

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 Dough JACKSON and DARLENE HIGGINS
Phone Number 485-7559 485-9950
Applicant's Address 14979 South Fork - P.O. Box 186
Verona KY 41092
City State Zip
- 4. Description of Request: To operate Video RENTAL and CRAFT & CERAMIC SHOPS
- 5. Name of Development N/A
- 6. Location of Development 2025 Madlick Rd
Verona, KY 41092
- 7. Acreage Under Review see ATT COPY A
- 8. Lot Number and Name of Subdivision (if part of a subdivision)
N/A
- 9. Owner of Property BRENDA & DOUG JACKSON & RAY & DARLENE HIGGINS
Phone Number T-485-7559 H-485-9950
- 10. Address of Property Owner 14979 South Fork - P.O. Box 186
Verona KY 41092
City State Zip
- 11. Proposed Use(s) On Site Video RENTAL & CRAFT and CERAMIC SHOP
- 12. Total Square Footage of Existing and/or Proposed Buildings
890.57 sq. ft
- 13. Current Zoning on Property SR-1/5C
- 14. Deed Book 415 Page No. 141 Group No. 2087B
- 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? see #B & C
- 17. Have you submitted a list of adjoining property owners with this request? Yes see #D
- 18. Applicant's Signature: Dough Jackson & Darlene Higgins
- 19. Property Owner's Signature: Brenda Jackson & Ray C Higgins

SECTION B

(To be completed by Boone County Planning Commission Staff)

1. Date Received 11-2-89
2. Fee Received 123.00 - 2 chs. @ 1.50 each (800619 + 800620)
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

#2

DEVELOPMENT: Verona Video Hut and Darlene's Ceramic Shop
APPLICANT: Doug Jackson and Darlene Higgins
LOCATION: 2025 Mudlick-Verona Road
ZONING: Suburban Residential One with a
Small Community Overlay (SR-1/SC)
DATE: December 13, 1989

REMARKS:

The applicants are requesting 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) and is owned by Doug and Brenda Jackson and Darlene and Ray Higgins.

On October 19, 1989, these two businesses were issued a Notice of Violation for operating without a Conditional Use Permit. Prior to that time, they had both legally been doing business in other buildings in Verona. For whatever reasons, they relocated to the old bank building on the west side of Verona.

All adjoining properties are zoned SR-1/SC. Their uses include:

North:	New Bethel Baptist Church
South:	residential, farming
East:	Verona Garage
West:	barber shop

The subject property was originally built as a bank. Prior to purchase by the current owners, the building was used as a dental lab.

The following reviews the general standards which apply to all Conditional Uses in the county:

1. The 1986 Boone County Comprehensive Plan Future Land Use Map indicates the future use of this area to be Commercial. No specific mention of the subject property, or of the center of Verona in general, is made in the Land Use Element of the Plan.
2. The design, operation and maintenance of the two shops will be harmonious and appropriate in appearance with the existing or intended character of the general vicinity and will not change its essential character.
3. The uses will not be hazardous to existing or future neighboring uses.
4. The site is adequately served by essential public facilities and services.
5. The uses will not require an excessive amount of public services at public cost.

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6. A ceramic shop and a video store do not involve uses, activities, or conditions that will be detrimental to any persons, property or the general welfare.
 7. Vehicles approaching the site have been established by previous users.

The Board must also consider criteria which specifically applies in Small Communities:

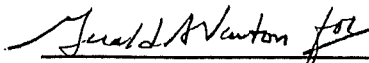
- a. These small shops are an integral part of Verona's function as a small community center and are not of a scale which will detract from the purpose and continued well being of Verona.
- b. The arrangement of the development, since it has been established for many years, is compatible with the arrangement of other uses in Verona which are to be protected.

Staff Concerns

Currently, there is an area at the side of the building in which two parked cars can be accommodated. The Boone County Zoning Regulations requires a minimum number of three off-street parking spaces. This difference is easily handled by the parking lot across the street at the New Bethel Baptist Church. The applicants have informed staff that they do have a parking agreement with the church. They further assured staff that they were not open for business during church meetings (on Wednesdays and Sundays). Staff suggests that this verbal assurance be made a condition, should the permit be approved, so that there is no possibility for parking conflict.

Another of Staff's concerns has to do with signage. Since there is no front yard to the development, the applicant's have turned to a projecting signs for advertising. Staff suggests that the applicant's be limited to one projecting sign which may advertise both tenants of the building.

Respectfully submitted,



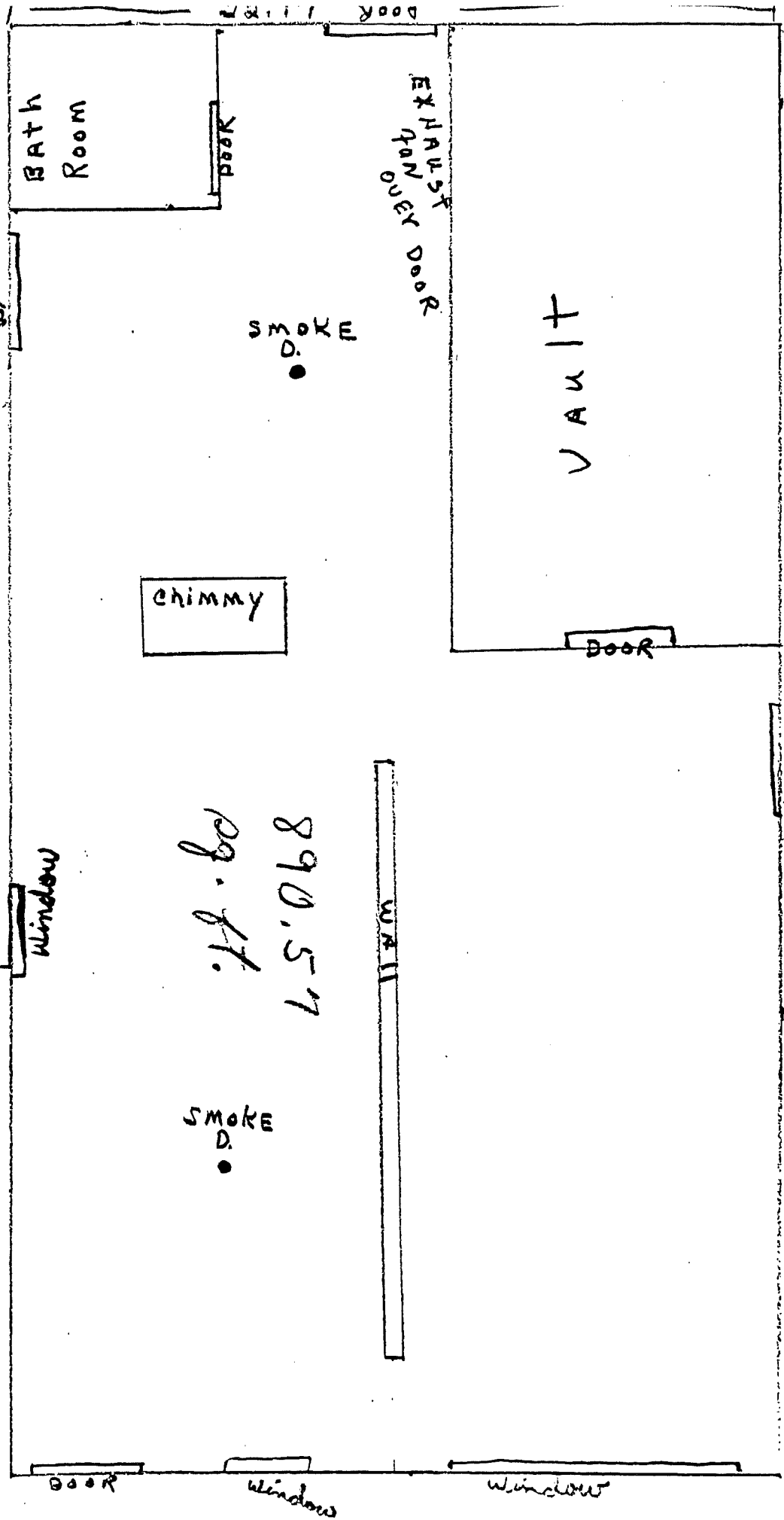
Thomas W. Breidenstein
Zoning Enforcement Officer

TWB:kat

B

parking area

HWV 14



Windows

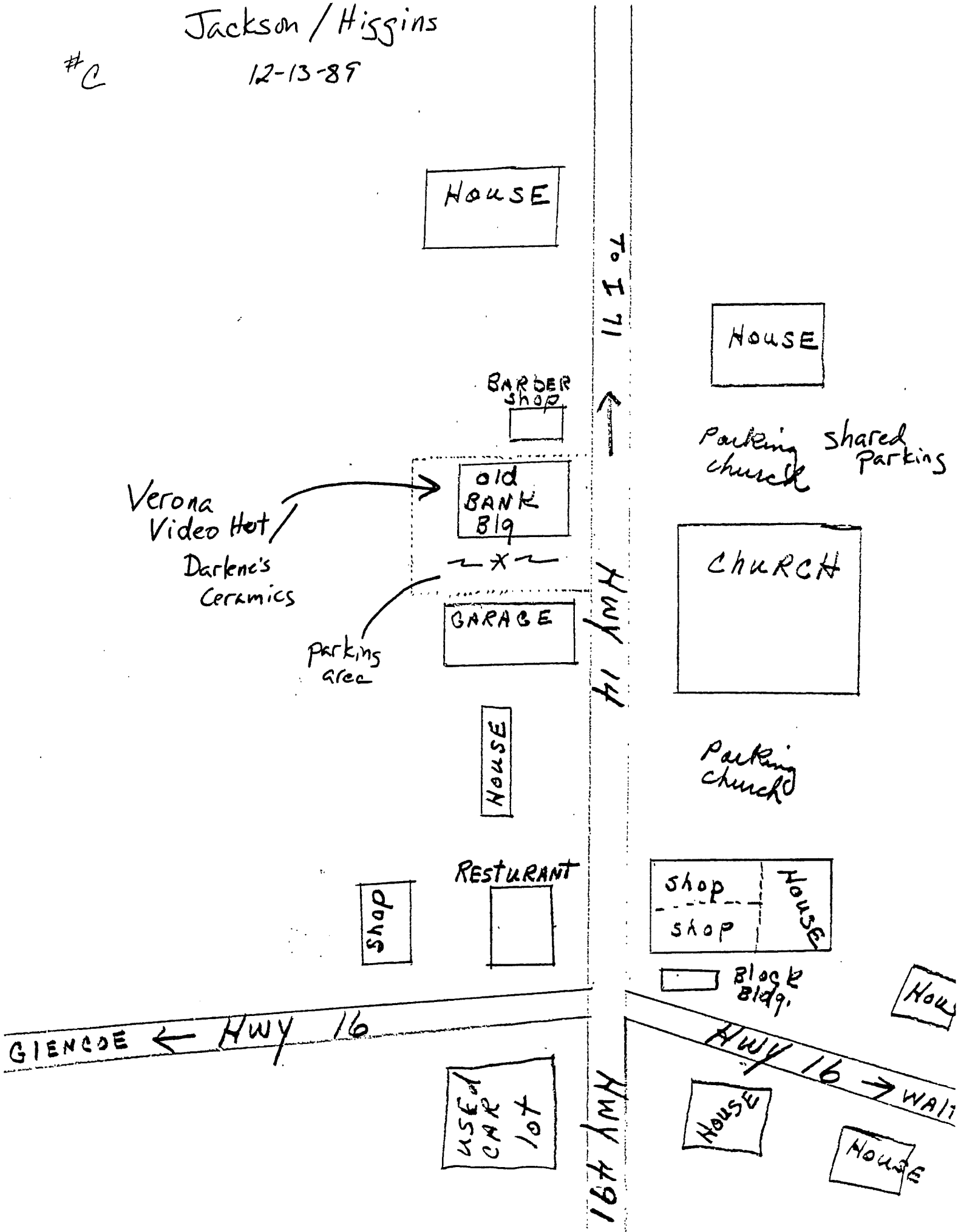
40.17



Jackson / Higgins

12-13-89

#C



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.

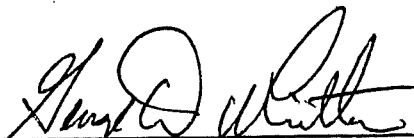
Mr. Ryan moved that the Board uphold the Zoning Administrator's decision as there is nothing else before the Board and there is no uncertainty. Mr. Nevel seconded the motion.

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