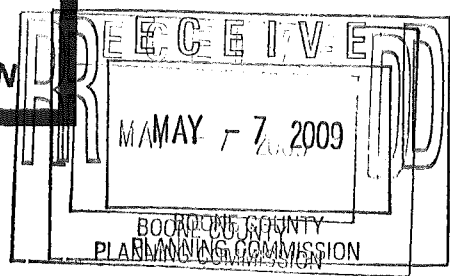


09-FBOA-004-A

APPLICATION FORM

BOARD OF ADJUSTMENT AND ZONING APPEALS ACTION BOONE COUNTY PLANNING COMMISSION



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

- 1. (Check One) Boone [X] Florence [ ] Walton [ ] Union [ ]
2. (Check One) [X] Conditional Use Permit [X] Variance [ ] Appeal [ ]
3. Applicant's Name Jonathan Woche, AICP
Phone Number 513-561-6232 ext. 4 Fax No. 513-561-1615
Applicant's Address McBride Dale Clarion - 5725 Dragon Way, Suite 220
Cincinnati OH 45227
City State Zip
4. Description of Request: Conditional use to allow electronic changeable copy prices on Speedway sign, and a variance to allow a reduction in the 660 foot separation between electronic changeable copy signs.
5. Name of Development Speedway Store #5348
6. Location of Development 7819 US 42
7. Acreage Under Review 0.8745
8. Lot Number and Name of Subdivision (if part of a subdivision)
9. Owner of Property EMRO Marketing
Address of Property Owner 539 S. Main Street Phone No. 502-223-4346 (Bill Oerther)
Findlay OH 45840
City State Zip
11. Proposed Use(s) on Site Sign change - Replace existing manual changeable copy price panels with electronic change panels.
12. Total Square Footage of Existing and/or Proposed Buildings Existing - 2,340 SF Store
13. Current Zoning on Property C-3/PD
14. Deed Book 559 Page No. 32 Group No. 2042
15. Is the site subject to a zone change? No
If yes, give date of approval
16. Have you submitted a Site Plan with this request? Yes
17. Have you submitted a list of adjoining property owners with this request? Yes
18. I, or we, understand and agree that this application and drawing(s) are being filed in accordance with the Boone County Zoning Regulations.

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

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

(over)

**BOARD OF ADJUSTMENT AND  
ZONING APPEALS ACTION  
APPLICATION  
PAGE 2**

**SECTION B** (To be completed by the Boone County Planning Commission Staff)

1. Date Received 5/7/09 Fee Received \$1,732.00 R# 58576
2. Is application complete?  Yes  No
3. Staff Reviewer \_\_\_\_\_
4. Scheduled Board Action Date \_\_\_\_\_
5. Board Action:  
6/10/09 **Approved**  
**Approved with Conditions** (See #6)  
**Denial** (See #7)
6. Conditions of Approval: SEE FBOA MEETING MINUTES  
AND C.L.U.R.
7. Reasons for Denial: \_\_\_\_\_

**Boone County Planning Commission  
Boone County Administration Building  
2950 Washington Street, Room 317  
P.O. Box 958  
Burlington, Kentucky 41005  
(859) 334-2196 - Phone  
(859) 334-2264 - Fax  
plancom@boonecountyky.org - E-mail  
[www.boonecountyky.org](http://www.boonecountyky.org) - Web Page**

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

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

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

## STAFF REPORT

APPLICANT: McBride Dale Clarion for Speedway

LOCATION: 7819 US 42, Florence, Kentucky

ZONING: Commercial Services/Planned Development (C-3/PD)

DATE: June 10, 2009

### Proposal

The applicant has submitted the following applications:

1. A Conditional Use Permit application to allow electronically changeable messages on Speedway's 20' tall, 171.79 square foot free-standing sign. The submitted rendering shows that four manually changeable fuel price windows will be replaced with two electronic fuel price windows and an electronic cigarette price window. The electronic fuel windows are 6.83 square feet (20.187" x 48.75") in area and the electronic cigarette window is 5.67 square feet in area (20.187" x 40.436")
2. A Variance to allow the electronic price panels within 660' of another electronic sign. The Boone County G.I.S. system shows that the Speedway sign is approximately 430' from Wildwood Inn's electronic sign.

### Pertinent Site History

On August 22, 1994, the Boone County Planning Commission approved a Sign Permit for a 20' tall, 179 square foot free-standing sign.

### Applicable Regulations

Article 2, Section 220 of the Boone County Zoning Regulations states that two duties of the Board of Adjustment and Zoning Appeals is to act on Conditional Use Permit and Variance applications.

Article 2, Section 250 of the Boone County Zoning Regulations states that the Board of Adjustment and Zoning Appeals shall have the power to hear and decide on applications for variances. A variance is defined as a departure from the dimensional terms of the zoning regulation pertaining to the height, width, or location of structures, and the size of yards and open spaces where such departure meets the requirements of KRS 100.241 to 100.247.

The Board should evaluate the applicant's variance request in terms of the criteria listed in Section 251 of the Boone County Zoning Regulations:

1. Before any variance is granted, the Board must find that the granting of the variance will not adversely affect the public health, safety or welfare, will not alter the essential character of the general vicinity, will not cause a hazard or nuisance to the public, and will not allow an unreasonable circumvention of the requirements contained in the Zoning Regulations.
  - A. The requested variance arises from special circumstances which do not generally apply to land in the general vicinity, or in the same zone;



- B. The strict application of the provisions contained in the regulations would deprive the applicant of the reasonable use of the land or would create an unnecessary hardship on the applicant;
  - C. The circumstances are the result of actions of the applicant taken subsequent to the adoption of the Zoning Regulation from which relief is sought.
2. The Board shall deny any request for a variance arising from circumstances that are the result of willful violations of the Zoning Regulation by the applicant subsequent to the adoption of the zoning regulation from which relief is sought.

The Board needs to evaluate the Conditional Use Permit request as it relates to the criteria necessary for granting or denying a Conditional Use Permit as stated in Section 262 of the Boone County Zoning Regulations. The criteria are listed below:

- 1. Will be harmonious with and in accordance with the general objectives, or with any specific objective of the County's comprehensive plan, a specific corridor plan and/or the zoning order;
- 2. Will be designed, constructed, operated, and maintained so as to be harmonious and appropriate in appearance with the existing or intended character of the general vicinity and shall not change the essential character of the same area;
- 3. Will be hazardous to existing or future neighboring uses;
- 4. Will be served adequately by essential public facilities and services such as highways, streets, police and fire protection, drainage structures, refuse disposal, water and sewer, and schools; or that the persons or agencies responsible for the establishment of the proposed use shall be able to provide adequately such services;
- 5. Will create excessive additional requirements at public cost for public facilities and services and will not be detrimental to the economic welfare of the community;
- 6. Will involve uses, activities, process, materials, equipment and conditions of operation that will be detrimental to any persons, property, or the general welfare by reason of excessive production of traffic, noise, smoke, dust, fumes, glare, or odors;
- 7. Will have vehicular approaches to the property which shall be so designated as not to create an interference with traffic on surrounding public thoroughfares.

Article 34, Section 3413 of the Boone County Zoning Regulations states that individual parcels of land in C-3 zoning districts shall be permitted a density of one (1) on-premises, architectural free-standing. In the City of Florence, the sign can be up to 20' tall and 150 square feet in area (dependent on road frontage).

Article 34, Section 3430 of the Boone County Zoning Regulations permits electronically changeable message boards as a Conditional Use in the Commercial Services (C-3) zoning district provided that the following requirements are met:

- A. Such message boards will be considered a part of a permitted sign, free-standing or building mounted; up to fifty percent (50)% of the permitted sign area can be used for an electronically changeable message board.



- B. All such message boards shall meet the minimum standards of the Kentucky Transportation Cabinet and any other controlling local, state, or federal agency.
- C. Electronically changeable message boards shall not be permitted at intervals of less than six-hundred sixty (660) feet, measured along the centerline of each interstate or thoroughfare from which the sign will be visible, between lines through the center of the signs and perpendicular or radial to said centerline.
- D. Apparent motion of the visual message, caused by, but not limited to, the illusion of moving objects, moving patterns or boards of light, expanding contracting, or rotating shapes or other similar animation effects, shall be prohibited. Such restriction applies to "scrolling" or "running" messages.
- E. The message displayed on the board must be displayed for a minimum of five (5) second intervals. In no instance can a message, or part thereof, flash on the message board.

#### Relationship of the Request to the Comprehensive Plan

The 2005 Boone County Comprehensive Plan's "2030 Future Land Use Plan" designates the majority of the site for "Commercial" uses. This designation is defined as "retail, corporate and professional office, interchange commercial, indoor commercial recreation, restaurants, services, etc."

The Future Land Use Development Guidelines (pages 140-142) found in the Land Use Element state that "developments in Boone County should give consideration to the overall design of the area. Design should be a primary concern at the early stages of the development, with an emphasis on the aesthetic impact of the proposed use. The minimal use of signs is encouraged; signage should be adequate to identify a specific development, but should not be used as a means to compete for motorist attention. The objective is to avoid the confusion and/or distraction of motorists, and to avoid the potential negative impacts of signs on the visual appearance of a development or corridor" (Design, Signs, and Historic Preservation).

#### Site Characteristics

The 0.8745 site is located on the southeast side of U.S. 42 and contains a 2,519 square foot Speedway convenience store, gasoline canopy, and eight striped parking places. Access to the site is provided from two curb cuts on U.S. 42, a curb cut on Wynnbrook Drive, and two shared driveways that connect to Rally's. The 20' tall free-standing sign is located in-between the two curb cuts on U.S. 42.

#### Surrounding Land Uses and Zoning

- Northeast: Wynnbrook Drive and Wildwood Inn (C-3/PD)
- Northwest: US 42, Colletts Liquor (O-2/PD), Penn Station (O-2/PD), and Camino Real (C-3/PD)
- Southeast: Joseph Cadillac, Subaru, and Saab (C-3/PD)
- Southwest: Rally's (C-3/PD)



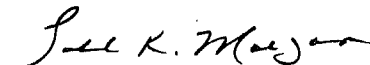
Staff Comments

1. The free-standing sign is legally non-conforming because it is 20 feet tall and 171.79 square feet in area. The Zoning Regulations permit free-standing signs in C-3 districts to be a maximum of 20' tall and 150 square feet in area in the City of Florence.
2. Staff recommends that the Board should analyze the "Design, Signs, and Historic Preservation" section of the Future Land Use Development Guidelines before acting on the requests. This section calls out that motorists should not be confused and/or distracted by excessive signs and that signs should not have a negative impact on the visual appearance of a corridor.
3. Section 3430 of the Boone County Zoning Regulations states that an electronic message board shall conform to the following criteria:
  - A. The electronic message board(s) shall not be more than fifty percent (50%) of a permitted sign area. The electronic message boards comprise 11.25% (19.33/171.79) of the overall sign area.
  - B. Electronic messages must be displayed on the board for at least 5 seconds and messages cannot flash, scroll, or run. The gasoline fuel price should only be changed one or twice a day.
  - C. Electronic message boards must be at least 660 feet apart. A Variance request was submitted because Speedway's sign is located approximately 430' from Wildwood Inn's electronic sign.
4. If the application is approved, Staff recommends the following conditions:
  - A. The electronic copy can only advertise fuel and cigarette prices;
  - B. The electronic copy shall be limited to one color and that color should be defined;
  - C. The sign shall be equipped with photocells and all electronic copy shall dim as the sky gets darker.

Conclusion

K.R.S. 100.237 and 100.241 and Section 220 of the Boone County Zoning Regulations gives the Florence Board of Adjustment and Zoning Appeals the authority to act on the requests.

Respectfully submitted,



Todd K. Morgan, AICP  
Senior Planner, Zoning Services

TKM/pr



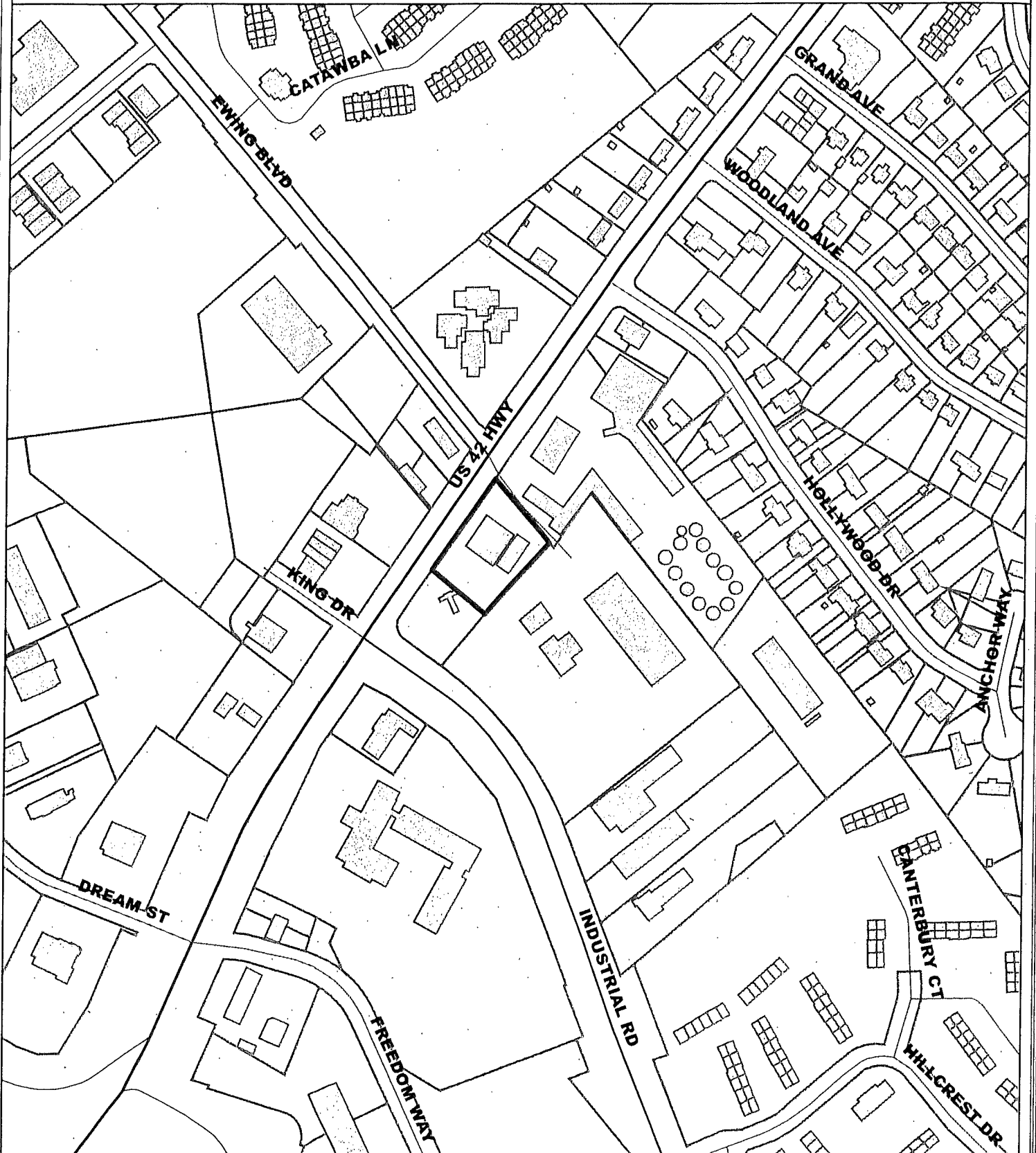
Attachments

- \*Site Vicinity Map
- \*Letter From the Applicant
- \*Plot Plan
- \*Existing Sign
- \*Proposed Sign
- \*Aerial Map with 660' Radius
- \*Zoning Map
- \*Future Land Use Map
- \*Application



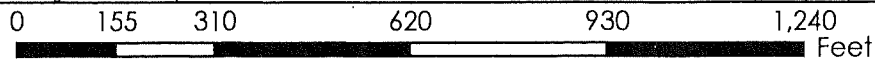
# SITE VICINITY MAP

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**Boone County GIS - Putting Northern Kentucky on the Map**



**Project Description and Justification Statement**  
**7819 US 42, Florence, KY – Speedway Store #5348**  
**Electronic Changeable Price Sign Panels**  
**Conditional Use and Variance Request**

Speedway SuperAmerica operates a Speedway convenience store and fuel station at 7819 US 42 in Florence, Kentucky. The property is zoned C-3 Commercial Services District. The existing store has a freestanding sign along US 42 that is approximately 20 feet tall, with a clearance of approximately 4'6" under the sign.

The existing freestanding sign currently contains four (4) manual changeable copy price panels. Speedway proposes to replace the four manual changeable copy price panels with three (3) electronic changeable copy price panels. Only the price portion of the proposed panels will be electronic copy. The electronic display "window" for the prices is 20.187" tall and 48.75" wide. The actual number display will be 18.187" high and 45.71" wide (approximately 5.8 SF each). The proposed replacement of the manual copy panels with the electronic changeable copy panels will not result in an increase in sign area or sign height. Electronic copy signs are permitted in the C-3 District subject to conditional use approval by the City of Florence Board of Adjustment.

There is an existing electronic changeable copy message sign for Wildwood Inn approximately 430 feet northeast of the proposed Speedway sign change. The Wildwood Inn sign is designed to be used to provide variable messages, whereas the panels proposed for Speedway will only display numeric information for price. A variance is requested to allow the electronic numeric changeable copy price panels to be located less than 660 feet from the existing electronic changeable copy message sign.

We believe that the proposed sign panel changes will not result in any adverse affect on the public health, safety or welfare, and will not alter the character of the general vicinity. The price panels will not cause a hazard or a nuisance, and allows Speedway to utilize improved, modern technology that limits time spent by employees manually changing prices. We believe that the proposed numeric electronic changeable copy sign panels comply with the general conditional use standards as specified in Section 262 of the Boone County Zoning Resolution. We respectfully request approval of the conditional use and variance to allow the proposed change to the sign.





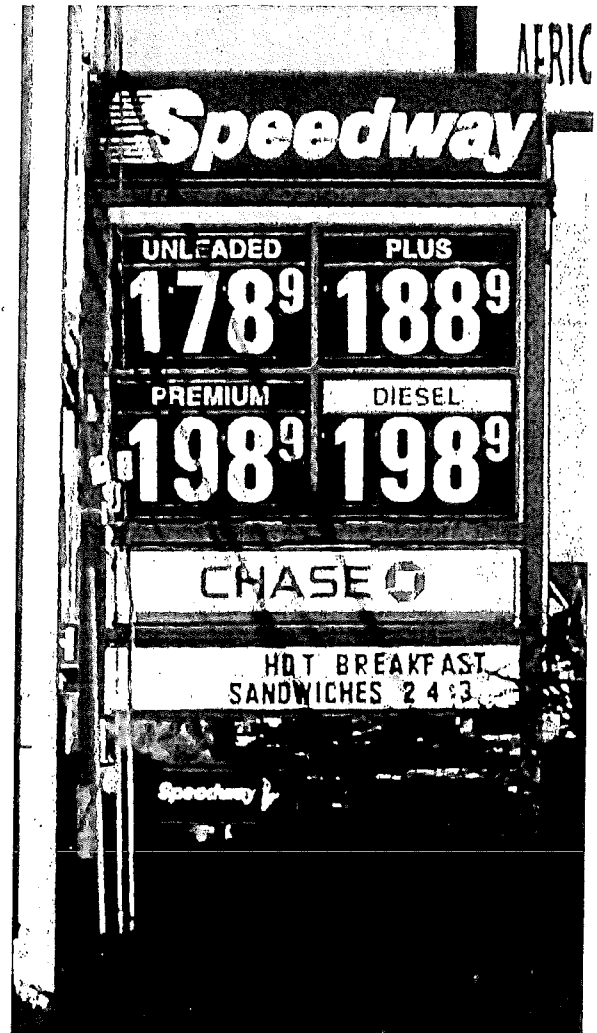
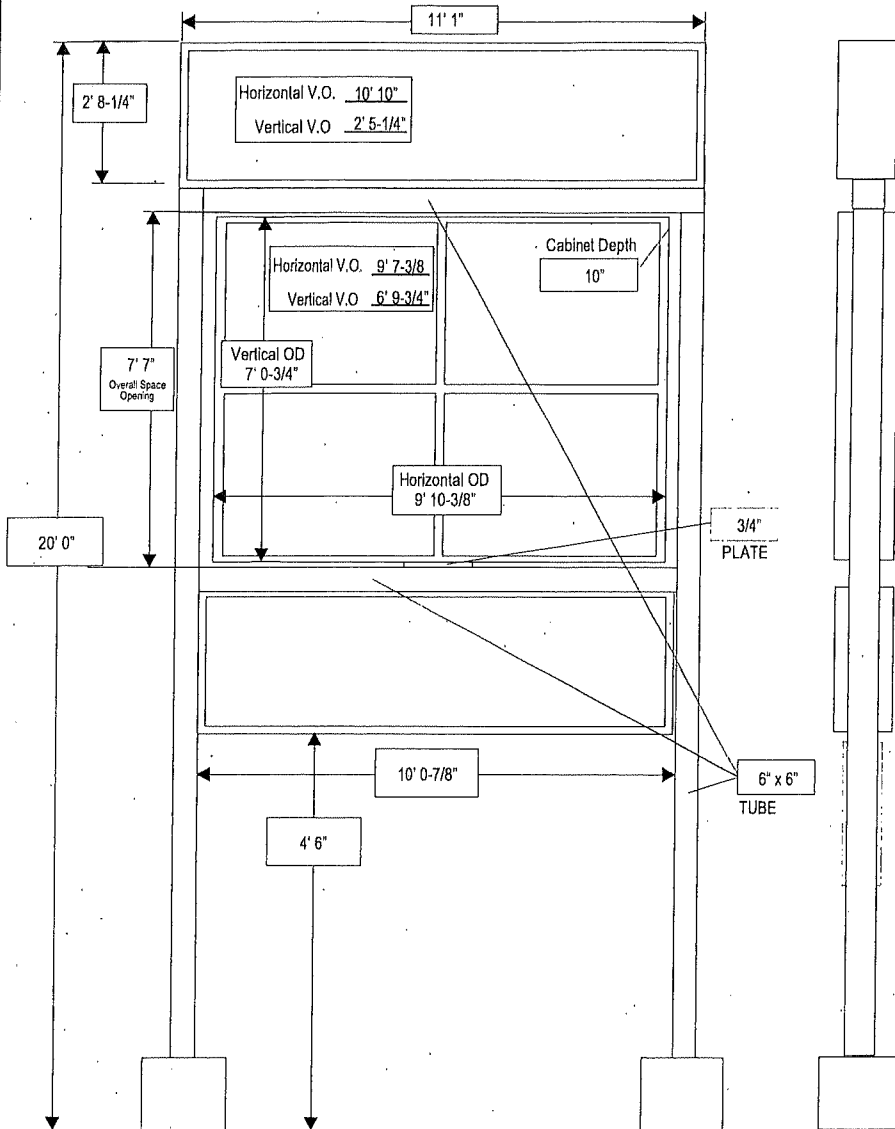


# LED SIGN CABINET RETROFIT SURVEY FORM

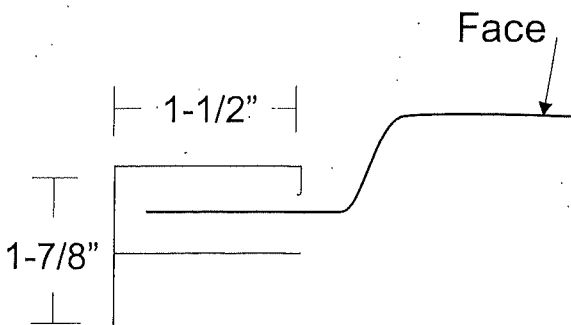
CUSTOMER NAME: **SPEEDWAY**

ADDRESS: **7819 US Highway 42** CITY: **Florence** STATE: **KY** ZIP CODE: **41042**

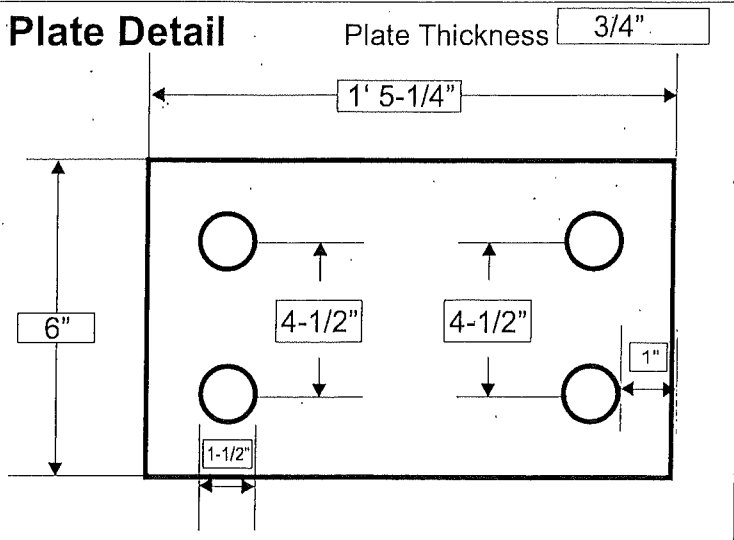
FACILITY NUMBER: **#5348** TELEPHONE NUMBER: ( ) FAX NUMBER: ( )



## Retainer



## Top Plate Detail

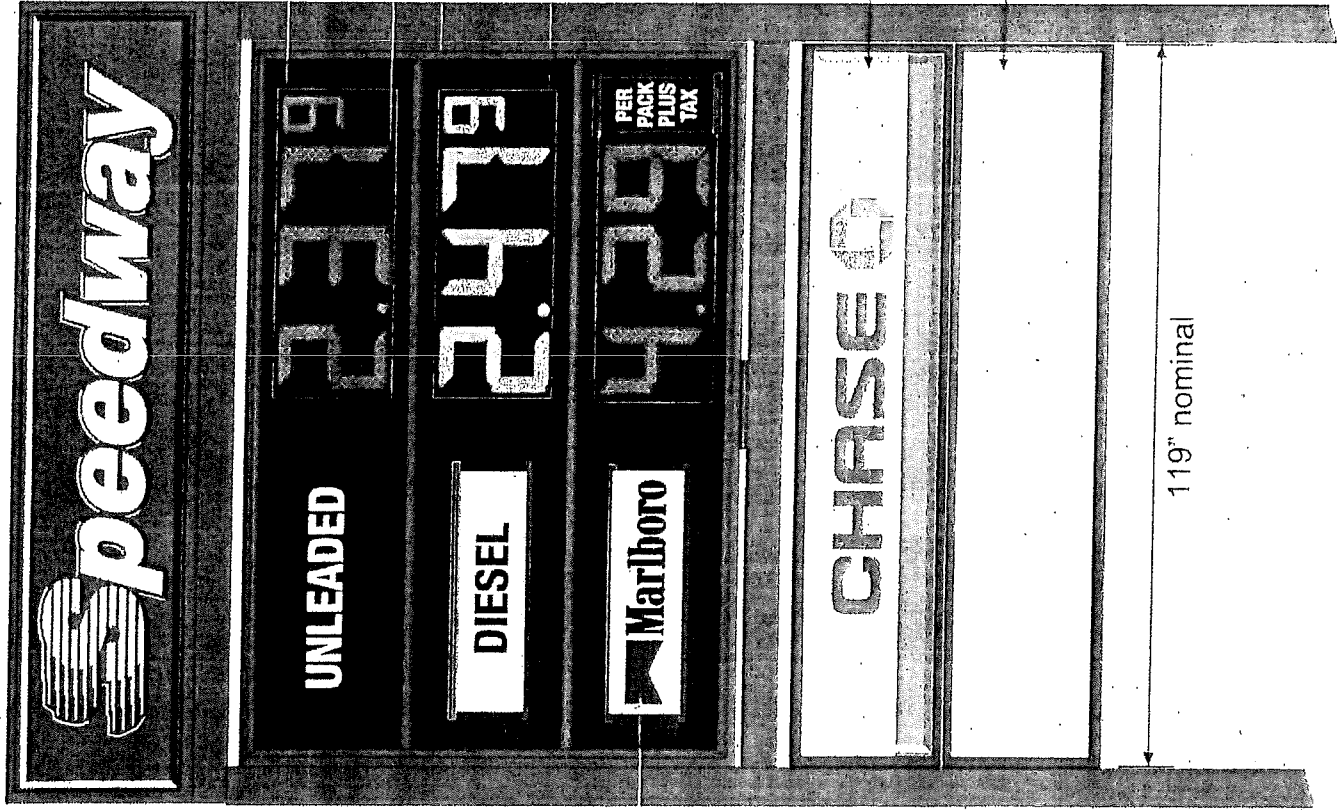




**PROPOSED SIGN**

**20' TALL**

**171.79 SQ. FEET**



**ELECTRONIC**

**PRICE WINDOWS**

**20.187" x 48.75"  
6.83 SQ. FEET**

18" red  
LumiDigit 2

**20.187" x 48.75"  
6.83 SQ. FEET**

18" green  
LumiDigit 2

**20.187" x 40.436"  
5.67 SQ. FEET**

Existing Chase  
panel to remain

Existing 2-line reader  
board to remain

**ELECTRONIC COPY**

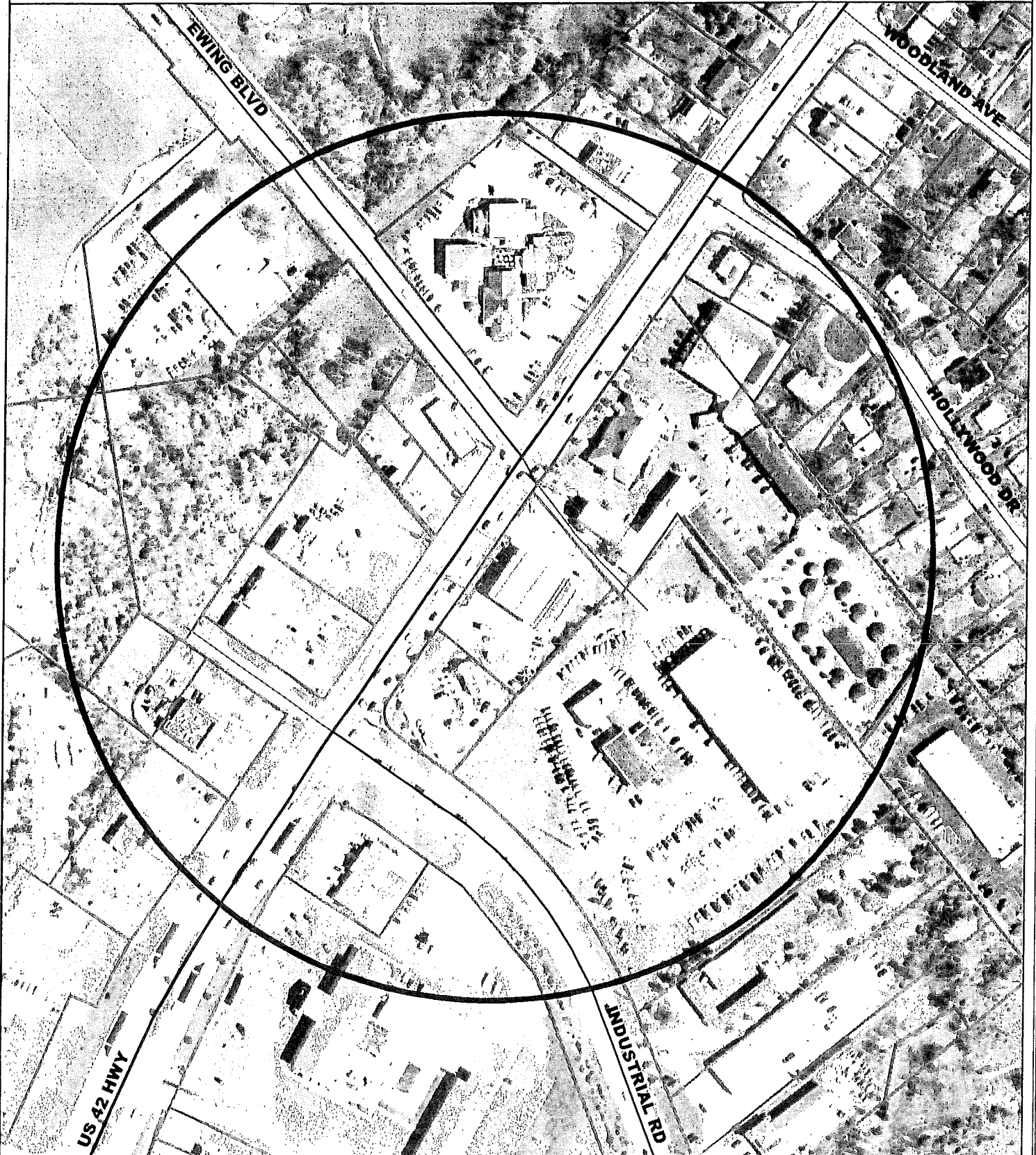
**19.33/171.79 = 11.25%**

SCALE: 3/8" = 1'-0"



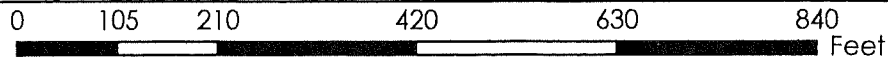
# AERIAL MAP WITH 660' RADIUS

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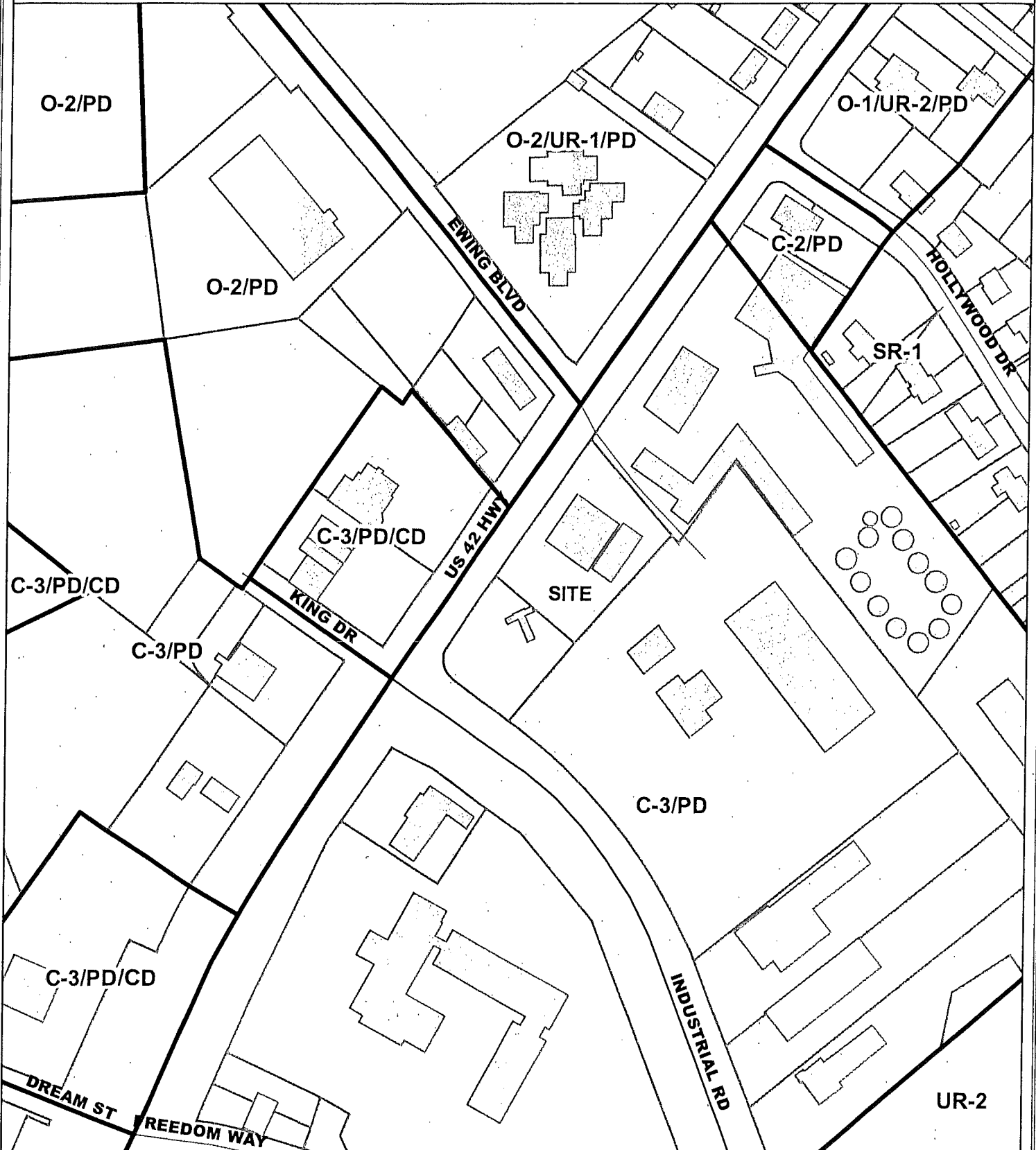


**Boone County GIS - Putting Northern Kentucky on the Map**



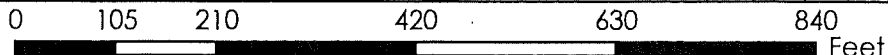
# ZONING MAP

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1 inch = 200 feet

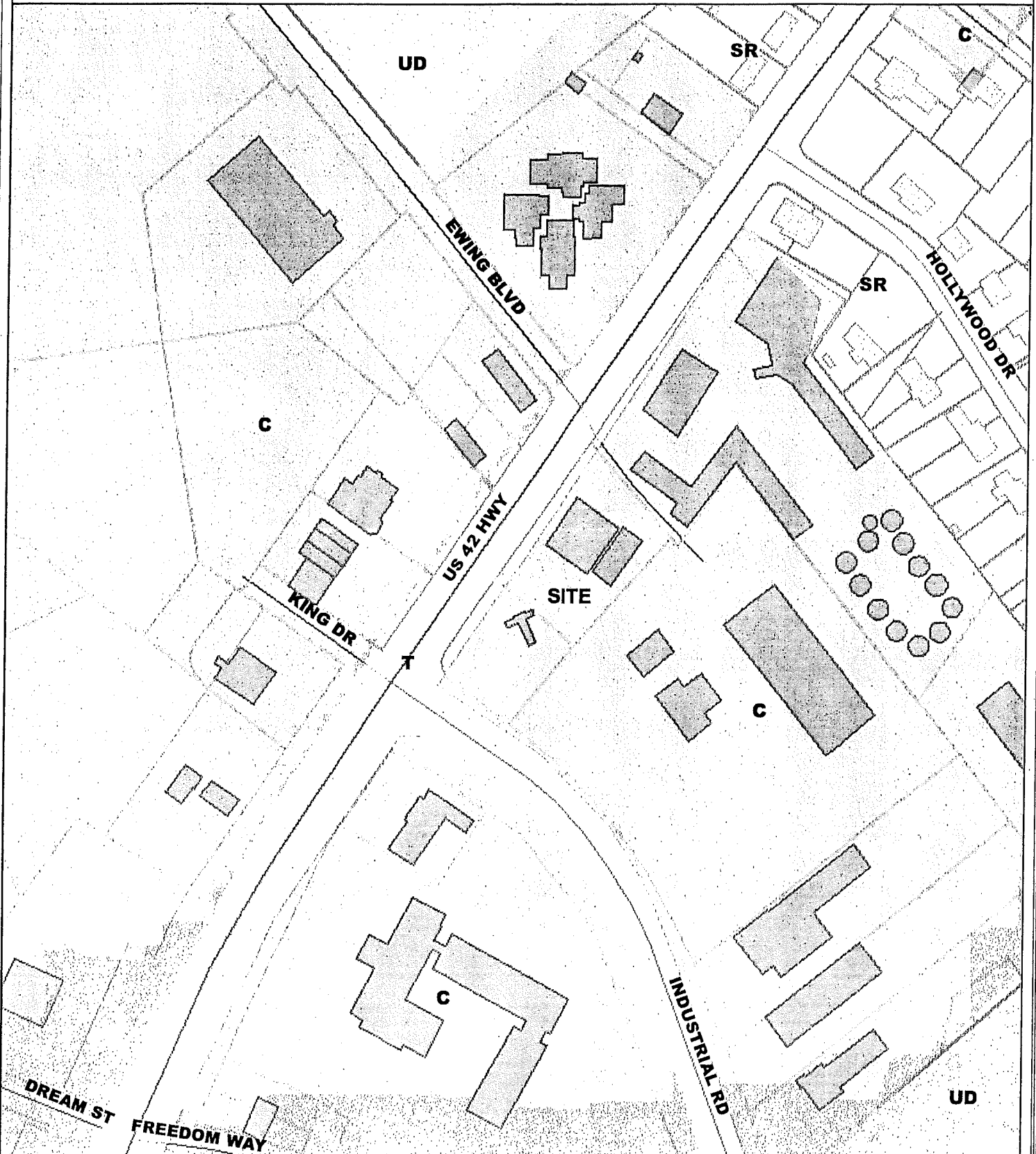


**Boone County GIS - Putting Northern Kentucky on the Map**



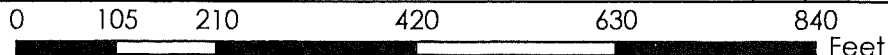
# FUTURE LAND USE MAP

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1 inch = 200 feet

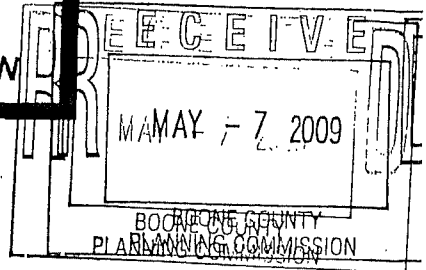


**Boone County GIS - Putting Northern Kentucky on the Map**



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 Jonathan Woche, AICP  
Phone Number 513-561-6232 ext. 4 Fax No. 513-561-1615  
Applicant's Address McBride Dale Clarion - 5725 Dragon Way, Suite 220  
Cincinnati OH 45227  
City State Zip

4. Description of Request: Conditional use to allow electronic changeable copy prices on Speedway sign, and a variance to allow a reduction in the 660 foot separation between electronic changeable copy signs.

5. Name of Development Speedway Store #5348

6. Location of Development 7819 US 42

7. Acreage Under Review 0.8745

8. Lot Number and Name of Subdivision (if part of a subdivision)

9. Owner of Property EMRO Marketing

- Address of Property Owner 539 S. Main Street Phone No. 502-223-4346 (Bill Oerther).

10. Findlay OH 45840  
City State Zip

11. Proposed Use(s) on Site Sign change - Replace existing manual changeable copy price panels with electronic changeable copy price panels.

12. Total Square Footage of Existing and/or Proposed Buildings Existing - 2,340 SF Store

13. Current Zoning on Property C-3/PD

14. Deed Book 559 Page No. 32 Group No. 2042

15. Is the site subject to a zone change? No  
If yes, give date of approval

16. Have you submitted a Site Plan with this request? Yes

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

18. I, or we, understand and agree that this application and drawing(s) are being filed in accordance with the Boone County Zoning Regulations.

ORIGINAL Property Owner's Signature: William Oerther, Pres. Manager SSA LLC  
(Faxed, Photocopied or Scanned Signatures will NOT be Accepted)

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

(over)

COPY

CLUR #09-FBOA-004-A

CERTIFICATE OF LAND USE RESTRICTION

- 1. NAME AND ADDRESS OF PROPERTY OWNER(S)  
EMRO Marketing  
539 S. Main Street  
Findlay, OH 45840
  
- 2. ADDRESS OF PROPERTY  
7819 U.S. 42  
Florence, KY 41042
  
- 3. NAME OF SUBDIVISION OR DEVELOPMENT (if applicable)  
Speedway
  
- 4. DEED BOOK 559                      PAGE NO. 32                      GROUP NO. 2042
  
- 5. TYPE OF RESTRICTION(S) (Check all that apply)  
 Zoning Map Amendment:                       Conditional Use Permit  
From \_\_\_\_\_ To \_\_\_\_\_  
 Development Plan                       Conditional Zoning  
 Subdivision Plat                       Other:  
(Not Recorded)  
 Variance
  
- 6. NAME AND ADDRESS OF PLANNING COMMISSION, BOARD OF ADJUSTMENT, LEGISLATIVE BODY OR FISCAL COURT WHICH MAINTAINS THE ORIGINAL RECORDS CONTAINING THE RESTRICTION

BOONE COUNTY PLANNING COMMISSION  
2950 WASHINGTON STREET, ROOM 317  
P.O. BOX 958  
BURLINGTON, KENTUCKY 41005

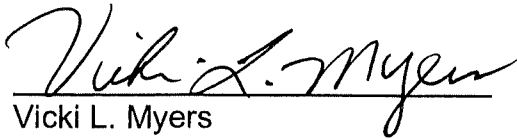
Todd K. Morgan  
SIGNATURE OF COMPLETING OFFICIAL

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

COMMONWEALTH OF KENTUCKY

COUNTY OF BOONE

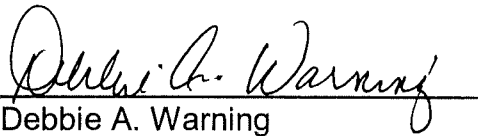
Subscribed, sworn to, and acknowledged before me by Todd K. Morgan on behalf of the  
Boone County Planning Commission this 17 day of June, 2009.



Vicki L. Myers  
NOTARY PUBLIC, State at Large

My commission Expires:  
April 17, 2011

This instrument was prepared for recording purposes only by:



Debbie A. Warning  
Boone County Planning Commission  
2950 Washington Street, Room 317  
P.O. Box 958  
Burlington, Kentucky 41005

NO TITLE EXAMINATION

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

CONDITIONS OF APPROVAL

The following Conditions of Approval apply to the Conditional Use Permit and Variance approved by the Florence Board of Adjustments and in accordance with the current zoning in effect as of June 10, 2009 Certificate of Land Use Restriction (#09-FBOA-004-A), for EMRO Marketing, Property Owner(s).

The following conditions will apply:

- 1) The electronic copy can only advertise fuel and cigarette prices.
- 2) The electronic copy color shall be limited to one color and the color is red.
- 3) The sign shall be equipped with photocells.
- 4) The sign shall conform with Article 34 of the zoning regulations.
- 5) The approval is based on the applicant's presentation and proposed sign drawing.

The approved Conditional Use Permit and Variance as well as the preceding conditions apply to the property described in:

DEED BOOK 559 PAGE NO. 32 GROUP NO. 2042