

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: Michael R. Bryant Owner
 Address: 8397 US 42 Florence, Kentucky 41042 Agent
 Telephone: 606-371-5416

Location: Delightful Days 8397 US 42 Florence, Kentucky 41042

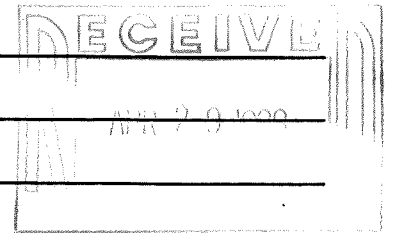
Name of Property Owner: American Legion Boone Post # 4

Address of Property Owner: 8385 US 42 Florence, Kentucky 41042

Zoning District: _____ Area in Acres: _____

Deed Book: _____ Page Number: _____ Group Number: _____

Description of Request: Variance of C-2 Zoning



Applicant's Signature: Michael R Bryant

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: Michael Bryant

DEVELOPMENT: Delightful Days RV Center

REQUEST: Appeal

LOCATION: 8385 and 8397 U.S. 42, Florence, Kentucky

ZONE: Commercial Two (C-2)

DATE: June 8, 1988, 8:00 P.M.

REMARKS:

The applicant is requesting an Appeal of the Zoning Administrator's and Zoning Enforcement Officer's decision regarding the expansion of a pre-existing, non-conforming use. The subject property is located directly behind the American Legion Boone Post #4 at 8385 U.S. 42 and northeast of the current Delightful Days RV Center at 8397 U.S. 42, Florence. Both properties are zoned Commercial Two (C-2).

HISTORY

On August 6, 1980, the Boone County Planning Commission granted a Special Use Permit to Mr. Bryant to allow the development of a "two story building which will house a professional (dental) office and the office for his Motor Home Center." This permit was granted for a 0.471 acre site at 8397 U.S. 42 which was zoned B-6 under the old City of Florence Zoning.

While this request was being processed, a petition for a re-hearing of the Supreme Court ruling striking down the local zoning regulations was being considered. In the meantime, the old regulations were still in effect. Under the old law, RV sales and service was obviously a permitted use. Such a use became pre-existing, non-conforming with the adoption of the 1980 Boone County Zoning Regulations and zoning map, which classified the applicant's property as Commercial Two (C-2). The 1980 (and 1986) zoning regulations categorize "specialized sporting goods and accessories including the sales and service of new and used marine craft, recreational vehicles, camping trailers, and motorcycles" in the Commercial Services (C-3) zoning district. Attached is a list of uses permitted in the Commercial Two (C-2) zone.

In October of last year, our office received a complaint regarding the expansion of the Delightful Days RV Center. The City of Florence Director of Public Services and I both contacted the owner and requested that he provide a Site Plan (prepared by a registered engineer, architect, or surveyor) to the Commission to ensure that the American Legion property was to be developed properly. After a number of warnings were ignored, I looked at the issue in terms of Article 2 (Administration) of the Boone County Zoning Regulations instead of Article 14 (Site Plan Review). There I found that the RV Center

STAFF REPORT - MICHAEL BRYANT
JUNE 8, 1988
PAGE TWO

was protected as pre-existing, non-conforming since the use is not allowed in C-2 zoning districts. However, Article 2 also states:

"Section 283

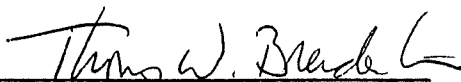
Non-Conforming Uses of Land

Where, at the time of 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." (p. 2-9)

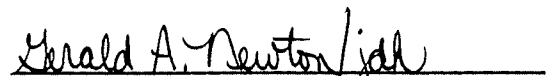
The Zoning Administrator's and Zoning Enforcement Officer's interpretation of this passage led to a letter dated April 13, 1988 which required that the expanded use be curtailed and that the RV sales and service be brought back to the previously approved 0.471 acres. Mr. Bryant has obviously chosen the appeal option explained in the letter (see attachment). As a point of clarification, a zone change to C-3 is not a viable option since a new C-3 district must be at least three acres in size. The other option of a zoning text amendment to allow RV sales and service in the C-2 zone was not considered.

A letter explaining Mr. Bryant's side of the Appeal is attached for the Board's review.

Respectfully Submitted,



Thomas W. Breidenstein
Zoning Enforcement Officer



Gerald A. Newton
Zoning Administrator

TWB/GAN:jdh

BOONE COUNTY PLANNING COMMISSION

BOONE COUNTY ADMINISTRATION BUILDING

P.O. BOX 697 — 2950 WASHINGTON STREET

BURLINGTON, KENTUCKY 41005

334-2196

MR. WILLIAM R. VIOX
CHAIRMAN

MR. LARRY BARNETT
VICE CHAIRMAN

MRS. CAROL SMITH
SECRETARY-TREASURER

MR. GERALD A. NEWTON
DIRECTOR

MR. D. T. WILSON
ATTORNEY

April 12, 1988

Mr. Michael Bryant
c/o Delightful Days RV Center
8397 U.S. 42
Florence, Kentucky 41042

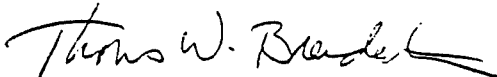
Dear Mr. Bryant:

In my letter dated February 19, 1988, and received by you February 23, 1988, I indicated that our office would file a criminal complaint for failure to obtain Site Plan approval for your recent expansion. As I am sure you are aware, such a complaint was not filed. We did not file the complaint because, after closer examination, it was determined that the Boone County Zoning Regulations could not allow your expansion.

Your property, and the properties north and south of you along U.S. 42, are zoned Commercial Two (C-2). The listing of principally permitted, accessory and conditional uses allowable in the C-2 districts does not include the sales and service of recreational vehicles. Therefore, the continued use of property at the above address only is protected as a pre-existing, non-conforming use. Pre-existing, non-conforming uses are not permitted to be enlarged.

The purpose of this letter, therefore, is to require you to discontinue the expanded use of your business on the VFW property north of your property. You must confine your business within the boundaries of the pre-existing status. Such action must be taken within 30 days of receipt of this letter to avoid a criminal complaint. Further, you have the option appealing this decision to the Florence Board of Adjustment within the 30 days.

Sincerely,



Thomas W. Breidenstein,
Zoning Enforcement Officer

TWB:mcb

Delightful Days R.V. Center

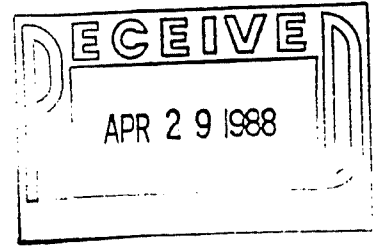
Sales • Rentals • Service • Parts

8397 U.S. 42

Florence, Kentucky 41042

371-5416

April 22, 1988



Mr. Charles Holland
Chairman of the Board of Adjustment
Boone County Planning Commission
P.O. Box 697 2950 Washington Street
Burlington, Kentucky 41005

Dear Mr. Holland,

Through a recent effort to enlarge our existing property we understand that the adjacent property is under a different zoning ordinance. These efforts were made in an attempt to accommodate our business needs, due to the road construction project on US 42. Therefore I request the board's consideration for a zoning change of the adjacent property in order to accommodate the enlargement of our existing property. At this time, this move is of great importance to insure the continuing business of Delightful Days R.V.Center. The enlargement needed is the north adjacent property at 8385 US 42. The enlargement needed is the rear section of this property measuring approximately 80x160. This move is also of great importance to insure the safety of vehicle and pedestrian traffic on US 42. Due to the nature of business Delightful Days R.V.Center is involved in, large vehicles need to enter and exit our property safely.

We are presently under a lease contract with the owner's of this property (American Legion Boone Post #4) and no attempt has been made by the property owner's to rectify this apparent problem in order to make this lease contract functional to our business. Therefore I have taken upon myself to contact Mr. Andrew R. Ament, surveyor of 205 E. Alexandria Pike Cold Springs, Kentucky to file a site plan for your approval. Numerous attempts by Mr. Andrew R. Ament to contact the planning and zoning office in order to find out what is necessary to facilitate this zoning change have been unsuccessful.

I hereby request the Board to kindly address this problem as soon as possible in order to expedite this change so we might resolve this matter and continue effectively doing business. Thank You for your consideration and promptness in this matter. If I can be of any further assistance, please advise.

Sincerely,
Michael R. Bryant

A handwritten signature in cursive script that reads "Michael R. Bryant".

President of Delightful Days R.V.Center

Section 920
COMMERCIAL TWO (C-2)

The purpose of the commercial two district is to provide comparable shopping goods, personal and professional services, and some convenience goods required for normal living needs as well as major purchase opportunities. Districts will be located on suitable lands central to community or regional trade areas and provided direct access from expressways or arterial roads. District facilities and plans will be organized to provide central and convenient collection of vehicles and pedestrians within the district's facilities and major shopping spaces.

Section 921
Principally Permitted Uses

The following uses are permitted:

1. All principally permitted uses of a Commercial One (C-1) district;

* C-1 ↓

- * 1. Hardware stores;
- * 2. Eating and drinking places including alcoholic beverages, but excluding drive-in and franchise food chains;
- * 3. Grocery stores and supermarkets;
- * 4. Stores with retail sales of meat, fish, seafood, dairy and poultry products;
- * 5. Fruit and vegetable stores;
- * 6. Bakeries, candy, nut and confectionery stores;
- * 7. Convenience stores;
- * 8. Liquor, beverage, drug and proprietary stores;
- * 9. Banking services (including drive-thru facilities) savings and loan associations, credit unions and other credit services;
- * 10. Insurance carriers and agents;
- * 11. Real estate operators, agents, lessors and real estate sub-dividing and developing services, operative builders and related services;
- * 12. Accounting, auditing and bookkeeping services;
- * 13. Postal services;
- * 14. Physician, dental, optical goods and services;
- * 15. Veterinary services and pet grooming services but not including the boarding of animals.
- * 16. Beauty and barber services and tanning salons;
- * 17. Nursery and child care centers;
- * 18. Laundering, dry cleaning and dyeing services including self-service;

- * 19. Pressing, alteration, garment repair and custom tailoring;
- * 20. Shoe repair, shoe shining and hat cleaning services;
- * 21. Family clothing, shoe stores, specialty clothing or boutiques and other apparel retail trade;
- * 22. Jewelry;
- * 23. Radio, t.v., music supplies, cameras, photographic supplies and specialty household appliances;
- * 24. Art, craft and hobby supplies and products, gifts and novelties;
- * 25. Antiques and used merchandise;
- * 26. Books, stationery, newspapers and magazines;
- * 27. Cigars and cigarettes;
- * 28. Florists excluding greenhouses;
- * 29. Sporting goods including bicycles;
- * 30. Draperies, curtains, upholstery and floor coverings;
- * 31. Paint, glass and wallpaper stores;
- * 32. Painting, paper hanging and decorative services;
- * 33. Photo finishing services;

2. All the principally permitted uses in an Office One (O-1) district;

O-1 ↓

- * 1. Bank related services (including drive-thru facilities)
- * 2. Agricultural, business and personal credit services;
- * 3. Security brokers, dealers and flotation services;
- * 4. Commodity contracts, brokers and dealers services including security and commodity exchanges;
- * 5. Insurance agents, brokers and services;
- * 6. Real estate agents, brokers and management services;
- * 7. Title abstracting services;
- * 8. Real estate subdividing and development services;
- * 9. Real estate operating builders offices excluding any outside storage equipment and the like;

- * 10. Holding and investment services;
- * 11. Photographic services;
- * 12. Advertising services;
- * 13. Consumer and mercantile credit reporting services, adjustment and collection services;
- * 14. Direct mail advertising services;
- * 15. Stenographic services and other duplicating and mailing services;
- * 16. News syndicate services;
- * 17. Employment services;
- * 18. Research, development and testing services of an office nature;
- * 19. Business and management consulting services;
- * 20. Motion picture, audio-visual and similar media production and distribution services;
- * 21. Physician and dental services including medical, dental laboratories;
- * 22. Legal, engineering, architectural, education and scientific research services;
- * 23. Accounting, auditing and bookkeeping services;
- * 24. Welfare and charitable administration offices;
- * 25. Business associations;
- * 26. Professional membership organizations;
- * 27. Labor unions and similar labor organizations;
- * 28. Civic associations;
- * 29. Telephone exchange stations, telegraph message centers, radio broadcasting studios, television broadcasting studios and other communication centers and offices excluding any relay, transmitting or receiving towers or similar unattached, erected equipment;
- * 30. The administration, management and any related office use or activity of commercial, business, service, professional, industrial, religious, private institutional, or similar organization, incorporation, companies, associations and such uses. Includes all integral stenographic reproduction, mailing, research, sales and similar office functions, as determined by the Zoning Administrator;
- * 31. Finance companies;
- * 32. Veterinary services not including the boarding of animals.
- * 33. Business colleges or schools.

C-2 (cont)

3. Eating and drinking places including alcoholic beverages and entertainment, but excluding drive-in and franchise fast food chains;
4. Limited price variety or discount stores, toy stores;
5. General dry goods and merchandise stores;
6. Department stores, mail order houses, direct retail selling organizations of general merchandise;
7. Furniture, home furnishings including specialty and floor coverings;
8. Specialized upholstery and furniture repair or refinishing services;
9. Apparel, including furriers;
10. Household appliances, china, glassware and metal ware;
11. Radio, t.v., watch, clock, and jewelry repair;
12. Drive-thru photographic, stenographic and other duplicating and mailing services;
13. Legal services, engineering and architectural services;
14. Security brokers, dealers and flotation services;
15. Commodity contracts, bankers and dealer services;
16. Security and commodity exchanges;
17. Title abstracting services;
18. Holding and investment services;
19. Advertising services including direct mail;
20. Business and management consulting services;
21. Employment services;
22. Consumer and mercantile credit reporting, adjustment and collection services;
23. Travel arranging, transportation ticket and public event or promotional booking agencies;
24. Radio and television broadcasting studios excluding transmitting stations and towers;

25. Art, music and dancing schools;
26. Medical and dental laboratory services;
27. Medical clinics - out-patient services;
28. Welfare and charitable services;
29. Business associations and professional membership organizations;
30. Civic, social and fraternal organizations;
31. Attached upper story dwelling units of up to three stories provided the building was originally designed for residential use and existing at the time of adoption of this ordinance, including:
 - a. Private garage and parking;
 - b. Structures such as fences and walls;
 - c. Buildings such as storage sheds;
 - d. The keeping an use of appropriate household pets;
32. Art and craft galleries and similar exhibit space;
33. Aquariums, botanical gardens and other natural exhibitions;
34. Arcades and other amusement centers;
35. Motion picture theaters (indoor);
36. Bowling alley;
37. Recreation centers, gymnasiums, clubs and similar athletic uses.
38. Motorcycles sales or bike shops excluding outside storage.

Section 922

Accessory Uses

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

1. Recreation uses or spaces of integral relation to the developed portions of the district defined to be:
 - a. Stages and similar assembly areas;
 - b. Auditoriums, exhibition halls and other public assembly spaces;
 - c. Billiards;
 - d. Play lots and tot lots;
 - e. General, leisure, ornamental and other parks, spaces, trails bikeway systems, malls and urban pedestrian networks;
2. Dwelling unit of the family of the owner-operator provided the building was originally designed for residential use including:

- a. Private garage and parking;
 - b. Structures such as fences and walls;
 - c. Buildings such as storage sheds;
 - d. The keeping and use of appropriate household pets;
3. Directional and incidental signage (See Article 19);
 4. Parking (See Article 18);
 5. Temporary buildings incidental signage (See Article 19);
 6. Storage, uncrating or unpacking areas provided such activities are an integral function of a permitted use and do not create enclosed or outside spaces which will tend to enlarge or overpower the activities of permitted uses;
 7. Drive-up photo finishing services and automatic teller services;
 8. Retail sale of motor fuels (excluding service stations);
 9. Indoor target ranges and similar athletic uses;

Section 923

Conditional Uses and Criteria

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

1. Drive-in and franchise fast-food chains and eating and drinking places, provided the activity is appropriately related to the character of the trade area being served;
2. Garden and landscape sales including florist greenhouses, lawn furniture and the like;
3. Gasoline service stations including normal maintenance, repair and wash services;
4. Churches, synagogues, temples and other places of religious assembly for worship;
5. Roller skating rink and ice skating rink.
6. Funeral homes and crematoriums excluding cemeteries or mausoleums;

7. Small scale sales or leasing of new and used motor vehicles requiring the storage of no more than fifty (50) vehicles on the premises.
8. Sale of satellite dishes.

Section 924

Intensity

The intensity of use in a commercial two district of under four (4) acres, including all the contiguous private property so designated, shall not exceed 15,000 square feet of gross floor area per acre of land. In a commercial two district of over four (4) acres, the intensity of use shall not exceed 18,000 square feet of gross floor area per acre of land.

Section 925

Minimum Size

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

Section 926

Minimum Standards

See Table 1 for dimensional standards. (Site plan review required for all permitted uses. See Article 14.)

CITY OF FLORENCE
BOARD OF ADJUSTMENT

June 8, 1988 - 8:00 P.M.

BOARD MEMBERS PRESENT:

Mr. Ashcraft
Chairman Holland
Mrs. Meihaus
Mrs. Ward
Mr. White

BOARD MEMBERS NOT PRESENT:

None.

LEGAL COUNSEL PRESENT:

Mr. Dale Wilson

Chairman Holland stated that each member had received a copy of the Minutes of the Board of Adjustment Meeting of May 11, 1988 and asked if there were any comments or corrections.

There being no changes to the Minutes, Mr. White moved that the Minutes be approved as mailed. Mr. Ashcraft seconded the motion and it carried unanimously.

AGENDA ITEMS:

1. The request of Ponderosa, Inc. for a Variance to raise an existing twenty-foot high sign to eighty (80) feet high to allow the restaurant to be more competitive and equal in sign height with surrounding establishments. The 1.047-acre site, located on the south side of U.S. 42 at the "South I-75" exit ramp on I-75, is zoned Commercial Services (C-3) and is owned by Ponderosa, Inc..

Staff Member, Paul Miller, presented the Staff Report which included a slide presentation (see Staff Report).

Chairman Whitton asked if there was anyone present who wished to speak in behalf of this request.

Mr. Bruce Bush, Area Manager for Ponderosa, Inc., stated that it will cost \$30,000 to raise the sign and before spending that money, they need the Board's approval. They are investing \$200,000 in remodeling the restaurant and want to be competitive.

Mr. Ashcraft questioned how long the restaurant had been in business and whether the restaurant gets the benefit of other signs in the area.

Mr. Bush stated that the restaurant has been in business for 13 years. He stated that they do not get the benefit of other signs in the area. He noted that their business is down about 22% from last year and many people that come in say they didn't know the restaurant was there. He stated that the higher sign would help their business. He stated that the drop in business is due to the sign, and noted that the competitions' business has increased. He added that they do about \$11,000 worth of business per week. Their breakeven point is \$9,000 to \$10,000 and they may have to close.

In response to a question from Chairman Holland, Mr. Bush advised that the sign company they are using is Cummings of Dayton, Ohio.

Chairman Holland advised that a flagging of the sign is necessary. He suggested that the sign be flagged at 40 feet, 50 feet, and 80 feet and that pictures be taken from the expressway. He noted that Mr. Bush may find that he does not need the Variance. He questioned why they wanted an 80-foot high sign.

Mr. Bush stated that the restaurant next door has an 80-foot high sign, and the sign may be higher.

Chairman Holland advised that the signs in the area were put up in consideration of the topography. He recommended that the request be tabled until the July meeting to allow for flagging of the sign.

Mr. Bush stated that they would like to go to 40 feet and then return next month with pictures. Chairman Holland advised that the regulations allow them to go to 40 feet.

Mr. Miller noted that the applicant does not need a Variance to go to 40 feet, but he does need a sign permit.

Counselor Wilson advised that the applicant can withdraw the request for an 80-foot sign, or he can waive the 60-day time limit and come back to the Board if he finds that he needs the Variance.

Mr. Bush stated that he will waive the time limitation.

Chairman Holland stated that it would be helpful to have a Board member present at the flagging. Mr. Bush stated that he will contact the Staff Office when the flagging is to be done.

Chairman Holland asked if there was anyone else present who wished to speak in regard to this request. There was no one else who wished to speak.

There being no further discussion, Chairman Holland moved that the request be tabled to allow for an artist's rendering and pictures of the flagging. He noted that the applicant has waived the sixty-day time limitation. Mrs. Ward seconded the motion and it carried unanimously.

2. The request of Michael Bryant for Delightful Days RV Center for an Appeal of the Zoning Administrator and Zoning Enforcement Officer's decision regarding the expansion of a pre-existing, non-conforming use. The subject property is located directly behind the American Legion Boone Post #4 at 8385 U.S. 42 and northeast of the current Delightful Days RV Center at 8397 U.S. 42, Florence. Both properties are zoned Commercial Two (C-2).

Staff Member, Tom Breidenstein, presented the Staff Report which included a slide presentation (see Staff Report).

Chairman Holland asked if a Site Plan had been submitted. Mr. Bryant stated that Mr. Ament is working on the Site Plan, which has not been submitted. Mr. Bryant advised that they are leasing the property.

Mr. Breidenstein advised that this is a pre-existing, non-conforming use that has expanded. Staff feels they are responsible for the Site Plan.

Mr. Bryant advised that the delay is not intentional. They have submitted paperwork to the lessor, but they only meet once a month.

Mr. Breidenstein stated that a non-conforming use cannot be expanded and Mr. Bryant needs to withdraw within the confines of his previous approval. He stated that there have been four months of delay and during that time, closer examination of the matter revealed that the expansion was not proper.

Mr. Breidenstein added, as indicated in the Staff Report, that Mr. Bryant and the American Legion do not have sufficient property to request a zone change. The only solution Staff can see is to request a text amendment allowing the use in the zone.

Discussion of the Permitted Uses in the C-2 and C-3 Zones followed.

Mr. White stated that he has visited the site. The front of the property has been changed by the State and the applicant needs relief. He noted that the area taken over by Mr. Bryant was a grassy field.

Mr. Bryant stated that the State took 45 feet from the front of his lot, which makes it impossible to get the delivery vehicles on and off the lot. He stated that part of his property will be returned, but that will take at least two years. They are trying to stay in business and take care of their customers, as well as consider safety.

Counselor Wilson advised that part of Mr. Bryant's activity is legal. However, Mr. Bryant has expanded a pre-existing, non-conforming use to a previously unused area that does not have pre-existing, non-conforming status -- which is the violation. If the grassy area had previously had a non-conforming use, then the Board could allow a substitution of one non-conforming use for another, but this is not the case. Counselor Wilson noted the process required for a text amendment. He advised that the Board does not have the authority to allow uses in a zone not provided for in the regulations.

Mr. Ashcraft stated that he is sympathetic to Mr. Bryant's problem, but suggested that he seek legal counsel.

Mr. Bryant stated that he has talked with the adjacent property owners and they are pleased with what he has done with the grassy lot.

Chairman Holland questioned if the grassy lot could be declared an access road for turning purposes and not for storage or selling. Mr. Breidenstein advised that this would be considered an expansion of the non-conforming use. He noted that the record of this meeting would show that the expansion was for the pre-existing, non-conforming use.

Mr. Ashcraft noted that the effect of the taking of the lot frontage may be to put Mr. Bryant out of business.

Chairman Holland asked if there was anyone else present who wished to speak regarding this request.

Mr. David Osborne stated that he is not representing the city at this meeting. He stated that they have tried to protect the "mom and pop" operations. He stated that Mr. Bryant had greatly improved the grassy lot and the gravel he put down even helped the drainage problem. He noted that Mr. Bryant admits he did not know he needed a Site Plan and the surveyor he contacted put him on the back burner. He noted problems with vehicles getting on and off the site since the road improvement. He stated that Mr. Breidenstein has followed the guidelines in regard to this matter, but he would like to see Mr. Bryant protected.

Mr. White noted that even if the Board overrules Mr. Breidenstein, it would not help Mr. Bryant as it is not within the Board's jurisdiction to allow him to use the lot.

Counselor Wilson noted the Conditional Uses in the C-2 Zone and stated that a text amendment making this use a Conditional Use may be appropriate. Mr. Breidenstein noted that a text amendment may take as long as five months.

Chairman Holland encouraged Mr. Bryant to get an attorney and request a text amendment. Mr. Breidenstein agreed.

There being no further discussion, Mrs. Meihaus moved that the Board uphold the Zoning Administrator's decision. Mr. White seconded the motion and it carried unanimously.

3. The request of Lackner Custom Sign Company for Mike Albert Leasing for an appeal of the Zoning Administrator and Zoning Enforcement Officer's decision regarding signs with electronically changeable copy. The intended location of the sign is on the west side of Woodspoint Drive near Interstate 71/75. The property is zoned Commercial Services (C-3) and is owned by Mike Albert Leasing.

Staff Member, Tom Breidenstein, presented the Staff Report (see Staff Report).

Mr. Bob Ryan, Vice President of Mike Albert Leasing, stated that they want to take a site that has historically been a failure and turn it into a viable business. They have changed the topography, but the site is located behind the Chevron station and does not have visibility from the expressway. They want to increase the awareness of their business in the community. This sign will attract traffic to the site and increase their business. He stated that other business have an advantage in that they sell more cars to direct customers and have better visibility. They are willing to invest nearly \$100,000 in this sign. They are willing to give a percentage of the sign to the community.

Mr. Cassidy, representing the sign company, stated that he had run a stopwatch on KY 18 and I-75 and the maximum time he could read the sign was 3.5 minutes. They change their copy every five minutes and one would not see the copy change unless they were there when the copy changed. He stated that the main problem at the last meeting was the flashing lights. This system is not the same and costs about \$45,000 more than the flashing light system. He distributed to the Board a memo entitled, "Mike Albert Changeable Copy", which he reviewed. He also displayed a rendering of the proposed sign. He presented pictures of the Holiday Inn sign in Fort Mitchell. Mr. Cassidy stated that the proposed sign contains fluorescent lights and a computer tells the sign when to change the copy. He stated that these signs are cost-prohibitive and were not considered in the new zoning regulations. A 20-amp. circuit powers the sign. They would like to change the sign about every half-hour. He noted that the sign would be down in a hole and needs to be 80-feet high. Therefore, they need an electronic message center as it cannot be changed manually. He stated that there aren't any of the signs in Florence, but other signs are changeable copy.

Mr. Ashcraft noted that if the appeal is granted, the Board has no control over how often the message changes.

Counselor Wilson stated that a proper condition would be an appropriate control device or mode limiting the number of copy changes.

Mr. Breidenstein advised that if the appeal is upheld, then the city is opened up to this type of sign and the condition may be difficult to enforce.

Mr. Cassidy stated that electronic changeable copy which was incandescent was addressed in the original zoning regulations under Section 1901.2.

Mr. Ashcraft asked Mr. Cassidy to explain why the sign he proposes is not electronically changeable copy.

Mr. Cassidy stated that it is changeable copy, but it is computer driven. He stated that the zoning code does not define changeable copy as copy that is changed manually. He stated that not every business will buy this sign as it is cost prohibitive and their location does not warrant it.

Counselor Wilson stated that a mode could be identified to eliminate what may be a violation, noting a previous case involving flashing lights in which this was done.

Mr. Breidenstein stated that he had seen a videotape of the sign and it is very attractive, but the regulations as written have to be used in making a determination. The Zoning Administrator is charged with classifying uses not classified in the regulations.

Mr. Cassidy stated that their location is an extension of the Mall Road District.

Mr. Breidenstein stated that if their decision is upheld, then the applicant has the option of applying for a text amendment allowing these types of signs, possibly as Conditional Uses to allow the Board to have control over the modes.

Mr. Ashcraft stated that Mr. Cassidy's interpretation of the Mall Road Sign District is not valid and noted that that area has been singled out for electronically controlled signs.

Mr. Cassidy stated that Mike Albert Leasing has a geographic hardship. The sign sits down in a hole and must be high enough to be seen. The copy on the sign cannot be manually changed due to the height of the sign.

Mrs. Meihaus stated that the sign is electronically changeable and such signs are only allowed in the Mall Road District.

Mr. Ashcraft asked if this site could be considered part of the Mall Road District.

Mr. Breidenstein stated that the opinion of the Zoning Administrator is that this site is not part of the Mall Road District. This matter would require another appeal.

Chairman Holland asked Mr. Breidenstein if his opinion had changed in regard to this sign. Mr. Breidenstein stated that he stands with the Staff Report as written. He added that changeable copy signs are permitted at this location, but not electronically changeable copy signs.

Mr. Cassidy argued that this technology was not available when the text was written.

In response to a question from Counselor Wilson, Mr. Breidenstein stated that it has been the Zoning Administrator's opinion that this site is not part of the Mall Road District.

Mr. Ashcraft asked if there is a definition of what the Mall Road District encompasses. Mr. Breidenstein advised that there is no line drawn on the Zoning Map, but it is a matter of interpretation by the Zoning Administrator. Counselor Wilson noted that one can go to Mike Albert Leasing without being on Mall Road.

Mr. Cassidy stated that the regulations do not say that the signs have to be manually changed.

Mr. White stated that Section 19.51 refers to "Mall Road Area" and until that area is defined, he does not think the Board can proceed. Chairman Holland stated that in his opinion, the Mall Road area is from KY 18 to U.S. 42 only.

Counselor Wilson noted that Section 19.51 refers to the Mall Road Area and to developments "located along it" and businesses "having frontage on it and unobstructed visibility".

Mr. Ryan stated that their location can be seen from Mall Road.

Mr. Breidenstein advised that if this site is included in the Mall Road Sign District, it would not be entitled to a free-standing sign.

There being no further discussion, Mrs. Meihaus moved that the Board uphold the Zoning Administrator's decision. Mr. Ashcraft seconded the motion and it carried unanimously.

BOARD ITEMS:

Counselor Wilson advised that letters will be sent out in regard to the McDonald's issue.

There being no further business to come before the Board, Mr. Ashcraft moved, seconded by Mr. White, that the meeting be adjourned. The meeting was adjourned by unanimous consent at 10:00 P.M..

APPROVED:



Charles F. Holland, Chairman

ATTEST:



Jan Hancock, Recording Secretary