APPLICATION FOR ZONING ACTION

TO:

- [ ] Boone County Planning Commission
- [ ] City of Florence Board of Adjustment
- [x] 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
- [x] Appeal or Variance
- [ ] Sign or Zoning Permit

Applicant: Arlinghaus Builders INC [x] Owner [ ] Agent

Address: 794 Dudley Rd Edgewood, Ky 41017

Telephone: 341-8051

Location: 1451 Boone Aire Rd Lot 4B Boone Aire County club sub

Name of Property Owner: Same as Applicant

Address of Property Owner: Same as Applicant

Zoning District: _____ Area in Acres: Lot 4B

Deed Book: 348 Page Number: 284 Group Number: 1600

Description of Request: Appeal of Zoning Administrator's decision relative to use of house Located at 1451 Boone Aire Road as a Model home. Specifically appeal of May 20, 1987 Letter.

Applicant's Signature: Joe Arlinghaus

Property Owner's Signature: Same as Applicant

FOR PLANNING COMMISSION USE ONLY

Application Fee: $115 Date Received: 6-1-87 By: TWB

Referred To: TWB / GAN Meeting Date: 7-8-87

Action Taken: _____ Date of Action: _____

STAFF REPORT

DEVELOPMENT: Proposed Model Home

APPLICANT: Joe Arlinghaus

LOCATION: 1451 Boone Aire Road

ZONING: Suburban Residential One

DATE: July 1, 1987

RE: APPEAL OF ZONING ADMINISTRATOR'S DECISION

The appeal tonight is to evaluate the decision made by myself, as Boone County Zoning Administrator of the Boone County Zoning Regulations, relative to my position that the home located at 1451 Boone Aire Road cannot be used as a model home under the circumstances as presented prior to the writing of the May 20, 1987 letter. This decision was based on land use reasoning and a careful evaluation of the area, site, and specifics of the situation. As I have indicated throughout this entire process, the decision was a difficult one to make in that under certain circumstances it could have been approved. Had the activity been different, it may have also been deemed appropriate. However, as presented at the time of my decision, the facts led me to state it inappropriate for the reasons listed below.

As Zoning Administrator I am assigned to determine the classification of a use of land, buildings or structures as a permitted, accessory or conditional use in a specific zoning district based on interpretation of the stated and implied requirements of the zoning regulations. This includes the determination of classification of new uses or uses not specifically identified in these regulations. Model homes have yet to be classified in the Boone County Zoning Regulations.

In determining the classification, it becomes apparent that as the Boone County Zoning Regulations do not classify the use as principally permitted or conditional at the present time, and model homes have existed and currently exist throughout this county, model homes in subdivisions should be treated as accessory to the principally permitted activity of a detached single-family dwelling unit.

It should be noted that the analysis was for the use of the structure and site. The structures and site themselves (in terms of land use) are no different than any other structure or site in the Suburban Residential One zone. However, there is a basic difference between the use of model homes and regular houses. A model home is used as a marketing tool to sell that type of home and/or its builder's craftsmanship to a potential future homeowner and client so that the builder can build a house for

that individual at another site. After a period of time, the model becomes dated and is sold as a residence. Historically, said models have been used to develop the subdivision in which they are located. On the other hand, a house (as principally permitted in this zone) will be vacant from time to time as its occupants move in or out. But its primary function is to serve as a dwelling unit for an individual or family.

Having identified this fundamental difference between the principally permitted dwelling unit and the model home being treated as accessory, it became necessary to then focus on the specific issue at hand; is this house located at 1451 Boone Aire Road accessory to the principally permitted uses of the detached single-family dwelling unit?

In assessing this issue, I looked at the availability of other lots in this subdivision as well as in the immediate vicinity. The thought behind this was simply if the builder has lots in this subdivision on which he intends to build or so close to this subdivision that, from a land use perspective, the other lots would not be perceived as being a separate area, then the structure's use could be accessory to the principally permitted activity of building single-family dwelling units. In review of County records and with confirmation of a letter courtesy copied to myself from Kruetzjans to Fischer, I found no lots which Mr. Arlinghaus owns in the subdivision except Lot #4B on which the proposed model home has been built.

With this information, the May 20, 1987 letter was written stating that as of that date the house could not be used as a model home and a series of options were presented to Mr. Arlinghaus including the appeal process which we are now involved in tonight.

The Boone Board of Adjustments and Appeals needs to determine whether or not my action as Zoning Administrator was correct or in error when determining that the house constructed at 1451 Boone Aire Road could not be used as a model home based on the data supplied up to the May 20, 1987 writing of the decision letter.

A series of correspondence is attached to show the history of this decision, all of which will be elaborated on during the verbal presentation.

Gerald A. Newton

Gerald A. Newton
Director/Zoning Administrator

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 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 reviewd 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 oppositon 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, of 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 hygenist 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 belived 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