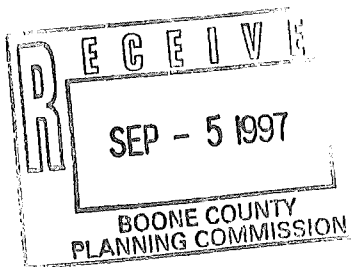


APPLICATION FORM



BOARD OF ADJUSTMENT AND ZONING APPEALS ACTION BOONE COUNTY PLANNING COMMISSION

See Boone County Zoning Regulations

SECTION A (To be completed by applicant)

(Check One)

- 1. [x] Boone [ ] Florence [ ] Walton [ ] Union

(Check One)

- 2. [ ] Conditional Use Permit [ ] Variance [x] Appeal [ ] Change in Non-Conforming Use

- 3. Applicant's Name William C. Anderson, Inc. & Mildred Anderson Phone Number 689-4085 Fax No. Applicant's Address 1743 Anderson Boulevard

Hebron, KY 41048 City State Zip

- 4. Description of Request: Appeal of determination of director of zoning services.

- 5. Name of Development Anderson Tool & Die

- 6. Location of Development 3171 Petersburg Road Burlington, KY 41048

- 7. Acreage Under Review 1.0

- 8. Lot Number and Name of Subdivision (if part of a subdivision)

- 9. Owner of Property Mildred Louise Anderson Phone Number of Owner

- 10. Address of Property Owner Burlington KY 41048 City State Zip

- 11. Proposed Use(s) on Site installation of lift gate assemblies

- 12. Total Square Footage of Existing and/or Proposed Buildings 1600

- 13. Current Zoning on Property RSE

- 14. Deed Book 640 Page No. 110 Group No. 2013

- 15. Is the site subject to a zone change? No If yes, give date of approval N/A

- 16. Have you submitted a Site Plan with this request? No

- 17. Have you submitted a list of adjoining property owners with this request? Yes

- 18. I, or we, understand and agree that this application and drawing(s) are being filed in accordance with the Boone County Zoning Regulations.

Applicant's Signature: E. Yarnon Anderson

Property Owner's Signature: Mildred L. Anderson

BOARD OF ADJUSTMENT AND  
ZONING APPEALS ACTION  
APPLICATION  
PAGE 2

**SECTION B** (To be completed by the Boone County Planning Commission Staff)

1. Date Received 9-5-97 Fee Received \$420.00 R# 14614
2. Is application complete?  Yes  No
3. Staff Reviewer KEVIN WALL
4. Scheduled Board Action Date 10/8/97
5. Board Action:  
 Approved  
 Approved with Conditions (See #6)  
 Denial (See #7)
6. Conditions of Approval: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
7. Reasons for Denial: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

WITHDRAWN VERBALLY BY  
APPELLANT'S ATTORNEY  
AT 10/8/97 HEARING

Boone County Planning Commission  
2995 Washington Street  
Burlington, Kentucky 41005  
(606) 334-2196 Phone  
(606) 334-2264 Fax

NOTE: See Boone County Planning Commission Fee Schedule for Board of Adjustment Fees.

Site Plan Review is not granted by the appropriate Board of Adjustment.

An application consists of all fees paid in full, submitted drawings and a completed application form.

## STAFF REPORT

DEVELOPMENT: **Anderson Tool & Die - Appeal**

APPLICANTS: William C. Anderson, Inc. and Mildred Anderson

LOCATION: 3171 Petersburg Road

ZONE: Rural Suburban Estates (RSE)

DATE: October 8, 1997

### REQUEST

In accordance with sections 201, 220, 230, 240, 245, 253, and 254 of the Boone County Zoning Regulations, an Appeal of the Zoning Administrator's interpretation of the zoning regulations has been filed before the Boone County Board of Adjustment and Zoning Appeals. Specifically, William C. Anderson, Inc. (co-applicant) and Mildred Anderson (co-applicant and property owner) have filed an Appeal of the Zoning Administrator's interpretation of Section 270 "Nonconforming Lots, Uses, and Structures" and Section 272 "Nonconforming Uses of Land" of the Boone County Zoning Regulations regarding the scope/extent of a pre-existing, nonconforming light industrial/shop use located at 3171 Petersburg Road, Boone County, Kentucky (Sections 270 and 272 are attached as Exhibit A). The Zoning Administrator determination in question is explained in the letter to Mr. David Koenig dated August 8, 1997 which is attached as Exhibit B. In this letter, the Zoning Administrator determined that a pre-existing, nonconforming use had been partially abandoned. The site in question is within a Rural Suburban Estates (RSE) zoning district.

### DUTIES OF ZONING ADMINISTRATOR AND BOARD OF ADJUSTMENT AND ZONING APPEALS

Section 201 of the Boone County Zoning Regulations describes the authority of the Zoning Administrator. One of the roles of the Zoning Administrator is to determine the classification of any use of land, buildings or structures as a principally permitted, accessory, or conditional use in a specific zoning district, as well as determine whether uses are either illegal or have pre-existing, nonconforming status, based on an interpretation of the stated and implied requirements of the zoning regulations. This includes the classification of new uses or uses not specifically identified in the regulations, and the interpretation of the regulations in instances where there is not a precise "fit" between the regulations and existing site conditions or development objectives. In addition, one of the Board's duties is to hear and decide Appeals where it is alleged there is an error in any order, requirements, decision, interpretation, grant or refusal made by the Zoning Administrator.

### DESCRIPTION OF SITE

The site in question is located at 3171 Petersburg Road, Boone County, Kentucky, and is approximately 1 acre in area. The site contains an approximate 3,200 square foot, one story, shop building but does not contain any structures indicative of the uses currently permitted in the RSE zone such as a residence, barn, etc. The facility has two driveways from Petersburg Road: the first is a concrete driveway that runs between the two residences located at 3169 and 3173 Petersburg Road (the subject site is located behind these two residences) - this driveway is approximately 213 feet long between the road and the parking area for the shop building; the second is a gravel driveway that loops around the lot and residence at 3169 Petersburg Road and connects to the road to the east of said residence. The parking/loading area located at the front of the shop building, and to the rear of the two adjoining residences which front directly on Petersburg Road, has a graveled surface. The majority of the features described above are shown on the attached survey of the property (Exhibit C).

### ADJOINING LAND USES AND ZONING

The entire area immediately surrounding the subject site is zoned Rural Suburban Estates (RSE). The land uses adjoining the site include the following.

- A. The two previously mentioned residences that are located to the north between the subject site and Petersburg Road, along the south side of Petersburg Road. An open space area is located further to the north across Petersburg Road.
- B. Detached, single family residences on estate style lots are located along the Petersburg Road frontage to both the east and west. Intermittent pastures/open space areas are located between a portion of these lots.
- C. An open space area is located immediately to the south of the subject site and a wooded area is located further to the south.

### PERTINENT HISTORY OF SITE AND REQUEST

The property was subject to a zone change application from Rural Suburban Estates (RSE) to Industrial One (I-1) in late 1983/early 1984. This application was denied by the Boone County Fiscal Court on March 27, 1984.

An Appeal of a Zoning Administrator's decision regarding a change in tenant for the facility was granted by the Board of Adjustment of December 7, 1987. Through this decision, the Board determined that a change from the previous tool and die operation to a business that repaired/refurbished office partitions did not constitute an unauthorized change in nonconforming use because both of these uses are in the same general land use category. As noted in the 8/8/97 letter to Mr. Koenig, this action was considered by the current Zoning Administrator as the "starting point" for determining whether or not the pre-existing, nonconforming status of the property's use had been altered and/or abandoned because it is a final, standing action and because the use had been largely defined in the public record through the Appeal application and proceedings. Up to this time, the facility had been used for the tool and die operation for several decades. The Anderson Tool and Die business moved its primary operation to a location along Limaburg Road in this same general time frame.

After the office partition repair business that was approved by the Board of Adjustment was initiated, the proprietor passed away. By 1991/92, Anderson Tool and Die had resumed some use of the property. The level/scope of the use of the site noticeably increased in or around May of 1997 without the Zoning Administrator's review or approval. All of these issues are explained further in the Zoning Administrator's letter dated 8/8/97.

On May 28, 1997, a letter was sent to Mr. Charles Anderson from Mr. Floyd Sharp, Zoning Inspector, regarding the use of the property (Exhibit D). Mr. Sharp's letter stated that the property could not be used for a commercial or industrial purpose unless evidence was presented which could demonstrate that such use had pre-existing, nonconforming status.

A letter dated June 26, 1997 was provided by the owner's attorney, Mr. David Koenig (Exhibit E). This letter explained the history of the site and included a large volume of utility records, purchase orders, and copies of rent checks that were provided to support the notion of a pre-existing, nonconforming use for the site. Due to the volume of these materials, they are not attached to this report but will be available for the Board's inspection at the public hearing.

On July 22, 1997, the Zoning Administrator met with representatives of Anderson Tool and Die, Mr. Koenig, and Mr. and Mrs. John Anderson who live nearby the subject site. The purpose of this meeting was to clarify facts regarding the use of the property, particularly facts relative to the scope and intensity of the use of the property since 1991/92. The majority of the facts used in the Zoning Administrator's decision regarding a partial abandonment of the pre-existing, nonconforming use were received at this meeting. In between the time that Mr. Koenig's letter dated 6/26/97 was received and the 7/22/97 meeting was conducted, Mr. John Anderson reviewed the materials submitted by Mr. Koenig and had corresponded with the Zoning Administrator regarding this matter (see letters from John Anderson to Kevin Wall dated 6/26/97 and 7/15/97 labeled as Exhibits F and G, and letter from Kevin Wall to John Anderson dated 7/8/97 labeled as Exhibit H).

On August 8, 1997, the Zoning Administrator rendered the decision now under Appeal in the aforementioned letter. The Appeal now under consideration was filed on September 5, 1997.

### ISSUE

The Zoning Administrator applied Section 270 "Nonconforming Lots, Uses, and Structures" and Section 272 "Nonconforming Uses of Land" of the Boone County Zoning Regulations, as well as applicable case law, to determine that there had been a demonstrated attempt to partially abandon the pre-existing, nonconforming use of the property. Notably, Section 270 states that "it is the intent of this order to permit these nonconforming lots, uses and structures to continue until they are no longer nonconforming." A considerable fact for the Zoning Administrator in this matter is that the level/scope of the use had been fairly constant for the last five to six years, and the recent activity conducted at the site (initiated in or around May 1997) tangibly exceeds the level maintained in this five to six year period.

### DECISION AND BASIS FOR DECISION

The decision in question, and the basis for the decision, are described in the previously mentioned letter dated August 8, 1997 from Kevin Wall, Director of Zoning Services, to David Koenig, Esq., and is briefly discussed in part in the "Issue" section of this report.

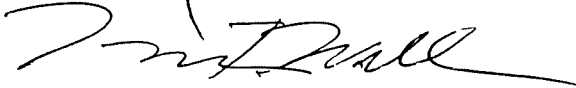
### CONCLUSION

As provided in Article 2 of the Boone County Zoning Regulations, an Appeal of the Zoning Administrator's decision may be granted by the Board of Adjustment and Zoning Appeals when it has been demonstrated that the decision in error. Issues of particular relevance to this matter include:

- A. The Zoning Administrator determined that a partial abandonment of the pre-existing, nonconforming use has occurred and not a total abandonment. Thus, the property may be used in the same manner that it has been for the five to six year period prior to May 1997.
- B. The facts used by the Zoning Administrator to define the current scope of the pre-existing, nonconforming use were provided by the Appellants themselves at the previously mentioned meeting on July 22, 1997. The Zoning Administrator merely used the facts provided by the Appellants regarding the use of the site between 1991/92 to May 1997 to formalize the current scope of the pre-existing, nonconforming use.

- C. As of the writing of the report, no evidence which demonstrates that the Zoning Administrator's decision is in error (as required by the Section 220 of the Zoning Regulations and KRS 100.257 "Administrative Review) has been submitted.

Respectfully submitted,

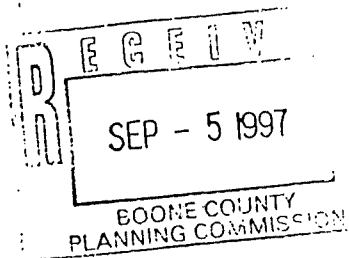


Kevin T. Wall, AICP CDT  
Director, Zoning Services

KTW/pr

attachments:

- \* Appeal application form
- \* excerpt of Official Zoning Map indicating subject site
- \* Exhibit A - Sections 270 and 272 of the Boone County Zoning Regulations
- \* Exhibit B - 8/8/97 letter from Kevin Wall to David Koenig
- \* Exhibit C - survey of subject property
- \* Exhibit D - 5/28/97 letter from Floyd Sharp to Charles Anderson
- \* Exhibit E - 6/26/97 letter from Dave Koenig to Kevin Wall
- \* Exhibit F - 6/26/97 letter from John Anderson to Kevin Wall
- \* Exhibit G - 7/16/97 letter from John Anderson to Kevin Wall
- \* Exhibit H - 7/8/97 letter from Kevin Wall to John Anderson



APPLICATION FORM

BOARD OF ADJUSTMENT AND ZONING APPEALS ACTION BOONE COUNTY PLANNING COMMISSION

See Boone County Zoning Regulations SECTION A (To be completed by applicant)

- 1. (Check One) Boone [x] Florence \_\_\_\_\_ Walton \_\_\_\_\_ Union \_\_\_\_\_
2. (Check One) \_\_\_\_\_ Conditional Use Permit \_\_\_\_\_ Variance [x] Appeal \_\_\_\_\_
Change in Non-Conforming Use \_\_\_\_\_
3. Applicant's Name William C. Anderson, Inc. & Mildred Anderson
Phone Number 689-4085 Fax No. \_\_\_\_\_
Applicant's Address 1743 Anderson Boulevard
Hebron, KY 41048
City State Zip
4. Description of Request: Appeal of determination of director of zoning services.
5. Name of Development Anderson Tool & Die
6. Location of Development 3171 Petersburg Road
Burlington, KY 41048
7. Acreage Under Review 1.0
8. Lot Number and Name of Subdivision (if part of a subdivision)
9. Owner of Property Mildred Louise Anderson
Phone Number of Owner \_\_\_\_\_
10. Address of Property Owner Burlington KY 41048
City State Zip
11. Proposed Use(s) on Site installation of lift gate assemblies
12. Total Square Footage of Existing and/or Proposed Buildings 1600
13. Current Zoning on Property RSE
14. Deed Book 640 Page No. 110 Group No. 2013
15. Is the site subject to a zone change? No
If yes, give date of approval N/A
16. Have you submitted a Site Plan with this request? No
17. Have you submitted a list of adjoining property owners with this request? Yes
18. I, or we, understand and agree that this application and drawing(s) are being filed in accordance with the Boone County Zoning Regulations.

Applicant's Signature: [Handwritten Signature]

Property Owner's Signature: [Handwritten Signature]

BOARD OF ADJUSTMENT AND  
ZONING APPEALS ACTION  
APPLICATION  
PAGE 2

**SECTION B** (To be completed by the Boone County Planning Commission Staff)

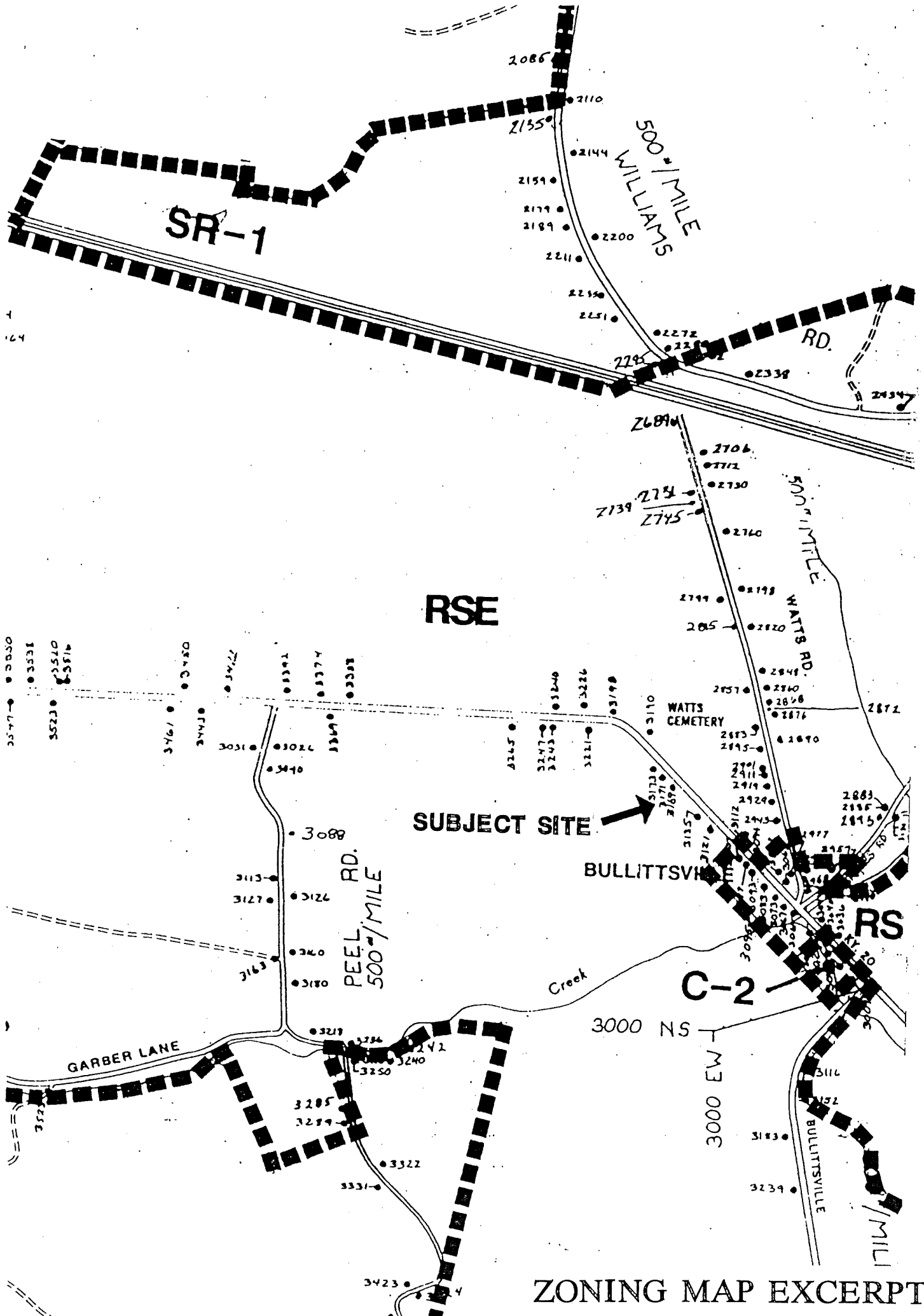
1. Date Received 9-5-97 Fee Received \$420.00 RT# 14614
2. Is application complete?  Yes  No
3. Staff Reviewer KELVIN WILL
4. Scheduled Board Action Date 10/2/97
5. Board Action:  
 Approved  
 Approved with Conditions (See #6)  
 Denial (See #7)
6. Conditions of Approval: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
7. Reasons for Denial: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Boone County Planning Commission  
2995 Washington Street  
Burlington, Kentucky 41005  
(606) 334-2196 Phone  
(606) 334-2264 Fax

NOTE: See Boone County Planning Commission Fee Schedule for Board of Adjustment Fees.

Site Plan Review is not granted by the appropriate Board of Adjustment.

An application consists of all fees paid in full, submitted drawings and a completed application form.



ZONING MAP EXCERPT

## EXHIBIT A

approved or approved with modification, the Board shall direct the Zoning Administrator to issue a conditional use permit listing the specific conditions specified by the Board for approval. If disapproved, the Board shall state the reasons for disapproval. If the application is disapproved by the Board, the applicant may seek relief through the appropriate circuit court. Appeals from Board decisions shall be as provided in Kentucky Revised Statutes, Section 100.347.

### SECTION 267

#### Expiration Conditional Use Permit

A conditional use permit shall be deemed to authorize only a particular conditional use. If said permit has not been exercised within one (1) year from the date it was issued, or a time limit established by the Board, or if said conditional use shall cease for more than one (1) year, the conditional use permit shall not revert to its original designation unless a new public hearing has been conducted. "Exercised" means that binding contracts for the construction of the main building or other improvement have been let; or in the absence of contracts that the main building or other improvement is under construction to a substantial degree, or that prerequisite conditions involving substantial investment under contract, in development, are completed. When construction is not a part of the use, "exercised" shall mean that the use is in operation in compliance with the conditions as set forth in the permit, or that substantial costs or expenses to establish the use have been incurred.

### SECTION 270

#### Nonconforming Lots, Uses, and Structures

Within the districts established by this order or amendments to districts that may later be adopted, lots, uses of land, and structures, which were lawful before this order was passed or amended, but which would be prohibited, regulated, or restricted under the terms of this order or further amendments may exist. It is the intent of this order to permit these nonconforming lots, uses and structures to continue until they are no longer non-conforming. It is further the intent of this order that a nonconforming use or structure shall not be enlarged or extended beyond the scope and area of its operation at the time it became a legal nonconforming use, nor shall other uses or structures which are prohibited elsewhere in the same district be permitted on lots of nonconforming uses or structures.

Uses of structures not legally established before this order was passed or amended shall not be given the statutes of legally pre-existing, non-conforming uses or structure, and may be subject to penalties for violation under Section 410 through 430 of this order.

### SECTION 271

#### Single Non-Conforming Lots of Record and Subdivisions, and Non-Conforming Setbacks

If any lot of record does not meet the minimum square footage requirements that are generally applicable in the district wherein said lot is located, and that lot existed at the effective date of adoption or amendment of this order, the owner may develop that lot in conformance with the dimensional (square footage) regulations, including front yard setback requirements, previously in effect. The lot must be developed in conformance with all other requirements of this order. Variances of any requirements other than the square footage of a lot or lot size shall be obtained only through action of the Board of Adjustment and Zoning Appeals as provided in Section 250 through Section 254. Subdivisions which had been granted preliminary plan approval prior to the adoption of this order may be developed in conformance with dimensional regulations under which preliminary plan approval was given.

In such instances where the front yard setback requirements for a pre-existing development differ from the current regulations, and an extension or enlargement of a previously developed street or subdivision is approved, the front yard setback requirements shall be adjusted at a rate of at least five feet for each

consecutive lot until the new minimum required setback is obtained, although all other requirements of this order must be met. When an addition is proposed for a pre-existing structure that does not meet the current setback requirements, the addition may be located along the nonconforming building line established by the existing structure, but may not encroach into such nonconforming setback unless a variance is granted by the Board of Adjustment and Zoning Appeals.

## SECTION 272

### Non-Conforming Uses of Land

Where, at the time of adoption of this order, legally established, uses of land exist which would not be permitted by regulations imposed by this order, the uses may be continued so long as they remain otherwise lawful, provided the Board shall not allow the enlargement or extension of a non-conforming use beyond the scope and area of its operation at the time these regulations were adopted.

K.R.S. 100.253 allows the following:

1. The lawful use of a building or premises, existing at the time of the adoption of any zoning regulations affecting it may be continued, although such use does not conform to the provisions of such regulations, except as otherwise provided herein.
2. The board of adjustment shall not allow the enlargement or extension of a non-conforming use beyond the scope and area of its operation at the time the regulation which makes its use nonconforming was adopted, nor shall the board permit a change from one (1) nonconforming use to another unless the new nonconforming use is in the same or a more restrictive classification, provided, however, the board of adjustment may grant approval, effective to maintain nonconforming-use status, for enlargements or extensions, made or to be made, of the facilities of a nonconforming use, where the use consists of the presenting of a major public attraction or attractions, such as a sports event or events, which has been presented at the same site over such period of years and has such attributes and public acceptance as to have attained international prestige and to have achieved the status of a public tradition, contributing substantially to the economy of the community and state, of which prestige and status the site is an essential element, and where the enlargement or extension was or is designed to maintain the prestige and status by meeting the increasing demands of participants and patrons.
3. Any use which has existed illegally and does not conform to the provisions of the zoning regulations, and has been in continuous existence for a period of ten (10) years, and which has not been the subject of any adverse order or other adverse action by the administrative official during said period, shall be deemed a nonconforming use. Thereafter, such use shall be governed by the provisions of subsection (2) of this section.

## SECTION 273

### Change from One Nonconforming Use to Another

The Board of Adjustments and Zoning Appeals shall have the power to hear and decide on applications to permit a change from one nonconforming use to another.

The Board shall not permit such a change unless the new nonconforming use is as equally or more compatible with permitted uses in the district in which it is located as the existing nonconforming use. Application for change of nonconforming use shall conform to the procedures and requirements for appeals as specified in Sections 245-254, inclusive, of this order and Kentucky Revised Statutes, Section 100.253.

## EXHIBIT B

# BOONE COUNTY PLANNING COMMISSION



2995 Washington Street, Burlington, KY 41005

606-334-2196

FAX 606-334-2264

E-Mail [plancom@one.net](mailto:plancom@one.net)

August 8, 1997

Mr. David Koenig, Esq.  
Dallas, Neace & Koenig  
Star Bank Building  
7992 Dixie Highway  
P.O. Box 6205  
Florence, KY 41042

RE: Use of Property at 3171 Petersburg Road, Boone County, Kentucky; Rural Suburban Estates (RSE) Zone

Dear Mr. Koenig:

The purpose of this letter is to provide my determination regarding the status of the pre-existing, nonconforming use of the above referenced property. First, I will outline a number of facts that pertain to this matter.

The property was subject to a zone change application to Industrial One (I-1) in 1983/84. This application was denied by the Fiscal Court and we agree that this application does not have any tangible bearing on the current issue.

The property was subject to a public hearing for an appeal of an administrative decision on December 9, 1987 before the Board of Adjustment regarding a change in tenant for the facility. The BOA found that allowing an office partition repair/refurbish operation to use the facility did not constitute an unauthorized change in nonconforming use (i.e., the BOA decided that the substance of the pre-existing and the new operations did not significantly differ). Because of this finding, I consider this action to be the "starting" point for the current issue because it is a standing BOA decision, although Mr. John Anderson did state at our meeting (held at my office on 7/22/97 and was attended by you and I, representatives of Anderson Tool & Die, and Mr. and Mrs. John Anderson who live nearby the facility and are directly related to the operators of Anderson Tool & Die) that he did not agree that the Anderson Tool & Die business was legally pre-existing, nonconforming at that time. I would also note that your clients and Mr. John Anderson did not readily agree on the facts pertinent to this matter, and a number of these facts cannot otherwise be readily confirmed or discounted.

Mr. David Koenig, Esq.  
August 8, 1997  
Page 2

Based on our meeting and your previous correspondence, it is apparent to me that the level of the pre-existing activity changed in the 1991/92 era. By this time, the operator of the office partition repair/refurbish business had passed away (which effectively ended this operation at the facility) and Anderson Tool & Die's operation was largely limited to their facility on Limaburg Road. In addition, your clients stated at our meeting that after 1991/92, no employee was "stationed" at the Petersburg Road facility (meaning that this was not the normal work place for any of their personnel).

It was nominally agreed by your clients and Mr. John Anderson that the facility has been used since that time up to the present for storage of records, materials, finished goods, etc. There was also a general agreement between these parties that the facility had been used at some level for an active shop use for Anderson Tool & Die. Your clients stated that the facility has been actively used for assembly, boxing, and crating (i.e., active uses which necessitate employees working at the facility versus a relatively passive use such as the storage activities) between three and five times a year since the 1991/92 era. Each one of these active periods lasted one to two days and usually involved two employees, and one Nissan or one, one ton truck. Mr. John Anderson questioned this frequency and stated that his recollection regarding the frequency of the active portion of the use was that it has been "occasional," "seldom," or "sporadic," although he did not keep track of the number of times a year the facility was used, number of employees, number of vehicles, etc. Based on these facts, the discrepancies between the statements made by the two parties appears to me to be largely semantical in nature, thus, I am compelled to accept your client's statements regarding the frequency and nature of the use of the facility since 1991/92.

However, it is also apparent that in the last two months or so the level of the pre-existing, activity has substantially increased (involves a contract to make lift gates for trucks). Employees have been working at the facility virtually every day, the number of employees actively working at the facility has increased to an average of four, the recent work has entailed outdoor storage which has not been present at the facility for several years (if at all in any significant form in the past), and the number of employee and delivery vehicles frequenting the site has notably increased as explained by neighbors. The increase in activity has also caused a number of complaints made to this office by neighbors in the area. Due to the fact that the level of the pre-existing, nonconforming activity had remained relatively constant or recurring in the same levels for the past five to six years and that this level of activity is notably less than the pre-existing, nonconforming use contemplated by the BOA in 1987, I have determined that the pre-existing, nonconforming use has been partially abandoned. This means that the recent activity involving the lift gate project has exceeded the level of activity inherent in the pre-existing, nonconforming use and is therefore in violation of Section 272 "Non-Conforming Uses of Land" of the Boone County Zoning Regulations. Based on the facts given to me, the scope of the pre-existing, nonconforming use is limited to the following:

Mr. David Koenig, Esq.  
August 8, 1997  
Page 3

- A. On-going storage of records, materials, finished goods, etc., for the tool and die business.
- B. Active use of the facility that includes assembly, boxing, crating, and related activities. The active use may be conducted for up to five "periods" each year, with each period not exceeding two working days. No more than two employees may be engaged in the active use at any given time during these periods. No vehicles beyond one truck (any size up to and including a one ton truck) may be used in connection with the permitted active business use of the facility (i.e., that is stored/parked at the site in question - does not include personal vehicles for the employees).
- C. No outside storage may be conducted at the facility (however, this does not prohibit outdoor "staging" when goods or materials are being moved in connection with the permitted storage activities or active use).

Although I was informed by Mr. John Anderson that Anderson Tool and Die never obtained an Occupational License for this location and therefore alleged that this in itself creates a total abandonment of the pre-existing, nonconforming status, a recent case which involved the City of Newport determined that there is no relationship between obtaining a business license and the abandonment of a pre-existing, nonconforming use (i.e., are considered two separate and unrelated issues). Thus, this issue did not play a role in my determination, nor did I research the issue due to the outcome of the Newport case. I would also note for the record that I considered in my decision the materials that you submitted on behalf of Anderson Tool and Die as well as correspondence from Mr. John Anderson.

Based on this determination, the scope of the pre-existing, nonconforming use must be maintained within the parameters outlined above. As you are aware, you (or any other aggrieved party such as a neighboring property owner) may appeal this decision to the Board of Adjustment within thirty (30) days of today's date. In order for an appeal to be granted, it must be demonstrated that the decision is in error. Please call me if you have any questions or need any clarifications.

Sincerely,



Kevin T. Wall, AICP CDT  
Director, Zoning Services

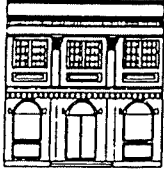
KTW/pr

cc: John I. Anderson, 3221 Petersburg Road, Burlington, KY 41005  
Floyd Sharp, Zoning Inspector



## EXHIBIT D

# BOONE COUNTY PLANNING COMMISSION



2995 Washington Street, Burlington, KY 41005  
606-334-2196 FAX 606-334-2264

May 28, 1997

Mr. Charles Anderson  
1743 Anderson Blvd.  
Hebron, KY 41048

Dear Sir:

On May 27, 1997, during our telephone conversation I advised you that the property at 3171 Petersburg Road was zoned Rural Suburban Estates (RSE) and that it could not be used for a commercial or industrial enterprise unless you could show evidence to support your continuous non-conforming use of this property since Anderson Tool & Die moved from this location several years ago.

You stated that this property has always been used for some type of commercial or industrial activity and that it was your intention to start doing a portion of your manufacturing in this building again.

I agreed to send you a copy of Article 2, Section 270 relating to uses of non-conforming lots and structures (attached). Mr. Anderson, if you have evidence supporting the continuous non-conforming use of this property you should present it in writing to Kevin T. Wall, (see attached card), within thirty (30) days from receipt of this letter. This evidence should consist of: telephone bills, utility bills, rental receipts, invoices, letters from residents of the area, business accounts, etc.

Sincerely,



Floyd Sharp  
Zoning Inspector

FS\par

Enclosure

cc: Kevin T. Wall, AICP CDT, Director, Zoning Services  
Mitchell A. Light, Asst. Zoning Administrator/Enf. Officer  
Fred Nevel, Zoning Inspector

# EXHIBIT E

## DALLAS, NEACE & KOENIG

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Star Bank Building  
19 North Main Street  
P.O. Box 187  
Walton, KY 41094  
PHONE: (606) 485-7727  
FAX: (606) 485-7730

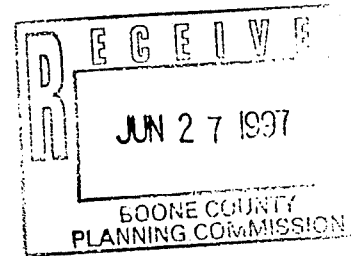
Star Bank Building  
7992 Dixie Highway  
P.O. Box 6205  
Florence, KY 41042  
PHONE: (606) 525-6161  
FAX: (606) 525-6194

PLEASE REPLY TO: FLORENCE

June 26, 1997

Mr. Kevin T. Wall, Director  
Zoning Services  
Boone County Planning Commission  
2495 Washington Street  
Burlington, KY 41005

Re: Anderson Tool & Die  
3171 Petersburg Road  
Burlington, Ky



Dear Kevin:

Reference is made to a letter dated May 28, 1997, from Floyd Sharp, Zoning Inspector, to Charles Anderson. A copy of said letter is attached as Exhibit 1. The purpose of this letter will be to set forth the nature and scope of the use of the property located at 3171 Petersburg Road, Burlington, Kentucky.

The subject property is presently owned by Mildred Anderson pursuant to a deed dated December 4, 1996, and recorded in Deed Book 640, page 110, of the Boone County Clerk's records. (Exhibit 2) The property is leased to William C. Anderson, Inc., a Kentucky corporation, which transacts business as Anderson Tool & Die.

The subject property was acquired by William C. Anderson, the founder of William C. Anderson, Inc. After William C. Anderson's death, the property was conveyed by William C. Anderson's heirs to John I. Anderson and Florence M. Anderson, husband and wife, pursuant to a deed dated February 14, 1977, and recorded in Deed Book 227, page 33. On August 7, 1984, John I. Anderson and Florence M. Anderson conveyed the property to William C. Anderson, Inc. William C. Anderson was the father of C. Vernon Anderson and the grandfather of Carl Anderson and Charles Anderson, all of whom are the shareholders, officers and directors of

Kevin T. Wall  
June 26, 1997  
page two

William C. Anderson, Inc., a Kentucky corporation, pursuant to a deed recorded in Deed Book 320, Page 80. On August 2, 1989, William C. Anderson, Inc. conveyed the property to C. Vernon Anderson and Mildred L. Anderson pursuant to a deed recorded in Deed Book 414, page 61. On February 5, 1992, the property was conveyed to the C. Vernon Anderson and Mildred Louise Anderson Trust pursuant to a deed recorded in Deed Book 472, page 146. The property was subsequently conveyed to Mildred Anderson as previously set forth.

In 1942, a 2,000 square foot wooden barn was constructed on the property. In the late 1950s, William C. Anderson began operating a one person machine shop in the barn. Mr. Anderson renovated the barn to accommodate his machine shop. C. Vernon Anderson began working part time on the property in the machine shop in the early 1970s and full time in 1975. An 800 square foot frame addition to the original structure was constructed in 1978 in order to accommodate the growth of Anderson Tool & Die.

The premises was the sole location of Anderson Tool & Die until 1987, at which time Anderson Tool & Die constructed a new facility located at 1743 Anderson Boulevard, Hebron, Kentucky. After Anderson Tool & Die relocated the majority of its operations to the Anderson Boulevard property, the facility on Petersburg Road was used for storage, light machining, and special projects which were better suited for the old facility.

In late 1987, Anderson Tool & Die proposed to lease a part of the property to an individual named Roger Sprague, who conducted a business called SMI, Inc., which fabricated and upholstered interior panels and partitions customarily utilized in offices. There was an initial determination that the proposed use by Mr. Sprague would constitute an unauthorized extension of a pre-existing, non-conforming use. The Planning Commission's staff Report (Exhibit 3) contains an accurate summary of the facts presented to the Board of Adjustment. A hearing was conducted by the Boone County Board of Adjustment on or about December 9, 1987, at which time the Board of Adjustment determined that Mr. Sprague's activities did not constitute an unlawful extension of the pre-existing non-conforming use.

Mr. Sprague died suddenly and unexpectedly shortly after the Board of Adjustment approved his use of the property. His associates attempted to continue the business. However, the business ceased operating in late 1988.

On July 26, 1988, C. Vernon Anderson and Charles Anderson incorporated Tru Turn Machining, Inc., which conducted its activities on the property. The Kentucky Secretary of State accepted for filing the Articles of Incorporation of Tru Turn Machining, Inc. and issued a certificate of incorporation, copies of which are attached hereto as exhibits 4 and 5. You will note that the articles of incorporation indicate that "the purposes of the corporation shall be to own and operate a machine shop; to use, own and lease all reasonable, necessary and related

Kevin T. Wall  
June 26, 1997  
page three

equipment, personal property and real estate in the conduct of its business..." Article VI of the Articles of Incorporation indicates that the principal office of the corporation is located at 3171 Petersburg Road, Burlington, Kentucky.

Tru Turn Machining commenced its operations in mid-1988. For a while, Tru Turn Machining and the business interior company were sharing the premises. Tru Turn Machining was the primary occupant after the termination of the business interior company. However, Anderson Tool & Die continued to store materials and equipment in the property and conducted some light machining operations there.

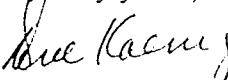
Tru Turn Machining moved its operations to the Anderson Tool & Die facility in Hebron in 1991 or 1992. Since Tru Turn Machining's departure, the property has been used by Anderson Tool & Die for storage of equipment and materials, light machining, and special projects.

I am enclosing some additional documentary evidence pursuant to Mr. Sharp's letter. Exhibit 6 is an accumulative copy of all rent checks for the property from August, 1992, to the present. Exhibit 7 contains copies of invoices and other materials generated by Tru Turn Machining. You will note that all information pertaining to Tru Turn Machining contains the 3171 Petersburg Road address. Exhibit 8 contains the electric bill for 3171 Petersburg Road from February, 1991, to the present.

Anderson Tool & Die presently has a contract to weld and assemble lift gate assemblies for trucks. The welding is performed at Anderson Tool & Die's facility on Anderson Boulevard in Hebron. Due to the lack of space at Anderson Boulevard, the hydraulic unit is being assembled on the lift gate at Anderson Tool & Die's facility at 3171 Petersburg Road.

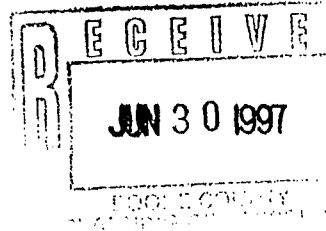
This use was completely consistent with the use of the property since the machine shop began operating in the late 1950s as a one person operation. Any machining operation requires some assembly, and the assembly on this particular project is the only function that is being conducted on the premises. Anderson Tool & Die never ceased its use of the property as a facility ancillary to its primary facility on Anderson Boulevard.

Very truly yours,

  
DAVID A. KOENIG

DAK/cb

EXHIBIT F



3221 Petersburg Road  
Burlington, KY 41005  
26 June 1997

Mr. Kevin T. Wall, Administrator  
Boone County Planning Commission  
2995 Washington Street  
Burlington, KY 41005

Dear Mr. Wall:

I am a Boone County landowner whose property adjoins a plot of ground with building formerly used by Anderson Tool & Die Co. (herein after referred to as AT&D) at 3171 Petersburg Road, Burlington.

I believe that property ceased to be used as a manufacturing site in the mid-1980's when AT&D moved its operations to Anderson Blvd. Because my home is only approximately 500 feet from the former AT&D business and I have an unobstructed view of that property, I can truthfully vouch for many years of business inactivity at that site.

Several weeks ago I learned the the building owners were refurbishing the building and were planning to again use it as a factory through a lease. I called your agency and was advised that an Inspector would visit the site. I later obtained a copy of a letter sent by that Inspctor to Charles Anderson of AT&D. The letter gave Mr. Anderson 30 days to submit evidence (telephone bills, utility bills, etc.) to you supporting continuous use. Article 2, Section 270 was cited as the authority for such usage.

I would appreciate hearing from you if such records were received and if further industrial activity will be sanctioned by your agency. Also, if such relief is allowed AT&D, what legal recourse is offered to those of us who reside in this RSE area? My neighbors and I are ready and willing to testify under oath as to the true situation in this matter.

An early response will be appreciated.

Sincerely yours,

John I. Anderson

**EXHIBIT G**

71  
JUL 16 1997

3221 Petersburg Road  
Burlington, KY 41005  
15 July 1997

Mr. Kevin T. Wall  
Boone County Planning Commission  
2995 Washington St.  
Burlington, KY 41005

Dear Mr. Wall:

I have received your letter of July 8, 1997, and am submitting this response which addresses your criterion "for not allowing pre-existing non-conforming use to be maintained is an intent to abandon such use," (Para. 2, lines 4-6 of your letter).

On Tuesday, Oct. 7, 1986, I was approached by Kenneth Anderson who said AT&D was going to sell the shop at 3171 Petersburg Road for \$45,000 and were Florence and I interested?

Although my answer was no, his legitimate offer, as president of AT&D at that time, signalled a direct intent to abandon that property and void the non-conforming zoning.

Again, my offer to testify under oath as to the veracity of this offer still stands.

Very sincerely yours,

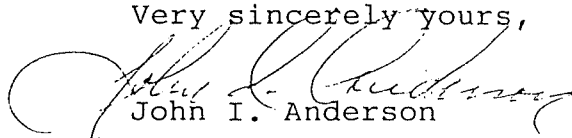
  
John I. Anderson

EXHIBIT H

KTW

BOONE COUNTY PLANNING COMMISSION



2995 Washington Street, Burlington, KY 41005

606-334-2196

FAX 606-334-2264

E-Mail plancom@one.net

July 8, 1997

Mr. John I. Anderson  
3221 Petersburg Road  
Burlington, KY 41005

RE: Anderson Tool & Die, 3171 Petersburg Road, Boone County, Kentucky

Dear Mr. Anderson:

The purpose of this letter is to request that you outline the information that you have regarding the history of the Anderson Tool & Die site at 3171 Petersburg Road. In the letter that you sent to me, you noted that "my neighbors and I are ready and willing to testify under oath as to the true situation in this matter." In addition, I am aware that you reviewed the materials submitted by Anderson Tool & Die's attorney that is intended to verify that the pre-existing, nonconforming use has not been abandoned.

Therefore, I am requesting that you (and any interested neighbors who know the history of the site) outline the history of the site to the best of your knowledge in a letter. Further, I would to know if you believe any of the facts outlined in the letter written by Anderson Tool & Die's attorney are in error. I will note that the standard for not allowing a pre-existing, nonconforming use to be maintained is an intent to abandon such use - this does not mean that there can not be periods of inactivity, but that there has been a demonstrated attempt not to resume the use if there have been periods of inactivity.

Please call me if you have any questions or need any clarifications.

Sincerely,

Kevin T. Wall, AICP CDT  
Director, Zoning Services

KTW/vlm