

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: MALL Chrysler Plymouth Owner

Address: 1086 BURLINGTON PK Ky 18 Agent

Floreson Ky 41042 Telephone: 525 1344

Location: SAME AS ABOVE

Name of Property Owner: Thomas W & Richard A Zimmer

Address of Property Owner: 114 Summit Dr Ft Mitchell Ky

Zoning District: BOOK C-3 Area in Acres: 5

Deed Book: 169 Page Number: 357 & 432 Group Number: _____

Description of Request: _____

wish to LEAVE STREAMERS up as they ARE permanent
installed with WARR and TURBIDITY to keep Turbid
SECTION 1903 IS FOR ALL SIGNS IN DISTRICT NONE OF THESE WARRS ARE CONNECTED TO SIGN

Applicant's Signature: [Signature]

Property Owner's Signature: [Signature]

FOR PLANNING COMMISSION USE ONLY

Application Fee: _____ Date Received: _____ By: _____

Referred To: _____ Meeting Date: _____

Action Taken: appeal denied Date of Action: 8/13/86

Z.E.O. actions upheld

STAFF REPORT

APPLICANT: Mall Chrysler Plymouth
LOCATION: 1086 Burlington Pike
ZONE: Commercial Three (C-3)
DATE: August 13, 1986

REMARKS:

The applicant is requesting an appeal of the Zoning Enforcement Officer's interpretation and administration of the zoning ordinance.

On July 21, 1986, I informed Mr. Thomas Zimmer of Mall Chrysler Plymouth that his business was in violation of Article 19, Section 1903 of the Boone County Zoning Ordinance, #5 (see enclosure).

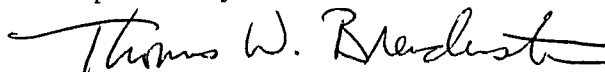
At that meeting, he informed me that his interpretation of this provision was different. Since Mr. Zimmer's streamers were not a part of a sign, he believed that they would be considered a permanent fixture of the lot. I disagreed, stating such streamers are permitted (when not part of a sign) for no more than 14 days, after which time they needed to be removed.

For further background, Mall Chrysler Plymouth was cited by my predecessor, Ralph Hopper, on August 29, 1984 and on October 23, 1985. In both cases, the streamers were not removed. It is my understanding that the streamers are removed and replaced from time to time as needed because of weather damage.

To conclude, it is up to the Board to decide whether or not my administration and interpretation of the Boone County Zoning Ordinance is proper and if Mall Chrysler Plymouth will be injuriously affected or aggrieved by my decision. Obviously, I believe that I took the correct action in citing the dealership. Also, I do not believe that the removal of colored streamers will affect the level of car sales at their lot. At this writing, T. L. Christen Buick and Simon and Fischer Honda, both located on the same street as Mall Chrysler Plymouth within one-half mile, do not display any such temporary advertising devices. If Mall Chrysler Plymouth's streamers are permitted to remain, these two dealerships would demand the same. Afterwards, I can envision all businesses in Boone County wanting permanent display of banners, streamers, pennants, etc.

As a final note my actions have been approved and agreed upon by Gerald Newton, Zoning Administrator, who has been charged by the Boone County Fiscal Court to make sure the Boone County Zoning Regulations are correctly administered and upheld.

Respectfully submitted,


Thomas W. Breidenstein
Zoning Enforcement Officer

article 19

SIGNS

Section 1900

Intent

The purpose of this Article is to promote and protect the public health, welfare, and safety by regulating existing and proposed outdoor advertising, outdoor advertising signs, and outdoor signs of all types. It is intended to protect property values, create a more attractive economic and business climate, and enhance and protect the physical appearance of the community. It is further intended to reduce sign or advertising distraction and obstructions that may contribute to traffic accidents, reduce hazards that may be caused by signs overhanging or projecting over public rights-of-way, and generally enhance community development.

Section 1901

Sign Permits

In order to maintain the scenic integrity and character of Boone County and to insure compliance with these regulations, a sign permit shall be obtained prior to the erection or construction of certain signs specified in this article.

In those cases where a sign permit is required, an application for said permit shall be filed with the Zoning Enforcement Officer. The application shall include, at minimum, the following information:

1. Name and address of the applicant;
2. Name and address of the owner of property on which the sign is to be located;
3. A written description of the proposed sign including type of sign and supporting structure, method of illumination (if any) and construction materials to be used in the sign;
4. A sketch map of the property on which the sign is to be erected showing existing structures, rights-of-way lines and proposed location of the sign; and
5. A drawing of the proposed sign showing display area dimensions, height of sign from grade to bottom of sign and information to be conveyed on sign.

Upon receipt of a full and complete application for a sign permit, the Zoning Enforcement Officer shall issue a permit or notify the applicant of any non-conformance with the provisions of this article within fourteen (14) days. The application data required by this section may be submitted as part of the Site Plan required by this order (Article 14) or as part of the application for a building permit.

The Zoning Enforcement Officer shall maintain a file of all applications for sign permits.

Section 1902

Government Signs Excluded

For the purpose of the order "sign" does not include signs erected and maintained pursuant to and in discharge of any governmental function, or required by any law, order, or governmental regulation.

Section 1903

General Requirements for All Signs and Districts

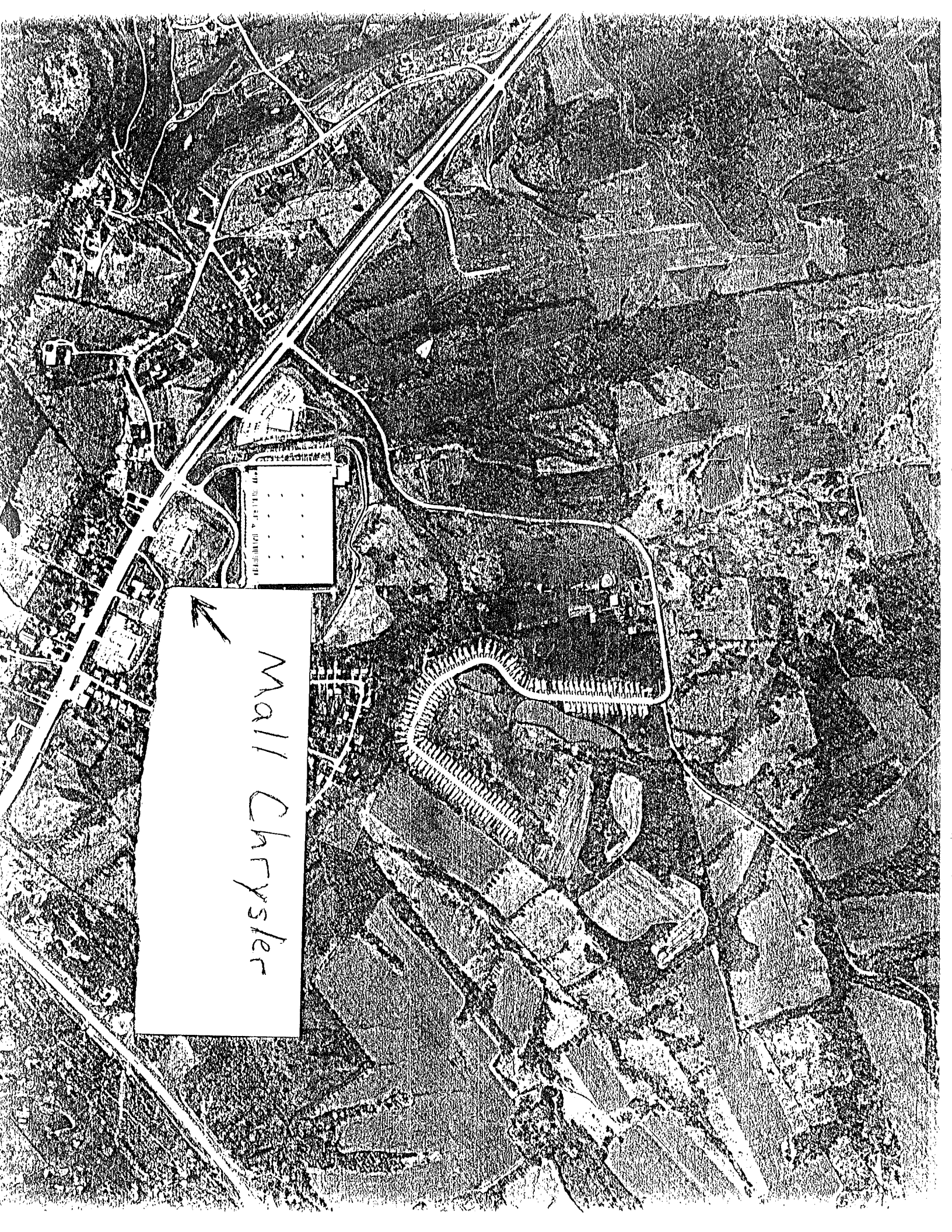
The regulations contained in this section shall apply to all signs and all use districts.

1. Any illuminated sign or lighting device shall employ only light emitting a light of constant intensity, and no sign shall be illuminated by or contain flashing, intermittent, rotating, or moving light or lights except signs performing a public service function indicating time, temperature, or similar services. In no event shall an illuminated sign or lighting device be placed or directed so as to directly beam upon a public road, highway, street, sidewalk, or other vehicular or pedestrian system, or adjacent premises so as to cause glare or reflection that may constitute a traffic hazard or nuisance;
2. No sign shall employ any parts or elements which revolve, rotate, whirl, spin or otherwise make use of motion so as to constitute a traffic hazard or nuisance;
3. All wiring, fittings, and materials used in the construction, connection, and operation of electrically illuminated signs shall be in accordance with the provisions of applicable electric codes in effect;
4. No sign shall be placed on the roof of any building so that the bottom of the sign face is more than one (1) foot above the roof line;
5. No sign or part thereof shall contain or consist of banners, posters, pennants, ribbons, streamers, spinners, or other similar moving devices. Such devices, as well as strings of lights, shall be permitted for the temporary purpose of advertising or attracting attention when not part of a sign for a period of up to fourteen (14) days, after which time they shall be removed.
6. No sign of any classification shall be installed, erected, or attached in any form, shape, or manner to a fire escape or any door or window giving access to any fire escape;
7. Should any sign be or become unsafe or be in danger of falling, the owner thereof or the person maintaining the same, shall upon receipt of written notice from the Zoning Enforcement Officer proceed at once to put such sign in a safe and secure condition or remove the sign;
8. No sign shall be placed in any public right-of-way except publicly-owned designs, such as traffic control signs and directional signs. Signs directing and guiding traffic and parking on private property but bearing no advertising matter shall be permitted on any property.

Section 1904

Measurement of Sign Area

The surface area of a sign shall be computed as including the entire area within a regular, geometric form or combinations of regular, geometric forms comprising all of the display area of the sign and



Mall Chrysler

BOONE COUNTY BOARD OF ADJUSTMENT

AUGUST 13, 1986

6:30 P.M.

Chairman Whitton called the meeting to order. Roll call was taken by staff member Dee Ann Brewer. 4 members present. Absent: Mr. Nevel. Staff members present were Messrs. Breidenstein, Newton and Ms. Brewer. Atty. Dale Wilson was also present.

Chairman Whitton proceeded to the items on the agenda.

Conditional Use Permit

A request of Ronald Neal for a Conditional Use Permit to allow church services to be held at 1816 Petersburg Road in Hebron. The 4.78 acre tract is zoned Commercial Two/Small Community Overlay, C-2/SC.

Staff member Tom Breidenstein presented the Staff Report. (See Staff Report)

Mr. Breidenstein presented a slide presentation of the proposed site and the surrounding area.

Chairman Whitton stated his understanding was the Hardware store required 15 parking spaces, the Video store required 4, and the Dentist Office required 6 for a total of 25. Chairman Whitton noted there were 38 parking spaces overall total and inquired how many parking spaces would the church's congregation have available to them. Mr. Breidenstein explained that if all the businesses at the site were operating at a full tilt they would be required to have 36 parking spaces. Mr. Breidenstein noted that would break down to 15 spaces for the Hardware store, 4 for the Video store, 6 for the Dentist Office and 11 for the Church for a total of 36. Mr. Breidenstein stated there were 38 parking spaces all together.

Mr. Ronald Neal, applicant for the proposed request, inquired how would the required number of parking spaces affect his congregation's parking in the future. Mr. Breidenstein explained that in the Zoning Regulations, a written agreement could be reached between all the parties involved and he felt that in the particular request that an agreement should not be hard to reach since the Dentist Office was rarely open at the same time the church would be operating, nor would there be much traffic from the Hardware or Video stores at that time.

Further discussion followed on the various times the other three stores may be operating and how they might affect the

church's parking requirement.

Chairman Whitton inquired of questions or comments from the audience. There was no response.

Mr. Archambault moved to approve the request of Ronald Neal for a Conditional Use Permit to allow church services to be held at 1816 Petersburg Road in Hebron based upon the Staff Report. The motion was seconded by Mr. Houston. After further discussion, the motion carried unanimously.

Mr. Neal inquired if he could now begin work on the church or would he need to wait to receive the Conditional Use Permit first. Atty. Dale Wilson stated he could now begin work and noted he would receive the approved Conditional Use Permit at a later date. Mr. Breidenstein concurred with Atty. Wilson.

Appeal

A request of Mall Chrysler-Plymouth for an Appeal of the Zoning Enforcement Officer's interpretation and administration of Article 19 (Signs) of the Boone County Zoning Regulations.

Mr. Breidenstein quoted "Section 1903" of the Boone County Zoning Regulations, #5: "No sign or part thereof shall contain or consist of banners, posters, pennants, ribbons, streamers, spinners, or other similar moving devices. Such devices, as well as strings of lights, shall be permitted for the temporary purpose of advertising or attracting attention when not part of a sign for a period of up to fourteen (14) days, after which time they shall be removed." Mr. Breidenstein presented a slide presentation of the particular site noting the streamers/pennants. Mr. Breidenstein presented the Staff Report.
(See Staff Report)

Mr. Breidenstein distributed a list of businesses throughout Boone County that had been cited for streamers/pennants which indicated that most all violations had been corrected.

Mr. Tom Zimmer, owner of Mall Chrysler/Plymouth, noted his interpretation of Articles 1900-1903 relating to signs and he felt Article 1903 was a section on signs and his streamers were not connected with signs and they had nothing to do with signs. Mr. Zimmer noted the idea behind Section 1903 was to promote, protect public health, welfare and safety regulations existing for outdoor advertising and signs. Mr. Zimmer stated the Article was to protect property values, create economic business climates and to enhance and protect the physical appearance of the community. Mr. Zimmer stated he was all for the Article but he did not feel that citing someone for streamers had anything to do with Article 1903 because there was no mention of tying streamers from one light pole to another. Mr. Zimmer agreed he did not like streamers that sagged any more than anyone else did and

explained that was why he had put up a "wire and turn buckle" which gave him the ability to tighten the streamers when they started to sag. Mr. Zimmer stated he felt streamers enhanced the appearance of his business even though they would not have an affect on sales at his business. Mr. Zimmer stated that if it was the law to keep the streamers/pennants down then he would, but he felt that was not the law unless the streamers/banners were on a sign.

Chairman Whitton explained that it was not the power of the Board to determine whether the ordinance was a good one or not but rather the Board was to look at the regulation as written and noted he was one of the businesses on the list that had been cited and he too had to remove this streamers/pennants. Chairman Whitton noted he also did not like having to remove them but that was the rule.

Atty. Wilson stated the question was whether the streamers/pennants represented signs so they would be regulated by Article 19 or are they not signs. Atty. Wilson quoted Article 20-7 (Signs): "Any device designated to inform or attract the attention of persons not on the premises on which the sign is located." Atty. Wilson explained, therefore, a sign did not have to be something with just words on it but could be any device designed to inform or attract the attention of persons not on the premises on which the sign was located. Atty. Wilson stated the streamers/pennants needed to be defined as whether they were "for the purpose of attracting the public, and if the streamers/pennants were not there to attract the public's attention, then what were their purpose." Mr. Zimmer stated he felt the streamers/pennants made the lot look nicer and added class.

Chairman Whitton pointed out that Mr. Zimmer was still permitted to use the streamers/pennants from time to time but streamers/pennants could not be permanently fixed to the site. Mr. Zimmer noted it takes him about 2 hours to put the streamers/pennants up and about one hour to take them down and he felt it would not be worth it to run them up and then take them back down again for just a short period of time.

Mr. Archambault inquired if Article 1903 was part of the Boone County Zoning Regulations. Atty. Wilson stated yes. Mr. Archambault inquired if Article 1903 could be amended by a Public Hearing. Atty. Wilson responded yes.

Chairman Whitton noted he felt a lot of what Mr. Zimmer had said had matter and could be argued in getting the regulation amended but explained it was not the Board's function to determine whether or not the regulation was appropriate.

Atty. Wilson explained the Public Hearing process for a text amendment of Article 1903.

Mr. Breidenstein noted there was a proposed change to the 1986 Comprehensive Plan which would allow streamers/pennants devices to be up for a fourteen (14) day period only three times a year and permits would have to be obtained through the Planning Commission's office.

After further discussion, Mr. ^{RYAN} Nevel agreed with the decision of the Zoning Enforcement Officer and Zoning Administrator, which meant rejecting the appeal. The motion was seconded by Mr. Houston. The motion carried unanimously.

Administration

Atty. Wilson discussed changes in the State law pertaining to variances and mobile homes. Atty. Wilson noted that Chapter 100 enabled zoning regulations to be enacted by local government. Atty. Wilson noted the mobile home change was: "A bonafied farm not in a zone that allowed mobile homes could prohibit them." Atty. Wilson explained that someone would not have an automatic right to a mobile home just because they had a bonafied farm. Atty. Wilson pointed out a bonafied farm was allowed a dwelling but the automatic right for a mobile home no longer existed. Atty. Wilson stated it would depend on whether the particular zone allowed a mobile home.

Atty. Wilson noted the other change was in a variance and the word "unique" had been changed to "special circumstances". Atty. Wilson read: "The request of variance arises from "special circumstances" which do not generally apply to the land in the vicinity". Atty. Wilson further explained "uniqueness" did not have to be shown anymore, just "special circumstances".

Atty. Wilson noted the second finding and read: "Strict application of provisions and regulations would deprive the applicant of a reasonable use of the land and added: "or would create an unnecessary hardship on the applicant".

Atty. Wilson referred to a "Conditional Use Permit" and noted the change was that where the land abutted a residential district, then a fourteen (14) day notice by mail would have to be sent to the abutting property owners.

Mr. Ryan inquired of the definition of a mobile home. Mr. Breidenstein read the definition of a mobile home. After further discussion on the difference of a mobile home and a modular home, Mr. Ryan moved the meeting adjourn. The motion was seconded by Mr. Archambault. The motion carried unanimously.

The meeting adjourned.



GEORGE D. WHITTON, CHAIRMAN

ATTEST:



DEE ANN BREWER, ADMINISTRATIVE ASST.