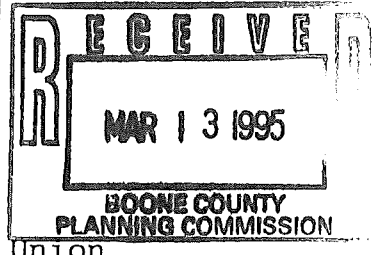


375  
21 + 50  
4/12

APPLICATION FORM  
**BOARD OF ADJUSTMENT  
AND  
ZONING APPEALS ACTION**

(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
3.  Change in Non-Conforming Use
3. Applicant's Name BERBERICH HOME & GARDEN CENTER INC. C/O MICHAEL BERBERICH  
Phone Number 371-8585 / 366-2028 Fax No. 371 0926  
Applicant's Address 218 MT ZION RD  
FLORENCE KY 41042  
City State Zip
4. Description of Request: CHANGE IN NON-CONFORMING USE FROM SAME OR MORE RESTRICTIVE ZONING CLASSIFICATION. FROM C-2 TO C-2 KIDS HELPING KIDS TO SIT DOWN RESTAURANT. ORIGINALLY ZONE C-3 AND MISTAKENLY RECLASSIFIED. SR IN 1990 UPDATE
5. Name of Development BERBERICH HOME GARDEN / MIKE'S CAFE
6. Location of Development 2134 PETERSBURG ROAD (KY 20) HEBRON KY
7. Acreage Under Review 2.04 (TWO) ACRES ±
8. Lot Number and Name of Subdivision (if part of a subdivision)  
N/A
9. Owner of Property BERBERICH HOME AND GARDEN CENTER, INC. C/O MICHAEL BERBERICH  
Phone Number of Owner 371-8585 / 366-2028
10. Address of Property Owner 218 MT ZION RD  
FLORENCE KY 41042  
City State Zip
11. Proposed Use(s) on Site SIT DOWN RESTAURANT
12. Total Square Footage of Existing and/or Proposed Buildings  
13,720 sq. ft.
13. Current Zoning on Property SR2
14. Deed Book 272 Page No. 271 Group No. 2006
15. Is the site subject to a zone change? NO, EXCEPT 1990 MISTAKE  
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: GERALD F. Dusing 4/10/95 371 6220  
Property Owner's Signature: [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 3/13/95 Fee Received \$226.00 RA 6110
2. Is application complete?  Yes  No
3. Staff Reviewer Jeff Hayes
4. Scheduled Board Action Date 4-12-95
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.

# STAFF REPORT

DEVELOPMENT: Mike's Cafe

APPLICANT: Berberich Home and Garden Center Inc.

LOCATION: 2134 Petersburg Road, Boone County

ZONING: Suburban Residential Two (SR-2)

DATE: April 12, 1995

The applicant is requesting a Change in a Non-Conforming Use to allow the reuse of a 13,720 square foot building located at 2134 Petersburg Road for a restaurant (See Sheet #1). The building was formerly used as a Home and Garden Center. The building was last used for a "Kids Helping Kids" facility, which ceased operation in April of 1994. This facility was used for a counseling center and a routine gathering place for approximately 150 adolescent with drug problems. The applicant proposes to reuse approximately 7,600 square feet of the building for the development of an approximately 150 seat restaurant facility. The remaining portion of the building would be used at this time as storage space for the restaurant.

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

When the Board reviews this request it must consider the proposed change in non-conforming use as it relates to the previous use which occurred on the site last. This use was the Kids Helping Kids use and not the home and garden center. In addition, the Board must compare the proposed use to the permitted uses which include:

1. Detached single-family dwelling units;
2. Duplex dwelling units with attached garages;
3. Townhouse dwelling units (minimum 5 acres);
4. Agricultural farming, dairying, and stock-raising;
5. Recreation defined in this district to open space parks, hiking areas and trails, bikeway systems and picnicking areas.

Conditional Uses include:

1. Conversion of an existing dwelling into multiple units of not more than three families;
2. Clubhouses, community centers and similar common assembly or shared facilities where the facility is and integral part of a residential development and the membership is limited to residents of a common development or neighborhood;
3. Townhouse dwelling units;
4. Churches, synagogues, temples and other places of religious assembly for worship;
5. Cemeteries including mausoleums;
6. Duplex dwelling units with attached garages (3 or more acres);
7. Nursery and day care centers.

Surrounding Land Uses and Zoning (See Sheet # 3)

North: Country Place Apartments zoned Urban Residential One/Planned Development (Ur-1/PD)

South: Single-family homes zoned Suburban Residential Two (SR-2)

East: Nor-Com zoned Commercial Two (C-2)

West: Single-family homes zoned Suburban Residential Two (SR-2)

Site History

In 1978, a 6,000 square foot building was constructed on the applicant's site for the purpose of housing the Berberich Home and Garden Center which was discontinued in 1980. In 1981, a adolescent drug rehabilitation center, called Kids Helping Kids occupied the facility. In 1983, a 7,500 square foot addition was constructed to the existing building to allow an expansion of the Kids Helping Kids facility which operated in this building until April of 1994. The applicant had an appraisal conducted for the property in mid 1994 at which time he discovered that the property was not zoned Commercial as he had believed, but rather residential.

After receiving this information, the applicant wrote a letter in February of 1995 (See Exhibit A), in which he identified to the Zoning Administrator what he felt was a mapping error of the Official Boone County Zoning Map. In March of 1995, Kevin Wall, the Zoning Administrator for Boone County, responded to the applicant's letter

by verifying the current zoning of the property as Suburban Residential Two (SR-2) and not Commercial Services (C-3) as the applicant believed. The Official Boone County Zoning Map had indicated that the applicant's property had been zoned SR-2 since 1980. Mr. Wall further informed the applicant that the proposed restaurant use was not a permitted use or a conditional use within the SR-2 zoning district. In addition, he identified that it would be necessary for the applicant to apply for a Change in Non-Conforming Use and receive approval from the Boone County Board of Adjustments before the proposed restaurant use could be permitted (See Exhibit B).

### Site Characteristics

The site is located on a higher elevation than Petersburg Road which provides access to this site. The property contains a sign which is approximately 20 feet in height, which could easily be reused to advertise the restaurant use. There is currently a large unpaved gravel area located to the front and rear of the existing 13,720 square foot pre-engineered metal building. This gravel area could accommodate approximately 100 parking spaces. There is some landscaping which is located on the east side of the building and a approximately five (5) foot deep ditch located along Petersburg Road. Currently the site is not served by public sewer and does not provide any stormwater detention on the site.

### Staff Concerns:

1. Staff believes that to make this site more in conformance with the existing Boone County Zoning Regulations that the all parking and circulation areas should be paved and that stormwater detention should be provided on the site. This would require the site to undergo Site Plan Review.
2. The Board should consider the potential amount of traffic which could be created by the proposed 150 seat restaurant use. The Institute of Transportation Engineers, Trip Generation Manual, 5th Edition, indicates that a high turn-over, sit-down restaurant of this size could produce on average 986 vehicle trip on a given weekday. On a given Sunday the restaurant could generate on average 1083 vehicle trips per day with a average peak hour vehicle trips of 72. The proposed restaurant use could generate substantially less or more vehicle trips depending on the type of restaurant.
3. The Board should also review the expansion potential of the restaurant use. Their will be approximately 6,000 square feet of building area left within existing building that could be utilized for seating expansion. The Boone County Zoning Regulations require restaurants to provide one parking space per 2 seats within the restaurant. This would require the proposed restaurant to provide 75 parking spaces within the existing gravel area. The Board is not permitted to allow any changed non-conforming use to be increased or enlarged, nor extended to occupy a greater area of land than was occupied

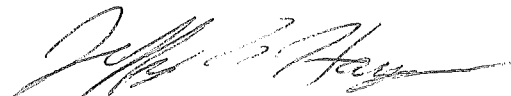
by the original non-conforming use. Therefore, a expansion of the existing gravel area for additional parking would be considered a enlargement of a non-conforming use which cannot be permitted.

4. A solid row of shrubs, which can be maintained at a height of approximately three (3) feet in height, should be planted along the perimeter of the parking area which faces KY 20 to screen the automobiles from the public right-of-way and also to prevent the headlights of cars from shining into the adjoining residences to the south. In addition, evergreen trees should be planted in the rear of the property and if possible along the west property line to screen the adjoining residential properties. These evergreen trees should be at least six (6) feet in height at the time of planting.
5. Staff believes that if the existing free-standing sign is to be reused that the sign should not be spot lit, but rather internally lit or not lit at all.
6. Any additional use of the property and/or building will require approval from the Board for a Change in Non-Conforming Use.
7. Staff believes that outside storage should not be permitted and that any dumpster should be properly screened. In addition, any outdoor lighting should be for security proposes only and should be directed away from adjoining residential properties.

Conclusion

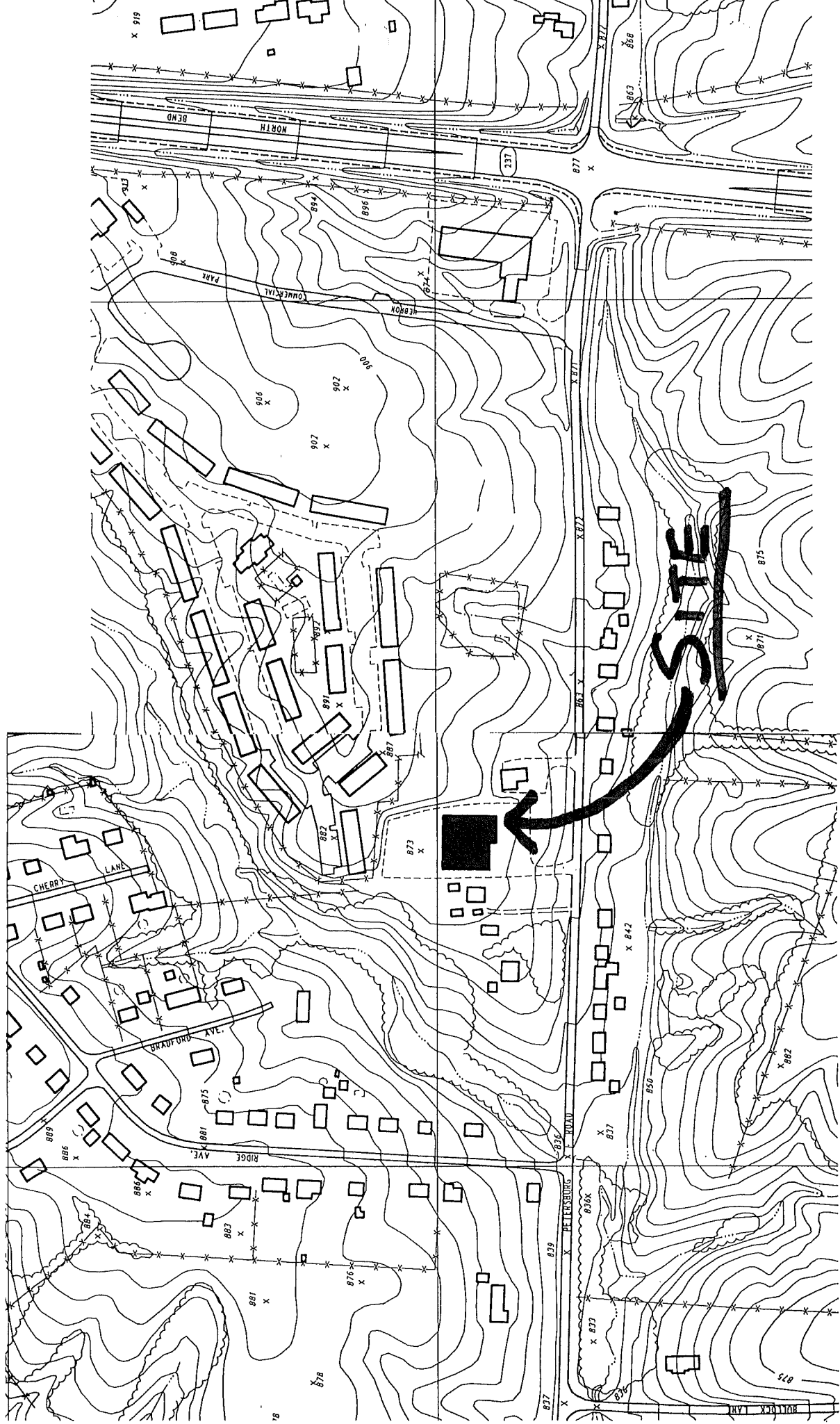
The Board should review the applicant's request with regards to the compatibility of the proposed non-conforming use with the permitted uses and conditional uses within the district. In addition, the proposed use has to be equally or more compatible than the previous non-conforming use. The Board shall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

Respectfully Submitted,



Jeffrey F. Hayes  
Planner

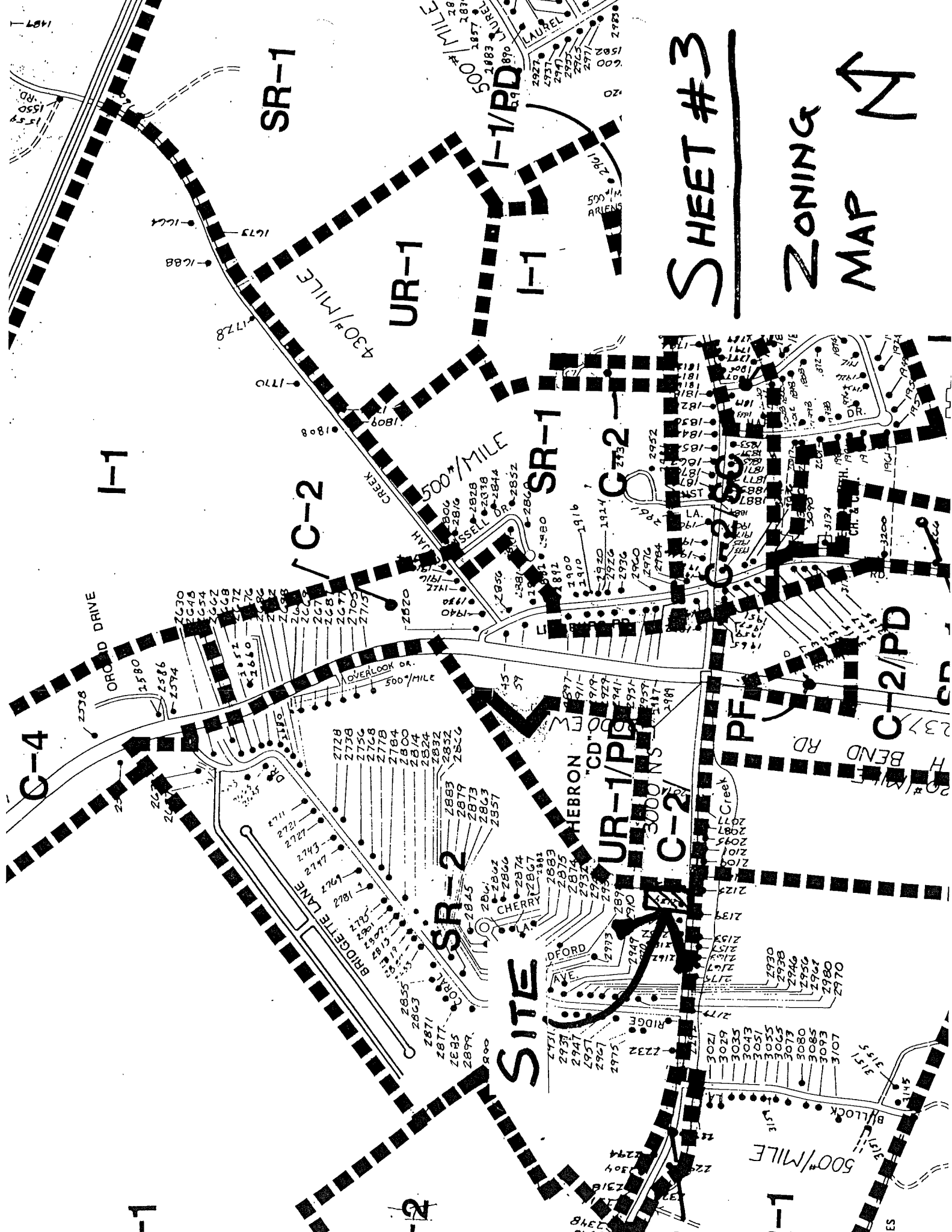
JFH\par



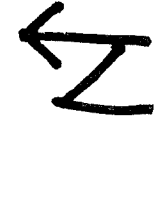
**SITE**



**SHEET # 1**  
**LOCATION MAP**



**SHEET #3**

**ZONING  
MAP** 

**SITE**

**C-2**

**UR-1/PD**

**SR-2**

**C-2**

**SR-1**

**UR-1**

**SR-1**

**I-1**

**I-1**

**I-2**

**I-1**

**ES**

**BERBERICH HOME & GARDEN CENTER INC.  
218 Mount Zion Rd.  
Florence Ky. 41042**

**EXHIBIT A**

M.KE pho 371-8585  
OFFICE 366-2028  
FAX 371-0926

JACK pho-371-8967  
OFFICE-533-8255

February 27, 1995

Mr. Kevin Wall  
Zoning Administrator,  
Boone County Planning and Zoning Commission  
Burlington, Ky. 41005

Dear Kevin

The purpose of this letter is to notify you of an error in the current zoning map and provide the information necessary to correct the error. The current Boone County zoning map shows the building owned by Berberich Home and Garden Center Inc., located at 2134 Petersburg Rd., as being in a residential zone. It should reflect a C-3 zone for that location. Berberich Home and Garden Center Inc. is a Kentucky corporation owned by myself and my brother, Jack Berberich.

23

The error was brought to our attention as a result of an appraisal being conducted on the property in mid 1994. At that time, Jack contacted Mr. Kevin Costello, by telephone, to discuss the situation. Jack informed him that the address of this property changed in the early 1980's, from 132 Bullittsville-Petersburg Rd. to 2134 Petersburg Rd. Mr. Costello suggested that the zoning map error may have occurred as a result of the change of address. He requested that we forward a letter to him detailing the history of the property from the time we purchased it. A letter was not sent at that time.

In January of this year, I visited the commission office. I spoke with Mr. Costello about the zoning map error and stated that he would soon be receiving our letter containing the appropriate information. I informed him that we were in the process of leasing the building, and the new tenants would be requesting a building permit for changes to the interior of the building. At that time, he indicated that you were now the zoning administrator and that I should address the letter to you. He suggested the letter be submitted at the same time the application for the building permit was submitted. The application is being made by Mr. Michael Cunningham and Mr. Alexander Bearce. We request that their permit application not be delayed because of the error in the zoning map. We are therefore, providing the following information:

1975 - Michael C. Berberich & Norbert J. Berberich Jr. purchased 2.0 acres of vacant land from Hebron Deposit Bank. The address of the property was 132 Bullittsville Rd. The property, zoned C-3, had previously been proposed as a site for a new location of Hebron Deposit.

1976 to 77 - We petitioned the planning and zoning commission to locate a lawn and garden center on the property. Approval was granted to construct a building of approximately 6000 square feet with appropriately sized external storage and sales area, within this C-3 zoning.

January 1978 - We began construction on a pre-engineered metal building of approximately 6000 square feet.

September 1978 - We relocated the Steven's Lawn-Farm-Garden Center to this New location incorporated as Berberich Home and Garden Center Inc. and continued operation until December, 1980.

May 1981 - Berberich Home and Garden Center Inc. petitioned the Boone County Planning and Zoning Commission to grant approval for a variance to permit an adolescent drug rehabilitation center DBA, Kids Helping Kids (KHK).

1983 - Berberich Home and Garden Center Inc. requested approval to construct an additional 7500 square feet building adjacent to the present building. the construction was approved. The building was completed in 1984 and occupied by KHK until the termination of their lease in April 1994.

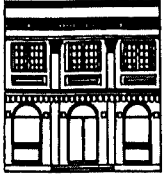
If you need additional information or have any questions regarding this matter, please contact me at 366-2028 or Jack at 533-8255. Thank you in advance for your assistance.

Sincerely,  
/s/

Michael C. Berberich  
Berberich Home and Garden Center Inc.

cc: Kevin Costello,  
Jack Berberich  
Mike Cunningham  
Alex Bearce

# BOONE COUNTY PLANNING COMMISSION



2995 Washington Street, Burlington, KY 41005  
606-334-2196 FAX 606-334-2264

## EXHIBIT B

March 8, 1995

Mr. Michael Berberich  
Berberich Home and Garden Center, Inc.  
218 Mt. Zion Road  
Florence, KY 41042

RE: Facility at 2134 Petersburg Road (KY 20)

Dear Mr. Berberich:

In response to your letter dated 2/27/95, I am providing the following information.

As you are aware, the current zoning map designates the site as Suburban Residential Two (SR-2). After researching the two prior official zoning maps for the area, I have found that the site has been zoned SR-2 since at least 1980. We have not located any records that indicate that the site was ever zoned C-3, although it is immediately adjacent to a C-2 zone. Thus, I have no option at this time but to consider the most recent use of the facility to be nonconforming. This also means that at this time I can not grant zoning approval for the Building Permit application that was recently submitted because restaurants are not a permitted use in the SR-2 zone, and I have not discovered any evidence which suggests that there has been an error in the preparation or adoption of the zoning map (although an oversight may have occurred).

However, you may apply for a "change from one nonconforming use to another" to the Board of Adjustment (the same body that hears variances and conditional use permits). In order for the change to be granted, it must be demonstrated that the new use "is as equally or more compatible with permitted uses in the district in which it is located as the existing nonconforming use." Through this process the Planning Commission will also review the existing site improvements to verify that sufficient parking and loading areas are currently provided for the restaurant use; if they are not, then the Board of Adjustment could deny your request because the restaurant use would require more land area (for parking and loading in this instance) than did the prior use. If the request were approved by the Board and the proposal does necessitate additional parking or loading, a Site Plan review will be required

Mr. Michael Berberich  
March 8, 1995  
Page 2

by this office. I recommend that you contact Jeff Hayes, a planner in our office, regarding the Board of Adjustment review (Jeff processes all Board of Adjustment business).

Further, the Planning Commission will be conducting a comprehensive update of the Boone County Zoning Maps this year. As part of this update we will consider changing the zoning of this site to something that more closely correlates to the existing improvements on the site, such as the adjoining C-2 zone, or perhaps a C-1 zone so that a transition is created between the existing C-2 and the residential uses along Petersburg Road.

Please call me if you have any further questions or need any clarifications.

Sincerely,



Kevin T. Wall, AICP CDT  
Director, Zoning Services

cc: Jim Key, Chief Building Official  
Jeff Hayes, Planner

RECEIVED

1995 JUN -9 A 8:58

NO.95-BCBOA-005-A

JERRY W. ROUSE  
BOONE COUNTY CLERK

CERTIFICATE OF LAND USE RESTRICTION

10.504

1. NAME AND ADDRESS OF PROPERTY OWNER (S)  
Berberich Home and Garden Center, Inc.  
Michael Berberich  
218 Mt.Zion Road  
Florence, Kentucky 41042

2. ADDRESS OF PROPERTY  
2134 Petersburg Road  
Hebron, Kentucky 41048

3. NAME OF SUBDIVISION OR DEVELOPMENT (if applicable)  
Mike's Cafe

DEED BOOK: 272

PAGE NO.: 271

GROUP NO.: 2006

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

Zoning Map Amendment  
from \_\_\_ to \_\_\_

Conditional Use Permit

Development Plan

Conditional Zoning

Subdivision Plat  
(Unrecorded)

Other: Change in Non-Conforming Use

Variance

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

BOONE COUNTY PLANNING COMMISSION  
2995 WASHINGTON STREET  
BURLINGTON, KENTUCKY 41005

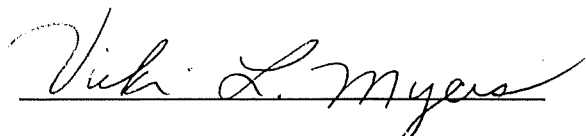
  
SIGNATURE OF COMPLETING OFFICIAL

Jeffrey F. Hayes/Planner  
NAME AND TITLE OF COMPLETING OFFICIAL  
(type or print)

COMMONWEALTH OF KENTUCKY

COUNTY OF BOONE

Subscribed, sworn to, and acknowledge before me by Jeffrey Hayes on behalf  
of the Boone County Planning Commission this 30th day  
of May, 1995.

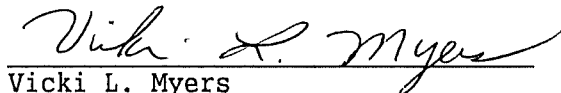


NOTARY PUBLIC, State at Large

My commission Expires:

April 17, 1999

This instrument was prepared for recording purposes only by:



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

NO TITLE EXAMINATION

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

CLUR# 95-BCBOA-005-A

CONDITIONS OF APPROVAL

The following Conditions of Approval apply to the Change in Non-Conforming Use as approved by the Boone Board of Adjustments and in accordance with the current zoning in effect as of April 12, 1995, (Certificate of Land Use Restriction # 95-BCBOA-005-A), for Michael Berberich, property owner.

The following conditions will apply: (1) Shrubs will be put down the left side from the front of the building to KY 20. (2) A Site Plan Review should be applied for within one year for the retention and parking (3) The number of seats will be dictated by the code and there will be no outside storage, and security lighting only.

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

described in: DEED BOOK 272 PAGE NO. 271 Group No. 2006

State of Kentucky, County of Boone  
 JERRY W. ROUSE, Clerk of the Boone County  
 Court, do certify that the foregoing  
Miss was, on the 9 day of June  
 19 95, at 8:58 P. M. lodged in my office  
 for record, and that it has been duly recorded in  
 my said office, together with this and the  
 certificate thereon endorsed.  
 Given under my hand this 9 day of June  
 19 95.  
 JERRY W. ROUSE, CLERK  
 By Jerry Rouse D.C.