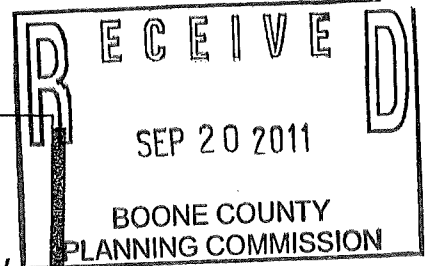


APPLICATION FORM



BOARD OF ADJUSTMENT AND ZONING APPEALS ACTION BOONE COUNTY PLANNING COMMISSION

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

See Boone County Zoning Regulations

SECTION A (To be completed by applicant)

- 1. (Check One) Boone [checked] Florence \_\_\_\_\_ Walton \_\_\_\_\_ Union \_\_\_\_\_
2. (Check One) [checked] Conditional Use Permit \_\_\_\_\_ Variance \_\_\_\_\_ Appeal \_\_\_\_\_ Change in Non-Conforming Use \_\_\_\_\_
3. Applicant's Name B.I. ALLEN CO. d/b/a PHANTOM FIREWORKS \*
Phone Number 303 746 1064 Fax No.
Applicant's Address 555 MARTIN LUTHER KING BLVD
Groveport Ohio 44502
4. Description of Request: RETAIL SALE OF CONSUMER FIREWORKS AND GENERAL MERCHANDISE FROM PERMANENT STORE
5. Name of Development N/A
6. Location of Development 8125 MAIL ROAD, FLORENCE, KY 41042 (FORMER CIRCUS CITY BUILDING)
7. Acreage Under Review 5.476 SEE DEED ATTACHED
8. Lot Number and Name of Subdivision (if part of a subdivision) N/A
9. Owner of Property BRAYER FLORENCE LLC
Address of Property Owner 7162 READING RD Phone No. 513 608-3619
10. CINCINNATI OHIO 45237
11. Proposed Use(s) on Site RETAIL SALE OF FIREWORKS AND GENERAL MERCHANDISE FROM THIS PERMANENT LOCATION WITHIN THE BUILDING
12. Total Square Footage of Existing and/or Proposed Buildings 31,252 sq ft - EXISTING
13. Current Zoning on Property C-3
14. Deed Book D 988 Page No. 23 Group No. 2040A
15. Is the site subject to a zone change? NO
16. Have you submitted a Site Plan with this request? REDRAWINGS
17. Have you submitted a list of adjoining property owners with this request? YES
18. I, or we, understand and agree that this application and drawing(s) are being filed in accordance with the Boone County Zoning Regulations.

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

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

\* WITH COPIES (over) P 392.7206 TO GERALD F. DUSING P 394.6200 e GDUSING@ASWDLAW.COM

**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 9-20-11 Fee Received \$1050.00 Receipt # 63630 cr
2. Is application complete?  Yes  No
3. Staff Reviewer \_\_\_\_\_
4. Scheduled Board Action Date \_\_\_\_\_
5. Board Action:  
\_\_\_\_\_ **Approved**  
10/12/11 **Approved with Conditions (See #6)**  
\_\_\_\_\_ **Denial (See #7)**
6. Conditions of Approval: SEE 10/12/11 FBOA Meeting  
MINUTES + C.C.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.

**SECTION 262**

**General Standards Applicable to All Conditional Uses**

The following reviews the seven criteria the Board must use to judge each Conditional Use Permit request:

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 any such services;
5. Will create excessive additional requirements at public cost for public facilities and services and will 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, fumes, glare or odors;
7. Will have vehicular approaches to the property which shall be so designed as not to create an interference with traffic on surrounding public thoroughfares.

## STAFF REPORT

APPLICANT: B.J. Allen Company d/b/a Phantom Fireworks

LOCATION: 8125 Mall Road, Florence, Kentucky

ZONING: Commercial Services (C-3)

DATE: October 12, 2011

### Proposal

A Conditional Use Permit application has been submitted to allow the year round retail sales of fireworks at 8125 Mall Road (former Circuit City Building), Florence, Kentucky. The submitted floor plan shows that Phantom Fireworks plans to convert the approximate 31,000 square foot building as follows (see attachments):

- Approximately 8,000 square feet will be a display area for fireworks and other merchandise (picnic supplies, paper goods, holiday trim, games, etc.).
- Approximately 7,400 square feet area will be unoccupied but can be converted into an additional display area in the future.
- The remainder of the building (approximately 15,600 square feet) is largely storage areas but also contains office space, break rooms, restrooms, and the loading dock.

The applicant has also submitted two architectural rendering options for the front elevation (see attachments). The main difference between the two options is that option 1 shows a purple entrance wall and option 2 shows a brown/grey entrance wall the more closely matches the bottom of the building. The applicant has informed Staff that they would like approval of option 1.

### Pertinent History

On June 8, 2011, the Florence Board of Adjustment upheld the Zoning Administrator's decision that the retail sale of fireworks from a permanent facility could not be approved under the Boone County Zoning Regulations (see attachments).

On September 13, 2011, the City of Florence passed an Ordinance adopting and approving text amendments to articles 10, 11, and 40 of the Boone County Zoning Regulations to define, permit and regulate fireworks retail sales in the C-3, C-4, I-1, and I-2 zoning districts.

### Site Characteristics

The site is 5.476 acres in area and contains an approximate 31,000 square foot building that was formerly occupied by Circuit City. Customer parking lot is located the front of the building and there is a rear service area. The site is accessed from Mall Road through the parking lot of the shopping center to the south. The site has existing landscaping/vegetation along the north, south, and west property lines. The area along the north property line is a grade which slopes down to Rosetta Creek.

### Applicable Regulations

Section 220 of the Boone County Zoning Regulations states one duty of the Board of Adjustment and Zoning Appeals is to act on Conditional Use Permit applications.

The Board needs to evaluate the Conditional Use Permit request terms of the criteria listed in Section 262 and 1033 of the Boone County Zoning Regulations.

Section 262 (General Standards Applicable to all Conditional Uses) - The Board may consider whether such use at the proposed location:

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.

Section 1033 lists fireworks retail sales as a Conditional Use in the C-3 zone and may be approved subject to the approval and qualifications of the Board of Adjustment and Zoning Appeals provided:

- a. The activity is an integral part and subordinate function of a permitted commercial use or service; or
- b. the arrangement of use, building, structure will be compatible with the organization of permitted and accessory uses to be protected in the district.

Section 4000 of the Boone County Zoning Regulations defines fireworks retail sales as "the sale of consumer or common fireworks classified as Division 1.4G (formerly Class C) explosives by the United States Department of Transportation to the general public in a non-seasonal retail environment in accordance with KRS 227. Customary accessory uses including the storage of inventory for on-site sales are permitted at a non-seasonal fireworks retail sales establishment. Storage, warehousing, or distribution of inventory for multiple store locations, the manufacturing or wholesaling of fireworks, or the sale of display fireworks classified as Division 1.3G (Class B) explosives by the United States Department of Transportation, are not permitted within a fireworks retail sales establishment. Facilities used for fireworks retail sales must be approved by the Boone County Building Department and applicable fire officials. (Ancillary sales under KRS 227.715(2) are not affected by this definition.)

### 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 and a smaller area as "Developmentally Sensitive". These designations are defined as follows:

Commercial - "Retail, corporate and professional office, interchange commercial, indoor commercial recreation, restaurants, services, etc."

Developmentally Sensitive - "Areas that have an existing slope of twenty percent or greater for a height of 20 meters, or have unique soil or flooding characteristics which limit the ability of an area to support urban development, or contain significant wooded areas, creeks, wildlife habitat or other natural features that are important to a site's stability and visual character..."

The Future Land Use Development Guidelines (pages 140-142) found in the Land Use Element contain the following passages that relate to the request:

- A. "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).
- B. "Developments in Boone County must include landscaping to accompany the proposed project. This landscaping should be designed to improve the public view of a development, and should be incorporated into parking lots and other vehicle circulation areas, as well as within open spaces and around structures. Landscaping is intended to minimize the visual impacts of the development from adjoining properties and roadways. The amount of heat absorbed by impervious cover from sun radiation is decreased by landscaping, which reduces energy costs. Landscaping helps to purify the air of harmful pollutants, reducing health impacts. It also helps reduce the quantity and improve the quality of storm water runoff, including temperature. The use of bioretention islands (water filtering basins) and grass swales should be used where possible in place of raised islands. Native species should be used wherever possible to minimize pesticides and other high impact forms of maintenance.

Developments along major roadways in Boone County must include landscaping between the development and the right-of-way in order to promote the aesthetic appearance from the roads and to facilitate the compatibility of differing land uses" (Landscaping).

The Land Use Element states that "the Mall Road area has been recommended through the 2002 Mall Road Corridor Study to become a new urbanism corridor. The Study shows a dense, well designed, urban style of development that should occur over time. Residential development may be a part of this urban area, but should be located to minimize noise impacts from the interstate and airport. The entire area of Steinberg Drive, Rosetta Drive, Connector Drive, and the I-75 Mall Road ramps should be planned in detail to provide mixed use development that includes a good road connection and traffic circulation between the Pleasant Valley Road corridor and I-75. Regionally-oriented growth should be confined to Mall Road and Houston Road, and should not expand on to U.S. 42, KY 18 or Hopeful Church Road. However, the highway-scaled, automobile-

oriented appearance of this growth should be minimized through the provision of pedestrian improvements, smaller facilities within outlots in conjunction with larger strip-style centers, multiple, scattered parking areas in lieu of large central parking areas, and street trees along Mall Road. This growth should also include multi-modal transportation amenities" (Florence Commercial Area, pp 144-145).

The following goals and objectives from the 2010 Boone County Comprehensive Plan relate to the proposal:

- A. Boone County businesses are developed in appropriate locations and are compatible with their surrounding areas (Business Activity, Goal).
- B. Compact, efficient development patterns shall be encouraged for business districts (e.g. industrial, commercial, and office) with appropriately sized and well maintained buffer spaces between the business use and other land usage (Business Activity, Objective).

#### Surrounding Land Uses and Zoning

North: Florence Antique Mall (C-3)

South: Shopping Center with Schloemer's Furniture and Watson's and former Woodcraft Furniture (C-2)

East: Bob Sumerel Tire (C-2)

West: Single-Family Residential Dwellings and Duplexes Fronting on Airview Avenue (SR-2)

#### Staff Comments

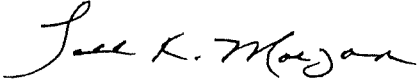
1. Staff would like the applicant to address the following questions:
  - A. What are the typical hours of operation?
  - B. Will all fireworks stored in the building be sold at this store?
  - C. Could the future retail expansion area ever be occupied by another tenant?
2. Staff received a letter from Richard J. Lunnemann, City Coordinator, regarding the proposal (see attachments). Mr. Lunnemann's letter recommends the following conditions:
  - A. The front facade shall be designed as shown in elevation #2.
  - B. No sidewalk sales shall be permitted.
  - C. No Temporary Advertising Displays (TADs) shall be permitted.
  - D. No Temporary Commercial Displays (TCDs) shall be permitted.
  - E. No vending machines or similar items shall be permitted outside the building.
  - F. No outside sales or storage of any type shall be permitted.

- G. Bring the site into compliance with the landscaping code (Article 36 of the Boone County Zoning Regulations).
3. Staff has received letters from Mark Martin, with Boone County Building Department, and Robert Krebs, with Florence Fire Department, regarding the request (see attachments).
  4. Staff has attached a copy of the June 8, 2011 Florence Board of Adjustment meeting minutes for review because they provide a lot of background information about the B.J. Allen Company and their typical store operations. The Appeal of the Zoning Administrator's decision is not germane to the current request because fireworks retail sales facilities are now Conditional Uses in the C-3 zone.
  5. Staff is currently working on the draft of the Mall Road District Study and the last public workshop was held on September 27, 2011. The draft document contains specific design and signage requirements that pertain to all properties within the study limits (see attachments). Due to this Study, City and Planning Commission Staff have asked the applicant to provide some building elevation and sign drawings so the Board can review what exterior improvements are being proposed. Staff is hopeful the Mall Road District Study will be adopted by the City of Florence early next year.
  6. The Board needs to analyze the Conditional Use Permit criteria before acting on the request.
  7. Staff recommends the following conditions if the request is approved:
    - A. Mr. Lunnemann's recommendations in Staff comment #2 above with the following clarifications.
      - The circular Phantom Fireworks sign shown on the front facade shall not overhang the top of the wall that it is being mounted on (see Section 3402 of the Boone County Zoning Regulations).
      - The purple canopies and accent bands shall not be illuminated or backlit.
      - The amount of signage on the front facade shall be in compliance with code or be no more non-conforming than Circuit City's building mounted signage.
    - B. The sides and rear of the building shall be painted with the brown/tan/grey colors that are being used on the front of the building. No signage or accent bands shall be permitted on the rear or side facades.
    - C. The front parking lot will be brought into compliance with Section 3625 of the Boone County Zoning Regulations (Interior Landscaping for Vehicular Use Areas). Additional perimeter landscaping shall not be required.

### Conclusion

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

Respectfully submitted,



Todd K. Morgan, AICP  
Senior Planner, Zoning Services

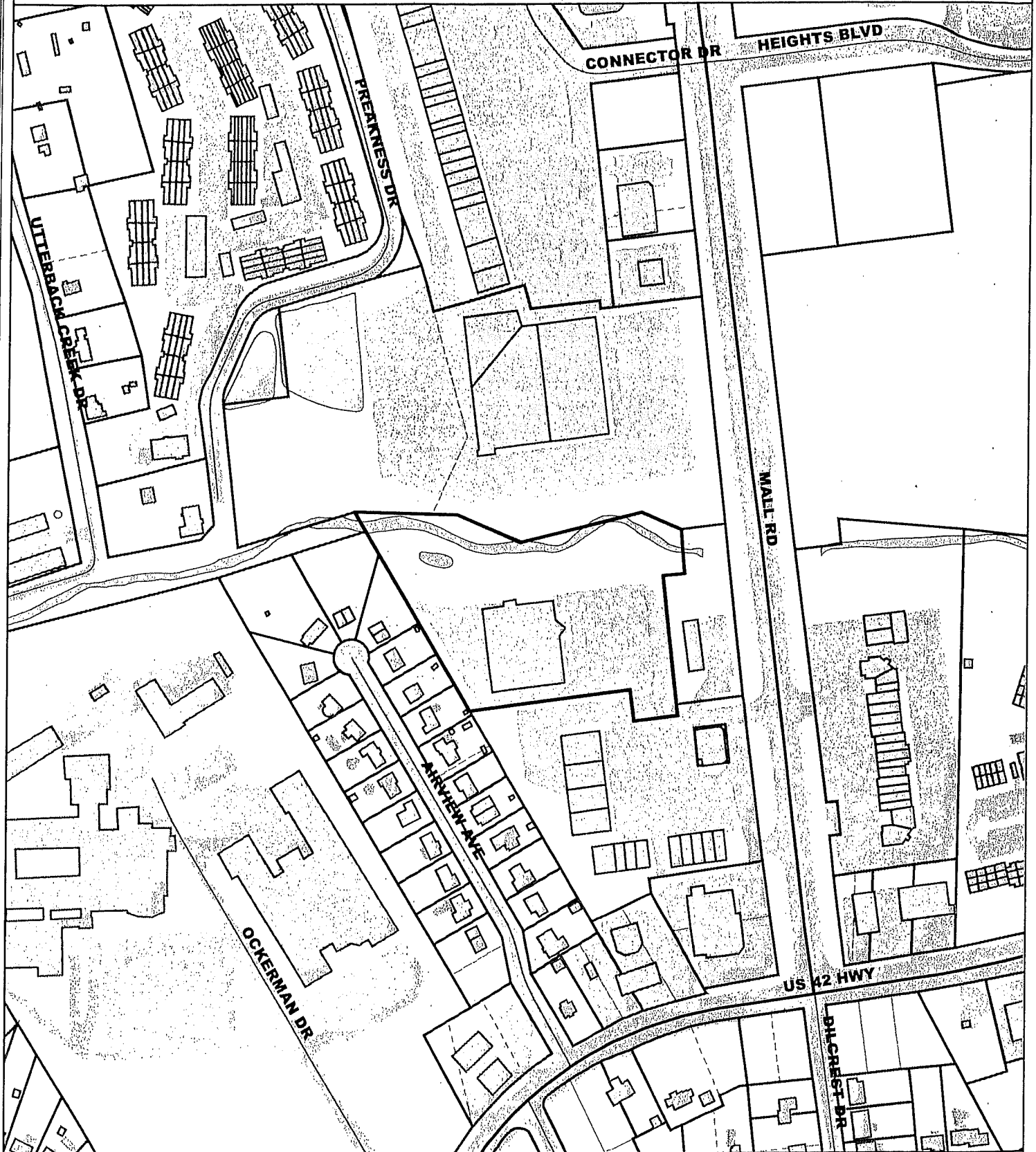
TKM/dw

Attachments

- \*Site Vicinity Map
- \*Letter From Gerry F. Dusing, Esq. describing request
- \*Proposed Floor Plan
- \*Proposed Front Building Elevations (Options 1 and 2)
- \*Existing Elevation Drawing
- \*Proposed Sign Cabinet Face on Existing Freestanding Sign
- \*2009 Aerial Map
- \*Zoning Map
- \*Future Land Use Map
- \*Letter from Richard J. Lunnemann
- \*Letter from Mark Martin
- \*Letter from Robert Krebs
- \*6/8/11 Florence Board of Adjustment Minutes
- \*Draft Mall Road District Study (Chapters 4 and 5)
- \*Application

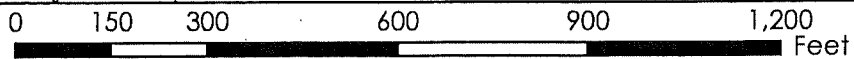
# SITE VICINITY MAP

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1 inch = 300 feet



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

Map Created: 01/01/2008

Boone County GIS  
ArcMap Document: \*.mxd

## Gerry Dusing

---

Sent: Thursday, September 29, 2011 10:56 AM  
To: tmorgan@boonecountyky.org  
Subject: Phantom Fireworks

Todd,

Hope to have pictures of signage/front elevation of building by tomorrow.

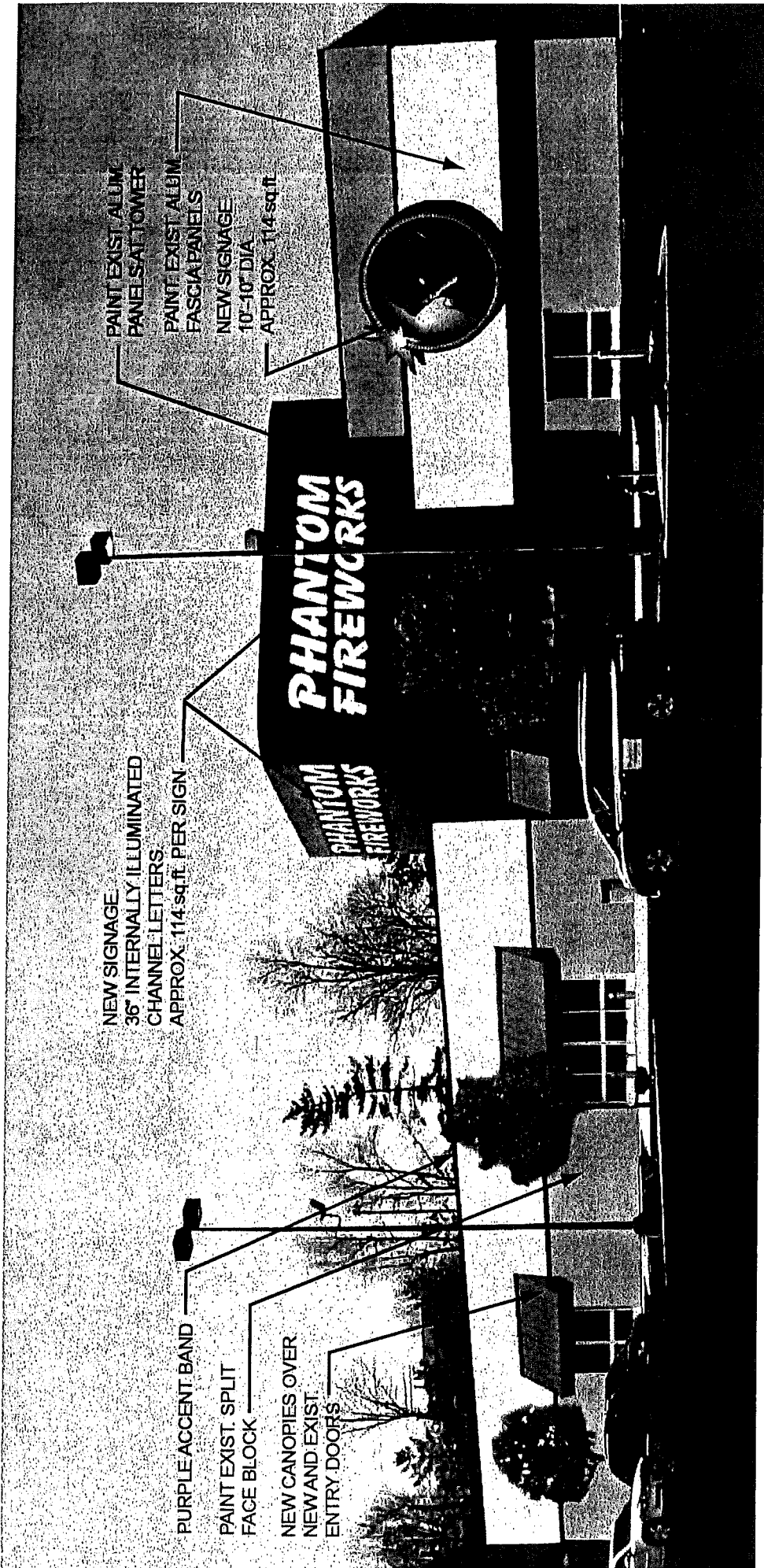
Meanwhile, you asked for a description of the request.

The request is for retail sales of consumer class fireworks in conformity with the recently adopted Ordinance of the City of Florence adding the definition of " Fireworks Retail Sales" to Article 40 of the Boone County Zoning Regulations text as applicable to the City of Florence and amending Article 1033 thereof to include as a listed Conditional Use "Fireworks Retail Sales". These are consumer or common fireworks classified as Division 1.4G (formerly Class C) by the US DOT, which is the classification safe to transport in ordinary passenger vehicles and all products sold are approved by the US Consumer Product Safety Commission. These are not commercial, display or professional class fireworks.

All building modifications required by US DOT and Kentucky will be in place as a predicate to occupancy. The display area will be app. 8,000 sq. ft. of the 15,000sq. ft. building interior. Other merchandise will include picnic supplies and related paper goods, holiday trim, games like Baggo and corn hole,

Gerald F. Dusing, Esq.  
Adams, Stepner, Woltermann & Dusing PLLC  
40 West Pike Street  
Covington, KY 41011  
859-394-6200  
859-392-7206





PAINT EXIST. ALUM.  
PANELS AT TOWER

PAINT EXIST. ALUM.  
FASCIA PANELS

NEW SIGNAGE  
10'-10" DIA.  
APPROX. 114 sq. ft.

NEW SIGNAGE  
36" INTERNALLY ILLUMINATED  
CHANNEL LETTERS  
APPROX. 114 sq. ft. PER SIGN

PURPLE ACCENT BAND

PAINT EXIST. SPLIT  
FACE BLOCK

NEW CANOPIES OVER  
NEW AND EXIST.  
ENTRY DOORS

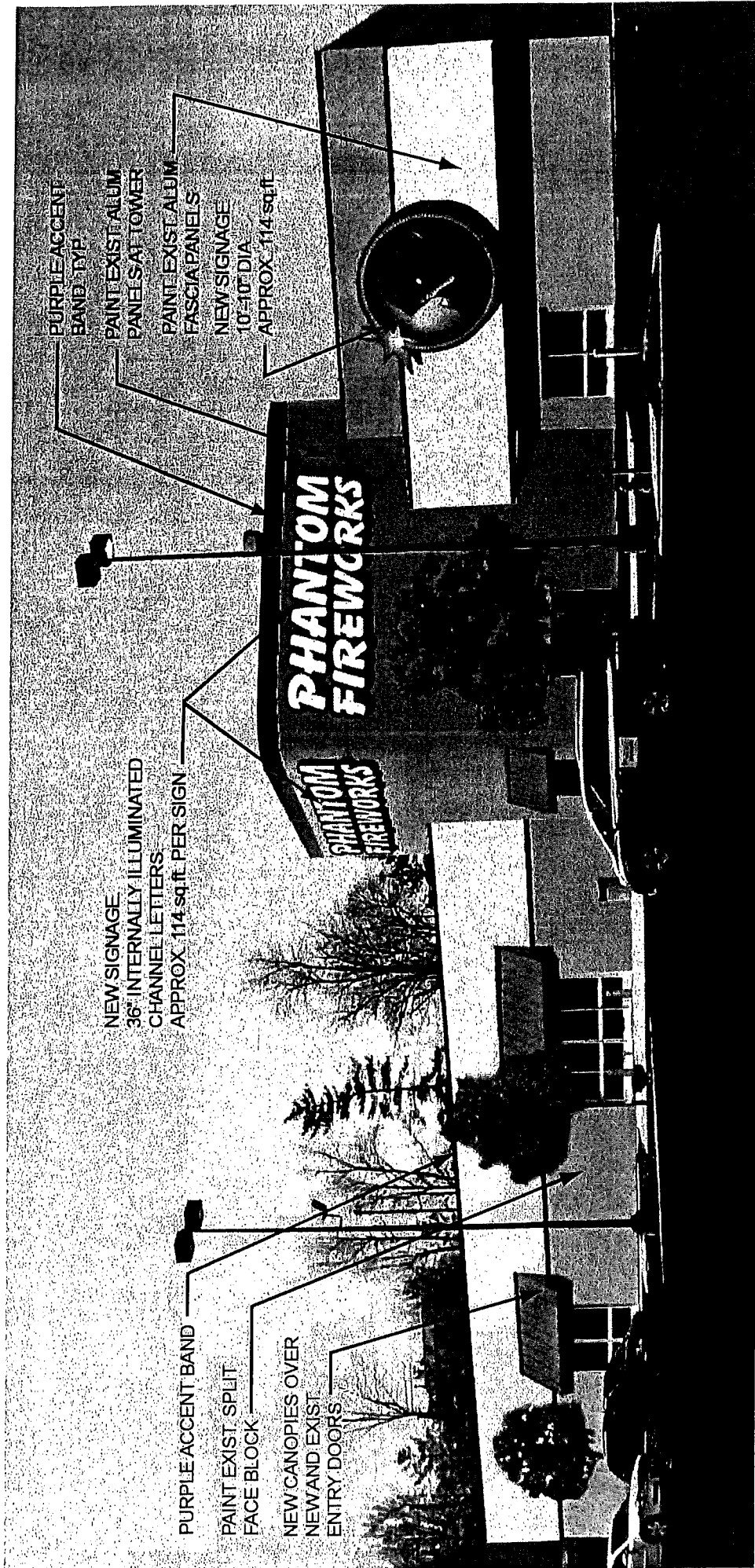


# PHANTOM FIREWORKS - PROPOSED ELEVATION -1

MALL ROAD, FLORENCE, KY



Hub+Weber  
Architects, PLC



NEW SIGNAGE  
 36" INTERNALLY ILLUMINATED  
 CHANNEL LETTERS  
 APPROX. 114 sq.ft. PER SIGN

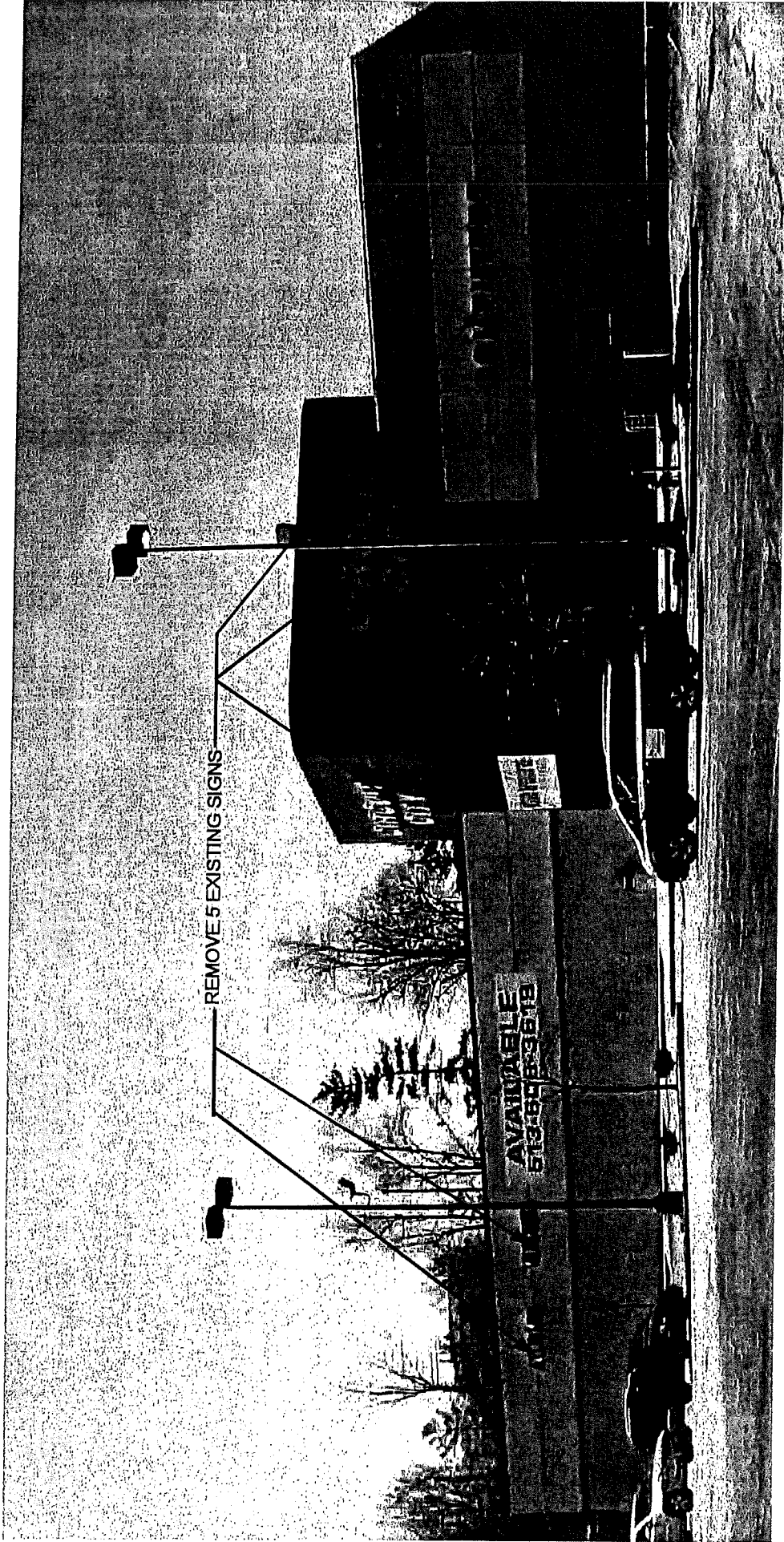
PURPLE ACCENT  
 BAND TYP.  
 PAINT EXIST ALUM.  
 PANELS AT TOWER  
 PAINT EXIST ALUM.  
 FASCIA PANELS  
 NEW SIGNAGE  
 10'-10" DIA.  
 APPROX. 114 sq.ft.

PURPLE ACCENT BAND  
 PAINT EXIST. SPLIT  
 FACE BLOCK  
 NEW CANOPIES OVER  
 NEW AND EXIST  
 ENTRY DOORS

**PHANTOM FIREWORKS - PROPOSED ELEVATION -2**

MALL ROAD, FLORENCE, KY





REMOVE 5 EXISTING SIGNS

AVAILABLE  
SIGNAGE



# PHANTOM FIREWORKS - EXISTING ELEVATION

MALL ROAD, FLORENCE, KY



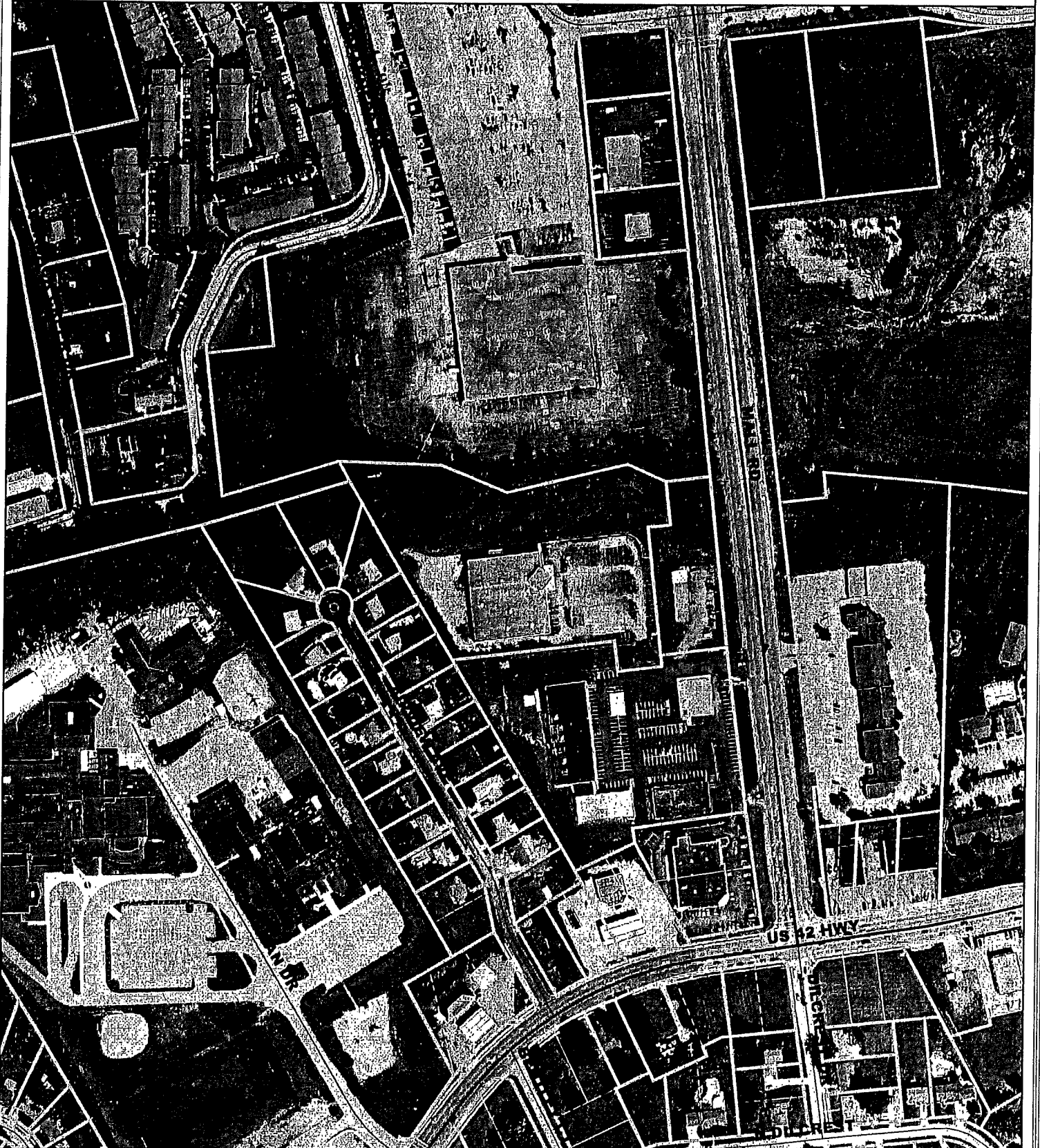
Hub+Weber  
Architects, P.C.

*Proposed Sign Cabinet Face on Freestanding Sign*



# 2009 AERIAL MAP

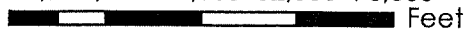
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0 8,750 17,500 35,000 52,500 70,000



Feet

1 Inch = 83,333 feet

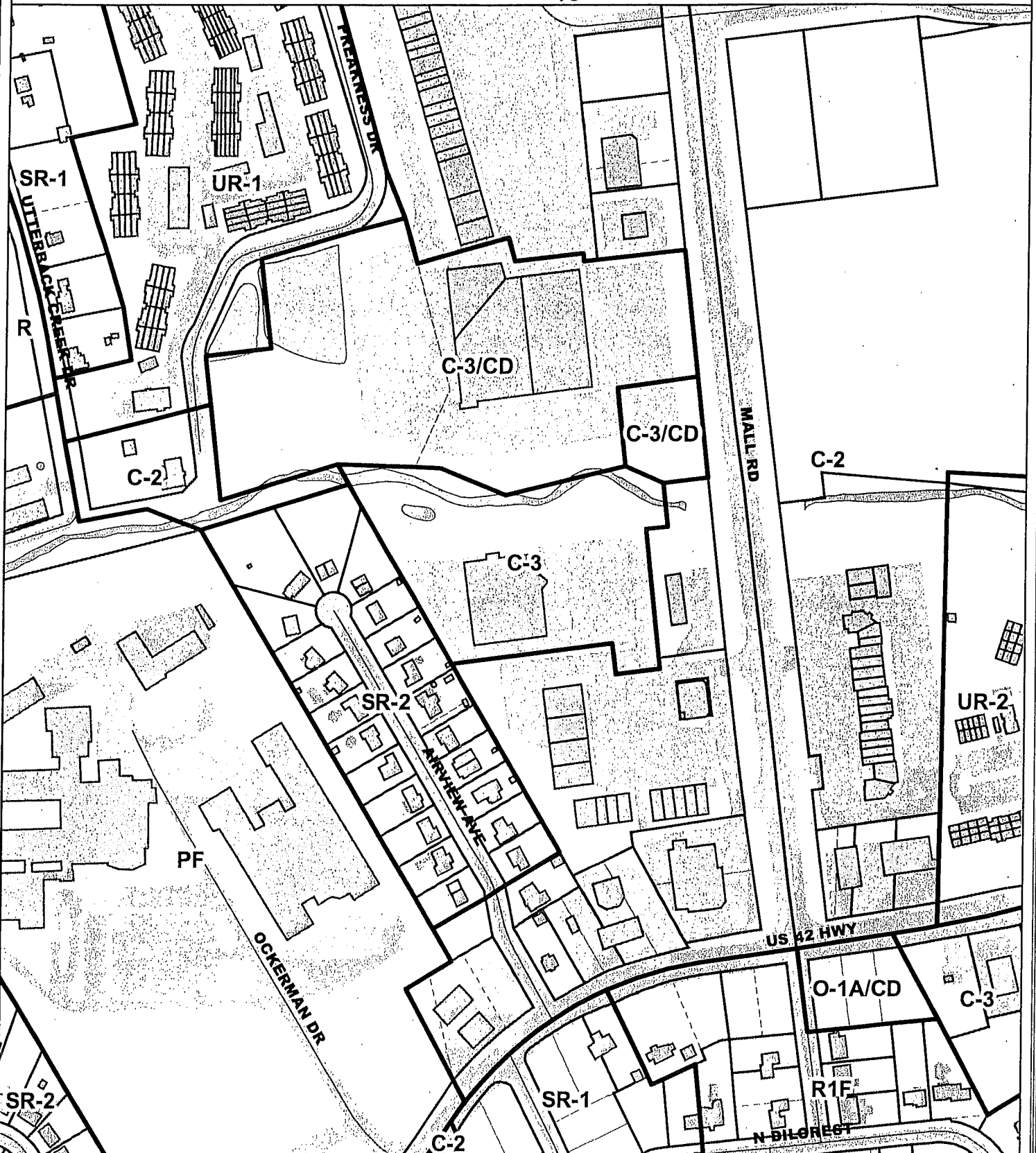


**Boone County GIS - Putting Northern Kentucky on the Map**



# ZONING MAP

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0 8,750 17,500 26,250 35,000 43,750 52,500 61,250 70,000

Feet

1 inch = 83,333 feet

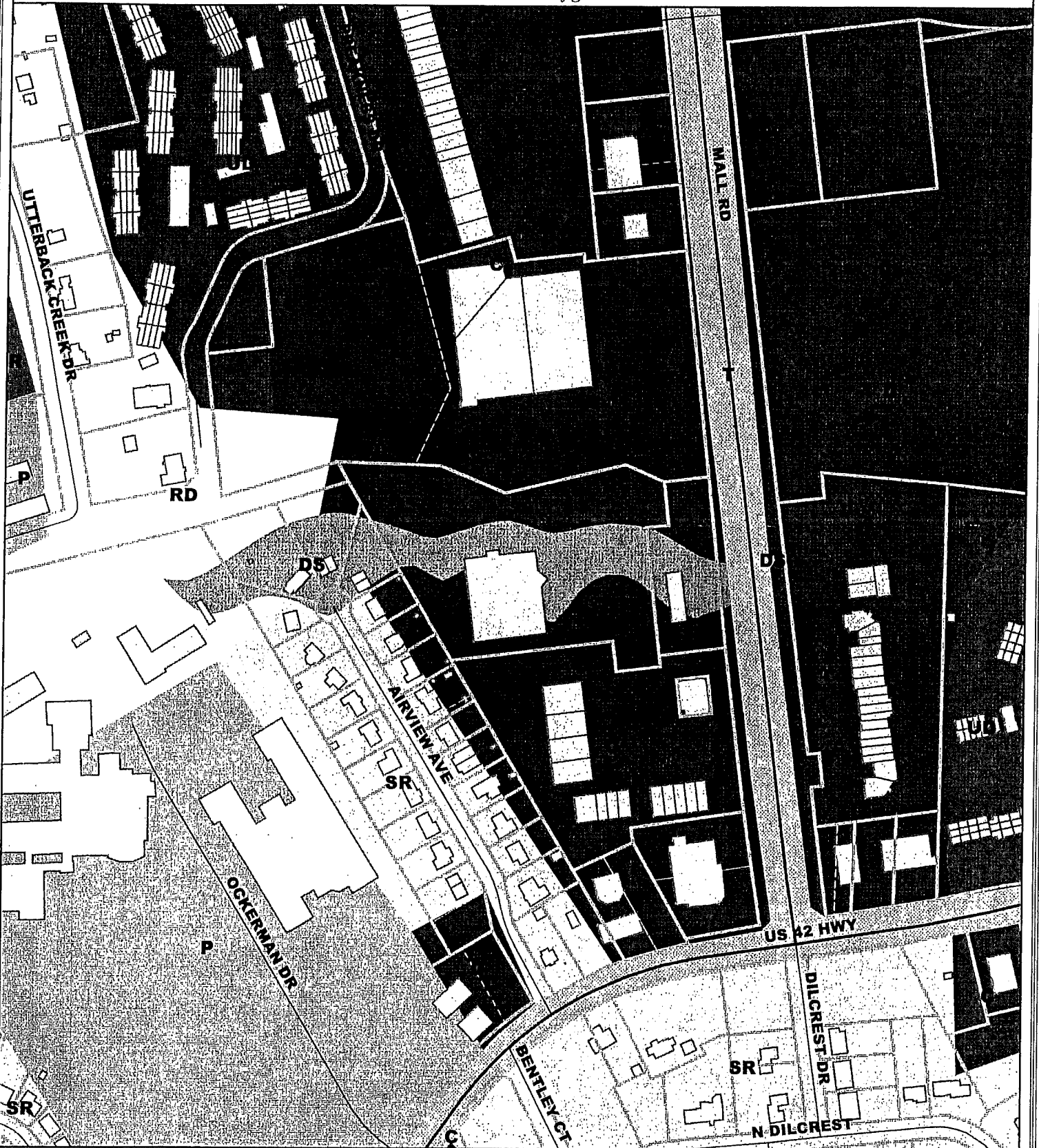


**Boone County GIS - Putting Northern Kentucky on the Map**



# FUTURE LAND USE MAP

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0 8,750 17,500 35,000 52,500 70,000

Feet

1 inch = 83,333 feet

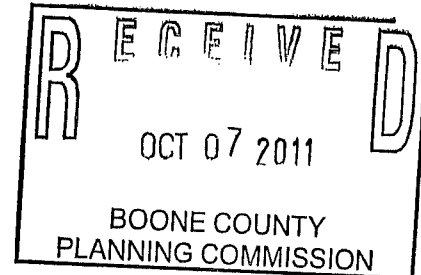


**Boone County GIS - Putting Northern Kentucky on the Map**



October 6, 2011

Mr. Todd Morgan  
Boone County Planning Commission  
2950 Washington Street, Room 317  
P. O. Box 958  
Burlington, KY 41005



Re: B.J. Allen Co. d/b/a Phantom Fireworks Conditional use Request

Dear Todd:

This letter is written on behalf of the City of Florence regarding the Conditional Use request submitted by the B.J. Allen Company proposing to operate a permanent fireworks retail store in the building at 8125 Mall Road. City staff reviewed the Conditional Use application including all exhibits/attachments and offers the following comments.

First, City staff found the exterior façade Improvements Identified in proposed elevation # 1 as undesirable. The exterior façade improvements Identified in proposed elevation # 2 will more adequately fit in with other buildings in the vicinity and the City vision of redevelopment within the Mall Road corridor. City staff requests that if the proposed application is approved, the façade improvements proposed by elevation # 2 be required as a condition as the minimum required.

Based on the nature of the proposed business and the City's recent experiences with same, City staff strongly suggests consideration of the following additional conditions of approval:

- No sidewalk sales shall be permitted.
- No Temporary Advertising Displays (TADs) shall be permitted.
- No Temporary Commercial Displays (TCDs) shall be permitted.
- No vending machines or similar items shall be permitted outside the building.
- No outside sales or storage of any type shall be permitted.

Finally, the existing landscaping on the site does not comply with the landscaping provisions of Article 36 of the Boone County Zoning Regulations. The City suggests a possible condition of approval to require additional perimeter landscaping or additional landscaping in the vehicle use areas of the parking lot.

If you have any questions please feel free to contact me.

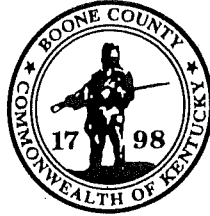
Sincerely,

A handwritten signature in cursive script that reads "Rick Lunnemann".

Richard J. Lunnemann  
City Coordinator

CC: Diane E. Whalen, Mayor  
Josh Wice, Business/Community Development Director

GARY W. MOORE  
County Judge-Executive



JIM KEY  
Chief Building Official

JEFFREY S. EARLYWINE  
County Administrator

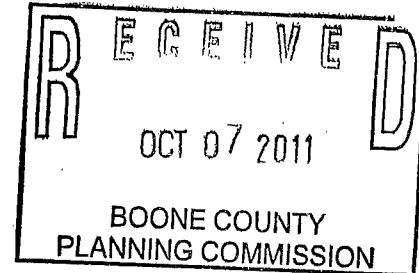
BUILDING DEPARTMENT

[www.BooneCountyKy.org](http://www.BooneCountyKy.org)

P.O. Box 960  
2950 Washington Street  
Burlington, KY 41005  
(859) 334-2218  
Fax (859) 334-3137

October 7, 2011

Boone County Planning Commission  
Attn. Todd Morgan, AICP Senior Planner  
2950 Washington Square  
Burlington, KY 41005



RE: Proposed Phantom Fireworks  
in existing building@  
8125 Mall Rd., Florence KY

We have made a cursory review of the preliminary plans for the proposed Phantom fireworks sales building at 8125 Mall Road and have found the building with interior modifications can be made to comply with the 2006 National Fire Protection Association (NFPA) 1124 requirements for permanent Consumer Fire Works Retail Sale (CFRS). This building would be limited per the Kentucky Fire Marshalls requirements to one tenant, the space on the plan shown as Future Retail Expansion could not be occupied by a separate tenant. The sales of fireworks are limited to consumer grade fireworks per NFPA 1124; **sales of Display Fire Works are not permitted.**

This facility would be required to fully comply with KRS 227.700-227.752 and must comply with the following:

- 1) Facility must be annually registered with the Kentucky Fire Marshalls Office.
- 2) A Storage Notification Report must be submitted to the Florence Fire Department and Kentucky Fire Marshalls Office annually.
- 3) A building permit must be obtained from this office and a Certificate of Occupancy issued prior to occupancy of the building in any form.
- 4) Any and all additional requirements of other agencies must be fully complied with.

Let me know if there are any questions regarding this matter.

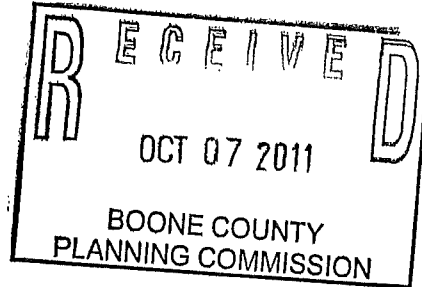
Cordially,

Mark E. Martin,  
Assistant Chief Building Official

MEM/mm

October 7, 2011

Todd Morgan  
Boone County Planning Commission  
2950 Burlington Pike  
Burlington, KY 41005



Dear Todd,

This letter is in reference to Phantom Fireworks proposal on Mall Road. I performed a cursory review of the proposed layout and do not see any major issues with the plan. It appears to meet the intent of NFPA 1124 which is the fire code that addresses fireworks sales in Kentucky. My review was not detailed in nature nor did it address all the specifics of the applicable fire and life safety codes.

Additional information will be needed for a detailed plan review in the future. If you have any questions or need any clarification please contact me at 859-647-5660.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert Krebs".

Robert Krebs  
Fire Marshal

**FLORENCE BOARD OF ADJUSTMENT  
FLORENCE GOVERNMENT CENTER  
BUSINESS MEETING  
June 8, 2011  
7:00 P.M.**

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Mr. Pieper called the meeting to order at 7:00 P.M.

**BOARD MEMBERS PRESENT:**

Mr. Timothy Pieper - Chairman  
Mrs. Linda Schaffer  
Mr. David Schneider, Jr.  
Mr. Ritsel Sparks

**BOARD MEMBERS NOT PRESENT:**

Ms. Lois Evans - Vice-Chairwoman

**LEGAL COUNSEL PRESENT:**

Mr. Dale Wilson

**APPROVAL OF THE MINUTES:**

Mr. Pieper stated that the Board members received copies of the minutes of the Florence Board of Adjustment Meeting of May 11, 2011. He asked if there were any comments or corrections. There being no changes, Mr. Sparks moved to approve the minutes and Mr. Pieper seconded the motion. Mr. Pieper called for a vote and it carried unanimously.

**AGENDA ITEMS:**

1. **Request of B.J. Allen Co. D/B/A Phantom Fireworks for an Appeal of the Zoning Administrator's decision that year round/permanent retail sales of fireworks is not a permitted use in the Commercial Services (C-3) Zone, specifically at the approximate 5.5 acre site at 8125 Mall Road (former Circuit City), Florence, Kentucky.**

Staff Member, Kevin Wall, AICP, presented the Staff Report (see Staff Report). He distributed four exhibits (see exhibits 1, 2, 3, and 4). The first is a color aerial map of the site and surrounding properties, the second is a picture of the subject building and parking lot, the third is a Memorandum and three attachments from Mayor Diane E. Whalen, and the fourth is a letter and attachments submitted from Gerald F. Dusing, which states the appellant's position.

Mr. Pieper asked if the applicant would like to make a presentation? Mr. Jim Woltermann, an attorney with Adams, Stepner, Woltermann & Dusing, said he would be making the presentation tonight for the appellant because Mr. Dusing was unavailable. He presented Anthony Donofrio.

Mr. Donofrio said he was Deputy General Counsel for B.J. Allen Company and his office is located in Youngstown, Ohio. He said they are here tonight because of their desire to operate a consumer fireworks retail sales facility in the City of Florence. He started by giving some history of the B.J. Allen Company, which is a privately owned company. Back in the 1970's the owner of the company, Bruce Holden, began selling non-food rack items to convenience and grocery stores. The store owners expressed an interest in sparklers so he looked into it and began providing the product to the stores. In 1977, Mr. Holden bought his first container of consumer fireworks from China and incorporated his business as the B.J. Allen Company. Since that time, the company has been operating under the trade name of Phantom Fireworks. They are one of America's largest importers, distributors, and retailers of consumer fireworks. They have over fifty permanent retail showrooms, like the one they are proposing in Florence. Most of the locations are stand alone buildings. The stores are located in twelve states and Puerto Rico. In addition, they operate about 1,200 temporary venues in seventeen states. They have a chain store division which supplies products to stores like K-Mart and Sheets. They also own the Diamond Sparkler factory which was acquired in 1985 from a Chicago owner. The business was moved to the corporate facility in Youngstown, Ohio. This is the only sparkler factory in the United States. They have warehouses and sales venues in Sacramento, Fresno, Bakersfield, Modesto, and Bloomington, California. In Connecticut, Arizona, Florida, Rhode Island, Georgia, Hawaii, Nevada, Pennsylvania, Utah, Washington, Nebraska, the Carolinas, and Puerto Rico their chain store division supplies stores and they also operate temporary and inline retail facilities.

The Circuit City Building in Florence would probably be the largest showroom that they would have. The typical showroom they build ranges between 10,000 and 15,000 square feet. Certain states have limitations on the square footage of the retail/showroom area. For example, Ohio law limits the square footage of the retail/showroom area to 5,000 square feet. The proposed Florence store would have a retail/showroom of 8,000 square feet. They plan to be a long term tenant in the building if the Board grants the request. The lease they entered into with the owner is a five year lease and they have four five year options to renew. They expect to be in the building for a minimum of twenty five years. The company's business plan is continued expansion. Mr. Holden started by selling fireworks out of the trunk of his mother's car and has built the company into what it is today. For the most part, the product they sell today is classified as Division 1.4G consumer fireworks as designated by the U.S. Department of Transportation. This is totally different from Division 1.3G which deals with display and professional fireworks. They sell consumer or backyard fireworks. Consumer fireworks, by their chemical composition, are manufactured to burn and not explode. In case of a mishap there would be no mass detonation. On the other hand, the fireworks located in a professional warehouse are highly volatile and could explode. The consumer fireworks sold by their company are approved by the Consumer Products Safety Commission (CPSC). All of the products they sell are given a stamp of approval by the American Fireworks Standards Laboratory (AFSL) before they are tested

by the CPSC. This organization is the underwriters laboratory for the fireworks industry. Every product that comes to the United States is rigorously tested and approved by the AFSL. Their testing is more extensive than CPSC testing. Their company is a charter member of the AFSL and they have had many employees serve as officers. Currently, one of their company Vice-President's is the president of the AFSL. Other employees have served on other national trade organizations, such as the APA (American Pyrotechnics Association).

From 1994 to 2009, the injury rate per 100,000 pounds of product has decreased 61.68%. From 1994 to 2009, the consumption of the product has increased by 200%, from 117,000,000 pounds to 213,900,000 pounds imported into this country. This increase consumption is due to the testing done by the AFSL, CPSC regulation, and better educated consumers. They do everything possible to educate the buying public with regard to the use of the product to prevent injuries. He noted that while the statistics are good (61.68% decrease in injuries with a 200% increase in consumption), they are still skewed. Forty-three percent (43%) of what the CPSC reports, as far as injuries go, are not legal consumer fireworks. Whenever you see a newspaper article regarding a fireworks injury, it is typically a case involving an M-80, cherry bomb, or other products that have been outlawed since the 1960's. These products fall under the jurisdiction of Alcohol, Tobacco, and Firearms (ATF) because they are illegal explosives. Their products are safe when used properly. The firecrackers that they sell have 50 milligrams of parti-technic composition in them. This is equivalent to one-sixth of an aspirin. The firecrackers are designed not to injure or break the skin even if you are holding it in your hand. He noted that many other products, such as trampolines and All Terrain Vehicles, have had far different statistics. Higher use of trampolines and ATVs have resulted in more injuries. Their industry is very proud of the safety records.

In response to House Bill 333, they would like to have a presence in the City of Florence and Kentucky. They plan on being in the building for a long time based on the lease they have entered into. This area is very attractive to them. The facility will be compliant with the National Fire Protection Association 1124. This is the standard governing the sale, use, and manufacture of consumer fireworks. They will do everything in their power to make the building compliant. It will probably take several hundred thousand dollars to bring the building into compliance with the standards but they are willing to do it.

The core topic of the Appeal is the permissibility of year round retail sales of fireworks in a permanent location in a Commercial Services (C-3) zone. Mr. Wall identified them as a single purpose retailer and has concluded that they are not permitted in the C-3 zone. They respectfully disagree with Mr. Wall's opinion. In addition to fireworks, they sell a variety of merchandise, and should fall under the general merchandise category in the C-3 zone. He noted that the primary purpose of a Walgreen or Rite Aide Pharmacy is to sell prescription or over the counter drugs but they also sell a lot of other merchandise. He sees them much like a Walgreen or Rite Aide but their primary purpose is selling fireworks. Phantom Fireworks also sell games, buckets, goggles, under safety items, bumper stickers, calendars, coolers, flags, flashing glasses, golf balls, flashlights, flash sticks, key chains, luggage tags, mini fans, hockey apparel, NASCAR signs, hats, noise makers, pepper spray, pasta sauce, blankets, magnets, pens, playing cards, posters, bracelets, Tiki torches,

watches, tee shirts, hooded sweat shirts, pom-poms, food products, soft drinks, picnic type items, and novelties. They believe they should fall under the classification of a general merchandiser with all the items that they sell. He showed some pictures of their showrooms that were mounted on a board and noted the posters, tee shirts, novelties that were being sold (the pictures were not submitted for the record).

He added that they are not constructing shacks on the side of roads when they enter a community. They put upwards of \$2,000,000 into a facility when they enter it. They are going to hire three or four year round managers at the Florence store and many other employees. He estimated that there would be about 60 seasonal employees that would work at the store. They will invest in the community and will bring in tax dollars. Their owner will get involved with local law enforcement and fire department. They will support the community and charitable causes. They will donate fireworks for events. For example, this coming weekend they are donating fireworks for a car show in Curtice, Ohio. The event is called Spark and Shine and it has grown substantially over the years. They do a fireworks show in a public park during the event. These are the types of things they do when they come into a community. They are willing to comply with all the safety and building code requirements. They believe they fit into the C-3 zone because of the products that they sell. They understand the apprehension and negative implications associated with a fireworks business. The photographs show they are not a typical road side stand. They put a lot into customer service and the community. The State Fire Marshall has classified a consumer fireworks sale facility as a mercantile use. This is the same classification given to a department store. A department store is specifically listed by Mr. Wall as an example of a general merchandise use. They sell general merchandise and fit into the C-3 zone because they are not a single item retailer. They are willing to make a commitment and spend the dollars necessary to make the facility attractive.

Mr. Woltermann said Mr. Donofrio and other representatives are present to answer any questions that the Board has. He indicated the key issue is whether the business fits under the category of general retail merchandise. The Zoning Administrator's April 15, 2011 letter indicates that the use is a single purpose retailer. Specifically, he says that a single purpose retailer does not qualify under the general merchandise label based on the definition outlined in Article 40. General merchandise is defined as a type of retail operation involving a variety of items sold on premise. It is also referred to as a department store. He thinks what Mr. Donofrio has submitted to them is a clear example of many items that are sold at each of their locations and clearly meets the criteria of general merchandise. They also received a ruling from the Public Protection Cabinet Department of Housing, Building, and Construction - Division of Building Code Enforcement in which they were classified as a mercantile use. The mercantile use definition includes the specific listing of department stores. Mr. Woltermann stated he submitted a copy of the correspondence.

They believe they have general merchandise being sold at a retail store. The Occupational License application includes a space for the business to be described. They have described the business as direct retail sales of general merchandise including consumer fireworks. The mere fact that consumer products is the predominant merchandise sold on premise does not mean that it is a single purpose retailer. They don't understand how the Zoning Administrator came to the conclusion that they are a single purpose retailer. The

fact is that fireworks have been sold for many years in the City of Florence in C-2 and C-3 zones on a temporary and seasonal basis. Section 3510 of the zoning code defines Seasonal Temporary Commercial Displays and Temporary Commercial Displays. The Seasonal Temporary Commercial Display section states that the retail sale of the particular seasonal good must be listed as principally permitted use in the Commercial Two (C-2) zoning district and may include such items as Christmas trees, fireworks, pumpkins, seasonal plants and seasonal food products. So in order for fireworks to have been sold as a Seasonal Temporary Commercial Display the product must be listed as a principally permitted use in the C-2 zone. They know that fireworks is not specifically listed in the C-1, C-2, or C-3 zoning district. As a result, they believe it is included in the general merchandise use. Similarly, Temporary Commercial Displays are defined as exhibits or showings of products, goods, equipment, or services listed as principally permitted uses in Commercial One (C-1), Commercial Two (C-2), and Commercial Services (C-3) zoning districts. Their position is that for display to be allowed the item must be a permitted use. They asked the Planning Commission for the various permits that were issued under this code section in the year 2010 and stated he has supplied a copy of those permits.

From a position of Constitutional Law, Phantom Fireworks must be permitted to conduct their business somewhere in the City of Florence. The sale of consumer fireworks on a year around basis from a permanent location is a lawful activity. The U.S. Supreme Court on a number of occasions decided that a lawful business cannot be prohibited by zoning. Zoning is to regulate, not to prohibit. There is nowhere in the City of Florence Zoning Ordinance that provides any zone that allows fireworks on a permanent basis specifically by the name fireworks. Unless it is included with general merchandise, the zoning regulations are unconstitutional. The Staff Report and letter from Mayor Whalen make it clear that the city wants time to think about what they are going to do with fireworks and where they want to put them. The City claims that the basis for this position is that nothing in KRS 227.700 to 227.750 shall restrict a local government from enacting ordinances that effect the sale or use of fireworks that is in their jurisdiction. The Mayor's letter claims that the city has moved expeditiously since the legislation was enacted and that permits for retailers for the products, such as Phantom Fireworks, should not be allowed until the matter has progressed through the zoning process and reasonable regulations and siting is established. The Kentucky legislature does not agree with the City of Florence. The Kentucky legislature approved the legislation. It did not give the City of Florence a specified date to proceed through the zoning process. Instead the Kentucky legislature stated that an emergency existed with respect to this legislation and that it would take effect upon its passage and approval by the Governor. The ruling on this matter must be made based on what the zoning code allowed when Phantom Fireworks filed their application for an Occupational License. What the zoning ordinance may be three months or three years from now is irrelevant. So either the zoning ordinance provides a permanent place to sell legal fireworks or it is unconstitutional for prohibiting them. It is their position, that the zoning ordinance is not unconstitutional but permits the sale of consumer fireworks from a C-3 zone under the general merchandise use. He offered to answer questions from the Board.

Mr. Pieper asked if anybody else in the audience wanted to speak?

Mr. Kevin Costello, Executive Director of the Boone County Planning Commission, asked Mr. Wall to further address the Temporary Commercial Display and Seasonal Temporary Commercial Display process and how it is different than a permanent use. Mr. Wall explained that code allows Temporary Commercial Display (TCD's) and Seasonal Temporary Commercial Displays (Seasonal TCD's). The big difference is that a TCD is good for 7 days and that a Seasonal TCD is good for 30 days. They allow short-term, seasonal, outdoor activities, such as the sale of Christmas trees. A permit was recently issued for a car show in the Village at the Mall parking lot where they are roping off a portion of the parking lot around Father's Day. A lot of the permits are issued around holidays but they do not have to be. The uses that are permitted are broader in scope and tie back to the C-1, C-2, and C-3 zones. He referenced a case, Carlton v. Taylor, in his decision that deals with uses being specifically listed and being legal. Temporary sales of fireworks were certainly legal prior to March 2011. His position on a permanent store and a temporary store is just how and when it was legislatively authorized. It is something that was not contemplated by the legislative body when the TCD provisions or permanent code was adopted about 3 years ago.

Mr. Wilson said the TCD regulations allow some fireworks. He asked Mr. Wall if he could have approved a TCD for the fireworks made legal by HB 333? Mr. Wall replied that he could not have approved such a permit before or after March 2011. Mr. Wilson said it was fireworks other than those made legal by HB 333 that were approved with the TCDs. Mr. Wall replied that was correct.

Mr. Woltermann said Section 3510 of the zoning regulations requires that the seasonal good must be listed as a principally permitted use. He is not saying that they could have done a permanent location under Section 3510 but he is saying that they received TCDs to sell the types of fireworks that were in existence at the time. Somewhere in C-1, C-2, and C-3 there has to be a principally permitted use for fireworks because the code says it. He believes the code says the retail sale of fireworks falls under general merchandise.

Mr. Wilson said that Mr. Wall can correct him if he is wrong, but he understands his statement to be that the previous TCD regulations did not allow what were then illegal fireworks. He added that the zoning regulations cannot supercede state law. Mr. Donofrio said he thinks the state law has expanded the definition of fireworks. Mr. Wilson replied that the Planning Commission and City of Florence have not acted to amend the zoning regulations to allow for that. Mr. Wall added that this is currently in process. Mr. Woltermann said their position is that they should not have to wait for the Planning Commission and City of Florence to expand their definitions in the zoning ordinance to conform with state law. This is a timing issue they shouldn't be responsible for. If the state legislature wanted to give you that opportunity to think about it for 6 months they wouldn't have made this emergency legislation and made it effective upon the Governor's signature. Mr. Wilson stated that he sees nothing in HB 333 that exempts these newly legal fireworks from local government authority to enact ordinances. In fact, they are subject to local government authority.

Mr. Pieper asked if anybody else in the audience wanted to speak?

Mayor Diane Whalen said she appreciates the opportunity to come to the meeting and talk about the matter. She thinks Phantom Fireworks made a nice presentation and she better understands their history and what they do. The City of Florence does not dispute that they are a reputable company and that their business model is a good one. They also do not dispute that they have a wonderful community presence and work with local law enforcement. But none of that is the topic of this Board of Adjustment meeting. The issue at hand is HB 333, which does allow for the establishment of a permanent retail site for the purchase of fireworks. Because of public safety concerns caused by the dissemination and use of new devices, HB 333 created a new reporting requirement for the State Fire Marshall. While they have explained what they sell is safe and has been tested, they are still subject to the State Fire Marshall. HB 333 also specifically preserves the rights of local governments to enact ordinances that effect the sale or use of fireworks in their jurisdictions. For example, local government may implement zoning restrictions, limit, or prohibit the sale or use of fireworks or require additional permitting or reporting. The City has acted expeditiously. They sent a letter to the Planning Commission shortly after the legislation was signed by the Governor. The legislation was passed by the legislature on March 4, 2011 and was signed by the Governor on March 16, 2011. The following week, city staff started informal discussions with Boone County Planning Commission on how to proceed with this local issue. Boone County Fiscal Court was also brought into the conversation as well. She sent a formal request to the Planning Commission on April 5, 2011 requesting the Planning Commission to propose appropriate zoning regulations pertaining to the permanent retail sale of fireworks. The Judge/Executive of Boone County Fiscal Court did the same thing. Phantom Fireworks through an attempt to expedite the lease of the facility and open up the store sought a ruling by the Zoning Administrator that the devices should be covered under the existing zoning regulations. But what they are talking about is something that was illegal prior to HB 333 being signed by the Governor. There is no way the zoning code talked about something that was never determined to be legal in Kentucky. She disagrees that the emergency act or the Governor's signature was supposed to make this an immediate thing and that they can back track their way into proper zoning. She thinks they are trying to enact ordinances that effect the sale and use of fireworks within their jurisdiction and that is what HB 333 allows them to do. There is no dispute that they are a reputable company or that the law has changed. What was once an illegal firework is now a legal firework and the permanent sales of fireworks is now permitted. What they are asking for is the right to do this through the zoning process and update the zoning code. They do not want to be pigeon holed or back ended and allow the use within existing zones without the opportunity for the Planning Commission to study it and make recommendations to the governing bodies. One of Mr. Dusing's letters states that Phantom Fireworks must be permitted to conduct business somewhere in the city. This is no different than what they did with sexually oriented businesses because they were required to provide a zone for them and they did. They do not dispute that they should be allowed somewhere in the city. According to Mr. Dusing's letter, when a business is lawful the government may regulate it by confining it to certain defined districts or sections of the city. He also acknowledges that the city has the power to enact zoning regulations and that is what they are trying to do. They stand behind the decision of the Zoning Administrator, Kevin Wall, and recommend that the Appeal be denied. They ask for the opportunity for this to go through the process and for recommendations to come back to Boone County Fiscal Court, City of Florence, City of Walton, and City of Union.

They want to make sure they are consistent and fair to anyone that would make an application.

Mr. Pieper asked if anyone else in the audience wanted to speak. There was no response.

Mr. Pieper asked if any of the Board members had questions?

Mrs. Schaffer asked for verification that the Board was not looking at the TCD and Seasonal TCD time limits and was looking at a permanent retail firework store. Mr. Wall responded that was correct and indicated they were using the TCD language as an analogy for why the permanent store should be permitted. He also added that TCDs are permitted in the proper zoning districts and includes the sale of fireworks.

Mrs. Schaffer asked for verification that the Fire Prevention and Building Code documentation that was submitted is not relevant to them because they were looking at the applicable zoning regulations. Mr. Wall responded that was correct.

Mrs. Schaffer said it seems like what they are dealing with is fireworks that just became legal but were illegal a few months ago.

Mr. Pieper asked if the Appeal is granted will permanent retail firework stores be permitted in all C-3 zones? Mr. Wilson said yes it would apply to all C-3 zones if the Board accepts their position. He added that they would be seen as a pre-existing non-conforming use if another ordinance is passed later which does not allow the use in the C-3 zone. Mr. Wall said he agreed with Mr. Wilson's assessment. He added that the Board is not evaluating the specific location or other uses which adjoin the property, and they are not relevant to the matter at hand.

Mr. Pieper asked if anybody else had any comments? There was no response.

Mr. Wilson said the Board should be deliberating and should decide whether to make a motion to uphold or overturn the Zoning Administrator's decision. The motion should include reasons or findings.

Mrs. Schaffer thanked the applicants for their presentation.

Mr. Pieper said he feels that Phantom Fireworks is a single purpose retailer and that the other items are ancillary items. He doesn't feel the business falls under the general merchandise label.

Mr. Pieper asked if anybody would like to make a motion?

**Mrs. Schaffer made a motion to uphold the Zoning Administrator's decision based on the Staff Report, testimony, facts presented, documents, zoning regulations, and case law. Mr. Pieper seconded the motion. Mr. Pieper asked for a roll call vote.**

Chairman Pieper - "yes", Mrs. Schaffer - "yes", Mr. Schneider - "yes", Mr. Sparks - "yes". The motion carried 4-0 to uphold the Zoning Administrator's decision.

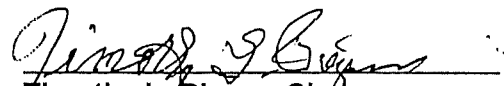
OTHER:

Mr. Pieper asked if there were any other items the Board would like to discuss? There was no comment.


ADJOURNMENT

Mr. Pieper asked for a motion to adjourn. Mrs. Schaffer so moved and Mr. Sparks seconded the motion. Mr. Pieper called for a vote and the meeting adjourned by unanimous consent at 8:02 P.M.

APPROVED

  
\_\_\_\_\_  
Timothy L. Pieper, Chairman

Attest:

  
\_\_\_\_\_  
Todd K. Morgan, AICP  
Senior Planner, Zoning Services

Exhibits

- 1 - Aerial Map of Site and Adjoining Properties
- 2 - Photo of Subject Site
- 3 - May 23, 2011 Letter From Mayor Diane E. Whalen
- 4 - June 3, 2011 Letter From Gerald F. Dusing

## CHAPTER 4

# DESIGN REQUIREMENTS

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This chapter outlines the aesthetic or cosmetic design requirements that apply to all buildings and sites in the Mall Road (MR) Overlay District, including parking structures, except for those which are exclusively detached or attached single family residential. These requirements are not intended to create or replicate any specific architectural style, although they are reflective of commercial and office structures which were customarily constructed from the late 19<sup>th</sup> through the mid 20<sup>th</sup> century. The design requirements are intended to create structures which are visually interesting and substantive, have “timeless” aesthetic characteristics, and which are adaptable over time. They are also intended to help establish more “urban” aesthetic qualities and human scale in the context of a regional, suburban shopping district, and establish design consistency without replication between sites. Based on these objectives, standardized corporate franchise/chain style architectural designs shall not be used unless they meet the design requirements set forth and can be reasonably adapted for future users without leaving earlier “trademark” features behind.

These requirements supercede the normal requirements of the Boone County Zoning Regulations. When specific development standards or requirements are not outlined in this document, the normal requirements of the Boone County Zoning Regulations shall apply. Specific, individual requirements in this chapter may be modified by the Zoning Administrator provided the proposal will create an equivalent or superior solution to the requirement in question, and the proposal does not diminish the design character which would otherwise be created by the normal requirement.

For additions or exterior modifications to existing buildings, these design requirements shall be followed to the extent that they will produce a cohesive overall design in which the new improvements and original structure are compatible with one another when viewed from public vantage points. If compatibility between the new improvements and original structure is not feasible based on these requirements, retrofit design concepts prepared by KZF Design may be used. These design concepts are available at the Planning Commission office.

Compliance with the design requirements in this chapter shall be determined through the applicable Site Plan process as required by Article 30 of the zoning regulations. Architectural elevations and sufficient design details which demonstrate compliance with these requirements shall be submitted as part of the Site Plan application in addition to the materials listed in Article 30. Architectural plans shall be stamped or sealed by a registered architect licensed by the Commonwealth of Kentucky.

## Architectural Design

Building Materials: The primary exterior wall materials shall include brick, architectural grade CMU, stone, tile, or concrete which is formed to have a unit masonry appearance. These materials shall have an integral color. Other materials such as EIFS/stucco, architectural grade metals, wood or cement board siding, glass block, and precast concrete may be used for trim, detailing, and incidental or secondary wall areas.

Only architectural grade materials shall be used. Flimsy or synthetic appearing exterior wall materials, such as ribbed, industrial style metal siding, T-111, EIFS systems with visually pronounced joints (not including designed scoring or reveals), plain faced CMU, vinyl siding, or hard board type materials are not permitted. Snap-in grids or applied mullions are not permitted in windows; only mullions which physically separate window glass into multiple panes shall be used for divided light type windows.

Materials for any pitched roof shall be architectural grade, three dimensional shingles or tiles, slate, or standing seam metal. Other types of decorative metal roofing can be evaluated on a case-by-case basis and approved if they are integral to the overall design of the structure.

Exterior Wall Colors: Exterior walls shall primarily use colors which are reflective of rich, natural tones such as those in the red, red-brown/terra cotta, brown, clay, beige/tan/blond, mustard, and/or warm gray ranges. White or exceptionally dark colors are not permitted. Other colors may be used for trim and detailing.

Facade Composition: Facades shall be designed to have a defined base, mid section, and top or cap. This can be accomplished by differentiating the material, finish, and/or color of the wainscot or knee wall (or entire ground floor for multi-story buildings) from the upper portion of the exterior wall. Additionally for multi-story buildings, a change in the fenestration pattern between the ground floor and the upper floors can be employed. The top or cap effect should be created through the provision of a three dimensional detail(s) which breaks or jogs the wall plane from the roof such as a defined cornice, brackets, corbels, projecting eave, exposed rafter tails, et al.

Tangible masonry detailing shall be provided such as defined window sills and lintels, quoins, soldier courses, herringbone or tile detailing, or medallions. Windows and storefront units shall be recessed within their openings ("punched" openings) to create shadow lines and three-dimensional relief. Windows/openings other than storefront type units shall have a vertical height to width orientation. Transoms and main/public entrances which are recessed behind the exterior facade are preferred. For office/commercial buildings, broad storefronts which allow direct visibility into the building interior shall be provided for building frontages along public sidewalks, streets, and private access drives which function as "streets." Facade projections, such as simple fabric awnings and roof awnings/canopies at street level, and shingle/blade style projecting signs, are encouraged

for building frontages along public sidewalks, streets, and private access drives which function as "streets." Firmly structured awnings with an "inflated" or plastic appearance shall not be used.

For "Impact Sites" as discussed in the "Recommended Land Use and Development Concepts for the 8 Sub-Districts" section in Chapter 2 and identified on the Impact Sites Map on page 2.16, at least one type of facade projection is required along both of the street/access drive frontages at the intersection corner where the building is located. Multi-story buildings are preferred on "Impact Sites." If one story, they shall use a taller ceiling height with an extended parapet to create height and scale commensurate with a multi-story building to anchor the structure to the intersection corner. The arrangement of bays and openings on the primary facades of buildings on "Impact Sites" shall align with the landscaping along the adjoining street frontages as discussed in the Landscaping section of Chapter 3.

For large scale structures such as anchor style retail buildings, parking structures, and civic/institutional buildings, the amount of detailing and fenestration will need to be adjusted to match the scale and function of the building. The exterior walls of larger office/commercial buildings can be designed to appear as a collection of multiple zero lot-line buildings or tenants. No exterior wall for large scale structures should exceed 150 feet in length without being interrupted by a minimum 5 foot horizontal change or jog in the footprint.

Public Entry Points: The main public building entrances for all buildings, except for the individual doorways into in-line multi-tenant spaces or bays, shall be placed along the adjoining public street frontages or private access drives which function as "streets." Public entrances may be placed on other frontages as well. These main public entrances shall be emphasized in the facade design by methods such as recessing the entrance behind the exterior facade, providing an over-scaled entrance feature which projects outward from or above the exterior facade, placing the doorway within a three dimensional archway, providing an awning or roof awning/canopy, and/or a changing the building materials, detailing, or color around the entrance opening.

For "Impact Sites" as discussed in the "Recommended Land Use and Development Concepts for the 8 Sub-Districts" section in Chapter 2 and identified on the Impact Sites Map on page 2.15, at least one main, emphasized pedestrian entrance should be placed at the corner of the intersection where the building is located or along the primary street frontage. For civic/public/institutional uses, the main entrance(s) should be placed symmetrically on the primary facade(s) with over-scaled features which emphasize or highlight it as discussed above; formal plazas or squares which align with the main entry points in an axial manner may also be employed (refer to civic space plazas below in this chapter).

Roof Shape: Parapet designs which have a defined cornice line and pitched roofs are permitted. Pitched roof forms shall be complete and symmetrical, and span the entire building massing on which they are placed. Mansard or other "stage set" type designs are not permitted.

## Screening

Mechanical Equipment Screening: All mechanical equipment shall be screened. Ground mounted equipment shall be screened either with landscaping or enclosed with an enclosure structure which uses the same materials, colors, and design detailing as the principal building. If roof mounted, the equipment shall be screened by a parapet wall (for flat roofed buildings) which is designed and constructed as an integral part of the overall building; applied, "stage set" style mechanical equipment screens are not permitted. For roof mounted equipment on pitched roofed buildings, the equipment shall be wholly contained within roof structure.

Loading/Unloading/Service Areas: Loading/unloading and/or service areas shall be placed in the side or rear yard only, excluding corner side yards and along access drives which function as "streets" including shared private development streets/driveways. Any such area shall be enclosed with a screen wall which is at least 8 feet high and which uses the same materials, colors, and design detailing as the building which it serves. Alternatively, dense landscape hedging which will provide year round screening and that will grow to at least 8 feet high without routinely overtaking the planting space may be considered.

Trash Enclosures: Garbage storage areas shall be placed in the side or rear yard only, excluding corner side yards and along access drives which function as "streets" including shared private development streets/driveways. Garbage storage areas shall be enclosed per the requirements of Section 3151 of the zoning regulations. Additionally, the required enclosure structure shall be constructed with the same materials, colors, and design detailing as the principal building.

## Site Features

Civic Space Plazas: The provision of civic space plazas is recommended for several areas in Chapter 2. These are larger scale plazas which generally serve multi-building developments as opposed to the smaller scale street frontage plazas described in Chapter 3. These spaces should be centrally located within the development they serve, and sited to create visibility for the adjoining businesses. They should be surfaced with pavers and/or decorative concrete in at least two different colors and/or textures. Fixed seating such as benches or combination bench walls/landscape planters should be provided. Moveable seating, Identity Elements as described below, and formally arranged landscaping are also recommended for these spaces.

In addition to casual or informal use, civic space plazas may also be used for activities such as the following:

- Outdoor seating for adjoining eating and drinking establishments.
- Outdoor event venues in commercial or office developments as described in Chapter 3 provided the stated requirements for this purpose are fulfilled.
- Temporary commercial displays (TCDs) provided the requirements of Article 35 of the zoning regulations are fulfilled.

Identity Elements: Identity or "personality" features such as flag pole arrangements, water features, follies, monuments or walls, and public art are encouraged throughout the Study Area, especially along the street frontages of Impacts Sites as shown on the "Impact Sites Map" on page 2.16, the main vehicular entrances and building entrances in larger multi-building/multi-tenant developments, street frontage plazas as described in Chapter 3, and civic space plazas as described immediately above. There are no prescribed setbacks for identity elements, however, they may not be located in vision triangles as prescribed by Article 32 of the zoning regulations, or within required buffer yards as outlined in Section 3645. Identity elements which contain any type of "sign" as defined by Article 40 of the zoning regulations will need to conform to the requirements of Article 34, which may include obtaining a Sign Permit.

Site Furniture: Site furniture includes items such as benches/seating and outdoor tables, light fixtures and masts, waste receptacles, bollards, bicycle racks, railings around outdoor seating areas, and street/regulatory signage. There are no proprietary specifications or requirements for site furniture, or prototypes which must be followed. Rather, site furniture must be architectural grade and the various items selected for any given site must visually correlate to one another as components of an overall design system. Also, site furniture must use neutral or dark colors, and shall not use wood or wood products.

## SIGNAGE

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This chapter outlines permitted signage within the limits of the Mall Road (MR) Overlay District. The Mall Road Overlay Sign District replaces the prior Mall Road Commercial Sign District outlined in Section 3440 of the Boone County Zoning Regulations. The differences between the proposed text and the version that is in the zoning regulations adopted by the City on 10/28/08 are shown in Appendix B.

Signage in the Mall Road Overlay Sign District is subject to the Sign Permit procedure outlined in Section 3405 of the zoning regulations. Signage is not subject to architectural/design review through the Site Plan procedure as discussed in Chapter 4.

### Mall Road Overlay Sign District

The Mall Road Overlay Sign District applies to those properties which are within the Mall Road (MR) Overlay as part of the Mall Road District Study. The purpose of the sign district is to promote the mixed-use district that is visualized by the study with high quality construction materials and to follow the recommendations of the 2005 Boone County Comprehensive Plan. The Land Use Element found in the 2005 Comprehensive Plan states that "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" (Future Land Use Development Guidelines - Design, Signs, and Historic Preservation, pg. 142).

For the purpose of the Mall Road Overlay Sign District, the following standards shall apply:

1. All sections of Article 34 not otherwise replaced below;
2. A density of one (1) architectural freestanding sign which identifies a shopping center, mixed use commercial, commercial subdivision, planned development, or single-use commercial development and its major access point shall be permitted in accordance with the following standards:
  - A. The sign shall not exceed 20 feet in height.
  - B. The maximum size of the sign shall be no more than one (1) square foot of sign area per lineal foot of road frontage along the street frontage where the sign is to be located. No architectural freestanding sign shall exceed two

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hundred (200) square feet in area.

- C. The base of the sign shall be constructed of materials, colors, and design details which match or correlate to one of the principal buildings on site. A second option is for the pole structure(s) to have sculptural or artistic characteristics. Lastly, a monument sign may be substituted as the permitted freestanding sign. The base of the monument sign shall be constructed with materials, colors, and design details which match or correlate to one of the principal buildings on site. The top of the monument sign shall have an architectural feature or finish, such as a gable, arch, or pediment.
- D. Up to 50% of the area of any permitted architectural freestanding or monument sign may be used as manually changeable copy display. Proposed manually changeable copy display(s) shall be located beneath all fixed copy signs.
- E. One (1) electronic message board or electronic display screen which is used solely to advertise infrequently changing alphanumeric and numeric messages (e.g. - fuel prices, hotel room rates, etc.) shall be permitted on the architectural freestanding or monument sign as a Conditional Use. Such message signs must conform to Article 2, Sections 260-267, inclusive, of this order, and further shall be subject to the following minimum standards and requirements:
  - (1) The application for conditional use permit shall be accompanied by the following information:
    - a. All of the information required in Section 3405 of this Article;
    - b. Identification of all thoroughfares from which the sign will be visible; and
  - (2) Infrequently changing electronic message boards or electronic display screens as conditional uses, shall conform, at a minimum to the following requirements:
    - a. Such message boards and screens will be considered a part of the architectural freestanding sign; up to twenty percent (20%) or twenty (20) square feet (whichever is less) of the permitted sign area can be in the form of an electronic message board or display screen.

- b. All such message boards and screens shall meet the minimum standards of the Kentucky Transportation Cabinet and any other controlling local, state, or federal agency.
  - c. 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", "running", or "flashing" messages.
  - d. The message displayed on the board shall not change more than three (3) times per day.
  - e. Messages shall be displayed in one color on a black background.
  - f. The sign shall be equipped with a dimmer and the message shall dim as the sky gets darker.
  - g. Off-premise advertising shall be prohibited on the sign.
3. Any parcel or outlot which is accessible from or marketed as part of a shopping center, mixed use commercial, commercial subdivision, or planned development (except for the lot where the above referenced architectural free-standing sign is located) shall be permitted a density of one (1) on-premises monument sign for the purpose of identifying the tenant(s) on the lot based on the following standards:
- A. The sign shall not exceed eight (8) feet in height.
  - B. The maximum size of the sign shall not exceed sixty (60) square feet in area.
  - C. The base and sides of the sign shall use construction materials and design details that match the outlot building.
  - D. The top of the sign shall have an architectural feature or finish, such as a gable, arch, or pediment.
  - E. Single panel plexi-faced cabinets shall not be permitted.
  - F. Up to 50% of the area of any permitted monument sign may be used for manually changeable copy. Any proposed manually changeable copy shall be located immediately on top of the sign base.

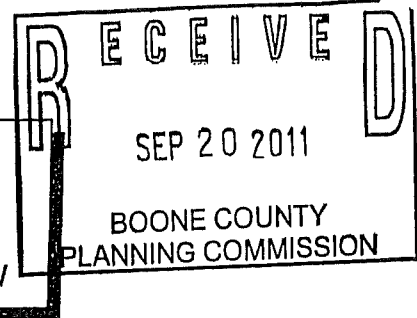
- G. One (1) electronic message board or electronic display screen which is used solely to advertise infrequently changing alphanumeric and numeric messages (e.g. - fuel prices, hotel room rates, etc.) shall be permitted on the monument sign as a Conditional Use. Such message signs must conform to Article 2, Sections 260-267, inclusive, of this order, and further shall be subject to the following minimum standards and requirements:
- (1) The application for conditional use permit shall be accompanied by the following information:
    - a. All of the information required in Section 3405 of this Article;
    - b. Identification of all thoroughfares from which the sign will be visible; and
  - (2) Infrequently changing electronic message boards or electronic display screens as conditional uses, shall conform, at a minimum to the following requirements:
    - a. Such message boards and screens will be considered a part of the monument sign; up to twenty percent (20%) of the permitted sign area can be in the form of an electronic message board or display screen.
    - b. All such message boards and screens shall meet the minimum standards of the Kentucky Transportation Cabinet and any other controlling local, state, or federal agency.
    - c. 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", "running", or "flashing" messages.
    - d. The message displayed on the board shall not change more than three (3) times per day.
    - e. Messages shall be displayed in one color on a black background.
    - f. The sign shall be equipped with a dimmer and the message shall dim as the sky gets darker.
    - g. Off-premise advertising shall be prohibited on the sign.

4. Sections 3402 and 3413 of the Boone County Zoning Regulations shall be used in determining permitted locations and the amount of building mounted signage that is permitted on a business. Permitted exceptions to Section 3413 are noted in Subsection 2 below.
  - (1) The following standards shall apply to building mounted signage in the Mall Road (MR) Overlay Sign District:
    - A. Channel letters, sandblasted redwood, individual pin mounted letters, neon copy, neon or L.E.D. accent bands, fabric awnings, and similar signs as determined by the Zoning Administrator shall be permitted.
    - B. Manually changeable copy, electronically changeable copy, board signs, plexi-faced panels, internally illuminated awnings, firmly structured awnings with an "inflated" or plastic appearance, and similar signs shall not be permitted unless they are replacing an existing sign of like kind that is the same size or smaller.
    - C. Building mounted signage shall not be permitted in residential developments. Exceptions are professional name plates, addresses, and building numbers.
  - (2) Permitted Exceptions to the building mounted signage regulations found in Section 3413 of the Boone County Zoning Regulations are as follows:
    - A. Projecting, shingle, or blade signs shall be permitted when a main building entrance is in close proximity to a street, private access drive, or shared private development street. Projecting signs will not be treated as one of the three permitted sign areas on a primary or secondary facade but the sign area shall be factored into the total square footage that is permitted on that given facade. The maximum size of a projecting sign shall not be more than 32 square feet in size. Projecting signs shall have a minimum clearance of 10 feet over sidewalks and shall not be permitted to project over vehicular ways.
    - B. Restaurants and entertainment uses (limited to night clubs and live performance venues) shall be allowed to have neon or L.E.D. accent banding along cornice lines and main entrances. The accent banding shall not be treated as one of the three permitted sign areas on a primary or secondary facade but the sign area shall be factored into the total square footage that is permitted on a given facade. The neon or L.E.D. banding shall be limited to 2 inches in height.

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5. Section 3410 of the Boone County Zoning Regulations shall be used in determining the location, height, area, and number of entrance signs that are permitted for a residential development. The following standards shall apply to residential entrance signs:
  - A. The base and sides of the sign shall use construction materials and design details that match or correlate to the residential structures on the lot.
  - B. The top of the sign shall have an architectural feature or finish, such as a gable, arch, or pediment.
  - C. Single panel plexi-faced cabinets shall not be permitted.
  - D. Electronically changeable message boards, electronic display screens, and manually changeable reader boards shall not be permitted.
  
6. Seasonal non-commercial banners for the advertising of holidays and special community events shall be permitted without the issuance of a Temporary Advertising Display Permit but are subject to the following standards:
  - A. The banner shall be located on permanent brackets on a light standard.
  - B. The light standard shall be located in close proximity to Mall Road or a shared development private street.
  - C. The banner shall be no larger than sixteen (16) square feet in area and shall not obstruct sight distance.

APPLICATION FORM



BOARD OF ADJUSTMENT AND ZONING APPEALS ACTION BOONE COUNTY PLANNING COMMISSION

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

See Boone County Zoning Regulations

SECTION A (To be completed by applicant)

(Check One)

1. Boone [checked] Florence \_\_\_\_\_ Walton \_\_\_\_\_ Union \_\_\_\_\_

(Check One)

2. [checked] Conditional Use Permit \_\_\_\_\_ Variance \_\_\_\_\_ Appeal \_\_\_\_\_

3. Applicant's Name B. J. ALLEN CO. d/b/a PHANTOM FIREWORKS \*

Phone Number 303 746 1064 Fax No. \_\_\_\_\_

Applicant's Address 555 MARTIN LUTHER KING BLVD

Youngstown Ohio 44502 City State Zip

4. Description of Request: RETAIL SALE OF CONSUMER FIREWORKS AND GENERAL MERCHANDISE FROM PERMANENT STORE

5. Name of Development N/A

6. Location of Development 8125 MAIL ROAD FLORENCE, KY 41042 (FORMER CIRCUS CITY BUILDING)

7. Acreage Under Review 5.476 SEE DEED ATTACHED

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

N/A

9. Owner of Property BRAYER FLORENCE LLC

Address of Property Owner 7162 READING RD Phone No. 513 609-3619

10. Cincinnati Ohio 45237 City State Zip

11. Proposed Use(s) on Site RETAIL SALE OF FIREWORKS AND GENERAL MERCHANDISE FROM THIS PERMANENT LOCATION WITHIN THE BUILDING

12. Total Square Footage of Existing and/or Proposed Buildings 31,252 sq ft - EXISTING

13. Current Zoning on Property C-3

14. Deed Book D 988 Page No. 23 Group No. [redacted] 2040A

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? RENDERINGS

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

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

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

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

\* WITH COPIES (over) P 392.7206 TO GERALD F. DUSING P 394.6200 E GDUSING@ASWBWV.COM

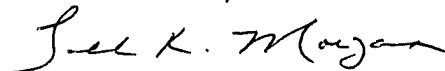
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CLUR #11- FBOA-006-A

CERTIFICATE OF LAND USE RESTRICTION

1. NAME AND ADDRESS OF PROPERTY OWNER(S)  
Brayer Florence, LLC  
7162 Reading Road  
Cincinnati, Oh 45237
2. ADDRESS OF PROPERTY  
8125 Mall Road  
Florence, KY 41042
3. NAME OF SUBDIVISION OR DEVELOPMENT (if applicable)  
B.J. Allen Co./dba Phantom Fireworks
4. DEED BOOK 988      PAGE NO. 23      GROUP NO. 2040A
5. TYPE OF RESTRICTION(S) (Check all that apply)
- Zoning Map Amendment:  
From \_\_\_\_\_ To \_\_\_\_\_
- Conditional Use Permit
- Development Plan       Conditional Zoning
- Subdivision Plat  
(Not Recorded)       Other:
- Variance
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



SIGNATURE OF COMPLETING OFFICIAL

Todd K. Morgan, AICP, Senior Planning/Zoning Division  
Name and Title of Completing Official

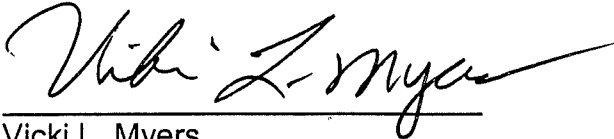
COMMONWEALTH OF KENTUCKY

COUNTY OF BOONE

Subscribed, sworn to, and acknowledged before me by Todd K. Morgan, AICP

on behalf of the Boone County Planning Commission this 27th day of October,

2011.



Vicki L. Myers

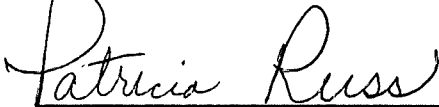
Notary ID 438411

NOTARY PUBLIC, State at Large

My commission Expires:

April 17, 2015

This instrument was prepared for recording purposes only by:



Patricia A. Russ

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 approved by the Florence Board of Adjustments and in accordance with the current zoning in effect as of October 12, 2011 Certificate of Land Use Restriction (#11-FBOA-006-A), for Brayer Florence, LLC, Property Owner(s).

The following conditions will apply:

1. **The front facade shall be designed as shown in elevation #2 and shall comply with the following:**
  - A. **The circular Phantom Fireworks sign shown on the front facade shall not overhang the top of the wall that it is being mounted on (see Section 3402 of the Boone County Zoning Regulations).**
  - B. **The purple canopies and accent bands shall not be illuminated or backlit.**
  - C. **The amount of signage on the front facade shall be in compliance with code or be no more non-conforming than Circuit City's building mounted signage.**
2. **The sides and rear of the building shall be painted with the brown/tan/grey colors that are being used on the front of the building. No signage or accent bands shall be permitted on the rear or side facades.**
3. **No sidewalk sales shall be permitted.**
4. **No Temporary Advertising Displays (TADs) shall be permitted.**
5. **No Temporary Commercial Displays (TCDs) shall be permitted.**
6. **No vending machines or similar items shall be permitted outside the building.**
7. **No outside sales or storage of any type shall be permitted.**
8. **The front parking lot will be brought into compliance with Section 3625 of the Boone County Zoning Regulations (Interior Landscaping for Vehicular Use Areas).**
9. **The existing buffer along the rear property line shall not be disturbed.**

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

DEED BOOK 988 PAGE NO. 23 GROUP NO. 2040A