

APPLICATION FOR ZONING ACTION

TO:

- |  |   |
|--|---|
| <input type="checkbox"/> Boone County Planning Commission            | <input type="checkbox"/> City of Union Board of Adjustment  |
| <input type="checkbox"/> City of Florence Board of Adjustment        | <input type="checkbox"/> City of Walton Board of Adjustment |
| <input checked="" type="checkbox"/> Boone County Board of Adjustment | <input type="checkbox"/> Zoning Enforcement Officer         |

FOR:

- |   |   |
|---|---|
| <input type="checkbox"/> Zoning Text Amendment                                  | <input type="checkbox"/> Zoning Map Amendment               |
| <input type="checkbox"/> Comprehensive Plan Change                              | <input type="checkbox"/> Planned Development Overlay Change |
| <input type="checkbox"/> Preliminary Plat Review                                | <input type="checkbox"/> Improvement Plat Review            |
| <input type="checkbox"/> Conditional Use Permit                                 | <input type="checkbox"/> Final or Deed Plat Review          |
| <input type="checkbox"/> Concept Development Plan Change                        | <input type="checkbox"/> Site Plan Review                   |
| <input type="checkbox"/> Preliminary Development Plan                           | <input type="checkbox"/> Historic District Overlay          |
| <input type="checkbox"/> Change of Non-Conforming Use                           | <input checked="" type="checkbox"/> Appeal or Variance      |
| <input type="checkbox"/> Design Review Board and Certificate of Appropriateness | <input type="checkbox"/> Sign or Zoning Permit              |

Applicant: Robert Ries and James C. Nichols  Owner  
 Agent  
Address: 1455 Boone Aire Rd. 1459 Boone Aire Road  
Florence, KY Florence, KY Telephone: 397-7345(W) 525-1949 (H)

Location: 1451 Boone Aire Road, Florence, KY

Name of Property Owner: Arlinghaus Builders, Inc.

Address of Property Owner: 794 Dudley Road, Edgewood, KY 41017

Zoning District: \_\_\_\_\_ Area in Acres: Residential Lot

Deed Book: 348 Page Number: 284 Group Number: 1600

Description of Request: See Attached

Applicant's Signature: *Robert H. Ries*

Property Owner's Signature: *Robert Ries* *James C. Nichols*

Application Fee: \$ 115.00 FOR PLANNING COMMISSION USE ONLY Date Received: 8-28-87 By: *MP*

Referred To: *Tom Breidenstern* Meeting Date: \_\_\_\_\_

Action Taken: \_\_\_\_\_ Date of Action: \_\_\_\_\_

BOONE COUNTY  
BOARD OF ADJUSTMENT

October 14, 1987 - 6:30 P.M.

---

---

BOARD MEMBERS PRESENT:

Mr. I. A. Archambault  
Mr. Dan Houston  
Mr. Fred Nevel  
Mr. Geroge Whitton, Chairman

BOARD MEMBERS NOT PRESENT:

Mr. Walt Ryan

LEGAL COUNSEL PRESENT:

Mr. Dale Wilson

Chairman Whitton stated that each member had received a copy of the Minutes of the Boone County Board of Adjustment Meeting of September 9, 1987 and asked if there were any comments or corrections.

There being no discussion, Mr. Houston moved, seconded by Mr. Achambault, that the Minutes be approved. The motion carried unanimously.

AGENDA ITEMS:

2. A request of Burlington Lodge #264, F & AM, for a Conditional Use Permit and Site Plan Review to allow the construction of a 1,500 sq. ft. meeting hall. The 1.339-acre site, located between Camp Ernst Road, Pleasant Valley Road, and Solomon Road, Boone County, Kentucky, is zoned Rural Suburban Estates (RSE) and is owned by the Burlington Lodge #264, F & AM.

Staff Member, Tom Breidenstein, presented the Staff Report which included a slide presentation (see Staff Report).

Chairman Whitton asked if there was anyone present who wished to speak in behalf of this request.

Mr. Larry Isaac, Master of Burlington Lodge, was present and Chairman Whitton asked him to address the Staff's concerns regarding landscaping.

Mr. Isaac stated that the landscaping had not yet been designed, but that it would be taken care of in a manner satisfactory to the Board. He added that they meet once a month, plus four times a month for practices, and there is very little traffic. There are 150 members of the Lodge, and only 20 to 30 attend the meetings.

Chairman Whitton asked if there was anyone present who wished to speak in opposition to the request or if there were any comments or questions from the Board.

There being no further discussion, Mr. Nevel moved that the Conditional Use Permit be granted and the Site Plan approved, with the landscaping and other concerns subject to approval by the Staff. Mr. Houston seconded the motion and it carried unanimously.

1. A request of Community Full Gospel Fellowship for a Conditional Use Permit and Site Plan Review to allow the construction of a new church. The 2.33-acre site, which is owned by Shirley Wohrley, is located at the northern end of Overlook Drive just south of the intersection of Coral Drive and KY 237, Hebron. The property is zoned Suburban Residential Two (SR-2). (Deferred from September 9, 1987)

Chairman Whitton noted that this request had been deferred at the last meeting in order for the Board to visit the site. He stated that the Board had visited the site and asked if there were any comments or questions from the Board or the audience.

Staff Member, Tom Breidenstein, advised that a petition had been received in opposition to the request and distributed copies to the Board members.

Mr. Nevel stated that he has a conflict of interest and will not be voting on this request.

Mr. Archambault stated that he is particularly concerned about the traffic and the septic system. He noted that the congregation is large and will continue to grow. He stated that he had visited the site and does not believe it to be appropriate for this use.

Mr. Houston noted that the lot is small and stated that he is concerned about the traffic and the buffer area.

Mr. Houston moved that the request be denied based on the comments made by the Board. Mr. Archambault seconded the motion. Mr. Nevel abstained from voting for the reason noted. All voting members were in favor and the motion carried.

3. A request of United Signs, Inc. (applicant for Huntington Banks) for a Variance in the number of free-standing signs in order to allow a 15 sq. ft. sign advertising two law offices and a dentist's office. The 1.9-acre site, located on the north side of KY 18 at 2252 Burlington Pike, is zoned Office Two (O-2) and is owned by the Huntington Bank.

Staff Member, Tom Breidenstein, presented the Staff Report which included a slide presentation (see Staff Report).

Chairman Whitton asked if there was anyone present who wished to speak in behalf of the request.

Mr. Bill Fox, representing United Signs, Inc., and Mr. Hollis Griffen, representing Huntington Bank, were present.

Mr. Fox stated that he was not aware of the Staff's concerns regarding the proposed sign blocking the Boone Woods sign. He stated that the sign would be 3' x 5' and that he does not think it will block the other sign, except possibly from their parking lot.

Mr. Griffen agreed and presented pictures of the signage in the area.

Mr. Houston noted that one sign will be further back from the road than the other and he did not believe that the 3' x 5' sign would block the park sign.

Mr. Breidenstein stated that the Staff was concerned about sign clutter in accordance with the intent of Article 19. He noted suggestions in the Staff Report regarding how the signs at the site could be incorporated into one sign.

Chairman Whitton asked if there was anyone present who wished to speak in opposition to the request. There was no one present.

Following discussion, Mr. Archambault moved that the Variance be granted to allow the additional sign. Mr. Nevel seconded the motion and it carried unanimously.

4. A request of Pilot Oil Corporation for a Variance in the number, height, and size of free-standing signage. The 4.52-acre site, which is located at the northeast corner of Richwood Road (KY 338) and Dixie Highway (U.S. 25), is zoned Commercial Services (C-3) and is owned by the Pilot Oil Corporation.

Staff Member, Tom Breidenstein, presented the Staff Report which included a slide presentation. He noted that the applicant is requesting a second sign, a larger sign, and a higher sign by this application (see Staff Report).

Chairman Whitton asked if there was anyone present who wished to speak in behalf of this request.

Mr. Jerry Dusing, an attorney representing the applicant, stated that the smaller sign of 238 sq. ft. is in conformance with the requirements. He noted that they are requesting another sign which would be 65 feet high, and the ordinance permits a height of only 40 feet. He noted that the square footage has been reduced and that instead of being 14' x 48', the sign will be 12' x 36', which he noted is 432 sq. ft. as opposed to 672 sq. ft.. Mr. Dusing presented the Board copies of a survey done by KZF, Inc. of the existing signs at the interchange indicating the heights and dimensions of those signs. He noted the location of the proposed sign. Mr. Dusing stated that their special circumstances are the topography and that their trade will come from the expressway. He stated that without the height variance, their sign would not be visible from the expressway and that a smaller sign would not be legible from the expressway. He stated that they are asking for less than what the other truck stops have. He noted that the sign will be illuminated from a catwalk on the sign.

Chairman Whitton asked if there were any other businesses at the interchange that have two high rise signs. Mr. Dusing stated that Boron and T.A. have two signs.

There being no one else present in behalf of the request, Chairman Whitton asked if there was anyone present in opposition to the request.

Mr. Don Davis, 377 Richwood Road, Walton, stated that the applicant had indicated at the Public Hearing that he did not intend to draw additional traffic from the expressway, but would only draw from the competition at the interchange. He noted that the Planning Commission had to allow this use due to the zoning. He stated that a group had gone to the Fiscal Court to express opposition to this use. The Fiscal Court decided by majority vote to send a letter to the developer asking him not to build on this site. Mr. Davis added that there are sufficient high rise signs at the interchange to attract traffic from the expressway. He noted his concerns regarding traffic in the area. Mr. Davis stated that he was speaking as a resident, not a member of the Planning Commission. He asked that the request be denied.

Mr. Dennis Davis, 357 Richwood Road, noted other signs built by United Sign which were supposed to be able to resist winds of 100 mph which have blown down. He agreed that the applicant had indicated that it was not his intention to bring additional traffic to the Richwood exit. He stated that he had spoken to the President of Pilot Oil who had indicated that it was his intention to draw trade by better prices, a food market, etc., but that he would not increase the traffic. Mr. Davis noted that there are county regulations regarding signs that were established for a reason. He noted his agreement with the Staff's findings and asked that the request be denied.

Ms. Sue Robinson, a resident of Richwood, stated that they own two rental properties which adjoin this site. They are concerned about the additional traffic, the noise, the flood lights on the signs, and safety in case of wind damage.

Mrs. Thelma Castellini, a resident of Richwood, stated that the proposed sign would be in her line of vision from her home. She commented on the events which lead to Pilot Oil building on the site. Mrs. Castellini stated that the site is 17 feet below the level of U.S. 25 and asked if the sign would be placed on the berm.

Mr. Jim Moleire, a resident of the area, asked that no additional errors be made in regard to this site.

Mr. Jerry Dusing stated that the base of the sign would be about 12 to 13 feet below the level of U.S. 25 and would be about 54 to 55 feet high. He added that marketing studies indicate that 90% of their business will come from existing traffic. He stated that the site is zoned for this use and was purchased on that basis and is being developed on that basis.

Chairman Whitton asked if there were any comments or questions from the Board.

Mr. Nevel commented on the existing guidelines regarding signs and asked when the last sign was erected at the interchange. Mr. Dennis Davis advised that the last sign was put up in 1981.

Mr. Nevel stated that the sign should not be permitted and moved that the request be denied. The motion was not seconded.

Chairman Whitton noted the number of existing signs in the area and stated that he was not sure that one more sign would cause a vehicle to come off the expressway.

Mr. Dusing stated that Pilot Oil is price competitive and needs to be seen.

Mr. Don Davis stated that hours, weeks, and months were spent in adopting the sign ordinances. He stated that every inch of this sign will add to the congestion at the interchange.

Following discussion and referring to the existing code, Mr. Archambault moved that a second sign be allowed which is in compliance with the current zoning ordinance, thereby denying the applicant's request for a height and size variance, but permitting a variation in the number of free-standing signs. Mr. Nevel seconded the motion and it carried unanimously.

5. A request of Robert Ries and James C. Nichols for an Appeal of the Zoning Administrator's decision of July 31, 1987 granting to Arlinghaus Builders, Inc. the right to establish a model home on Lot 4B of the Boone Aire County Club Subdivision. The property is located at 1451 Boone Aire Road and is zoned Suburban Residential One (SR-1).

Mr. Gerald Newton, Director, presented the Staff Report noting the attachments thereto (see Staff Report).

Chairman Whitton asked for the applicant's comments at this time.

Mr. Bob Ries stated that Mr. Jim Nichols was not present, but that he was representing Mr. Nichols and four other residents of Boone Aire Road. He noted the comments made at the Public Hearing regarding traffic, safety, and a decrease in property values. He stated that they contest that the builder bought the lots which the Zoning Administrator discussed. He stated that the model home at Gun Powder Estates directs clients to other model homes. He stated that he followed one car and that clients are being taken out of Boone County. He added that there is no monitoring of the model homes. He stated that model homes file business income tax returns and there is a stipulation that businesses cannot exist in a residential area due to the problems caused by them. He stated that these model homes were not all there when he moved in and had they been there, he would not have moved in.

Chairman Whitton noted Mr. Ries' comments about clients being taken in cars to other model homes and other areas and asked if he was speaking specifically about Arlinghaus properties.

Mr. Ries stated that he was and added that they have signed a complaint against the other model homes because Arlinghaus says he owns the lots and other builders still have signs on them.

Mr. Ron Robinson, County Commissioner, stated that he was present as the Commissioner from District 2. He stated that planning and zoning issues are one of the most important aspects of his job. He stated that the Zoning Regulations are the guidebook for development. He reviewed the Ordinances and noted "Accessory Uses". He stated that a model home is not an accessory use as it is the only structure on the lot. He stated that the house is being used as a business. He referred to "Home Occupations" indicated in the Zoning Ordinance and noted that the model home does not meet these standards. He added that model homes need to be allowed, but there are provisions to make changes in the regulations. He stated that the Board's decision must be based on what the Zoning Regulations say at this time.

Chairman Whitton asked Mr. Robinson if he was saying that every model home in Boone County was in violation and should be cited.

Mr. Robinson replied that if someone files a complaint, the regulations must be followed until changes are made. He stated that all model homes are in violation and, if the Board allows this one, they are setting a precedent.

Chairman Whitton commented that model homes have existed in the County for many years. He noted that model homes are not addressed in the Regulations, but that they do exist.

Mr. Robinson stated that "Home Occupations" are addressed. He added that for 30 or 40 years builders have built model homes in subdivisions, but that is not the situation here.

Mr. Newton stated that the Zoning Regulations specify that when there are uses not specifically identified in the Regulations, then it is the duty of the Zoning Administrator to classify that use if it currently exists. If it is a new business, then the applicant can seek a text amendment.

Mr. Eric Deters, representing Arlinghaus Builders, stated that the last time the Board made a decision on this matter it was not based on security, traffic, or price reduction, but on Mr. Newton's letter of May 20. Mr. Arlinghaus followed the guidelines recommended by the Commission and outlined by Mr. Newton. He stated that the model home is being used only for the area where it is located. He stated that they are not advertising in the newspaper or taking clients to other locations in cars. He asked that the appeal be denied.

Counselor Wilson advised that the issue before the Board is how Mr. Newton interprets the term "area" as it applies to the Arlinghaus model home.

Mr. Newton reviewed the criteria used. He noted that Boone Aire Country Club Estates and the portion called The Greens are recorded on one deed. He stated that when Arlinghaus supplied information showing that they own lots, he did not feel that he could change the criteria -- i.e., ownership of lots. He noted that a definition for model homes and model home centers has been proposed and is recommended for approval to the legislative bodies; but, in the meantime, each instance must be reviewed on a case-by-case basis.

Chairman Whitton clarified that the difference between Mr. Newton's previous denial of the request and his current approval of the request is that as of May 20, Mr. Arlinghaus did not own any lots. Mr. Newton agreed with his comments.

Following discussion of the proposed definition of model homes and model home centers, Counselor Wilson advised that if the Board believes Mr. Newton acted properly in consideration of the changes since May 20, then it should vote to uphold his decision and deny the appeal. If the Board believes he acted improperly, then it should vote to uphold the appeal.

Mr. Ries stated that he is appealing because of violations in what is being done at the model homes. He stated that Mr. Richardson indicated that they are violating a written rule. He stated that he had seen people being taken to other areas in cars. He asked how many times this model home had been monitored since July.

Counselor Wilson stated that he interprets what Mr. Ries is saying to mean that he is appealing that Mr. Newton even used this criteria and that the use is not allowed according to the book. Mr. Ries agreed.

Chairman Whitton advised that there are two issues being brought up here. One is the appeal and the other is a complaint.


Mr. Newton stated that his office will investigate the alleged violations.

Counselor Wilson advised that the Board is charged to uphold or not to uphold Mr. Newton's decision based on the information available on July 31, 1987. The information presented by Mr. Ries is another issue.

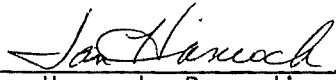
There being no further discussion, Mr. Houston moved that the Board uphold Mr. Newton's decision based on the facts that he had when he made the decision. Mr. Nevel seconded the motion and it carried unanimously.

There being no further business to come before the Board, Mr. Archambault moved, seconded by Mr. Nevel, that the meeting be adjourned. The meeting was adjourned by unanimous consent at 8:45 P.M..

APPROVED:

  
\_\_\_\_\_  
George D. Whitton, Chairman

ATTEST:

  
\_\_\_\_\_  
Jan Hancock, Recording Secretary