

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: Nancye Kenner  Owner

Address: 138 Duettel Ln,  Agent

Walton Ky 41094 Telephone: 371-9045

Location: Boone County off us-23 in Richwood.

Name of Property Owner: SAME

Address of Property Owner: SAME

Zoning District: C-3 Area in Acres: \_\_\_\_\_

Deed Book: 243 Page Number: 196 Group Number: \_\_\_\_\_

Description of Request: Remove Existing Mobile Home and Room Addition, for New modular Home, to update Home and to make living easier for elderly lady

Applicant's Signature: Nancye Kenner

Property Owner's Signature: Nancye Kenner

FOR PLANNING COMMISSION USE ONLY  
Application Fee: 100.00 Date Received: 3-18-85 By: act

Referred To: \_\_\_\_\_ Meeting Date: 5-17-85

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

April 10, 1985

CHANGE OF NON-CONFORMING USE

Applicant: Nancye Kenner  
Location: 138 Dueffle Lane  
Zoned: Commercial Services, C-3  
Remarks: The applicant is requesting approval by the Board of Adjustment to replace an existing mobile home (around 16 foot by 40 foot) with a modular home (24 foot by 60 foot) in this Commercial zoning district.

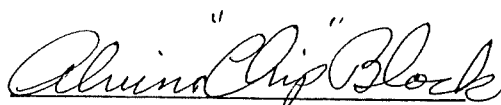
The Board is permitted to review, and approve if desiring to, applications to change one non-conforming use to another non-conforming use under Section 284 of the zoning regulation. This is provided that the Board shall not permit the change unless the new non-conforming use is as equally or more compatible with the permitted uses in the district in which it is located. Also, 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 non-conforming use.

The Board, in your review of this request, have been requested to permit the replacement of one mobile home residence with another mobile home residence.

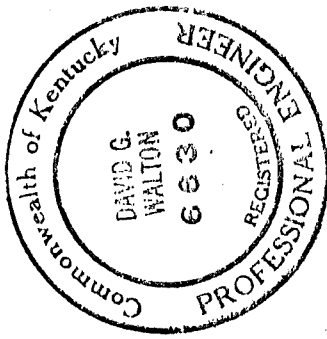
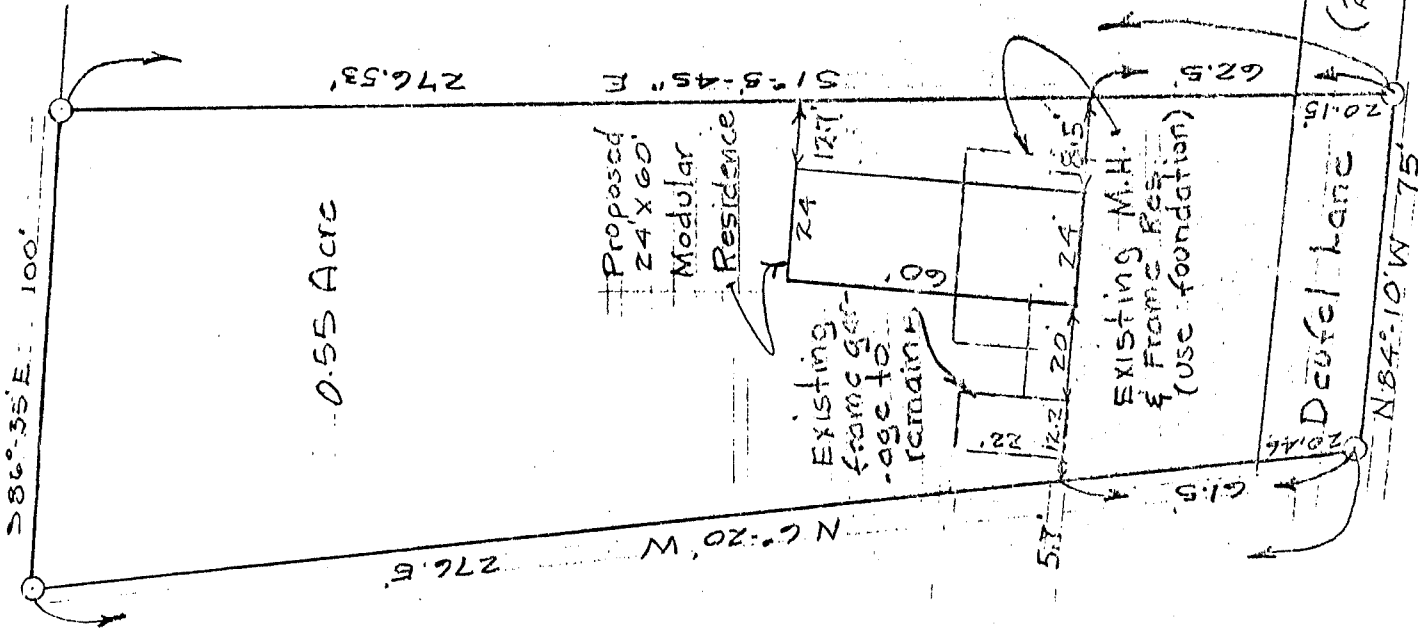
Attached for your information is a plan, submitted by the applicant, showing the proposed location of the requested home.

Adjoining land uses to the north are Commercial/Industrial. To the east and the west is current residential land use. And to the south is currently undeveloped land use.

The Boone County Comprehensive Plan Land Use map indicates a planned future land use of Commercial for this subject tract and all adjoining tracts to this property.



Alvin "Chip" Block  
Planner



PLOT PLAN - PROPOSED RESIDENCE - N.E. 123  
 DEUFEL LANE WALTON P.O., BOONE CO., KY.  
 FOR NANCY KENNER, RECORD OWNER

SCALE: 1" = 50'  
 DATE: Mar. 11.88

APPROVED BY: FB 165/17  
 DRAWN BY: \_\_\_\_\_  
 REVISED: \_\_\_\_\_

D.B. 243/196 - Group 2064 - Boone Co.  
 Records at Burlington, KY.

**Walton & Walton - Civil Engineers - Surveyors**  
 Burlington, KY 41008... Phone 596-6017

DRAWING NUMBER

BOONE COUNTY BOARD OF ADJUSTMENTS

APRIL 10, 1985

6:30 P.M.

---

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

Chairman Whitton suggested the Board review and discuss the Minutes of the previous meetings at the May Board of Adjustment Meeting.

Chairman Whitton proceeded to Item 3 of the Board's Agenda.

Variance

A request of Beckman Construction Co. (agent) for Acramold Engineering, Inc. (owner) for a Variance in the required rear yard of an Industrial One, I-1 zoning district adjoining a Rural Suburban, RS zoning district for a 2.0002 acre tract located off of Anderson Boulevard. The purpose of the Variance is to permit the construction of an industrial building.

Staff member Chip Block related that correspondence had been received from Beckman Construction Co. indicating the company's wishes to withdraw their application for a dimensional variance to develop a 2.0002 acre tract on Anderson Blvd. and that the company wished to pursue development of an alternate site.

Chairman Whitton, on behalf of the Board, accepted the application withdrawal.

Zoning - Change in Non-Conforming Use

A request of Nancye Kenner for a Change of Non-Conforming Use to permit the replacement of a mobile home with a larger modular home for a 0.55 acre tract located at 138 Dueffle Lane currently zoned Commercial Services, C-3.

Staff member Chip Block presented summarized versions of the staff reports and then presented a slide presentation identifying the subject properties as the subject properties are adjacent to each other.

Mr. Block explained the property is currently zoned C-3 and the request of Nancye Kenner was to permit the replacement of a 16' x 40' trailer with a modular home that is 24' x 60'. Mr. Block explained the applicants Virgil and Lula Hensley

adjacent property owners of 128 Dueffle, also wished to replace their existing mobile home of 12' x 60' with a larger mobile home of 24' x 48'. Mr. Block explained it is within the Board's discretion to replace one non-conforming use with another non-conforming use according to Section 284 of the Boone County Zoning Regulations providing the Board finds the proposed use is equally or more compatible with the permitted uses of the C-3 zoning district. Mr. Block noted that copies of the plan, submitted by the applicant Kenner, (attached to the staff report) indicated the proposed location of the requested home. Mr. Block described the surrounding area land uses to the north as commercial, to the east and west as residential and to the south as currently undeveloped land use. Mr. Block stated the Boone County Comprehensive Plan Land Use map indicates a planned future land use of commercial for the subject and all adjoining tracts.

Mr. Block then presented a slide presentation on the subject and adjoining area.

Chairman Whitton inquired of Mrs. Kenner if any additional land would be needed to accommodate the new mobile home. Mrs. Kenner responded no.

Staff Member Chip Block noted the Board in the past had considered pre-existing non-conforming use changes in light of the land usage involved, and if the Board feels it is not an increase in non-conformity by allowing more building on the lot and rather just extensions of the existing residences on the properties, then the Board could grant approval.

There was no audience opposition to the request expressed.

Mr. Nevel moved that the Board grant the request for a change of non-conforming use to Nancye Kenner for a .55 acre tract located at 138 Dueffle Lane. The motion was seconded by Mr. Ryan. After discussion, the motion carried unanimously.

#### Zoning - Change in Non-Conforming Use

A request of Virgil R. and Lula M. Hensley for a Change of Non-Conforming Use to permit the replacement of an existing mobile home with a larger mobile home for a 0.775 acre tract located at 128 Dueffle Lane currently zoned Commercial Services, C-3.

Mr. Block related the subject area as previously reviewed by Board Members on the preceding request.

Chairman Whitton inquired if the Hensleys needed any additional land to accommodate the replacement mobile home. Mr. and Mrs. Hensley responded no.

There was no audience opposition to the request expressed.

Mr. Block noted the Hensley's plan did not indicate a new location of the replacement mobile home but that the Hensleys had represented to him that the replacement home would be located no closer to Dueffle Lane than the existing mobile home location and thus would not change setbacks, etc. Mr. Hensley confirmed Mr. Block's understanding.

Mr. Ryan moved that the Board grant the request of Virgil and Lula Hensley for a change of non-conforming use for property located at 128 Dueffle Lane and currently zoned C-3. The motion was seconded by Mr. Nevel. After discussion, the motion carried unanimously.

#### Zoning Appeal

A request of Edward G. Drennen for an Appeal of an Enforcement Officers' decision finding that the use of the property located at 1528 Dublin Place and the adjoining 30 acre tract for a "trucking and excavation company" is a Pre-existing and Non-conforming use. This property is currently zoned Rural Suburban, RS and Suburban Residential One, SR-1.

Staff Member Chip Block stated the appeal is an appeal of the Enforcement Officers' decision finding that the operation of a "trucking and excavating company" was a pre-existing non-conforming use of property located at 1528 Dublin Place and an adjoining 30-acre tract. Mr. Block noted a copy of the informal hearing on the subject report was attached for the Board Members' reference and review. Mr. Block explained that pursuant to the direction of Counselor Wilson, a portion of the subject non-conforming decision with regard to pavement of a driveway was also being appealed by way of a letter of appeal of counsel for Ron and Carol Foltz, of Foltz Trucking and Excavating.

Chairman Whitton inquired of the number of requests. Mr. Block noted there were two requests: one from the entire Enforcement Officers' finding (Ed Drennen) on behalf of adjoining and adjacent residences; and two, an appeal of a portion with regard to driveway pavement (Peter Summe) on behalf of Ron and Carol Foltz.

April 10, 1985

PAGE FOUR

Atty. Edward Drennen, representing the citizens of Dublin Place, stated the appeal is based upon a number of issues which arose during the course of the informal staff hearing. Mr. Drennen stated the references to the effective date as May 14, 1981 is incorrect as that May date is the date of readoption of the existing ordinance which according to the Boone County Zoning Regulations had a retroactive application effect back to August 6, 1980. Mr. Drennen stated that during the course of the informal hearing the Enforcement Officers presented aerial photographs (dated April 18, 1980 and April of 1981) and stated the Board members can clearly note on those aerial photographs there is no structure to the rear or along the treeline exactly four months prior (on the April 1980 aerial photograph) to the retroactive application date of August 1980. Mr. Drennen noted to the Board that affidavits have been submitted by various area residents stating that the date of the erection of the building was not until after May of 1981 nor was the road in existence. Mr. Drennen refuted the affidavits submitted by Ron and Carol Foltz which state that the building was started in 1979 and completed before May of 1981 and Mr. Drennen noted the aerial photographs disputed such statements of the Foltzs. Mr. Drennen stated no building permit was issued by the County to Mr. Foltz at any time. Mr. Drennen also noted that the Foltz' affidavit contended they began operating the business in 1980 and Mr. Drennen noted the deed contains specific deed restrictions prohibiting the operation of businesses being run in the subdivision. Mr. Drennen stated the Foltz are in violation of the deed restrictions and numerous other County building requirements. Mr. Drennen also noted that Mr. Foltz had denied the residents the opportunities to verify the issuance of the County occupational license and the date of same. Mr. Drennen emphasized the documentation submitted by Foltz does not verify when the building went up and cannot prove a non-conforming use and Mr. Drennen stated the burden of proof rests upon the Foltz's to provide information that the use is non-conforming prior to the effective date of the zoning ordinance. Mr. Drennen then presented a petition of signatures of area residents in opposition to the business operation. Mr. Drennen stated the Foltz business currently uses a residential subdivision street to get to and from the property. Mr. Drennen closed by stating the decision is in error, the use is not non-conforming and the structure should really be taken down.

Chairman Whitton inquired for clarification of the dates. Mr. Drennen explained the report of the Zoning Enforcement Officers' makes reference to the zoning ordinance effective date as May 1981 and the zoning regulations effective date of readoption was May 1981 which according to Sect. 920 had a retroactive application provision which made it retroactive back to the original effective date of adoption of August 6, 1980.

Chairman Whitton inquired of where the aerial photographs came from. Staff member Ralph Hopper responded the photographs were taken for a study done for the uniform house numbering system in April of 1980 and 1981.

Mr. Ryan inquired of where on the photographs the building would be located. Mr. Block indicated the areas on the aerial photographs. Board members reviewed the aerial photographs.

Mr. Hopper pointed out that the lack of the building permit was not under the jurisdiction of the Planning Commission. Mr. Hopper noted there is reference in the regulations under Article II sect. 287 which provides for undue hardship which states that any building that was being constructed at the time of the adoption of the regulations can continue without being in violation and is part of the basis for the Zoning Enforcement Officers' decision.

Mr. Drennen again emphasized that the aerial photographs indicate in April of 1980 there was no structure on the property which refutes the Foltz's assertion that the building was begun in 1979, and the burden of proof is on the Foltz's to provide verifying information as to when construction of the building was started.

Mr. Peter Summe, Attorney for Ronald and Carol Foltz, disputed the effective date of the zoning ordinance as indicated by Mr. Drennen and related the case of Creative Display which effectively struck down the constitutionality of the Boone County Zoning Regulations as proper pre-conditions were not followed. Mr. Summe related that following that decision it took until April or May of 1981 for the County to readopt an ordinance. Mr. Summe contended that up until that point there was no zoning in Boone County and that the Foltz's started the building during that period or even prior to that period he did not have to get a zoning application as there was not a procedure to get a permit under. Mr. Summe stated there are a lot of facts that have not been disputed. Mr. Summe related the Foltz's even prior to 1979 were purchasing the property under land contract. Mr. Summe presented the other issue is the subject of ingress and egress to the property and Mr. Summe presented a plat drawing on the subdivision denotes Lot 18 as the Foltz property and Mr. Summe stated that Lot 17 is part of the drive area. Mr. Summe contended the Foltz's used the drive area for ingress/egress long before 1979 and from that date on a "path was beaten down". Mr. Summe related Mr. Foltz improved the condition in 1982 by placing gravel over the dirt path. Mr. Summe stated that Sect. 288 of the Ordinance allows repair and maintenance of the non-conforming use, and thus necessitates the appeal by the Foltz's of the portion of the decision requiring the drive area be asphalt or concrete surfaced. Mr. Summe stated the

subdivision street is a County road and is allowed to be used by any type vehicles. Mr. Summe related Mr. Foltz does not use that ingress/egress at all times and often uses the adjacent cemetery property for exit. Mr. Summe stated the resurfacing of the drive would be an undue hardship on the Foltzs. Mr. Summe contended the use of the property was non-conforming, the building construction was started prior to the effective date of the ordinance, and that the Foltzs should be able to improve a non-conforming drive but not have to improve it to the quality of Section 1800 of the Zoning Ordinance.

Mr. Bill Thompson, 1502 Dublin Place, representing the residents of Dublin Place, gave a brief history of the property noting that in 1979 Mr. Foltz purchased the 30-acre landlocked parcel abutting Dublin Place properties, then in 1980 purchased the home located 1528 Dublin Place (one of the abutting pieces of property to the 30-acre tract), and then in 1982 the building and connector road construction was begun which is well after the May effective date. Mr. Thompson stated the Planning and Zoning Commission ignored the affidavits of area residents and that the ignoring of the affidavits was not fair to the residents. Mr. Thompson noted the trucking operation brings noise, danger to small children, dust and tacky appearance of many daily truck trips and even at night, and undue strain from the weight of large trucks on the County streets. Mr. Thompson related that in 1982 when the drive and building was being built area residents called and complained of the business operation, and Mr. Thompson suggested that Planning and Zoning Commission records be checked which would verify when the building construction took place. Mr. Thompson stated that if the continuation of the operation of the business is permitted he and other residents intend to go to the PVA Office and obtain lower valuations on properties as residents feel the trucking excavation operation has lowered their property values tremendously. Mr. Thompson stated the 30-acre tract was landlocked and was not used for the excavation business prior to 1980 as the Foltz property was not purchased to gain access until 1980. Mr. Thompson related the construction date was August of 1982. Mr. Thompson stated that as it is Mr. Foltz who is charging that the property is pre-existing non-conforming and as such Mr. Foltz is responsible to provide the dates to the Board to determine whether the garage building is pre-existing.

Chairman Whitton inquired of the content of the affidavits submitted by residents. Mr. Thompson responded the nature was that the building was not pre-existing to the grandfather clause of May of 1981 by way of physical witnessing of the area through the years.

Mr. Ryan inquired if the cemetery property came off of the 30-acre Foltz tract. Mr. Thompson explained the adjacent cemetery property abuts Mr. Foltz property which has a "fair weather road" on dry days only and which does

April 10, 1985

PAGE SEVEN

not provide a continuous access to the 30-acre tract. Mr. Thompson stated it is very seldom that Mr. Foltz can use that dirt cemetery access.

Mr. Summe asked Mrs. Carol Foltz to clarify some issues for the Board. Mrs. Foltz related that they had lived in Florence on Vivian Drive for 10 years and operated the same business and there was never any complaints. Mr. Summe asked how many trucks are owned by the excavation business. Mrs. Foltz responded 3 tractor-trailers and 2 single axles. Mrs. Foltz stated there are 3 trucks going in in the morning and 3 trucks coming at night and an occasional piece of equipment moved. Mrs. Foltz stated the building is used mainly for the maintenance of the trucks or storage.

Mr. Ryan asked Mrs. Foltz then if at the most there would be 5 trucks in the morning and 5 in the evening. Mrs. Foltz stated that was correct except for the occasional movement of a piece of equipment. Mrs. Foltz stated that most pieces of equipment are kept at the job site and that only pieces of equipment are kept at the house for storage.

Mr. Drennen inquired if Mrs. Foltz had said the Vivian Drive operation was the business site until June of 1980. Mrs. Foltz responded yes. Mr. Drennen inquired where vehicles were parked then. Mrs. Foltz responded that most vehicles stayed at Mr. Foltz' father's house.

Mr. Hopper noted that the aerial photographs were interpreted by staff member Gerald Newton who determined the existence of a low lying structure on the 1981 photograph which would bring Sect. 287 into application to the effect that the building had been started.

Mr. Block noted that when the new regulations were adopted in 1981 Mr. Block had checked with the County Attorney to determine the date of enforcement which the County Attorney had stated the date would be May 5, 1981 would be the effective date of the zoning regulations. Mr. Block related the direction from the County Attorney at that time was do not attempt to enforce anything prior to May 5, 1981 due to the Supreme Court decision on the previous zoning regulations.

Mr. Block related that Mr. Wilson had represented to him that if additional information was presented at the Board's April meeting that action would not have to be taken immediately and that the Board could review the records and defer action to allow additional study and review of the issues.

Mrs. Wolfe stated that she counted as much as 15 trips by trucks in one day.

April 10, 1985

PAGE EIGHT

Discussion followed of the aerial photographs and the subdivision plats.

Mr. Drennen emphasized the effective date of August 6, 1980 was the enactment of the new Boone County Zoning Laws after the Supreme Court's Creative Display decision. Mr. Drennen suggested the Board determine when the effective date of the statute is and then decide as the road was well after the effective date the Foltz should bring it up to standard. Mr. Drennen stated the burden of proof rests on Mr. Foltz. Mr. Drennen stated that once most of the dates are straight in Board members' minds they will conclude in favor of the residents.

Mr. Summe stated that ingress/egress is a non-conforming use as well and that improvement by gravel was done and that the Foltz felt they were making a situation better by graveling the drive area and that the requirement of the property being surfaced would impose a hardship on the Foltz's to meet the statutory requirements of Sect. 1800.

Mr. Thompson stated the gravel was no improvement, and that bulldozers, backhoes and even small trucks add to the nuisance of the operation.

Chairman Whitton explained that due to the vast amount of information he would suggest the Board review the information and defer action.

Counselor Vincent stated that it would seem appropriate for the Board to allow further study of the issues and dates and to defer action on the subject appeal.

Mr. Summe requested Mrs. Foltz to clarify the Vivian Drive operation. Mrs. Foltz related the operation on Vivian Drive starting in 1980.

Mr. Ryan moved that the Board defer action on the appeals until the Board can meet with staff and counsel to review and verify the information on the matters of controversy. The motion was seconded by Mr. Nevel. After discussion, the motion carried unanimously.

Chairman Whitton stated the subject appeal would, in all probability, be on the May 8th Board of Adjustment Agenda.

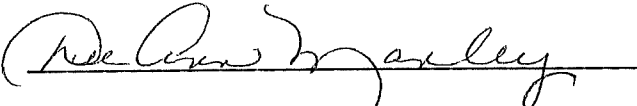
April 10, 1985  
PAGE NINE

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

The meeting was adjourned at approximately 7:55 p.m.

  
\_\_\_\_\_  
GEORGE D. WHITTON, Chairman

Attest:

  
\_\_\_\_\_