

426
99-002-A

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)

* AGREE WITH OPINION
OF NON-CONFORMING
PRE-EXISTING STATUS
BUT APPEAL SCOPE
OF PROPERTY ENTITLED
TO THIS STATUS -
SHOULD INCLUDE BARN.

- 1. Boone _____ Florence _____ Walton _____ Union _____
- 2. Conditional Use Permit _____ Variance Appeal _____
 Change in Non-Conforming Use
- 3. Applicant's Name MICHAEL & DELORES RYAN
Phone Number 485 4669 Fax No. _____
Applicant's Address 11712 RICHWOOD CHURCH ROAD
WALTON KY 41094
City State Zip
- 4. Description of Request: APPEAL OF ZONING ADMINISTRATOR'S OPINION
OF SCOPE OF PRE-EXISTING NON-CONFORMING USE
INCLUDES BARN AND REAR YARD AROUND BARN
- 5. Name of Development RYAN MOWER SERVICE
- 6. Location of Development 11712 RICHWOOD CHURCH ROAD
WALTON, KY 41094
- 7. Acreage Under Review 3.713
- 8. Lot Number and Name of Subdivision (if part of a subdivision) Parcel 212 of Rhodes
Subdivision of lots 32, 33 + 31 QUICK'S Rolling Acres Subdivision
- 9. Owner of Property MICHAEL & DELORES RYAN
Phone Number of Owner 485 4669 10. _____
Address of Property Owner 11712 RICHWOOD CHURCH ROAD 41094
City State Zip
- 11. Proposed Use(s) on Site lawn mower repair consistent with
PRE-EXISTING NON-CONFORMING PRESENT USE
- 12. Total Square Footage of Existing and/or Proposed Buildings N/A
- 13. Current Zoning on Property A-2
- 14. Deed Book 318/119 Page No. PLAT 10/19 Group No. 1085 2069
- 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: Dolores Ryan

Property Owner's Signature: Dolores Ryan

* GERALD F. DUSING 291-7270 P
40 W. P. KE ST (over) 291-7902 F
Covington Ky 41042

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 12-14-98 Fee Received \$424.00 R# 18990

2. Is application complete? Yes No

3. Staff Reviewer KEVIN WALL

4. Scheduled Board Action Date 1/13/99 - RESCHEDULED & RE-NOTICED FOR

5. Board Action: Approved 2/10/99 ~~2/3/99~~ DUE TO WEATHER & HEARING STARTED 2/3/99 & CONTINUED TO 2/10/99

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.

BCPC: 11/96

STAFF REPORT

DEVELOPMENT: **Ryan Mower Service - Appeal**

APPELLANT: Michael Ryan and Dolores Ryan

LOCATION: 11712 Richwood Church Road, Boone County, Kentucky

ZONE: Agricultural Estate (A-2)

DATE: January 13, 1999

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, Michael Ryan and Dolores Ryan 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 lawn mower repair business located at 11712 Richwood Church 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. Gerald Dusing dated November 16, 1998, which is attached as Exhibit B (a letter from the Appellant's attorney requesting a Zoning Administrator determination and related attachments are included as part of Exhibit B). In this letter, the Zoning Administrator determined the scope of a pre-existing, nonconforming lawn mower repair business which had been the subject of prior citizen complaints. The Appellant contends that a detached barn structure and an unspecified area around this barn should be included within the scope of the pre-existing, nonconforming use, however, the Zoning Administrator has determined that the nonconforming lawn mower repair business is limited to an attached garage - this single issue is the subject of this Appeal.

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 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, determination of how applicable development standards are applied in different circumstances, 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 11712 Richwood Church Road, Boone County, Kentucky, and is approximately 3.77 acres in size. The lot has 220 feet of frontage on Richwood Church Road. The site contains a one story, ranch style residence with an attached garage; the topography of the site slopes upward from the road to this residence. The site also contains a detached barn structure that is located near the rear property line. This barn structure is accessed by a gravel driveway that runs across the property from the residence. With the exception of the structures, the site is largely open lawn area. An aerial photograph of the site is attached as Exhibit C.

HISTORY OF ISSUE

- 1985 A lawn mower repair business is initiated at 11712 Richwood Church Road. This fact is attested by several letters that are included as part of Exhibit B. This fact was not known by the Zoning Administrator until the Appellants attorney requested a determination for a pre-existing, nonconforming use.
- 1995 Planning Commission personnel investigate an alleged illegal business at 11712 Richwood Church Road, which turned out to be the lawn mower repair business in question. This is noted in the memorandum from Floyd Sharp of the Boone County Public Works Department (former Zoning Inspector with the Boone County Planning Commission) to Kevin Wall dated December 16, 1998 (Exhibit D).
- 1997 A Home Occupation Permit application is approved by the Planning Commission on May 6 (application form and approval letter are marked Exhibit E). The application form states that the business will be conducted in the attached garage and that the business will not "change the exterior appearance of the building or premises by reason of sight, sound, odors, or vibrations discernible from abutting properties."
- 1998 In response to a citizen complaint, a letter dated May 13 was issued by Brad Horn, Zoning Enforcement Officer, regarding violations of the above referenced Home Occupation Permit (Exhibit F).

In response to another complaint and the submission of various photographs of the lawn mower repair operation by a neighbor, a letter dated July 22 was issued by Brad Horn, Zoning Enforcement Officer, which revoked the Home Occupation Permit because the business no longer complied with the Home Occupation requirements outlined in Section 3142 of the Boone County Zoning Regulations (Exhibit G). The referenced photographs will be available for the Board's review at the January 13, 1999 Public Hearing regarding this matter.

On October 26, 1998, the Zoning Administrator received the previously mentioned letter requesting a determination as to whether the lawn mower repair business constituted a pre-existing, nonconforming use because it had been in continuous existence for at least ten years. This would render the need to comply with the current Home Occupation requirements moot, although the scope of the pre-existing, nonconforming use still could not be expanded beyond its historic level.

On November 13, 1998, the Zoning Administrator inspected the premises with Brad Horn, Zoning Enforcement Officer, and the Appellants. At this meeting, the Appellants noted that the barn was used to store lawn mowers that were Mr. Ryan's personal property, but was not used for the lawn mower repair business. When questioned about a repair tag attached to one of the lawn mowers in the barn by Mr. Horn, Mr. Ryan responded that the tag was on the mower from the previous owner, and that the tag was not from his business.

On November 16, 1998, the Zoning Administrator issued the previously mentioned letter. This letter defines the scope of the pre-existing, nonconforming use by outlining several limitations. Limitation #3 is enumerated as follows:

All repair activities and associated storage of mowers (mowers that are waiting to be repaired or picked up) must occur within the attached garage. I understand that Mr. Ryan has several mowers and other machines that are his personal property that are stored in the detached barn on the lot - this is acceptable because it is not part of the business use. However, I will reiterate that all aspects of the mower repair business itself must occur within the attached garage.

This limitation is the result of the Appellant's statement that the detached barn was not used in conjunction with the lawn mower repair business and the fact that the previous Home Occupation Permit application stated that the business occurred within the attached garage. In addition, no evidence has been offered which suggests that the detached barn was ever a part of the lawn mower repair business.

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 the lawn mower repair business had pre-existing, nonconforming status, and to define the scope of said use, including the limitation that the use occur only within the attached garage. A considerable fact for the Zoning Administrator in this matter is that the level/scope of the use had apparently increased in the Spring/Early Summer of 1998, and that the permitted scope of the use needed to be concretely defined for the benefit of the Appellant, neighboring property owners, and zoning enforcement personnel. The rationale used in formulating the "attached garage" limitation is discussed above in the last paragraph of the "History of Issue" section of this report.

DECISION AND BASIS FOR DECISION


The decision in question, and the basis for the decision, are described in the previously mentioned letter dated November 16, 1998 from Kevin T. Wall, Director of Zoning Services, to Gerald Dusing, Esq., and is briefly described 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 is in error. Issues of particular relevance to this matter include:

- A. The memorandum from Floyd Sharp which states that he was assured in 1995 and 1998 by the Appellants that the business was not being conducted in the barn (Exhibit D).
- B. The Home Occupation Permit application which states that the business will be conducted in the attached garage (Exhibit E).
- C. The Appellants told the Zoning Administrator and Brad Horn, Zoning Enforcement Officer, during their November 13, 1998 site inspection that the barn was not used for the repair business, but that it housed a number of lawn mowers and other machinery that was the personal property of the Appellants.
- D. No evidence has been offered to the Zoning Administrator which suggests that the barn or surrounding area on the property has been used as part of the lawn mower repair business or the pre-existing, nonconforming use.
- E. As of this writing, no evidence which demonstrates that the Zoning Administrator's decision is in error (as required by Section 220 of the zoning regulations and KRS 100.257 "Administrative Review") has been submitted.
- F. The Appellants may apply for a "Change in Nonconforming Use" as an attempt to legitimately use the detached barn as part of the pre-existing, nonconforming use.

Respectfully submitted,



Kevin T. Wall, AICP CDT
Director, Zoning Services
Zoning Administrator for Boone County Fiscal Court

KTW\pr

attachments:

- Appeal application form
- Exhibit A - Sections 270 and 272 of the Boone County Zoning Regulations
- Exhibit B - letter dated 11/16/98 from Kevin Wall to Gerald Dusing, letter dated 10/23/98 from Gerald Dusing to Kevin Wall and related attachments
- Exhibit C - aerial photograph of 11712 Richwood Church Road property
- Exhibit D - memorandum dated 12/16/98 from Floyd Sharp to Kevin Wall
- Exhibit E - letter dated 5/6/97 from Fred Nevel to Mike Ryan and approved Home Occupation Permit application
- Exhibit F - letter dated 5/13/98 from Brad Horn to Dolores Ryan
- Exhibit G - letter dated 7/22/98 from Brad Horn to Michael Ryan

42602

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 _____
3. Applicant's Name MICHAEL & DELORES RYAN
Phone Number 485 4669 Fax No. _____
Applicant's Address 11712 RICHWOOD CHURCH ROAD WALTON KY 41094
4. Description of Request: APPEAL OF ZONING ADMINISTRATOR'S OPINION OF SCOPE OF PRE-EXISTING NON-CONFORMING USE TO INCLUDE BARN AND REAR YARD AROUND BARN
5. Name of Development RYAN MOWER SERVICE
6. Location of Development 11712 RICHWOOD CHURCH ROAD WALTON KY 41094
7. Acreage Under Review 0.113
8. Lot Number and Name of Subdivision (if part of a subdivision) Parcel 1 & 2 of Rhodes Subdivision of Lots 32, 33 + 34 Hewick's Rolling Acres Subdivision
9. Owner of Property MICHAEL & DELORES RYAN
Phone Number of Owner 485 4669
Address of Property Owner 11712 RICHWOOD CHURCH ROAD WALTON KY 41094
10. Proposed Use(s) on Site Lawn Mower Repair consistent with PRE-EXISTING NON-CONFORMING PRESENT USE.
11. Total Square Footage of Existing and/or Proposed Buildings N/A
12. Current Zoning on Property H-2
13. Deed Book 310119 Page No. PLAT 10/19 Group No. 1085
14. Is the site subject to a zone change? NO
15. 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.

* AGREE WITH OPINION OF NON-CONFORMING PRE-EXISTING STATUS BUT APPEAL SCOPE OF PROPERTY ENTITLED TO THIS STATUS - SHOULD INCLUDE BARN

Applicant's Signature: Dolores Ryan

Property Owner's Signature: Dolores Ryan

* GERALD F. DUSING 291-7270 P
40 W. P. KE ST (over) 291-7902 P
COVINGTON KY 41042

**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 12-14-98 Fee Received \$426.00 R# 18990
- 2. Is application complete? Yes No
- 3. Staff Reviewer KEVIN WALL
- 4. Scheduled Board Action Date 1/13/99
- 5. Board Action:
 - Approved
 - Approved with Conditions (See #6)
 - Denial (See #7)
- 6. Conditions of Approval: _____
- 7. Reasons for Denial: _____

**Boone County Planning Commission
2095 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.

BCPC: 11/96

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

November 16, 1998

Mr. Gerald F. Dusing
Adams, Brooking, Stepner, Woltermann & Dusing
40 West Pike Street
P.O. Box 861
Covington, KY 41012-0861

RE: Ryan Mower Service, 11712 Richwood Church Road, Boone County, Kentucky

Dear Mr. Dusing:

In response to your request, I am providing the following determination regarding the lawn mower repair business at 11712 Richwood Church Road. In addition to reviewing the information that you supplied, I have reviewed various letters from the Planning Commission to the Ryans (dated 5/6/97, 5/13/98, and 7/22/98) and a large collection of photographs of the business that were taken a few months ago (while it was still in operation), and visited the location on Friday, November 13, 1998 with Brad Horn, Zoning Enforcement Officer.

First, based on the letters provided from various neighbors in the area, it is apparent that there has been some sort of lawn mower repair business at the Ryan's home since at least 1985. In accordance with KRS 100.253 and Section 272 "Non-Conforming Uses of Land" of the Boone County Zoning Regulations, the lawn mower repair use has been in continuous existence for at least ten years without being subject to adverse order or other adverse action during said period, therefore, it is deemed to have legal nonconforming status.

Second, it is also apparent that the mower repair business had by and large been operating within the scope of the Home Occupation requirements within the zoning regulations, but has recently grown beyond this pre-existing scope (at or about the time that the Home Occupation License was revoked). Therefore, in order for the business to stay within the scope of the pre-existing use, the lawn mower repair business must be maintained within the following use limitations:

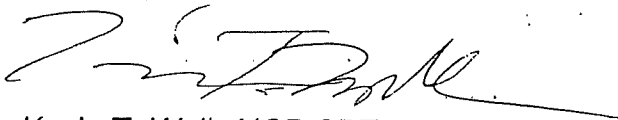
1. No signage may be used on site to advertise the business.
2. Repair activities must cease at 9:00 p.m.

Mr. Gerald F. Dusing
November 16, 1998
Page 2

3. All repair activities and associated storage of mowers (mowers that are waiting to be repaired or picked up) must occur within the attached garage. I understand that Mr. Ryan has several mowers and other machines that are his personal property that are stored in the detached barn on the lot - this is acceptable because it is not part of the business use. However, I will reiterate that all aspects of the mower repair business itself must occur within the attached garage.
4. No retail sales may occur on the premises nor may any mowers for sale be displayed on the premises. Again, I understand that Mr. Ryan occasionally repairs his personal mowers and offers them for sale. This is acceptable as long as it is done on an "individual mower" basis (i.e., no more than one at a time) and the means for marketing these mowers is not displaying them on the premises or using on site signage. This is similar to a homeowner who occasionally buys a used car, repairs it, and then resells it; this activity has been deemed acceptable in the past as long as the car was the personal property of the homeowner and it was done on an individual vehicle basis (i.e., one at a time).

As you are aware, this decision may be appealed to the Boone County Board of Adjustment within thirty (30) days of today's date by either your client or another aggrieved party, such as a neighbor who does not agree with this decision. 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/vlm

cc: Resident, 11724 Richwood Church Road, Walton, KY 41094

**ADAMS, BROOKING, STEPNER, WOLTERMANN & DUSING,
P.L.L.C.**

Attorneys and Counselors at Law

JOHN R.S. BROOKING * GREGORY S. SHUMATE *
DONALD L. STEPNER * J.S. "BROOK" BROOKING *
JAMES G. WOLTERMANN * STACEY L. GRAUS *
GERALD F. DUSING PAUL J. DARPEL *
MICHAEL M. SKETCH * LORI A. SCHLARMAN *
DENNIS R. WILLIAMS * CHANDRA S. BALDWIN *
JAMES R. KRUER * ROBERT D. DILTS *
JEFFREY C. MANDO * WESTON W. WORTHINGTON
R. JEFFREY SCHLOSSER * JEFFREY A. STEPNER *
MARC D. DIETZ *

40 WEST PIKE STREET

P.O. BOX 861

COVINGTON, KENTUCKY 41012-0861

AREA CODE 606-291-7270

FAX 606-291-7902

8100 BURLINGTON PIKE - SUITE 344
P.O. BOX 576
FLORENCE, KENTUCKY 41012-0576
AREA CODE 606-371-6220
FAX 606-371-8341

1850 FEDERATED BUILDING
7 WEST SEVENTH STREET
CINCINNATI, OHIO 45202-2417
AREA CODE 513-241-7640

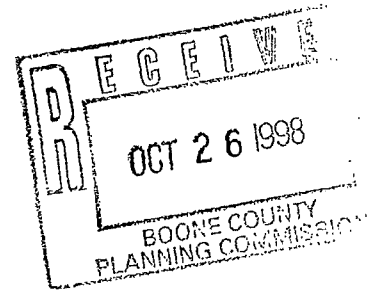
CHARLES S. ADAMS (1906-1971)
C. GORDON WALKER (1911-1967)

* ALSO ADMITTED IN OHIO
** ADMITTED ONLY IN OHIO

October 23, 1998

Mr. Kevin T. Wall, Director
of Zoning Services
BOONE COUNTY PLANNING
COMMISSION
2995 Washington Street
Burlington, KY 41005

**RE: 11712 Richwood Church Road
Walton, Kentucky**



Dear Kevin:

Per our telephone conversation, this office represents Michael and Delores Ryan regarding their lawn mower repair business at their residence at the above-referenced address.

This letter requests your opinion that their lawn mower repair business is protected as a non-conforming use under KRS 100.253(3) and as referenced in Section 272 of the Boone County Zoning Ordinance. The Ryans have conducted their lawn mower repair business at the premises since 1985. The first involvement with the Planning Commission occurred in May 1997 when Zoning Enforcement Officer Floyd Sharp came to the home and inspected the business. Mr. Sharp directed the Ryans to take down the sign "Ryan Mowers" from their yard and to apply for a Home Occupation Permit. They applied for a Home Occupation Permit and were granted same.

In May 1998 Mr. Sharp and Mr. Horn came to the Ryan home to appease a neighbor. The resolution was for Mike to change the quitting time of his mowing repair from 10:00 p.m. to 9:00 p.m. Mike has a full time day job and engages in his lawn mower repair in the evenings after work.

A few days later in May 1998 the Ryans met with Mr. Sharp and Mr. Horn and another gentlemen at the Planning Commission for a meeting that the Ryans requested. They explained the complaint from the neighbor was harassment over personal differences and had nothing to do with the business and that the Planning Commission should take that point into consideration if any other complaints are received from that same household.

Mr. Kevin T. Wall, Director
of Zoning Services
BOONE COUNTY PLANNING
COMMISSION
October 23, 1998
Page Two

In July 1998, the Ryans noticed they were being videotaped by the same disgruntled neighbor and on July 23, 1998 they received a letter dated July 22, 1998 from Brad Horn. All correspondence from the Planning Commission, May 6, 1997, May 13, 1998 and July 22, 1998 is enclosed for your ready reference.

Also enclosed is a packet of documentation that the lawnmower repair business has been operating at the Ryan premises since 1985. Also enclosed is a letter from Richard S. Deakins of 11706 Richwood Church Road, and a letter dated September 10, 1998 from Willetta Rusconi and Denise Rusconi of 922 Richwood Road documenting that the Ryan Mower Service has been operating at the Ryan premises since 1985.

Also enclosed is a letter dated September 14, 1998 from Steve Modlin of 729 Aylor Lane, which you know is a subdivision street off Richwood Road, documenting that he has used Ryan Lawnmower Repair since 1987. I also enclose a letter from Jeff and Doris Beierlein dated September 15, 1998 documenting that they have lived just around the corner from Mike and Delores Ryan for 13 years. They could testify that the business has been operating there for the 13 years that they have been neighbors.

Finally, I enclose a letter from Robert Martin of Martac Real Estate documenting that the lawnmower service has been servicing Mr. Martin since the mid-1980s.


We request your investigation and formal opinion letter that Ryan Lawnmower Service is a non-conforming use protected under the statute and zoning code.

We invite you for a personal inspection. If you desire to review the premises you may contact Delores or Mike Ryan directly at 485-4669 or me at 291-7270.

Thank you in advance for your prompt attention.

Very truly yours,

ADAMS, BROOKING, STEPNER,
WOLTERMANN & DUSING


GERALD F. DUSING

GFD:vam
Enclosures

Cc: Mike and Delores Ryan

COPY

September 9, 1998

Mr. David Turner
Burlington, Kentucky 41005

Mr. Turner,

I have been working on lawn and garden equipment since 1985 at
11712 Richwood Church Road.

I began repairing family, friends and neighbors' lawnmowers and
garden tillers as a hobby. I continue doing it part-time, in the evening and on
Saturday, as I work a 40-hour a week job in Cincinnati.

Sincerely,

Mike Ryan

State of Kentucky
County of Boone

This will certify that Mike Ryan appeared before me this 9th day of September,
1998 and affixed his signature to this document.

Robert S. Martin, Broker

To Whom It May Concern,

Mike Ryan has provided me lawn mower repair service since the mid 1980's. Up until a few years ago I lived in the Richwood area. Also, within the past decade, I have participated in residential development and also residential brokerage in Richwood.

I am surprised that Mike Ryan's small business in his garage and barn is causing a neighborhood problem. His operation has always been neat and appears considerate to the neighborhood.

Robert S. Martin

Mr. Dave Turner

I am writing, to object to, Ryan Mower Services permit being revoked. Not only has Mr. Ryan been harmed, by denying him to perform a service, that generated extra income for his family, it has also created an inconvenience for me and a lot of my friends and neighbors, to utilize a service after our normal work schedules.

Until Mr. Ryan opened his repair service, we would have to take time off work, or wait until weekends: when we should be using our equipment; to get said equipment in for repairs. If we had to leave equipment at shop, we again had to take off work or wait till the next weekend to pick-up.

Granted I (we), may have to leave our equipment at Mr. Ryan's, but, it is done after work hours, so we lose no work time, or weekends.

I have lived here 26 years and have known the Ryan's, ever since they moved in next door. My job requires that I get up between 3 and 4 AM, which means I go to bed, fairly early. Mr. Ryan has always kept noise to a very minimum after 8 PM, knowing my early morning schedule.

Traffic increase was also a reason we heard was part of the decision to revoke permit. ~~There~~ There is very little chance of proving, Mr. Ryan's Service has caused this so called problem.

(next page)

In the last 26 years I have watched between 10 and 20 subdivisions started in our area. About half of these in the last 10 to 12 years. These are not counting the number of single family homes built on 1 to 20 acre plots along main roads.

Contractors and their employees, plus all the people moving in has contributed to increase of traffic.

Another factor which has increased traffic, and I will give 2 examples, children coming of age to drive. In the last 5 years Mr. Ryan and myself have added four vehicles and drivers to this area, two children from each of us. Add ones to the other households in this area with children now driving, and more coming of age every month.

We have not even mentioned Realtors' and their agents. Enough said. I have watched traffic increase every year for the last 26 years.

My understanding is that all this commotion started from one complaint from one household. I cannot believe the powers, that made this decision, would inconvenience all of us that use Mr. Ryan's service. "(Over 1 complaint)".

Richard A. Deakin
11706 Richwood Church Rd

September 10, 1998

Mr. David Turner
Burlington, KY 41005

Re: Ryan Mower Service

Mr. Turner;

We have been employing Mr. Mike Ryan of Ryan Mower Service to make appropriate repairs on our Lawn Mowers and Tractor since 1985. He has been extremely knowledgeable, prompt and professional.

Our property joins The Ryan Family and in the past 13 years there has never been a time that our family has been disturbed or disrupted by Mr. Ryan having this Service at his residents. Also, we have not seen an increase in traffic on Richwood Road as a result of Mr. Ryans' Business.

As property owners on Richwood Road, we believe Ryan Mower Service is as asset to the area.

Sincerely,

Willetta Rusconi

Willetta Rusconi

Denise E. Rusconi
Denise E. Rusconi

922 Richwood Road
Walton, KY 41094

der

September 14, 1998

To Whom It May Concern,

My name is Steve Modlin. I have lived in Richwood, Ky. since March of 1977. When I moved here from Florence there was only a few gas stations and a truck stop. If we needed anything from the store we had to drive to Florence or Walton to get it. Since that time we have watch this area grow alot. The traffic has increased drastically from all of the development in this area, new homes, new businesses.

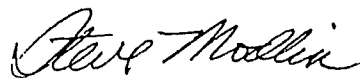
In 1987 I meet Mike Ryan. Mike started working on my lawn and garden equipment. He has worked on my lawn tractor, chainsaw, weedeater, and blower.

It has been a real convenience to have someone nearby that you can trust and know that can work on my equipment. Mike has always done this in an up-most professional way.

I would like to see Mike be able to continue to do this.

Any increase in traffic is do to all of the new development not to Mike Ryan working on neighbors and friends equipment!

Yours Truly,



Steve Modlin
729 Aylor Ln.
Richwood, Ky. 41094
485-4782

September 15, 1998

To Whom it may concern:

I was extremely upset to learn that Mr. Mike Ryan was being forced to close his mower servicing business due to a neighbor's complaints. Mr. Ryan has been servicing our riding mower since 1993. He is very reliable and trustworthy and frankly I would not feel comfortable with anyone else servicing our equipment.

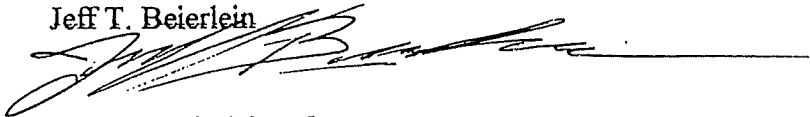
I understand that one of the reasons for concern was the increase in the amount of traffic on Richwood Church Rd. My husband and I have lived on Chambers Rd., just around the corner from the Ryan's home for 13 years. Let me assure you the increase in traffic has been phenomenal. It is not due however to the Ryan Mower Service. Just look at the growth in our area over the last three years. New subdivisions are popping up everywhere, and the traffic has been consistently increasing with the new growth in the area.

It would be next to impossible for most of us to load our mowers onto a truck and haul them in for repairs.

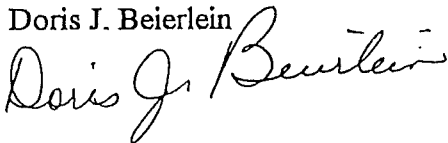
In this day and age it is a very valuable asset to find a person that is trustworthy, honest and dependable, not to mention conveniently located.

We very sincerely request that you reconsider this decision on behalf of all of Mr. Ryan's clients.

Jeff T. Beierlein



Doris J. Beierlein





Ryan - Exhibit C

100 0 100 Feet



1 inch equals 100 feet
Produced by the
Boone County Planning Commission
GIS Services Division
December 29, 1998



GREGORY V. SKETCH, P.E., L.S.
County Engineer



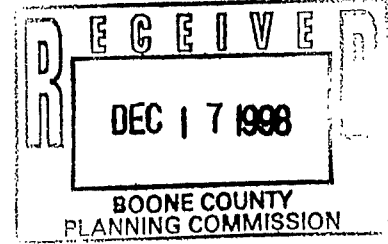
HARVEY F. PELLEY, L.S.
Director of Public Services

DEPARTMENT OF PUBLIC WORKS

5645 IDLEWILD ROAD
BURLINGTON, KY 41005

Phone: 606 586-5445

Fax: 606 586-5487

MEMORANDUM

TO: Kevin Wall, Planning and Zoning

FROM: Floyd Sharp

SUBJECT: Ryan Mower Service, 11712 Richwood Church Rd.

DATE: December 16, 1998

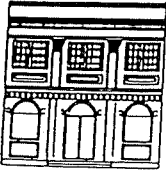
During 1995 and again in 1998, I visited the subject address due to complaints that an illegal business was being operated. Each time I contact Mr. and Mrs. Ryan they assured me that only small engine repairs (lawn mowers) was being conducted at that location. They also assured me that all work was being done in their attached garage and that no work was being done in the barn on the property.

I advised Mrs. Ryan that the home occupation permit required that all work must be contained in the attached garage and that no materials or inventory should be stored outside. They were also informed that no signs would be permitted.

Floyd

EXHIBIT E

BOONE COUNTY PLANNING COMMISSION



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

May 6, 1997

Mr. Mike Ryan
11712 Richwood Church Road
Walton, KY 41094

Dear Mr. Ryan:

This office has approved the attached application for a "Home Occupation" with the following understanding:

1. If your business should increase to a level that it becomes a problem in your neighborhood, you will be required to move the business to a more suitable location.
2. Should this office receive complaints from other residents of the area and after investigation the complaints have been justified, your permit will be voided.

Sincerely,

Fred C. Nevel
Zoning Enforcement Officer

FCN\par

Enclosure

HOME OCCUPATION PERMIT APPLICATION

RETURN TO:

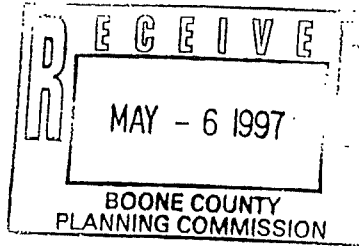
(Please type or print)

Boone County Planning Commission
2995 Washington Street
Burlington, KY 41005

Name: Mike Ryan

Address: 11712 Richwood Church
Walton, Ky 41094

Phone 485-4669



1. What type of business operation will be conducted? small engine repair + service
2. Will any persons, other than members of the family residing on the premises, be engaged in the business operation? (please check answer)
NO YES If YES, HOW MANY? _____
3. Where in the home will the business be conducted? attached garage
4. Will any merchandise or commodities be sold on the premises in connection with the Home Occupation?
No If Yes, describe: _____
5. Will the Home Occupation change the exterior appearance of the building or premises by reason of sight, sound, odors, or vibrations discernible from abutting properties?
No Yes If yes, describe: _____
6. Briefly describe the activities and processes necessary to conduct the business (bookkeeping, deliveries, storage, etc.) repair + service air cooled engines + mowers
7. Briefly describe the traffic that will be generated by the Home Occupation: drop off + pickup
8. Will any equipment be utilized with the Home Occupation? small hand tools
9. An Occupational License must be obtained from the Finance Department of either the County of Boone or the City of Florence.

I HEREBY ACKNOWLEDGE, BY SIGNATURE, THAT ALL OF THE ABOVE INFORMATION AND ANY ATTACHMENTS ARE TRUE AND ACCURATE TO THE BEST OF MY KNOWLEDGE.

DATE 5/6/97 SIGNATURE Dolores Ryan

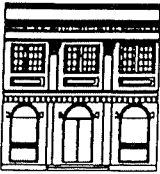
FOR PLANNING COMMISSION USE ONLY

APPROVED DATE 5-6-97 ZONING DIST. A-2 STAFF REVIEWER Fred O. Nunez

DENIED REASON(S) _____

EXHIBIT F

BOONE COUNTY PLANNING COMMISSION



2995 Washington Street, Burlington, KY 41005

606-334-2196

FAX 606-334-2264

E-Mail plancom@one.net

May 13, 1998

Ms. Delores Ryan
11712 Richwood Road
Walton, KY 41094

Dear Ms. Ryan:

On May 12, 1998, Floyd Sharp and I met with you in response to a complaint received in our office. The complaint was in reference to the mower repair business you are running from your garage and whether or not it is legal.

During our meeting you produced documentation of an approved "Home Occupation Permit" signed by Fred Nevel on May 6, 1997. This documentation allows you to legally operate your home occupation from your attached garage. However, Mr. Sharp and I did discuss some violations with you that need to be corrected.

1. All mowers should be kept in or behind the garage, not displayed in the front or side yard.
2. The sign "Ryan Mowers" must be removed from your mail box.
3. We agreed that 9:00 P.M. will be the latest you will operate your business so as not to disturb your neighbors.

When these violations are corrected, you will be in full compliance of your Home Occupation permit.

If you have any questions, please feel free to call me at the telephone number listed above.

Sincerely,



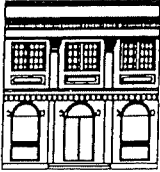
Brad Horn
Zoning Enforcement Officer

BH\pr

cc: Floyd Sharp, Asst. Codes Enforcement Officer

EXHIBIT G

BOONE COUNTY PLANNING COMMISSION



2995 Washington Street, Burlington, KY 41005

606-334-2196

FAX 606-334-2264

E-Mail plancom@one.net

July 22, 1998

Mr. Michael Ryan
11712 Richwood Rd.
Walton, KY 41094

Dear Mr. Ryan:

Our office has received documentation that leads me to believe you are operating your mower service outside the parameters of a Home Occupation.

The areas of concern are as follows:

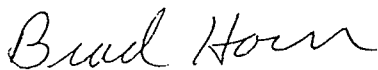
- 1) You are using the barn behind your home for storing mowers related to your business.
- 2) Traffic on Richwood Rd. has increased due to your business.
- 3) You are testing the repaired mowers on your lawn, which is outside the confines of your attached garage.

After reviewing the information given to me, it appears your mower service business has outgrown its present location and no longer qualifies for a Home Occupation.

Therefore I have no other choice, but to revoke your Home Occupation permit and recommend relocation in a Commercial Services (C-3) district. You will be permitted thirty (30) days to phase out the current operation.

Thank you for your cooperation.

Sincerely,



Brad Horn
Zoning Enforcement Officer

BH\pr

cc: Kevin T. Wall, Director of Zoning Services

COPY

CLUR # 99-BCBOA-002-A

CERTIFICATE OF LAND USE RESTRICTION

1. NAME AND ADDRESS OF PROPERTY OWNER (S)

Michael & Dolores Ryan
11712 Richwood Church Road
Walton, Kentucky 41094

2. ADDRESS OF PROPERTY
11712 Richwood Church Road
Boone County, Kentucky

3. NAME OF SUBDIVISION OR DEVELOPMENT (if applicable)
Ryan Mower Service

DEED BK.: 318/119

PAGE NO.:10/19

GROUP NO.: 2069

4. TYPE OF RESTRICTION(S) (Check all that apply)

Zoning Map Amendment:
From To

Conditional Use Permit

Development Plan

Conditional Zoning

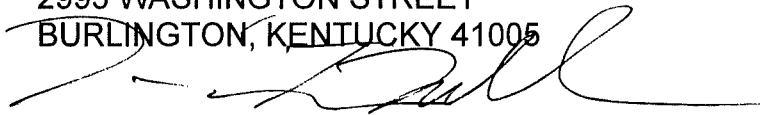
Subdivision Plat
(Not Recorded)

Other: Appeal

Variance

5. NAME AND ADDRESS OF PLANNING COMMISSION, BOARD OF ADJUSTMENT, LEGISLATIVE BODY OR FISCAL COURT WHICH MAINTAINS THE ORIGINAL RECORDS CONTAINING THE RESTRICTION

BOONE COUNTY PLANNING COMMISSION
2995 WASHINGTON STREET
BURLINGTON, KENTUCKY 41005



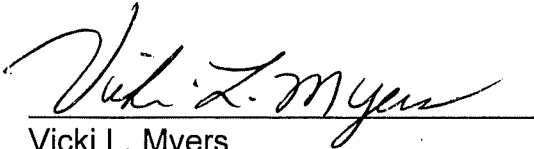
SIGNATURE OF COMPLETING OFFICIAL

Kevin T. Wall, AICP/CDT, Director of Zoning Services
Name and Title of Completing Official

COMMONWEALTH OF KENTUCKY

COUNTY OF BOONE

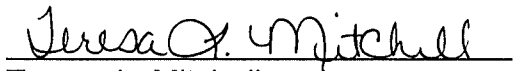
Subscribed, sworn to, and acknowledge before me by Kevin T. Wall behalf of the
Boone County Planning Commission this 8th day of March 1999.



Vicki L. Myers
NOTARY PUBLIC, State at Large

My commission Expires:
April 17, 1999

This instrument was prepared for recording purposes only by:



Teresa L. Mitchell
Boone County Planning Commission
2995 Washington Street
Burlington, Kentucky 41005

NO TITLE EXAMINATION

(Legal Description and source of Title and Group Number furnished by the applicant.)

CONDITIONS OF APPROVAL

The following Conditions of Approval apply to the Appeal approved by the Boone County Board of Adjustments and in accordance with the current zoning in effect as of February 10, 1999 Certificate of Land Use Restriction (# 99-BCBOA-002-A), for Michael and Dolores Ryan, Property Owners.

The following conditions will apply: No Conditions

The approved Appeal as well as the preceding conditions apply to the property described in: DEED BOOK 318/119 PAGE NO. 10/19 Group No. 2069