

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: Ronald Smith Owner Agent
 Address: 10480 Dixie Highway
Florence, Ky. 41042 Telephone: 371-7375

Location: East side of US 25, lot 1 Coffey's sund

Name of Property Owner: Lucy A & Wm Carpenter

Address of Property Owner: % Dave Koneig 223 MainSt, Florence, Ky.

Zoning District: I-1 Area in Acres: 0.65 ac

Deed Book: 201 Page Number: 23 Group Number: 259

Description of Request: site plan review

Applicant's Signature: *Ronald E. Smith* 2/17/87
 Property Owner's Signature: *Ronald E. Smith* 2/17/87

FOR PLANNING COMMISSION USE ONLY

Application Fee: 100.00 Date Received: 6-17-87 By: *MWB*

Referred To: *Maria Costello* Meeting Date: _____

Action Taken: _____ Date of Action: _____

- OWES fee
- names & addresses
- legal descriptions

STAFF REPORT

APPLICANT: Ronald Smith
DEVELOPMENT: Auto Body Shop
LOCATION: Immediately north of 10480 Dixie Highway,
Boone County
ZONE: Industrial One (I-1)
DATE: July 8, 1987

REMARKS:

The applicant is requesting a Change in Non-Conforming Use, rear yard and landscaped buffer Variances, and Site Plan Review in order to allow an auto body and wrecker service. The 0.65 acre site, located immediately north of 10480 Dixie Highway, Boone County, is zoned Industrial One (I-1) and is owned by Lucy and William Carpenter.

In October, 1978, the applicant bought the house and small garage at 10480 Dixie Highway and continued an auto body repair shop and wrecker service which had been established 20 years prior. Since the start of the applicant's business, the adjoining property (identified as 10478 Dixie Highway) has been used to store cars waiting for service. The Zoning Administrator has determined that the use is protected with pre-existing, non-conforming status. Because of this status, the Board must rule on any changes made. Article 2, Section 283 of the Boone County Zoning Regulations reads:

"Where, at the time of adoption of this order, legally established, uses of land exist which would not be permitted by regulations imposed by this order, the uses may be continued so long as they remain otherwise lawful, provided the Board shall not allow the enlargement or extension of a non-conforming use beyond the scope and area of its operation at the time these regulations were adopted." (p. 2-7)

Simply put, the Board must decide if the proposed construction would be an expansion of the pre-existing use.

According to the submitted site plan, the existing garage used for auto body repair is 744 square feet. Existing structures used for storage are 840 square foot and 924 square feet for a total enclosed space of 2,508 square feet used for the business. Two of these structures will be removed and the garage will be converted back to private use. The proposed four bay

garage is 1,921 square feet. The Board should also consider that the applicant has made a commitment to use the property around his house for residential purposes only. The entire business operation will be moved to the new garage.

As to the requests for Variances, the following reviews the four criteria the Board must use:

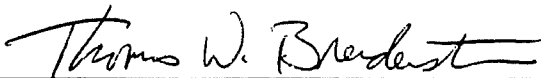
1. At its narrowest point, the subject lot is 91 feet wide. With a required front yard setback of 50 feet and rear yard of 30 feet, only 11 feet of buildable space would be available. Because of the curved way U.S. 42 was constructed, this lot is the most narrow lot in the general vicinity.

(Note: One of the existing buildings to be removed is only 6 feet from the rear line; the request is for a rear setback of 9 feet. Also, the garage presently used for auto body repair was constructed on the property line.)

2. Strict application of the setback requirements would not allow the applicant to build a new garage.
3. The lot was created before the adoption of the Zoning Regulations.
4. Since the rear yard Variance would affect only the railroad (with agricultural land on the opposite side of the tracks), staff can find no reason why the public health, safety, or welfare would be affected. The elimination or reduction of the landscaped buffer in the front of the proposed parking lot would have a more direct impact. However, staff feels that after a more thorough site plan review, this impact can be properly studied and resolved.

As mentioned, the applicant has submitted a formal site plan for review and approval. At the time of writing, this review has not been completed. The results of this review, and any suggested conditions and safeguards, will be reported at the July 8 meeting.

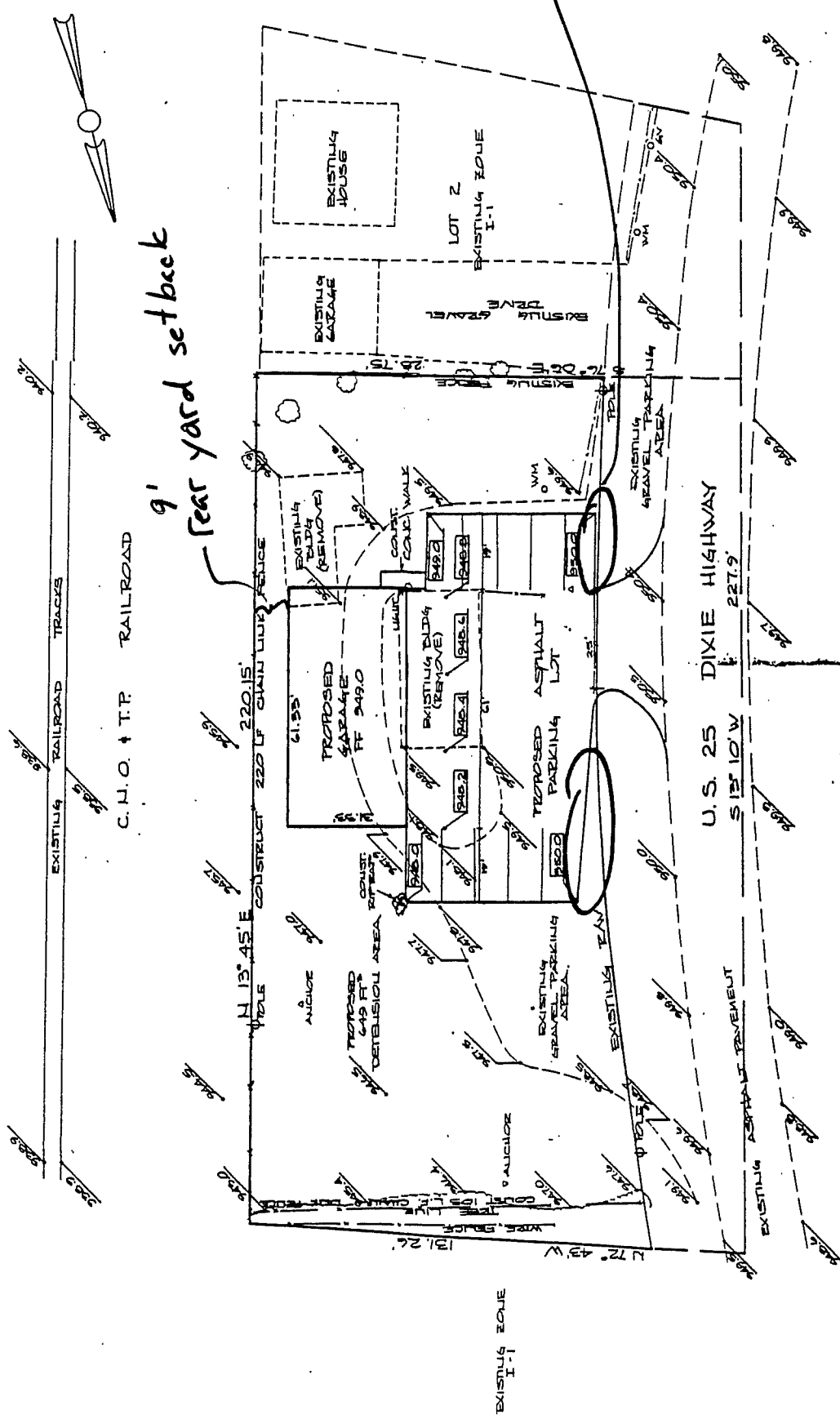
Respectfully submitted,



Thomas W. Breidenstein,
Zoning Enforcement Officer

TWB:mcb

Attachment



RECEIVED
JUN 17 1987

SITE PLAN

LOT 1 COFFEY'S SUBMISSION OF TRACT 4, LALDS OF LUCY + WM CARPENTER

ROL'S AUTO BODY + WEEVER SERVICE
10480 DIXIE HIGHWAY
ELSMERE, KENTUCKY

RAYMOND BERFENBECK
CONSULTING ENGINEER
4205 DIXIE HIGHWAY
ELSMERE, KENTUCKY

JULIE, 1987

SCALE 1"=20'



AREA LOT 11 C.B.S.A.C.
EXISTING BUILDING IS
SEWAGE DISPOSAL PER HEALTH DEPT
TREATMENT PLANT
STORM WATER SHALL DRAIN ACROSS
EXISTING ASPHALT DRIVEWAY
TO THE
DISTRIBUTION AREA.
SIGN BY SEPARATE PERMIT
TWO INCHES HEIGHT * 20"
WATER SERVICE FROM DOUGUE CO WATER
AND SEWER DISTRICT
BACK REF MISC 221' TH 25
ABOUT 110' 25"
NO HOUSING UNITS ARE PROPOSED FOR THIS SITE
NO RECREATIONAL FACILITIES ARE PROPOSED
FOR THIS SITE.

Ronald Smith - Change in Non-Conforming Use 7-8-87

BOONE COUNTY
BOARD OF ADJUSTMENT

July 8, 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 June 10, 1987, and asked if there were any comments or corrections.

There being no discussion; Mr. Houston moved, seconded by Mr. Ryan, that the Minutes be approved. The motion carried unanimously.

AGENDA ITEMS:

1. A request of Arlinghaus Builders, Inc. for an Appeal of the Zoning Administrator's decision disallowing the use of a single-family residence as a model home. The subject property is located at 1451 Boone Aire Road and is zoned Suburban Residential One (SR-1).

Mr. Gerald Newton, Zoning Administrator, stated that his decision was made on May 20, 1987 and based on information available at that time. There was an initial complaint in October, 1986 regarding two model homes in the area. An analysis of those two model homes found them to be legal uses. This determination was made on November 26, 1986.

Mr. Newton stated that "model homes" are not specifically mentioned in the Zoning Regulations. They are neither a Principally Permitted Use nor a Conditional Use. Therefore, they are considered to be an Accessory Use. Mr. Newton stated that as an Accessory Use, they must be accessory to an allowable use. This was the basis for determining that the other two model homes were legal -- they were found to be accessory to an allowable use. In this instance, there is no allowable use to which the model home is an accessory use.

Mr. Newton advised that the discussion here is in regard to a use, not a structure, and a use can be changed. He noted a packet provided to each Board Member containing copies of all correspondence relative to this issue.

Chairman Whitton asked if the applicant was present and wished to comment.

Mr. Charles Deters, an attorney representing Mr. Arlinghaus, referred to a letter received from the Boone County Planning Commission on November 26, 1986. He reviewed the letter and stated that it did not mention "accessory use". He stated that a sign application was enclosed with the letter, which would indicate that a model home is going to be used. He added that builders do not build on their own lots, they build on other people's. He stated that two builders have built a model home and there cannot be an arbitrary limit. He reviewed the subdivision plans and noted the location of lots available to Mr. Arlinghaus. He presented an agreement signed May 26, 1986 between Boone County Public Properties and Drees-Arlinghaus Joint Venture. He added that no criteria has been established that the lots have to be available in the same subdivision as the model home. He presented a letter signed by the owners of four properties adjacent to the model home stating that they do not object to the model home.

Mr. Newton also referred to the letter of November 26, 1986 and stated that the letter contains criteria which helped to make the decision. He added that at the time his decision was made, the subdivision information noted by Mr. Deters was not available to him. He was aware of Mr. Arlinghaus' intention to acquire lots on Boone Aire Road. Mr. Newton noted a case in New York in which model homes were found to be a commercial use.

Chairman Whitton asked if there was anyone else present who wished to speak regarding this issue.

Mr. Tom Nienaber stated that he represents the homeowners on the road where the Arlinghaus model home is being constructed, which is in the Boone Aire Country Club Estates subdivision. He stated that there are only four lots left in the development. He noted that Mr. Arlinghaus owns only one lot, which is the one on which the model home is being constructed. He added that model homes have signs and extra lighting, and are used to sell other properties. He stated that there is

no parking available for the model homes and they are destroying the residential character of the subdivision. He noted that the Finke model home is not owned by Mr. Finke. Mr. Nienaber requested that the Board concur with Mr. Newton's decision and deny the use of this structure as a model home.

Mr. Newton commented that a letter has been sent to Mr. Finke indicating that his model home does not meet the criteria to continue as a model home in the future. A response has not been received.

Chairman Whitton asked Mr. Arlinghaus if he owned, or had option on, any lots in the adjacent subdivision in May, 1986.

Mr. Arlinghaus replied that at that time, he had the lot on which he is now building.

Chairman Whitton then asked him if he now owns any lots in the same or adjacent subdivision.

Mr. Arlinghaus stated that he owns one lot in addition to the model home lot. This is lot #78 in Boone Aire Country Club Subdivision.

In response to a question from Mr. Nevel, Mr. Nienaber stated that the Finke model home is owned by Thomas Daly, II and Shiela Marie Daly. He has attempted to contact the Daly's, but has not been able to do so.

Mr. Bob Reese, 1455 Boone Aire Road, stated that the Daly's were going to lease the house back to Mr. Finke for two years and then they would be living in it. He stated that he was given this information by Mr. Kreutzjans. He noted problems in the neighborhood created by the model homes.

Mr. Jim Nichols, who lives adjacent to the Finke model home, asked the Board to allow the residents the quiet enjoyment of their homes and determine if this was a commercial use in a residential area.

Mr. John Denuccio, a resident of Boone Aire Road, stated that he had tried to buy the Fischer model home, but they would not sell it to him. He added that a representative from the Fischer Development Company told him that Mr. Fischer would not build on Boone Aire Road and he had to go to another builder to have his house built.

Mr. Tom Lacke, a representative of Arlinghaus Builders, noted the hours during which a model home is open. He noted that the house is kept clean and the lawn mowed.

Chairman Whitton asked if there were any comments or questions from the Board members.

Mr. Nevel asked if there were legal guidelines regarding this matter.

Counselor Wilson stated that Mr. Newton has reviewed the text and zoning map. The text indicates the Principally Permitted Uses and Conditional Uses. There is no question that the structure is valid, the issue is the use of the structure. He stated that an Accessory Use must be incidental to a Principally Permitted Use. Mr. Newton has determined that it is reasonable to have a model home on site for a large subdivision where many lots are being built on by one builder. He added that when a model home is being used just as a marketing device to sell residential structures elsewhere, not related to the on-going development of the model home site, then there is a gray area.

Mr. Nevel asked how long a model home could be used as a model home before becoming a residence.

Counselor Wilson stated that the model home must achieve its ultimate use as a residence. He added that the Board's decision must be related to the facts specific to the issue.

Mr. Deters stated that they are willing to accept a two-year time limitation.

Mr. Nienaber stated that a time limit of two years is not acceptable.

Mr. Nevel moved that the Board uphold the Zoning Administrator's decision based on the facts presented and information available in May, 1986. Mr. Archambault seconded the motion.

Chairman Whitton asked for a roll call vote on the motion which found Mr. Archambault, Mr. Nevel and Chairman Whitton in favor. Mr. Ryan and Mr. Houston were opposed. The motion carried by a vote of 3 to 2.

Chairman Whitton advised Mr. Arlinghaus that the Board had voted to uphold the Zoning Administrator's decision. However, if conditions have changed since May 20, 1986, he has the right to ask Mr. Newton to render a new decision based on the criteria.

2. A request of Ronald Widener for a Conditional Use Permit in order to allow the conversion of a single-family residence into a florist and gift shop. The 0.41-acre site, located on the northeast corner of KY 18 and Bullittsville Road (Garrard Street), is zoned Suburban Residential Two/Small Community (SR-2/SC) and is owned by Ronald L. Widener.

Staff Member, Tom Breidenstein, presented slides of the site and adjacent areas. He noted the site was previously used as a residence, but is currently vacant. Mr. Breidenstein presented the Staff Report (see Staff Report).

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

Mr. Widener stated that he was in agreement with the Staff Report. He added that on-site parking for 3 or 4 cars would not have an adverse effect on the historical value of the property.

Chairman Whitton asked if there was anyone present in opposition to the request.

Ms. Jana Book, 5958 Garrard Street, stated that she lives behind the site in question. She noted her concerns regarding parking, access, hours of operation, and garbage disposal. She requested that a privacy fence be constructed to shield her property.

Mr. Newton advised that the applicants were willing to submit a Site Plan. However, the Staff wanted to first determine if the Historic Preservation Board would allow parking on the site. It is the opinion of Patty Hayden, the Staff expert regarding historical preservation, that as long as the number of parking spaces is limited and to the rear of the property, it would not jeopardize the structure being on the Historic Register.

Chairman Whitton asked the applicant if he was willing to construct a privacy fence.

Mr. Widener stated that he was willing to do so.

Mr. Nevel moved that the Conditional Use Permit be granted subject to the conditions that the use be in compliance with the Historical Society Requirements and that a privacy fence be constructed to the rear of the property. Mr. Houston seconded the motion and it carried unanimously.

3. A request of Judy Lancaster for a modification of a previously approved Conditional Use Permit to allow the sale of records in connection with an electronic equipment store. The 0.9-acre tract, located near the southwest corner of KY 18 and KY 338 in Burlington, is zoned Suburban Residential Two with a Small Community Overlay (SR-2/SC), and is owned by Raymond Smith.

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

Chairman Whitton asked the applicant for her comments.

Ms. Judy Lancaster stated that she will not allow loitering in the area of her store.

Mr. Archambault moved that the modification of the Conditional Use Permit be granted. Mr. Houston seconded the motion and it carried unanimously.

4. A request of Guilford Clifton, Chairman of Trustees, Hebron Baptist Church, for a Conditional Use Permit to immediately allow the use of an existing two-story frame house as a Sunday School and to use the remaining property for future church expansion. The 4.772-acre site, located just east of the Hebron Baptist Church on Petersburg Road, is zoned Suburban Residential One (SR-1) and is owned by the church.

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

Chairman Whitton asked the applicant for his comments.

Mr. Clifton stated that they had talked about installing a walkway for pedestrian traffic to the driveway in the rear of the property. He is planning to close the driveway.

Chairman Whitton asked if there was anyone present who wished to speak in opposition to this request. There was no discussion.

Mr. Nevel moved, seconded by Mr. Archambault, that the Conditional Use Permit be granted. The motion carried unanimously.

5. A request of Dorothy Stanley for a dimensional variance of 16.5 feet in order to build a wood deck/screened porch 13.5 feet from the rear property line. The 0.5-acre (approx.) lot, located at 6816 Glen Arbor Drive of the Oakbrook Subdivision, is zoned Suburban Residential One/Planned Development Overlay (SR-1/PD), and is owned by Dorothy Stanley.

Staff Member, Tom Breidenstein, presented slides of the site and adjacent areas. He presented the Staff Report and noted the criteria used to review Variance applications. He stated that possible special circumstances involved may be the odd shape of the lot and the topography, which would prevent building in the usual way.

Chairman Whitton asked the applicant for her comments.

Mr. John Roberts, speaking in behalf of Dorothy Stanley, stated that they are making this request based on the shortness of the back yard and the slope. He stated that a straight deck would be too high.

Chairman Whitton asked if there was anyone else present who wished to comment regarding this application, or if there were any questions from the Board.

There being no discussion, Mr. Houston moved that the Dimensional Variance be granted due to the topography. Mr. Archambault seconded the motion and it carried unanimously.

6. A request of D. Brigham Roberts, agent for Skilcraft Sheetmetal, Inc., for a Dimensional Variance of 10 feet in order to construct an industrial addition 40 feet from the front property line. The 3.0-acre site, located at 5184 Limaburg Road in Boone County, is owned by Skilcraft Sheetmetal and is zoned Industrial One (I-1).

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

Chairman Whitton asked Mr. Roberts for his comments.

Mr. Roberts stated that the building was constructed on the site in 1971 at an angle, all additions have been kept rectangular. To keep the front property line straight, this phase would require a 40-foot setback, rather than a 44-foot setback.

Chairman Whitton asked if there were any comments or questions regarding this request.

Mary Willoughby asked if the addition would be used for warehousing or manufacturing. She stated that there is a lot of noise and odor coming from the facility.

Mr. Kenneth Anderson, one of the owners and secretary of Skilcraft, stated that the facility will be used for manufacturing, handling materials, and warehousing. He stated that the machines which generate noise are punch presses. There will be no additional punch presses. He stated that some of the synthetic materials which are cut with lasers cause an odor. The odors have been investigated by an industrial hygienist and NIOSH. They have been assured that there is nothing harmful in the odors. He stated that he was also concerned about the odors since his oldest son is one of the operators at the facility.

Staff Member, Tom Breidenstein, stated that should the Variance not be granted, the applicant could go through Site Plan Review with a 44-foot setback.

Chairman Whitton noted that the applicant is putting an industrial use on an Industrial site, he is not asking for an unpermitted use.

Mr. Nevel moved, seconded by Mr. Houston, that the Dimensional Variance be granted. The motion carried unanimously.

7. A request of Ronald Smith for a Change in Non-Conforming Use, rear yard and landscaped buffer Variances, and Site Plan Review in order to allow an auto body and wrecker service. The 0.65-acre site, located immediately north of 10480 Dixie Highway in Boone County, is zoned Industrial One (I-1) and is owned by Lucy and William Carpenter.

Staff Member, Tom Briedenstein, presented slides of the site and adjacent properties. He presented the Staff Report and noted that the applicant intends to clean up the lot, raze buildings, and construct a new four-bay garage. A special consideration of the lot is that it is the narrowest lot on the street.

Chairman Whitton asked the applicant for his comments.

Mr. Ray Erpenbeck, engineer for Mr. Smith, stated that he prepared the Site Plan and addressed the issues raised by the Staff. He stated that the property has been used as an auto repair business for 30 years and this is a natural extension of that business. He added that the rear yard abuts the railroad, which has a 100-foot right-of-way. He stated that he believed the project will enhance the area and eliminate an existing, undesirable situation.

Chairman Whitton asked if there was anyone else present who wished to comment.

Mr. Gilbert List, owner of an adjacent property, expressed his concerns regarding sewage disposal and runoff of gas and oil.

Staff Member, Tom Breidenstein, stated that the engineer has provided the location of an on-site sewage disposal system and the facility for storm water detention. Staff has not yet had time to review this information.

Mr. Ray Erpenbeck stated that the on-site sewage disposal system will be installed according to Health Department Regulations. A retention basin has been provided on the site to collect and discharge surface water in a controlled manner.

Mr. List stated that he has noted other locations where the tanks provided fill up and then there is discharge into the ponds.

Chairman Whitton advised him that if oil was being discharged into his pond he would have the right to petition the EPA or the Health Department.

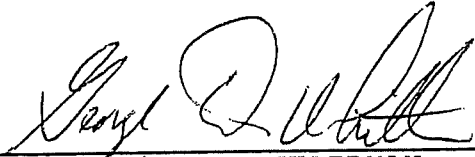
Chairman Whitton questioned whether the Board had the authority to expand a pre-existing non-conforming use and asked Counselor Wilson for his comments.

Counselor Wilson stated that under the Statutes, the Board is permitted to allow a substitution of a pre-existing non-conforming use with another, provided it is of the same nature and character, or a more restrictive use. The Board cannot change the scope.

Mr. Archambault noted that the applicant is reducing the square footage and, therefore, making the non-conforming use smaller.

Mr. Archambault moved that the request be granted, subject to Site Plan Review acceptable to the Staff. He requested that the Staff consider the comments made regarding runoff and sewage disposal. Mr. Nevel 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 8:30 P.M..



George Whitton, CHAIRMAN

ATTEST:

Jan Hancock, Recording Secretary