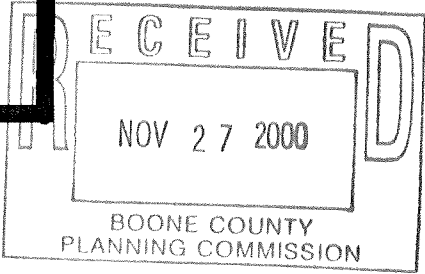


1-Boa
01-BCBA-DENIED

No curb

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 DAY'S AUTO CENTER, c/o TIMOTHY M. DAY
Phone Number (859) 282-8664 Fax No. _____
Applicant's Address 7800 Dixie Highway (U.S. 25)
Florence, KY 41042
- 4. Description of Request: Appeal decision of Zoning Administrator regarding continuing pre-existing non-conforming use of auto sales/display of autos for sale along frontage of Lot on U.S. 25.
- 5. Name of Development DAY'S AUTO CENTER
- 6. Location of Development 7800 Dixie Highway, Florence, KY 41042
- 7. Acreage Under Review 0.36 Acre
- 8. Lot Number and Name of Subdivision (if part of a subdivision) Plat BK 1, P. 118-A
Lots 1 and 2 ORCHARD ACRES SUBDIVISION
- 9. Owner of Property Applicant by Land Contract: Patricia Quast vendor/fee owner of
Phone Number of Owner (859) 282-8664 / Patricia Quast (859) 283-9400 10. record
Address of Property Owner c/o David Quast, DMD, 7620 Dixie Highway, Florence, KY 41042
- 11. Proposed Use(s) on Site Existing historical uses: light auto repair/
sales of tires/auto maintenance and limited used car sales
- 12. Total Square Footage of Existing and/or Proposed Buildings N/A - no new building
- 13. Current Zoning on Property C-1
- 14. Deed Book 748 Page No. 301 Group No. 216
- 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: Timothy M Day

Property Owner's Signature: Patricia Quast

**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 1-27-01 Fee Received A 726.00 RA# 26144
- 2. Is application complete? _____ Yes _____ No
- 3. Staff Reviewer KEVIN WALL
- 4. Scheduled Board Action Date 1/18/01
- 5. Board Action:
 - _____ Approved
 - _____ Approved with Conditions (See #6)
 - Denial (See #7) 1/18/01
- 6. Conditions of Approval: _____
- 7. Reasons for Denial: REFER TO HEARING MINUTES

**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 REFUSAL TO GRANT PRE-EXISTING, NONCONFORMING STATUS TO A PROPOSED AUTO SALES BUSINESS

APPELLANT: DAY'S AUTO CENTER C/O TIMOTHY M. DAY

LOCATION: 7800 DIXIE HIGHWAY, FLORENCE, KENTUCKY

ZONE: COMMERCIAL ONE (C-1)

DATE: JANUARY 18, 2001

REQUEST

In accordance with sections 201, 220, 230, 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 Florence Board of Adjustment and Zoning Appeals. Specifically, Timothy M. Day on behalf of Day's Auto Center has filed an Appeal of the Zoning Administrator's refusal to grant pre-existing, nonconforming status to an auto sales use at 7800 Dixie Highway (former location of Cooper's Automotive Service), which is in a C-1 zone. The C-1 zone does not permit auto sales as a principally permitted, accessory, or conditional use. The Appellant contends that a pre-existing, nonconforming auto sales use was established on the site by a prior occupant(s?) after a combination zone change from C-1 to C-2 and Conditional Use Permit application to allow auto sales and an expansion of the existing auto repair building was recommended for denial by the City Council's Planning and Zoning Committee to the full City Council.

In the letters attached as Exhibit 2 (letter dated 11/1/00) and Exhibit 4 (letter dated 11/6/00), the Zoning Administrator determined that the Appellant had not demonstrated that a pre-existing, nonconforming auto sales use had been established on the lot in question. Rather, the Appellant had at best demonstrated that occasional, informal auto sales between private individuals (versus a regular business) may have occurred on the site, similar to private individuals that may sell a used car from their home via a "for sale" sign placed on the vehicle. The Appellant's arguments, provided through counsel, are outlined in Exhibit 1 (letter and attachments dated 10/31/00) and Exhibit 3 (letter dated 11/2/00).

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.

HISTORY OF REQUEST/ISSUE

June/July 2000: Several different representatives of the Appellant (including a Professional Engineer and his father) met with several different Planning Commission staff members regarding a proposed expansion of the existing auto repair building and the establishment of a smaller-scaled auto sales business. Because auto sales is not permitted in the C-1 zone and there was no contention that a pre-existing, nonconforming auto sales use was established on the lot, the applicant was advised to concurrently apply for a zone change from C-1 to C-2 and a Conditional Use Permit. If the Appellant wished to only expand the auto repair business in the C-1 zone with a pre-existing, nonconforming auto sales use, the Appellant would have needed to merely apply for a Conditional Use Permit. The Appellant submitted the aforementioned zone change and CUP application on July 11, 2000.

August 2000 A Public Hearing for the zone change/CUP application was conducted by the Boone County Planning Commission on August 23rd. During this hearing, the Appellant's representative notes that the zone change application is necessary to conduct the proposed small-scaled auto sales business on the lot (minutes attached as Exhibit 5).

September 2000 The Planning Commission's Zone Change Committee reviewed and recommended denial of the zone change/CUP application to the full Planning Commission on September 6th. The full Planning Commission voted unanimously to recommend denial of the request to the City Council on September 20th.

October 2000 The City Council's Planning and Zoning Committee reviewed and recommended denial of the zone change/CUP request on October 25th. The Appellant's counsel made the initial claim of a pre-existing, nonconforming auto sales use on the premises through the letter and supporting materials dated October 31st (Exhibit 1). The Appellant's counsel's letter stated that auto sales would occur within their "historical parameters" on the site, which seem to be basically the same limits as those proposed through the zone change/CUP application.

November 2000 On November 1st, the Zoning Administrator responded to the Appellant's initial letter (letter attached as Exhibit 2). In this letter, the Zoning Administrator determined that the Appellant had not provided any tangible evidence that a pre-existing, nonconforming auto sales business had ever existed on the site, but that the Appellant had provided some anecdotal evidence that intermittent, casual sales between private individuals may have occurred on some basis. The Appellant's counsel reiterated the same basic claims in a letter dated November 2nd (Exhibit 3), and in a letter dated November 6th (Exhibit 4), the Zoning Administrator responded with the same basic conclusions outlined in the November 1st letter (Exhibit 2).

The Appellant was issued a notice of violation for conducting an auto sales business in a C-1 zone on November 21st. The Florence City Council discussed the zone change/CUP application at their November 21st caucus meeting, and denied the application on November 28th. This Appeal was filed on November 27th.

PER 12-15 CARS FOR SALE
ON SITE - SAME
BASIC SCOPE
PROPOSED BY
APPELLANT II
EXHIBIT 3

ADJOINING LAND USES AND ZONING

North: Across Roger Lane - Domino's Pizza at 7708 Dixie Highway and 1 Roger Lane (a single-family detached residence) zoned Commercial One (C-1). Single-Family detached residences along the north side of Roger Lane zoned Suburban Residential One (SR-1).

- East: Across Dixie Highway - Remke's complex zoned Commercial Two (C-2).
- South: Ameristop zoned Commercial One (C-1). Dixie Apartments off Riehl Drive zoned Urban Residential Two (UR-2).
- West: 2 & 4 Roger Lane (single-family detached residences) immediately adjacent to the subject parcel zoned Commercial One (C-1). Single-Family detached residences along the south side of Roger Lane zoned Urban Residential Two (UR-2).

DESCRIPTION OF SITE

The site is located at 7800 Dixie Highway on the southwest corner of the Rogers/Dixie Highway intersection. The lot contains 0.36 acres and has approximately 165 feet of frontage on Rogers and approximately 100 feet of frontage on Dixie Highway, with access points on both streets. The site contains a two bay auto repair building with an office. The majority of the site is paved, although the area between the structure and the residential lot to the west is covered with a lawn.

DECISION AND BASIS FOR DECISION

The decision in question, and the basis for the decision, are described in the previously mentioned letters dated November 1, 2000 and November 6, 2000 from Kevin Wall to Gerald Dusing (Exhibits 2 and 4). In lieu of providing any additional documents or information as suggested in these letters so that the Zoning Administrator could reevaluate the Appellant's claim in a more compelling light, the Appellant chose to appeal the Zoning Administrator's refusal.

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 are addressed in the Zoning Administrator's letters (Exhibits 2 and 4). It is the Zoning Administrator's conclusion that the Appellant has made several unsupported claims that some sort of auto sales has existed on the site, and although the Appellant clearly has tried to initiate a formal auto sales/dealer business, no evidence that any sort of formal sales business has occurred on the site has been produced by the Appellant, nor has the Zoning Administrator or City Staff discovered any such evidence/documents. Rather, only documents which infer that intermittent, casual sales between individuals (much like an individual selling a used car from their home) may have occurred have been provided (refer to Exhibit 1 and its attachments). This is perplexing to the Zoning Administrator when considering that the auto sales industry is very "document intensive" - dealers are required to obtain a license from the state, sales require titles and receipts, inventory vehicles require insurance, etc., yet not a single document which would corroborate a prior auto sales use on this site has been produced. Not even a yellow pages listing or newspaper ad have been provided.
- B. The claim of a pre-existing, nonconforming use was made only after the zone change/CUP application was recommended for denial. As evidenced in the Planning Commission's Public Hearing minutes (Exhibit 5), the applicant's representative stated that the zone change/CUP approval was necessary to operate an auto sales use at this location.
- C. The Appellant has claimed that because multiple checks were written to the City of Florence for their Occupational License application, the additional check was to cover the cost of such a license for an auto sales business. However, the City never issued an Occupational License for auto sales at this location. Boone County issued an Occupational License for auto sales at this location, but the County does not verify zoning approval for businesses within the City through this process - this verification is performed by the City and as already noted, the City did not issue a license for auto sales this location.
- D. The Appellant submitted several letters and pre-prepared "form" or "fill in the blank" testimonials (fifty seven according to the Appellant's count) in which various individuals claim that auto sales has occurred on the site in the past. These testimonials do not specify the nature of the alleged sales (formal dealership or occasional/intermittent sales via the placement of "for sale" signs on vehicles - it is difficult to believe that fifty seven people off the street would even know such a detail when there is no corroborating evidence otherwise), nor are these testimonials sworn affidavits (leads to the Zoning Administrator's conclusion that they may provide some anecdotal evidence regarding past casual sales). Additionally, what is not stated is how many people who have direct knowledge of this matter that refused to provide such a letter or sign a "form testimonial."

- E. A few photographs which show cars parked on the site were provided as some sort of visual evidence of the alleged pre-existing, nonconforming use. One of these photographs partially shows some white lettering on a windshield, although it is not clear whether this vehicle was for sale (photographs will be available for viewing at the Public Hearing).
- F. It is the Zoning Administrator's conclusion that (at best based on the information provided) casual, intermittent auto sales between private individuals may have occurred on the site through the use of "for sale" signs placed on vehicles, but that a regular auto sales business was not conducted on the site. Previous occasional or intermittent use does not constitute a pre-existing, nonconforming use, particularly when it is of a different nature than the use now proposed:
- G. Nonconforming uses are discussed in Sections 270 and 272 of the Boone County Zoning Regulations (Exhibit 8).

Respectfully submitted,



Kevin T. Wall, AICP CDT
Zoning Administrator for City of Florence

KTW/pr

attachments:

- Exhibit 1 - letter w/ attachments from Gerald Dusing to Kevin Wall dated 10/31/00
- Exhibit 2 - letter from Kevin Wall to Gerald Dusing dated 11/1/00
- Exhibit 3 - letter from Gerald Dusing to Kevin Wall dated 11/2/00
- Exhibit 4 - letter from Kevin Wall to Gerald Dusing dated 11/6/00
- Exhibit 5 - 8/23/00 Planning Commission Public hearing minutes for Day zone change/CUP request
- Exhibit 6 - Appeal application form and property survey
- Exhibit 7 - area vicinity and zoning map
- Exhibit 8 - Sections 270 and 272 of the Boone County Zoning Regulations

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

Attorneys and Counselors at Law

40 WEST PIKE STREET

P.O. BOX 861

COVINGTON, KENTUCKY 41012-0861

859-291-7270

FAX 859-291-7902

October 31, 2000

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 *	W. THOMAS FISHER *

* ALSO ADMITTED IN OHIO
** ADMITTED ONLY IN OHIO

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

OF COUNSEL
JOSEPH T. CONDIT *
JANICE M. KENNEDY **

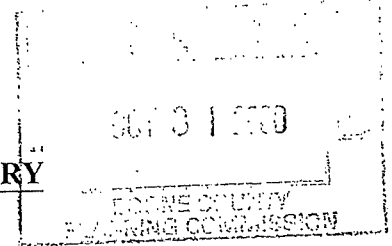
8100 BURLINGTON PIKE - SUITE 344
P.O. BOX 576
FLORENCE, KENTUCKY 41022-0576
859-371-6220
FAX 859-371-8341

2407 ASHLAND AVENUE
CINCINNATI, OHIO 45206
859-291-7270

P. O. BOX 20728
COLUMBUS, OHIO 43220
614-459-9435
FAX 614-459-9042

Kevin T. Wall, AICP CDT
Director, Zoning Services
BOONE COUNTY PLANNING
COMMISSION
2995 Washington Street
Burlington, KY 41005

VIA HAND DELIVERY



RE: Day's Auto Center
7800 Dixie Highway
Florence, Kentucky 41042

Dear Mr. Wall:

This confirms my telephone call to you that this office represents Day's Auto Center, respecting its vested right to continue to display automobiles for sale along its Dixie Highway (U.S. 25) frontage and sell them on site as a pre-existing, nonconforming use under authority of the United States and Kentucky Constitutions, Kentucky Revised Statutes Chapter 100 and the City of Florence zoning ordinance.

Enclosed are pictures of automobiles for sale along the Dixie Highway frontage when the property was an auto repair/service/Cooper Tire "Cooper Auto Service" facility.

Also enclosed are fifty-seven (57) written and signed testimonials of witnesses vouching that automobiles have been displayed for sale on this lot for many years. The number of years mentioned in each statement is the number of years of personal knowledge by that eye witness. Mrs. Middleton, who lives up the street, indicates forty-five (45) years. The seller of the premises to the Days, Patricia Quast, testifies to approximately twelve (12) years.

Also enclosed are copies of checks paid to Boone County Fiscal Court for Occupational Licenses issued June 28, 2000 for this 7800 Dixie Highway. Separate fees were charged and paid and separate occupational licenses were issued for the used car sales use and the general

vehicle repair use. Likewise, the City of Florence charged two separate fees and issued two separate licenses for car sales and general garage/repairs operations.

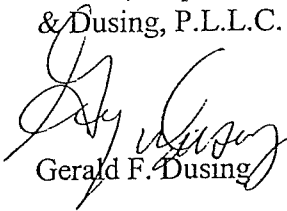
As I advised by telephone, Chris and Tim Day want to be "up front" with the City and the zoning enforcement officer. Accordingly, they will continue to sell used cars within the historical parameters of that activity on that site.

Please retain these materials on file.

Thank you.

Very truly yours,,

Adams, Stepner, Woltermann
& Dusing, P.L.L.C.



Gerald F. Dusing

GFD/hcj

Cc: Day's Auto Center

3584

DAY'S LUBRICATION CENTER

7525 INDUSTRIAL RD.
FLORENCE, KY 41042

DATE 6-28-00

73-216/421

PAY TO THE ORDER OF

Boone County Fiscal Ct.

\$ 25⁰⁰

Twenty five dollars

DOLLARS

Autosales Heritage BANK

ERLANGER, KENTUCKY 41018

140236143 01 070500 6438

FOR

Boone Cen bus 2000-01

Lusty M Og

⑆003584⑆ ⑆042102160⑆

45081204⑆

⑆0000002500⑆

CANCELLED Check for Car Sales

3582

DAY'S LUBRICATION CENTER

7525 INDUSTRIAL RD.
FLORENCE, KY 41042

DATE 6-28-00

73-216/421

PAY TO THE ORDER OF

Boone County Fiscal Court

\$ 25⁰⁰

Twenty five dollars

DOLLARS

Heritage BANK

ERLANGER, KENTUCKY 41018

140236144 01 070500 6438

FOR

2000-2001 Lic

Lusty M Og

⑆003582⑆ ⑆042102160⑆

45081204⑆

⑆0000002500⑆

CANCELLED Check for Garage

3585

DAY'S LUBRICATION CENTER

7525 INDUSTRIAL RD.
FLORENCE, KY 41042

DATE 6-28-00

73-216/421

PAY TO THE ORDER OF

City of Florence

\$ 125.00

One hundred twenty-five and 00/100

DOLLARS

200001 **Heritage** BANK

ERLANGER, KENTUCKY 41018

140161964 01 0630 0 4369

FOR

occ lic

[Signature]

⑆003585⑆ ⑆042102160⑆ 45081204⑆ ⑆0000012500⑆

CAR Lic. CANCELLED Check

3581

DAY'S LUBRICATION CENTER

7525 INDUSTRIAL RD.
FLORENCE, KY 41042

DATE 6-28

73-216/421

PAY TO THE ORDER OF

City of Florence

\$ 50.00

Fifty and 00/100

DOLLARS

Heritage BANK

ERLANGER, KENTUCKY 41018

140161965 01 0630 0 5366

FOR

2000 yf occ lic 7698-011370

[Signature]

⑆003581⑆ ⑆042102160⑆ 45081204⑆ ⑆0000005000⑆

GARAGE lic CANCELLED Check

3612

DAY'S LUBRICATION CENTER
7525 INDUSTRIAL RD.
FLORENCE, KY 41042

73-216/421

DATE 7-7-00

\$ 25⁰⁰/_{xx}

PAY TO THE ORDER OF:

CITY OF FLORENCE, KY

DOLLARS

Twenty Five

110435410 01 071100 6262

Heritage
BANK
ERLANGER, KENTUCKY 41018

Chris Wray Jr

FOR *Car Service Fee*

45081204

0000002500

003612 042102160

Cancelled check for
Additional fee for CAR @ LIC

BOONE COUNTY FISCAL COURT ORDINANCE #430-4

P.O. BOX 457 • FLORENCE, KY 41022-0457

EACH BUSINESS LOCATION IS REQUIRED
TO PAY \$25.00 ANNUAL TAX



**GENERAL BUSINESS CERTIFICATE
LICENSE FEE \$25.00**

DUE ON OR BEFORE JULY 1, 2000

LICENSE YEAR 2000/2001	EXPIRES JUNE 30 2001
---------------------------	-------------------------

TOTAL PAID

25.00
TOTAL PAID IS MARKED
FOR REMITTANCE.

88651
DAY'S USED CARS
7800 DIXIE HIGHWAY
FLORENCE KY 41042

NAME AND ADDRESS ABOVE



JUN 28 2000

BOONE COUNTY
OCCUPATIONAL LICENSE DEPT.

DISPLAY THIS COPY AT BUSINESS LOCATION

P.O. BOX 457 • FLORENCE, KY 41022-0457

EACH BUSINESS LOCATION IS REQUIRED
TO PAY \$25.00 ANNUAL TAX

**GENERAL BUSINESS CERTIFICATE
LICENSE FEE \$25.00**

DUE ON OR BEFORE JULY 1, 2000

TOTAL PAID

LICENSE YEAR
2000/2001

EXPIRES JUNE 30
2001

25.00
TOTAL PAID IS MARKED
FOR REMITTANCE.

89178

DAY'S LUBRICATION CENTER
800 DIXIE HIGHWAY
FLORENCE KY 41042

RECEIVED

JUN 28 2000

OR NAME AND ADDRESS ABOVE



BOONE COUNTY
OCCUPATIONAL LICENSE DEPT.

DISPLAY THIS COPY AT BUSINESS LOCATION

ACCOUNT NO.

2000 OCCUPATIONAL LICENSE

NUMBER

00-11390

BUSINESS
LICENSE ID

7698

TYPE

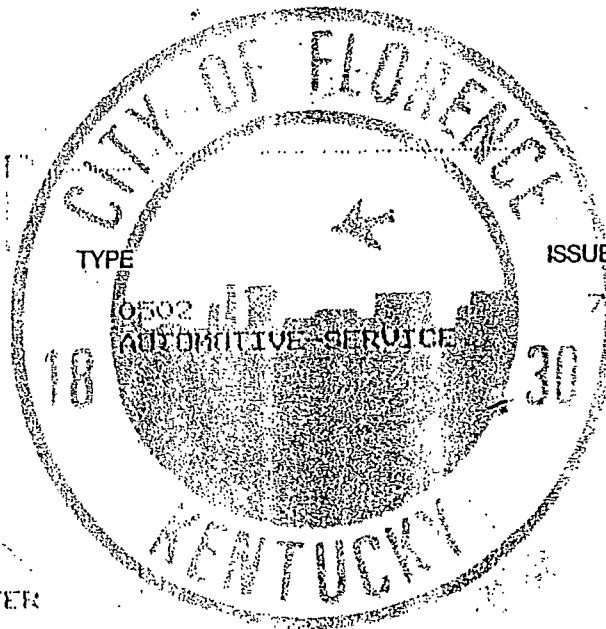
0502
AUTOMOTIVE SERVICE

ISSUED

7/25/00

EXPIRES

6/30/01



LICENSEE:

DAY JR., CHRIS
D&A DAYS AUTO CENTER
7800 DIXIE HIGHWAY
FLORENCE KY 41042

Shirley S. Miller
TAX CLERK

7628 Dixie Hwy., Suite 102
Florence, Kentucky 41042
606-283-2910

Accounting &
ABS Bookkeeping
services

Copy of 57 letters
Cars Sold Here

September 14, 2000


Re: 7800 Dixie Hwy.
Car Sales

To Whom it may concern;

As a business owner within the county of Boone, and the City of Florence for the past 10 ½ years it has been my observations that at the above mentioned address cars have been placed on the lot with "For Sale" signs hung in their windows. This practice to my knowledge had been going on for quite a number of years.

It seemed that every time you passed, a vehicle was for sale at this location. You will also find other vehicles "For Sale" at other locations along this stretch of Dixie Hwy.

Sincerely,



Charles Reinhardt

Date 10-3-00

To: Whom It May Concern

I Patricia A. Quast who presides at

7620 Dixie Hwy

owns that used cars were sold by Cooper Tires

at 7800 Dixie Highway and Roger Lane in

Florence, Ky.. I know that cars were sold for a

period of Approximately 12 years.

Thank You

Patricia A. Quast

SIGNATURE

283-9400

PHONE NUMBER

Date 9-19-2000

To: Whom It May Concern

I Fran Middleton who presides at
12 Bee St Florence

knows that used cars were sold by Cooper Tires
at 7800 Dixie Highway and Roger Lane in
Florence, Ky.. I know that cars were sold for a
period of 45 years.

Thank You

Fran Middleton

SIGNATURE

525 0052

PHONE NUMBER

Date 9/19/00

To: Whom It May Concern

I Randy Hodge who presides at
7825 Riehl Dr Florence Ky
knows that used cars were sold by Cooper Tires
at 7800 Dixie Highway and Roger Lane in
Florence, Ky.. I know that cars were sold for a
period of 40 years.

Thank You

Randy Hodge

SIGNATURE

647-1764

PHONE NUMBER

Date Aug 14, 2000-----

To: W h o m I t M a y C o n c e r n

I Nathan Ransdell----- who presides at
3061 Allen Fork-----
knows that used cars were sold by Cooper Tires
at 7800 Dixie Highway and Roger Lane in
Florence, Ky.. I know that cars were sold for a
period of 12 years.

Thank You

Nathan Ransdell-----

S I G N A T U R E

P H O N E N U M B E R

Date Aug 14, 2000

To: W h o m I t M a y C o n c e r n

I Carol Schwing who presides at
3061 ALLEN FORK Dr.

knows that used cars were sold by Cooper Tires
at 7800 Dixie Highway and Roger Lane in
Florence, Ky. I know that cars were sold for a
period of 12 years.

Thank You

Carol Schwing

SIGNATURE

689-5310

PHONE NUMBER

Date 9/15/00

To: W h o m I t M a y C o n c e r n

I Clifton Schwing who presides at
4208 Arbor Ct Independence Ky
knows that used cars were sold by Cooper Tires
at 7800 Dixie Highway and Roger Lane in
Florence, Ky.. I know that cars were sold for a
period of 15 years.

Thank You

Clifton Schwing

SIGNATURE

859-525-0424

PHONE NUMBER

Date 09-20-00

To: Whom It May Concern

I Joseph W. Jazg who presides at
RR 2 Box 945 Verona Ky 40092
knows that used cars were sold by Cooper Tires
at 7800 Dixie Highway and Roger Lane in
Florence, Ky.. I know that cars were sold for a
period of 12 years.

Thank You

Joseph W. Jazg
SIGNATURE

859 567 2288
PHONE NUMBER

Date 9-20-00

To: W h o m I t M a y C o n c e r n

I Robert A. Volmer who presides at
836 COLLINS RD VINE HILLS, KY 41017
knows that used cars were sold by Cooper Tires
at 7800 Dixie Highway and Roger Lane in
Florence, Ky.. I know that cars were sold for a
period of 12 years.

T h a n k Y o u

Robert A Volmer

S I G N A T U R E

859-341-9719

P H O N E N U M B E R

Date 9-15-00

To: Whom It May Concern

I Debbie Kennedy who presides at
8614 Dixie Hwy Union
knows that used cars were sold by Cooper Tires
at 7800 Dixie Highway and Roger Lane in
Florence, Ky.. I know that cars were sold for a
period of 4 years.

Thank You

Debbie Kennedy

SIGNATURE

PHONE NUMBER

Date 9/15/00

To: W h o m I t M a y C o n c e r n

I Peggy Schwarz who presides at
4208 Arbor Ct. Independence Ky
knows that used cars were sold by Cooper Tires
at 7800 Dixie Highway and Roger Lane in
Florence, Ky.. I know that cars were sold for a
period of 15 years.

Thank You

Peggy Schwarz

SIGNATURE

859-525-0424

PHONE NUMBER

Date 9/19/00

To: Whom It May Concern

Bea Angel who presides at
7832 Kell Drive, Florence, Ky
owns that used cars were sold by Cooper Tires
7800 Dixie Highway and Roger Lane in
Florence, Ky.. I know that cars were sold for a
period of MANY years.

Thank You

Bea Angel

SIGNATURE

(859) 525-1207

PHONE NUMBER

Date 2/18/00

To: W h o m I t M a y C o n c e r n

I John A. Linstead who presides at
448 SWAN CR. ELSHERE, KY. 41018
knows that used cars were sold by Cooper Tires
at 7800 Dixie Highway and Roger Lane in
Florence, Ky.. I know that cars were sold for a
period of 7 years.

Thank You

John A. Linstead
SIGNATURE

859-342-6227

PHONE NUMBER

Date 9-18-00

To: Whom It May Concern

I Phil Newberry who presides at
21 Heathstone Ct.
knows that used cars were sold by Cooper Tires
at 7800 Dixie Highway and Roger Lane in
Florence, Ky.. I know that cars were sold for a
period of 5 years.

Thank You

Phil Newberry

SIGNATURE

282-9691

PHONE NUMBER

Date 9-18-00

To: Whom It May Concern

I Steve Noff who presides at
150 Seneca Tr. Elsmere, Ky. 41018
knows that used cars were sold by Cooper Tires
at 7800 Dixie Highway and Roger Lane in
Florence, Ky.. I know that cars were sold for a
period of 4 years.

Thank You

Steve Noff

SIGNATURE

PHONE NUMBER

Date 9/18/00

To: Whom It May Concern

I Bill Thompson who presides at
Burlington Ky
knows that used cars were sold by Cooper Tires
at 7800 Dixie Highway and Roger Lane in
Florence, Ky.. I know that cars were sold for a
period of _____ years.

Thank You

William R. Thompson

SIGNATURE

PHONE NUMBER

Date 9/18/00

To: Whom It May Concern

I LARRY EVERS who presides at
12655 GREEN RD WATSON KY 41098
knows that used cars were sold by Cooper Tires
at 7800 Dixie Highway and Roger Lane in
Florence, Ky.. I know that cars were sold for a
period of 5 years.

Thank You


SIGNATURE

513 876 8096

PHONE NUMBER

Date 9-19-2000

To: W h o m I t M a y C o n c e r n

I John Matthews who presides at
12669 Dixie Hwy #6 Walton Ky. 41094

knows that used cars were sold by Cooper Tires
at 7800 Dixie Highway and Roger Lane in
Florence, Ky.. I know that cars were sold for a
period of 3 years.

Thank You

John Matthews

SIGNATURE

485-7652

PHONE NUMBER

Date 9/19/00

To: Whom It May Concern

I DOUG ANGEL who presides at
7832 RIEHL DRIVE FLORENCE, KY 41042

Knows that used cars were sold by Cooper Tires
#7800 Dixie Highway and Roger Lane in
Florence, Ky.. I know that cars were sold for a
period of MANY years.

Thank You

Doug Angel

SIGNATURE

(859) 525-1207

PHONE NUMBER

Date 9-13-21

To: Whom It May Concern

I Helen LITNER who presides at
7824 Riehl Dr Apt 5
knows that used cars were sold by Cooper Tires
at 7800 Dixie Highway and Roger Lane in
Florence, Ky.. I know that cars were sold for a
period of 7 years.

Thank You

Helen LITNER

SIGNATURE

859-282-8009

PHONE NUMBER

Date 9/14/00

To: Whom It May Concern

I William J. Smith who presides at
111 Brent Spence Sq. Cov. Ky. 41011
knows that used cars were sold by Cooper Tires
at 7800 Dixie Highway and Roger Lane in
Florence, Ky.. I know that cars were sold for a
period of 7 years.

Thank You

William J. Smith

SIGNATURE

261-5123

PHONE NUMBER

Date 9-30-2000

To: Whom It May Concern

I Joyce Carnahan who presides at
5 Lee St

owns that used cars were sold by Cooper Tires

7800 Dixie Highway and Roger Lane in

Louisville, Ky.. I know that cars were sold for a

period of 1 years.

Thank You

J. Carnahan

SIGNATURE

PHONE NUMBER

Date 9-13-00

To: W h o m I t M a y C o n c e r n

I Paul Webster who presides at
1290 Mt. Zion Rd. Union, Ky 41091

knows that used cars were sold by Cooper Tires
at 7800 Dixie Highway and Roger Lane in
Florence, Ky.. I know that cars were sold for a
period of 10 years.

T h a n k Y o u

Paul Webster

S I G N A T U R E

384-3751

P H O N E N U M B E R

Date 10-2-2000

To: Whom It May Concern

I RICHARD S. LEIGH who presides at

5569 REGAL RIDGE BUELLINGTON KY 41005

knows that used cars were sold by Cooper Tires

at 7800 Dixie Highway and Roger Lane in

Florence, Ky.. I know that cars were sold for a

period of 4 years.

Thank You

Richard S. Leigh

SIGNATURE

859-586-5653

PHONE NUMBER

Date 9/19-00

To: Whom It May Concern

I Frank Schwartz who presides at
Florence

Knows that used cars were sold by Cooper Tires
at 7800 Dixie Highway and Roger Lane in
Florence, Ky.. I know that cars were sold for a
period of 5 years.

Thank You

Frank J. Schwartz

SIGNATURE

374-8388

PHONE NUMBER

Date 9-18-00

To: Whom It May Concern

I Thomas Hall who presides at

Independence Rd Independence Kc

owns that used cars were sold by Cooper Tires

7800 Dixie Highway and Roger Lane in

Independence, Ky.. I know that cars were sold for a

period of 1 years.

Thank You

Thomas Hall

SIGNATURE

NA

PHONE NUMBER

Date 9/19-00

To: Whom It May Concern

I Rusty Strawn who presides at
DRY Ridge, Ky

knows that used cars were sold by Cooper Tires
at 7800 Dixie Highway and Roger Lane in
Florence, Ky.. I know that cars were sold for a
period of 1 years.

Thank You

Rusty Strawn

SIGNATURE

NA

PHONE NUMBER

Date 9/19/00

To: W h o m I t M a y C o n c e r n

Oscar D. Halcomb who presides at

7836 Riehl DR #4, Flo. Ia

~~K~~nows that used cars were sold by Cooper Tires

at 7800 Dixie Highway and Roger Lane in

Florence, Ky.. I know that cars were sold for a

period of several years.

Thank You

Oscar D. Halcomb/MG

SIGNATURE

859/282-1280

PHONE NUMBER

Date 9/19/00

To: W h o m I t M a y C o n c e r n

I ~~know~~ Nancy Graft who presides at
7826 Riehl DR #6, Flor. ky. 41042-2632

Knows that used cars were sold by Cooper Tires
at 7800 Dixie Highway and Roger Lane in
Hopence, Ky.. I know that cars were sold for a
period of several years.

Thank You

Nancy Graft

SIGNATURE

859/647-7370

PHONE NUMBER

Date 9-18-00

To: Whom It May Concern

I ORPHA ADAMS who presides at

DIXIE APTS, Florence Ky

knows that used cars were sold by Cooper Tires

at 7800 Dixie Highway and Roger Lane in

Florence, Ky.. I know that cars were sold for a

period of 2 years.

Thank You

Orpha Adams

SIGNATURE

282-2990

PHONE NUMBER

Date 9/19/00

To: Whom It May Concern

I Edward L Lesly ----- who presides at
7834 RIEHL DR #1 ----- Florence, Ky -----

Shows that used cars were sold by Cooper Tires
#7800 Dixie Highway and Roger Lane in
Florence, Ky.. I know that cars were sold for a
period of 5 years.

Thank You

Edward Lesly -----

SIGNATURE

525-1033 -----

PHONE NUMBER

Date 9/19/00

To: Whom It May Concern

Stacey Cottrell who presides at

7834 Biehl Dr # 1

knows that used cars were sold by Cooper Tires

at 7800 Dixie Highway and Roger Lane in

Florence, Ky.. I know that cars were sold for a

period of 10 years.

Thank You

Stacey Cottrell

SIGNATURE

525-1033

PHONE NUMBER

Date 9/19-----

To: Whom It May Concern

I MIKE HENSLEY who presides at
2011 Riggs Ln-----

knows that used cars were sold by Cooper Tires
at 7800 Dixie Highway and Roger Lane in
Florence, Ky.. I know that cars were sold for a
period of 6 Mo. years.

Thank You

Mike Hensley-----

SIGNATURE

unlisted-----

PHONE NUMBER

Date 9/19

To: Whom It May Concern

I Florence Henderson who presides at

7827 Richl Dr #3 Florence Ky

KNOWS that used cars were sold by Cooper Tires
at 7800 Dixie Highway and Roger Lane in
Florence, Ky.. I know that cars were sold for a
PERIOD of 1 years.

Thank You

Florence Henderson

SIGNATURE

0000

PHONE NUMBER

Date 9/19-00

To: Whom It May Concern

I FRANCES EDDINGTON who presides at
Dixie Apts Fl, Ky

knows that used cars were sold by Cooper Tires
at 7800 Dixie Highway and Roger Lane in
Florence, Ky.. I know that cars were sold for a
period of 7 years.

Thank You

Frances Eddington

SIGNATURE

UNListed

PHONE NUMBER

Date 9/19

To: Whom It May Concern

I Linda Brown who presides at

Dixie APTS - Florence, Ky

knows that used cars were sold by Cooper Tires

at 7800 Dixie Highway and Roger Lane in

Florence, Ky.. I know that cars were sold for a

period of several years.

Thank You

Linda L Brown

SIGNATURE

NA

PHONE NUMBER

Date 9/19-----

To: Whom It May Concern

I GENE A. Smith who presides at
Dixie APTS Florence, Ky-----

knows that used cars were sold by Cooper Tires
at 7800 Dixie Highway and Roger Lane in
Florence, Ky.. I know that cars were sold for a
period of 2 years.

Thank You

Gene Smith-----

SIGNATURE

PHONE NUMBER

Date 09-19-00 -----

To: Whom It May Concern

I Denise M. Wagoner ----- who presides at

Dixie Apts ----- Florence Ky -----

knows that used cars were sold by Cooper Tires

at 7800 Dixie Highway and Roger Lane in

Florence, Ky.. I know that cars were sold for a

period of 3 ----- years.

Thank You

Denise M. Wagoner -----

SIGNATURE

PHONE NUMBER

Date 09-19-00

To: Whom It May Concern

I Donna Beal ----- who presides at

Donna Beal, Florence, Ky -----

knows that used cars were sold by Cooper Tires

at 7800 Dixie Highway and Roger Lane in

Florence, Ky.. I know that cars were sold for a

period of 2 years.

Thank You

Donna Beal -----

SIGNATURE

PHONE NUMBER

Date 9/19-----

To: Whom It May Concern

I J. GilLeap----- who presides at
Florence Ky-----

knows that used cars were sold by Cooper Tires
at 7800 Dixie Highway and Roger Lane in
Florence, Ky.. I know that cars were sold for a
period of 10----- years.

Thank You

J. GilLeap-----
SIGNATURE

727-1022-----
PHONE NUMBER

Date 9/19-----

To: Whom It May Concern

I Glenna Brandenburg who presides at
7825 Riehl Dr #1 Flo. Ky-----

knows that used cars were sold by Cooper Tires
at 7800 Dixie Highway and Roger Lane in
Florence, Ky.. I know that cars were sold for a
period of 15----- years.

Thank You

Glenna Brandenburg

SIGNATURE

W/A-----

PHONE NUMBER

Date 9/19/2000

To: W h o m I t M a y C o n c e r n

I Marilyn Stephens who presides at
7825 Riche Dr. in Florence, Ky.
knows that used cars were sold by Cooper Tires
at 7800 Dixie Highway and Roger Lane in
Florence, Ky.. I know that cars were sold for a
period of many years.

T h a n k Y o u

Marilyn Stephens

S I G N A T U R E

Unlisted

P H O N E N U M B E R

Date 9-19-00

To: W h o m I t M a y C o n c e r n

I Tracey Terrell who presides at
Dixie APTS

knows that used cars were sold by Cooper Tires
at 7800 Dixie Highway and Roger Lane in
Florence, Ky.. I know that cars were sold for a
period of 2 years.

Thank You

Nancy Jones

SIGNATURE

N/A

PHONE NUMBER

Date 9-14-20

To: Whom It May Concern

I Robert Neal who presides at
202 Center St Florence Ky
knows that used cars were sold by Cooper Tires
at 7800 Dixie Highway and Roger Lane in
Florence, Ky.. I know that cars were sold for a
period of 5 years at least

Thank You

Robert Neal

SIGNATURE

283-2616

PHONE NUMBER

Date 9/14/00

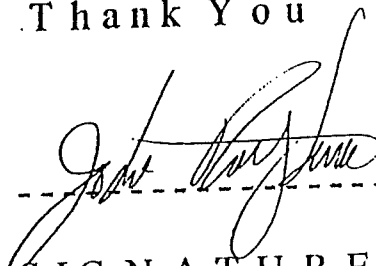
To: Whom It May Concern

I JOHN POTTINGHAUS who presides at

209 MEADOWS DR, FLORENCE KY

knows that used cars were sold by Cooper Tires
at 7800 Dixie Highway and Roger Lane in
Florence, Ky.. I know that cars were sold for a
period of 10 years.

Thank You



SIGNATURE

383.1249

PHONE NUMBER

Date 9-14-2000

To: Whom It May Concern

I Rene' Soulette who presides at

205 MERRAVAY DRIVE (594-4605 PHONE)
FLORENCE KY. 41042

knows that used cars were sold by Cooper Tires

at 7800 Dixie Highway and Roger Lane in

Florence, Ky.. I know that cars were sold for a

period of 8 years.

Thank You

Rene' Soulette

SIGNATURE

PHONE NUMBER

Date 9-14-00

To: W h o m I t M a y C o n c e r n

I Paul Lampkin who presides at

7410 Fair Court #125

knows that used cars were sold by Cooper Tires
at 7800 Dixie Highway and Roger Lane in
Florence, Ky.. I know that cars were sold for a
period of 1 years.

Thank You

Paul Lampkin

SIGNATURE

746-0823

PHONE NUMBER

Date 9-14-00

To: W h o m I t M a y C o n c e r n

I Betty Miller who presides at
7821 Riehl Dr. #3 Florence, Ky 41042
knows that used cars were sold by Cooper Tires
at 7800 Dixie Highway and Roger Lane in
Florence, Ky.. I know that cars were sold for a
period of 3 years.

Thank You

Betty Miller

SIGNATURE

(859) 282-7358

PHONE NUMBER

4/13/2000
To whom it may Concern

I Terry Schwimg At 3061 Allen Fork Dr.
Burlington Ky Have notice that
Copper tires have sold Used CARS
FOR the PAST 10 yrs. Locate at
Dixie Hwy + Rogers Lane Florence
Ky.

Thankyou,

Terry Schwimg

859-689-5310

Date 9-14-00

To: W h o m I t M a y C o n c e r n

I Tanya Roberts who presides at
282 Shannon Ct Florence, Ky 41042

knows that used cars were sold by Cooper Tires
at 7800 Dixie Highway and Roger Lane in
Florence, Ky.. I know that cars were sold for a
period of 10 years.

Thank You

Tanya Roberts

S I G N A T U R E

859-371-9113

P H O N E N U M B E R

Date 9-15-2000

To: Whom It May Concern

I Robert Moore who presides at
10480 Michael Dr. Florence, Ky 41042.
knows that used cars were sold by Cooper Tires
at 7800 Dixie Highway and Roger Lane in
Florence, Ky.. I know that cars were sold for a
period of _____ years.

Thank You

Robert Moore

SIGNATURE

371-3920

PHONE NUMBER

Date 9/15/2000

To: W h o m I t M a y C o n c e r n

I LARRY M BERGET who presides at
9 PATRICIA ST FLORENCE, KY 41042:
knows that used cars were sold by Cooper Tires
at 7800 Dixie Highway and Roger Lane in
Florence, Ky.. I know that cars were sold for a
period of 10 years.

Thank You


SIGNATURE

859-282-7811

PHONE NUMBER

Date 9-15-00

To: Whom It May Concern

I Vicki Lower who presides at
7043 Mandersley Florence Ky 41042
knows that used cars were sold by Cooper Tires
at 7800 Dixie Highway and Roger Lane in
Florence, Ky.. I know that cars were sold for a
period of 7 years.

Thank You

Vicki Lower

SIGNATURE

727-2837

PHONE NUMBER

Date 9-15-00

To: W h o m I t M a y C o n c e r n

I Charles Dawalt who presides at
7249 Tortway Rd Florence Ky 41042.

knows that used cars were sold by Cooper Tires
at 7800 Dixie Highway and Roger Lane in
Florence, Ky.. I know that cars were sold for a
period of 10 years.

Thank You

Charles W Dawalt

SIGNATURE

282 9609

PHONE NUMBER

Date 9/20/00

To: W h o m I t M a y C o n c e r n

I Wm. H. Clem who presides at
1890 Lamonworth COTT RD. Dry Ridge Ky
knows that used cars were sold by Cooper Tires
at 7800 Dixie Highway and Roger Lane in
Florence, Ky.. I know that cars were sold for a
period of 5 years.

Thank You

William H. Clem

SIGNATURE

857 428-3742

PHONE NUMBER

Date 9/20/00

To: Whom It May Concern

I Tim Dirkes who presides at
963 John St. Covington KY 41016 :

knows that used cars were sold by Cooper Tires
at 7800 Dixie Highway and Roger Lane in
Florence, Ky.. I know that cars were sold for a
period of 2 years.

Thank You

Tim Dirkes

SIGNATURE

Tim Dirkes

PHONE NUMBER

859-261-3875

Date 9-20-00

To: Whom It May Concern

I Edward S. Fletcher who presides at
3394 Cedar Tree Ln. Erlanger Ky 41018
knows that used cars were sold by Cooper Tires
at 7800 Dixie Highway and Roger Lane in
Florence, Ky.. I know that cars were sold for a
period of 3 1/2 years.

Thank You

Edward S. Fletcher

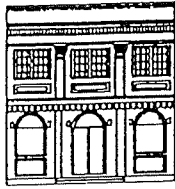
SIGNATURE

342-9169

PHONE NUMBER

EXHIBIT 2

BOONE COUNTY PLANNING COMMISSION



2995 Washington Street • Burlington, KY 41005

www.boonecountyky.org

Phone: (859) 334-2196

Fax: (859) 334-2264

E-mail: plancom@boonecountyky.org

November 1, 2000

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

FAX: 291-7902

RE: Auto Sales at 7800 Dixie Highway, Florence, Kentucky; Commercial One (C-1) Zone

Dear Mr. Dusing:

As a follow-up to our telephone conversation last week and in-response to the letter and packet of information that you submitted, I am providing the following information.

First, as you are aware, auto sales is not a permitted use in the C-1 zone. However, if a use has been determined to have pre-existing, nonconforming status, it may be continued. As I noted in my voice mail yesterday, the information that you provided is not compelling, but rather provides anecdotal evidence that private individuals may have occasionally parked cars on the premises with "for sale" signs. This practice, if it did occur with any regularity, does not constitute a regular car sales business as proposed by Mr. Day through his zone change/CUP application. Otherwise, a private individual who placed a "for sale" sign on a car at their home in a residential zone would have hypothetically established a car sales business at said home - this point is reinforced in the letter by Mr. Reinhardt which states "you will also find other vehicles for sale at other locations along this stretch of Dixie Highway." As I am not aware of any legal dealerships in the immediate vicinity, these seem to be informal sales between private individuals versus formal car sales businesses.

I requested several of the other members of the planning and enforcement staff to review the information that you provided. We have all agreed that the following issues need to be addressed before a finding in your client's favor can be reached.

- A. Your letter states that the Days will "continue to sell used cars within the historical parameters of that activity on that site," however, the alleged historical parameters have not been defined. As I noted above, it appears that this may have been limited to occasional, private sales between individuals. As discussed in our previous conversation, your case would be much stronger if you provided a copy of

an auto dealer's license issued by the state for this location (as well as successive renewals). In addition, any other specific evidence that shows a history of auto sales, such as auto titles or sales receipts for cars which list this address and the former business(es) at this location would help.

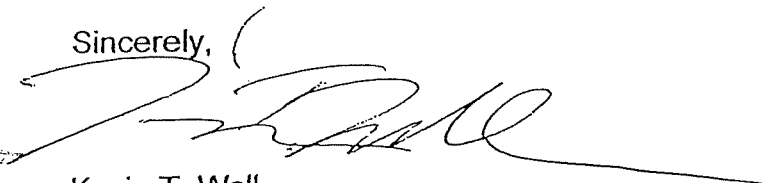
- B. You have provided copies of checks made to the City of Florence for Occupational Licenses for the Day business. However, the City has never issued a license for auto sales for either Day or the prior business (Cooper). Based on the photocopy that you provided, Boone County apparently did issue an Occupational License to Mr. Day for auto sales, however, it is my understanding that the County does not verify zoning compliance for proposed businesses that are also within the City - the City performs this task. Irrespective, I had a pre-application meeting for the zone change/CUP application with Mr. Day's engineer, and while we discussed the existing auto repair business, no mention was made of any pre-existing auto sales use. Likewise, Mitch Light discussed the proposal several times with Mr. Day and there was no mention of a pre-existing auto sales use, nor was this an issue raised at the Public Hearing. It seems somewhat strange that a claim of a pre-existing use would be made at this juncture (i.e., after the City Council's Planning and Zoning Committee is recommending denial of the application to the full Council) when, as evidenced by the submission of the zone change/CUP application, your client had basically conceded that the application was necessary in order to operate the intended business.
- C. The photographs show cars parked on the premises, but do not demonstrate that these vehicles were for sale. One photograph partially shows some white lettering on the windshield of one vehicle, but whether this writing states that the vehicle is for sale or not is not shown.
- D. The stack of "form" testimonials provided (your letter states that there are fifty seven of them) provide, as eluded above, some anecdotal evidence that cars with for sale signs may have occasionally been placed on the site. These are not sworn affidavits and do not attest to the nature, scale, duration, etc., of any car sales business that may have occurred at this location.
- E. No evidence has been provided regarding when the alleged car sales were conducted. As we have no record of a legal car sales business being conducted on the lot since at least 1988, any prior pre-existing, nonconforming use that may have existed may now be considered to be abandoned.

As can be deducted from the comments made above, compelling, tangible evidence needs to be provided before a finding that a pre-existing, nonconforming car sales business exists can be made. I will review any additional documentation that you can provide which will bolster your client's position and I will render another determination. However, if you/your client do not wish to pursue that route further, this letter can otherwise be considered to be

Mr. Gerald Dusing
November 1, 2000
Page 3

a determination that sufficient evidence to support a finding that a pre-existing, nonconforming auto sales lot at this location has not been provided, and this determination can be appealed to the Florence Board of Adjustment within thirty (30) days. As you are aware, in order for an appeal to be granted, it must be demonstrated that the decision is in error. Please call me if you have any questions or need any clarifications.

Sincerely,

A handwritten signature in black ink, appearing to read "Kevin T. Wall", written over a horizontal line.

Kevin T. Wall
Zoning Administrator
City of Florence

KTW/vlm

cc: Jeff Koenig, City Coordinator, City of Florence
Melissa Bradford, Zoning Enforcement Officer

EXHIBIT 3

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 *
 GERRIT P. DUSING * SCOTT M. GUENTHER *
 MICHAEL M. SKELTON * ROBERT D. DILTS *
 DEANIS H. WOLTERMAN * PAUL E. SCHWARZ **
 JAMES R. KRUE * CATHY ANN O. STAMMOS *
 JEROME C. MANDIS * JENNIFER A. STEPNER *
 MARCO D. DILLZ * JENNIFER L. LANGEN *
 STACEY L. GRAIS * W. THOMAS PISCHER *

40 WEST PIKE STREET

P.O. BOX 861

COVINGTON, KENTUCKY 41012-0861

859-291-7270

FAX 859-291-7902

OF COUNSEL
 JENNIFER T. COBB **
 JANICE M. KENNEDY **

4100 HURLINGTON PIKE - SUITE 344
 P.O. BOX 416
 FLORENCE, KENTUCKY 41022-0576
 859-371-0270
 FAX 859-371-8341

2407 ASHLAND AVENUE
 CINCINNATI, OHIO 45206
 859-291-7270

P. O. BOX 20728
 COLUMBUS, OHIO 43120
 614-438-8435
 FAX 614-438-9917

* AT NO ADMITTED IN OHIO
 ** ADMITTED ONLY IN OHIO

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

November 2, 2000

Via Fax No. 334-2264

Kevin T. Wall

Zoning Administrator, City of Florence

BOONE COUNTY PLANNING COMMISSION

2995 Washington Street

Burlington, KY 41005

RE: Day's Auto Sales

7800 Dixie Highway, Florence, Kentucky 41042

Dear Mr. Wall:

This responds to your letter of November 1, 2000. I regret that you do not find 57 signed statements from independent witnesses compelling. We do,

You request additional information to define the "historical parameters" of car sales on the property. Cars displayed for sale on a regular basis parked along the Dixie Highway (U.S. 25) frontage of this 7800 Dixie Highway property comprises the historical scope of this activity.

Whether or not the previous owner(s) had a state issued auto dealer's license is irrelevant to pre-existing, nonconforming land use determination. Day's Auto Sales has no practical way of tracing auto titles or sales receipts for cars listing this address.

The City of Florence in fact contacted Mr. Day and required an additional fee for car sales on the lot as clearly evidenced by the cancelled check provided to you. I have had recent experience where in fact the City of Florence scrutinized zoning before issuing an occupational license (remember pawnshop vs. check cashing?).

The application for zone change/CUP was for a moderate expansion of the existing, historical uses of the premises. The Planning Commission voted it would rather Day's business limp along within its present paved area rather than upgrade utilizing its C-1 property to its rear which is a well kept lawn. The Day's uses as an auto repair and/or used car sales are not permitted in C-1, but both uses are pre-existing. The CUP/zone change was necessary to operate the business for the request for modest expansion.

NOV 2

Kevin T. Wall
Zoning Administrator, City of Florence
BOONE COUNTY PLANNING COMMISSION
November 2, 2000
Page Two

Referencing your E., do you mean you have evidence of "legal" car sales on the lot prior to 1988 or that you checked back to 1988 and found none? If the former, please provide this evidence to us. It is not probative to contend that any pre-existing, nonconforming auto sale use on the premises that may have existed may now be considered abandoned when we have furnished a statement from the prior owner/seller to Day's, (Patricia Quast) that car sales have occurred on this lot for at least approximately the prior 12 years.

Very truly yours,

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


GERALD F. DUSING

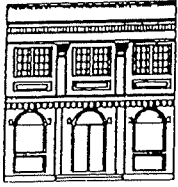
GFD:vam

cc: **Via Fax No. 282-0109**
Timothy Day
DAY'S AUTO CENTER

Via Fax No. 647-5411
Jeff Kocnig, City Coordinator
CITY OF FLORENCE

EXHIBIT 4

BOONE COUNTY PLANNING COMMISSION



2995 Washington Street • Burlington, KY 41005

www.boonecountyky.org

Phone: (859) 334-2196

Fax: (859) 334-2264

E-mail: plancom@boonecountyky.org

November 6, 2000

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

FAX: 291-7902

RE: Auto Sales at 7800 Dixie Highway, Florence, Kentucky; Commercial One (C-1)
Zone

Dear Mr. Dusing:

I have reviewed your letter dated November 2, 2000 regarding the above-referenced matter, which was written in response to my letter dated November 1, 2000.

First, regarding the form "testimonials," as mentioned in my first letter, these provide little more than anecdotal evidence that some sort of car sales, likely intermittent, casual sales between private individuals versus a formal sales business, may have occurred on the site. Although your letter states that you and your client find these forms to be compelling evidence, what is not stated is how many people with some knowledge of this matter refused to sign these "petition-like" forms, or how many people who signed these forms do not have any actual knowledge of the subject. Again, these are not sworn affidavits.

Second, your letter is correct in the respect that a dealer's license issued from the state is not required to establish a pre-existing, nonconforming use. However, documentation such as an old dealer's license, or auto titles or sales receipts which list the address in question as the dealer would significantly bolster your case because such documents are concrete, tangible evidence. What evidence has been provided to date is rather intangible and unspecific, particularly regarding the "historical parameters" of the alleged auto sales use. In short, no documentation other than unsupported claims have been provided regarding this issue.

Third, although it appears that your client did write multiple checks to the City, apparently for an Occupational License(s), the City nonetheless only issued one license. That Occupational License was for auto repair, and no license was issued for auto sales.

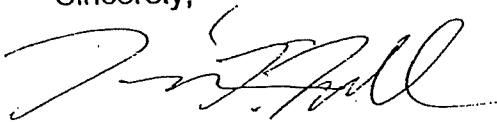
Mr. Gerald Dusing
November 6, 2000
Page 2

Fourth, relative to your question pertaining to paragraph "E" in my letter, we reviewed the Occupational Licenses that the City has on file for this location from the present back through 1988 (i.e., the previous Cooper business at this location). We did not find any documentation that an auto sales business has ever been conducted on this site.

Fifth, your 11/2/00 letter seems to reiterate points that were largely already stated in your original correspondence. As I determined, the case has not been established that a regular auto sales business, as is proposed by your client, had ever been conducted at this locale. Rather, it appears that occasional/intermittent, informal sales between private individuals may have occurred through the placement of "for sale" signs on parked cars. As you are aware, previous intermittent use does not constitute a pre-existing, nonconforming use. The letters and materials that you have submitted to date do not distinguish the difference between a formal, regular auto sales business and occasional, informal sales between private individuals - this is discussed at some length in my original letter.

As noted in my previous letter, compelling, tangible evidence needs to be provided before a finding that a pre-existing, nonconforming car sales business exists can be made. It is my conclusion that this has not yet occurred. I will review any additional documentation that you can provide which will bolster your client's position and I will render another determination. However, if you/your client do not wish to pursue that route further, this letter can otherwise be considered to be a determination that sufficient evidence to support a finding that a pre-existing, nonconforming auto sales lot at this location has not been provided, and this determination can be appealed to the Florence Board of Adjustment within thirty (30) days. As you are aware, in order for an appeal to be granted, it must be demonstrated that the decision is in error. Please call me if you have any questions or need any clarifications.

Sincerely,



Kevin T. Wall
Zoning Administrator
City of Florence

KTW/vlm

cc: Jeff Koenig, City Coordinator, City of Florence
Melissa Bradford, Zoning Enforcement Officer

EXHIBIT 5

BOONE COUNTY PLANNING COMMISSION
BOONE COUNTY ADMINISTRATION BUILDING
COURTROOM 3A
August 23, 2000
7 P.M.

PUBLIC HEARING

Commission Members Present: Mrs. Arnett - Secretary/Treasurer, Mr. Barlow, Mr. Caddell - Chairman, Mr. Chaney, Vice Chairman, Mr. Hicks, Mr. Knock (arrived during the applicant's presentation), Mr. McMillian, Mr. Newman, Mrs. Poston, Mr. Ries - Temporary Presiding Officer, Mr. White, and Mrs. Wilson.

Staff Members Present: Mr. Kevin Costello, AICP, Executive Director; Ms. Jan Hancock, Secretary; and Mr. Mitch Light, Assistant Zoning Administrator/ZEO.

Legal Counsel Present: Mr. Larry Dillon

Mr. Arnold Caddell, Chairman, called the meeting to order at 7 P.M.. Following an explanation of the Public Hearing process, the Chairman introduced the item on the Agenda:

1. **Applicant:** Timothy M. Day and Chris Day for Patricia Quast and David Quast (owners)

Request: Zoning Map Amendment

The request of Timothy M. Day and Chris Day for Patricia Quast and David Quast (owners) to consider a Zoning Map Amendment from Commercial One (C-1) to Commercial Two (C-2) and a Conditional Use Permit for an approximate 0.36 acre lot at 7800 Dixie Highway, Florence, Kentucky. The request is for a zone change and a Conditional Use Permit to allow auto sales and the expansion of an automotive repair facility.

Staff Member Mitch Light presented the Staff Report which included a slide presentation (see Staff Report).

The Chairman asked for the applicant's presentation.

Mr. Riley Kinman with R N K Environmental Inc., representing Chris Day and his son Timothy Day, presented an exhibit containing photographs of the site. He stated that the building was formerly blue, but is now white. Mr. Day and his son have made improvements to the property, including straightening up the wall and planting shrubbery on it, removing a lot of the debris, and putting up a new fence. He stated

that Chris and Timothy Day are small businessmen. Under the existing zoning, they are allowed to repair automobiles, but not sell them. They want to be able to sell some of the automobiles they repair. He stated that they currently have two bays and by adding the 18-foot addition they will have two additional bays, which will double their capacity for automobile repair.

Mr. Knock arrived at this time.

Mr. Kinman stated that they will add eighteen feet to the back of the building and twelve feet to the side. The proposed improvements to the office and restroom area, a two-bay addition (18' x 16' and 14' tall) to the back of the existing building for a total of four bays, a twelve-foot extension to the long side (27.6') of the building (parallel to Roger Lane), and an eighteen foot wide paved entrance from Roger Lane. He stated that the existing rock retaining wall on the southeast side of the building is finished. He indicated where they have planted some new trees. He stated that the concrete/blacktop area will be resealed and coated. There is a new sign on the southeast corner. Two new lights will be placed on the building to shine on the sales area and front lot area. The lights will be protected from shining onto the residential area behind the building. He stated that the proposed hours for auto repair are Monday through Friday from 8 AM to 5 PM and no Saturday or Sunday hours. Auto sales will be Monday through Friday from 8 AM to 5 PM, Saturday 8 AM to 4 PM, and no Sunday hours.

Mr. Newman questioned the eighteen-foot extension on the back of the building and the driveway into the new bays. Mr. Kinman stated that the bays will open towards Roger Lane and people will drive in from Roger Lane. Mr. Newman asked if all the bay doors will be accessed from Roger Lane. Mr. Kinman responded that the existing two bay doors are entered from Dixie Highway and only the new bay doors will be entered from Roger Lane. He reviewed pictures of the site.

Mrs. Arnett asked if they will move the dumpster. Mr. Kinman responded that they will move it to the back and enclose it.

Mr. Kinman stated that they have improved the appearance of the site with trees and wall repair. He stated that the fence is to conceal the storage area. He stated that there will be trees across the back to buffer the building from the residential area on Roger Lane. It is 33 feet to the next property, which is 33 feet for detaining water, and they can put a small depression there with berming. He indicated the high bay area, where the gravel drive will be, and where the refurbished restrooms and offices will be. He offered to answer any questions.

Mr. Newman asked if the high bays will be for diesel trucks or just for automobiles. Mr. Kinman responded "only automobiles".

Pictures provided by the applicant showing the "before" and "after" appearance of the site were circulated by Staff.

Chris Day stated that he had a license to sell cars on Industrial Road, so this is not a new car sales lot coming into Florence – it is just one moving from one place to another. He stated that he hopes to improve this site.

Timothy Day stated that this is a family-owned business. They were on Industrial Road, but left because the property was not being maintained by the management. They have had a car license for two years. He stated that the Fire Marshall signed off on the Coopers property after they made improvements. They have worked hard at cleaning up the site and have planted some shrubs. He stated that the kids are still coming over the four-foot fence. He stated that some of the shrubs in the back will need to come out because of the beer cans and debris – and they will clean up that area. They currently have cars parked at the opening onto Dixie Highway to keep people from cutting through to Roger Lane. They can close that access or make it smaller. He stated that the maximum number of cars they had on their lot was twenty to twenty-five. He stated that they would never have over twenty-five cars for sale.

The applicant submitted a booklet entitled “Day Addition – Request for Zoning Change from C-1 to C-2” (see Exhibit 1). This concluded the applicant’s presentation.

The Chairman asked if there was anyone else present who wished to speak in favor of the proposal. There being no response, he asked if there way anyone present in opposition to the request or having questions.

Mr. Tom Wilson, 5 Roger Lane, across the street from the site, read his written comments into the record (see Exhibit 2).

Mr. Ken Alford, 1 Roger Lane, stated that he will be looking at the site from his house. His children walk through there and there will be extra traffic. This use will bring down the value of his home. His main concerns are safety and property value. He stated that he lives in a residential area, but he will have a garage across the street from him.

The Chairman asked if there was anyone else present who wished to speak. There being no response, he asked if there were any comments or questions from the Commissioners.

Mrs. Poston questioned the storage. Mr. Timothy Day responded that the storage is outside at the end of the building in the fenced area. Mr. Kinman indicated the location of the storage area between the existing building and the adjacent building (Ameristop). Mrs. Poston asked if there is storage there now. Mr. Kinman responded that it has been cleaned out and there is a new white fence that prevents people from Dixie Highway seeing what is stored back there. Mr. Chris Day stated that there were tires back there, but they do not have anything back there now. Mr. Knock asked if they plan to store back there. Chris Day responded “no”. Mr. Knock commented that they refer to it as a storage area. Timothy Day stated that right now they have an

engine crane, used tires, and some lumber back there. Mrs. Poston asked if properties on Roger Lane will be able to see into the storage area. Timothy Day responded "no" and stated that there is a fence back there.

Mrs. Poston questioned the gravel drive. Mr. Kinman responded that it will be paved. Mr. Knock questioned if the drive is used as an access from Dixie Highway to Roger Lane or if it is only ingress and egress for this property. Mr. Kinman responded that it is only ingress/egress for this property.

Mr. Knock asked if storage is permitted on the site under C-1 zoning. Mr. Light responded that storage is not permitted in the rear. He stated that tires have been seen above the fence. He stated that no storage is permitted outside without being screened. The storage along the side has been there for a number of years and there have been complaints. Mr. Knock asked if C-1 permits the outside storage of tires with a fence. Mr. Light responded that he does not think so, but will check and let the Committee know. Mr. Costello stated that it could be that the storage is illegal and that it is pre-existing. State law is that if the violation exists for ten years or more, it is permitted. Staff will have to determine how long tires or any storage has been there. Staff will provide this information to the Committee. Mr. Knock commented that this may be a better alternative if outside storage is permitted.

Mr. White stated that this was an abandoned gas station and asked if the EPA has signed off on the underground fuel tanks. Mr. Kinman responded that the site is not on the list of underground storage areas in the state of Kentucky, so the EPA either signed off on it or it pre-dates the regulations. Mr. White responded that there is no pre-dating of the regulations. Mr. Kinman stated that he believes the tanks were filled in place and paved over. Mr. Costello stated that Staff will check into this. Mr. Knock questioned an NFA (No Further Action) by the state in instances like this. Chris Day stated that Dr. Quast told him that the tanks were taken up twenty years ago. Chairman Caddell stated that Staff will provide this information to the Committee.

Mrs. Arnett asked if they will be doing mechanical or auto body repairs. Chris Day responded "just mechanical - no auto body".

Mr. Newman stated that the way the C-1 zoning line runs seems odd. He questioned if there were commercial uses at 1, 2, and 4 Roger Lane. Mr. Costello responded that some years ago, the Planning Commission through its consultant, KZF, had manually drawn maps and he has found a number of misrepresentations. Errors also occurred when working with aerial photographs. Mr. Light stated that he was told by Staff Member Dave Geohegan that Jerry Newton made a Zoning Administrator interpretation that included these houses. He stated that this is not the issue at this time, but does need to be looked at. Chairman Caddell stated that this issue can be looked at in the update process. Mr. Costello stated that if the houses were zoned Residential, there would have to be a 50-foot minimum setback because this would be a commercial business next to residential. If the houses are zoned C-1, there are less

stringent setbacks. Mr. Newman asked Staff to check on what appears to be a vacant lot behind #1 Roger Lane. Mr. Costello responded that he believes that is one house on two lots. Mr. Newman asked Staff to look at the zoning in the entire area and to see if #1, #2, and #4 Roger Lane were ever commercial uses. Mr. Light will check to see if there were ever Occupational Licenses for these properties.

Mr. Ries asked if there will be repairs done to cars other than those that will be up for sale. Mr. Chris Day responded "yes". Mr. Ries stated that those cars will be stored at the back of the building and questioned if will be adequately buffered from the residents. Mr. Chris Day responded "yes". Mr. Ries questioned the lighting back there. Chris Day responded that he hired the electrical company to put up the lights that are there now and they light up the lot.

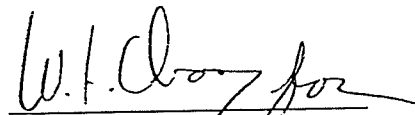
Mr. Knock stated that the houses were probably zoned C-1 because there is not a fifty-foot setback. He believes the houses may have been zoned to accommodate the setback. Mr. Costello responded that the zoning code changed in 1980 and this needs to be researched.

The Chairman asked if there were any further comments.

Mr. Alford emphasized the effect this will have on his house. He will be able to see the garage that will be on the property.

There being no further comments, the Chairman stated that the Committee Meeting for this item will be on September 6, 2000 at 4 P.M. in the Fiscal Courtroom on the second floor of this building. This item will be on the Agenda for the Business Meeting on September 20, 2000 at 7:30 P.M.. The Chairman closed this Public Hearing at 8:10 P.M..

APPROVED:


Arnold Caddell, Chairman

Attest:


Jan Hancock, Recording Secretary

Exhibits:

- 1 "Day Addition – Request for Zoning Change from C-1 to C-2 for Property at 7800 Dixie Highway, Florence, Kentucky" with cover letter signed by Riley N. Kinman, Ph.D., P.E. – submitted by the applicant.
- 2 Memo In re: Day Auto Care Rezoning and Conditional Use, dated August 22, 2000, submitted by Tom Wilson, 5 Roger Lane.

R N K ENVIRONMENTAL INC.

2643 CRESCENT SPRINGS ROAD
ERLANGER, KY 41017
FAX / PHONE: (606) 344-0966

8/23/2000
PH. #1
EX 1

July 11, 2000

Boone County Planning Commission
2995 Washington Street
Burlington, KY 41005

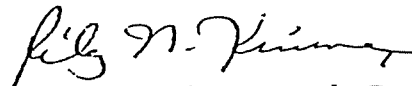
Re: Request for Zoning Change from C-1 to C-2
For Property at 7800 Dixie Highway

Dear Members of the Commission:

This is to provide you with an application for a zoning change request at 7800 Dixie Highway, Florence, Ky., from C-1 to C-2. The reason for this request is to permit expansion of existing automobile repair operations and add automobile sales to the existing operations. A copy of a concept plan is attached as a part of the zoning change application.

Please contact me at 344-0966 if you have any questions.

Respectfully yours,



Riley N. Kinman, Ph.D., P.E.
President, RNK Environmental, Inc.

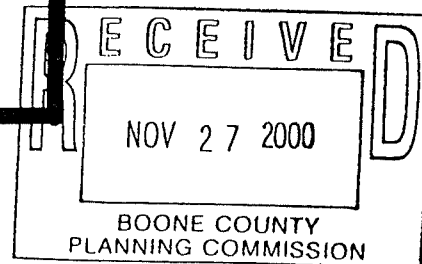
RNK/hlh

Enclosures

EXHIBIT 6

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

3. Applicant's Name DAY'S AUTO CENTER, c/o TIMOTHY M. DAY
Phone Number (859) 282-8664 Fax No. _____
Applicant's Address 7800 Dixie Highway (U.S. 25)
Florence, KY 41042

City State Zip

4. Description of Request: Appeal decision of Zoning Administrator regarding continuing pre-existing non-conforming use of auto sales/display of autos for sale along frontage of Lot on U.S. 25.

5. Name of Development DAY'S AUTO CENTER

6. Location of Development 7800 Dixie Highway, Florence, KY 41042

7. Acreage Under Review 0.36 Acre

8. Lot Number and Name of Subdivision (if part of a subdivision) Plat BK 1, P. 118-A
Lots 1 and 2 ORCHARD ACRES SUBDIVISION

9. Owner of Property Applicant by Land Contract: Patricia Quast vendor/fee owner of
Phone Number of Owner (859) 282-8664 / Patricia Quast (859) 283-9400 10. record
Address of Property Owner c/o David Quast, DMD, 7620 Dixie Highway, Florence, KY 41042

City State Zip

11. Proposed Use(s) on Site Existing historical uses: light auto repair/sales of tires/auto maintenance and limited used car sales

12. Total Square Footage of Existing and/or Proposed Buildings N/A - no new building

13. Current Zoning on Property C-1

14. Deed Book 748 Page No. 301 Group No. 216

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: *Timothy M. Day*

Property Owner's Signature: *Patricia Quast*

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 11-27-00 Fee Received \$ 726.00 R# 26144
- 2. Is application complete? _____ Yes _____ No
- 3. Staff Reviewer KEVIN WALL
- 4. Scheduled Board Action Date _____
- 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.

PEARL, SARAH
DB. 178, P. 681

LOT 3

1 STY
BRICK
RES.

CHAIN LINK FENCE

BLKTP. DRIVE

OVERHEADS
ELECT. & TEL.

N 42° 26' 30" W 100.00'

50' R/W

25' PAV.

ETHEL & COULIE ALFORD (333/27) R/W

1 STY BRICK COM.

GRASS

ESTER HANCOCK
DB. 222, P. 100

142.35'

S 47° 33' 30" W

VACANT
1 STY. BLK. SERVICE STA.
11' HIGH
FLOOR ELEV 905.0

GRASS

N 47° 33' 30" E

892.0

ROGERS LANE

GROUP 216

0.36 ACRE
PRESENT ZONING C-1
CONC. PARKING LOT

LOT 1
ORCHARD ACRES SUB
PLAT BK. 1, P. 118-A

PERM DRAIN. EASE

STORM DRAIN BOX

POLE

TEL.

S 22° 46' 30" E

S 63° 25' 05" E

32.58

ARC-35.48

ENTRANCE

5' CONC. WALK

6' CURB

HANDICAP RAMP

CURB BOX

U.S. HWY.

NO. 25

PATRICIA A. QUAST PROPERTY
7800 Dixie Highway

Plat

*Don
Conrad
Furn
Kermit*

NORA L. DEMPSEY DB. 205, P. 286, O. 106, O. 81, O. 81, O. 81

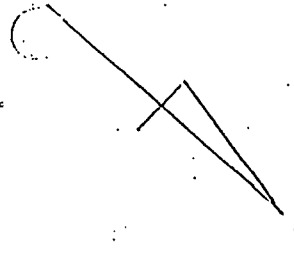
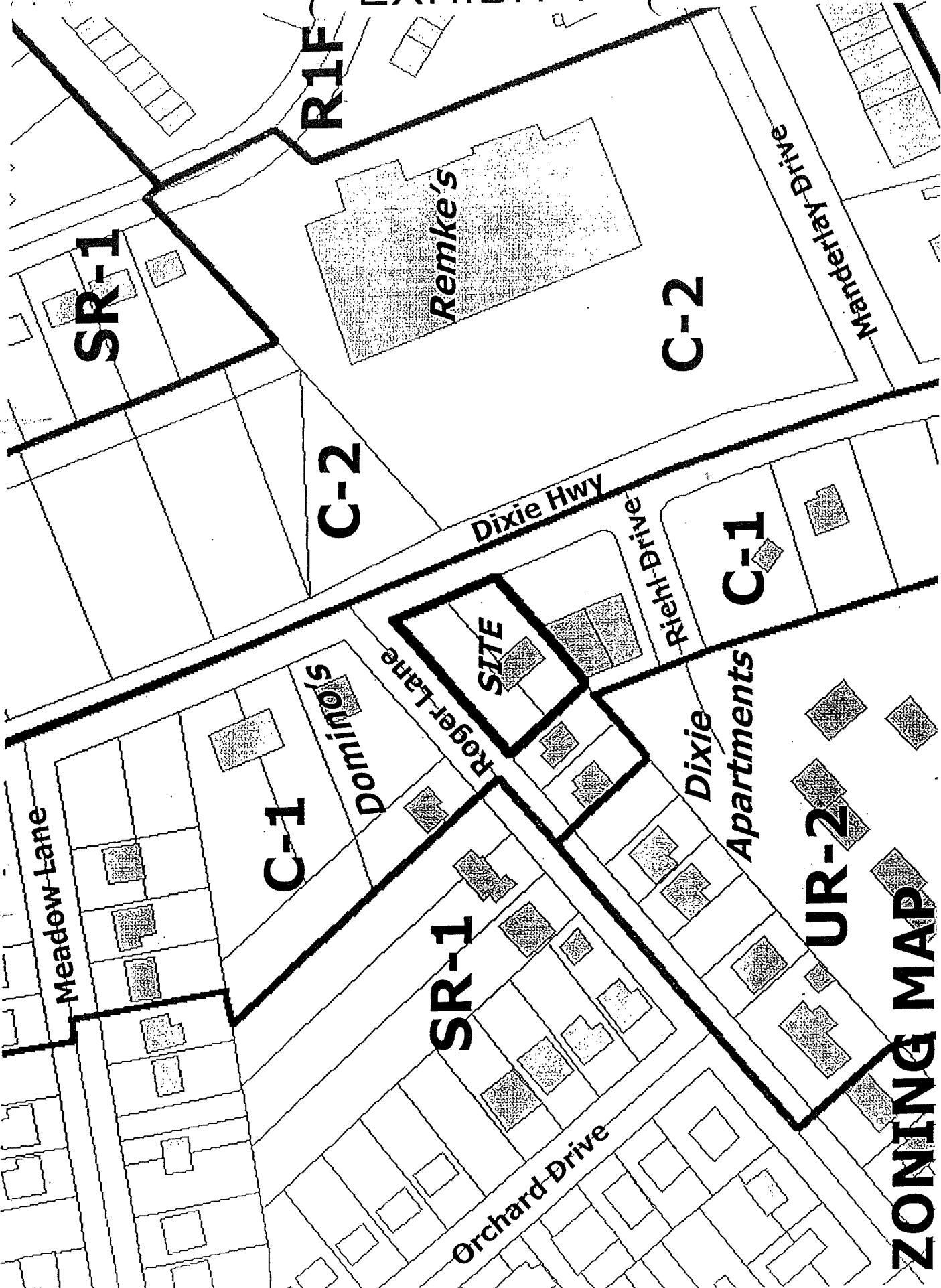


EXHIBIT 7



SR-1

R1F

Remke's

C-2

Manderlay Drive

C-2

Dixie Hwy

C-1

Right Drive

SITE

Dominic's

Roger Lane

C-1

Dixie Apartments

Meadow Lane

SR-1

UR-2

Orchard Drive

ZONING MAP

EXHIBIT 8

approved or approved with modification, the Board shall direct the Zoning Administrator to issue a conditional use permit listing the specific conditions specified by the Board for approval. If disapproved, the Board shall state the reasons for disapproval. If the application is disapproved by the Board, the applicant may seek relief through the appropriate circuit court. Appeals from Board decisions shall be as provided in Kentucky Revised Statutes, Section 100.347.

SECTION 267

Expiration Conditional Use Permit

A conditional use permit shall be deemed to authorize only a particular conditional use. If said permit has not been exercised within one (1) year from the date it was issued, or a time limit established by the Board, or if said conditional use shall cease for more than one (1) year, the conditional use permit shall not revert to its original designation unless a new public hearing has been conducted. "Exercised" means that binding contracts for the construction of the main building or other improvement have been let; or in the absence of contracts that the main building or other improvement is under construction to a substantial degree, or that prerequisite conditions involving substantial investment under contract, in development, are completed. When construction is not a part of the use, "exercised" shall mean that the use is in operation in compliance with the conditions as set forth in the permit, or that substantial costs or expenses to establish the use have been incurred.

SECTION 270

Nonconforming Lots, Uses, and Structures

Within the districts established by this order or amendments to districts that may later be adopted, lots, uses of land, and structures, which were lawful before this order was passed or amended, but which would be prohibited, regulated, or restricted under the terms of this order or further amendments may exist. It is the intent of this order to permit these nonconforming lots, uses and structures to continue until they are no longer non-conforming. It is further the intent of this order that a nonconforming use or structure shall not be enlarged or extended beyond the scope and area of its operation at the time it became a legal nonconforming use, nor shall other uses or structures which are prohibited elsewhere in the same district be permitted on lots of nonconforming uses or structures.

Uses of structures not legally established before this order was passed or amended shall not be given the statutes of legally pre-existing, non-conforming uses or structure, and may be subject to penalties for violation under Section 410 through 430 of this order.

SECTION 271

Single Non-Conforming Lots of Record and Subdivisions, and Non-Conforming Setbacks

If any lot of record does not meet the minimum square footage requirements that are generally applicable in the district wherein said lot is located, and that lot existed at the effective date of adoption or amendment of this order, the owner may develop that lot in conformance with the dimensional (square footage) regulations, including front yard setback requirements, previously in effect. The lot must be developed in conformance with all other requirements of this order. Variances of any requirements other than the square footage of a lot or lot size shall be obtained only through action of the Board of Adjustment and Zoning Appeals as provided in Section 250 through Section 254. Subdivisions which had been granted preliminary plan approval prior to the adoption of this order may be developed in conformance with dimensional regulations under which preliminary plan approval was given.

In such instances where the front yard setback requirements for a pre-existing development differ from the current regulations, and an extension or enlargement of a previously developed street or subdivision is approved, the front yard setback requirements shall be adjusted at a rate of at least five feet for each

consecutive lot until the new minimum required setback is obtained, although all other requirements of this order must be met. When an addition is proposed for a pre-existing structure that does not meet the current setback requirements, the addition may be located along the nonconforming building line established by the existing structure, but may not encroach into such nonconforming setback unless a variance is granted by the Board of Adjustment and Zoning Appeals.

SECTION 272

Non-Conforming Uses of Land

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.

SECTION 273

Change from One Nonconforming Use to Another

The Board of Adjustments and Zoning Appeals shall have the power to hear and decide on applications to permit a change from one nonconforming use to another.

The Board shall not permit such a change unless the new nonconforming use is as equally or more compatible with permitted uses in the district in which it is located as the existing nonconforming use. Application for change of nonconforming use shall conform to the procedures and requirements for appeals as specified in Sections 245-254, inclusive, of this order and Kentucky Revised Statutes, Section 100.253.