

REVIEW NO. _____

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 R BARRY WENHAMAN JR.
Phone Number 596-8431
Applicant's Address 2966 E. GALLATIN ST.
Burlington Ky 41005
City State Zip
4. Description of Request: To allow a landscaping business to
conduct office business at address and to store vehicles
and equipment over night
5. Name of Development WENHAMAN LANDSCAPE CO.
6. Location of Development 5400 N. GARRARD ST.
Burlington Ky 41005
7. Acreage Under Review _____
8. Lot Number and Name of Subdivision (if part of a subdivision)
Lot # 2, 3, 4 and part of 17 of Congleton's subdivision
9. Owner of Property Bill + Peggy Goodridge
Phone Number 689 7605
10. Address of Property Owner 3127 Peel Rd.
Burlington Ky 41005
City State Zip
11. Proposed Use(s) On Site STORE EQUIPMENT + CONDUCT
OFFICE BUSINESS, DRAW + DRAFT LANDSCAPE DESIGNS
12. Total Square Footage of Existing and/or Proposed Buildings
Office - existing 285 sq ft / BARN - existing 825 sq ft
13. Current Zoning on Property SR 2 / SC
14. Deed Book 273 Page No. 312 Group No. 424
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? yes
17. Have you submitted a list of adjoining property owners with
this request? yes
18. Applicant's Signature: R Barry Wenhaman Jr.
19. Property Owner's Signature: Bill Goodridge

SECTION B

(To be completed by Boone County Planning Commission Staff)

1. Date Received 8-24-89
2. Fee Received 8/35
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: DOES NOT FIT CHARACTER OF THE AREA - APPLICANT GIVEN 6 MONTHS TO REMOVE USE

BCPC:7/11/88

STAFF REPORT

#1

DEVELOPMENT: Wehrman Landscaping
APPLICANT: R. Barry Wehrman, Jr.
LOCATION: 5900 N. Garrad Street, Burlington
ZONING: Suburban Residential Two
with a Small Community Overlay (SR-2/SC)
DATE: September 13, 1989

REMARKS:

The applicant is requesting a Conditional Use Permit to allow the operation of a landscaping business. The 1.07 acre site, located at the southeast corner of Garrad and Temperate Streets in Burlington (the Lassing House) is zoned Suburban Residential Two with a Small Community Overlay (SR-2/SC) and is owned by Bill and Peggy Goodridge.

In July, 1989, the Planning Commission received a complaint regarding a landscaping business in a residential area. More specifically, the complaints revolved around noise created by equipment used in the business and by employees early in the morning and late at night. Also, much mention was made of the smells associated with a landscaping business, especially the storage of mulch and the burning of debris.

This activity is indeed a violation of the Boone County Zoning Regulations. However, since the subject property is within a Small Community Overlay, Wehrman Landscaping had the option to apply for a Conditional Use Permit to allow the use. "Garden and landscape sales including florist greenhouses, lawn furniture, and the like" is listed as a Conditional Use in the C-2 zoning districts and is therefore conditionally permitted in SC Overlays.

All surrounding properties are zoned SR-2/SC and are used for residential proposes. The subject property, currently known as the Lassing House, has been surveyed by the Kentucky Heritage Council. However, the house, whose historical name is the Gaines-Winston House, is not on the National Register of Historic Places due to a "loss of architectural integrity" (extensive changes to the exterior).

Following is a review of the general standards which apply to Conditional Uses in all zoning districts:

1. The 1986 Boone County Comprehensive Plan Future Land Use Map indicates the future use of this property and all surrounding properties to be Medium Density Residential (3 to 8 dwelling units per acre). The text of the Plan makes no specific mention of the subject property. The text does, however, make the following general statements:

"Burlington proper will see numerous changes to its center"

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"Historically significant structures will need protection from the increased pressures to develop the county seat"

2. The Board must give careful consideration to the proposed operation and maintenance of the landscaping business. Currently, there is considerable outside storage of materials, including mulch and landscaping items. Also, much equipment is stored outside and in a barn throughout the day. Finally, the business is evidenced by the number of employee's vehicles parked on the property during the day. The Board must consider whether this activity is harmonious and appropriate in appearance with the existing or intended residential character of the general vicinity. The applicant has indicated to Staff that much of the outside activities will be curtailed, but that he intends to continue to utilize the barn for storage and the house for an office.
3. Without the storage of chemicals, Staff can find no reason why the intended use will be hazardous to existing or future neighboring uses.
4. The site is adequately served by essential public facilities.
5. The business will not create additional requirements at public cost for public facilities so as to be a detriment to the economic welfare of the community.
6. Already we have seen that the uses, activities, processes, materials, equipment, and conditions of operation have generated complaints from the neighborhood. Again, these complaints revolve around excessive production of traffic, noise, smoke, fumes, and odors - all items to be considered by the Board when reviewing this application. The applicant should be prepared at the meeting to discuss how the proposed changes in his business operation will reduce or eliminate the nuisances.
7. Vehicular approaches to the property are existing and do not create an interference with traffic on surrounding public thoroughfares.

The Board must also consider criteria which is specific to Conditional Uses in Small Communities:

- a. A landscaping business, in general, is not an integral part of a small community. The Board must also consider if the scale, nature, and character of the business will detract from, or conflict with, the principle purpose and continued well-being of Burlington.
- b. With the revisions discussed by the applicant (ie. no outside storage), Staff believes the arrangement of the use will be compatible with the arrangement or organization of permitted uses to be protected in the district.

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Should the Board grant this Condition Use Permit, Staff recommends the following conditions:

1. That no outside storage of equipment or materials be permitted, and;
2. That no burning of debris and materials be permitted.

Should the Board deny this request, Staff recommends that the applicant be allowed adequate time to relocate his business. Since this move to other property may require a zone change or a Conditional Use Permit, Staff recommends a six (6) month compliance date.

Respectfully submitted,



Thomas W. Breidenstein
Thomas W. Breidenstein,
Zoning Enforcement Officer

TWB:kat

54 Boone County



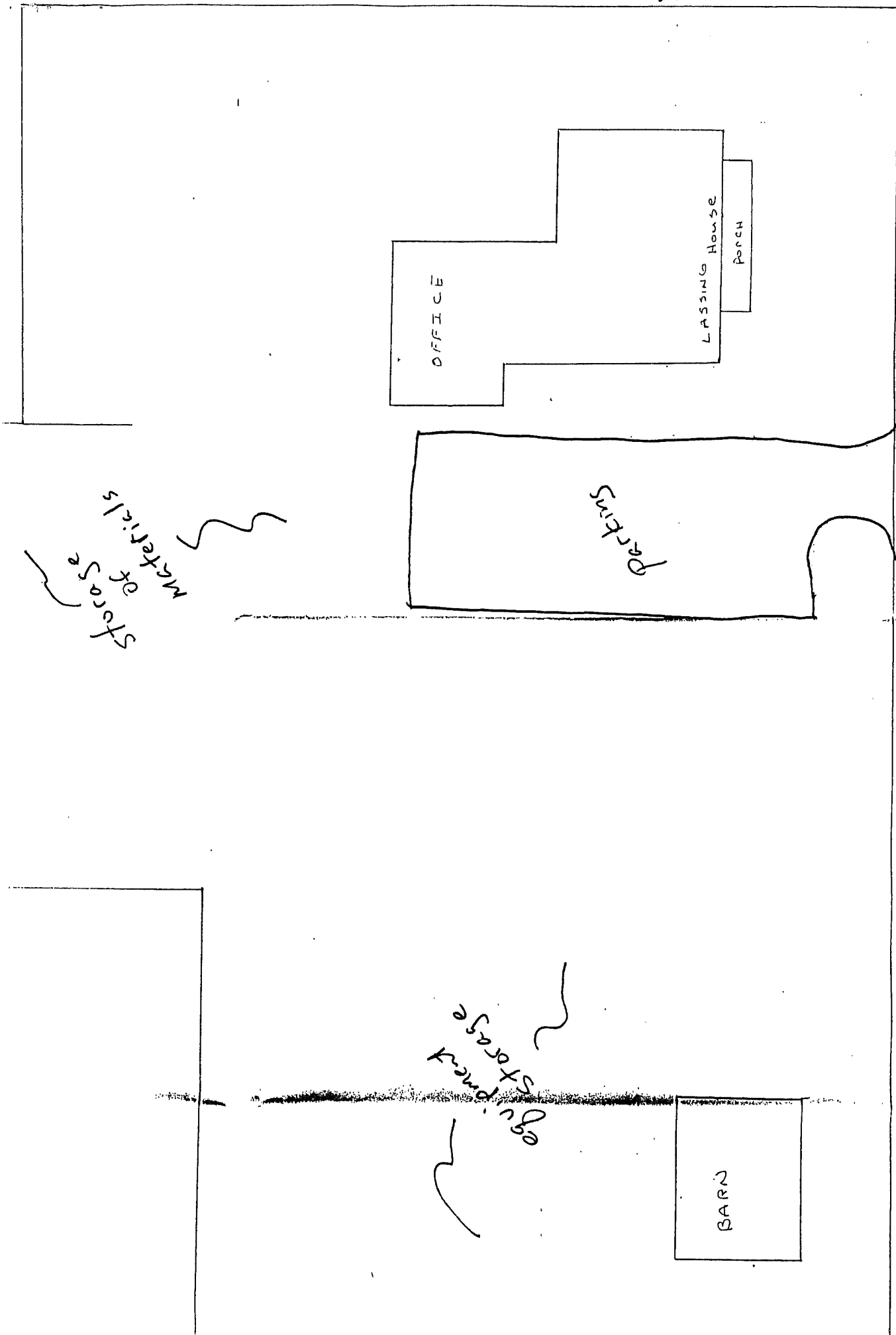
Gaines-Winston house

Be-128

The Gaines-Winston house in the northeast corner of the original Burlington grid consists of a frame Greek Revival I-house appended to a single-pen log house. John Gaines presumably built the log house before the middle nineteenth century. Albert G. Winston, a Burlington lawyer-farmer who served as circuit clerk of the county from 1862 to 1868, added the frame portion of the house and the two-story log outbuilding in the late 1860s or early 1870s.

Duncan-Riddell house
Be-131

Burlington's closest equivalent to the ornamented cottage is the Duncan-Riddell house, built in the middle nineteenth century for Boone County Circuit Clerk J. W. Duncan. The small-scale frame structure is sheathed with both vertical and horizontal weatherboarding, and decorative bargeboards were used on both the main block and the small wing at one end of the house. The heavy scroll brackets under the present porch roof may originally have supported a shallow pent roof across the front of the main block. From about the turn of the century, the house was owned by Judge



~ toward st ~ (to KY 18) →

BOONE COUNTY
BOARD OF ADJUSTMENT

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

BOARD MEMBERS PRESENT:

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

BOARD MEMBERS NOT PRESENT:

Mr. Walt Ryan

LEGAL COUNSEL PRESENT:

Mr. Dale Wilson*

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

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

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

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

AGENDA ITEMS:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

APPROVED:



George D. Whitton, Chairman

Attest:



Jan Hancock, Recording Secretary