

APPLICATION FORM

BOARD OF ADJUSTMENT AND ZONING APPEALS ACTION

(See Boone County Zoning Regulations).

SECTION A (To be completed by applicant)

- 1. (Check One)  Boone  Florence  Walton  Union
- 2. (Check One)  Conditional Use Permit  Variance  Appeal  
 Change in Non-Conforming Use
- 3. Applicant's Name William Keith and Peggy Browning  
Phone Number 606-586-9074 291-5911 (W)  
Applicant's Address 1895 Fernwood Place  
Burlington Kentucky 41005  
City State Zip
- 4. Description of Request: We would like a release from the 50 foot set-back requirement specified by the developer. Intentions are to build an attached garage onto our current dwelling. SIDE-YARD VAR.
- 5. Name of Development Not applicable
- 6. Location of Development \_\_\_\_\_
- 7. Acreage Under Review Not applicable
- 8. Lot Number and Name of Subdivision (if part of a subdivision)  
Lot #6 Willow Bend Subdivision
- 9. Owner of Property William Keith and Peggy Browning  
Phone Number 606-586-9074
- 10. Address of Property Owner 1895 Fernwood Place  
Burlington Kentucky 41005  
City State Zip
- 11. Proposed Use(s) On Site Intentions are to build an attached garage onto our current dwelling.
- 12. Total Square Footage of Existing and/or Proposed Buildings  
Existing dwelling - 1650 ft. Proposed garage - 780 ft.
- 13. Current Zoning on Property SR - 1
- 14. Deed Book 306 Page No. 295 Group No. 1289
- 15. Is the site subject to a zone change? \_\_\_\_\_  
If yes, give date of approval \_\_\_\_\_
- 16. Have you submitted a Site Plan with this request? available on Oct. 23 ~~at hearing~~
- 17. Have you submitted a list of adjoining property owners with this request? yes
- 18. Applicant's Signature: William Keith & Peggy Browning
- 19. Property Owner's Signature: Wm. Keith & Peggy Browning

*Handwritten signatures and initials at the bottom of the page.*

SECTION B

(To be completed by Boone County Planning Commission Staff)

1. Date Received 10-17-89
2. Fee Received \$ 139.00
3. Is application complete?  <sup>Per 10-20-89</sup> Yes  No
4. Staff Reviewer J. GREGORY TOLLEY
5. Scheduled Board Action Date NOV. 2, 1989
6. Board Action:  
 Approval  
 Approved With Conditions (See #7)  
 Disapproved (See #8)
7. Conditions: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
8. Reasons For Disapproval: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

- COPY OF DEED  
- SITE PLAN

BOONE COUNTY  
BOARD OF ADJUSTMENT

November 8, 1989 - 6:30 P.M.

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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

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

Approval of the Minutes:

Chairman Whitton noted that each member had received a copy of the Minutes of the Boone County Board of Adjustment Meeting of October 11, 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. Ryan seconded the motion and it carried unanimously.

AGENDA ITEMS:

- 1a. The request of Wanda Cole (applicant) for an appeal of the Zoning Administrator's decision regarding the continued use of an illegal mobile home. The subject property, located on Stephenson Mill Road, is zoned Agricultural Estates (A-2) and is owned by Mrs. Willie Clarkston. (The applicant and Zoning Administrator have waived the seven-day time requirement for this notification. The local newspapers have been notified of this unadvertised appeal. Also, a Staff Report will be presented at the meeting, but was not included in the packet.)

Staff Member, Greg Tulley, presented the Staff Report which included a slide presentation (see Staff Report). He noted that this site is visible from I-71.

Mr. Gerald Newton, Zoning Administrator, advised that a Zoning Permit was issued to Mrs. Clarkston last June to replace one mobile home with another, a copy of which was included with the Staff Report. He stated that the two mobile homes have been joined with facing walls opened to provide more living space. Mrs. Cole resides in the units and has health problems. Mr. Newton stated that there are at least three mobile homes on the property, which is zoned A-2. He stated that putting on a roof does not change the mobile homes into a house and they must be considered as two mobile home units. He added that it is somewhat of an emergency to construct the roof due to leakage.

Mrs. Cole stated that the original mobile home was removed and her mobile home was combined with another one.

Mr. Newton stated that the issue is whether or not it is appropriate to continue this use.

Mrs. Cole stated that her parents have owned this land for 37 years and there has been a mobile home on the site for 31 years. Her father purchased all of the land from the creek to the top of the hill and they have had problems with poachers and hay being stolen. Mrs. Cole stated that she will not be able to walk again for six months to a year. She bought a 10' x 50' mobile home. The mobile home that was removed was 14' x 80' with an add-on room. There is not a kitchen or bathroom on one side of the units. She presented drawings of the proposed interior and exterior of the units. It will be a square unit with siding. The shed will be removed and rebuilt to match. She described the existing structures on the property. She has a new cistern and septic tank built to code. In response to a question from Chairman Whitton, she advised that the nearest non-family neighbor is two-tenths of a mile away. Her home will be 980 sq. ft. and the mobile home that was removed was 12,000+ sq. ft. with an add-on room. In regard to the third trailer, she stated that it is her uncle's, but it is not permanent. She added that she will be able to pay for the siding by April.

Mr. Newton stated that the information received by the office was that there were two mobile homes. He noted that the Board may look at the square footage in order to make a decision and place time constraints for the mobile homes to be seen as one unit.

Mr. Ryan stated that when this is complete, it will be an improvement over what was there before.

In response to a question from the Chairman, Mrs. Cole stated that she will be able to have the work done by Easter if she does not have to have more than two surgeries. Mr. Newton stated that this would be reasonable.

Chairman Whitton asked if she could have the work done by June 1 and Mrs. Cole stated that she could.

Chairman Whitton asked if there was anyone else present who wished to speak. There was no response.

Counselor Wilson advised that the Board could find that based on the facts presented, this does not represent a violation of the prior approval, provided that the work is completed by June 1, 1990, and the Board could overturn the Zoning Administrator's decision.

Mr. Ryan moved that the Board overturn the Zoning Administrator's decision on the basis indicated by Counselor Wilson, including the condition that the work be completed by June 1, 1990. Mr. Nevel seconded the motion and it carried unanimously.

- 1b. The request of William Keith and Peggy Browning (applicant) for a Variance to allow a reduction in the side yard building setback in order to construct a garage attached to an existing house. The 0.30-acre site, located on the southwest corner of Briargate Place and Fernwood Place, is zoned Suburban Residential One (SR-1) and is owned by William Keith and Peggy Browning.

Ms. Browning, part-owner of the residence on Fernwood Place, stated that denial of the Variance will create a hardship as the driveway is steep and a hazard in the winter. It is difficult to clean it before leaving for work in the morning or after work before dark. There is a connector box at the base of the driveway and she has narrowly missed it. She stated that they do not have a basement and need extra storage by using one side of the garage. She presented pictures of the site and stated that there would be no blockage of view. She indicated a string-fence in the picture to show the extent of the attachment. Ms. Browning stated that she has spoken with six of the neighbors and they are not opposed.

Chairman Whitton asked if there were any questions or if anyone else wished to speak.

Mr. Nevel questioned what would be done with the existing driveway and Ms. Browning advised that it may be removed at a later date. She added that the proposed garage would be brick to match the house, with the door facing Briargate Drive.

There being no further discussion, Mr. Nevel moved that the Variance be granted. Mr. Ryan seconded the motion and it carried unanimously.

2. The request of Michael McKinney (agent for Arlene A. Jones, owner) for an Appeal of the Zoning Administrator's decision denying permission for a free-standing sign at the recently approved Hardee's development. The 1.029-acre site, located at the southwest corner of KY 18 and Limaburg Road, is zoned Commercial Two with a Planned Development Overlay (C-2/PD) and is owned by Arlene Jones.

Mr. Gerald Newton, Zoning Administrator, presented the Staff Report using a slide presentation (see Staff Report). He stated that Hardee's is part of the Planned Development and allowing them a free-standing sign would not allow advertisement through signage on the remaining buildings.

Mr. McKinney stated that he represents Hardee's Food Systems. He stated that none of the other buildings exist and there is approximately seven acres that has not been platted and has no access road. He stated that the only platted lot for the purpose of this appeal is Parcel A. He stated that signs for other purposes may be addressed at a later date. He stated that when the Drees company got approval for the zone change, there was a misunderstanding that the conditions would also apply to the Jones property that was not even platted. He added that directly across the street is IGA, Florence Deposit Bank, and a car dealership, all having their own free-standing signs. He stated that the one multi-sign serving the Oakbrook Market Place is not readable when driving. He added that there is ambiguity in Section 19.20 of the regulations and due to this ambiguity, he asked that the sign be allowed.

Chairman Whitton noted that there was discussion of a ground-mounted sign. Mr. McKinney stated that the only discussion about this had been at 4 P.M. today with Mr. Newton.

Mr. Nevel questioned the size of the proposed sign and Mr. McKinney advised that it is 8' x 16' and 30 feet tall, which barely clears the top of the building. It is a typical Hardee's sign which is their trademark.

Mr. Newton advised that the area that was rezoned could be allowed two free-standing signs, and one already exists. He stated that in regard to the issue of ambiguity, you could determine that frontages on South Limaburg Road and KY 18 are involved and since there are two roads, there could be two signs. He noted that one sign is in place, leaving one sign for the remainder of the property. If Hardee's is granted a free-standing sign, then future uses would not be entitled to a sign without changing the Concept Development Plan or a Special Sign District. He noted that there is no guarantee that a sign package would be approved by the Planning Commission and the Fiscal Court, and the property owner needs to consider this.

Mr. McKinney stated that Mrs. Jones is party to the appeal and should be permitted to take that risk.

Chairman Whitton emphasized Mr. Newton's comments that there is no guarantee that a sign package would be allowed. Mrs. Jones stated that she understood that this could not be guaranteed.

Chairman Whitton asked if anyone else wished to speak. There was no response.

Mr. Houston moved that permission for the free-standing sign be granted, based on the finding within the regulations that there is frontage on two major thoroughfares, and with the understanding that Mrs. Jones and Mr. McKinney know that another company will have to go through the legal process in regard to the signage. Mr. Nevel seconded the motion.

Chairman Whitton noted that the motion is to overturn the Zoning Administrator's decision. Mr. Houston agreed.

Mr. Archambault stated that he would abstain from voting in regard to this item, but that his vote goes with the majority.

The Chairman asked for a vote on the motion made by Mr. Houston which found Mr. Houston, Mr. Nevel, Mr. Ryan and Chairman Whitton in favor. Mr. Archambault abstained. The motion carried.

3. The request of Raymond Erpenbeck (applicant) for an Appeal of the Zoning Administrator's decision regarding a zoning district boundary line. The subject property is located on the north side of KY 18, east of Limaburg Creek Road, and is currently zoned Commercial Two with a Planned Development Overlay (C-2/PD) and Industrial One (I-1).

Mr. Gerald Newton, Zoning Administrator, stated that the issue is not the use, but a question of the zoning boundary line. Mr. Newton presented the Zoning Administrator's Report which included the use of transparencies to overlay one map and/or drawing on another, (see Zoning Administrator's Report).

Chairman Whitton questioned where the 1,000-foot distance came from, as there is reference to this figure in Mr. Newton's report. Mr. Newton advised that it was presented by the Erpenbecks and is based on the two end points and arcing across the balance of the property at this distance from KY 18. Mr. Newton referred to his October 5, 1989 letter to Mr. Nienaber and the paragraph on Page 2 regarding "variety among land uses and densities in return for imaginative designs". He noted Mr. Nienaber's letter of October 19, 1989, page 2, which states, ". . . we are formally requesting that the proposed C-2 PD Development be permitted by dimension, . . .". He noted that there is some flexibility, but emphasized the words "by dimension" and stated that he cannot agree to this. He stated that they cannot add by dimension another 9.5 acres in Planned Development.

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

Mr. Busald, stated that he represents the applicants by option, which is Erpenbeck Enterprises. He re-presented the wide-lined overlay used by Mr. Newton and stated that whoever drew the zoning line started off at 1,050 feet and ended up at a point of 1,000 feet, with the lowest point in the middle of 870 feet. This creates a difficult parcel from a builder's point of view. Using a drawing, he indicated what was proposed to the Planning Commission and a red area indicating the land that the C-2/PD area would gain from the I-1 area in the rear if the boundaries ran parallel at 1,000 feet from the center line of the road. He noted that Mr. Newton had indicated this to be 9.5 acres. They measured at every 250 feet and the gain would be 5.6 acres. On another drawing, he indicated

what would be lost from the C-2/PD area (indicated in blue), if the line were 900 feet from the center line of the road which would be four acres, not 3.5 acres as indicated by Mr. Newton. He stated that they have analyzed Mr. Newton's report and propose a compromise. He stated that the average ground is 947 feet deep and they would round this off to 950 feet and there would be a decrease in the area (indicated in blue) of 1.4 acres and an increase (indicated in red) of 2.2 acres, with a net increase of one-half acre. He added that it appears that the intent was to create a strip of property that runs generally parallel to the bend in the road. He stated that Section 5.30 of the Regulations indicates that when there is uncertainty, then the boundaries are intended to be parallel to some fixed point. He stated that the line as drawn would result in buildings being at an angle on the property and good building principles indicate that they should be flush with the road, not at an angle. Using 950 feet, the building would set square with the road and another fifty feet back. He stated that if the Board believes there was confusion, then he suggests that they go with the compromise plan.

Chairman Whitton questioned why he believes that the line cannot be accurately located and Mr. Busald stated that what is indicated is an unusual configuration creating a slightly "M" shaped property.

Mr. Newton questioned if there are other property owners involved with the zoning line and Mr. Erpenbeck advised that the entire area under discussion is under option by Erpenbeck Commercial Enterprises.

In response to questions from Mr. Newton, Counselor Wilson advised that an applicant, a property owner, or an option holder can state that uncertainty exists. Based on the criteria and the decision of the Zoning Administrator, the Board has to determine whether uncertainty exists and, if it does, then the Board can address the suggestions of the applicant. The Board must first determine if uncertainty exists.

Mr. Newton stated that he has not made a decision on the proposal presented by Mr. Busald. He stated that the zoning line is not uncertain and he can replicate that line on a variety of maps. In response to questions from Mr. Nevel, Mr. Newton indicated that areas to the east and west on the map and stated that the surrounding properties would not be affected by this line noting that there are Concept Development Plans and fixed boundaries for those sites.

Chairman Whitton questioned what would happen to the zoning in the county if the Board begins to negotiate zoning districts by setbacks.

Mr. Newton stated that wherever he can replicate the zoning lines, there is no uncertainty.

Counselor Wilson stated that this process is not to be used to acquire the same thing as a zone change and is used only when there is uncertainty in regard to a fixed boundary line. The Board is not granting a zone change.

Mr. Nevel questioned how the Planning Commission established the zoning line. Mr. Newton advised that it was established during the update of the Comprehensive Plan in 1986, which included a public hearing. The area was put in the C-2/PD zone to have a transition from the impact of the airport, industrial and commercial areas to the residential areas. This area would be a transition of the uses. They did not feel that KY 18 was a sufficient transition area. They did not specify a set parallel dimension from a fixed object, as is done in many other areas.

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

Mr. Paul Vesper stated that he is one of the general partners that owns this property. He stated that the Board's determination should be made on the zoning ordinance. He agrees with Mr. Newton that there is no uncertainty of the location of the zoning line, and there must first be a determination as to whether or not uncertainty exists. He noted that the Zoning Administrator says there is certainty, but he is wrong in his interpretation of where the zoning line lays. The presentation of the Erpenbeck's is consistent with their interpretation. He stated that when you look through your own eyes, there is no uncertainty, and that he and Mr. Newton can both be certain of where the line is. The resolution of where the line is, is in Section 5.2.. He stated that a line is two points connected by a series of points. He questioned how you would find the points in the middle of the zoning line if you did not reference the end points. He stated that the way the zoning line is drawn adds a third point, creating an angle. He stated that there are six specific points in the ordinance but only the third one applies -- where district boundaries are approximately parallel to center lines of streets or rights-of-way lines or highways. He stated that this is the rational way that lines are drawn. He stated that if you were to take a scale to the map used by Mr. Newton, he would question where you would start and stop in consideration of the thickness of the lines. He stated that the drafter approximated the line. He stated that the intent is to find a boundary line that is rational and the rational zoning line is parallel to the center line. He stated that he does not know if the Erpenbecks will ever own the property and wants the zoning line interpreted in the way that the ordinance requires. He asked that the Erpenbecks not agree to anything other than what the owners feel is correct. He stated that he does not agree with the 950-foot distance and asked that it be found that there is uncertainty and that the line be scaled from the center line of KY 18 at a distance of 1,000 feet, which is essentially the two corner points.

Chairman Whitton asked if Mr. Vesper was the property owner in 1986 when the change was granted and if he took issue with it at that time.

Mr. Vesper stated that he owned the property in 1986 and did not take issue at that time.

Chairman Whitton asked if there was anyone else present who wished to speak. There was no response.

Chairman Whitton stated that this is an important appeal and he believes there are strong arguments on both sides. He noted that he would be concerned in regard to setting a precedent. He stated that he would prefer that this be worked out so that the Board would not have to make a ruling.

Counselor Wilson advised that the Board has sixty days to act and has the right to table the request.

Mr. Busald requested a five-minute recess to which the Chairman agreed.

Following the recess, Mr. Busald stated that the applicants request a deferral. He noted that they are having a public hearing on November 29 and asked if there was a provision for a Special Meeting.

Mr. Newton recommended that the deferral be until the next regularly scheduled meeting on December 13, 1989. Chairman Whitton agreed.

Mr. Houston moved that this request be deferred until the next meeting of the Board on December 13, 1989. Mr. Archambault seconded the motion and it carried unanimously.

BOARD ITEMS:

Mr. Newton introduced Staff Member Greg Tulley who will be the principal plans examiner for the Board due to the resignation of Mr. Miller.

CLOSED SESSION:

At this time, the Board went into Closed Session to discuss pending litigation.

Following Closed Session, Mr. Nevel moved that the meeting be adjourned. Mr. Ryan seconded the motion. The meeting was adjourned by unanimous consent at 8:30 P.M..

APPROVED:

  
George D. Whitton, Chairman

Attest:

  
Jan Hancock, Recording Secretary