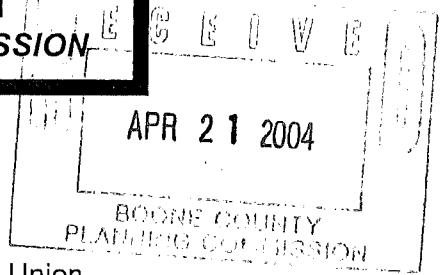


APPLICATION FORM

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. Conditional Use Permit Variance Appeal
3. Applicant's Name Moraine Materials Co. Phone Number 937-743-0650 Fax No. 937-743-0651 Applicant's Address 1400 Commerce Center Dr. Franklin OH 45005
4. Description of Request: Addition of a silo to an existing ready mix facility.
5. Name of Development Moraine Materials Co.
6. Location of Development 8401 Dixie Highway Florence, KY 41842
7. Acreage Under Review 10.41
8. Lot Number and Name of Subdivision (if part of a subdivision) NA
9. Owner of Property Moraine Materials Co. Phone Number of Owner 937-743-0650
10. Address of Property Owner 1400 Commerce Center Dr. Franklin OH 45005
11. Proposed Use(s) on Site READY MIX concrete Plant
12. Total Square Footage of Existing and/or Proposed Buildings
13. Current Zoning on Property C-3
14. Deed Book 867 Page No. 487-489 Group No. 2050
15. Is the site subject to a zone change? NO
16. Have you submitted a Site Plan with this request? Attached
17. Have you submitted a list of adjoining property owners with this request? Attached
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: [Signature]
Property Owner's Signature: [Signature]

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 4-21-04 Fee Received \$185.00 PA 38530
2. Is application complete? \_\_\_\_\_ Yes \_\_\_\_\_ No
3. Staff Reviewer \_\_\_\_\_
4. Scheduled Board Action Date \_\_\_\_\_
5. Board Action:  
5/12/04 Approved  
5/12/04 Approved with Conditions (See #6)  
Denial (See #7).
6. Conditions of Approval: SEE 5/12/04 B.C.B.O.A.  
MEETING MINUTES
7. Reasons for Denial: \_\_\_\_\_

Boone County Planning Commission  
2995 Washington Street  
Burlington, Kentucky 41005  
(859) 334-2196 - Phone  
(859) 334-2264 - Fax  
plancom@boonecountyky.org - E-mail  
[www.boonecountyky.org](http://www.boonecountyky.org) - Web Page

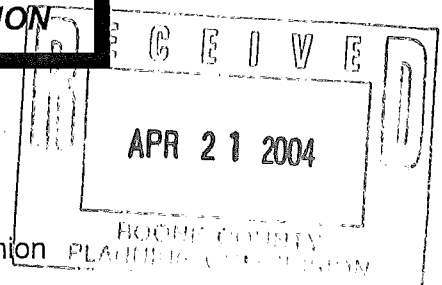
NOTE: See Boone County Planning Commission Fee Schedule for Board of Adjustment Fees.

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.

APPLICATION FORM

BOARD OF ADJUSTMENT  
AND  
ZONING APPEALS ACTION  
BOONE COUNTY PLANNING COMMISSION



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

- 1. (Check One)  
 Boone \_\_\_\_\_ Florence \_\_\_\_\_ Walton \_\_\_\_\_ Union \_\_\_\_\_
- 2. (Check One)  
\_\_\_\_\_ Conditional Use Permit  \_\_\_\_\_ Variance \_\_\_\_\_ Appeal \_\_\_\_\_  
\_\_\_\_\_ Change in Non-Conforming Use \_\_\_\_\_
- 3. Applicant's Name Moraine Materials Co.  
Phone Number 937-743-0650 Fax No. 937-743-0651  
Applicant's Address 1400 Commerce Center Dr.  
Franklin OH 45005  
City State Zip
- 4. Description of Request: Height Variance for additional  
silo.
- 5. Name of Development Moraine Materials Plant 29
- 6. Location of Development 8401 Dixie Highway  
Florence, KY 41042
- 7. Acreage Under Review 10.41
- 8. Lot Number and Name of Subdivision (if part of a subdivision)  
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- 9. Owner of Property Moraine Materials Co.  
Phone Number of Owner 937-743-0650
- 10. Address of Property Owner 1400 Commerce Center Dr  
Franklin OH 45005  
City State Zip
- 11. Proposed Use(s) on Site Ready Mix Concrete Plant
- 12. Total Square Footage of Existing and/or Proposed Buildings \_\_\_\_\_
- 13. Current Zoning on Property C-3
- 14. Deed Book 864 Page No. 487-489 Group No. 2050
- 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? Attached
- 17. Have you submitted a list of adjoining property owners with this request? Attached
- 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: [Signature]

Property Owner's Signature: [Signature]

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 4-21-04 Fee Received \$ 450.00 R# 38530
2. Is application complete? \_\_\_\_\_ Yes \_\_\_\_\_ No
3. Staff Reviewer \_\_\_\_\_
4. Scheduled Board Action Date \_\_\_\_\_
5. Board Action:  
\_\_\_\_\_ Approved  
5/12/04 Approved with Conditions (See #6)  
\_\_\_\_\_ Denial (See #7).
6. Conditions of Approval: SEE 5/12/04 B.C.B.O.A.  
MEETING MINUTES
7. Reasons for Denial: \_\_\_\_\_

Boone County Planning Commission  
2995 Washington Street  
Burlington, Kentucky 41005  
(859) 334-2196 - Phone  
(859) 334-2264 - Fax  
plancom@boonecountyky.org - E-mail  
[www.boonecountyky.org](http://www.boonecountyky.org) - Web Page

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

APPLICANT: Moraine Materials  
LOCATION: 8401 Dixie Highway, Boone County, Kentucky  
ZONING: Commercial Services (C-3)  
DATE: May 12, 2004

### Proposal

The Applicant is requesting a Change in Non-Conforming Use and Variance to allow an 85.83 foot tall dry materials cement silo to remain on a property which contains a ready mix concrete plant. The silo was constructed without permits in late March. The silo, if approved, will replace two ground storage cement silos that are currently in use. The Applicant has indicated that a conveyor system and hopper which are visible from Dixie Highway will also be removed. The business is located at 8401 Dixie Highway and is zoned Commercial Services (C-3).

### Applicable Regulations

Article 2, Section 220 of the Boone County Zoning Regulations states that the Board of Adjustment and Zoning Appeals shall have the power to hear and decide on applications for Variances and Changes in Non-Conforming Use.

Article 2, Section 250 of the Boone County Zoning Regulations defines a variance "as a departure from the 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 KRS 100.241 to 100.247."

The Board should evaluate the applicant's request as it relates to the criteria necessary for granting a variance as stated in Section 251 of the Boone County Zoning Regulations:

1. Before any variance is granted, the Board must find that the granting of the variance will not adversely affect the public health, safety or welfare, will not alter the essential character of the general vicinity, will not cause a hazard or nuisance to the public, and will not allow an unreasonable circumvention of the requirements contained in the zoning regulations.
  - A. The requested variance arises from special circumstances which do not generally apply to land in the general vicinity, or in the same zone;
  - B. The strict application of the provisions contained in the regulations would deprive the applicant of the reasonable use of the land or would create an unnecessary hardship on the applicant;
  - C. The circumstances are the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought.

2. The Board shall deny any request for a variance arising from circumstances that are the result of willful violations of the zoning regulation by the applicant subsequent to the adoption of the zoning regulation from which relief is sought.

Article 2, Section 270 of the Boone County Zoning Regulations states that it is the intent of the regulations to keep non-conforming lots, uses or structures from being "enlarged or extended beyond the scope and area of its operation at the time it became a legal non-conforming use, nor shall other uses or structures which are prohibited elsewhere in the same district be permitted on lots of non-conforming uses or structures."

Article 2, Section 272 of the Boone County Zoning Regulations states that where, at the time of adoption of this order, legally established, uses of land exist which would not be permitted by regulations imposed by this order, the uses may be continued so long as they remain otherwise lawful, provided the Board shall not allow the enlargement or extension of a non-conforming use beyond the scope and area of its operation at the time these regulations were adopted.

K.R.S. 100.253 allows the following:

1. The lawful use of a building or premises, existing at the time of the adoption of any zoning regulations affecting it may be continued, although such use does not conform to the provisions of such regulations, except as otherwise provided herein.
2. The board of adjustment shall not allow the enlargement or extension of a non-conforming use beyond the scope and area of its operation at the time the regulation which makes its use nonconforming was adopted, nor shall the board permit a change from one (1) nonconforming use to another unless the new nonconforming use is in the same or a more restrictive classification, provided, however, the board of adjustment may grant approval, effective to maintain nonconforming-use status, for enlargements or extensions, made or to be made, of the facilities of a nonconforming use, where the use consists of the presenting of a major public attraction or attractions, such as a sports event or events, which has been presented at the same site over such period of years and has such attributes and public acceptance as to have attained international prestige and to have achieved the status of a public tradition, contributing substantially to the economy of the community and state, of which prestige and status the site is an essential element, and where the enlargement or extension was or is designed to maintain the prestige and status by meeting the increasing demands of participants and patrons.
3. Any use which has existed illegally and does not conform to the provisions of the zoning regulations, and has been in continuous existence for a period of ten (10) years, and which has not been the subject of any adverse order or other adverse action by the administrative official during said period, shall be deemed a nonconforming use. Thereafter, such use shall be governed by the provisions of subsection (2) of this section.

Article 10, Section 1031 and 1033 of the Boone County Zoning Regulations does not list concrete plants as a principally permitted use or conditional use in the C-3 zoning district.

Article 10, Section 1036 and Table 31.1 of the Boone County Zoning Regulations indicate that the maximum height limitation of a structure in the Commercial Services (C-3) zone is 50 feet.

### Site Characteristics

The ready mix concrete plant is located on a 10.41 acre parcel. The operation contains an office, a plant, loading areas, conveyor systems, granular material stockpiles, a customer/visitor parking area, and concrete truck parking area. Ingress and egress to the site is provided from a single curb cut on Dixie Highway. The front of the property is screened by a berm and some evergreen planting. The sides and rear of the property are screened by thick deciduous tree lines. The property also contains a large commercial billboard by its southwest property boundary.

### Surrounding Land Uses and Zoning

North: Auto Sales & Got-A-Go (C-3)

South: Single-Family Residential Dwellings (C-2 & C-3)

East: Norfolk Southern Railroad

West: Dixie Highway, Single-Family Residential Dwellings (I-2), Maddox Garden Center (C-3 & I-2)

### Staff Comments

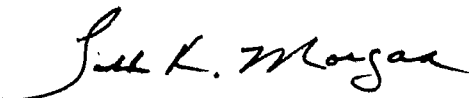
1. The business is non-conforming because the Commercial Services (C-3) zoning district does not permit concrete businesses. Concrete businesses are principally permitted in the Industrial Two (I-2) and Industrial Three (I-3) zoning districts.
2. The Applicant informed Staff that they were not aware that they needed any approvals before constructing the new silo. They thought that replacing the ground storage silos with the new 85.83 foot tall silo was as an equal trade-off and that permits were not required.
3. The Board needs to determine if the new silo constitutes an enlargement or extension of the existing non-conforming use. The Board needs to determine if the height of the proposed silo is more objectionable than the ground storage silos, conveyor system, and hopper that will be removed.
4. A Variance application is also required because the height of the proposed silo exceeds the 50 foot height limitation in the Commercial Services (C-3) zone.
5. Although the perimeter of the ready mix concrete is well screened, Staff remains concerned that the new silo is far taller and more noticeable than the existing ground storage silos.

6. Staff would like to point out that several tall structures already exist in the area. The subject site contains the ready mix plant and a billboard near the southwest property boundary. The adjoining property to the northwest contains a large lattice communication tower. Staff believes that the height of these structures minimizes the aesthetic impact of the silo.
7. Staff would like the Applicant to explain why the ground storage silos need to be replaced with a taller structure.
8. The Board needs to analyze the finding for granting a Variance.
9. If the Board grants approval of the requests, Staff recommends the following conditions:
  - a. The ground storage silos must be removed from the property at the time the new silo becomes operational;
  - b. The conveyor system and hopper between the plant and the Dixie Highway right-of way must be removed from the property at the time the new silo becomes operational;
  - c. A Minor Site Plan will to be submitted and approved by the Boone County Planning Commission before any more work is performed on the silo.

#### Conclusion

KRS 100.253 and Section 220 of the Boone County Zoning Regulations gives the Boone County Board of Adjustment and Zoning Appeals the authority to grant the applicant's requests for a Change-in-Non-Conforming Use and a Variance.

Respectfully submitted,

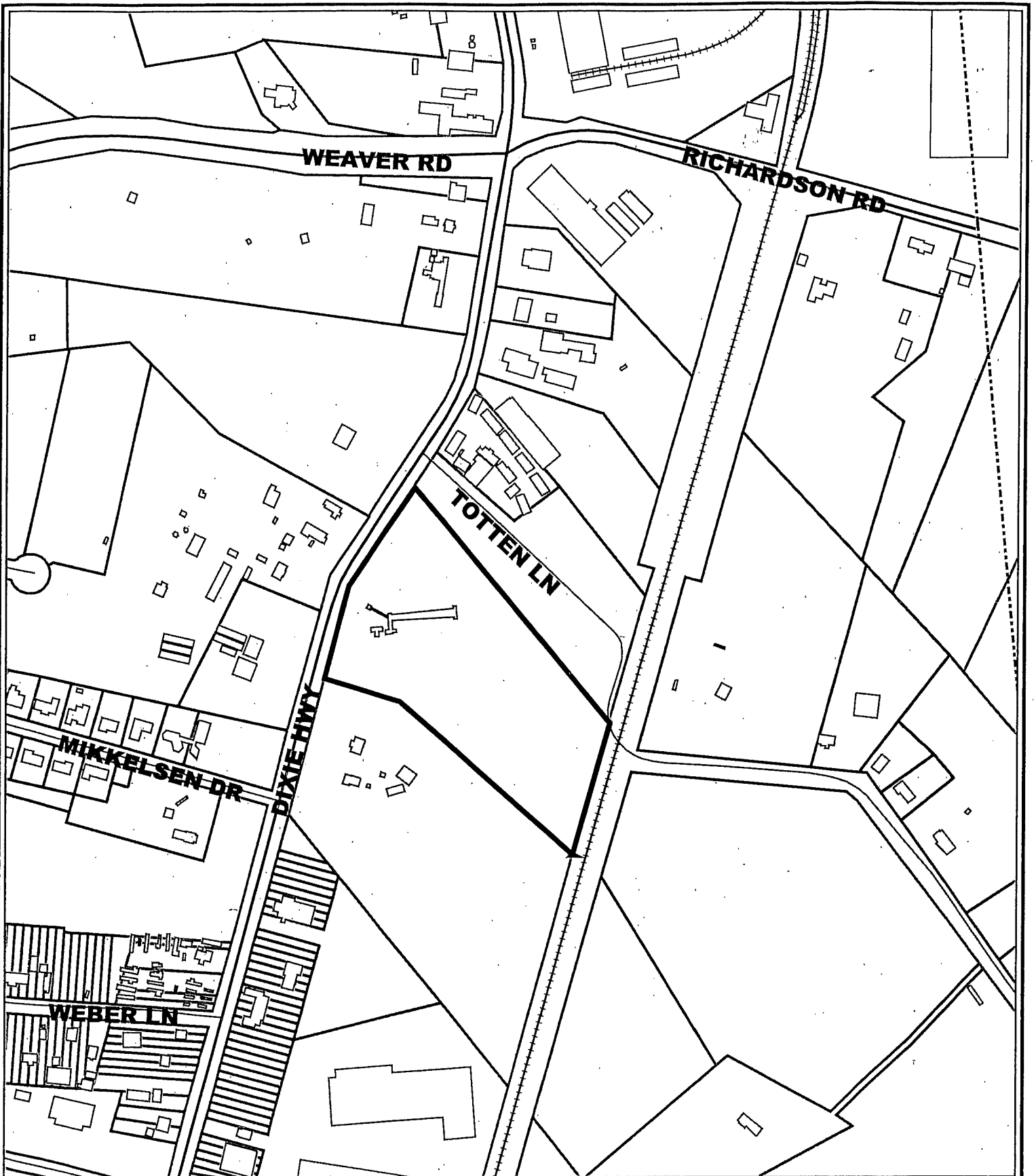


Todd K. Morgan, AICP  
Planner, Zoning Services

TKM/pr

#### Attachments

- Exhibit A – Site Vicinity Map
- Exhibit B – Concept Plan
- Exhibit C – Concept Plan (Silo Elevation Drawing)
- Exhibit D – Zoning Map
- Exhibit E – Aerial Map
- Exhibit F – Applications



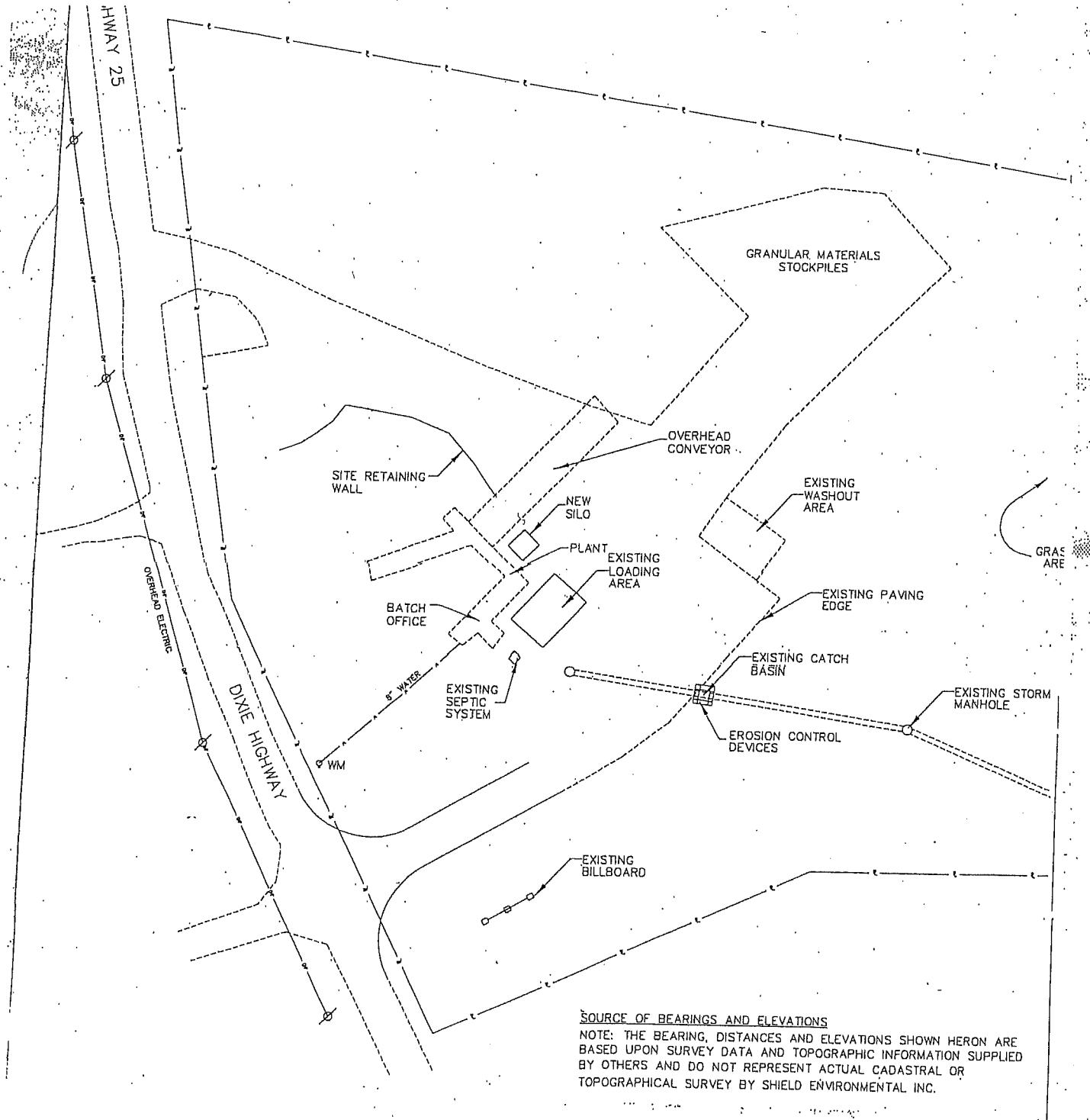
# Moraine Materials Site Vicinity Map

400 0 400 Feet



1 inch equals 400 feet  
Produced by the  
Boone County Planning Commission  
GIS Services Division  
April 30, 2004

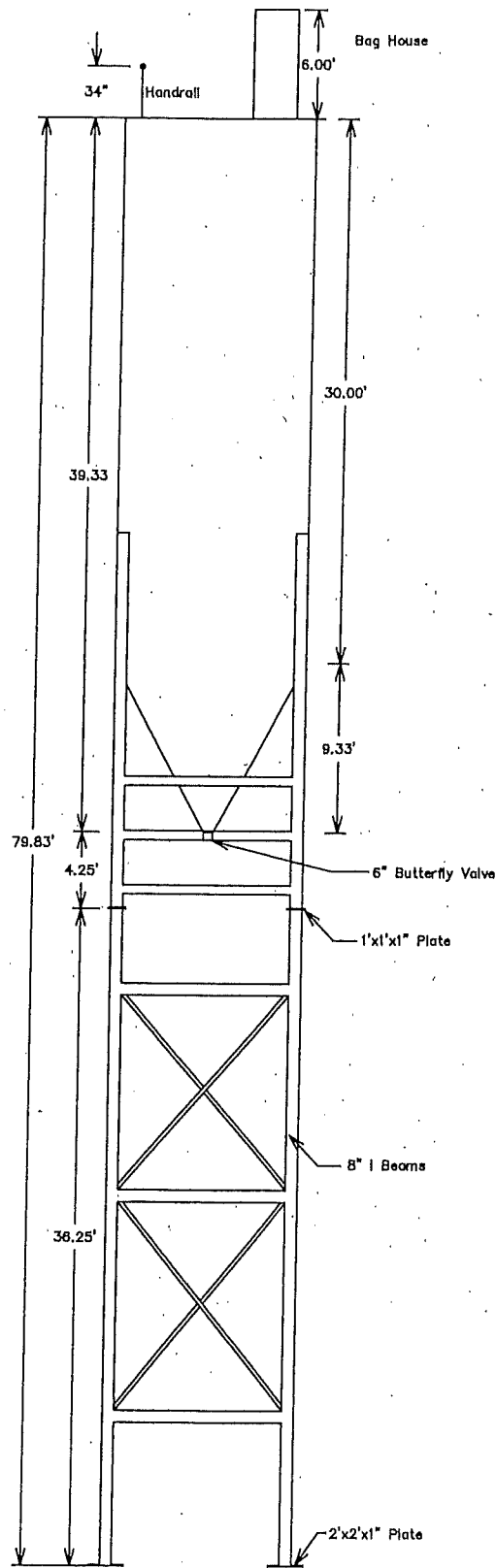




SOURCE OF BEARINGS AND ELEVATIONS

NOTE: THE BEARING, DISTANCES AND ELEVATIONS SHOWN HEREON ARE BASED UPON SURVEY DATA AND TOPOGRAPHIC INFORMATION SUPPLIED BY OTHERS AND DO NOT REPRESENT ACTUAL CADASTRAL OR TOPOGRAPHICAL SURVEY BY SHIELD ENVIRONMENTAL INC.

P:\Shield Projects (Non-UST)\Ready Mix Concrete\Moraine Materials\304-1110 US Hwy 25\Drawings\silos details.dwg, side view of silo assembly, 3/17/2004 3:35:53 PM, BruceG



Notes:  
 All information provided based  
 on Post-Construction Observation And/Or  
 As Reported By Owner.



MARCH 2004

PROJECT NO: 304-1110  
 DRAWN BY: BG  
 APPROVED BY: BH

FIGURE 4  
 SIDE VIEW OF SILO ASSEMBLY AS-BUILT  
 MORAINÉ MATERIALS  
 PLANT 29  
 US HIGHWAY 25  
 FLORENCE, KENTUCKY



2456 Fortune Drive, Suite 100  
 Lexington, KY 40509  
 (859) 294-5155

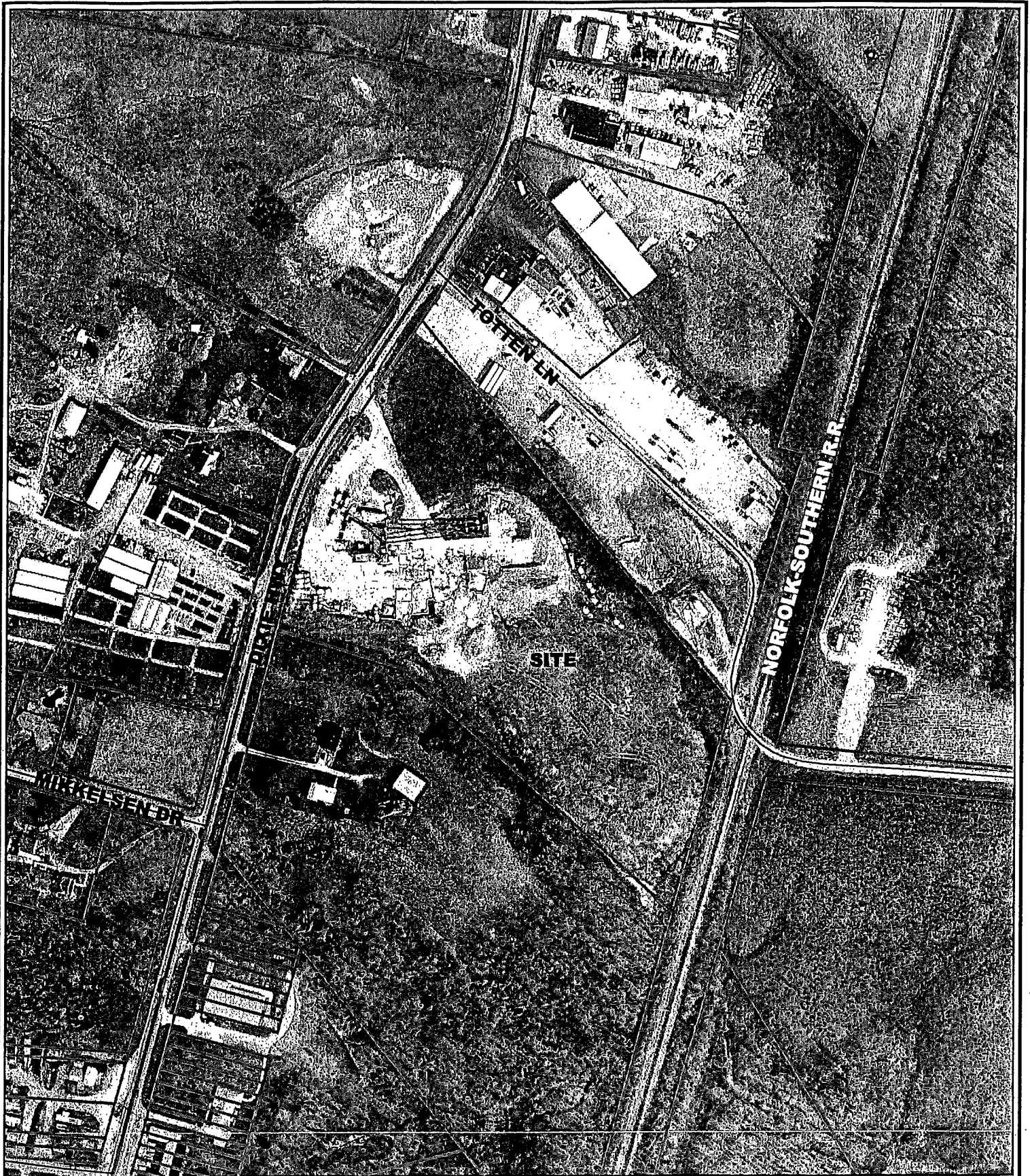


# Moraine Materials Zoning Map

400 0 400 Feet

1 inch equals 400 feet  
Produced by the  
Boone County Planning Commission  
GIS Services Division  
April 30, 2004





# Moraine Materials Aerial Map

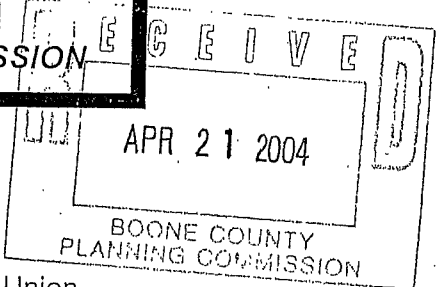
250 0 250 Feet

1 inch equals 250 feet  
Produced by the  
Boone County Planning Commission  
GIS Services Division  
April 30, 2004



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)

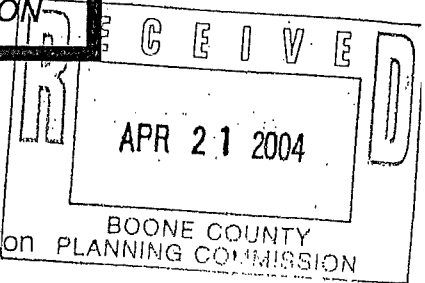
- (Check One)
- Boone \_\_\_\_\_ Florence \_\_\_\_\_ Walton \_\_\_\_\_ Union \_\_\_\_\_  
(Check One)
  - \_\_\_\_\_ Conditional Use Permit \_\_\_\_\_ Variance \_\_\_\_\_ Appeal \_\_\_\_\_  
 Change in Non-Conforming Use
  - Applicant's Name Moraine Materials Co.  
Phone Number 937-743-0650 Fax No. 937-743-0651  
Applicant's Address 1400 Commerce Center Dr.  
Franklin OH 45005  
City State Zip
  - Description of Request: Addition of a silo to an existing ready mix facility.
  - Name of Development Moraine Materials Co.
  - Location of Development 8401 Dixie Highway  
Florence, KY 41042
  - Acreage Under Review 10.41
  - Lot Number and Name of Subdivision (if part of a subdivision)  
NA
  - Owner of Property Moraine Materials Co.  
Phone Number of Owner 937-743-0650
  - Address of Property Owner 1400 Commerce Center Dr.  
Franklin OH 45005  
City State Zip
  - Proposed Use(s) on Site READY Mix Concrete Plant
  - Total Square Footage of Existing and/or Proposed Buildings \_\_\_\_\_
  - Current Zoning on Property C-3
  - Deed Book 864 Page No. 487-489 Group No. 2050
  - Is the site subject to a zone change? NO  
If yes, give date of approval \_\_\_\_\_
  - Have you submitted a Site Plan with this request? Attached
  - Have you submitted a list of adjoining property owners with this request? Attached
  - 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: [Signature]

Property Owner's Signature: [Signature]

APPLICATION FORM

BOARD OF ADJUSTMENT  
AND  
ZONING APPEALS ACTION  
BOONE COUNTY PLANNING COMMISSION



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

- 1. (Check One)  
 Boone \_\_\_\_\_ Florence \_\_\_\_\_ Walton \_\_\_\_\_ Union \_\_\_\_\_
- 2. (Check One)  
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\_\_\_\_\_ Change in Non-Conforming Use
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- 7. Acreage Under Review 10.41
- 8. Lot Number and Name of Subdivision (if part of a subdivision)  
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- 9. Owner of Property Moraine Materials Co.  
Phone Number of Owner 937-743-0650
- 10. Address of Property Owner 1400 Commerce Center Dr  
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City State Zip
- 11. Proposed Use(s) on Site Ready Mix Concrete Plant
- 12. Total Square Footage of Existing and/or Proposed Buildings \_\_\_\_\_
- 13. Current Zoning on Property C-3
- 14. Deed Book 864 Page No. 487-489 Group No. 2050
- 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? Attached
- 17. Have you submitted a list of adjoining property owners with this request? Attached
- 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: [Signature]

Property Owner's Signature: [Signature]

COPY

CLUR #04-BCBOA-014-A

CERTIFICATE OF LAND USE RESTRICTION

1. NAME AND ADDRESS OF PROPERTY OWNER(S)

Moraine Materials Company  
1400 Commerce Center Drive  
Franklin, OH 45005

2. ADDRESS OF PROPERTY

8401 Dixie Highway  
Florence, KY 41042

3. NAME OF SUBDIVISION OR DEVELOPMENT (if applicable)

Moraine Materials Company

4. DEED BOOK 864

PAGE NO. 487

GROUP NO. 2050

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: Change in Non-Conforming Use

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



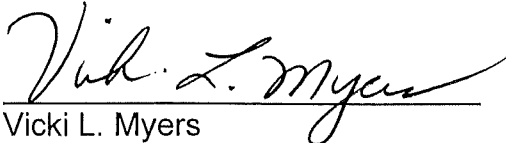
SIGNATURE OF COMPLETING OFFICIAL

Todd K. Morgan, Planner, Zoning Services  
Name and Title of Completing Official

COMMONWEALTH OF KENTUCKY

COUNTY OF BOONE

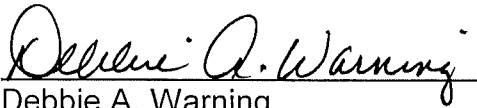
Subscribed, sworn to, and acknowledged before me by Todd K. Morgan on behalf of the  
Boone County Planning Commission this 18 day of May, 2004.



Vicki L. Myers  
NOTARY PUBLIC, State at Large

My commission Expires:  
April 17, 2007

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 Change in Non-Conforming Use and Variance approved by the Boone County Board of Adjustments and in accordance with the current zoning in effect as of May 12, 2004 Certificate of Land Use Restriction (#04-BCBOA-014-A), for Moraine Materials Company, Property Owner(s).

The following conditions will apply:

- 1) The ground storage silos must be removed from the property at the time the new silo becomes operational.
- 2) The conveyor system and hopper between the plant and Dixie Highway right-of-way must be removed from the property at the time the new silo becomes operational.
- 3) A Minor Site Plan is to be submitted and approved by the Boone County Planning Commission before any more work is performed on the silo.

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

DEED BOOK 864

PAGE NO. 487

GROUP NO. 2050