

APPLICATION FORM

BOARD OF ADJUSTMENT AND ZONING APPEALS ACTION

(See Boone County Zoning Regulations)

SECTION A (To be completed by applicant)

- (Check One)
1. Boone _____ Florence _____ Walton _____ Union _____
- (Check One)
2. Conditional Use Permit _____ Variance _____ Appeal _____
Change in Non-Conforming Use _____
3. Applicant's Name Michael T. McKinney
Phone Number (606) 586-9955
Applicant's Address 2252 Burlington Pike, P.O. Box 688,
Burlington, Kentucky 41005
City State Zip
4. Description of Request: Request for Conditional Use Permit to construct and operate a Hardee's Restaurant.
5. Name of Development Hardee's Restaurant
6. Location of Development Parcel A The Jones Development near
Burlington, Kentucky
7. Acreage Under Review 1.029 Acres
8. Lot Number and Name of Subdivision (if part of a subdivision) _____
9. Owner of Property Arlene Jones
Phone Number (606) 586-5550
10. Address of Property Owner 4211 Idlewild Road
Burlington, Kentucky 41005
City State Zip
11. Proposed Use(s) On Site Construction and Development of a Hardee's restaurant.
12. Total Square Footage of Existing and/or Proposed Buildings
3,200 square feet
13. Current Zoning on Property C-2 PD
14. Deed Book 357 Page No. 230 Group No. 2031
15. Is the site subject to a zone change? No
If yes, give date of approval _____
16. Have you submitted a Site Plan with this request? Yes
17. Have you submitted a list of adjoining property owners with this request? Yes
18. Applicant's Signature: Michael T. McKinney
19. Property Owner's Signature: Arlene A. Jones

SECTION B

(To be completed by Boone County Planning Commission Staff)

1. Date Received 8-24-89
2. Fee Received 250.00 (owes 101.00 for pub. & prop. owner) \$100 per # 600 Yd
3. Is application complete? X Yes X No
4. Staff Reviewer PAUL R. MILLER
5. Scheduled Board Action Date 9-13-89
6. Board Action:
X Approval
 Approved With Conditions (See #7)
 Disapproved (See #8)
7. Conditions: 1) THE APPLICANT SHALL BE REQUIRED TO SUBMIT ARCHITECTURAL DRAWINGS FOR THE DESIGN OF THE EXTERIOR OF THE RESTAURANT AS PART OF THE SITE PLAN REVIEW STAGE OF DEVELOPMENT. THIS BUILDING DESIGN SHALL CLOSELY APPROXIMATE THE ARCHITECTURAL STYLE OF THE ADJACENT COMMERCIAL USES.
8. ~~Reasons for Disapproval:~~ 2) THE SITE PLAN MUST CONFORM TO THE PLAN SUBMITTED AT THE 9-13-89 BOARD MEETING.

BCPC:7/11/88

STAFF REPORT

#2

DEVELOPMENT: Hardee's restaurant
APPLICANT: Michael T. McKinney
LOCATION: KY 18 and South Limaburg Road, Boone County, Kentucky
ZONING: Commercial Two/Planned Development (C-2/PD)
DATE: September 13, 1989
REMARKS:

The applicant is requesting a Conditional Use Permit to allow the construction of a drive-in, franchise fast-food restaurant. The 1.029 acre site is located at the southwest corner of the KY 18 and South Limaburg Road intersection in Boone County, Kentucky. The property is zoned Commercial Two/Planned Development (C-2/PD) and is owned by Arlene Jones.

History of the Site

This site is a portion of a larger 37.3 acre tract which was the subject of a Zoning Map Amendment application for rezoning of the property from Suburban Residential Two (SR-2) to Urban Residential One/Planned Development (UR-1/PD) and C-2/PD on September 24, 1986. The zone change was approved by the Fiscal Court on November 4, 1986. Among the Conditions of Approval that were part of the zone change request, the applicants agreed to submit applications to the Board of Adjustment for any conditional uses in Section 923 of the Boone County Zoning Regulations, and agreed to build a frontage road for the proposed commercial area along KY 18.

Surrounding Zoning and Land Uses

north: C-3; automobile dealership
south: C-2/PD and UR-1/PD; remainder of undeveloped commercial site; apartment complex beyond
east: C-2/PD; remainder of the commercial site (an agricultural supply business occupies the two structures on the site); SR-2 zoning beyond with one single-family residence
west: C-2/PD; commercial strip center (UDF and others)

Adherence to Approved Concept Development Plan

This request is unique in that a Concept Development Plan was approved with the zone change which established the C-2/PD zoning of subject property. This plan identified the area on the west of South Limaburg Road to be reserved for "commercial retail and service establishments requiring small individual free standing sites," and stipulated that the remaining area fronting on KY 18 be for "commercial uses serving an area-wide market." The proposed restaurant meets both of these criteria. Further, the specifications of the approved Concept

=====
Development Plan, with those Conditions imposed by the Planning Commission and the Fiscal Court, takes precedence over the general objectives of the Comprehensive Plan. Therefore, the Board must consider if this proposed use meets the intent of the Concept Development Plan rather than the Comprehensive Plan for the County.

Conditional Use Criteria

The following reviews the general considerations the Board must make before granting Conditional Use Permits in Boone County:

1. For this request, the Concept Development Plan approved as part of the zone change for this property acts as the Comprehensive Plan for this property. The compliance of the Concept Development Plan was reviewed at the zone change application for the subject property. As stated above, the proposed use is generally in compliance with the approved Concept Development Plan.
2. The appearance of the proposed restaurant will be harmonious with the surrounding commercial uses if the architectural design closely approximates that of the existing commercial strip on the opposite side of South Limaburg Road. The restaurant will change the character of the general vicinity by adding to the area-wide draw of the existing convenience and video store, making this site more of a destination point for area-wide traffic.
3. The proposed restaurant will not be hazardous to neighboring uses.
4. The proposed restaurant will be adequately served by essential public facilities and services.
5. The proposed restaurant will not create excessive additional requirements at public cost for public facilities and services.
6. The proposed restaurant will not be detrimental to any persons, property, or the general welfare.
7. Vehicular access to the proposed restaurant is to be off of a planned frontage road to parallel KY 18. This being so, the traffic associated with the restaurant will not create an interference with traffic on South Limaburg Road or KY 18. However, the applicant would be required to build at least a portion of the road for access to their restaurant.

The Board must also consider the specific criteria applicable to Conditional Uses in the C-2 zone:

1. The proposed restaurant will not add to the creation of a compact, multi-purpose and pedestrian oriented commerce center in that the use will be physically removed from nearby commercial uses, will not introduce a new type of commercial use to aid in the multi-purpose character of the area, and is vehicle, not pedestrian, oriented. However, this type of use was

=====

among those considered possible in the approved Concept Development Plan for the property, which in turn was deemed appropriate for this area of Boone County.

2. The arrangement of the restaurant should be mutually compatible with the organization of permitted and accessory uses in the district if comparable architectural design is employed.

Staff Concerns

The development of this property is of great importance to this area of Boone County; this is one of the reasons why it was deemed appropriate that the property be rezoned with the Planned Development Overlay designation. Any development on this site has a potential for affecting the traffic volume, types, and destination on KY 18, a major thoroughfare in the county. This was an issue at the zone change request and must be continually assessed. This site also has the potential for impacting a great many existing and future residential uses, especially in the Oakbrook area. For these reasons, care must be taken in reviewing the appropriateness of any proposed use on this site.

This site is integral with the Oakbrook development, and is thus directly tied to that residential development. The existing commercial strip on South Limaburg Road contains at least two destination-type commercial development. Any development of the opposite side of South Limaburg Road has the potential for increasing the area-wide draw of this intersection. Because of the Planned Development nature of the existing commercial uses, it is important that new developments employ similar architectural design for proposed structures to maintain the harmony of the area. Hardee's, being a national chain with established design standards, will not appear harmonious with the adjoining commercial uses unless a deliberate effort to match the existing style is undertaken.

The Staff believes the Board must take extra care in reviewing this application; the Planned Development nature of the property, and surrounding properties, requires that attention. Should the Board decide to grant this Conditional Use Permit, the Staff recommends the following Conditions of Approval:

- 1) The applicant shall be required to submit architectural drawings for the design of the exterior of the restaurant as part of the Site Plan Review stage of development. This building design shall closely approximate the architectural style of the adjoining commercial uses.
- 2) The existing driveway access to the subject property from KY 18 shall be removed.
- 3) The applicant shall not be permitted an independent, free-standing sign. Non-building mounted signage for the proposed restaurant shall be integrated into the existing free-standing sign for the Oakbrook Commercial Center.

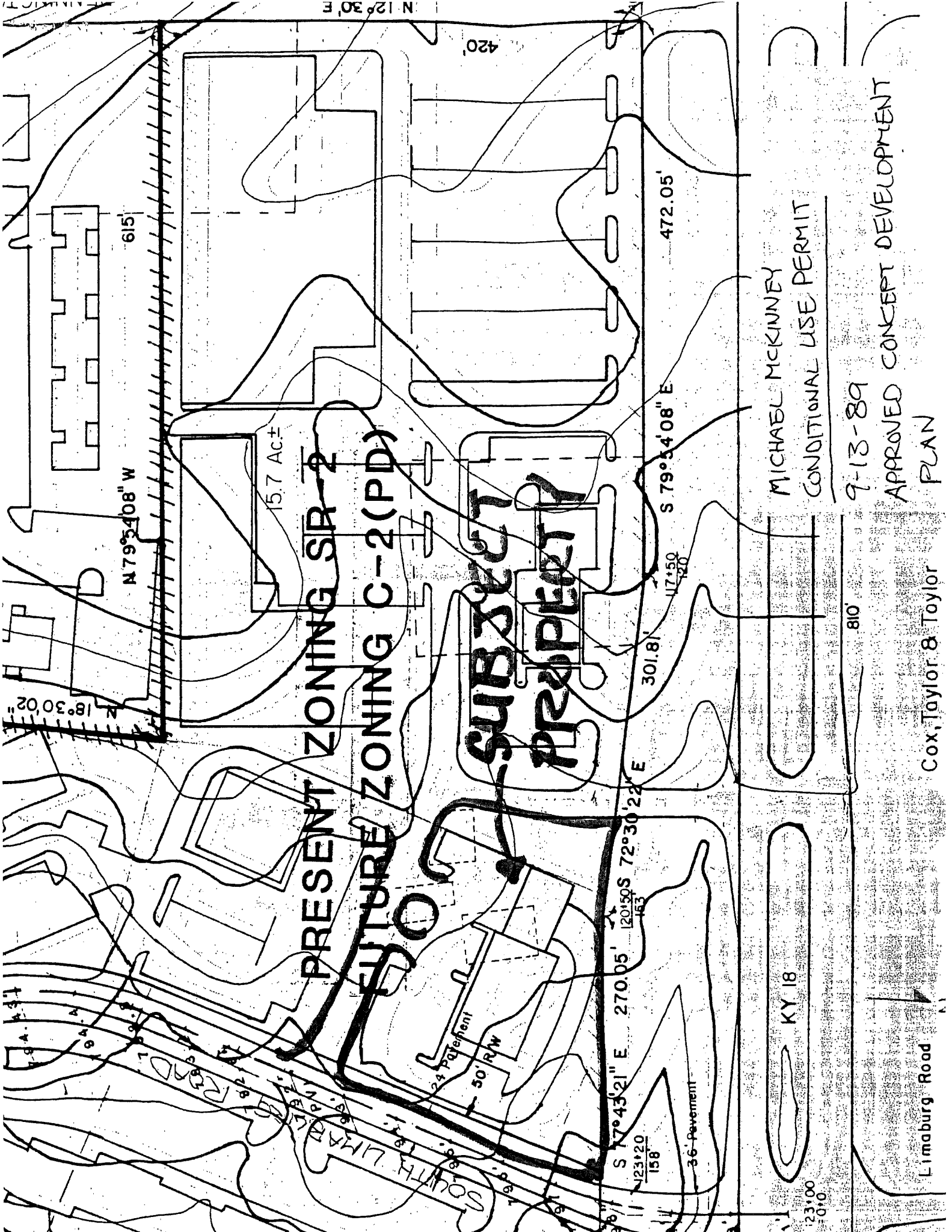
=====
Should the Board approve this Conditional Use Permit, the applicant will be required to undergo Preliminary Development Plan and Site Plan Review before the Boone County Planning Commission. Attached to this report is a copy of the submitted Site Plan, a portion of the Future Land Use Map depicting this area of the County, and a portion of the Concept Development Plan approved in 1896.

Respectfully submitted,



Paul R. Miller
Plans Examiner/Planner II

PRM:hs



PRESENT ZONING SR-2
FUTURE ZONING C-2(PD)

SUBJECT PROPERTY
SUBJECT PROPERTY

615'

N 79° 54' 08" W

15.7 Ac.±

420'

472.05'

S 79° 54' 08" E

301.81'

117.50'
120

S 17° 43' 21" E 270.05' ±
20' 50" S 72° 30' 22" E

153

158

123±20

196'

MICHAEL MCKINNEY
 CONDITIONAL USE PERMIT

9-13-89

APPROVED CONCEPT DEVELOPMENT PLAN

810'

KY 18

23' 00"
50' 10"

Limaburg Road

Cox, Taylor & Taylor

N 12° 30' E

BOONE COUNTY
BOARD OF ADJUSTMENT

September 13, 1989 - 6:30 P.M.

BOARD MEMBERS PRESENT:

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

BOARD MEMBERS NOT PRESENT:

Mr. Walt Ryan

LEGAL COUNSEL PRESENT:

Mr. Dale Wilson*

The meeting was called to order by Chairman Whitton at 6:30 P.M..

- * Chairman Whitton advised that legal counsel was not yet present. The meeting will begin, but should a legal hold-up arise, the item will be tabled until legal counsel arrives.

Chairman Whitton noted that each member had received a copy of the Minutes of the Boone County Board of Adjustment Meeting of August 9, 1989 and asked if there were any comments or corrections.

There being no changes to the Minutes, Mr. Nevel moved that they be approved as mailed. Mr. Archambault seconded the motion and it carried unanimously.

AGENDA ITEMS:

1. The request of R. Barry Wehrman for a Conditional Use Permit to allow an office for a landscaping business in a Small Community zone. The 1.07-acre site is located at 5900 N. Garrad Street, Burlington, Kentucky. The property is zoned Suburban Residential Two/Small Community (SR-2/SC) and is owned by Bill and Peggy Goodridge.

Staff Member, Paul Miller, presented the Staff Report which included a slide presentation (see Staff Report).

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

Mr. Barry Wehrman, attorney, was present with his son, Barry Wehrman, Jr., who is the applicant. In response to questions asked by his father, Barry Wehrman, Jr. gave the following information: His address is 2699 Gallatin Street, almost directly behind this building. He employs eight people and they arrive between 8 a.m. and 8:15 a.m.. They work eight hours, returning to the site about 5 p.m. and leave within ten or fifteen minutes. Not all of them drive, and there are six or seven cars in the parking lot all day. They do not arrive as early as 5:30 a.m. or 6:30 a.m., and do not return as late as 9:30 p.m. or 10 p.m.. They operate two pick-up trucks and a flat bed dump truck. They have a Bobcat, two rototillers, and other shovels and tools. They have two trailers about 12' x 6' to transport the equipment. None of the personnel work at the place of business, but only at the customer's facility. They occasionally return during the day. He stated that it takes about 60 seconds to start up the Bobcat and it is loaded in two minutes and the engine is shut off. They start up one piece of lawn equipment which is kept in the barn. It takes about 30 seconds for them to get away from the site and onto KY 18. He occasionally works at the site on designs for customers. He keeps a mulch of oak and walnut bark. They have had two burning episodes and no complaints were made to him. An employee burned debris without his knowledge. There was a complaint by the neighbor and he offered to pay for the cleaning of her house, which she refused. He showed the Board pictures of the site, which were submitted for the record. He stated that there is a florist two blocks away that fronts on KY 18, there is also a daycare center two blocks away. Vehicles are stored on the back of the site. There was a business in the location in 1988, which was a haircutting place, and he noted their operating hours. There was a lumber company nearby, but he believes it has moved. There are stables up the road, as well as a truck & trailer company, and a school. These businesses generate traffic in the early morning hours. He stated that his business slows down around mid-October through the first of March. At that time, there are only two employees and one or two cars. The trucks park on the side or behind the barn out of sight of traffic on Bullittsville Road. His customers do not come in to his place of business. He stores his equipment there and does designs.

In response to questions from the Chairman, Mr. Wehrman, Jr. stated that he moved to this site in mid-February, 1989. At that time, a lady from here told him there was already a permit and he did not heed one. Mr. Wehrman, Jr. added that this is a temporary location for his business to store his equipment and to do drafting. His in-laws own the property and are out of town at this time. Mr. Wehrman, Sr. noted that a complaint had been filed.

Mr. Wehrman also gave the Board a sample of his mulch which they examined.

There being no one else present in behalf of the request, the Chairman asked if there was anyone present in opposition to the request.

Mr. Ed Drennan, attorney representing Mr. James Noakes, who is an adjacent property owner living on Gallatin Street, distributed a packet of material to the Board members which he reviewed. He stated that prior to the change in the Comprehensive Plan, there was a beauty parlor in the building and also attorneys' offices. The position of the residents is that there are a number of vehicles parked in the location, and there is mulch and debris. There have been occurrences of burning the debris, which is a nuisance. He stated that they do not have a permit to do business there. The residents do not have a problem with allowing him six months to get out. He stated that the business operates six days a week, including Saturdays and holidays. He stated that there are pictures in the folder indicating other violations which the Zoning Enforcement Officer may want to address. He stated that they are opposed to this type of operation.

Mr. Wehrman, Sr., noting that there is a list of persons in the packet who signed in opposition and that he could not cross-examine a list, stated that this is not competent evidence and he objects to it.

Mr. Nunn stated that he just bought the house on the corner. The equipment is running early in the morning and there is a mulcher crunching up limbs and shrubs, which wakes him up every morning, including Sunday. He has had to clean his vehicles and his pool due to the burned debris. He stated that this is not the place for this business.

Brenda Kinman, an adjoining property owner, stated that the property has only been cleaned up for about a month and there is a garbage dump on the site. She stated that they are mulching up old shrubs. She does not appreciate them changing the quiet neighborhood.

Mr. Jim Noakes stated that half the residents in the community are senior citizens that have lived there 30 and 40 years. Due to the noise and smoke from the fires last summer, their leisure time was taken away. He stated that the site is more like one-half acre. There is a driveway recently built off the county road. He stated that the barn was recently remodeled and he does not think permits were issued. He stated that this is an eyesore and a nuisance.

Sherry Noakes stated that she cannot use her porch or backyard due to the noise. She added that it is not true that employees are only there for a few minutes a day. She stated that the houses are very close together and they object.

Russ Hodge, who lives across the road, stated that the first time they burned grass it lasted for three days and three nights with smoke coming towards his house. He noted that Mr. Wehrman, Jr. had indicated that the second fire was lit by one of his employees without his knowledge. He stated that he did not see him with a hose to put it out. He stated that he is opposed to the permit.

Mr. Charles Courtney, who lives directly across from where the debris was burned, stated that Mr. Wehrman has cleaned up the site and made a big improvement. The smoke has only bothered him once. He noted that Mr. Wehrman had stated that he would not burn anymore.

The Chairman asked if there were any comments from the Board.

In response to a question from the audience, Counselor Wilson explained the Small Community Overlay Zone.

There being no further discussion, Mr. Archambault moved that the request be denied on the basis that a landscaping business does not fit into the community based on the comments made. He stated that they would have six months to move the operation to a location that fits better into the community. Mr. Houston seconded the motion and it carried unanimously.

2. The request of Michael T. McKinney for a Conditional Use Permit to allow the construction of a drive-in, franchise fast-food restaurant. The 1.029-acre site is located at KY 18 and South Limaburg Road, Boone County, Kentucky. The property is zoned Commercial Two/Planned Development (C-2/PD) and is owned by Arlene Jones.

Staff Member, Paul Miller, presented the Staff Report which included a slide presentation (see Staff Report).

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

Mr. Michael McKinney, attorney, and Mr. Michael Keaton, Real Estate Manager, and Mr. Steve McCordy, Construction Manager, were present. Mr. McKinney stated that they agree with the Staff Report except in regard to the free-standing sign. This project is separate from the remaining commercial development of the Drees Company and they feel that a free-standing sign is imperative. He stated that the small kiosk sign serving United Dairy Farmers is not readable and does not do what signs do for commercial establishments. He stated that the Concept Development Plan required a parallel road off KY 18 and they understand that it will be constructed. They have a signed deal to bring in a bank next to this Hardee's and part of that deal is developing the other half of the road. There would be no left turns off KY 18 as the access would be right-turn only. He noted that there is a free-standing sign across the highway serving numerous businesses on the site. He stated that Action Nissan, Florence Deposit Bank, Flick's IGA, and other businesses have free-standing signs. He distributed to the Board copies of pictures of the proposed signs. The signs are approximately 8' x 16" and 30 feet tall. They will build a brick or stucco building, whichever fits in with the needs of the Board. He stated that the Drees Company has the right of first refusal on all of these lots and they gave up that right to allow Hardee's to come in. Ralph Drees also retained the right of architectural review. He added that this type of establishment is needed in the Burlington area. He submitted a full set of their plans.

In response to questions from Chairman Whitton, Mr. McKinney advised that their colors are brown and orange, which is their trademark.

Mr. Miller advised that there is some question as to whether a free-standing sign would be appropriate under the regulations. He noted that this is a planned development and the Zoning Administrator may need to make a decision. Counselor Wilson noted that a Planned Development allows for some deviations in the underlying zone. He stated that a lot will depend on what is allowed in the Planned Development Overlay, what was on the application, etc.. He noted that the site will have to go before the Planning Commission for approval.

Mr. McKinney asked that a free-standing monument sign be approved subject to approval by the Planning Commission. He stated that the original Planned Development did not anticipate a fast food restaurant on the corner lot. He stated that they will put over a \$1 million into the site and need to bring customers in.

Mr. Houston commented that he did not see how they could not have a free-standing sign when every other business around them has one.

Mr. Kevin Costello, Assistant Director, quoted from the regulations and advised that the sign needs a decision by the Zoning Administrator.

Mr. McKinney stated that when the original plan was presented, the Drees Company had a right of first refusal and they have been fit to let someone else develop the site. They argue that this takes it outside of the one plan/one developer concept.

Mr. Houston moved that the Conditional Use Permit be granted. The sign is to be determined by the Zoning Administrator.

Counselor Wilson stated that the Board is neither approving or denying the sign. The Chairman agreed and stated that the Board is taking no action on the sign.

Mr. Miller noted that there were suggested conditions in the Staff Report.

Mr. McKinney stated that they did not understand the second condition.

Mr. Miller stated that the intent is that there be no access to this lot on KY 18. Access is to be off the frontage road.

Mr. McKinney stated that the existing machinery business is not on the lot under discussion. He stated that if the driveway is eliminated, then access to Margaret Jones' house is eliminated. She will move as soon as the remaining property is developed. He stated that there will not be two separate entrances. The parallel access road will go to Limaburg Road. He added that the parallel road is vital to them.

Chairman Whitton stated that the Site Plan is in agreement with Mr. McKinney's comments. Mr. Miller advised that they are not yet at Site Plan stage. Chairman Whitton stated that approval could be conditioned upon the submitted Site Plan.

Mr. Houston restated his motion. Mr. Houston moved that the Conditional Use Permit be granted, subject to Condition #1 of the Staff Report in regard to architectural conditions, and that the plan conform to the Site Plan submitted this evening. Mr. Nevel seconded the motion and it carried unanimously.

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

APPROVED:



George D. Whitton, Chairman

Attest:



Jan Hancock, Recording Secretary