

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 McDONALD'S CORPORATION ATTENTION: TIM GREENE
Phone Number (614) 899-3145
Applicant's Address 635 BROOKSEEDGE BOULEVARD
WESTERVILLE, OHIO 43081
City State Zip
- 4. Description of Request: APPEAL DISAPPROVAL OF SIGN PERMIT FOR THE
REQUEST APPROVAL OF MODIFICATION OF PRE-EXISTING NON-CONFORMING SIGN TO
ADD McDONALD'S LOGO SIGN TO EXISTING CHEVRON SIGN SUPERSTRUCTURE.
- 5. Name of Development McDONALD'S
- 6. Location of Development KY 338/EAB DRIVE ADJACENT W. SIDE CHEVRON
- 7. Acreage Under Review N/A
- 8. Lot Number and Name of Subdivision (if part of a subdivision)
N/A - TRACT 8, PLAT OF LANDS OF HEIRS OF LUCY AND WILLIAM CARPENTER
- 9. Owner of Property THOMAS BISHOFF
Phone Number (606) 485-4702
- 10. Address of Property Owner 11200 PADDOCK DRIVE
UNION, KENTUCKY 41091
City State Zip
- 11. Proposed Use(s) On Site McDONALD'S 70-100' SIGN PLATE WITHIN EXISTING
CHEVRON SIGN FRAME
- 12. Total Square Footage of Existing and/or Proposed Buildings
N/A
- 13. Current Zoning on Property SR-1 AT SIGN LOCATION
- 14. Deed Book 187 Page No. 550 Group No. 77
- 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? SITE PLAN 1
- 17. Have you submitted a list of adjoining property owners with this request? YES, ATTACHED.
- 18. Applicant's Signature: [Handwritten Signature]
- 19. Property Owner's Signature: _____

1. FOR McDONALD'S RESTAURANT AT KY 338 AND EAB DRIVE IS SUBMITTED DIRECTLY TO BOONE PLANNING COMMISSION

SECTION B

(To be completed by Boone County Planning Commission Staff)

1. Date Received 3-2-90
2. Fee Received \$750.00 R#4884
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

#4

APPLICANT: McDonald's Corporation

REQUEST: Appeal and Change in Non-Conforming Use

LOCATION: north side of Richwood Road, west of I-75, west of Chevron

ZONING: Commercial Services (C-3)

DATE: April 11, 1990

REMARKS:

The applicant is requesting an Appeal of the Zoning Administrator and Zoning Enforcement Officer's decision denying a permit for an addition to an existing free-standing sign. If the Appeal is unsuccessful, the Applicant is requesting a Change in Non-Conforming Use to allow the addition of a McDonald's sign onto an existing Chevron high-rise sign. The subject property is located on the north side of Richwood Road, west of I-75, is zoned Commercial Services (C-3) and is owned by Thomas Bishoff.

Appeal

On January 22, 1990, the applicant applied for a Sign Permit to allow the addition of a 250 square foot McDonald's sign onto the existing 363 square foot, 136 foot high Chevron sign. This permit was denied for the reasons outlined in the Zoning Enforcement Officer's letter of February 5, 1990 (see attachment).

Basically, the sign addition was not approved because the McDonald's sign would not be located on McDonald's property and would thus be classified as an "off-premise" sign. Also, since the existing Chevron sign itself is not located on Chevron property, it is classified as an "off-premise" sign. However, it is protected as a pre-existing, non-conforming use because it was in existence prior to the adoption of the zoning regulations. The property on which the Chevron sign is located is zoned Suburban Residential One (SR-1) --- a district which does not allow "off-premise" signs.

At this writing, the applicant has not supplied Staff with written arguments in support of their position that the Zoning Administrator and Zoning Enforcement Officer's decision was incorrect and that they were injuriously affected or aggrieved. Therefore, the Zoning Enforcement Officer respectfully requests that this Board uphold the decision so that the public may rely on the consistency of the interpretation and administration of the Sign Article of the Boone County Zoning Regulations.

Change in Non-Conforming Use

If this Board upholds the decision of the Zoning Administrator and the Zoning Enforcement Officer, the applicant has requested a Change in Non-Conforming Use to allow the installation of the sign.

Article 2, Section 284 of the zoning regulations reads, in part:

The Board shall not allow any changed non-conforming use to be increased or enlarged, nor extended to occupy a greater area of land than was occupied by the original non-conforming use. (p. 2-8)

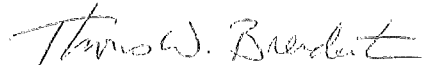
Further, Section 285 reads, in part:

1. No such non-conforming structure may be enlarged or altered in a way which increases its non-conformity, but any structure or portion thereof may be altered to decrease its non-conformity. (p. 2-8)

These sections were written to accomplish the intent of allowing non-conforming uses to continue, but to discourage their survival.

Staff is of the opinion that the applicant proposes an inventive solution to a question often faced by Boards of Adjustment, ie. the combination, and thus partial elimination, of high-rise signs. However, given the facts of this situation, Staff does not believe that this Board has the authority to grant the requested Change. Again, at this writing, the applicant has not supplied Staff with written reasons for the Change in Non-Conforming Use.

Respectfully submitted,



Thomas W. Breidenstein
Zoning Enforcement Officer

TWB:kat

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

MR. ~~WILLIAM~~ R. VIOX
CHAIRMAN

MR. FRED BURCH
VICE CHAIRMAN

MRS. CAROL SMITH
SECRETARY-TREASURER

February 5, 1990

Gerald F. Dusing
c/o Adams, Brooking, Stegner, Wolterman, & Dusing
8100 Burlington Pike
Suite 400
Florence, KY 41042

Dear Mr. Dusing:

This letter is written to inform you that your application for a sign permit for the proposed McDonald's restaurant at the Richwood Road exit has been denied.

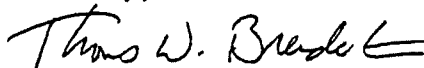
Article 19, Section 1940 of the Boone County Zoning Regulations allows off-premise signs in certain C-3, I-1, and I-2 zoning districts only. The existing Chevron sign is located in a SR-1 district; therefore, the structure is classified as a pre-existing, non-conforming structure. Article 2, Section 284 of the zoning regulations prohibits the enlargement of any pre-existing, non-conforming use.

Your options at this point are three-fold:

1. Appeal this decision to the Boone County Board of Adjustment and Zoning Appeals;
2. Apply for a zoning map amendment for a Special Sign District Overlay, or;
3. Apply to the Boone County Planning Commission for a zone change from SR-1 to either C-3, I-1, or I-2 and for a Conditional Use Permit to allow an off-premise sign and for any required Variances.

If you have any questions on this denial or on the options, do not hesitate to call me at the number above.

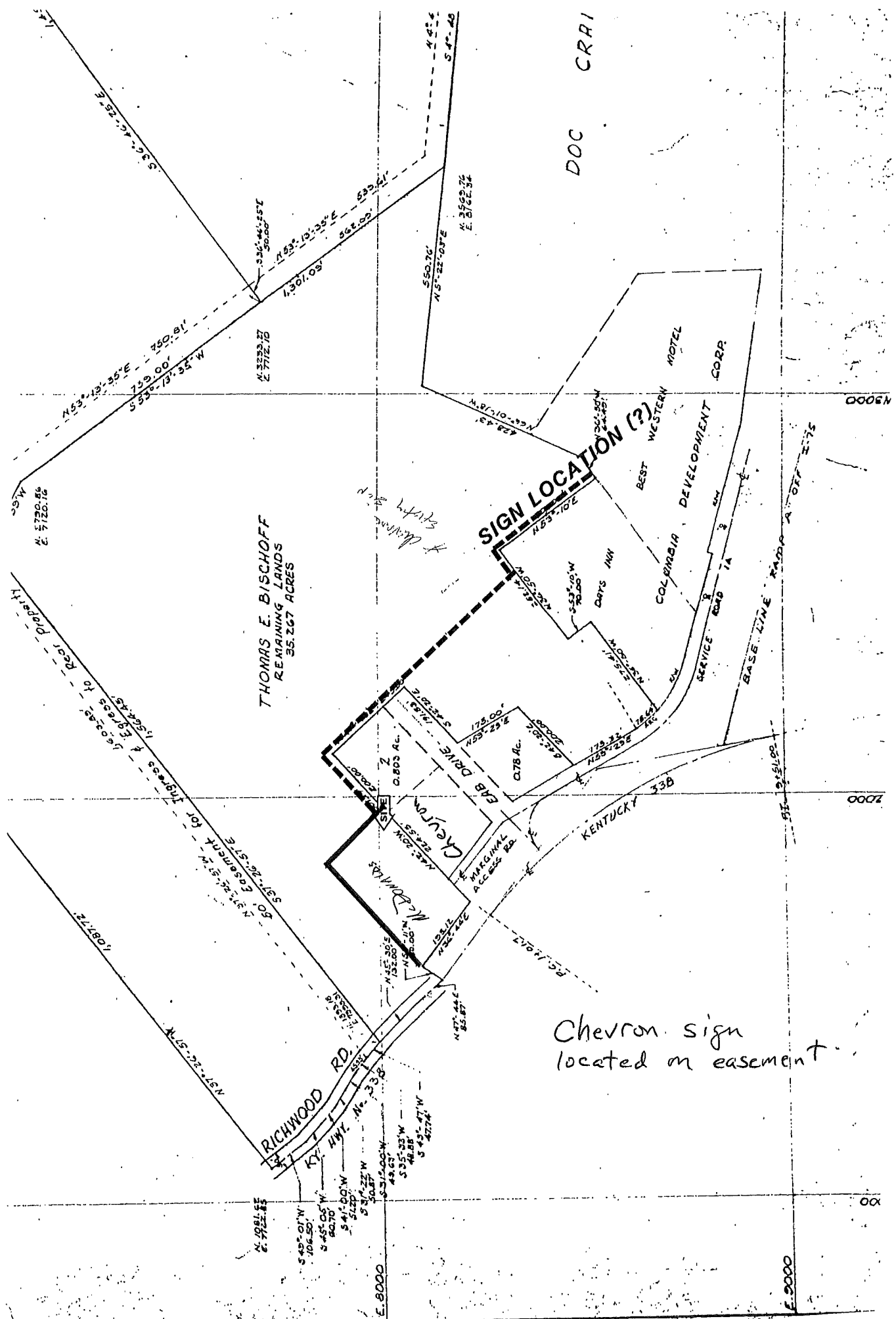
Sincerely,



Thomas W. Breidenstein
Zoning Enforcement Officer

TWB:kat

cc: Gerald A. Newton, Zoning Administrator
Douglas Powell, Transportation Planner



McDonald's 4-11-90

BOONE COUNTY BOARD OF ADJUSTMENT
BUSINESS MEETING

April 11, 1990 - 6:30 P.M.

BOARD MEMBERS PRESENT:

Mr. I. A. Archambault
Mr. Dan Houston
Mr. Walt Ryan
Mr. George Whitton, Chairman

BOARD MEMBERS NOT PRESENT:

Mr. Fred Nevel

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 Board member had received a copy of the Minutes of the Boone County Board of Adjustment Meeting of March 14, 1990 and asked if there were any comments or corrections.

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

AGENDA ITEMS:

1. The request of Duke Associates for a Variance to construct a 128 sq. ft. Real Estate sign for South Park Industrial Park. The 18-acre site is located north of I-275 and east of KY 237. The site is zoned Industrial One (I-1) and is owned by Tom Schleper.

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

Chairman Whitton asked if anyone wished to speak in behalf of the request.

Mr. Mike Meyer of Ray Meyer Sign Company, fabricator of the sign for Duke Associates, stated that he has a copy of the advertising request filed with the Commonwealth of Kentucky on April 2, 1990. They have not yet received a reply. He stated that this is a single-faced sign, 8' x 16', for 128 square feet.

Chairman Whitton asked if there was anyone else present who wished to speak in regard to this request or if there were any questions. There being no response, he asked if there were any questions from the Board.

Chairman Whitton advised that it has been the Board's policy in the past to put a time limit on the sign. He asked if the applicant had considered what the time frame might be.

Mr. Mark Bradley of Duke Associates stated that he would not see the time limit exceeding five years.

Mr. Ryan stated that in the past the Board has used a two-year time limit. He questioned if the size of this sign is different than what has been allowed in the past.

Mr. Tom Breidenstein, Zoning Enforcement Officer, stated that the State of Kentucky regulates the size and does not allow any real estate sign to be larger than 150 square feet, which has historically been the limit imposed by the Board.

Mr. Bradley stated that there will be a sign of 128 sq. ft. for Duke Associates and also a sign for Schleper Development. He stated that they do not want to share a sign as they are two independent groups and do not want to be confused as a joint venture. He stated that they have a disadvantage as their property is further back in the park and not as accessible as the other owner's property. He added that their sign will be on the Schleper property. It has not been determined how close together the signs will be.

Counselor Wilson advised that in the county you can have off-premise signs in certain zones. He noted that this is a temporary sign for marketing purposes.

Mr. Breidenstein stated that the Zoning Administrator determined that this would not be an off-premise sign since the sign would be advertising the entire park and the secondary message is that Duke Associates is developing it. He stated that the sign would be permitted if the Variance is granted. He added that he and Mr. Tulley have no recommendations in regard to the placement of the sign.

Mr. Ryan moved that the Variance be granted, subject to approval by the Department of Transportation, and that there be a two-year time limit. Mr. Houston seconded the motion and it carried unanimously.

2. The request of Greg and Terri Anneken for a Variance in the reduction of lot frontage. The two-acre site is located at 12549 Cleek Lane, Unincorporated Boone County, Kentucky. The site is zoned Agricultural Estates (A-2) and is owned by Hershel Gabbard.

Staff Member, Greg Tulley, 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. Greg Anneken stated that they were not able to acquire the property next to this and are seeking the Variance.

Mr. Gabbard stated that he owns the property. He stated that there is no city water and they will put in a tank.

Chairman Whitton commented that the Variance is for the front yard only.

Mr. Houston moved that the Variance be granted. Mr. Archambault seconded the motion.

Chairman Whitton noted that the applicant will also have to apply to the Health Department.

Mr. Anneken stated that the Health Department had come to the site and advised that he would have to put in topsoil or go with a low-pressure septic system. He will go with the low-pressure system.

Chairman Whitton asked for a vote on the motion made by Mr. Houston and it carried unanimously.

3. The request of Burlington Realty and Development for a Conditional Use Permit to allow the construction of a convenience store with gasoline service and a car wash. The 13.0-acre site, located at the southwest corner of KY 237 and Barbara Drive (across from Elijahs Creek Road) is zoned Commercial Two (C-2) and is owned by the Burlington Realty and Development Company.

Staff Member, Tom Breidenstein, presented the Staff Report which included a slide presentation (see Staff Report). Mr. Doug Powell, Transportation Planner, presented Staff's concerns in regard to the width of the access drives which causes confusion as to where the cars are supposed to be and danger to pedestrians crossing the access drive. He stated that reducing the width of the drives and defining the traffic aisles would make the drives safer. He distributed copies of "Guidelines for Urban Major Street Design", published by ITE. Mr. Powell reviewed the guidelines and stated that the concerns have been discussed with the applicant. He stated that the regulations do not say what the minimum and maximum driveway widths should be, but allude to reviewing the widths. Mr. Powell provided a copy of the Guidelines to the applicant.

Mr. Ray Erpenbeck stated that the reason the two entrances are this wide is that it has been their experience that the trucks delivering gasoline short-cut the entrances and tear up the landscaping and sidewalks. Mr. Erpenbeck reviewed a larger scale drawing with the Board, noting the locations of the fuel tanks and how the tankers would enter and exit the site.

Mr. Robert Kirby, Sr. indicated to the Board where the tankers would enter and exit the site to discharge into the tanks. He stated that possibly one of the entrances could be narrowed. He indicated where the dumpster would be located and stated that the garbage trucks would also use the wider entrance.

Mr. Powell stated that there are a lot of industrial park developments where there are semi's and they are not allowed 50' entrances. He stated that he believes 40-foot wide entrances might be more appropriate.

Staff Member, Brian Fogle, stated that under Condition #2, access to adjoining properties, this concern has been addressed and is no longer an issue.

Following discussion, Chairman Whitton deferred this item until the end of the meeting to allow the applicant to meet with the Staff.

At the conclusion of the meeting, Mr. Robert Kirby, Sr. indicated to the Board the areas they would extend for ten feet and stated that they would reduce the entrances to 40 feet each.

Mr. Houston moved that the request be granted subject to the condition that the center island along Barbara Drive be extended ten feet on either end for the 40-foot wide entrances. Mr. Ryan seconded the motion and it carried unanimously.

4. The request of McDonald's Corporation for an Appeal of the Zoning Administrator's and Zoning Enforcement Officer's decision denying a permit for an addition to an existing free-standing sign. If the Appeal is unsuccessful, the Applicant is requesting a Change in Non-Conforming Use to allow the addition of a McDonald's sign onto an existing Chevron high-rise sign. The subject property is located on the north side of Richwood Road, west of I-75, and is zoned Commercial Services (C-3). The property is owned by Thomas Bishoff.

Staff Member, Tom Briedenstein, presented the Staff Report which included a slide presentation (see Staff Report).

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

Mr. Jerry Dusing, attorney, stated that he wrote the McDonald's position statement that had been distributed (see memorandum from McDonald's Corporation to the Boone County Board of Adjustment, dated April 11, 1990).

Mr. Dusing referred to the pictures of the sign included with the Staff Report and presented pictures of the existing Chevron sign. He stated that the sign is about 100 square feet, which is about one-quarter the size of McDonald's normal sign. It is also about one-third as large as the McDonald's sign on Dream Street for I-75 traffic. Mr. Dusing introduced Mr. Roger Kessler from Kessler Sign Company in Zanesville, Ohio.

Mr. Kessler stated that McDonald's asked him to look at the site in regard to signage along the interstate. He found that they would have to have a 150' sign to be noticed going south on I-75, and about that size going north. Therefore, he looked at alternatives and felt that McDonald's could put their sign underneath the Chevron sign -- it would be smaller, but would work visually. He added that Mr. Bishoff owns all the property so he felt that it would not be an off-premise sign. He stated that preliminary observation indicates that the structure will withstand the new sign. They will get approval from a structural engineer for the additional sign.

Mr. Dusing stated that an on-premise sign would have to be at the rear of the property, significantly closer to Heritage Trails Subdivision, to impact the interstate. He stated that Mr. Kessler did himself out of a sizable contract by this suggestion. He stated that the sign panel within the structure of the Chevron sign fits within the spirit and the letter of the law of pre-existing, non-conforming uses and that is the basis for their application and legal entitlement to the sign. He added that McDonald's contract to locate here has a contingency of having a high-rise sign. If the sign is not approved, McDonald's is not obliged to go on the site. He stated that he takes issue with the Staff Report when it says that the Board does not have the authority in this regard. He stated that Staff's view is that this is an enlargement or a change of pre-existing use. He quoted from McDonald's position statement on Pages 1 and 2 in this regard. He stated that the Agreement of Lease for the Chevron substructure has existed since 1975, prior to the Zoning Ordinance. The property is owned by Mr. Bishoff and leased to Chevron. It is connected to the Chevron site by easement. He stated that an argument could be made that it is not an off-premise sign. He added that this is a change in non-conforming use allowed by the ordinance. He stated that the Board has to decide if the addition of a McDonald's sign panel within the existing dimensions at the same location is an enlargement or change in the area of the existing Chevron substructure. He stated that it is an allowable modification of a pre-existing non-conforming use. Mr. Dusing reviewed the position statement in regard to Section 284 and 285 of the Boone County Zoning Ordinance. He noted that attached to the position statement is an Attorney General opinion of 1983, whose job it is to interpret state statute. He stated that the opinion says that local zoning ordinances cannot be more restrictive than the state statute or they are void. He added that the Boone County regulations took two pages to say what this says in two paragraphs. Mr. Dusing also reviewed the other opinions attached to the position statement. He stated that if you had a pre-existing, non-conforming house, you could put in new windows, add new rooms within, or change the basement -- which is not a change in scope or enlargement. He stated that the proposed sign has less impact on the neighborhood than a free-standing sign on the site, which is allowed, would have.

Mr. Dusing questioned that should Chevron change its name to Standard and want to add another letter to the sign panel -- would that be an enlargement.

Counselor Wilson stated that the statute says you can substitute a pre-existing non-conforming use with an entirely different one, if it is determined that the new use is no more objectionable than what was there before. He stated that it is appropriate for this Board to consider this matter under KRS 100. He added that the Board also looks at whether the change in non-conforming use results in a change in the character of what was there before. In determining if something is more objectionable, the Board must look at the land use impacts and character of the use.

Mr. Dusing added that he put up a two-line petition, which he quoted and a copy of which is attached to the position statement, at the gas station and there are 100 signatures on the petition, 17 coming from residents of the subdivision.

Chairman Whitton asked if there was anyone else present who wished to speak in regard to this request.

Mr. William Lamb, a resident of Heritage Trails, stated that the residents would prefer that the McDonald's sign be with the Chevron sign. However, there should be protection in case a year from now McDonald's wants to build a second sign on the site.

Chairman Whitton asked if there is any proposal for a free-standing sign at the entrance.

Mr. Dusing stated that there would be a standard entrance sign on the site which would be 50 sq. ft. and 18 feet high.

Mrs. Thelma Castellini stated that you are ahead any time you can get two signs on one pole instead of two poles with one sign each. She stated that the neighborhood hopes that care will be taken to position the sign so that it is not visible from Heritage Trails and that the edge that faces Heritage Trails be painted black. She stated that they welcome McDonald's to Richwood.

Jenny Woodner, a resident of Heritage Trails, stated that she prefers the addition to the Chevron sign over another high rise sign and is in agreement with it being painted black. They would also appreciate anything that can be done to reduce the reflection of the existing Chevron sign.

Mr. Sid Goble, a resident of Heritage Trails, questioned if there would be laws concerning the illumination of the signs. He stated that they do not object as much to the signs as they do to the light they give.

Mr. Kessler stated that the signs are illuminated with fluorescent tubes. The McDonald's sign would not be any brighter than the Chevron sign and is turned off at 11 p.m. during the week and midnight on the weekend. He stated that the Chevron sign is on all night.

Mr. Breidenstein stated that there is no standard of brightness for signs, but there is language that says the lights cannot create a nuisance to adjoining streets or the interstate. He stated that he would trust that McDonald's would be responsive to any complaints from the neighbors.

Mr. Kessler stated that the McDonald's sign is turned off at 11 p.m. during the school session and 12 midnight on the weekend and during the summer session.

Audrey Lane, a resident on Apaloosa, stated that there will also be a Wendy's sign and many more signs. She stated that they had not seen the petition. After reviewing the petition, she stated that those who signed would not have the illumination that they have and were at least two miles away.

Mr. Breidenstein noted that Mr. Dusing had stated that if this request is not allowed, then they would be permitted a 150' sign on the McDonald's property. He stated that this would not be an automatic approval and would have to come before this Board for a Variance.

Mr. Dusing stated that there will not be a 40' high on-premise sign. They will have a 50 sq. ft. standard golden arches entrance sign that is 18 feet high. This request is an alternative to the free-standing high-rise sign. He added that in Edgewood the menu board on the drive-thru is considered a sign and, therefore, they will need to be told what a sign is.

Mr. Tim Greene, Real Estate Development, McDonald's, stated that the shared sign is to attract travelers off the highway and the road sign is to identify McDonald's to travelers on KY 338. They have no intention of erecting two high rise signs. The road sign will be 18' high with 50 sq. ft. in the service area.

Mr. Dusing displayed a picture of the type of sign they would have at the entrance.

Mr. Ryan moved that the change or modification to the existing Chevron sign that is a pre-existing non-conforming use be approved to allow the addition of the McDonald's sign, and there is to be no other free-standing sign used to attract traffic from I-75. Mr. Houston seconded the motion.

Chairman Whitton asked if they would agree that the application for the entrance sign will be no bigger than approximately 50 square feet and no more than twenty feet tall.

Mr. Dusing stated that as long as they have the shared use of the Chevron sign, they agree to have no other high-rise sign on the premises. They also agree that the entrance sign will be no bigger than approximately 50 square feet and no more than twenty feet tall provided that it is approved if it otherwise meets the ordinance.

Chairman Whitton stated that as long as the sign meets the standard criteria it will be granted.

Mr. Ryan included the comments made by Chairman Whitton and Mr. Dusing as part of the motion. Mr. Houston seconded the amendment to the motion.

Chairman Whitton asked for a vote on the motion made by Mr. Ryan and it carried unanimously.

There being no further business to come before the Board, Mr. Ryan moved that the meeting be adjourned. Mr. Archambault seconded the motion and it carried unanimously.

APPROVED:



George D. Whitton, Chairman

Attest:



Jan Hancock, Recording Secretary