

SECTION B

(To be completed by Boone County Planning Commission Staff)

1. Date Received 10-19-89
2. Fee Received \$ 215.00 R# 800551
3. Is application complete? _____ Yes _____ No
4. Staff Reviewer _____
5. Scheduled Board Action Date _____
6. Board Action:
_____ Approval
_____ Approved With Conditions (See #7)
_____ Disapproved (See #8)
7. Conditions: _____

8. Reasons For Disapproval: _____

BCPC:7/11/88

STAFF REPORT

APPLICANT: Michael T. McKinney (agent for Arlene A. Jones, owner)

REQUEST: Appeal of Zoning Administrator's decision regarding free-standing signs

DEVELOPMENT: Hardee's

LOCATION: southwest corner of KY 18 and Limaburg Road

ZONE: Commercial Two with a Planned Development Overlay (C-2/PD)

DATE: November 8, 1989

REMARKS:

The applicant is requesting an Appeal of the Zoning Administrator's decision to deny Hardee's permission for a free-standing sign. The 1.029 acre site, located on the southwest corner of Burlington Pike and Limaburg Road, is zoned Commercial Two with a Planned Development Overlay (C-2/PD), and is owned by Arlene A. Jones.

History

On November 4, 1986 the Boone County Fiscal Court approved a Zoning Map Amendment from the previous zoning of the Jones property (SR-2) to the current zoning of C-2/PD. Throughout the zone change process, including the Planning Commission's Public Hearing, there was no specific language regarding sign restrictions. Also, when this Board approved the applicant's request for a Conditional Use Permit on September 13, 1989, no restrictions on signs were imposed. There was much discussion regarding signs at that meeting (see attached minutes of the previous Board meeting). However, it was decided that only the Zoning Administrator had the authority to review signs at that time. Therefore, signage for the Hardee's development was required, by implication, to follow the applicable sections of the Boone County Zoning Regulations.

Sign Regulations

The section of Article 19 (Signs) of the Boone County Zoning Regulations which applies to this situation reads, in part, as follows:

2. Free-Standing Signs
 - a. Shopping centers, mixed use commercial, and planned developments shall be permitted one on-premises free-standing entrance sign for the purpose of identifying the name of the development and its major access point. Such

developments with frontage and access from two or more major thoroughfares may be allowed one free standing entrance sign at one access point on each such major thoroughfares for a maximum of two free standing signs. No free-standing sign may be permitted for individual establishments or buildings located within, or accessible from, the entrance of a shopping center or mixed use development when such building or establishment, or the lot upon which such establishment is located is planned, designed, or marketed as a part of such development. (This requirement also applies to any out-lots subdivided as part of a larger development and any developments established under Article 15, Planned Development Overlay, of the zoning regulations.) (p. 19-4)

Appeal

Basically, the applicant contends that there is a "patent ambiguity" in this section of Article 19. The section leads off with language which would allow planned developments up to two (2) entrance signs when such developments have frontage on and access to two (2) major thoroughfares. The Oakbrook Marketplace, including the Hardee's site, has frontage on, and access to, Burlington Pike and Limaburg Road. The applicant's arguments for this appeal, as well as his response to the Zoning Administrator's decision, are found in his attached six (6) page "Notice of Appeal".

Response

The Zoning Administrator's decision can also be found in the applicant's six (6) page "Notice of Appeal". (see letter of October 18, 1989 and Sign Permit of April 12, 1988) Basically, Hardee's has been denied their own free-standing sign because their development falls within the restrictions described in the last two (2) sentences of Section 1920, #2. The first two (2) sentences refer to an entire development, whereas the second half of this paragraph deals with individual, free-standing businesses which are a part of a larger development, but whose buildings are not physically attached. In other words, Drees may be entitled to erect a second free-standing sign where Limaburg Road meets Oakbrook Road. This second entrance sign would identify the entrance and would advertise the development and not any individual tenant. Individual establishments are not entitled to their own individual free-standing signs.

The 1.029 acre site will support such an individual establishment. Hardee's will be "located within, or accessible from, the entrance of a shopping center or mixed use development" and the Hardee's lot is located "is planned, designed, or marketed as a part of such development. (This requirement also applies to any out-lots subdivided as part of a larger development and any developments established under Article 15, Planned Development Overlay, of the

zoning regulations.)" This language was used by the Zoning Enforcement Officer in April, 1988 when sign permit SP-B-51/8 was issued to United Signs (agent for Drees) for the Oakbrook Marketplace. A condition was attached to the permit which explained that this main identification sign was the only free-standing sign allowed for the entire commercial development.

Conclusion

The Zoning Administrator respectfully requests that the decision denying permission for the installation of a free-standing sign at the recently approved Hardee's be upheld. The intent of the Article 19 (Signs) of the Boone County Zoning Regulations reads, in part:

(This Article) 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 distracting and obstructions that may contribute to traffic accidents,...and generally enhance community development. (p. 19-1)

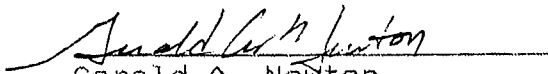
Further, the intent of the Planned Development Overlay District read, in part:


The Planned Development Zone is intended to encourage:
A signage package in harmony with the objectives of the Planned Development. (p.15-2)

The Drees Company, when it applied for their zone change for this development stated the following as a part of their objective of their new planned development:

The character of the proposed commercial development along new Limaburg Road will be influenced by the residential flavor and scale of the existing Oakbrook development. Street trees will be a predominant feature along new Limaburg Road and overall designs, landscaping and signage standards will be enforced to present a unified appearance.

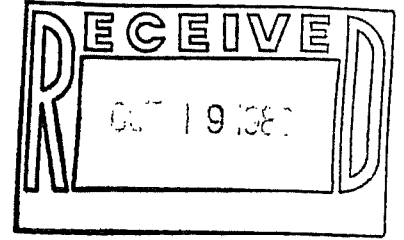
Therefore, so that these intents might be fully realized, and so that the administration of the sign ordinance will be consistent throughout the County, the Zoning Administrator requests that his decision be upheld.


Gerald A. Newton
Zoning Administrator


Thomas W. Breidenstein
Zoning Enforcement Officer

TWB:hs

BOONE COUNTY BOARD OF ADJUSTMENTS
FILE NO. _____



IN RE: THE MATTER OF
HARDEE'S RESTAURANT

* * * * *
NOTICE OF APPEAL
* * * * *

TO THE BOARD OF ADJUSTMENTS:

Hardee's Foodsystems, Inc. respectfully appeals from the decision of the Boone County Zoning Administrator denying the request of Hardee's for a permit to erect a free-standing sign on the site of the proposed Hardee's Restaurant on Parcel "A" of the Jones Development at the southwest side of the intersection of Kentucky Highway 18 and New Limaburg Road.

The grounds for the within appeal are as follows:

Under date of October 6, 1989, request was made by Hardee's for a permit to erect a free-standing sign as part of its development plan for Parcel "A" of the Jones Development. A copy of this request is attached hereto as Exhibit "1" and is incorporated herein by reference.

Under date of October 18, 1989, the Boone County Zoning Administrator rendered a decision wherein the request by Hardee's was denied for the reason that the original sign permit for the development area permitted only one (1) free-standing sign. A copy of said permit is attached hereto as Exhibit "2" and is incorporated

MICHAEL T. MCKINNEY

Attorney at Law

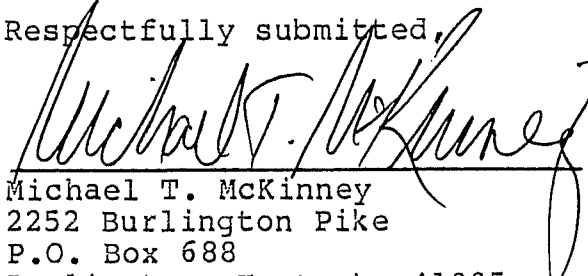
herein by reference. A copy of said decision is attached hereto as Exhibit "3" and is incorporated herein by reference.

Section 1920 of the Boone County Zoning Regulations directs that planned developments shall be permitted one (1) free-standing sign; however, Section 1920 further indicates that two (2) free-standing signs may be allowed if the development fronts and is accessed by two or more major thoroughfares. This provision creates a patent ambiguity in the reading of Section 1920. Parcel "A" of the Jones Development is fronted and accessed by both Kentucky Highway 18 and Limaburg Road, both of which are, and have been, major thoroughfares in Boone County. Additionally, there is no definition contained within the Regulations as to what constitutes a "major" thoroughfare.

Inasmuch as Section 1920 of the Boone County Zoning Regulations contains the foregoing ambiguities it should be interpreted with maximum flexibility.

CONCLUSION: The decision of the Boone County Zoning Administrator should be reversed and the Boone County Board of Adjustments should authorize and direct the issuance of a use permit for a singular free-standing sign for Hardee's Restaurant on Parcel "A" of the Jones Development.

Respectfully submitted,



Michael T. McKinney
2252 Burlington Pike
P.O. Box 688
Burlington, Kentucky 41005
606/586-9955

Counsel for Hardee's

MICHAEL T. MCKINNEY

Attorney at Law

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Notice of Appeal was served by ordinary mail this 19th day of October, 1989, on the following parties of record:

Boone County Board of Adjustments
Boone County Courthouse
Burlington, Kentucky 41005

Mary Margaret Jones
1731 Florence Pike
Burlington, Kentucky 41005

Patrick L. Jones
3486 Idlewild Road
Burlington, Kentucky 41005

Arlene A. Jones
4211 Idlewild Road
Burlington, Kentucky 41005

Paul Sewell and Marie Sewell
1655 Burlington Pike
Burlington, Kentucky 41005

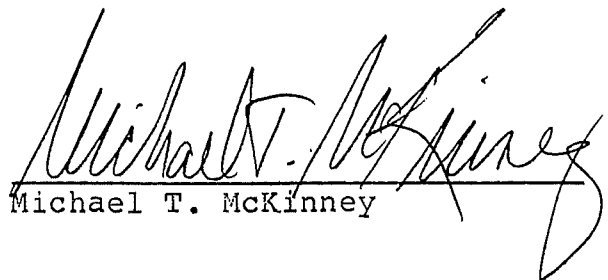
The Drees Company
c/o Ralph Drees
211 Grandview Drive
Ft. Mitchell, Kentucky 41017

Florence Deposit Bank
c/o Harold L. Campbell
7000 Dixie Highway
Florence, Kentucky 41042

Buckingham Woods, Inc.
c/o John Taylor
1215 Hill Top
Park Hills, Kentucky 41011

Herbert Cress and Suzanne Cress
7456 Camp Ernst Road
Burlington, Kentucky 41005

CAT Development Company
P.O. Box 172
Florence, Kentucky 41042


Michael T. McKinney

MICHAEL T. MCKINNEY

Attorney at Law

LAW OFFICES
MICHAEL T. MCKINNEY

Attorney at Law
MICHAEL T. MCKINNEY

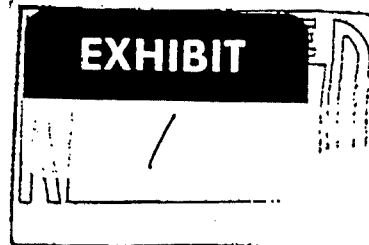
TELEPHONE (606) 586-9955
FAX No. (606) 586-6937

HUNTINGTON BANK OF BOONE COUNTY BRANCH
P.O. BOX 688
BURLINGTON, KENTUCKY 41005-0688

Of Counsel
WILLIAM P. McEVOY

October 6, 1989

Mr. Gerald Newton
Director of Boone County
Planning Commission
Boone County Courthouse
Burlington, Kentucky 41005



[HAND DELIVERED]

IN RE: Hardee's/Jones Project

Dear Mr. Newton:

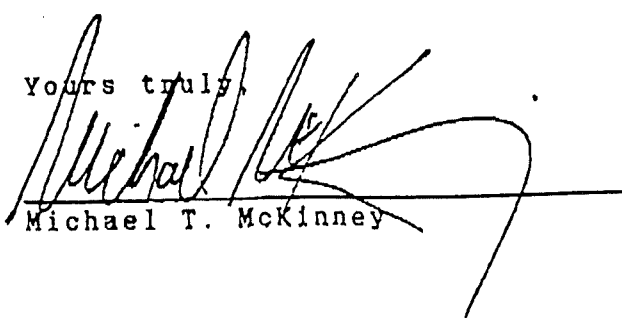
As you will recall the Boone County Board of Adjustments approved the conditional use permit to allow for the construction of a Hardee's restaurant on Parcel A of the Jones Development located adjacent to the Limaburg Road at Kentucky 18. However, the Board of Adjustments left open the issue of signage for the proposed restaurant as it pertains to a free-standing sign. Part of my presentation to the Board of Adjustments included photographs and information regarding a small, compact, free-standing sign which is the familiar trademark for Hardee's restaurants.

Request is hereby made for a determination by you as to the propriety of the construction of such a sign by Hardee's as part of its project. I do not mind telling you that signage of this nature is a must for my client in completion of its project. In review of other similar areas around Boone County and, in particular, Florence there are many examples of well done signs along this same vein.

I trust that you have all of the information necessary to enable you to decide this matter. If not, do not hesitate to contact me for any assistance in that regard.

I shall look forward to your favorable reply.

Yours truly,


Michael T. McKinney

MTM:trt

BOONE COUNTY PLANNING COMMISSION USE PERMIT

Zoning Art. Amend. SIGN Zoning Var. Amendment permit is hereby granted to

United Signs, Inc., 1030 Straight St., Cincinnati, OH 45214

for Oakbrook Marketplace

for property located at south side of KY 18 at Limaburg Rd., Boone County
and zoned C-2/PD, for the purpose of erecting one free-standing
sign with 139 s.f. and 21' 8" tall (452 feet road frontage)

in accordance with article 19, section 1920 of the Boone County

Zoning Order (Ordinance), subject to the following

special conditions:

Contact Boone County Building Inspector (Dan Hinkle, 334-2218) to obtain
building permit.

Site Plan for this development was approved 4-1-87 and indicated that base
of sign would be landscaped.

Article 19, Section 1920, #2(a) of the Boone County Zoning Regulations
states that no other free-standing sign will be permitted for this development.

(includes out-parcels on opposite side of Limaburg Road.

**** NOTE: Prior to the placement of any approved sign, a building permit is required from the appropriate Building Inspector.**

Failure to comply with the above cited Zoning regulations and special conditions, shall render this permit null and void and to no effect.

April 12, 1988
DATE

Thomas W. Bledsoe
ZONING ENFORCEMENT OFFICER

BOONE COUNTY PLANNING COMMISSION

BOONE COUNTY ADMINISTRATION BUILDING

P.O. BOX 697 — 2950 WASHINGTON STREET

BURLINGTON, KENTUCKY 41005

(606) 334-2196

FAX (606) 334-2264

MR. GERALD A. NEWTON
DIRECTOR

MR. D. T. WILSON
ATTORNEY

WILLIAM R. VIOX
CHAIRMAN

MR. FRED BURCH
VICE CHAIRMAN

MRS. CAROL SMITH
SECRETARY-TREASURER

October 18, 1989

EXHIBIT

3

Mr. Michael T. McKinney
Attorney at Law
P.O. Box 688
Burlington, Kentucky 41005-0688

Re: Hardee's / Jones' property

Dear Mike:

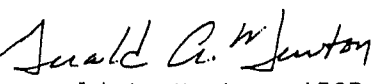
I have reviewed your letter typed October 6, 1989, and received October 12, 1989. I offer the following Zoning Administrator decision.

Boone County Ordinance 920.101 represents the official ordinance which rezoned this property in question from Suburban Residential Two (SR-2) to Commercial Two / Planned Development (C-2/PD). I have thoroughly reviewed the record and can only find the following statement regarding signage: "Street trees will be a predominant feature along new Limaburg Road and overall design, landscaping, and signage standards will be enforced to present a unified appearance." This is in a document submitted by the Drees Company as a part of the rezoning proposal. As you can see, this wording does not constitute a Special Sign District for the area, therefore, the zoning regulations apply.

Section 1920 of the Boone County Zoning Regulations states that planned developments shall be permitted one free-standing sign. A copy of this section has been included for your review. Two free-standing signs may be allowed if the development fronts and is accessed by two or more major thoroughfares. On April 12, 1988, a sign permit number SP-B-51/88 was issued (attached). The permit stated that no other free-standing signs would be permitted with the development. Because the Boone County Zoning Regulations have a provision for two, yet the issued permit limits the site to one, I will back my Enforcement Officer's 1988 position, this position being that only the one free-standing sign approved on April 12, 1988 is allowed for this development.

As I believe there is some ambiguity in Section 1920 and this being a Zoning Administrator decision, it may be appealed to the Boone County Board of Adjustments.

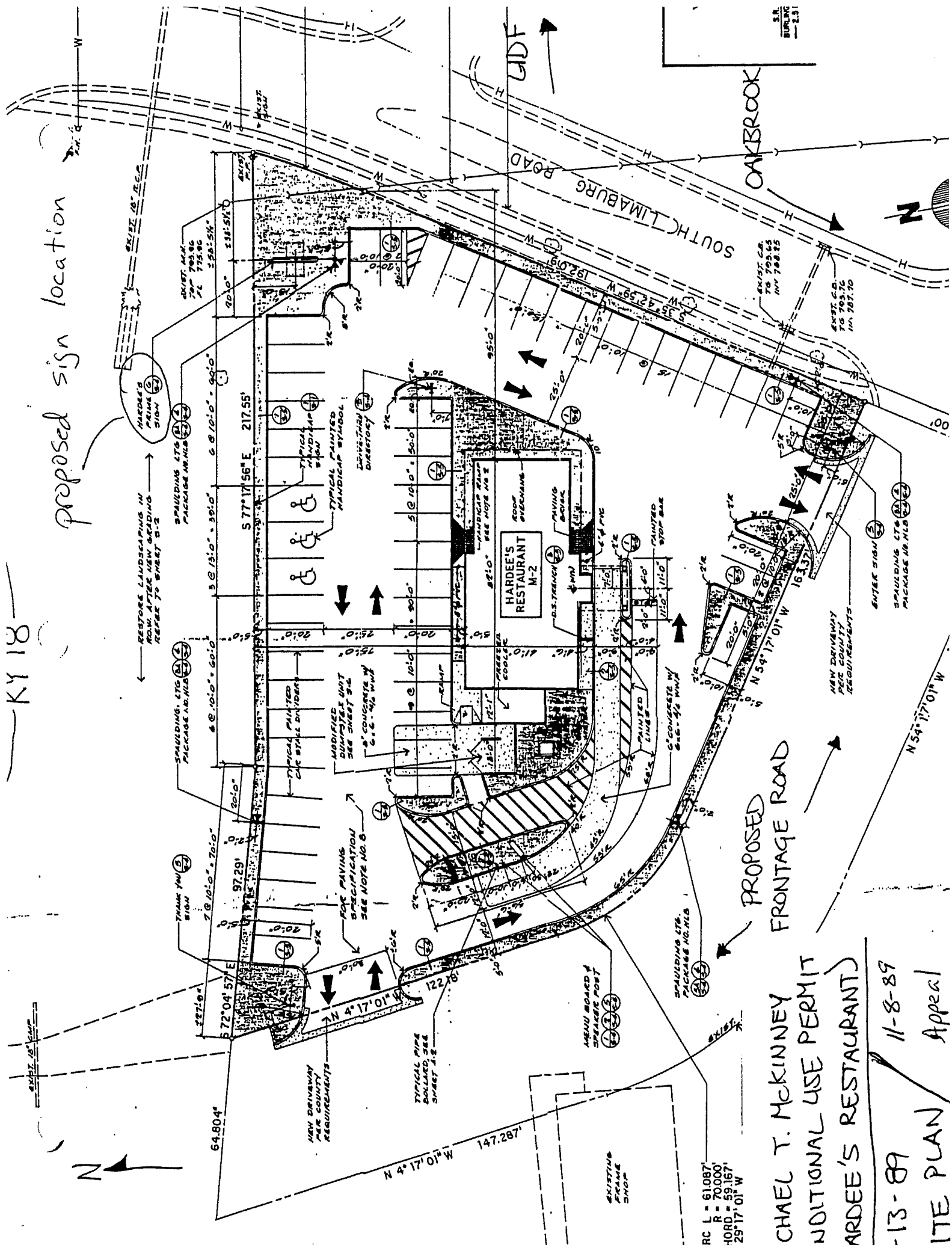
Sincerely,


Gerald A. Newton, AICP
Zoning Administrator

GAN:jdh

KY 18

proposed sign location



RESTORE LANDSCAPING IN ROW AFTER NEW GRADING REFER TO SHEET 5-2

SPALDING, CTG PACKAGE NO. HLB

THANK YOU SIGN

NEW DRIVEWAY PER COUNTY REQUIREMENTS

TYPICAL PIPE BOLLOADED SEE SHEET 4-2

FOR PAVING SPECIFICATION SEE NOTE NO. 8

MODIFIED DUMPSTER UNIT SEE SHEET 3-2

5" CONCRETE W/ 6" C. 1/2" W/ 1"

NEW DRIVEWAY PER COUNTY REQUIREMENTS

TYPICAL PAINTED CONCRETE DRIVEWAY

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TYPICAL PAINTED CONCRETE DRIVEWAY

PROPOSED FRONTAGE ROAD

MICHAEL T. MCKINNEY
CONDITIONAL USE PERMIT
HARDEE'S RESTAURANT

11-13-89
11-8-89
SITE PLAN / Appeal

ARC L = 61.087'
R = 70.000'
CHORD = 59.167'
N 29° 17' 01" W

SPALDING, CTG. PACKAGE NO. HLB

NEW DRIVEWAY PER COUNTY REQUIREMENTS

ENTER SIGN

SPALDING, CTG. PACKAGE NO. HLB

RESTORE LANDSCAPING IN ROW AFTER NEW GRADING REFER TO SHEET 5-2

THANK YOU SIGN

SPALDING, CTG. PACKAGE NO. HLB

NEW DRIVEWAY PER COUNTY REQUIREMENTS

TYPICAL PIPE BOLLOADED SEE SHEET 4-2

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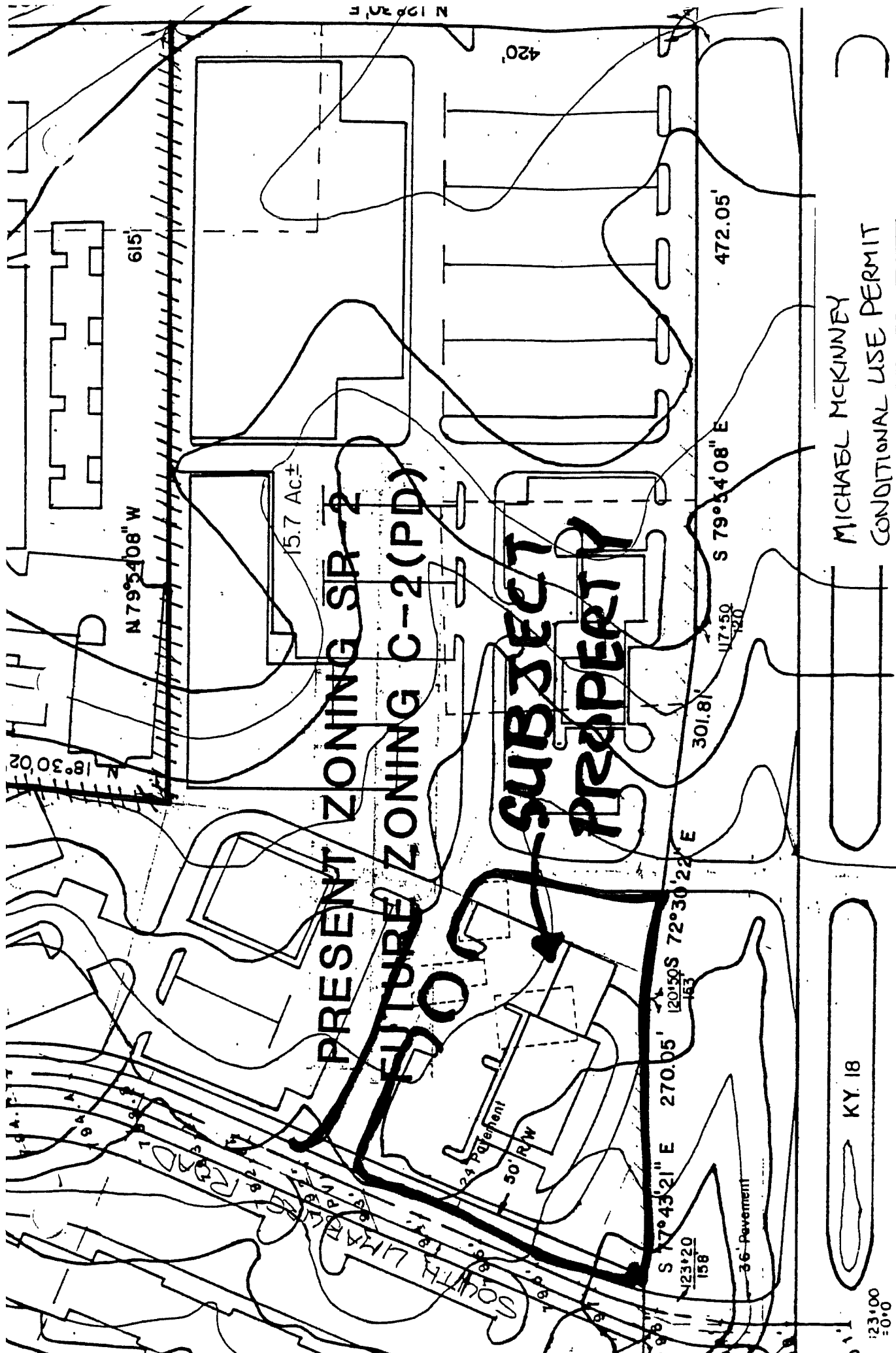
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TYPICAL PAINTED CONCRETE DRIVEWAY



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

SUBJECT PROPERTY

N 79° 54' 08" W

615'

15.7 Ac±

420'

472.05'

S 79° 54' 08" E

301.8'

S 17° 43' 21" E 270.05'

(20150S 72° 30' 22" E

158

36' Pavement

123120

117.50

1270

MICHAEL MCKINNEY

CONDITIONAL USE PERMIT

9-13-89 / 11-8-89 Appeal

APPROVED CONCEPT DEVELOPMENT PLAN

.810

KY 18

23.00

±0.00

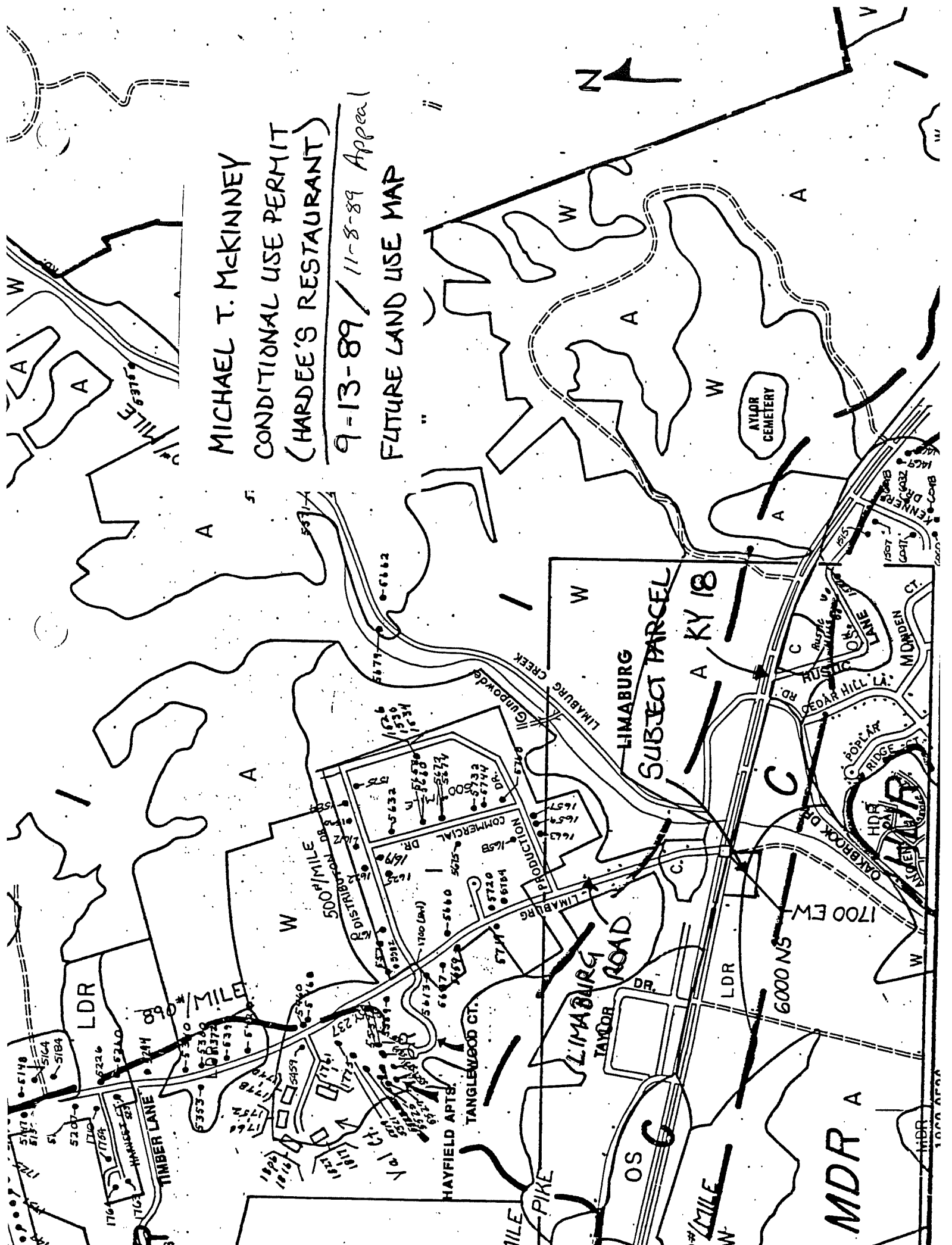
Limaburg Road

Cox, Taylor & Taylor

PLAN



MICHAEL T. MCKINNEY
 CONDITIONAL USE PERMIT
 (HARDEE'S RESTAURANT)
 9-13-89 / 11-8-89 Appeal
 FUTURE LAND USE MAP



BOONE COUNTY
BOARD OF ADJUSTMENT

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

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