

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:  Owner  
E. Andre' Busald, agent for Progressive Investment Corporation  Agent  
Address: 226 Main Street, P. O. Box 845, Florence, KY 41042-0845  
Telephone: 606/371-3600

Location: Located generally on the South-West side of "Old" Ky. 18 (see attached property description)

Name of Property Owner: Dr. Gary Shearer  
Address of Property Owner: 1271 Boone Aire Road, Florence, Kentucky 41042

Zone: R Area in Acres: 17.59

Deed Book: 290 Page No.: 75 Group No: 2032

Description of Request: Applicant requests Conditional Use Permit within an R zone to construct a "5 star" type restaurant.

Property Owner's Signature: *[Signature]*  
Date 2/22/85 Applicant's Signature: *[Signature]*  
Dr. Gary Shearer  
E. Andre' Busald

FOR PLANNING COMMISSION USE:  
Application date and fee of \$ 222.00 Received: \_\_\_\_\_  
Referred to: \_\_\_\_\_ For Meeting Date: \_\_\_\_\_  
Action: \_\_\_\_\_ Date: \_\_\_\_\_

March 13, 1985

CONDITIONAL USE PERMIT REPORT

Applicant: E. Andre' Busald for Progressive Investment Corporation

Location: Southwest side of Old Ky. 18, Boone Aire Road, Boone County

Development: Restaurant

Zoned: Recreation, R

Remarks: The applicant is requesting approval for the construction of a "5 star" type restaurant on the 17.59 acre tract. This application is based upon the fact that Section 723 Number 11 permits, "Eating and drinking establishments including alcoholic beverages".

The current zoning of the adjoining properties to the east and the south is Suburban Residential One, SR-1. To the north, across Boone Aire Road, is current zoning of Urban Residential One, UR-1. To the west is current zoning of Recreation, R.

The Boone County Comprehensive Plan Land Use map shows that this property and the property to the west is planned for Recreation use. The property to the east is planned for Medium Density Residential use. The property to the north is planned for High Density Residential.

The text of the Comprehensive Plan makes the following statements concerning the planned Recreation use:

Recreation uses included in the Comprehensive Plan are public and private active recreation uses, and other sites, both public and private which are held for environmental conservation purposes and may incorporate active recreation use.

Planned public recreation areas dominate the recommended pattern of recreation development. In existing urbanized areas, and in areas planned for intense residential development, the ability to purchase and develop recreation lands is limited. Recreation uses may best be provided on shared sites with public schools or in conjunction with planned residential developments as an amenity provided by the developer. Additional recreation opportunities may be available on publicly-held open space land such as that surrounding the Airport.

Specific recreation facility development is included in the infrastructure/community facilities element of the plan, but broad patterns of land use are identified here.

The Beechland Golf Course/Boone Woods Park area is recommended for continued and expanded recreation use, as is the Fairgrounds area northwest of Burlington. The Boone-Aire County Club is planned for maintenance as a public or private facility.

The applicant has submitted plans for the development and the use of the property. (Attached for your convenience is a reduced copy of that plan) This plan generally shows their intention to use the existing buildings and accessory structures for the proposed land use. The proposed additions include additional building area to the proposed restaurant, additional pedestrian walks through the property to the parking lot, and the provision of a 62 space asphalt surfaced parking lot and a 44 space gravel surfaced overflow parking lot. The two pools on the property would be partially filled-in to create two reflecting pools.

Water would be available to the property from service connections to the Boone County Water District main located along Boone Aire Road. The application does not address their proposal for the treatment of sanitary sewage disposal. At the public hearing held on the rezoning of the property there was stated that they proposed to use the existing treatment plants on the site and to upgrade them.

The existing building to house the restaurant has approximately 9000 square feet with an anticipated maximum seating capacity of 279. (These are statements from the Zone Change Public Hearing) The Boone County Zoning Regulations require one off-street parking space for every 150 square feet of gross floor area. By this requirement the regulations would require 60 off-street parking spaces. The current drive leading into the property currently is approximately 12 feet wide. Since this drive would serve two-way traffic, the regulations require that this drive be at a minimum of 20 feet wide.

I would also refer the Board to review Section 723 for the conditions and criteria to be used for the review of Conditional Use Permits in the Recreation zone.

If the Board finds that they would be approving this request and the abovenoted deficiencies have not been adequately addressed, I would recommend the following conditions:

1. That approvals for the acceptance of the plans for sanitary sewage disposal from the appropriate state and local agencies are received.

2. That the drive leading into the property be at a minimum of 20 feet in width.
3. That if in the opinion of the Zoning Enforcement Officer this proposed land use would be using the overflow parking area on a continuing basis, then the overflow area would be required to be hard surfaced as required by Section 1812 of the regulations.

Alvin "Chip" Block

Alvin "Chip" Block  
Planner

BOONE COUNTY BOARD OF ADJUSTMENTS

MARCH 12, 1985

6:30 P.M.

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Chairman Whitton called the meeting to order. The roll call was taken by Staff Member Jeanne Huddleson. Four members present: Messrs. Archambault, Ryan, Houston, and Chairman Whitton. Counselor Dale Wilson was also present.

Chairman Whitton suggested the Board review and discuss the Minutes of the last Board of Adjustment Meeting of March 6, 1985 later in the Meeting.

Chairman Whitton proceeded to Item 1 of the Board's Agenda.

Conditional Use Permit

A request of Don Kathman for a Conditional Use Permit for the construction of a building to house their car restoration business and for the sale of the cars. This property is currently zoned Agriculture Estate/Small Community Overlay, A-2/SC. This property is at the corner of Ky. 338 and U.S. 42.

Staff member Chip Block reported that a letter had been received by the Planning Commission staff from Mr. Don Kathman requesting that the request be withdrawn for the Conditional Use Permit. Chairman Whitton accepted the withdrawal of the request.

Zoning Appeal

A request of Delbert Wesley for an Appeal of a Notification of Violation issued by the Zoning Enforcement Officer for the placement of a mobile home in a Suburban Residential One, SR-1 zoning district on a less than one acre tract located near or at the corner of Ky. 491 and Ky. 1942, Verona, Boone County.

Staff member Chip Block presented a staff report which stated the applicant is requesting an appeal of a Notification of Violation concerning the placement of a mobile home on the property. Mr. Block reported that inspection of the property was initiated upon a complaint registered in the planning office by a nearby property owner. Mr. Block presented copies of letters sent with regard to the notification of the violation.

Staff member Ralph Hopper confirmed the facts contained in the staff report with regard to the Notification of Violation based on the complaint of a nearby property owner.

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Mr. Delbert Wesley, owner of the mobile home, stated that he did not realize at the time of placement of the mobile home that permits were required and apologized for not acquiring permits. Mr. Wesley stated that he had brought with him the surrounding neighbors with the exception of two who had written letters for him.

Chairman Whitton inquired of legal counsel on the matter. Counselor Wilson responded that it appeared Mr. Wesley was not contesting the presence of the mobile home, and had indicated in his letter that the mobile home would only be used temporarily for storage.

Mr. Wesley explained the series of events in the notification of the violation as he was notified and he had then asked Mr. Hopper (Zoning Enforcement Officer) if the mobile home could remain at its location. Mr. Wesley related that Mr. Hopper had stated that he could not allow the mobile home to remain and that Mr. Hopper would check on the differences between the zoning references to mobile home as opposed to modular home.

Counselor Wilson clarified that the issue was when does a mobile home become a modular home under the Zoning Regulations.

Mr. Hopper explained that any single unit is termed as a mobile home as opposed to a home that is made up of more than one section. Mr. Hopper stated that the mobile home in its current state would not be permissible as the home would have to be a double-wide along with other modular home features to be classified and permitted under the current zoning regulations.

Mr. Ryan noted that the mobile home is in an area where there are several similar type homes which were previously allowed through variances.

Mr. Hopper related that the reason for the Notice of Violation was due to a complaint and that some of the mobile homes in the area may be pre-existing non-conforming uses.

Counselor Wilson noted that if the property owner would have requested a conditional variance in the SR-1 zone the Board of Adjustment does not have the authority to grant a use that is not permitted in the SR-1 based on KRS 100.00.

Discussion followed of the events leading up to the violation and misunderstandings of the proposed use of the property.

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Mr. Archambault inquired if the mobile home was to be used for a residential property as opposed to the inference in the letter that the mobile home was to be used temporarily.

Mr. Wesley responded that he could not get the mobile home out of the location due to the inclement weather conditions and the letter was intended to allow Mr. Wesley adequate time to pursue an alternative or to allow the Board to review the matter.

Mr. Ryan commented that what Mr. Wesley meant was that Mr. Wesley would use the current mobile home for storage until the mobile home could be located on the subject property legally and then he would allow his son to move into the mobile home.

Chairman Whitton noted that the proposed use is not a permitted use nor is it a conditional use in the SR-1 zoning district. Mr. Hopper responded that is correct. Mr. Wilson noted the only remaining option is to try to get the mobile home in compliance. Mr. Wilson also noted the uncertainty of the necessary changes to the structure to bring the mobile home into compliance.

Mr. Hopper stated he did not know if the existent mobile home could even be brought into compliance. Mr. Hopper read from the Zoning Regulations the pertinent section (Sect. 20-6) with regard to mobile homes.

Mr. Ryan expressed concern over the other mobile home structures existing in the area.

Discussion followed of other mobile home structures in the area and alternate sources of remedy for Mr. Wesley.

Mr. Ryan moved that the Board determine that the mobile home structure does not comply with the zoning requirements, and to allow the appellant some time to meet with the staff to determine if the mobile home could be brought into compliance. The motion was seconded by Mr. Archambault.

Mr. Hopper related that he knows of no provisions in the Regulations under the SR-1 zoning that would permit the mobile home.

A roll call vote was taken on the motion as follows:

Ayes: Messrs. Ryan, Archambault and Houston.

Nay: Chairman Whitton.

The motion passed by a vote of 3 to 1.

Chairman Whitton explained that the motion this evening was the determination that the mobile home is not in compliance and allows Mr. Wesley the opportunity to see of any way to work it out and if the situation could not be worked out then the mobile home would have to be removed.

Mr. Houston requested and directed that the staff explore why other similar type home facilities are allowed in the subject or surrounding area.

#### Dimensional Variance

A request of Burlington Realty and Development for a Variance in the required setback for a corner lot from the side street setback and from the side yard setback for property currently zoned Commercial Two, C-2 and located at the corner of Ky. 18 and Peoples Lane.

Staff member Chip Block presented the staff report which described that the applicant is requesting approval of Dimensional Variance for two of the required yard setbacks for the purpose of constructing a Commercial building on the premises. Mr. Block stated that one setback variance being requested is in the requirement for setback from the property line along a side street. Mr. Block stated the applicant is requesting a variance to 20 feet from the required 37.5 feet and in addition, the applicant is requesting a variance in the required side yard set back for a commercial building adjoining a residential zoning district to 45 feet from the required 50 feet. Mr. Block stated there are no unique conditions of topography, shape or size of site or other features that are unique to the site. Mr. Block stated the property had been recently rezoned from UR-2 to C-2 by the applicant and thus the applicant caused the requirements for the setbacks as the C-2 zone requires. Mr. Block noted that the applicant had not provided information regarding whether or not the request would preserve the public welfare and the essential character of the area would not be changed by the granting of the variances.

Mr. Bob Kirby, representing Burlington Realty and Development, presented a full-scale copy of a proposed plan and described the needed variances for the proposed project. Mr. Kirby explained the proposed building would be lined up with the existing apartment building.

Mr. Archambault inquired if the playground would remain. Mr. Kirby responded the playground would be relocated.

Chairman Whitton inquired if the necessary elements were present for the granting of the variance. Counselor Wilson responded that as with other variances the Board

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should use their discretion in review of the elements as presented in the staff report. Mr. Wilson then noted that Mr. Block could find no unique conditions on the subject property and inquired if the applicant was aware of any unique conditions on the property.

Mr. Kirby stated there is unique topography or soil conditions on the property. Mr. Kirby stated the only uniqueness of the site is what has happened prior to the request with the savings and loan being built close to right of way due to topography, and the building of past building according to past variance requirements. Mr. Kirby contended the proposed building would be compatible with the existing buildings on the site.

Mr. Archambault noted that the unique conditions were created by the applicant. Mr. Kirby responded the conditions occurred when the front and side yard setback requirements were changed in 1980 and that the buildings were built under the old setback code requirements.

There was no other audience support, opposition or informational requests presented.

Mr. Archambault moved that the Board grant the variances to 20 ft. from the required 37.5 ft. for the property line along the side street and to 45 ft. from the required 50 ft. requirement for the side yard setback due to the uniqueness with regard to existent structures on the property. The motion was seconded by Mr. Ryan. After discussion, the motion carried unanimously.

#### Conditional Use Permit

A request of E. Andre' Busald (agent) for Progressive Investment Corporation for a Conditional Use Permit for the construction of a restaurant for property located on the southwest side of "Old" Ky. 18, Boone Aire Road, and currently zoned Recreation, R.

Staff member Chip Block presented a slide presentation and distributed copies of a reduced plan proposed for the property. Mr. Block stated the applicant is requesting approval for the construction of a "5 star" type restaurant on a 17.59 acre tract. Mr. Block described the current zoning of the subject and adjoining tracts. Mr. Block noted the Boone County Comprehensive Plan Land Use map shows that the subject property and the property to the west is planned for Recreation use. Mr. Block noted the submitted plan generally shows the intention to use the existing buildings and accessory structures for the proposed land use with proposed additions to include additional building area to the proposed restaurant, additional pedestrian walks through the

property to the parking lot and the provision of a 62-space asphalt surfaced parking lot and 44-space gravel surfaced overflow parking area with the two pools on the property to be partially filled-in to create two reflecting pools. Mr. Block noted that water would be available to the property from service connections to the Boone County Water District main located along Boone Aire Road. Mr. Block stated the application does not address the treatment of sanitary sewage disposal. Mr. Block also noted that the Boone County Zoning Regulations require one off-street parking space for every 150 square feet of gross floor area and thus according to Regulations would require 60 off-street parking spaces. Mr. Block also noted that since the drive leading up the existing buildings would serve two-way traffic the Regulations require that the drive be a minimum of 20 feet wide as opposed to the drive's current width of approximately 12 feet.

Mr. Andre' Busald, representing Progressive Investment, explained why the request was for a Recreational use wherein a specific use is proposed as opposed to a proposal for a Commercial use which would open up the host of Commercial uses. Mr. Busald explained that meetings had been held in the hopes of satisfying the surrounding residents expressed concerns. Mr. Busald explained that only about 7.59 acres will really be used for the proposal and the remaining 10 acres will stay in its present condition. Mr. Busald the applicant would be in agreement with the conditions as proposed by Mr. Block for the overflow parking area, the widening of the drive, and the sewage treatment system.

Mr. Archambault inquired if the front of the existing building would change. Mr. Leroy Mason, Architect, responded that the front of the structure would remain as it currently exists. Mr. Busald stated that the adjacent condominium owners had requested that the front of the building remain as it currently exists.

Chairman Whitton noted that Mr. Busald had mentioned they had been working with Chief Roberts, Florence Fire Chief, on the widening of the drive, etc., and Chairman Whitton inquired if Mr. Busald planned to get a letter from Mr. Roberts. Mr. Busald responded the concerns of adequate water pressure have been studied and he presented a written report on the results of water pressure tests. Mr. Busald also noted the concern of the driveway needing to be widened to accommodate fire equipment in the event of fire. Mr. Busald stated the drive would have to be widened and that in some areas the drive is 20 ft. wide.

Chairman Whitton inquired of staff if the applicant would have to submit to site plan review of the project. Mr. Block responded that the Chairman was correct but that a review had been done in-house by Mr. Block himself and Staff Engineer Jim Jenkins and Mr. Block stated, in his opinion, a site plan review did not need to be done.

Chairman Whitton expressed concern of the applicant not having to submit to site plan review and stated that a commercial use without site plan review disturbs him.

Staff member Chip Block explained that the elements reviewed by staff and the Staff Engineer were the very elements reviewed under a site plan review.

Counselor Wilson noted that the subject request is different in that the subject request is in accordance with the zoning and the Boone County Comprehensive Plan planned land use for the area.

Mr. Houston moved that the Board grant the Conditional Use permit for property located on the southwest side of Old Ky. 18, Boone Aire Road, Boone County for the construction of a "5 star" type restaurant on the 17.59 acre tract inclusive of the conditions outlined in the staff report as follows: 1) that approvals for the acceptance of the plans for sanitary sewage disposal from the appropriate state and local agencies are received; 2) that the drive leading into the property be at a minimum of 20 feet in width; 3) that if in the opinion of the Zoning Enforcement Officer this proposed land use would be using the overflow parking area on a continuing basis, then the overflow parking area would be required to be hard surfaced as required by Sect. 1812 of the Regulations. The motion was seconded by Mr. Ryan. After discussion, the motion carried unanimously.

Mr. Busald stated his understanding that the Board granted approval with the foregoing three conditions.

#### Conditional Use Permit

A request of Industry Day Care Centers, Inc., for a Conditional Use Permit for the purpose of establishing a Day Care Center on property located at 7356 Industrial Road, Boone County, and currently zoned Industrial Two, I-2.

Staff member Chip Block presented the staff report which stated the applicant is requesting approval to use an existing building for the purposes of operating a Day Care Center and the application is based upon Section 1043 Number 9 which permits "Nursery and Child Care Centers". Mr. Block related the current zoning of all adjoining properties to the site is Industrial Two, I-2, and the planned future land use of the subject and adjoining tracts is planned for Industrial. Mr. Block stated the applicant has submitted a plan for the property which basically calls for the renovation of the interior of the building with all existing utilities to remain as they currently exist.

Mrs. Elaine Daugherty, d/b/a Industry Day Care Center, Inc., stated the center would mainly service employees of the Northern Kentucky Industrial Park.

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Mr. Houston stated his only concern was whether the Industrial Park supported the proposed use. Mrs. Daugherty responded the Foundation is in favor of the proposed use.

Chairman Whitton stated a letter had been received from the Northern Kentucky Industrial Park regarding this agenda item. Staff member Chip Block read the letter aloud which stated the Northern Kentucky Industrial Park has approved the day care center at the proposed location.

There was no other audience support or opposition expressed.

Mr. Houston moved that the Board approve the Conditional Use Permit for the property located at 7356 Industrial Road for the purpose of establishing a day care center. The motion was seconded by Mr. Ryan. After discussion, the motion carried unanimously.

#### CONDITIONAL USE AND VARIANCE REPORT

A request of Stop-N-Go Foods, Inc. for a Conditional Use Permit for the construction of a building for gasoline sale, sales of convenience goods, and for an eating establishment and for a Variance in the required yard setbacks for both side yards for property located at 7300 Industrial Road and currently zoned Industrial Two, I-2.

Staff member Chip Block presented a staff report which stated approval is sought for the construction of a building with accessory gasoline pumps and canopy for the purpose of allowing the use of the property for the gasoline and convenience goods, and for the purpose of an eating establishment. Mr. Block described the current zoning of adjoining properties to the north, south, and west as Industrial Two, I-2 and to the east as currently zoned Industrial One, I-1. Mr. Block explained the Boone County Comprehensive Plan Land Use map indicates the subject property and all adjoining properties as planned for Industrial use, and cited from the Boone County Comprehensive Plan the following: "Continued development of the Northern Kentucky Industrial Park and Mineola Industrial Park as well as expansion of existing operations therein will provide a major source of growth." Mr. Block explained the applicant is also requesting a Variance in the required setback requirements for the side yards for a corner lot in the I-2 zone and noted the variance request should be considered first. Mr. Block stated the only unique condition found for the property is that the property existed in its current size prior to the current regulations and noted that the property with its current size and the requirements for a 100 ft. setback from Industrial Road and a 50 ft. setback from Dixie Highway and 20 ft. side yard setback would render the subject property undevelopable. Mr. Block stated the

application does contain a proposed development for the property including the proposed setback which shows the development of one building and a canopy over the self-serve gas pumps with a total of 19 off-street parking spaces to be provided. Mr. Block noted that the Board had approved a similar type proposal for the subject property on September 8, 1982 which proposal is now null and void.

Mr. Jerry Butterbaugh, of Hilltop Corporation, (current owner of the subject property), related that the subject property was purchased with the purchase of all King Kwik franchises in 1982. Mr. Butterbaugh explained that with the required setback amounts the property will become harder and harder to develop and thus the necessity of the variance to allow the lot to be developed.

Chairman Whitton inquired if there was any other audience support or opposition to the proposed request.

Counselor Wilson inquired if the staff had had the opportunity to review the site plan. Mr. Block stated the only concern of the staff was vehicular ingress/egress to and from the gas pumps. Mr. Block stated that due to the reduction in gas pumps from 4 to 2 the staff did not foresee a problem but would recommend the Board not allow left hand turns out onto Industrial Road.

Mr. Butterbaugh stated the developer could post a sign stating no left turn at the Industrial ingress/egress to discourage traffic.

Mr. Archambault moved that the Board grant the Variance in the required yard setbacks for both side yards for property located at 7300 Industrial Road and that the Board grant the Conditional Use Permit for the construction of a building for gasoline sales, sales of convenience goods and for an eating establishment.

Staff member Chip Block stated that after further consideration he might suggest that the driveway only be constructed in design and curve to only allow right hand turning out of the proposed development.

Mr. Butterbaugh stated his familiarity with such a curved access as they have same at other Stop-N-Go facilities and expressed concern of accidents with the design and curve type access.

Discussion followed of the posting of signs to deter the crossover of Industrial Road.

Mr. Archambault amended his motion to include that a sign be posted in a very visible area.

Administration

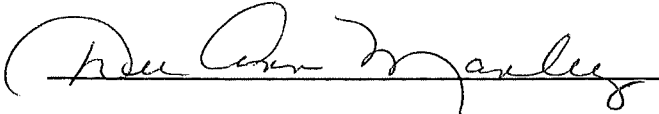
Mr. Hooks introduced himself and explained that he is the adjacent property owner who had complained of the placement of the Wesley mobile home in Agenda Item 2 of the Board's agenda. Mr. Hooks expressed concern of what is clearly stipulated in the Regulations as not permitted uses and the deviations to allow non-permitted uses. Counselor Wilson explained the areas of recourse available to Mr. Hooks and the procedures of the review and planning boards.

Chairman Whitton noted that the Board of Adjustment does not make policy but rather enforces existing policies.

Mr. Archambault moved that the Board adjourn. The motion was seconded by Mr. Houston. After discussion, the motion carried unanimously.

  
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GEORGE D. WHITTON, Chairman

Attest:

  
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Rose Ann Marley