

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
- Preliminary Plat Review
- 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
- Improvement Plat Review
- Final or Deed Plat Review
- Site Plan Review
- Historic District Overlay
- Appeal or Variance
- Sign or Zoning Permit

Applicant: ROBERT P. CUNNINGHAM Owner

- Owner
- Agent

Address: 219 BUCKINGHAM DRIVE

FLORENCE, KY 41042 Telephone: 525-9314 (32-96-8)

Location: LOT # 35 SOUTH-WEST CORNER OF BUCKINGHAM DRIVE & CHELSEA SQUARE

Name of Property Owner: COMPONENT CONST. & CBS CONST.

Address of Property Owner: 219-BUCKINGHAM DRIVE

Zoning District: _____ Area in Acres: 1/4 (about)

Deed Book: 344-283 Page Number: 51-228 Group Number: 1506

Description of Request: TO CHANGE THE BACKSET DISTANCE ON THE SIDE OF THE HOUSE TO THE STREET FROM 25' TO 12' 6" OFF THE LOT LINE, WHICH WOULD SET THE HOUSE 25' FROM THE CURB OF STREET.

Applicant's Signature: [Signature]

Property Owner's Signature: [Signature]

FOR PLANNING COMMISSION USE ONLY

Application Fee: 639.00 Date Received: 10-30-87 By: [Signature]

Referred To: Tom Meeting Date: 11-19-87?

Action Taken: denied Date of Action: 11-19-87

500.00 special meeting
 65.00 publ. minimum
 24.00 adj. prop. owners
 50.00 variance - residential

original in 11-19-87 file

See over for signature

STAFF REPORT

APPLICANT: Robert P. Cunningham

DEVELOPMENT: single-family residence

LOCATION: corner of Buckingham Drive and Chelsea Square, Florence

ZONE: Suburban Residential One (SR-1)

DATE: November 19, 1987; 7:30 p.m.

REMARKS:

The applicant is requesting a Variance in the required side yard setback in order to allow the construction of a single-family residence 12.5 feet from the side property line. the + 0.25 acre site, located at the northwest corner of Buckingham Drive and Chelsea Square (lot #35 of the Buckingham Woods Subdivision), is zoned Suburban Residential One (SR-1) and is owned by Component Construction and CBS Construction.

In October, 1987, when Section V of the Buckingham Woods Subdivision was approved by the Boone County Planning Commission, a 25 foot setback from both Buckingham Drive and Chelsea Square was recorded. In October, 1987, Mr. Cunningham applied for building and zoning permits with a plot plan indicating a 12.5 foot setback from Buckingham Drive. The applicant had the understanding that the side yard setback for a corner lot could be one-half the required front yard setback. Article 17, Section 1721, of the Zoning Regulations does require such an arrangement; however, since the 25 foot setback was recorded with the Boone County Clerk, a side yard Variance is required.

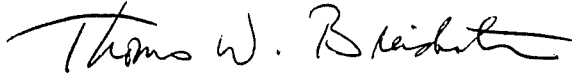
The following reviews the four findings of fact the Board must use when considering requests for Variances:

1. Staff could find no special circumstances involved with this property that does not apply to other lots in the subdivision.
2. Strict application of the setback provisions would require that a smaller house be constructed on the lot. The buildable area of the lot is demonstrated with the attached plats.
3. Again, no special circumstances were found.
4. If granted, the reduced side yard will not affect the public health, safety, and welfare. However, the Board should consider whether or not the essential character of the general vicinity will be altered. All houses along Buckingham Drive behind the proposed Cunningham house have been constructed along the 25 foot line. This new house will encroach upon this even line of houses.

Staff Report - Robert P. Cunningham
November 19, 1987
Page Two

Staff has no conditions to recommend should the Board grant this request.

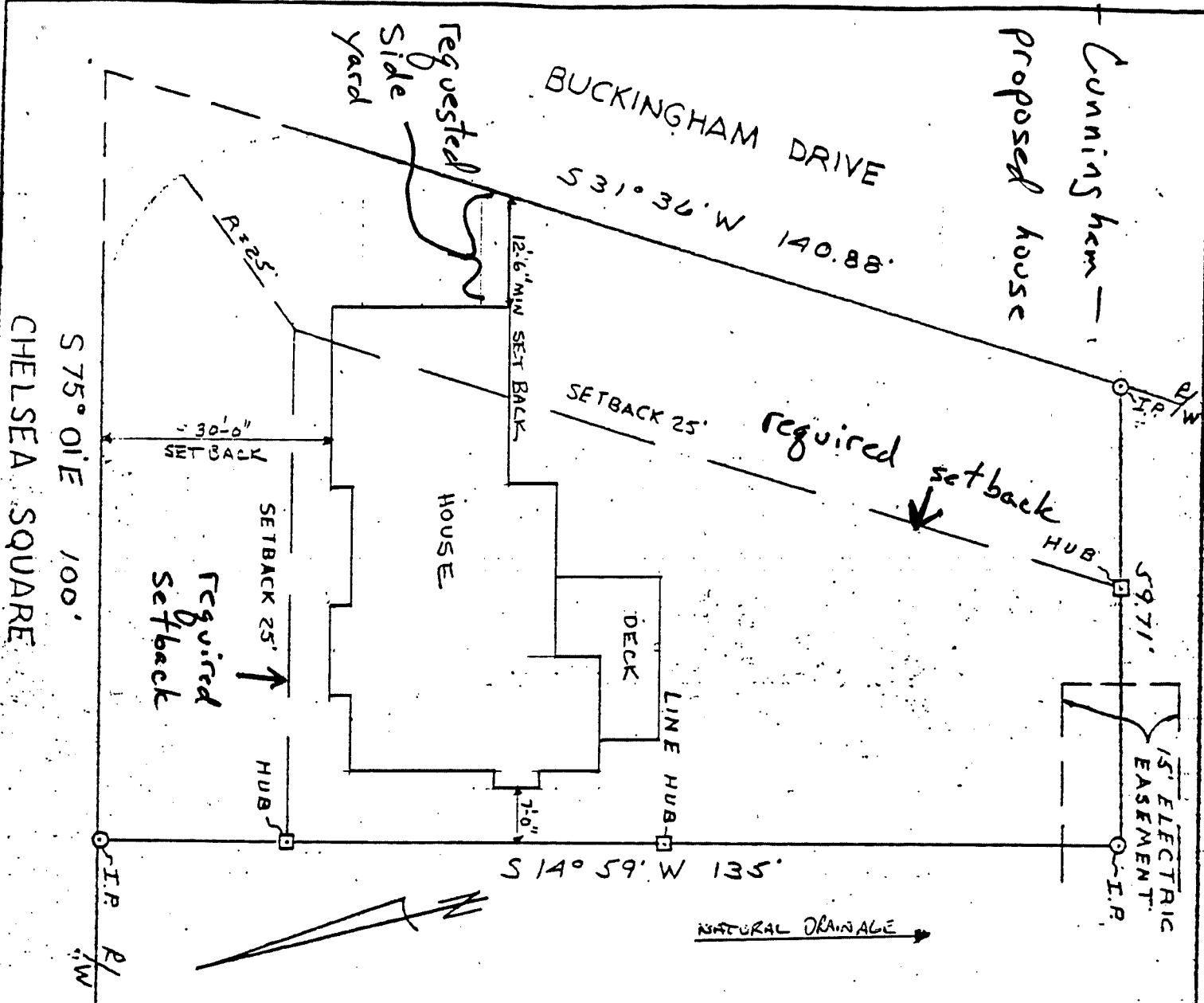
Respectfully submitted,

A handwritten signature in cursive script, reading "Thomas W. Breidenstein".

Thomas W. Breidenstein,
Zoning Enforcement Officer

TWB:mcb

Attachments



FILE NUMBER: _____
CLIENT: Bob Cunningham
STREET ADDRESS: Buckingham Drive
CITY OR VILLAGE: Florence
TOWNSHIP: N/A
COUNTY: Boone
STATE: Kentucky
CITY LOT NUMBER: A
SUBDIVISION NAME: ~~Williamsburg East~~ *Br. Knolls*
LOT NUMBER: ~~37~~ *35* Section 5
PLAT BOOK: 18
PAGE: 1

This identification plat is made for and at the instance of
 Bob Cunningham

I hereby certify that this identification plat shows the improvement or improvements as located on the premises described, that the improvement or improvements are entirely within lot lines, and that there are no encroachments upon the premises described by the improvement or improvements of any adjoining premises, except as indicated. I further certify that there are no record plat assessments affecting the tract shown hereon, except as noted.

BY: *Andrew R. Ament*
 Registered Land Surveyor

ANDREW R. AMENT
REGISTERED LAND SURVEYOR 1729
 205 East Alexandria Pike
 Cold Spring, Ky. Phone 606/441-8184

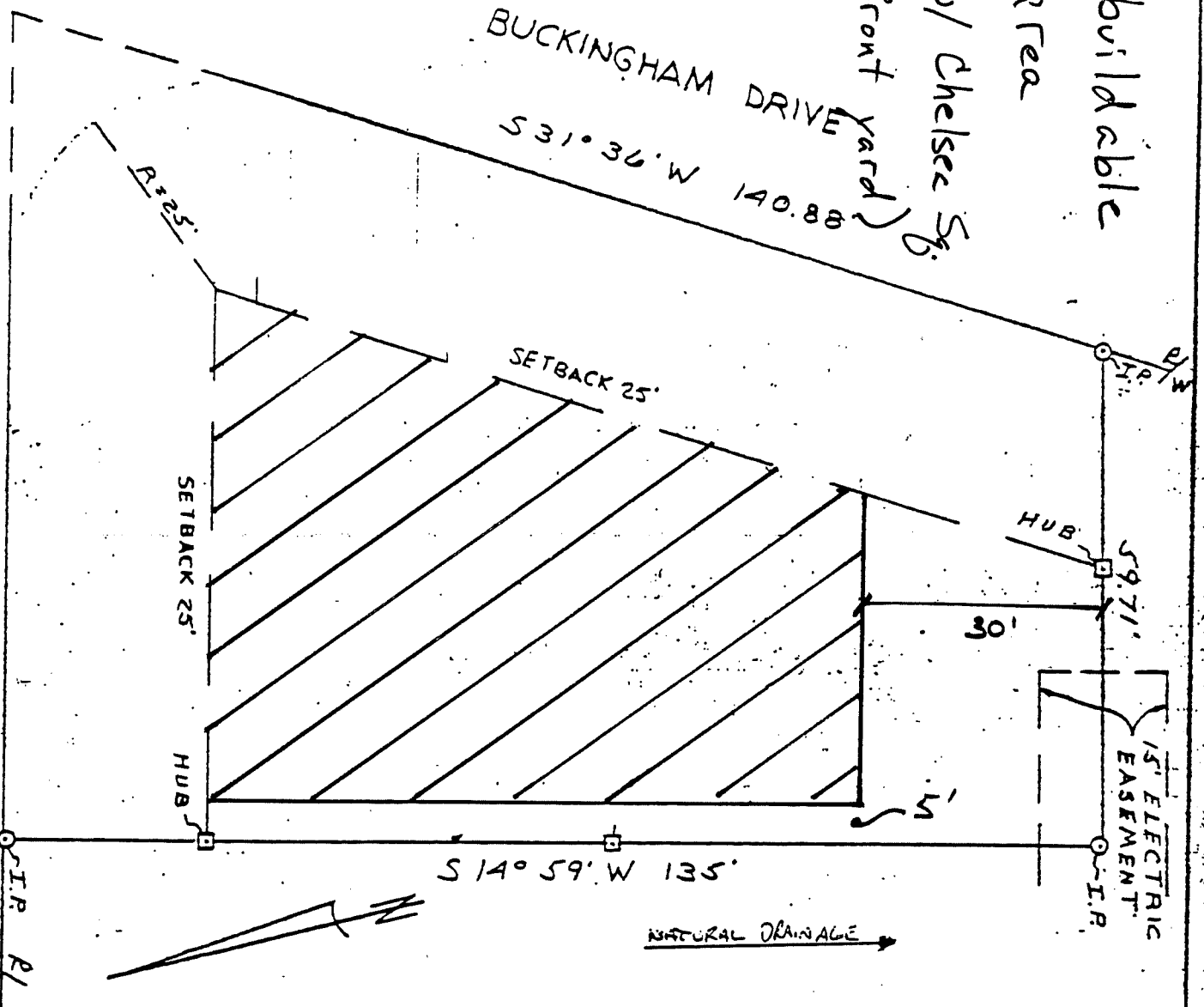
| | | |
|---------------|------------|--------------|
| SCALE: 1"=20' | DRAWN: ARA | CHECKED: ARA |
| DATE: 8-20-87 | JOB NO | 1257 |

buildable
Area

(w/ Chelsea Sq.
Front yard)

BUCKINGHAM DRIVE
531.36' W 140.88'

CHELSEA SQUARE
S 75° 01' E 100'



FILE NUMBER: 15' ELECTRIC EASEMENT
CLIENT: Bob Cunningham

STREET ADDRESS: Buckingham Drive
CITY OR VILLAGE: Florence
TOWNSHIP: N/A
COUNTY: Boone

STATE: Kentucky
CITY LOT NUMBER: N/A
SUBDIVISION NAME: Williamsburg East

LOT NUMBER: Section 5
~~35~~ 35

PLAT BOOK: 18
PAGE: 1

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Bob Cunningham

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BY: *Andrew R. Ament*
Registered Land Surveyor

ANDREW R. AMENT
REGISTERED LAND SURVEYOR 1729
205 East Alexandria Pike
Cold Spring, Ky. Phone 606/441-8164

| | | |
|---------------|------------|--------------|
| SCALE: 1"=20' | DRAWN: ARA | CHECKED: ARA |
| DATE: 8-20-87 | JOB NO | 1257 |

buildable
area
(Buckingham Dr.
front yard)

BUCKINGHAM DRIVE
S 31° 36' W 140.88'

CHELSEA SQUARE
S 75° 01' E 100'

100'

S 14° 59' W 125'

SETBACK 25'

SETBACK 25'

HUB

HUB

59.71'

15' ELECTRIC
EASEMENT

NATURAL DRAINAGE

FILE NUMBER:
CLIENT: Bob Cunningham

STREET ADDRESS: Buckingham Drive
CITY OR VILLAGE: Florence

TOWNSHIP: N/A
COUNTY: Boone
STATE: Kentucky

CITY LOT NUMBER: N/A
SUBDIVISION NAME: *Williamsburg East*

LOT NUMBER: ~~37~~ 35
Section 5

PLAT BOOK: 18
PAGE: 1

This identification plat is made for and at the instance of
Bob Cunningham

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BY: *Andrew R. Ament*
Registered Land Surveyor

ANDREW R. AMENT
REGISTERED LAND SURVEYOR 1729
205 East Alexandria Pike
Cold Spring, Ky. Phone 606/441-8184

| | | |
|---------------|------------|--------------|
| SCALE: 1"=20' | DRAWN: ARA | CHECKED: ARA |
| DATE: 8-20-87 | JOB NO | 1257 |

CITY OF FLORENCE
BOARD OF ADJUSTMENT

December 9, 1987 - 8:30 P.M.

Chairman Holland called the meeting to order at 8:30 P.M..

BOARD MEMBERS PRESENT:

Mr. Ashcraft
Chairman Holland
Mrs. Meihaus
Mrs. Ward
Mr. White

BOARD MEMBERS NOT PRESENT:

None.

LEGAL COUNSEL PRESENT:

Mr. Dale Wilson

Chairman Holland stated that each member had received a copy of the Minutes of the Board of Adjustment Meeting of November 11, 1987 and the Special Meeting of November 19, 1987 and asked if there were any comments or corrections.

There being no changes to the Minutes of these meetings, Mr. Ashcraft moved, seconded by Mr. White, that the Minutes of the meetings be approved. The motion carried unanimously.

AGENDA ITEMS:

1. A request of Robert P. Cunningham for a Variance in the required rear yard setback in order to allow the construction of a single-family residence 15 feet from the rear property line. The .25-acre (approx.) site, located at the northwest corner of Buckingham Drive and Chelsea Square (lot #35 of the Buckingham Woods Subdivision), is zoned Suburban Residential One (SR-1) and is owned by Component Construction and CBS Construction.

Staff Member, Tom Breidenstein, stated that Mr. Cunningham's request for a side yard Variance in regard to this site was denied at the Special Meeting of this Board on November 19, 1987 (see Minutes of the Board of Adjustment - Special Meeting, November 19, 1987).

Mr. Cunningham stated that the request was the same, except that he is now turning the house and requesting a rear yard Variance.

Mr. White asked if the setback on Chelsea Square would be in line with the other houses on the street.

Mr. Cunningham stated that the minimum setback requirement on Chelsea Square is 25 feet, but the rest of the houses are set back 30 feet. Mr. Cunningham offered to move the house back to 30 feet, noting that the rear yard may be even smaller.

Mr. Breidenstein advised that due to the angle of Buckingham Drive, moving the house back to the 30-foot line, may cause the house to be too close to the property line.

Chairman Holland asked if there was anyone present who wished to speak for or against this request. There being no one, he asked if there was any further discussion from the Board.

There being no further discussion, Mr. White moved that the Variance be granted as requested. Mrs. Ward seconded the motion and it carried unanimously.

2. A request of Paul Kirn, Jr. for a Conditional Use Permit and a Variance in the required lot frontage in order to allow the construction of a duplex dwelling unit. The 8,100 sq. ft. tract, located west of 7049 Curtis Avenue and south of 7052 Curtis Avenue, is zoned Suburban Residential Two (SR-2) and is owned by Roy and Kim Dringenburg.

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

Chairman Holland asked the applicant for his comments regarding how this request would affect the Kentaboo Baptist Church.

Mr. Paul Kirn, Jr. stated that the duplex is more than 30 feet off Curtis Avenue and there would be almost 100 feet between the church parking lot and the duplex.

Mr. White stated that the lots along Curtis Avenue are 25 feet wide and stated that taking four or five feet from the adjoining lot would make that lot illegal.

Mr. Breidenstein stated that Staff had stressed to the real estate agent that the minimum lot size and minimum setbacks must be maintained.

In response to a question from Mr. Ashcraft, Mr. Breidenstein advised that the additional four feet would be taken from Lot #20.

Mr. Kirn stated that he did not own Lot #20. He stated that he would be purchasing the lot intended for the duplex dwelling and four feet from the single-family residence owned by the Dringenburgs.

Counselor Wilson quoted from KRS 100 and advised that the Board would not be permitted to grant a Variance which could alter the density requirements. He stated that the Board could not take action which would cause there to be less square footage than the minimum lot size requires.

Mr. Breidenstein advised that the single-family dwelling lot would be left with 6,900 sq. ft. after the four feet is removed, which is above the minimum required lot size. He added that should this Variance be granted, then a Variance would need to be granted in regard to the lot frontage requirement on the Dringenburg property. He stated that this Variance is not before the Board at this time and had not been advertised.

Chairman Holland asked if there was anyone present who wished to speak in behalf of this request. There being no response, he asked if there was anyone present in opposition to the request.

Mr. Charles Callan, 7035 Curtis Avenue, stated that there are currently six duplexes on the street out of a total of 24 houses. He wants the site developed as a single-family residence.

Mr. Roger Braden, attorney for Kentaboo Baptist Church, stated that they are not opposed to this request, provided Mr. Kirn takes care of the drainage. He noted that when the request for the church's parking lot was approved, a major issue was the drainage. Mr. Braden presented the Board with photographs indicating the slope of this lot.

Mr. Kirn stated that there is a natural slope to the land and that he would grade the front of the lot towards the street, which would reduce the drainage.

Mr. Ashcraft asked Mr. Kirn to clarify his comment regarding the drainage.

Mr. Kirn stated that the driveways pitch toward the street. He will build the duplex higher than the street and grade the land towards the street, thereby reducing the amount of ground sloping toward the church property.

Counselor Wilson advised that a Variance for Lot #20 had not been advertised and that it could not be considered at this time. He stated that the Board may wish to defer this request.

Ms. Arlene Jones, real estate agent, asked if the square footage could be added diagonally across the back of the lots in order not to affect the lot frontage dimension.

Chairman Holland asked if Ms. Jones' proposal would affect the density requirements.

Counselor Wilson stated that the Board may wish to defer this request in order to determine how much of Lot #20 would be involved.

Mr. Ashcraft agreed with Counselor Wilson and added that he would also like the question of the drainage addressed further. Mr. Ashcraft stated that he would like to visit the site.

Mr. Jim McKenrick, 7048 Curtis Avenue, stated that there are currently too many duplexes on the street and he wants an owner-occupied home built on this lot, not rental property.

Chairman Holland asked if there was anyone else present who wished to speak.

There being no further discussion, Mr. Ashcraft moved that the request be deferred until the January 13, 1988 meeting in order to allow time to address the issues discussed, including how much land would be taken from Lot #20. Chairman Holland seconded the motion.

A roll call vote on the motion found Mr. Ashcraft, Mrs. Meihaus, Mrs. Ward and Chairman Holland in favor. Mr. White abstained. The motion carried.

3. A request of Robert G. Hill for an Appeal of the Zoning Administrator's decision regarding the use of property located at 8501 U.S. 42, Florence. Specifically, the Appeal refers to the decision requiring a Public Hearing rather than a Conditional Use Permit for the development of the above mentioned property, which is zoned Commercial Two/Planned Development (C-2/PD). (See separate letter.)

Staff Member, Tom Breidenstein, presented slides of the subject site.

Mr. Gerald Newton, Zoning Administrator, advised that there was no Staff Report in regard to this request. He stated that the Board Members had received a packet of information in regard to the request which contains correspondence between the applicant and members of Staff, as well as Mr. Newton. Mr. Newton reviewed the packet of information noting the events that had occurred. (See letter from Mr. Newton to Mr. Bob Hill, 12/1/87; to Mr. Newton from Mr. Hill, 11/19/87; to Mr. Breidenstein from Mr. Hill, 5/11/87; and to Mr. Hill from Mr. Breidenstein, 5/1/87.)

Mr. Bob Hill presented pictures of the site to the Board. He stated that they want to open a gift-type store, including arts and crafts, pottery, and ceramics. The site was previously occupied by a plumbing business. He stated that they would be replacing the outside plumbing equipment with attractive items, such as pottery and urns. He added that the people in Florence are basically in agreement with their plans, provided that they do not put the items in front of the house. About a month ago, a successful yard supply-type business wanted to expand their operation onto this site. He agreed to allow them to come in and replace the urns and pottery in the yard with trees and shrubs that would be for sale. Most of the county, except for the Planning Commission, was in favor of this plan. He added that they are located near the edge of Florence and are concerned about security. He stated that they would be operating a "mom and pop" type gift store with only one or two customers at a time. Sharing the building with another business would increase the security. He added that the site will be fenced with chainlink fencing. Mr. Hill stated that they are entitled to pre-existing, non-conforming rights which have been taken away by Planned Development. He added that the Staff would not allow him to open his store until he wrote the letter of November 19, 1987. He stated that they were substituting something pretty for something ugly and that the operation would be like a small Frank's.

In response to questions from Mr. White, Mr. Hill added that he had owned the property for approximately 16 years and it was annexed to the city about six years ago. He stated that they had taken the property back over themselves as it had looked like a junkyard.

Mr. Ashcraft agreed that Mr. Hill had greatly improved the appearance of the site.

Counselor Wilson advised that Mr. Hill is arguing that a pre-existing, non-conforming use exists and that this use is within the same scope, character, and nature of what was there before and, therefore, he should not have to conform to the Planned Development requirements and, if the use is different, it is no more objectionable than what was previously on the site.

Mr. Hill stated that the Staff had agreed to let him open up the gift shop if he signed the letter of November 19, 1987; otherwise, he would have to pay approximately \$10,000 for studies and he plans to put that money into the building and the yard.

Mr. Newton objected to Mr. Hill's comments regarding the Staff.

Following discussion of the letters contained in the packet distributed to the Board members, Mr. Hill stated that one of the issues is the outside storage. He stated that the plants, pottery, urns, and items of that type are kept outside and are for sale if someone wants to buy them, but are not outside storage. Mr. Hill discussed the improvements he proposes for the site.

Mr. White agreed that a landscaping business would improve the site.

Counselor Wilson stated that the Board does not have the authority to overrule the Planned Development requirement which would apply if a substantial change in use has occurred. He noted that Mr. Newton is stating that a non-conforming use no longer exists. Counselor Wilson asked if the changes that have occurred are substantial enough to place this site into Planned Development. In essence, Mr. Newton is saying that Mr. Hill is subject to the Planned Development requirements and Mr. Hill is saying that he is not.

Chairman Holland asked if there was anyone present who wished to speak for or against this request. There was no one present who wished to speak in regard to this issue.

Mr. Ashcraft asked what changes have occurred in regard to this site.

Mr. Newton advised that the site has been placed in Planned Development by action of City Council because of the importance of this location to the city, which is explained in his letter to Mr. Hill. He added that Mr. Hill's letter of November 19, 1987 indicated that Mr. Hill is adding another business to this site. Mr. Newton stated that, in his opinion, adding a second business, outside storage, and the possibility of increased parking, are significant changes over what had been agreed to last May. He noted that there is no hard surface parking on the site. Mr. Newton added that he does agree that the site has been improved.

Mr. Hill stated that he did not have to blacktop the parking lot, but has agreed to do so within three years.

Mr. White stated that a three-year limitation would not be proper. He added that when you are in Planned Development, you have to conform to the requirements.

Mr. Hill stated that he will forego the outside storage and will let the tenant take over his operation on the outside. He stated that this will not be a change in what he planned on doing, just different merchandise.

Mr. White advised Mr. Hill that when he adds the second business he has to play by the rules regarding Planned Development. He stated that Mr. Newton's decision in this matter was correct.

Mr. Newton added that even without the second business, Mr. Hill had mentioned putting up fencing and having outside storage, both of which would cause a problem.

Evelyn Kalb, Councilwoman, City of Florence, stated that her understanding of this issue is that a pre-existing use exists with Mr. Hill's own business, but bringing in the nursery business places the site in Planned Development. She questioned if the Board had to determine if this was the proper process to take the property out of Planned Development.

Mr. Ashcraft advised her that the Board does not have the authority to take the site out of Planned Development.

Mr. Ashcraft moved that the Board uphold the Zoning Administrator's decision and deny this appeal based on the addition of the second business. Mrs. Meihause seconded the motion and it carried unanimously.

4. A request of Lackner Sign Company for a Variance in the height of a free-standing sign. The site is approximately one acre in size. An existing free-standing sign, 35 feet in height and 254 sq. ft. in size, is located adjacent to I-75 near the northwest corner of the site. The applicant is proposing to raise this sign to 65 feet in overall height.

Staff Member, Jim Sturdevant, presented the Staff Report which included a slide presentation (see Staff Report).

Chairman Holland asked if there was anyone present representing the Lackner Sign Company.

Mr. Paul Grone stated that there was no one present from the sign company, but that he is the owner and operator of the Dream Street McDonald's. He has owned the restaurant for a year and feels that most of his business comes off the interstate. He is at a competitive disadvantage due to the higher signs in the area. He stated that he would be willing to take down the billboard sign in the Mt. Zion Road area if the Board would grant this request.

Chairman Holland stated that this McDonald's is a well-established restaurant and most people know where it is.

Mr. Grone stated that his expressway sign cannot be seen in time for an impulse decision to be made and for the customer to get off the interstate.

Mrs. Ward noted a small sign on the interstate prior to the underpass.

Mr. Grone agreed that there is a small sign on the interstate as indicated by Mrs. Ward. He added his comments regarding the importance of a high-rise sign and that his sign is blocked by a tree in the summer.

Mr. Scott Brewer, an employee of McDonald's, stated that they have a large number of vacationers and people who do not live in the area that come into the restaurant.

Chairman Holland commented that the McDonald's sign is one of the most recognized signs in the United States.

Following discussion of the locations and heights of other signs in the area, Mr. White noted that the McDonald's sign had been one of the first in the area and that the tree mentioned by Mr. Grone had grown. He stated that the tree could be removed. Mr. White added that all one can really see of the McDonald's sign is the arches and you have to be looking for them.

Mr. White added that he did not want to raise the sign and block the Red Lobster sign. He noted that the curvature of the road had to be considered. Mr. White stated that he would like for someone from the sign company to have been present at this meeting.

Mr. Grone stated that he did not want to block anyone else's sign and would be willing to reflag the sign to be sure this does not happen.

Mr. Sturdevant advised that under the current regulations, the sign could be forty feet high, and it is currently not over the allowable maximum. He added that the northbound sign is visible prior to when you get to the sign provided by the highway department. He stated that there is also visibility of the sign going southbound on the interstate. Mr. Sturdevant stated that people traveling on the interstate can see that this is a commercial area and make an impulse decision to get off the interstate and choose a restaurant. He stated that McDonald's is not at a competitive disadvantage and the sign ordinance should be upheld.

Mr. Grone disagreed and stated that travelers see the McDonald's sign last.

Mr. White stated that he would like to have the sign be more visible, but be below the Red Lobster sign. Mr. Grone stated that he had pictures of the flagging of the sign.

Mr. White moved that this request be deferred until a representative of Lackner Sign Company is present and can discuss the sign in relation to the other signs in the area, or until the sign is reflagged.

Mr. Sturdevant asked Mr. Grone for clarification of his comments regarding the billboard sign along Mt. Zion Road and I-75.

Mr. Grone stated that he rents the space and would remove his advertising. He does not own the sign and cannot remove it entirely.

Chairman Holland stated that there would be a five-minute recess in order for Mr. Grone to get the pictures of the flagging. Following the recess, Mr. Grone provided the pictures of the flagging to the Board.

Mr. White restated his motion as indicated above that this request be deferred, that the deferral be until the January 13, 1988 meeting, and that all additional fees be waived. Mrs. Ward seconded the motion.

Mr. Grone stated that he would waive the time limitations.

Chairman Holland asked if there was any further discussion. There being none, he asked for a roll call vote on the motion made by Mr. White and it carried unanimously.

Chairman Holland asked to be contacted if the sign was reflagged so that he could be present. Mr. Grone agreed to contact him.

5. A request of McDonald's Restaurant for a Conditional Use Permit to allow the construction of a 3,900 sq. ft. (approx.) fast food, drive-thru restaurant on the northeast corner of Dixie Highway and Turfway Road (adjacent to Taco Bell). The 0.73-acre site is zoned Commercial Two (C-2) and is owned by Regal Quad, Inc..

Mr. Gerald Newton, Director, presented the Staff Report which was prepared by Mr. Kevin Costello (see Staff Report).

Chairman Holland stated that he had received a summons in regard to this issue and asked Counselor Wilson if the request should be heard this evening.

Counselor Wilson advised that it was proper for the Board to hear this request and that the applicant may have new facts to present.

Mr. Newton distributed to the Board members copies of a letter from Mr. J. E. Gehrum of Pflum, Klausmeier & Gehrum, to Mr. Gerald F. Dusing, dated December 8, 1987. A copy is available in the Staff file. (Note: A correction was made to this letter during the meeting. The last line of paragraph two, page one, should read, "This drive is located approximately 240 (not 2400) feet from the Dixie Highway intersection.")

Counselor Wilson stated that the Staff Report refers to the Florence Board of Adjustment Meeting of November 11, 1987 and requested that a copy of the Minutes of that meeting be attached to the Minutes of this meeting.

Counselor Wilson noted that a statement had been made that this parcel is an outlot of a shopping center and requested information regarding the zones adjoining the mall boundaries.

Mr. Newton stated that he did not have that information with him, but to the best of his knowledge there is Commercial Zoning around the site, with the area to the north being C-1 or C-2, and Suburban Residential Two (SR-2) behind the shopping center.

Mr. Gerald Dusing, attorney, stated that the surrounding property is all zoned Commercial Two (C-2), except for the Residential portion. He added that the Zoning Code for the Commercial Two Zone lists drive-in, franchise, fast-food chains provided they are appropriate to the trade area. He stated that they are a listed permitted Conditional Use, provided they are in keeping with the trade area and meet the listed criteria. He noted that he has not heard any facts to indicate that they are not related to the trade area. He added that since they fit the criteria for a Conditional

Use, then the question is whether or not they fit the criteria. Mr. Dusing reviewed the criteria indicated on Page 4 of the Staff Report and indicated that they are: (1) In compliance with the Comprehensive Plan; (2) Harmonious with the surrounding uses, noting Wendy's and Taco Bell restaurants; (3) Not dangerous to the public safety, noting that they do not have explosives or dangerous materials. He added that they do not think loitering is a problem; (4) Agreeable to extending the sidewalks along Turfway Road from where they currently terminate to the curb cut on Turfway Road, and agree to build an acceleration lane; (5) Mr. Dusing stated that this item was addressed by his comments to Item #3; (6) Not "excessive" and do not emit fumes; and (7) that the traffic issue would be addressed later in the discussion.

Mr. Dusing stated that the proposed use is compatible with the character of the uses in the zoning district. He commented on the public safety issue discussed at the last meeting in regard to teenagers being drawn to the site. He referred to a letter he had written to Mr. Costello, dated December 1, 1987 (which is attached to the Staff Report). Mr. Dusing noted that on Page 5 of his letter he refers to McDonald's option on the proposed site and the "Shopping Center Rider", paragraph 2, "Easement for Parking and Ingress and Egress". He stated that they have a common area access easement over the parking areas of the Thriftway lot. He stated that this easement solves the concerns expressed in regard to their having control of the parking areas outside of their fee simple ownership. He stated that this easement gives them the right to have their security people present and to ask people to leave. He noted that Mr. Minerva, who is in charge of Security for McDonald's, was present. Mr. Dusing reviewed a police "run sheet" attached to his letter which indicated that there had been only six police calls to the Dream Street McDonald's in the past six months and only three of them were to clear the lot.

Mr. Dusing noted the Site Traffic Generation Study which had been distributed to the Board members. He introduced Mr. Jack Gehrum of Pflum, Klausmeier & Gehrum, and noted his professional credentials.

Mr. Gehrum reviewed the traffic study and discussed the prepared exhibits including Exhibit C, which represents the traffic count on a hourly basis. He stated that sources of information for this study were the ITE (Institute of Traffic Engineers) and the McDonald's National Study. He noted that the numbers in the McDonald's study were higher than the ITE figures. Mr. Gehrum noted his letter to Mr. Dusing dated December 8, 1987 and discussed the process by which data was collected and analyzed. He stated that their opinion is that there are no major traffic problems which will be generated by the proposed use and that the existing capacity will be maintained on Turfway Road.

Following discussion of the days and hours that the traffic counts were taken, Mr. Ashcraft asked if the fact that McDonald's would be adjacent to a shopping center parking lot had been considered in relation to the McDonald's Study.

Mr. Gehrum advised that this fact had not been considered.

Chairman Holland asked if there was anyone present who wished to speak in opposition to this request.

Mr. Jim Collins, Councilman, City of Florence, stated that an assumption is being made that the traffic movement in this area is okay at this time. He stated that traffic does not flow well in this area now and that it is a main artery for rescue equipment going to Booth Hospital. He noted that the traffic figures were obtained by McDonald's and are being presented by a traffic consultant. He noted that Mr. Gehrum's map of the intersection shows it to be a four-way intersection; but there is a fifth road, which is a great part of the traffic problem. Mr. Collins stated that Dream Street is very difficult to get through on a Friday night, which impacts U.S. 42. He noted that he is very concerned about the area.

Mr. Tom Kathman, Florence Police Department, noted that the Staff Report refers to a "neighborhood" McDonald's, but he does not think that there is such a thing as a "neighborhood" McDonald's. He noted the customer counts of other restaurants in the area and based on those figures, he stated that he would question the accuracy of the McDonald's figure of 658 trips per day. He discussed the police dispatch runs to the Dream Street McDonald's and stated that the biggest problem is not on the McDonald's lot, since there are police there, but on the shopping center lot which is four or five feet away. He noted that there is a limit to the number of policemen available for off-duty work. He added that the Police Department has a very good relationship with the Dream Street McDonald's. Mr. Kathman advised that there is a school with football within a mile of the proposed McDonald's. He questioned the possibility of cabling off the adjoining parking lot.

Mr. Dusing advised that it would not be possible to cable off the adjoining lot.

Mr. White stated that yesterday during a 15-minute period from noon until 12:15 P.M., there were 76 cars entering the McDonald's on Dream Street.

Mr. Ashcraft asked if the lease referred to by Mr. Dusing earlier indicated that McDonald's would have control of security of the entire parking area.

Mr. Dusing stated that they would have the right to go anywhere on the lot, and if their customers do so, then they have the right to exert control. He added that this is their understanding with the owners.

Mr. Dusing stated that Chief Callan had already left this evening, but he had indicated that he did not perceive a problem in this location. He added that the Mayor had indicated that their plan was reasonable and addressed his concerns. Mr. Dusing stated that any new use on this site will generate traffic, but the question is in regard to the word "excessive", and noted the traffic counts taken by Mr. Gehrum. He discussed the public funds expended in regard to the Dream Street McDonald's in relation to the tax revenues collected. He noted that trucks will use the delivery entrance and that backing of the trucks will not be required.

Chairman Holland asked if there was anyone else present who wished to speak.

Mr. Bob Pope stated that he owns a small business at this intersection and noted his concerns about people driving through the McDonald's and congregating in the area, which is the reason why elderly people do not go to Dream Street, according to a recent newspaper article. He noted his concerns about the traffic and asked what the hours of operation would be.

Mr. Dusing stated that he did not know the hours of operation.

Mr. Pope added that when the police ask people to leave the McDonald's property, they may go across the street and he may, therefore, lose business. He stated that when the shopping mall on Houston Road occurs there will be even more traffic. Mr. Pope noted that there will be many situations occur which McDonald's cannot control that will be detrimental to businesses in the area.

Mr. Ashcraft asked what powers the police have in regard to "cruising".

Mr. Kathman advised that they tell them to keep moving. He added that in Florence Square they will have the manager tell them that they want them off the lot.

Mrs. Meihaus stated that this may be a neighborhood location during the week, but it is not on the weekend. She stated that the proposed McDonald's will create additional traffic and will be detrimental to businesses in the area.

Counselor Wilson noted that this parcel is an outlot of the shopping mall and asked what the current status is of the shopping mall -- Is it fully occupied? In a period of transition?

Mr. Ray Merkel, leasing agent for the owner of the shopping center, stated that there is currently less traffic coming into the shopping center than there was previously. He added that approximately 9,000 sq. ft. of the shopping center is currently unoccupied.

Counselor Wilson noted that according to the figure given by Mr. Merkel, the center is approximately 20% unoccupied.

Mr. Ashcraft stated that McDonald's is a fine corporation with good intentions, but it is not compatible with the shopping center due to the traffic it generates. He noted that it is the existing businesses and the people of the community that assume the risk. He stated that there would be problems with loitering and cruising and, therefore, the use is not compatible with a multi-purpose commercial center. He added that he did not think this would be a neighborhood McDonald's. He noted that there would be a large cost to the public just for police protection.

Mr. Dusing stated that the shopping center is agreeable to this use on the site and they have a letter from United Dairy Farmers indicating that they are in full support. He noted that United Dairy Farmers is a part of the same company as the shopping center. He added that the shopping center would not allow this use if it would hurt their business.

Mr. Ashcraft moved that the Conditional Use Permit be denied as it would detract from the compact multi-purpose center (trade area) as indicated in the Zoning Regulations.

Chairman Holland stated that he disagrees with the Staff Report which indicates that the proposed use will not be detrimental to any persons or property due to any excessive production of traffic, noise, smoke, fumes, or odor. He stated that he believes the proposed use will generate excessive traffic. Chairman Holland asked if Mr. Ashcraft wished to add this item as part of his motion.

Mr. Ashcraft amended his motion to include as part of the basis for denying the request that it will be detrimental to persons and property due to the excessive production of traffic. Mrs. Meihaus seconded the amended motion.

There being no further discussion, Chairman Holland asked for a roll call vote on the motion and it carried unanimously.

NEW BUSINESS:

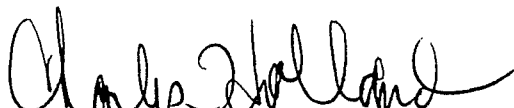
Mr. White advised that the church sign on Hopeful Road is causing problems to motorists as it is too bright. Mr. Newton stated that they are aware of this and will take care of it.

Mr. White asked if a sign would be permitted at the Izzy's on Houston Road. Mr. Newton stated that this had been approved by the Fiscal Court.

Mr. Newton advised that arrangements for liability insurance have been made and it will be effective when the current policy expires.

There being no further business to come before the Board, Chairman Holland moved, seconded by Mrs. Ward, that the meeting be adjourned. The meeting was adjourned by unanimous consent at 12:35 A.M..

APPROVED:



Charles Holland, Chairman

ATTEST:



Jan Hancock, Recording Secretary