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

RECEIVED NOV 19 2019 80618 BOONE COUNTY PLANNING COMMISSION

SECTION A (To be completed by applicant)

(Check One)

1. _____ Boone X Florence _____ Walton _____ Union

(Check One)

2. _____ Conditional Use Permit _____ Variance _____ Appeal
   X Change in Non-Conforming Use
3. Applicant's Name Susan Houp Wright Brothers
   Applicant's Address 8169 Mall Road
   Florence Ky 41042
   City State Zip
   Phone Number 859 283-2222 Fax No. — E-Mail susan@expectthebest.com
4. Description of Request: allowing a metal roof to be added over the fence in storage area
5. Name of Development Wright Brothers, Inc
6. Location of Development 8169 Mall Road Florence Ky 41042
7. Acreage Under Review
8. Lot Number and Name of Subdivision (if part of a subdivision)
9. Owner of Property Eric R. Fegan Copperwood Realty Group
   Address of Property Owner 562 Buttermilk Pike Ste A
10. Crescent Springs Ky 41017
    City State Zip
    Phone Number 859-331-3333 Fax No. — E-Mail eric@copperwoodrg.com
11. Proposed Use(s) on Site outside Storage Cyl. Area
12. Total Square Footage of Existing and/or Proposed Buildings
13. Current Zoning on Property C-2/PD/MR
14. Deed Book [redacted] 1113 Page No. 731 Group No. 2040A
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: Susan Houp
(Faxed, Photocopied or Scanned Signatures will **NOT** be Accepted)

(over)

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

1. Date Received 11-19-19 Fee Received $932.00 Receipt # 80618
2. Is application complete? ✓ Yes _____ No
3. Staff Reviewer _____
4. Scheduled Board Action Date _____
5. Board Action:
   _____ **Approved**
   1/15/20 **Approved with Conditions** (See #6)
   _____ **Denial** (See #7)
6. Conditions of Approval: SEE 1/15/20 Meeting Minutes AND C.L.U.R.
7. Reasons for Denial: _____

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

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

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

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

STAFF REPORT

APPLICANT: Susan Houp for Wright Brothers

LOCATION: 8169 Mall Road, Florence, Kentucky

ZONING: Commercial Two/Planned Development/Mall Road Overlay District (C-2/PD/MR)

DATE: December 11, 2019

PROPOSAL

The applicant has submitted a Change in Nonconforming Use application to allow Wright Brothers to expand their outside gas cylinder storage fence enclosure to 24' x 41' and cover it with a roof. The fence enclosure is located in the rear parking lot of the commercial strip center (formerly called Schloemer's Center).

TIMELINE

1990 - Wright Brothers moved into the retail strip center. They were initially a retail store that dealt with hobbyists (bike sales and gas sales). Their storage cage was located directly behind their tenant space (see 1994 and 1999 aerial photos).

2005 - Wright Brothers moves to their current tenant space at 8169 Mall Road and stops selling bicycles. Cylinder tank storage was moved inside the tenant space for a short period of time but Florence Fire Department made them move the tanks back outside (see 2007 aerial photo).

2013 - Bengal Tots moves into the corner tenant space and constructs an outside play area along the side of the building. The State Fire Marshal asked for the gas cylinder storage area to be moved because it was too close to the outside play area. At this time, gas cylinder storage was moved to a trailer in the southwest portion of the rear parking lot (see 2016 aerial).

2014 - Florence Code Enforcement action was initiated because storage trailers were in place without a Temporary Storage Trailer (TST) Permit. A TST permit was then obtained which allowed temporary storage trailers to remain until November 1, 2014. A Uniform Citation was issued on November 14, 2014 because the trailers remained in place with an expired permit. The Citation was reviewed by the Florence Code Enforcement Board on December 3, 2014 and they ordered the trailers to be removed within 10 days. The trailers were removed and the issue was closed.

2017 - Wright Brothers signs a lease with the former landlord (Gary Schloemer) so they can install a 24' x 20' chainlink storage enclosure in the southwest portion of the rear parking lot. Neither the Florence Board of Adjustment or Planning Commission granted approvals.

2018 - Wright Brothers expands the chainlink fence limits to 24' x 41'.

APPLICABLE REGULATIONS

Section 220 of the Boone County Zoning Regulations states that one duty of the Board of Adjustment is to act on applications for changes in non-conforming use.

Section 270 of the Boone County Zoning Regulations states that it is the intent of the regulations to keep non-conforming lots, uses or structures from being enlarged or extended beyond the scope and area of its operation at the time it became a legal non-conforming use, nor shall other uses or structures which are prohibited elsewhere in the same district be permitted on lots of non-conforming uses or structures."

Section 272 of the Boone County Zoning Regulations states where, at the time of the adoption of this order, legally established, uses of land exist which would not be permitted by regulations imposed by this order, the uses may be continued so long as they remain otherwise lawful, provided the Board shall not allow the enlargement or extension of a non-conforming use beyond the scope and area of its operation at the time these regulations were adopted.

KRS 100.253 allows the following:

1. The lawful use of a building or premises, existing at the time of the adoption of any zoning regulations affecting it, may be continued, although such use does not conform to the provisions of such regulations, except as otherwise provided herein.

2. The board of adjustment shall not allow the enlargement or extension of a non-conforming use beyond the scope and area of its operation at the time the regulation which makes its use nonconforming was adopted, nor shall the board permit a change from one (1) nonconforming use to another unless the new nonconforming use is in the same or a more restrictive classification, provided, however, the board of adjustment may grant approval, effective to maintain nonconforming-use status, for enlargements of extensions, made or to be made, of the facilities of a nonconforming use, where the use consists of the presenting of a major public attraction or attractions, such as a sports event or events, which has been presented at the same site over such period of years and has such attributes and public acceptance as to have attained international prestige and to have achieved the status of a public tradition, contributing substantially to the economy of the community and state, of which prestige and status the site is an essential element, and where the enlargement or extension was or is designed to maintain the prestige and status by meeting the increasing demands of participants and patrons.

3. Any use which has existed illegally and does not conform to the provisions of the zoning regulations, and has been in continuous existence for a period of ten (10) years, and which has not been the subject of any adverse order or other adverse action by the administrative official during said period, shall be deemed a nonconforming use. Thereafter, such use shall be governed by the provisions of subsection (2) of this section.

4. The provisions of subsection (3) of this section shall not apply to counties containing a city of the first class, a consolidated local government, an urban-county government, or a city with a population equal to or greater than twenty thousand (20,000) based upon the most recent federal decennial census. (Note: This subsection became effective January 1, 2015).

Section 1133 of the Boone County Zoning Regulations lists business which store explosives, fireworks, gas, biodiesel, or petroleum as a primary activity as a Conditional Use in the Industrial One (I-1) zoning district.

SITE CHARACTERISTICS

The commercial strip center is located on 4.84 acre site on the west side of Mall Road. Wright Brothers is located in the southwestern most tenant space rear building.

The 24' x 41' gas cylinder fence compound is located in the southwest corner of the strip center's rear parking lot and enclosed with an 8' tall chainlink fence. Wright Brothers Staff accesses the compound by using a sidewalk that connects their tenant space to the rear parking lot. The rear of the property contains an overhead utility easement and a substantial deciduous tree buffer that buffers the fence enclosure from the residences on Airview Drive . Boone County G.I.S. shows that the ground elevation falls from 898' above sea level at the southwest property line to 880' above sea level at the fence enclosure.

SURROUNDING LAND USES & ZONING

North: Phantom Fireworks and Pro Touch Window Tinting/Auto Detailing (C-2/PD/MR)

South: Walgreen's (C-2/PD/MR) and Murphy Express (C-2)

East: Mall Road and Mall Road Center (C-2/PD/MR)

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

STAFF COMMENTS

1. Staff has the following comments regarding Wright Brothers Nonconforming status and the current application:

   A. The Zoning Administrator determined that Wright Brothers is a preexisting nonconforming use because the business has continuously existed in the strip center since 1990 and has always sold and stored industrial gasses. This is documented in the applicant's timeline and attached aerial maps.

   B. Staff contacted Dale Wilson, the Florence Board of Adjustment and Boone County Planning Commission's attorney, regarding the request because the original gas cylinder storage/trailer compound was relocated to the southwest portion of the rear parking lot in 2013 per the order of the State Fire Marshal. The applicant never received approvals from the Florence Board of Adjustment or Planning Commission before making this change.

      Mr. Wilson said there is case law that allows changes in nonconforming use to be made when the change/expansion promotes public safety and welfare.

   C. The application will allow the gas cylinder storage area to be expanded to 24' x 41' and covered with a roof.

2. The Board needs to analyze the request in terms of Sections 270 and 272 of the Boone County Zoning Regulations. The Board can also analyze if the proposed change in non-conforming use is more objectionable than the established condition.

3. Staff has the following questions for the applicant:

   A. Was the fence enclosure undersized when it was first constructed or is Wright Brothers selling/storing more gas?

      A 24' x 20' fence enclosure was constructed in the southwest corner of the parking lot in 2017 and was expanded to 24' x 41' in 2018.

B. Why is the roof enclosure being proposed?

4. Staff recommends the following conditions if the application is approved:

A. The gas cylinder storage compound shall be limited to 24' x 41' and be kept in the approved location.

B. Gas cylinders shall not be permitted to be stored in temporary storage trailers.

C. Any future proposal to expand the gas cylinder storage compound shall be approved by the Florence Board of Adjustment through the Change in Nonconforming Use application process.

D. The fence compound and roof enclosure shall be removed if Wright Brothers does not renew their lease and vacates the premises.

CONCLUSION

KRS 100.253 and Section 220 of the Boone County Zoning Regulations gives the Florence Board of Adjustment the authority to act on the request.

Respectfully submitted,

Todd K. Morgan, AICP
Senior Planner, Zoning Services

TKM/ss

Attachments
*Site Vicinity Map
*2016 Aerial with Location of 24' x 41' Gas Cylinder Storage Enclosure
*Gas Cylinder Storage Enclosure Dimensions and Roof Plans
*Picture of Gas Cylinder Storage Enclosure
*Inventory of Chemicals Stored in Enclosure
*11/20/19 Agency Email and Responses From Jerry Noran and Fire Marshal Vogelpohl
*Zoning Map
*Topographical Map
*1994 Aerial Map
*1999 Aerial Map
*2007 Aerial Map
*2016 Aerial Map
*Application

SITE VICINITY MAP

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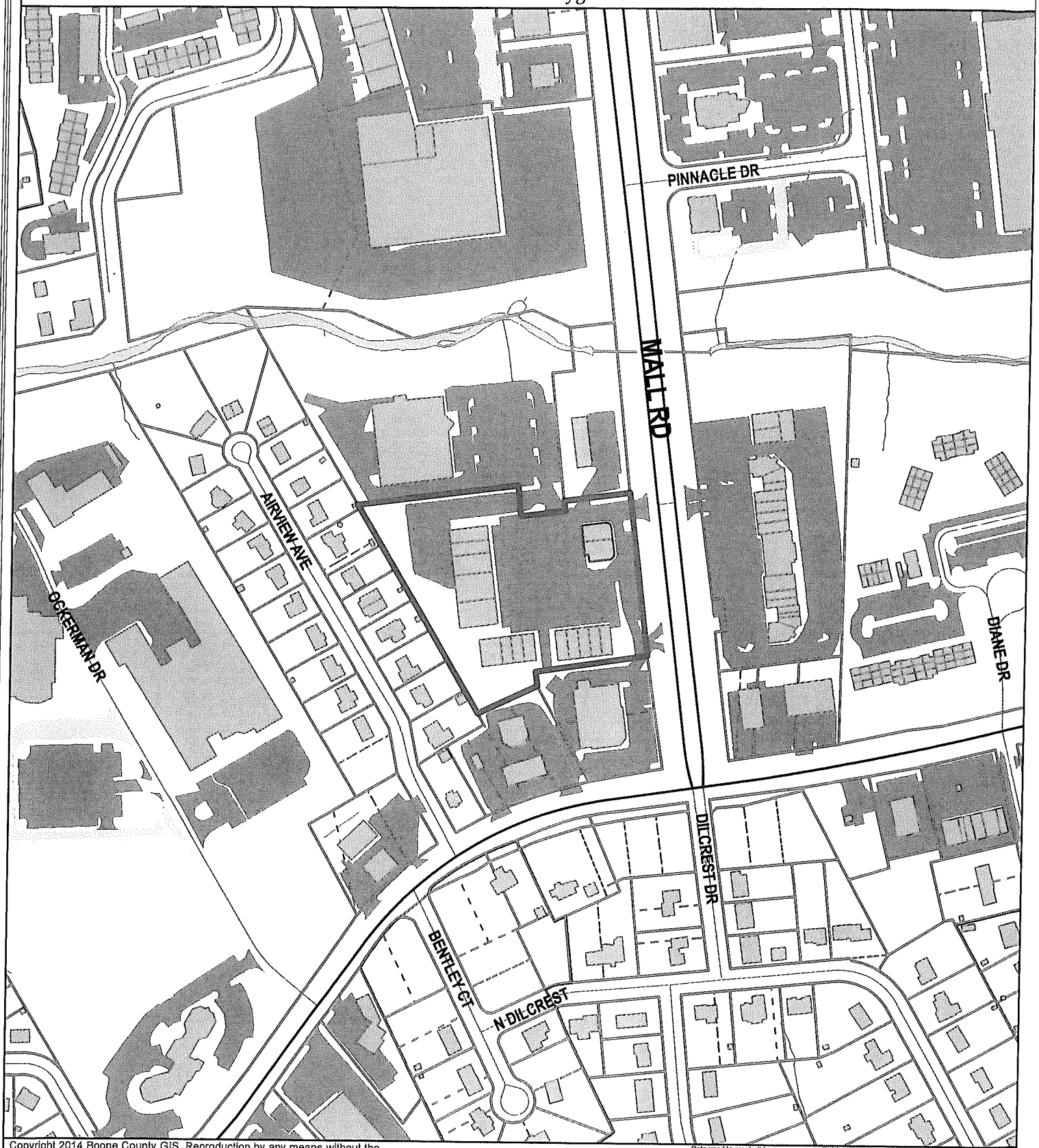

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1 inch = 300 feet

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Map Created: 07/01/2013

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2016 Aerial Map

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0 0.0045 0.009 0.018 0.027 0.036 Miles

1 Inch = 50 feet

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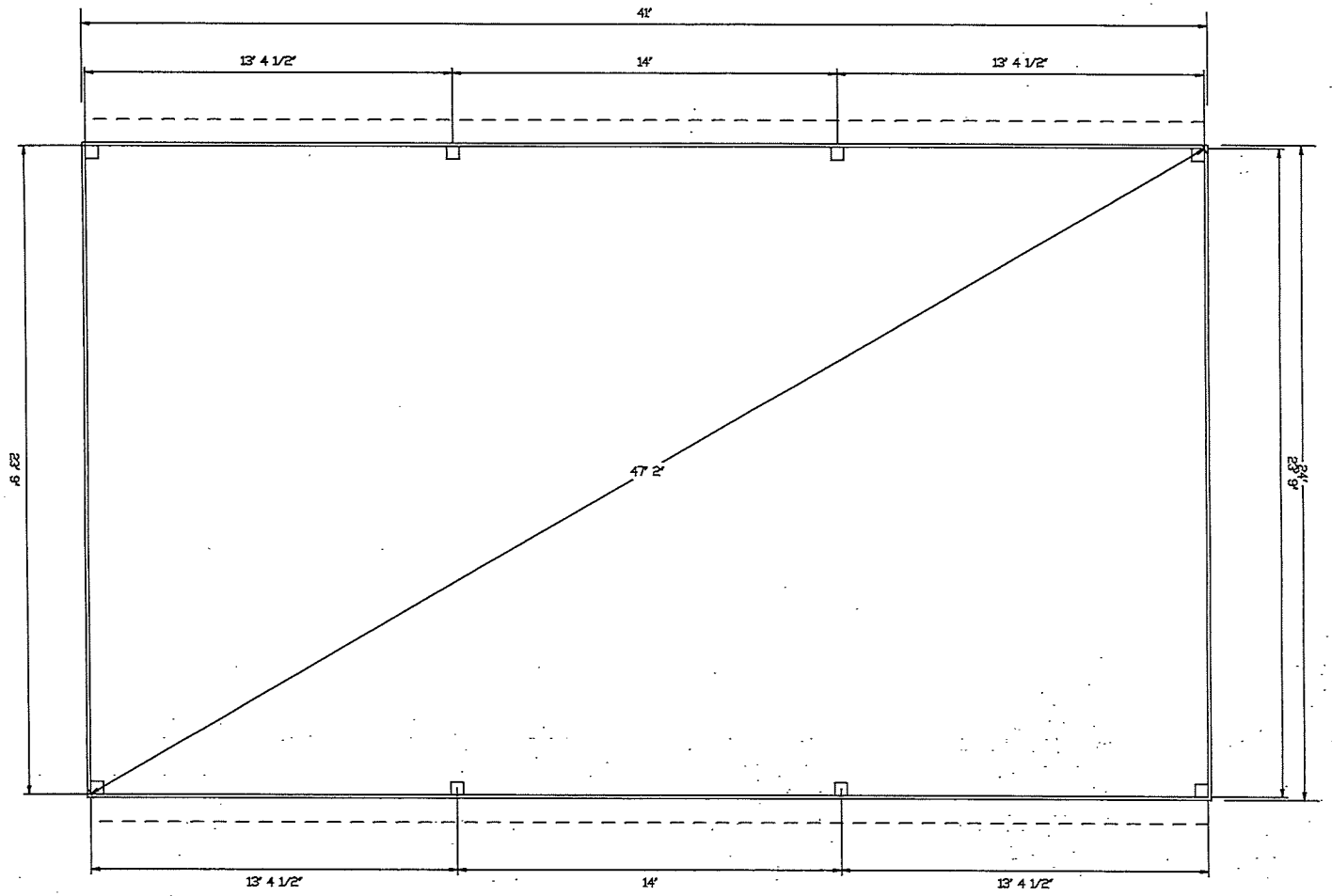
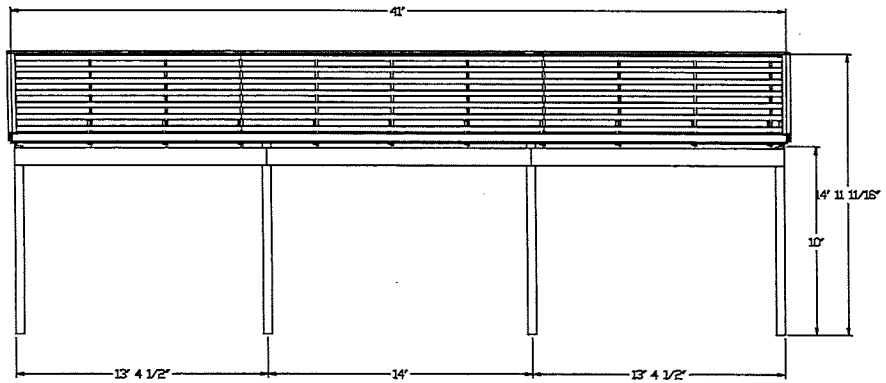
State Plane Kentucky North NAD 1983

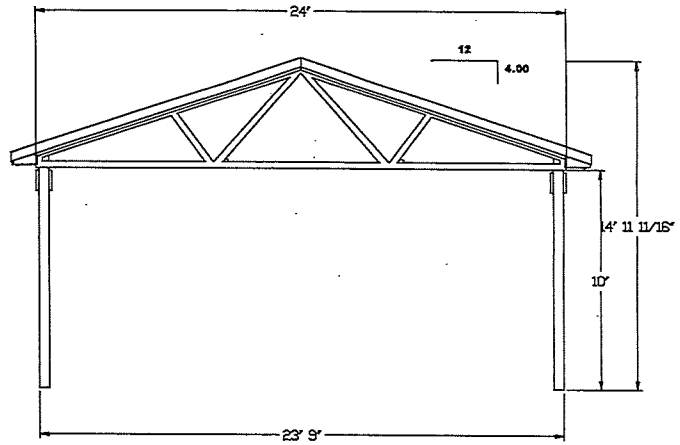
Map Created: xx/xx/2019

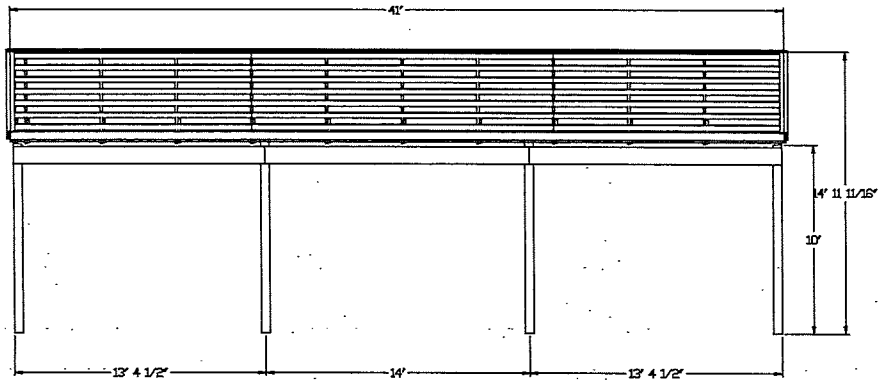
ArcMap Document: BooneCounty (partner).mxd

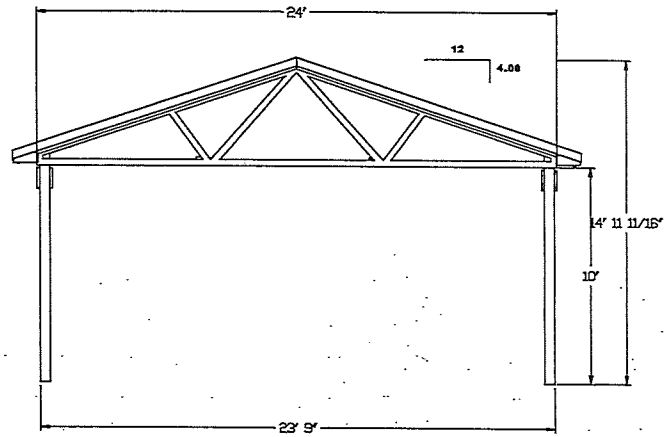


Plan View	PROJECT:	Carter Lumber	PROJECT NUMBER:
SCALE: NTS	CUSTOMER --		
DATE: Monday, October 28, 2019			SHEET NUMBER:
BY:		(518)885-5311	

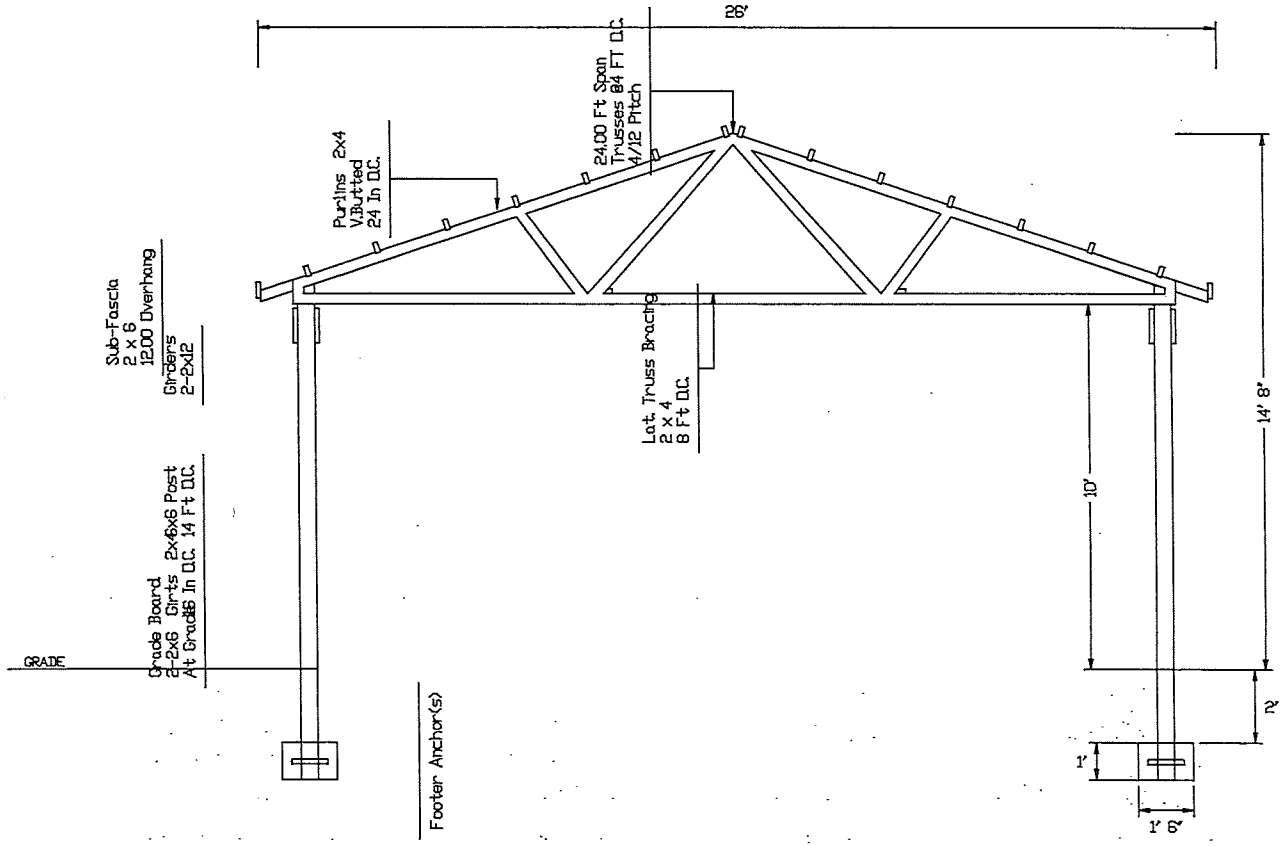




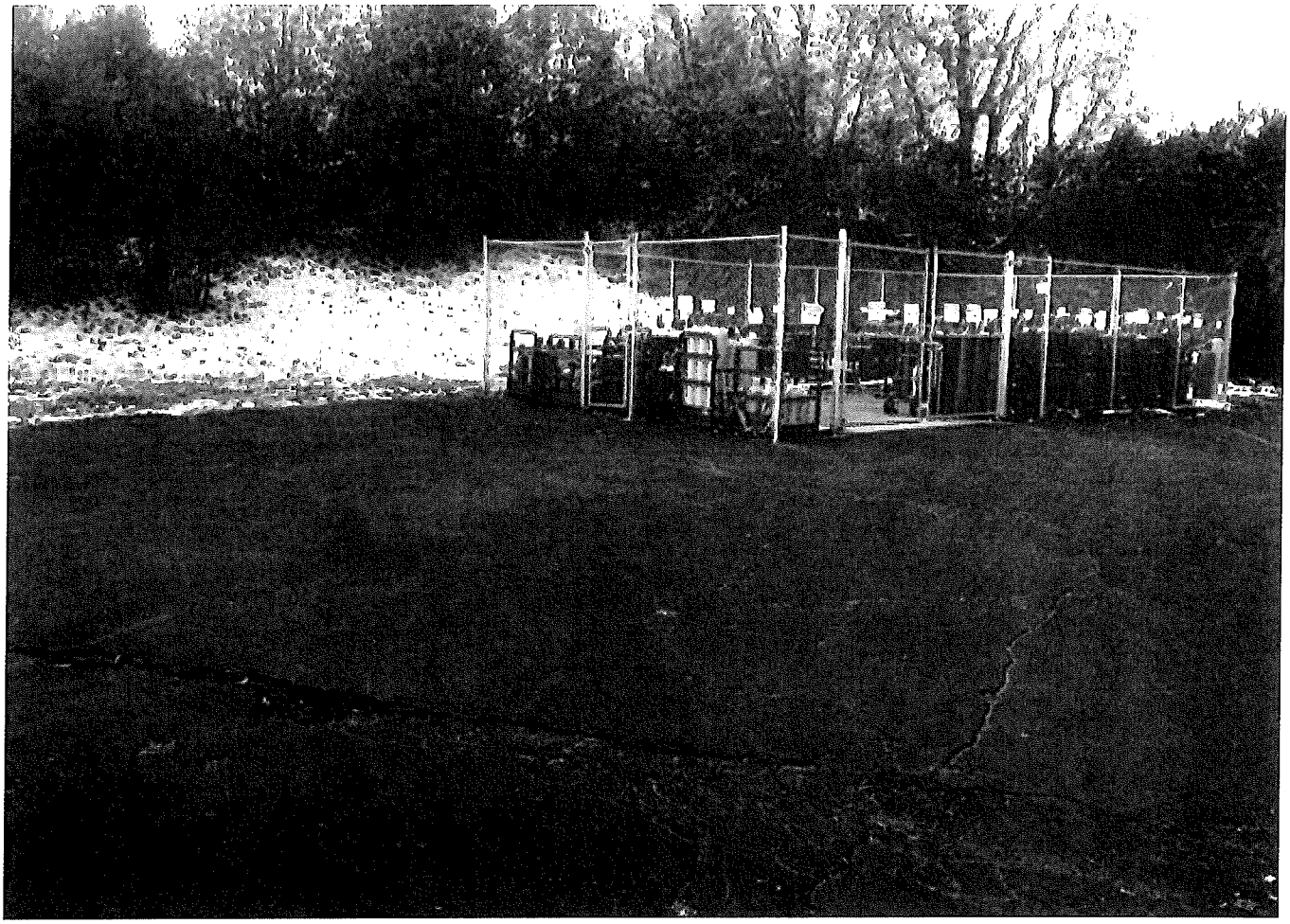




4 Elevations	PROJECT:	Carter Lumber	PROJECT NUMBER:
SCALE: 1/4" : 1"	CUSTOMER --		
DATE: Monday, October 28, 2019			SHEET NUMBER:
BY:		(518)885-5311	



Cross Section	PROJECT:	Carter Lumber	PROJECT NUMBER:
SCALE: NTS	CUSTOMER --		
DATE: Monday, October 28, 2019			SHEET NUMBER:
BY:		(518)885-5311	



Inventory List

	Inventory ID	Name	In stock
1	20 CO2	Carbon Dioxide 20lb	15
2	5 CO2	Carbon Dioxide 5lbs	20
	10 CO2	Carbon Dioxide 10lbs	5
3	50 CO2	Carbon Dioxide 50 lbs	10
4	20 60/40 N	Beer gases small	3
5	80 60/40 N	Beer gases med	8
6	226 60/40N	Beer Mixes	7
7	#8 ACE	Acetylene 150 CF	15
8	E OXY MG	Medical grade Oxygen	12
9	E N2O MG	Medical grade Nitrous Oxide	11
10	20 OXY	Oxygen 20	15
11	MC ACE	Acetylene 10CF	20
12	20 OXY UHP	Oxygen Purity Plus G5	2
13	#3 ACE	Acetylene 70CF	14
14	#2 ACE	Acetylene 40 CF	14
15	73 NIT	Nitrogen	23
16	122 NIT	Nitrogen	8
17	40 NIT	Nitrogen	7
18	20 NIT	Nitrogen	13
19	80 75/25 N	Beer Mixes	13
20	20 75/25N	Beer Mixes	10
21	80 ARG	Argon	16
22	115 ARG	Argon	13

	Inventory ID	Name	In stock
23	20 ARG	Argon	10
24	20 75/25.	Weld mixes	15
25	80 75/25.	Weld mixes	14
26	115 75/25.	Weld mixes	15
27	244 OXY MG	Medical grade Oxygen	6
28	226 NIT MG	Nitrogen medical grade	7
29	100 PRO	Propane	2
30	33 PRO	Propane	4
31	56 N2O RAC	Nitrous Oxide PLUS Syphon racing	3
32	56 N2O MG	Medical grade Nitrous Oxide	5
33	242 HEL	Helium	1
34	115 HEL	Helium	2
35	80 HEL	Helium	2
36	300 OXY AV	Aviation Oxygen	2
37	230 AIR	Breathing Air	4
38	80 OXY	Oxygen	20
39	330 OXY	Oxygen	9
40	244 OXY	Oxygen	11
41	122 OXY	Oxygen	20
42	375 75/25.	Weld Mixes	9
43	330 ARG	Argon	11
44	226 NIT	Nitrogen	11
45	300 NIT	Nitrogen	5

Todd Morgan

From: Jerry Noran
Sent: Wednesday, November 20, 2019 1:24 PM
To: Todd Morgan
Subject: FW: Change in Nonconforming Use Application for Wright Brothers at 8169 Mall Road, Florence, KY

Our concerns were mostly related to quantities and types of stored gasses, and their proximity to the building. If Kevin's okay, then we are too.

Sincerely,
Jerald E. Noran, CBO, AIA
Chief Building Official
Boone County Building Department
2950 Washington Street
P.O.Box 900
Burlington, KY 41005
859-334-3288
jnoran@boonecountyky.org

From: Kevin Vogelpohl [mailto:Kevin.Vogelpohl@Florence-KY.gov]
Sent: Wednesday, November 20, 2019 1:18 PM
To: Todd Morgan <TMorgan@boonecountyky.org>; Joshua Hunt <Joshua.Hunt@Florence-KY.gov>; Jeremy Kleier <Jeremy.Kleier@Florence-KY.gov>; Jerry Noran <jnoran@boonecountyky.org>
Subject: RE: Change in Nonconforming Use Application for Wright Brothers at 8169 Mall Road, Florence, KY

EXTERNAL MESSAGE: Use caution when opening links or attachments.
Todd,

In reviewing the plans, I have no problem with the proposal. Wright Bros has been very good about their storage of gasses to this point and cooperative with any requests we may have. Also, they do not exceed any storage limits for the gasses and routinely file the required Tier II paperwork as required.

Thanks,

Kevin R. Vogelpohl
Battalion Chief/Fire Marshal

Florence Fire/EMS
1152 Weaver Rd
Florence, KY 41042
kevin.vogelpohl@florence-ky.gov
O: (859) 647-5660 F: (859)647-5670

CITY OF FLORENCE KENTUCKY FIRE/EMS

From: Todd Morgan [mailto:TMorgan@boonecountyky.org]
Sent: Wednesday, November 20, 2019 9:31 AM
To: Joshua Hunt; Kevin Vogelpohl; Jeremy Kleier; Jerry Noran
Subject: Change in Nonconforming Use Application for Wright Brothers at 8169 Mall Road, Florence, KY

All,

Wright Brothers has submitted a Change in Nonconforming Use application to allow their outside gas cylinder storage area to be expanded to 24' x 41' and covered with a roof. I have attached their pertinent plans and chemical inventory list.

The Florence Board of Adjustment will be holding a public hearing on this request on 12/11/19, at 7:30 P.M. Please send me an email by 12/10/19 if you have any comments or questions that you would like to include in the public hearing record.

Thanks for your help.

Todd K. Morgan, AICP
Senior Planner, Zoning Services
Boone County Planning Commission
(859) 334-2196

ZONING MAP

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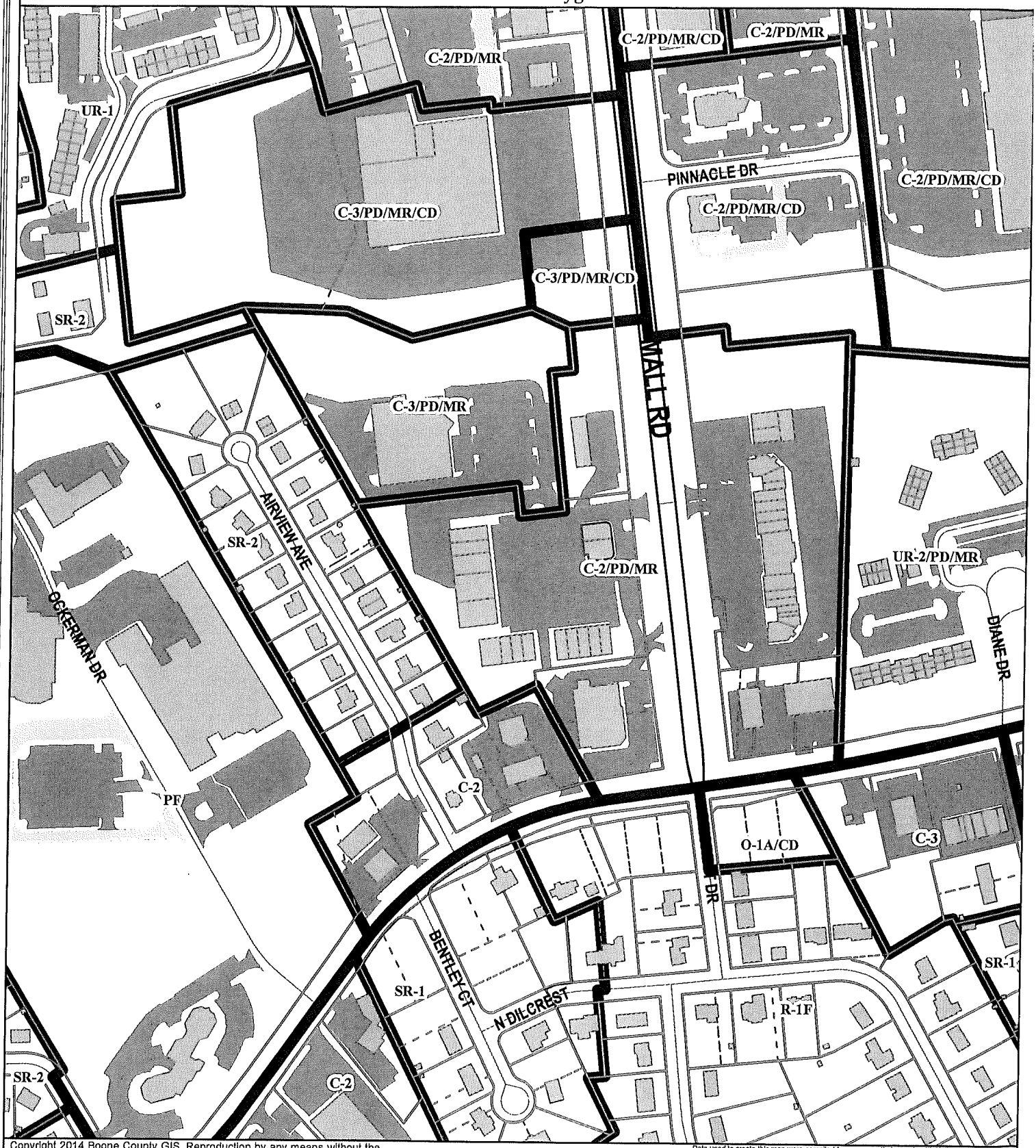

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0 150 300 600 900 1,200 Feet

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TOPOGRAPHICAL MAP

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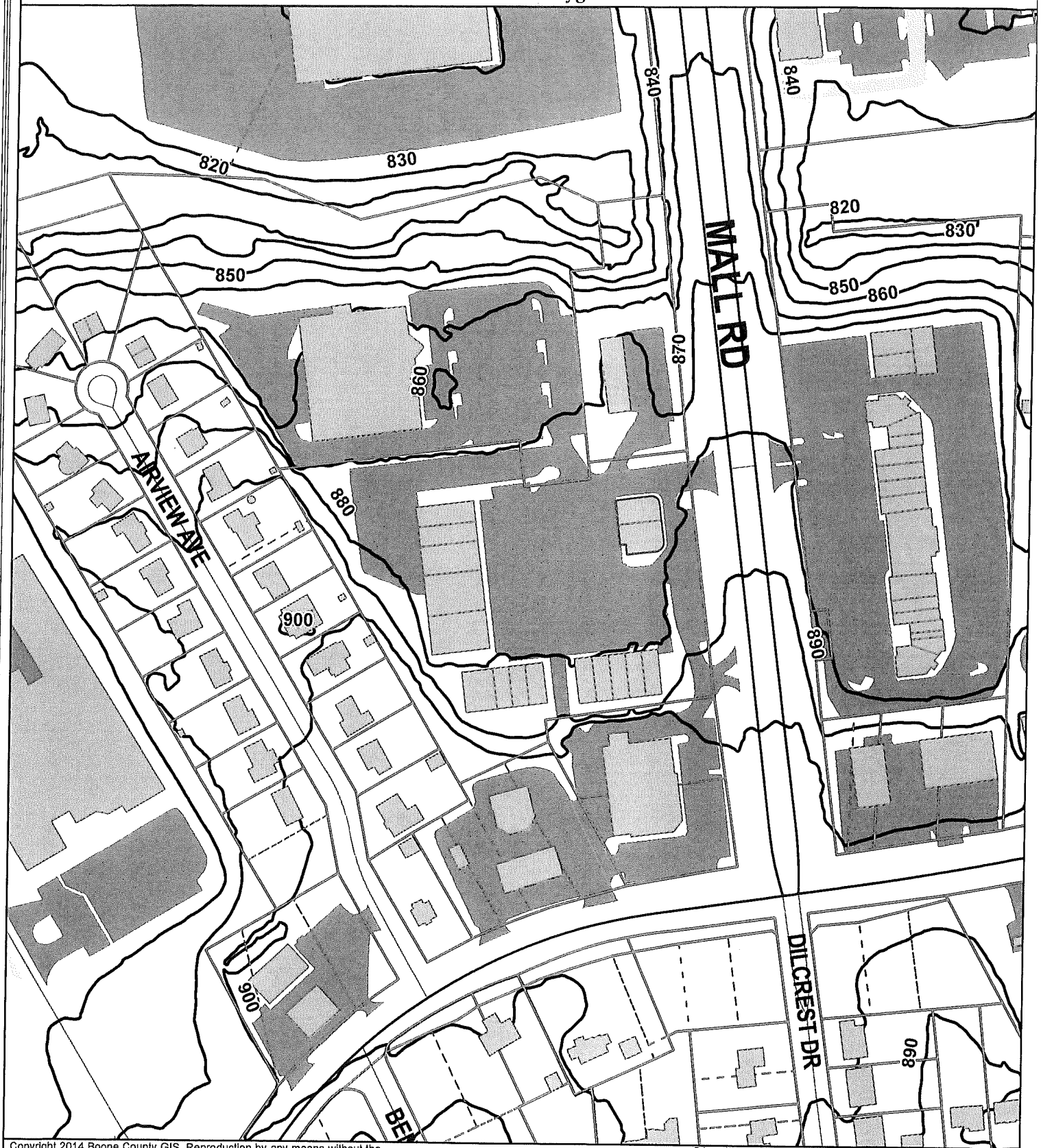

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0 100 200 400 600 800 Feet

1 inch = 200 feet

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1994 AERIAL MAP

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0 50 100 200 300 400 Feet

1 inch = 100 feet

N W E S

Boone County GIS - Putting Northern Kentucky on the Map

State Plane Kentucky North NAD 1983

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1999 AERIAL MAP

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0 50 100 200 300 400 Feet

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N W E S

Boone County GIS - Putting Northern Kentucky on the Map

Map Created: xx/xx/2019

ArcMap Document: *.mxd

2007 AERIAL MAP

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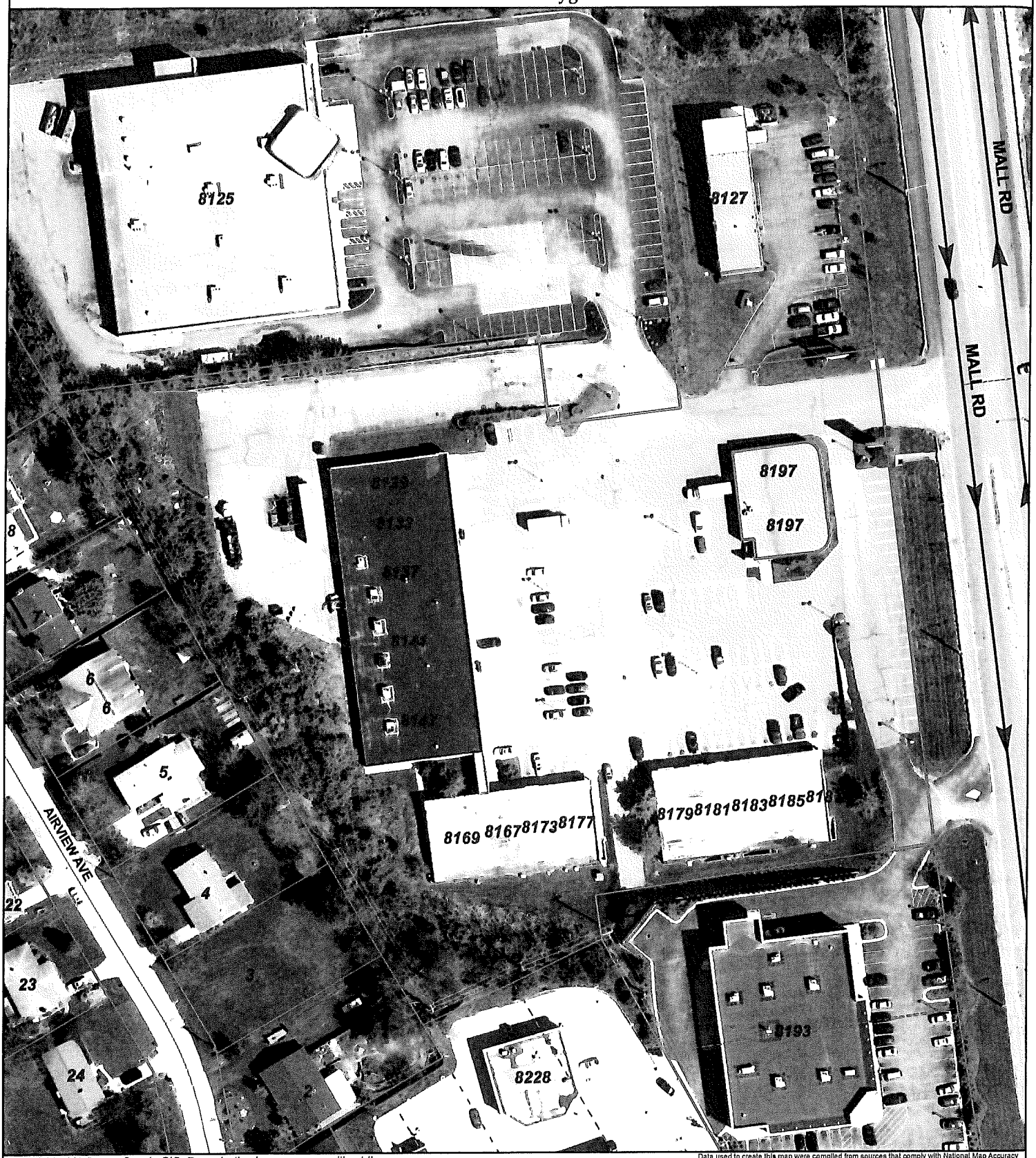

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Map Created: xx/xx/2019

ArcMap Document: *.mxd

2013 AERIAL MAP

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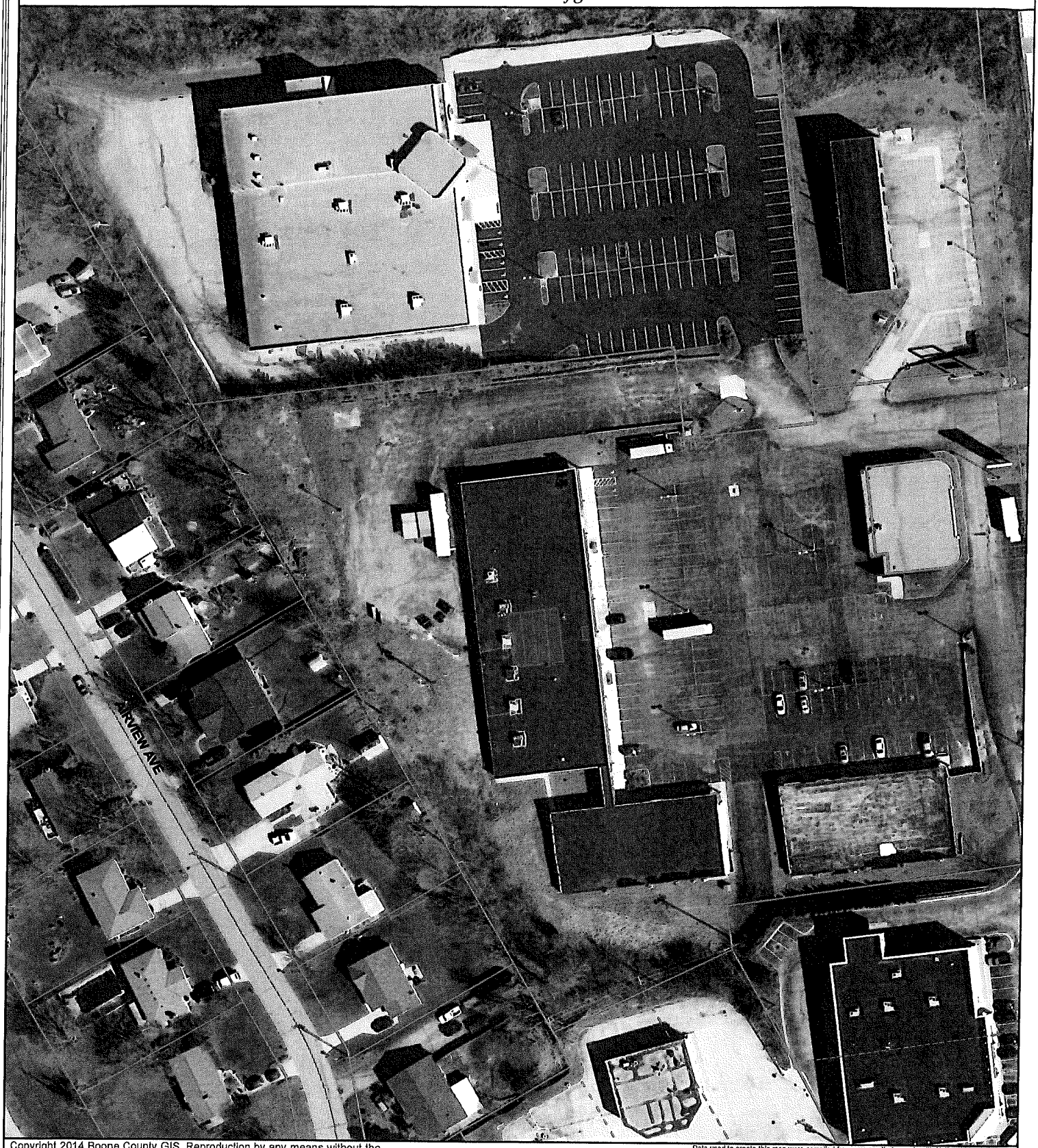

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N W E S

Boone County GIS - Putting Northern Kentucky on the Map

Map Created: 07/01/2013

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2016 AERIAL MAP

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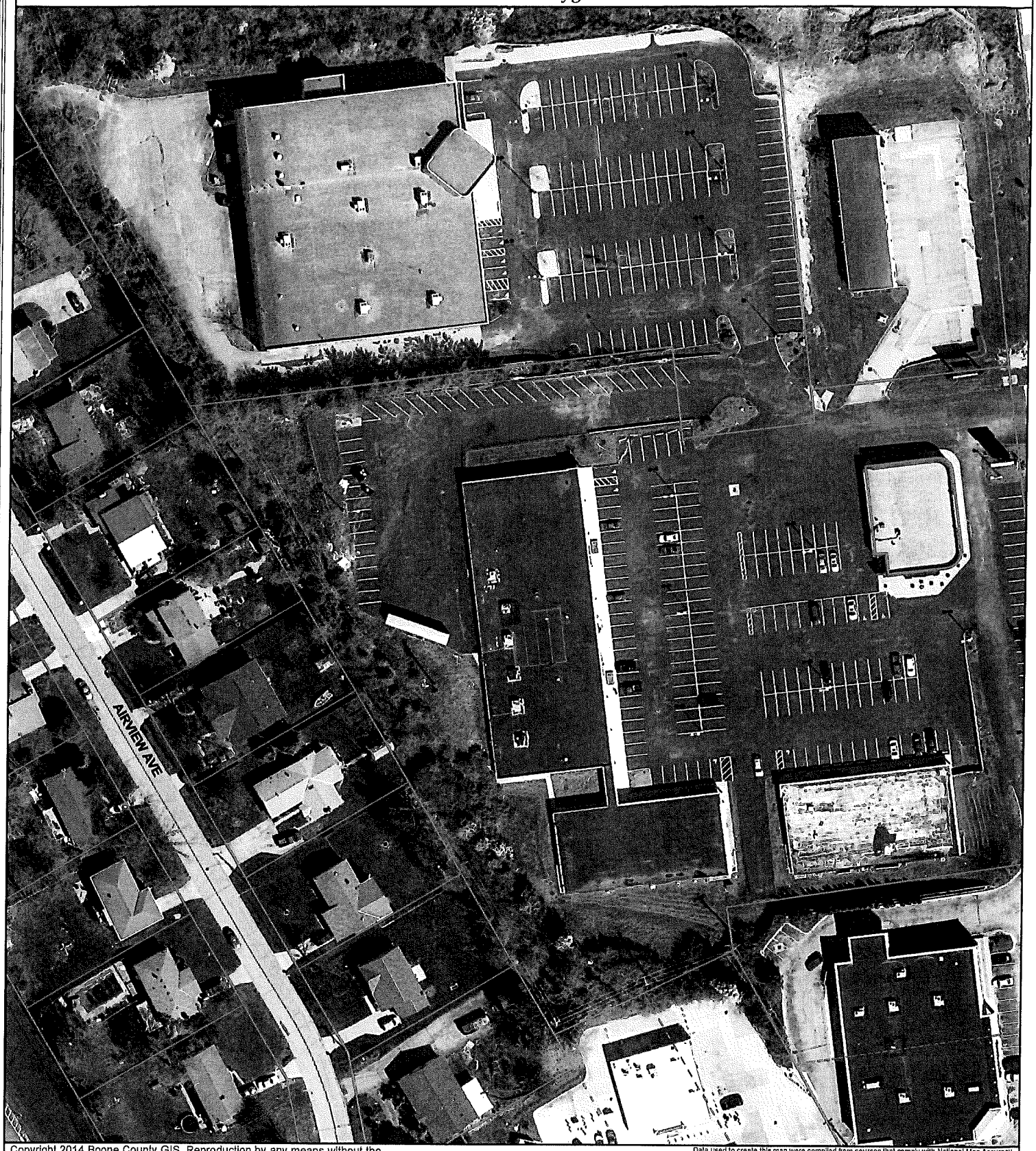

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APPLICATION FORM

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

RECEIVED NOV 19 2019 80618 BOONE COUNTY PLANNING COMMISSION

SECTION A (To be completed by applicant)

1. (Check One) _____ Boone X Florence _____ Walton _____ Union
2. (Check One) _____ Conditional Use Permit _____ Variance _____ Appeal
   X Change in Non-Conforming Use
3. Applicant's Name Susan Houp Wright Brothers
   Applicant's Address 8169 Mall Road
   Florence (City) Ky (State) 41042 (Zip)
   Phone Number 859 283-2222 Fax No. — E-Mail susan@expectthebest.com
4. Description of Request: allowing a metal roof to be added over the fence in storage area
5. Name of Development Wright Brothers, Inc
6. Location of Development 8169 Mall Road Florence Ky 41042
7. Acreage Under Review
8. Lot Number and Name of Subdivision (if part of a subdivision)
9. Owner of Property Eric R. Fegan Copperwood Realty Group
   Address of Property Owner 562 Buttermilk Pike Ste A
10. Crescent Springs (City) Ky (State) 41017 (Zip)
    Phone Number 859-331-2333 Fax No. — E-Mail eric@copperwoodrg.com
11. Proposed Use(s) on Site outside storage cyl. area
12. Total Square Footage of Existing and/or Proposed Buildings
13. Current Zoning on Property C-2/PD/MR
14. Deed Book [redacted] 1113 Page No. 731 Group No. 2040A
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: _____ Eric Fegan
(Faxed, Photocopied or Scanned Signatures will **NOT** be Accepted)

ORIGINAL Applicant's Signature: _____ Susan Houp
(Faxed, Photocopied or Scanned Signatures will **NOT** be Accepted)

(over)

CLUR #20-FBOA-001-A

CERTIFICATE OF LAND USE RESTRICTION

1. NAME AND ADDRESS OF PROPERTY OWNER(S)
Pika Properties LLC
542 Karlenia Court
Edgewood, KY 41017

2. ADDRESS OF PROPERTY
8169 Mall Road
Florence, KY 41042

3. NAME OF SUBDIVISION OR DEVELOPMENT (if applicable)
Wright Brothers

4. DEED BOOK 1113 PAGE NO. 731 GROUP NO. 2040A

5. TYPE OF RESTRICTION(S) (Check all that apply)

____ Zoning Map Amendment:
From_____To

____ Development Plan

____ Subdivision Plat
(Not Recorded)

____ Variance

____ Conditional Use Permit

____ Conditional Zoning

_X_ Other: Change in Non-Conforming Use

6. NAME AND ADDRESS OF PLANNING COMMISSION, BOARD OF ADJUSTMENT, LEGISLATIVE BODY OR FISCAL COURT WHICH MAINTAINS THE ORIGINAL RECORDS CONTAINING THE RESTRICTION

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

Todd K. Morgan

SIGNATURE OF COMPLETING OFFICIAL

Todd K. Morgan, AICP – Senior Planner
Name and Title of Completing Official

COMMONWEALTH OF KENTUCKY

COUNTY OF BOONE

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

on behalf of the Boone County Planning Commission this 17 day of January, 2020.

Treva L. Beagle
Notary ID 588897
NOTARY PUBLIC, State at Large

My commission Expires:
November 12, 2021

This instrument was prepared for recording purposes only by:

Ronica Wuest
Boone County Planning Commission
2950 Washington Street, Room 317
P.O. Box 958
Burlington, Kentucky 41005

NO TITLE EXAMINATION

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

CLUR #20-FBOA-001-A

CONDITIONS OF APPROVAL

The following Conditions of Approval apply to the change in non-conforming use approved by the Florence Board of Adjustment and in accordance with the current zoning in effect as of January 15, 2020 Certificate of Land Use Restriction (#20-FBOA-001-A), for Pika Properties, LLC, Property Owner(s).

The following conditions will apply:

1. The gas cylinder storage enclosures shall be limited to 24'x41' and be kept in the approved location.
2. Gas cylinders shall not be stored in temporary storage trailers.
3. Any future proposal to expand the gas cylinder storage enclosure shall be approved by the Florence Board of Adjustment through the Change in Nonconforming Use application process.
4. The fence enclosure and roof shall be removed if Wright Brothers does not renew their lease and vacates the premises.
5. No gas cylinders shall be stored outside the 24'x41' fence enclosure.
6. The applicant shall be required to submit any required Tier II paperwork to Florence Fire Department each year.
7. A 24 hour video security system shall be required to monitor the 24'x41' fence enclosure.
8. The metal roof which will cover the 24'x41' fence enclosure shall be an earth tone color.
9. Architectural finishes shall be required on the gable ends of the roof. The finishes shall match the roof color.

The approved change in non-conforming use as well as the preceding conditions apply to the property described in:

DEED BOOK 1113 PAGE NO. 731 GROUP NO. 2040A