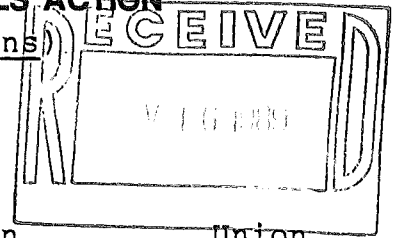


APPLICATION FORM

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
- 3. _____ Change in Non-Conforming Use
- 3. Applicant's Name Barbara S. Wells, Toebben Construction Co.
Phone Number 331-1560
Applicant's Address 2536 Hazelwood Drive
Crescent Springs, KY 41017
City State Zip
- 4. Description of Request: Requesting a dimensional, front yard,
variance on an I-2 Zone from 100'-0" to 50'-0"
- 5. Name of Development TOEBBEN INDUSTRIAL PARK
- 6. Location of Development Mt. Zion Road
- 7. Acreage Under Review 40.5 Acres
- 8. Lot Number and Name of Subdivision (if part of a subdivision)
Lot numbered 1 - 12
- 9. Owner of Property MATTH TOEBBEN, TOEBBEN BUILDERS & DEVELOPERS
Phone Number 331-1560
- 10. Address of Property Owner 2536 Hazelwood Drive
Crescent Springs, KY 41017
City State Zip
- 11. Proposed Use(s) On Site Industrial and Manufacturing Facilities for
various companies
- 12. Total Square Footage of Existing and/or Proposed Buildings
NO EXISTING BUILDINGS
- 13. Current Zoning on Property I-2
- 14. Deed Book 72 Page No. 634 Group No. 2058
- 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: Barbara S. Wells
- 19. Property Owner's Signature: Matth Toebben

SECTION B

(To be completed by Boone County Planning Commission Staff)

1. Date Received 11-16-89
2. Fee Received \$193.00 (800683)
3. Is application complete? Yes Yes _____ No _____
4. Staff Reviewer [Signature]
5. Scheduled Board Action Date [Signature]
6. Board Action:
 Approval
 Approved With Conditions (See #7)
 Disapproved (See #8)
7. Conditions: _____

8. Reasons For Disapproval: _____

BCPC:7/11/88

STAFF REPORT

#1

DEVELOPMENT: Toeppen Industrial Park
APPLICANT: Toeppen Construction
LOCATION: Toeppen Drive, off Mt. Zion, Boone County
ZONING: Industrial Two (I-2)
DATE: December 13, 1989

REMARKS:

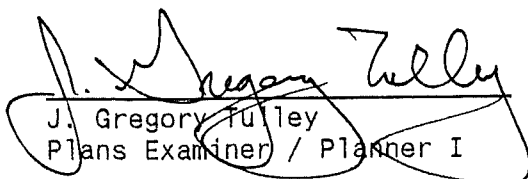
The applicant is seeking a Variance to allow a reduction in the front yard building setback for lots 1 through 12 in the Toeppen Industrial Park. The 40.5 acre site is located off east Mt. Zion Road in Boone County. The property is zoned Industrial Two (I-2), and is owned by Matt Toeppen, Toeppen Builders and Developers. The property is bordered, to the south by additional land owned by Toeppen, to the north by single family residences, to the west by the southern railroad, and to the east by residences and a pay lake.

The applicant is requesting a Variance to reduce the front yard setback from the required 100' feet to 50' feet. The applicant feels that this variance is needed due to the land configuration and natural restrictions. (see attached letter)

The Board must make certain considerations in determining the findings necessary for granting Variances in Boone County. These are addressed below.

1. The requested Variance must arise from special circumstances that do not generally apply to the general vicinity or same zone. Due to the location of the access road the lot's front to rear dimension is reduced. This request arises from the applicants desire to provide a larger buildable area.
2. Strict application of the zoning regulations would require the applicant to use the 100' foot front yard setback.
3. It can be argued that the above mentioned circumstance is the result of actions of the applicant since the access road could have been located along a property line or the structures could go as high as 100' feet requiring a smaller building foot print.
4. If granted, Staff does not feel that the public health, safety, or general welfare will be adversely affected or the essential character of the general vicinity will be altered.

Respectfully submitted,


J. Gregory Fulley
Plans Examiner / Planner I

JGT:kat

TOEBBEN

CONSTRUCTION

November 20, 1989

Mr. George Whitton, Chairman
Boone County Board of Adjustments
Boone County Administration Building
P.O. Box 697 - 2950 Washington Street
Burlington, Kentucky 41005

RE: Variance on The Toebben Industrial Park

Dear Mr. Whitton:

We are making application for a dimensional variance for Phase one, Toebben Industrial Park off of Mt. Zion Road in Boone County, Kentucky.

The Phase One Improvement Plan for this project has been preliminary approved by the Boone County Planning Commission. We are requesting a dimensional variance for this phase only affecting lots 1 through lot 12.

The property is zoned I-2. The Boone County Zoning Regulations of August, 1986, require a 100'-0" front set-back. We would like to reduce the front set-back requirement to 50'-0".

The physical boundaries of this property are such that on the west property line is the Southern Railroad tracks, and on the east side of the property is land that is not part of this development and belongs to another owner. Due to the lack of width of this entrance land in phase one, the lots vary in depth from 273'-0" at the beginning of Toebben Drive to 410'-0" at lots 11 and 12. where the property starts to get wider.

Therefore, we are asking for a dimensional front set-back variance based on land configuration and natural restrictions of Phase One of the Toebben Industrial Park.

Sincerely,
TOEBBEN CONSTRUCTION COMPANY, INC.

Barbara S. Wells
Architect

mjg

2536 Hazelwood Drive
Crescent Springs, KY 41017
(606) 331-1560

BOONE COUNTY
BOARD OF ADJUSTMENT

December 13, 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 November 8, 1989 and asked if there were any comments or corrections.

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

AGENDA ITEMS:

2. The request of Doug and Brenda Jackson & Darlene and Ray Higgins (owners) for a Conditional Use Permit to allow the operation of a video store and ceramic shop. The 0.09-acre site, located on the south side of KY 14, is zoned Suburban Residential One with a Small Community Overlay (SR-1/SC).

Staff member, Greg Tulley, presented the Staff Report which included a slide presentation (see Staff Report).

Chairman Whitton asked if there was anyone present in behalf of the request.

Darlene Higgins stated that they met with the pastor and he said they could use the church parking lot. She added that there is one small sign hanging outside and one sign inside of the window.

Chairman Whitton then asked if there was anyone present in opposition to the request. There was no response.

There being no discussion, Mr. Ryan moved that the Conditional Use Permit be granted. Mr. Houston seconded the motion.

Mr. Ryan advised that it would be a good idea to get the parking agreement in writing. Chairman Whitton requested that a copy of the agreement be provided for the Board if it is obtained.

There being no further comments, the Chairman asked for a vote on the motion and it carried unanimously.

1. The request of Matth Toebben (owner) Toebben Builders and Developers for a Variance to allow a reduction in the front yard building setback for lots 1 through 12 in the Toebben Industrial Park. The 40.5-acre site is located off east Mt. Zion Road in Boone County, Kentucky. The property is zoned Industrial Two (I-2). The property is bordered to the south by additional land owned by Toebben, to the north by single-family residences, to the west by the southern railroad, and to the east by residences and a pay lake.

Staff member, Greg Tulley, presented the Staff Report which included a slide presentation (see Staff Report).

Barbara Wells of Toebben Construction presented and reviewed an enlarged Site Plan noting the location of Toebben Drive. If the buildings were set back 100 feet, and with the rear set back requirements, the building would have to be very narrow and would not function properly.

Chairman Whitton noted that the lots are 210' to 220' deep and the setbacks would allow for a 90' industrial building. He commented that the requested Variance is only for the front lots. Ms. Wells agreed.

Ms. Wells stated that the property gets wider as it goes back so they only need the Variance for the first twelve lots. Ms. Wells reviewed the drawing for residents of Mt. Zion Road who were present.

Mr. Buster Sigmund, a property owner to the east of the site, questioned what would come out of the headwall. He stated that he has 110 acres of property and a fishing lake.

Mr. Matth Toebben stated that they have built a large retention pond which should solve some of the problem. It will be surface water only coming through the pipe.

Mr. Toebben added that all of the houses, including the trailer park, have now been picked up by the sewer. The water will be more pure because of this.

Chairman Whitton noted that Mr. Sigmund is concerned about contaminants coming out of the headwall and Mr. Toebben has advised that there will be surface water only.

Mr. Sigmund questioned further buildings on the site.

Counselor Wilson referred Mr. Sigmund to the list of Principally Permitted Uses in the zone and advised that these uses are already approved, but the Conditional Uses would have to come back before the Board.

A gentleman in the audience questioned what protection Mr. Sigmund would have if his fish start dying. He noted that twelve people would be draining into the area and he questioned who would be responsible.

Counselor Wilson advised that they should contact the State Division of Water Quality immediately. He noted that there would be a question of proving the source of the contaminant.

Chairman Whitton advised that the property is zoned Industrial and the Board is addressing the question of the setbacks only. He suggested that Mr. Sigmund talk directly with Mr. Toebben about items of concern.

Counselor Wilson suggested that Mr. Sigmund contact the Staff Office in regard to the Site Plans so that he can review them as they are submitted.

Mr. Joseph Flick, a resident of Mt. Zion Road directly across from the development, questioned the side yard setbacks.

Mr. Tulley advised that they would continue to be 50 feet.

Mr. Flick submitted pictures of the trees remaining on the lots directly across from this property. The trees will not block his view of the buildings and questioned if anything could be done. He would like a berm built.

Mr. Toebben advised that a rock wall be installed that is seven to eight feet high and about 60 feet long on lot #2. The people buying the other lots will landscape them. They left the trees for a buffer zone. He noted that the building will have a 100-foot setback on Mt. Zion Road. He added that in consideration of the topography, he does not think they will build on the upper part of the lot and the buffer will be substantial.

Mr. Flick stated that he would like a buffer similar to the one for Mr. Sigmund's property.

Mr. Mark Powell, a property owner directly to the east, adjacent to lots #6 and #8, stated that he understood that there was to be a buffer strip along there. His property was sold to him as residential and he has only been there a year.

Mr. Toebben advised that the areas they are concerned about are already industrial zoning. The landscaping will be included in the building packages when they sell them.

Chairman Whitton noted that the property is already zoned industrial. The issue before the Board is the setbacks.

Mr. Houston moved that the Variance be granted. Mr. Nevel seconded the motion and it carried unanimously.

3. The request of Alice Jean Rowland (owner) for a Conditional Use Permit to allow the construction of a 900-square foot addition. The 3.8-acre site, located on the north side of Burlington Pike next to Hayes Taxidermy, is zoned Suburban Residential One with a Small Community Overlay (SR-1/SC).

Mr. Gerald Newton, Director, presented the Staff Report which included a slide presentation (see Staff Report).

Chairman Whitton asked if there were any comments from the applicant.

Ms. Rowland stated that they want to extend the building to make it more convenient to get the tractor trailers in out of the weather. She stated that she did not have a problem with the screening and did not object to the trees.

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

There being no further discussion, Mr. Nevel moved that the Conditional Use Permit be granted with the condition of the landscape buffer along the front of the property as recommended in the Staff Report. Mr. Archambault seconded the motion and it carried unanimously.

4. The request of Ronald and Kara Widener (owners) for a Conditional Use Permit to allow the conversion of a florist/gift shop into a law office. The 0.41-acre site, located on the northeast corner of KY 18 and Bullittsville Road (Garrard Street) is zoned Suburban Residential Two/Small Community (SR-2/SC).

Mr. Gerald Newton, Director, 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 regard to this request.

Mr. McKinney stated that he has a purchase contract with the Widener's pending approval of the Conditional Use Permit. They intend to restore the building to its original condition with improvements that will add to the Burlington community. There will be less traffic with the law office than there would be with the florist shop.

There being no further discussion, Mr. Archambault moved that the Conditional Use Permit be granted. Mr. Houston seconded the motion and it carried unanimously.

5. The request of Ray 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). This item has had no further discussion since the November Board meeting.

Chairman Whitton noted that this item was tabled last month. He stated that the arguments were heard at that time. Chairman Whitton reopened the item and asked if anyone wished to submit any new or significant information or to summarize their position.

Mr. Gerald Newton, Zoning Administrator, stated that they thought they would be able to work this out between meetings. His last conversation with Mr. Ray Erpenbeck was on November 28, 1989 and a possible compromise was discussed at that time. The compromise was the one proposed by Andre Busald at the last meeting -- a line 950 feet from the center of KY 18 to the zoning boundary line. Mr. Newton suggested that such a letter be sent to him by Mr. Erpenbeck, with the property owner's agreement, and he would decide on it. There has been no letter and no further action.

Mr. Newton added that there had been a great deal of discussion about what constitutes a line. It was indicated that the proper term was that a line was intended to be a connection between two points -- in which case it would have been called a line segment or a segment. In zoning, a line is the boundary between two different districts and is not necessarily a straight line between two points. Mr. Newton stated that he believes the line can be replicated as drawn and that it is not uncertain where it is. In the event the Board does not agree with this, he cannot agree with the 1,000 feet that was proposed. The 950 feet seems fair as long as only one other property owner is involved. He noted that the applicants have indicated that there are no other property owners involved.

Mr. Nienaber stated that he is the attorney for the Erpenbecks, the option holders on the property. He stated that they feel the 950 foot compromise is reasonable and they would agree to it. He noted that Mr. Vesper was present and stated that Mr. Vesper is not needed as part of any agreement.

Mr. Ray Erpenbeck stated that any time you have to scale a distance to determine it, there is a degree of uncertainty.

Counselor Wilson stated that there is no guarantee that the Erpenbecks will exercise their option to purchase. He stated that it appears to him that the property owner, as represented by Mr. Vesper, is not willing to be bound by a decision of 950 feet.

Chairman Whitton stated that Boone County has an ordinance that says that when the Fiscal Court adopts the recommended boundary line proposed in an Update, that boundary line becomes law -- whether it is appropriately placed or not.

Counselor Wilson agreed and stated that if the location of the line is not appropriate, then the way to make a change is through the zone change procedure.

Chairman Whitton stated that he has great concern about the Board deciding that property lines, which are law, become arbitrary depending on where the intent of that line should be. It is not the responsibility of the Board of Adjustment to determine where the zoning lines should have been placed in the county. If the line is locatable, then it is the line. If Mr. Vesper feels the line should be somewhere else, then he can apply for a zone change.

Mr. Nienaber stated that Section 500 of the Zoning Regulations gives some guidance and sign posts to interpret and locate the lines. If you look at the line in relationship to how lines should be located and interpret it, then they feel the 1,000 feet is proper.

Chairman Whitton stated that where lines should be is irrelevant to where they are. He added that Section 500 provides for those lines which are not locatable.

Counselor Wilson commented that the second word in Section 500 is "where uncertainty exists. . .".

Mr. Vesper stated that this Board has to make a determination under Section 500 as to whether or not uncertainty exists and, if there is uncertainty, what is the correct interpretation. If it were the intent of the Fiscal Court to make the line so locatable, then the Zoning Ordinance could require a metes and bounds description, which is not practical. He stated that the thickness of the line equals 50 feet when put to scale. He stated that the line was meant to approximate the center line of KY 18. He stated that it is not a matter of rezoning, but a matter of interpretation. The Board's first finding must be whether or not there is uncertainty. Mr. Vesper stated that he is one of the property owners and he is their attorney, but he is not authorized to speak for them and give up their rights. He stated that he is not bound by this proceeding because it is not a zone change.

Mr. Newton stated that he does not agree that there is uncertainty. He was willing to consider a letter co-authored by the applicant and the property owner. He had thought there was only one property owner, but now does not know how many there are. He added that the uncertainty statement applies to the Zoning Administrator, and he does not have uncertainty.

Counselor Wilson stated that the decision made by the Zoning Administrator was that the zoning boundary line is not at 1,000 feet.

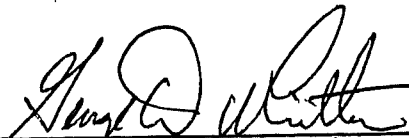
Mr. Ryan moved that the Board uphold the Zoning Administrator's decision as there is nothing else before the Board and there is no uncertainty. Mr. Nevel seconded the motion.

Mr. Houston commented that they had both agreed to change the line and, therefore, he believes there is some uncertainty.

Chairman Whitton asked for a roll call vote on the motion made by Mr. Ryan which found Mr. Archambault, Mr. Nevel, Mr. Ryan, and Chairman Whitton in favor. Mr. Houston was opposed. The motion carried by a vote of 4 to 1.

There being no further business to come before the Board, Mr. Archambault moved that the meeting be adjourned. Mr. Nevel seconded the motion. The meeting was adjourned by unanimous consent at 8:15 P.M..

APPROVED:


George D. Whitton, Chairman

Attest:


Jan Hancock, Recording Secretary