

BOARD OF ADJUSTMENT AND
ZONING APPEALS ACTION
APPLICATION
PAGE 2

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

1. Date Received Dec 20 95 Fee Received \$282.00 (2#8785)
2. Is application complete? Yes No
3. Staff Reviewer Jeff Hayes
4. Scheduled Board Action Date _____
5. Board Action:
 Approved
 Approved with Conditions (See #6)
 Denial (See #7)
6. Conditions of Approval: See Minutes

7. Reasons for Denial: _____

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

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

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

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

STAFF REPORT

DEVELOPMENT: **Office**

APPLICANT: Keystone Home Builders, Inc.

LOCATION: 9868 U.S., 42 Box 25, Union, Kentucky

ZONING: Agricultural Estate (A-2)

DATE: January 29, 1996

The applicant is requesting a Change in Non-Conforming Use to allow the the existing home and barn on the site to be used for a business office and storage for their home building operation. The site was previously used as Phelps Welding within the barn, while the home was used for the owners place of residence. The existing house and barn are located on the west side of U.S. 42 approximately 800 feet north from the intersection of U.S. 42 and Mt. Zion/ Hathaway Road (See Map #1).

The applicant would use the house for their business office with only a few employees actually working within the building. The barn would be used to store excess materials left over from job sites and tools and equipment used for the construction of the homes. Heavy equipment would not be stored on the site nor would material deliveries be made to this site.

The Board of Adjustments and Zoning Appeals has the power to hear and render decisions on applications to permit a change from one non-conforming use to another. The Board shall not permit such a change unless the new non-conforming use is as equally or more compatible with permitted uses in the district in which it is located as the existing non-conforming use. The Board shall not allow any changed non-conforming use to be increased or enlarged, nor extended to occupy a greater area of land than was occupied by the original non-conforming use. In permitting such change, the Board may require appropriate conditions and safeguards in accord with other provisions of this order.

When the Board reviews this request it must consider the proposed change in non-conforming use as it relates to the previous use which occurred on the site last. This use was Phelps Welding. In addition, the Board must compare the proposed use to the permitted uses within the A-2 zone which include:

1. Single-family dwelling units;
2. Farms of tobacco, fiber, cash grain, fruits, tree nuts, vegetables, or other field crops;
3. Farms of no predominant crops, including range and grasslands pastures, horticultural specialties, apiary farms and other agricultural and related activities;

4. Farms and ranches of dairy production, livestock including cattle, hogs, sheep, goats, horses or similar, poultry or other fowls;
5. Animal husbandry services including veterinarian, animal hospital, poultry hatching and other services;
6. Fish hatcheries, and other fish culture activities and related services;
7. Wild life preserve sanctuaries, habitats, cultures and related activities;
8. Forestry activities including timber production, tree products production, commercial forestry production, forest nurseries and other forestry activities and related services;
9. Horticultural, floricultural, viticultural, and other agricultural related uses and services;
10. Agriculture related activities including grist milling services, corn shelling, hay bailing, threshing, contract sorting, grading and packaging services and other agricultural processing services.

Conditional Uses include:

1. Roadside stands, farmers mart and similar sales uses of agricultural and related products including specialty crafts and foods;
2. Garden store, nursery and similar landscape sales of products produced on the premises;
3. Garden plots and other similar forms of communal or organization farming practices;
4. Churches, synagogues, temples and other places of religious assembly for worship;
5. Cemeteries including mausoleums;
6. Public and commercial recreation;
7. Duplex dwelling units;
8. Commercial kennels and boarding stables including grooming and veterinary services;
9. Bed and Breakfast Inns.

Surrounding Land Uses and Zoning (See Sheet # 2)

- North: Veterinarian office and farm fields zoned Agricultural Two (A-2) and Rural Suburban/Small Community (RS/SC)
- South: Farm land zoned Agricultural Estate (A-2)
- East: Undeveloped pasture zoned Rural Suburban/Small Community (RS/SC)
- West: Farm land zoned Agricultural Estate (A-2)

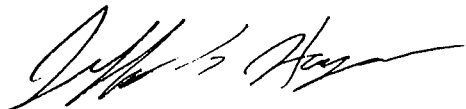
Staff Concerns:

1. Staff believes that the proposed use will be similar in scope and activities as the existing use. However, it is important to place restrictions on outside storage of any kind and place a limit on the number of employees and vehicles which can work within the home or barn and park on the property.
2. Any exterior changes to the site including paving will require site plan approval. In addition, any signs or changes of signs will require sign permit approval. The buildings which exist on the site currently, cannot be expanded in size without Board approval for any non-conforming use.

Conclusion

The Board should review the applicant's request with regards to the compatibility of the proposed non-conforming use with the permitted uses and conditional uses within the district. In addition, the proposed use has to be equally or more compatible than the previous non-conforming use. The Board shall not allow any changed non-conforming use to be increased or enlarged, nor extended to occupy a greater area of land than was occupied by the original non-conforming use.

Respectfully Submitted,



Jeffrey F. Hayes, AICP
Planner

JFH\par

UNION BOARD OF ADJUSTMENT
UNION CITY BUILDING
BUSINESS MEETING
October 11, 1995
8:00 P.M.

BOARD MEMBERS PRESENT:

Mr. Carl Caudill
Mr. Terry Kidwell, Chairman
Mrs. Amy Lutes

All members were present.

LEGAL COUNSEL PRESENT:

Mr. Dale Wilson

Chairman Kidwell called the meeting to order at 8:10 P.M. and introduced Mr. Dale Wilson, legal counsel. Counselor Wilson stated that the Union Board of Adjustment has three members, all of whom have taken the oath of office.

Counselor Wilson stated that the Board members have received the Amended By-Laws and asked if the Board is ready to adopt the Amended By-Laws and to agree to Mr. Kidwell being Chairman of the Union Board of Adjustments. The Board members indicated their agreement.

Chairman Kidwell moved to adopt the Amended By-Laws and that he be the Chairperson. Mr. Caudill seconded the motion and it carried unanimously.

Counselor Wilson reviewed the criteria for considering a Conditional Use Permit.

Agenda Items:

1. The request of Stanley A. Hastings for a Conditional Use Permit to allow the development of a veterinary clinic on a site located on the west side of U.S. 42 in the existing Cincinnati Bell Switching Station, Union, Kentucky. The property is currently owned by Jan Hastings and is zoned Rural Suburban (RS).

Staff Member Jeff Hayes presented the Staff Report which included a slide presentation (see Staff Report). Mr. Hayes showed a map to indicate the relationship of the site to Alternative #6.

Counselor Wilson advised that the Staff does not make a recommendation on the application. He stated that if the Board chooses to grant the request, the Board has the right to impose conditions and may address the Staff concerns with the conditions.

The Chairman asked for the applicant's presentation.

Mr. Stanley Hastings stated that if this request is approved, he intends to have an architect design something more attractive than the current building. He plans an outpatient center on the site to do routine care and minor procedures. He has a full service facility in Erlanger and animals would be transferred there if there is reason to spend the night. He does not intend to have overnight stays at the subject location. He stated that there are trees there for screening the parking area, but they can plant additional trees. He is waiting for approval before investing in sewage or spending money on the architect.

The Chairman asked if anyone else wished to speak.

Mr. Gary Falcon questioned why the facility is being put on this site.

Mr. Hastings stated that if this building is taken, it will be at least five or ten years before it occurs. If it does occur and the practice is doing well, he will find another site at that time and build a full service hospital.

Mr. Henry Ridener stated that as a resident, you have to have 1.8 acres for a sewer. He questioned how they can get by on the site unless they have a treatment plant. He questioned the cost.

Mr. Hastings stated that a holding tank is an option. If he cannot do anything else, he will put in a holding tank and have it hauled.

Mary Ann Fisher asked if the existing building would be torn down. Mr. Hastings advised that he will remodel the existing building.

Mrs. Fisher stated that she is concerned about the traffic. The increased traffic will make it hazardous there unless there is a turn lane or blacktopped strip for people to make a slow exit off the highway. She does not see enough land there for sufficient parking or for a sewer system. They have not seen plans of the building and they do not know what the remodeled building will look like. There are at least two or three accidents per month with people making left turns in and out of small businesses there. She does not think that enough information has been provided.

Ann Falcon stated that the site is on the bend coming into Union and it is dangerous.

Mrs. Phelps stated that she would object if in the future this could be changed to a kennel. She asked if it would have to come before the Board again if that were to happen.

Counselor Wilson advised that the request would have to come back before the Board if the use is different from what is approved.

Mr. Eugene Moore stated that he lives next door to the site and has no objection to the clinic being there.

Chairman Kidwell asked Mr. Moore if he would be pleased with just trees blocking the parking lot to his house. Mr. Moore replied "yes" and noted that the clinic will only operate during the day and there will only be 3 or 4 cars there. He noted that the building is not large enough to hold too many people.

Mrs. Phelps asked if there would be night lights at the back entrance. Mr. Hastings stated that he does not know -- but, if there are lights at the back entrance, they would be on a timer. He stated that the hours would be routine business hours to 5:30 or 6 P.M..

Chairman Kidwell asked if they will adhere to the size of the signs. Mr. Hastings stated that he has not thought about the signage but anticipates just having the sign on the building. He stated that there is not space there for a big sign.

Mr. Hayes advised that if the application is approved, it has to go through Site Plan Review for the parking and the applicant has to apply for any type of signage on the building or the site. There could be a tall sign or a small sign, depending on what the Board feels is appropriate. Counselor Wilson advised that Kentucky law allows the Board members to visit the site, if necessary, before making a decision.

At the request of Mr. Caudill, Mr. Hayes presented one of the slides again and pointed out that there is adequate sight distance in both directions from the driveway. Mr. Hayes stated that because of the limited number of clients who will visit the site, the Staff feels that it will be the same or less traffic than a residence.

Mr. Hayes stated that a Conditional Use Permit runs with the property and, if the applicant sells the property, the buyer would be entitled to operate the facility as a veterinary clinic. If there are no conditions, they could basically do what they want -- the applicant may have good intentions, but the ownership may change and that needs to be considered.

Mr. Ron Sharp stated that the Board may want to consider a restriction for on-street parking in front of the facility due to the visibility.

Mr. Moore questioned someone else buying the property and using it for something else. The Chairman explained that the Board will stipulate that it is for an animal clinic only, there is to be no boarding, the hours of operation are limited to 9 A.M. to 6 P.M., there is to be no parking out front, Site Plan review is required for the parking lot and the septic system, there is to be the signage on the building only, and there are to be trees for a buffer zone around the parking area.

Mr. Hastings commented that someone may want to drop off an animal on their way to work before 9 A.M..

A resident questioned a condition to limit the lighting at night. Counselor Wilson stated that such a condition would be that there is to be no spillover lighting. Mr. Hayes advised that Site Plan Review is required.

There being no further comments, Chairman Kidwell moved to approve the Conditional Use Permit with the conditions that (1) they go through Site Plan Review for the parking lot and get additional approval from the appropriate agencies for the septic system; (2) the sign is only on the building and of a small nature, or there be a small monument sign; (3) it remains as an animal clinic; (4) the hours of operation are 8 A.M. to 6 P.M.; (5) there is to be no animal boarding; (6) no parking out front -- parking only behind the building; and (7) no spillover lighting. Mrs. Lutes seconded the motion and it carried unanimously.

2. The request of William C. Vocke, Jr. for a Conditional Use Permit to allow the development of a day care on a site located on the south side of Whispering Trails at the corner of U.S. 42, Union, Kentucky. The property is currently owned by D & P Development and is zoned Rural Suburban (RS).

Staff Member Jeff Hayes presented the Staff Report which included a slide presentation (see Staff Report). He reviewed the distances from the nearest residence and the property line to the proposed facility.

Mrs. Lutes questioned if the property goes all the way to U.S. 42.. Mr. Hayes replied "yes" and referred Mrs. Lutes to Map #2. He stated that Lot #57 is also part of the applicant's property. He stated that if U.S. 42 is widened with Alternative 6, some of that area -- possibly 50' to 75' -- will be taken by the state.

Mr. Caudill asked if there is any possibility that down the road they would want to put a commercial building in the front. Mr. Hayes advised that if it were a commercial use that is not an allowable use in the zone, it would require a zone change application and the City of Union would have the final say on it. If it would be necessary that the building be closer to U.S. 42 to reduce the impact on the residents, that is something this Board can consider.

Chairman Kidwell stated that if 75 feet is taken and U.S. 42 goes thru there, people will be looking at the parking lot. Mr. Hayes agreed and noted that if the state takes some of the property in the front, possibly additional landscaping in the front would be necessary to hide the parking lot.

Chairman Kidwell asked for the applicant's presentation.

Mr. William Vocke stated that they are doing a day care center for 99 children. In the past, they have built Kiddie Castle in Fort Wright and Kinder Village on Boone Aire Road. They use all brick and the facilities look like residences. This facility will look similar to the one on Boone Aire Road. They use concrete and concrete curbs -- no blacktop. The hours are 6 A.M. to 6 P.M.. There are approximately two cars every

minute, but they have no problems at the other centers. The cars are only there from about 7:30 - 7:45 A.M., and in the evening there is no problem because working hours change for evening pickup. They have one small 40 amp security light in the front. They put in the 10-foot buffer zones. He stated that if Alternative #3 is used, they would want to shift the parking lot. His engineer will look at all of this and when Site Plan Review comes up, everyone will be there to see what they are proposing.

Mr. Randy Lovett questioned why they want the entrance to the parking lot to come out on their street. There will be a lot of cars with 99 children. The residents are having a hard time as it is getting out on U.S. 42. He questioned why they do not want the entrance on U.S. 42 rather than on Whispering Trails.

Mr. Hayes advised that the state would not allow the entrance to be on U.S. 42.

Ann Falcon stated that they live on a cul-de-sac with one way in and one way out. Adding 100 cars to the neighborhood will make traffic 50 cars deep to get out in the morning to get to work. The neighborhood is not meant to have 100 cars -- it is a residential area.

Dorene Spage stated that she is concerned about the traffic. The cars will go down and turn around in the cul-de-sac where the children are playing.

Mrs. Falcon questioned how the school buses will get in and out of the neighborhood. Mrs. Spage stated that there are four school buses that come up and down the street at that time.

Chairman Kidwell stated that the Board understands the concerns regarding traffic.

Mr. Henry Ridener questioned the water and sewer. He stated that in the Spring when there are rains there is a gulch that catches the water, but a lot of driveways on that side flood. If they regrade the property and bring the parking lot closer, it will make the water back up go even further up the street. There is a house up the street that has a big hole in the yard, but that would not be very appropriate. He stated that the entrance on U.S. 42 would not be approved probably because the developer did not want it to interfere with the commercial lot there.

Mr. Hayes stated that on a major arterial like U.S. 42, access points have to be set back a certain distance. At that location, the requirement would be 185 feet from the existing intersection with Whispering Trails. The state would have to give approval for a new curb cut on U.S. 42 and would be reluctant, if they allowed it at all, to allow it on a stretch of road that will be widened to five lanes. The state has ultimate approval. He stated that if they can meet the 185-foot distance, they can request the curb cut on U.S. 42 -- but, if the state does not allow it, they cannot have it.

Mr. Ridener noted the prior approval this evening. Chairman Kidwell advised that there is an existing curb cut there.

Mr. Ridener stated that there was a sanitation plant on the site 2 or 3 years ago. The sewer plant was there for a long time. He stated that kids eat dirt and play in dirt and he does not think the site would be safe for children. He stated that he saw dirt being hauled away, but he did not see dirt being brought in to cover the site. He stated that if they grade the property, it will cause a water problem up the street that they already have.

Mr. Halls, an adjacent property owner, stated that they share the concerns about the traffic. As adjacent property owners, they are concerned about the noise level generated by 100 kids. He noted that it was not stated where the play area would be and he hopes it would not be towards their property. They are opposed to the request.

Dennis Lew Hodges stated that it is absurd to consider this as a commercial venture on U.S. 42 -- it is a commercial venture on Whispering Trails which, by deed, cannot be done. He is opposed to the request. He questioned what legal action the residents can take if the Board approves the request.

Counselor Wilson advised that the appeal would be to the Boone County Circuit Court and has to be done within 30 days. He suggested that this be discussed with their own lawyer. Counselor Wilson noted that if the application is turned down, the applicant can also appeal to the Circuit Court.

Mr. Hodges stated that the applicant is not faced with the same restrictions on his property as Mr. Hodges is on his and that is unfair.

Mr. Randy Lovett stated that with the restrictions, the residents cannot put up an outbuilding in their back yard unless it is attached to the house. Counselor Wilson discussed deed restrictions versus zoning regulations and advised that the Board does not have the authority to enforce deed restrictions.

Mrs. Lutes questioned if the Board denies the request and the applicant goes to the Circuit Court, is the Circuit Court likely to place conditions on the development of the property -- or will it come back to the Board. Counselor Wilson advised that the Circuit Court will look at the record and determine whether the Board's decision is based on facts contained in the record. The Circuit Court is there to see if the Board is arbitrary. If the court feels that the findings or conditions are not clear enough, they may send it back to the Board. Mrs. Lutes expressed concern that if the Board's decision was overturned, the Board would no longer have any control. Chairman Kidwell noted that if the Board turns the request down, the Board cannot put the conditions on it and if it does not come back to the Board there is no way the Board can address those concerns. Counselor Wilson stated that if that happened, he would be arguing to the Judge that it should be sent back so that the Board can determine what conditions should be imposed.

Mrs. Falcon questioned if you lived on a cul-de-sac, which was the only way in and out, and there were 100 cars coming in and out of your neighborhood, how would you feel? She stated that that is how they feel.

Jim Ryle stated that their zoning is R-4. Mr. Hayes advised that it is RS, which requires one-half acre minimum lot sizes. Mr. Ryle questioned the new subdivision on Mt. Zion Road. Mr. Hayes stated that he believes it is SR-1. Mr. Hayes explained the differences between RS and SR-1 zoning and Counselor Wilson advised that a different piece of property is not going to weigh on the decision this evening. He suggested that Mr. Ryle call the Planning Commission in regard to the subdivision on Mt. Zion Road.

Mr. Gary Michaels, a resident of Whispering Trails, stated that it is not unusual for him to wait five minutes to turn left out of Whispering Trails.

Chairman Kidwell stated that the Board understands about the number of cars that will be coming in and out of Whispering Trails and that no one likes the traffic that will be there.

Mr. Michaels stated that it is more than not liking it -- it is going to be an impossible situation.

Mary Ann Fisher referred to the Staff Report on the bottom of Page 1, Item a). She stated that she does not see the activity as being integral to the area. She stated that there are day care centers within a 7 to 10 mile radius to the right. She stated that it would be a more efficiently used day care center if it were more toward the Farm View residential area because going that way is heading towards the expressway, which is where the majority of the people go. There are several day care centers within a 5 to 10 mile radius, which is not a five-minute drive. She sees this as a violation of a). She referred to b) on Page 1 and stated that if they grade the property it will look substantially different and not only would they have a water problem, it would violate the open space character of the district. When they pull in they will see the parking lot and a few trees will not help that much. She referred to d) on Page 2 and stated that this is not a request by any resident in the district. She wonders if it would not be best for this to be somewhere else that would not be as close to a busy cul-de-sac neighborhood as Whispering Trails. If it is not properly signed so that it is visible from the highway and Whispering Trails, it is a hazard. If it is properly visible, it is an eyesore. The playground has not been stipulated and there has been no indication of proper fencing, parking lot size, turn in/pull out, or if there would be any amendments to the state highway that have to be approved by the state. They would be looking at the highway they have now supporting the increased traffic flow. If the sign is not large enough to be seen at a glance, it proposes a hazard. There is no traffic signal there and no left turn signals. There would not be enough room there to support a turn lane. She stated that the applicant said that they would put up a building that is block or stone, but she saw the building on Boone Aire and she can tell it is a day care center. She stated that if you have a parking lot of more than 50 spaces, it is not a residential home.

Glen Dotts stated that on U.S. 42 prior to Whispering Trails toward Ryle the speed limit increases from 35 to 45 MPH.

Gary Falcon stated that Ryle and Gray Schools are just one-half mile south of the site and, if there is any more traffic, he does not know how they will handle it during the morning hours and in the afternoon when the school buses are going back and forth on U.S. 42.

Mary Ann Fisher stated that people in the area can appeal to the judge themselves if they have a petition with so many signatures. She stated that you can state your case of why it would be inadvisable regarding the zoning. She stated that there is other action they can take to go around the Board if the Board is considering approving this request.

Mr. Dean Lower asked if there is a safety issue with the proposed changes to U.S. 42 and bringing it possibly closer to this facility. He noted that in Texas a truck drove thru a day care center.

Mary Thayman questioned if it is already decided that the front part of the lot on U.S. 42 could be for commercial use. Mr. Hayes explained that the Comprehensive Plan Update has been completed recently. It is a 25-year projection of land use in the county and shows the frontage along U.S. 42 (200 to 300 feet off U.S. 42) as being appropriate for commercial -- which is typical in most areas of a five-lane road. He noted that typically you do not see a home next to a five-lane road.

Counselor Wilson explained that the Comprehensive Plan is a Future Land Use Plan that is a projection for 25 years -- but, it does not zone land. Even though the area is indicated in the Future Land Use Plan as being commercial within the 25-year planning horizon, it is not zoned commercial yet and someone who wants to use it for commercial purposes would have to get a zone change.

Mr. Ridener stated that if it is not zoned commercial, it is residential -- and he cannot see a day care center in residential. He stated that they are trying to sell it for a commercial lot.

Mrs. Lutes explained that day care is a Conditional Use that is allowed in the district.

Mary Thayman stated that they cannot stop growth, but day care is one step closer to it being commercial. They want to keep it residential. She questioned why Union cannot be a city that does not get that commercial. She stated that they bought there thinking it would be residential.

Mr. Vocke stated that you look for the growth of the city. The city is constantly growing. He stated that a day care center is called for in the area. It is proven that it will handle the 99 children.

Mrs. Fisher stated that she objects to Mr. Vocke making statements without facts. It has not been proven that a day care center is necessary there. She stated that Mr. Vocke has not addressed any of the issues in the Staff Report. He has not addressed her concerns about Article 9 in the Staff Report. She does not see any evidence of what Mr. Vocke is saying.

Counselor Wilson stated that the applicant has the floor and asked if he wished to relinquish the floor. The applicant relinquished the floor.

Cheryl Hodges stated that there is property for sale no more than one-half mile away next to IGA. Mr. Vocke stated that considering this property would be considering coming off U.S. 42. Mrs. Hodges stated that there is an existing driveway that comes up to the house. Mr. Vocke stated that he believes that ingress/egress is extremely dangerous because it is off the main road.

Chairman Kidwell stated that the Board is considering the subject location.

Mrs. Hodges stated that she has a real problem with the drainage. She lives further up the street near the end. There is drainage not only on Whispering Trails but from the subdivision behind them. There is another subdivision going in and there is an input of water from Indian Hill. She stated that she has a video tape that shows how much of a problem the drainage can be.

Chairman Kidwell stated that the whole city of Union has drainage problems. He asked the applicant how he proposes to handle the drainage problems.

Mr. Vocke stated that the study has to be proven by the engineer in the site review. If the engineering does not work, they cannot build a building.

Mr. Hayes stated that the stormwater the residents are mentioning is an existing problem and this development cannot compound the problem the residents say exists.

Mary Ann Fisher stated that Mr. Hayes' comments are not a basis of fact. She stated that you need a canoe to get on their street in the Spring. Mr. Hayes stated that the residents are saying there is a problem there. If this property is developed, the development cannot increase the problem that exists in the subdivision.

Chairman Kidwell commented that when you blacktop or concrete, there is no place for water to go.

Mary Thayman stated that the people have so much frustration because a house was built and the drainage was approved -- but they were under water so much that they dug a big hole in the front yard. The residents now have this big open dangerous thing. The residents cannot help but think that something is going to be approved and that the Board did not realize the problem.

In response to a question from Chairman Kidwell, Mr. Vocke stated that the engineer is Ray Erpenbeck. Chairman Kidwell stated that he is the one who would decide whether it can handle the water.

Chairman Kidwell questioned the fencing. Mr. Vocke stated that he generally shows the fencing and the buffer zone on the site review.

Chairman Kidwell asked if there were any further comments.

The Chairman stated that he wants to know if there is going to be fencing and where everything will be.

Mr. Vocke stated that there will be a 10-foot buffer zone completely around the whole lot. The buffer zone will be trees -- pine trees to hide the view and buffer the sound. There will be fencing in the rear of the building more toward the side toward Ryle High School, which he indicated to the Chairman on the map. Chairman Kidwell stated that Mr. Vocke is indicating fencing behind the building toward Lot #57.

Mr. Caudill stated that he looks at this as being a residential street and he sees them dumping traffic at certain times of the day that are critical for people going in and out. He is hearing that an adjustment for the road can be taken to the front to U.S. 42. He feels that there is a lot of traffic on the residential street already and then they start talking about school buses. From what he hears from the residents, it is hard to get in and out of there.

Mr. Vocke stated that he was not aware of the traffic problem there. If he had known about it, he would have looked into it and given a better answer.

Mr. Hayes stated that if the Board wishes, the request can be deferred to give the applicant additional time to address the concerns.

Chairman Kidwell stated that traffic is a problem and there is also the water situation. He questioned what will guarantee the residents that this will not create more than what is already there. Mr. Vocke stated that if he has to go this route, it might be best to request a deferral.

Counselor Wilson stated that if the Board wants more information, they can defer the request. It is up to the Board whether they want to take action or defer. If the applicant wants to make a decision that he needs more time to address the questions he can withdraw his application and reapply, and another hearing will be scheduled.

Mrs. Lutes stated that a building that is quite a bit larger than the homes is being proposed. She asked if they could get by with a smaller facility. Mr. Vocke stated that that would not be feasible -- they are licensed for 99 children and there would be no profit in something smaller. Mrs. Lutes stated that the Little Red Schoolhouse has more children and is not that large. Mr. Vocke stated that you are required to have 35 feet per child and the Little Red Schoolhouse has two floors. Mrs. Lutes stated that she was referring to the day care center on Burlington Pike across from Boone County High School, which is all on one floor. Mr. Vocke stated that that is a large building that has an 8-foot ceiling. He stated that they put in 10-foot ceilings. The other building looks smaller because it is sheet metal in the front. Mrs. Lutes asked if they could go to a smaller building. Mr. Vocke replied "we could get

down". Mrs. Lutes asked if they need that much parking. Mr. Vocke replied "no" and stated that less parking is in his favor.

Mr. Tim Terlong, who was with the applicant, questioned how you define how much traffic is too much -- or is it simply judgment. He stated that if there are 99 children in the day care and all 99 are the only child in a family and every parent has to be at work at a specific time, that is one issue. If children are being dropped off and picked up and there are 2, 3, or 4 in a family and a split time period from 6 A.M. to 9 A.M., and possibly even being served with small buses, that is a different situation. He questioned how it is determined how much traffic is too much.

Counselor Wilson stated that the Board will consider all the facts presented. Traffic issues are just one of them. The Board will consider that the street is a cul-de-sac and there is not an outlet to go out the other end of Whispering Trail. The Board will consider the function of the road and the facts presented and decide the issue.

Chairman Kidwell moved to deny the request because there are buses going in and out all the time in the mornings and in the afternoon; if a car gets in there and cannot get out and has to turn around there are kids playing there, which would be a hazard to existing and future neighborhood uses; cars coming in and out and turning off U.S.42; the Board is not sure how the water situation would be addressed or that it would be addressed; promises are made -- but once it is in, it is in there; it would be the wrong think to happen there; safety of the neighborhood itself; the traffic coming in and out; and it would cause problems on U.S. 42 and for the schools.

Mr. Caudill stated that it is a big detrimental change for people living in a residential area where the area has been quiet and there are kids. A lot of people like to be able to let the kids walk out in the street. He does not think you can place a business there and still consider it being a residential area. Chairman Kidwell incorporated these comments in his motion.

Mr. Caudill seconded the motion.

Mrs. Lutes stated that it would change the existing or intended character of the general vicinity. Chairman Kidwell incorporated her comment in his motion. Mr. Caudill seconded.

Mrs. Lutes stated that the vehicular approaches to the property will create an interference with the traffic on the surrounding public thoroughfares. Chairman Kidwell included this comment in his motion. Mr. Caudill seconded.

A roll call vote on the motion found Mr. Caudill, Chairman Kidwell, and Mrs. Lutes in favor. The motion carried unanimously.

There being no further business to come before the Board, the meeting adjourned by unanimous consent at 10:10 P.M..

APPROVED:

Terry Kidwell, Chairman

Attest:

Jan Hancock, Recording Secretary

COPY

CLUR # 96-UBOA-001-A

CERTIFICATE OF LAND USE RESTRICTION

1. NAME AND ADDRESS OF PROPERTY OWNER (S)

Jozie Phelps
9869 U.S. 42
Union, Kentucky 41091

2. ADDRESS OF PROPERTY

9868 U.S. 42 Box 25
Union, Kentucky 41091

3. NAME OF SUBDIVISION OR DEVELOPMENT (if applicable)

Phelps Welding

DEED BOOK: 485

PAGE NO.: 284

GROUP NO.: 2055

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

Zoning Map Amendment:: Conditional Use Permit
From to

Development Plan Conditional Zoning

Subdivision Plat Other: Change in Non-Conforming Use
(Unrecorded)

Variance

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

BOONE COUNTY PLANNING COMMISSION
2995 WASHINGTON STREET
BURLINGTON, KENTUCKY 41005

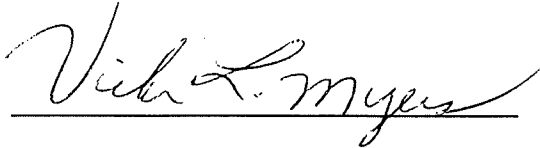

SIGNATURE OF COMPLETING OFFICIAL

Jeffrey Hayes, AICP/Planner
Name and Title of Completing Official

COMMONWEALTH OF KENTUCKY

COUNTY OF BOONE

Subscribed, sworn to, and acknowledge before me by Jeffrey Hayes on behalf of the
Boone County Planning Commission this 19th day of June 1996.

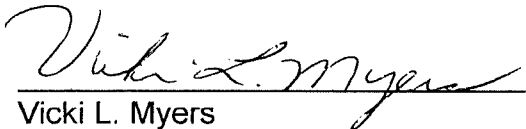


NOTARY PUBLIC, State at Large

My commission Expires:

April 17, 1999

This instrument was prepared for recording purposes only by:



Vicki L. Myers
Boone County Planning Commission
2995 Washington Street
Burlington, Kentucky 41005

NO TITLE EXAMINATION

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

CONDITIONS OF APPROVAL

The following Conditions of Approval apply to the Change in Non-Conforming Use. As approved by the Union Board of Adjustments and in accordance with the current zoning in effect as of January 29, 1996 (Certificate of Land Use Restriction # 96-UBOA-001-A), for Jozie Phelps property owner.

The following conditions will apply: (1).there be no outside storage, (2) no manufacturing be done on the property, (3) there be no storage of large equipment on the property, (4) they receive Site Plan approval and a sign Permit, (5) approximately only three people work in the office, and (6) there be no expansion without Board approval.

The approved Change in Non-Conforming Use as well as the preceding conditions apply to the property

described in: DEED BOOK 485

PAGE NO. 284

Group No. 2055