes.

Applicable Regulations

Article 10, Section 1023 of the Boone County Zoning Regulations permits *automotive repair facilities and wash services* as a conditional use within a Commercial Two (C-2) district.

Article 40 of the Boone County Zoning Regulations defines an **Automobile Repair Facility** as, “A business establishment that repairs, rebuilds, reconditions, or services automobiles or automotive parts, including but not limited to any of the following activities: body and paint work; engine repair or rebuilding; installation, repair, or reconditioning of tires, brakes, transmissions, mufflers, automotive or air conditioning systems, automotive upholstery, or automotive glass, all on a individual vehicle basis; changing of oil, other fluids, and filters; emissions testing.

Article 40 of the Boone County Zoning Regulations defines **Automotive Wrecking** as, “The dismantling or wrecking of used motor vehicles, mobile homes, or trailers; or the *storage*, sale, or dumping of dismantled, *wrecked vehicles or their parts*. The presence of two or more non-operational motor vehicles on a lot for a time period exceeding thirty (30) days shall constitute evidence regarding the establishment of an automobile wrecking yard. Also may be referred to as a junkyard.

Article 11, Section 1143 of the Boone County Zoning Regulations, Industrial Two (I-2) District allows, “*automobile repair and auto body services including junkyards, wrecking, or other storage*” as a conditional use.

Article 33, Section 3314 of the Boone County Zoning Regulations states that all parking and loading spaces set forth in Sections 3311 and 3325, including driveways, aisles, vehicle storage, outdoor storage, and vehicle circulation areas shall be improved with either asphalt concrete or portland cement concrete to provide a durable and dust-free surface.

KRS 100.237 Conditional use permits states, “*The board shall have the power to hear and decide applications for conditional use permits to allow the proper integration in to the community of uses which are specifically named in the zoning regulations . . .*”

KRS 177.910 Unauthorized recyclers prohibited. KRS 177.910 states that, “*No person shall operate or cause to be operated any automobile, vehicle, machinery or material recycling establishment or place of business which is situated closer than one thousand (1,000) feet from the right-of-way line of any road unless a permit for such operation shall have been obtained from the department (Department of Highways). The operation of any automobile, vehicle, machinery or material recycling establishment or place of business so situated without a permit is hereby declared to be a public nuisance.*” Applicable definitions are described in KRS 177.905 as follows:

(2) "Automobile, vehicle or machinery recyclers" means any place where five (5) or more junked, wrecked, or nonoperative automobiles, vehicles, machines and other similar scrap or salvage materials, excluding non-operative farm equipment, are deposited, parked, placed or otherwise located, or any business as defined in subsection (3) where ten (10) or more junked, wrecked, or nonoperative automobiles, vehicles, machines and other similar scrap or salvage materials are deposited, parked, placed or otherwise located."

(3) "Business" means any person engaged as an automotive dealer, body shop operator, wrecker service operator, service station operator or other activity which may buy, sell, or repair nonoperative vehicles, automobiles or machinery as a service."

KRS 177.915 Permit – Conditions—Screening. states, ". . . Any automobile, vehicle, machinery or material recycling establishment or place of business that cannot as a practical matter be screened shall be required to be removed".

The Board should evaluate the applicant's request as it relates to the criteria necessary for granting a Conditional Use Permit stated in Section 262 and the following criteria from Section 1023 of the Boone County Zoning Regulations:

Findings listed in Section 262:

1. Will be harmonious with and in accordance with the general objectives, or with any specific objective of the County's comprehensive plan, a specific corridor plan and/or the zoning order;
2. Will be designed, constructed, operated, and maintained so as to be harmonious and appropriate in appearance with the existing or intended character of the general vicinity and shall not change the essential character of the same area;
3. Will be hazardous to existing or future neighboring uses;
4. Will be served adequately by essential public facilities and services such as highways, streets, police and fire protection, drainage structures, refuse disposal, water and sewer, and schools; or that the persons or agencies responsible for the establishment of the proposed use shall be able to provide adequately such services;
5. Will create excessive additional requirements at public cost for public facilities and services and will be detrimental to the economic welfare of the community;
6. Will involve uses, activities, process, materials, equipment and conditions of operation that will be detrimental to any persons, property, or the general welfare by reason of excessive production of traffic, noise, smoke, dust, fumes, glare, or odors;
7. Will have vehicular approaches to property which shall be so designated as not to create an interference with traffic on surrounding public thoroughfares.

Article 10, Section 1023 of the Boone County Zoning Regulations allows auto repair facilities as a conditional use in the C-2 district if the proposed facility meets all of the following requirements:

1. The activity is an integral and subordinate function of a permitted commercial use, professional or personal service; or
2. The activity will further add to, not detract from, the creation of a compact, multi-purpose, and pedestrian oriented commerce center; and
3. The arrangement of uses, buildings or structures will be mutually compatible with the organization of permitted and accessory uses to be protected in the district.

Surrounding Land Uses and Zoning

North: Across Burlington Pike adjacent properties are zoned SR-2/SC and include Kentucky Motor Service and Burlington Elementary School.

East: Adjacent property (included as a part of the Smith High Tech Automotive Tract, are zoned Commercial Two (C-2) and contain a residential structure.

South: Adjacent properties include a small section of undeveloped property and a residential neighborhood zoned SR-1.

West: Adjacent properties are zoned SR-2/SC and include four residential structures and a real estate agency.

Staff Concerns/Comments

1. Article 10, Section 1023 of the Boone County Zoning Ordinance provides for the operation of automobile repair facilities and wash services as a conditional use in the Commercial-Two (C-2) District. The definition for "Automobile Repair Facilities" covers a variety of activities but does not include businesses to be considered as "Automobile Wrecking Yards" which includes the storage of wrecked vehicles. It should be noted that Automobile Wrecking Yards are not allowed in the C-2 district as a permitted or conditional use. The only district in which these facilities are allowed as a conditional use is in the Industrial Four District.

As the attorney who presented the applicant's original application described the proposed conditional use as "*vehicle maintenance facilities – not a repair shop or junkyard*" and the applicant described his activity as, "*towing with 10-15 cars being stored waiting on processing from insurance companies*" (see attached May 8, 1996 Minutes), the board of adjustment needs to make the determination whether or not the expansion of the applicant's operation only involves the repair of vehicles OR if it is the expansion of the towing operation and the resulting storage of wrecked vehicles that has facilitated the additional need for parking. If the need for additional parking is the result of the towing and storage of wrecked vehicles, the board must then consider whether this is an allowable use under Article 40 of the Boone County Zoning Regulations which states that the storage of two (2) or more non-operational cars for a period of thirty (30) days automatically constitutes the operation of an "Automobile Wrecking Yard". As stated above, this use is only permitted in the Industrial Four District as a conditional use.

In addition, the board should be aware of the definitions contained KRS 177.905 (as listed on page 2 of this report) and KRS 177.910 which requires a state permit for businesses of this type which are in operation within 1,000 feet from the right-of-way line of any road. Should the board decide to approve the applicant's request regarding expansion of the site, it should be contingent upon obtaining a state permit or letter from the state exempting this business. Conditions of approval should also include the number of vehicles openly stored on-site and a time limitation for the storage of individual vehicles.

2. The land use element of the Boone County Comprehensive Plan which details development guidelines and future land use for the immediate area states, “*A comprehensive Burlington Plan should be finalized that addresses the unique transportation, parking, public facilities, historic preservation, and subdivision characteristics of the area. Until then, commercial development along KY 18 and the KY 232 intersection should be discouraged in order to protect the remaining downtown Burlington businesses.*” In addition, the 2000 Goals and Objectives for the update of the Boone County Comprehensive Plan (passed by the County on March 27, 2000) states, “*New development or redevelopment within Boone County is designed, constructed, and operated in such a way that the quality of life of the existing physical environment and social environment are maintained and enhanced. Development within Boone County preserves and promotes a better quality of life.*”

As downtown Burlington is located within a National Register Historic District, the board should determine whether the expansion of Smith’s High Tech Auto is harmonious with the historic character of Burlington and existing downtown businesses. In addition, the board should consider whether or not the plans for expansion are designed in a manner that maintains and enhances the physical and social environments for the area and promotes a better quality of life for the adjacent residential uses located to the south and west of the site.

3. The applicant has indicated that his application does not include the paving of the proposed parking area for three years. It is the staff’s opinion that the storage of approximately 70 vehicles that are wrecked or in disrepair in a gravel lot has the appearance of a automobile wrecking facility or junkyard. Whether the cars are rotated in and out within several days or not, there is still the potential for 70 vehicles to be placed in the gravel lot in an unorganized manner. Should the board approve this request, it should be contingent upon the parking lot being properly compacted, paved, and striped in order to park cars in specified spaces and to present a more orderly appearance. Article 33, Section 3314 requires that all parking areas be paved.
4. The applicant proposes the construction of two (2) houses within two (2) years in order to “buffer” or provide screening of the enlarged parking area (and open storage of 70 vehicles) from residential structures already existing on South Orient Street. It is the staff’s opinion that constructing houses to screen other houses from a potential nuisance does not alleviate the impact of the operation but compounds its effects by increasing the number of families to be adversely impacted by the parking of cars and open storage of wrecked vehicles.
5. Although the applicant proposes to construct a chain link fence with black vertical slats and plant landscape buffers, the residential structures in the area are located at a higher elevation than the repair facility and its proposed expansion area. Therefore, a six foot fence with five or six foot trees will do little to buffer the neighborhood’s view of parked or stored vehicles. In addition, the negative impact to the homes in this area is immediate while the buffering of the site will not occur until the evergreen and canopy trees mature.
6. The applicant’s proposal depicts the development of a future storage building but states that it is not included in this request. The board should clarify the purpose of

showing the location of the building, whether or not it indicates that the applicant will continue to expand his existing site, and the intended maximum build out of his operation.

Conclusion

KRS 100.237 and Sections 260 and 1023 of the Boone County Zoning Regulations give the Boone County Board of Adjustment and Zoning Appeals the authority to grant the applicant's request for the expansion of an automotive repair facility operating as a conditional use in the Commercial Two (C-2) district. It is the staff's opinion that while the applicant has attempted to mitigate the impact of expanding his existing operation the staff still questions whether the proposed expansion is in conformance with the Boone County Comprehensive Plan or Boone County Zoning Regulations. The reasons are as follows:

1. The use of the expansion area may not fall within with the definition of an "automotive repair facility".
2. The proposed expansion is not harmonious with the historic nature of Burlington.
3. The expansion of the site, which cannot be adequately buffered until the maturing of trees, will adversely affect the quality of life for residences in adjacent neighborhoods.
4. If the request is approved, the board has no guarantees that the applicant will not continue to attempt the expansion of his existing site to the point where it is no longer feasible to mitigate the adverse impact to historic Burlington and adjacent residential structures.

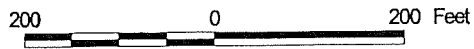
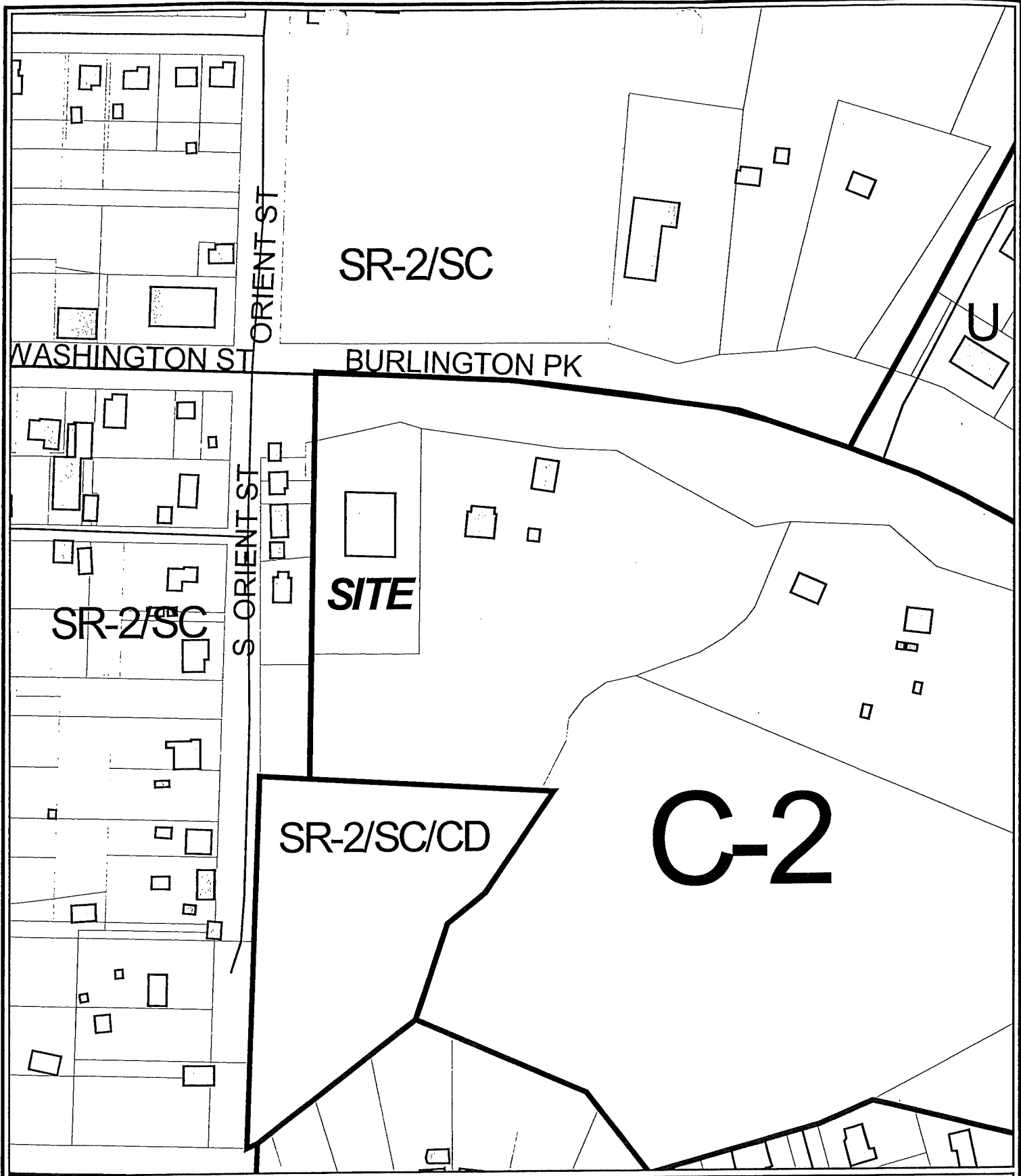
Respectfully submitted,



Lara B. Robertson, AICP

Attachments

- Location Map
- Site Map
- Copies of the May 8, 1996, July 14, 1999, and September 2, 1999 Meeting Minutes of the Boone County Board of Adjustments and Zoning Appeals pertaining to the Smith High Tech Automotive Conditional Use Permits and subsequent requests.
- Exhibit A- Additional information letter submitted by the applicant.
- Exhibit B- Plat showing the location of the additional 0.7008 acres of property to be added to the existing site.
- Exhibit C- Conceptual Landscape Buffer Plan.
- Exhibit D-Profile Sheet showing views of the property from adjacent areas.



2791 Burlington Pike

1 inch equals 200 feet
Produced by the
Boone County Planning Commission
GIS Services Division
August 3, 2000



4. The request of Raymond Erpenbeck for a Conditional Use Permit to allow an auto repair facility on a 1.61-acre tract at 2791 Burlington Pike, Boone County, Kentucky. The property is currently owned by Raymond W. Smith and is zoned Commercial Two (C-2).

Staff Member Jeff Hayes presented the Staff Report which included a slide presentation (see Staff Report). In regard to Staff Concern #1, Mr. Hayes advised that the applicant has indicated that there will be only vehicle maintenance and not body work on vehicles damaged in accidents.

Chairman Whitton asked for the applicant's comments.

Mrs. Anne McBee, attorney for Mr. and Mrs. Raymond Smith, the owners of the property, stated that the use will be a vehicle maintenance facility -- not a repair shop or junkyard. There will be 6,000 square feet in the building with ample parking. They will use the existing access point. She stated that a vehicle maintenance facility is a Conditional Use in the C-2 Zone. The Smiths have been long time residents of Burlington and have had grocery stores, vehicle maintenance facilities, and a service station since 1970. She stated that one of the issues is to protect existing businessmen in Burlington and to provide services to the residents. This use will protect existing businessmen because they have been in business a long time. Their architect and engineer is Ray Erpenbeck. Wayne Smith, the son of Mr. and Mrs. Smith, has been operating the business where it exists in Burlington and will be operating the business in the future.

Mr. Wayne Smith stated that currently he has 5 - 10 vehicles being left overnight. He does towing and sometimes has vehicles waiting to be processed by insurance companies. He is not in the salvage business -- but the cars sit there until the insurance companies process them. There are 10 - 15 cars in that inventory. He has no problem with a monument sign and that was his original intent. The hours of operation will be 8 A.M. - 6 P.M. and closed on Sunday. He will use a metal structure with a brick front and glass outcropping across both the corners. He has no problem in extending the line of trees and extending the buffer zone around.

Chairman Whitton stated that there would be 15 - 25 cars on the site. Wayne Smith agreed and advised that that is the number he has right now, but he only has two bays. With the new building, there would be nine bays and he may have all of the cars inside.

Mr. Ray Erpenbeck indicated the swale which will be filled. The final grade will be level, or several feet lower than the existing KY 18. There is a storm sewer under KY 18 that discharges into this property. They will pick that water up and pipe it thru the site and discharge it at the southern end. He stated that the existing pond will be used as a retention area. They have shown the landscaping in the front of the building and it is on the Site Plan. A detailed Landscaping Plan will be submitted as part of the Site Plan approval process. He stated that they have addressed the issues raised by the Staff. The facility will be an asset to the community.

Wayne Smith stated that the business has done well and he is experiencing growth pains, which is the reason for this building. All of his customers are in Burlington in the growing community and subdivisions.

Mrs. McBee read a letter dated May 8, 1996 from Bill and Sara Garrison, who are adjoining property owners. The letter states that they will cooperate with the plans and method of construction. Mrs. McBee advised that Ronnie Morris will also be speaking and she may assist him as he has difficulty speaking.

Ronnie Morris has been a neighbor to the property for 18 years. He stated that the distance from the property lines is 75 feet. He noticed on Sunday that there were only two cars on Mr. Smith's lot and he has never seen 10 or 15 cars there. He has never seen debris or old parts on the property and it has been an asset to the community. He stated that from where Mr. Smith is proposing to build up to the intersection of KY 18 and East Bend Road, there is only one residence.

Sara Holdslaw stated that she has been neighbors with the Smiths for 15 years and she gives him her blessing to build here. She would rather have him than a stranger.

Mrs. McBee requested approval of the Conditional Use Permit.

Chairman Whitton asked if there was anyone else present who wished to speak in regard to this request. There was no response.

There being no further comments, Mr. Houston moved to grant the Conditional Use Permit with the condition that the Staff Concerns be addressed at Site Plan Review. Mr. Ryan seconded the motion.

Mrs. Millar stated that she would like some conditions added to the motion. She stated that there should be a limit on the number of vehicles that will be allowed to be stored outside and suggested a limit of 20 vehicles. The hours of operation would be 8 A.M. - 6 P.M. Monday thru Saturday. She requested Staff input in regard to the size of the sign as it is generally a concern in the area.

Mr. Hayes advised that the sign should be kept under 100 square feet -- which would be a substantial sign. Chairman Whitton stated that the sign would be 100 square feet and would be a monument sign.

Mr. Ryan questioned the lighting of the sign. Mr. Hayes advised that it would be best if the sign was internally lit, but it could be backlit.

Mrs. Millar stated that the landscaping is to be on the front property line and on the side as discussed. The front of the building is to be brick and the rest of it could be metal.

Mr. Houston objected to the condition proposed by Mrs. Millar. He stated that 20 vehicles is cutting him a bit thin on storage. Chairman Whitton noted that Wayne Smith said that on the average there would be 15 - 25 cars on the lot and Mrs. Millar has suggested a limit of 20. He will have 9 service bays in the future and currently he only has two.

Mr. Houston stated that he has been in this business and Mr. Smith has no way of knowing how many cars he is going to tow over a weekend. If he cannot park them on his lot, he will park them up and down the driveway -- which will look worse. Restricting him to 20 cars is unfair. Mr. Houston stated that he would agree to a condition restricting them to 25 cars stored outside.

Mr. Hayes advised that the Staff's concern in regard to the number of vehicles was disabled vehicles and vehicles that have been in accidents causing the place to take on the appearance of a junkyard. Vehicles with little or no damage parked on a paved surface towards the back of the site are not of concern. The concern is wrecked vehicles being there for long periods of time.

Mr. Archambault questioned the average amount of time for the cars to be moved off the site. Mr. Smith stated that the minimum amount of time he can do it in is 45 days according to the state and it is generally 60 - 90 days by the time the paperwork is processed. When there is a snow storm, the number of cars would peak -- but they are mostly moved quicker. At times when there are a lot of accidents he has had as many as 25 cars.

Mrs. Millar stated that her concern is not particularly with the applicant, but a Conditional Use Permit follows the property. She does not want this to become a salvage yard and not auto repair in the future.

Counselor Wilson advised that if the property is sold, the new owner can come in and say "it was good for the guy who sold it to me, so why isn't it good for me?". It comes down to "what is reasonable?". He noted that the motion on the floor is for a limit of 25 vehicles.

Mr. Houston advised that the limit is 25 vehicles outside.

Chairman Whitton stated that Mr. Smith is a fine citizen, but he questions if this is the best location for this kind of operation going into the town of Burlington.

Chairman Whitton reviewed the motion made by Mr. Houston and amended: To grant the Conditional Use Permit with conditions - (1) the Staff Concerns are to be addressed at Site Plan Review; (2) a limit of 25 cars parked outside; (3) a monument sign not to exceed 100 square feet; (4) hours of operation are 8 A.M. - 6 P.M. and closed on Sunday; (5) a metal building with brick and glass in front; and (6) landscaping and screening for the adjacent property owners. Mr. Ryan seconded the amended motion.

A vote on the motion found Mr. Archambault, Mr. Houston, Mrs. Millar, and Mr. Ryan in favor. Chairman Whitton was opposed. The motion carried by a vote of 4 to 1.

Mr. Houston questioned the Variance affecting the airport in any way. Mr. Caldwell responded that they are pursuing a written request with the FAA. The verbal opinion is "no effect". The Chairman stated that they need to pursue the approval.

The Chairman asked if there was anyone else present who wished to speak in regard to this request.

Ms. Rebecca Rettenmaier with Corporex stated that they are in support of the request.

There being no further comments, Mr. Houston moved to grant the Variance on the basis that it will not affect anything and will shape up the building, but with the condition that they obtain written permission and consent from the airport. Mr. Ryan seconded the motion. Chairman Whitton stated that the applicant needs to forward a copy of the airport approval to the Staff.

The Chairman asked for a vote on the motion made by Mr. Houston and it carried unanimously.

4. The request of Raymon Wayne Smith on behalf of Smith's High Tech Automotive for a Conditional Use Permit to allow an expansion of parking at the current location, along with a connecting entrance to South Orient Street for property at 2821 Burlington Pike, Boone County, Kentucky. The property is currently zoned Commercial Two (C-2).

Staff Member Mark Jordan presented the Staff Report which included a slide presentation (see Staff Report). A letter from Susan Cabot, Historic Preservation Planner, was submitted for the record (see Exhibit 1).

The Chairman asked for the applicant's presentation.

Attorney Ann McBee, representing the applicant, stated that the Board is familiar with the history of this site. Since the last approval, the business has grown. There is a piece of flat land at the back and they are asking to be able to use it for parking of employee cars only. There is an entrance to it on South Orient Street. The area would be twelve spaces for employees only. There is an existing chainlink fence. She stated that there is an existing business and a permitted commercial use there. She does not know what it would do to a pedestrian oriented commerce center, because there really isn't one there. She stated that the county plans to destroy all of the businesses

across the street. This business intends to stay in Burlington and she does not think an existing business should be discouraged from expanding in order to protect something the county says they will be removing. The parking lot will not create a hazardous situation to the surrounding properties -- there are nine employees, which is not a parade of the masses. It is harmonious and appropriate for the existing business. She stated that there is a curb cut and driveway there going into this property, which they could use. It is zoned commercial and any commercial vehicle could go in there, but there will be no truck traffic. She stated that the business is already there and is kept clean. Mr. Smith has done everything the Board asked him to do -- the trees are planted and the fence was put up. Mr. Smith has been advised by the Water & Sewer District that they are going to remove the trees the Board made him put up -- hopefully, they can require Water & Sewer to put them back. They have been trying to save the trees the Board recommended. Mr. Smith is simply asking to enlarge his parking lot. She stated that the longest a car can be stored is 90 days because of state regulations. She stated that it is great Mr. Smith's business has grown, particularly since it looks like we will not be having that many businesses any more.

Mrs. Millar stated that the business is the repair of vehicles -- so why would there be a need to keep a car for 90 days?

Mr. Smith responded that they are a towing and repair shop. He gets cars dropped off to him that he cannot do anything with and, if there is a police impoundment, he cannot get rid of the car. He has to spend money trying to dispose of the vehicle. A lot of times, he has to keep the cars for a long time. Last year, he junked 120 cars. Every ninety days he puts out an ad for cars he needs to dispose of. He stated that the twenty-five car limit on the lot was legitimate at the time, but his business has grown.

Mrs. Millar asked the applicant if he is in compliance with the twenty-five car limit on the outside lot. Mr. Smith responded "no".

Mr. Ryan asked to review the slides again. Mr. Houston questioned the vegetative screening. Mr. Smith reviewed the slides with the Board. He explained that he wants to use the existing driveway to the left of his building. Mr. Ryan questioned the size of the site. Mr. Smith responded that it is about one-half acre. The fence is 160 feet and the site is about 250 feet deep. Chairman Whitton commented that the slides shows more than twenty-five cars parked on

the lot. Mr. Smith agreed. Mr. Ryan asked if the fence is on the applicant's property. Mr. Smith responded "no". He believes the fence is about 25 feet from the property line. Mr. Ryan questioned the tree buffer. Mr. Smith responded that they planted six-foot evergreen trees and hardwoods, which are growing -- but they have not even been there three years. In response to a question from the Chairman, Mr. Smith explained that he proposes to extend the existing chainlink fence straight back.

Mr. Ryan stated that he is also concerned about the view as you come into Burlington. Mr. Smith responded that his parent's property conceals the site. Attorney McBee explained that there is a little white house, then the Smith house, and then the business. There is a swale between the white house and the Smith house -- and there is nothing they can do about that.

Chairman Whitton stated that when this was approved, it was put in the conditions that it was to be relatively small in scale and restricted to twenty-five cars. They are not currently in compliance, but now we are talking about going way past the original intent of the conditions.

Mrs. Millar stated that C-2 conditional uses include "Automotive Repair Facilities" -- but do "Automotive Repair Facilities" include towing and storage of wrecked cars? Counselor Wilson responded that he can only assume that the Zoning Administrator has made that determination. He can see that those functions could be accessory to this type of business.

Chairman Whitton asked if there was anyone present who wished to speak either for or against this request.

Mr. Roy Cantrell, 6039 Orient Street, stated that he would be more directly affected than anyone else since the requested driveway would be directly across from his driveway. He read a letter he had written to the Board (see Exhibit 2) which explained that the drawing is incorrect and shows his house to be at 6045 Orient Street. His house is located just across the street from the proposed parking lot expansion. They have lived there for many years and have enjoyed the view of the fields. They are not opposed to the expansion, but are opposed to an additional entrance to the lot from South Orient Street. The south end of their street is narrow and has been damaged by trucks in the past. He is concerned that large trucks would use South Orient Street if this entrance is permitted. If the expansion is approved, he requests a row of trees along the east side of South Orient Street to screen wrecked cars from view. He is

concerned that there will be a junkyard across from where they sit on the porch. He is also concerned about traffic on South Orient Street, which is in a bad state of repair. He noted the letter from the Kirkpartricks which is included in the packets (see Exhibit 3).

Mr. Ryan asked what type of screening would be satisfactory. Mr. Cantrell responded that they would have to put in large trees because small trees would take ten years before they do any good. A large tall pine tree would block the view, but it would be almost as bad as the wrecked cars. He feels that the expansion will devalue their property and the other properties on the street.

Mr. Ryan questioned building a berm with trees and shrubs on top. Mr. Smith responded that he does not have any dirt other than what they used for fill, but they could probably build up a berm of some type. Mr. Cantrell stated that it would be satisfactory if it is tall enough, but he still does not want the entrance there.

Mr. Bill Garrison, a resident of Orient Street, stated that his back yard adjoins the Smith garage. He feels that they have been good neighbors and complied in regard to the trees, but he does not like the frequent build-up of tires on the lot. He is also concerned about the street. They have had to call the county because big trucks come up and down the street and loosen dirt and then it rains and there is mud all over the street. He feels that junk cars will be brought in and out on their street and devalue their neighborhood.

Mr. Cantrell stated that there are two entrances off KY 18 to the property now. He would like them to use the KY 18 entrances they have now instead of using Orient Street.

Mr. Archambault asked if they can develop a perimeter area in the fenced in area to move vehicles and stay off Orient Street. Mr. Smith responded "we can". He explained that he was trying to separate the vehicles being worked on and vehicles being stored from the employees' vehicles so that they did not have to come into a fenced lot every morning. He stated that the property is technically his father's, not his, and he will not give up the entrance there since his father has always had an entrance off South Orient Street. Mr. Archambault asked if it is a dedicated right-of-way. Mr. Jordan responded that he did not have that information, but could find out.

Counselor Wilson stated that if they are agreeable not to use the access as part of this application, it would not be approved as part of this application and any rights his father may or may not have would be addressed another time. He does not know if the Board wants Mr. Smith to come in with another plan that addresses the concerns of the neighbors or to vote on the current request.

Chairman Whitton stated that he does not think this is an appropriate place for this type of business -- he did not think so before and he does not think so now. Mrs. Millar agreed. She stated that when this was originally approved, her impression was that it was a family-oriented "take-care-of-the-community" business. The applicant agreed at that time that there would be no more than twenty-five cars parked here -- but the slides show, and the applicant has agreed, that he has not complied with that condition and is requesting more than twice what a used car lot in C-2 would be allowed. She stated that it is a much greater impact on the neighborhood than was intended for this vicinity.

Mr. Houston stated that he was in favor initially and still is. He stated that Mr. Smith's business has increased so much that he is coming back to the Board. Mr. Ryan stated that possibly the applicant may want to make a different proposal to the Board that may satisfy the Board and the neighbors. It would have to include a lot of berming and screening and not have access off South Orient Street.

Attorney McBee asked for deferral to the next Business Meeting to determine the status of the entrance and to talk to the neighbors about berming. She needs to address the questions -- if Mr. Smith says he will not use the access on South Orient Street, does that commit his father to not using it? Does the plan need to be changed to exclude it? They need to talk with Mr. Smith's father who is out-of-town.

Chairman Whitton stated that he would like the applicant to address the issue of turning the entrance to Burlington into a junkyard. He stated that the applicant is quadrupling the scale originally talked about. This is not compatible with the Comprehensive Plan and is not what Burlington needs.

Mr. Ryan moved to defer the request to the next Business Meeting. Mr. Archambault seconded the motion and it carried unanimously. The request will come back before the Board on the second Wednesday in August.

Agenda Items:

1. The request of Raymon Wayne Smith on behalf of Smith's High Tech Automotive for a Conditional Use Permit to allow an expansion of parking at the current location, along with a connecting entrance to South Orient Street for property at 2821 Burlington Pike, Boone County, Kentucky. The property is currently zoned Commercial Two (C-2). This request was tabled at the last meeting.

Mr. Ryan moved to bring Item #1 back before the Board. Mrs. Millar seconded the motion and it carried unanimously.

Mr. Jordan summarized the request for a Conditional Use Permit which was tabled from the last meeting. He explained that there is an existing 600 square foot building currently being used for vehicle repair, storage of accessory vehicles, and vehicle impoundment. The property was the subject of a Conditional Use application in May, 1996 and conditions were imposed at that time. Mr. Jordan reviewed the conditions from May, 1996. He explained that the applicant is currently proposing an addition to the use of 97 additional parking spaces (85 gravel and 12 paved). The paved spaces are for employee parking. The applicant is also proposing an entrance off South Orient Street to the employee parking area. There will be a fence around the perimeter of the proposed expansion. Mr. Jordan presented the slides shown at the last meeting.

Attorney Ann McBee stated that they have notified counsel and Staff that Mr. Smith withdraws the request for the connecting entrance to South Orient Street and now requests only 85 gravel parking spaces. She stated that the site has changed since the time of the last meeting and Mr. Smith has now put in additional fill and berm. The slides shown by Staff are not accurate at this time.

Mr. Smith explained that he is working on a berm that will extend about eight or nine feet above the parking lot and continue on down to South Orient Street. He will continue the existing landscaping and the same treescape across the top of the berm.

Chairman Whitton stated that the berming will be seen from South Orient Street, but it does not extend around to KY 18. Mr. Smith agreed.

Ms. McBee stated that this was an existing business in Burlington for many years and relocated to the Smith home place which is zoned C-2. It is a Permitted Use. The Comprehensive Plan encourages local businesses to stay in Burlington and to provide a pedestrian oriented commerce

center. The request is for an expansion out the back. It is compatible with what is existing on the site and there would not be a great change in the view with the berming. The business has expanded and Mr. Smith needs to accommodate the people in Burlington. She requested approval.

The Chairman asked if there was anyone present who was here for the last meeting and has anything additional to say based on the applicant's actions.

Mr. Roy Cantrell, 6039 South Orient Street, who lives directly across from the proposed parking lot expansion, is concerned that his house sets on a high bank and the berm will not be high enough to block their view. He asked that the berm be a little higher.

Mr. Bill Garrison, whose property adjoins the back of the subject property, stated that wrecked cars become junked cars and they do not need a junk car lot on the street. There will be in and out traffic and a lot of debris. Wrecked cars are on the site for a long period of time. He is concerned that their property values will go down.

Betty Afton stated that she submitted written comments to the Board.

Susan Cabot, Historic Preservation Planner for the Boone County Planning Commission, stated that she had submitted a memo regarding her concerns about this request. She took the last three slides shown by Staff to illustrate her concern about the view coming into Burlington and the impact on Burlington. She stated that this is a major gateway to Burlington and this is not a desirable use on the edge of the Burlington National Register Historic District and the county seat.

The Chairman asked if there were any comments from the Board.

Mrs. Millar stated that she visited the site yesterday. The trees planted on the west side facing South Orient Street are very small and, due to the level of the houses, they provide no blocking of the view of this facility. She questioned how the landscaping proposed for the back portion would be different.

Mr. Smith explained that the trees comply with the specifications, but they are in a gully. He stated that the berm is above the trees now and the new trees would be on top of the berm. He will continue the previous pattern of evergreens and hardwoods all the way down the side. The berm will be above South Orient Street. It will be about

six to ten feet high on the end going down towards the parking lot and there will be trees on top of it. He stated that the trees that are there now will be taken out by the sewer district and will have to be replanted. Some of the evergreens have died because it is too wet there for them. He will put back any trees the sewer district does not replace.

Mr. Ryan asked if it would be possible to plant enough evergreen trees so that the use would not be visible from South Orient Street.

Mr. Smith responded that the evergreens planted three years ago were to be five-foot on center and they would continue that pattern with evergreens and hardwoods. He believes staggered evergreens and hardwoods will look better in five or six years when they grow.

Mr. Ryan noted Ms. Cabot's comments and asked if the proposed lot would be visible from KY 18.

Mr. Smith responded that the flow of cars to the site has increased. There are constantly twenty or thirty cars waiting for insurance pick up or to go to salvage. He intends to put the cars along the west side next to the berm and does not think they would be viewed from the road. He would like to continue filling so that there will be one continuous hill back there. He wants to fill over another twenty feet. He stated that the parking lot will go straight out the back of the building.

Mrs. Millar stated that at the time the original request was granted, the applicant stated that this operation was to be a vehicle maintenance facility and at no time in the original presentation was it discussed that this would be an impoundment lot.

Mrs. Millar moved to deny the request on the basis that it would overwhelm the area and is not consistent with the intended character of the area. Mr. Ryan seconded the motion and it carried unanimously.

2. The request of Shane Lindon for a Variance to allow a reduction in the required front yard setback from 60' to 20' for property at 2335 Beaver Road, Boone County, Kentucky. The property is currently zoned Agricultural Estate (A-2).

Staff Member Mark Jordan presented the Staff Report which included a slide presentation (see Staff Report).

The Chairman asked for the applicant's presentation.

Mr. Shane Lindon, 2535 Beaver Road, stated that he did not meet with Staff. The slides shown by Staff are not of the area where he wants to build the house. He showed the Board pictures of the site. He stated that he wants to build a house below the barn where there is a corn patch. He has not had the land surveyed because he wanted to get the Variance first. He wants to set the house closer to the road because they do not have city sewers and he wants to have his septic system on that side of the creek. He wants the house to be forty feet from the center of the road. He stated that there are only three residents on Big Oak Road, one of whom is his mother. With the Variance, he could build 45 feet from the center of the road and that would give him enough room for the septic system.

Chairman Whitton asked if the applicant was aware of the requirements regarding two houses on one lot.

Mr. Lindon responded that if he gets the Variance, he will have the land surveyed and deeded off. He does not want to deed off two acres and then not be able to build on it.

Chairman Whitton asked if there was anyone present who wished to speak either for or against the request. There being no response, he asked if there were any comments from the Board. There was no response.

Mrs. Millar moved to grant the request as submitted with the condition that the property be subdivided and there be a separate lot with a minimum of 80,000 square feet. Mr. Ryan seconded the motion.

Mr. Lindon stated that he had no problem with the condition.

The motion carried unanimously.

3. The request of Gerald F. Dusing on behalf of Design Build Services for a Variance to allow a reduction in the rear yard setback requirement from 30' to 14.5' for a Variance of 15.5' for property at 1338 Cox Avenue, Lot 4, Section 111, Mineola Industrial Park, Boone County, Kentucky. The property is currently zoned Industrial One (I-1).

Mr. Edwards disqualified himself in regard to this request as he knows the owner of this property and has a relative who works for him. Mr. Edwards left the room at this time.

Staff Member Mark Jordan presented the Staff Report which included a slide presentation (see Staff Report).

ADDITIONAL INFORMATION FOR THE APPLICATION OF RAYMON W. SMITH II AND RAYMON W. SMITH II, TRUSTEE FOR MODIFICATION OF THE CUP ISSUED JUNE 28, 1996, CLUR #96-BCBOA-006-A, TO INCREASE PARKING LIMITATIONS AND ENLARGEMENT OF THE EXISTING SITE BY THE ADDITION OF A 0.7008 ACRE PARCEL.

July 13, 2000

The Conditional Use Permit issued June 28, 1996, CLUR #96-BCBOA-006-A, limits outside parking to 25 cars. This limitation has proven to be unrealistic and unworkable. This application, if approved, would provide parking for approximately 70 vehicles. The applicant's parking needs are calculated as follows: Applicant often has as many as 12 employees present for work at the same time. Applicant has 9 company owned vehicles which may all be on the premises at the same time. Applicant's garage has 8 bays. Optimum use requires 4 vehicles to be rotated through each bay every day, a total of 32 vehicles. Many of these vehicles are owned by commuters who must leave their vehicle for an entire day, or even overnight. Applicant's incidental towing of disabled vehicles can result in as many as 3 or 4 disabled vehicles arriving each day. The disabled vehicles typically remain on the premises for several days to assess needed repairs, coordinate with owners, insurance adjusters, suppliers of parts and other auto repair facilities. Please note that applicant does not provide auto body and fender repairs on these premises. Disabled vehicles requiring these services are removed to other repair facilities within a few days. Please note further that the premises are not used to impound vehicles. Additional temporary parking is required for applicant's customers who visit briefly to make inquiries or schedule services and for vehicles making deliveries to the premises.

The conveyance of the 0.7008 acre parcel from the Raymon W. Smith Trust to Raymon W. Smith II has not been completed but the conveyance plat was approved on April 5, 2000. A copy is included with this application.

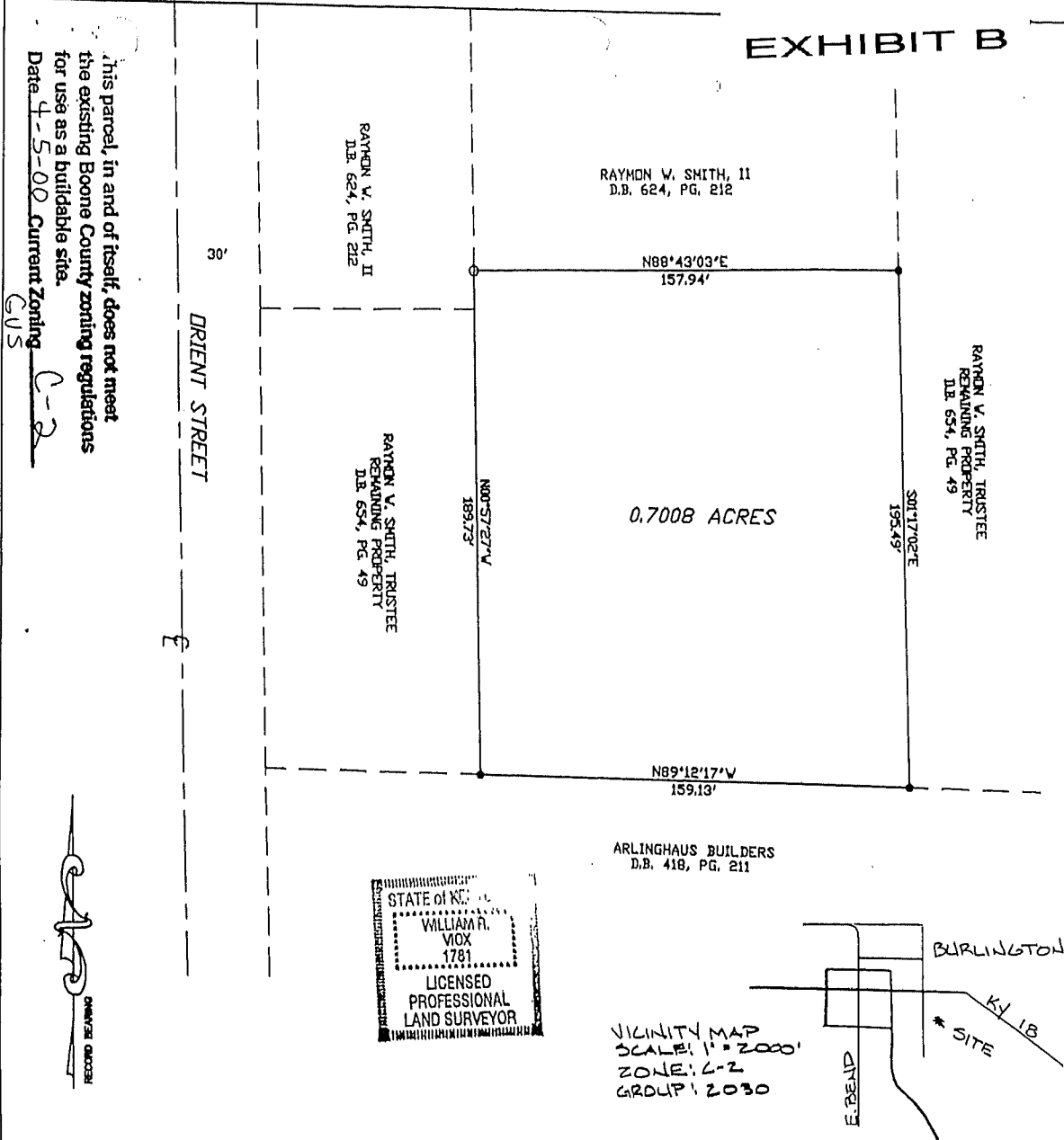
Rough grading for the proposed enlargement of the parking area has been completed in accordance with a grading plan approved on May 3, 1999. See CLUR #99-SP-040A. A large amount of fill dirt was used. Applicant anticipates the use of a gravel surface for a period of three years to allow for compaction before finally adding asphalt paving.

The existing improved parking area is not co-extensive with the rear boundary of the original 1.294 acre parcel. The result is that the proposed improvement is to be constructed partially on the existing 1.294 acre parcel and partially on the additional 0,7008 acre parcel.

The submitted concept plan indicates that the proposed enlarged parking area will be enclosed with an 8-ft. chain-link fence. Applicant is proposing a 6-ft. chain-link fence, which will match the existing improvements.

The submitted concept plan also indicates a proposed new building. This proposed new building is merely a concept at this time. Applicant is not seeking approval for a new building in this application.

The submitted concept plan shows the location of two new dwelling houses to be constructed on the East Side of South Orient Street on property owned by the Raymon W. Smith Trust. The purpose is to show that in time these two new houses would provide additional screening of the enlarged parking area from South Orient Street and the properties on the West Side of South Orient Street, which enjoy a greater elevation. If this additional screening is determined to be necessary, applicant will accept a condition that the two additional houses be constructed within three years.

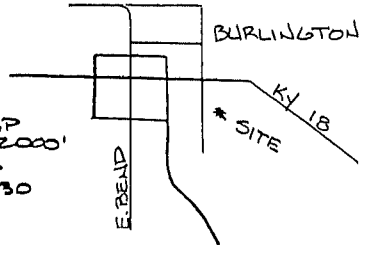


This parcel, in and of itself, does not meet the existing Boone County zoning regulations for use as a buildable site.
 Date: 4-5-00 Current Zoning: C-2
 CUS



ARLINGHAUS BUILDERS
 D.B. 418, PG. 211

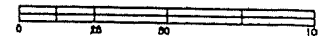
VICINITY MAP
 SCALE: 1" = 2000'
 ZONE: C-2
 GROUP: 2030



BOONE COUNTY PLANNING COMMISSION APPROVAL CERTIFICATE
 Approved for recording the transfer of property only by the Boone County Planning Commission this 5th day of April, 2000.

Judy Runk 4-5-00
 CHAIRMAN DATE

This plat shall be void if not filed with the Boone County Clerk for recording purposes within two (2) years of Planning Commission approval.



- EXISTING IRON PIN
- SET 1/2" REBAR AND CAP STAMPED "PLS 1781"
- ▲ SET R.R. SPIKE

FOR NON-BUILDABLE LOTS

I Certify that this plat of land in and of itself does not meet the current zoning regulations for use and is being transferred for non-building purposes.

W. A. Viox 2/24/00
 P.L.S. 1781 DATE

LAND SURVEYOR'S CERTIFICATE

I certify that this plat depicts a survey made by me or under my supervision in accordance with the Kentucky Minimum Surveying Standards, and complies with all requirements of the Boone County Zoning and Subdivision Regulations, and that dedicated areas including public ways or streets are currently owned by the property owner.

W. A. Viox 2/24/00
 P.L.S. 1781 DATE

I hereby certify that the survey depicted by this plat was done by persons under my direct supervision by the method of random traverse with sideshots. The unadjusted error of closure was at least 1:10,000 and was not adjusted. The survey, as shown hereon is a Class A Survey and the accuracy and precision of said survey meets all the specifications of this class.

W. A. Viox 2/24/00
 P.L.S. 1781 DATE

PLAT OF 0.7008 ACRE
 TO BE CONVEYED BY
 KATHLEEN SMITH.
 BOONE COUNTY KENTUCKY
 - SOUTH OF KENTUCKY HIGHWAY 18 -
 80 FEET EAST OF ORIENT STREET
 FEBRUARY 24, 2000 SCALE: 1" = 50'
 P & Z Code No. 3530

COPY

CLUR #00-BCBOA-027-A

CERTIFICATE OF LAND USE RESTRICTION

1. NAME AND ADDRESS OF PROPERTY OWNER(S)
Raymon W. Smith II
2791 Burlington Pike
Burlington, KY 41005

2. ADDRESS OF PROPERTY
2791 Burlington Pike
Burlington, KY 41005
3. NAME OF SUBDIVISION OR DEVELOPMENT (if applicable)
Smith's High Tech Automotive

4. DEED BOOK 624 PAGE NO. 212 GROUP NO. 2030

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

 Zoning Map Amendment: Conditional Use Permit
 From To

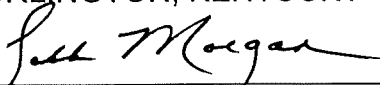
 Development Plan Conditional Zoning

 Subdivision Plat Other:
 (Not Recorded)

 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



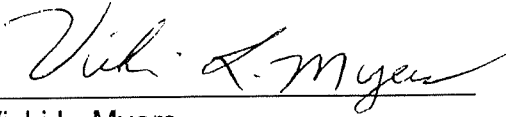
SIGNATURE OF COMPLETING OFFICIAL

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

COMMONWEALTH OF KENTUCKY

COUNTY OF BOONE

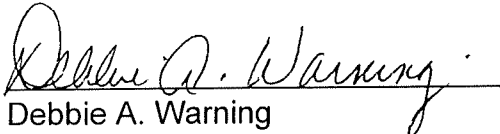
Subscribed, sworn to, and acknowledged before me by Todd Morgan on behalf of the
Boone County Planning Commission this 22 day of August, 2000.



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.)

CONDITIONS OF APPROVAL

The following Conditions of Approval apply to the Conditional Use Permit approved by the Boone County Board of Adjustments and in accordance with the current zoning in effect as of August 9, 2000 Certificate of Land Use Restriction (#00-BCBOA-027-A), for Raymon W. Smith II, Property Owner(s).

The following conditions will apply:

- 1) A six-foot fence around the to-be-developed parking lot is required.
- 2) There will be no automotive recycling and salvaging (wrecking).
- 3) Compliance with the *Boone County Zoning Regulations* for paving or concrete is required.
- 4) Must comply with Buffer Yard requirements as per the *Boone County Zoning Regulations*.
- 5) Any future building expansion would be required to go back before the Boone County Board of Adjustments.

The approved Conditional Use Permit as well as the preceding conditions apply to the property described in:

DEED BOOK 624

PAGE NO. 212

GROUP NO. 2030

Kevin Wall