

APPLICATION FORM

BOARD OF ADJUSTMENT  
AND  
ZONING APPEALS ACTION  
BOONE COUNTY PLANNING COMMISSION

RECEIVED  
80055  
AUG 20 2019  
BOONE COUNTY  
PLANNING COMMISSION

FIVE (5) SCALED COPIES AND ONE (1) 11X17 REDUCTION OF SUBMITTED DRAWINGS ARE REQUIRED  
See Boone County Zoning Regulations

SECTION A (To be completed by applicant)

- (Check One)
- Boone \_\_\_\_\_ Florence \_\_\_\_\_ Walton \_\_\_\_\_ Union \_\_\_\_\_  
(Check One)
  - \_\_\_\_\_ Conditional Use Permit \_\_\_\_\_ Variance  Appeal \_\_\_\_\_  
Change in Non-Conforming Use
  - Applicant's Name Legacy Living of Florence  
Applicant's Address 8463 Castlewood Drive  
Indianapolis IN 46250  
City State Zip
  - Phone Number 317 698-4000 Fax No. \_\_\_\_\_ E-Mail tschantz@legacyliving.biz  
Description of Request: Appeal Zoning Administrator's decision  
regarding major/minor
  - Name of Development Legacy Living of Florence
  - Location of Development 8520 Gunpowder Road  
Florence KY 41042
  - Acreage Under Review 14,7136 acres
  - Lot Number and Name of Subdivision (If part of a subdivision)
  - Owner of Property Legacy Living Real Estate Florence  
Address of Property Owner 8463 Castlewood Drive  
Indianapolis IN 46250  
City State Zip
  - Phone Number 317-698-4000 Fax No. \_\_\_\_\_ E-Mail tschantz@legacyliving.biz
  - Proposed Use(s) on Site Independent and Assisted Living
  - Total Square Footage of Existing and/or Proposed Buildings 148,336 S.F.
  - Current Zoning on Property PF - Public Facilities
  - Deed Book 127/128 Page No. 843/27/106/42 Group No. 172/173/2047
  - Is the site subject to a zone change? No  
If yes, give date of approval \_\_\_\_\_
  - Have you submitted a Site Plan with this request? Yes
  - Have you submitted a list of adjoining property owners with this request? No
  - I, or we, understand and agree that this application and drawing(s) are being filed in accordance with the Boone County Zoning Regulations.

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

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

(over)

Gerry Dusing  
GDusing@aswdlaw.com

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

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

1. Date Received 8-20-19 Fee Received 15,082.00 Receipt # 80055
2. Is application complete?  Yes  No
3. Staff Reviewer KEVIN WALKER
4. Scheduled Board Action Date 9/11/19
5. Board Action:  
 Approved  
 Approved with Conditions (See #6)  
 Denial (See #7) ZONING ADMINISTRATOR DECISION UPHOLD
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@boonecountky.org - E-mail  
[www.boonecountky.org](http://www.boonecountky.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.

*[Faint, illegible handwritten text]*

**STAFF REPORT**

APPELLANT: Legacy Living of Florence  
LOCATION: 8520 Gunpowder Road, Florence, Kentucky  
ZONING: Public Facilities (PF)  
DATE: September 11, 2019

**BACKGROUND, DESCRIPTION OF REQUEST, AND 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. The determination in question is outlined in the e-mail dated 8/1/19 from Kevin Wall, Zoning Administrator for the City of Florence, to Gerald Dusing, attorney for Legacy Living of Florence. Legacy Living Real Estate Florence is the owner of the property in question.

The e-mail chain between Kevin Wall and Gerald Dusing, which outlines the issue and the Zoning Administrator's determination, is attached as Exhibit A. The determination is based on the conditions of approval and the Concept Development Plan for a Zoning Map Amendment from Suburban Residential One (SR-1) to Public Facilities (PF) that was approved by the Florence City Council on 1/22/19. The approval documents for this zone change application (Concept Development Plan sheet, 11/7/18 Committee Report, Planning Commission Resolution R-18-010-A, and City of Florence Ordinance No. 0-1-19) are attached as Exhibit B.

The Appeal application was received on 8/20/19. The application and related materials are attached as Exhibit C. The application was complete when the adjoining property owners list for mailed public notices was received on 8/21/19.

The Zoning Administrator decision outlined in the 8/1/19 e-mail (Exhibit A) determined that a proposal to replace two, four (4) unit townhouse buildings in the north part of the site with one, nine (9) unit townhouse building constituted a major amendment to the Zoning Map Amendment and Concept Development Plan approval per Section 314 "Amendments to an Approved Zoning Map Amendment" of the Boone County Zoning Regulations. Section 314 of the zoning regulations states:

Major amendments to the terms of an approved Zoning Map Amendment, including a Concept Development Plan, that involve substantial or significant changes in the development concept, uses, intensity, supplemental conditions of approval, or other plan elements of substantive effect must be submitted to the Planning Commission

and shall conform to the procedure and requirements described in Sections 301-310. Minor amendments to the approved Concept Development Plan that do not involve changes in the development concept, uses, intensity, supplemental conditions of approval, or other plan elements of substantive effect may be approved by the Zoning Administrator.

Specific issues raised by the Zoning Administrator include:

- A. The overall number of townhouse style units on the site would be increased from twenty eight (28) to twenty nine (29), which represents an increase in dwelling unit density/intensity that was not contemplated by the decision makers through the zone change approval process.
- B. The size and scale of the proposed nine (9) unit townhouse building is substantially broader/larger than those shown on the Concept Development Plan, which only included four (4) unit townhouse buildings (in addition to one larger assisted living/memory care building that is not of issue).
- C. The proposal would modify a supplemental condition of approval. Condition #1 (page 3 of 11/7/18 Committee Report) states, "The approval is based on the submitted Concept Development Plan, building elevations, and building perspectives unless modified by other conditions below." The submitted Concept Development Plan included a assisted living/memory care building and a total of twenty eight (28) townhouse units that were evenly divided between seven, four (4) unit structures.

Gerald Dusing requested the Zoning Administrator to determine whether the proposed change was a major or minor amendment to the approved Zoning Map Amendment and Concept Development in response to communications between the owner and Michael Schwartz, Planner. Mr. Schwartz had informed Legacy Living that he concluded that this change was a major amendment per Section 314 (refer to 7/31/19 e-mail in Exhibit A). Under the Zoning Administrator's decision, the desired change can still be pursued through the formal Change in Concept Development Plan procedure. The Planning Commission approved a Major Site Plan for this project on 6/11/19. This site plan was for the assisted living/memory care building and seven, four (4) unit townhouse buildings (28 total townhouse units).

#### 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 230 of the Boone County Zoning Regulations states that it is the intent of the regulations that all questions of interpretation and enforcement shall be first presented to the Zoning Administrator, and that such questions shall be presented to the Board only on appeal from the decision of the Zoning Administrator, and that recourse from the decisions of the Board shall be to the appropriate court of jurisdiction as provided by law. It is further the intent of the regulations that the duties for the legislative bodies in connection with the zoning regulations shall not include hearing and deciding questions of interpretation and enforcement that may arise. The legislative bodies shall have only the duties of considering and adopting or rejecting proposed amendments or repeal.

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 3, Section 303 of the Boone County Zoning Regulations states that the Planning Commission, as a condition to the approval of a zone change for zoning districts of commercial, multi-family (including apartments, townhouses, and condominiums), industrial, mobile home park development, office, public facility, recreation, highly recommends that a Concept Development Plan be submitted. In accordance with the applicable provisions of Chapter 100 of the Kentucky Revised Statutes, this Concept Development Plan, when submitted and agreed upon, shall be followed and be binding as a requirement of the zone change or map amendment

Article 3, Section 314 of the Boone County Zoning Regulations (quoted above) provides criteria for determining whether a proposed change to a Zoning Map Amendment approval constitutes a major or minor amendment. Changes which are deemed to be major amendments must be approved through the public hearing process and involve formal actions by the Planning Commission and legislative body.

Article 12, Sections 1211, 1212, and 1213 of the Boone County Zoning Regulations outline the Principally Permitted, Accessory, and Conditional Uses in the Public Facilities (PF) zone.

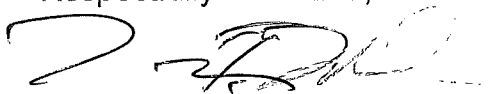
#### DECISION AND BASIS FOR DECISION

The decision in question, and the basis for this decision, are described in the previously mentioned e-mail dated 8/1/19 from Kevin Wall to Gerald Dusing (Exhibit A).

#### 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 this request. In order for an appeal to be granted, the Board must determine that the administrative decision in question is in error.

Respectfully submitted,



Kevin T. Wall, AICP  
Zoning Administrator  
City of Florence

#### EXHIBITS

- Exhibit A - E-mail chain which includes 8/1/19 Zoning Administrator decision e-mail from Kevin Wall to Gerald Dusing
- Exhibit B - Zoning Map Amendment approval documents (Concept Development Plan sheet, 11/7/18 Committee Report, Planning Commission Resolution R-18-010-A, and City of Florence Ordinance No. 0-1-19)
- Exhibit C - Application and proposal materials
- Exhibit D - Legacy Living Site map

# EXHIBIT A

**Michael Schwartz**

---

**From:** Gerry Dusing <GDusing@aswdlaw.com>  
**Sent:** Thursday, August 01, 2019 1:03 PM  
**To:** Kevin Wall  
**Cc:** Michael Schwartz; 'Joshua Hunt'; T Schantz  
**Subject:** RE: Legacy Living proposal to add dwelling unit

Kevin,

I think going from 28 units to 29 units with less bedrooms and combining two small buildings into one building, all of which are tangential to the main large building in the overall development being categorized as a "Major" change is in the eye of the beholder. And I understand you are the beholder and I am not.

What is missing here is the cost – benefit consideration of requiring the developer to go through the entire process when the purpose of Section 314 is to avoid that when there are such small iterations of a plan.

I'll see what the client wants to do.

Thanks,

Gerry

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CONFIDENTIAL WARNING

This email message, together with any attachments, is intended only for the personal and confidential use of the recipient(s) named above. This message may be an attorney-client communication and as such is privileged and confidential. If you are not the intended recipient, you are hereby notified that you have received this document in error and that any review, dissemination, distribution, or copying of this message is strictly prohibited. If you have received this message in error, please notify us immediately by telephone (859)394-6200 or by return email and delete this message, along with any attachments, from your computer. Thank you.

---

**From:** Kevin Wall <KWall@boonecountyky.org>  
**Sent:** Thursday, August 1, 2019 11:13 AM  
**To:** Gerry Dusing <GDusing@aswdlaw.com>  
**Cc:** Michael Schwartz <mschwartz@boonecountyky.org>; 'Joshua Hunt' <Joshua.Hunt@Florence-KY.gov>  
**Subject:** Legacy Living proposal to add dwelling unit

Gerry:

Per condition #1 of the zone change approval, the Concept Development Plan is binding except as otherwise modified by the agreed conditions. The Concept Development Plan includes one main building with a total of 100 beds for memory care and assisted living, and seven (7) townhouse buildings which contain four (4) units each for a total of twenty eight (28) townhouse units. The larger building with 100 beds is not at issue. This approval, which is the result of a public hearing process, does not contemplate additional units, nor does it contemplate townhouse structures which are larger or wider than four (4) units. Regarding changes to approved Concept Development Plans, Section 314 of the Boone County Zoning Regulations states (in full):

Major amendments to the terms of an approved Zoning Map Amendment, including a Concept Development Plan, that involve substantial or significant changes in the development concept, uses, intensity, supplemental conditions of approval, or other plan elements of substantive effect must be submitted to the Planning Commission and

shall conform to the procedure and requirements described in Sections 301-310. Minor amendments to the approved Concept Development Plan that do not involve changes in the development concept, uses, intensity, supplemental conditions of approval, or other plan elements of substantive effect may be approved by the Zoning Administrator.

The current proposal seeks to increase the density on the site by one dwelling unit for a total of twenty nine (29) townhouse units. Although one could argue that it is "just one additional unit," it represents an increase in density/intensity that was not contemplated by the decision makers through the public hearing process. The current proposal is to replace at least a portion of the two bedroom units with one bedroom units. The zoning regulations do not define or consider density/intensity for individual dwelling units in terms of number of bedrooms or occupants, but as complete dwelling units, regardless of the number of bedrooms or occupants. This principle is reinforced by the definition of "density" in Article 40 of the zoning regulations.

As mentioned above, condition #1 requires the compliance with the Concept Development Plan. The Concept Development Plan expressly notes (and illustrates) that the development will include twenty eight (28) townhouse style units which are evenly distributed among seven (7) buildings. As it is written, agreed, and adopted, the requested change would represent a modification to a supplemental condition of approval. As Zoning Administrator, I am not authorized to approve this change administratively.

The current proposal seeks to change the building configuration by replacing two four (4) unit buildings with a single nine (9) unit building, which more than doubles the townhouse building size shown on the plan for the area in question (i.e., four unit townhouse buildings exclusively were proposed). Thus, the resulting size and scale of the proposed nine unit building is substantially broader/larger than the approved townhouse structures and is a significant change to the development concept. Because this e-mail outlines a determination of the Zoning Administrator, it can be appealed to the Board of Adjustment within thirty (30) days from the date of this e-mail.

Sincerely,

Kevin Wall  
Zoning Administrator  
City of Florence

**From:** Gerry Dusing [<mailto:GDusing@aswdlaw.com>]  
**Sent:** Wednesday, July 31, 2019 4:43 PM  
**To:** Kevin Wall; mschwartz@  
**Subject:** Fwd: 9-Plex

Kevin and Mike

I have represented Legacy Living in this process  
I request that the simple consolidation of  
two buildings into one be ruled a minor change. It's one more unit but one less building and the other 99.99% of  
the plan remains the same

Section 314 of the Code is ambiguous at best. There are two defined possibilities :  
Major and Minor. The first sentence defines Major. In order to be Major, intensity is modified by the  
parameters of the defining phrase "substantial or significant changes...in intensity". One unit is clearly not  
substantial or significant relative the entire plan  
What is not Major then is Minor. The second sentence in section 314 is superfluous. However, to be consistent  
with the first section the second sentence's modifier "of substantial effect" must be read to apply to all the  
elements of consideration (concept, uses, intensity etc), and not just "other plan elements".

Please reconsider. Besides Section 314, it's the change is very minor by any reasonable standard. To have to back through another 5 month proves wastes the time of staff, the commissioners and Florence it Council members

Thanks

Gerald F. Dusing  
Adams, Stepner, Woltermann & Dusing, PLLC  
40 West Pike Street  
Covington, KY 41011  
Office: 859-394-6200  
Fax: 859-392-7206  
Mobile: 859-653-2701  
E-mail: [Gdusing@aswdlaw.com](mailto:Gdusing@aswdlaw.com)



Begin forwarded message:

**From:** T Schantz <[tschantz@legacyliving.biz](mailto:tschantz@legacyliving.biz)>  
**Date:** July 31, 2019 at 1:47:14 PM EDT  
**To:** Gerry Dusing <[GDusing@aswdlaw.com](mailto:GDusing@aswdlaw.com)>  
**Subject:** 9-Plex

Gerry

Mr. Schwartz stated to us today that changing from two four-plexes to one nine-plex would need a public hearing and go through another zoning process because we're changing the unit count.

Is there anything you can do to help us through this? Please disregard my VM if you receive this email first.

Thanks, Tony

Tony Schantz  
Legacy Living, LLC  
8463 Castlewood Drive  
Indianapolis, IN 46250  
Mobile: (317) 698-4000  
Office: (317) 813-0534  
[tschantz@legacyliving.biz](mailto:tschantz@legacyliving.biz)<<mailto:tschantz@legacyliving.biz>>  
[<cid:image001.jpg@01D547A6.75620900>]<<https://www.jasperseniorliving.com/>>  
[<cid:image002.png@01D547A6.75620900>]<<https://www.facebook.com/LegacyLivingOfJasper/>>  
>





**ZONE CHANGE/CONCEPT PLAN COMMITTEE REPORT**

**TO:** Boone County Planning Commission

**FROM:** Kim Bunger, Chairman

**DATE:** November 7, 2018

**RE:** Request of **Steven Berling (applicant)** for **Cathy Dryden, John Dryden, Cynthia Schroeder, and Jerry Inskeep (owners)** for a Zoning Map Amendment from Suburban Residential One (SR-1) to Public Facilities (PF) for a 14.86 acre site located on the east side of Gunpowder Road, approximately 40 feet north of the Gunpowder Road/Ridgeview Drive intersection, approximately 25 feet south of the Gunpowder Road/Bill Wentz Drive intersection, and including the property at 8756 Gunpowder Road, Boone County, Kentucky (annexation into the City of Florence pending). The request is for a zone change to permit memory care, assisted living, and senior housing.

**REMARKS:**

We, the Committee, recommend approval of the above referenced request based on the following findings of fact and with the following conditions:

**FINDINGS OF FACT**

1. The Committee concluded the request is in general agreement with the Boone County Comprehensive Plan for the following reasons:
  - A. The 2035 Future Land Use Map forecasts the site for Suburban Residential, Rural Lands, and Developmentally Sensitive uses. The Boone County Comprehensive Plan states the Future Land Use Map is intended to be used in tandem with the Land Use Element text and that the future land use boundaries are approximate and subject to refinement and interpretation by the Planning Commission and county legislative bodies (Land Use Maps, pg. 164).
  - B. The proposal is in general agreement with the following passage from the Land Use Element:

The U.S. 42 corridor between the Weaver Road/Hopeful Church intersection and the newly rebuilt Pleasant Valley/Gunpowder intersection has developed commercially over the last decade. Vehicle stacking problems during rush hours and conflicting left turn movements have become significant problems on this section of roadway. Frontage road and interconnecting parking lots are necessary here to allow vehicles to access existing and future traffic signals. Through redevelopment of the former Boone Kenton Warehouse site and adjacent parcels, access to Weaver Road should be implemented, as well as well-planned access to U.S. 42. If improvements are made to Gunpowder Road from U.S. 42 to Mt. Zion Road, more intense land uses could be examined for the property behind Wentz Drive as well as the possibility of having access to Gunpowder Road. If commercial development occurs in this area, it should primarily be accessed from U.S. 42 (Gunpowder, pg 169).

C. The proposal is in agreement with the following passage from the Population Element:

Boone County's median age in 2010 was 35.7 which is younger than the Kentucky median age of 38.1. Over time, the older age groups have increased their proportion of the total population. Table 2.8 indicates that the 45-64 and 65+ age groups have increased in percentage in Boone County since 2000 while the younger age groups have decreased. As is the case nationwide, people are generally having fewer children while living longer (Age and Sex Distribution, pp. 18-19).

Table 2.8 - Age of Boone County Population (Source: 2010 U.S. Census)

Age	2000		2010	
	Number	Percent	Number	Percent
0-4	6,849	8.0	9,019	7.6
5-19	20,011	23.3	27,225	22.9
20-44	33,872	39.3	40,342	34.0
45-64	18,318	21.3	30,912	26.0
65+	6,941	8.1	11,313	9.5

D. The proposal is in agreement with the following passages from the Housing Element:

Demand for multi-family housing has historically been in, or around Florence. The emphasis on new construction, however, has shifted to the unincorporated county. The continuing in-migration of a young, professional population combined with the increased growth of single-parent families and the overall graying of the population, means the demand for various multi-family housing options will continue in the future for Boone County (Housing Demand, pg. 75).

High density residential areas should be located sufficiently near with convenient access to major streets, highways, and shopping, and public facilities. A progression of densities of residential uses from high (multi-family) to low (single-family) shall be encouraged. Where traditional progressions of high to low net density are not possible through creative development design, an appropriate and attractive visual transition should be achieved. This could include existing vegetation or new landscaping and/or fencing (Housing Densities, pg. 81).

E. The proposal is in agreement with the following Goals and Objectives:

- The needs of an aging population (e.g., access to services, transportation, and support networks) shall be acknowledged and addressed (Demographics, Goal A, Objective 2).
- Provide appropriate services, housing, employment, and shopping opportunities in order to meet the needs of the population in all geographic areas of the County (Demographics, Goal A, Objective 4).
- The local transportation system in Boone County shall be maintained and improved to enhance the overall safety and level of service (Transportation, Goal B).

- Proper vehicular and pedestrian access to adjoining property shall be provided and/or retained when a property develops or redevelops (Transportation, Goal B, Objective 6).

The Committee reviewed the passages and Goals and Objectives above and concluded:

- The proposed elderly housing facility will contain an assisted living/memory care building with 106 beds and 28 independent living apartments. The development will serve Boone County's growing senior population and generate minimal traffic, mainly at off-peak times.
  - The development is a transitional use between a commercial area and single-family residential neighborhood.
  - The development is located in close proximity to major streets, shopping, and public facilities.
  - The development will be well screened with street frontage landscaping and existing vegetation.
  - Conditions are being imposed that require the possibility of gated emergency access to the undeveloped property to the north and further study of road improvements on Gunpowder Road by Kentucky Transportation Cabinet.
2. The Committee has concluded that the attached conditions are necessary to achieve consistency with the specific goals, objectives, and policies of the 2010 Boone County Comprehensive Plan. The Committee has also concluded that the attached conditions are necessary to mitigate any foreseeable community impacts that may be created by the development. The applicant and property owners have signed a letter demonstrating agreement with the conditions.

### CONDITIONS

1. The approval is based on the submitted Concept Development Plan, building elevations, and building perspectives unless modified by other conditions below.
2. The access point on Gunpowder Road shall be moved approximately 135 feet to the north. The final placement shall be determined by Kentucky Transportation Cabinet and they will determine all sight distance requirements are met.
3. A Traffic Impact Study shall be submitted to Kentucky Transportation Cabinet and they will determine if a center turn lane is warranted on Gunpowder Road.
4. The driveway located immediately to the west of "Townhome 1" shall be gated and extended to the property line to allow for future emergency access to the adjoining property to the north.
5. The following pedestrian improvements shall be required:
  - A. Sidewalks or a bicycle/pedestrian path shall be required along the Gunpowder Road frontage of the subject 14.86 acre property.
  - B. The internal sidewalk network shown on the Concept Development Plan.
6. The following lighting conditions shall apply to the development:

- A. All light poles and associated fixtures shall be limited to 15 feet in height. All fixtures shall be downcast oriented.
  - B. Wallpacks shall not be oriented towards Gunpowder Road or adjoining residentially zoned properties. Low wattage wall scones shall be permitted on these building facades.
7. The development shall comply with the parking requirements found in the Boone County Zoning Regulations.
8. Additional stone veneer shall be required on the south and west building elevations of the assisted living/memory care building. See the attached drawing that was marked up at the October 17, 2018 Zone Change Committee meeting.

A copy of the Public Hearing minutes accompanies the findings and recommendation serving as a summary of the evidence and testimony presented by the proponents and opponents of this request. Attached is the signature page for the Zone Change/Concept Development Plan Committee Vote.



**ZONE CHANGE/CONCEPT PLAN COMMITTEE VOTE**

TO: Boone County Planning Commission

FROM: Kim Bunger, Chairman

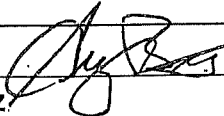
DATE: October 17, 2018

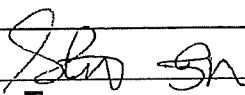
**ZONING MAP AMENDMENT - Kim Bunger, Chairman, Todd Morgan, Staff**

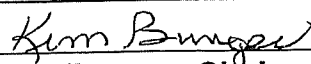
1. Request of **Steven Berling (applicant)** for **Cathy Dryden, John Dryden, Cynthia Schroeder, and Jerry Inskeep (owners)** for a Zoning Map Amendment from Suburban Residential One (SR-1) to Public Facilities (PF) for a 14.86 acre site located on the east side of Gunpowder Road, approximately 40 feet north of the Gunpowder Road/Ridgeview Drive intersection, approximately 25 feet south of the Gunpowder Road/Bill Wentz Drive intersection, and including the property at 8756 Gunpowder Road, Boone County, Kentucky (annexation into the City of Florence pending). The request is for a zone change to permit memory care, assisted living, and senior housing.

**REMARKS:**

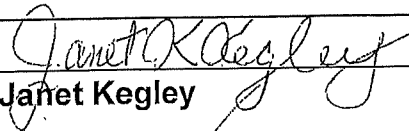
We, the Committee Members were present at the Committee Meeting and voted on the above request or else were absent from voting. Further, based upon the vote, the Committee directs the Staff to draft the findings of fact and conditions if deemed necessary in order to complete the Committee Report.

  
\_\_\_\_\_  
**Greg Breetz**  
For Project  Absent \_\_\_\_\_  
Against Project \_\_\_\_\_  
Abstain \_\_\_\_\_ Deferred \_\_\_\_\_

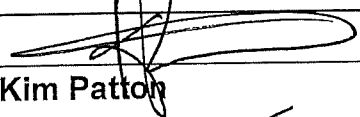
  
\_\_\_\_\_  
**Steve Turner**  
For Project  Absent \_\_\_\_\_  
Against Project \_\_\_\_\_  
Abstain \_\_\_\_\_ Deferred \_\_\_\_\_

  
\_\_\_\_\_  
**Kim Bunger, Chairman**  
For Project  Absent \_\_\_\_\_  
Against Project \_\_\_\_\_  
Abstain \_\_\_\_\_ Deferred \_\_\_\_\_

\_\_\_\_\_  
**Randy Bessler (Alternate)**  
For Project \_\_\_\_\_ Absent \_\_\_\_\_  
Against Project \_\_\_\_\_

  
\_\_\_\_\_  
**Janet Kegley**  
For Project  Absent \_\_\_\_\_  
Against Project \_\_\_\_\_  
Abstain \_\_\_\_\_ Deferred \_\_\_\_\_

\_\_\_\_\_  
**Lisa Heilman, (Alternate)**  
For Project \_\_\_\_\_ Absent \_\_\_\_\_  
Against Project \_\_\_\_\_  
Abstain \_\_\_\_\_ Deferred \_\_\_\_\_

  
\_\_\_\_\_  
**Kim Patton**  
For Project  Absent \_\_\_\_\_  
Against Project \_\_\_\_\_  
Abstain \_\_\_\_\_ Deferred \_\_\_\_\_

\_\_\_\_\_  
**Mark Hicks (Alternate)**  
For Project \_\_\_\_\_ Absent \_\_\_\_\_  
Against Project \_\_\_\_\_  
Abstain \_\_\_\_\_ Deferred \_\_\_\_\_

\_\_\_\_\_  
**Richard Lunnemann (Alternate)**  
For Project \_\_\_\_\_ Absent \_\_\_\_\_  
Against Project \_\_\_\_\_  
Abstain \_\_\_\_\_ Deferred \_\_\_\_\_

**TOTAL:** \_\_\_\_\_ DEFERRED 5 FOR PROJECT \_\_\_\_\_ ABSENT  
\_\_\_\_\_ AGAINST PROJECT \_\_\_\_\_ ABSTAIN

RESOLUTION R-18-010-A

A RESOLUTION OF THE BOONE COUNTY PLANNING COMMISSION RECOMMENDING APPROVAL, WITH CONDITIONS, FOR A REQUEST OF STEVEN BERLING (APPLICANT) FOR CATHY DRYDEN, JOHN DRYDEN, CYNTHIA SCHROEDER AND JERRY INSKEEP (OWNERS), FOR A ZONING MAP AMENDMENT FROM SUBURBAN RESIDENTIAL ONE (SR-1) TO PUBLIC FACILITIES (PF) FOR A 14.86 ACRE SITE LOCATED ON THE EAST SIDE OF GUNPOWDER ROAD, APPROXIMATELY 40 FEET NORTH OF THE GUNPOWDER ROAD/RIDGEVIEW DRIVE INTERSECTION, APPROXIMATELY 25 FEET SOUTH OF THE GUNPOWDER ROAD/BILL WENTZ INTERSECTION, AND INCLUDING THE PROPERTY AT 8756 GUNPOWDER ROAD, BOONE COUNTY, KENTUCKY (ANNEXATION INTO THE CITY OF FLORENCE PENDING). THE REQUEST IS FOR A ZONE CHANGE TO PERMIT MEMORY CARE, ASSISTED LIVING AND SENIOR HOUSING AND PROVIDING THE RECOMMENDATION BE FORWARDED TO THE CITY OF FLORENCE, FLORENCE, KENTUCKY.

**WHEREAS**, the Boone County Planning Commission received a request for a Zoning Map Amendment to the Boone County Zoning Map and such Zoning Map Amendment being a zone change from from Suburban Residential One (SR-1) to Public Facilities (PF) for a 14.86 acre site located on the east side of Gunpowder Road, approximately 40 feet north of the Gunpowder Road/Ridgeview Drive intersection, approximately 25 feet south of the Gunpowder Road/Bill Wentz intersection, and including the property at 8756 Gunpowder Road, Boone County, Kentucky (**annexation into the City of Florence pending**). The request is for a zone change to permit memory care, assisted living and senior housing, which is more particularly described below; and,

**WHEREAS**, the Boone County Planning Commission as the planning unit for the unincorporated areas of Boone County, Kentucky and the City of Florence, Florence, Kentucky, was requested to and has conducted a Public Hearing serving as a due process trial-type hearing and made findings recommending approval, with conditions, for the Zoning Map Amendment.

**NOW, THEREFORE, BE IT RESOLVED BY THE BOONE COUNTY PLANNING COMMISSION AS FOLLOWS:**

**SECTION I**

That the request for a Zoning Map Amendment for the real estate which is more particularly described below shall be and is hereby recommended for approval, with conditions, this Zoning Map Amendment being a zone change from Suburban Residential One (SR-1) to Public Facilities (PF) for a 14.86 acre site located on the east side of Gunpowder Road, approximately 40 feet north of the Gunpowder Road/Ridgeview Drive intersection, approximately 25 feet south of the Gunpowder Road/Bill Wentz intersection, and including the property at 8756 Gunpowder Road, Boone County, Kentucky (**annexation into**

**BOONE COUNTY PLANNING COMMISSION  
RESOLUTION R-18-010-A  
PAGE TWO**

the City of Florence pending). The real estate which is the subject of this request for a Zoning Map Amendment in a Suburban Residential One (SR-1) zone is more particularly described in DEED BOOK 936, PAGE NO. 449 (as supplied by the applicant) as recorded in the Boone County Clerk's office.

**SECTION II**

That as a basis for the recommendation of approval for a Zoning Map Amendment request are the findings of fact, and conditions, of the Boone County Planning Commission as set forth in its minutes and official records for this request shall be and are hereby incorporated by reference as if fully set out in this Resolution and marked as "Exhibit A."

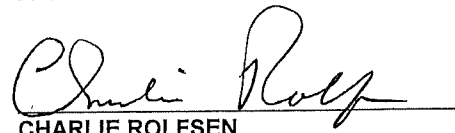
The Committee recommended approval for this request based on the findings of fact and conditions as set forth in the Committee Report and marked as "Exhibit B."

**SECTION III**

That a copy of this Resolution recommending approval, with conditions, for a Zoning Map Amendment for a zone change from Suburban Residential One (SR-1) to Public Facilities (PF) for a 14.86 acre site located on the east side of Gunpowder Road, approximately 40 feet north of the Gunpowder Road/Ridgeview Drive intersection, approximately 25 feet south of the Gunpowder Road/Bill Wentz intersection, and including the property at 8756 Gunpowder Road, Boone County, Kentucky (**annexation into the City of Florence pending**), shall be forwarded to the City of Florence, Florence, Kentucky, having jurisdiction over the property for its action on the recommendation of the Boone County Planning Commission.

**PASSED AND APPROVED ON THIS 5TH DAY OF DECEMBER, 2018.**

**APPROVED:**

  
**CHARLIE ROLFSEN  
CHAIRMAN**

**ATTEST:**

  
**TREVA L. BEAGLE  
MANAGER, ADMINISTRATIVE SERVICES**

CR/tlb

**ORDINANCE NO. O-1-19**

**AN ORDINANCE ADOPTING AND APPROVING A ZONING MAP AMENDMENT FROM SUBURBAN RESIDENTIAL ONE (SR-1) TO PUBLIC FACILITIES (PF) FOR A 14.86 ACRE SITE LOCATED ON THE EAST SIDE OF GUNPOWDER ROAD, SOUTH OF U.S. 42, ADJACENT TO THE CITY LIMITS, TO ALLOW MEMORY CARE, ASSISTED LIVING AND SENIOR HOUSING. (BERLING/DRYDEN PROPERTY)**

WHEREAS, the City of Florence, Kentucky, is a member of the county-wide planning unit with a county-wide planning commission known as the Boone County Planning Commission, and

WHEREAS, the Boone County Planning Commission by Resolution No. R-18-010-A recommended approval for a zoning map amendment, and

WHEREAS, the recommendation for approval by the Boone County Planning Commission is based upon certain findings and conditions attached to the Commission's Resolution, all of which have been reviewed by the City Council for the City of Florence, Kentucky.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY OF FLORENCE, KENTUCKY, AS FOLLOWS:

**SECTION I**

That the request of Steven Berling (Applicant) for Cathy Dryden, John Dryden, Cynthia Schroeder and Jerry Inskeep (Owners), for a zoning map amendment from Suburban Residential One (SR-1) to Public Facilities (PF) for a 14.86 acre site located on the east side of Gunpowder Road, south of U.S. 42, adjacent to the City limits, in conjunction with proposed annexation of the 14.86 acres into the City of Florence, Kentucky, to allow memory care, assisted living, and senior housing, shall be and is hereby approved.

The real estate which is the subject of this request is more particularly described in Exhibit "A", attached hereto and incorporated herein by reference. The zoning map of Boone County, Kentucky, as it applies to the City of Florence, Kentucky, shall be amended or changed to reflect the zoning map amendment for this subject property.

**SECTION II**

The approval of this zoning map amendment is granted subject to the conditions, terms and provisions of the Boone County Planning Commission recommendation, including its Committee Report, made a part of that recommendation, a copy of that recommendation and Committee Report of the Boone County Planning Commission being attached, marked Exhibit "B" and incorporated herein as if fully set out, this recommendation being in the form of Resolution No. R-18-010-A of the Boone County Planning Commission, including the exhibits

referenced to that Resolution.

### SECTION III

This approval is granted based on the Findings of Fact made by the Boone County Planning Commission and contained within its recommendation that is attached and part of the Commission's Resolution No. R-18-010-A, marked Exhibit "B", and attached hereto.

### SECTION IV

If the approval for this zoning map amendment shall be held invalid, in whole or in part, by any Court of proper jurisdiction, that invalidity shall not affect the validity of any of the other zoning regulations, zoning map, or comprehensive plan provisions as they are severable from this Ordinance and are intended to have full force and effect regardless of any invalidity relating to this particular Ordinance.

### SECTION V

This Ordinance shall be published by posting on the City's internet website.

PASSED AND APPROVED ON FIRST READING THIS 8<sup>th</sup> DAY OF January, 2019.

PASSED AND APPROVED ON SECOND READING AND PUBLICATION ORDERED THIS 22<sup>nd</sup> DAY OF January, 2019.

APPROVED:

Deane & Whalen  
MAYOR

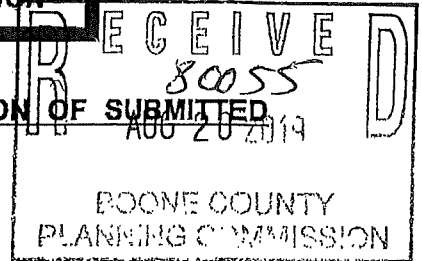
ATTEST:

Nancy Geilman  
CITY CLERK

# EXHIBIT C

## APPLICATION FORM

**BOARD OF ADJUSTMENT  
AND  
ZONING APPEALS ACTION  
BOONE COUNTY PLANNING COMMISSION**



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

See Boone County Zoning Regulations

### SECTION A (To be completed by applicant)

- (Check One)
1.  Boone \_\_\_\_\_ Florence \_\_\_\_\_ Walton \_\_\_\_\_ Union \_\_\_\_\_
- (Check One)
2. \_\_\_\_\_ Conditional Use Permit \_\_\_\_\_ Variance  Appeal \_\_\_\_\_  
\_\_\_\_\_ Change in Non-Conforming Use
3. Applicant's Name Legacy Living of Florence  
Applicant's Address 8463 Castlewood Drive  
Indianapolis IN 46250  
City State Zip
4. Phone Number 317 698-4000 Fax No. \_\_\_\_\_ E-Mail tsehanta@legacyliving.biz
5. Description of Request: Appeal Zoning Administrator's decision  
regarding major/minor
6. Name of Development Legacy Living of Florence
7. Location of Development 8520 Gunpowder Road  
Florence KY 41042
8. Acreage Under Review 14,7136 acres
9. Lot Number and Name of Subdivision (If part of a subdivision) \_\_\_\_\_
10. Owner of Property Legacy Living Real Estate Florence  
Address of Property Owner 8463 Castlewood Drive  
Indianapolis IN 46250  
City State Zip
11. Phone Number 317-698-4000 Fax No. \_\_\_\_\_ E-Mail tsehanta@legacyliving.biz
12. Proposed Use(s) on Site Independent and Assisted Living
13. Total Square Footage of Existing and/or Proposed Buildings 148,336 S.F.
14. Current Zoning on Property PF - Public Facilities
15. Deed Book 1127/1128 Page No. 843/27/106/42 Group No. 172/173/2047
16. Is the site subject to a zone change? No  
If yes, give date of approval \_\_\_\_\_
17. Have you submitted a Site Plan with this request? Yes
18. Have you submitted a list of adjoining property owners with this request? No
19. 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)

*Gerry Dusing*  
GDusing@aswdlaw.com

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

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

1. Date Received 8-20-19 Fee Received \$1,082.00 Receipt # 80055
2. Is application complete?  Yes  No
3. Staff Reviewer Kevin White
4. Scheduled Board Action Date \_\_\_\_\_
5. Board Action:  
 Approved  
 Approved with Conditions (See #6)  
 Denial (See #7)
6. Conditions of Approval: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
7. Reasons for Denial: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Boone County Planning Commission  
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.

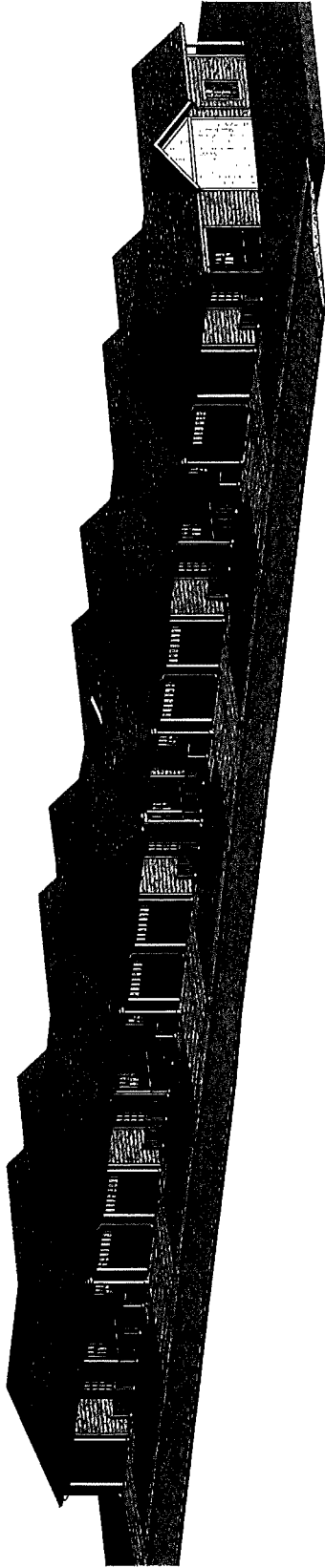
Site Plan Review is not granted by the appropriate Board of Adjustment.

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

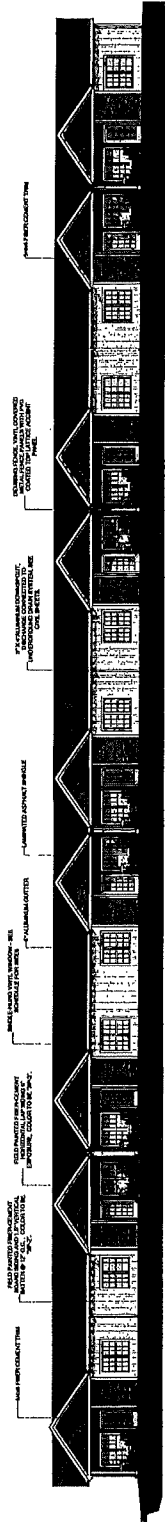
*[Handwritten signature and date]*



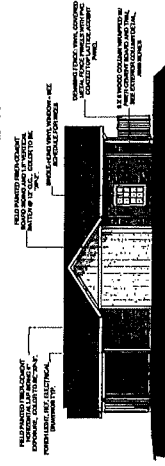




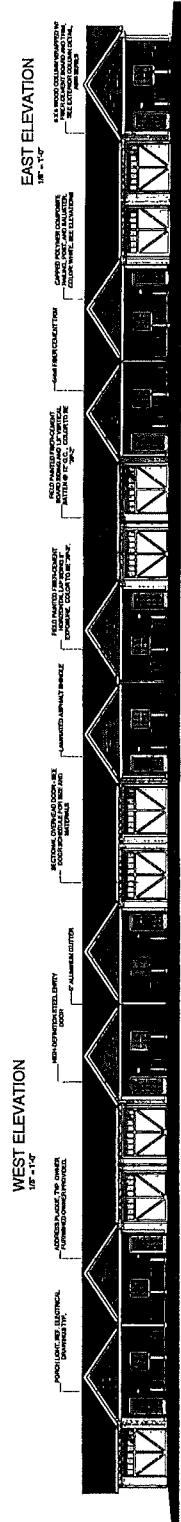
RENDERING OVERALL



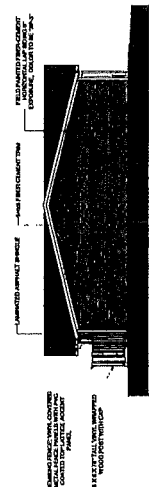
NORTH ELEVATION  
1/8" = 1'-0"



EAST ELEVATION  
1/8" = 1'-0"



SOUTH ELEVATION  
1/8" = 1'-0"

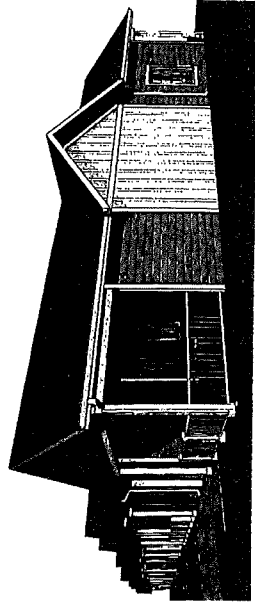


WEST ELEVATION  
1/8" = 1'-0"

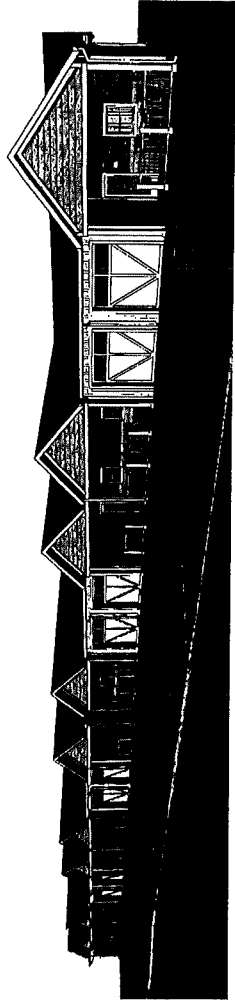


**LEGACY OF FLORENCE, KY**  
**LIVING** ONE BEDROOM 9 PLEX TOWNHOME ELEVATIONS

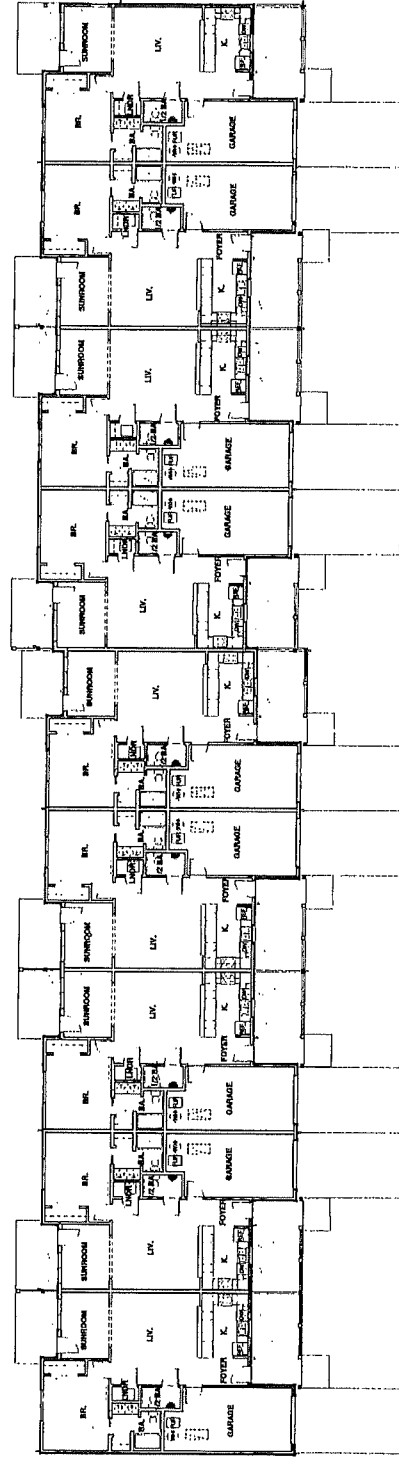




RENDERING of EAST SIDE



RENDERING of SOUTH SIDE



PRESENTATION FLOOR PLAN  
1/8" = 1'-0"



**LEGACY LIVING** LEGACY OF FLORENCE, KY

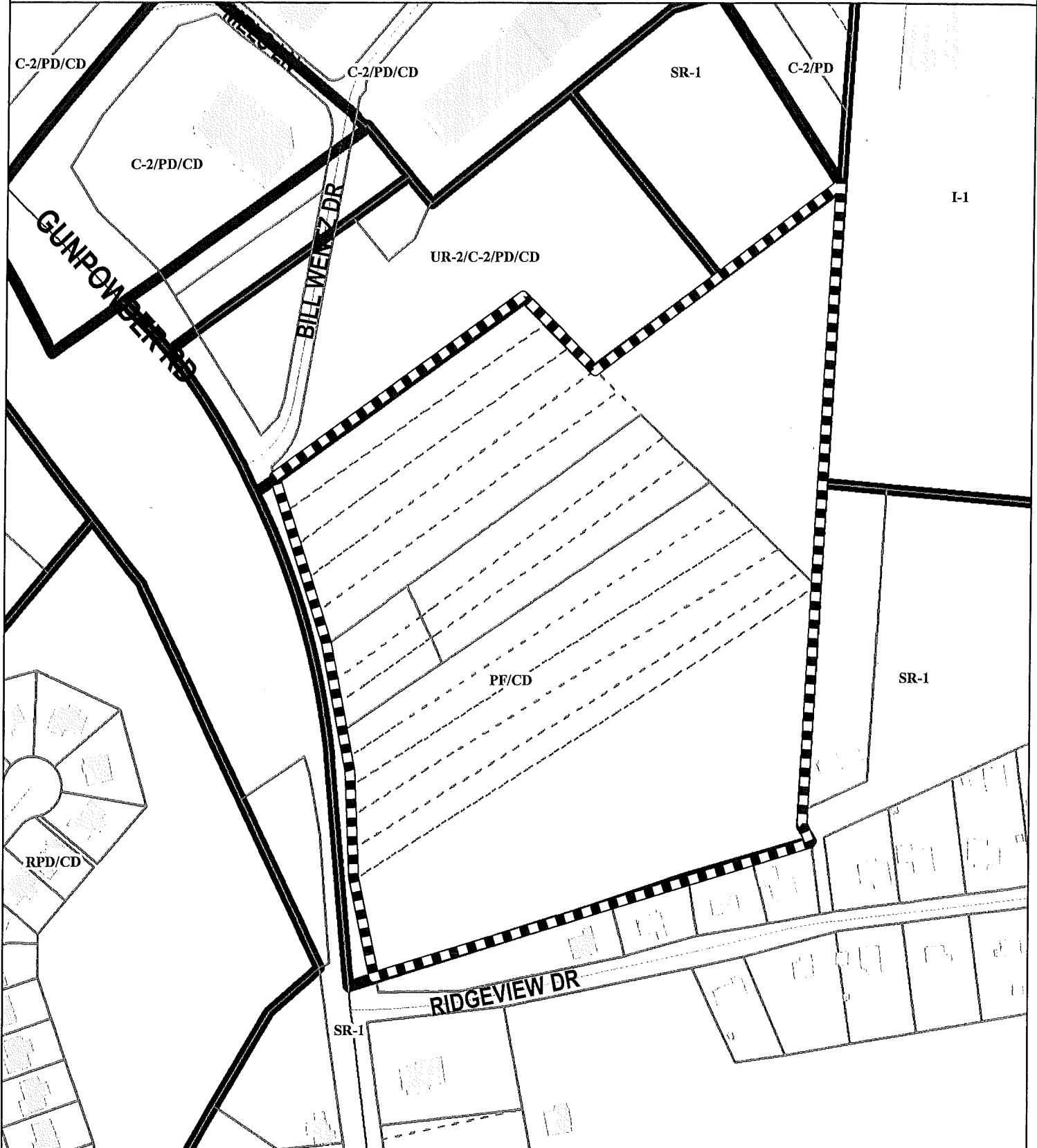
ONE BEDROOM 9 PLEX TOWNHOME FLOOR PLAN AND RENDERINGS



OME  
CONSULTING ENGINEERS  
31 JULY 2019

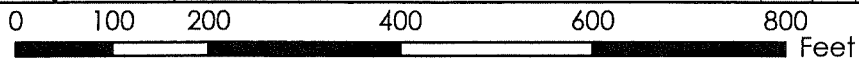
# Exhibit D - Legacy Living Site

www.boonecountygis.com



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1 inch = 200 feet



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

