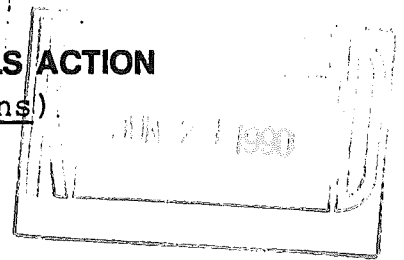


APPLICATION FORM

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 Empiregas Inc. of Walton
Phone Number 800-251-0039
Applicant's Address P.O. Box 303
Lebanon, MO 65536
City State Zip

4. Description of Request: Request for Conditional Use Permit to use land for a retail LP gas outlet and for the bulk storage of LP gas in no less quantity than 30,000 gallons

5. Name of Development Empiregas Inc. of Walton

6. Location of Development Service Road, Walton, KY

7. Acreage Under Review 4.165

8. Lot Number and Name of Subdivision (if part of a subdivision) None

9. Owner of Property Albert Martin
Phone Number 513-941-4660

10. Address of Property Owner 1508 Ebenezer Road
Cincinnati, OH 45238
City State Zip

11. Proposed Use(s) On Site Retail LP gas outlet and the bulk storage of LP gas in no less quantity than 30,000 gallons

12. Total Square Footage of Existing and/or Proposed Buildings Approximately 672 sq ft

13. Current Zoning on Property I1

14. Deed Book 324 Page No. 74 Group No. 2082

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: *Robert J. Martin*

19. Property Owner's Signature: *Robert J. Martin*

*Chuck Burns contact @ Empire.
485-1133*

SECTION B

(To be completed by Boone County Planning Commission Staff)

1. Date Received 6-21-90
2. Fee Received 421 EM 5387 CP #3 2/17
3. Is application complete? D.P. Yes No
4. Staff Reviewer J. Gray T. O'Neil
5. Scheduled Board Action Date 7-11-90
6. Board Action:
 Approval
 Approved With Conditions (See #7)
 Disapproved (See #8)
7. Conditions: _____

8. Reasons For Disapproval: _____

BCPC:7/11/88

STAFF REPORT

#3

DEVELOPMENT: Retail Gas Outlet
APPLICANT: Empire Gas Inc.
LOCATION: Service Road, Walton, Kentucky
ZONING: Industrial One (I-1)
DATE: July 11, 1990

REMARKS:

The applicant is requesting a Conditional Use Permit to allow a Retail Propane Gas outlet. The 1.91 acre site is located on the eastern side of Service Road in Walton. The site is zoned Industrial One (I-1) and is owned by Albert Martini. On June 10, 1987, the Boone County Board of Adjustment denied a Conditional Use Permit request to store fireworks at the same site. Later, the Boone County Circuit Court upheld the Board's decision.

The applicant wants to construct a retail outlet with bulk storage of LP gas in no less quantity than 30,000 gallons. The plan also includes a 672 square foot building and a parking area with 4 parking spaces and one handicap space.

A site plan has been provided by the applicant and is attached. It indicates the surrounding land uses as single-family residences and open space.

North: open space with medium density vegetation
South: open space with heavy density vegetation
East: Quality Forest Products
West: Interstate 75

All of the surrounding property with the exception of the western edge is zoned Industrial One (I-1). The western side of Interstate 75 is zoned Commercial Services (C-3).

The following reviews the criteria which the Board must use to judge each Conditional Use permit:

1. The 1990 Boone County Comprehensive Plan Future Land Use Map indicates the site as Industrial. The Land Use element states:

"This road (Service Road) could also serve as access for industrial development to the south of the interchange if properly designed. Attention should be given to the appearance from the interstate of industrial uses in this area because it represents the southern entrance into Boone County."

2. Will be designed, constructed, operated and maintained so as to be harmonious and appropriate in appearance with the existing or intended character of the general vicinity and shall not change the essential character of the same area. Staff is of the opinion that this development if approved and constructed will change the essential character of the


area, which at this time is residential in nature even though the site is zoned Industrial One (I-1).

3. Will be hazardous to existing or future neighboring uses. The storage of 30,000 gallons of Propane Gas has the potential for being hazardous. Residences are within 300 yards to the north and south.
4. The development will be served adequately by essential public facilities and services such as highways, streets, police and fire protection etc. and that the persons or agencies responsible for the establishment of the proposed use shall be able to provide adequately any such service. Service Road is approximately 12 feet wide and consequently can allow for one car at a time. This road must be upgraded to a 25 foot width in order to handle significant truck traffic.
5. Additional excessive requirements at public cost for public facilities will not be created.
6. The use as a retail gas outlet will be detrimental to the existing residences due to truck significant traffic that would be accessing the site. Again, Service Road must be upgraded to handle the load this development would generate.
7. Will have vehicular approaches to the property which shall be so designed as not to create an interference with traffic an surrounding public thoroughfares. Vehicular approaches will negatively impact Service Road if significant truck traffic is generate to the site.

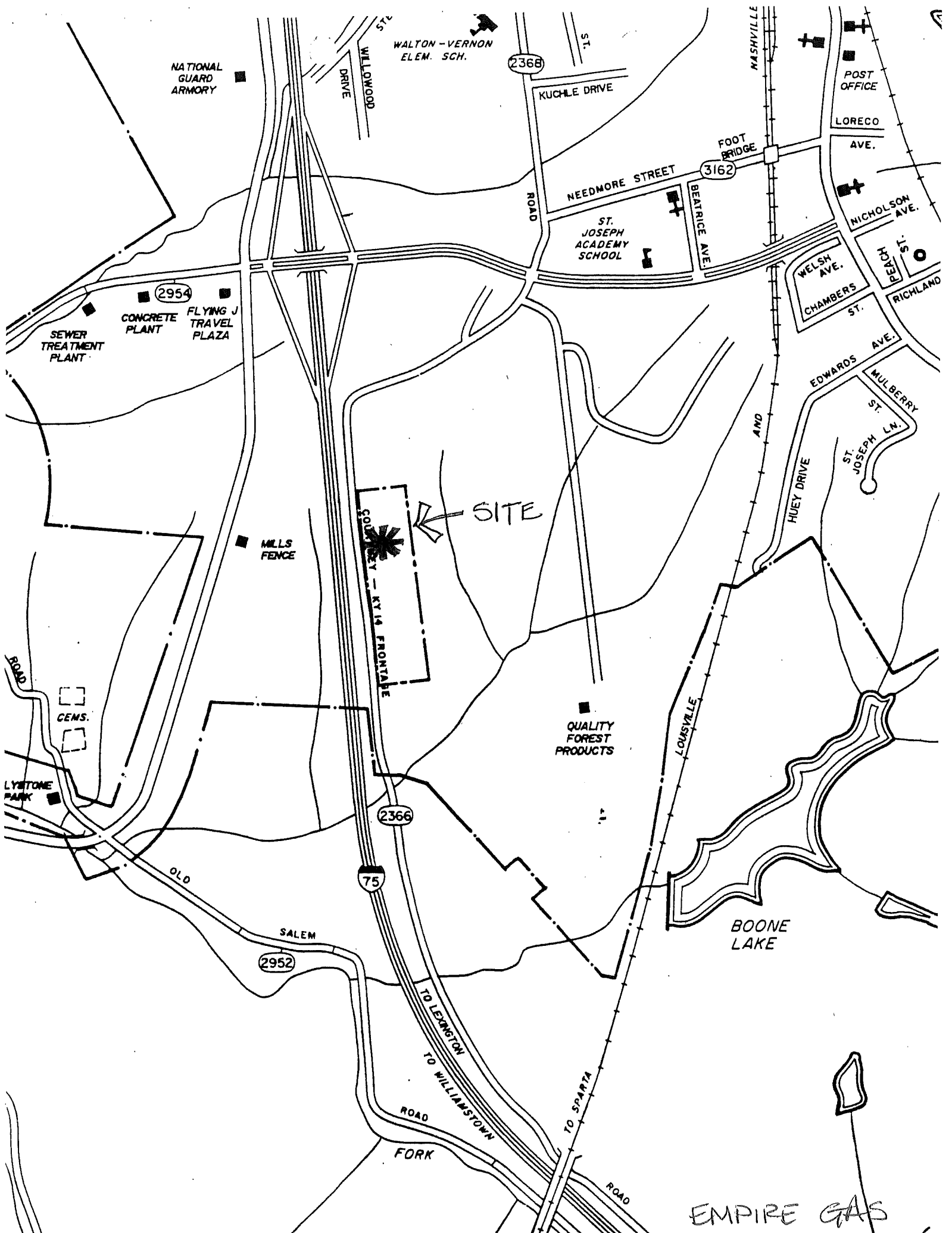
Staff Concerns

1. Service Road is intended to serve the existing residential properties. It would have to be widened from 12 feet to 25 feet and upgraded to county or state road specifications in terms of pavement thickness and composition.
2. This site has visibility from Interstate 75 and care should be taken to minimize negative visual impacts since this is the "entry" into Boone County.

Respectfully submitted,


J. Gregory Tulley
Plans Examiner / Planner I

JGT:kat



NATIONAL
GUARD
ARMORY

WALTON-VERNON
ELEM. SCH.

2366

KUCHLE DRIVE

NEEDMORE STREET

3162

FOOT
BRIDGE

POST
OFFICE

LORECO
AVE.

NICHOLSON
AVE.

ST.
JOSEPH
ACADEMY
SCHOOL

BEATRICE AVE

WELSH
AVE.

CHAMBERS
ST.

HAYES
ST.

RICHLAND

2954

CONCRETE
PLANT

FLYING J
TRAVEL
PLAZA

SEWER
TREATMENT
PLANT

MILLS
FENCE

SITE

COUNTY - KY14 FRONTAGE

QUALITY
FOREST
PRODUCTS

LOUISVILLE

HUEY DRIVE

EDWARDS
AVE.

ST. JOSEPH LN.

MULBERRY
ST.

BOONE
LAKE

2952

SALEM

2366

75

TO LEWINGTON

TO WILLIAMSTOWN

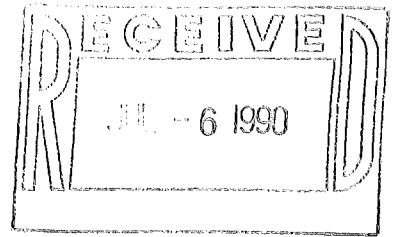
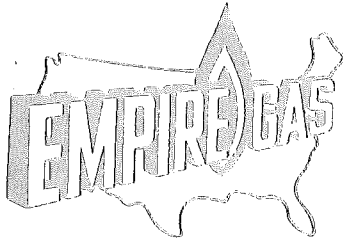
ROAD

TO SPARTA

ROAD

EMPIRE GAS

The National Symbol of Service



July 2, 1990

Boone County Planning Commission
P.O. Box 697 - 2950 Washington St.
Burlington, Kentucky 41005
Attn: Greg Tulley

Subject: Empiregas Inc. of Walton
Service Road
Walton, Boone County, Ky
Zoning Conditional Use Approval

Dear Mr. Tulley:

The land submitted for your approval is approximately 4.17 +/- acres and is to be parceled into two (2) separate lots. Parcel One will be approximately 1.91 +/- acres and will be project site built upon for LP gas retail distribution. Parcel two will be approximately 2.25 +/- acres and the future use of this parcel is as of yet undisclosed.

Respectfully submitted,

Chuck Burns
Retail Manager

BOONE COUNTY BOARD OF ADJUSTMENT
BUSINESS MEETING

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

BOARD MEMBERS PRESENT:

Mr. Dan Houston
Mr. Walt Ryan
Mr. George Whitton, Chairman

BOARD MEMBERS NOT PRESENT:

Mr. I. A. Archambault
Mr. Fred Nevel

LEGAL COUNSEL PRESENT:

Larry Dillon

The meeting was called to order by Chairman Whitton at 6:40 P.M..

Agenda Items:

1. The request of Mark Waller for a Change in Non-Conforming Use to allow the replacement of a mobile home from the southern portion of a 305.5-acre farm to the northern portion. The property, which is located on the south side of Waller Road, west of Munk Road, is owned by Marion Waller and is zoned Agricultural Estate (A-2).

Staff Member, Tom Breidenstein, 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.

Mr. David Koenig advised that he was present in behalf of the request, along with Mark and Angie Waller, who are the occupants of the mobile home, and Mike Collins.

Mr. Koenig stated that in 1984/1985, there were about eight mobile homes on the property. There are currently five or six mobile homes, with two being occupied. The homes which are not occupied now, will not be occupied in the future. Mr. Mark Waller interrupted and stated that there will be three or four mobile homes.

Mr. Koenig emphasized that the use is diminishing. He stated that the mobile home occupied by Mr. Waller and his family was moved and, unknown to him, it was in violation of the zoning ordinance. He stated that the applicant is willing to agree to a condition that there will be no other mobile homes on the northern part of the property. This is the first mobile home on the northern part of the site.

Mr. Ryan stated that the other mobile homes are in Gallatin County, and only this one is in Boone County.

Mr. Waller stated that this is a temporary residence and he hopes to build a house in the future. He does not have a timeframe at this time.

Chairman Whitton asked if there was anyone else present who wished to speak. There being no response, he asked if there were any comments from the Board.

There being no further discussion, Mr. Ryan moved that the request be granted subject to the condition that there be no more than four mobile homes on the farm and no additional mobile homes in Boone County. He stated that this is not an expansion of a non-conforming use as there will be no more mobile homes on the farm. Mr. Houston seconded the motion.

Mr. Houston questioned if it should be indicated in the motion that this is a temporary use. Mr. Ryan stated that the motion is as stated.

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

2. The request of The Drees Company for a Conditional Use Permit to allow the installation of an off-premises sign and a Variance to allow the sign closer than 1,760 feet from an existing off-premises sign. The 54.6-acre site, located on the north side of Burlington Pike, across from the eastern entrance to Boone Aire Road (Square D Property), is zoned Industrial One (I-1) and is owned by the Square D Corporation.

Staff Member, Tom Breidenstein, 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.

Mr. Bruce King of the Drees Company stated that his main concern is not traffic, but selling houses and having a sign that people can use to get back to the houses. He stated that Mr. Barrett of the Square D Corporation readily agreed to the sign as they have been having some problems with traffic leaving. He stated that the sign might give the traffic more time to go over to the left and get on Boone Aire Road. He stated that construction of the turning lane has begun. They are hosting the Homefest Show this summer and there will be a tremendous amount of traffic going down the road. The sign is not promoting The Drees Company, or the other builders in the show, but it is a directional

sign. He stated that a lot of the communities back there this sign on their advertisements.

In response to questions from Chairman Whitton, Mr. King stated that they are not competing for attention or promoting their company. The sign should not be looked at as a billboard sign. He added that this sign request has taken up several weeks of his time. He and their architect and others could not understand the regulations.

Chairman Whitton stated that signage in the county is a sensitive issue. He advised that the Homebuilders' Association and the Staff are negotiating on signage in regard to the update of the Comprehensive Plan.

Chairman Whitton asked if there was anyone else present who wished to speak. There being no response, he asked if there were any comments from the Board.

In response to questions from Mr. Houston, Mr. Breidenstein advised that they currently have a billboard sign on the corner of Boone Aire Road. He noted that both of the signs are off-premise signs.

Chairman Whitton stated that he did not want to set a precedent and suggested that the Board get advice from legal counsel. He asked that the request be deferred.

Mr. Ryan moved that the request be deferred to allow time for the Board to confer with the Staff and legal counsel in regard to the sign. Mr. Houston seconded the motion.

Mr. King stated that the Home Show starts on August 1. If the request is deferred for a month, they will miss the Home Show.

Chairman Whitton stated that they are not requesting a temporary sign, they are requesting a permanent one.

The Chairman asked for a vote on the motion made by Mr. Ryan to defer the request and it carried unanimously.

3. The request of Empire Gas Inc. for a Conditional Use Permit to allow a retail propane gas outlet. The 1.91-acre site is located on the eastern side of Service Road in Walton. The site is zoned Industrial One (I-1) and is owned by Albert Martini.

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 behalf of the request.

Mr. Jim Elliott of Dave Estes Engineering stated that the site is zoned I-1 and this is a Conditional Use for the retail sale of LP gas. He stated that the Mayor of Walton is excited about having this type of business in the city. The use of the property will be similar to Furrow Gas. The site will all be paved. There will be a small building and outside storage. The site is spread out and will not look cluttered. He showed the Board a picture of the building they intend to put on the site. Mr. Elliott noted that Staff's main concern was the access off the service road. He stated that any industrial use in the area will involve tractor trailer traffic. He has not talked to the Highway Department to determine if the service road will be widened. They believe that the road may be widened when the development progresses. There will be very little truck traffic on the road with there being at most one tanker truck a week. The site has a 30,000 gallon tank. He noted that Mr. Chuck Burns and Mr. Gilbert Parker of Empire Gas were present.

Mr. Parker stated that he is with Empire Gase from Lebanon, Missouri. They operate in 37 states and have ten or eleven retail outlets in Kentucky. He stated that there probably would not be one tractor trailer per week. He noted that there is visibility to I-75. They will clear the lot, but not take down the bigger trees. They will put up a nice building. There will be a 30,000 gallon storage tank. They will go back further from the property line than is required. He stated that they have to comply with all state and federal codes. They cannot get a license to operate unless they do everything right. The facility will be clean and safe. They are putting in the larger tank to keep truck traffic down.

Chairman Whitton questioned the nature of the business. Mr. Parker stated that it is a retail facility and they deliver to the customer. The delivery trucks are single axle and either three-quarter or one ton service vehicles. There will be two trucks and the largest will be about the size of a Pepsi truck. The only tractor trailer traffic would be to bring the product to them. Their truck would go out in the morning and probably not come back until late in the afternoon. The service truck would be in and out twice a day as he can only haul one tank at a time.

Mr. Burns stated that he will be managing the facility. He stated that it is a no-outlet road. The traffic will be minimal. They have a temporary office in Walton now and there is very little traffic on the road. He stated that the Mayor and the people are in favor of the facility as last winter they could not get enough gas to meet the demands.

Mr. King stated that the site will have asphalt paving and on-site detention. The utilities are available, except that there is no sanitary sewer. He stated that the City of Walton has a project where they have a fund set up for a sanitary sewer extension once this corridor starts. Until that time, there will be a leach line system for the one bathroom in the building. There will be a security fence to prevent tampering with the tanks.

Ms. Sue Travis with First Commercial Realty stated that they are buying a four-acre parcel. Mr. King stated that they are buying four acres, but using a 1.91-acre tract for this use. It is not decided at this time if they will develop the other acreage in the future.

Chairman Whitton asked if there was anyone else present who wished to speak, either for the request, in opposition to the request, or having questions.

Mr. Bill Waller stated that he owns the adjacent four acres. He is concerned about the use. He was aware of a propane explosion some years ago and is concerned about the nearby residences. He stated that this is a high risk use and will limit what he can do with his four acres. He believes the use will decrease his property value.

Mr. Parker stated that they go by certain guidelines. There are safety valves that automatically cut off. Liability is their main concern. He stated that liability insurance costs a lot and it is in their best interest not to have explosions. He stated that propane is a safe fuel. There are excess flow valves in case of a line rupture. He noted that this facility will enhance Mr. Waller's property.

Chairman Whitton questioned that if there was an explosion, at what distance would an adjacent structure be affected.

Mr. Parker stated that a propane tank is equipped with relief valves to let off pressure so that a tank will not burst. He has been in the business 22 years and has not seen a tank explode. The tanks are 3/4" to 7/8" thick. Explosions do not occur. There are excess flow valves to stop the flow of gas. The industry is heavily regulated for safety by local and state fire marshalls and there are codes to go by.

There being no further comments from the audience, the Chairman asked if there were any comments from the Board.

Chairman Whitton questioned if a car could pass their truck on the road.

Mr. Parker stated that he was out there in a one-half ton pick-up truck and he passed another pick-up truck on the road.

Chairman Whitton noted that the road is 12 feet wide. He asked if they had considered widening the road.

Mr. Parker stated that he would approach his boss in this regard.

There being no further discussion, Mr. Houston moved that the Conditional Use Permit be granted subject to the condition that they get Health Department approval and comply with the requirements of the regulatory agencies. Mr. Ryan seconded the motion and it carried unanimously.

4. The request of Richard H. Apler for a Conditional Use Permit to allow parking for a trap club. The parking area is to be located at 9972 Country Hills Court, Union, Kentucky. The property is zoned Agriculture (A-1) and is owned by Richard H. Apler.

Staff Member, Amy Moore, stated that the applicant had submitted a deed for the section marked "26C-2" on the map attached to the Staff Report. This section is about 20 acres. It was not understood that a deed was to be submitted for all of the acreage the applicant intended to use. The property to the north is where the trap shooting will take place on an area of approximately 22 to 23 acres. If the current request is granted, the applicant will come back next month in regard to the additional acreage.

Mrs. Moore 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. Richard Apler stated that there are two private clubs in Boone County and both are full. He stated that trap shooting promotes gun safety and is a worldwide sport. His land is zoned Agriculture One. The zoning will remain the same, but the criteria will be changed if he gets the zoning permit. Parking will be provided on the twenty acres. He expects 25 to 30 members when the club gets started, with a maximum of about 100 members. There will be 15 to 20 to 30 cars at the most. There will be shooting about twice a week -- possibly Wednesday evening and Sunday afternoon. At 100 yards, the shell falls to the ground. At 75 yards, it would puncture skin. At 50 yards, it would cause injury. He bought this property 14 years ago. Mr. Apler stated that the main reason people are against him is that it will devalue their property. He stated that this will raise his property value. He stated that if houses were put on the property to the back, which could be as much as thirty acres, there would be a traffic problem more than twice a week. The trap club will give employment to minors twice a week to pull the birds and score.

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. Jerry Dusing, attorney, stated that he was contacted by residents of the area. He reviewed the map which had been explained by Mrs. Moore in regard to the area involved this evening. He displayed to the Board a large cardboard with photographs of the houses in the neighborhood to show the types of homes that exist coming off KY 537 (Rabbit Hash/Hathaway Road). Mr. Dusing showed a video prepared by a member of the neighborhood which showed the houses in the area and also a trap club in operation. The lady from the neighborhood narrated the video and noted the contrast between their quiet neighborhood and the noise of the trap club.

Mr. Dusing stated that the Staff Report was entirely accurate. He noted that not all of the adjacent property owners have been notified, which is a requirement for a Conditional Use Permit. He stated that at least two adjacent property owners in the pink area on the map were not notified. He noted that there is no Site Plan.

Mr. Dusing stated that there is a concern for safety, which is not addressed. He noted that the Board cannot evaluate the proposal without the Site Plan and operating rules. He stated that the proposal flunks every criteria in the book. It is not compatible with the text of the Comprehensive Plan for the area, it is not compatible with the Land Use Map. He noted that the entire area is designated for low-density residential use. He referred to Section 263 regarding the standards for Conditional Uses that this application has to meet. He stated that the first criteria is "will it be in accord with the Comprehensive Plan?", and it is not. The second criteria is whether it will be harmonious with the general character of the vicinity, and it cannot be operationally harmonious with the neighborhood. He stated that it will be hazardous to neighboring uses. He noted that Mr. Apler indicated that the shot will fall down at 100 yards, but at 75 yards it will hurt you. He stated that this is not true. There is a concern for overspray and lead shot pollution. There are children in the neighborhood and there is no evidence that the safety concerns will not occur. He stated that it will be served adequately by essential public facilities. Mr. Dusing stated that the access is a deadend cul-de-sac which is inappropriate for a 100-member club. The use would be detrimental to persons and property. The traffic and noise would be detrimental. The vehicular approaches are not adequate. He noted that a trap shooting club is a Conditional Use and must be within the scope and purpose of the district. The primary purpose is to protect future viability and character, and residential development is the best way to protect that. The application fails all of the criteria.

Mr. Dusing stated that they contacted The National Association for Trap Shooting, which puts out a booklet on how to develop new facilities so that people can wisely select a site and meet industry standards. He stated that this site is tight being about 700 feet deep on one side, and 1,500 feet on the other, with a house and yard in the front. The lot is 600 feet across the back and 130 feet across the front. It is not realistic to keep the shooting within 130 feet and be safe for the neighbor's children. He referred to the Trap Shooting Association booklet regarding considerations for site selection and safety. He stated that there is no clue regarding the type of shooting range. He noted the need for natural noise insulation and stated that this is an open field with no noise barriers and no talk of berming.

Mr. Dusing stated that this is prime land for residential use. He noted that you cannot get to the site except through a subdivision street. He continued to quote from the booklet noting that safety is a foremost consideration. Also that "need", not "cost" should be of paramount concern. He stated that the booklet is evidence in regard to 12-gauge shot. The booklet says the shot travels 1,230 feet per second. He stated that a shot would be in the air at least one second and probably longer. A 20-gauge shot travels 1,282 to 1,350 feet per second. There will be overspray. Also, there is a lake back

there and there will be pollution into the water source affecting the wildlife. He presented a petition of 41 signatures of people in the vicinity of the site. Chairman Whitton advised that the Board has a copy of the petition and the letters.

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

Mr. Ed Reuben stated that he is building a house there. He has been an educator in the Boone County schools. He does not see this type of facility being appropriate in an area being developed into homes. He stated that there are at least three others building there. He believes that the trap club will decrease his property value. He moved to the area for peace and quiet, and now the area will be congested and noisy.

Mr. Everett Longworth, who lives across the street from the site, has a nine-year old boy and a thirteen-year old boy and he does not want them to get shot in the woods.

Christine Kidd stated that she owns 40 acres adjacent to the area colored in yellow on the map. Mr. Apler's house is visible from her front yard and the additional property he would buy would be adjacent to her property.

Mr. Norb Gregory stated that the clubs in the area now were built when there were no houses around.

There being no one else present in opposition to the request, the Chairman asked if there was anything further from the applicant.

Mr. Apler questioned where the video was taken in regard to the noise level. He stated that the nearest house would be 300 yards away from where the gun would be fired. He has never heard of anyone being shot as the projectiles are always in the air. He would have to be fully insured. All of the noise will go away from the subdivision. He stated that the lady that made the video is about one-half mile from where the noise would be.

Chairman Whitton stated that there are Conditional Uses so that the Board can look at the appropriateness of a requested use. This is a residential development and this is a commercial use. He noted that Mr. Dusing had reviewed the criteria the Board would have to consider. He stated that this use is not appropriate in or adjacent to a residential zone.

Ms. Rita Straup stated that she is a trap shooter and helped Mr. Apler prepare his application. She was not aware that Country Hills Lane was a residential area. It is all zoned A-1. She questioned why the Staff did not tell them the use was not appropriate.

Chairman Whitton reviewed the Conditional Use procedure and stated that the Staff does not make a decision regarding Conditional Use Permits.

There being no further discussion, Mr. Ryan moved that the request be denied on the basis that the use is not appropriate for the neighborhood and surrounding area. Mr. Houston seconded the motion and it carried unanimously.

Chairman Whitton stated that the Conditional Use Permit is not granted.


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 June 13, 1990 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.

There being no further business to come before the Board, the meeting was adjourned by unanimous consent.

APPROVED:



George D. Whitton, Chairman

Attest:



Jan Hancock, Recording Secretary