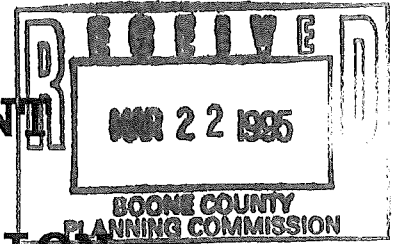


APPLICATION FORM
BOARD OF ADJUSTMENT
AND
ZONING APPEALS ACTION



(See Boone County Zoning Regulations)

SECTION A (To be completed by applicant)

1. (Check One) Boone Florence Walton Union
 (Check One)
2. Conditional Use Permit Variance Appeal
 Change in Non-Conforming Use
3. Applicant's Name Terry Dweally
 Phone Number 525-1580 Fax No. _____
 Applicant's Address 8383 U.S. HWY 92
Florence, Kentucky 41042
 City State Zip
4. Description of Request: Amend existing conditional use permit (See Attached PROPOSALS)
5. Name of Development A & A Distribution & Auto
6. Location of Development 8383 U.S. HWY 92
Florence, Kentucky 41042
7. Acreage Under Review SEE ATTACHED
8. Lot Number and Name of Subdivision (if part of a subdivision)
9. Owner of Property Terry Dweally
 Phone Number of Owner 525-1580
10. Address of Property Owner 10109 Russell Lane
Union, Ky 41091
 City State Zip
11. Proposed Use(s) on Site SEE ATTACHED PROPOSALS;
BUT PROPOSED USES WILL REMAIN UNCHANGED
12. Total Square Footage of Existing and/or Proposed Buildings
EXISTING ... 36' x 80' 39' x 80' 26' x 40'
13. Current Zoning on Property C-2
14. Deed Book 270 Page No. 46 Group No. 2098 E
15. Is the site subject to a zone change? N/A
 If yes, give date of approval _____
16. Have you submitted a Site Plan with this request? Yes
17. Have you submitted a list of adjoining property owners with this request? Yes
18. I, or we, understand and agree that this application and drawing(s) are being filed in accordance with the Boone County Zoning Regulations.
 Applicant's Signature: [Signature]
 Property Owner's Signature: [Signature]

(over)

BOARD OF ADJUSTMENT AND
ZONING APPEALS ACTION
APPLICATION
PAGE 2

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

\$10.00 R# 6240

1. Date Received March 22, 95 Fee Received 621.00 R# 6208
2. Is application complete? Yes No
3. Staff Reviewer Jeff Hayes
4. Scheduled Board Action Date 3-10-95
5. Board Action:

Approved
 Approved with Conditions (See #6)
 Denial (See #7)

6. Conditions of Approval: See Minutes

7. Reasons for Denial:

Boone County Planning Commission
2995 Washington Street
Burlington, Kentucky 41005
(606) 334-2196 Phone
(606) 334-2264 Fax

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

DEVELOPMENT: A & A Distribution and Auto
APPLICANT: Terry Dwelly
LOCATION: 8383 U.S. Highway 42, Florence
ZONING: Commercial Two (C-2)
DATE: April 12, 1995

A & A Distribution and Auto which is located off of US Highway 42 (See Sheet #1) is requesting a amendment to their existing Conditional Use Permit which was granted on March 14, 1990. This permit allowed the applicant to sell automobiles, but placed seven (7) conditions upon approval (See Exhibit A). Exhibit B is a dateline which identifies the numerous enforcement problems which the City of Florence and the Boone County Planning Commission have had with A & A Distribution and Auto. The major problem which has occurred since the approval of the Conditional Use Permit is Condition #2. This condition allowed only one vehicle to be displayed in the front of the building. This condition and the subsequent enforcement problems with this condition have resulted in the applicant asking to amend his original Conditional Use Permit approval.

Article 10, Section 1023, Item 6 of the Boone County Zoning Regulations permits small scale sales or leasing of new and used motor vehicles requiring the storage of no more than fifty (50) vehicles on the premises.

Surrounding Zoning and Land Uses (See Sheet #2)

North: Boone County Board of Education zoned Public Facilities (PF)
South: Single family homes zoned Suburban Residential One (SR-1)
West: American Legion Boone Post zoned Commercial Two (C-2)
East: Closed Workout America zoned Commercial Two (C-2)

The 1990 Boone County Comprehensive Plan does not specifically address this area but does state that:

Developments in Boone County should give consideration to the overall design of the project. Design should be a primary concern at the early stages of the development, with an emphasis on the aesthetic impact of the proposed use. The minimal use of signs is encouraged.

The proper application of these guidelines help, in part, to achieve an overall objective of this Comprehensive Plan. This objective states that various broad categories of land use are not inherently incompatible if properly designed and developed.

The Board must also consider specific criteria which apply to Conditional Uses within a Commercial Two zone:

- a) The activity is of integral and subordinate function of a permitted commercial use, professional or personal service;
- b) the activity will further add to, not detract from, the creation of a compact, multi-purpose and pedestrian oriented commerce center;
- 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.

Staff Concerns

1. Don Martin, Florence Enforcement Officer, has identified the current conditions of the existing Conditional Use Permit on Sheet #3 and the recommended conditions for the amended Conditional Use Permit on Sheet #4. This recommendation outlines that a maximum of five vehicles be permitted to be displayed in front of the building. However, a 20 feet fire lane should be marked and painted which allows access for emergency vehicles and customers only. This lane shall not be used for parking, storage, display, or unloading. In addition, parking spaces shall be installed along the east property line (fence line) and marked as customer parking. These spaces shall not be used as display area.
2. If the amended Conditional Use is permitted the applicant shall be required to undergo Site Plan Review. This Site Plan Review and the subsequent improvements indicated on the Site Plan should be completed before the display of the five vehicles can be permitted in the front of the building.
3. The area which the applicant has paved which is located off of the applicants property cannot be considered as part of this request. Therefore, the applicant cannot utilize this area for parking, display, or any other function of the business. If the applicant does purchase this property in the future and wishes to utilize this area, it will be necessary for the applicant to come before the Board for a Conditional Use Permit.

4. Staff believes that if the applicant wishes to utilize the rear of the site it will be necessary for a 25 foot buffer to be installed which should consist of a minimum of a double staggered row of six (6) feet high (minimum) evergreen trees planted a minimum of fifteen (15) feet on center.
5. Staff also believes that the previous conditions number 4, 5, and 7 of the existing conditional use identified in Exhibit A still apply to this request and should be imposed as conditions again.

Conclusion

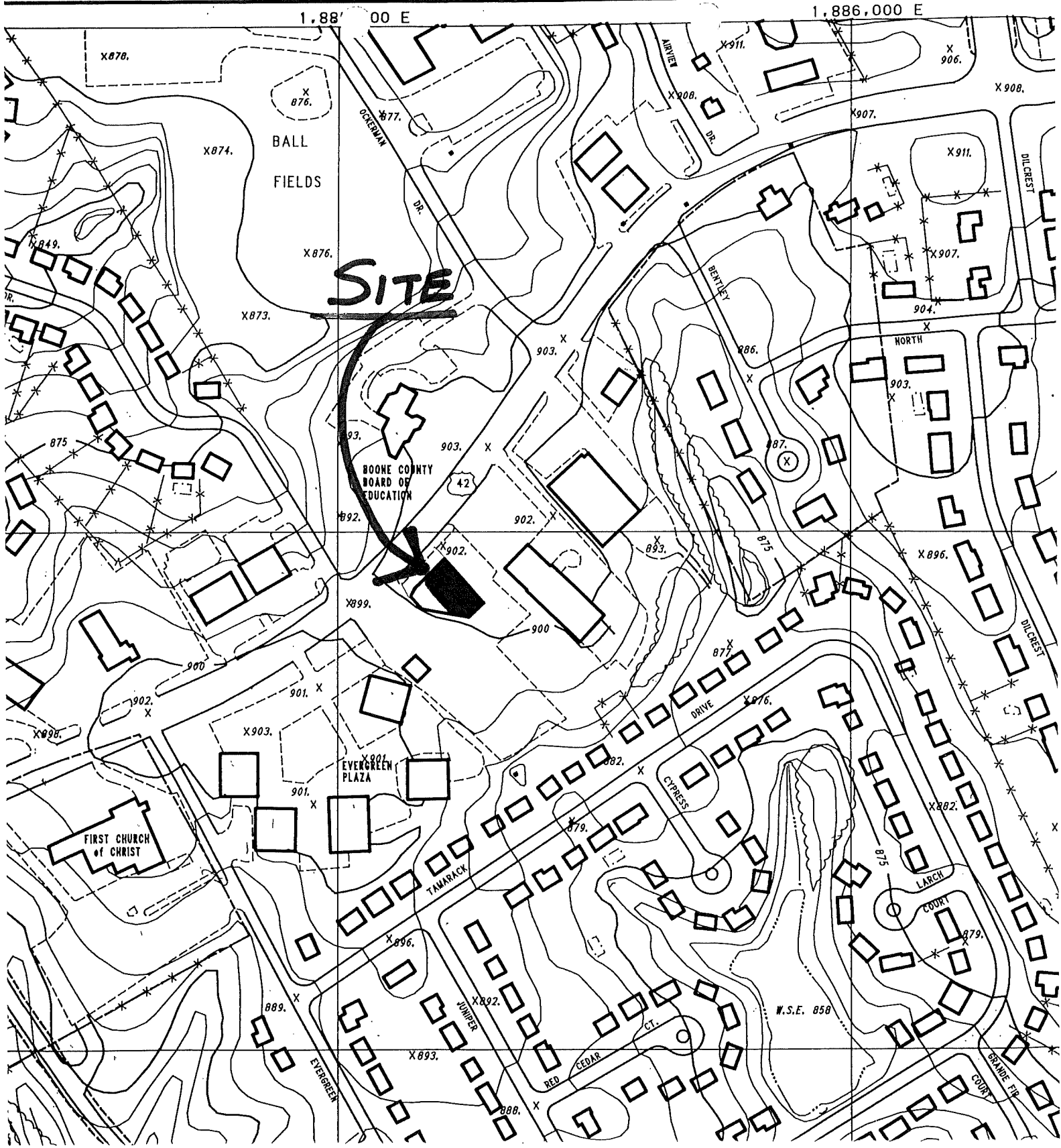
The Board must use the seven criteria for a conditional use and the four criteria for condition use within Commercial Two (C-2) zone to judge the appropriateness of this request. Staff believes that without stringent conditions recommended in the staff concerns the request could present a detriment to the general welfare. Furthermore, without stringent conditions the proposed request may not be appropriate and harmonious with the existing or intended character of the general vicinity.

Respectfully submitted,



Jeffrey F. Hayes
Planner

JFH\par



SHEET #1

LOCATION MAP



EXHIBIT A

CLUR# 90-FBOA-005

CONDITIONS OF APPROVAL

The following Conditions of Approval apply to the Conditional Use Permit as approved by the Florence Board of Adjustments and in accordance with the current zoning in effect as of March 14, 1990, (Certificate of Land Use Restriction # 90-FBOA-005), for Terry Dwelly, property owner.

The Conditional Use Permit be granted subject to the following conditions:

1. That the rear one-half acre of the 0.953-acre tract not be included.
2. That only one vehicle be permitted to be displayed in the front of the building.
3. That vehicles be permitted to be displayed along the fence to the east provided a 20-foot access roadway is maintained between the building and the vehicles.
4. That vehicles only be placed on paved surfaces.
5. That maintenance of the automobiles for sale be limited to simple maintenance--such as, washing, oil changes of transmission oils and lubricants. There is no heavy mechanical work permitted on the property.
6. That the circulation lane be left open pending further consideration when the applicant presents his plan for a sign.
7. That the lighting be toward the lot or towards the front and not towards the residential area.

The approved Conditional Use Permit as well as the preceding conditions apply to the property described in: DEED BOOK 270 PAGE NO. 46 Group No. 2048

STATE OF KENTUCKY,)

: SCT.

COUNTY OF BOONE,)

I, JERRY W. ROUSE, CLERK OF THE COUNTY COURT IN AND FOR THE COUNTY AND STATE AFORESAID, DO HEREBY CERTIFY THAT THE FOREGOING INSTRUMENT OF RECORDING WAS, ON THE 9 DAY OF April, 19 90, AT 2:55 P. M. REGISTERED IN MY OFFICE FOR RECORD, WHEREUPON THE SAME, THE FOREGOING, AND THIS

EXHIBIT B

CONTACTS WITH A-A AUTO SALES, A-AGRI, OR TERRY DWELLY

11-02-87 Tom Breidenstein (TB) issued a notice of violation for the illegal storage and sales of tractors and sheds from an abutting property (Florence Fitness Center). Given until 11-05-87 to comply. (See item number 1)

11-11-87 Mr. Dwelly complied with the notice of violation.

12-03-87 TB issued a notice of violation for the use of an illegal temporary sign. (See item number 2)

12-08-87 Complied with notice of violation by removing the sign.

03-30-89 TB issued a notice of violation for the utilization of illegal temporary sign and banners. (See item number 3)

04-18-89 Sign was removed and then subsequently replaced. Banners were still in place.

04-20-89 Sign was removed, banners still remained. Mr. Dwelly obtained a Temporary Advertising Display Permit (TAD) for the banners.

08-16-89 TB observed the sale of automobiles and boats without the issuance of a Conditional Use Permit (CUP).

08-23-89 TB sent a certified letter giving seven days to discontinue the sale of automobiles and boats. Mr. Dwelly was given the option to apply for a CUP.

08-24-89 TB spoke to Mr. Dwelly. Mr. Dwelly agreed to discontinue the sales of automobiles and boats within the seven day time period. TB mailed and application and checklist for a CUP.

09-13-89 TB inspected site, automobiles and boats had been removed and was now in compliance with C-2 zone.

11-15-89 TB filed criminal complaint against Mr. Dwelly for allowing banners to remain in place beyond the expiration date on the TAD.

12-29-89 In court Mr. Dwelly pleaded guilty, was fined \$200 (which was suspended) and paid court costs.

03-14-90 CUP granted to Mr. Dwelly for the sale of automobiles from his property at 8383 US 42. Only one vehicle may be displayed in front of building, all others must be parked along fence (see CUP). (See item number 6)

08-24-90 TB observed the sale of boats and failure to comply with conditions of the CUP. TB sent certified letter to Mr. Dwelly giving seven days to call and set and appointment on site to go over the conditions of the CUP. The deadline to respond was set for 09-04-90. (See item number 7)

09-18-90 TB again observed the sale of a boat, this boat was being displayed on an abutting property. TB took slides of the access roadway being blocked between A-A Auto Sales and the American Legion. This was a violation of the CUP.

02-27-91 TB issued a notice of violation to Mr. Dwelly for failure to abide by the conditions of the CUP, (See item number 8). A certified letter was sent (See item number 9) as well as leaving the notice of violation in the door. Mr. Dwelly was given until 03-06-91 to comply.

03-08-91 TB received verification from the Post Office that the letter was delivered on 03-01-91 indicating that Mr. Dwelly received the letter. (See item number 10)

03-11-91 TB inspected the site for compliance, there were several violations of the CUP.

03-18-91 TB took Kevin P. Costello, Zoning Administrator (KPC) to inspect the site for compliance. KPC authorized TB to file a criminal complaint against Mr. Dwelly.

03-19-91 Mr. Dwelly left a message at BCPC for TB stating that he would move the vehicles into compliance with the CUP.

03-20-91 Criminal charges were not filed against Mr. Dwelly due to his compliance. TB sent a letter outlining the conversation with Mr. Dwelly earlier the same day. (See item number 11)

08-02-91 TB received a complaint from the Florence City Coordinator about violations of the CUP. Specifically the sale of more than one vehicle in front of the building. TB issued a notice of violation giving until 08-03-91 to comply. (See item number 12)

08-05-91 TB mailed an application for a new CUP to Mr. Dwelly in order to try to change his existing CUP to allow the sale of more than one vehicle in front of the building. TB also informed Mr. Dwelly that he must abide by the conditions of the original CUP until such time that a new CUP is approved.

8-06-91 TB inspected the site. Several vehicles and a camper remained in violation of the CUP.

08-07-91 TB took pictures of vehicles and camper that remained in violation.

08-12-91 TB inspected the site. Several vehicles and a camper remained in violation of the CUP. KPC authorized filing a criminal complaint against Mr. Dwelly.

08-13-91 TB inspected the site. Several vehicles and a camper remained in violation of the CUP. TB filed criminal charges against Mr. Terry Dwelly and A-Agri. Arraignment set for 09-06-91. (See item number 13)

08-19-91 TB inspected the site. Five vehicle were displayed in violation of the CUP.

09-05-91 All vehicles were moved in accordance with the CUP.

09-06-91 Arraignment day. Case was set for pre-trial on 09-20-91.

09-11-91 Pre-trial was rescheduled for 10-04-91. (See item number 14)

10-01-91 TB inspected the site. Three vehicles were displayed in violation of the CUP.

10-04-91 TB inspected the site. Five vehicles were displayed in violation of the CUP. TB attended the pre-trial. A trial date was set for 11-13-91.

11-12-91 TB inspected the site. Ten vehicles were displayed in violation of the CUP. The trial date was rescheduled for 02-27-94. (See item number 15)

09-27-94 Donald Martin (DM) observed that more than one vehicle was being displayed in front of the building. There were also vehicles being displayed on non-paved surfaces. There were also several banners and pennants on display without a TAD. There was also an illegal temporary sign place in front of the building.

09-29-94 DM sent a letter to Mr. Dwelly informing him of the violations of the CUP as well as the Boone County Zoning Regulations. He was given seven days to comply. (See item number 16)

10-19-94 DM inspected the site and observed that Mr. Dwelly was selling a camper and recreational vehicles known as "ski-doos" in violation of a C-2 zone. There were also several trailers parked on the grass in the public Right-Of-Way for sale. The pennants and banners had not been removed. The illegal temporary sign had been removed.

10-24-94 DM Sent a second notice to Mr. Dwelly concerning the pennants and banners. This letter also informed Mr. Dwelly that the sale of those types of recreational vehicles was not allowed in a C-2 zone. (See item number 17)

11-03-94 DM inspected the site. A motorcycle was offered for sale in the public Right-Of-Way.

11-04-94 DM inspected the site. Three vehicles were displayed in violation of the CUP.

11-07-94 DM inspected the site. Two vehicles were displayed in violation of the CUP.

11-10-94 DM spoke to Terry Dwelly Jr. and informed him that the pennants and banners must be removed and that only one vehicle may be displayed in front of the building. He asked if he could apply for an additional CUP. I told him he could, but he must still abide by the conditions of the original CUP.

01-04-95 DM inspected the site. Two vehicles were displayed in violation of the CUP. A letter was sent informing Mr. Dwelly of the violations and giving him three days to comply. (See item number 18)

01-09-95 DM inspected the site. Two vehicles were displayed in violation of the CUP. One vehicle was being displayed for sale on the grass of an abutting property.

01-10-95 DM inspected the site. Six vehicles were displayed in violation of the CUP.

01-18-95 DM inspected the site. Eight vehicles were displayed in violation of the CUP.

02-10-95 DM inspected the site. Eight vehicles were being displayed in violation of the CUP. Two of these were on an abutting property. DM issued a citation, Terry Dwelly Jr. signed off on it. DM took pictures. Rick Lunneman and Brad Reece from the city of Florence were present on this visit. (See item number 19)

02-23-95 DM inspected the site. Six vehicles were being displayed in violation of the CUP. See site plan and pictures. Got approval from Kevin Wall to file the case to mediation. (See item number 20)

02-27-95 DM inspected site. Nine vehicles were displayed in violation of CUP. DM took six pictures and issued a citation, placed citation in door. Cited Mr. Terry Dwelly to mediation. (See item number 21)

03-01-95 DM spoke with Mr. Dwelly by phone. Mr. Dwelly asked what he needed to do to be in compliance. DM informed him, he said he would move all vehicles in order to be in compliance with the CUP.

03-06-95 DM inspected the site. Several vehicles were not parked in compliance with the CUP. Vehicles must be parked along fence and 20' from the building.

03-08-95 Mr. Dwelly canceled the mediation. DM turned the case over to the county attorney (Krigler) for prosecution. Arraignment set for 10:00 AM Friday, March 17, 1995.

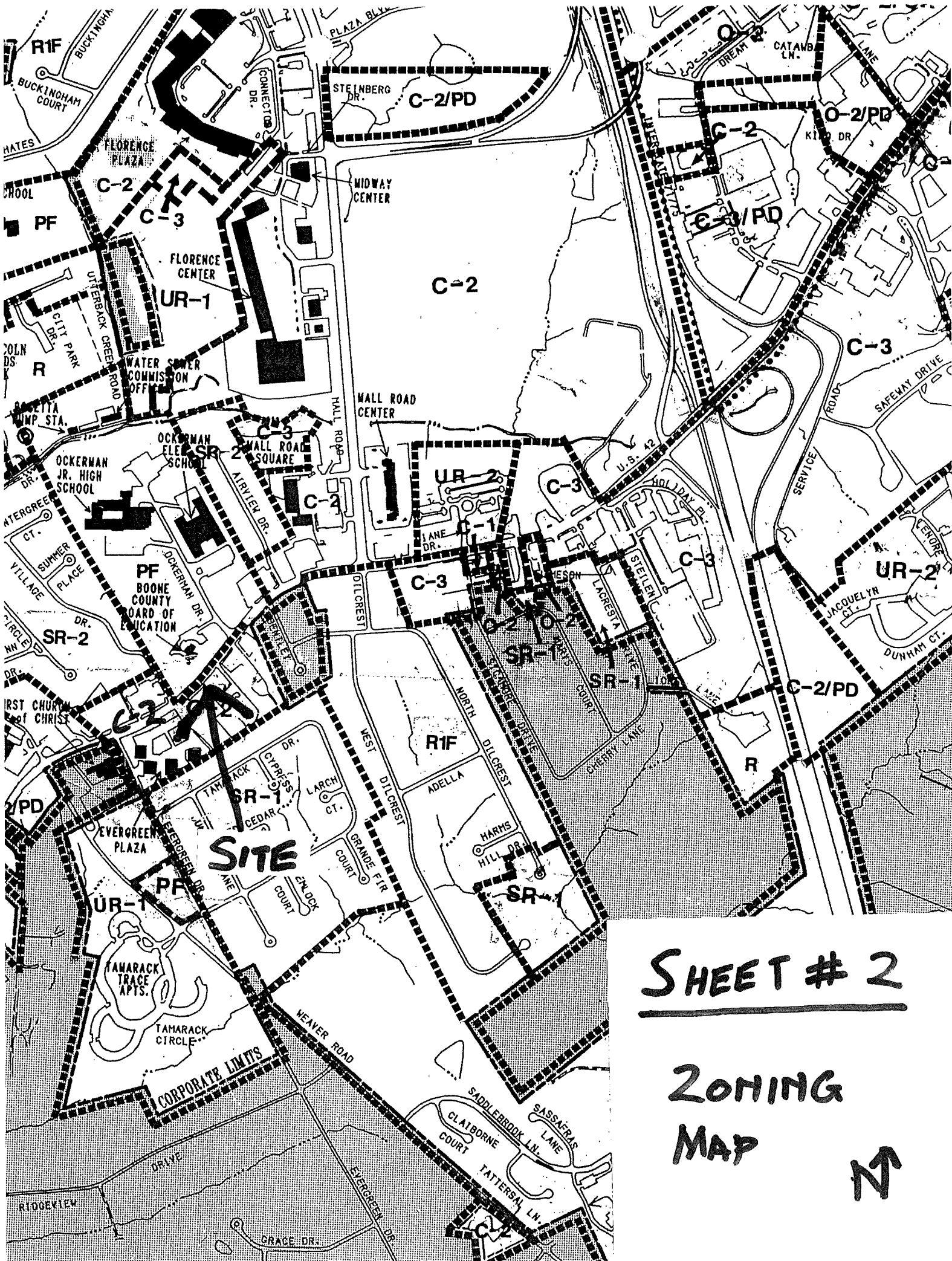
03-09-95 DM stopped at site and delivered a third copy of the CUP application and copies of the zoning complaint form to Terry Dwelly Jr. DM spoke with Mr. Dwelly by phone, he said he would submit a completed CUP application to the BCPC before the arraignment.

03-17-95 Arraignment rescheduled for 04-11-95 in order to see the outcome of Mr. Dwelly's possible request for a new CUP allowing the parking of more than one vehicle in front of the building.

03-23-95 Chris Nordloh (291-5255), attorney for Mr. Dwelly, submitted the paper work and application/request for a new CUP.

03-28-95

DM inspected the site. 3 vehicles were parked or displayed beyond the front line of the building, 2 of these were not on Mr. Dwelly's property, 1 of these was "for sale" in the public R-O-W. DM spoke to Chris Nordloh and requested that he contact Mr. Dwelly and inform him that he is violation of his original CUP and that he must abide by the conditions of the original CUP until the BOA determines if new conditions may be approved.



SHEET # 2

ZONING
MAP



A. AGR
B 383
FLOREN
-OR-

CURRENT CONDITIONS OF CUP

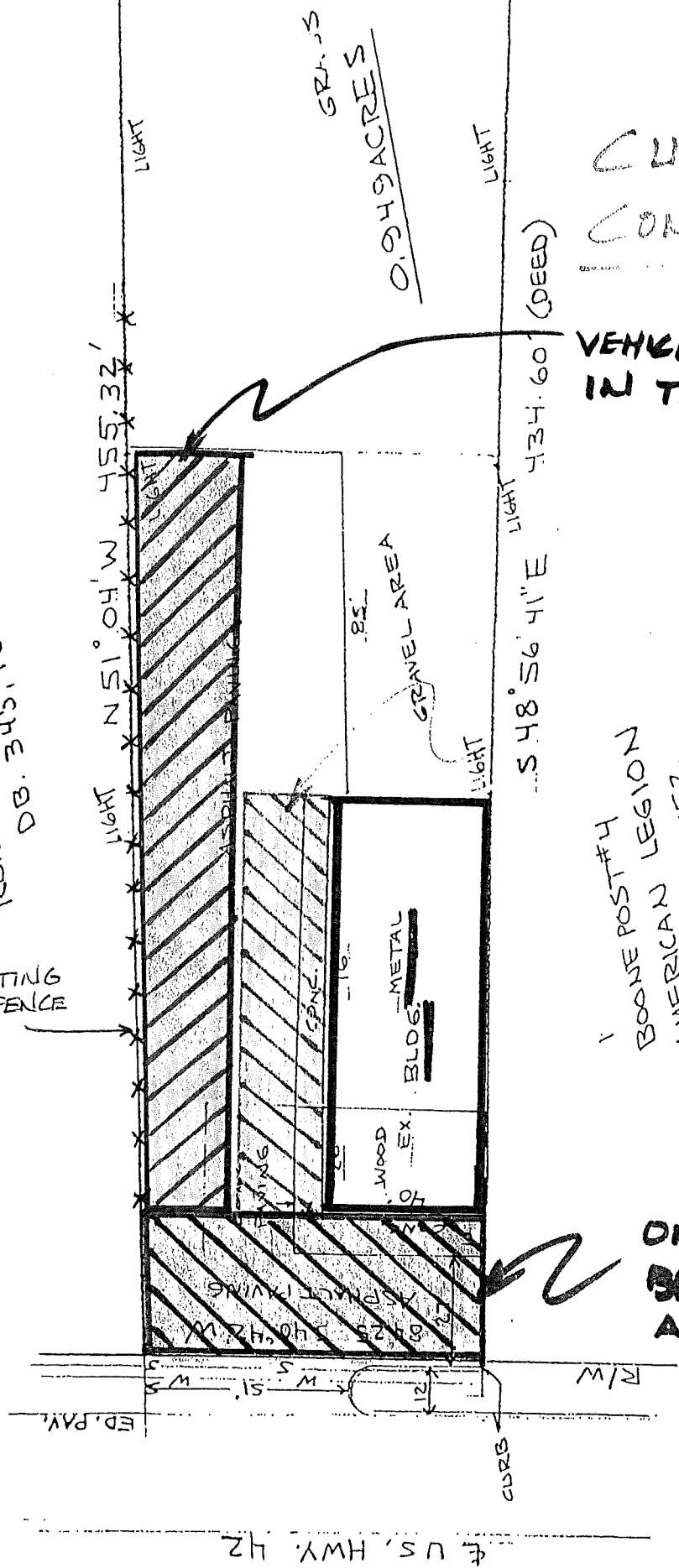
VEHICLES MUST BE DISPLAYED
IN THIS AREA

20' ACCESS
ROADWAY TO BE
MAINTAINED
BETWEEN BUILDING
AND VEHICLES.

1
BOONE POST #4
AMERICAN LEGION
DB. 258, PG. 152

ONLY (1) VEHICLE MAY
BE DISPLAYED IN THIS
AREA

RONALD SCHWEITZER & JAS, B. CORBETT
DB. 345, PG 56

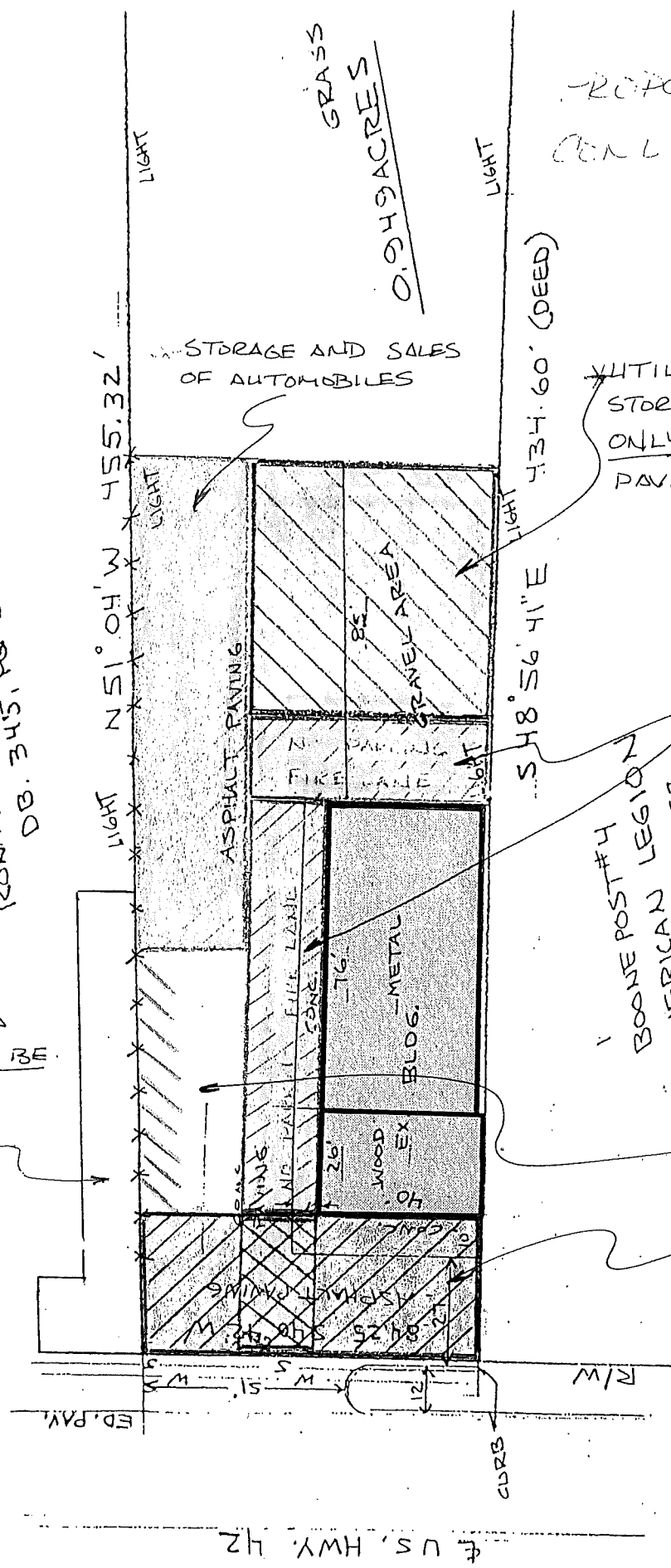


U.S. HWY. 42

Sheet #3

RONALD SCHWEITZER & JAS. B. CORBETT
 DB. 345, PG. 56

THIS AREA
 MAY NOT BE
 UTILIZED



UTILIZATION OF CURB
 A. AGR. 3383
 FLOREN

UTILIZE THIS AREA FOR
 STORAGE/SALES OF AUTOMOBILES
 ONLY AFTER IT HAS BEEN
 PAVED

MAINTAIN 20' ACCESS
 ROADWAY AROUND BUILDING
 MARKED "NO PARKING FIRE
 LANE"

BOONE POST #4
 AMERICAN LEGION
 DB. 258, PG. 152

PAINT A MINIMUM OF
 8 PARKING SPACES
 FOR CUSTOMERS
 AND EMPLOYEES ONLY

ALLOW THE DISPLAY OF
 NO MORE THAN 5
 VEHICLES IN FRONT
 OF BUILDING

Sheet #4

BOONE COUNTY CLERK

CERTIFICATE OF LAND USE RESTRICTION

1. NAME AND ADDRESS OF PROPERTY OWNER (S)
Terry Dwelly
8383 U.S. 42
Florence, Kentucky 41042

2. ADDRESS OF PROPERTY
8383 U.S. 42
Florence, Kentucky 41042

3. NAME OF SUBDIVISION OR DEVELOPMENT (if applicable)
A & A Distribution

DEED BOOK: 270

PAGE NO.: 46

GROUP NO.: 2048B

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

- Zoning Map Amendment from ___ to ___
Development Plan
Subdivision Plat (Unrecorded)
Variance
X Conditional Use Permit
Conditional Zoning
Other:

5. 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
2995 WASHINGTON STREET
BURLINGTON, KENTUCKY 41005

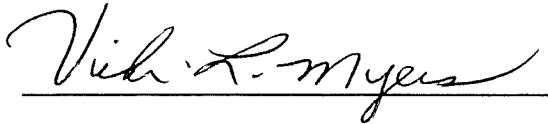
Handwritten signature of Jeffrey F. Hayes
SIGNATURE OF COMPLETING OFFICIAL

Jeffrey F. Hayes, AICP, Planner
NAME AND TITLE OF COMPLETING OFFICIAL
(type or print)

COMMONWEALTH OF KENTUCKY

COUNTY OF BOONE

Subscribed, sworn to, and acknowledge before me by Jeffrey Hayes on behalf
of the Boone County Planning Commission this 11th day
of August, 1995.

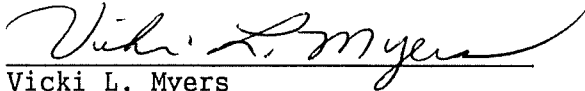


NOTARY PUBLIC, State at Large

My commission Expires:

April 17, 1999

This instrument was prepared for recording purposes only by:



Vicki L. Myers
Boone County Planning Commission
2995 Washington Street
Burlington, Kentucky 41005

NO TITLE EXAMINATION

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

CONDITIONS OF APPROVAL

The following Conditions of Approval apply to the Conditional Use Permit as approved by the Florence Board of Adjustments and in accordance with the current zoning in effect as of May 10, 1995, (Certificate of Land Use Restriction # 95-FBOA-003-A), for Terry Dwelly, property owner.

The following conditions will apply: (1) Two staggered rows of pine trees, at a minimum of six feet, be placed 7 foot on center at the rear of the subject property and that the trees be maintained and replaced as necessary. (2) That the emergency access drive be painted and striped with signs to designate the lane as a "No Parking" area. (3) The existing conditions of previous permit #4, #5, and #7 be incorporated as conditions. (4) If further paving is required to the back, a site plan review will be required by the applicant. (5) The paved area on the Workout America property which adjoins the applicants site cannot be used for the display of vehicles or parking for A & A Auto Sales. (6) The applicant is permitted to park three cars on the elevated pad, 3 more next to the pad, and 8 cars on the other side of the emergency lane. The cars shall be parked four to the front, a six foot gap, and four behind, for a total number 14 cars. The customer parking would be located directly behind this area along the fence as indicated on the drawing. (7) The first five conditions shall be in place before the applicant would be permitted to display anymore cars than permitted by the previous Conditional Use Permit.

The approved Conditional Use Permit as well as the preceding conditions apply to the property

described in: DEED BOOK 270 PAGE NO. 46 Group No. 2048B

State of Kentucky, County of Boone
 JERRY W. ROUSE, Clerk of the Boone County
 Court, do certify that the foregoing
Misc. was, on the 14 day of Aug.
1995 at 4:39 P. M, lodged in my office
 for record, and that it has been duly recorded in
 my said office, together with this and the
 certificate thereon endorsed.
 Given under my hand this 14 day of Aug.
 19 95.
 JERRY W. ROUSE, CLERK
 By Jerry Rouse D.C.