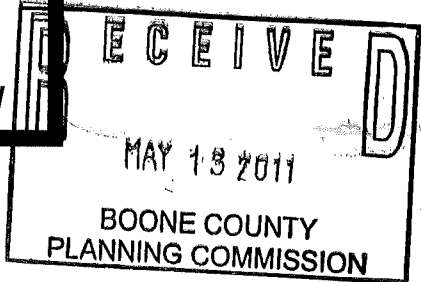


APPLICATION FORM

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) Conditional Use Permit [ ] Variance [X] Appeal [ ]
3. Applicant's Name B. J. ALLEN CO. d/b/a PHANTOM FIREWORKS \*
4. Description of Request: APPEAL OF ZONING ADMINISTRATOR'S DECISION THAT SALE OF CONSUMER FIREWORKS IS NOT GENERAL MERCHANDISE AND OTHERWISE NOT PERMITTED
5. Name of Development N/A
6. Location of Development 8125 MAIL ROAD FLORENCE, KY IN C-3 ZONE
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 BAKER FLORENCE, LLC
10. Address of Property Owner 7162 READING RD Phone No. (513) 608-3619 SUITE 730 CINCINNATI Ohio 45237
11. Proposed Use(s) on Site RETAIL SALE OF GENERAL MERCHANDISE INCLUDING CONSUMER FIREWORKS
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. 231 DEED ATTACHED
15. Is the site subject to a zone change? NO 2040A
16. Have you submitted a Site Plan with this request? N/A
17. Have you submitted a list of adjoining property owners with this request?
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] Member (Faxed, Photocopied or Scanned Signatures will NOT be Accepted)

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

(over) \* WITH COPIES TO GERALD F. DUSING P 394-6200 gdusing@aswllaw.com fax 859 392-7206

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 \_\_\_\_\_  
Phone Number \_\_\_\_\_ Fax No. \_\_\_\_\_  
Applicant's Address \_\_\_\_\_  
\_\_\_\_\_  
City State Zip
4. Description of Request: \_\_\_\_\_  
\_\_\_\_\_
5. Name of Development \_\_\_\_\_
6. Location of Development \_\_\_\_\_  
\_\_\_\_\_
7. Acreage Under Review \_\_\_\_\_
8. Lot Number and Name of Subdivision (if part of a subdivision) \_\_\_\_\_  
\_\_\_\_\_
9. Owner of Property \_\_\_\_\_  
Address of Property Owner \_\_\_\_\_ Phone No. \_\_\_\_\_
10. \_\_\_\_\_  
City State Zip
11. Proposed Use(s) on Site \_\_\_\_\_  
\_\_\_\_\_
12. Total Square Footage of Existing and/or Proposed Buildings \_\_\_\_\_
13. Current Zoning on Property \_\_\_\_\_
14. Deed Book \_\_\_\_\_ Page No. \_\_\_\_\_ Group No. \_\_\_\_\_
15. Is the site subject to a zone change? \_\_\_\_\_  
If yes, give date of approval \_\_\_\_\_
16. Have you submitted a Site Plan with this request? \_\_\_\_\_
17. Have you submitted a list of adjoining property owners with this request? \_\_\_\_\_
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:** \_\_\_\_\_  
(Faxed, Photocopied or Scanned Signatures will NOT be Accepted)

**ORIGINAL Applicant's 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 5/13/11 Fee Received \$1082<sup>00</sup> (#6282)
2. Is application complete?  Yes  No
3. Staff Reviewer KEVIN WALL
4. Scheduled Board Action Date 6/8/11
5. Board Action:  
 Approved  
 Approved with Conditions (See #6)  
 Denial (See #7) 6/8/11 - APPEAL DENIED, ZA DECISION UPHOLD
6. Conditions of Approval:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
7. Reasons for Denial: SEE 6/8/11 FBOA MINUTES  
\_\_\_\_\_  
\_\_\_\_\_

**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**

APPELLANT: B.J. Allen Co. dba Phantom Fireworks  
LOCATION: 8125 Mall Road, Florence, Kentucky  
ZONING: Commercial Services (C-3)  
DATE: June 8, 2011

**REQUEST AND HISTORY OF ISSUE**

In accordance with sections 201, 220, 230, 240, 245, 253, and 254 of the Boone County Zoning Regulations, an appeal of the Zoning Administrator's interpretation of the zoning regulations has been filed before the Florence Board of Adjustment and Zoning Appeals. Specifically, B.J. Allen Co. dba Phantom Fireworks has filed an appeal of the Zoning Administrator's determination that year round/permanent retail sales of consumer or common fireworks is not a Principally Permitted Use in the Commercial Services (C-3) zone (Section 1031 of the zoning regulations).

The Zoning Administrator has evaluated two written inquiries provided on behalf of the Appellant by their attorney. The first inquiry was outlined in a letter dated 4/12/11 from Gerald F. Dusing to Kevin T. Wall (attached as Exhibit 2). This letter contends that a permanent/year round retail fireworks store is appropriately classified under the C-3 zone principally permitted use category #16, which is described as "department stores, mail order houses, direct retail selling organizations of general merchandise" (letter states #17, this use is principally permitted use #16 under the current code).

In a response letter dated 4/15/11 (attached as Exhibit 3), the Zoning Administrator determined that this contention was not supported by the language of the code due to both customary applications or understandings of the terms in this use category and the language in Article 40 "Definitions." The Zoning Administrator's response outlined a number of courses of action which the Appellant could pursue including seeking another interpretation based on another use category(ies) or filing a statutory appeal to the FBOA.

This letter also suggested that the Appellant participate in the ongoing legislative process to amend the zoning regulations to allow year round/permanent retail sales of fireworks. Changes in State law that occurred in March 2011 allow year round/permanent retail sales of fireworks in addition to seasonal or temporary sales which were previously permitted (per HB 333 which was a series of amendments to KRS 227). HB 333 included an emergency clause which made it effective immediately. In response to these statutory changes, both Mayor Whalen and Judge/Executive Moore requested that the Planning Commission study the issue of year round/permanent retail sales of fireworks and recommend appropriate changes to the zoning regulations to allow this use. The Planning Commission will hold a public hearing on July 6, 2011 for draft text changes recommended by the Commission's Technical/Design Review Committee.

The second inquiry was outlined in a letter dated 4/21/11 from Gerald F. Dusing to Kevin T. Wall (attached as Exhibit 4). In addition to providing greater explanation of why the use should be allowed under principally permitted use #16 "department stores, mail order houses, direct retail

selling organizations of general merchandise" as contended in the first letter, this letter also argued that the use should also fall under principally permitted use category #15, which is "general dry goods and merchandise stores" (letter states #16, this use is principally permitted use #15 under the current code).

In a response letter dated 5/10/11 (attached as Exhibit 5), the Zoning Administrator determined that the contentions in this letter were not supported by the regulations. Based upon additional legal advice, the Zoning Administrator also determined that the use had not been legislatively contemplated when the current regulations were adopted in 2008, as the year round/permanent retail sales of fireworks was not a legal activity under State law until March 2011. The additional legal input included a review of the "Carlton v. Taylor" case, which is mentioned in the 5/10/11 response letter.

The Appellant's attorney's 4/12/11 letter acknowledges that fireworks or consumer fireworks are not defined in the zoning code, and that the sales of fireworks from a permanent store location is not listed as a permitted, conditional or accessory use in the zoning code, nor is it a prohibited activity anywhere in the zoning code. Both of the Zoning Administrator's response letters state that fireworks are expressly mentioned in the regulations in context of manufacturing, warehousing, et al, as a conditional use in the I-1 and I-2 zones, and mentioned relative to temporary or seasonal sales in Article 35 (TCD chapter).

Copies of the recent changes to KRS 227 (HB 333) regarding the year round retail sales of fireworks and the Carlton v. Taylor decision that is referenced in the Zoning Administrator's 5/10/11 letter are attached as Exhibit 6 and Exhibit 7 respectively. A copy of KRS 227/HB 333 was provided with the Appellant's attorney's initial 4/12/11 letter (Exhibit 2).

The core topic of this appeal is the permissibility of year round retail sales of consumer or common fireworks from a permanent location in the Commercial Services (C-3) zone. Although the Appellant has proposed to conduct this activity at 8125 Mall Road (former Circuit City building) which is zoned C-3, the appeal would affect how the C-3 zone text is applied in overall terms and is not limited to this specific location.

#### APPLICABLE REGULATIONS

Article 2, Section 201 of the Boone County Zoning Regulations states that one of the duties of the Zoning Administrator is to determine the classification of a use of land, buildings or structures as a permitted, accessory or conditional use in a specific zoning district, as well as determine the applicability and substance of development performance standards, based on interpretation of the stated and implied requirements of the zoning regulations. This includes the determination of classification of new uses or uses not specifically identified in these regulations.

Article 2, Section 220 of the Boone County Zoning Regulations states that one of the duties of the Board of Adjustment is to hear and decide appeals where it is alleged there is an error in any order, requirements, decision, interpretation, grant, or refusal made by the Zoning Administrator.

Article 2, Section 245 of the Boone County Zoning Regulations states that appeal to the Board of Adjustment and Zoning Appeals may be taken by any person, or entity claiming to be injuriously

affected or aggrieved by an official action, order, requirement, interpretation, grant, refusal, or decision of the Zoning Administrator. Such appeal shall be taken within thirty (30) days after the decision by filing, with the Board of Adjustment and Zoning Appeals, a notice of appeal specifying the grounds upon which the appeal is being taken, and by giving notice of such appeal to any and all parties of record. The Zoning Administrator shall transmit to the Board of Zoning Appeals all the papers constituting the record upon which the action appealed from was taken. The appellant may also submit any materials appropriate for review in consideration of the appeal.

Article 10, Section 1031 of the Boone County Zoning Regulations outlines uses that are principally permitted in the Commercial Services (C-3) zone (attached as Exhibit 8).

Article 40 of the Boone County Zoning Regulations outlines definitions to terms as they are to be applied in context of the regulations.

#### ADJACENT LAND USES AND ZONING

- A. A multi-tenant shopping center is located to the north (C-2 and C-3).
- B. A tire shop/auto repair facility is located to the immediate east, along west side of Mall Road (C-2). A multi-tenant office/retail complex is located to the east/southeast across Mall Road, and a vacant area is located to the east/northeast across Mall Road (C-2).
- C. A multi-tenant shopping center is located to the south (C-2).
- D. Several detached single family residences that front on Airview Drive are located to the west (SR-2).

#### DESCRIPTION OF SITE

The site at 8125 Mall Road contains 5.476 acres and an approximate 31,000 square foot building. It also contains a parking lot at the front of the building and 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.

#### DECISION AND BASIS FOR DECISION

The decisions in question, and the basis for these decisions, are described in the previously mentioned letters dated 4/15/11 and 5/10/11 from Kevin T. Wall to Gerald F. Dusing (previously referenced Exhibits 3 and 5).

#### CONCLUSION

KRS 100.257 and Section 220 of the Boone County Zoning Regulations give the Florence Board of Adjustment and Zoning Appeals the authority to act on the request. In order for an appeal to be granted, the Board must determine that the administrative decisions in question are in error.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Kevin T. Wall", with a long horizontal flourish extending to the right.

Kevin T. Wall, AICP  
Zoning Administrator  
City of Florence

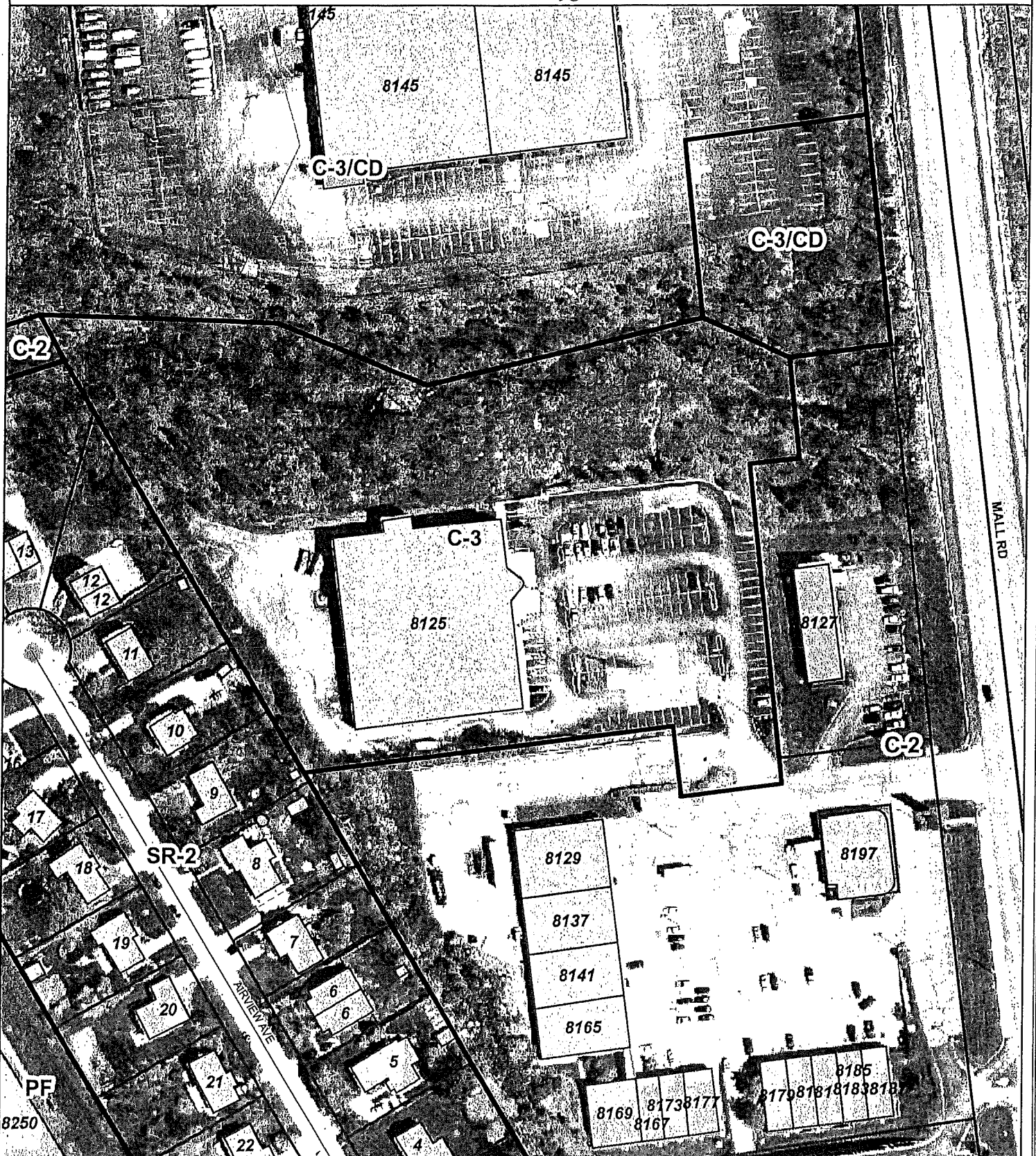
attachments:

- Exhibit 1 - 8125 Mall Road air photo map
- Exhibit 2 - 4/12/11 letter from Gerald F. Dusing to Kevin T. Wall
- Exhibit 3 - 4/15/11 letter from Kevin T. Wall to Gerald F. Dusing
- Exhibit 4 - 4/21/11 from Gerald F. Dusing to Kevin T. Wall
- Exhibit 5 - 5/10/11 letter from Kevin T. Wall to Gerald F. Dusing
- Exhibit 6 - HB 333 (amendments to KRS 227)
- Exhibit 7 - Carlton v. Taylor decision
- Exhibit 8 - Section 1031 "Principally Permitted Uses" (C-3 zone), followed by C-1 and O-1 principally permitted uses allowed in C-3 zone by reference (Sections 1011 and 1111)
- application materials

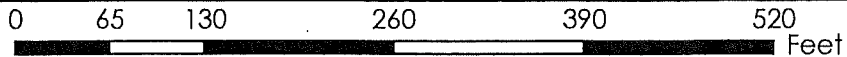
KTW/dw

# Exhibit 1 - 8125 Mall Road

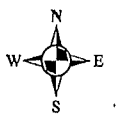
www.boonecountygis.com



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



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



# EXHIBIT 2

# Adams

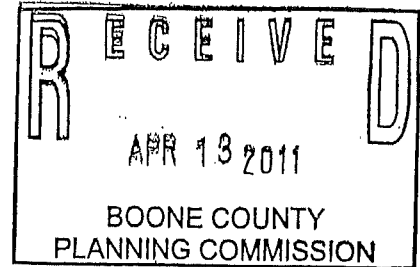
STEPNER, WOLTERMANN & DUSING, PLLC

Gerald F. Dusing  
Attorney at Law  
Gdusing@aswdlaw.com  
t: (859) 394-6200f: (859) 392-7206

40 W. Pike Street, P.O. Box 861, Covington, KY 41012-0861

April 12, 2011

Kevin T. Wall, AICP, CDT  
Zoning Administrator  
City of Florence, Boone County  
c/o Boone County Planning Commission  
Administration Building  
2950 Washington Street  
Burlington, Kentucky 41005



RE: Confirming Conforming Use Zoning Retail Sales  
8125 Mall Road (Previous Circuit City Building)  
Florence, Kentucky

Dear Kevin:

This office represents Phantom Fireworks which intends to open a general retail sales store at the free-standing building referenced above. Its sales will primarily consist of consumer fireworks which are addressed by the recent (March, 2011) amendments to KRS Chapter 227, copy enclosed for your ready reference.

Per our telephone conversation, you suggested that because this is a new law not anticipated nor specifically addressed by the zoning code, that I supplement the Occupational License Permit Application with a brief narrative of our position that the contemplated store is a permitted use at that location.

Fireworks or consumer fireworks are not defined terms in the zoning code.

Sales of fireworks from a permanent store location is not listed as a permitted, conditional or accessory use in the zoning code, nor is it a prohibited activity anywhere in the zoning code.

The proposed site is zoned straight Commercial Services-3 (C-3). No. 17 principally permitted use within C-3 is: "Department stores, mail order houses, direct retail selling organizations of general merchandise." No other permitted, conditional or accessory use is listed anywhere in the zoning code that would have a more specific application to general retail sales of consumer fireworks.

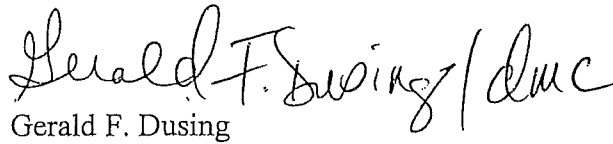
Accordingly, general retail sales of consumer fireworks as referenced in KRS 227 is a permitted use at the old Circuit City location at 8125 Mall Road, Florence, Kentucky.

Kevin T. Wall, AICP, CDT  
April 12, 2011  
Page 2

Thank you in advance for your prompt consideration of this matter. If you have any questions, please do not hesitate to contact me.

Very truly yours,

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

  
Gerald F. Dusing

GFD/jmr  
Enclosure  
cc: Client

612792.1



# BOONE COUNTY PLANNING COMMISSION

[www.boonecountyky.org/pc](http://www.boonecountyky.org/pc)  
[www.boonecountygis.com](http://www.boonecountygis.com)

Boone County Administration Building  
2950 Washington Street, Room 317  
P.O. Box 958  
Burlington, KY 41005

Phone (859) 334-2196; Fax (859) 334-2264  
[plancom@boonecountyky.org](mailto:plancom@boonecountyky.org)

## EXHIBIT 3

April 15, 2011

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

RE: Proposed Retail Sales of Fireworks at 8125 Mall Road (Previous Circuit City Building), Florence, Kentucky; Commercial Services (C-3) Zone

Dear Mr. Dusing:

In response to your letter dated 4/12/11 regarding the proposed retail sales of consumer fireworks at 8125 Mall Road, I am providing the following information:

As noted in your letter, the site in question is within a C-3 zone. The permanent/year round sales of consumer fireworks is not expressly identified as a principally permitted, accessory, or conditional use in any zone in the Boone County Zoning Regulations, C-3 or otherwise. In fact, such activity was not legal in Kentucky under state law until legislative changes were adopted last month. In short, our local code does not acknowledge an activity that was, until very recently, prohibited under statute.

Fireworks are expressly mentioned in the regulations in context of manufacturing, warehousing, et al, as a conditional use in the I-1 and I-2 zones. They are also mentioned relative to temporary or seasonal sales in Article 35.

Your 4/12/11 letter contends that a permanent/year round retail fireworks store is appropriately classified under the C-3 zone principally permitted use category #17, which is described as "department stores, mail order houses, direct retail selling organizations of general merchandise." It is my conclusion that this contention is not supported by the language of the regulations due to the following reasons.

- A. Unless there are multiple types of product lines within multiple "departments," a single purpose retailer (fireworks or otherwise) is not a department store.
- B. No information was provided which would support a claim that the business is a "mail order house." "Service Merchandise" that was on Mall Road years ago is an example of this type of business (an order service for the purchase of a variety of consumer goods which also had some on-site inventory).

Mr. Gerald F. Dusing  
April 15, 2011

- C. 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. Such items do not include a sexually oriented business." Admittedly, this definition creates some level of redundancy within principally permitted use category #17, however, the same basic principles of multiple types of product lines for department stores apply here as well (stores such as Macy's, K Mart, Wal Mart, and even Walgreens comfortably fit within this understanding).

There are several courses of action which can be pursued. First, another Zoning Administrator determination could be sought based on an argument that the proposed use falls within one or more other C-3 zone use categories. Additionally, I can reevaluate the issue if there is more to the proposal than is apparent on the surface (i.e., a retail store which largely or exclusively sells consumer fireworks and presumably related products; I assume that display fireworks or other types of explosives are not part of the program).

Second, your client could participate in the legislative process to change the zoning regulations so that the use would be expressly identified in the code. As I mentioned in our previous conversation, both Mayor Whalen and Judge/Executive Moore have sent requests which ask the Planning Commission to study the issue and recommend any appropriate changes to the zoning regulations. We would appreciate professional industry input in this endeavor.

Third, because this letter outlines a determination of the Zoning Administrator, it may be appealed to the Board of Adjustment within thirty (30) days. In order for an appeal to be granted, it must be demonstrated that the decision is in error.

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

Sincerely,



Kevin T. Wall, AICP  
Zoning Administrator  
City of Florence

cc: Kevin Costello, AICP, BCPC Executive Director  
Adam Howard, Boone County Fiscal Court  
Josh Wice, City of Florence  
Dale Wilson, BCPC Legal Counsel

# EXHIBIT 4

**Adams**  
STEPNER, WOLTERMANN & DUSING, PLLC

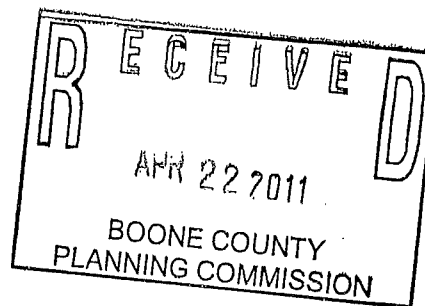
Gerald F. Dusing  
Attorney at Law  
Gdusing@aswdlaw.com  
t: (859) 394-6200f; (859) 392-7206

40 W. Pike Street, P.O. Box 861, Covington, KY 41012-0861

April 21, 2011

VIA FACSIMILE (859) 334-2264  
& REGULAR U.S. MAIL

Kevin T. Wall, AICP, CDT  
Zoning Administrator  
City of Florence, Boone County  
c/o Boone County Planning Commission  
Administration Building  
2950 Washington Street  
Burlington, Kentucky 41005



RE: Confirming Conforming Use Zoning Retail Sales  
8125 Mall Road (Previous Circuit City Building)  
Florence, Kentucky

Dear Mr. Wall:

I am in receipt of your letter of April 15, 2011.

You state that one course of action that may be pursued is "another Zoning Administrator determination could be sought based on an argument that the proposed use falls within one or more other C-3 use categories." This letter requests that reconsideration as well as reconsideration of your ruling of your April 15, 2011 letter.

The proposed use would be a retail outlet of consumer fireworks and related products to the exclusion of display fireworks and other types of explosives.

Let me clarify.

First, your statement that the sale of consumer fireworks "was not legal in Kentucky under state law until legislative changes were adopted last month" is not entirely accurate. Consumer fireworks have always been legal for retail sale in Kentucky. The recent amendments to KRS 227 simply expanded the product line of the types of consumer fireworks that are permitted to be sold and used. Various product lines of consumer fireworks have always been available for sale and use in Kentucky. Prior to the new law, ground-based consumer fireworks were legal. Now the line has been expanded to include aerial items and items with a report (bang), such as firecrackers. The sale of consumer fireworks is a permitted use in the same zoning classification that permitted consumer fireworks prior to the recent amendments to KRS 227.

Second, it is axiomatic that a legal activity must be permitted somewhere in the jurisdiction. It is also fundamental that if a specific use ("retail sale of consumer fireworks") is not defined or listed as a specific permitted use it is to be treated as encompassed by a compatible description of an existing listed permitted use in the Zoning Code (ZC). Permitted uses 17 and 16 in C-3 permit the sale of general merchandise. Consumer fireworks is merchandise. The use is encompassed in both listed permitted uses.

Third, "Department store" is not defined in the ZC. Phantom Fireworks will be selling multiple product lines of different brands of consumer fireworks from the store. It is no different than Circuit City being an "electronics store" whose merchandise was limited to electronic and related products, of various lines and brands. Toys-R-Us is another example. It is in the C-2 zone, which has no listed permitted use for the sale of toys. There are "single product line" retail stores in the C-2 zone along all of Mall Road whose product line is not specifically listed as a permitted use in C-2 (which encompasses permitted uses listed in 0-1 and C-1), yet can only be deemed permitted under the identical "Department stores, mail order houses, direct retail selling organizations of general merchandise" permitted use designation. (Permitted use 4, in C-2).

Fourth, a retail store selling various product lines of consumer fireworks is clearly within the definition of "general merchandise" as that term is defined in Article 40 of the ZC. The first sentence of the definition is dispositive: "A type of retail operation involving a variety of items sold on premises. "The fact it is defined that it is also referred to as a "department store" expands its application, not limits it to only stores as you interpret the term (with which we disagree). Otherwise listing the use separately from "Department stores" is superfluous. It is also consistent with the entire scheme of how permitted uses are listed throughout the ZC wherein most numbered permitted uses list more than one permitted use of a generally related nature. To interpret "direct selling organizations of general merchandise" as synonymous with a requirement that the store sell more than one general category of merchandise is inconsistent with the basic structure of the ZC in its method of categorizing and listing of permitted uses in all its zoning categories.

Finally, even though the sought use of retail sale of consumer fireworks is encompassed in permitted use #17 in C-3, it also falls within permitted use 16 in C-3: "General dry goods and merchandise stores." The phrase "merchandise stores" is dispositive. Consumer fireworks are legal merchandise. The word "General" modifies "dry goods," and is not coupled with the term "merchandise" for it to even be considered within the definition of "General Merchandise." To construe permitted use #16 "and merchandise stores" to be encompassed within permitted use #17 "Department Stores" because of a strained interpretation of the term "general merchandise" renders the phrase extraneous and of no use or effect in #16. Such an interpretation violates basic tenants of statutory construction. Moreover, the use of "and" is conjunctive, indicating a merchandise store is a separate and distinct use.

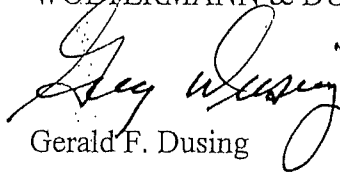
Kevin T. Wall, AICP, CDT  
April 21, 2011  
Page 3

Please reconsider your ruling and advise.

Thank you.

Very truly yours,

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

A handwritten signature in cursive script, appearing to read "Gerald F. Dusing".

Gerald F. Dusing

GFD/dmc  
cc: Client

616629.1



# BOONE COUNTY PLANNING COMMISSION

www.boonecountyky.org/pc  
www.boonecountygis.com

Boone County Administration Building  
2950 Washington Street, Room 317  
P.O. Box 958  
Burlington, KY 41005

Phone (859) 334-2196; Fax (859) 334-2264  
plancom@boonecountyky.org

## EXHIBIT 5

May 10, 2011

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

RE: Response to 4/21/11 Letter re Retail Sales of Fireworks at 8125 Mall Road (Previous Circuit City Building), Florence, Kentucky; Commercial Services (C-3) Zone

Dear Mr. Dusing:

I have reviewed your letter dated 4/21/11 regarding the above referenced matter and have the following response.

First, I will outline a few clarifications. Your letter represents that there was an inaccuracy in my 4/15/11 about the legality of the retail sale of fireworks prior to the recent legislative changes. My letter clearly states that the remarks are in reference to "the permanent/year-round sales of consumer fireworks" (i.e., common, Class C, or Division 1.4G as defined by the U.S. Department of Transportation and not necessarily the lower tier "novelties" or "trick noisemakers"). There was no representation in my letter that temporary, seasonal sales was not permitted by statute or the Boone County Zoning Regulations. Temporary or seasonal sales of fireworks were and are expressly permitted within limitations by Article 35.

Second, I can not reasonably agree with the remaining arguments outlined in your letter. The first of these (first paragraph on page 2 beginning with the term "second") basically would not allow local governments any opportunity to respond to changes made by the state legislature. HB 333 expressly permits local governments to "enact ordinances that affect the sale or use of fireworks within their jurisdiction." My 4/15/11 letter states that the Planning Commission is currently studying the issue. We anticipate that applicable changes to the zoning regulations will be recommended in the foreseeable future.

Third, the arguments regarding general merchandise and department stores were already addressed in my 4/15/11 letter. The determinations in the previous letter are based on the direct language of the regulations themselves and otherwise customary applications or understandings of these terms.

Fourth, the last paragraph (bottom of page 2 beginning with the term "finally") asserts that the use falls under the category "general dry goods and merchandise stores" (Principally Permitted Use #15). Regarding your discussion on "merchandise stores," I received additional legal advice pertaining to legislative intent at the time the current regulations were adopted, which was in 2008. HB 333 which amended KRS 227 as it relates to permanent fireworks retail stores was signed into law in March 2011.

Mr. Gerald F. Dusing  
May 10, 2011  
Page 2

As outlined previously, the term "fireworks" is expressly mentioned in the 2008 zoning regulations in context of manufacturing, warehousing, et al, as a conditional use in the I-1 and I-2 zones, and relative to temporary or seasonal sales in Article 35. The regulations do not use the term "fireworks" relative to the permanent/year-round sales of consumer fireworks (nor do I recall any discussion of it during the code formulation and adoption process), as this specific activity was not legal in Kentucky at the time. Based on the legal input provided (including a review of *Carlton v. Taylor*), I am not compelled to expand the scope of "merchandise stores" beyond its meaning in 2008 when the code was adopted.

Your 4/12/11 letter acknowledges that "sales of fireworks from a permanent store location is not listed as a permitted, conditional or accessory use in the zoning code, nor is it a prohibited activity anywhere in the zoning code." KRS 100.271 outlines the powers and potential powers of the zoning administrator. It also limits this authority with the phrase that the zoning administrator "may not have the power to permit any construction, or to permit any use or any change of use which does not conform to the literal terms of the zoning regulations." The literal terms do not currently include permanent retail sales of fireworks. The Boone County Zoning Regulations in general terms do not outline prohibited activities. Rather, the code lists permitted uses and others are excluded by omission.

As mentioned in my previous letter, your client is welcome to participate in the legislative process to amend the zoning regulations as it pertains to the year round retail sales of fireworks. We would appreciate professional industry input in this endeavor. Also, because this letter outlines a determination of the Zoning Administrator, it may be appealed to the Board of Adjustment within thirty (30) days. In order for an appeal to be granted, it must be demonstrated that the decision is in error.

Lastly, I believe we had been referring to the previous version of the Boone County Zoning Regulations relative to the use category numbers. The "general dry goods and merchandise stores" category is currently Principally Permitted Use #15 (versus 16), and the "department stores, mail order houses, direct retail selling organizations of general merchandise" category is currently Principally Permitted Use #16 (versus 17). Please call me if you need any further information.

Sincerely,



Kevin T. Wall, AICP  
Zoning Administrator  
City of Florence

cc: Kevin Costello, AICP, Executive Director, Boone County Planning Commission  
Adam Howard, Boone County Fiscal Court  
Josh Wice, City of Florence  
Dale Wilson, BCPC Legal Counsel

# EXHIBIT 6

AN ACT relating to fireworks, making an appropriation therefor, and declaring an emergency.

*Be it enacted by the General Assembly of the Commonwealth of Kentucky:*

→ SECTION 1. A NEW SECTION OF KRS CHAPTER 227 IS CREATED TO READ AS FOLLOWS:

- (1) For the purposes of this section, "APA 87-1" means the latest document: Standard for Construction and Approval for Transportation of Fireworks, Novelties, and Theatrical Pyrotechnics written by the American Pyrotechnic Association (APA).
- (2) The storage of consumer fireworks, display fireworks, or theatrical pyrotechnic devices, as defined in APA 87-1, at retail, wholesale, storage, or manufacturing facilities shall be reported in writing to the state fire marshal and the local fire chief of the jurisdiction where the facilities are located.

  - (a) The report shall be completed by the owner or lessee of the property or the supplier of the fireworks, and shall include the address of the facility, the location of the fireworks to be stored, a copy of the shipping bill, and whether they are consumer fireworks, theatrical pyrotechnic devices, or display fireworks.
  - (b) The initial report for permanent business establishments open year round shall be submitted between January 1, 2012, and January 31, 2012, for existing business and fifteen (15) days before storage begins for new businesses. The report for permanent business establishments open year round shall be updated annually and upon a change in location of the stored items.
- (3) Seasonal retailers, as defined in Section 7 of this Act, shall submit, at least fifteen (15) days prior to opening for sale each year, a report to the state fire marshal and the local fire chief of the jurisdiction identifying:

- (a) The address where the sales will be taking place;
- (b) The address where the fireworks will be stored; and
- (c) A description of how the fireworks will be stored. Only one (1) report is due if the seasonal retailer stores the same product at the same location for both the June 10 through July 7 and December 26 through January 4 seasons.

(4) Failure to submit a report required under this section shall be cause to cease and desist operation of the facility or site until such time as the required information is properly submitted. Inspectors shall notify the permit holder in writing and may allow twenty-four (24) hours to remedy the violation, unless the violation poses a distinct fire hazard.

→ Section 2. KRS 227.700 is amended to read as follows:

As used in KRS 227.700 to 227.750,~~[The term]~~ "fireworks" means~~[shall mean]~~ any composition or device for the purpose of producing a visible or an audible effect by combustion, deflagration, or detonation, and which meets the definition of "consumer fireworks~~["common"]~~" as defined in Section 3 of this Act or "display~~[special]~~" fireworks as defined in Section 5 of this Act and as set forth in the United States Department of Transportation's (DOT) hazardous materials regulations. "Fireworks" does not include:

- (1) Exception number 1: Toy pistols, toy canes, toy guns or other devices in which paper or plastic caps manufactured in accordance with DOT regulations, and packed and shipped according to said regulations, are not considered to be fireworks and shall be allowed to be used and sold at all times.
- (2) Exception number 2: Model rockets and model rocket motors designed, sold, and used for the purpose of propelling recoverable aero models are not considered to be fireworks.
- (3) Exception number 3: Propelling or expelling charges consisting of a mixture of sulfur, charcoal, and saltpeter are not considered as being designed for producing audible effects.

→ Section 3. KRS 227.702 is amended to read as follows:

As used in KRS 227.700 to 227.750, "consumer~~[Common]~~ fireworks" means~~[are]~~ fireworks that are suitable for use by the public, ~~[and]~~ designed primarily to produce visible effects by combustion, and ~~[must]~~ comply with the construction, chemical composition, and labeling regulations of the United States Consumer Product~~[Products]~~ Safety Commission. The types, sizes, and amount of pyrotechnic contents of these devices are limited as enumerated in this section. Some small devices designed to produce audible effects are included, such as whistling devices, ground devices containing fifty (50) mg. or less of explosive composition, and aerial devices containing one hundred thirty (130) mg. or less of explosive composition. Consumer~~[Common]~~ fireworks are further defined by the Consumer Product Safety Commission in CPSC, 16 C.F.R. Pts 1500 and 1507, are classified as Division 1.4G~~[class C]~~ explosives by the United States Department of Transportation, and include the following:

- (1) Ground and hand-held sparkling devices.
  - (a) Dipped stick-sparkler or wire sparkler. These devices consist of a metal wire or wood dowel that has been~~[. Stick or wire]~~ coated with pyrotechnic composition. Upon ignition of the tip of the device, a shower of sparks is produced. Sparklers may contain up to~~[ that produces a shower of sparks upon ignition. Total pyrotechnic composition may not exceed]~~ one hundred (100) grams of pyrotechnic composition per item. Those devices containing any perchlorate or chlorate salts may not exceed five (5) grams of pyrotechnic composition per item. Wire sparklers which contain no magnesium and which contain less than one hundred (100) grams of composition per item are not included in this category, in accordance with DOT regulations;
  - (b) Cylindrical fountain. Cylindrical tube~~[ not more than three fourths (3/4) in. (19 mm) inside diameter,]~~ containing not more than~~[ up to]~~ seventy-five (75) grams of pyrotechnic composition. Upon ignition, a shower of colored sparks,

and sometimes a whistling effect or smoke, is produced. This device may be provided with a spike for insertion into the ground (spike fountain), a wood or plastic base for placing on the ground (base fountain), or a wood or cardboard handle, if intended to be hand-held (handle fountain). When more than one (1) tube is mounted on a common base, total pyrotechnic composition may not exceed two hundred (200) grams, or five hundred (500) grams if the tubes are separated from each other on the base by a distance of at least one-half (1/2) inch;

- (c) Cone fountain. Cardboard or heavy paper cone containing up to fifty (50) grams of pyrotechnic composition. The effect is the same as that of a cylindrical fountain. When more than one (1) cone is mounted on a common base, the total pyrotechnic composition may not exceed two hundred (200) grams, or five hundred (500) grams if the tubes are separated from each other on the base by a distance of at least one-half (1/2) inch;
- (d) Illuminating torch. Cylindrical tube containing up to one hundred (100) grams of pyrotechnic composition. Upon ignition, colored fire is produced. May be spike, base or hand-held. When more than one (1) tube is mounted on a common base, total pyrotechnic composition may not exceed two hundred (200) grams, or five hundred (500) grams if the tubes are separated from each other on the base by a distance of at least one-half (1/2) inch;
- (e) Wheel. ~~A [Pyrotechnic] device attached to a post or tree by means of a nail or string. A [Each] wheel may have one (1) or more drivers, each of which may contain not more than [contain up to six (6) "driver" units: tubes not exceeding one-half (1/2) in. (12.5 mm) inside diameter and containing up to] sixty (60) grams of pyrotechnic composition. No wheel may contain more than two hundred (200) grams total pyrotechnic composition.~~ Upon ignition, the wheel revolves, producing a shower of color and sparks and, sometimes, a

whistling effect;

- (f) Ground spinner. Small device containing not more than twenty (20) grams of pyrotechnic composition, similar in operation to a wheel but intended to be ~~in design and effect and~~ placed on the ground and ignited. A shower of sparks and color is produced by the rapidly spinning device; ~~and~~
- (g) Flitter sparkler. Narrow paper tube attached to a stick or wire and filled with not more than one hundred (100) grams of pyrotechnic composition that produces color and sparks upon ignition. ~~This device does not have a fuse for ignition.~~ The paper at one (1) end of the tube is ignited to make the device function; and
- (h) Toy smoke device. Small plastic or paper item containing not more than one hundred (100) grams of pyrotechnic composition that, upon ignition, produces white or colored smoke as the primary effect;
- (2) Aerial devices.
- (a) Sky rockets and bottle rockets. Cylindrical tube containing not more than ~~rocket. Tube not exceeding one half (1/2) in. (12.5 mm) inside diameter that may contain up to~~ twenty (20) grams of pyrotechnic composition. Sky rockets contain a wooden stick for guidance and stability and rise into the air upon ignition. A burst of color or noise or both is produced at the height of flight;
- (b) Missile-type rocket. A device similar to a sky rocket in size, composition, and effect that uses fins rather than a stick for guidance and stability;
- (c) Helicopter, aerial spinner. A tube ~~not more than one half (1/2) in. (12.5 mm) inside diameter and~~ containing up to twenty (20) grams of pyrotechnic composition. A propeller or blade is attached, which, upon ignition, lifts the rapidly spinning device into the air. A visible or audible effect is produced at the height of flight;
- (d) Roman candles. Heavy paper or cardboard tube ~~not exceeding three eighths~~

(3/8) in. (9.5 mm) inside diameter and] containing up to twenty (20) grams of pyrotechnic composition. Upon ignition, up to ten (10) "stars" (pellets of pressed pyrotechnic composition that burn with bright color) are individually expelled at several second intervals;[-and]

- (e) Mine, shell. Heavy cardboard or paper tube usually[up to two and one half (2-1/2) in. (63.5 mm) inside diameter] attached to a wood or plastic base and containing up to sixty (60)[forty (40)] grams of total chemical composition (lift charge, burst charge, and visible or audible effect[pyrotechnic] composition). Upon ignition, "stars," components producing reports containing up to one hundred thirty (130) milligrams of explosive composition per report[firecrackers], or other devices are propelled into the air. The term "mine" refers to a device with no internal components containing a bursting charge, and the term "shell" refers to a device that propels a component that subsequently bursts open in the air. A mine or shell device may contain more than one (1) tube provided the tubes fire in sequence upon ignition of one (1) external fuse. The term "cake" refers to a dense-packed collection of mine or shell tubes. Total chemical composition including lift charges of any multiple tube devices may not exceed two hundred (200) grams. The maximum quantity of lift charge in any one (1) tube of a mine or shell device shall not exceed twenty (20) grams, and the maximum quantity of break or bursting charge in any component shall not exceed twenty-five percent (25%) of the total weight of chemical composition in the component. The tube remains on the ground; and
- (f) Aerial shell kit, reloadable tube. A package kit containing a cardboard, high-density polyethylene (HDPE), or equivalent launching tube with multiple-shot aerial shells. Each aerial shell is limited to a maximum of sixty (60) grams of total chemical composition (lift charge, burst charge,

and visible or audible effect composition), and the maximum diameter of each shell shall not exceed one and three-fourths (1-3/4) inches. In addition, the maximum quantity of lift charge in any shell shall not exceed twenty (20) grams, and the maximum quantity of break or bursting charge in any shell shall not exceed twenty-five percent (25%) of the total weight of chemical composition in the shell. The total chemical composition of all the shells in a kit, including lift charge, shall not exceed four hundred (400) grams. The user lowers a shell into the launching tube, at the time of firing, with the fuse extending out of the top of the tube. After the firing, the tube is then reloaded with another shell for the next firing. All launching tubes shall be capable of firing twice the number of shells in the kit without failure of the tube. Each package of multiple-shot aerial shells must comply with all warning label requirements of the Consumer Product Safety Commission.

- (3) Audible ground devices.
- (a) Firecrackers, salutes. Small paper-wrapped or cardboard tube containing not more than fifty (50) mg. of pyrotechnic composition. Those used in aerial devices may contain not more than one hundred thirty (130) milligrams of explosive composition per report. Upon ignition, noise and a flash of light is produced; and
- (b) Chaser. Small paper or cardboard tube that travels along the ground upon ignition. A whistling effect, or other noise, is often produced. The explosive composition used to create the noise may not exceed fifty (50) mg[; and
- ~~(4) Combination items. Firework devices containing combinations of two (2) or more of the effects described in paragraphs (a), (b), and (c) of subsection (2) of this section].~~

→ Section 4. KRS 227.704 is amended to read as follows:

Items listed in this section are classified as novelties and trick noisemakers and are not classified as consumer~~[common]~~ fireworks by the United States Department of Transportation, and their transportation, storage, retail sale, possession, sale, and use shall be allowed throughout the state at all times.

- (1) Snake, glow worm. Pressed pellet of pyrotechnic composition that produces a large, snake-like ash upon burning. The ash expands in length as the pellet burns. These devices may not contain mercuric thiocyanate.
- (2) Smoke device. Tube or sphere containing pyrotechnic composition that, upon ignition, produces white or colored smoke as the primary effect.
- (3) Wire sparkler. Wire coated with pyrotechnic composition that produces a shower of sparks upon ignition. These items may not contain magnesium and must not exceed one hundred (100) grams of pyrotechnic composition per item. Devices containing any chlorate or perchlorate salts may not exceed five (5) grams of pyrotechnic composition per item.
- (4) Trick noisemaker. Item that produces a small report intended to surprise the user. These devices include:
  - (a) Party popper. Small plastic or paper item containing not more than sixteen (16) mg. of explosive composition that is friction sensitive. A string protruding from the device is pulled to ignite it, expelling paper streamers and producing a small report.
  - (b) Booby trap. Small tube with string protruding from both ends, similar to a party popper in design. The ends of the string are pulled to ignite the friction sensitive composition, producing a small report.
  - (c) Snapper. Small, paper-wrapped item containing a minute quantity of explosive composition coated on small bits of sand. When dropped, the device explodes producing a small report.
  - (d) Trick match. Kitchen or book match that has been coated with a small

quantity of explosive or pyrotechnic composition. Upon ignition of the match a small report or a shower of sparks is produced.

- (e) Cigarette load. Small wooden peg that has been coated with a small quantity of explosive composition. Upon ignition of a cigarette containing one (1) of the pegs, a small report is produced.
- (f) Auto burglar alarm. Tube which contains pyrotechnic composition that produces a loud whistle or smoke, or both, when ignited. A small quantity of explosive, not exceeding fifty (50) mg. may also be used to produce a small report. A squib is used to ignite the device.

→ Section 5. KRS 227.706 is amended to read as follows:

*As used in KRS 227.700 to 227.750, "display" ~~The term "special"~~ fireworks means pyrotechnic devices or ~~shall mean~~ large fireworks designed primarily to produce visible or audible effects by combustion, deflagration or detonation. This term includes, but is not limited to, firecrackers containing more than two (2) grains (130 mg) of explosive composition, aerial shells containing more than forty (40) grams of pyrotechnic composition, and other display pieces which exceed the limits for classification as "consumer ~~common~~ fireworks." Display ~~Special~~ fireworks are defined by the Consumer Product Safety Commission in CPSC, 16 C.F.R. Pts. 1500 and 1507, and are classified as Class B explosives by the United States Department of Transportation.*

→ Section 6. KRS 227.710 is amended to read as follows:

No person, firm, copartnership, or corporation shall offer for sale, expose for sale, sell at retail, keep with intent to sell, possess, use, or explode any display fireworks, except as follows:

- (1) (a) In cities the chief of the fire department, or mayor, or similar official where there is no fire department, and in counties outside of cities the county judge/executive, may grant permits for supervised public displays of fireworks by municipalities, fair associations, amusement parks, and other organizations

or groups of individuals.

- (b) Every display shall be handled by a competent display operator to be approved by the public official by whom the permit is granted, and shall be of such character, and so located, discharged or fired as in the opinion of the official, after proper inspection, ~~to~~~~shall~~ not be hazardous to property or endanger any person.[]
- (c) "Competent display operator" shall be defined as the person with overall responsibility for the operation and safety of a fireworks display. The competent display operator shall have a Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) License and have participated as an assistant in firing at least five (5) public displays. A "competent display operator" is also an employee possessor. A permit under paragraph (a) of this subsection shall be issued only to a competent display operator holding an ATF license.
- (d) At least one (1) competent display operator shall be on site during display set-up and firing. This competent display operator shall maintain a copy of the permit application, as signed by the local authority having jurisdiction as identified in this section, on site and at all times the display is in place, and shall be presented on demand of the state fire marshal or local fire chief. All public displays that require issuance of a permit shall be conducted in accordance with the provisions of National Fire Protection Association (NFPA) 1123 – Code for Fireworks Display (adopted edition).
- (e) Permits shall be filed with the state fire marshal at least fifteen (15) days in advance of the date of the display. After the privilege is granted, sales, possession, use, and distribution of fireworks for the display shall be lawful for that purpose only. No permit granted under this subsection shall be transferable. For the purposes of this subsection, "public display of fireworks"

shall include the use of pyrotechnic devices or pyrotechnic materials before a proximate audience, whether indoors or outdoors.

*(f) Any person remaining within the display area shall be identified as licensed by the ATF; or an employee thereof, or be an assistant in training to become a competent display operator. All persons remaining within the display area shall be at least eighteen (18) years of age.*

*(g) The Commissioner of the Department of Housing, Buildings and Construction with recommendation from the state fire marshal shall promulgate administrative regulations in accordance with KRS Chapter 13A to administer the provisions of this subsection. The regulations shall address the process by which permits are issued and any other procedures that are reasonably necessary to effectuate this subsection.*

- (2) The sale, at wholesale, of any display fireworks for permitted~~[supervised]~~ displays by any resident manufacturer, wholesaler, dealer, or jobber, in accordance with regulations of the United States Bureau of Alcohol, Tobacco and Firearms, and Explosives if the sale is to the person holding a display permit as outlined in subsection (1) of this section. The permit holder shall present the permit along with other verifiable identification at the time of sale.
- (3) The sale of display fireworks in accordance with a license issued by the United States Bureau of Alcohol, Tobacco, Firearms and Explosives~~[, at wholesale, of any kind of fireworks by any resident manufacturer, wholesaler, dealer, or jobber, provided the fireworks are intended for shipment directly out of state in accordance with regulations of the United States Department of Transportation]~~.
- (4) The sale and use in emergency situations of pyrotechnic signaling devices and distress signals for marine, aviation, and highway use.
- (5) The use of fuses and railway torpedoes by railroads.
- (6) The sale and use of blank cartridges for use in a show or theater or for signal or

ceremonial purpose in athletics or sports.

- (7) The use of any pyrotechnic device by military organizations.
- (8) The use of fireworks for agricultural purposes under the direct supervision of the United States Department of the Interior or any equivalent or local agency.
- (9) Nothing in this section shall prohibit a person, firm, co-partnership, non-profit, or corporation from offering for sale, exposing for sale, selling at retail, keeping with intent to sell, possessing or using consumer fireworks as defined in Section 3 of this Act and~~[The sale of common fireworks]~~ as permitted pursuant to KRS 227.715.

→ Section 7. KRS 227.715 is amended to read as follows:

Except as provided in KRS 227.710, the consumer~~[common]~~ fireworks described in KRS 227.702~~[(1)]~~ may be offered for sale, sold at retail, or kept with the intent to sell, only if the following requirements are met:

- (1) Any person firm, co-partnership, non-profit, or business intending to sell consumer~~[common]~~ fireworks described in KRS 227.702(1) shall register annually with the state fire marshal, who may assess a fee of no more than twenty-five dollars (\$25)~~[fifty dollars (\$50)]~~ for each site at which fireworks shall be sold. The registration requirement under this section shall not apply to permanent business establishments which are open year round and in which the sale of fireworks is ancillary to the primary course of business. Each location shall be required to charge sales tax at the current rate imposed on retailers in KRS 139.200;
- (2) Permanent business establishments open year round and in which the sale of consumer fireworks is ancillary to the primary course of business shall only be permitted to sell those consumer fireworks described in KRS 227.702(1), or shall meet the criteria for "seasonal retailer" described in subsection (3) of this section;
- (3) "Seasonal retailers" shall be defined as any person, firm, co-partnership, non-

profit, or corporation intending to sell "consumer fireworks" between June 10th and July 7th, or December 26th and January 4th of each year or both, and shall include permanent businesses, temporary businesses, stores, stands, or tents. A seasonal retailer shall register with the state fire marshal, who may assess a fee of no more than two hundred fifty dollars (\$250) for each site at which fireworks shall be sold. Each location shall be required to charge sales tax at the current rate imposed on retailers in KRS 139.200;

(4) Any person, firm, co-partnership, non-profit, or corporation intending to sell consumer fireworks, as defined in KRS 227.702(2) and (3) as the primary source of business, that is not a seasonal retailer as defined in subsection (3) of this section, shall register with the state fire marshal, who may assess a fee of no more than five hundred dollars (\$500) for each site at which fireworks will be sold. Each location shall be required to charge sales tax at the current rate imposed on retailers in KRS 139.200;

(5) The annual registration required by ~~subsection (1) of~~ this section shall be received by the state fire marshal at least fifteen (15) days prior to offering fireworks for sale at the site for which the registration is intended. Evidence that a sales and use tax permit has been obtained from the Department of Revenue shall be presented to the state fire marshal as a condition of registration. If the registration is received less than fifteen (15) days prior to offering fireworks for sale at the site for which registration is intended, an additional assessment of one hundred dollars (\$100) shall be added to the initial fee;

~~(6)~~~~(3)~~ Each site at which fireworks are offered for sale shall have its registration certificate displayed in a conspicuous location at the site;

~~(7)~~~~(4)~~ Each site at which fireworks are offered for sale shall comply with all applicable provisions of the International Building Code, with Kentucky Amendments (adopted edition), and NFPA 1124 (National Fire Protection

Association) – Code for the Manufacture, Transportation, Storage, and Retail Sales of Fireworks and Pyrotechnic Articles (adopted edition) [have a working fire extinguisher at the site, in compliance with NFPA Pamphlet 10];

~~(8)~~~~(5)~~ — No common fireworks item shall be offered for sale if it has as part of its device any wings, fins, or other mechanism designed to cause the device to fly, or if it carries a cautionary label which includes in its description any of the following terms: "explosive," "emits flaming pellets," "flaming balls," "firecracker," "report," or "rocket;"

~~(6)~~ No person or business shall give, offer for sale, or sell any consumer~~[common]~~ fireworks listed in KRS 227.702 to any person under eighteen (18)~~[sixteen (16)]~~ years of age;

~~(9)~~~~(7)~~ No person under eighteen (18) years of age may be employed by a fireworks distribution facility, or manufacturing facility. No person under eighteen (18) years of age shall sell consumer fireworks at a consumer fireworks retail sales facility registered under Section 7 of this Act unless the individual is supervised by a parent or guardian;

(10) The state fire marshal may revoke the registration of any site which is in violation of a requirement of this section, or any other requirement provided pursuant to this chapter. If the violation renders any property especially susceptible to fire loss, and there is present such hazard to human life or limb that the public safety imperatively requires emergency action, the state fire marshal may take that action, as provided in KRS 227.330(6); and

(11) A person lawfully possessing consumer fireworks, as defined in KRS 227.702(2) and (3) may use those items if:

(a) He or she is at least eighteen (18) years of age;

(b) Fireworks are not ignited within two hundred (200) feet of any structure, vehicle, or any other person; and

(c) Use of the fireworks does not place him or her in violation of any lawfully enacted local ordinance.

→ Section 8. KRS 227.750 is amended to read as follows:

- (1) The state fire marshal, or any fire department having jurisdiction which has been deputized to act on behalf of the state fire marshal, shall cause to be removed at the expense of the owner all stocks of fireworks which are stored and held in violation of this chapter. After a period of sixty (60) days, the seized fireworks may be offered for sale by closed bid to a properly certified fireworks wholesaler.
- (2) After a period of sixty (60) days, the seized fireworks may be offered for sale by closed bid to a properly certified manufacturer, distributor, or wholesaler. All seized fireworks or explosives with a Class 1.3G or "Display" designation shall require the notification of the United States Bureau of Alcohol, Tobacco and Firearms. The state fire marshal shall provide the owner or possessor a receipt containing the complete inventory of any fireworks seized within five (5) business days of the seizure.
- (3) Before any seized fireworks may be disposed of:
- (a) If the owner of the seized fireworks is known to the state fire marshal, the state fire marshal shall give notice by registered mail or personal service to the owner of the state fire marshal's intention to dispose of the fireworks. The notice shall inform the owner of the state fire marshal's intent. The state fire marshal shall conduct an administrative hearing in accordance with KRS Chapter 13B concerning the disposal of fireworks; or
- (b) If the identity of the owner of any seized fireworks is not known to the state fire marshal, the state fire marshal shall cause to be published, in a newspaper of general circulation in the county in which the seizure was made, notice of the seizure, and of the state fire marshal's intention to dispose of the fireworks. The notice shall be published once each week for

three (3) consecutive weeks. If no person claims ownership of the fireworks within ten (10) days of the date of the last publication, the state fire marshal may proceed with disposal of the fireworks. If the owner does claim the fireworks within ten (10) days of the date of the last publication, a hearing as set out in paragraph (a) of this subsection shall be held

(4) Nothing in KRS 227.700 to 227.750 shall restrict a local government from enacting ordinances that affect the sale or use of fireworks within their jurisdiction~~[The state fire marshal shall seize, take, remove, or cause to be removed at the expense of the owner, all stocks of fireworks or combustibles offered or exposed for sale, stored, or held in violation of this chapter. All fireworks held, possessed, or used in violation of this chapter shall be destroyed as contraband].~~

→ Section 9. KRS 227.708 is amended to read as follows:

- (1) Items described in KRS 227.702~~[(1)]~~ are legal for retail sale provided all applicable federal and state requirements with respect thereto are met.
- (2) Items described in ~~[KRS 227.702(2) and (3) and ]~~KRS 227.706 are not legal for retail sale but are legal under permits granted pursuant to KRS 227.710 for the purposes specified in this chapter for public displays and may be sold at wholesale as provided in this chapter.
- (3) Items described in KRS 227.704 are legal for retail sale provided all applicable federal and state requirements with respect thereto are met.

→ Section 10. KRS 227.782 is amended to read as follows:

- (1) There is hereby established in the State Treasury a special fund to be known as the fire prevention and public safety fund. The fund shall consist of all moneys recovered as penalties under KRS 227.778 and moneys collected for fees pursuant to Section 7 of this Act.~~[ ]~~
- (2) Notwithstanding KRS 45.229, fund amounts not expended at the close of the

fiscal year shall not lapse but shall be carried forward to the next fiscal year.

(3) Any interest earnings of the fund shall become a part of the fund and shall not lapse.

(4) The moneys shall be deposited to the credit of the fund and shall, in addition to any other moneys made available for such purpose, be made available to the state fire marshal to administer Sections 1 to 10 of this Act and to support fire safety and prevention programs.

→ Section 11. Whereas the ordinary effective date of legislation passed during the 2011 Regular Session of the Kentucky General Assembly would hinder persons subject to the provisions of this Act from complying with its requirements before the July 4 holiday, an emergency is declared to exist, and this Act takes effect upon its passage and approval by the Governor or upon its otherwise becoming a law.

# EXHIBIT 7

CARLTON v. TAYLOR

Ky. 679

Cite as, Ky.App., 669 S.W.2d 679

Court in the case of *Wagoner, et al. v. Lonnie Jarrell, et al.*, decided July 2, 1976, by a memorandum opinion. In addition, the appellee attached to its counterstatements as an appendix, a copy of the memorandum opinion per curiam issued by the Supreme Court in *Wagoner v. Jarrell; supra*, and also a copy of the findings of fact, conclusions of law and judgment of the Floyd Circuit Court in Action No. 10850 styled *Lonnie Jarrell v. Isle Coals, Inc., et al.* RAP 1.310(d) provides that unpublished opinions shall not be cited or otherwise used in any other case in any court. In spite of this rule, we have seen numerous instances in which memorandum and other unpublished opinions have been cited. Upon proper motion it has been our policy to strike the offending counterstatements and grant additional time to file a counterstatement in conformity with the rules.

The Special Fund has moved that the counterstatements be stricken and that appellee be penalized for the violation of the rule and denied leave to file a counterstatement in conformity with the rule.

Upon consideration, we have determined to follow our previous policy and grant leave to appellee, Jesse Justice, to refile a counterstatement in conformity with the rule.

[2] The purpose of this opinion is to serve notice upon the Bar generally that in future cases in which unpublished opinions are cited we will entertain motions to strike the offending counterstatement, and if the circumstances warrant, deny leave to refile.

The appellant's motions to strike the counterstatements of appellee, Jesse Justice, are granted. The appellee, Jesse Justice, is granted to and including December 22, 1977 to refile counterstatements in which the citations of unpublished opinions have been deleted.

Jerry CARLTON, Wendell Bruce, John N. Cunningham, Mike Richey and Robert Stivers, Members of the Lawrenceburg Board of Zoning Adjustment, and the Lawrenceburg Board of Zoning Adjustment, Bernice Wayne Burke, Hollie Warford, Sr., Kenneth Hoskins, Thomas Searcy, James Link, Raymond Carlton, Ann Whitt, Gene Williams, W. T. McCoun, Members of the Lawrenceburg-Anderson County, Kentucky Joint Planning Commission, and the Lawrenceburg-Anderson County, Kentucky Joint Planning Commission, and Board of Education of Anderson County, Kentucky, Appellants,

v.

William C. TAYLOR, Appellee.

Court of Appeals of Kentucky.

Feb. 17, 1978.

Rehearing Denied April 14, 1978.

Discretionary Review Denied

Sept. 12, 1978.

The Anderson Circuit Court, Harold Y. Saunders, J., found zoning sections relied on for denial of application for building permit to construct building to be used for liquor business to be unconstitutional, and appeal was taken. The Court of Appeals, Wintersheimer, J., held that: (1) trial court correctly found that ordinance zoning provision was unconstitutional for failure to delineate standards by which city zoning board of adjustment could approve exceptions to uses permitted in local business districts but (2) remaining portions of ordinance were not vitiated and thus it was reasonable for board of adjustment to refuse to deviate from list of permitted uses, which did not include liquor store.

Reversed.

Park, J., filed a concurring opinion.

1. Municipal Corporations ⇌ 111(4)  
Zoning ⇌ 42

Ordinance zoning provision was unconstitutional for failure to delineate standards



by which city zoning board of adjustment could approve exceptions to uses permitted in local business districts but remaining portions of ordinance, which contained a severability clause, were still effective.

## 2. Zoning ⇐ 384

Where specific list of permitted uses, which did not include liquor store, remained as valid part of ordinance following finding of unconstitutionality of provision for failure to delineate standards by which city zoning board of adjustment could approve exceptions to uses permitted in local business districts, it was reasonable for board of adjustment to refuse to deviate from list of permitted uses in denying application for building permit to construct building to be used for liquor business within city limits.

## 3. Zoning ⇐ 384

Application for building permit to construct building which would then be used for liquor business within city limits in area zoned business district-local did not meet statutory conditional use test, which concerns use that is essential to or would promote public health, safety or welfare. KRS 100.111(5).

## 4. Zoning ⇐ 435

Applicant for building permit to construct building to be used for liquor business within city limits in area zoned business district-local could have sought conditional use permit under zoning ordinance, which did not properly set out standards to be used in construing ordinance and which arguably did not prohibit liquor stores in area, but record indicated that applicant could not sustain burden of proof that city zoning board of adjustment was arbitrary in denying permit and thus there was no basis for any presumption that there was sufficient evidence before the board which would have required it to grant conditional use permit. KRS 100.111(5); Const. § 2.

Dale Wright, Ollie J. Bowen, Lawrenceburg, for appellants.

Robin Griffin, Miller, Griffin & Marks, Lexington, for appellee.

Before PARK, WHITE and WINTERSHEIMER, JJ.

WINTERSHEIMER, Judge.

This appeal is from a judgment of the trial court, without the intervention of a jury, and involves the application for a building permit to construct a building which would be used for a liquor business within the city limits of Lawrenceburg, Kentucky, in an area zoned Business District-Local. The application was denied by the City Building Inspector, and the appellee perfected an appeal to the Zoning Board of Adjustment. On April 19, 1976, an extensive public hearing was conducted, at which time the Zoning Board of Adjustment unanimously upheld the denial by the Building Inspector. On May 18, 1976, appellee filed a complaint in the circuit court and that court found the zoning sections relied on for the denial to be unconstitutional in a judgment entered on December 13, 1976. Following various unsuccessful motions after judgment, the appellants filed a notice of appeal on February 12, 1977, in this Court.

The question presented is whether the trial judge committed reversible error in nullifying the zoning provisions of the city ordinance and authorizing a permit to be issued.

This Court reverses the judgment of the trial court.

[1, 2] The trial court was correct in finding that Section 18-36(a)(4) was unconstitutional for failure to delineate standards by which the Board of Adjustment could approve exceptions to uses permitted in local business districts. The contention that the unconstitutional provision is void and is of no effect does not vitiate the remaining portions of the ordinance which contained a severability clause, as required by *Rash v. Louisville and Jefferson County Metropolitan Sewer District*, 309 Ky. 442, 217 S.W.2d 232 (1949). The severed portion is no longer considered in construing the legal requirements; but the remaining portions of the ordinance are still effective. Accord-

ingly,  
regula  
listed  
store  
thus  
Sectio  
permi  
ed ma  
are th  
suanc  
which  
are pe  
ed. T  
permi  
pletel  
sions

In t  
350 S  
contai  
licens  
only  
remai  
cedur  
it had  
Howe  
permi  
of the  
the B  
ate fr  
case.

[3]  
with  
except  
"cond  
"cond  
"speci  
ordina  
part  
which  
public  
possib  
the p  
test.  
of the  
is atte  
fire an  
servic  
domin  
which  
provid  
An ap  
not so

ingly, the only uses permitted in the zone regulated by Article 18-36 would be those listed in 18-36(a)(1), (2) and (3). A liquor store is not listed as a permitted use, and thus would not be permitted in this zone. Section 18-36(a)(2) enumerates the uses permitted in the zone. What is not included must be considered as excluded. These are the standards which determine the issuance of permits. Only those businesses which fall within one of these categories are permitted uses; all others are prohibited. Therefore, to allow the issuance of a permit for a liquor store would be to completely disregard the remaining valid provisions of the applicable ordinance.

In the matter of *Schneider v. Wink*, Ky., 350 S.W.2d 504 (1961) the stricken clause contained the standards for issuing a license. Once this clause was eliminated, only the general power to issue a license remained. Therefore, once the general procedure for obtaining a license was followed, it had to be granted as a matter of law. However, in this situation, a specific list of permitted uses still remains as a valid part of the ordinance. Thus, it is reasonable for the Board of Adjustment to refuse to deviate from the list of permitted uses in this case.

[3] It appears that the trial court agrees with the conclusion that the term "special exception" is synonymous with the term "conditional use". Historically, the term "conditional use" has replaced the term "special exception" in most modern zoning ordinances. KRS 100.111(5) provides in part that a conditional use means a use which is essential to or would promote the public health, safety or welfare. It is impossible to conclude that the application in the present case meets such a statutory test. It would appear that the philosophy of the conditional use concept is one which is attempting to permit such uses as schools, fire and police stations, and other essential service type uses in zones which are predominantly built with similar use types, but which need such conditional uses nearby to provide essential and necessary services. An application for a retail liquor store does not so qualify.

Careful examination of this record indicates that the zoning ordinance in question does not properly set out the standards that are to be used in construing the ordinance. The "Purposes of Article" cannot be considered as the standard required in construing the ordinance. The trial court correctly determined that there was no distinction between the words "purpose" and "preamble." It is well settled in Kentucky that a preamble to an ordinance is merely an introductory clause, and the constitutionality of a legislative act cannot be tested by its preamble. *City of Elizabethtown v. Cralle*, Ky., 317 S.W.2d 184 (1958). Such a regulatory ordinance must be careful not to vest absolute and arbitrary power in any administrative board or agency, so as to be in violation of Section 2 of the Kentucky Constitution. It can be argued that the specific ordinance in question does not prohibit a liquor store in the area. Certainly, it cannot be said that a liquor store per se is an unlawful business, even though it may be considered as highly undesirable by some, and may, in fact, be undesirable in certain areas. It is the obligation of the drafters of the zoning ordinance to be specific, if they desire to prohibit specific offensive businesses. Such prohibition should encompass the necessary rationale and proper standards.

[4] In this specific situation, in view of the requirements of KRS 100.111(5), it appears to this Court that the appellee could have sought a conditional use permit. However, the record indicates that the appellee could not sustain the burden of proof that the Board of Adjustment was arbitrary. *Gentry, et al. v. Ressonier, et al.*, Ky., 437 S.W.2d 756 (1969). Therefore, there is no basis for any presumption that there was sufficient evidence before the Board of Adjustment which would have required it to grant a conditional use permit.

The judgment of the trial court is reversed.

WHITE, J., concurs.

PARK, J., concurs by separate opinion.

PARK, Judge, concurring.

I concur with the result reached by the majority opinion in this case.

First, I agree that Taylor is not entitled to the building permit, even though a portion of the ordinance is unconstitutional. Section 18-36 of the Lawrenceburg City Ordinance relating to "local" business districts provides an itemized list of businesses which are permitted within the district. Subsection (a)(4) then provides that the Board of Adjustment may grant "special exceptions" for other retail businesses "if it determines that the proposed use would not be detrimental to the development of the district as a retail shopping area". The majority opinion of this Court, and the opinion of the trial court, are clearly correct in holding that the provisions of subsection (a)(4) violate Section 2 of the Kentucky Constitution because of the absence of any standard by which the "special exceptions" could be granted. If subsection (a)(4) is stricken from the ordinance, a retail liquor store cannot be a permitted use within a "local" business district. A retail liquor store would be a permitted use only in a "central business district" under Section 18-37 of the ordinance. Consequently, there is no total prohibition of an otherwise lawful business such as was presented in *U.S. Mining & Exploration Natural Resources Co. v. City of Beattyville, Ky.*, 548 S.W.2d 833 (1977). I agree with the majority opinion that the invalidity of subsection (a)(4) does not entitle Taylor to the building permit.

Second, I agree with so much of the majority opinion as holds that a "special exception", authorized by subsection (a)(4) of Section 18-36, is in fact a "conditional use" authorized under Chapter 100 of the Kentucky Revised Statutes. Under KRS 100.237, a Board of Adjustment has the power to grant conditional use permits only for those uses for which are "specifically" named in the zoning regulations "which may be suitable only in specific locations in the zone". Section 18-36 of the Lawrenceburg City Ordinances does not specifically name the uses for which a "special excep-

tion" or "conditional use" permit can be granted within a local business district. Under subsection (a)(4), a condition use permit could be granted for "all offices and other retail businesses or services" not specifically authorized in a local business district. As defined by KRS 100.111(5), a "conditional use" means "a use which is essential to or would promote the public health, safety or welfare in one or more zones, but which would impair the integrity and character of the zone in which it is located, or in adjoining zones, unless restrictions on location, size, extent and character of performance are imposed in addition to those imposed in the zoning regulation". I conclude that the provisions of subsection (a)(4) of Section 18-36, relating to the granting of "special exceptions", do not comply with the standards for granting conditional use permits imposed by KRS 100.237 and KRS 100.111(5).

Because subsection (a)(4) of Section 18-36 fails to meet the statutory requirements for granting conditional use permits, I agree with the majority opinion that the Board of Adjustment had no authority to grant Taylor's request for the building permit. A retail liquor store was not a permitted use within a local business district, and the ordinance provided the Board with no valid authority to grant the building permit as a "conditional use". For these reasons, I concur in the majority opinion.



Richard William CONLEY, Appellant;

v.

COMMONWEALTH of Kentucky, Appellee.

Court of Appeals of Kentucky.

March 17, 1978.

Discretionary Review Denied  
Sept. 12, 1978.

Defendant was convicted, on his plea of guilty, in the Boone Circuit Court, Sam

Neac  
Cour  
(1) tl  
plea  
tellig  
high  
guilt;  
(3) th  
inati  
estab  
sonal  
was  
cept  
not  
trist  
stanc  
furth  
mado

1. C

guilt  
volu  
willi

2. C

requ  
to st

3. C

amir  
estal  
vide  
fend  
stan  
guilt

4. C

accu  
exar

5. C

tiary  
ant's  
chia  
pete  
exar  
hear

# EXHIBIT 8

12. Drive-through facilities operated in conjunction with a permitted use, and which are conducted in accordance with Section 3155;
13. Recycling collection containers.

## SECTION 1023

### Conditional Uses and Criteria

The following uses and appropriate accessories subject to the approval and qualifications of the Board of Adjustment and Zoning Appeals provided: a) the activity is an integral and subordinate function of a permitted commercial use, professional or personal service; or b) the activity will further add to, not detract from, the creation of a compact, multi-purpose and pedestrian oriented commerce center; and c) the arrangement of uses, buildings or structures will be mutually compatible with the organization of permitted and accessory uses to be protected in the district:

1. Garden and landscape sales including florist greenhouses, lawn furniture and the like;
2. Automotive repair facility and wash services for vehicles;
3. Small scale sales or leasing of new and used motor vehicles requiring the storage of no more than fifty (50) vehicles on the premises (**Does not apply in the City of Florence**);
4. Small scale sales or leasing of new and used recreational vehicles requiring the storage of no more than fifty (50) vehicles on the premises (**Does not apply in the City of Florence**);
5. Mini-warehouses or storage facilities (**Does not apply in the City of Florence**);
6. Horse related uses, including riding and boarding stables, as defined by KRS 100.111 (2)(c).
7. Indoor kennels for household pets; except in the City of Florence where indoor kennels for household pets are only allowed when not adjoining a residential zoned property.

## SECTION 1024

### Intensity

The intensity of use in a Commercial Two district of under four (4) acres, including all the contiguous private property so designated, shall not exceed 12,000 square feet of gross floor area per acre of land. In a commercial two district of over four (4) acres, the intensity of use shall not exceed 15,000 square feet of gross floor area per acre of land.

## SECTION 1025

### Minimum Size

The minimum size and extent of a Commercial Two district, including all the contiguous private property so designated, shall not be less than two (2) acres.

## SECTION 1026

### Minimum Standards

See Article 31 for dimensional standards. (Site Plan Review required for all permitted uses, See Article 30)

## SECTION 1030

### **COMMERCIAL SERVICES (C-3)**

The purpose of the Commercial Services district is to provide, control and centralize those types of commercial activities which; a) depend on and generate high vehicular accessibility, visibility and traffic; and/or b) large outdoor single-purpose storage, display and parking areas and c) which do not fit the scale, character, trade area and general objectives of the other commercial districts in this article or the employment districts defined in Article 11. Such districts will generally be organized about regional or major community trade areas.

Sites will be of suitable lands which can be appropriately buffered from surrounding urban uses. Districts will be located to have direct visibility from major arterials. District facilities and plans should be organized to accomplish as much clustering of compatible uses, sharing of parking and access, signage, lighting and other spaces and improvements as possible.

## **SECTION 1031**

### **Principally Permitted Uses**

The following uses are permitted:

1. All principally permitted uses of a Commercial One (C-1) district;
2. All the principally permitted uses in an Office One (O-1) district; with the exception of principally permitted use #27 in Section 1111.
3. Commercial parking facilities and commercial recreational vehicle parking facilities;
4. Sales of lumber, building materials, heating and plumbing equipment, electrical supplies, hardware and farm equipment;
5. Sales, automotive repair, or lease of new and used motor vehicles including tires, batteries and accessories;
6. Major furniture, floor coverings, household appliances and home furnishing outlets;
7. Eating and drinking establishments including alcoholic beverages and accessory drive-in facilities
8. Sporting goods and accessories including the sales and service of new and used marine craft, recreational vehicles, camping trailers, bicycles, and motorcycles and other sporting equipment and sales;
9. Sale of mobile homes, sheds, car ports and other pre-fabricated buildings;
10. Garden and landscape sales, lawn furniture and the like, farm and garden supply outlets including equipment and vehicles;
11. Food lockers including preparation facilities and individualized household goods storage lockers (mini warehouses);
12. Equipment (light), automobile, truck rental and leasing services;
13. Gasoline filling stations, automobile repair facilities, car and truck washes, but excluding junk yards, wrecking or other storage, and excluding the repair of tractor-trailers and other trucks;
14. Florists including greenhouses;
15. General dry goods and merchandise stores;
16. Department stores, mail order houses, direct retail selling organizations of general merchandise;
17. Household appliances, china, glassware and metal ware;
18. Medical and dental laboratory services;
19. Travel arranging, transportation ticket and public event or promotional booking agencies;
20. Hotels and motels including convention facilities;

21. Auto parts and accessories stores;
22. Flea markets;
23. Churches, synagogues, temples and other places of religious assembly for worship;
24. The business of cashing checks or accepting deferred deposit transactions as regulated by KRS 368.010 to 368.120. **(APPLIES TO THE CITY OF FLORENCE CITY LIMITS ONLY)**
25. Pawn shops. **(APPLIES TO THE CITY OF FLORENCE CITY LIMITS ONLY)**
26. Bowling alley, skating rinks, roller skating rinks, miniature golf courses, golf driving ranges, and skateboard facilities;

## **SECTION 1032**

### **Accessory Uses**

Accessory uses, buildings and structures customarily incidental and subordinate to any of the permitted uses including:

1. Recreation uses, buildings and structures customarily incidental and subordinate to any of the permitted uses and defined to be:
  - a. Stages and similar assembly areas;
  - b. Auditoriums, exhibition halls and other public assembly spaces;
  - c. Amusement centers;
  - d. Tennis courts and billiards;
  - e. Play lots, tot lots, recreation centers and similar athletic uses;
  - f. Swimming beaches and swimming pools;
  - g. General, leisure, ornamental and other park spaces;
2. A dwelling unit of the property owner, or owner-operator, manager, or employee of the business including:
  - a. Private garage and parking;
  - b. Structures such as fences and walls;
  - c. Buildings such as storage sheds;
  - d. Appropriate storage of a recreation vehicle or unit;
  - e. The keeping and use of appropriate household pets;
3. Signage (See Article 34);
4. Parking (See Article 33);
5. Temporary buildings incidental to construction;

---

## ARTICLE

10

---

### COMMERCIAL DISTRICTS

---

#### SECTION 1000

##### Intent

The intent of this article is to create and provide: a) the necessary selection of goods and services required by urban and suburban neighborhoods, communities and regions; b) sites which are capable of centrally serving trade area populations; c) sites which are appropriately supported and served by necessary infrastructure; d) the implementation of an overall identifiable, cohesive urban and suburban form which is compact and efficient in design and makes efficient use of parking, multi-modal forms of transportation, open space and other physical characteristics of the land and improvements. In addition, this article is intended to prevent the excessive commercialization from wasting or blighting public and private facilities and land.

#### SECTION 1010

##### COMMERCIAL ONE (C-1)

The purpose of the Commercial One district is to provide the convenience goods and personal services required for daily living needs. Districts will be located on suitable lands central to the neighborhood trade area with direct access from neighborhood collector roads or minor arterials. District facilities and plans will be organized to provide central and convenient collection of vehicles, pedestrians and multi-modal forms of transportation within the district's facilities and major shopping spaces.

#### SECTION 1011

##### Principally Permitted Uses

The following uses are permitted:

1. Hardware stores;
2. Eating and drinking establishments including alcoholic beverages;
3. Grocery stores and supermarkets;
4. Stores with retail sales of meat, fish, seafood, dairy and poultry products;
5. Fruit and vegetable stores; bakeries, candy, nut and confectionery stores;
6. Convenience stores;
7. Liquor, beverage, drug and proprietary stores;
8. Banking services, savings and loan associations, credit unions and other credit services;  
**(THE FOLLOWING PASSAGE APPLIES TO THE CITY OF FLORENCE CITY LIMITS ONLY)** The business of cashing checks or accepting deferred deposit transactions as regulated by KRS 368.010 to 368.120 shall not be included in this permitted use.

9. Insurance carriers and agents;
10. Real estate operators, agents, lessors and real estate sub-dividing and developing services, operative builders and related services;
11. Accounting, auditing and bookkeeping services;
12. Postal services and packaging services provided the use is essential for pick-up and delivery convenience and not storage or transfer activities more appropriate to an employment district;
13. Physician, dental, optical goods and services;
14. Veterinary services and pet grooming services but not including the boarding of animals;
15. Beauty and barber services and tanning salons;
16. Nursery and day care centers;
17. Laundering, dry cleaning and dyeing services including self-service;
18. Alteration and garment repair and custom tailoring;
19. Shoe repair, shoe shining and hat cleaning services;
20. Family clothing, shoe stores, specialty clothing or boutiques and other apparel retail trade;
21. Jewelry stores;
22. Radio, t.v., music supplies, cameras, photographic supplies and specialty household appliances;
23. Art, craft and hobby supplies and products, gifts and novelties;
24. Antiques and used merchandise;
25. Books, stationery, newspapers and magazines;
26. Florists excluding greenhouses;
27. Sporting goods including bicycles;
28. Draperies, curtains, upholstery and floor coverings;
29. Paint, glass and wallpaper stores;
30. Photo finishing services;
31. Recreation centers, gymnasiums, clubs and similar athletic uses;
32. Video stores;
33. Funeral homes and crematoriums excluding cemeteries or mausoleums.

---

ARTICLE

11

---

EMPLOYMENT DISTRICTS

---

**SECTION 1110**

**OFFICE ONE (O-1)**

The purpose of the Office One district is to create a low density, low rise office environment and to provide professional and personal services and employment opportunities in close proximity to and compatible with residential districts. The Office One district shall accommodate smaller scale and independent office uses, which are not located within a larger Office Two district or which do not need or desire to be located in a commercial district. Office One districts are located on suitable lands within established or planned urban entities where adequate infrastructure and services are available or proposed.

**SECTION 1111**

**Principally Permitted Uses**

The following uses are permitted:

1. Bank related services or credit unions;
2. Business and personal credit services and title services;
3. Security brokers, investment services and finance companies;
4. Insurance agents, brokers and services;
5. Real estate agents, brokers and management services;
6. Real estate management services and builders offices excluding any outside storage equipment and the like;
7. Photographic services;
8. Eating and drinking establishments including alcoholic beverages;
9. Direct mail and advertising services;
10. Stenographic services and other duplicating and mailing services;
11. News syndicate services and employment services;
12. Research, development and testing services of an office nature;
13. Business and management consulting services and associations;

14. Motion picture, audio-visual and similar media production and distribution services;
15. Physician and dental services including medical, dental laboratories and clinics;
16. Legal, engineering, architectural, education and scientific research services;
17. Accounting, auditing and bookkeeping services;
18. Charitable and social services administration offices;
19. Professional membership organizations and labor organizations and civic associations;
20. Telephone exchange stations, telegraph message centers, radio broadcasting studios, television broadcasting studios and other communication centers and offices excluding any relay, transmitting or receiving towers or similar unattached, erected equipment;
21. The administration, management and any related office use or activity of commercial, business, service, professional, industrial, religious, private institutional, or similar organization, incorporation, companies, associations and such uses. Includes all integral stenographic reproduction, mailing, research, sales and similar office functions, as determined by the Zoning Administrator;
22. Veterinary services not including the boarding of animals;
23. Business colleges or schools;
24. Recreation centers, gymnasiums and other related recreational facilities;
25. The retail sale of office supplies and equipment;
26. Funeral homes and crematoriums excluding cemeteries or mausoleums.
27. Sexually Oriented Business as defined in Article 40 and applicable standards in Article 31.

## **SECTION 1112**

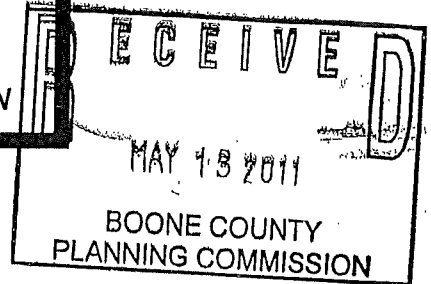
### **Accessory Uses**

Accessory uses, buildings, and structures customarily incidental and subordinate to the purposes of the district including:

1. Recreation uses or spaces of integral relation to the developed portions of the district including:
  - a. Temporary exhibit spaces;
  - b. Aquariums, botanical gardens and other natural exhibitions;
  - c. Stages and similar assembly areas;
2. Accessory uses for an office facility:
  - a. Garages and parking;
  - b. Structures such as fences and walls;
  - c. Buildings such as storage sheds;
3. Signage (See Article 34);

APPLICATION FORM

BOARD OF ADJUSTMENT  
AND  
ZONING APPEALS ACTION  
BOONE COUNTY PLANNING COMMISSION



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

- 1. (Check One)  
 Boone  Florence  Walton  Union
- 2. (Check One)  
 Conditional Use Permit  Variance  Appeal  
 Change in Non-Conforming Use
- 3. Applicant's Name B. J. ALLEN CO. d/b/a PHANTOM FIREWORKS \*  
 Phone Number 303-746-7064 Fax No. \_\_\_\_\_  
 Applicant's Address 555 MARTIN LUTHER KING JR. BLVD.  
YOUNGSTOWN, OHIO 44502  
 City State Zip
- 4. Description of Request: APPEAL OF ZONING ADMINISTRATOR'S DECISION  
THAT SALE OF CONSUMER FIREWORKS IS NOT GENERAL MERCHANDISE AND OTHERWISE  
NOT PERMITTED
- 5. Name of Development N/A
- 6. Location of Development 8125 MAIL ROAD FLORENCE, KY IN G-3 ZONE
- 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 BAREA FLORENCE, LLC  
 Address of Property Owner 7102 READING RD Phone No. (513) 608-3619  
SITE 730 CINCINNATI Ohio 45237  
 City State Zip
- 11. Proposed Use(s) on Site RETAIL SALE OF GENERAL MERCHANDISE  
INCLUDING CONSUMER FIREWORKS
- 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. 231 DEED ATTACHED
- 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? N/A
- 17. Have you submitted a list of adjoining property owners with this request? \_\_\_\_\_
- 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: MMH, Member  
(Faxed, Photocopied or Scanned Signatures will NOT be Accepted)

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

\* WITH COPIES TO (over) GERALD F. DUSING P 394-6200  
gdusing@aswellaw.com  
fax 859 392-7206

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 \_\_\_\_\_  
Phone Number \_\_\_\_\_ Fax No. \_\_\_\_\_  
Applicant's Address \_\_\_\_\_  
\_\_\_\_\_  
City State Zip
4. Description of Request: \_\_\_\_\_
5. Name of Development \_\_\_\_\_
6. Location of Development \_\_\_\_\_
7. Acreage Under Review \_\_\_\_\_
8. Lot Number and Name of Subdivision (if part of a subdivision) \_\_\_\_\_
9. Owner of Property \_\_\_\_\_  
Address of Property Owner \_\_\_\_\_ Phone No. \_\_\_\_\_
10. \_\_\_\_\_  
City State Zip
11. Proposed Use(s) on Site \_\_\_\_\_
12. Total Square Footage of Existing and/or Proposed Buildings \_\_\_\_\_
13. Current Zoning on Property \_\_\_\_\_
14. Deed Book \_\_\_\_\_ Page No. \_\_\_\_\_ Group No. \_\_\_\_\_
15. Is the site subject to a zone change? \_\_\_\_\_  
If yes, give date of approval \_\_\_\_\_
16. Have you submitted a Site Plan with this request? \_\_\_\_\_
17. Have you submitted a list of adjoining property owners with this request? \_\_\_\_\_
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:** \_\_\_\_\_  
(Faxed, Photocopied or Scanned Signatures will NOT be Accepted)

**ORIGINAL Applicant's Signature:** Mark Arleson  
(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 5/13/11 Fee Received \$1082<sup>00</sup> (#6282)
2. Is application complete?  Yes  No
3. Staff Reviewer KENIN WALL
4. Scheduled Board Action Date 6/8/11
5. Board Action:  
 Approved  
 Approved with Conditions (See #6)  
 Denial (See #7)
6. Conditions of Approval: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
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.