

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: Clarence & Ruby Cutter Owner
 Address: P.O. Box 721 Agent

Burlington, Ky. 41005 Telephone: 689-7858

Location: 2 1/2 miles from Burlington on Bullittsville Rd.

Name of Property Owner: Clarence & Ruby Cutter

Address of Property Owner: P.O. Box 721, Burlington, Ky 41005

Zoning District: RSE Area in Acres: 22

Deed Book: 358 Page Number: 193 Group Number: 2007

Description of Request: Zoning for boarding horse barn

Applicant's Signature: Clarence Cutter

Property Owner's Signature: Clarence Cutter

FOR PLANNING COMMISSION USE ONLY

Application Fee: 201.00 Date Received: 5/22/87 By: MB

Referred To: Tom Breidenstein Meeting Date: _____

Action Taken: _____ Date of Action: _____

STAFF REPORT

APPLICANT: Clarence and Ruby Cutter
DEVELOPMENT: commercial boarding stable
LOCATION: 4100 block of Bullitsville Road, Boone County
ZONE: Rural Suburban Estates (RSE)
DATE: June 10, 1987
REMARKS:

The applicant is requesting a Conditional Use Permit to allow the construction and operation of a commercial boarding stable. The 22 acre site, located on the east side of Bullitsville Road just north of Fawn Lane, is zoned Rural Suburban Estates (RSE) and is owned by Clarence and Ruby Cutter.

Adjoining land uses include:

North: woodland and farm land
East: farm land, small residential subdivision (Fawn Lane)
South: farm land
West: farm land

The following reviews the general standards applicable to all Conditional Uses in Boone County:

1. The 1986 Boone County Comprehensive Plan Future Land Use Map indicates the future use of this property to be Low Density Residential (up to three dwelling units per acre). The Land Use element makes no particular comment on the Cutter's property.

The Recreation element of the plan briefly explains:

"Boone County has a number of semi-public and private recreation facilities which currently meet a large percentage of the county's need. The standards previously discussed do not account for privately operated recreation. Therefore, while the semi-public and private recreation facilities provide services to the county, they do not reduce the county's overall need for additional park land. Nevertheless, the semi-public properties total 526 acres and provide fishing areas, horseback riding, ball fields, golf courses, picnic areas, natural trails, camping, play grounds, and boating areas with docks." (p. R-12)

The Yellow Pages lists five boarding stables in Boone County.

2. The Cutters have proposed to build a house and a stable large enough to hold approximately 20 horses. They have indicated that these two structures may be as close as 30 feet apart, connected by a breezeway. On their plot plan, the Cutters have indicated a front yard setback in excess of 400 feet. Staff believes that a house and a stable, as described by the Cutters, will be designed, constructed, and maintained so as to be harmonious with the character of the general vicinity.
3. Staff can find no reason why the use would be hazardous to neighboring uses.
4. The site is adequately served by essential public facilities and services.
5. Additional excessive requirements at public cost for public services will not be created.
6. A boarding stable does not involve uses or activities that will be detrimental to any persons or property.
7. The location of the vehicular approach to the property will not create an interference with traffic on Bullitsville Road. However, an effort should be made by the Cutters to remove foliage blocking traffic visibility to the south. Also, they should work with the county road department in relocating a guardrail which also partially blocks traffic visibility.

The Board must also consider more specific criteria that apply to Conditional Uses in the RSE:

1. A boarding stable will not contradict the semi-rural, open space character of the district.
2. The use will not require an infrastructure need above that of the permitted uses in the district.
3. The purpose of the RSE is "to provide a residential environment whose dwelling types and densities are typical of a semi-rural, open space character." The Cutters have proposed to keep the majority of their property open, recreation space.
4. The arrangement of the buildings will be compatible with the organization of uses to be protected.

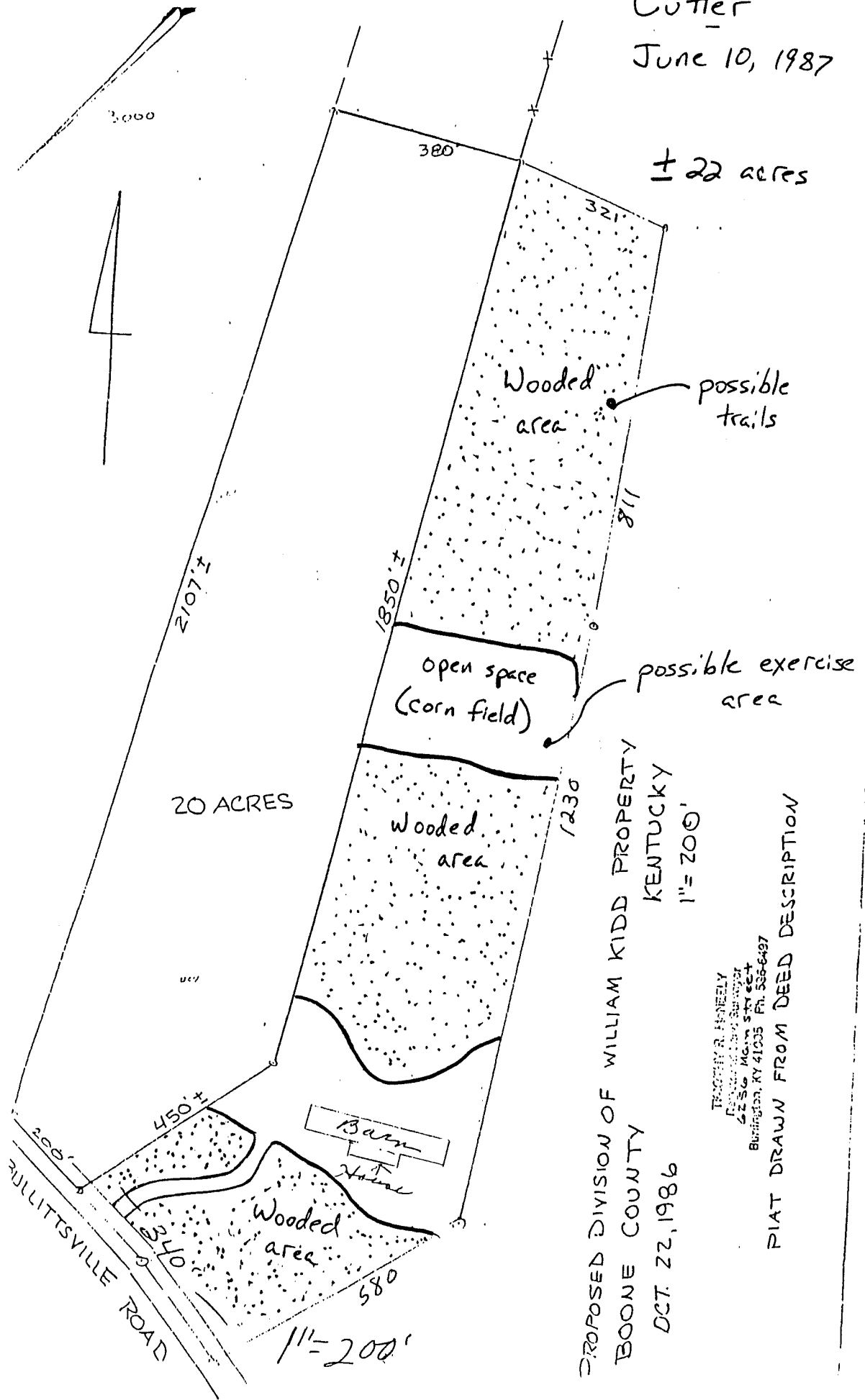
Should the Board grant this request, staff would recommend that, as a condition, the Cutters improve visibility for traffic exiting their site by removing excess foliage and by negotiating with the road department regarding the location of the guardrail.

Respectfully submitted,



Thomas W. Breidenstein,
Zoning Enforcement Officer

Cutter
June 10, 1987



PROPOSED DIVISION OF WILLIAM KIDD PROPERTY
 BOONE COUNTY
 OCT. 22, 1986
 KENTUCKY
 1" = 200'

TRACY R. FINEELY
 2256 Mason Street
 Burlington, KY 41005 Ph. 568-6497

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BOONE COUNTY
BOARD OF ADJUSTMENT

June 10, 1987 - 6:30 P.M.

Chairman Whitton called the meeting to order.

BOARD MEMBERS PRESENT:

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

BOARD MEMBERS NOT PRESENT:

None

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 May 13, 1987, and asked if there were any comments or corrections. Mr. Archambault stated that on Page 4, Paragraph 2, Mr. Hollis Griffin should be Mr. Hollis Grittin.

Mr. Houston moved, seconded by Mr. Ryan, that the Minutes be approved as amended. The motion carried unanimously.

AGENDA ITEMS:

1. A request of Albert J. Martini, Jr. for a Conditional Use Permit to allow the construction of a "Class C" fireworks warehouse and wholesale facility. The 4.165-acre site, located on the east side of Service Road, approximately 800 feet south of KY 16, is zoned Industrial One (I-1). Ken Aitken from the State Fire Marshall's office has been subpoenaed for this meeting. Additionally, Mr. Martini will supply his expert. This request was deferred at the May 13, 1987 meeting.

Counselor Wilson advised that the Fire Marshall will be available for questions from those in favor, and those opposed to the application.

Mr. Ken Aitken stated that he is the Chief Deputy Fire Marshall and Chief of the Hazardous Material Section of the State Fire Marshall's Office. His duties include the permitting of "Class C" fireworks and plan review for the construction of buildings that will house hazardous substances.

Mr. Aitken stated that the classification of fireworks (i.e. "Class C") is a designation given by the Department of Transportation, which deals with the transportation of explosives. He stated that "Class C" fireworks involve a pyrotechnic effect, generally created by using oxidizers or metals. A common oxidizer is air. He noted examples of chemical oxidizers used to enhance the effect of "Class C" fireworks.

Mr. Aitken discussed the storage of quantities of "Class C" fireworks for resale, including fire-resistant building construction and distance removal requirements based on pyrotechnic weight. He stated that a "Class C" fireworks storage building is for storage only. There can be no office or other facilities in the same building. He noted the separation distance requirements from other buildings on the site. He stated that the applicant would have to comply with this code, as administered by a local building official, and also the Kentucky Building Code. Mr. Aitken noted the criteria used to determine the amount of "Class C" fireworks which can be stored in a given location. He noted precautions required in the construction of a storage building, including dust-proofing the electrical equipment.

Mr. Aitken also discussed the potential hazards involved with the storage of "Class C" fireworks. He stated that the fireworks do not need air to burn, due to the oxidizers. He noted that conventional water means may not be able to be used to fight a fire in a storage building. He stated that "Class C" fireworks burn faster and hotter than normally stored material. Mr. Aitken stated that accidents involving "Class C" storage buildings usually do not happen.

Chairman Whitton questioned the risk to the surrounding areas from fumes if such a fire should occur.

Mr. Aitken stated that there could be the possibility of toxic vapors in such a fire and noted chemicals which could be burning. He stated that the Code is designed to help prevent a fire from occurring and added that the storage building is designed to keep sources of fire away from the fireworks.

In response to questions from Chairman Whitton, Staff Member Tom Breidenstein stated that the applicant is aware of the Code. He added that the Staff Office is generally aware of the requirements and has discussed this issue with the local building inspector. He added that due to the type of materials stored, this facility would also come under the Fire Marshall's control.

Mr. Archambault asked who would supervise the building.

Mr. Aitken stated that the building would be supervised by the Department of Code Enforcement and the Fire Marshall's Office would also be involved.

Chairman Whitton questioned the risk of explosion.

Mr. Aitken noted an example where a railroad car full of fireworks was set afire and an explosion did not occur. He added that in another instance, gasoline was added and only a large fire occurred - there was no explosion. He stated that he has seen confiscated fireworks burned with an accelerator (i.e., gasoline or diesel fuel) added and there was only a large fire.

Chairman Whitton asked him if he was saying that without an accelerator, the likelihood of an explosion was remote.

Mr. Aitken stated that anything is possible given proper circumstances, and that he could not answer Chairman Whitton's question.

Mr. Archambault asked, if there was a fire and the fumes were to go out into the community, what would the effect on the community be?

Mr. Aitken replied that there would be the possibility of respiratory distress, but that this would also be possible in a common house fire. He added that should an entire warehouse containing "Class C" fireworks be burning, it may be best to let it burn out as opposed to putting water on it due to the disposal of the debris.

Chairman Whitton noted that the building will have a sprinkler system.

Mr. Aitken noted classes of fireworks and explosives that should not be suppressed when burning due to the danger of explosion.

Chairman Whitton asked if there was anyone in the audience who wished to ask questions of Mr. Aitken.

Lucille Martin, a resident of the area close to the proposed storage facility, asked if Mr. Aitken would recommend this storage facility to the residents.

Mr. Aitken commented that people live near propane plants and gasoline terminals without incident.

Mr. Bob Dwaller, owner of property next to the proposed facility, commented on the possibility of toxic fumes and stated that the proposed storage facility would be within a quarter mile of a city, which may have to be evacuated.

Mr. Aitken stated that evacuation of the city would be a possibility, but usually only the immediate area is evacuated.

Chairman Whitton asked, as a general rule, how much of an area would be in danger due to toxic fumes.

Mr. Aitken replied that an individual situation would have to be evaluated and the amount of fumes considered. He added that the people involved with toxic study would be more aware of this than he is. Mr. Aitken asked the applicant about the quantity of fireworks he intended to store in the facility.

Mr. Martini stated that he would be storing 250,000 lbs. gross weight.

Mr. Aitken stated that as a general rule of thumb, between 2.5% and 5% of the gross weight is what the pyrotechnic would equal. In this case, he stated that the pyrotechnic would equal between 6,000 and 12,000 net, which would be approximately equivalent to 3 to 6 tons of ammonia nitrate fertilizer burning, should the facility burn. He stated that at that weight, there could be a possibility of toxic drift. He added that in determining whether or not to evacuate the community, one would have to consider the wind, the topography, and other factors. He added that evacuation of the community would be a possibility.

Mr. Bob Dwaller asked if the proposed plans meet the Code requirements.

Staff Member, Tom Breidenstein, stated that the Site Plan meets the requirements of the Boone County Zoning Regulations. He added that he did not know if the plans met the State requirements and suggested that the applicant comment on this.

Mr. Martini stated that Hemmer Construction Company has talked to Mr. Roddy in Frankfurt, Kentucky regarding this. In response to a question from Mr. Whitton, he added that he did not know if the plans had been reviewed in Frankfurt.

Mr. Bob Dwaller noted that there are some "Class C" fireworks that are illegal and asked if they would be involved with the proposed facility.

Mr. Aitken replied that he assumed there would be no illegal fireworks at the facility.

Mr. Dwaller noted that the proposed facility would be located on a one-lane dead-end street. He added that should the building burn, he would assume that it would be isolated until it burned out.

Ms. Ruth Kleet, an attorney representing Albert and Wanda Martini, introduced Dr. John Conkling, Ph.D.. She stated that he is Executive Director of the American Pyrotechnics Association and noted numerous articles which he has written. A copy of Dr. Conkling's professional credentials and copies of articles which he has written were provided to the Chairman and are available in the Staff Office.

Dr. John Conkling stated that the government basically classifies fireworks into two categories. He stated that "Class B" fireworks do cause the hazard of explosion in a fire. He added that "Class C" fireworks are typically a combination of a oxidizing agent and a fuel. He stated that no federal permit is required for purchasing or storing "Class C" fireworks. They are regulated by the United States Consumer Products Safety Commission. There is federal control over what goes into "Class C" fireworks and their performance. He added that before "Class C" fireworks can be shipped in the United States, they must be tested for stability and approved for transportation by the Department of Transportation. He stated that he is unaware of any "Class C" fireworks spontaneously igniting. He added that the State of Kentucky further restricts fireworks and permits only certain types to be sold in the State.

Dr. Conkling stated that the fireworks industry is also concerned about the safety of the products. He noted an experiment performed in Tennessee by the Department of Transportation. He stated that the fireworks were consumed within the test site and there was little danger to personnel or property. Results of these tests are contained in an article entitled, "American Fireworks Manufacturing: An Industry In Transition". A copy of this article is contained in the information provided by Ms. Kleet. Dr. Conkling stated that he is personally unaware of any explosion associated with a "Class C" fireworks fire. He stated that a "Class C" fireworks fire can be resolved with water. He added that if conditions permit, letting the fire burn out will solve the clean up problem.

Mr. Conkling stated that he has visited the site in question. He stated that the separation distances are in compliance with the NFPA Code. He added that the construction plans appear to be in compliance with the NFPA Code.

Dr. Conkling added that in a fire of "Class C" fireworks there would be smoke. There are no invisible toxic fumes. He stated that one can see the smoke and will, therefore, know which areas to evacuate. The smoke dissipates very readily.

Chairman Whitton asked if anyone had questions to ask Dr. Conkling.

Mrs. Lucille Martin stated that Dr. Conkling was a theorist and noted that his testimony did not agree with Mr. Aitken's. She stated that the neighborhood does not need this facility.

Dr. Conkling replied that he is more than a theorist and has practical experience. He noted that he is a consultant to the United States government.

Mrs. Martin replied that he is talking about tests as opposed to practical experience. She added that there are fires in facilities of this type.

Mrs. Alva Falls stated that they are served by a small, volunteer fire department and asked if they would have the necessary equipment to fight a fire of the type under discussion.

Mr. Aitken stated that he could not answer that. He added that he has not seen the site or the plans and does not know how much water is available. He added that the firemen would need self-contained breathing apparatus and adequate water flow.

Mrs. Falls added that the facility would be located at the end of the water line and the pressure is low.

Mrs. Patricia Parson stated that she is a resident of the area of the proposed facility. She stated that she has acquired information from the State Transportation Department which indicates the service road to be a Class A Highway. She added that on this type of road, the applicant could not bring in tractor trailers to deliver the fireworks. Mrs. Parsons provided the Chairman with a letter she had written regarding her research into the road issue. A copy of her letter is available in the Staff Office.

Chairman Whitton commented that Mrs. Parson is stating the the road is a Class A road with a weight limit of 44,000 lbs..

Mrs. Parson added that tractor trailers are not allowed on the road. She added that she had obtained this information from Mr. Bob Yeager of the Transportation Department.

Counselor Wilson advised that should the Board approve this request, it would be up to the State or County road department to enforce this regulation if it applies.

Ms. Kleet stated that the applicant has indicated that deliveries would be made only three or four times per year.

Mrs. Parson stated that the number of proposed deliveries does not matter. She added that this is a one-lane dead-end road.

Mrs. Lucille Martin stated that an unattended building would create an attractive nuisance and noted that there are teenagers in the area.

Mr. Martini advised that a security system would be provided and the facility would be fenced. He added that there will eventually be full-time employees present.

Mr. Nevel noted that people would not be permitted in the storage building.

Mr. Aitken noted that they would be permitted in an office building in the complex, but not in the storage facility.

Mr. Martini stated that he meant the employees would be on the site but not in the storage building.

Mr. Ryan moved that the request be denied based on the possibility of toxic fumes, the dead-end road and the weight limit on the road, and the location of the state and federal highways in the area. Mr. Nevel seconded the motion.

Counselor Wilson clarified that a "yes" vote is a vote to deny the request.

Chairman Whitton asked for a roll call vote on the motion which found Mr. Houston, Mr. Nevel, Mr. Ryan and Chairman Whitton in favor. Mr. Archambault was opposed. The motion carried by a vote of 4 to 1.

* * * *

2. A request of the Boone County Water and Sewer District for a Conditional Use Permit to allow a 1,200 sq. ft. addition. The 2.296-acre site, located at 5825 Bullitsville Road, Burlington, is zoned Suburban Residential Two with a Small Community Overlay (SR-1/SC).

Staff Member, Tom Breidenstein, presented the Staff Report (see Staff Report).

Chairman Whitton asked if there was anyone present who wished to comment regarding this request.

Mr. Paul Kroger stated that he was present and requested approval.

Mr. Nevel moved that the request be granted and that the fee be waived. Mr. Ryan seconded the motion.

Mr. Kroger stated that he wished to pay the fee and does not want it waived.

Mr. Nevel amended his motion deleting, "that the fee be waived". Mr. Ryan seconded the amendment. The motion carried unanimously.

* * * *

3. A request of Quality Sign Company (agent) for a Variance to allow a second building-mounted sign at the Mubea plant. The 4.60-acre site, located at 8200 Dixie Highway in Boone County, is zoned Industrial Two (I-2) and is owned by MUBEA.

Staff Member, Tom Breidenstein, presented the Staff Report and indicated that slides are available (see Staff Report).

Mr. Mark Stotman, representing Quality Sign Company, stated that the reason a second building-mounted sign is being requested is that a new section has been added to the existing building. There are now loading docks on both ends of the building. Having one small sign on one end of the building will cause confusion for the truck drivers.

Chairman Whitton asked if the applicant could waive the need for a free-standing sign. Mr. Stotman replied that they could.

Chairman Whitten asked if there was anyone present who wished to comment regarding this application. There was no discussion.

Mr. Houston moved, seconded by Mr. Ryan and that request be granted. The motion carried unanimously.

* * * *

4. A request of Clarence and Ruby Cutter (owners) for a Conditional Use Permit to allow the construction and operation of a commercial boarding stable. The 22-acre site, located in the 4100 block of Bullitsville Road, is zoned Rural Suburban Estates (RSE).

Staff Member, Tom Breidenstein, presented the Staff Report and stated that a slide presentation was available (see Staff Report).

In response to the Staff Report, Mr. Cutter advised that a guardrail which was partly blocking traffic visibility at the entrance to the property has been taken care of and a ten-foot culvert has been added.

Chairman Whitton asked if there was anyone present who wished to comment regarding this request.

Mr. Walt Salen stated that he is an adjoining property owner. He asked how much foliage has been removed from the site and if there would be a buffer between the site and his property at 2966 Fawn Drive.

Mr. Cutter stated that none of the foliage between his property and the subdivision will be removed.

In response to questions from Mr. Salen, Mr. Cutter advised that he owns four show horses and will rent out a few stables to cover expenses. He added that approximately ten stalls will be rented. The horses will be in the barn, except when turned out in the pasture for an hour or two.

Mr. Salen asked if Mr. Cutter were to expand his operation if he would have to appear before the Board again.

Staff Member, Tom Breidenstein, advised him that if the applicant were to extend the land area he would have to come before the board. However, the Conditional Use Permit would not regulate the number of horses.

Mr. Salen also questioned the disposal of waste and Mr. Ryan advised him that the Board could add a condition regarding the waste disposal. Mr. Salen stated that he is concerned about a large amount of manure.

Mr. Larry Burchamn, the real estate agent who sold the site to the applicants, stated that the Cutters will reside on the property. He added that they should not be restricted regarding the number of horses. He noted that horses will come and go and the Cutters should not be held to a specific number. He added that the manure will be sawdust manure which is easy to dispose of.

Mr. Salen stated that the proposed use is a public operation which will be in a residential community. He asked if the hours of operation would be limited.

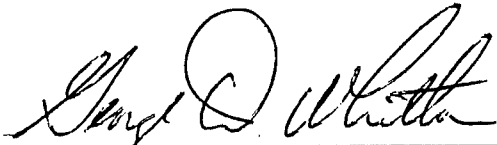
Mr. Cutter stated that most people will be riding in an indoor arena. He added that the facility will only be open to the horse owners, not the public.

Mr. Nevel moved that the request be granted. Mr. Ryan seconded the motion and it carried unanimously.

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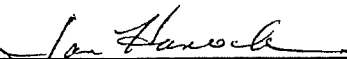
There being no further business to come before the Board, the meeting was adjourned by unanimous consent at 8:00 P.M..

APPROVED:



George D. Whitton, CHAIRMAN

ATTEST:



Jan Hancock, RECORDING CLERK