

APPLICATION FOR ZONING ACTION

TO:

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

FOR:

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

Applicant: Wm. C. Anderson, Inc. Owner Agent
 Address: 1743 Anderson Blvd., Hebron, Kentucky 41048
 Telephone: (606) 689-4085

Location: 3171 Petersburg Road, Burlington, Kentucky

Name of Property Owner: Wm. C. Anderson, Inc.

Address of Property Owner: 1743 Anderson Blvd. Hebron, Kentucky 41048

Zoning District: RSE Area in Acres: 2.889

Deed Book: 308 ; 320 ; 323 Page Number: 196 ; 80 ; 235 Group Number: 2013

Description of Request: Appeal to Boone County Board of Adjustment from Zoning Enforcement Officer's determination that a change of pre-existing non-conforming use has occurred on the subject property. See attached letter. (Roger Sprague is sublessee of subject property).

Applicant's Signature: Kenneth J. Anderson, Pres.

Property Owner's Signature: Kenneth J. Anderson, Pres.

FOR PLANNING COMMISSION USE ONLY
 Application Fee: \$193 Date Received: 11-20-87 By: TWB

Referred To: TWB Meeting Date: 12-9-87

Action Taken: appeal upheld Date of Action: 12-9-87

Legal Description contained in deeds, copies of which are attached.

STAFF REPORT

APPLICANT: William C. Anderson, Inc.
LOCATION: 3171 Petersburg Road, Boone County
ZONE: Rural Suburban Estates (RSE)
DATE: December 9, 1987; 6:30 p.m.

REMARKS:

The applicant is requesting an Appeal of the Zoning Administrator's decision regarding a change in use from a tool and die facility to an office equipment repair facility and for a Change in Non-Conforming Use. The 2.889 acre site, located at the old Anderson Tool and Die facility on the south side of Petersburg Road, is zoned Rural Suburban Estates (RSE) and is owned by William C. Anderson, Inc.

History

The Anderson Tool and Die has been in operation at 3171 Petersburg Road for approximately 24 years in the RSE zoning district. Therefore, the tool and die business is protected as a legal, pre-existing, non-conforming use. Their business has been so successful that they moved the bulk of their operations to industrially zoned property on Anderson Boulevard.

After their move to the Anderson Boulevard property, the Anderson Tool and Die kept some specialty machinery in one half of their building on Petersburg Road (which they continue to use in their business). The other half of their building has been vacated and leased to Roger Sprague, owner of SMI, Inc. (Sprague Modular Interiors). SMI is a small business which refurbishes office equipment, especially cloth and metal partitions used in modular offices, as well as an occasional desk or file cabinet. Mr. Sprague operates his business primarily in the evenings and during weekends. A complaint was received by our office when trucks different from those typical of the tool and die began frequenting the site at times not typical of the tool and die's hours of operation. The building itself has not been changed; only the use has been modified.

Appeal

The first part of this request is an Appeal of the decision that the SMI business represents a different use of the residentially zoned property on Petersburg Road. The Boone County Planning Commission staff has contended that, although the tool and die is permitted to remain as a legal, pre-existing, non-conforming use, not all industrial or commercial uses are necessarily permitted. Only the Board of Adjustment has been empowered to allow changes to legal non-conforming uses, no matter how "less offensive" or "less intense."

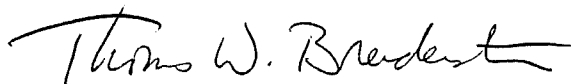
The applicant has contended that the new use is the same as the old use. Much of the same equipment is used in the repair and refurbishing of office equipment as is used in a tool and die. The only differences are the products being worked upon and the amount of work being conducted. The applicant will be able to expand on these arguments at the meeting.

Change in Non-Conforming Use

The second part of this application is a request for a Change in Non-Conforming Use. Should the Appeal fail, the applicant would ask that Mr. Sprague's office equipment refurbishing activity be permitted in conjunction with the continued tool and die activity. The Board must evaluate this request with the requirements of Article 2 of the Zoning Regulations. Those sections of the Article which apply to a change in use are attached. Generally, the Board must decide whether SMI's type of business is the same, or more compatible with residential and agricultural uses which are principally permitted in the RSE zoning district. Also, the Board should understand that the applicant intends to continue the tool and die operations.

All surrounding property is zoned RSE and is used either residentially, agriculturally, or is open space. The attached survey plat (which was submitted during a requested Zoning Map Amendment in 1984) shows the location of the one story building used for the tool and die. Also, the parking, loading, driveway areas, and immediately adjacent land uses are shown. Slides taken of the interior of the building showing the two uses in the two halves of the building should be available at the December 9 meeting.

Respectfully submitted,



Thomas W. Breidenstein,
Zoning Enforcement Officer

TWB:mcb

Attachments

NONCONFORMING LOTS, USES, AND STRUCTURES

Section 280

Intent

Within the districts established by this order or amendments that may later be adopted, there exists lots, uses of land, structures, and uses of structures and land in combination which were lawful before this order was passed or amended, but which would be prohibited, regulated, or restricted under the terms of this order or further amendments. It is the intent of this order to permit these nonconforming lots, uses and structures to continue until they are removed, but not to encourage their survival. It is further the intent of this order that a nonconforming use or structure shall not be enlarged or extended beyond the scope and area of its operation at the time it became a legal nonconforming use, nor shall other uses or structures which are prohibited elsewhere in the same district be permitted on lots of nonconforming uses or structures.

Uses of structures not legally established before this order was passed or amended shall not be given the statutes of legally pre-existing, non-conforming uses or structure, and may be subject to penalties for violation under Section 430 through 450 of this order.

Section 283

Non-Conforming Uses of Land

Where, at the time of adoption of this order, legally established, uses of land exist which would not be permitted by regulations imposed by this order, the uses may be continued so long as they remain otherwise lawful, provided the Board shall not allow the enlargement or extension of a non-conforming use beyond the scope and area of its operation at the time these regulations were adopted.

Section 284

Change from One Nonconforming Use to Another

The Board of Adjustments and Zoning Appeals shall have the power to hear and decide on applications to permit a change from one nonconforming use to another.

The Board shall not permit such a change unless the new nonconforming use is as equally or more compatible with permitted uses in the district in which it is located as the existing nonconforming use. Application for change of nonconforming use shall conform to the procedures and requirements for appeals as specified in Sections 241-246, inclusive, of this order and Kentucky Revised Statutes, Section 100.253.

The Board shall not allow any changed nonconforming use to be increased or enlarged, nor extended to occupy a greater area of land than was occupied by the original nonconforming use. In permitting such change, the Board may require appropriate conditions and safeguards in accord with other provisions of this order.

Section 285

Non-Conforming Structures

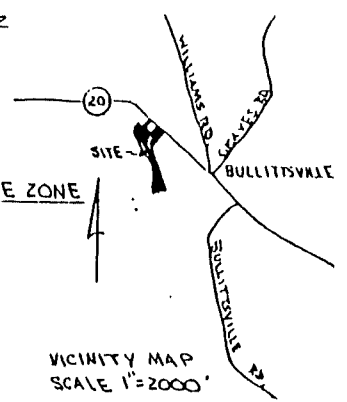
Where a lawful structure exists at the effective date of adoption or amendment of this order that could not be built under the terms of this order by reason of restrictions on intensity or size or lot coverage or height or bulk or setback, or other requirements concerning the structure, such structure may be continued so long as it remains otherwise lawful, subject to the following provisions:

1. No such non-conforming structure may be enlarged or altered in a way which increases its non-conformity, but any structure or portion thereof may be altered to decrease its non-conformity;
2. Should such structure be moved for any reason for any distance, it shall thereafter conform to the regulations for the district in which it is located after it is moved as otherwise provided in Kentucky Revised Statutes, Section 100.253(2).

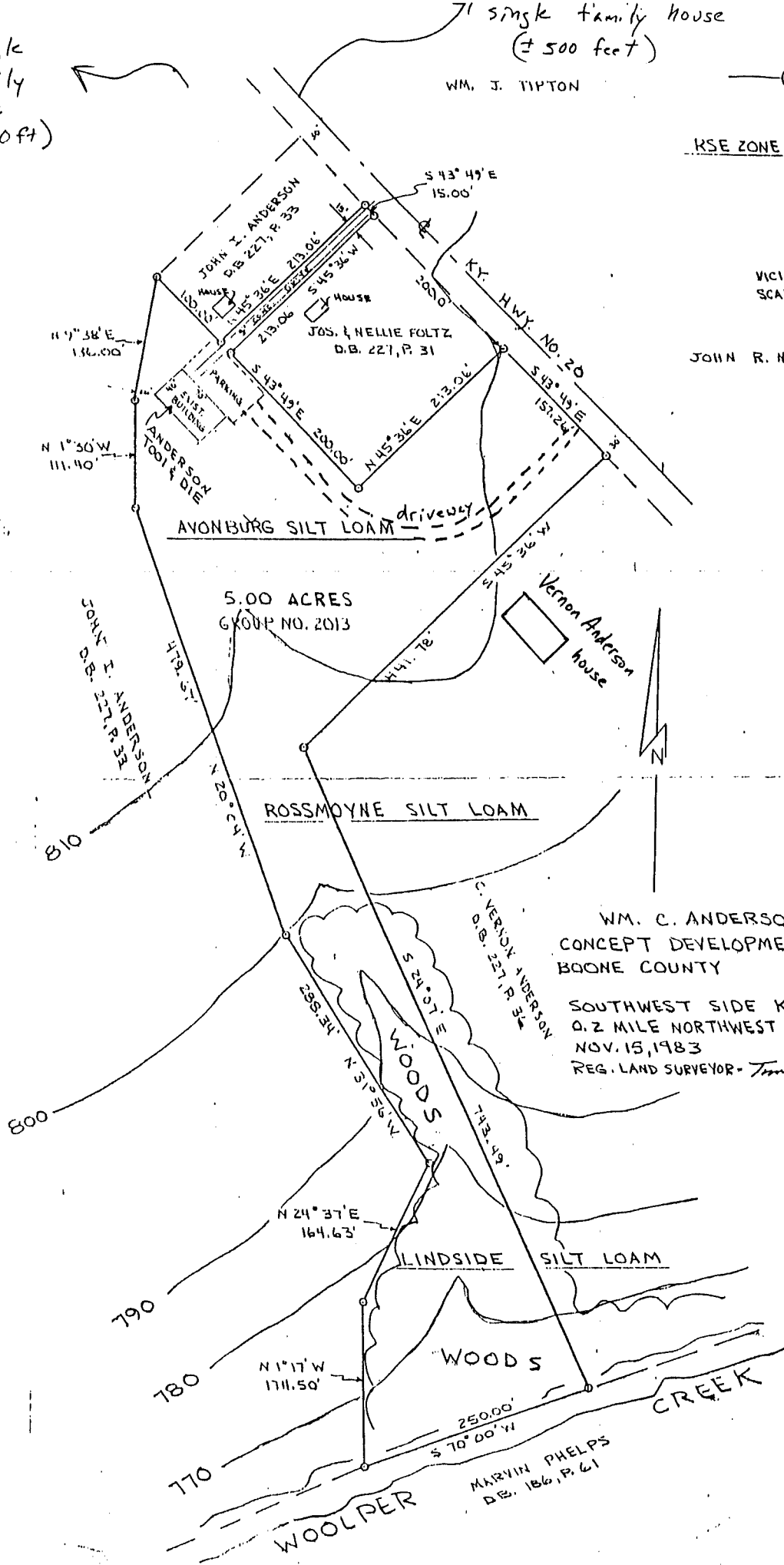
Single family house
house
(± 600 ft)

Single family house
(± 500 feet)

WM. J. TIPTON



JOHN R. NOEL



WM. C. ANDERSON, INC.
 CONCEPT DEVELOPMENT PLAN
 BOONE COUNTY KENTUCKY
 SOUTHWEST SIDE KY. HWY. NO. 20
 0.2 MILE NORTHWEST WILLIAMS RD.
 NOV. 15, 1983
 SCALE 1"=100'
 REG. LAND SURVEYOR - Timothy R. M. Hardy

BOONE COUNTY
BOARD OF ADJUSTMENT

December 9, 1987 - 6:30 P.M.

BOARD MEMBERS PRESENT:

Mr. Dan Houston
Mr. Fred Nevel
Mr. Walt Ryan
Mr. George Whitton, Chairman

BOARD MEMBERS NOT PRESENT:

Mr. I. A. Archambault

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 November 11, 1987 and asked if there were any comments or corrections.

There being no comments or corrections, Mr. Nevel moved that the Minutes be approved as written. Mr. Ryan seconded the motion and it carried unanimously.

AGENDA ITEMS:

1. The request of Walt Ramey (agent for Andy's Glass Shop) for a Conditional Use Permit and landscaped buffer Variance to allow the operation of a glass replacement facility. The 0.557-acre site, located at 1041 Burlington Pike, is zoned Commercial One (C-1) and is owned by Mr. and Mrs. Lenore Surface.

After closer review, it was determined that this property is zoned Suburban Residential Two (SR-2) rather than C-1. Therefore, a Zoning Map Amendment will be required to permit the proposed use.

Chairman Whitton advised that this request had been withdrawn.

2. The request of Lloyd Stephenson, Jr. for a front yard Variance of three feet in order to allow the construction of a single-family residence. The 0.2-acre site located at 2 Mary's Court is zoned Suburban Residential One (SR-1) and owned by Lloyd Stephenson.

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

Mr. Lloyd Stephenson, Jr. stated that granting this Variance will not affect the public health, safety or welfare, but will increase the value of surrounding properties. He added that only a small portion of the garage violates the 30-foot setback requirement. Their contractor, Mr. William Kreigler, advised them that there was a soft spot where the house should have been placed and that putting it there would not provide a solid foundation. They have acted on Mr. Kreigler's advice.

Chairman Whitton asked if there was anyone present who wished to speak in favor of, or in opposition to, this request. There being no response, he asked if there were any comments or questions from the Board.

There being no discussion, Mr. Nevel moved that the Variance be granted on the basis that there would have been a problem with the foundation and the Variance will not adversely affect the public health, safety, or welfare. Mr. Ryan seconded the motion and it carried unanimously.

3. The request of Michael Elizabeth Skerchock for a Conditional Use Permit to allow the operation of a day care/pre-school facility. The 0.5-acre (approx.) tract, located at the northeast corner of N. Jefferson Street and Gallatin Street, is zoned Suburban Residential Two/Small Community Overlay (SR-2/SC), and is owned by Michael Elizabeth Skerchock.

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

Ms. Skerchock advised that she has obtained the report from the Health Department which was requested by Staff. She noted that the report states that the Health Department went out and has made a determination in regard to the sewage. She added that the two trees mentioned in the slide presentation were water maples and that they will have to be removed as parts of them are damaged and may be hazardous.

Mr. Breidenstein summarized the letter received from the Health Department which indicated that a septic system would not be possible on the site. They referred Ms. Skerchock to the Boone County Water and Sewage Department for a possible tap into the county sewage system. The other alternative would be a holding tank system.

Ms. Skerchock added that they do not intend to use the existing driveway and will provide another driveway.

Chairman Whitton asked the applicant if there was a problem in regard to the suggestions of the Health Department. Ms. Skerchock indicated that there was not.

Chairman Whitton asked if there was anyone present who wished to speak in favor of this request. There being no one, he asked if there was anyone present in opposition to the request.

Mrs. Oceola Edwards stated that this would be the third day care center within a two-block area. She stated that this is a beautiful residential area and that the elderly residents would have a problem with the noise. She advised that there were others who would have attended this meeting in opposition to the request but that they were ill.

Ms. Skerchock stated that at the time she purchased this property, there was a waiting list of 32 children at the day care center across the street, which indicates a need for this service in the area.

Following discussion regarding the locations of the other two day care centers, Ms. Edwards advised that she lives two doors from one of them. She added that the people living next to the site in question are elderly and ill.

Counselor Wilson advised that the Board should consider this type of use in relation to what has been occurring in this area. He noted the proximity of the site to the courthouse, and added that the Board may want to consider whether this area is becoming less residential. He also suggested that questions such as numbers of children, hours of operation, etc. may be appropriate.

Mr. Ryan asked that the applicant respond to the questions indicated by Counselor Wilson. Mrs. Skerchock stated that they would have 30 children and would operate from 6:30 A.M. to 6 P.M..

There being no further discussion, Mr. Ryan moved that the request be granted, subject to the applicant going before the Planning Commission for Site Plan approval. Mr. Ryan's motion was made on the basis that there are two other day care centers close to this site and that there are other businesses in the area, which indicates that the area is developing in other than a residential manner. Mr. Houston seconded the motion and it carried unanimously.

4. The requests of William C. Anderson Inc. for (a) an Appeal of the Zoning Administrator's decision regarding a change in use from a tool and die facility to an office equipment repair facility, and (b) for a Change in Non-Conforming Use. The 2.889-acre site, located at 3171 Petersburg Road, is zoned Rural Suburban Estates (RSE) and is owned by William C. Anderson Inc..

Staff Member, Tom Breidenstein, presented the Staff Report which included a slide presentation. Slides of the interior of the site were not available due to a problem with the camera. (See Staff Report).

Mr. David Koenig, representing William C. Anderson Inc. (also referred to as Anderson Tool & Die and AT&D), stated that Mr. Ken Anderson, President of the corporation, was present. Mr. Carl Anderson was also present. He stated that he was in agreement with the Staff Report and added that the tool and die business had been in this location for 24 years. It existed prior to the Boone County Zoning Regulations. He stated that the bulk of the operation currently on the site is the repair of modular-type office furniture. They are hesitant to ask for a change in non-conforming use as it may preclude the property being used in the future for the tool and die business. He stated that they may want to return to this use on the site within six to eighteen months. Mr. Koenig stated that the furniture repair business is operated by Mr. Sprague and that this business is essentially the same as what was conducted on the site by the machine shop, which involves a variety of uses. The current use of the property is less intensive than the previous use. Mr. Sprague was not present at this meeting. Mr. Koenig added that the machine shop has been moved to Anderson Blvd.

Mr. Ken Anderson stated that the bulk of their operation had been moved to Anderson Blvd., but that heat treating, material storage, punch presses, and various equipment remained on this site. Mr. Sprague asked to rent the vacated portion of the building. They felt that Mr. Sprague's operation was not unlike the tool and die operation, noting that such a business is very diversified. He stated that there was no intent to change the usage and provided pictures of the facility and equipment.

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

Mr. Koenig added that one of the reasons Mr. Sprague was attracted to this site was that he needed the machine shop capability for some of his work. He added that this use is similar to the pre-existing use and that no permit is needed to continue.

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. John Anderson, who lives in the first house west of the site, stated that he is a son of William C. Anderson, founder of this business. Mr. Anderson objects to the request as the business exists only 20 feet from his property. In 1984, AD&T applied for an expansion permit, which was denied. A mobile home was then put in behind the original building and is connected by a passageway. Mr. Anderson stated that the mobile home was not shown in the slide presentation. He added that he does not object to AD&T as an on-going business, but does object to a new business on the site. Mr. Anderson stated that he is not related to Mr. Ken Anderson, but is related to the other Andersons involved.

Mr. Johnny Noll stated that he moved into this area eight years ago with the understanding that the area was zoned residential. He stated that there should not be a business on this site and he is opposed to its expansion.

Counselor Wilson advised that the appeal is in regard to whether or not the new activity on the site is different in scope, nature, and character from the previous use. He noted that Mr. Koenig is arguing that the uses are essentially the same type of activity.

Chairman Whitton noted that the Zoning Administrator has said that the new activity is not the same type of use as the pre-existing activity and that the applicant is appealing that decision.

Counselor Wilson agreed and added that if the Board votes to uphold the Zoning Administrator's decision, then the second issue would be to determine whether or not this new activity is more objectionable than the previous activity.

Mr. John Anderson stated that the two activities are not the same -- that the tool and die business was a manufacturing operation, not a remodeling operation like the repair of furniture.

Mr. Gerald Newton, Zoning Administrator, stated that in investigating this complaint, it became evident that this was not the same activity. The fact that people noticed a change in hours of operation was an indication that the activity was changing. Mr. Newton added that the new activity may be within the same scope, but the change is sufficient to warrant a Change in Non-Conforming Use and to allow those opposed to the change an opportunity to be heard.

In response to questions from Mr. Nevel, Mr. Ken Anderson advised that they do subcontract work for Skilcraft. He added that they store materials in the old building and do some cutting and heat treating there.

Mr. Koenig added that Mr. Sprague refinishes and repairs office furniture, which is the same scope as a machine shop in that it is a manufacturing process. He added that Mr. Sprague cuts metal, covers items, spot paints, and trims -- all of which were previously done on the site.

Counselor Wilson advised that Mr. Koenig had submitted a memorandum regarding case law in regard to non-conforming uses. This memorandum is available in the Staff file.

Chairman Whitton asked the Board if the work being done by Mr. Sprague on this site is within the same scope and nature of what existed previously and, if so, the Board should vote to overrule the Zoning Administrator's decision. If not, then the Board should vote to uphold the Zoning Administrator's decision.

Mr. Nevel moved that the Board uphold the Zoning Administrator's decision on the basis that the scope and nature of the work appear to be substantially different. The motion was not seconded.

Mr. Ryan stated that he is not thoroughly familiar with the activities of both businesses, but that they appear to be similar.

Mr. Ryan moved that the Zoning Administrator's decision be overruled on the basis that the two activities are similar. Mr. Houston seconded the motion and it carried unanimously.

Mr. John Anderson stated that he had sent a letter to the Planning and Zoning Commission and submitted a copy for the record.

5. The request of Dr. and Mrs. George Renaker for an Appeal of the Zoning Administrator's decision regarding the replacement of a legal mobile home and for a Change in Non-Conforming Use. The 108.9-acre tract, located at 3203 and 3251 Idlewild Road, is zoned Agricultural Estates (A-2) and is owned by Dr. and Mrs. Renaker.

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

Mr. Gerald Newton, Zoning Administrator, stated that he had met with the Renakers in regard to this request and had learned that there had previously been a mobile home on the property which they were replacing. He requested verification that there had been a mobile home on the site prior to 1980, when the Zoning Regulations were adopted. He has not received this verification. He advised that had he received this verification, the Renakers would have been able to place a mobile home on the property. However, the mobile home in question is in a different location on the property and has a different impact. He advised that a more difficult solution to this problem would be a request for a zone change.

Mr. Gerald Dusing, attorney for the applicant, stated that Mrs. Renaker could swear to the fact that there was a trailer on the site since 1978. Mrs. Hill, a neighbor, stated that she would swear to that.

Mr. Dusing stated that the Renakers did not know that it made any difference that the new mobile home was 300 feet away from the previous location. The new location provided better access to the cistern. The Renaker's daughter and her husband occupy the trailer. He stated that the only impact he could determine was that one mobile home had more visibility than the other. He added that this was an allowable change of one Non-Conforming Use for another.

Mrs. Ray Hill stated that her property lies between the previous location of the trailer and the current location. She stated that the trailer is against her back fence and under her shade trees. Mrs. Hill stated that the trailer would affect the sale of her property.

Mr. Dusing stated that the trailer had been set up for about six weeks, including connection to the cistern.

Mr. Newton stated that neither zoning permits nor building permits had been issued for the footer or the foundation. Mr. Breidenstein asked if a permit for the septic tank had been obtained from the Health Department.

Mrs. Renaker stated that she did not have a permit, but did have a "perc" test. She added that she had been advised that a permit was not needed as they were updating an old cistern. She noted that the old trailer had used the cistern from the farmhouse that burned. Mrs. Renaker added that the new trailer is not using the old cistern, but is on a new cistern.

Mr. Newton questioned the difficulties involved in moving the trailer.

Mr. Ray Hill stated that the trailer should remain where it is since the Renakers have invested their money in it. Mrs. Hill disagreed.

Mrs. Renaker stated that the trailer has been set on concrete and the wheels have been removed.

Counselor Wilson suggested that an alternative to moving the trailer may be to landscape the site.

Mr. Breidenstein stated that a great deal of landscaping would be required. He added that the trailer is 10 to 20 feet away from the property line and the required setback is 10 feet.

Mr. Ryan asked where the trailer would need to be moved in order not to bother Mrs. Hill.

Mrs. Hill stated that she would be satisfied if the trailer were just turned.

Mr. Dusing stated that they will turn the trailer parallel to the road, move it over a bit, and do the landscaping. He suggested that the best approach may be to approve the Change in Non-Conforming Use, subject to conditions, as opposed to the Appeal of the Zoning Administrator's decision.

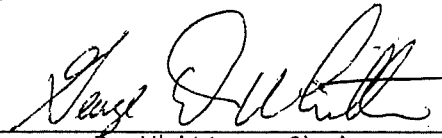
Chairman Whitton agreed with the suggestion made by Mr. Dusing.

Counselor Wilson asked that the record reflect that the Appeal stands.

There being no further discussion, Mr. Ryan moved that the request be approved to Change a Non-Conforming Use by allowing the trailer to be moved ± 300 feet south along Idlewild Road subject to the conditions that the new trailer be moved an additional 30 feet from the adjoining (Hill's) property and rotated to be parallel with the road, with sufficient screening to protect the Hill's view. The conditions are to be met within six months. Mr. Houston seconded the motion and it carried unanimously.

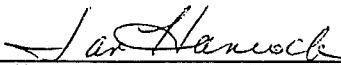
There being no further business to come before the Board, the meeting was adjourned by unanimous consent at 8:15 P.M.

APPROVED:



George D. Whitton, Chairman

ATTEST:



Jan Hancock, Recording Secretary