

APPLICATION for ZONING ACTION

TO:

- Boone County Planning Commission
- City of Florence Board of Adjustment
- Boone County Board of Adjustment
- City of Union Board of Adjustment
- City of Walton Board of Adjustment
- Zoning Enforcement Officer

FOR:

- Zoning Text Amendment
- Comprehensive Plan Change
- Improvement Plan Approval
- Conditional Use Permit
- Concept Development Plan Change
- Preliminary Development Plan
- Change of Non-Conforming Use
- Design Review Board and Certificate of Appropriateness
- Zoning Map Amendment
- Planned Development Overlay Change
- Preliminary Plat Approval
- Final or Deed Plat Approval
- Site Plan Review
- Historic District Overlay
- Appeal or Variance
- Sign or Zoning Permit

SARA

Applicant: TONY GARZA for Wendy's International Owner Agent

Address: 4288 W. Dublin - Granville Rd. Dublin, OH 43017

Telephone: ⁶¹⁴-764-3363

Location: 7910 ~~2893~~ Dream Street, Florence, Ky.

Name of Property Owner: Wendy's International

Address of Property Owner: 4288 W. Dublin - Granville Rd.

Zoning District: _____ Area in Acres: _____

Deed Book: 294 Page Number: 253 Group Number: 1542

Description of the Request: To Allow the addition of a 10 feet "Solarium" to our existing Building.

Property Owner's Signature: [Signature] for Wendy's Int.

Applicant's Signature: [Signature]

FOR PLANNING COMMISSION USE ONLY

Application Fee: 150.00 Date Received: _____ By: _____

Referred to: _____ Meeting Date: _____

Action Taken: _____ Date of Action: _____

BOARD of ADJUSTMENT and ZONING APPEALS

CHECKLIST

I. GENERAL INFORMATION

Applicant's Name: Tony Garcia for Wendy's International

Interest in Property: OWNER

Location and/or Address of the Property: 7910 Dream Street,
Florence

Deed Book: 294 Page Number: 253 Group Number: 1542

Request of the Applicant: Requesting a variance in the required
front yard of 75 feet to a requested setback of 65 feet to permit
the addition for more seating area for the business.

Present Zoning and Affected Sections of the Regulations: _____

Presently zoned Commercial Services, C-3 and affecting Section
946 (and Table One) found on Page 9-8 and following Article 17

Present Use of the Subject Property and the Adjoining property: _____

The property along with all adjoining property to the north,
south, and west is currently used for commercial purposes.

To the east the property is currently undeveloped.

III. VARIANCE REQUESTS:

1. *What Variance is Needed and to What Section(s) do They Apply:*

A variance is needed in the required front yard setback for the planned addition for Wendy's Restaurant. The required setback is 75 feet from the front property line. The request is to permit the structure to maintain a setback of 65 feet. This is as required by Table One defining the dimensional standards.

2. *What Could be the Unique Conditions to Justify the Granting of the Request:*

In my opinion there are no unique conditions to justify the granting of the request due to the construction of the current building after the adoption of the current regulations.

3. *What Reasonable Use of the Land Will be Denied if This is not Granted:*

Unless the plans for the addition can be altered to meet the setbacks of the district, the addition as proposed may not be built.

4. *Has the Applicant Caused These Unique Conditions?*

In my opinion the property owner in the development of the land has caused these unique conditions in that they constructed the original building up to the required setback.

5. *Will the Variance be Detrimental, or will it Preserve, the Public Welfare and How? Will it Alter the Essential Character of the Neighborhood?*

This variance will not nor will it preserve the public welfare.

It would, in my opinion, alter the character of the neighborhood by allowing the construction of a building within the front yard setback. Currently the Dream Street area has only one building within the setback, that being for Pizza Hut which is a 25 foot setback and was constructed prior to the zoning regulations.

FLORENCE BOARD OF ADJUSTMENTS

NOVEMBER 14, 1984

6:30 P.M.

Chairman Holland called the Florence Board of Adjustment Meeting to order.

The roll call was taken. Four members present: Messrs. Holland, White, Wilder and Bolton. Counselor Dale Wilson was also present.

The Board considered the Minutes of the meeting of the Florence Board of Adjustment Meeting of October 24, 1984. Chairman Holland moved that the Minutes be approved as reviewed. The motion was seconded by Mr. Wilder. After discussion, the motion carried unanimously.

AGENDA ITEMS:

Variance

A request of Tony Garcia for Wendy's International for a Dimensional Variance for a front yard setback of 65 feet from the required front yard of 75 feet for their property located at 7910 Dream Street, Florence. The request, if granted will permit the construction of an addition onto the front of the building for additional seating capacity.

Mr. Block distributed photographs of the area for Board Members' review. Mr. Block explained the request of the applicant is for a variance to permit an additional seating area for the restaurant. Mr. Block stated that presently the property is zoned Commercial Services 3 which affects Section 946 and Table One found on page 9-8 and following Article 17 of the Zoning Regulations. Mr. Block described the property along with all adjoining properties to the north, south and west is currently used for commercial purposes with the land to the east being currently undeveloped. Mr. Block explained the variance is needed from the required 75 foot front yard setback to a 65 foot front yard setback for the planned addition for Wendy's Restaurant. Mr. Block stated there are no unique conditions to justify the granting of the request. Mr. Block noted that the property owner in the development of the land has caused the unique condition in that they constructed the original building up to the required setback. Mr. Block closed by stated that the variance if granted would alter the essential character of the neighborhood by allowing the construction of a building within the required front yard setback. Mr. Block noted that currently the Dream Street area has only one building non-conforming to the front yard setback and that being the Pizza Hut building which was constructing prior to the Zoning Regulations.

Mr. Tony Garcia, representing Wendy's Restaurants, urged the Board to grant the variance and stated plans for the proposed addition of a screen house or glass front atrium addition on to the front of the Wendy's Restaurant. Mr. Garcia presented pictures of the proposed addition.

Chairman Holland inquired why the addition was not originally proposed. Mr. Garcia responded that Wendy's is on a national expansion campaign and has chosen the atrium open air additions for their restaurants.

There was no audience support or opposition expressed.

Mr. White inquired of the photograph depicting the Dream Street area and noted that it appeared that Captain D's (the restaurant next door to Wendy's) is closer than 75 feet to the street. Mr. Block responded the angle of the road gives the illusion of that and that Captain D's is in conformance. Discussion followed of the Dream Street area.

Chairman Holland inquired of a site plan on the proposed addition. Board members reviewed the site plan.

Mr. Wilder inquired what kind of precedence would be set in the area by the granting of the variance on the proposed addition of Wendy's Restaurants. Counselor Wilson responded that a justification for a variance is the uniqueness of the subject property. Mr. Wilson then reminded Board members of Mr. Block's noting of the low topography to the rear of the restaurant. Mr. Wilson then stated that it was a matter of Board discretion as to whether the uniqueness mentioned justified or did not justify such a variance.

Board members discussed the uniqueness and/or the lack of uniqueness of the subject location.

Mr. Holland moved that the Board deny the request for a dimensional variance from 75 feet to 65 feet for property located at 7910 Dream Street for the reason there is no unique condition existing on the land to justify a variance. The motion was seconded by Mr. Bolton.

Mr. Garcia explained expansion to the rear of the restaurant is impractical as the kitchen is located in that area. Mr. Garcia explained the selarium additions are most favorable to the customers.

A roll call vote was taken on the motion.

Ayes: Messrs. Holland, Wilder, Bolton.
Nay: Mr. White

The motion carried by a vote of 3-1.

Conditional Use Permit

A request of Tony Garcia for Wendy's International for a Conditional Use Permit for a seating addition onto the front of their business located at 6725 Dixie Highway, Florence, Kentucky. If the request is granted, this addition will permit the construction of a 10 foot by a 33 foot addition on property currently zoned C-2.

Mr. Block distributed photographs of the area for Board Members' review. Mr. Block explained the request of the applicant is for a permit for additional seating area for the restaurant. Mr. Block stated that presently the property is zoned Commercial Services 2 which affects Section 923 of the Zoning Regulations that permit "drive-in and fast-food franchise restaurants". Mr. Block described the property along with all adjoining properties to the north, west, and east is currently used for commercial purposes with the land to the south being currently single family residential. Mr. Block noted that properties to the north, east and west is planned for commercial and property to the south is planned for high density residential. Mr. Block stated a site plan was submitted showing a proposed 10 ft. x 33 ft. addition for additional seating capacity within the building, and the proposed addition does meet the required setback for the C-2 zoning district.

Mr. Tony Garcia, representing Wendy's Restaurants, urged the Board to grant the permit and stated plans for the proposed addition of a selarium or glass front atrium addition on to the front of the Wendy's Restaurant. Mr. Garcia presented pictures of the proposed addition.

Chairman Holland inquired of the parking capacity on the site. Mr. Block stated that currently there are 28 parking spaces on the site which would service approximately 4200 sq. ft. of useable floor area excluding the storage areas. Mr. Block noted that the applicant will have approximately 3,400 sq. ft. with the proposed addition and would meet the zoning requirements.

There was no audience support or opposition expressed.

Mr. Wilson reminded Board members that the request was for a conditional use permit and would not require the Board to find a uniqueness of the subject property to justify approval.

Mr. White moved that the Board approve the conditional use permit on the request of Wendy's International for a seating addition of 10 ft. by 33 ft. on to the business located at 6725 Dixie Highway. The motion was seconded by Mr. Holland.

A roll call vote was taken on the motion.

Ayes: Messrs. Holland, Wilder, Bolton and White.

The motion carried unanimously.

Variance

A request of Michael R. Hoppenjans (agent) for Dr. L. B. Payne for a variance in the frontage requirement for a lot located on Goodridge Drive, Florence.

Mr. Block distributed photographs of the area for Board Members' review. Mr. Block explained the request of the applicant is for a variance to permit the construction of a duplex on a 50 ft. frontage wide lot instead of the required 60 foot frontage width lot as required in the Suburban Residential Two, SR-2 zone. Mr. Block stated that presently the property is zoned Suburban Residential Two (SR-2) which affects Section 846 and Table One found on page 846 and following Article 17 of the Zoning Regulations. Mr. Block described the property is currently undeveloped and adjoining the subject tract is currently residential on both sides of Goodridge. Mr. Block explained the variance is needed in the required frontage of 60 ft. to 50 ft. for a lot for a duplex to be constructed in the SR-2 zone. Mr. Block noted a unique condition is the fact that the lot existed prior to the current zoning regulations with the present footage. Mr. Block also pointed out that if the request is denied, the applicant could still be permitted to construct, without the need for a variance, a single-family residence. Mr. Block noted there is approximately 15 to 18 feet between houses.

Discussion followed of the photographs and the distances between properties.

Chairman Holland inquired if there was to be only 9 feet between the buildings or to the property line. Mr. Hoppenjans responded it would be 9 feet to the property line and 11 additional feet to the next house. Mr. Hoppenjans responded Lot 37 is also owned by Dr. Payne. Mr. Hoppenjans noted that a variance on Lot #3 was granted on August 18, 1982 and some precedence was possibly set in that action. Mr. Hoppenjans stated he does not feel that the proposed duplex will alter the character of the neighborhood as out of 8 to 9 lots 4 are two-family dwellings.

Mr. Sullivan Runion, 83 Goodridge, related to the Minutes as previously mentioned by Mr. Hoppenjans and stated that in same "Mr. Bolton expressed concern that the neighborhood would be become saturated with duplexes and that he had driven down the street and noted that not another vacant lot on Goodridge Drive is suitable for duplex development. The remaining open lots are too hilly and not suitable for residential development." Mr. Runion stated that since that time the applicant has already developed yet another duplex. Mr. Runion urged the Board to preserve the single-family character of the area.

Mr. Mike Scott, resident of Goodridge Drive, stated that his yard was used by easement for the applicant to connect the sewer/water tap and a hole was made to repair damage to his property. Mr. Scott stated he has requested of Mr. Hoppenjans to repair the damage and to no avail. Mr. Scott requested the variance be denied.

Mr. William Foote, a resident of Goodridge Drive, inquired of the number of duplexes currently being proposed. Mr. Scott expressed concern that requests would come later for additional duplexes.

Mr. Hoppenjans related that he did attempt to repair the property and the damage was done by the City of Florence Water Dept.

Mr. Runion related that the applicant does not keep his properties up with regard to lawn maintenance, repairs, etc. Mr. Hoppenjans disputed the references to upkeep.

Helen Russell, 74 Goodridge Drive, related the applicant was requested numerous times to repair the water tap hole damage and muddy roads due to construction, etc. Mrs. Russell inquired if the structure could be built on 50 feet. Chairman Holland stated there is a drawing presented, certified by Viox and Viox, which shows 50'x210'x297'. Mrs. Russell requested the applicant be required to keep the streets clean in their construction at the very least.

Marian Foote, a resident of Goodridge Drive, noted that there is governmental concern over the existing number of rental properties in Florence.

Mr. Foote inquired if the capacity of the sewers and water supply etc. had been checked. Discussion followed of the sewer and water tap connections.

John Conrey, 39 Goodridge Drive, stated that with regard to the sewers there is consistent problems with the area sewer system.

Mr. Bolton moved that the Board deny the request for a variance in the frontage requirement for a lot located on Goodridge Drive to permit the construction of a duplex on a 50 foot frontage width lot. The motion was seconded by Mr. White. Mr. Bolton noted that when the other variances were granted the neighborhood was basically a neighborhood of single-family dwellings. Mr. Holland recalled that when the other variances were granted consideration was given to the fact that there was no other land suitable for additional duplexes. Discussion followed of changes in the area.

A roll call vote was taken on the motion.

Ayes: Messrs. Holland, Wilder, Bolton and White.

The motion carried unanimously.

Variance

A request of Buckeye Sign Co. (agent) for Sherwin-Williams for a variance in the required square footage for a building-

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mounted sign for their business to be located at 7629 Dixie Highway, Florence, in a C-2 zone.

Staff member Chip Block relating the request is for a variance in the required square footage for a building mounted sign. Mr. Block noted that since the building has 50 foot of lineal width 75 square feet of sign area to the front of the building would be permitted and the request is to permit 120 square feet of sign area on the front of the building. Mr. Block stated presently the property is zoned C-2 affecting Section 1912 of the Sign Regulation article. Mr. Block described the present use of the subject and adjoining properties. Mr. Block stated there are no unique conditions found on the subject property nor on other land in the same zone. Mr. Block stated the applicant would not be denied any reasonable use of the land because they would still be permitted a building mounted sign and still have visibility from the road as they have been approved a free-standing sign which will be seen in both directions along Dixie Highway. Mr. Block also noted the variance will or will not preserve the public welfare in approving the request and the approval could alter the character of the area by allowing a larger sign than permitted.

Mr. Howard Everhardt, Owner/Operator of Buckeye Sign, related there are only 3 standard Sherwin-Williams sign types available (4'x20', 4'x30' and 4'x40'), and the applicant has requested to go with the medium size sign which has the company logo of the paint boy, etc., and also is the smallest sign available which notes that floor coverings are also available at the business. Mr. Everhardt stated that the signs requested were based on studies of a sign surveyor based on the size of the lot and visibility factors.

Chairman Holland inquired if the applicant is also permitted a free-standing sign. Mr. Block responded that is correct and that a free-standing sign has already been approved for 112 sq. ft with a 35 ft. total height of the sign.

Mr. Jerry King, manager of the store, related that for aesthetic purposes the medium size Sherwin-Williams sign was selected, and the free-standing sign was to direct traffic to the business from the road. Mr. King stated that without the free-standing sign there will not no visibility from the north heading south.

Mr. Bolton inquired of the unique conditions of the site. Chairman Holland noted that some footage is given up with the free-standing sign as proposed by the applicant. Chairman Holland also noted the unique setting of the building on the lot, and that in coming up the road only the side of the building is visible, and that such could be regarded as a unique condition.

Mr. Everhardt stated the agent is proposing what they feel is asthetically best for the building and the lot.

Mr. Holland moved that the Board grant the variance of 120 sq. ft. of sign area for this building due to the fact that it is difficult to see the building (especially going north) and the curve of the road. The motion was seconded by Mr. White.

A roll call vote was taken on the motion.

Ayes: Messrs. Holland, Wilder, Bolton and White.

The motion carried unanimously.

Mr. Everhardt thanked the members of the Board for their consideration.

Conditional Use Permit

A request of E. Andre' Busald (agent) for Corporex for the modification of a Conditional Use Permit granted in May of 1984. The request is to modify the maximum height of the structure of 50 feet limited under this Permit.

Staff member Chip Block stated that when the permit was initially approved the property was zoned Office Two, O-2 but the property has since been rezoned to Office Two/Planned Development Overlay, O-2/PD. Mr. Block stated the request that a modification be made to the Conditional Use Permit that limited the development to a maximum height of 50 feet. Mr. Block stated the present use of the subject tract along with adjoining land to the southwest is undeveloped and to the northwest is agricultural and residential. Mr. Block noted that to the northeast (across Turfway) is public/institutional and to the southeast (across I-75) is developing commercial. Mr. Block distributed to Board members copies of the frontal elevation of the building as well as the dimensional distances and a checklist of the actual height that is being proposed for the building at this time.

Atty. E. Andre' Busald inquired if communications had been received from Mayor Rolfes with regard to negotiations on the conditional use permit.

Chairman Holland noted that one of the concerns with the 50-foot limitation was that Florence did not have fire equipment to adequately serve heights above 50 foot.

Mr. Busald related that in the earlier presentation on the conditional use permit that Mr. White had expressed concern of the "50-foot Ordinance", and has subsequently researched same and found that the zoning permits up to 70 feet. Mr. Busald stated that at that time as the applicant did fall so closely with the 50'1" plan to the 50' limitation that little concern was expressed. Mr. Busald explained the minor modifications to the plan have since taken place and noted that in the motion for approval of the conditional use permit a condition was added

restricting it to 50'. Mr. Busald stated that with the modifications the structure is proposed to be actually 60' in toto and actually only 51' to the bottom of the windows of the top floor of the structure with the top of the windows being a distance of 56' and the remaining 4' from the top of the windows to the top point is a parapet (a low protective wall around the roof) for aesthetic purposes as the roof will not be accessed by the public. Mr. Busald stated that in his negotiations with Mayor Rolfes it was indicated to him that perhaps modification to the 50' rule should be done on a case-by-case basis as with the subject instance.

Mr. Wilder requested that both letters received by the Board be read into the record. Accordingly, Mr. Busald read the correspondence aloud and into the record:

Correspondence received from Mayor Rolfes dated October 5, 1984 and addressed to Chairman Holland, Florence Board of Adjustments:

"Re: Corporex Hotel Development on Turfway Road

Dear Mr. Holland:

I recently had a meeting with Mr. Dan Fay of Corporex regarding the proposed hotel development that they will be putting on Turfway Road. You may recall this is the request of Sutherland Lumber Company for which the Board of Adjustments granted a variance with the condition that the height limitation did not exceed 50 feet. They have since revised their design and come up with a proposal that appears to be quite attractive, except that the building height would be 56 feet. There is also the possibility of an elevator penthouse to be added to this height. I have discussed with the Fire Chief and he concurs that due to the design and the type of life-safety precautions that this development will be employing that he would not have a serious problem with the 56 foot construction height on this particular facility. Therefore, I would expect that Corporex will probably be requesting that you rehear their request for a variance and remove the 50 foot height limitation to comply with their 56 foot design. However, it is important to be sure that no additions to the 56 feet are allowed other than the elevator penthouse.

If you have any questions regarding this matter, please feel free to contact myself or Chief Don Roberts."

Signed by the Roger W. Rolfes, Mayor of Florence with copy to Chief Roberts

Correspondence received from Mayor Rolfes dated October 4, 1984 and addressed to Chairman Holland, Florence Board of Adjustments:

"Re: Height Limitation of Residential-Type Buildings

Dear Mr. Holland:

As you know, the City of Florence has had for some time and apparently erroneously been under the impression that we currently have a height limitation of 50 feet on buildings to be building within the City of Florence. Apparently, the ordinance which restricting construction to 50 feet was overturned when the Planning and Zoning regulations were suspended by the Creative Displays case. Since it never was readopted that ordinance is no longer in effect."

Mr. White interrupted Mr. Busald's reading and stated that he had checked with Mr. Ray Vincent, Counsel for the Board of Adjustment, on this issue who stated that the 50-foot ordinance was immediately readopted. Discussion followed of the readoption of the ordinance or the lack thereof of the readoption of the 50 foot ordinance. Mr. Busald stated that he had tried to locate the ordinance and subsequently inquired of Planning Commission and staff of the location of some and that no ordinance can be found on 50-foot limitation. Counselor Wilson advised of the height limitation currently in force, and stated that for the O-2 zone the height limitation is 70 feet. Mr. Wilson noted that since 1980 there are some over 50 feet, some right at 50 feet, and some 70, etc.

The remainder of the correspondence was read into the record by Mr. Busald as follows:

"However, the Fire Department has very strong feelings regarding the limitation of buildings that will be used for residential purposes. This would include motels, apartment buildings or any other type of structure that would contain lodging facilities. It is the Chief's feeling, per discussions which we have had, that the 50 foot limitation on these types of buildings should definitely be maintained. However, there are some instances where extenuating circumstances are such that a minor modification may be desirable. Therefore, as per discussions with the Fire Chief, I would request the Board of Adjustments to follow the following procedure on any situations where requests for variances may come before you that would involve the residential-type structures previously defined. This procedure would be that we would adhere to the 50 foot limitation as a condition for granting such variance. If after the developer puts together their plan and finds that they may need to slightly exceed that limitation for whatever reason, if it is approved by the Fire Chief on that specific instance it would then seem appropriate that the additional height variance be granted. However, by following the initial approach of adhering to the 50 foot limitation this will alleviate placing the Board in an uncomfortable position if requests to exceed 50 feet are made.

I would appreciate if you could adopt this type of procedure and if there are any questions, please feel free to contact me."

Signed by Roger Rolfes, Mayor of the City of Florence.

Mr. Busald stated that it is his understanding that in the event of a fire that the fire department could get people out of the top floor.

Mr. Fay stated that in additions to the expressed fire department concern the developer has added extra stairwells over and above those required by Code.

Chairman Holland inquired of what if people went to the roof of the structure. Mr. Fay stated the ladder goes the distance to the floor of the roof (that being 56').

Mr. Wilder inquired of the surrounding landscaped area to allow for the additional distance of ladder to rooftop. Mr. Fay responded that that would be approximately 10 feet.

Chief Roberts expressed concern and stated is he is totally opposed to residential construction in an office use zone. Chief Roberts stated he is not totally opposed with regard to the proposed project. Mr. Roberts expressed concern of precedence and structures going to 70 feet because it is in the office zone. Chief Roberts did not state that it was represented to him that the building was to be 100% suppressed, stand pipes, and with total access around the building.

Mr. Busald interjected that the whole concept of the existence of the Board of Adjustment in that the Board may act at its discretion and does not set precedence and the Board has the power to address each case on a case-by-case basis. Counselor Wilson concurred with the representations of Mr. Busald.

Mr. White interjected that Chief Roberts brought up an interesting point of the residential use which restricts height limitations to 45 feet.

Chief Roberts stated he did not have objection to 56' but rather where the lines will be drawn with residential buildings.

Discussion followed of access around the building, zoning height limitations and zones and uses. Discussion followed of a fire lane and the proximity of landscaping.

Mr. Busald stated he would hate to see his client get caught in a crossfire of the dissatisfaction in the way the Zoning Code is currently set forth as expressed by Chief Roberts and others in the Zoning Code. Mr. Busald reminded that no precedence would be set and reminded Board members of their discretionary power on a case by case basis.

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Mr. Roberts expressed continuing concern of precedence of what is coming in the office zone and the residential use.

Mr. Fay presented layout plans of the structure, and related the various fire safety features of the structure. Board members reviewed the plan and discussed alternative parking, a fire lane, elevation, etc.

Mr. Holland inquired if a floor could be eliminated. Mr. Fay stated that the layout was holding to the preliminary design and feasibility dictates the project as proposed.

Mr. Edward Brose, area developer, stated he was concerned of the inconsistency of the Zoning Code and urged the setting of a basis of consideration or accepted practice in the City of Florence.

Chairman Holland clarified that in a conditional use then the Board can specify the conditions unless expressed by the Code.

Mr. Busald reminded that that is the function of the Board who do operate to "across the board" rules such as the zoning rules and realizing there are special circumstances a special board is created by law and that is the function of the Board of Adjustment. Mr. Busald noted that although Mr. Brose is curious as to what the Board will do in the subject instance it does not in any way control his situation or future development, nor should it.

Counselor Wilson advised that precedence would not be set and that subsequent automatic approvals to others would not follow. Mr. Wilson noted that in a conditional use permit the Board is allowed to impose reasonable conditions. Mr. Wilson again advised of the discretionary powers of the Board. Mr. Wilson also noted to Mr. Brose that if his plan as submitted to the Planning Commission changes with regard to intensity then the Planning Commission must re-review the project.

Chairman Holland inquired of the wishes of the Board. Chairman Holland suggested the matter be tabled. Discussion followed.

Mr. Bolton stated he would like to see the City of Florence, the Fire Department, and other concerned parties.

Mr. Busald stated his client would encourage a meeting with the City of Florence on the issue of whether 60' would be allowed in the subject instance.

Mr. White moved that the Board table action on the proposed Conditional Use Permit for property zoned Office Two/Planned Development Overlay to allow further input and study of staff, the Board, the City of Florence, and the Fire Department. The motion was seconded by Mr. Wilder.

FLORENCE BOARD OF ADJUSTMENTS

NOVEMBER 14, 1984

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AGENDA ITEMS:

Variance

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Mr. Block distributed photographs of the area for Board Members' review. Mr. Block explained the request of the applicant is for a variance to permit an additional seating area for the restaurant. Mr. Block stated that presently the property is zoned Commercial Services 3 which affects Section 946 and Table One found on page 9-8 and following Article 17 of the Zoning Regulations. Mr. Block described the property along with all adjoining properties to the north, south and west is currently used for commercial purposes with the land to the east being currently undeveloped. Mr. Block explained the variance is needed from the required 75 foot front yard setback to a 65 foot front yard setback for the planned addition for Wendy's Restaurant. Mr. Block stated there are no unique conditions to justify the granting of the request. Mr. Block noted that the property owner in the development of the land has caused the unique condition in that they constructed the original building up to the required setback. Mr. Block closed by stated that the variance if granted would alter the essential character of the neighborhood by allowing the construction of a building within the required front yard setback. Mr. Block noted that currently the Dream Street area has only one building non-conforming to the front yard setback and that being the Pizza Hut building which was constructing prior to the Zoning Regulations.

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Mr. White inquired of the photograph depicting the Dream Street area and noted that it appeared that Captain D's (the restaurant next door to Wendy's) is closer than 75 feet to the street. Mr. Block responded the angle of the road gives the illusion of that and that Captain D's is in conformance. Discussion followed of the Dream Street area.

Chairman Holland inquired of a site plan on the proposed addition. Board members reviewed the site plan.

Mr. Wilder inquired what kind of precedence would be set in the area by the granting of the variance on the proposed addition of Wendy's Restaurants. Counselor Wilson responded that a justification for a variance is the uniqueness of the subject property. Mr. Wilson then reminded Board members of Mr. Block's noting of the low topography to the rear of the restaurant. Mr. Wilson then stated that it was a matter of Board discretion as to whether the uniqueness mentioned justified or did not justify such a variance.

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Mr. Garcia explained expansion to the rear of the restaurant is impractical as the kitchen is located in that area. Mr. Garcia explained the selarium additions are most favorable to the customers.

A roll call vote was taken on the motion.

Ayes: Messrs. Holland, Wilder, Bolton.
Nay: Mr. White

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Mr. Block distributed photographs of the area for Board Members' review. Mr. Block explained the request of the applicant is for a permit for additional seating area for the restaurant. Mr. Block stated that presently the property is zoned Commercial Services 2 which affects Section 923 of the Zoning Regulations that permit "drive-in and fast-food franchise restaurants". Mr. Block described the property along with all adjoining properties to the north, west, and east is currently used for commercial purposes with the land to the south being currently single family residential. Mr. Block noted that properties to the north, east and west is planned for commercial and property to the south is planned for high density residential. Mr. Block stated a site plan was submitted showing a proposed 10 ft. x 33 ft. addition for additional seating capacity within the building, and the proposed addition does meet the required setback for the C-2 zoning district.

Mr. Tony Garcia, representing Wendy's Restaurants, urged the Board to grant the permit and stated plans for the proposed addition of a selarium or glass front atrium addition on to the front of the Wendy's Restaurant. Mr. Garcia presented pictures of the proposed addition.

Chairman Holland inquired of the parking capacity on the site. Mr. Block stated that currently there are 28 parking spaces on the site which would service approximately 4200 sq. ft. of useable floor area excluding the storage areas. Mr. Block noted that the applicant will have approximately 3,400 sq. ft. with the proposed addition and would meet the zoning requirements.

There was no audience support or opposition expressed.

Mr. Wilson reminded Board members that the request was for a conditional use permit and would not require the Board to find a uniqueness of the subject property to justify approval.

Mr. White moved that the Board approve the conditional use permit on the request of Wendy's International for a seating addition of 10 ft. by 33 ft. on to the business located at 6725 Dixie Highway. The motion was seconded by Mr. Holland.

A roll call vote was taken on the motion.

Ayes: Messrs. Holland, Wilder, Bolton and White.

The motion carried unanimously.

Variance

A request of Michael R. Hoppenjans (agent) for Dr. L. B. Payne for a variance in the frontage requirement for a lot located on Goodridge Drive, Florence.

Mr. Block distributed photographs of the area for Board Members' review. Mr. Block explained the request of the applicant is for a variance to permit the construction of a duplex on a 50 ft. frontage wide lot instead of the required 60 foot frontage width lot as required in the Suburban Residential Two, SR-2 zone. Mr. Block stated that presently the property is zoned Suburban Residential Two (SR-2) which affects Section 846 and Table One found on page 846 and following Article 17 of the Zoning Regulations. Mr. Block described the property is currently undeveloped and adjoining the subject tract is currently residential on both sides of Goodridge. Mr. Block explained the variance is needed in the required frontage of 60 ft. to 50 ft. for a lot for a duplex to be constructed in the SR-2 zone. Mr. Block noted a unique condition is the fact that the lot existed prior to the current zoning regulations with the present footage. Mr. Block also pointed out that if the request is denied, the applicant could still be permitted to construct, without the need for a variance, a single-family residence. Mr. Block noted there is approximately 15 to 18 feet between houses.

Discussion followed of the photographs and the distances between properties.

Chairman Holland inquired if there was to be only 9 feet between the buildings or to the property line. Mr. Hoppenjans responded it would be 9 feet to the property line and 11 additional feet to the next house. Mr. Hoppenjans responded Lot 37 is also owned by Dr. Payne. Mr. Hoppenjans noted that a variance on Lot #3 was granted on August 18, 1982 and some precedence was possibly set in that action. Mr. Hoppenjans stated he does not feel that the proposed duplex will alter the character of the neighborhood as out of 8 to 9 lots 4 are two-family dwellings.

Mr. Sullivan Runion, 83 Goodridge, related to the Minutes as previously mentioned by Mr. Hoppenjans and stated that in same "Mr. Bolton expressed concern that the neighborhood would be become saturated with duplexes and that he had driven down the street and noted that not another vacant lot on Goodridge Drive is suitable for duplex development. The remaining open lots are too hilly and not suitable for residential development." Mr. Runion stated that since that time the applicant has already developed yet another duplex. Mr. Runion urged the Board to preserve the single-family character of the area.

Mr. Mike Scott, resident of Goodridge Drive, stated that his yard was used by easement for the applicant to connect the sewer/water tap and a hole was made to repair damage to his property. Mr. Scott stated he has requested of Mr. Hoppenjans to repair the damage and to no avail. Mr. Scott requested the variance be denied.

Mr. William Foote, a resident of Goodridge Drive, inquired of the number of duplexes currently being proposed. Mr. Scott expressed concern that requests would come later for additional duplexes.

Mr. Hoppenjans related that he did attempt to repair the property and the damage was done by the City of Florence Water Dept.

Mr. Runion related that the applicant does not keep his properties up with regard to lawn maintenance, repairs, etc. Mr. Hoppenjans disputed the references to upkeep.

Helen Russell, 74 Goodridge Drive, related the applicant was requested numerous times to repair the water tap hole damage and muddy roads due to construction, etc. Mrs. Russell inquired if the structure could be built on 50 feet. Chairman Holland stated there is a drawing presented, certified by Viox and Viox, which shows 50'x210'x297'. Mrs. Russell requested the applicant be required to keep the streets clean in their construction at the very least.

Marian Foote, a resident of Goodridge Drive, noted that there is governmental concern over the existing number of rental properties in Florence.

Mr. Foote inquired if the capacity of the sewers and water supply etc. had been checked. Discussion followed of the sewer and water tap connections.

John Conrey, 39 Goodridge Drive, stated that with regard to the sewers there is consistent problems with the area sewer system.

Mr. Bolton moved that the Board deny the request for a variance in the frontage requirement for a lot located on Goodridge Drive to permit the construction of a duplex on a 50 foot frontage width lot. The motion was seconded by Mr. White. Mr. Bolton noted that when the other variances were granted the neighborhood was basically a neighborhood of single-family dwellings. Mr. Holland recalled that when the other variances were granted consideration was given to the fact that there was no other land suitable for additional duplexes. Discussion followed of changes in the area.

A roll call vote was taken on the motion.

Ayes: Messrs. Holland, Wilder, Bolton and White.

The motion carried unanimously.

Variance

A request of Buckeye Sign Co. (agent) for Sherwin-Williams for a variance in the required square footage for a building-

mounted sign for their business to be located at 7629 Dixie Highway, Florence, in a C-2 zone.

Staff member Chip Block relating the request is for a variance in the required square footage for a building mounted sign. Mr. Block noted that since the building has 50 foot of lineal width 75 square feet of sign area to the front of the building would be permitted and the request is to permit 120 square feet of sign area on the front of the building. Mr. Block stated presently the property is zoned C-2 affecting Section 1912 of the Sign Regulation article. Mr. Block described the present us of the subject and adjoining properties. Mr. Block stated there are no unique conditions found on the subject property nor on other land in the same zone. Mr. Block stated the applicant would not be denied any reasonable use of the land because they would still be permitted a building mounted sign and still have visibility from the road as they have been approved a free-standing sign which will be seen in both directions along Dixie Highway. Mr. Block also noted the variance will or will not preserve the public welfare in approving the request and the approval could alter the character of the area by allowing a larger sign than permitted.

Mr. Howard Everhardt, Owner/Operator of Buckeye Sign, related there are only 3 standard Sherwin-Williams sign types available (4'x20', 4'x30' and 4'x40'), and the applicant has requested to go with the medium size sign which has the company logo of the paint boy, etc., and also is the smallest sign available which notes that floor coverings are also available at the business. Mr. Everhardt stated that the signs requested were based on studies of a sign surveyor based on the size of the lot and visibility factors.

Chairman Holland inquired if the applicant is also permitted a free-standing sign. Mr. Block responded that is correct and that a free-standing sign has already been approved for 112 sq. ft with a 35 ft. total height of the sign.

Mr. Jerry King, manager of the store, related that for aesthetic purposes the medium size Sherwin-Williams sign was selected, and the free-standing sign was to direct traffic to the business from the road. Mr. King stated that without the free-standing sign there will not no visibility from the north heading south.

Mr. Bolton inquired of the unique conditions of the site. Chairman Holland noted that some footage is given up with the free-standing sign as proposed by the applicant. Chairman Holland also noted the unique setting of the building on the lot, and that in coming up the road only the side of the building is visible, and that such could be regarded as a unique condition.

Mr. Everhardt stated the agent is proposing what they feel is asthetically best for the building and the lot.

Mr. Holland moved that the Board grant the variance of 120 sq. ft. of sign area for this building due to the fact that it is difficult to see the building (especially going north) and the curve of the road. The motion was seconded by Mr. White.

A roll call vote was taken on the motion.

Ayes: Messrs. Holland, Wilder, Bolton and White.

The motion carried unanimously.

Mr. Everhardt thanked the members of the Board for their consideration.

Conditional Use Permit

A request of E. Andre' Busald (agent) for Corporex for the modification of a Conditional Use Permit granted in May of 1984. The request is to modify the maximum height of the structure of 50 feet limited under this Permit.

Staff member Chip Block stated that when the permit was initially approved the property was zoned Office Two, O-2 but the property has since been rezoned to Office Two/Planned Development Overlay, O-2/PD. Mr. Block stated the request that a modification be made to the Conditional Use Permit that limited the development to a maximum height of 50 feet. Mr. Block stated the present use of the subject tract along with adjoining land to the southwest is undeveloped and to the northwest is agricultural and residential. Mr. Block noted that to the northeast (across Turfway) is public/institutional and to the southeast (across I-75) is developing commercial. Mr. Block distributed to Board members copies of the frontal elevation of the building as well as the dimensional distances and a checklist of the actual height that is being proposed for the building at this time.

Atty. E. Andre' Busald inquired if communications had been received from Mayor Rolfes with regard to negotiations on the conditional use permit.

Chairman Holland noted that one of the concerns with the 50-foot limitation was that Florence did not have fire equipment to adequately serve heights above 50 foot.

Mr. Busald related that in the earlier presentation on the conditional use permit that Mr. White had expressed concern of the "50-foot Ordinance", and has subsequently researched same and found that the zoning permits up to 70 feet. Mr. Busald stated that at that time as the applicant did fall so closely with the 50'1" plan to the 50' limitation that little concern was expressed. Mr. Busald explained the minor modifications to the plan have since taken place and noted that in the motion for approval of the conditional use permit a condition was added

restricting it to 50'. Mr. Busald stated that with the modifications the structure is proposed to be actually 60' in toto and actually only 51' to the bottom of the windows of the top floor of the structure with the top of the windows being a distance of 56' and the remaining 4' from the top of the windows to the top point is a parapet (a low protective wall around the roof) for aesthetic purposes as the roof will not be accessed by the public. Mr. Busald stated that in his negotiations with Mayor Rolfes it was indicated to him that perhaps modification to the 50' rule should be done on a case-by-case basis as with the subject instance.

Mr. Wilder requested that both letters received by the Board be read into the record. Accordingly, Mr. Busald read the correspondence aloud and into the record:

Correspondence received from Mayor Rolfes dated October 5, 1984 and addressed to Chairman Holland, Florence Board of Adjustments:

"Re: Corporex Hotel Development on Turfway Road

Dear Mr. Holland:

I recently had a meeting with Mr. Dan Fay of Corporex regarding the proposed hotel development that they will be putting on Turfway Road. You may recall this is the request of Sutherland Lumber Company for which the Board of Adjustments granted a variance with the condition that the height limitation did not exceed 50 feet. They have since revised their design and come up with a proposal that appears to be quite attractive, except that the building height would be 56 feet. There is also the possibility of an elevator penthouse to be added to this height. I have discussed with the Fire Chief and he concurs that due to the design and the type of life-safety precautions that this development will be employing that he would not have a serious problem with the 56 foot construction height on this particular facility. Therefore, I would expect that Corporex will probably be requesting that you rehear their request for a variance and remove the 50 foot height limitation to comply with their 56 foot design. However, it is important to be sure that no additions to the 56 feet are allowed other than the elevator penthouse.

If you have any questions regarding this matter, please feel free to contact myself or Chief Don Roberts."

Signed by the Roger W. Rolfes, Mayor of Florence with copy to Chief Roberts

Correspondence received from Mayor Rolfes dated October 4, 1984 and addressed to Chairman Holland, Florence Board of Adjustments:

"Re: Height Limitation of Residential-Type Buildings

Dear Mr. Holland:

As you know, the City of Florence has had for some time and apparently erroneously been under the impression that we currently have a height limitation of 50 feet on buildings to be building within the City of Florence. Apparently, the ordinance which restricting construction to 50 feet was overturned when the Planning and Zoning regulations were suspended by the Creative Displays case. Since it never was readopted that ordinance is no longer in effect."

Mr. White interrupted Mr. Busald's reading and stated that he had checked with Mr. Ray Vincent, Counsel for the Board of Adjustment, on this issue who stated that the 50-foot ordinance was immediately readopted. Discussion followed of the readoption of the ordinance or the lack thereof of the readoption of the 50 foot ordinance. Mr. Busald stated that he had tried to locate the ordinance and subsequently inquired of Planning Commission and staff of the location of some and that no ordinance can be found on 50-foot limitation. Counselor Wilson advised of the height limitation currently in force, and stated that for the O-2 zone the height limitation is 70 feet. Mr. Wilson noted that since 1980 there are some over 50 feet, some right at 50 feet, and some 70, etc.

The remainder of the correspondence was read into the record by Mr. Busald as follows:

"However, the Fire Department has very strong feelings regarding the limitation of buildings that will be used for residential purposes. This would include motels, apartment buildings or any other type of structure that would contain lodging facilities. It is the Chief's feeling, per discussions which we have had, that the 50 foot limitation on these types of buildings should definitely be maintained. However, there are some instances where extenuating circumstances are such that a minor modification may be desirable. Therefore, as per discussions with the Fire Chief, I would request the Board of Adjustments to follow the following procedure on any situations where requests for variances may come before you that would involve the residential-type structures previously defined. This procedure would be that we would adhere to the 50 foot limitation as a condition for granting such variance. If after the developer puts together their plan and finds that they may need to slightly exceed that limitation for whatever reason, if it is approved by the Fire Chief on that specific instance it would then seem appropriate that the additional height variance be granted. However, by following the initial approach of adhering to the 50 foot limitation this will alleviate placing the Board in an uncomfortable position if requests to exceed 50 feet are made.

I would appreciate if you could adopt this type of procedure and if there are any questions, please feel free to contact me."

Signed by Roger Rolfes, Mayor of the City of Florence.

Mr. Busald stated that it is his understanding that in the event of a fire that the fire department could get people out of the top floor.

Mr. Fay stated that in additions to the expressed fire department concern the developer has added extra stairwells over and above those required by Code.

Chairman Holland inquired of what if people went to the roof of the structure. Mr. Fay stated the ladder goes the distance to the floor of the roof (that being 56').

Mr. Wilder inquired of the surrounding landscaped area to allow for the additional distance of ladder to rooftop. Mr. Fay responded that that would be approximately 10 feet.

Chief Roberts expressed concern and stated is he is totally opposed to residential construction in an office use zone. Chief Roberts stated he is not totally opposed with regard to the proposed project. Mr. Roberts expressed concern of precedence and structures going to 70 feet because it is in the office zone. Chief Roberts did not state that it was represented to him that the building was to be 100% suppressed, stand pipes, and with total access around the building.

Mr. Busald interjected that the whole concept of the existence of the Board of Adjustment in that the Board may act at its discretion and does not set precedence and the Board has the power to address each case on a case-by-case basis. Counselor Wilson concurred with the representations of Mr. Busald.

Mr. White interjected that Chief Roberts brought up an interesting point of the residential use which restricts height limitations to 45 feet.

Chief Roberts stated he did not have objection to 56' but rather where the lines will be drawn with residential buildings.

Discussion followed of access around the building, zoning height limitations and zones and uses. Discussion followed of a fire lane and the proximity of landscaping.

Mr. Busald stated he would hate to see his client get caught in a crossfire of the dissatisfaction in the way the Zoning Code is currently set forth as expressed by Chief Roberts and others in the Zoning Code. Mr. Busald reminded that no precedence would be set and reminded Board members of their discretionary power on a case by case basis.

Mr. Roberts expressed continuing concern of precedence of what is coming in the office zone and the residential use.

Mr. Fay presented layout plans of the structure, and related the various fire safety features of the structure. Board members reviewed the plan and discussed alternative parking, a fire lane, elevation, etc.

Mr. Holland inquired if a floor could be eliminated. Mr. Fay stated that the layout was holding to the preliminary design and feasibility dictates the project as proposed.

Mr. Edward Brose, area developer, stated he was concerned of the inconsistency of the Zoning Code and urged the setting of a basis of consideration or accepted practice in the City of Florence.

Chairman Holland clarified that in a conditional use then the Board can specify the conditions unless expressed by the Code.

Mr. Busald reminded that that is the function of the Board who do operate to "across the board" rules such as the zoning rules and realizing there are special circumstances a special board is created by law and that is the function of the Board of Adjustment. Mr. Busald noted that although Mr. Brose is curious as to what the Board will do in the subject instance it does not in any way control his situation or future development, nor should it.

Counselor Wilson advised that precedence would not be set and that subsequent automatic approvals to others would not follow. Mr. Wilson noted that in a conditional use permit the Board is allowed to impose reasonable conditions. Mr. Wilson again advised of the discretionary powers of the Board. Mr. Wilson also noted to Mr. Brose that if his plan as submitted to the Planning Commission changes with regard to intensity then the Planning Commission must re-review the project.

Chairman Holland inquired of the wishes of the Board. Chairman Holland suggested the matter be tabled. Discussion followed.

Mr. Bolton stated he would like to see the City of Florence, the Fire Department, and other concerned parties.

Mr. Busald stated his client would encourage a meeting with the City of Florence on the issue of whether 60' would be allowed in the subject instance.

Mr. White moved that the Board table action on the proposed Conditional Use Permit for property zoned Office Two/Planned Development Overlay to allow further input and study of staff, the Board, the City of Florence, and the Fire Department. The motion was seconded by Mr. Wilder.

A roll call vote was taken on the motion.

Ayes: Messrs. Holland, Wilder, Bolton and White.

The motion carried unanimously.

Mr. Wilder moved the Board of Adjustment meeting adjourn.


Charles Holland, Chairman

Attest:
