

APPLICATION FOR ZONING ACTION

FOR:

- 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: B & J Development Co. (dba Florence Square) Owner
 Address: 212 East Third Street - Suite 300 Agent
Cincinnati, Ohio 45202 Telephone: 721-2744

Location: 7609 Mall Road, Florence, Kentucky 41042

Name of Property Owner: B & J Development Company

Address of Property Owner: 212 East Third Street, Cincinnati, Ohio 45202

Zoning District: C-2 Area in Acres: 9.4 acres

Deed Book: 211 Page Number: 411 Group Number: 966,2040

Description of Request: Change in size of parking spaces for proposed Zayre site from 10 by 20 feet, to 9 by 19 feet (see attached for further discussion).

Applicant's Signature: 

Property Owner's Signature: 

FOR PLANNING COMMISSION USE ONLY

Application Fee: _____ Date Received: _____ By: _____

Referred To: _____ Meeting Date: _____

Action Taken: _____ Date of Action: _____

STAFF REPORT

APPLICANT: B & J Development (dba Florence Square)
LOCATION: 7609 Mall Road (new Zayre store between
Children's Palace and Central Hardware)
ZONING: Commercial Two (C-2)
DATE: April 8, 1987
REMARKS:

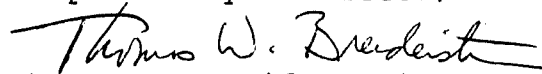
The applicant is requesting a Variance in the dimensions of parking stalls. The Boone County Zoning Regulations require 10 foot by 20 foot spaces; the request is for 9 foot by 19 foot spaces. The 9.4 acre site, located on Mall Road between Children's Palace and Central Hardware, is zoned Commercial Two and is owned by B & J Development.

Attached is a copy of the applicant's reasons for the Variance. Following is a review of the four standards that the Board must apply to each Variance:

1. The special circumstance leading to this request is the fact that in order to have the required number of parking spaces, an agreement to share spaces had to be worked out. Some customers shopping at Zayre would be required to walk from Children's Palace or Central Hardware.
2. Strict application of the zoning regulation would prohibit the applicant from parking Zayre customers on the same lot.
3. It can be argued that the above mentioned circumstance is the result of actions of the applicant since the number of required parking spaces is based upon the square footage of the building.
4. If granted, staff does not feel that the public health, safety, or general welfare will be adversely affected or that the essential character of the general vicinity will be altered. In fact, it can be argued that by providing parking spaces closer to the use, the safety of the shopping public will be better served. Traffic along Connector Drive, on which pedestrians would walk if required to park at Children's Palace or Central Hardware, is at times very heavy.

Another factor involved and not discussed above is the addition of quite a large amount of landscaping. Should 9 foot by 19 foot parking spaces be allowed, a 30 foot (approximate) area would become available for landscaping. The applicant has agreed to attractively landscape this strip.

Respectfully submitted,


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 owners 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 or 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.

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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.

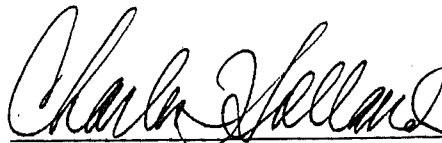
Mr. McGehee stated that the noise comes from all different areas, not just the rear. He stated that he did not question neighbors to the rear because those people had friendly relations with Mr. Lohre and he did not know them.

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