

APPLICATION FOR ZONING ACTION

TO:  Boone County Planning Commission  City of Union Board of Adjustment  
 City of Florence Board of Adjustment  City of Walton Board of Adjustment  
 Boone County Board of Adjustment  Zoning Enforcement Officer

FOR:  Zoning Text Amendment  Zoning Map Amendment  
 Comprehensive Plan Change  Preliminary Plat Approval  
 Improvement Plat Approval  Final Plat or Deed Plat  
 Conditional Use Permit  Site Plan Review  
 Concept Development Plan  Historic District Overlay  
 Preliminary Development Plan  Sign Permit or Zoning Permit  
 Change of Non-Conforming Use  Appeal or Variance  
 Design Review Board Hearing and Certificate of Appropriateness

Applicant: Rightway Nursery, Inc.  Owner  
 Agent

Address: 6188 Hopeful Rd.  
Florence, Kentucky, 41042 Telephone: 525-6678

Location: 1007 Burlington Pike, Florence, Ky

Name of Owner: ~~David~~ Brenton Bevins

Address of Owner: 2722 Valley Trails, Villa Hills, Ky 41006

Zone: SR-2 Area in Acres: 1 acre +

Deed Book: ① 244 ② 248 Page No.: 156 100 Group No: 2032 2032

Description of Request: Requesting approval for  
operation of a landscape & Nursery company with  
retail sales IN PLACE OF DENTIST'S OFFICE.  
Owner's Signature: Brenton C. Bevins

Date Oct 20, 1983 Applicant's Signature: Rightway Nur. Inc.  
By Ben R. W. Pres.

FOR PLANNING COMMISSION USE:

Application date and fee of \$ 150.00 Received: October 24, 1983

Referred to: \_\_\_\_\_ For Meeting Date: \_\_\_\_\_

Action: \_\_\_\_\_ Date: \_\_\_\_\_

Co-owner Christina K. Bevins



This request is for a change in the use of the property from a dentist office to a retail nursery and landscape center. The Board in its review must decide if the planned use of a nursery is a no less non-conforming use than the previous use of a dentist office. The Board should be put on notice that the planned use is including the construction of three greenhouses and the outside storage and display of plants on gravel and mulch beds. The applicant has submitted a plan that he has drawn showing the extent of the proposed use. The plan though does not bear the seal of a surveyor or engineer because the applicant indicated that he did not want to go to the expense to have one done not knowing the outcome of this request. He has indicated that he would provide one if the approval is given.

(Note for the Board: In my opinion if the applicant is going to put the greenhouses on the property, then I would consider this request would be involving a possible increase in the non-conformity of the commercial land use of the property.)

BOONE COUNTY BOARD OF ADJUSTMENT

MINUTES

NOVEMBER 9, 1983

6:30 P.M.

Chairman Whitton called the meeting to order at 6:30 P.M.. The members present were Mr. Archambault, Mr. Houston, Mr. Ryan, Mr. Whitton. Mr. Nevel was absent. Mr. Ryan made a motion to approve the minutes of October 12, 1983 and October 19, 1983. The motion carried unanimously. Chairman Whitton proceeded with the request of Rightway Nursery, Inc. for an appeal to the Board to permit a change of a non-conforming use from a dentist office to a landscape and nursery sales office on a 1 acre plus tract zoned Suburban Residential Two (SR-2) located at 1007 Burlington Pike, Florence, Boone County, Kentucky. Mr. Block presented the Enforcement Officer's Report and identified the property for the Board members. The members of the Board reviewed the site plan. Chairman Whitton asked if there were any questions from the Board. Mr. Wilson explained the interpretation of a pre-existing non-conforming use. Mr. Wilson asked if the dentist office was in operation or if it had been abandoned before the new zoning. Mr. Block replied the dentist office has been there since the new zoning but had moved out of the building within the past month. In response to Mr. Ryan, Mr. Block stated the paved parking area is already there with no changes having to be made. Mr. Ryan asked if there were any greenhouses on the property at this time. Mr. Block replied no greenhouses were there and that the rear yard has been left in grass with a small plot in the back for a personal garden. In reply to Mr. Ryan, Mr. Block stated the nearest house in the rear has an approximately 20 feet sideyard between this property line and their house. Mr. Block continued the location of the proposed greenhouses are on the same side as the adjoining property which is a residence but also has a tax service home occupation and are within about 20 to 30 feet of the property line. Mr. Wilson stated in order to allow the new use the Board would have to determine if the use is of the same or more restrictive classification. Chairman Whitton asked if Mr. Ben Wright would like to speak in behalf of his request. Mr. Wright, applicant, stated Dr. Bevins indicated he treated between 8 to 10 patients per day. Mr. Wright further stated that on a yearly average he would not have that many customers although there may be days when there would be 25 and some days none. He continued that he fully intended to keep the front of the property as it is; that he will not display plants out near the road. He continued that he has plans for a chain link fence around the premise of the property for safety from vandalism theft, etc. and have no intention of adding anything to it other than three (3) portable greenhouses which could be moved at any time. Mr. Ryan asked if there was any screening in the area

in the area of the proposed greenhouses. Mr. Wright stated "no". Chairman Whitton stated his concern in granting this request as this Board has certain legal limits and in his opinion Mr. Wright may need a zone change as this zoning is Suburban Residential One (SR-1). He continued you are applying to a commercial use based on a pre-existing non-conforming use with additional structures. Mr. Wright defined the greenhouses as portable structures used for wintering plants. In reply to Vice Chairman Archambault, Mr. Wright stated there would be portable greenhouses. He continued they are portable units with no foundations as they are temporary, not for growing. Mr. Wright stated he would not be growing houseplants or vegetables in a heated greenhouse, this is a protective system. Mr. Wright indicated it had been his understanding in the past that in reality any homewoner can construct that definition of a greenhouse in their back yard with no particular zoning; but when a foundation was put in, it became a permanent structure which is a different story. Chairman Whitton stated the criteria here is for a commerical use, not for somebody's back yard. He continued in my opinion I see the whole strip along there being commercial. In response to Chairman Whitton, Mr. Block outlined the areas surrounding zones. In reply to Chairman Whitton, Mr. Block stated by memory that area of Ky. 18 has been planned as medium density residential under the Comprehensive Plan, the only commercial being within the City of Florence, Pete and Libby's and across the road from the church down to Chrysler. In response to Vice Chairman Archambault, Mr. Wright stated the traffic volume would be the same as before, except in the spring and fall. Mr. Archambault stated if the buildings are portable Mr. Wright would not be increasing anything. Mr. Wright pointed out he had stated to Mr. Block the intensity of the business as a dentist office was involved inside the walls. He continued the intensity of his business will be the opposite, yet if you weigh the total intensity on a pieve of property he personally doesn't think he is being any more intense than a dentist office. He continued that there may be a shift of locations on the property as far as the intensity. In response to Mr. Archambault, Mr. Wright replied it is his agreement with Dr. Bevins not to change the parking lot or do anything to it, as it is in good condition. Chairman Whitton asked if there were any further questions. Mr. Ryan asked if the adjoining property owners were aware of this request. Mr. Wilson stated notification is not required on this type of request. Mr. Wright stated he would invite the members of the Board to call any of the adjoining property owners. He continued before he entered into a contract, the people he worked with contacted the property owners receiving a very positive reaction. Mr. Ryan made a motion to table the request until response was received from the adjoining property owners stating they had no opposition to the request. Mr. Houston seconded. Chairman Whitton asked if there was any further discussion. Mr. Wright stated he would like to set up greenhouses as soon as possible. The motion carried unanimously. Discussion was held as to the type of notification to be used in notifying adjoining property owners. It was decided by the Board members that Staff send out a Questionaire, along with a stamped addressed envelope, to the adjoining property owners on which they would indicate their opposition

or approval of the request. The questionnaire is to be signed and returned to the Planning Commission office for record in the file. Chairman Whitton stated that a meeting prior to the next regular meeting would be held and Mr. Wright notified of the time and date.

Chairman Whitton proceeded with the request of Frances A Gerding for an appeal to the Board to permit the division of 3.5 acres off of a total 73,109 acres based upon the lot being pre-existing. This property is located .5 miles north down Wolper road on left, zoned Agriculture One (A-1). Mr. Block presented the Enforcement Officer's Report. Mr. and Mrs. Gerding were present to speak on behalf of the request. Chairman Whitton asked Mr. Block if there was already a mobile home on the site. Mr. Block stated the mobile home was placed on the site in accordance with a special use permit issued by the Boone County Planning Commission in an Agriculture district under the old zoning regulations. It is shown in the records of the Courthouse as being on a 3 acre tract with the condition to the granting of the permit being the approval of the on site sewage disposal; which was received. The Boone County Building Inspector issued a building permit for approximately the same size land about one (1) month later which would have involved the mobile home tie downs along with other things for the mobile home itself. Chairman Whitton stated the problem is the tract was never actually split off. He continued the Board must determine if this is a pre-existing non-conforming based on what has happened. Mr. Ryan asked if the mobile home was on a 3.5 acre tract. Mr. Block stated "yes", since 1980. They have recently put in a modular home improving the tract from a mobile home status to a modular status. In reply to Mr. Block, Mrs. Gerding replied they had not applied for a building permit. Chairman Whitton asked for any questions from the Board. Mr. Wilson stated if the request is equivalent to a preliminary plat procedure, there would not be a legal problem. In response to Mr. Wilson, Mr. Block stated this is the same piece of ground, but they have never taken steps to divide the piece off the original farm tract. The survey work for the building permits and permits to the planning commission originally were on the 3½ acres. They never submitted it for review process. Chairman Whitton stated the Chair would entertain a motion. Mr. Ryan moved the request be granted. Mr. Houston seconded, the motion carried unanimously.

Chairman Whitton stated at this time the Chair will entertain any additional business from the floor.

Mr. Nick Benson stepped forward representing Quality Forest, Inc. Mr. Benson stated his client had found a new parcel of land located on Mary Grubbs Highway; the Strauss property, but was not here to argue the merits. Mr. Benson further stated his clients have found property last week and asked him Friday for him to get things moving as they had a bond issue. Mr. Benson stated that he

discussion the zoning with Mr. Block, who did some research and in his opinion stated it is Industrial One (I-1) but requires a conditional use permit. Mr. Benson stated the plant water treats wood. He continued the main reason he has given the Board this much back ground, is that his clients, by thinking they were in business, have already obtained their bond issued before Fiscal Court. The option on the property expires November 24, 1983. Mr. Benson stated that he has paid his clients \$500.00 fee for a special meeting to come before the Board as quickly as possible. Mr. Benson stated that his clients have decided to take only 20 acres out of the potential 120 acres and he thought there are only five or six adjoining property owners; one of which is the gentleman selling the property and one of which is the railroad. Mr. Benson stated that if the Board defers the request on the November 28th meeting, it would be the same as a "no" vote, due to time limitations. Mr. Benson stated if the Board desires, at his clients expense, they would fly the Board to North Carolina to view their other plant. Mr. Benson stated his client will buy the whole 120 acres even though he only needs 20 acres but will take the 20 acres surveyed in the corner. Mr. Benson further stated the problem with the site on Chambers Road was that it was 195 feet from residents back door, but under this arrangement they will be 1000 feet from nearest house. Mr. Benson continued the concept by taking the Strauss tract, the lower section is the other 100 acres will be a buffer zone so to speak from the other adjoining land owners which we feel is an attraction. In response to Mr. Ryan, Mr. Benson stated that Tom Ryan, by his stepping it off, the nearest house would be about 1000 feet away. Mr. Ryan asked if that residence would be on Service Road and asked where access road would be. The members of the Board reviewed the plat and discussed the location of the site and access road. Mr. Block illustrated on the zoning map the location of the proposed site and the surrounding zones. Mr. Benson stated bordering this property would be the Krekler property and the highway will be bordering the property more than anything else. Further discussion followed pertaining the the adjoining property owners. Mr. Benson stated that he felt they have a good location for the plant. He continued that it was unfortunate that the last time they had bad press. Mr. Benson further stated he would like for the Board to be open minded on the request and make up their own decision. In response to Chairman Whitton, Mr. Benson stated that in the 50 years the plant has been in existence, no one has gotten sick from working in or living next to this type of plant. He continued that they have never received any citations or violations from EPA. Mr. Benson stated the reasons he felt the previous request was denied and offered to provide the Board with a transcript of the Fiscal Court. Discussion followed pertaining the the reasons for Fiscal Courts decision.

The Board members discussed the date for the hearing and agreed to meet November 28, 1983 at 6:30 P.M.. In response to Mr. Houston, Mr. Benson stated the site is approximately 3 to 4 miles from the previous site.

Chairman Whitton asked if there was any other business. Hearing none, Mr. Ryan moved for adjournment; Mr. Houston seconded. The meeting adjourned at 7:17 P.M..

RECONVENED MEETING

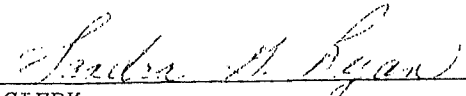
NOVEMBER 28, 1983

Chairman Whitton called the reconvened meeting to order at 6:25 P.M. Four Board Members were present; Mr. Nevel was absent. Staff members present were Mr. Wilson, Mr. Block and Mrs. Ryan.

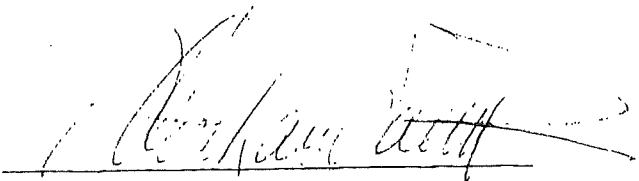
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Chairman Whitton asked for any comments. Mr. Houston moved the request be granted; Vice Chairman Archambault seconded. The motion carried with a three yes vote and one no. Mr. Ryan moved for adjournment; Mr. Houston seconded. The meeting adjourned 6:30 P.M..

RESPECTFULLY SUBMITTED

  
CLERK

APPROVED: Nov 14 1983

  
I.A. ARCHAMBAULT, II  
VICE CHAIRMAN