

APPLICATION FOR ZONING ACTION

TO:

- Boone County Planning Commission
- City of Florence Board of Adjustment
- Boone County Board of Adjustment
- City of Union Board of Adjustment
- City of Walton Board of Adjustment
- Zoning Enforcement Officer

FOR:

- Zoning Text Amendment
- Comprehensive Plan Change
- Preliminary Plat Review
- Conditional Use Permit
- Concept Development Plan Change
- Preliminary Development Plan
- Change of Non-Conforming Use
- Design Review Board and Certificate of Appropriateness
- Zoning Map Amendment
- Planned Development Overlay Change
- Improvement Plat Review
- Final or Deed Plat Review
- Site Plan Review
- Historic District Overlay
- Appeal or Variance
- Sign or Zoning Permit

Applicant: BP Oil Co. Div. Sohio Oil Co., c/o Patrick D. Goran Owner
 Agent
 Address: 9040 Roswell Road, Suite 500
Atlanta, GA 30338 Telephone: 404/641-2515

Location: 7961 U.S. Rt. 42

Name of Property Owner: Same as above

Address of Property Owner: Same as above

Zoning District: C-3 Area in Acres: 1.07

Deed Book: 326 Page Number: 164 Group Number: MAP 73 Parcel 77 & 78

Description of Request: 1) variance from side yard set back requirement of 10'.
2) sign variance for point of sale sign frames near property line.

Applicant's Signature: Patrick D. Goran

Property Owner's Signature: Patrick D. Goran

Application Fee: ~~9.00~~ 4.85 FOR PLANNING COMMISSION USE ONLY Date Received: 3-18-87 By: TWB

Referred To: _____ Meeting Date: 4-8-87 BDA

Action Taken: _____ Date of Action: _____

STAFF REPORT

APPLICANT: B.P. Oil Company (Division of Sohio Oil Co.)
LOCATION: 7961 U.S. 42, Florence, Kentucky
ZONING: Commercial Services (C-3)
REMARKS:

The applicant is requesting a side yard Variance from 10 feet to 5 feet in order to build a new car wash and a Variance in the number of free-standing signs. The 1.07 acre tract, located on U.S. 42, across from Dream Street, is zoned Commercial Services (C-3) and is owned by the B.P. Oil Company.

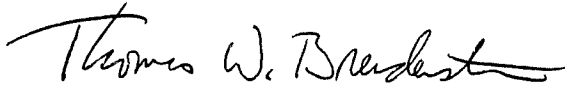
B.P. Oil intends to totally reconstruct the gas station and car wash. All existing structures on the site will be removed and replaced with the "Gulf station of the future." (Photographs will be available at the meeting.) The applicant has indicated to staff that in order for this new configuration to function properly on this lot, a Variance of 5 feet is required.

Attached is a copy of the applicant's letter explaining the need for the Variances. Following is a review of the four findings-of-fact found in Article 2, Section 244:

1. The special circumstance involved is the sharp drop-off of the property on three sides. Retaining walls have either been built or are proposed to make a portion of this lot level. Tremendous expense would be required to make the entire lot level. As to the sign request, staff could find no special circumstance other than the existence of a number of pre-existing or illegal signs.
2. Strict application of the zoning regulations would cause the applicant to either build a new, larger retaining wall or reduce the number of pump islands. Both requirements would create an unnecessary hardship on the applicant. Strict application of the sign article of the zoning regulations would allow the existing two free-standing signs to remain and any additional signage that the applicant can prove is pre-existing, non-conforming. Building mounted signage would also be permitted.
3. The physical characteristics of the property are not the results of the actions of the applicant.
4. Should the Variance be granted, staff can find no reasons that the public health, safety, or welfare would be affected.

Should the Board grant these Variances, staff recommends that the applicant be required to screen the car wash from the affected adjoining property (Dunkin Donuts). Since there is a grade difference of 4 feet, some sort of tall plantings would be required to effectively screen the new building.

Respectfully submitted,

A handwritten signature in cursive script that reads "Thomas W. Breidenstein". The signature is written in black ink and is positioned above the typed name.

Thomas W. Breidenstein,
Zoning Enforcement Officer

TWB:mcb

CITY OF FLORENCE
BOARD OF ADJUSTMENT

April 8, 1987 - 7:30 P.M.

Chairman Holland called the meeting to order at 7:42 P.M..

BOARD MEMBERS PRESENT:

Mr. Ashcraft
Chairman Holland
Ms. Lanigan
Mr. White

BOARD MEMBERS NOT PRESENT:

None

LEGAL COUNSEL PRESENT:

Mr. Hugh Skees

Chairman Holland stated that each member had received a copy of the Minutes of the Board of Adjustment Meeting of March 11, 1987. There being no comments or corrections; Chairman Holland moved, seconded by Mr. White, that the Minutes be approved. The motion carried unanimously.

AGENDA ITEMS:

2. A request of James and Eula Miller for a Conditional Use Permit to allow the conversion of an existing single-family residence into a duplex dwelling unit. The 0.17-acre lot, located at 12 Rose Avenue, is zoned Suburban Residential Two (SR-2).

Gerald Newton presented the Staff Report.

Mr. Miller stated, in response to a question from the Chairman, that the proposed unit will be on the right side of their existing house when facing the house.

The Chairman asked if there was anyone present who wished to speak in regard to the application, or if there was any further discussion. There being none, Mr. White moved, seconded by Ms. Lanigan, that the application be approved, on that condition that adequate parking is provided.

The Chairman asked for a roll call vote on the motion which found Mr. Ashcraft, Chairman Holland, Ms. Lanigan and Mr. White in favor. The motion passed unanimously.

5. A request of Charles Durnbaugh for Variances in the height, square footage, and number of free-standing signs. The 1.1-acre site, located at 7859 Commerce Place, is zoned Commercial Services (C-3).

Gerald Newton presented the Staff Report.

Mr. Rick Johnson, United Signs (the proposed contractor), distributed information to the Board. He presented photographs of the proposed signs. He stated that a passerby would not see the present sign. He noted the criteria used to determine the appropriate size and location of signs to attract traffic from Highway 18.

Mr. Jerry Dusing, an attorney representing Mr. Durnbaugh, commented on the Staff report and noted the applicant's reasons for requesting the variances, indicating the need and benefits of good visibility of the sign.

Chairman Holland asked if there was anyone else in the audience who wished to comment on the application. There was no audience participation.

The Chairman noted that many of the neighborhood property owners had indicated that they were not opposed to this application.

Mr. White stated that he had visited the site and noted that the applicant would have preferred to locate on the higher elevation. Mr. White stated that Mr. Durnbaugh's sign was obstructed from view.

Mr. Ashcraft moved, seconded by Mr. White, that the variances be approved as requested.

The Chairman asked for a roll call vote on the motion which found Mr. Ashcraft, Chairman Holland, Ms. Lanigan and Mr. White in favor. The motion carried unanimously.

3. A request of the B. P. Oil Company (a division of Sohio Oil Company) for a 5-foot Variance in the side yard set-back and a Variance in the number of free-standing signs. The 1.07-acre tract, located on U. S. 42 across from Dream Street, is zoned Commercial Services (C-3).

Mr. Gerald Newton presented the Staff Report and also photographs of the site. Staff noted that it would be possible for this property to have shared access with Dunkin' Donuts.

Mr. Pat Goran, a construction engineer with B. P. Oil Company, stated that the Staff Report had been very thorough and he would be available to answer any questions. He reviewed drawings of the site with the Commission members, noting the location of existing and proposed signs.

The Chairman asked if there was anyone present representing Dunkin' Donuts. Mr. Granet Benson, District Sales Manager, and Mr. Gerald Deters, franchise owner at this location, were present. The Chairman asked for their comments.

Mr. Benson stated that as the primary tenant, their main concern is the visibility of their signage.

Mr. Ashcraft noted that there are drainage problems typically associated with car washes. He stated that he had visited the site and asked why, since the applicant will be razing the existing structure and rebuilding, the structure could not be located on the site to take advantage of the natural drainage toward the rear of the site.

Mr. Goran replied that the location of the building is based upon its visibility and commented on the traffic flow into the site. He also commented on the proposed drainage system. Mr. Goran stated that he understood the comments of the gentlemen from Dunkin' Donuts and stated that they will work with them as much as possible to not interfere with their visibility.

The Chairman asked if there was anyone else present who wished to comment in behalf of, or in opposition to, this application; or if there were any additional comments or questions from the Board.

Mr. Newton noted that action by the Board will establish the setback line, but that the exact location of the building can be varied.

Following discussion, Mr. White moved that the request for a 5-foot variance in the side yard set-back be granted and that the request for a variance in the number of free-standing signs be omitted and addressed in the Site Review. Mr. Ashcraft seconded the motion.

Chairman Holland asked for a roll call vote on the motion which found Mr. Ashcraft, Ms. Lanigan and Mr. White in favor. Chairman Holland was opposed. The motion carried.

4. A request of the B & J Development Company (dba Florence Square) for a Variance in the dimension of parking stalls. The 9.4-acre site, located on Mall Road between Children's Palace and Central Hardware, is zoned Commercial Two (C-2).

Staff member, Tom Breidenstein, presented the Staff Report.

In response to questions from the Chairman regarding the Staff Report, Mr. Newton stated that the applicant is requesting an increased number of parking spaces in the same area so that they will be closer to the building and will, therefore, increase safety. He noted that the applicant has agreed to appropriately landscape an approximate 30-foot area that would become available for landscaping.

Mr. Ashcraft noted that there would be an increase of 31 parking spaces, plus additional landscaping. He asked what the rationale was behind the required size of 10' X 20' or 9' X 19' for parking stalls.

In response to his question, Mr. Newton cited examples of locations where the 9' X 19' parking stalls exist. He stated that the required size of parking stalls in stable parking areas reflects the trend toward smaller cars.

Chairman Holland asked if there was anyone present representing the applicant who wished to speak.

Mr. Tom Williams representing North American Properties (the developer), and Mr. Tim Zellich representing Hickson Associates (the architect) were present.

Mr. Williams stated that the 9' X 19' stalls are the accepted standard today. He noted the requested change to the smaller parking stalls would increase safety and that the additional landscaping would make the site more attractive.

Mr. Tim Zellich provided a copy of the plans to the Board members and noted the location of the proposed landscaping.

Mr. White stated that applications had been turned down in the past due to the required 10' X 20' parking stalls. He stated that the explanation of the trend to smaller parking stalls had provided clarification for him.

Chairman Holland asked if there was anyone present who wished to speak regarding this application. There was no audience response.

Mr. White moved that the request for a variance in the dimension of parking stalls be granted, based on the fact that such a trend exists in the area. Ms. Lanigan seconded the motion.

Chairman Holland asked for a roll call vote on the motion which found Mr. Ashcraft, Chairman Holland, Ms. Lanigan and Mr. White in favor. The motion carried unanimously.

1. A request of Terry Lohre for an Appeal of the Zoning Administrator's decision regarding the activity of Mark's Guns, which is located at the northeast corner of Dixie Highway and Glenrose Avenue, Florence.

Mr. Gerald Newton, Director/Zoning Administrator, presented the Staff report and noted a letter he had written, dated January 26, 1987, which was attached to the Staff report. Mr. Newton stated that the issue before the Board this evening is whether or not the Board supports his decision that "Mark's Guns has complied with the provisions and conditions of their site plan approved March 19, 1986, and is not in violation of the Boone County Zoning Regulations"; or if the Board will overturn Mr. Newton's decision based on evidence and information to be presented at this meeting. Mr. Newton discussed the research, considerations, and findings upon which his decision was based, (See Staff report and attachments). Mr. Newton stated that the Board must consider the question, "Is the activity of Mark's Guns a public nuisance?". He clarified a "public" vs. a "private" nuisance and stated that, in his opinion as Zoning Administrator, the activity of Mark's Guns does not constitute a "public nuisance".

Chairman Holland asked if there was anyone present representing the applicant who wished to speak.

Mr. Mike Sutton, an attorney, stated that he was representing Mr. Lohre. He added that Mr. Daniel Martin, an acoustical consultant, was also present, at Mr. Lohre's request.

Mr. Terry Lohre, the applicant, presented a copy of the plat of the area and noted the location of his property, Mark's Guns, and various adjacent properties. He stated that he had purchased a lot in 1967 and built his present home on the lot in 1969. He said that he had been assured, prior to purchasing additional lots in the autumn of 1986, that the noise level of Mark's Guns would be controlled. He stated that his attorney had contacted the Planning and Zoning Commission regarding the noise and had been advised that the owner would be contacted. The owner had agreed to make modifications to reduce the noise level and Mr. Lohre was advised that their operating license would be revoked if they did not comply.

Chairman Holland asked Mr. Lohre why he felt this was a public nuisance.

Mr. Lohre stated that he had petitions indicating that 27 people still complain about the noise, despite the modifications which have been made. He added that he cannot proceed with his plans to develop a four-acre parcel of land he owns adjacent to the area because of the noise level.

Chairman Holland asked Mr. Lohre why this is a public nuisance.

Mr. Sutton replied that Mr. Lohre also owns the property rented to Mr. Barton, who also complains about the noise. He added that they also have the signed petitions. He stated that the majority of the noise is coming from the rear of the building and the people living behind Mark's Guns are most affected.

Mr. Daniel Martin, an acoustical consultant, distributed copies to the Board members of a report he had made regarding his evaluation of the noise level since the modifications to the structure were made. Mr. Martin indicated his credentials and noted other parties for whom he had performed similar work. Mr. Martin stated that there is no figure in the Zoning Regulations indicating the decibel level which constitutes a nuisance. He stated that the Decibel Scale ranges from 0 to 120 and added that the 120 level would hurt the ears. Mr. Martin discussed the readings he had taken at the site, indicating distance from the site and background noise among the considerations which affect the readings. He stated that he had not been inside the building and had been ordered off the site. Mr. Martin commented on possible modifications which could be made to affect the noise level.

Mr. Newton discussed the decibel readings taken by the Staff, and noted the readings which he had personally made. Mr. Newton added that the readings are difficult to understand and, for reference, noted that his voice would be in the 60's range.

Mr. Daniel Martin added that normal speaking voice is approximately 74 decibels. At this time, Mr. Martin played a tape which he had made of the sounds coming from Mark's Guns. He noted that the readings indicated on the tape could be affected by weather, the acoustics of the meeting room, and other factors.

Mr. White indicated that he had visited the site. He stated that he did not hear shots at Mr. Lohre's house or at his son's house. Mr. White stated that Mr. Lohre's son had advised him that the shots could be heard only at certain times.

Mr. Sutton asked Mr. Daniel Martin what suggestions he could make to the owners to further reduce the noise.

Mr. Daniel Martin stated that he had not been permitted to examine the premises and made suggestions of a general nature.

Chairman Holland asked if there were any questions from the Board of if anyone else wished to speak regarding this issue.

Mrs. Terry Lohre, the applicant's wife, stated that the gunshots are a disturbance to her and added that Mark's Guns has changed the character of the neighborhood.

Mr. Lohre's son, Doug, stated that he had told Mr. White that the noise was highly aggravating. He noted that people get used to the noise of planes going overhead, but that a gunshot is an abrupt sound and more disturbing.

Mr. Gary Barton, a resident of Glenrose Avenue, stated that he rented his home from Mr. Lohre. Mr. Barton stated that he had made a list of the dates and times that he has been disturbed by the gunshots with his windows closed. He said that complaints regarding the noise had not really ceased, but that they were waiting for the test results and to see what the Board of Adjustment would do.

Mrs. Gant stated that she lives at the end of Glenrose Avenue and the noise is driving her crazy.

Mr. David Martin, an attorney representing the owners of Mark's Guns, asked Mr. Lohre for further clarification of several of the points he had made. He asked Mr. Lohre why he had sent people into Mark's Guns to fire shots while readings were taken outside. Mr. Martin asked why the readings could not have been taken based on regular customers firing shots. Mr. Martin also raised questions regarding the calibre of weapons fired for the readings, indicating that they were greater than the normal calibre fired in the establishment. Mr. Martin asked if Mr. Lohre had created an artificial noise situation.

Mr. Lohre replied that he had provided the gunshots because he had no control over whether or not there would be firing at the time Mr. Daniel Martin came to the site. Mr. Sutton added that the problem is the nature of the sound and the high decibel readings.

Mr. David Martin then asked Mr. Daniel Martin, the acoustical consultant, for clarification of several of the points made by him. Mr. David Martin asked if Mr. Daniel Martin was being paid by Mr. Lohre and also asked questions regarding his credentials as an "expert". He questioned the conditions under which the recording presented by Mr. Daniel Martin was made.

Mr. Daniel Martin indicated that he was being paid by Mr. Lohre and commented on the tape recording which he had presented.

Mr. Kevin McGehee, President of Mark's Guns, Inc., stated that the firing range is an accessory use. He noted the hours they are open. He stated that he has tried to cooperate with all the requests of the Planning and Zoning Commission and the City of Florence. He noted his desire to get along with the officials, the cities, and the public. He said that he has been told that he is not in violation of the Site Plan, but is still getting complaints from Mr. Lohre. He read a letter from the Assistant Chief of Police, written in behalf of the Chief, indicating that they were not aware of any problems since the measures were taken to control the noise level. He stated that he had contacted several adjacent property owners and they are not bothered by the noise. He indicated that some of the signatures on Mr. Lohre's petition are those of children. Mr. McGehee added that Mr. Lohre could never be satisfied and that Mr. Lohre is harassing him because he has been unable to purchase his property.

Mr. Sutton asked Mr. McGehee if the noise primarily comes from the rear quarter of the building and why he had not inquired of the residents to the rear of the property if they were bothered by the noise.

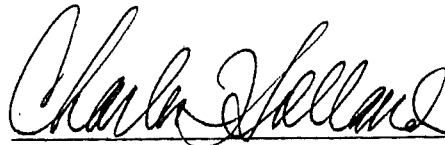
Mr. McGehee stated that the noise comes from all different areas, not just the rear. He stated that he did not question neighbors to the rear because those people had friendly relations with Mr. Lohre and he did not know them.

Mrs. Lohre commented that there were no signatures by children on the petitions.

Following discussion, Chairman Holland moved that the Board uphold the decision made by Mr. Newton -- this is not a public nuisance. Mr. Ashcraft seconded the motion.

Chairman Holland asked for a roll call vote on the motion which found Mr. Ashcraft, Chairman Holland, Ms. Lanigan and Mr. White in favor. The motion carried unanimously.

There being no further business to come before the Board, Chairman Holland moved, seconded by Mr. White, that the meeting be adjourned. The motion carried unanimously and the meeting was adjourned at 10:40 P.M..



Charles Holland,
CHAIRMAN

Attest:



Jan Hancock,
RECORDING CLERK