

APPLICATION FORM

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

R E C E I V E D

JUN 17 2013

BOONE COUNTY
PLANNING COMMISSION

FIVE (5) SCALED COPIES AND ONE (1) 11X17 REDUCTION OF SUBMITTED DRAWINGS ARE REQUIRED

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 _____

3. Applicant's Name VIOX + VIOX INC
 Applicant's Address 466 ERLANGER ROAD
ERLANGER KY. 41018
 City State Zip

4. Phone Number (859) 727-3293 Fax No. (859) 727-8452 E-Mail VRAHMAN@VIOXINC.COM

4. Description of Request: REDUCTION OF FRONT SETBACK FROM 60' TO 30' ON ALL LOTS EXCEPT 28, 29, 30, 39, 40, 41, 42, 47, 48, 49, 50, 51 + 52

5. Name of Development REMAINING MAJOR ESTATES AT PORTER PLANTATION

6. Location of Development BALLANTREE WAY OFF OF BERGAMO ROAD OFF OF PORTER ROAD, VERONA, BOONE CO., KY.

7. Acreage Under Review 118.651

8. Lot Number and Name of Subdivision (if part of a subdivision) SEE #4 + 5

9. Owner of Property DSD INVESTMENT PROPERTIES
 Address of Property Owner 825 LINDBERGH CT. SUITE 490

10. HEBRON KY. 41048
 City State Zip

11. Phone Number (859) 393-1216 Fax No. _____ E-Mail _____

11. Proposed Use(s) on Site SINGLE FAMILY RESIDENTIAL

12. Total Square Footage of Existing and/or Proposed Buildings N/A

13. Current Zoning on Property A-2

14. Deed Book 984 Page No. 849 Group No. 2087A

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? YES

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.

ORIGINAL Property Owner's Signature: [Signature]
(Faxed, Photocopied or Scanned Signatures will NOT be Accepted)

ORIGINAL Applicant's Signature: [Signature] P.E. Viox + Viox Inc
(Faxed, Photocopied or Scanned Signatures will NOT be Accepted)

**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 6/17/13 Fee Received \$982.00 Receipt # 07079
2. Is application complete? Yes No
3. Staff Reviewer _____
4. Scheduled Board Action Date _____
5. Board Action:
7/10/13 **Approved**
Approved with Conditions (See #6)
Denial (See #7)
6. Conditions of Approval: NONE

7. Reasons for Denial: _____

**Boone County Planning Commission
Boone County Administration Building
2950 Washington Street, Room 317
P.O. Box 958
Burlington, Kentucky 41005
(859) 334-2196 - Phone
(859) 334-2264 - Fax
plancom@boonecountyky.org - E-mail
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: Viox & Viox, Inc.

LOCATION: Future Lots in Manor Estates at Porter Plantation Subdivision. Terminus of Ballantree Way, Boone County, Kentucky

ZONING: Agricultural Estate (A-2)

DATE: July 10, 2013

Proposal

The applicant is requesting the following Variances:

1. Reduce the 150' road frontage requirement to 110' for fifteen (15) future lots in Manor Estates at Porter Plantation Subdivision. The subject properties are listed as lots 28, 29, 30, 33, 37, 38, 39, 40, 41, 47, 48, 51, 53, 54 and 71 on the draft Preliminary Plat.
2. Reduce the 60' front yard building setback requirement to 30' for twenty-one (21) future lots in Manor Estates at Porter Plantation Subdivision. The subject properties are listed as 26, 27, 31, 32, 33, 34, 35, 36, 37, 38, 43, 44, 45, 46, 53, 54, 70, 71, 72, 73, and 74 on the draft Preliminary Plat.

Applicable Regulations

Article 2, Section 250 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. A variance is defined 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.

Table 31.1 of the Boone County Zoning Regulations indicates that the setback requirements in the Agricultural Estate (A-2) zone are 60' front, 25' rear, and 10' sides.

Table 31.1 of the Boone County Zoning Regulations indicates conventional lots in the A-2 zone shall be a minimum of 80,000 square feet in area and have at least 150 feet of road frontage.

Article 40 of the Boone County Zoning Regulations states that lot frontage is the distance between the side property lines as measured across the required minimum front yard setback line.

Site Characteristics

The 118.651 acre site is located at the terminus of Ballantree Way and also has approximately 1,915 feet of frontage on the south side of Interstate 71. Although the majority of the site is wooded with mature deciduous trees, there is one major clearing that extends northwards and southwards from Ballantree Way. Boone County GIS shows that the topography of the site ranges from moderate to severe. The ground elevation is approximately 830' above sea level at the terminus of Ballantree Way, 650' above sea level at the southwest property corner, and 720' above sea level at the northeast property corner.

Adjoining Properties and Zoning

North: I-71 and Single Family Residential Dwellings Fronting on Brown Road (A-2)

South: Single-Family Residential Dwelling and 50.46 Undeveloped Parcel (A-2)

East: Single-Family Residential Dwellings Fronting on Monticello Way and Xalapa Way (A-2)

West: Agricultural Tract (A-2)

Staff Comments

1. On March 31, 2004, Boone County Planning Commission approved a Preliminary Plat for Manor Estates at Porter Plantation Subdivision. The Plat shows that 34 parcels would be created in the 118.651 acre area and that each parcel would meet the 80,000 square foot minimum lot size requirement. The Plat also indicates that each house would meet the A-2 setback requirements (60' front, 25' rear, and 10' sides).

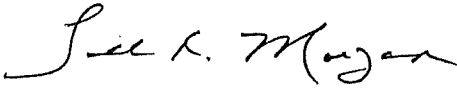
The draft Preliminary Plat also shows that 34 lots will be created in the 118.651 acre area. Each lot will meet the 80,000 square foot minimum lot size requirement.

2. The applicant has submitted two letters indicating why the Variances should be approved.
3. Staff believes that the strict application of the Zoning Regulations would create an unnecessary hardship on the property owner for the reasons that are outlined in the applicant's letters.
4. The Board needs to review the Variance criteria before acting on the request.

Conclusion

KRS 100.241 and Section 250 of the Boone County Zoning Regulations gives the Boone County Board of Adjustment and Zoning Appeals the authority to act on the requests.

Respectfully submitted,



Todd K. Morgan, AICP
Senior Planner, Zoning Services

TKM/dw

Attachments

- *Site Vicinity Map
- *Letters From Applicant
- *Draft Preliminary Plat
- *3/31/04 Preliminary Plat
- *Zoning Map
- *Topographical Map
- *2012 Aerial Map
- *Applications

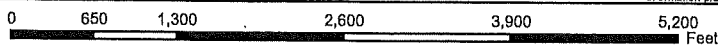
SITE VICINITY MAP

www.boonecountygis.com



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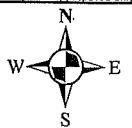
Data used to create this map were compiled from sources that comply with National Map Accuracy Standards. Boone County GIS extends no warranty with respect to the accuracy or content of the information provided by this map. This map should be used for general planning purposes only.



1 inch = 1,500 feet

Boone County GIS

"Putting Northern Kentucky on the Map"



Map Projections: NAD 83

REMAINING MANOR ESTATES AT PORTER PLANTATION

REQUEST FOR VARIANCE

VARIANCE REQUESTED – Reduction of lot width from 150' to a minimum of 110' on lots 28, 29, 30, 33, 37, 38, 39, 40, 41, 47, 48, 51, 53, 54, and 71.

REASON – In order to grant a variance, the Board of Adjustments (“BOA”) must adopt findings of fact that meet the requirements of the Kentucky Revised Statutes. KRS100.243(1) specifies three factors that should be considered when making this finding of fact:

- (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 of the regulation would deprive the applicant of the reasonable use of the land or would create an unnecessary hardship on the applicant; and
- (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.

As can be seen with the attached revised preliminary plan for this subdivision, the topography in this area is severe (i.e. narrow ridges of varying widths falling off to developmentally sensitive slopes). Due to the fact that this subdivision requires individual septic systems for the proposed single family detached residential homes, there can be only minimal grading done on the site. The streets will follow the top of the narrow ridges in this subdivision. This fact restricts the depth of the lots to whatever is available between the top of the ridge or street and the perimeter property line. To obtain the required square footage in each lot, some lots are much wider than the minimum 150' width given the restriction in lot depth. This subdivision contains approximately 5,700' of frontage at the setback line. Normally, this would yield 38 lots. We are requesting a variance to reduce the lot width on some of the lots to a minimum of 110' as a measure to compensate for the lots that require more than the 150' minimum frontage to meet their area requirements as stated previously. With this variance in place, we are only proposing 34 lots which is less than the 38 one would expect from the given frontage length of the proposed streets as stated previously. Also, this is the same number of lots that are shown on the existing approved preliminary plan for this area.

In conclusion, we respectfully request the approval of this variance because the situation described herein clearly represents a special circumstance, as required by KRS100.243. Additionally, if the owner was required to meet the strict provisions of the zoning ordinance the owner would suffer hardship.

REMAINING MANOR ESTATES AT PORTER PLANTATION

REQUEST FOR VARIANCE

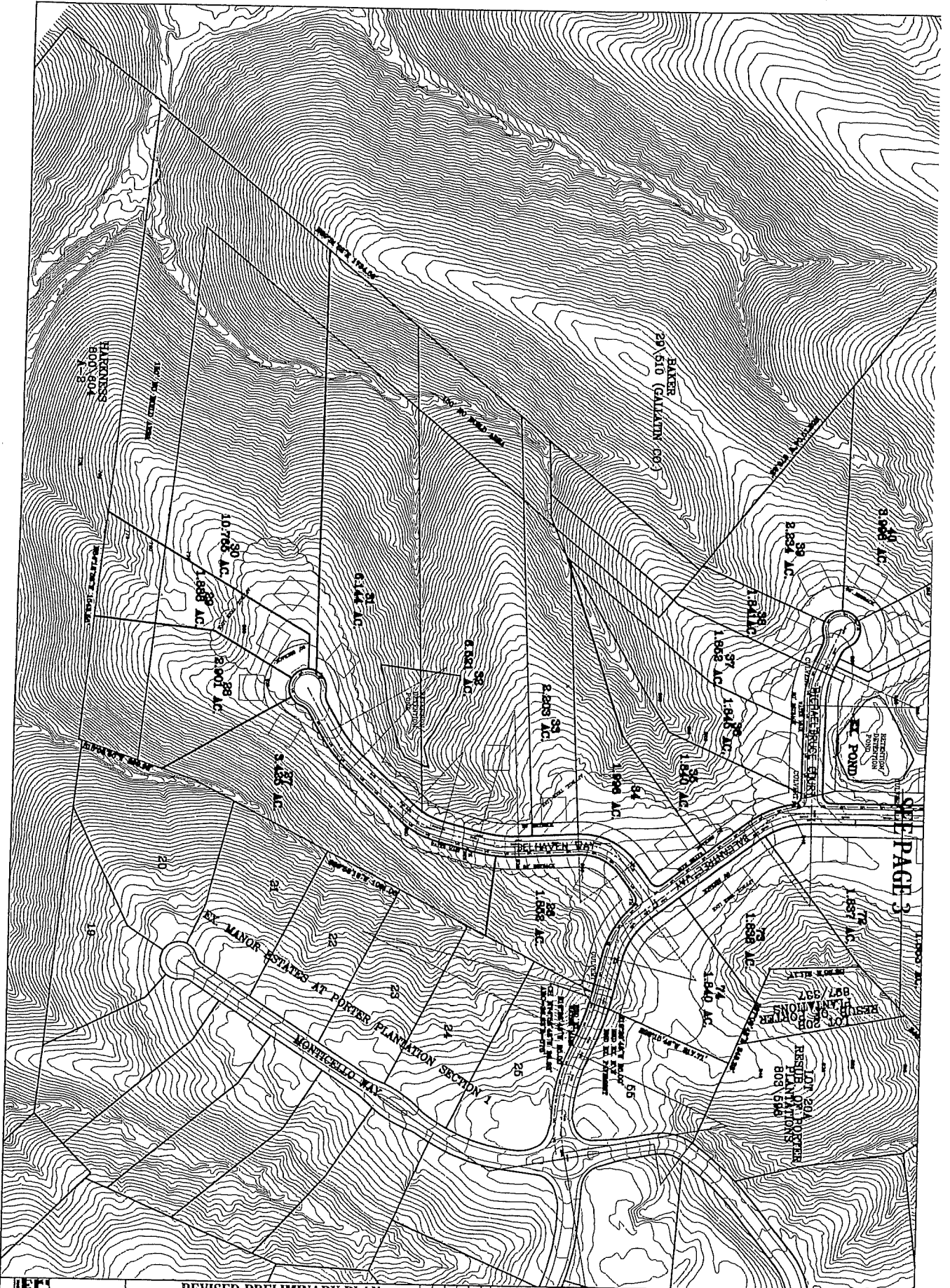
VARIANCE REQUESTED – Reduction of front setback from 60' to 30' on all lots except 28, 29, 30, 39, 40, 41, 42, 47, 48, 49, 50, 51, and 52.

REASON – In order to grant a variance, the Board of Adjustments (“BOA”) must adopt findings of fact that meet the requirements of the Kentucky Revised Statutes. KRS100.243(1) specifies three factors that should be considered when making this finding of fact:

- (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 of the regulation would deprive the applicant of the reasonable use of the land or would create an unnecessary hardship on the applicant; and
- (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.

This variance request is consistent with both sections (a) and (b). As can be seen on the attached revised preliminary plan for this subdivision, the topography in this area is severe (i.e. narrow ridges of varying widths falling off to developmentally sensitive slopes). Because this subdivision requires individual septic systems for the proposed single family detached residential homes, there can only be minimal grading done on the site. The streets will follow the top of the narrow ridges in this subdivision. Also note that this property is heavily wooded. To construct the proposed homes on the proposed lots and to prevent these homes from being prohibitively below street elevation, construction of subfoundations, and to leave the developmentally sensitive slopes undisturbed, it is requested that the front setback be reduced from 60' to 30' (this is the standard setback in any SR1 zone). By doing this, not only will the houses be more constructible, it will also reduce the amount of clearing required not only for the house itself, but also for the required septic system and allow for more of the existing vegetation to be preserved.



In conclusion, we respectfully request the approval of this variance because the situation described herein clearly represents a special circumstance, as required by KRS100.243. Additionally, if the owner was required to meet the strict provisions of the zoning ordinance the owner would suffer hardship.



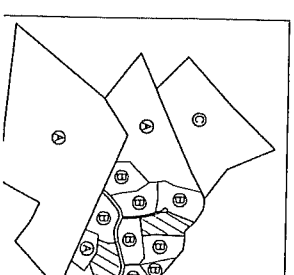
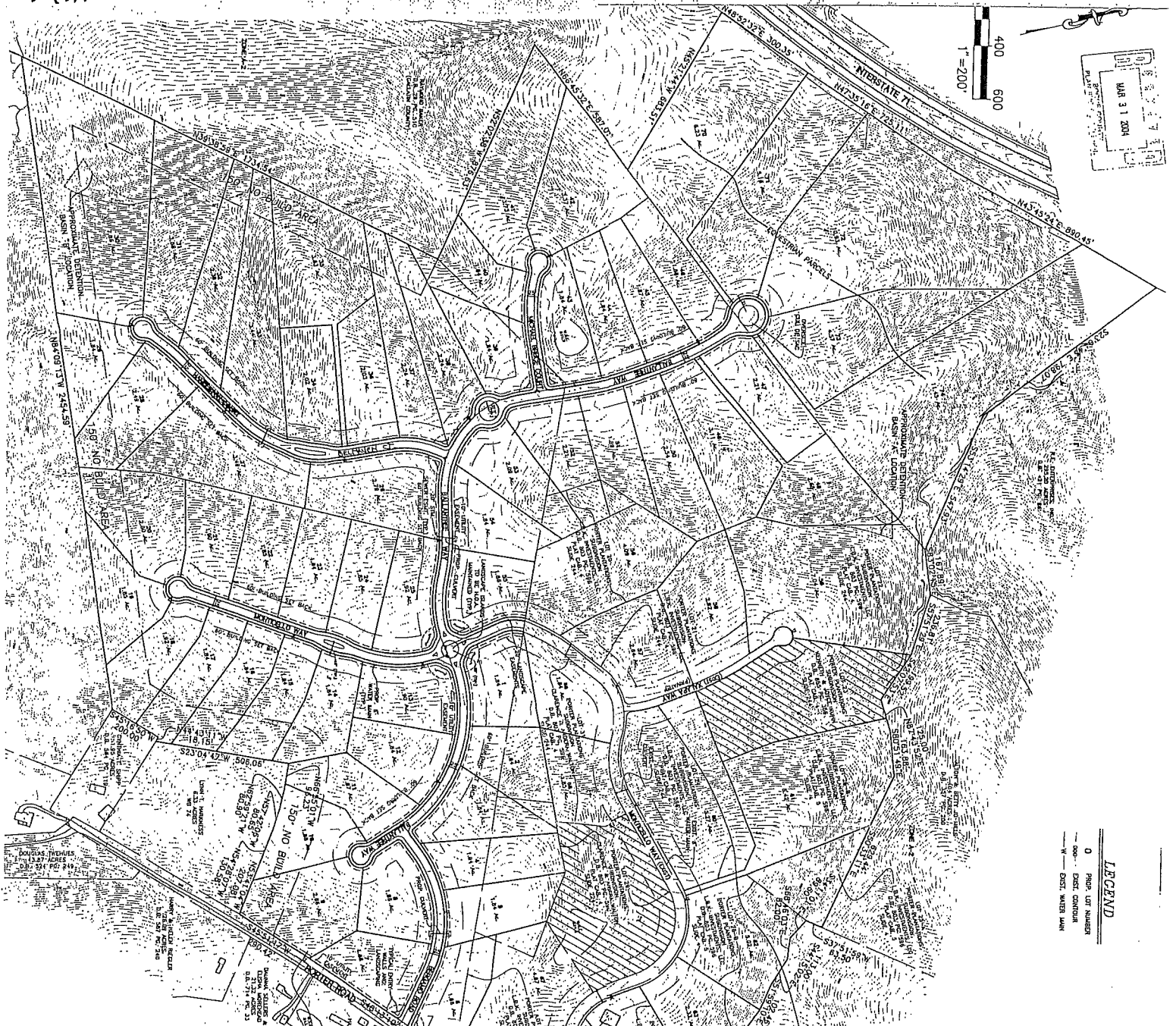
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 PROFESSIONAL LAND SURVEYOR
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REVISED PRELIMINARY PLAN
MANOR ESTATES AT PORTER PLANTATION
BOONE COUNTY, KENTUCKY


VIOX & VIOX
 Civil Engineers, Surveyors, and Landscape Architects
 448 Erving Road, Lexington, Kentucky 40514
 Ph: (606) 273-2823 • Fax: (606) 273-4422 • www.viox.com

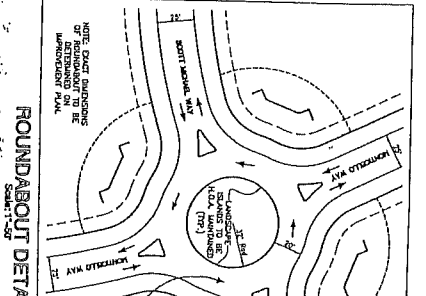
PLAN SCALE
 1" = 100'



3/31/04 Preliminary Plat Approval
 MANOR ESTATES at PORTER PLANTATION



ADDITIONAL 5' AS TO BE DEDICATED TO 20' PORTER ROAD

NOT SUB



RESUBMISSION OF LOT 24, PLAT CAB 5, SLIDE 4

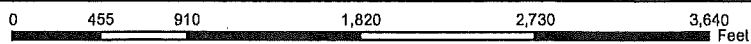
ZONING MAP

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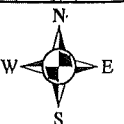
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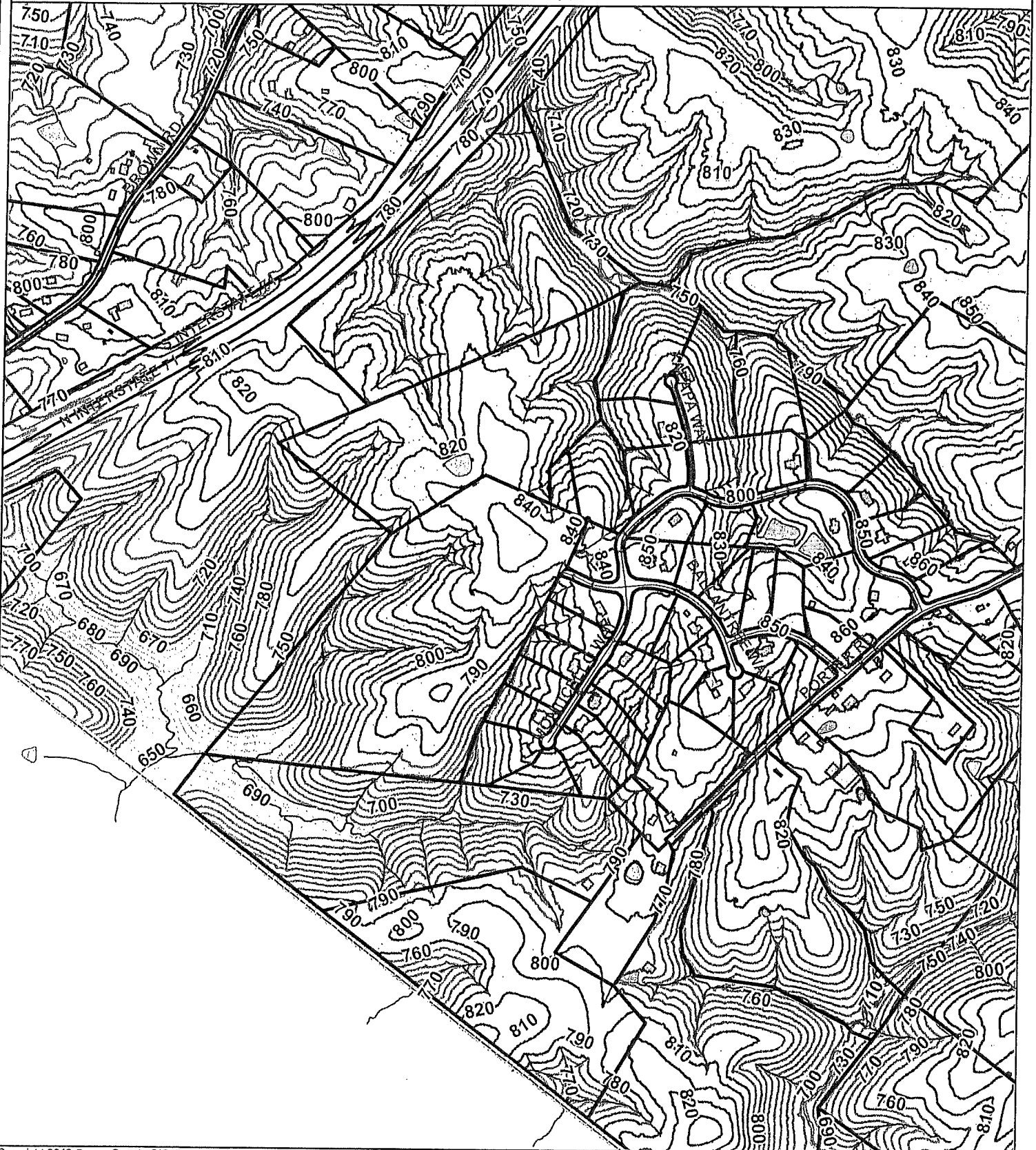
"Putting Northern Kentucky on the Map"



Map by Plan-It-Right.com 11/11/12

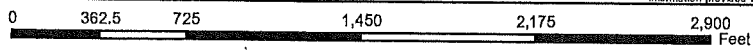
TOPOGRAPHICAL MAP

www.boonecountygis.com

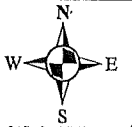


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Map & Photo Courtesy: Aerial 2010 2012

APPLICATION FORM

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AND
ZONING APPEALS ACTION
BOONE COUNTY PLANNING COMMISSION

FIVE (5) SCALED COPIES AND ONE (1) 11X17 REDUCTION OF SUBMITTED DRAWINGS ARE REQUIRED

See Boone County Zoning Regulations

SECTION A (To be completed by applicant)

(Check One)

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(Check One)

2. _____ Conditional Use Permit Variance _____ Appeal _____

3. _____ Change in Non-Conforming Use _____

Applicant's Name VIOX + VIOX INC

Applicant's Address 4106 ERLANGER ROAD

ERLANGER KY. 41018

City State Zip

Phone Number (859) 727-3293 Fax No. (859) 727-8456 E-Mail VKAHMANN@VIOXINC.COM

4. Description of Request: REDUCTION OF LOT WIDTH FROM 150' TO A MIN OF 110' ON LOTS 28, 29, 30, 33, 37, 38, 39, 40, 41, 47, 48, 51, 53, 54 & 71

5. Name of Development REMAINING MAJOR ESTATES AT PORTER PLANTATION

6. Location of Development BALLANTREE WAY OFF OF BERGAMO ROAD OFF OF PORTER ROAD, VERONA, BOONE CO. KY.

7. Acreage Under Review 118.051 AC

8. Lot Number and Name of Subdivision (if part of a subdivision) SEE # 4 + 5

9. Owner of Property DS D INVESTMENT PROPERTIES

Address of Property Owner 825 LINDBERGH AT SUITE 490

10. HEBRON KY. 41048

City State Zip

Phone Number (859) 393-1216 Fax No. _____ E-Mail _____

11. Proposed Use(s) on Site SINGLE FAMILY RESIDENTIAL

12. Total Square Footage of Existing and/or Proposed Buildings N/A

13. Current Zoning on Property A-2

14. Deed Book 984 Page No. 849 Group No. 2037A

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? YES

17. Have you submitted a list of adjoining property owners with this request? YES

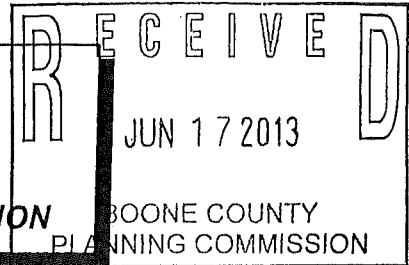
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ORIGINAL Applicant's Signature: [Signature] P.E. Viox + Viox Inc.
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ZONING APPEALS ACTION
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 - (Check One)
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 Change in Non-Conforming Use _____
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 Applicant's Address 466 ERLANGER ROAD
ERLANGER KY. 41018
 City State Zip
 Phone Number (859) 727-3293 Fax No. (859) 727-8452 E-Mail VKAHMANN@VIOXINC.COM
 - Description of Request: REDUCTION OF FRONT SETBACK FROM 60' TO 30' ON ALL LOTS EXCEPT 28, 29, 30, 39, 40, 41, 42, 47, 48, 49, 50, 51 & 52
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 - Location of Development BALLANTREE WAY OFF OF BERGAMO ROAD OFF OF PORTER ROAD, VERONA, BOONE CO., KY.
 - Acreage Under Review 118.651
 - Lot Number and Name of Subdivision (if part of a subdivision)
SEE #4 & 5
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 Address of Property Owner 825 LINDBERGH CT. SUITE 490
HEBRON KY. 41048
 City State Zip
 Phone Number (859) 393-1214 Fax No. _____ E-Mail _____
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(Faxed, Photocopied or Scanned Signatures will NOT be Accepted)

ORIGINAL Applicant's Signature: [Signature] P.E. Viox + Viox Inc
(Faxed, Photocopied or Scanned Signatures will NOT be Accepted)

CERTIFICATE OF LAND USE RESTRICTION

- 1. NAME AND ADDRESS OF PROPERTY OWNER(S)
DSD Investment Properties
825 Lindbergh Ct.
Hebron, KY 41048

- 2. ADDRESS OF PROPERTY
Ballantree Way

- 3. NAME OF SUBDIVISION OR DEVELOPMENT (if applicable)
Manor Estates at Porter Plantation

- 4. DEED BOOK 984 PAGE NO. 849 GROUP NO. 2087A

- 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:
 Variance (2)

- 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
2950 WASHINGTON STREET, ROOM 317
P.O. BOX 958
BURLINGTON, KENTUCKY 41005

Todd K. Morgan
SIGNATURE OF COMPLETING OFFICIAL

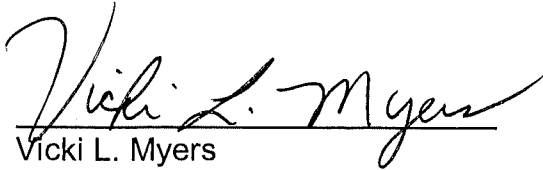
Todd K. Morgan, AICP, Senior Planner, Zoning Services
Name and Title of Completing Official

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 11th day of July, 2013.



Vicki L. Myers

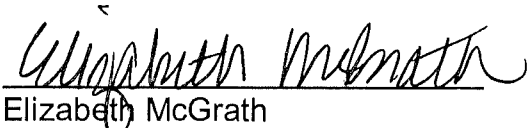
Notary ID 438411

NOTARY PUBLIC, State at Large

My commission Expires:

April 17, 2015

This instrument was prepared for recording purposes only by:



Elizabeth McGrath

Boone County Planning Commission

2950 Washington Street, Room 317

P.O. Box 958

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 Variance (2) approved by the ___
Boone Board of Adjustments and in accordance with the current zoning in effect as
of July 10, 2013 Certificate of Land Use Restriction (#13-BCBOA-016-A), for ___ DSD
Investment Properties ___, Property Owner(s).

The following conditions will apply:

No Conditions

The approved ___ Variance (2) as well as the preceding conditions apply to the property
described in:

DEED BOOK 984

PAGE NO. 849

GROUP NO. 2087A