

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: Walt Ramey (Andy's Glass Shop) Owner
 Agent
 Address: 1620 Burlington Pike Florence, Ky. 41042
 Telephone: 371-9993

Location: 1041 Burlington Pike, Florence, Ky. 41042

Name of Property Owner: Mr. & Mrs. Lenore C. Surface

Address of Property Owner: 1041 Burlington Pike Florence, Ky. 41042

Zoning District: C-1 Area in Acres: _____

Deed Book: 358 Page Number: 295 Group Number: 2032

Description of Request: We are seeking a conditional use permit for the location and operation of a glass replacement company, also with this request we are seeking a variance for location of drive entrance. / SIDE BUFFER REQUIREMENT

Applicant's Signature: Walt Ramey

Property Owner's Signature: H. L. Surface

FOR PLANNING COMMISSION USE ONLY
 Application Fee: \$335.00 Date Received: 11/9/87 By: Dave G.
Cond. Use & Variance

Referred To: _____ Meeting Date: B. BOA 12/9/87

Action Taken: _____ Date of Action: _____

NOT RECORDED

Z.M.A. needed -> see Walt Ramey file, new business 12/16/87 -PH 1/27/88

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. Koening 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. Koening 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