

00-BCBA-028-A

APPLICATION FORM

**BOARD OF ADJUSTMENT
AND
ZONING APPEALS ACTION
BOONE COUNTY PLANNING COMMISSION**

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

- (Check One)
1. Boone _____ Florence _____ Walton _____ Union _____
(Check One)
2. _____ Conditional Use Permit _____ Variance Appeal _____
_____ Change in Non-Conforming Use _____ and MZC-5, LLC
3. Applicant's Name Berberich Development Co. and Berberich Family Enterprises I-Ltd.
Phone Number (606) 341-2292 Fax No. (606) 341-0358
Applicant's Address c/o Dennis Williams
40 West Pike Street, Covington, KY. 41012
City State Zip
4. Description of Request: Appeal of staff determination as set forth in letter dated April 24, 2000, attached hereto as Exhibit "A" and Exhibit "B".
5. Name of Development Mt. Zion Crossing Subdivision
6. Location of Development 9950 Berberich Drive
Florence, KY
7. Acreage Under Review 28 plus
8. Lot Number and Name of Subdivision (if part of a subdivision)
1, 2, 3, 4, 5, 6, 7, 9, and 10 Mt. Zion Crossing
9. Owner of Property Berberich Development Co., Berberich Family Enterprise I-Ltd. and
Phone Number of Owner (606) 341-2292 10. MZC-5, LLC
Address of Property Owner 3033 Dixie Highway, Ste. 201, Edgewood, KY
City State Zip
11. Proposed Use(s) on Site Commercial
12. Total Square Footage of Existing and/or Proposed Buildings N/A
13. Current Zoning on Property C-4
14. Deed Book see attached Page No. _____ Group No. 2049-R
15. Is the site subject to a zone change? No.
If yes, give date of approval _____
16. Have you submitted a Site Plan with this request? No.
17. Have you submitted a list of adjoining property owners with this request? yes
18. I, or we, understand and agree that this application and drawing(s) are being filed in accordance with the Boone County Zoning Regulations.

Applicant's Signature: _____

Property Owner's Signature: _____

(over)

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 5-23-00 7-5-00 Fee Received \$768.00 (4322) *# 24776*
- 2. Is application complete? _____ Yes _____ No
- 3. Staff Reviewer KEVIN WALL
- 4. Scheduled Board Action Date 6/14/00 - DEFERRED UNTIL 8/9/00
- 5. Board Action: DEFERRED AGAIN UNTIL 9/13/00
 Approved
 Approved with Conditions (See #6)
 Denial (See #7)
- 6. Conditions of Approval: _____
- 7. Reasons for Denial: _____

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

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

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

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

STAFF REPORT

ISSUE: APPEAL OF ZONING ADMINISTRATOR DECISION REGARDING NUMBER OF PERMITTED FREESTANDING/MONUMENT SIGNS AT MT. ZION CROSSING SUBDIVISION

APPELLANT: BERBERICH DEVELOPMENT CO., BERBERICH FAMILY ENTERPRISES I-LTD., AND MZC-5 LLC, C/O DENNIS WILLIAMS

LOCATION: NORTHEAST CORNER OF MT. ZION ROAD/SAM NEACE DRIVE INTERSECTION AND 9950 BERBERICH DRIVE (MT. ZION CROSSING SUBDIVISION), BOONE COUNTY, KENTUCKY

ZONE: COMMERCIAL FOUR (C-4)

DATE: August 9, 2000

REQUEST

In accordance with sections 201, 220, 240, 245, 253, and 254 of the Boone County Zoning Regulations, an Appeal of the Zoning Administrator's interpretation of the Zoning Regulations has been filed before the Boone County Board of Adjustment and Zoning Appeals. Specifically, Dennis Williams, on behalf of the entities named above, has filed an Appeal of the Zoning Administrator's interpretation of Section 3414.3(1)b (regarding freestanding/monument style signs in the C-1 and C-4 zones) of the Boone County Zoning Regulations, and the Zoning Administrator's interpretation of a variance approval granted by the Board of Adjustment on June 11, 1997 to exceed the required size and height requirements for freestanding/monument style signs in the C-4 zone. The Zoning Administrator's determination in question is explained in the letter to Mr. Dennis Williams dated April 24, 2000 which is attached as Exhibit 1 (a letter from the Appellant requesting a Zoning Administrator determination is attached as Exhibit 2). In short, the Appellant contends that in addition to receiving a variance to exceed the normal size and height for the freestanding sign permitted for the whole development, they are also entitled to a second freestanding sign which identifies the overall development and a separate monument style sign for each individual lot within the development, for a total of approximately twelve freestanding signs within the development.

In the letter attached as Exhibit 1, the Zoning Administrator determined that the current (1996) and past (1991) sign regulations only permit one freestanding sign for the entire Mt. Zion Crossing commercial subdivision, and that the regulations clearly define the number of freestanding signs per lot, overall development, subdivision, etc., as a density requirement (per the definition of density in Article 40 of the Zoning Regulations - not a dimensional requirement) and that the BOA has no power under either state law or the Zoning Regulations to alter density requirements through the variance procedure or any other procedure - rather, the BOA merely granted a variance to alter the size and height requirements (dimensional requirements) of the one monument style sign that is permitted for the whole subdivision; this variance allowed a 40 foot high monument style sign with 425 square feet of tenant advertising space in a zone where the normal maximum requirements are 15 feet in height and 150 square feet in area. The Zoning Administrator also responded in this letter to the Appellants claim that the BOA and the Appellant had made some sort of "compromise" or deal which also allowed a second freestanding sign to identify the overall development and an individual monument style sign on each individual lot within the development in exchange for less sign area than was originally requested in the variance application (the silhouette of the original sign was almost 900 square feet); the Zoning Administrator pointed out that the BOA does not need to "compromise" because the Board may unilaterally impose conditions and the Applicant's agreement is not necessary.

DUTIES OF ZONING ADMINISTRATOR AND BOARD OF ADJUSTMENT AND ZONING APPEALS

Section 201 of the Boone County Zoning Regulations describes the authority of the Zoning Administrator. One of the roles of the Zoning Administrator is to determine the classification of any use of land, buildings or structures as a principally permitted, accessory, or conditional use in a specific zoning district, as well as determine whether uses are illegal or have pre-existing, nonconforming status, based on an interpretation of the stated and implied requirements of the zoning regulations. This includes the classification of new uses or uses not specifically identified in the regulations, determination of how applicable development standards are applied in different circumstances, and the interpretation of the regulations in instances where there is not a precise "fit" between the regulations and existing site conditions or development objectives.

In addition, one of the Board's duties is to hear and decide Appeals where it is alleged there is an error in any order, requirements, decision, interpretation, grant or refusal made by the Zoning Administrator.

DESCRIPTION OF SITE

The site is an approximate 28 acre development located on the northeast corner of the intersection of Mt. Zion Road and Sam Neace known as Mt. Zion Crossing. The development was approved through the subdivision processes (Preliminary Plat, Improvement Plan, and Final Plat) as one overall development that includes a street called "Berberich Drive" that connects Mt. Zion Road to Sam Neace Drive in a loop fashion. The development currently contains Thriftway, the Bank of Kentucky, two strip centers along Mt. Zion Road, and two office buildings that are under construction.

DECISION AND BASIS FOR DECISION

The decision in question, and the basis for the decision, are described in the previously mentioned letter dated April 24, 2000 from Kevin Wall to Dennis Williams (Exhibit 1).

CONCLUSION

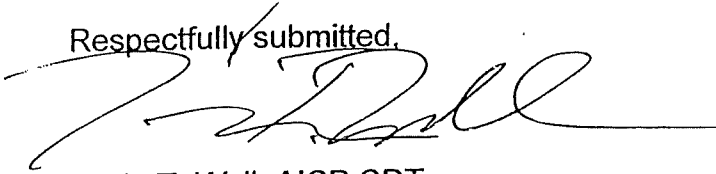
As provided in Article 2 of the Boone County Zoning Regulations, an Appeal of the Zoning Administrator's decision may be granted by the Board of Adjustment and Zoning Appeals when it has been demonstrated that the decision is in error. Issues of particular relevance to this matter include:

- A. All of the claims made in the Appellant's narrative (except for one that is discussed below regarding the definition of "shopping center") are addressed in the Zoning Administrator's letter (Exhibit 1). Whereas the Appellant has made vague claims that do not reference any specific requirement of the Zoning Regulations or specific parts of the BOA hearing minutes in question (just inferences), the Zoning Administrator's determination outlines specific passages in the staff report and hearing minutes for the variance request, and the specific, applicable requirements and definitions of the Zoning Regulations. Rather, the Appellant's arguments seem to hinge upon some obscure "deal" rather than the requirements of the Zoning Regulations or the Board's approval of the variance. In fact, the Applicant is quoted in the minutes as stating that he intended to put monument style signs on other lots, but that issue was unrelated to the variance request (the actual number of permitted freestanding signs [i.e., one for the overall development] was stated by both Staff and a Board member at the hearing) - these other signs are unrelated to the variance application when they were discussed by the Applicant at the variance hearing, but now they are part of some sort of "compromise" pertaining to it?

- B. The Appellant's arguments regarding the purported "deal" seem to state that in addition to receiving substantial variances for size and height of the one permitted monument style sign, the Appellant was also approved for up to eleven additional freestanding/monument signs. Typically, when a sign variance is granted the Board may impose a condition(s) which places further limitations on other signs on the property to minimize overall visual impacts, versus allowing additional signs which are not otherwise permitted by the Zoning Regulations and that were not part of the Public Hearing request, as is suggested by the Appellant.
- C. The one argument used by the Appellant that the Zoning Administrator's determination does not address is that the development is not a "shopping center" as defined by the Zoning Regulations, therefore, each lot is entitled to their own freestanding sign in lieu of one freestanding/monument style sign for the entire development (this claim was not part of the original request for a determination on this issue). According to the Appellant, the development is not a shopping center because it contains multiple lots that have been, or will be, sold to independent parties. While the development may not necessarily be a shopping center as defined, this point is irrelevant when considering that the freestanding/monument sign requirements in Section 3414.3(1)b apply to "shopping centers, mixed use commercial, and planned developments" as well as "any outlots subdivided as part of a larger development," and not just shopping centers as defined. The development is certainly a "mixed use commercial" development and it certainly includes "outlots subdivided as part of a larger development." In fact, the additional monument style signs sought by the Appellant are specifically intended for outlots that are subdivided as part of a larger, overall development.
- D. Several of the outlots included in this Appeal have been developed and currently have businesses operating on them, and two other buildings in the development are under construction. If the Appellant does not own these lots, then the Appellant might not be an aggrieved party subject to relief from the Board for all of the properties outlined in the application. The Appellant should clarify the ownership of the various lots involved in this request.
- E. As outlined in the Zoning Administrator's decision, the Appellant may propose the creation of a Special Sign District through the Zoning Map Amendment process. Through this process, a developer may essentially create his own sign regulations for a particular development and can propose a separate freestanding sign for each lot.

- F. Staff agrees with the Appellant's narrative in the respect that if the Board members believe that they approved all of the signs claimed by the applicant through the June 11, 1997 variance hearing, then this Appeal should be granted.

Respectfully submitted,



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

KTWpr

attachments:

- Exhibit 1 - letter from Kevin Wall to Dennis Williams dated 4/24/00
- Exhibit 2 - letter from Dennis Williams to Kevin Wall dated 4/18/00
- Exhibit 3 - Appeal application form, narrative describing grounds for Appeal, and related submittal materials
- Exhibit 4 - Staff Report for original 6/11/97 variance request
- Exhibit 5 - minutes from 6/11/97 BOA meeting
- Exhibit 6 - Section 3405 "Sign Permits" of Zoning Regulations
- Exhibit 7 - Section 3413.3(1)b. "Freestanding Signs" (C-1 and C-4 zone) of Zoning Regulations
- Exhibit 8 - definition of "density" from Zoning Regulations

EXHIBIT 1

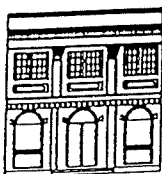
BOONE COUNTY PLANNING COMMISSION

2995 Washington Street, Burlington, KY 41005

606-334-2196

FAX 606-334-2264

E-Mail plancom@one.net



April 24, 2000

Mr. Dennis R. Williams
Adams, Stepner, Woltermann & Dusing, PLLC
40 West Pike Street
P.O. Box 861
Covington, KY 41012-0861

RE: Variance for Size and Height of Freestanding Sign Granted 6/11/97 for Mt. Zion Crossing Subdivision, Mt. Zion Road, Boone County, Kentucky; Commercial Four (C-4) Zone

Dear Mr. Williams:

This letter is in response to your letter dated April 18, 2000. In your letter (as well as in a previous meeting held several months ago), you and your client contend that in addition to the Board of Adjustment approving a variance (on June 11, 1997) to allow two freestanding signs that are 40 feet tall and have 425 square feet of tenant advertising space, each outlot is also entitled to have its own monument style freestanding sign. Although I understand that your client believes that the development is permitted all of these freestanding signs (Mr. Berberich even stated at the BOA hearing that "there are several outlots which will have individual monument signs that are unrelated to this issue"), this understanding is, and was, incorrect for several reasons.

First, Section 3414.3(1).b of the Zoning Regulations clearly state for freestanding signage in C-4 zones that:

Shopping centers, mixed use commercial, and planned developments shall be permitted a density of one (1) on-premises monument sign for the purpose of identifying the name of the development, its major tenant(s), and its major access point. (See Article 2, Section 250 regarding Board of Adjustment and Zoning Appeals authority regarding density). No monument sign may be permitted for individual establishments or buildings located within, or accessible from, the entrance of a shopping center or mixed use development when such building or establishment, or lot upon which such establishment is located is planned, designed, or marketed as a part of such development. (This requirement also applies to any outlots subdivided as part of a larger development and any developments established under Article 15, Planned Development Overlay, of the zoning regulations).

Mr. Dennis R. Williams
Adams, Stepner, Woltermann & Dusing, PLLC
April 24, 2000
Page 2

Although a more limited size and height are now permitted for freestanding signs in the C-4 zone, and freestanding signs must be monument style (changes were made in the 1996 version of the Zoning Regulations), the prior regulations (1991 version) contained the same language regarding density of freestanding signs (i.e., one for the overall development - this same point was outlined in the Staff Report to the BOA in 1997).

Section 250 of the Zoning Regulations states "the Board (Board of Adjustment) shall not possess the power to grant a variance to permit a use of land, building or structure, which is not permitted by the zoning regulation in question, or to alter the density requirements in the zone in question" (this provision is also statutory per KRS 100.247). The definition of "density" in Article 40 "Definitions" of the regulations specifically state "for signage, density is expressed in this order in terms of the number of a certain type of sign per wall, building, lot, or overall development or subdivision." When considering the C-4 freestanding sign requirements, Section 250 (which is mentioned in the C-4 freestanding sign requirements), and the definition of density, it is abundantly clear that the entire development is permitted a density of one monument style sign and that the Board of Adjustment is not authorized to grant variances to allow additional freestanding signs, monument or otherwise (i.e., not authorized to alter the zone's density requirements as they pertain to signage), regardless of the applicant's stated intent at the hearing or on the application form (the application form states that the requested variance is for "signs"). This point is reinforced by the fact that Board member Shirley Millar is quoted in the hearing minutes as saying "they are only allowed one sign on the entire property."

In addition, the variance was conditionally approved (the motion for conditional approval used the term "sign" in its singular form). Although the wording in the minutes is not straightforward, these conditions are basically two-fold (in addition to allowing the 40 foot height and 425 square feet of tenant advertising space): 1.) Any other business inside this development has to go on this sign, and 2.) They shall not have a monument sign. Your letter also notes several "compromises" with staff and the BOA regarding lowering the height of signs and enclosing the bottom of the signs to create monument signs. The "monument" requirement for freestanding signs is a use requirement of the C-4 zone and is not open to compromise or debate (i.e., not subject to relief through the variance process because it is not a dimensional standard), and conditions may be unilaterally imposed by the BOA without the applicant's agreement.

As pointed out in your letter, it is true that two pylon signs are shown on the approved Preliminary Plat for the development, and a pylon sign along the Mt. Zion Road frontage is noted on the approved site plan for the Thriftway development. However, signs are not reviewed or approved through either the Preliminary Plat or Major Site Plan processes (this was also pointed out in the Staff Report to the BOA in 1997). As clearly outlined in Section

Mr. Dennis R. Williams
Adams, Stegner, Woltermann & Dusing, PLLC
April 24, 2000
Page 3


3405 of the Zoning Regulations, sign approval is only granted through the issuance of a Sign Permit. To date, no Sign Permit application has been submitted for these signs. It is also true that a former staff member issued a Sign Permit to allow the Bank of Kentucky in Mt. Zion Crossings to have its own monument style sign (this sign has since been erected). This approval was an error and does not mean that other outlots in the development are entitled to their own monument style signs.

Overall, this issue is already summed up in the minutes for the June 11, 1997 BOA public hearing. The third paragraph of the minutes for the variance request state (note the second and third sentences):

Staff member Ed Coleman presented the Staff Report which included a slide presentation (see Staff Report). He advised that the Site Plan had two signs on it, but signs are not approved through the Site Plan process — sign permits are required. He stated that the two signs are not permitted in the Zoning Regulations. Under the current regulations, the maximum height for a monument sign is 15 feet.

The determination outlined in this letter may be appealed to the Board of Adjustment within thirty (30) days. In order for an appeal to be granted, it must be demonstrated that the determination is in error. Additionally, your client may propose all of the desired signs through a Special Sign District; through this process, he can essentially propose his own sign requirements for the development. Please call me if you have any questions or need any clarifications.

Sincerely,



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

KTW/pr

cc: Todd Morgan, Planner
Mitch Light, Asst. Zoning Administrator/Enforcement Officer
Dale Wilson, Legal Counsel

EXHIBIT 2
ADAMS, STEPNER, WOLTERMANN & DUSING,
P.L.L.C.

Attorneys and Counselors at Law

DONALD L. STEPNER * MARY ANN STEWART *
JAMES G. WOLTERMANN * LORI A. SCHLARMAN *
GERALD F. DUSING SCOTT M. GUENTHER
MICHAEL M. SKETCH * ROBERT D. DILTS *
DENNIS R. WILLIAMS * PAUL E. SCHWARZ **
JAMES R. KRUER * CATHERINE D. STAVROS *
JEFFREY C. MANDO * JEFFREY A. STEPNER *
MARC D. DIETZ * JENNIFER L. LANGEN *
STACEY L. GRAUS *

* ALSO ADMITTED IN OHIO
** ADMITTED ONLY IN OHIO

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

40 WEST PIKE STREET
P.O. BOX 861
COVINGTON, KENTUCKY 41012-0861
AREA CODE 859-291-7270
FAX 859-291-7902

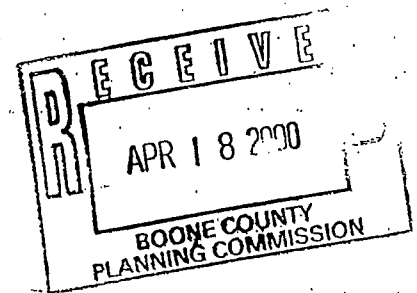
OF COUNSEL
JOSEPH T. CONDIT *
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FLORENCE, KENTUCKY 41012-0576
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AREA CODE 859-291-7270
P. O. BOX 20728
COLUMBUS, OHIO 43220
AREA CODE 614-459-9435
FAX 614-459-9042

April 18, 2000

Boone County Planning Commission
2995 Washington Street
Burlington, KY 41005

Attn: Mr. Kevin Walls
Mr. Todd Morgan

RE: Mt. Zion Crossing - Sign Variance Issue



Gentlemen:

As you will recall from our meeting in January of this year, I represent Berberich Development Company and Berberich Family Enterprises - I, Ltd., the owner and developer of Mt. Zion Crossing.

It is my understanding, based upon our meeting, that it is your opinion that the regulations do not permit the tenants of the outlots of the development to apply for or to have constructed a monument sign identifying their place of business. As we expressed to you during our meeting, it is our specific recollection that this matter was addressed and dealt with at the June 11, 1997 Board of Adjustments hearing where the owner of the property had applied for a variance regarding the pylon signs at the development.

My and my client's recollection is that the site plan as approved reflected two forty (40) foot high pylon signs. Upon application for the sign permit, staff took the position that such signs were not permitted. We applied for a variance and ultimately compromised with the staff and the Board of Adjustments to construct lower signs and to construct them with an enclosed (monument) bottom section. As a condition of this compromise, it was discussed and clearly understood by all that the tenants of outlots would be permitted their own monument signs.

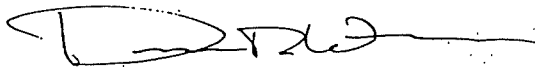
Could you please put into writing to me your understanding of our current request and your specific reasons for denial of my client's request. We would intend to then appeal your decision denying our request directly to the Board of Adjustments to address with them the issues raised by the references in the June 11, 1997 minutes and mine and my client's recollection that their pylon sign issues were compromised and settled at that time upon the specific understanding and agreement that monument signage for tenants of the buildings in the outlots would be permitted.

Boone County Planning Commission
RE: Mt. Zion Sign Variance Issue
April 18, 2000
Page two

Thanking you in advance for your prompt attention to this matter, I remain

Very truly yours,

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



DENNIS R. WILLIAMS

DRW/jlc

#46249

EXHIBIT 3

APPLICATION FORM

**BOARD OF ADJUSTMENT
AND
ZONING APPEALS ACTION
BOONE COUNTY PLANNING COMMISSION**

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

- (Check One)
1. Boone Florence Walton Union
 2. (Check One)
 Conditional Use Permit Variance Appeal
 Change in Non-Conforming Use and MZC-5, LLC
 3. Applicant's Name Berberich Development Co. and Berberich Family Enterprises I-Ltd.
 Phone Number (606) 341-2292 Fax No. (606) 341-0358
 Applicant's Address c/o Dennis Williams
40 West Pike Street, Covington, KY 41012
 City State Zip
 4. Description of Request: Appeal of staff determination as set forth in letter dated April 24, 2000, attached hereto as Exhibit "A" and Exhibit "B".
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 6. Location of Development 9950 Berberich Drive
Florence, KY
 7. Acreage Under Review 28 plus
 8. Lot Number and Name of Subdivision (if part of a subdivision)
1, 2, 3, 4, 5, 6, 7, 9, and 10 Mt. Zion Crossing
 9. Owner of Property Berberich Development Co., Berberich Family Enterprise I-Ltd. and
 Phone Number of Owner (606) 341-2292 10. MZC-5, LLC
 Address of Property Owner 3033 Dixie Highway, Ste. 201, Edgewood, KY
 City State Zip
 11. Proposed Use(s) on Site Commercial
 12. Total Square Footage of Existing and/or Proposed Buildings N/A
 13. Current Zoning on Property C-4
 14. Deed Book see attached Page No. _____ Group No 2049-R
 15. Is the site subject to a zone change? No.
 If yes, give date of approval _____
 16. Have you submitted a Site Plan with this request? No.
 17. Have you submitted a list of adjoining property owners with this request? yes
 18. I, or we, understand and agree that this application and drawing(s) are being filed in accordance with the Boone County Zoning Regulations.

Applicant's Signature: 

Property Owner's Signature: 

(over)

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 5-23-00 Fee Received \$768.00 P# 24322
- 2. Is application complete? _____ Yes _____ No
- 3. Staff Reviewer KEVIN WALL
- 4. Scheduled Board Action Date 6/14/00
- 5. Board Action:
 - _____ Approved
 - _____ Approved with Conditions (See #6)
 - _____ Denial (See #7)
- 6. Conditions of Approval: _____
- 7. Reasons for Denial: _____

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

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

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

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

Exhibit "B"

The Applicant appeals the decision expressed in Staff's letter dated April 24, 2000 for the following reasons:

Applicant has requested that it be permitted to install monument signs identifying the use of tenants or owners of lots 1, 2, 3, 4, 5, 6, 7, 9, and 10 of the Mt. Zion Crossing Subdivision as developed by Applicant. Attached hereto is a drawing showing the approximate location of the requested monument signs. Staff has expressed its opinion that such signage is not permissible under the applicable ordinances. Applicant feels that Staff's decision is in error for the following reasons:

1. As part of an earlier zoning variance hearing, held on June 11, 1997, the Applicant is entitled to the signage requested for Lots 1, 2, 3, 4, 5, 6, 7, 9 & 10 of the Mt. Zion Crossing Subdivision. Applicant desires to install monument style signs upon these lots identifying the tenant or owners' use upon the respective lots.

Attached as Exhibit "1" are the minutes of the hearing which was held on June 11, 1997, on Applicant's previously requested sign variance. The staff advises us that the original tape of the hearing is no longer in existence and cannot be reviewed for any additional information.

As a result of this hearing, it was understood and agreed that monument signs would be permitted on the above mentioned lots. The Board of Adjustments at the June 11, 1997 hearing and Applicant agreed to a compromise, whereby Applicant would decrease the height of his requested Pylon signs and enclose the bottom of same to give it the monument style appearance. It was an understood condition of this compromise, as reflected in the transcript of that hearing, that Applicant would be permitted monument signs on the individual lots to identify those tenants or owners that were not identified on the Pylon Signs. As this Applicant pointed out to the staff, per his site plan, he was entitled to two pylon signs at the entrance of the main road; that they would not be sufficient to permit proper identification of all tenants and all of the out lots; that he had always been told that he was entitled to a monument sign on each lot; that the Berberich Drive was a public street, and that the out lots were separate property. Mr. Coleman, the Zoning Enforcement Officer at the June 11th hearing, explained that this development was not a planned development and confirmed that they could have individual monument signs within the development. It is the Applicant's recollection that these issues were clearly discussed and understood at the June 1997 hearing and that is why he agreed to a reduction in the height of the pylon signs.

The Applicant asks the Board to recall its consensus and permit the requested monument signs. Even a reading of the minutes of the June 1997 hearing (which is a summary only, and which the Applicant believes to leave out critical parts of the discussion), confirms that the Board and Applicant recognized that the development was not a "shopping center" within the definition of such under the ordinance, that its tenants needed and

expected access to sufficient signage and that this included monument signs on certain lots whose use was not identified on the Pylon Signs.

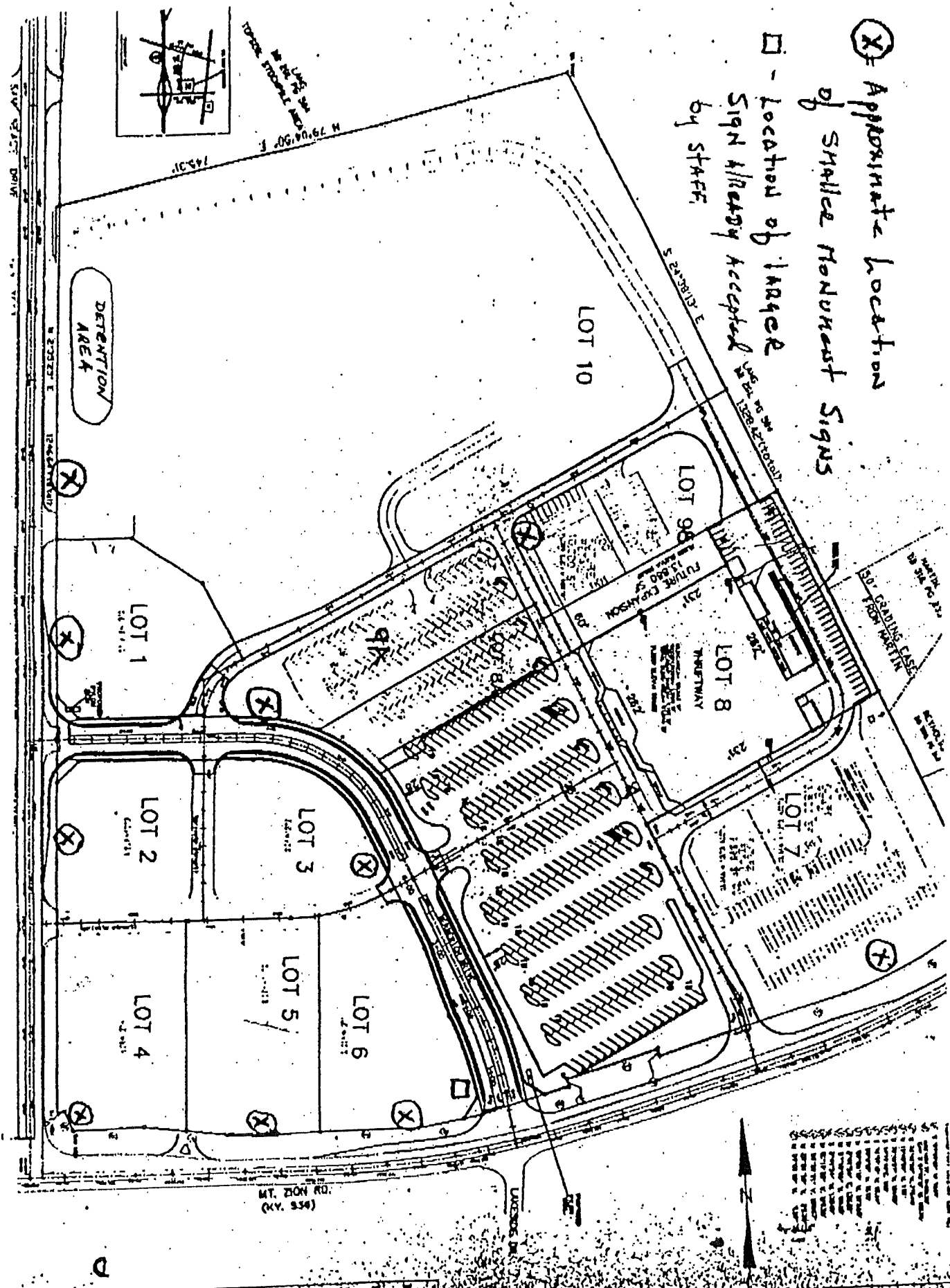
2. Even if the Board is of the opinion that there was no compromise permitting the requested signs, still the interpretation by staff that monument style signs are not permitted is in error, under the applicable zoning ordinance.

Section 3413 3(1), speaks to the use of free-standing monument signs. In sub-paragraph (b) of that section, the second sentence reads, "no monument sign may be permitted for individual establishments or buildings located within, or accessible from, the entrance of a shopping center or mixed use development when such building or establishment, or the lot upon which such establishment is located is planned, designed, or marked as it is part of such development". (This requirement also applies to any out lots subdivided as part of a larger development and any developments established under Article 15, Planned Development Overlay, of the Zoning Regulations). This sentence refers back to shopping centers. "Shopping centers" are defined in the ordinance as follows:

"A group of retail and/or service establishments planned, developed, and managed as a single site with common off street parking provided on the property."

The Mt. Zion development is not a shopping center under this definition. The lots are all independently owned, or will be as they are sold off; have their own defined parking areas, and share no common areas with the other lots in question. The currently existing Thriftway building and the retail strip center next to the Thriftway building do share some common parking, but their signage is not in issue.

This conclusion is confirmed by the fact that staff has already approved a monument sign for The Bank of Kentucky and installed on the lot sold to the Bank by the Applicant.



X - Approximate Location
 of Small Request Signs
 □ - Location of Large
 Sign already accepted
 by STAFF

DETENTION
AREA

LOT 10

LOT 9

LOT 8

LOT 1

LOT 2

LOT 3

LOT 7

LOT 4

LOT 5

LOT 6

LAYOUT

IMPROVEMENT PLAN

EXHIBIT 4

STAFF REPORT

#2

DEVELOPMENT: Thriftway Marketplace
APPLICANT: Berberich Family Enterprises I, Limited
LOCATION: 9950 Berberich Drive, Boone County, Kentucky
ZONING: Commercial Four (C-4)
DATE: June 11, 1997

Proposal

The applicant is requesting a Variance to allow an increase in the size and height of a monument sign on the site of the Thriftway Marketplace, which is located at the corner of Mt. Zion Road and Berberich Drive, Boone County, Kentucky. The applicant's request is for a Variance that would permit a monument sign at a height of 40 feet. The silhouette of the sign is approximately 894 square feet in size. The portion of the sign, designed to contain signage, is approximately 425 square feet in size. A letter from the applicant addressed to the Planning Commission, expressing the applicant's intent, is included in this Staff Report.

Article 34

Article 34, Section 3413 of the Boone County Zoning Regulations, states the following for Freestanding/Monument Signs in Commercial Four (C-4) districts:

Shopping centers, mixed use commercial, and planned developments shall be permitted a density of one (1) on-premises monument sign for the purpose of identifying the name of the development, its major tenant(s), and its major access point.

In the Commercial Four (C-4) zoning district, the maximum size of a monument sign shall be no more than one (1) square foot of sign area per linear foot of road frontage along the street frontage where the sign is to be located. No monument sign in a C-4 zoning district shall exceed one-hundred fifty (150) square feet in area.

In Commercial Four (C-4) zoning districts, the maximum height of a monument sign shall not exceed fifteen (15) feet from grade to the top of the sign structure.

The applicant's Site Plan for the development was approved in September of 1996. The Site Plan did indicate two (2) pylon signs, one located at the corner of Mt. Zion Road and Berberich Drive, and the other located at Berberich Drive and Sam Neace Drive. Staff would remind the Board and the Applicant that approval of signs does not occur through

Site Plan review. The applicant must receive Sign Permits in order to erect signs.

The applicant did however, receive Site Plan approval before the update of the Boone County Zoning Regulations, in October of 1996. The previous Zoning Regulations had different limitations of signs in Commercial Four (C-4) districts. The previous Zoning Regulations stated the following concerning signs in a C-4 zoning district:

The maximum size of a freestanding sign in a Commercial Four (C-4) zoning district shall be no greater than one (1) square foot of sign area per linear foot of road frontage along the street frontage where the sign is to be located. No freestanding sign may exceed two hundred fifty (250) square feet in area.

The maximum height of a freestanding sign in a Commercial Four (C-4) zoning district shall not exceed forty (40) feet.

A Variance is defined as a departure from dimensional terms of the zoning regulation pertaining to the height, width, or location of structures, and the size of yards and open spaces where such departure meets the requirements of K.R.S. 100.241 to 100.47.

Variances are appropriate by reason of exceptional narrowness, shallowness, or unusual shape of a site on the effective date of the zoning regulations or amendment thereof or by reason of exceptional topographic conditions, or some other extraordinary situation or condition of the site. The literal enforcement of the above dimensional terms of the zoning regulation would deprive the applicant of reasonable capacity to make use of the land in a manner equivalent to the use permitted other landowners in the same zone. The dimensional terms pertaining to height, width and location involve such items as structures, parking space stalls, driveway aisles, and landscaped buffers and signs. Lot frontages, the size of yards, and open spaces refer to minimum yard dimensions such as building setbacks.

The Board should evaluate the applicant's request as it relates to the criteria necessary for granting a Variance, stated in Article 2, Section 251 of the Boone County Zoning Regulations.

Conclusion

K.R.S. 100.241 gives the Boone County Board of Adjustment and Zoning Appeals the authority to approve the applicant's request for a Variance to allow an increase in the height and size of a monument sign. It is Staff's opinion that the proposed Variance will not adversely affect the public health, safety, or welfare, and will not allow an unreasonable circumvention of the requirements of the zoning regulations, but that it may alter the

essential character of the general vicinity and may cause a nuisance to the public. It is Staff's opinion that the applicant did not know that the sign requirements would change for Commercial Four (C-4) zoning districts through the October 1996 update, and therefore should be allowed to have a monument sign at the size (250 sq. ft.) permitted within the Zoning Regulations before the October 1996 update. It is Staff's opinion that a monument sign at forty (40) feet in height and almost nine hundred (900) feet in size, is inappropriate and defeats the purpose of a freestanding monument sign which is to be smaller in scale and profile than freestanding, non-monument signs.

Respectfully Submitted,

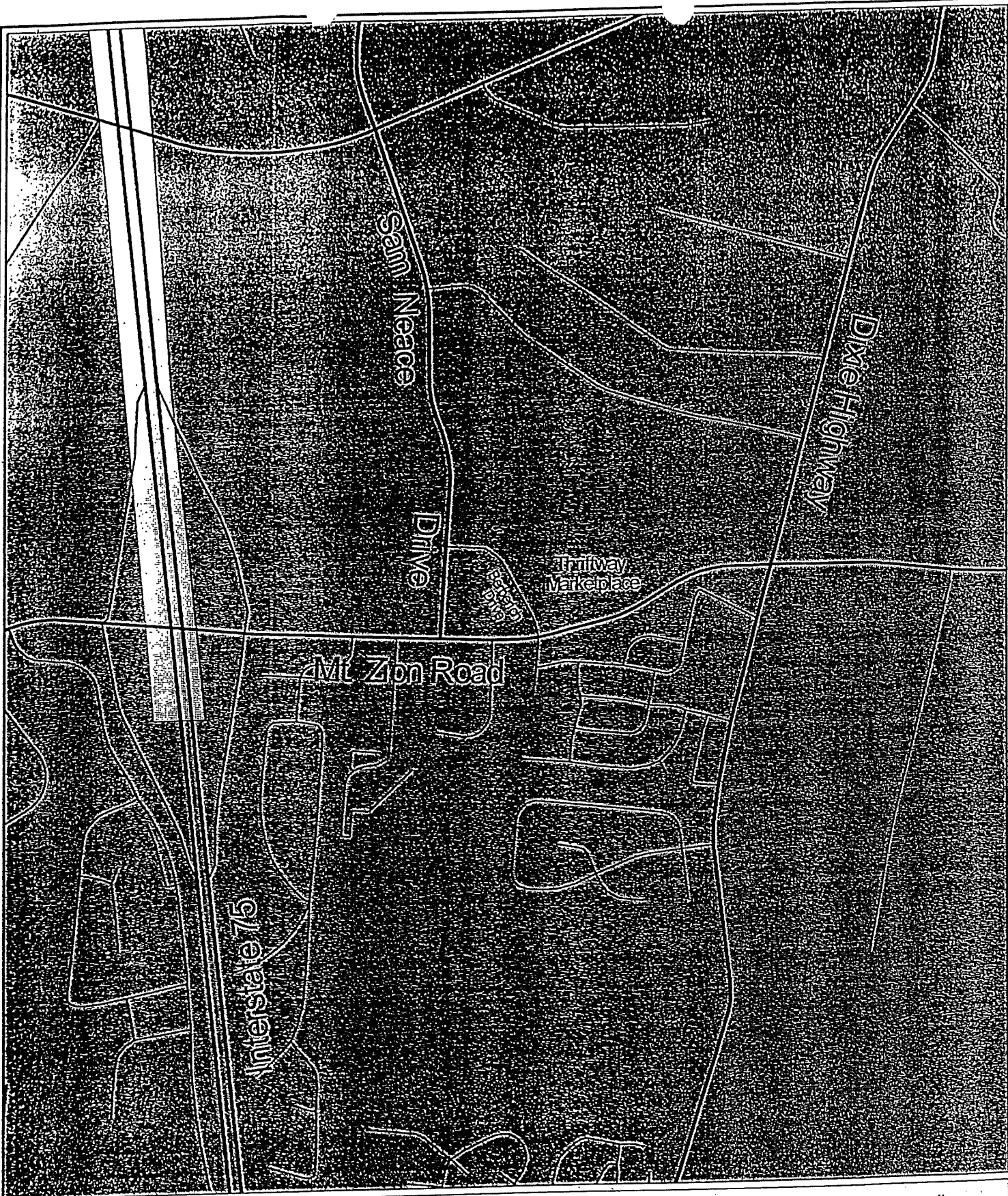


Edward Coleman
Planner

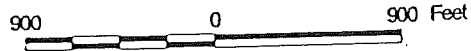
EC\par

Attachments

- Location Map
- Applicant's letter of intent
- Proposed Sign
- Site Plan
- Zoning Map



Thriftway Marketplace



1 inch equals 900 feet
Produced by the
Boone County Planning Commission
GIS Services Division
June 4, 1997



Adams, Brooking, Stepler, Woltermann & Dusing
Suite 400, 8100 Burlington Pike
Florence, Kentucky 41043
(606) 371-6220
Fax: (606) 371-8341

May 21, 1997

Boone County Planning Commission
2995 Washington Street
Burlington, Kentucky 41005

RE: REQUEST FOR VARIANCE MT ZION CROSSING SIGNS

Gentlemen:

Attached is an application for variance in size of monument style signs proposed for this development. You will recall that the site plan as approved by the commission reflects two pylon style signs of 40' height to be constructed. After approval of this site plan, the regulations on signs for C4 areas was modified to limit signs to monument signs of significantly less height and size. The developer has marketed this property pursuant to the site plan as approved and had even agreed with a sign company to construct the pylon signs. However, in an effort to bring this development on line and to accommodate you planning goals, the developer has agreed to modify their signs to comply with the definition of monument style signs under you regulations. The developer does, however, propose to use larger signs to identify the development and its tenants. It is for this reason that we file the attached request for variance.

Attached is also a sign drawing depicting the size and style of the proposed signage. The drawing will be modified at the time of request for sign permit to show that the lower portion is enclosed to comply with your monument sign definition.

Should you have any questions, please do not hesitate to contact the undersigned.

Sincerely,


Dennis R. Williams

DRW/wd

ATTACHMENT

4. The applicant has an approved site plan depicting two pylon style signs upon the development. After approval of this site plan, the regulations for C4 zones was modified to limit signs to monument style signs. This change occurred without the knowledge of applicant. Applicant has consistently marketed the development by way of the approved site plan and tenants and applicant expected the construction of pylon style signs. Upon seeking information for sign permitting, applicant learned of the regulation modifications.

Applicant seeks variance in size and height of monument style signs to permit construction of signs similar in size to that depicted on the attached drawing. The sign construction will be modified to enclose the bottom so as to meet the definition of a monument style sign.

* ALL SIGN CABINETS
U.L. LISTED

12" & 18" P.V.C. LETTERS

DRYVIT BY
DEV'R

MOUNT ZION
CROSSING

THRIFTWAY
FOOD • DRUG

7'

12'

20'

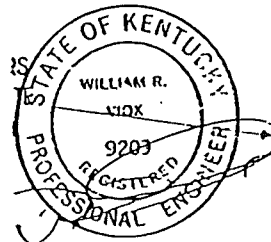
12" X 16" X 3/8"

40'

48

800

*Bottom
will be
Enclosed*



CREATED BY:

DATE:

SCALE: 1/4" = 1.0'

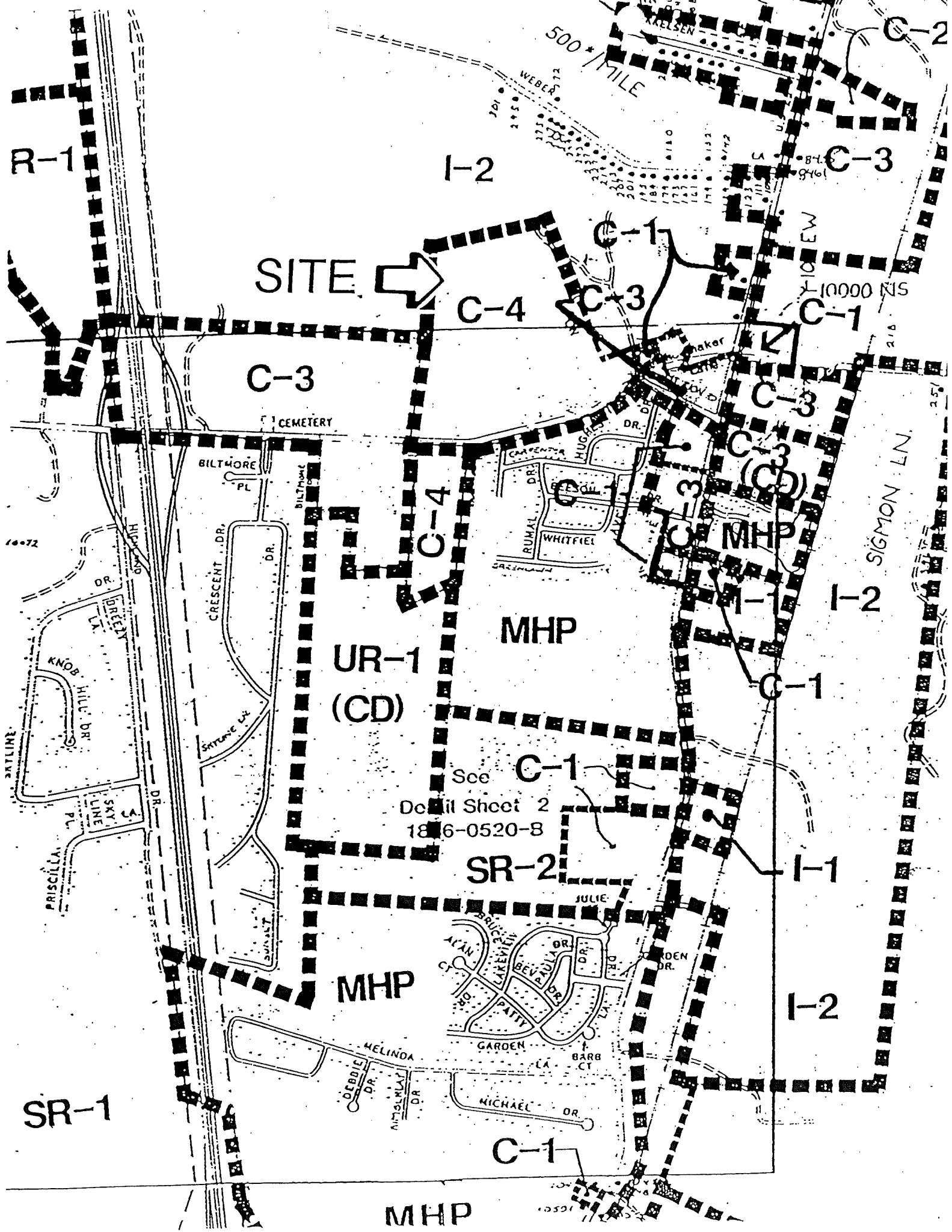


THE DESIGNS AND IDEAS EXPRESSED IN THIS DOCUMENT ARE THE SOLE
PROPERTY OF QUALITY SIGNS INC. AND ARE NOT TO BE USED, IN WHOLE OR
IN PART, WITHOUT THE WRITTEN AUTHORIZATION OF QUALITY SIGNS INC.

SALES REP.

MARK STOTTMAN

APPROVED BY:



SITE →

I-2

C-3

CEMETERY

BILTMORE

CRESCENT DR.

DR.

SHYRONE LN.

PRISCILLA

UR-1
(CD)

MHP

See C-1
Detail Sheet 2
1816-0520-8

SR-2

MHP

MELINDA

ORBBIE DR.

ANTHONY DR.

MICHAEL DR.

ALAN CT.

BRUCE CT.

LAKEMITH DR.

BEVERLY DR.

PATT DR.

JULIE DR.

RODEN DR.

BARB CT.

C-1

MHP

R-1

C-1

C-4

C-3

C-3

YICREW

10000 NS

C-1

C-1

C-3

C-1

C-3

C-1

C-3

C-1

C-3

C-1

C-3

C-1

C-3

C-1

C-3

C-1

C-3

C-1

C-3

C-1

C-3

C-1

C-3

C-1

SIGMON LN.

I-2

C-1

I-1

I-2

C-2

500 * 1/4 MILE

WEBER

KELSEN

LA

84

9461

16-72

257

17-17

17-17

17-17

17-17

17-17

17-17

17-17

EXHIBIT 5

Staff Member Ed Coleman presented the Staff Report which included a slide presentation (see Staff Report).

Chairman Whitton clarified that they are allowed a 596 square foot sign and the square footage of the sign they propose is only 550, which is 46 square feet under what they are permitted.

The Chairman asked for the applicant's presentation.

Attorney Dennis Williams with Adams, Brooking & Stepner, representing the applicant, showed the Board a schematic of the signage they propose. They feel that the proposed signage makes the front of the store look better. He asked for approval. He stated that Mr. Berberich, one of the owners, was present to answer any questions.

Mr. Houston stated that the location where they want to put the pharmacy sign is offset. Mr. Williams explained that it is a parallel wall that is recessed back several feet.

The Chairman asked if there was anyone else present who wished to speak either for or against this request or to ask questions. There was no response.

There being no further comments, Mr. Ryan moved to grant the request. Mr. Houston seconded the motion and it carried unanimously.

2. The request of Berberich Family Enterprises I, Limited for a Variance to allow an increase in the size and height of a monument sign at the Thriftway Marketplace at the corner of Mt. Zion Road and Berberich Drive, Boone County, Kentucky. The property is zoned Commercial Four (C-4).

Chairman Whitton advised that this is the same development as Item #1.

Staff Member Ed Coleman presented the Staff Report which included a slide presentation (see Staff Report). He advised that the Site Plan had two signs on it, but signs are not approved through the Site Plan process -- sign permits are required. He stated that the two signs are not permitted in the Zoning Regulations. Under the current regulations, the maximum height for a monument sign is 15 feet.

Chairman Whitton stated that at the time of their application for Site Plan approval, the maximum height was 40 feet. Mr. Coleman agreed and advised that it was 250 square feet total.

Attorney Dennis Williams with Adams, Brooking & Stepner, representing the applicant, disagreed that permitting the Variance causes a change in the general vicinity or a nuisance value. He stated that when this development was designed and Site Plan approval requested, the C-4 Zone permitted pylon signs. It was marketed to prospective tenants that there would be pylon signs 40 feet high. The developer relied on that information and has a financial investment in the Winn Dixie site alone of \$9 million -- which does not include the \$3 million that went into the rest of the site and excavation, or the donation they made to the state to

get Sam Neace Highway put through. When they came in for a sign permit, they learned that the regulations had changed to limit them to a monument sign of significantly less height. They talked with Staff and, despite the fact that the developer already had a construction agreement with a sign company to build the pylon signs, they were told they should come before the Board and ask for a Variance in height. He stated that they will enclose the sign at the bottom to be a monument sign. They do not think that the height creates a significant change in the vicinity as the entire intersection is commercial. This will be a regional draw type site and the sign does not create unreasonable circumvention of the Zoning Regulations. The developer anticipates no less than eleven tenants on the sign. He noted that the Board has a copy of their Site Plan. He stated that the sign shown in the slide presentation had only three signs and was not in the C-4 Zone.

Mr. Williams referred to Section 215 and the circumstances under which Variances should be granted. He stated that the Board has the ability to consider their expectations, the reasonable use of the land, and the change in usage which might be imposed by a change of regulations, and hardship. His client has agreed to endure the cost of signage construction. He will pay to have the sign redesigned, as well as labor to fill in the bottom of the sign, and the costs associated with the Variance -- which can be considered a hardship. The situation they are in is through no fault of their own. They had a reasonable expectation that 40-foot pylon signs would be permitted and it was not until later that they learned the regulations had been changed. He stated that Mr. Berberich was present to answer any questions. He requested approval of the Variance.

The Chairman asked if there was anyone else present who wished to speak either for or against this request or to ask questions. There being no response, he asked if there were any comments or questions from the Board.

Mrs. Millar stated that if the Zoning Regulations had not changed, they would still have had to get a Variance for the sign. Mr. Coleman advised that they would need a Variance for the height of the sign, but not for the area. Mrs. Millar stated that they are only allowed 250 square feet, but they want 800 square feet. Mr. Coleman advised that the calculations must include the "Mt. Zion Crossing" at the top, the 7' x 20' Thriftway area, and the 12' x 20' area for tenants. It is the silhouette of the sign. He noted that the applicant has indicated that they would enclose the bottom and it would be a solid foundation.

Chairman Whitton asked if there would be additional signage on the sign.

Mr. Berberich stated that they hope to begin construction on a second building in the next six weeks. They currently have five tenants under Letter of Intent or lease for the additional space and they anticipate another four tenants. There would be the Thriftway sign and nine other tenant signs. He stated that they have to address the visibility and readability of the tenant information, as well as tenant recognition -- which is why they requested this size sign. He stated that there are several outlots which will have individual monument signs that are unrelated to this issue.

Chairman Whitton asked if the new building will have individual signage. Mr. Berberich responded "no" and stated that it will be mounted on this sign, which will not change the space required for the signage -- they will make the panels smaller to fit in the same space -- but there is a limitation as to how small the panels get before they are not readable. In the 12' x 20' area, there will be three signs across and three down.

Chairman Whitton stated that the space will not change, but the panels will be smaller. Mr. Berberich agreed.

Mr. Williams stated that the actual area of written signage is 12' x 20' plus the Thriftway sign and the Mt. Zion Crossing sign, which is not 800 square feet. Mr. Coleman advised that his calculations are made on the silhouette of the sign. Chairman Whitton questioned how pole signs are calculated. Mr. Coleman advised that he does not include the pole. Mrs. Millar stated that they are only allowed one sign on the entire property.

Chairman Whitton questioned the new building. Mr. Coleman explained that it is on a different lot -- it is not in a PD and they can have individual monument signs within the development.

Mr. Williams stated that the outlots would have their own monument signs, but the tenants of the shopping center buildings would be identified on this sign. Mr. Berberich stated that the second building will have a number of smaller tenants. That building will be 275' wide and 85' deep and it is impractical to have a series of monument signs along the road, so their signs will be added to this sign. They will also have building-mounted signage.

Mr. Williams stated that Berberich Drive cuts through the 28 acres and the six outlots across the drive will be sold off and will have monument signs. The tenants of the retail space would be identified in the panels of the subject sign. He stated that it would be similar to Houston Lakes. He stated that they are not asking for more lettering space, other than the Mt. Zion Crossing part, and are down to 19' x 20', which is 380 square feet.

Mrs. Millar questioned the square footage including the Mt. Zion Crossing area. Mr. Coleman stated that as proposed in their drawing, it would be 425 square feet.

Chairman Whitton asked if the five tenants of the retail space could each have a sign. Mr. Coleman stated that he was not aware of this additional building. This building could not be on the same lot and, therefore, this would be an off-premise sign. Chairman Whitton noted that they are not requesting that at this time.

Mrs. Millar asked if she could make a motion for a smaller sign. Counselor Wilson advised that if a Board member feels that the sign should be above what is allowed by the regulations but disagrees with the amount of signage, the Board member could make a motion for less signage than is requested. The motion should state how they arrived at that figure and, prior to the vote, the applicant should respond to that figure.

Mrs. Millar moved to approve a height of 40 feet, but that the size of the sign be per the Zoning Regulations prior to the last adoption. The total amount of signage would be 250 square feet. The square footage would be of the actual signage, not considering the Mt. Zion Crossing or the space at the bottom -- just the space that is being used.

Mr. Houston stated that if he could not advertise, he would not want to put a business there.

Mrs. Millar's motion was not seconded.

Mr. Houston moved to grant the Variance with the 425 square feet because they have five tenants on the sign now and will put four more on it. He stated that if he would not want his business in that complex if he could not advertise. He moved to grant the Variance as submitted with the condition that any other business inside this development has to go on this sign and not have a monument sign. Mr. Archambault seconded the motion.

A vote on the motion found Mr. Houston, Mr. Ryan, Mr. Archambault, and Chairman Whitton in favor. Mrs. Millar was opposed. The motion carried.

3. The request of McDonald's Corporation for a Change in Non-Conforming Use to allow an increase in the height of an existing non-conforming sign at the northwest quadrant of I-75 and Richwood Road, Boone County, Kentucky. The property is zoned Employment Planned Development (EPD).

Staff Member Ed Coleman presented the Staff Report which included a slide presentation (see Staff Report). He advised that since the Staff Report was prepared, it has been determined that this site is in the C-3 Zone. A letter from Mr. Kevin Wall explaining why they need to get approval from the Board is attached to the Staff Report. He stated that the original height of the Chevron sign is indicated at 116 feet, but he has since found out that the sign is actually 137 feet high per an Affidavit from Attorney Gerry Dusing.

Chairman Whitton asked if the McDonald's sign is now higher than the Chevron sign was. Mr. Coleman advised that it is the same height. He explained that when the McDonald's sign was approved, it was approved at a height that is now exceeded and it is Mr. Wall's opinion that although it is less non-conforming based on the square footage, they still need approval by the Board of Adjustment.

Chairman Whitton stated that there is less square footage than before and the height of the sign is not greater than what was there before. Mr. Coleman agreed and stated that it is Staff's opinion that the change is appropriate because the sign has been reduced in size and become less non-conforming. He showed the Board pictures of the signage in the area. Following review of the pictures, the Chairman asked for the applicant's comments.

EXHIBIT 6

3. No part of a building mounted sign may be placed above the highest part of the roof or parapet for the section of wall on which the sign is mounted.
4. No sign shall be placed in any public right-of-way except publicly-owned signs, such as traffic control signs and directional signs.
5. The bottom edge of any free standing pole sign (excluding entrance signs) erected in or above any area used for vehicular movement or parking shall be at least ten (10) feet above the paved level of such area. This height may need to be increased in the case where tractor trailer traffic would require a greater height clearance.
6. All signs must conform to building code requirements.

SECTION 3403

Measurement of Sign Area

The surface area of a sign shall be computed as including the entire area serving as written or graphic advertisement within a regular, geometric form comprising all of the display area of the sign and including all of the elements of the matter displayed. Frames and structural members not used for advertising matter shall not be included in computation of surface area. Where a sign has two (2) display faces back to back, the area of only one (1) face shall be considered the sign area, provided the two (2) sign faces are not visible from one location therefore constituting two (2) signs.

SECTION 3404

General Sign Setback Requirements

Any permitted sign may be placed any distance outside the public right-of-way and any public easement so long as the sign will not obstruct traffic visibility at street or highway intersections.

SECTION 3405

Sign Permits

Sign permits are required for all signs except those noted in Section 3406.

In those cases where a sign permit is required, an application for said permit shall be filed with the Zoning Administrator. The application shall include, at minimum, the following information:

1. Name and address of the applicant.
2. Name, signature of authorization, and address of the owner of property on which the sign is to be located.
3. A written description of the proposed sign including type of sign and supporting structure, method of illumination (if any) and construction materials to be used in the sign.
4. A sketch map of the property on which the sign is to be erected showing existing structures, rights-of-way lines and proposed location of the sign.
5. A drawing of the proposed sign showing display area dimensions, height of sign from grade to bottom of sign, and information to be conveyed on sign.

Upon receipt of a full and complete application for a sign permit, the Zoning Administrator shall issue a permit or notify the applicant of any non-conformance with the provisions of this article within ten (10) working days. Failure to issue a permit or notify the applicant of any non-conformance does not constitute approval of the proposed sign. If the sign described in any sign permit has not been erected or installed within one (1) year from the date of issuance thereof, said permit shall expire without further notice. The permit may be extended upon request of the applicant prior the date of expiration for a period not to exceed six (6) months. The Zoning Administrator shall maintain a file of all applications for sign permits.

SECTION 3406

Signs Not Requiring a Permit

The following signs do not require a permit:

1. One temporary sign not exceeding one hundred (100) square feet in area, announcing special public or institutional events, the erection of a building, the architect, the builders or contractors, may be erected for a period of sixty (60) days plus the construction period. Such temporary signs shall conform to the general requirements listed in Section 3402 and such other standards deemed necessary to accomplish the intent of this Article.
2. Temporary political signs placed outside a public street right-of-way. The signs shall be removed within one week after a final election.
3. Temporary special event directional signage for community events is allowed seven (7) days prior to the event and shall be removed one (1) day after the conclusion of the event. These signs shall not be located in the public street right-of-way.
4. One (1) real estate sign per road frontage may be posted on an available property. The sign shall be limited to 16 square feet in residential districts and 32 square feet in other districts. Regular open house signs shall be permitted one (1) week prior to the scheduled event and shall be removed by 9:00 p.m. the day of the event. A sold sign shall be removed by the seller of his or her agent within one week after the date of closing. Also, such signs, if constructed of a non-rigid material (such as a banner) must conform to the requirements of Section 3420 of this Article, including the issuance of a permit.
5. Professional name plates of six (6) square feet or less in area.
6. Signs denoting the name and address of the occupants of the premises of two (2) square feet or less in area.
7. Signs advertising the sale of agricultural goods produced on the premises (such as fire wood, vegetable, etc.) of sixteen (16) square feet or less in area.
8. Official flags of cities, the county, commonwealth, or any nation bearing no advertising material.
9. Sandwich Board/A-frame signs permitted in the Walton Downtown (WD) District) (See Section 3460)

EXHIBIT 7

SECTION 3412

Signs Permitted in Residential Districts Requiring a Permit

1. One monument style sign customarily incidental to places of worship, schools, civic associations, libraries, museums, social clubs, or societies, shall not exceed thirty-two (32) square feet in area and shall be located on the premises of such institution;

SECTION 3413

Signs Permitted in Commercial, Employment, and Recreational Districts Requiring a Permit

1. **Building Mounted Signs** (All Commercial, Employment, and Recreation Districts)

A business establishment may be permitted building mounted signage for each building elevation directly on, or with high visibility from, any arterial, collector, or marginal access street, including areas of major internal traffic circulation of a development. The primary building elevation shall be permitted two square feet of sign area per lineal foot of building width for the elevation upon which it is mounted, or in multi-tenant buildings, the width of the portion of the building frontage occupied by an individual establishment. Any additional elevations shall be permitted one (1) square foot of sign area per lineal foot of width for the same elevation on which it is mounted. Under no circumstances shall any establishment be allowed more than three (3) elevations of building mounted signage. The square footage allotted for any one side may be divided up to allow for up to three (3) separate building mounted signs on that elevation. For the purpose of this order, signs on awnings are considered in the total square footage of building mounted signage permitted for that elevation. Only the copy area on the awnings will be calculated for square footage.

2. **Canopy Signs** (All Commercial and Employment Districts)

Canopy mounted signage is permitted on no more than three (3) elevations of the canopy. The square footage allowed for canopy signs may not exceed 25% of the area of the fascia on which they are mounted. The signs may not extend above or below the fascia of the canopy.



3. **Free-Standing/Monument Signs**

- (1). Commercial One District (C-1) and Commercial Four (C-4) districts:

- a. Individual business establishments not located within a shopping center, mixed-use commercial, or Planned Development shall be permitted a density of one (1) on-premises, monument sign. (see Article 2, Section 250 regarding Board of Adjustment and Zoning Appeals authority regarding density). There shall be only one (1) monument sign for each such individual business establishment, regardless of the number of business establishments conducted in the building and regardless of the number of road frontages.
- b. Shopping centers, mixed use commercial, and planned developments shall be permitted a density of one (1) on-premises monument sign for the purpose of identifying the name of the development, its major tenant(s), and its major access point. (see Article 2, Section 250 regarding Board of Adjustment and Zoning Appeals authority regarding density). No monument sign may be permitted for individual establishments or buildings located within, or accessible from, the entrance of a shopping center or mixed use development when such

building or establishment, or the lot upon which such establishment is located is planned, designed, or marketed as a part of such development. (This requirement also applies to any out-lots subdivided as part of a larger development and any developments established under Article 15, Planned Development Overlay, of the zoning regulations.)

- c. In the Commercial One (C-1) zoning district, the maximum size of a monument sign shall be no more than one-half ($\frac{1}{2}$) square foot of sign area per lineal foot of road frontage along the street frontage where the sign is to be located. No monument sign in a C-1 zoning district shall exceed one-hundred (100) square feet in area.
- d. In the Commercial Four (C-4) zoning district, the maximum size of a monument sign shall be no more than one (1) square foot of sign area per lineal foot of road frontage along the street frontage where the sign is to be located. No monument sign in a C-4 zoning district shall exceed one-hundred fifty (150) square feet in area.
- e. In the Commercial One (C-1) zoning district, the maximum height of a monument sign shall not exceed ten (10) feet from grade to the top of the sign structure. In the Commercial Four (C-4) zoning district, the maximum height of a monument sign shall not exceed fifteen (15) feet from grade to the top of the sign structure.

(2). Other Commercial Districts (C-2, C-3,)

- a. Individual business establishments not located within a shopping center, mixed-use commercial, or Planned Development shall be permitted a density of one (1) on-premises, free-standing sign. (see Article 2, Section 250 regarding Board of Adjustment and Zoning Appeals authority regarding density). There shall be only one (1) free-standing sign for each such individual business establishment, regardless of the number of business establishments conducted in the building and regardless of the number of road frontages.
- b. Shopping centers, mixed use commercial, and planned developments shall be permitted a density of one (1) on-premises free-standing sign for the purpose of identifying the name of the development, its major tenant(s), and its major access point. (see Article 2, Section 250 regarding Board of Adjustment and Zoning Appeals authority regarding density). No free-standing sign may be permitted for individual establishments or buildings located within, or accessible from, the entrance of a shopping center or mixed use development when such building or establishment, or the lot upon which such establishment is located is planned, designed, or marketed as a part of such development. (This requirement also applies to any out-lots subdivided as part of a larger development and any developments established under Article 15, Planned Development Overlay, of the zoning regulations.)
- c. In Commercial Two (C-2) and Commercial Services (C-3) zoning districts, the maximum size of a free-standing sign shall be no more than one (1) square foot of sign area per lineal foot of road frontage along the street frontage where the sign is to be located. No free-standing sign in C-2, C-3, and districts may exceed two-hundred (200) square feet in area.
- d. In Commercial Two (C-2) and Commercial Services (C-3) zoning districts, the maximum height of a free-standing sign from grade to the top of the sign structure shall be proportional to the road frontage along which the sign is to be located at the following scale:

EXHIBIT 8

Conditional Use Permit

A permit granted by the Board of Adjustment and Zoning Appeals permitting a defined use, other than a principally permitted use to be established within the zoning district and subject to the special requirements established by the Board.

Condominium

A single-family attached dwelling unit separately owned and valued for property tax purposes, with common areas under group ownership and property taxes paid by a homeowners association.

Convenience Store

A small retail store that sells grocery and deli items, and other day-to-day goods, and stocks such goods on the premises, all on a limited basis. A convenience store may offer the retail sale of motor fuels as an accessory use if permitted in the particular zone, or if the particular zone allows gasoline filling stations as a principally permitted use.

Corner Lot

(See Lot Types)

Cul-De-Sac

(See Street)

Critical Volume

A volume (or combination of volumes) for a given street which produces the greatest utilization of capacity for that street in terms of passenger cars of mixed vehicles per hour.

Cycle Time

The time period in seconds required for one complete sequence of signal indications.

Day Care Center

(See Nursery School or Daycare)

Dead-end Street

(See Street)


Deceleration Lane

A speed change land, including tapered areas, for the purpose of enabling a vehicle that is to make an exit turn from a roadway to slow to safe turning speed after it has left the main stream of faster moving traffic.

Delay

Stopped time per approach vehicle, in second per vehicle.

Density

 Defined as a unit of measurement involving a portion of an activity devoted to a specific use identified in acres, square footage, or number of dwelling units in relation to a site or portion thereof. For commercial and employment uses, density is typically expressed in this order as a ratio of square footage of building area per acre of land area. For residential uses, density is typically expressed in this order in terms of the number of dwelling units per acre of land. For signage, density is expressed in this order in terms of the number of a certain type of sign per wall, building, lot, or overall development or subdivision. The term "density" may be used interchangeably with the term "intensity" in this order.

June 8, 2000

Dear Mr. Wall,

We are writing in regard to the notice sent us, advising of Benberich Family Enterprises appeal of the Zoning Administrator's decision regarding the number of freestanding signs permitted in a commercial subdivision, Commercial Four Zone.

As we are adjoining property owners, 196 Mt. Zion Rd, we are asking that the Board of Adjustment and Zoning Appeals, follow the guideline, zoning ordinance and regulations, ordained and ordered by the City's of Florence, Union, Walton, and Boone County. In particular Article 34, Section 3413 B-1b. and Article 2, Section 250 which seems straight forward in it's description of standard criteria.

We thank you, for your consideration of our rights as adjoining property owners.

Sylvia & Jim Rosenacker
196 Mt. Zion Rd.
Florence, Ky. 41042

COPY

CLUR #00-BCBOA-028-A

CERTIFICATE OF LAND USE RESTRICTION

1. NAME AND ADDRESS OF PROPERTY OWNER(S)

Berberich Development Company

2319 Armella Place

Villa Hills, KY 41017

DEED BOOK 617, PAGES 224, 276, 289, 281, 286

DEED BOOK 606, PAGE 183

Berberich Family Enterprises-I, Limited

2319 Armella Court

Villa Hills, KY 41017

DEED BOOK 701, PAGE 145

MZC-5, LLC

2319 Armella Place

Villa Hills, KY 41017

DEED BOOK 758, PAGE 240

2. ADDRESS OF PROPERTY

9950 Berberich Drive

Florence, KY 41042

3. NAME OF SUBDIVISION OR DEVELOPMENT (if applicable)

Mt. Zion Crossing

4. GROUP NO. 2049B

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

Zoning Map Amendment:
From To

Conditional Use Permit

Development Plan

Conditional Zoning

Subdivision Plat
(Not Recorded)

Other: Appeal

Variance

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

BOONE COUNTY PLANNING COMMISSION
2995 WASHINGTON STREET
BURLINGTON, KENTUCKY 41005



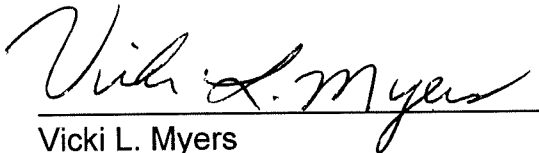
SIGNATURE OF COMPLETING OFFICIAL

Kevin T. Wall, Zoning Administrator, Boone County Fiscal Court
Name and Title of Completing Official

COMMONWEALTH OF KENTUCKY

COUNTY OF BOONE

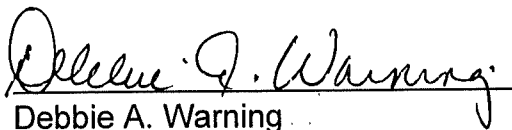
Subscribed, sworn to, and acknowledged before me by Kevin T. Wall on behalf of the
Boone County Planning Commission this 15 day of September, 2000.



Vicki L. Myers
NOTARY PUBLIC, State at Large

My commission Expires:
April 17, 2003

This instrument was prepared for recording purposes only by:



Debbie A. Warning
Boone County Planning Commission
2995 Washington Street
Burlington, Kentucky 41005

NO TITLE EXAMINATION

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

CONDITIONS OF APPROVAL

The following Conditions of Approval apply to the Appeal approved by the Boone County Board of Adjustments and in accordance with the current zoning in effect as of September 13, 2000 Certificate of Land Use Restriction (#00-BCBOA-028-A), for Berberich Development Co., Berberich Family Enterprises I-Ltd., and MZC-5, LLC, Property Owner(s).

The following conditions will apply:

No conditions.

The approved Appeal as well as the preceding conditions apply to the property described in:

DEED BOOKS 617, 606, 701, 758

PAGES 224, 276, 183, 289, 281, 286, 145, 240

GROUP NO. 2049B